

Chapter 9

FROM THE WITNESS STAND AND THE BENCH TO THE NEWS STAND AND THE TELEVISION: RECORDING EVENTS IN MISSOURI'S COURTROOMS

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INTRODUCTION - HISTORY

Camera and electronic coverage of public proceedings within all Missouri courtrooms has not yet been recognized as a constitutional right. Federal courts, both within and without our state, have adopted rules which prohibit cameras of all types and all electronic recording devices anywhere within the environs of their respective courthouses, except for ceremonial and other extraordinary occasions. An experiment conducted from 1993 - 1995 in some federal district and appellate courts, despite a favorable recommendation by the participants, has not yet resulted in a change in the federal court rules.

The state courts of Missouri, however, are more tolerant. Yet, it is important for journalists to view camera access to state courtrooms in Missouri as a privilege, rather than a right. While the right to record and photograph court proceedings seems fundamental to journalists, it is a privilege that took years of work and a considerable change in the attitude of many judges to accomplish. Appreciation for this distinction will help journalists understand the need to work with judges, lawyers and other court personnel so that the journalists might best accomplish their objectives.

Following the Bruno Hauptmann - Lindbergh baby kidnaping case in 1935, rules were adopted for all federal and most state courts which generally prohibited the photographing or broadcasting of trials. This prohibition remained largely unchanged for the next 45 years. In 1981, the United States Supreme Court handed down a decision in which it ruled that television coverage of trials did not constitute a denial of due process under the United State Constitution. *Chandler v. Florida*, 449 U.S. 560 (1981). The next year, the American Bar Association approved a new canon to the A.B.A. Code of Judicial Conduct which permits judges to authorize trials to be televised. Over the next ten years, 46 states adopted some form of the A.B.A. canon and rules to authorize televising some types of court proceedings. The rules varied from state to state as to the type of proceeding (criminal, civil, appellate) that was permitted to be televised.

On October 29, 1991, the Supreme Court of Missouri appointed a 16 member group of journalists, judges and lawyers from throughout Missouri to comprise a Supreme Court Task Force on Cameras in the Courtroom. The group was charged with researching the subject and then submitting a report along with recommendations to the Supreme Court of Missouri.

After months of information gathering and meetings, the Task Force's recommendation to the Supreme Court was submitted in July and was largely incorporated into the Supreme Court's Order of September 11, 1992, announcing the adoption of Administrative Rule 16 of the Supreme Court of Missouri.

By A.R. 16, the Supreme Court declared that for the next two years, cameras and electronic recording devices would be permitted on an experimental basis in certain designated Missouri courtrooms. The experimental period for use of this rule in the Supreme Court of Missouri and each of the districts of the Missouri Courts of Appeal was to run from October 1, 1992, to September 30, 1994. For the 11 circuit courts designated by the Supreme Court, the period of the experiment began January 1, 1993, and ran through December 31, 1994. Throughout this period, the Supreme Court Task Force continued to serve, monitoring the use and effect of the experimental rule, in order to make a recommendation for adoption of a permanent rule at the conclusion of the period. The experiment proved largely successful. After each proceeding that involved recording or photographing, questionnaires were given to the jurors and the trial participants to get feedback on the impact the journalists' presence had on the proceeding. Of the responses returned, most courtroom participants didn't even notice the journalists in the courtroom once the proceeding was underway. There were no responses criticizing journalists for distractions, noise or commotion. Additionally, a chief concern of opponents to the plan was that the trial participants would "play" to the camera.

During the experiment, however, not a single comment was made on this issue.

On August 21, 1995, upon recommendation of the Task Force and with few amendments, A.R. 16 was finally adopted by the Supreme Court to apply to all state courts throughout Missouri. A tribute to the work of the Court and its Task Force is the fact that almost ten years later the rule remains unchanged, except its appellation was changed from “Administrative Rule” to “Court Operating Rule” (herein “COR”), in 2000. In the event of a future change, the most current version of COR 16 can be found at the website of the Missouri Supreme Court, (www.missourisupremecourt.org) under its “Media” link. Most of the early difficulty with using the rule in practice, and indeed the difficulties that continue today, involve logistics rather than decorum.

