

**Public Access to Mississippi Trial Courts:
Report of Media and the Courts Study Committee**

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Introduction

Mississippi Supreme Court Chief Justice Edwin L. Pittman created the Media and the Courts Study Committee in November 2001 to study the possibility of allowing cameras in state trial courts. Chief Justice Pittman named Justice James E. Graves Jr. as chairman of the committee.

Justice Graves broadened the scope of the study to include other issues in an effort to improve the relationship between the media and the judiciary. The committee determined that its three primary goals were to:

1. Study ways to enhance the relationship between the media and the courts;
2. Educate the public and improve the people's confidence in the justice system; and
3. Suggest ways for judges to interact with the media..

Study committee membership

Makeup of the committee initially included two representatives each designated by the Conference of Chancery Judges and the Conference of Circuit Judges and one representative each from the Conference of County Court Judges, the Justice Court Judges Association and the Municipal Judges Association.

Judicial members include Circuit Judges Tomie T. Green of Jackson and Billy Joe Landrum of Laurel, Chancery Judges Margaret Alfonso of Gulfport and Norman L. Gillespie of Oxford, Madison County Judge William Agin, Terry and Utica Municipal Judge Lee Agnew Jr., and Bolivar County Justice Court Judge James Strait.

During the first public meeting of the panel, a television news director and the Associated Press' Jackson bureau chief questioned the absence of journalists on the committee. Justice Graves stated that while some judges were reluctant to have journalists on the committee, he was open to the idea. He suggested that professional organizations recommend persons to serve. Subsequently, the Board of Directors of the Mississippi Associated Press Broadcasters Association voted unanimously to recommend Dick Rizzo, director of news and public affairs for Mississippi ETV and Public Radio in Mississippi, and Dennis Smith, vice president and news director of WLBT-TV in Jackson. Graves added them to the committee.

Fact finding

The committee, after an initial introductory meeting to discuss its mission, conducted a series of fact-finding public hearings. Meetings were conducted in Jackson on April 8, 2002, in Tupelo on July 25, 2002, in Gulfport on Aug. 30, 2002, in Greenville on Sept. 30, 2002, and in Meridian on Oct. 11, 2002. The committee then met four times as a group to discuss the commentary from the public hearings, review the rules regarding cameras in other states and draft a set of recommendations. The concerns aired by participants in those hearings and by members of the committee will be more fully discussed later.

Recommendations

1. The study committee recommends that the Mississippi Supreme Court adopt rules to permit broadcast and still camera coverage of proceedings in the trial courts. The committee's proposed guidelines are attached as Appendix A to this report.
2. The study committee recommends that it remain a viable and active committee in order to assist in the review and consideration of the proposed guidelines and other matters discussed herein.
3. As an alternative to statewide implementation of cameras in the courtroom, the committee recommends that the Supreme Court conduct a pilot project to allow camera access in selected venues.
4. The committee discussed the possibility of a cooperative venture between media and the judiciary to educate journalists and the public. Suggestions included:
 - a. Producing a short training video that explains the rudiments of Mississippi courtroom procedure.
 - b. Publishing a media guide to court coverage. Media guides have been published in the past by the American Bar Association, the Mississippi Bar and organizations of media professionals. The Mississippi Bar and the court public information office have discussed the possibility of creating a new or updated media guide. The Mississippi Bar has grant money available to fund this effort.
 - c. Organizing speakers or panel discussions to educate the news media about court procedures. Judges and journalists suggested that judicial conferences and meetings of journalistic organizations present opportunities for discussion and education.
 - d. Arranging education by journalists for judges on media ethics, deadlines and news gathering.
 - e. Organizing occasional meetings of judges and journalists, perhaps over lunch or in some other social setting, to discuss issues outside the context of specific cases.

The study committee recognizes the need to better educate and inform the public about proceedings in the court system, which is the least understood of the three branches of government. Improving the public's understanding of the court system and the matters decided therein is expected to improve public trust in the judicial system.

The American Bar Association in 1998 sponsored a nationwide public opinion poll to assess the public's understanding of the justice system and gauge public attitudes. The ABA study, published as *Perceptions of the U.S. Justice System*, stated that, when asked from whom they wanted to learn about the justice system, 75 percent of the respondents stated that they wanted to learn from judges.

