



MEDIA ADVOCACY HANDBOOK

The Media Advocacy Handbook
is published by
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CONTENTS

Media Advocacy Policy	2
Media Relations	3
Responding to an Inquiry	3
Do's and Don'ts	3
Initiating Coverage	5
Individual Cases	5
The Interview	5
Television	5
Class Action/Law Reform/General Advocacy	6
Tips and Tools	7
Sample E-mail and Media Advisories	8
Sample Client Release Form	8
Preparation Worksheet	9
Ethical Concerns When Dealing With the Media	10
• Trial Publicity	
• Confidentiality Issues	
Relevant Sections of the Code of Professional Responsibility	11
Juvenile Rights Issues	13
• Rules/Access to Record and Proceedings	
Television Coverage of Proceedings	16

MEDIA ADVOCACY POLICY OF THE LEGAL AID SOCIETY

In this age of technology an essential part of advocacy for our clients must include an aggressive media strategy. Staff should work with the Director of Communications to initiate and respond to inquiries from the media. This will usually take two focuses: advocacy for a particular client in an individual case, and more general advocacy for poor people as a group, emphasizing how the law affects them. Each requires its own analysis, but they have in common tactical choices which we must make constantly.

In the individual case, it is no more acceptable "never to talk to the press" than it would be "never to cross-examine a witness." While our clients are often unpopular, media coverage is a reality which cannot be ignored. The touchstone is what is best for the client. Silence is sometimes appropriate; sometimes it is not. As lawyers, we must be guided by our ethical obligations to our clients. These obligations require us to consult with our clients and to consider what is best for them. Clients enmeshed in the criminal justice system may have different needs than those in the civil arena. Too, the needs of children require special sensitivity, as well as other clients with mental or physical disabilities that limit their ability to participate fully in their cases. Yet, the principle remains constant: what is best for the client.

Some extrinsic factors may also shape the strategy in an individual matter. There are specific legal and ethical constraints that apply to speaking about cases and/or clients. We must be aware of the applicable ethical rules, including the Code of Professional Responsibility, statutory restrictions and any rule of the court or relevant jurisdiction on free press/fair trial issues. We must also abide by our obligation to preserve the confidences and secrets of the client and should develop a media strategy in close consultation with the client.

With class actions, law reform cases and advocacy for clients without litigation, the need for media attention is more overt. Often a primary goal of such work is to affect public decision-making. Unfortunately our clients are seldom heard, even though they are quite capable of speaking for themselves. We must find ways to help make their needs known, sometimes speaking out strongly and effectively for them, sometimes facilitating ways for them to speak effectively for themselves.

Our media advocacy policy is to be distinguished from public statements on legislation and other issues when The Legal Aid Society is asked to speak in its institutional voice. These public statements require a broader, coordinated approach. When such requests are made, the matter should be brought to the attention of the head of the practice area, who will be responsible for reviewing the testimony, position or response and for seeking the approval of the Attorney-in-Chief.

As with any advocacy, staff should talk with people who have had experience working with the press and to share ideas. The Director of Communications will continue to coordinate all contact with the media and assist staff in developing media strategy at all levels of advocacy. Training will be important to accomplishing this task. The Public Information Office will conduct training sessions for staff throughout the boroughs, relying on in-house resources and outside experts. The training will be coordinated to address the specific needs and concerns of our various practice areas. A Media Advocacy Handbook will be distributed to all staff.

Finally, we must be careful that this policy does not become a license for self aggrandizement. Again, this is about clients. We look forward to The Legal Aid Society continuing its public role.

(Revised: November 2005)

MEDIA RELATIONS

What to do, how to do it and when to do it

Dealing with the media is a reality in the practice of law, although, traditionally, many lawyers have been reluctant to do so. The key words in effective media relations are Plan, Prepare, Practice and Be Polite. Media communication includes responding when a reporter calls to inquire about a case and initiating the contact to generate a story.

Responding to an Inquiry

The old refrain "I will not try my case in the media" just doesn't work anymore. If reporters are calling you, the case is already news. In most high profile cases in the criminal and juvenile justice practice areas, you have advance notice; the case has hit the major dailies and the airwaves before you were assigned. You will be a more effective advocate for your client if you recognize that your case is newsworthy and plan your media strategy accordingly. The lead attorney in the case is usually the media contact.

PLAN – Get an early start. Begin planning before the phone starts ringing. Decide what you may or may not want to disclose about a particular case. Define your message. Think about two or three points that you want to get across. Write them down. (A preparation worksheet is on page 9.) You are developing your media strategy. Remember that the reporter's interests and those of your client's are not the same. You must evaluate the best way to advance your client's legal interests, to minimize any risk of harming your client and to avoid exposing yourself to any sanctions.

PREPARE – You need to be prepared to respond accurately and honestly. You should consult with others who have had experience working with the media: your colleagues, your supervisors and the Public Information Office. They will help you to define your message and to develop your strategy. It is essential to anticipate the tough questions. Reporters are expected to ask questions. You are not required to answer them. Brainstorm. Collaboration with others will help you to identify sensitive areas and how to handle them. Target your message.

Always consult with your client. If the case is extremely high profile, reporters may want to interview your client. In a criminal case, it is highly unlikely that it will be in the best interest of your client to be interviewed by the media. You act as your client's spokesperson. You should prepare your client's family; reporters will attempt to reach family members.

Usually the same reporters will be covering an ongoing high

profile case. Get to know them. Use the opportunity to correct inaccuracies and misconceptions that have been fed to reporters by your adversaries, to educate the public and to change perceptions. At times, you may feel it is not in the best interest of your client to talk to the press directly. If so, use the Public Information Office to relay your message and to help field the press calls.

PRACTICE – Try out your statements on others. There may be reasons beyond your awareness why certain statements would not serve the best interests of your client. Rehearse out loud, choosing your words carefully. Be clear; be brief. Think in sound bites. Repeat your message over and over again.

BE POLITE – Hostility and anger will hurt your client. You are a more effective advocate when you are in control.

Do's and Don'ts

ALWAYS RESPOND – Any reporter who calls, should be called back, even when you are not willing to discuss the case. Someone should respond - either the lawyer handling the case or the Public Information Office. Screen calls through voice mail, if possible. If you are caught off guard, make an excuse ("I have a pressing matter. I will have to call you back."), find out the reporter's deadline and be sure to call back as promised in time for the reporter's deadline. Reporters are under deadline pressure. Nothing irks a reporter more than failing to keep your word on calling back and ignoring deadlines. A sketchy notion of what you want to say is not good enough. Listen to the question. If you don't understand it, ask for clarification. Think before you speak. Stick to your message. Repeat your message. There is no such thing as "strike that" in the court of public opinion. Again, look at the worksheet on page 9. Use the Public Information Office to help you. It is advisable to respond to print media first and then tackle the electronic media. There is a major difference between the print media and electronic media. You will be more comfortable before the cameras if you have talked with print reporters who are usually the first to call.

ALWAYS TELL THE TRUTH – Once lost, your credibility can never be regained.

AVOID 'NO COMMENT' – SILENCE IS NOT GOLDEN No comment is a simple way of getting out of talking to a reporter, but not effective. It causes a negative public perception. The reporter is going to do the story whether you comment or not. It is always better to get your side reported. However, if you have determined that it is not in your client's

interest to talk to reporters, give them a sensible reason such as: "The case is in progress and I am unable to discuss the details;" "My client has already responded by entering a plea of not guilty;" "I can't discuss this because of attorney-client privilege;" or, in the juvenile area, for example, "As you know, matters in Family Court are confidential, therefore, I am unable to discuss them." Reporters may not like that response, but they will respect it.

LESS IS MORE WHEN DEALING WITH THE PRESS –

Don't talk too much. Remember that reporters have a limited amount of space or air time. Learn to talk in sound bites; short answers work best. Listen carefully to the question. Think before you speak. Again make your answers short and to the point. Long discourses end up on the cutting room floor, and, even more important, you risk being quoted out of context. Don't ramble; you will give the reporter too many choices. If you keep your response to a few major points, you have much better control over what is printed or aired. Remember your message. Repeat your message.

SPEAK IN PLAIN ENGLISH – Avoid legal jargon that can confuse your message.

NEVER ASSUME – Don't assume a reporter is "off duty." They never are. Never assume the reporter is your "friend" or is "on your side." He or she has a job to do. Never assume that the reporter is familiar with the legal issues involved in your case. Be prepared to explain. Make it simple and brief.

DON'T FEAR THE MEDIA – You have planned your message and prepared your media strategy in collaboration with others. You've done your homework. You have anticipated the key questions. Remember you are the expert on the case; you enjoy your work. Show it by being direct, forthright and honest. Being properly prepared puts you on level ground with the reporter. Repeat your message. Stick to your statement. Use the interview as an opportunity to advocate for your client. Don't make the mistake of assuming that a tough question is hostility on the part of the reporter. The reporter is expected to ask tough questions. Stick to what you know. If the question is outside your area, tell the reporter you don't know the answer and offer to help or suggest someone who would be an expert in that area. Remember you are an advocate for your client. Ask the reporter what she/he has learned thus far. It may be helpful in your case strategy.

