

October 5, 1978

MEMORANDUM FOR: Alan Rosenthal, ASLAP
James Yore, ASLBP
James Kelley, OGC
Harold Denton, NRR
Howard Shapar, ELD

FROM: Frank L. Ingram, OPA

SUBJECT: REVIEW OF TRIAL POLICY CONCERNING USE OF
CAMERAS DURING NRC LICENSING HEARINGS

Enclosed are: (1) a draft "Consent Calendar" paper; (2) a draft "General Statement of Policy," and (3) a draft public announcement related to camera coverage of NRC licensing hearings. The "Consent Calendar" paper recommends that the Commission formalize, on a permanent basis, its trial policy of permitting camera coverage of NRC licensing hearings with conditions--operation of cameras from fixed positions only, a prohibition on the use of artificial lighting, and a proviso that Licensing and Appeal Boards will continue to use Federal or State court rooms when available and that the camera policy applied in these facilities will be applicable to our proceedings. We would appreciate having your concurrence or comments by COB on Wednesday, October 11.

Frank L. Ingram
Assistant to the Director
Office of Public Affairs

Enclosures:
As stated

cc: Lee Gossick, EDO

OFFICE	PA				
SURNAME	FIngram.gmo				
DATE	10/5/78				

For: The Commissioners

From: Joseph J. Fouchard, Director
Office of Public Affairs

Subject: Review of Trial Policy Concerning Use of Cameras During
NRC Licensing Hearings

Purpose: To obtain Commission approval to continue television and
still camera coverage of proceedings before Atomic Safety
and Licensing Boards and Atomic Safety and Licensing Appeal
Boards on a permanent basis.

- Decision Criteria:
1. Has camera coverage, since February 1, 1978, created distractions or otherwise interfered with the hearings?
 2. Has the trial practice of limiting camera coverage to fixed positions and prohibiting the use of artificial lighting proved to be workable from the media standpoint?
 3. Has the trial policy limited the availability of Federal or State court rooms to Licensing and Appeal Boards?

4. Will continued camera coverage of licensing hearings create future distractions or otherwise impinge on the licensing process?
5. Are the information needs of the public being adequately served by the conditions imposed on camera coverage by the trial policy?

Alternatives:

1. Return to the former policy of permitting cameras in the hearing room only before and after sessions of the proceedings and during recesses. The use of cameras would be prohibited when hearings are in session.
2. Permit the use of cameras on an unrestricted basis during hearings.
3. Formalize the trial policy permitting camera coverage of hearings under conditions where no artificial lighting is allowed and the cameras must be operated from fixed positions.
4. Permit cameras to be used only during those portions of hearings in which limited appearances are being heard. The evidentiary portion of hearings would be closed to camera coverage.

Discussion:

On January 27, 1978, the Commission approved a trial policy permitting camera coverage of Atomic Safety and Licensing Board and Atomic Safety and Licensing Appeal Board proceedings with certain conditions-- cameras must be operated from fixed positions and no artificial lighting is permitted. In its General Statement of Policy, the Commission noted: (1) it would continue to be the practice of hearing and appeal boards to use Federal or State court rooms when available and that the policy of those courts in regard to the use of cameras would be observed, and (2) the Commission would reassess the trial policy in about six months.

The history of camera coverage of licensing proceedings under the former Atomic Energy Commission and the NRC up to January 1978 is discussed in SECY 78-5141 dated *Jan. 12, 1978*.

Experience to date with the trial policy in 23 hearings or prehearing conferences where cameras were used demonstrates that it is--and can continue to be--an acceptable means of permitting camera coverage of NRC licensing

proceedings. There have been four instances where the policy of the court--either Federal or State--did not permit camera coverage and the custom of the court was observed by NRC. On the other hand, two proceedings in the Black Fox case in Oklahoma were held in a Federal court in Tulsa with the permission of the judge.

With one exception there have been no major difficulties in implementing the policy. The one case involved an apparent misunderstanding as to who had jurisdiction over the hearing room in a Federal building, but the matter was resolved at the beginning of the second day of the hearing.

Camera coverage has not interfered with the hearings; it has not impacted on the use of court rooms for these proceedings; and the restrictions of fixed positions and no artificial lighting have not restricted the ability of cameramen to cover the hearings. The camera crews have cooperated with the NRC public affairs staff and the media are appreciative of our efforts to help them do their job.

Alternative 1: Return to the former policy of permitting cameras in the hearing room only before and after sessions of the proceeding and during recesses. The use of cameras would be prohibited when hearings are in session.

- Pro:
1. Would prevent possible distractions or other impingements on the licensing process which could result from camera coverage.
 2. Would help to assure that the behavior of witnesses and participants would not be influenced by an "outside intrusion"--resulting in stage fright, grandstanding, nervousness, etc.
 3. Would not present the possibility that presiding officers would have additional difficulties in maintaining appropriate order and decorum.
 4. Would be consistent with the camera policy applied in many Federal courts--a policy the staff must follow when proceedings are conducted in these facilities.
- Con:
1. Since there is no evidence that the trial policy has caused distractions or otherwise impinged on the licensing process, charges of discrimination against a major source of news for the public (television and newspaper still cameras) would be even more intense than in the past.

2. May make the possibility that NRC hearing boards would be subject to "sit-ins" by camera crews-- to test NRC authority in this area--a very real one.

