

Filming in Courthouses — Agreement with New Jersey Motion Picture and Television Commission

Memorandum To: Assignment Judges
Date: May 5, 1993
From: Chief Justice Robert N. Wilentz

As you may have read, I have reached an agreement with the New Jersey Motion Picture and Television Commission that allows the resumption of filming in courthouses. Attached is a copy of the Commission's statement and my own statement that together fairly clearly set forth the understanding.

Your role in this arrangement, after the Commission has advised you that filming has been approved, is to satisfy yourself that the filming will not interfere with courthouse operations, and to impose "other reasonable conditions . . . after financial, insurance and other arrangements satisfactory to the county have been made." Obviously you'll have to check with your county officials to make sure that those arrangements have been made.

Filming will be permitted only "when court is not in session." My understanding of this last condition is that even if a courtroom is not being used on a particular day, filming will not be permitted if ordinary operations are being conducted throughout the courthouse.

There is one further matter to be attended to before allowing filming. Since the Executive Director of the Commission initially indicated that he would submit to the subcommittee proposed filming only when the Commission thought it had a potential of violating one of the three standards, I found it necessary to make certain that he understood the arrangements clearly contemplated the submission of all proposed filming to the subcommittee, and that no filming whatsoever would be permitted unless the subcommittee approved. I have informed him that, given his statement, I intended to instruct Assignment Judges not to allow filming unless they were assured that the subcommittee has approved. He has now agreed that all filming will be submitted to the subcommittee, and presumably when you are informed that the Commission has approved of the filming, you will also be explicitly advised that the subcommittee has approved. Nevertheless, given this initial misunderstanding, prior to permitting any filming you should check directly with one of the members of the subcommittee to confirm the fact that the subcommittee has indeed approved.

Statement Issued by the New Jersey Motion Picture and Television Commission

The New Jersey Motion Picture and Television Commission is pleased to announce that Chief Justice Robert Wilentz has agreed, subject to the legitimate interests of the Judiciary, to once again allow the filming of motion picture and television productions, approved by the Commission, in courthouses throughout the State of New Jersey.

In compliance with the Chief Justice's request, the Commission will appoint a subcommittee to determine whether a given project scheduled to film in a courtroom conforms to the criteria he has set forth. His stipulations are as follows:

1. "No film or scene from such film shall be approved if produced by a political party or candidate or if it directly supports or opposes a political party or candidate. The fact that a film or scene supports or opposes views commonly attributed to a political party or candidate shall not be considered. Only clear and direct support of or opposition to the political party itself, or to the candidate himself or herself, shall require denial of permission."
2. "No pornographic film or scene from such film shall be approved."
3. "No scene shall be approved if granting permission poses a significant risk of loss of confidence of minorities in the judiciary. The viewpoint, itself, if any, of the film or scene shall not be a basis for denial of permission."
4. "The subcommittee shall assume, in connection with standard number three above, that minorities will become aware of the filming and will conclude, despite disclaimers, that it was permitted directly or indirectly by the Judiciary and by the Chief Justice."

The Commission has agreed to grant approval only when recommended by the subcommittee and to comply with the other stipulations that the Chief Justice has set forth in his attached statement. Accordingly, for example, filming will only be permitted following Commission approval when court is not in session and when the Assignment Judge in a given courthouse has determined that such activity will not otherwise interfere with courthouse operations. Film making activity will be further subject to other reasonable conditions that may be set forth by an Assignment Judge and after financial, insurance and other arrangements satisfactory to the county have been made.

The Chief Justice will review this matter after one year, and has agreed not to revise his policy nor revoke any permission granted by the Commission during that period.

The subcommittee will consist of six members who need not be members of the Commission. They shall serve for one year and may be reappointed without limit. The following have been appointed as subcommittee members:

1. William J. Brennan, Esq., former New Jersey State Bar Association President
2. Theodore V. Wells, Jr., Esq., partner at the Lowenstein firm
3. Douglas S. Eakeley, Esq., former First Assistant Attorney General
4. Celeste Holm, Chairman, New Jersey Motion Picture and Television Commission
5. Michael Proscia, Vice-Chairman, New Jersey Motion Picture and Television Commission
6. Michael Uslan, Secretary, New Jersey Motion Picture and Television Commission

The foregoing reflects the Chief Justice's concerns in this matter. We understand those concerns, which are further outlined in his attached statement.

