

November 11, 1977

SECY-77-574

For: The Commissioners

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

Subject: REVIEW OF POLICY CONCERNING USE OF CAMERAS
DURING NRC LICENSING HEARINGS.

Purpose: To obtain Commission guidance on a public affairs
policy matter.

Issue: Should NRC policy be changed to permit television
and still camera coverage of proceedings before Atomic
Safety and Licensing Boards and Atomic Safety and
Licensing Appeal Boards.

Decision Criteria:

1. Can camera coverage of licensing hearings be permitted without creating distractions or otherwise impinging on the licensing process?
2. Are the information needs of the public being adequately served when one of the principal news media--television--is not permitted to cover the hearing with its cameras?

Alternatives:

1. Retain the present policy of permitting cameras in the hearing room before and after sessions of the proceeding and during recesses. Cameras are prohibited when the hearing is in session.
2. Permit cameras to be used in the hearing room on an unrestricted basis.
3. Permit cameras to be used in the hearing room, but only under conditions where no artificial lighting is allowed and the cameras must operate from fixed positions.
4. Permit cameras to be used only during that portion of the hearing in which limited appearances are being heard. The evidentiary portion of the hearing would remain closed to camera coverage.

Contact:
Joe Fouchard, OPA 492-7715

Discussion:

On June 10, 1975, the Commission adopted the policy of the former Atomic Energy Commission with respect to the use of TV and still cameras in the hearing rooms during NRC licensing proceedings. That policy prohibits photography during periods when the hearing actually is in session. Photography is permitted in the hearing room before and after each session of the hearing and during recesses. Tape recorders or live radio broadcasts are permitted if they are not disruptive to the hearing.

Licensing Board Chairmen typically grant a few minutes of "shooting time" before the start of a hearing to accommodate TV and still photography. Recently the NRC has received a number of protests concerning this policy. These have included requests from KING-TV and the Seattle Times in connection with the Skagit hearing in Seattle, and from the Radio Television News Directors Association with respect to the Black Fox hearing in Oklahoma. There also were protests at the Marble Hill hearing. Several members of Congress recently have questioned our policy as a result of complaints from news media in their areas.

We have indicated to the Congressmen, to the Seattle media and to the Radio-TV News Directors Association that the Commission would take a fresh look at our policy. That is the purpose of this paper.

The Atomic Energy Commission considered the issue of camera coverage of its licensing hearings on several occasions and following each review decided not to change its policy. In 1971 the Administrative Conference of the United States, at the request of the AEC, initiated a study of the photography question with respect to all regulatory agencies. In 1972 the Conference-- by a split vote--recommended that agencies "encourage broadcast coverage--subject to appropriate limitations and controls to prevent disruption and protect witnesses-- of proceedings involving issues of broad public interest." Subsequently, the AEC decided not to change its policy. However, since that time, some State regulatory agencies-- such as the Illinois Commerce Commission--have permitted

filmed coverage of their proceedings. Mr. Yore reports that at the Federal level only the Federal Communications Commission has implemented the Administrative Conference recommendation in full by publishing a policy statement containing guidelines for broadcast of its proceedings. Much of the audio-visual coverage permitted by other agencies appears to be less the result of the Administrative Conference recommendation than of the Government in the Sunshine Act. EPA's policy is to allow broadcast coverage of non-adjudicatory proceedings. When EPA promulgated new regulations for formal adjudicatory hearings on registration of pesticides, it proposed allowing broadcast coverage, but withdrew the proposal in the final published regulations because of objections. Thereafter, in reporting out a new pesticide bill which later became law, the Senate Committee on Agriculture and Forestry indicated it would oppose any such broadcast coverage in future EPA regulations. A discussion of the alternatives follows:

Alternative 1:

Retain the present policy of permitting cameras in the hearing room only before and after sessions of the proceeding and during recesses. Cameras would be prohibited when the hearing is in session.

- Pro:
1. Maintains an atmosphere conducive to presentation and consideration of evidence. Distractions occasioned by high-intensity lighting, camera noise and movement are eliminated.
 2. Witnesses' and participants' behavior is not influenced by knowledge that they are "on camera" (stage fright, nervousness, grandstanding, etc.).
 3. Aids presiding officers in maintaining appropriate order and decorum.
 4. Is consistent with the rules of the Federal court system. Since NRC often uses Federal courtrooms for its hearings, it is necessary to follow the custom of the court when using their facilities.
- Con:
1. TV news industry will continue to assert that this policy discriminates against a major source of news for the public in that the camera is as essential to the TV reporter as the pencil is to the printed press. Newspapers also believe their still cameras should be allowed to provide visual coverages and will continue to object to our policy.

