

STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter

of

the Application for a Project Permit
for the Construction of Certain 90-
and 70-meter ski jump facilities proposed by
the Lake Placid Olympic Organizing
Committee at Intervale (Town of North
Elba) Essex County, New York, to be used
for the 1980 Winter Olympic Games.

EDITED TRANSCRIPT OF CONTINUED PROCEEDINGS
in the above-entitled matter at a pre-hearing conference be-
fore the Adirondack Park Agency, at the Olympic Arena, Lake
Placid, New York, on Friday, November 19, 1976, commencing
at 11:00 A. M.

PRESIDING:

VICTOR JOHN YANNACONE, Jr., ESQ.,

Hearing Officer.

APPEARANCES:

FOR THE PROJECT SPONSOR:

MCCORMICK, URFIRER & BROOKS, P.C.
(JAMES M. BROOKS, ESQ., of Counsel)
75 Main Street, Lake Placid, New York
Appearing for the Town of North Elba
as Trustee for the Public Parks and
Playgrounds District.

NORMAN L. HESS, ESQ.
Lake Placid, New York
Appearing for the Lake Placid
1980 Winter Olympics, Inc.

ROBERT J. KAFIN, ESQ.
115 Maple Street, Glens Falls, New York
Special Counsel for the sponsoring
committee.

J. VERNON LAMB, JR.
Olympic Arena, Lake Placid, New York
Chairman, Environmental Council
Nordic Competitions for the sponsoring
committee.

FOR THE ADIRONDACK PARK AGENCY:

ROBERT C. GLENNON, ESQ., Counsel
Ray Brook, New York.

ROBERT F. FLACKE, Chairman
Adirondack Park Agency.

FOR THE INTERVENOR ADIRONDACK COUNCIL:

WHITEMAN, OSTERMAN & HANNA, ESQS.
(JOHN HANNA, JR., ESQ., Of Counsel)
99 Washington Avenue
Albany, New York
Appearing for the Intervenor Adirondack
Council.

FOR THE INTERVENOR ADIRONDACK COUNCIL: (Continued)

ROSEMARY NICHOLS, ESQ.
2706 Foxwood Drive S.,
Clifton Park, New York
Appearing for the intervenor
Adirondack Council.

FOR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION:

PHILIP H. GITLEN, ESQ.
Assistant Counsel, New York State
Department of Environmental Conservation
50 Wolf Road
Albany, New York.

THOMAS MONROE, Regional Director of
Environmental Analysis, Ray Brook, New York.

FOR THE ADIRONDACK PARK LOCAL GOVERNMENT
REVIEW BOARD:

BEVERLY B. HARRIS, Executive Director
P. O. Box 5, Long Lake, New York 12847.

FOR OTHER INTERESTS:

HERMAN F. COLE, Executive Director of
the Governor's Executive Commission on
Winter Sports and the 1980 Winter Games
Box 119, Ray Brook, New York.

DAVID DUMONT
518 Oriental Avenue
Mamaroneck, New York
Appearing in behalf of the Sierra Club.

STEPHEN FARRINGTON
Lake Placid, New York
Appearing in behalf of the Snow Birds
of the Lake Placid Club.

P R O C E E D I N G S

THE HEARING OFFICER: I want all the representatives of all the nonprint media here. I'm the Hearing Officer, Victor J. Yannacone, Jr. Present is the Chairman of the Adirondack Park Agency, Robert Flacke.

* * *

MR. LOVEDAY: C-A-R-L L-O-V-E-D-A-Y, News Director, WPTZ-TV, Plattsburgh, New York.

MR. ROGERS: Jim Rogers, WNBZ Radio, Saranac Lake.

THE HEARING OFFICER: Are you a local station or are you affiliated with a national network or any part of a wire service?

MR. ROGERS: We are associated with the Associated Press and the ABC Television network.

THE HEARING OFFICER: And with respect to the television station, are you a private independent station or associated with any network?

MR. LOVEDAY: We are affiliated with NBC and a subscriber of United Press International.

MR. NARDIELLO: Donald Nardiello, WIRD Radio, Lake Placid, New York. We're affiliated with the UPI.

MR. ORTLOFF: Chris Ortloff, O-R-T-L-O-F-F, WNBZ Radio, Saranac Lake, same affiliation Mr. Rogers has. I am also affiliated with National Public Radio on a personal basis.

THE HEARING OFFICER: All right, anyone else?