BE HELPFUL – By cooperating, you can help make the reporter's job easier, and thus ensure accuracy and cooperation. If you have filed papers on a case and they are a matter of public record, share the documents with the reporter. It will save time and will help to get out the information you want to share. If you have a particular issue you feel will bet-

ter serve your client, share it with the reporter. Your goal is to affect the outcome of the story for your client.

DON'T BE DEFENSIVE, DON'T MAKE FLIP REMARKS

You must remain in control. You are an effective advocate if you keep your cool. Your tone should be conversational. However, don't ever get so comfortable that you make flip remarks. A flip remark is disastrous in print or on the air. If a reporter interrupts you as you are speaking, simply say, "I'd like to finish the point I was making." If a reporter repeats incorrectly what you have said, you say, "I guess I didn't make myself clear. This is what I said." And go through it again. Repeat your message. If a reporter continues to ask the same question in a different form that you feel you have answered, you can say, "I thought I had answered that question. But let's try it again." Repeat your message. Again, stick to your statement. If you encounter an antagonistic reporter, and there are very few of them, who asks "How can you represent —" calmly explain why you believe in what you are doing. If the question is openly hostile, you may say, "I really object to your form of question." Then repeat what you are prepared to say. If a reporter throws a number of questions at you in a machine gun fashion, concentrate on what is being asked. Answer only the questions you want to answer.

NEVER SAY 'OFF THE RECORD' – Never say anything to a reporter that you don't want to see in print or hear on TV. Avoid using "off the record," "not for attribution," or "on background." These terms do not have universal definitions. You may find yourself identified or quoted when you don't want to be. Generally, "on background" means that the reporter can use the information you supplied as background without quoting or identifying you as the source. "Off the record" means you don't want the information used at all. "Not for attribution" means the reporter can use your quote but cannot identify you. Actually, you should not use these terms unless you have complete, time-tested trust in the reporter. If you feel that in a particular case, it would be in the interest of the client to speak to a particular reporter "on background," "not for attribution," or "off the record," check with the Public Information Office to determine if that reporter has proven trustworthy in the past. It is important that both you and the reporter fully understand the same ground rules.

OOPS, THAT'S NOT WHAT I SAID – If a reporter has misquoted you or in some way used a negative slant to the story, call and discuss the matter calmly and politely. You should correct misinformation and offer to be helpful in the future. It will not serve the interest of your client to be nasty or threatening. Consult the Public Information Office. It may be appropriate to request a correction or to submit a letter to the Letters to the Editor column.

LET'S MAKE THINGS HAPPEN — INITIATING MEDIA COVERAGE

In recent years, there has been an explosion of media coverage of legal matters. The general public is faced with constant reminders of the judicial system at work through the news media. People who really had no idea what a courtroom was like now consider themselves experts. They have an interest. They want to know more. Media advocacy is the most cost-effective, credible way to reach a variety of audiences. Now more than ever before, you can advance the interest of your client through effective media advocacy to promote public understanding and support for the needs and concerns of our clients. Our common goal is to help the public understand the issues that affect poor people through media coverage of individual cases, class actions, law reform cases and general advocacy.

While the approach when initiating the contact with reporters to generate coverage is somewhat different than responding to inquiries from the media, the basic guidelines for effective media coverage apply: Plan, Prepare, Practice and Be Polite, as well as the Do's and Don'ts. Again, your message is the most important ingredient in effective media advocacy.

Individual Cases

You have a case that you think may be newsworthy. You need to ask yourself a few questions.

- What is the particular message you want to get across?
- What is the problem?
- How was your client affected?
- Does this case exemplify an issue that affects other poor people? How?
- What is the remedy you are seeking? or What remedy have you achieved for the client?
- How can coverage help your client?
- Does this case highlight a specific problem that may generate public support?
- Why should the media care about this case?

You are developing your media strategy. Talk to the Public Information Office and use the Preparation Worksheet on page 11.

Again, it is best to collaborate with others — your colleagues, supervisors, the Public Information Office — to get their opinion, to help define your message and to identify sensitive areas. Consult with your client to determine if he or she is interested in media coverage. Again, client approval is essential. In the civil area, it is often more effective to have the client and the attorney speak to the media. You should pre-

pare your client for an interview. The ideal situation is for you and the client to be together during the interview. (That may not be possible if the interview takes place over the telephone.) Timing is important. Do not wait a week until you take action. The Public Information Office will help you to determine where the story will receive the best exposure and which reporter/reporters should be contacted. Some stories should be geared toward a particular reporter who has an interest in this type of case, covers a specific beat or is especially receptive. Some stories are particularly TV oriented, while others are not. Some belong in legal publications. Others make a great human interest feature or column in the dailies. Often a good human interest feature in one of the major dailies will generate television coverage that night.

The Interview

TO THE POINT – Tell the story. Make it short and simple. Make it a people story. Be clear, direct. AGAIN, REMEMBER YOUR MESSAGE.

DON'T WASTE TIME. YOURS OR THE REPORTER'S – You've defined your message. You should be totally prepared for the interview. Be available for follow-up calls, especially if the reporter plans to write or air the story that day. Please remember: Reporters are on deadlines. You want this story covered. If you promise material, be sure to follow-up.

USE THE OPPORTUNITY – You know what you want to say. Get your message out; your point across. You are the educator; the public is your pupil. There's an old Henry Kissinger story that bears repeating. When Kissinger, the master of interviews, entered a morning press conference, he said to reporters: "Does any reporter have any questions for my answers?"

Television

For a television interview, be sure your clothes are not distracting. Men should wear dark suits, avoid plaids. Your jacket should be buttoned. Blue shirts are better than white. Your socks should be dark and calf length. Pastels are best for women; no bright or flashy jewelry that reflects the lights. Sit up straight, don't slouch. Lean forward slightly. Look at your interviewer. Smile. Even though the subject is serious, try not to frown when you are concentrating. You want to portray confidence and enthusiasm. Listen to the questions; this demands full concentration. Take your time.

REPEAT YOUR MESSAGE – You are fully prepared. Relax and enjoy.

CLASS ACTIONS, LAW REFORM CASES AND GENERAL ADVOCACY



Our primary goal is to promote public understanding of issues affecting our clients. Again, it is best that the lead attorney on the case be the media contact. When preparing to file class action/law reform litigation, it is advisable to call the Public Information Office. We will assist you. It is best to have a press release or a media advisory which will be distributed to the media. The press release should answer the following questions:

- What's the problem?
- What does the litigation seek to correct?
- Who is affected? How?
- What can be done to correct the problem?
- Who is responsible for the problem?
- What can be done to prevent reoccurrence?

Concentrate on the lead plaintiffs. Humanize them. What's their story? Again, it is important to discuss media coverage with the lead clients to determine if they are willing to go public and agree to interviews.

The press release should be written in collaboration with the Public Information Office and obviously cleared by the attorneys handling the case. When the case is filed, the press release should be e-mailed or faxed to reporters covering the particular court, to reporters interested in the issue and to a general distribution list. A copy of the pleadings should also

be supplied to selected reporters. Television and radio reporters often don't want to see a lengthy brief; thus the importance of the press release to get out accurate information. The Public Information Office maintains an up-to-date listing of reporters, assignment editors and news editors as well as editorial board members and Op-Ed (the page opposite the editorial page) page editors. Coordination is necessary and should take place at Legal Aid and not in newsrooms. Reporters get very upset when multiple releases are sent to the same newspaper and no one knows who is getting what. The Public Information Office is responsible for distributing the release and make the media contacts. After the press release is out, calls are made and interviews arranged. Initial coverage is often followed up by editorials.

Often, a press conference is the most effective tool in announcing the filing of a major case or announcing the decision in a major case. A press conference is also an efficient way to reach all the media at once. The Public information Office will help you decide when a press conference should be called and will make the arrangements.

Other important avenues for effective media advocacy are Op-ed pieces, Letters to the Editor and Talk Shows. The Public Information Office will assist you. Please call the Public Information Office with any questions or suggestions at **212-577-3346**.

TIPS AND TOOLS

TIPS

Your Message

- Decide on two or three points you want to make.
- Write them down.
- What are the issues involved?
- Use this opportunity to promote public understanding of these issues.

Ethical Obligations

- Always consult with your client.
- Client approval is essential.
- In any dealings with the media, you must adhere to the Professional Rules of Conduct, statutory regulations and court rules.

Run With It

- You know your message. Stick to it.
- You have anticipated the tough questions.
- Concentrate. Listen to the questions.
- Be clear, be direct.
- Get your message out.
- Make your points.
- Stress the public policy issues.

TOOLS

Tools that will assist you in effective media advocacy include the press release/media advisories, the press conference, op-ed pieces, letters to the editor, editorial board meetings, testimony before government entities and television news shows.