2. May subject NRC hearing boards to "sit-ins" by camera crews to test NRC authority. This could involve calling in law enforcement authority or adjourning the hearing.

Alternative 2:

Permit cameras to be used in the hearing room on an unrestricted basis.

- Pro:
1. Would open up news coverage of the NRC regulatory process to an unprecedented degree.
 2. Would satisfy the needs of TV stations and newspaper still photos.
 3. Might provide better public understanding of the thoroughness of NRC licensing procedures.

- Con:
1. Would create difficulties in carrying out an orderly proceeding, including the possibility of encouraging demonstrations.
 2. Might cause witnesses to tailor their presentations to attract media attention.
 3. Artificial lights would be uncomfortable for the hearing board, counsel and witnesses, and could distract witnesses testifying under oath.
 4. Movement of cameras around the hearing room would be a distraction to the hearing board, witnesses and counsel.
 5. Quality of NRC decisionmaking could be impaired.
 6. In cases where Federal court rules prohibit cameras, NRC must comply or find a hearing room outside the Federal court building.

Alternative 3:

Permit cameras to be used in the hearing room, but with the restrictions that no artificial lighting is allowed and the cameras must operate from fixed positions.

- Pro:
1. Would open up NRC regulatory process to essentially the same degree as Alternative 2.

2. Would provide less possibility for distractions than Alternative 2 in that natural light would be used and cameras would not be moving around the hearing room.
3. Might provide better public understanding of the licensing process.
4. Would meet the needs of most TV stations-- although some may not have equipment to film with natural light--in providing coverage of an important story in the local area where a plant is proposed. The same is true for news photographers.

- Con:
1. Some distraction still is possible since witnesses would know that they are being filmed, and there would be some small camera noise.
 2. In cases where Federal court rules prohibit cameras, NRC must comply or find a hearing room outside the Federal court building.
 3. Possibility that demonstrations would be encouraged by presence of cameras.
 4. Witnesses may tailor presentations to attract media attention.

Alternative 4:

Permit cameras to be used only during that portion of the hearing in which limited appearances from the public are being heard. Cameras would operate on natural light and from fixed positions. The evidentiary portion of the hearing would remain closed to camera coverage.

- Pro:
1. Would open up news coverage of hearing process, and go part way in assisting TV and still cameramen.
 2. Might provide better understanding that public can voice its views and be heard by NRC.
 3. Has advantage of keeping evidentiary portion of hearing free of cameras, distractions, etc., while permitting coverage of non-evidentiary portion.


- Con:
1. Where Federal courtrooms are used for hearings, would force NRC to go elsewhere for space or revert to past practice of no cameras during any portion of hearing.
 2. Persons making limited appearances might tailor their presentations to secure more news media attention.
 3. Possibility of encouraging demonstrations is still present.
 4. TV news industry and newspaper photographs still would protest camera bar in evidentiary portion of hearings.

Recommendations:

The Chairmen of the Atomic Safety and Licensing Board Panel and the Appeal Panel strongly favor Alternative 1 (retention of the existing policy). Their views are set forth in detail in appendices 1 and 2. The Office of Public Affairs, the General Counsel, the Office of Nuclear Reactor Regulation, and the Office of the Executive Legal Director recommend the Commission tentatively adopt Alternative 3 (use of cameras with restrictions on lighting and fixed positions) for a six month trial period to determine if the concerns about disruption of the hearings are real. During this trial period the custom of the courts would be observed; that is, if the Federal court or State court whose facilities we are using bars cameras, then NRC hearing boards would follow suit. In cases where non-court facilities are used, the cameras would be permitted under the restrictions set forth in Alternative 3. It would be made clear that the prime consideration in the selection of space for a particular hearing is not whether camera coverage is possible, but, rather, is the suitability of the facility for the conduct of the hearing.

Scheduling:

For an early open Policy Session.*


Joseph J. Fouchard
Acting Director
Office of Public Affairs

Enclosures:
Appendix 1 & 2

*GISA Meetings are scheduled for Monday, November 14, and Wednesday, November 23, 1977.

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Frank Ingram, OPA 492-7715

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