MS. MOOS: Gianne Moos, G-I-A-N-N-E M-O-O-S, WPTZ-TV, Plattsburgh.

MR. MACK: Bob Mack, Director of Operations, WIRD, Lake Placid.

THE HEARING OFFICER: All right, at this time I am declaring this conference a pre-hearing conference, not a part of the formal hearing proceedings. It may be broadcast, it may be recorded by any of the electronic media who wish. I'm going to declare a three-minute recess in case anyone wants to get set up or prepared and we will reconvene at 11:06.

MR. BROOKS: I'm Jim Brooks, the attorney for the Public Parks and Playgrounds District. We would like at this time to place all media on notice that at the next hearings, any equipment, any cables or wires that are going to be placed on the floor will require compliance with the proposed agreement that is now in the hands of Mr. Allen, the Olympic Arena Director, and that if the media do not make arrangements with Mr. Allen or with my office to comply with the terms of that agreement, we will not permit them to put any wires or cables on the floor for any further coverage of these hearings. We are permitting it today because of some possible claim by media representatives that they did not have sufficient advance notice. However, we intend fully to hold those media personally responsible for any other persons who may be injured as a result of their cables.

(Whereupon a three-minute recess was taken.)

THE HEARING OFFICER: I'm going to extend the recess another three minutes.

(Whereupon a further three-minute recess was taken.)

THE HEARING OFFICER: All right, ladies and gentlemen, I am reconvening the recessed prehearing conference or meeting that has so far had two sessions prior to today. I am not declaring the formal hearings on the petitioner's application open at this time. I am adjourning those hearings until noon today with the consent of the Chairman of the Adirondack Park Agency who is here present, Mr. Robert Flacke.

The sole and exclusive issue to be resolved at this prehearing conference at this time is the role that the media will play in the public interest. The Assistant Attorney General, Mr. Gitlen, has raised the issue this morning that Section 52 of the Civil Rights Law of the State of New York, a section of that law adopted by the Laws of 1952, Chapter 241, and amended to provide an exception for

certain legislative events at which legislators were present by the Laws of 1962, Chapter 706, and effective since July 1st, 1962, prohibits the televising, the broadcasting or the taking of motion pictures of certain proceedings. The proceedings for which television, broadcasting or taking motion pictures are barred include proceedings "in which the testimony of witnesses by subpoena or other compulsory process is or may be taken conducted by a court, a commission, a committee, an administrative agency or other tribunal in this State." That prohibition is modified by an exception. The exception is that the prohibition contained in this section "*** shall not apply to proceedings conducted by either house of the State Legislature or committee or joint committee of the Legislature or by a Temporary State Commission which includes members of the Legislature so long as any testimony of witnesses which is taken is taken without resort to subpoena or other compulsory process."

Now, for those of you that are unfamiliar with the legislative history of this addition to the Civil Rights Act which follows the

provisions about restraints on the print media with respect to people who may not be generally considered public figures, the dates 1952 and 1962 are significant.

At that time the United States Congress was regularly conducting televised hearings, some of them in the nature of circus performances, at which witnesses were subpoenaed and, under the penalty of prison sentences or other denials of their civil and human rights, they were forced to testify under the glare of national television cameras. In many cases these hearings and this compulsory process worked untold hardships on innocent people.

As a result, a number of states, not only the State of New York, modified their Civil Rights Laws to try and give subpoenaed witnesses, especially those who had to assert their constitutional rights for whatever reason under the Fifth Amendment to the Constitution of the United States and the appropriate New York State equivalent the opportunity to do so without being broadcast.

In 1962, legislators, many of whom

relied heavily upon television coverage of their hearings to get sufficient public exposure to be re-elected saw fit to put the legislative hearing exception into this law, and I read it to you as it appears in the law. To the best of my knowledge, there is one lower court case in the State of Wisconsin dealing with the fundamental right of the electronic media to the same access to the materials of the public hearings that the print media have always had.

That case occurred in Brown County, Wisconsin, in the City of Green Bay and involved a hearing before the Department of Natural Resources in 1972 involving a claim by citizens that a number of national corporations operating in Green Bay, Wisconsin were causing odor pollution. A number of network television stations wished the right to televise those hearings. At the opening of the hearing the attorney for the defendants challenged their right and went to the court of general jurisdiction in the County, their Circuit Court, and eventually a ruling was granted which was affirmed, that provided the electronic media had the same

freedom for their particular tools as the print media and whereas the print media's tools are basically paper and pencil and occasionally tape recorders, the electronic media, of course, have lights and cameras and more sophisticated broadcast and recording equipment.

