



September 22, 1977

MEMORANDUM FOR: Joseph J. Fouchard, OPA

FROM: Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Panel

SUBJECT: NRC POLICY REGARDING USE OF CAMERAS
DURING ADJUDICATORY HEARINGS

This is in response to your memorandum of September 21, 1977, in connection with the review of the existing Commission policy pertaining to television and still camera coverage of NRC adjudicatory proceedings.

I strongly favor the retention of the existing policy for essentially the reasons assigned in support of it in your draft memorandum for the Commissioners. In this connection, I do not think it likely that any legal challenge to the Commission's authority to bar cameras would be successful. My impression is that few, if any, federal courts permit the use of cameras. The considerations underlying the judicial prohibition are essentially the same as those underlying our policy and there is no cause to believe that the courts would not give equal effect to them where the Commission is concerned. Beyond that, I know of no constitutional or statutory provision which interdicts a bar on camera use. Certainly, the First Amendment guarantee of freedom of the press does not come into play. Nor do I see any merit in the suggestion of invidious discrimination in favor of newspapers and periodicals.

There is one practical aspect of the matter which is of particular concern to me. When an appeal board decides to hold an oral argument in a location other than Bethesda, Mr. Stephens is requested to obtain, if at all possible, a

federal courtroom. As your draft memorandum for the Commissioners observes, our use of court facilities -- which has many patent advantages -- requires observance of the regulations governing such use. Thus, it is reasonable to suppose that, were the camera coverage policy to be relaxed, there would be pressure brought to bear upon us to refrain from resort to federal courtrooms (or to the facilities of state courts likewise imposing a bar on cameras). Indeed, the claim might well be made that the new policy precluded our employment of any facility which did not allow cameras. I would think that this possibility might be of even greater concern to the licensing boards, which conduct most of their hearings outside of Bethesda and also seek to obtain access to courtrooms.

You note that Mr. Yore is looking into the matter of the camera policy of other federal agencies. Although the results of his survey may be informative, I do not think that they should be deemed dispositive. For one thing, few other agencies conduct adjudicatory hearings on issues which are as emotionally charged as those in the area of nuclear power. In any event, we should make our own judgment as to whether allowing camera coverage would be consistent with the objective of insuring an orderly and dignified licensing proceeding, free of posturing and other plays for media and public attention.

I would add only that I recognize the at least surface attractiveness to the "public's right to know" argument so often advanced in support of televised adjudicatory proceedings. That argument, however, is as applicable to judicial proceedings as it is to administrative adjudication. The federal courts have apparently concluded that the addition to the sum total of public knowledge which might be provided by television coverage would be acquired at too great a cost. I reach the same conclusion in the context of our proceedings. Generally speaking, the local printed media coverage of licensing and appeal board hearings and oral arguments

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which are of substantial public interest appears to be reasonably thorough -- and, indeed, probably is more instructive than would be a 60-second segment on the 6 o'clock TV news.*/ Be that as it may, the avoidance of the perils attendant upon converting the participants in the proceeding into actors on a TV stage outweighs in my judgment any supplemental contribution which camera coverage would make to public understanding.

Alan S. Rosenthal

Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Panel

cc: James R. Yore, ASLBP
James L. Kelly, OGC
Howard K. Shapar, ELD

*/ My surmise is that rarely would a TV station see fit, either live or on video tape, to provide anything approaching gavel-to-gavel coverage.