Making court proceedings accessible to broadcast and still camera coverage will make news of court matters more accessible to the public. The public relies heavily upon broadcast media for news. Most other states permit broadcast coverage of some sort. However, under the current rules of court in Mississippi, broadcast journalists cannot use the tools of their trade, cameras and audio recording equipment, in courtrooms.

The study committee recognizes a need for restrictions which will preserve courtroom decorum and preserve the rights of litigants to fair and impartial consideration of matters pending resolution by the courts. The limitations proposed by the study committee are intended to be the least restrictive possible to protect the rights of the litigants, while at the same time preserving the spirit of openness.

The study committee arrived at these recommendations after much discussion. The committee was not unanimous. Rather, the committee reflected a diversity of viewpoints. The proposed guidelines for implementation represent a compromise that would permit camera coverage with restrictions that preserve the decorum of the courtroom and preserve the rights of the litigants to fair and impartial consideration of matters in litigation.

Commentary of committee member Dick Rizzo is attached as Appendix B. Mr. Rizzo wishes to express his concerns about proposed Guideline F, Family and Juvenile Matters.

Other issues encountered by the committee

While cameras in the trial courts dominated discussions during the public hearings conducted by the committee, people who appeared before the committee raised other concerns related to court access and the relationship of the media and the courts. Some of those included:

Mutual understanding and trust

Participants in the public hearings recognize the need for efforts to educate and build mutual trust. Part of what divides the media and the courts is each entity's lack of understanding of how the other operates.

Journalists' lack of understanding of court proceedings was a recurring complaint among judges who attended the public meetings. One broadcast journalist called it a "woeful lack of understanding on the part of the media." Other journalists acknowledged that they need a better understanding of court proceedings, and that the public would benefit from their having a better understanding.

Some participants in the hearings said journalists are intimidated by the technical nature of the proceedings, and that journalists don't make enough of an effort to educate themselves.

Judges expressed reluctance to grant interviews. Some said they had negative experiences in the past.

Journalists said it's hard to get it right when one of the most authoritative sources, the judges, won't talk.

Some judges said they found it helpful to the accuracy of news accounts to be able to answer reporters' technical questions about proceedings. Some have a practice of granting off-the-record interviews, while others are willing to be quoted.

While the Code of Judicial Conduct prohibits judges from talking about matters pending before their courts, the code specifically says judges may explain the procedures. Canon 3B(9) of the Mississippi Code of Judicial Conduct says:

A judge shall not, while a proceeding is pending or impending in any

court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. **This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court...**(emphasis added).

Public access to court files and proceedings

News reporters in several of the meetings said they encountered problems in getting access to court files. Reporters stated that some employees of clerks' offices were not cooperative in providing public files.

A newspaper editor stated that some files were sealed without proper authority. Other news reporters stated that court clerks did not want to allow them to look at public files.

Reporters said they encountered problems getting access to some court proceedings. Hearings were sometimes conducted inside jails, and reporters were not permitted to attend.

A newspaper editor stated that some judges who closed proceedings did not follow the procedure set out by the Supreme Court. The editor asked if the notice requirement before closing a court proceeding could be modified so that a notice would be posted outside the courtroom. The editor noted that sometimes news staff were unaware that a motion to close a proceeding was pending.

The Mississippi Supreme Court in the case of *Gannett River States Publishing Co. v. Hand*, 571 So. 2d 941 (Miss. 1990), established the requirements for closing a court file or a proceeding. Requirements include giving 24 hours' notice and allowing the media an opportunity to be heard and object to closure of files or proceedings. The notice requirement says notice shall be given by the docketing a closure motion in the office of the court clerk.¹

¹ The Mississippi Supreme Court in *Hand* said:

....Beginning with the principle that the press and public are entitled to notice and a hearing before a closure order is entered, we hold that any submission in a trial court for closure, either by a party or on the court's own motion, and be it a letter, written motion, or oral motion either in chambers or open court, must be docketed, as notice to the press and public, in the court clerk's office for at least 24 hours before any hearing on such submission, with the usual notice to all parties. This requirement should not be taken to mean that a greater notice period may not be afforded where feasible. Preferably the submission should be a written motion if time and circumstances allow.