What follows is a walking tour of the rule along with some hints to make it easier to use for the journalist.¹

TYPES OF PROCEEDINGS THAT MAY BE COVERED

The only judicial procedures from which cameras and other recording devices are expressly excluded are adoption, domestic relations, child custody and juvenile proceedings. COR 16.02(c). Not excluded are criminal proceedings where a juvenile is being tried as an adult. *Id.*

The broadcasting, televising, recording and photographing of all other proceedings is to be permitted unless Missouri law requires the proceedings to be held in private or the judge concludes that such coverage would materially interfere with the rights of the parties to a fair trial. COR 16.02(b) and (c). Even though permitted, the judge may prescribe conditions for coverage so long as they are consistent with the requirements of this rule. COR 16.02(a). In fact, some courts have adopted local rules designed to address local conditions. The Media Coordinator should be consulted with respect to local rules that may be applicable.

SPECIFIC PROHIBITIONS

In the courtroom, electronic recording or photographing of the following is not permitted:

- Prospective jurors, jurors and the jury selection process. COR 16.02(d). This prohibition includes times when jurors are exiting and returning to the courtroom, when they are rendering and delivering their verdict, and after they have been discharged.
- Audio pick up or broadcasting of conferences between attorneys and their clients, between co-counsel, between counsel and the judge held at the bench or in chambers, or between judges in an appellate proceeding. COR 16.02(e).
- Materials on counsel tables; however, access to exhibits that have been received into evidence can be obtained during recesses, absent objection from counsel. COR 16.02(f).
- All criminal proceedings until the defendant is represented by counsel or has waived such representation. COR 16.02(m).
- Any participant in a court proceeding who is a crime victim, police informant, undercover agent, relocated witness or juvenile, upon request by the participant. COR 16.03(c).
- Any other participant in the proceeding, including other witnesses, if good cause for a prohibition is shown and the Court so orders. COR 16.03(c).

If any of the proscribed matters are recorded or photographed, which may inadvertently occur during the course of a trial, it is incumbent upon the journalist to ensure that the material is not broadcast, published, or transmitted to the public. While the rule contains no specific provision as to what is to be done in the event a prohibited subject is unintentionally or inadvertently recorded, keep in mind that the judge can limit or terminate media coverage at anytime. COR 16.02(j). Furthermore, if in-court camera/electronic coverage is permitted, the media is then prohibited from recording interviews for broadcast in the hallways immediately adjacent to the entrance to the courtroom or photographing through windows or doorways into the courtroom. COR 16.02(i).

As said, the judge has the discretion to revoke permission and terminate camera/electronic coverage at any time upon finding either (a) that the prescribed rules have been violated or (b) that substantial rights of a participant or right to a fair trial may be threatened if such coverage is allowed to continue. COR 16.02(j).

GETTING STARTED: THE MEDIA COORDINATOR

The general scheme requires journalists and media organizations to work through a “Media Coordinator,” that is, persons throughout Missouri designated to act as liaison between media and court personnel in their area, in requesting a court’s permission to use cameras and electronic recording devices during its judicial proceedings.

The Supreme Court of Missouri appoints media coordinators from a list of nominees provided by news media representatives. COR 16.03(a). The Media Coordinator for a particular court can be identified by contacting the presiding judge of that court,

other court personnel and local media representatives. COR 16.03(d). In practice, the Media Coordinator is usually selected upon the recommendation or in agreement with the presiding judge of the court or the circuit. The Media Coordinator is someone who has had experience working with the courts they serve and with COR 16. In fact, in most jurisdictions, the Media Coordinator is actually a working journalist. They are a necessary and valuable resource to journalists in achieving permission to record and broadcast court proceedings.

A current list of all Media Coordinators may be found on the Missouri Supreme Court's website (www.missourisupremecourt.org), under its "Media" link. A list may also be obtained upon request to Communications Counsel to the Supreme Court, P.O. Box 150, Jefferson City, MO 65102, phone: 573-751-4144, fax: 573-751-7514. COR 16.03(d). If a Media Coordinator has not been appointed or is unavailable for a particular proceeding, the court may appoint one from among local working media representatives to serve for that proceeding. COR 16.03(a). In addition, the Communications Counsel to the Missouri Supreme Court has frequently been called upon to serve in this role by local courts and/or media, when necessary. The privilege of COR 16 "may be exercised only by persons and organizations that are part of the new media or educational television." COR 16.02(k). In practice, the individual with primary responsibility for determining whether a person or organization is so qualified is the Media Coordinator.

THE PROCESS FOR OBTAINING PERMISSION

It is recommended that each news organization should designate one of its own as its media representative to work on its behalf with the Media Coordinator for a particular court. The media representative is responsible for providing the Media Coordinator with all information, e.g., case name and number, date, time and place of hearing, to complete a request for coverage.