The press release is a news story. It should be clear, concise and brief, preferably one page, but not more than two. Answer the basics: who, what, why, where, when and how. The top of the press release should contain the date, contact person/persons, phone numbers and e-mail addresses as well as conditions for release if there is a release date or embargo.

Use a punch headline. The lead paragraph should tell the story. A media advisory should be simple—giving the who, what, why, where and when. The advisory either informs the media of a press conference or advises them that lawyers and clients on a particular case will be available for interviews between the hours of __ and __, date and location.

The Press Conference

While the press conference is the most efficient tool in reaching all the media at once with a major story, you must use it wisely. The key words are “a major story,” the announcement of which will raise additional questions from the media.

There is nothing worse than wasting the time of reporters with a non-newsworthy press conference. Be credible, be honest, be fair. If you can tell your story in a press release with follow up phone calls, do so. If a press conference is necessary, put out a media advisory containing the who, what, why, where and when. Give the name of the person/persons making the announcement. It is best to call a press conference for late morning/early afternoon. If you are able to have clients at a press conference, you must prepare them for

questions. Be certain to advise clients that they do not have to answer all questions. That’s why they have lawyers!

Other Tools

OP-ED – You should call the newspaper to determine if there is an interest in an op-ed piece you wish to write and submit. Find out the length and stay within the limits. Another effective outlet for opinions on specific issue is the point/counterpoint piece which many newspapers carry on the op-ed page, allowing both sides to debate an issue.

LETTERS TO THE EDITOR – Letters to the editor are used to correct a news story or to comment on one by providing additional information. Be clear, concise and brief. The letter should be signed by a particular individual and include the person’s affiliation and phone number.

EDITORIAL BOARD MEETING – Editorial Board meetings provide an excellent opportunity for effective advocacy. When you phone for an appointment, you should be prepared to briefly state the reason for your request for a meeting (examples: pending legislation, budgetary problems, elimination of an essential program). Go to the meeting prepared to make your point clearly and concisely and answer questions. Bring materials. Follow up with any additional materials that are requested.

TELEVISION NEWS – Television news shows provide spirited debate and/or clarification of issues. Before agreeing to appear on a show, you should find out the topic to be discussed, who will be the interviewer and if there are any other guests and who they are. Prepare. You have an extremely limited amount of time to make a point. Anticipate questions.

ADVISORIES AND RELEASE FORMS

Note: Put advisories and releases on organization's letterhead

SAMPLE of an E-mailed Advisory of a Court Decision

For more information:

Contact Name _____ phone _____ e-mail _____

Contact Name _____ phone _____ e-mail _____

Victory for Elderly and Disabled Immigrants

In a major victory for disabled and elderly immigrants who were forced to choose between food, shelter and medicine, the State Supreme Court ruled today that they will receive full benefits prospectively as well as retroactive benefits. Some 2,000 disabled and elderly immigrants throughout the State will benefit from today's ruling in Krapunskiy v. Doar, a class action filed on behalf of the disabled and elderly who were found ineligible for federal SSI benefit by reason of their immigration status. The 43-page decision is attached to this e-mail.

SAMPLE of a Press Advisory

For more information:

Contact Name _____ phone _____ e-mail _____

Contact Name _____ phone _____ e-mail _____

Organizations will hold a press conference at 11 a.m. today, December 12, 2005, at the steps of the New York County State Supreme Court Building, 60 Centre Street, to announce a class action lawsuit against the city, charging that the city's workfare program violates state labor and welfare laws by failing to pay welfare recipients at a rate that is comparable to the wage earned by regular workers who are doing the same or similar work for the City.

WHO: Plaintiffs and their attorneys.
WHAT: Announcement of law suit against the city's workfare program
WHERE: Steps of State Supreme Court, 60 Centre Street
WHEN : 11 a.m. today, December 12, 2005

SAMPLE of General Release Form

I _____ OF _____

NAME _____ ADDRESS _____

do hereby permit and authorize The Legal Aid Society and persons approved by The Legal Aid Society to videotape and/or photograph me and/or my children and interview me and/or my children on DATE , and to use the footage and/or photographs and the interview in newsletters, annual reports or other materials and/or video productions approved by The Legal Aid Society to promote the work of The Legal Aid Society and its service to clients.

SIGNATURE _____

DATED _____

PREPARATION WORKSHEET

This worksheet is intended to help you prepare for an interview. It should help you organize your thoughts. You may want to refer to it when talking with a reporter on the telephone. However, you should not use it during a face-to-face interview with either print or electronic media. **It is not a script.**

SUBJECT/ISSUE

Two or three major points you want to get across

1. _____
2. _____
3. _____

SOUND BITES

ANTICIPATED QUESTIONS (INCLUDING THE TOUGH ONES)
(Think of ways to use your message when answering questions.)

ETHICAL CONSIDERATIONS WHEN DEALING WITH THE MEDIA



Comments to the media about a legal matter are constrained by ethical rules governing the legal profession and also, in some instances, by state and federal statutes which safeguard the confidentiality of medical and psychiatric information.

The most important ethical considerations are provisions in the Code of Professional Responsibility which restrict an attorney's ability to comment publicly about cases (22 NYCRR § 1200.38 [DR 7-107]), as well as those that require an attorney to preserve a client's "confidences and secrets" (see 22 NYCRR § 1200.19 [DR 4-101]).

Trial Publicity

The Code of Professional Responsibility prohibits an attorney from publicly commenting on a case if there is a "substantial likelihood of materially prejudicing an adjudicative proceeding." (22 NYCRR § 1200.38[a]). Prejudice is considered likely when a lawyer makes certain comments about a "civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration." Prohibited topics for comment include statements about the character, reputation or criminal history of a party, witness or suspect; disclosure of a witness' identity or anticipated testimony; disclosure of a party's or witness' submission to examination or testing, the results of the examination or test, or of a refusal to undergo testing; disclosure of physical evidence that will be presented in court proceedings; or disclosure of any information that the lawyer should reasonably anticipate will be inadmissible at trial, when a disclosure could create a substantial risk of prejudicing a court proceeding. (22 NYCRR § 1200.38[b]).

Additional provisions apply specifically to criminal matters, and bar a lawyer from commenting on the possibility of a guilty plea; the existence or contents of a confession or statement, or a person's refusal to make a statement; or an opinion as to an accused person's guilt or innocence.

The rule explicitly authorizes certain categories of public statements. An attorney may make a statement on behalf of a client to mitigate recent adverse publicity (see 22 NYCRR § 1200.38[a]), and may comment "without elaboration" on such matters as the nature of a claim or defense; information in the public record; scheduling and steps in litigation; and, in criminal matters, the background of the accused and basic facts about the arrest and crime. (22 NYCRR § 1200.38[c][7].)

Confidentiality Concerns

The Code of Professional Responsibility requires all staff to preserve the confidentiality of both communications from a client and client secrets learned during the course of representation. 22 NYCRR § 1200.19 [DR 4-101]. Communications from a client to the attorney or staff working as agents of the attorney are protected by the attorney-client privilege. Staff must also preserve the confidentiality of information learned about the client during the course of representation, if the client has asked the attorney to keep such information confidential, or where disclosure could embarrass or be detrimental to the client. An attorney may not divulge a client's confidences or secrets without the client's consent, and must fully counsel a client before obtaining a waiver of confidentiality.

Client Counseling Concerns

In counseling a client about whether to share information with the media, do not limit your advice to legal considerations. (See ABA Model Code of Professional Responsibility EC 7-8). Make sure that the client understands that the reporter will control the content of the story. Discuss the possible ramifications of publicity, since media coverage can become intense and even disruptive, not only for the client, but also for his or her family. Be aware that disclosure of information about a client's medical or psychiatric condition might in some circumstances be viewed as a waiver of privacy protections that are afforded by state and federal law. The privacy of "individually identifiable health information," including information about a patient's physical or mental health status and treatment, are protected by the federal HIPAA privacy (see 45 C.F.R. § 160.103; see also Health Insurance Portability & Accountability Act of 1996, Public Law 104-191, 110 Stat. 2033), while the New York State HIV Confidentiality Law (Public Health Law § 2782) safeguards the confidentiality of HIV-related information.

Also keep in mind that it is frequently possible to speak to the media without revealing confidential information about a particular client. For example, in class action and law reform matters, media coverage frequently focuses primarily on the issues in the litigation. Even where a reporter wants to highlight the situation of a particular client in order to illustrate the issues in a case, it may be possible to withhold the client's identity. In cases involving a single client, such as criminal cases that have attracted public attention, it is often possible to field basic questions by using information from court documents.