A hearing must be held in which the press is allowed to intervene on behalf of the public and present argument, if any, against closure. The movant

Electronic access to court records

Journalists inquired about the prospects of Internet access to trial court files.

Judges and lawyers worried about the implications of making sensitive information such as medical records and personal information such as Social Security numbers and addresses available to the world. While information in open court files is theoretically available to anyone willing to make a trip to the courthouse, few make the effort. The ready access of the Internet would change that.

Mississippi courts are not yet at the point of being able to provide instant access. Supreme Court and Court of Appeals dockets and decisions are available via the Internet. The appeals courts have not yet implemented electronic filing. Mississippi trial courts have limited use of electronic filing.

The public access vs. privacy debate has been underway for several years nationwide. Mississippi's courts system has not yet devised policies and recommendations.

Subpoenas to the news media

A newspaper editor reported what he believed was abuse of subpoena power against news personnel by a party in litigation. The editor expressed the opinion that the party which subpoenaed the reporters could have accomplished the same purpose by introducing into evidence a copy of the news articles rather than attempting to put journalists on the witness stand. The editor said the practical effect was to hinder news gathering and force the media to expend money on legal fees in attempts to quash subpoenas.

The editor said, "It is intimidating and has a chilling effect" when news gatherers are

must be required to "advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceedings, and it must make findings adequate to support the closure." *Waller v. Georgia*, 467 U.S. 39, 48, 104 S.Ct. 2210, 2216, 81 L.Ed.2d 31, 39 (1984). In considering the less restrictive alternatives to closure, the court must articulate the alternatives considered and why they were rejected. Then the court must make written findings of fact and conclusions of law "specific enough that a reviewing court can determine whether the closure order was properly entered." *Press-Enterprise I*, 464 U.S. 501, 510, 104, S.Ct. 819, 824, 78 L.Ed.2d 629, 638 (1984). A transcript of the closure hearing should be made public and if a petition for extraordinary relief concerning a closure order is filed in this Court, it should be accompanied by the transcript, the court's findings of fact and conclusions of law, and the evidence adduced at the hearing upon which the judge bases the findings and conclusions. These requirements cannot be avoided by an agreement between the defendant and State that proceedings and files should be closed.

required to testify. “It turns us from observers to participants.”

Public commentary regarding camera coverage

As stated earlier, the study conducted five public hearings to assess attitudes of the judiciary, the news media and the public toward cameras in the courtroom, and to discern other concerns that affect the relationship of the media and the courts. The discussions focused primarily on cameras in the courts.

Two areas of discussion of the camera issue were:

1. Should camera coverage be permitted in Mississippi trial courts?
2. If camera coverage is to be permitted, what are the rules and the logistics?

Camera coverage of trial court proceedings is now prohibited by Canon 3 B (12) of the Mississippi Code of Judicial Conduct.² To allow camera coverage in the trial courts, the

² The Mississippi Supreme Court revised the canons in 2001 so that the court itself could broadcast oral arguments of the Supreme Court and Court of Appeals via the Internet. Trial court camera coverage is prohibited under Canon 3 B (12), which reads:

Except as may be authorized by rule or order of the Supreme Court, a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

- (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
- (b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
- (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
 - (i) the means of recording will not distract participants or impair the dignity of the proceedings;
 - (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
 - (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
 - (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Supreme Court would have to revise Canon 3 B (12).

The committee discussed broadcast camera coverage, still camera photography, Internet access, audio tape recording and the use of laptop computers in the courtroom. Discussions focused primarily upon television broadcast access to the courts, although any rule change should address access by television as well as web publications, radio broadcasters and still photographers.

Responses from participants at the public hearings could be loosely grouped into three categories:

1. Those who favor camera coverage;
2. Those who vigorously oppose camera coverage;
3. Those who do not oppose camera coverage, but who foresee logistics obstacles.

Judicial discretion

A frequent comment from judges was that if a rule permitting cameras were adopted, they wished to have discretion. The types of discretion discussed ranged from staunch objectors who wanted to be able to ban cameras from their courtrooms, to judges who agreed that cameras could be permitted during some proceedings, but wanted authority to exclude them in some circumstances.