There are now three classes of media that are involved in these hearings and will involve an interpretation of Section 52 of the Civil Rights Law as far as these hearings and proceedings are concerned. The first is the print media who wish to make private recordings of the substance of the testimony presented at this hearing for their own use and for their own recollection in order to have that recollection refreshed. As far as I am concerned, I interpret Section 52 as not prohibiting such private recordings not made for rebroadcast or republication. The Agency itself is making a full verbatim live audio recording of these proceedings for its records. There is a verbatim transcript being taken by our hearing reporter which, based on my reading of the last transcript that I have a copy of, is in fact a verbatim recording of everything

that went on here, and a fine job has been done so far by the stenotype reporter.

There is now the question of recording for informational purposes by the electronic media--nonvideo, audio recording. The issue becomes whether or not such recordings are for broadcast and broadcast purposes. If they are not for broadcast purposes and are to provide a record that reporters and commentators may rely upon for the purpose of refreshing their recollection and substantiating their own statements, then I submit that Section 52 of the Civil Rights Law of the State of New York is no bar, and I intend to so rule.

The more difficult problem arises with respect to the live radio broadcast of the proceedings herein and the filming, the taking of motion pictures or video tape recordings of these proceedings for rebroadcast.

As Section 52 is presently constituted, I call the attention of all the parties that the generally accepted reporting service in the State of New York, namely, the

West Publishing Company, the publisher of our McKinney's Consolidated Laws of New York Annotated, indicate that there have been no constitutional interpretations of Section 52 as to whether or not it constitutes a restraint upon the electronic media not otherwise imposed on the print media. That was the issue raised in the Wisconsin case and it was ruled that similar prohibitions with the exception of proceedings held in a court of record were subject to the State's "Sunshine Law."

We do not have exactly the same "Sunshine Law" as the State of Wisconsin. However, it is my interpretation of the legislative intent of the people of the State of New York as demonstrated by their elected representatives on numerous occasions, that it is the purpose of hearings such as these to inform the widest possible segment of the public. For the last two pre-hearing conferences, which were not judicially sanctioned hearings in the sense of the terms as set forth in the Administrative Procedure Act of the State of New York recently adopted and in Article 27 of the Executive Law dealing with the Adirondack Park

Agency, the question of media coverage has been raised. Attorneys present for the State Attorney General have not raised any objections to such coverage. My understanding is, although I was not physically present, that the two public hearings conducted pursuant to the provisions of the National Environmental Policy Act as interpreted by Regulation A-95 of the Office of Management and Budget, as further interpreted by the rules of the United States Department of Commerce and the other federal agencies involved, has permitted and allowed electronic media the freedom to cover those hearings within the constraints imposed by those media.

I understand that no objection to such coverage of those hearings has been made. We are here in Lake Placid, New York. To the best of my knowledge, Lake Placid, New York, is not served by any public rail transportation or any regularly scheduled airline service. It is in the northern section of the Adirondack Park jurisdiction and the Adirondack Park, as we all know from our reading of the Executive Law, has been judicially and executively and legislatively declared to be primarily a wilderness

area.

We are dealing here with the 1980 Olympic Games. To the best of my knowledge, the 1980 Olympic Games are not a matter of just local concern. I understand that there is substantial interest in the 1980 Olympic Games on the part of people as far removed as the City of Albany, the City of New York, and perhaps even as far removed as the City of Washington, D.C.

The last time I checked the United States census figures--the relative populations of the Adirondack Park Agency jurisdictional area and even the City of Albany were disproportionate, in that there are more people in the City of Albany and certainly in the City of New York than within the entire jurisdiction of the Adirondack Park Agency.

In addition, I was advised yesterday by an attorney that he is appearing on behalf of the Sierra Club, Incorporated, a national institution with offices in Washington, D.C., offices in California and I believe its principal place of business in San Francisco, California. To the best of my

knowledge the experts who prepared the various documents in this case come from regions outside the Adirondack Park Agency and certainly to not maintain their regular places of business within the wilderness.

I personally come from Patchogue, Long Island, a long way from here to the south outside the City of New York. I have come to Lake Placid--now this makes the third trip. It is becoming increasingly difficult to travel to Lake Placid from the distant south, my home in Patchogue, in the wintertime.