Statement by Chief Justice Robert N. Wilentz

Prior to the *Bonfire of the Vanities* controversy, I had attempted to accommodate the State's policy of encouraging the movie industry by allowing filming in courthouses. The Judiciary granted practically all applications for such filming. When it was claimed that, having allowed some, the Judiciary was obliged to allow all filming, and so ruled by a Federal Judge (thereafter reversed by the Court of Appeals), I banned all filming. I will not restate the concerns that prompted my decision. They are the same as those that led to banning the *Bonfire* scene.

The arrangements with the Commission satisfy my concerns and are similar to the proposal I made shortly after I acted on *Bonfire* before the lawsuit. The restrictions on filming, however, are more narrowly drawn. I am confident the Commission and its subcommittee will act in good faith and that the legitimate interests of the Judiciary will be protected. I continue to believe the arrangements are constitutional.

The restrictions on filming are limited. The justification for prohibiting courthouse filming of pornography or scenes from films produced by a political candidate or political party are self-evident. The restriction on scenes posing a substantial risk of further undermining the confidence of minorities in the judiciary addresses a unique condition: the lack of confidence of minorities in the justice system. If not known before, it is by now a well known fact -- officially and convincingly documented in New Jersey by the Supreme Court's Task Force on Minority Concerns.

These restrictions address my concern that my attempt to accommodate the State's policy of encouraging the movie industry might in some instances, if filming were totally uncontrolled, diminish confidence in the Judiciary.

I assume it is obvious to all that courthouses are not meant to be film studios or movie sets and that, but for the State's policy, commercial filming has no proper place there. The State, however, has just such a policy, a law strongly encouraging the movie industry and creating a Commission to implement that policy. I regard it as my duty to accommodate that policy so long as doing so does not damage the legitimate interest of the Judiciary. I believe that the arrangements made with the Commission, under which only films approved by that Commission will be permitted, accomplishes both the encouragement of the movie industry and the protection of the interests of the Judiciary, given the standards adopted by the Commission and the makeup of the subcommittee. I am pleased that we were able to reach this agreement.

EDITOR'S NOTE

This agreement had been preceded by an interim directive issued December 19, 1990 by the Chief Justice, prohibiting any filming in the courthouses except for actual court proceedings. The text of that interim directive was as follows: "Effective immediately, there shall be no filming of any kind in any courthouse or courtroom in your vicinage except the filming of actual court proceedings, which may continue as in the past."

In concert with the interim directive, the following statement was issued on December 19, 1990, by the Chief Justice:

In view of the decision of the Federal District Court, I am left with the alternative of either permitting all filming or permitting none. That decision would hold unconstitutional selective permission based on standards that I believe are critical to the interests of the Judiciary. For the reasons given in my prior statements on this matter, I have advised all

Assignment Judges that pending the outcome of the appeal, no filming will be allowed in the courthouses of New Jersey. This order does not apply to the filming or televising of actual court proceedings which may continue as in the past.

The interim directive was to be effective pending the outcome of the appeal in *Amato v. Wilentz*, Civ. No. 90-01951 (D. N. J. May 16, 1990). The Third Circuit decision, dated December 30, 1991, dismissed the case for lack of standing by the plaintiff and didn't reach the constitutional issues raised. *Amato v. Wilentz*, Civ. No. 91-5045 (3rd Cir. 1991).

On January 6, 1992, Chief Justice Wilentz issued a public statement to the press stating that since the constitutional issues were not decided, "[t]he ban on filming in the courts will remain in place." As noted in the Chief Justice's May 5, 1995 memorandum to the Assignment Judges, subsequently the Chief Justice reached agreement with the New Jersey Motion Picture and Television Commission to submit courthouse filming requests for review by a Commission subcommittee that is to determine whether the filming requests conform to criteria established by the Chief Justice, and if so to grant such requests. The Chief Justice determined that he would review the agreement after one year, and further agreed not to revise his policy nor to revoke any permission granted by the Commission during that period. The text of the May 5, 1995 memorandum is included. The names and phone numbers of the subcommittee members have been omitted, as has the last paragraph of the memorandum.