



Recommendation 72-1

Broadcast of Agency Proceedings

(Adopted June 8, 1972)

In recent years radio and television broadcasters have sought live or delayed coverage of many kinds of public governmental proceedings. While Canon 35 of the Canons of Judicial Ethics of the American Bar Association states that broadcasting or televising of court proceedings "should not be permitted," the reasons for this policy, to the extent they are applicable to administrative proceedings, are often outweighed by the need to inform the public concerning administrative proceedings, particularly those of broad social or economic impact, and to encourage participation in the understanding of the administrative process. Therefore, the public interest will be served by permitting radio and television coverage of many administrative proceedings, subject to appropriate limitations and controls.

Recommendation

A. Audiovisual Coverage of Public Administrative Proceedings

An agency which conducts proceedings of interest to the general public should adopt regulations, consistent with the principles stated below, which state whether audiovisual coverage of each type of proceeding is permitted, precluded or left to the discretion of the presiding officer or other official under standards determined by the agency.

1. *Proceedings in which audiovisual coverage should be encouraged.*—Notice-and-comment and on-the-record rulemaking proceedings, and adjudications in which a public interest standard is applied to authorize service or determine its level or quality, normally involve issues of broad public interest. An agency should take affirmative steps to encourage audiovisual coverage of public hearings or oral presentations in such proceedings, including provision of adequate space and facilities, convenient schedules, and the like.

2. *Proceedings in which audiovisual coverage should be excluded.*—Audiovisual coverage should be excluded in adjudicatory proceedings involving the rights or status of individuals (including those of small corporations likely to be indistinguishable in the public mind from one



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or a few individuals) in which individual past culpable conduct or other aspect of personal life is a primary subject of adjudication and the person in question objects to coverage.

3. *Proceedings in which agencies should balance conflicting values.*—In adjudicatory proceedings not governed by paragraphs 1 and 2, an agency should determine whether the drawbacks of audiovisual coverage outweigh the advantages of informing the public. When audiovisual coverage is excluded or restricted, the agency should state the reasons for such exclusion or restriction on the record of the proceeding.

B. Prevention of Disruption

Audiovisual coverage should be conducted with minimal physical intrusion on the normal course of the proceeding. Agencies should impose reasonable restrictions on lighting, multiple microphones and other possible sources of disruption.

C. Protection of Witnesses

In any public proceeding a witness should have the right, prior to or during his testimony, to exclude audiovisual coverage of his testimony.

Citations:

38 FR 19791 (July 23, 1973)

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2 ACUS 54

Separate Statement of Richard B. Smith; joined by G. Harrold Carswell, Dale W. Hardin, Marion Edwyn Harrison, and Richard C. Van Dusen

The Conference was closely divided on the question of the adoption of Recommendation 32. While we cannot speak for all of those who opposed the recommendation, we believe that the encouragement provided by Recommendation 32 to the televising and recording of administrative proceedings is unwise and undesirable. We believe



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the various agencies should retain their existing discretion to allow or not allow coverage of their proceedings, guided by the spirit of Canon 35 of the Canons of Judicial Ethics.

In our view the underlying considerations of Canon 35 are fully applicable to many, if not most, administrative proceedings conducted by Federal agencies. The Canon provides:

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings, detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony and create misconceptions with respect thereto in the mind of the public and should not be permitted.

We fear that most audiovisual coverage of administrative proceedings, whether adjudicatory or rulemaking in nature, would disrupt and distort such proceedings. Presentation of radio or television coverage almost inevitably would be highly selective and episodic, with selection largely governed by dramatic rather than substantive values. In the light of television's dramatic and emotional impact and prevailing programming practices, there is a special danger of severe distortion. The likelihood of more than a few seconds or minutes of viewing is remote, and such spotlighting of a portion of an administrative proceeding could only be seen out of context. Televising of administrative proceedings also may have adverse effects on the behavior of participants who would be cast in the role of actors rather than engaged in the task of presenting arguments and developing a record to a tribunal which then decides the matter before it.

The presence of lights, cameras and microphones may affect adversely the dignity and proper focus of an administrative proceeding. Although the recommendation attempts to protect against the possibility of disruption, we are not persuaded that presiding officers, once the broadcast media are introduced into a hearing, will be able to keep noise and distraction within permissible limits.

There is little demand for broadcast coverage of administrative proceedings. The availability of newscast commentary on proceedings as well as newspaper and printed periodical coverage does provide public access and information. Moreover, public officials and agency administrators often appear on radio and television to explain, or to be questioned concerning, policies and programs of their agencies. The goal of adequately informing the



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public can be reached without impairing the fairness, dignity and conduct of administrative proceedings.