Pros and cons put forth in the public hearings

Favoring camera coverage

The court system is the least understood of the three branches of government. Proponents of allowing camera coverage stated that broadcast coverage would better educate the public to how the courts operate and what really happens. Giving the public a better understanding of how the judicial system works would promote public trust and confidence in the system.

Numerous judges and journalists complained that the public mistakenly believes entertainment programs such as *Judge Judy* are what court is really like. Proponents of camera access to courts stated that allowing camera access to court proceedings would give the public a better understanding of what actually occurs in Mississippi courts and dispel the stereotypes of Judge Judy and Judge Joe Brown that so many judges and journalists disdain.

In the interest of open government, camera coverage would promote public accountability by allowing more of the public to see and hear what happens in court. When the camera is rolling, everyone is encouraged to be better prepared, sit up straighter and do their best.

Camera access proponents said the change would be expected to improve the quality of broadcast reporting by allowing the public to see and hear parts of the actual proceedings. This would essentially bring the courtroom into people's homes via television, which is the leading source of news to the public.

Decades ago, courtroom drama was a local attraction. Many people with no connection to the proceedings sat as spectators. The court watchers now are for the most part news reporters and interest groups who monitor court proceedings. People who attend just to see what will happen next are rare. The public does not have time to come to the courthouse to watch, so they rely upon newspapers, television and radio for coverage.

Broadcast journalists pointed out that the very nature of their medium is pictures and sound, and that it's difficult to tell the story of courtroom proceedings without video and audio.

Many other states already permit camera coverage. Those states have worked out the technical and logistics bugs and could provide models that Mississippi courts could utilize.

Opposition and discussion

Opposition to camera coverage came from judges, lawyers, prosecutors and representatives of crime victims.

Some judges said they didn't care what other states did; they are opposed to opening Mississippi courtrooms to cameras. The federal courts for the most part prohibit camera coverage, and the hallowed halls of the U.S. Supreme Court have never opened their doors to permit cameras to record arguments in the court of last resort. Some judges said what's good enough for the U.S. Supreme Court is good enough for them.

Judges said it is imperative to maintain the dignity of the court and assure fairness to the parties who resolve their disputes there. Some judges said they feared that cameras would hinder courts in efforts to safeguard fair trials for all litigants.

Some judges expressed fears that broadcast coverage would be disruptive to the proceedings or would in some way alter the proceedings. Some objectors said that when the camera is rolling, the courtroom could become more of a performance stage than it already is. Lawyers and witnesses might be tempted to play for the cameras.

Some objectors expressed the view that television and still cameras would be disruptive by their mere presence. Video cameras with tripods are very noticeable, and photojournalists tend to move about. If a camera crew came into the courtroom and set up equipment while a proceeding was underway, it would be a disruption and a distraction, according to some who object to camera coverage. Also, some were concerned that still cameras with their motor drive and shutter noise and flash would present a distraction. Some objectors said multiple video crews or still camera photographers could multiply the disruption and the distractions to a jury.

However, photojournalists stated that improvements in equipment have made it compact enough that video equipment can be operated unobtrusively in the courtroom. Using a pool camera was suggested as a means of allowing broadcast coverage while minimizing the potential for disruption or distraction in the courtroom. And some suggested that courts themselves install unobtrusive cameras similar to those used at the Supreme Court and Court of Appeals.

Some judges and lawyers pointed to the O.J. Simpson trial as an example of the kind of circus atmosphere that they feared playing out in a Mississippi courtroom. One television

journalist observed that the O.J. Simpson case “came along and just killed the cameras” argument. However, judges and media who favor cameras observed that the O.J. Simpson trial was an anomaly, and that a judge in control of the courtroom would not allow such an atmosphere to persist.

Some judges argued that the educational potential for televised court proceedings would be lost to the time constraints of the medium. One judge noted that thousands of cases are filed each year, and there aren't enough journalists available and there isn't interest in covering more than a fraction of them. Other judges agreed that there is neither public interest in nor air time available to carry the everyday court proceedings. The reality of most court proceedings is that they would not make for interesting television. While there are brief periods of excitement in court, the majority of the proceedings would bore the public. What the public would get would still be reporting on mostly the high-profile or sensational cases. Broadcasters, because of the time limitations of the medium, would air only short sound bites and would not be able to provide context.