RELEVANT SECTIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY

DR7-107 [22 NYCRR 1200.38] Trial Publicity

- A.** A lawyer participating in or associated with a criminal or civil matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in that matter. Notwithstanding the foregoing, a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement so made shall be limited to such information as is necessary to mitigate the recent adverse publicity.
- B.** A statement ordinarily is likely to prejudice materially an adjudicative proceeding when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:
1. The character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness.
 2. In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement.
 3. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented.
 4. Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration.
 5. Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.
 6. The fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.
- C.** Provided that the statement complies with DR7-107[1200.38] (A), a lawyer involved with the investigation or litigation of a matter may state the following without elaboration:
1. The general nature of the claim or defense.
 2. The information contained in a public record.
 3. That an investigation of the matter is in progress.
 4. The scheduling or result of any step in litigation.
 5. A request for assistance in obtaining evidence and information necessary thereto.
 6. A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest.
 7. In a criminal case:
 - a. The identity, age, residence, occupation and family status of the accused.
 - b. If the accused has not been apprehended, information necessary to aid in apprehension of that person.
 - c. The fact, time and place of arrest, resistance, pursuit, use of weapon, and a description of physical evidence seized, other than as contained only in a confession, admission, or statement.
 - d. The identity of investigating and arresting officers or agencies and the length of the investigation.

ABA Model Code of Professional Responsibility

Confidences and Secrets - Client's Consent

EC 4-2 The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when the client consents after full disclosure, when necessary to perform the lawyer's professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of the client to partners or associates of his or her firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non-lawyer employees of the office, particularly secretaries and those having access to the files;

and this obligates a lawyer to exercise care in selecting and training employees so that the sanctity of all confidences and secrets of clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of the client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in the professional relationship. Thus, in the absence of consent of the client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should the lawyer, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or the client's confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning clients.

EC 4-3 Unless the client otherwise directs, it is not improper for a lawyer to give limited information to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided the lawyer exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4-5 A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of the client after full disclosure, such information for the lawyer's own purpose. Likewise, a lawyer should be diligent in his or her efforts to prevent the misuse of such information by employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

22 NYCRR §1200.19 DR 4-101

Preservation of Confidences and Secrets of a Client

- A.** "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.
- B.** Except when permitted under DR 4-101(C), a lawyer shall not knowingly:
1. Reveal a confidence or secret of a client.
 2. Use a confidence or secret of a client to the disadvantage of the client.
 3. Use a confidence or secret of a client for the advantage of the lawyer or of a third party person, unless the client consents after full disclosure.

C. A lawyer may reveal:

1. Confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them.
2. Confidences or secrets when permitted under disciplinary rules or required by law or court order.
3. The Intention of a client to commit a crime and the information necessary to prevent the crime.
4. Confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or his or her employees or associates against an accusation of wrongful conduct.
5. Confidences or secrets to the extent implicit in withdrawing a written or oral opinion or representation previously given by the lawyer and believed by the lawyer still to be relied upon by a third person where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud.

D. A lawyer shall exercise reasonable care to prevent his or her employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

ABA Model Code of Professional Responsibility

Consultation and Decision Making

EC 7-7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on the lawyer. As typical examples in civil cases, it is for the client to decide whether to accept a settlement offer or whether to waive the right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise the client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

EC 7-8 A lawyer should exert best efforts to insure that decisions of the client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to the client need not be confined to purely legal considerations. A lawyer should advise the client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his or her experience as well as the lawyer's objective viewpoint. In assisting the client to reach a proper decision, it is often desirable for a lawyer to point out those

factors which may lead to a decision that is morally just as well as legally permissible. The lawyer may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for the lawyer. In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

Client Capacity

EC 7-11 The responsibility of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7-12 Any mental or physical condition that renders a client incapable of making a considered judgment on his or her own behalf casts additional responsibilities upon the lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, the lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his or her interests, regardless of whether the client is legally disqualified from performing certain acts, the lawyer should obtain from the client all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for the client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of the client. But obviously a lawyer cannot perform any act or make any decision which the law requires the client to perform or make, either acting alone if competent, or by a duly constituted representative if legally incompetent.

JUVENILE RIGHTS

Uniform Rules for the Family Court

22 NYCRR §205.4 – Access to Family Court proceedings

I. Admission of the Media and the Public to Family Court Proceedings

A. New York Law

- (a) The Family Court is open to the public. Members of the public, including the news media, shall have access to all courtrooms, lobbies, public waiting areas and other common areas of Family Court otherwise open to individuals having business before the court.
- (b) The general public or any person may be excluded from a courtroom only if the judge presiding in the courtroom determines, on a case-by-case basis based upon supporting evidence, that such exclusion is warranted in that case. In exercising this inherent and statutory discretion, the judge may consider, among other factors, whether:
 - (1) the person is causing or is likely to cause a disruption in the proceedings;
 - (2) the presence of the person is objected to by one of the parties, including the law guardian, for a compelling reason;
 - (3) the orderly and sound administration of justice, including the nature of the proceeding, the privacy interests of individuals before the court, and the need for protection of the litigants, in

particular, children, from harm, requires that some or all observers be excluded from the courtroom;

- (4) less restrictive alternatives to exclusion are unavailable or inappropriate to the circumstances of the particular case.

Whenever the judge exercises discretion to exclude any person or the general public from a proceeding or part of a proceeding in Family Court, the judge shall make findings prior to ordering exclusion.

- (c) When necessary to preserve the decorum of the proceedings, the judge shall instruct representatives of the news media and others regarding the permissible use of the courtroom and other facilities of the court, the assignment of seats to representatives of the news media on an equitable basis, and any other matters that may affect the conduct of the proceedings and the well-being and safety of the litigants therein.
- (d) Audio-visual coverage of Family Court facilities and proceedings shall be governed by Parts 29 and 131 of this Title.
- (e) Nothing in this section shall limit the responsibility and authority of the Chief Administrator of the Courts, or the administrative judges with the

approval of the Chief Administrator of the Courts, to formulate and effectuate such reasonable rules and procedures consistent with this section as may be necessary and proper to ensure that the access by the public, including the press, to proceedings in the Family Court shall comport with the security needs of the courthouse, the safety of persons having business before the court and the proper conduct of court business.

FCA §§ 341.1, 741(b), 1043

Each statute reads as follows:

The general public may be excluded from any proceeding under this article and only such persons and the representatives of authorized agencies as have a direct interest in the case shall be admitted thereto.

B. First Amendment Right of Access

In criminal cases, the general public and press have a qualified First Amendment right of access to trial: closure must be supported by a showing of a compelling governmental interest and must be narrowly tailored to serve that interest.

Globe Newspaper Co. v. Superior Court, 457 US 596. However, it appears that no such right of access exists in juvenile delinquency proceedings. See *United States v. Three Juveniles*, 61 F3d 86; *United States v. A.D.*, 28 F3d 1353; *State ex rel. Plain Dealer Publishing Co. v. Geauga County Court of Common Pleas*, 734 NE2d 1214.

Appellate courts in New York have not found a First Amendment right of access to child abuse and neglect proceedings. *Matter of Ruben R.*, 219 AD2d 117; *Matter of Katherine B.*, 189 AD2d 443.

When media representatives are admitted unconditionally, United States Supreme Court decisions limit the court's authority to impose prior restraints and order the media not to disseminate information. Availability of court-ordered restraints on disclosure and of sanctions for unauthorized disclosure. See, e.g., *Florida Star v. B.J.F.*, 491 US 524. However, the court may decide to exclude the media unless they agree to limitations on the disclosure of information learned in court. *Matter of S. Children*, 140 Misc2d 980.

II. Access to Records Related to Family Court Proceeding

FCA §166

A. General Provisions

Privacy of records

The records of any proceeding in the family court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.

Uniform Rules for the Family Court 22 NYCRR 205.5

Privacy of Family Court records

Subject to limitations and procedures set by statute and case law, the following shall be permitted access to the pleadings, legal papers formally filed in a proceeding, findings, decisions and orders and, subject to the provisions of CPLR 8002, transcribed minutes of any hearing held in the proceeding:

- (a) the petitioner, presentment agency and adult respondents in the Family Court proceeding and their attorneys;
- (b) when a child is either a party to, or the child's custody may be affected by, the proceeding:
 - (1) the parents or persons legally responsible for the care of that child and their attorneys;
 - (2) the guardian, guardian ad litem and law guardian or attorney for that child;
 - (3) an authorized representative of the child protective agency involved in the proceeding or the probation service;
 - (4) an agency to which custody has been granted by an order of the Family Court and its attorney; and
- (c) a representative of the State Commission on Judicial Conduct, upon application to the appropriate Deputy Chief Administrator, or his or her designee, containing an affirmation that the commission is inquiring into a complaint under article 2-A of the Judiciary Law, and that the inquiry is subject to the confidentiality provisions of said article;
- (d) in proceedings under articles 4, 5, 6 and 8 of the Family Court Act in which temporary or final orders of protection have been issued:
 - (1) where a related criminal action may, but has not yet been commenced, a prosecutor upon affirmation that such records are necessary to conduct an investigation of prosecution; and
 - (2) where a related criminal action has been commenced, a prosecutor or defense attorney in accordance with procedures set forth in the Criminal Procedure Law provided, however, that prosecutors may request transcripts of Family Court proceedings in accordance with section 815 of the Family Court Act, and provided further that any records or information disclosed pursuant to this subdivision must be retained as confidential and may not be redisclosed except as necessary for such investigation or use in the criminal action; and
- (e) another court when necessary for a pending proceeding involving one or more parties or children who are or were the parties in, or subjects of, a pro-

ceeding in the Family Court pursuant to article 4, 5, 6, 8 or 10 of the Family Court Act. Only certified copies of pleadings and orders in, as well as information regarding the status of, such Family Court proceeding may be transmitted without court order pursuant to this section. Any information or records disclosed pursuant to this subdivision may not be re-disclosed except as necessary to the pending proceeding.

