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# Media in the Courtroom: Fair Public Trials

Hon. David O. Carter

HANDLING TERRORISM CASES IN THE CRIMINAL JUSTICE SYSTEM

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# Hague Memorandum Good Practice 8: *Media Guidelines*

- Timely access to accurate information of court proceedings increases transparency and public confidence in the fairness of the justice system
- Providing the trial judge with latitude to control the conduct of the proceedings to:
  - Maintain decorum and prevent distractions
  - Guarantee the safety of any court official/party/witness/juror
  - Ensure fair and impartial administration of justice
- Developing rules and procedures for media coverage
  - Providing justification for limitation or denial of media coverage
  - Selecting a media representative to serve as liaison
  - Written requests for special or additional coverage

# Benefits to Courts in Allowing Media Access

- Transparency Builds Public Confidence
- Increases Public Awareness of Problems
- Increase Parties' Confidence that Outcome is Fair

# Problems U.S. Courts Have Encountered

- Dignity of the Courtroom



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# Problems U.S. Courts Have Encountered

- Dignity of the Courtroom
- Privacy of Witnesses
- Ability to Select Fair Jury
- Interference with Neighboring Courtrooms









# California State Court Judges Consider ~20 Factors Before Allowing Cameras in Courtroom



# California State Court Judges Consider ~20 Factors Before Allowing Cameras in Courtroom

- The importance of maintaining public trust and confidence in the judicial system;
- The importance of promoting public access to the judicial system;
- The parties' support of or opposition to the request;
- The nature of the case;
- The privacy rights of all participants in the proceeding, including witnesses, jurors, and victims;
- The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;
- The effect on the parties' ability to select a fair and unbiased jury;
- The effect on any ongoing law enforcement activity in the case;
- The effect on any unresolved identification issues;
- The effect on any subsequent proceedings in the case;
- The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;
- The effect on excluded witnesses who would have access to the televised testimony of prior witnesses;
- The scope of the coverage and whether partial coverage might unfairly influence or distract the jury;
- The difficulty of jury selection if a mistrial is declared;
- The security and dignity of the court;
- Undue administrative or financial burden to the court or participants; etc.

# “Media” is not just one entity!

- Television
- Audio/Radio/Cellphone
- Sketch Artists
- Newspapers / Print Media

# Televised Media—General Rules

- Media members must not film any juror or spectator
- Media members must not film discussions between attorney and client
- Only one camera in courtroom
  - Camera must be stationary and permanent, not set up every day
  - Operator must not come in and out; can only leave during recess
- If two or more news outlets request access, they must share one camera.
  - Media feeds must stay outside of the courtroom

# Televised Media—Problems

- The Judge can control the courtroom, but it is harder to control the outside areas such as hallways, lobbies, and outside of the courthouse
- Case study: Aryan Brotherhood case
  - Media would film jurors walking in and out of the courthouse
  - Filming of witness—this can be very dangerous for informant or cooperating witnesses
  - Question: should you allow press conferences on the courthouse steps?