If cameras were present for only a small portion of a trial rather than the entire proceeding, jurors might attach undue importance to a particular portion of the trial, according to some objectors. The very visible presence of photojournalists at a trial over-emphasizes that particular segment of evidence or testimony and sends a message to jurors that “this is really important,” objectors said.

Many judges as well as some lawyers expressed the opinion that allowing cameras would be desirable to broadcast media by giving them the pictures that are essential to the visual medium, but that such a change wouldn't give the public anything that it doesn't already have. Judges frequently pointed out that broadcast journalists can come to court, sit, listen and take notes the same as their print media counterparts. Broadcast journalists have access to the parties outside the courtroom. Photo opportunities are available outside the courthouse. Photojournalists may videotape interviews outside the courtroom.

However, reporters noted that for courtroom testimony, there is no substitute for being there, and that lawyers and witnesses are frequently reluctant to grant interviews outside.

Judges who support cameras in the courtroom said they have a problem with the idea of unequal treatment to print and broadcast media. Print journalists' equipment is pen and paper. Print journalists bring their equipment into court, while broadcast journalists are limited.

Vigorous objections were raised to the possibility that children and sex crime victims would be the subject of broadcast coverage. At one of the hearings, an advocate for victims of sexual assault described the difficulty of getting victims to press charges and testify. The stigma of sexual assault persists. Victims fear their names becoming public. Victims are fearful of being perceived as being somehow at fault for what happened to them and fearful of being thought of as having done something wrong.

Child victims are particularly vulnerable, and the prospects of broadcast coverage exacerbate the emotional harm that has been visited upon them.

Various media representatives from around the state responded that many news

organizations as a matter of policy do not identify victims of sexual assault. Likewise, many media representatives expressed a desire to protect the identities of children.

Some objectors questioned whether parties to litigation or witnesses should have the opportunity to reject broadcast coverage of a proceeding or of their participation in a proceeding.

Numerous prosecutors, lawyers and judges stated that the presence of cameras poses potential problems for lay witnesses and undercover law enforcement officers. If undercover officers are photographed or videotaped, their cover is blown and they are potentially no longer effective.

Cameras in the courtroom could also make it more difficult to get witnesses to testify. Prosecutors noted that some witnesses are already very nervous about having to face the jury and the public, and prospects of having their testimony televised may make some more fearful of possible repercussions. Witnesses are fearful of retaliation from gangs or other associates of defendants, and television exposure would make them more nervous, prosecutors said.

One lawyer stated, "Litigants come to the courtroom and most of them are scared to death when they get here. I think we are going to have to consider first and foremost the litigants.... Witnesses walk in and see a courtroom full of people and they are almost speechless."

One judge said, "We feel like it (cameras) will intimidate the witnesses and it could possibly intimidate the jury."

The idea of photographing jurors also was the subject of much concern.

A prosecutor said jurors fear retaliation from the families and associates of criminal defendants, and television exposure could make that worse. Prosecutors also expressed apprehension that broadcast coverage would embarrass potential jurors and lead more to try to avoid jury service.

Off limits

Most news representatives who spoke at the public hearings acknowledged that some things should be limited, or off limits.

Most news media representatives agreed that jurors should not be videotaped or photographed.

Media representatives also noted, as stated above, that most news organizations by their own policies avoid identifying child victims and victims of sex crimes.

First Amendment free press v. Sixth Amendment fair trial

The media's First Amendment free press rights are sometimes at odds with Sixth Amendment fair trial rights, particularly when it comes to matters such as suppression hearings. Without cameras being part of the equation, judges and journalists have long disagreed over balancing the public's right to know with the defendant's right to a fair trial.

Some judges said they feared that broadcast reports of evidence adduced at suppression

hearings, even if the evidence was excluded for trial purposes, would become known to jurors. Some judges complained of print media reporting of suppressed evidence, and said they feared broadcast coverage would increase the chances of jurors being exposed to information that is inadmissible at trial.