Requests for camera or electronic coverage of court proceedings should be made to the Media Coordinator for that court at least five (5) days in advance of the scheduled proceeding. COR 16.03(b). While courts are cooperative and do not enforce this requirement where it is not necessary or practical to do so, the single greatest reason for denial of a request is that it was made too late to be accommodated.

Upon receipt of a request, the Media Coordinator gives written notice to counsel for all participants, to parties appearing without counsel and to the judge at least four days in advance of the proceeding. A copy of the Media Coordinator's notice is also to be filed with the clerk of that court. *Id.* The court directs the attorneys and any pro se parties to inform all prospective witness of the media coverage of the trial and to give them an opportunity to object to being photographed or their testimony recorded. COR 16.03(c).

The court has the discretion to extend or reduce these times by court order. COR 16.03(b). Where a proceeding has not been scheduled five days in advance, the Media Coordinator must give notice of a request as soon as practical after the proceeding is scheduled. *Id.* Generally, any request that is made for coverage in a timely manner that allows for some advance notice will be granted. What are not tolerated, however, are last minute requests at the courthouse or late arrivals and day of trial requests. The media should anticipate and allow enough time for a formal hearing by the Court to determine whether to permit camera/electronic coverage of an upcoming proceeding. Such a hearing can be required by the judge, either on his own initiative or upon request by an attorney or pro se party.

EQUIPMENT AND TECHNICAL SPECIFICATIONS

General:

COR 16 allows for the use of still cameras, television cameras and audio recording equipment within courtrooms. A requirement common to each is that they be unobtrusive and cause no distraction. COR 16.04(a). Also, courthouse facilities and systems are not to be modified at public expense in order to permit camera/electronic recording of proceedings. 16.04(a) (2) and (3).

It is the duty of media personnel to advise the media coordinator of the equipment proposed to be used and to determine in advance whether the judge is adequately familiar with that equipment. If the judge is not, the equipment should be demonstrated and approved by the judge prior to the proceeding. Failure to do so may preclude use of the equipment. COR 16.04(a)(4).

Media personnel and equipment must be in place at least 15 minutes prior to the time scheduled for commencement of the proceeding. COR 16.04(a)(4). If a journalist shows up late and the proceeding has started, wait until a recess to ask permission to enter and set up your equipment. Even if you have approval to attend a proceeding, by showing up late you risk missing a part of the event or being barred from covering it all. In general, the privilege is yours to lose.

Specific Equipment:**Television Equipment:**

TV cameras are to be designed or modified to prevent participants in the courtroom from being able to determine whether they are recording. COR 16.04(a)(2).

Still Cameras:

Still cameras and lenses must be unobtrusive, without distracting light or sound. COR 16.04(a)(1). This includes use of high speed film and devices to muffle the sounds of motor drives and shutters.

Audio Equipment:

Microphones, wiring and audio recording equipment is not to produce any interference with the proceedings. Changes in the courtroom's existing audio systems are to be approved by the judge. Microphones used by counsel and the judge are to be equipped with off/on switches to allow for non-recorded conferences. COR 16.04(a)(3).

Lighting:

Flashbulbs and other auxiliary lighting equipment are prohibited. Modification of existing light sources, e.g., using higher wattage light bulbs in existing equipment, if approved by the judge, are to be installed without public expense. COR 16.04(b).

Limitations on Equipment and Personnel:

Limitations with respect to the amount of equipment and number of news media personnel permitted in the courtroom at the same time are as follows:

Still Photographers:

One (1) photographer with two (2) camera bodies and two (2) lenses. COR 16.04(c)(1).

Television:

One (1) TV camera and one (1) camera operator. Recording and broadcasting equipment that is not a component of the camera is to be located outside the courtroom. COR 16.04(c)(2).

Audio:

One (1) audio system. If the courtroom's existing system is technically suitable for broadcast, it is to be used. Recording equipment and operating personnel are to be located outside the courtroom, if possible. COR 16.04(c)(3).

Pooling:

The Media Coordinator has sole responsibility for prescribing pooling arrangements among media representatives. The judge is not to be involved in mediating disputes. A pool representative designated by the Media Coordinator is to provide copies of recordings and photographs to media representatives upon request and at a price not to exceed actual costs. COR 16.04(c)(4). In practice, the first media organization to apply is usually the one that is designated to run the pool for its type of news media. In most jurisdictions, media outlets trade off the pool duties on multiple day events so that the burden is shared more equally.