The need to know in these hearings, I believe, is a fundamental constitutional issue, the only question being who needs to know. If this were a land development within the Adirondacks or a resort improvement within the Lake Placid Village or Town of North Elba area, I would seriously question whether or not all of this media coverage was justified and certainly would not even consider a reinterpretation of Section 52 of the Civil Rights Law. However, we are dealing here with a hearing which must produce evidence -- substantial, credible.

scientific evidence -- on the fair preponderance of which a state executive agency, namely, the Adirondack Park Agency, can make a full and complete determination on the record of whether a permit for a critical element of the 1980 Olympics shall be granted. If that permit is denied, then my understanding is that there is a substantial probability that the 1980 Olympics as proposed and as approved by the International Olympic Committee cannot be held. If, on the other hand, that permit is granted on less than a fair preponderance of the substantial, credible evidence, then it is my understanding that, pursuant to the various statutes of the State of New York and the National Environmental Policy Act of 1969 as amended and other appropriate federal and state statutes, the determination of the Agency is subject to challenge, including temporary injunction and temporary restraining orders, restraining the issuance of these permits, in the federal courts of the United States. In which case it is possible and, from my own personal experience, I can attest to the fact of how easy it is to make it possible, to delay the construction of necessary facilities even when

they are permitted, so as to effectively preclude the meeting of certain construction deadlines and, again, effectively preventing the people of the United States through this local area, Lake Placid, from hosting the 1980 Olympic Games.

This is why, at the preliminary hearings, I pointed out that one of the fundamental questions to be raised and addressed in this hearing procedure is whether or not the 1980 Olympic Games are, in fact, in the interest of the people of the State of New York and the area served by the Adirondack Park Agency.

At this time, as a prelude to taking testimony on the issue of coverage and the public need to know, I wish to make clear to all of you the substance of the position of the Adirondack Park Agency.

At the present time, I am the duly appointed representative of that Agency. I am charged with the mandate of taking testimony and maintaining a record that, hopefully, will provide the substantial, credible evidence necessary to support a determination by the Agency on the

permit application before it.

The Adirondack Park is a unique national natural resource treasure. It is abundant in natural resources and open space, certainly unique to the State of New York and the Eastern United States. The wild forests, the water, the wildlife and the aesthetic resources of the Park and its open-space character provide an outdoor recreational experience of national and international significance.

THE HEARING OFFICER: (Continuing)

Growing population, advancing technology and the need to expand our national economy focus ever increasing pressures on these priceless natural resources. Nearly a century ago, rigid constitutional safeguards, unique in the history of the United States, protected the public lands of the Adirondack Park. The people of the State of New York in numerous referenda have consistently reiterated their support for the time-honored institution that is the forest preserve, the "forever wild" land, and now the Adirondack Park. The State of New York by its own statutory, legislatively determined position, admits to an obligation to insure that contemporary and projected future pressures on the Park resources are provided for within a land use control framework which recognizes not only matters of local concern but also those of regional and state concern.

I submit that I have made a preliminary determination in the preliminary proceedings and I intend to make it in the formal

proceedings and in that I am supported by the Adirondack Park Agency commissioners themselves, that the 1980 Olympics is, in fact, a matter of state and regional and national and international concern.

For over a hundred years, the Adirondack environment has been maintained, protected, in some cases enhanced, in others not so improved, by the unique intermingling of public and private land holdings. A unique pattern of private land use has developed which has not only complemented the forest preserve holdings but has provided an outlet for the development of supporting facilities necessary to the proper use and enjoyment of the unique wild forest atmosphere of the Park.

Local governments in the Adirondack Park, according to the legislature, have found it increasingly difficult to cope with the unrelenting pressures for development being brought to bear on the area and to exercise their discretionary powers as municipal subdivisions of the state to create effective land

use and development controls. The basic purpose of Article 27 of the Executive Law of the State of New York, the organic act under which the Adirondack Park Agency operates, is to insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wild life, recreational, open space and the historic, ecological, and natural resources of the Adirondack Park. The responsibility for developing long range Park policy is that of the Adirondack Park Agency. By legislative mandate set forth in Section 801 of Article 27 of the Executive Law, the policies developed by the Adirondack Park Agency shall -- a mandatory word "shall" -- recognize the major state interest in three characteristics: conservation, use, and development of the Park's resources and the preservation of its open space character and, at the same time, provide a continuing role for local government.