# Audio/Radio/Cellphones

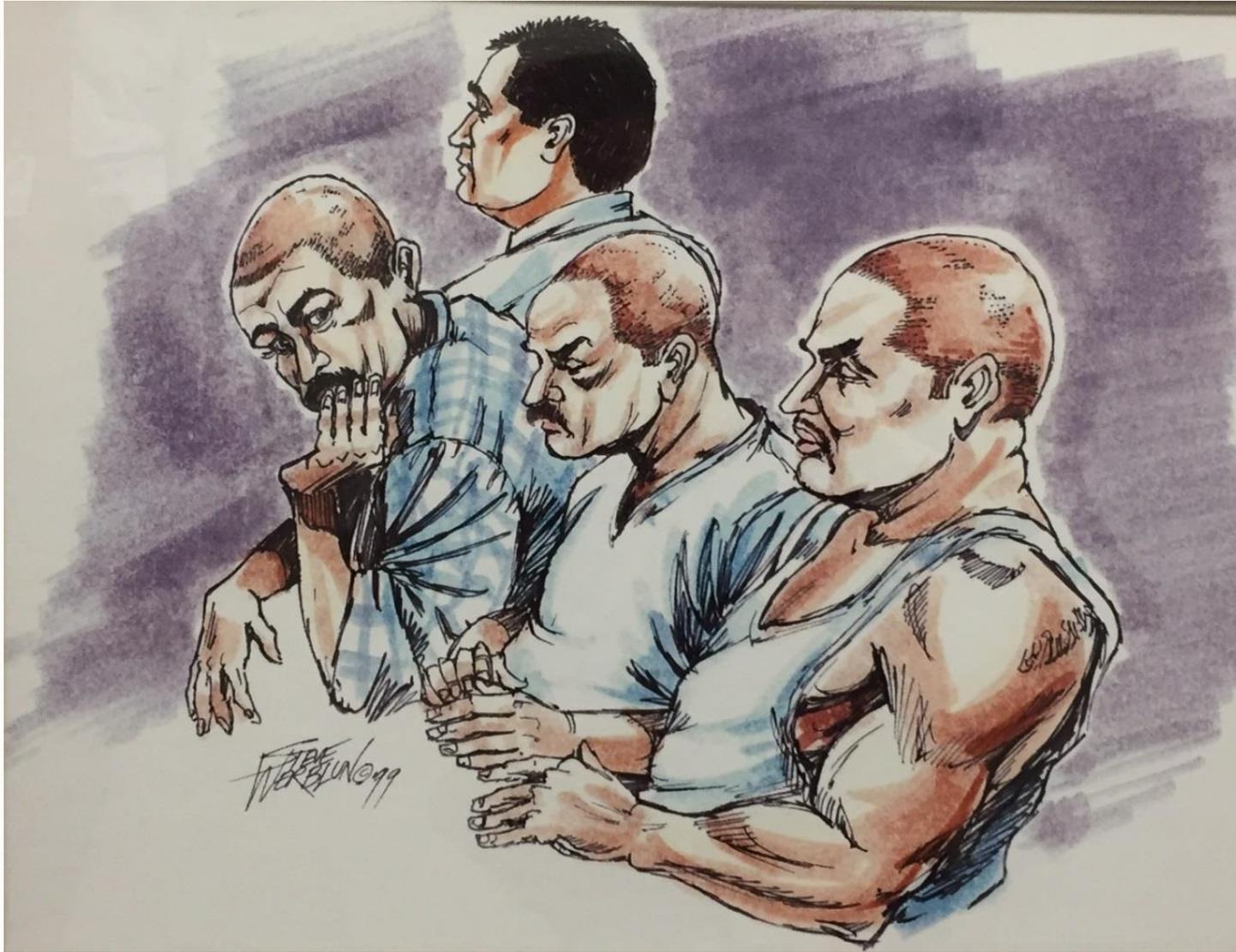
- Radio stations will often ask to record proceedings
- Danger: allowing cell phones into the courtroom
  - Cellphones now can make audio recordings
  - Cellphones can also take pictures (very dangerous for informants and cooperating witnesses)

# Sketch Artists

- Judge can ask to see the sketches before they go out, to make sure the identity of witnesses and jurors is protected



Aryan Brotherhood trial in 2006.



Defendants in the Mexican Mafia trial in 2000.

## Two O.C. men convicted of conspiring to fight with Islamic State



Defendants in 2016  
ISIS material  
support trial.

# Newspapers and Print Media

- How important is it for the public to have access to what is going on inside the courtroom? Very important. The print media provides public access.
- Tip: designate press space in the courtroom to prevent overcrowding and disruption.
- Tip: select a local print media representative who regularly covers your courtroom—there is a trust factor.
- Tip: select a local representative from each area of media (television, print, etc.) to be a liaison between the court and the press, and a spokesperson for you with the press.

# Conclusion

Fairness and equity are primary considerations.

Cameras, audio recording, and sketch artists are allowed only if judge is confident trial will still be fair and equitable.

Newspapers and print media have historically always been allowed—but you need good policies to keep things organized.

# Cal.Rules of Court, Rule 1.150

## Rule 1.150. Photographing, recording, and broadcasting in court

### **(a) Introduction**

The judiciary is responsible for ensuring the fair and equal administration of justice. The judiciary adjudicates controversies, both civil and criminal, in accordance with established legal procedures in the calmness and solemnity of the courtroom. Photographing, recording, and broadcasting of courtroom proceedings may be permitted as circumscribed in this rule if executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected. This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings.

### **(b) Definitions**

As used in this rule:

- (1) “Media coverage” means any photographing, recording, or broadcasting of court proceedings by the media using television, radio, photographic, or recording equipment.
- (2) “Media” or “media agency” means any person or organization engaging in news gathering or reporting and includes

any newspaper, radio or television station or network, news service, magazine, trade paper, in-house publication, professional journal, or other news-reporting or news-gathering agency.

(3) “Court” means the courtroom at issue, the courthouse, and its entrances and exits.

(4) “Judge” means the judicial officer or officers assigned to or presiding at the proceeding, except as provided in (e)

(1) if no judge has been assigned.

(5) “Photographing” means recording a likeness, regardless of the method used, including by digital or photographic methods. As used in this rule, photographing does not include drawings or sketchings of the court proceedings.

(6) “Recording” means the use of any analog or digital device to aurally or visually preserve court proceedings. As used in this rule, recording does not include handwritten notes on the court record, whether by court reporter or by digital or analog preservation.