Alternative 2: Permit the use of cameras on an unrestricted basis during hearings.

Pro: 1. Would open up news coverage of the NRC regulatory process to an unprecedented degree.

2. Based on experience, would more than satisfy the needs of TV stations and newspaper still photographers.

Con: 1. Would pose more of a possibility that there could be difficulties in carrying out an orderly proceeding--encouragement of demonstrations, etc.

2. Could increase the possibility that witnesses might be encouraged to "tailor" their presentations to attract media attention.

3. Artificial lights would be uncomfortable for the boards, counsel, witnesses and other participants.

4. Movement of cameras could cause real distractions for all involved.
5. Would increase the possibility that quality of NRC decisionmaking would be impaired.

Alternative 3: Formalize the trial policy permitting camera coverage of hearings under conditions where no artificial lighting is allowed and the cameras must be operated from fixed positions.

Pro: 1. Has proved satisfactory to the media and the hearing boards and hearing participants during the trial period.

2. Does not afford the possibility of the distractions outlined in "Con" (3 and 4) above.

3. Provides a better understanding of the NRC licensing process.

Con: 1. Necessitates a deviation from the policy when court rules prohibit the use of cameras.

2. Still affords the opportunity for demonstrations or that witnesses might "tailor" presentations to attract media attention.

Alternative 4: Permit cameras to be used only during those portions of hearings in which limited appearances are being heard. The evidentiary portion of hearings would be closed to camera coverage.

- Pro:
1. Provides some of the benefits of Alternatives 2 and 3.
 2. Would provide--though to a lesser extent than Alternatives 2 and 3--a better understanding of NRC licensing process.
 3. Keeps evidentiary portions of hearings free of possible camera-related distractions, etc., while permitting coverage of non-evidentiary portions.

Con: 1. Generally same as for Alternative 1.

Recommendations:

1. That the Commission adopt Alternative 3 with the proviso that the licensing and appeal boards will continue to use court rooms when available and that the camera policy of those court facilities will be applicable to NRC proceedings.

2. Note that a Statement of Policy (Appendix A) will be published in the Federal Register.
3. Note that a public announcement (Appendix B) will be issued.

The Chairmen of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Panel, the General Counsel, the Offices of Nuclear Reactor Regulation, the Executive Legal Director and Public Affairs all concur in this recommendation.

Sunshine Act: Recommend affirmation at an open meeting.

Joseph J. Fouchard, Director
Office of Public Affairs

Enclosures:

1. Appendix A
2. Appendix B

CAMERA COVERAGE OF HEARINGS BEFORE ATOMIC SAFETY AND LICENSING
BOARDS AND ATOMIC SAFETY AND LICENSING APPEAL BOARDS

General Statement of Policy

On January 27, 1978, the Nuclear Regulatory Commission issued a General Statement of Policy in which it announced that, on a trial basis, it will permit, under specified conditions, the use of television and still cameras by accredited news media during hearings and related proceedings before Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards. The trial policy provided that the cameras could be used if they do not require additional lighting beyond that required for the conduct of the proceeding and are stationed at a fixed position within the hearing room throughout the course of the proceeding.

The Commission also said that it will continue to be the practice of the hearing and appeal boards to use Federal or State court rooms when these facilities are available and in such cases the policy of those courts in regard to the use of cameras will be observed.

The Commission noted that it planned to reassess this trial policy in about six months after its hearing and appeal boards had sufficient experience with camera coverage to determine whether it could be carried out without disruption to the proceeding or unacceptable distraction to the participants.

The Commission has completed a review of this matter and has determined that the camera policy as stated in its January 27, 1978, Statement of General Policy will be continued.

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NRC TO CONTINUE POLICY OF PERMITTING
CAMERA COVERAGE OF ITS LICENSING PROCEEDINGS

The Nuclear Regulatory Commission announced today that it will continue to permit camera coverage by news media of NRC licensing and appeal board proceedings. The NRC is one of the first Federal agencies to allow such coverage.

In January of 1978 the Commission announced that on a trial basis cameras could be used to cover proceedings of its Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards. The cameras may be used if they do not require additional lighting beyond that needed for the conduct of the hearing and are stationed at a fixed position in the hearing room throughout the proceeding.

The Commission noted that it is the practice of the hearing and appeal boards to use Federal or State court rooms when these facilities are available. In such cases the policy of those courts in regard to the use of cameras will be observed.

During the trial period cameras were used in about 20 NRC hearings or prehearing conferences. In reviewing the matter, the Commission was advised by its staff that such coverage has not been disruptive nor have there been unacceptable distractions to the participants in the hearings. The Commission has decided to continue its camera policy, with the same restrictions as to natural lighting and fixed positions.

The following information was received from David Phoelke, a supervisor in the District Clerk's Office, U.S. District Court, St. Paul.

The Court's camera policy, contained in Rule 7d is:

"No camera or other picture-taking device, radio or television broadcasting equipment, or voice-recording instrument, whether or not court actually is in session, shall be brought into any federal court building or place of holding proceedings before a United States commissioner or magistrate in this District for use during the trial or hearing of any case, or proceeding incident to any case, or in connection with any session of the United States grand jury."

Mr. Phoelke suggested that any requests for interpretations of this rule, as it would apply to NRC, should be addressed, in writing, to:

Chief Judge Edward J. Devitt
U.S. Court House
316 N. Roberts
St. Paul, MN 55101