Variations:

The quantity and types of equipment used in the courtroom are at all times within the discretion of the judge. COR 16.02(g). The judge may permit variations in equipment or techniques either upon application for a variance from the Media Coordinator or upon consent of counsel and the parties. COR 16.02(h).

Also, the judge or judges have discretion to permit variations from COR 16 with respect to media coverage of investitive or ceremonial proceedings. COR 16.02(l).

Courtroom Set-up and Decorum:

Requests for modification of courtroom facilities and systems should first be presented to the Media Coordinator for consideration. Media representatives are discouraged from proposing modifications directly to the Court in the absence of the Media Coordinator. Any changes in the courtroom, including its sound and lighting facilities, are to be made at no public

expense, and are first to be approved by the judge.

The judge is to designate the area(s) within the courtroom where media personnel are to be located. COR 16.04(d). A principal consideration in placement of cameras is to avoid accidental violation of the rule prohibiting showing of jurors. COR 16.02(d). Television cameras are usually located in the back row of the courtroom, and still photographers are usually allowed to be in or near the front row of the courtroom. When taking pictures or shooting video in a courtroom, the ideal position for the camera is to be situated along the wall on the same side as the jury box. This allows the best vantage point for several reasons: (1) access across the whole courtroom for wide shots; (2) as the attorneys face the jury to address them, you can get their pictures from the side and maybe the front, instead of the back; and (3) most importantly, that angle allows you to screen out shots of the jury easily, so that otherwise good shots aren't ruined when you discover a juror is shown in part of the frame.

Equipment is to be installed and removed at times when the court is not in session, and it is to be operated from a fixed position. Videotapes and still cameras, film and lenses are to be changed in the courtroom only during recesses. Media personnel are not to move about the courtroom or engage in any movement that attracts undue attention. Still photographers are not to assume body positions inappropriate for spectators. COR 16.04(e).

The attire and conduct of media personnel is at all times to be dignified and proper for judicial proceedings. COR 16.04(f).

COMMENTS AND RECOMMENDATIONS

Throughout Missouri, different judges have different feelings about the advisability of COR 16. Those feelings usually forecast whether a request for camera/electronic coverage of a proceeding will be approved. There is no prescribed procedure for appealing from a judge's ruling. Whether an appeal would be possible is not known. In general, judges from major metropolitan areas, having had more experience in working with media personnel under this rule, are more likely to approve requests. In all jurisdictions, courts that have been approached in accordance with the rules the first time, are always easier to deal with and receive approval on subsequent requests. However, there are exceptions in every jurisdiction.

Media Coordinators usually recommend that the attire worn by media personnel be consistent with that worn by others within the courtroom, such as lawyers, court reporters, bailiff and the court clerk. If you are dressed nicely and are respectful, fewer problems are sure to arise, and variances seem to be easier to come by.

Judges do not have authority to permit media coverage of juvenile, adoption, domestic relations, child custody or other proceedings required to be held in private. The Supreme Court Task Force on Cameras in the Courtroom stated that it did not regard COR 16.02(h) to authorize any exception or variance in this respect.

As said, COR 16 contains no specific provision as to what is to be done in the event of an unintentional or inadvertent violation of the prohibition against, for example, photographing of jurors or a protected witness. Of course, this could result in a limitation or termination of media coverage under COR 16.02(j). If an individual is improperly photographed, the spirit of the Rule would require each new organization to prevent, if possible, that picture from being broadcast, published or otherwise publicly disseminated.

While we tend to think of COR 16 as being designed for the trial court, it is applicable to the Missouri Courts of Appeal, as well. The Western District of our Court of Appeals in Kansas City, reports that oral arguments in at least two cases have been recorded by the media. And, all oral arguments to the Missouri Supreme Court can be listened to live by the Missourinet.

Finally, journalists should keep in mind that whether cameras/electronic coverage is permitted or denied, nothing in COR 16 is intended to limit the right of any member of the news media to attend and observe any judicial proceeding that is otherwise open to the public. The right of reporters, sketch artists and others to attend judicial proceedings as a member of the public is not affected by this rule.

ENDNOTES

¹This article is primarily for the journalist seeking to become informed about the procedure and protocol for recording proceedings in Missouri courtrooms. A publication that will be of additional benefit to jurists, lawyers and media coordinators is *Cameras In The Courtroom, A Guide to Missouri's Court Operating Rule 16*, prepared by Beth S. Riggert, Communications Counsel, Supreme Court of Missouri, June 2003. A copy of this publication is available on-line at www.missourisupremecourt.org, under its "Media" link.