Where the Family Court has authorized that the address of a party or child be kept confidential in accordance with Family Court Act, section 154-b(2), any record or document disclosed pursuant to this section shall have such address redacted or otherwise safeguarded.

Comment: This rule contains no explicit bar to the release of records lawfully obtained pursuant to the Rule by any attorney, party, or other individual or agency. *Matter of Jane*, NYLJ, 10/21/94, p. 37, col. 5 (Fam. Ct., Ulster Co.).

B. Juvenile Delinquency and PINS Proceedings: Diagnostic Assessments, Probation Reports and Victim Impact Statements

FCA §351.1(5), (6)

5. (a) All diagnostic assessments and probation investigation reports shall be submitted to the court and made available by the court for inspection and copying by the presentment agency and the respondent at least five court days prior to the commencement of the dispositional hearing. All such reports shall be made available by the court for inspection and copying by the presentment agency and the respondent in connection with any appeal in the case.

(b) The victim impact statement shall be made available to the victim or the victim's family by the presentment agency prior to sentencing.

6. All reports or memoranda prepared or obtained by the probation service for the purpose of a dispositional hearing shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Except as provided under section 320.5 such reports or memoranda shall not be furnished to the court prior to the entry of an order pursuant to section 345.1.

FCA §750(1), (2)

1. All reports or memoranda prepared or obtained by the probation service shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Except as provided in section seven hundred thirty-five of this article, such reports or memoranda shall not be furnished to the court prior to the completion of the fact-finding hearing and the mak-

ing of the required findings.

2. After the completion of the fact-finding hearing and the making of the required findings and prior to the dispositional hearing, the reports or memoranda prepared or obtained by the probation service and furnished to the court shall be made available by the court for examination and copying by the child's law guardian or counsel or by the respondent if he is not represented by a law guardian or other counsel. All diagnostic assessments and probation investigation reports shall be submitted to the court at least five court days prior to the commencement of the dispositional hearing. In its discretion the court may except from disclosure a part or parts of the reports or memoranda which are not relevant to a proper disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the reports or memoranda are not disclosed, the court shall state for the record that a part or parts of the reports or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review on any appeal from the order of disposition. If such reports or memoranda are made available to respondent or his law guardian or counsel, they shall also be made available to the counsel presenting the petition pursuant to section two hundred fifty-four and, in the court's discretion, to any other attorney representing the petitioner.

C. Child Protective Proceedings: Child Protective Agency and State Central Register Reports and Records

FCA §1047(b): Child Protective Agency Reports

(b) Reports prepared by the probation service or a duly authorized association, agency, society or institution for use by the court at any time for the making of an order of disposition shall be deemed confidential information furnished to the court which the court shall make available for inspection and copying by all counsel. The court may, in its discretion, withhold from disclosure, a part or parts of the reports which are not relevant to a proper disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interests of justice or in the best interests of the child. In all cases where a part or parts of the reports are not disclosed, the court shall state for the record that a part or parts of the reports have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review on appeal from the order of disposition. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing.

SSL §372(3), (4)(a): Foster Care Records

3. Such records maintained by the department or an authorized agency, including a local social services district, regarding such children are confidential, provided, however, that such records are subject to the provisions of article thirty-one of the civil practice law and rules. When either the subject foster child, or such child's parent, or such child's guardian if any, is not a party to the action, a copy of the notice or motion for discovery shall be served upon such parent, guardian, and child and, if the child is still a minor, the child's law guardian. Such persons may thereafter appear in the action with regard to such discovery. Where no action is pending, upon application by a parent, relative or legal guardian of such child or by an authorized agency, after due notice to the institution or authorized agency affected and hearing had thereon, the supreme court may by order direct the officers of such institution or authorized agency to furnish to such parent, relative, legal guardian or authorized agency such extracts from the record relating to such child as the court may deem proper. The department through its authorized agents and employees may examine at all reasonable times the records required by this section to be kept.
4. (a) All such records relating to such children shall be open to the inspection of the board and the department at any reasonable time, and the information called for under this section and such other data as may be required by the department shall be reported to the department, in accordance with the regulations of the department. Such records kept by the department shall be deemed confidential and shall be safeguarded from coming to the knowledge of and from inspection or examination by any person other than one authorized, by the department, by a judge of the court of claims when such records are required for the trial of a claim or other proceeding in such court or by a justice of the supreme court, or by a judge of the family court when such records are required for the trial of a proceeding in such court, after a notice to all interested persons and a hearing, to receive such knowledge or to make such inspection or examination. No person shall divulge the information thus obtained without authorization so to do by the department, or by such judge or justice.

SSL §422(4)(A): State Central Register Reports and Related Records

4. (A) Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the department, local departments, or the commission on quality of care for the mentally disabled, shall be confidential and shall only be made available to [the law guardian and other individuals or entities specified in the statute].

Television Coverage of Court Proceedings

New York Judiciary Law §218 permits news organizations to film court proceedings in certain cases. Applications to film must be submitted in writing to the presiding trial judge seven days in advance of the proceeding, unless circumstances merit a shorter time period. The judge must confer with counsel for all parties before deciding whether to grant or deny the application. The parties' consent is required only for arraignments and suppression hearings in criminal cases. The presiding judge's determination can be appealed to the administrative judge of the court.

NY Judiciary Law §218 and the court rules which implement it have been extended to June 30, 1997. It was not extended thereafter. Because the debate over cameras in the courtroom continues, we have retained §218 in this handbook.

NY Judiciary Law §218. Audio-Visual Coverage of judicial proceedings

1. **Authorization.** Notwithstanding the provisions of section fifty-two of the civil rights law and subject to the provisions of this section, the chief judge of the state or his designee may authorize an experimental program in which presiding trial judges, in their discretion, may permit audio-visual coverage of civil and criminal court proceedings, including trials.
2. **Definitions.** For purposes of this section:
 - (a) "Administrative judge" shall mean the administrative judge of each judicial district; the administrative judge of Nassau county or of Suffolk county; the administrative judge of the civil court of the city of New York or of the criminal court of the city of New York; or the presiding judge of the court of claims.
 - (b) "Audio-visual coverage" shall mean the electronic broadcasting or other transmission to the public of radio or television signals from the courtroom, the recording of sound or light in the courtroom for later transmission or reproduction, or the taking of still or motion pictures in the courtroom by the news media.
 - (c) "News media" shall mean any news reporting or news gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspapers, magazines, trade papers, in-house publications, professional journals or any other news reporting or news gathering agency, the function of which is to inform the public, or some segment thereof.
 - (d) "Presiding trial judge" shall mean the justice or judge presiding over proceedings at which audio-visual coverage is authorized pursuant to this section.
 - (e) "Covert or undercover capacity" shall mean law en-

forcement activity involving criminal investigation by peace or police officers who usually and customarily wear no uniform, badge, or other official identification in public view.

- (f) "Arraignment" shall have the same meaning as such term is defined in subdivision nine of section §1.20 of the criminal procedure law.
- (g) "Suppression hearing" shall mean a hearing on a motion made pursuant to the provisions of section §710.20 of the criminal procedure law; a hearing on a motion to determine the admissibility of any prior criminal, vicious or immoral acts of a defendant and any other hearing held to determine the admissibility of evidence.
- (h) "Nonparty witness" shall mean any witness in a criminal trial proceeding who is not a party to such proceeding; except an expert or professional witness, a peace or police officer who acted in the course of his or her duties and was not acting in a covert or undercover capacity in connection with the instant court proceeding, or any government official acting in an official capacity, shall not be deemed to be a "non-party witness".
- (i) "Visually obscured" shall mean that the face of a participant in a criminal trial proceeding shall either not be shown or shall be rendered visually unrecognizable to the viewer of such proceeding by means of special editing by the news media.

3. Requests for coverage of proceedings; administrative review.

- (a) Prior to the commencement of the proceedings, any news media interested in providing audio-visual coverage of court proceedings shall file a request with the presiding trial judge, if assigned, or if no assignment has been made, to the judge responsible for making such assignment. Requests for audio-visual coverage shall be made in writing and not less than seven days before the commencement of the judicial proceeding, and shall refer to the individual proceeding with sufficient identification to assist the presiding trial judge in considering the request. Where circumstances are such that an applicant cannot reasonably apply seven or more days before the commencement of the proceeding, the presiding trial judge may shorten the time period for requests.
- (b) Permission for news media coverage shall be at the discretion of the presiding trial judge. An order granting or denying a request for audio-visual coverage of a proceeding shall be in writing and shall be included in the record of such proceeding. Such order shall contain any restrictions imposed by the judge on the audio-visual coverage and shall contain a statement advising the parties that any violation of

the order is punishable by contempt pursuant to article nineteen of this chapter. Such order for initial access shall be subject only to review by the appropriate administrative judge; there shall be no further judicial review of such order or determination during the pendency of such proceeding before such trial judge. No order allowing audio-visual coverage of a proceeding shall be sealed.