Some judges said they consider pretrial publicity a problem already, and that broadcast coverage will mean more changes of venue will be granted in criminal cases to get beyond the television viewing area. Changes of venue increase the cost of trials in terms of travel, meals and lodging for court staff, jurors and the parties, and most of that expense is borne by taxpayers in the county in which the case originated.

Media representatives and some judges countered that the test is not whether a prospective juror has heard about a case, but rather whether that would-be juror has been influenced by what he or she has read or seen or heard. Advocates of broadcast coverage said that voir dire will identify those who have formed an opinion and are unable to set that opinion aside.

Some judges worried that the introduction of cameras to the courtroom and the arguments over what can and can't be covered would create legal arguments that could delay or halt a trial. Judges expressed fears that they might have to divert attention from the taking of testimony, with jurors waiting, and hear arguments over what can and can't be photographed or taped. Previous rulings closing courtrooms have generated litigation, and media excluded from access with cameras would be expected to litigate those issues.

Broadcast and print journalists, however, said that they pick their battles carefully. The costs of litigation limit the number of times that journalists pursue an appeal to gain access to some facet of a proceeding. Journalists said that some news budgets anticipate expenditures for legal fees. However, representatives of large news operations said they must limit the number of cases they litigate. Smaller news operations have less, if any, budget for legal fights.

What should be private in a public court?

Much concern was raised about coverage of Chancery Court proceedings in general, and domestic matters in particular. While chancellors acknowledged that there would be news value in and much public interest in matters such as annexations and constitutionality challenges, which are heard in Chancery Court, some chancellors were of the opinion that their courts should not be subject to the same rules, if a policy to allow camera coverage was adopted. Some chancellors expressed the opinion that the intimate details of divorce and child custody proceedings should in some fashion be shielded. Spousal abuse is sometimes an element of divorce proceedings. Allegations of personal indiscretions are aired in divorce courts. Some chancellors said the parties in those proceedings should be afforded some measure of privacy. The discussions acknowledged that any member of the public could walk into the courtroom and watch and listen, but that making those proceedings available to camera coverage that could be broadcast would be harmful to the parties.

Broadcast and print journalists said that they have little interest in covering such

proceedings, with the exception of an occasional high profile case. Journalists acknowledged a need to protect youth. Journalists expressed the view that, with or without camera access, few divorce or custody cases would warrant media coverage. Several chancellors said they seldom see a news reporter in their courts anyway.

Some judges stated that they saw no need to carve out exceptions beyond those which already exist to give judges discretion to close proceedings to any member of the public.

How would the courts accommodate cameras if the rules permit them?

Logistics present some obstacles and impediments to camera coverage. Some courtrooms are designed in such a way as to make it difficult if not impossible to accommodate a broadcast crew and equipment. Some courtrooms, particularly those utilized by some justice courts and municipal courts, are so small that it would be difficult to find a place for photojournalists to sit or stand. Some courtrooms are laid out in such a fashion that some rearranging would have to be done to create a place for photojournalists.

Justice and municipal courts are expected to attract much media interest, because those courts are where criminal defendants make their initial appearances. Those courts also hear the first testimony and arguments during preliminary hearings and bond hearings. Those hearings often present to print and broadcast journalists their first opportunity to obtain a photograph of a defendant.

One possible solution would be to use a pool photographer to avoid the problem of where to put a number of photojournalists and their equipment. Another consideration is to have the court install cameras similar to those now used at the Supreme Court and Court of Appeals.

Judges worried that, in cases in which courtrooms might have to be modified or equipment installed to accommodate the media, how much will it cost, and who should pay. Judges are concerned that tight court budgets should not have to bear the additional burden of making modifications to accommodate broadcast media.

Conclusion

The study committee thanks the Supreme Court for the opportunity to address issues of public access to the courts. It is the hope of the study committee that the discussions entertained by the committee and the recommendations offered here will assist the Supreme Court in its consideration of these important issues.

Appendix A

Proposed Guidelines

The reporting, recording, televising, photographing, broadcasting, cablecasting, narrowcasting and webcasting of Court proceedings in all Mississippi state courts are hereby authorized in accordance with the guidelines promulgated herewith which contain safeguards to ensure that this type of media coverage shall not detract from the dignity of the court proceedings or otherwise interfere with the achievement of a fair and impartial trial.

