

COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE SECTION



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SUMMARY OF THE COMMENTS OF THE SECTION ON COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE ON THE DISTRICT COURT'S POLICY REGARDING PRESS INTERVIEWS IN THE COURTHOUSE

The United States District Court for the District of Columbia is currently reviewing its policy prohibiting the media from conducting any interviews in the courthouse except in the Press Room. The Section on Courts, Lawyers and the Administration of Justice, including its Committee on Court Rules, comments that the existing policy may sweep too broadly and interfere unnecessarily with the legitimate interests of the public and the press in proceedings in both the District Court and the Court of Appeals. The Section supports the goals of the policy, but is not persuaded that the policy restricting media interviews is necessary or appropriate to achieve these goals. There does not appear to be a justification for singling out members of the media for a special rule concerning conversations in the courthouse. The problems at which the Court's policy is aimed -- arising out of courthouse meetings involving parties, lawyers, witnesses, or other participants in the justice system -- can be caused by lawyers, investigators, and ordinary members of the public as well as by members of the press.

The Section is especially troubled by this restriction because of its potential effect on the ability of the media to effectively cover proceedings at the courthouse. Unnecessary restrictions on the ability of the media to cover these stories frustrate this interest and indeed raise significant constitutional questions.

The Section suggests that any rule aimed at problems of disruption or harassment address these problems directly, and not merely assume that any member of any class of people is likely to cause them.

The Section is also concerned that this policy is an unwritten directive rather than a court rule. The Section encourages the Court's Committee on Local Rules to seek public comment on, and inclusion in the Local Rules of, any policy relating to the media that it chooses to recommend to the Court, and recommends generally that the Local Rules include any policies that forbid or require conduct by members of the public. The Section also encourages the Committee on Local Rules to determine whether the Court has adopted other unwritten policies that should be part of the Local Rules and to take appropriate steps if any such policies exist.

SECTION ON COURTS, LAWYERS
AND THE ADMINISTRATION OF JUSTICE
OF THE DISTRICT OF COLUMBIA BAR

COMMENTS ON THE POLICY
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA REGARDING
PRESS INTERVIEWS IN THE COURTHOUSE

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STANDARD DISCLAIMER

The views expressed herein represent only those of the Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar and not those of the Bar or its Board of Governors.

**COMMENTS OF THE SECTION ON COURTS, LAWYERS
AND THE ADMINISTRATION OF JUSTICE
OF THE DISTRICT OF COLUMBIA BAR ON
THE DISTRICT COURT'S POLICY REGARDING
PRESS INTERVIEWS IN THE COURTHOUSE**

The United States District Court for the District of Columbia has had for several years a policy that prohibits the media from conducting any interviews in the courthouse except in the Press Room. The Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar, and its Committee on Court Rules and Legislation, understand that the Court's Committee on Court Rules has been asked by the Chief Judge to review the policy and make a recommendation to the Court. We respectfully submit these comments.

The District of Columbia Bar is the integrated bar for the District of Columbia. Among the Bar's sections is the Section on Courts, Lawyers and the Administration of Justice. The Section has a standing Committee on Court Rules and Legislation, whose responsibilities include serving as a clearinghouse for comments on proposed changes to court rules. Comments submitted by the Section represent only its views, and not those of the D.C. Bar or of its Board of Governors.

These comments address two different types of concerns -- one specific to the policy on media interviews, and the other more general relating to adoption of important court policies outside the Court's rule-making process.

Media Interviews. Commenting on the current policy is difficult because we have no formal, comprehensive statement of its boundaries. Indeed, we understand that if the Court decides to continue this policy, it will define it more precisely. However, we are concerned that the general policy may sweep too broadly and

interfere unnecessarily with the legitimate interests of the public and the press in proceedings in both the District Court and the Court of Appeals.

We of course fully support the goals of the policy: to maintain security at the courthouse; to protect parties, witnesses and family members from unwanted intrusions and harassment; to insulate jurors from discussions about ongoing trials; and to prevent disturbance of ongoing proceedings. But we are not persuaded by the information available to us that the policy restricting media interviews is necessary or appropriate to achieve these goals.

Consider, for example, the following example based on an actual experience. A lawyer was speaking to a law clerk of one of the judges in the courthouse. A court security officer approached and asked them to discontinue the conversation because the officer assumed that the law clerk was a reporter. Once the officer learned the truth, he allowed the conversation to continue. The point of this example is not that the difficulty court security officers have determining whether one participant in a conversation is a reporter makes the policy hard to enforce (although it does). The more fundamental point is that this difficulty reflects the fact that courthouse conversations including a reporter are not inherently more disruptive or otherwise troublesome than other conversations. The policy prohibits conversations that pose no threat.

We do not perceive a justification for singling out members of the media for a special rule concerning conversations in the courthouse. The policy assumes, for reasons unknown to us, that reporters as a class are more likely than other people to conduct themselves inappropriately in the courthouse. The problems at which

the Court's policy is aimed -- arising out of courthouse meetings involving parties, lawyers, witnesses, or other participants in the justice system -- can be caused by lawyers, investigators, and ordinary members of the public as well as by members of the press. Judges have adequate power to prohibit harassment or intimidation of parties, witnesses, and jurors, and disruption of court proceedings, by any person or group of persons, whether or not members of the press. Similarly, court security officers may instruct anyone to leave a courtroom that needs to be secured, or ask any substantial group of people to take a hallway conversation elsewhere if they are disturbing proceedings in nearby courtrooms. While we are not aware of the particular circumstances that may have persuaded the Court to adopt this policy in 1978, we do not believe that media interviews have caused problems in other courthouses in the Washington metropolitan area (or elsewhere) where a similar policy is not in effect.

We are especially troubled by this restriction because of its potential effect on the ability of the media to effectively cover proceedings at the courthouse. As recognized in numerous cases upholding the right of public access to civil and criminal proceedings, the public has a strong and legitimate interest in many of the hearings and trials in this Court. Unnecessary restrictions on the ability of the media to cover these stories frustrate this interest and indeed raise significant constitutional questions.

We recognize that certain types of gatherings may be inappropriate in the courthouse. For example, a press conference involving numerous reporters and continuing for a period of time may inevitably create problems. However, any

congregation of similar size and duration, whether or not reporters are involved, may present the same issues. As a result, we suggest that any rule aimed at problems of disruption or harassment address these problems directly, and not merely assume that any member of any class of people is likely to cause them.

The Rule-Making Process. We are also concerned that this policy is an unwritten directive rather than a court rule. Making policies part of the Court's Local Rules has important benefits -- giving interested persons a prior opportunity to comment, increasing the likelihood that the policy will be appropriate, and ensuring that affected persons know what the rules are. Policies specifically aimed at the activities of the media are generally contained in formally adopted local rules. We encourage the Committee on Local Rules to seek public comment on, and inclusion in the Local Rules of, any policy relating to the media that it chooses to recommend to the Court. We do not suggest that all policies followed by court security officers in dealing with members of the public should be included in the Local Rules. We do believe, however, that the Local Rules should include any policies that forbid or require conduct by members of the public, and close cases should generally be resolved in favor of inclusion in the Local Rules.

We also encourage the Committee on Local Rules to determine whether the Court has adopted other unwritten policies that should be part of the Local Rules and to take appropriate steps if any such policies exist. At a minimum, the Committee should recommend that the Court compile and publicize any such policies so that lawyers, litigants, members of the media, and others know what the Court expects of them.