- (c) Subject to the provisions of subdivision seven of this section, upon a request for audio-visual coverage of court proceedings, the presiding trial judge shall, at a minimum, take into account the following factors:
 - (i) the type of case involved;
 - (ii) whether such coverage would cause harm to any participant in the case or otherwise interfere with the fair administration of justice, the advancement of a fair trial or the rights of the parties;
 - (iii) whether any order directing the exclusion of witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage that could be viewed by such witnesses to the detriment of any party;
 - (iv) whether such coverage would interfere with any law enforcement activity; or
 - (v) involve lewd or scandalous matters.
- (d) A request for audio-visual coverage made after the commencement of a trial proceeding in which a jury is sitting shall not be granted unless, (i) counsel for all parties to the proceeding consent to such coverage, or (ii) the request is for coverage of the verdict and/or sentencing in such proceeding.

4. Supervision of audio-visual coverage; mandatory pretrial conference; judicial discretion.

- (a) Audio-visual coverage of a court proceeding shall be subject to the supervision of the presiding trial judge. In supervising audio-visual coverage of court proceedings, in particular any which involve lewd or scandalous matters, a presiding trial judge shall, where necessary for the protection of any participant or to preserve the welfare of a minor, prohibit all or any part of the audio-visual coverage of such participant, minor or exhibit.
- (b) A pretrial conference shall be held in each case in which audio-visual coverage of a proceeding has been approved. At such conference the presiding trial judge shall review, with counsel and the news media who will participate in the audio-visual coverage, the restrictions to be imposed. Counsel shall convey to the court any concerns of prospective witnesses with respect to audio-visual coverage.

- (c) There shall be no limitation on the exercise of discretion under this subdivision except as provided by law. The presiding trial judge may at any time modify or reverse any prior order or determination.

5. Consent

- (a) Audio-visual coverage of judicial proceedings, except for arraignments and suppression hearings, shall not be limited by the objection of counsel, parties, or jurors, except for a finding by the presiding trial judge of good or legal cause.
- (b) Audio-visual coverage of arraignments and suppression hearings shall be permitted only with the consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision four of section 170.10 or 180.10 of the criminal procedure law and the party has affirmatively elected to proceed without counsel at such proceeding.
- (c) Counsel to each party in a criminal trial proceeding shall advise each nonparty witness that he or she has the right to request that his or her image be visually obscured during said witness' testimony, and upon such request the presiding trial judge shall order the news media to visually obscure the visual image of the witness in any and all audio-visual coverage of the judicial proceeding.

6. Restrictions relating to equipment and personnel; sound and light criteria. Where audio-visual coverage of court proceedings is authorized pursuant to this section, the following restrictions shall be observed:

- (a) Equipment and personnel:
 - (i) No more than two electronic or motion picture cameras and two camera operators shall be permitted in any proceeding.
 - (ii) No more than one photographer to operate two still cameras with not more than two lenses for each camera shall be permitted in any proceeding.
 - (iii) No more than one audio system for broadcast purposes shall be permitted in any proceeding. Audio pickup for all media purposes shall be effectuated through existing audio systems in the court facility. If no technically suitable audio system is available, microphones and related wiring essential for media purposes shall be supplied by those persons providing audio-visual coverage. Any microphones and sound wiring shall be unobtrusive and located in places designated by the presiding trial judge.
 - (iv) Notwithstanding the provisions of subparagraphs

(i), (ii) and (iii) of this paragraph, the presiding trial judge may modify his original order to increase or decrease the amount of equipment that will be permitted into a courtroom on a finding of special circumstances so long as it will not impair the dignity of the court or the judicial process.

- (v) Notwithstanding the provisions of subparagraphs (i), (ii) and (iii) of this paragraph, the equipment authorized therein shall not be admitted into a court proceeding unless all persons interested in providing audio-visual coverage of such proceedings shall have entered into pooling arrangements for their respective groups. Furthermore, a pool operator for the electronic and motion picture media and a pool operator for the still photography media shall be selected, and procedures for cost sharing and dissemination of audio-visual material established. The court shall not be called upon to mediate or resolve any dispute as to such arrangements. In making pooling arrangements, consideration shall be given to educational users' needs for full coverage of entire proceedings.
- (b) Sound and light criteria:
 - (i) Only electronic and motion picture cameras, audio equipment and still camera equipment which do not produce distracting sound or light shall be employed to cover judicial proceedings. The chief administrator of the courts shall promulgate a list of acceptable equipment models.
 - (ii) No motorized drives shall be permitted, and no moving lights, flash attachments, or sudden lighting changes shall be permitted during judicial proceedings.
 - (iii) No light or signal visible or audible to trial participants shall be used on any equipment during audio-visual coverage to indicate whether it is operating.
 - (iv) It shall be the affirmative duty of any person desiring to use equipment other than that authorized by the chief administrator to demonstrate to the presiding trial judge, adequately in advance of any proceeding, that the equipment sought to be utilized meets acceptable sound and light criteria. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.
 - (v) With the concurrence of the presiding trial judge modifications and additions may be made to light sources existing in the facility, provided such modification or additions are installed and maintained at the expense of the news media who are providing audio-visual coverage and

provided they are not distracting or otherwise offensive.

(c) Location of equipment and personnel. Cameras, equipment and personnel shall be positioned in locations designated by the presiding trial judge.

(i) All audio-visual coverage operators shall assume their assigned, fixed position within the designated area and once established in such position, shall act in a manner so as not to call attention to their activities.

(ii) The areas so designated shall provide reasonable access to coverage with the least possible interference with court proceedings. Equipment that is not necessary for audio-visual coverage from inside the courtroom shall be located in an area outside the courtroom.

(d) Movement of equipment during proceedings. Equipment shall not be placed in, moved about or removed from the courtroom, and related personnel shall not move about the courtroom, except prior to commencement or after adjournment of proceedings each day, or during a recess. Camera film and lenses shall be changed only during a recess in proceedings.

7. Restrictions on audio-visual coverage. Notwithstanding the initial approval of a request for audio-visual coverage of any court proceeding, the presiding trial judge shall have discretion throughout the proceeding to revoke such approval or limit such coverage, and may where appropriate exercise such discretion to limit, restrict or prohibit audio or video broadcast or photography of any part of the proceeding in the courtroom, or of the name or features of any participant therein. In any case, audio-visual coverage shall be limited as follows:

(a) no audio pickup or audio broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding trial judge, shall be permitted without the prior express consent of all participants in the conference;

(b) no conference in chambers shall be subject to audio-visual coverage;

(c) no audio-visual coverage of the selection of the prospective jury during voir dire shall be permitted;

(d) no audio-visual coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room during recess, or while going to or from the deliberation room at any time shall be permitted; provided, however, that, upon consent of the foreperson of a jury, the presiding trial judge may, in his or her discretion, permit audio cov-

erage of such foreperson delivering a verdict;

(e) no audio-visual coverage shall be permitted of a witness, who as a peace or police officer is currently engaged in a covert or undercover capacity, without the prior written consent of such witness;

(f) no audio-visual coverage shall be permitted of a witness, who as a peace or police officer is currently engaged in a covert or undercover capacity, without the prior written consent of such witness;

(g) no audio-visual coverage shall be permitted of the victim in a prosecution for rape, sodomy, sexual abuse or other sex offense under article one hundred thirty or section 255.25 of the penal law; notwithstanding the initial approval of a request for audio-visual coverage of such a proceeding, the presiding trial judge shall have discretion throughout the proceeding to limit any coverage which would identify the victim, except that said victim can request of the presiding trial judge that audio-visual coverage be permitted of his or her testimony, or in the alternative the victim can request that coverage of his or her testimony be permitted but that his or her image shall be visually obscured by the news media, and the presiding trial judge in his or her discretion shall grant the request of the victim for the coverage specified;

(h) no audio-visual coverage of any arraignment or suppression hearing shall be permitted without the prior consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision four of section 170.10 or 180.10 of the criminal procedure law and the party has affirmatively elected to proceed without counsel at such proceeding;

(i) No judicial proceeding shall be scheduled, delayed, reenacted or continued at the request of, or for the convenience of the news media;

(j) no audio-visual coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person;

(k) no audio-visual coverage of any judicial proceedings which are by law closed to the public, or which may be closed to the public and which have been closed by the presiding trial judge shall be permitted; and

(l) no audio-visual coverage shall be permitted which focuses on or features a family member of a victim or a party in the trial of a criminal case, except while such family member is testifying. Audio-visual coverage operators shall make all reasonable efforts to determine the identity of such persons, so that such coverage shall not occur.