Definitions

For the purposes of this rule, “media” shall mean any persons or organizations engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering agencies.

“Media coverage” shall mean any reporting, recording, broadcasting, narrowcasting, cablecasting or webcasting of court proceedings by the media using TV, radio, photographic, recording, or other electronic devices.

“Proceeding” shall mean any pre- or post-court hearing, including but not limited to pretrial motions, and the trial of the case.

Guidelines

A. DISCRETION OF JUDGES

All media coverage of proceedings shall not be limited by the objection of counsel or parties, except that the courts individually reserve the right to limit or deny media coverage.

1. All media coverage in the courts is subject at all times to the authority of the judge to
 - (a) control the conduct of the proceedings before the court;
 - (b) ensure decorum and prevent distractions; and
 - (c) ensure fair administration of justice in the pending case.
2. The judge has sole and primary discretion to exclude and/or specify the type of media coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover officers, relocated witnesses, and juveniles.
3. The judge has discretionary power to forbid media coverage whenever that media coverage may have a deleterious effect on the paramount right of the defendant to a fair trial.
4. The judge has the discretion to limit or to terminate media coverage at any time during the proceedings if the Court deems such is necessary and that it is in the interest of justice to protect the rights of the parties, witnesses, or the dignity of the court, or to assure the orderly conduct of the proceedings.

B. RESTRICTIONS

1. Neither the jury nor any potential member of the jury may be photographed, videotaped,

recorded, broadcast, cablecast, narrowcast, webcast, or filmed in or near the courtroom, nor shall the jury selection process be photographed, recorded, videotaped, broadcast, cablecast, narrowcast, webcast, or filmed.

2. Audio pickup, broadcast or recording of a tender of evidence offered by a party for the purpose of determining admissibility made before the judge out of the hearing of the jury is not permitted.
3. Audio pickup, photography, recording, broadcasting, cablecasting, narrowcasting, webcasting, or filming of a conference in the courtroom between members of the court, and counsel, co-counsel, or counsel and client is not permitted.
4. Audio pickup, photography, recording, broadcasting, cablecasting, narrowcasting, webcasting, or filming of proceedings held in chambers, and proceedings generally closed to the public is not permitted.
5. Audio pickup, photography, recording, broadcasting, cablecasting, narrowcasting, webcasting, or filming of conferences between an attorney and client, witness or aid, between attorneys or between counsel and the court at the bench is not permitted.

C. NOTICE

All media who use either still cameras, TV cameras, or other electronic recording devices shall notify, in writing, both the clerk and the court administrator of the particular court of the media's desire to cover a proceeding. Said notice shall be provided at least forty-eight (48) hours in advance of the day of coverage. Judges shall have the discretion to shorten the time for advance notice.

D. DECORUM

The decorum and dignity of the court, the courtroom, and the proceedings must be maintained at all times. Court customs shall be followed including appropriate attire. Movement in the courtroom during the proceedings shall be limited and may be completely excluded except during breaks or recesses. Disruption of the proceedings will not be permitted.

E. STANDARDS

All media should maintain high journalistic standards regarding fairness, objectivity, and accuracy in news coverage.

F. FAMILY AND JUVENILE MATTERS

Because of the following sensitive matters addressed in county, chancery and youth courts, these matters will be exempted from media coverage: divorce matters, custody, modification, contempt, child support, guardianship, conservatorship, adoption, commitment, termination of parental rights, paternity, and actions for protection from domestic abuse. Divorce actions not involving children can be excluded from this exemption upon motion filed by the media and a showing that the public's interest outweighs the parties' interest.