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(7) “Broadcasting” means a visual or aural transmission or signal, by any method, of the court proceedings, including any electronic transmission or transmission by sound waves.

**(c) Photographing, recording, and broadcasting prohibited**

Except as provided in this rule, court proceedings may not be photographed, recorded, or broadcast. This rule does not prohibit courts from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the courthouse or between court facilities if the broadcasts are controlled by the court and court personnel.

**(d) Personal recording devices**

The judge may permit inconspicuous personal recording devices to be used by persons in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device must obtain advance permission from the judge. The recordings must not be used for any purpose other than as personal notes.

**(e) Media coverage**

Media coverage may be permitted only on written order of the judge as provided in this subdivision. The judge in his or her discretion may permit, refuse, limit, or terminate media coverage. This rule does not otherwise limit or restrict the right of the media to cover and report court proceedings.

**(1) Request for order**

The media may request an order on *Media Request to Photograph, Record, or Broadcast* (form MC-500). The form

must be filed at least five court days before the portion of the proceeding to be covered unless good cause is shown.

A completed, proposed order on *Order on Media Request to Permit Coverage* (form MC-510) must be filed with the request. The judge assigned to the proceeding must rule on the request. If no judge has been assigned, the request will be submitted to the judge supervising the calendar department, and thereafter be ruled on by the judge assigned to the proceeding. The clerk must promptly notify the parties that a request has been filed.

*(2) Hearing on request*

The judge may hold a hearing on the request or may rule on the request without a hearing.

*(3) Factors to be considered by the judge*

In ruling on the request, the judge is to consider the following factors:

(A) The importance of maintaining public trust and confidence in the judicial system;

(B) The importance of promoting public access to the judicial system;

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(C) The parties' support of or opposition to the request;

- (D) The nature of the case;
- (E) The privacy rights of all participants in the proceeding, including witnesses, jurors, and victims;
- (F) The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;
- (G) The effect on the parties' ability to select a fair and unbiased jury;
- (H) The effect on any ongoing law enforcement activity in the case;
- (I) The effect on any unresolved identification issues;
- (J) The effect on any subsequent proceedings in the case;
- (K) The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;
- (L) The effect on excluded witnesses who would have access to the televised testimony of prior witnesses;
- (M) The scope of the coverage and whether partial coverage might unfairly influence or distract the jury;
- (N) The difficulty of jury selection if a mistrial is declared;
- (O) The security and dignity of the court;
- (P) Undue administrative or financial burden to the court or participants;

(Q) The interference with neighboring courtrooms;

(R) The maintenance of the orderly conduct of the proceeding; and

(S) Any other factor the judge deems relevant.

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*(4) Order permitting media coverage*

The judge ruling on the request to permit media coverage is not required to make findings or a statement of decision.

The order may incorporate any local rule or order of the presiding or supervising judge regulating media activity outside of the courtroom. The judge may condition the order permitting media coverage on the media agency's agreement to pay any increased court-incurred costs resulting from the permitted media coverage (for example, for additional court security or utility service). Each media agency is responsible for ensuring that all its media personnel who cover the court proceeding know and follow the provisions of the court order and this rule.

*(5) Modified order*

The order permitting media coverage may be modified or terminated on the judge's own motion or on application to

the judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered under the application must be given to the parties and each media agency permitted by the previous order to cover the proceeding.

*(6) Prohibited coverage*

The judge may not permit media coverage of the following:

- (A) Proceedings held in chambers;
- (B) Proceedings closed to the public;
- (C) Jury selection;
- (D) Jurors or spectators; or
- (E) Conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench.

*(7) Equipment and personnel*

The judge may require media agencies to demonstrate that proposed personnel and equipment comply with this rule.

The judge may specify the placement of media personnel and equipment to permit reasonable media coverage without

disruption of the proceedings.

*(8) Normal requirements for media coverage of proceedings*

Unless the judge in his or her discretion orders otherwise, the following requirements apply to media coverage of court proceedings:

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(A) One television camera and one still photographer will be permitted.

(B) The equipment used may not produce distracting sound or light. Signal lights or devices to show when equipment is operating may not be visible.

(C) An order permitting or requiring modification of existing sound or lighting systems is deemed to require that the modifications be installed, maintained, and removed without public expense or disruption of proceedings.

(D) Microphones and wiring must be unobtrusively located in places approved by the judge and must be operated by one person.

(E) Operators may not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction.

(F) Equipment or clothing must not bear the insignia or marking of a media agency.

*(g) Media pooling*

If two or more media agencies of the same type request media coverage of a proceeding, they must file a joint statement of agreed arrangements. If they are unable to agree, the judge may deny media coverage by that type of media agency.

**(f) Sanctions**

Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings of the court and may be the basis for an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions as provided by law.