8. **Violations.** Any violation of an order or determination issued under this section shall be punishable as a contempt pursuant to article nineteen of this chapter.

Title 22, New York Code of Rules and Regulations
[22 NYCRR §131]

Part 131. Audio-Visual Coverage of Judicial Proceedings

§131.1 Purpose; General Provisions

- (a) These rules are promulgated to comport with the legislative finding that an enhanced public understanding of the judicial system is important in maintaining a high level of public confidence in the judiciary, and with the legislative concern that cameras in the courts be compatible with the fair administration of justice...
- (b) These rules shall be effective for any period when audio-visual coverage in trial courts is authorized by law and shall apply in all counties in the state.
- (c) Nothing in these rules is intended to restrict any pre-existing right of the news media to appear at and to report on judicial proceedings in accordance with law.
- (d) Nothing in these rules is intended to restrict the power and discretion of the presiding trial judge to control the conduct of judicial proceedings.
- (e) No judicial proceeding shall be scheduled, delayed, reenacted or continued at the request of, or for the convenience of, the news media.
- (f) In addition to their specific responsibilities as provided in these rules, all presiding trial judges and all administrative judges shall take whatever steps are necessary to insure that audio-visual coverage is conducted without disruption of court activities, without detracting from or interfering with the dignity or decorum of the court, courtrooms and court facilities, without compromise of the safety of persons having business before the court, and without adversely affecting the administration of justice.

§131.2 Definitions

For the purposes of this Part:

- (a) "Administrative judge" shall mean the administrative judge of each judicial district; the administrative judge of Nassau County or of Suffolk County; the administrative judge of the Civil Court of the City of New York, the Criminal Court of the City of New York or the Family Court of the City of New York; or the presiding judge of the Court of Claims.
- (b) "Audio-visual coverage" or "coverage" shall mean the electronic broadcasting or other transmission to the public of radio or television signals from the courtroom, the

recording of sound or light in the courtroom for later transmission or reproduction, or the taking of still or motion pictures in the courtroom by the news media.

- (c) "News media" shall mean any news reporting or news gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspapers, magazines, trade papers, inhouse publications, professional journals, or any other news reporting or news gathering agency, the function of which is to inform the public or some segment thereof.
- (d) "Presiding trial judge" shall mean the justice or judge presiding over judicial proceedings at which audio-visual coverage is authorized pursuant to this Part.
- (e) "Covert or undercover capacity" shall mean law enforcement activity involving criminal investigation by peace officers or police officers who usually and customarily wear no uniform, badge, or other official identification in public view.
- (f) "Judicial proceedings" shall mean the proceedings of a court or a judge thereof conducted in a courtroom or any other facility being used as a courtroom.
- (g) "Child" shall mean a person who has not attained the age of sixteen years.
- (h) "Arraignment" shall have the same meaning as such term is defined in subdivision nine of section 1.20 of the Criminal Procedure Law.
- (i) "Suppression hearing" shall mean a hearing on a motion made pursuant to the provisions of section 710.20 of the Criminal Procedure Law; a hearing on a motion to determine the admissibility of any prior criminal, vicious or immoral acts of a defendant; and any other hearing held to determine the admissibility of evidence.
- (j) "Nonparty witness" shall mean any witness in a criminal trial proceeding who is not a party to such proceeding; except an expert or professional witness, a peace or police officer who acted in the course of his or her duties and was not acting in a covert or undercover capacity in connection with the instant court proceedings, or any government official acting in an official capacity, shall not be deemed to be a "nonparty witness".
- (k) "Visually obscured" shall mean that the face of a participant in a criminal trial proceeding shall either not be shown or shall be rendered visually unrecognizable to the viewer of such proceeding by means of special editing by the news media.

§131.3 Application for Audio-Visual Coverage

- (a) Coverage of judicial proceedings shall be permitted only upon order of the presiding trial judge approving an application made by a representative of the news media for

permission to conduct such coverage.

- (b) (1) Except as provided in paragraph two of this subdivision, an application for permission to conduct coverage of a judicial proceeding shall be made to the presiding trial judge not less than seven days before the scheduled commencement of that proceeding. Where circumstances are such that an applicant cannot reasonably apply more than seven days before commencement of the proceedings, the presiding trial judge may shorten the time period. The application shall be in writing and shall specify such proceeding with sufficient particularity to assist the presiding trial judge in considering the application and shall set forth which of the types of coverage described in subdivision (b) of section 131.2 is sought, including whether live coverage is sought. Upon receipt of any application, the presiding trial judge shall cause all parties to the proceeding to be notified thereof.
- (2) An application for permission to conduct coverage of an arraignment in a criminal case or of any other proceeding after it has commenced may be made to the presiding trial judge at any time and shall be otherwise subject to the provisions of paragraph one hereof.
- (3) Each application shall relate to one case or proceeding only, unless the presiding trial judge permits otherwise.
- (c) Where more than one representative of the news media makes an application for coverage of the same judicial proceeding, such applications shall be consolidated and treated as one.

§131.4 Determination of the Application

- (a) Upon receipt of an application pursuant to section 131.3, the presiding trial judge shall conduct such review as may be appropriate, including:
 - (1) consultation with the news media applicant;
 - (2) consultation with counsel to all parties to the proceeding of which coverage is sought, who shall be responsible for identifying any concerns or objections of the parties, prospective witnesses, and victims, if any, with respect to the proposed coverage, and advising the court thereof;
 - (3) review of all statements or affidavits presented to the presiding trial judge concerning the proposed coverage.

Where the proceedings of which coverage is sought involve a child, a victim, a prospective witness, or a party, any of whom object to such coverage, and in any other appropriate instance, the presiding trial judge may hold such conferences and conduct any direct inquiry as may be fitting.

- (b) (1) Except as otherwise provided in paragraphs two and three hereof or section 131.8 of these rules, consent of the parties, prospective witnesses, victims, or other participants in judicial proceedings of which coverage is sought is not required for approval of an application for such coverage.
- (2) An application for audio-visual coverage of a trial proceeding in which a jury is sitting, made after commencement of such proceeding, shall not be approved unless counsel to all parties to such proceeding consent to such coverage; provided, however, this paragraph shall not apply where coverage is sought only of the verdict or sentencing, or both, in such proceeding.
- (3) Counsel to each party in a criminal trial proceeding shall advise each nonparty witness that he or she has the right to request that his or her image be visually obscured during said witness' testimony, and upon such request the presiding trial judge shall order the news media to visually obscure the visual image of the witness in any and all audio-visual coverage of the judicial proceeding.
- (c) In determining an application for coverage, the presiding trial judge shall consider all relevant factors, including but not limited to:
 - (1) the type of case involved;
 - (2) whether the coverage would cause harm to any participant;
 - (3) whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties;
 - (4) whether any order directing the exclusion of witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage that could be viewed by such witnesses to the detriment of any party;
 - (5) whether the coverage would interfere with any law enforcement activity;
 - (6) whether the proceedings would involve lewd or scandalous matters;
 - (7) the objections of any of the parties, prospective witnesses, victims, or other participants in the proceeding of which coverage is sought;
 - (8) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse; and
 - (9) the extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought.

The presiding trial judge also shall consider and give great weight to the fact that any party, prospective witness, victim, or other participant in the proceeding is a child.

- (d) Following review of an application for coverage of a judicial proceeding, the presiding trial judge, as soon as practicable, shall issue an order, in writing, approving such application, in whole or in part, or denying it. Such order shall contain any restrictions imposed by the judge on the audio-visual coverage and shall contain a statement advising the parties that any violation of the order is punishable by contempt pursuant to article nineteen of the Judiciary Law. Such order shall be included in the record of such proceedings and, unless it wholly approves the application and no party, victim or prospective witness objected to coverage, it shall state the basis for its determination.
- (e) Before denying an application for coverage, the presiding trial judge shall consider whether such coverage properly could be approved with the imposition of special limitations, including but not limited to:
 - (1) delayed broadcast of the proceedings subject to coverage, provided, however, where delayed broadcast is directed, it shall be only for the purpose of assisting the news media to comply with the restrictions on coverage provided by law or by the presiding trial judge;
 - (2) modification or prohibition of audio-visual coverage of individual parties, witnesses, or other trial participants, or portions of the proceedings; or
 - (3) modification or prohibition of video coverage of individual parties, witnesses, or other trial participants, or portions of the proceedings.

§131.5 Review

- (a) Any order determining an application for permission to provide coverage, rendered pursuant to subdivision (d) of section 131.4 of this part, shall be subject to review by the administrative judge in such form, including telephone conferences, as he or she may determine, upon the request of a person who is aggrieved thereby and who is either:
 - (1) a news media applicant; or
 - (2) a party, victim, or prospective witness who objected to coverage.
- (b) Upon review of a presiding trial judge's order determining an application for permission to provide coverage, the administrative judge shall uphold such order unless it is found that the order reflects an abuse of discretion by the presiding trial judge, in which event the administrative judge may direct such modification of the presiding trial judge's order as may be deemed appropriate. Any order directing a modification or overruling a pre-

siding trial judge's order determining an application for coverage shall be in writing.