G. EQUIPMENT AND PERSONNEL

Unless otherwise agreed upon by the court, electronic news gathering equipment and personnel within the courtroom or hearing room shall be limited as follows:

1. All equipment shall be operated from areas specifically designated by the court. Reasonable efforts shall be made to accommodate audio and video access by the media. These rules are not to be interpreted to require that additional costs or expenses be incurred by the State, counties or municipalities in order to accommodate media coverage.
2. Not more than one portable TV camera operated by not more than one camera operator shall be permitted unless authorized by the court. Only natural lighting shall be used. TV cameras shall be quiet and shall be placed and operated as unobtrusively as possible within the courtroom at a location approved by the court. All running wires shall be securely taped to the floor.
3. Not more than one still camera operated by not more than one photographer shall be permitted unless authorized by the court. Only natural lighting shall be used. Still cameras shall be quiet and appropriately soundproofed. Still cameras shall be placed and operated as unobtrusively as possible within the courtroom at a location approved by the court.
4. Not more than one audio recording device operated by not more than one radio reporter shall be permitted unless operated by the court. If an audio "feed" is available from a courtroom public address system, the reporter may elect to use it. The radio reporter will be limited to using two microphones in the hearing room/courtroom. All running wires shall be securely taped to the floor.
5. Tape recorders may be used by all media so long as they do not constitute a distraction during proceedings.

6. Any pooling arrangements for additional media shall be the sole responsibility of the media and must be concluded prior to coverage without calling upon the courts to mediate any dispute regarding appropriate equipment and personnel.

H. OBJECTIONS

Any party may request or object to media coverage by written motion, which may be supported by affidavits. Said motion shall be filed no later than fifteen (15) days prior to the commencement of the proceeding, unless good cause exists to shorten the time for filing of the motion. No evidentiary hearing shall be required.

I. IMPERMISSIBLE USE OF MATERIAL

None of the notes, film, videotape, still photographs, electronic images, or audio reproduction developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceeding. For the purposes of the judicial proceeding, such material gathered by media coverage shall not be part of the official court record. The official court record of any proceeding is the transcript of the original notes of the court reporter made in open court.

J. ENFORCEMENT AND SANCTIONS

In any proceeding where there is media coverage, these rules shall have the force and effect of a judicial order and may be enforced by the court as allowed by law.

A violation of these rules may be sanctioned by measures deemed appropriate by the court.

Appendix B

Comments of committee member Dick Rizzo

Director of news and Public Affairs, ETV and Public Radio in Mississippi

I would like to first express my sincere appreciation to Justice James E. Graves for appointing me to the Media and the Courts Study Committee. It was an honor to work with him and with a distinguished group that approached our task with reason and resolve. Additionally, I want to thank Beverly Pettigrew Kraft for her assistance throughout the process of arriving at our summary report. Her thoroughness, professionalism, and attention to detail resulted in our somewhat daunting directive being less taxing and more collegial.

Overall, the Committee's proposed guidelines are a solid base on which to improve the

public's understanding of the judicial process while strengthening the constitutional right of public access to the courts and maintaining the constitutional rights of those served by those courts. They were arrived at through significant compromise and a deliberate concern by all committee members to provide for the common good of all Mississippians. While I voted with the committee to codify significant exemptions in section F (Family and Juvenile Matters), I did so with significant reservations. Below is a summary of my concerns.

As a broadcast journalist, I believe there should be, with one exception, no exemptions regarding "sensitive matters addressed in county, chancery and youth courts." That exception should be for any and all matters involving minor children.

As it is currently written, broadcast journalists will be unable to cover divorce cases unless they file a motion with the Court that shows "the public's interest outweighs the parties' interest." Not only should broadcast journalists be free and unfettered to decide which family matter cases are worthy of news coverage, but the Court's imposed burden of proof should not be exclusively placed upon them and not print journalists.

Additionally, other proceedings such as conservatorships have been exempted. Such limitations infringe upon the public's right to learn more about potentially significant matters regarding elected or appointed officials, community leaders, and others in positions of authority. As has been demonstrated in numerous cases, the facts of which have been gathered and conveyed by a free press, personal integrity is an important variable when we the people assess public servants.

It is my sincere hope that over time, the personal and professional relationships between Mississippi judges and journalists will improve, increasing the level of mutual trust. In turn, that will hopefully prompt the lifting of the above mentioned restrictions.

Doing so will result in guidelines that are more evenly balanced, constitutionally. Removing the restrictions will not prevent those served by our courts from being guaranteed the right to a "speedy and public trial." Instead, better balance will allow broadcast journalists to better provide for the public's right to an unabridged and free press.

Justice James E. Graves Jr., chairman, joins in and agrees with the points raised in this commentary.