I submit and I intend to propose as a finding of fact that the 1980 Olympics as proposed by the Lake Placid Olympic Organizing

Committee does, in fact, represent a use and development of the Park's resources and does, in fact, provide for, and is based upon, an active role by local government.

The Adirondack Park Agency has implemented a land use and development plan which recognizes the complementary needs of all the people of the state for the preservation of the Park's resources and its open space character and protection of the Park's permanent, seasonal and transient populations, their need for growth and service areas, employment, and a strong economic base as well. The mandate of this Agency is to provide for the protection of natural resources and for the promotion of the economic health and well-being of its constituents, the people who live within the Park jurisdiction.

To this end, the Adirondack Park Agency is subject under the law to interpreting actions and reviewing projects which come under certain classifications. In the case of the subject matter of the hearing before us,

we are dealing with an area of concern designated in the statute as a hamlet area.

The statute characterizes for us a "hamlet area."

"They range from large, varied communities that contain a sizeable permanent, seasonal and transient population with a great diversity of residential, commercial, tourist and industrial development and a high level of public services and facilities," such as the Village of Lake Placid and the Town of North Elba, "to smaller less varied communities with a lesser degree of diversity of development and a generally lower level of public services and facilities."

Then in Section 805 of the Adirondack Park Act: "Hamlet areas will serve as the service and growth centers in the Park. They are intended to accomodate a large portion of the necessary and natural expansion of the Park's housing, commercial and industrial activities. In these areas, a wide variety of housing, commercial, recreational, social and pro-

fessional needs of the Park's permanent, seasonal and transient populations will be met. Because a hamlet is concentrated in character and located in areas where existing development patterns indicate the demand for and the viability of service and growth centers, these areas will discourage the haphazard location and dispersion of intense building development in the Park's open space areas. These areas will continue to provide services to Park residents and visitors and in conjunction with other land use areas and activities on both private and public lands will provide a diversity of land uses that will satisfy the needs of a wide variety of the people. The delineation of the hamlet areas on the plan map is designed to provide reasonable expansion areas for the existing hamlets where the surrounding resources permit such expansion. Local government should take the initiative in suggesting appropriate expansions of the presently delineated hamlet boundaries both

prior to and at the time of enactment of local land use programs."

I intend to take administrative judicial notice of the fact that the application for a project permit for the 90- and 70-meter ski jump facility is, in fact, such consideration by local government of the appropriate expansion, in their eyes, of the presently delineated hamlet operation.

The hearing that we will commence at noon, provided certain procedural technicalities are resolved, will deal with the entire substance of this application. At the present time, the proponents of the application intend to present evidence in support of the application. A number of individuals and groups have indicated a desire to appear and participate in these hearings. A determination has been made by the Adirondack Park Agency and will be administered by me as the Hearing Officer as their duly authorized agent, to permit as wide a public participation in these proceedings as is

consistent with the administrative and judicial due process to which all the parties concerned are entitled.

The objective of these hearings is to establish a sufficient substantive record to enable the Agency to make a decision based upon the fair preponderance of the substantial credible evidence dealing with the subject matter that is, in fact, relevant, competent and material [to the issues raised.] The issues involved are of national significance. They are in effect of international significance since they will affect an international event in 1980. It is impossible for all those in the United States with need to know to crowd into this hearing room and it is also impossible -- I will take judicial notice of the fact that it is impossible -- for all of them to get here even if they wanted to.

MR. KAFIN: Mr. Hearing Officer, can I interrupt for just a moment?

THE HEARING OFFICER: No.

Therefore, we will now, in a pre-hearing meeting I intend to take testimony, not under oath unless the party is willing to give

it under oath, as to the needs of the several media services and the justification for their participation. When I have finished taking this evidence and making this record, we will then consider the matter of the application of Section 52 of the Civil Rights Law prior to the opening of the formal proceeding.

Now I intend to call as the Agency's initial witness, Mr. Flacke, the Chairman of the Adirondack Park Agency. Mr. Flacke.

MR. KAFIN: In your preamble here, you referred to a decision of the Adirondack Park Agency with respect to participation in this case. So that the record is clear, would you identify for us where that ruling is and produce it or have it marked so that all the parties are aware of this ruling because I am not aware of it.