- (c) No judicial proceeding shall be delayed or continued to allow for review by an administrative judge of an order denying coverage in whole or in part.
- (d) This section shall authorize review by the administrative judge only of a presiding trial judge's order pursuant to paragraph (b) of subdivision three of section 218 of the Judiciary Law determining an application for permission to provide coverage of judicial proceedings and shall not authorize review of any other orders or decisions of the presiding trial judge relating to such coverage.

§131.6 Mandatory Pretrial Conference

- (a) Where a presiding trial judge has approved, in whole or in part, an application for coverage of any judicial proceeding, the judge, before any such coverage is to begin, shall conduct a pretrial conference for the purpose of reviewing, with counsel to all parties to the proceeding and with representatives of the news media who will provide such coverage, any objections to coverage that have been raised, the scope of coverage to be permitted, the nature and extent of the technical equipment and personnel to be deployed, and the restrictions on coverage to be observed. The court may include in the conference any other person whom it deems appropriate, including prospective witnesses and their representatives. In an appropriate case, the presiding trial judge may conduct the pretrial conference concurrently with any consultations or conferences authorized by subdivision (a) of section 131.4
- (b) Where two or more representatives of the news media are parties to an approved application for coverage, no such coverage may begin until all such representatives have agreed upon a pooling arrangement for their respective news media prior to the pretrial conference. Such pooling arrangement shall include the designation of pool operators and replacement pool operators for the electronic and motion picture media and for the still photography media, as appropriate. It also shall include procedures for the cost sharing and dissemination of audio-visual material and shall make due provision for educational users' needs for full coverage of entire proceedings. The presiding trial judge shall not be called upon to mediate or resolve any dispute as to such arrangement. Nothing herein shall prohibit a person or organization that was not party to an approved application for coverage from making appropriate arrangements with the pool operator to be given access to the audio-visual material produced by the pool.
- (c) In determining the scope of coverage to be permitted, the presiding trial judge shall be guided by a consideration of all relevant factors, including those prescribed in subdivision (c) of section 131.4 of this part. Wherever necessary or appropriate, the presiding trial judge shall,

at any time before or during the proceeding, proscribe coverage or modify, expand, impose, or remove special limitations on coverage, such as those prescribed in subdivision (e) of section 131.4., of this part.

§131.7 Use and Deployment of Equipment and Personnel by the News Media

(a) Limitations Upon Use of Equipment and Personnel in the Courtroom.

- (1) No more than two electronic or motion picture cameras and two camera operators shall be permitted in any proceeding.
- (2) No more than one photographer to operate two still cameras, with not more than two lenses for each camera, shall be permitted in any proceeding.
- (3) No more than one audio system for broadcast purposes shall be permitted in any proceeding. Audio pickup for all news media purposes shall be effectuated through existing audio systems in the court facility. If no technically suitable audio system is available, microphones and related wiring essential for media purposes shall be supplied by those persons providing coverage. Any microphones and sound wiring shall be unobtrusive and placed where designated by the presiding trial judge.
- (4) Notwithstanding the provisions of paragraphs one, two, and three of this subdivision, the presiding trial judge on a finding of special circumstances may modify any restriction on the amount of equipment or number of operating personnel in the courtroom, compatible with the dignity of the court or the judicial process.

(b) Sound and Light Criteria

- (1) Only electronic and motion picture cameras, audio equipment, and still camera equipment that do not produce distracting sound or light may be employed to cover judicial proceedings. The equipment designated in §131.13 of this part shall be deemed acceptable.
- (2) Use of equipment other than that authorized in §131.13 of this part may be permitted by the presiding trial judge provided the judge is satisfied that the equipment sought to be utilized meets the sound and light criteria specified in paragraph one of this subdivision. A failure to obtain advance approval shall preclude use of such equipment in the coverage of the judicial proceeding.
- (3) No motorized drives, moving lights, flash attachments, or sudden lighting changes shall be permitted during coverage of judicial proceedings.
- (4) No light or signal visible or audible to trial participants shall be used on any equipment during cover-

age to indicate whether it is operating.

- (5) With the concurrence of the presiding trial judge and the administrative judge, modifications and additions may be made in light sources existing in the court facility, provided such modifications or additions are installed and maintained at media expense and are not distracting or otherwise offensive.
- (c) Location of Equipment and Personnel. Electronic and motion picture cameras, still cameras, and camera personnel shall be positioned in such locations as shall be designated by the presiding trial judge. The areas designated shall provide the news media with reasonable access to the persons they wish to cover while causing the least possible interference with court proceedings. Equipment that is not necessary for audio-visual coverage from inside the courtroom shall be located in an area outside the courtroom.
- (d) Movement of Equipment and Media Personnel. During the proceedings, operating personnel shall not move about, nor shall there be placement, movement or removal of equipment, or the changing of film, film magazines or lenses. All such activities shall take place each day before the proceeding begins, after it ends, or during a recess.
- (e) Identifying Insignia. Identifying marks, call letters, words and symbols shall be concealed on all equipment. Persons operating such equipment shall not display any identifying insignia on their clothing.
- (f) Other Restrictions. The presiding trial judge may impose any other restrictions on the use and deployment of equipment and personnel as may be appropriate.

§131.8 Additional Restrictions on Coverage

- (a) No audio pickup or audio broadcast of conferences that occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding trial judge, shall be permitted without the prior express consent of all participants in the conference.
- (b) No conference in chambers shall be subject to coverage.
- (c) No coverage of the selection of the prospective jury during voir dire shall be permitted.
- (d) No coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room, or during recess, or while going to or from the deliberation room at any time, shall be permitted provided, however, that, upon consent of the foreperson of a jury, the presiding trial judge may, in his or her discretion, permit audio coverage of such foreperson delivering a verdict.
- (e) No coverage shall be permitted of a witness, who as a

peace officer or police officer acted in a covert or undercover capacity in connection with the proceedings being covered, without the prior written consent of such witness.

- (f) No coverage shall be permitted of a witness, who as a peace officer or police officer is currently engaged in a covert or undercover capacity, without the prior written consent of such witness.
- (g) No coverage shall be permitted of the victim in a prosecution for rape, sodomy, sexual abuse, or other sex offense under article one hundred thirty or section 255.25 of the Penal Law; notwithstanding the initial approval of a request for audio-visual coverage of such a proceeding, the presiding trial judge shall have discretion throughout the proceeding to limit any coverage that would identify the victim, except that said victim can request of the presiding trial judge that audio-visual coverage be permitted of his or her testimony, or in the alternative the victim can request that coverage of his or her testimony be permitted but that his or her image shall be visually obscured by the news media, and the presiding trial judge in his or her discretion shall grant the request of the victim for the coverage specified.
- (h) No coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person.
- (i) No coverage of any judicial proceedings that are by law closed to the public, or that may be closed to the public and that have been closed by the presiding trial judge, shall be permitted.
- (j) No coverage of any arraignment or suppression hearing shall be permitted without the prior consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel, consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision four of section 170.10 or 180.10 of the Criminal Procedure Law and the party has affirmatively elected to proceed without counsel at such proceeding.
- (k) No audio-visual coverage shall be permitted which fo-

cuses on or features a family member of a victim or a party in the trial of a criminal case, except while such family member is testifying. Audio-visual coverage operators shall make all reasonable efforts to determine the identity of such persons, so that such coverage shall not occur.

The restrictions specified in subdivisions (a) through (k) may not be waived or modified except as provided herein.

§131.9 Supervision of Audio-Visual Coverage

- (a) Coverage of judicial proceedings shall be subject to the continuing supervision of the presiding trial judge. No coverage shall take place within the courtroom, whether during recesses or at any other time, when the presiding trial judge is not present and presiding.
- (b) Notwithstanding the approval of an application for permission to provide coverage of judicial proceedings, the presiding trial judge shall have discretion throughout such proceedings to revoke such approval or to limit the coverage authorized in any way. In the exercise of this discretion, the presiding trial judge shall be especially sensitive and responsive to the needs and concerns of all parties, victims, witnesses, and other participants in such proceedings, particularly where the proceedings unnecessarily threaten the privacy or sensibilities of victims, or where they involve children or sex offenses or other matters that may be lewd or scandalous. The presiding trial judge shall be under a continuing obligation to order the discontinuation or modification of coverage where necessary to shield the identity or otherwise insure the protection of any such person, party, witness, or victim, or in order to preserve the welfare of a child.
- (c) Counsel to each party in a trial proceeding that is subject to coverage shall inquire of each witness that he or she intends to call regarding any concerns or objections such witness might have with respect to coverage. Where counsel thereby is advised that a witness objects to coverage, counsel shall so notify the presiding trial judge.



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