THE HEARING OFFICER: Counselor, as I indicated to you at the first pre-hearing meeting and the second pre-hearing meeting, these were matters that were discussed at the time of commissioning me as the Hearing Officer. I intend to call Mr. Flacke to establish Agency policy as determined in this case by the chairman who has been

duly authorized to do so.

MR. BROOKS: You have mentioned that the 1980 Winter Olympic Games are in issue here, and it is my distinct understanding that we clarified at the last meeting that your mandate is purely and simply to hear the relevant evidence on the 1980 ski jump area, the 70- and 90-meter hill, not the Winter Olympic Games, and that your mandate is limited to the Intervale ski jump and the ski jump itself..'

THE HEARING OFFICER: Counselor, there is a petition before this Agency based upon an application for a project permit for a 90- and 70-meter ski jump facility. The last I read in that petition is that the 90- and 70-meter ski jump facility belongs to the 1980 Olympics. If this petition is denied and there is no 90- and 70-meter olympic ski jump, it was my understanding from what I read in this application--which is the only document officially before us at this time that I am legally obliged to read -- there will be no 1980 Olympics.

Now, at the risk of being a bit obvious: no ski jump, no Olympics. Therefore, the issue is really the 1980 Olympics. Now,

whether or not that's going to be jurisdictional we'll discuss again in the procedural aspect of the formal Hearing.

I call Mr. Flacke, the Chairman of the Agency.

MR. BROOKS: Well, we take exception to your comment.

THE HEARING OFFICER: Your exception is noted to all the rulings. No counsel need formally note their exceptions. Exceptions are deemed taken to all rulings.

Mr. Flacke, do you wish to have your testimony taken under oath or do you wish to be unsworn in giving your testimony?

MR. FLACKE: Unsworn, Mr. Yannacone.

THE HEARING OFFICER: All right. Mr. Flacke, what is your present association with the Adirondack Park Agency?

MR. FLACKE: I'm the Chairman of the Adirondack Park Agency.

THE HEARING OFFICER: As such, you have certain duties which have been delineated in the Executive Law of the State of New York and certain duties delineated under the existing regulations of the Agency, is that correct?

MR. FLACKE: Yes.

THE HEARING OFFICER: And one of those duties involves presiding at meetings of the Agency itself?

MR. FLACKE: Yes.

THE HEARING OFFICER: And have there been meetings dealing with the substance of the hearing today?

MR. FLACKE: Yes.

THE HEARING OFFICER: Would you briefly summarize for us in your own words the position of the Agency with reference to the substance of these hearings and my conduct thereof?

MR. FLACKE: The Agency has appointed you as the Hearing Officer. They have, by resolution, authorized or given authority through myself for the allowance of the intervenors and the methodology of it, and we do deem the hearings a matter of public interest.

THE HEARING OFFICER: Now, Mr. Flacke, the question of public participation is at issue in these hearings and I have made certain preliminary rulings on behalf of the Agency with reference to our position to encourage public participation by

the constituents of the Agency, namely, all those who are residents of the Park or who have substantial economic interest in the area served by the Agency and also, in the public interest, those intervenors who can show good cause. Is that, in fact, the position of the Agency?

MR. FLACKE: That is the position of the Agency.

THE HEARING OFFICER: The question has been raised today as to the extent of media coverage and participation. Is there anything in the Agency rules, regulations or any position statements by the Agency which indicate that media participation is to be discouraged in any way?

MR. FLACKE: No, there is not.

THE HEARING OFFICER: Is there any provision in the Agency acts or any determinations by the Agency or its members that any particular form of media coverage shall be encouraged over any other form?

MR. FLACKE: No, there is not.

THE HEARING OFFICER: Is it the Agency's position that the media shall all be treated equally as far as their coverage is concerned

consistent with the maintenance of good order in the hearing?

MR. FLACKE: Yes.

THE HEARING OFFICER: And has the Agency delegated to the Hearing Officer the determination as to the extent of participation that will be permitted the media in the hearings?

MR. FLACKE: Yes, I have done that.

THE HEARING OFFICER: All right. Are there any statements that you have heard so far this morning by me that are inconsistent with Agency policy?

MR. FLACKE: No.

THE HEARING OFFICER: Does my preliminary statement fairly and substantively reflect the position of the Agency with reference to these hearings?

MR. FLACKE: It does.

THE HEARING OFFICER: All right, I have no further questions. Thank you, Mr. Flacke.

MR. GITLEN: Now, Your Honor, I have a question of the witness.

THE HEARING OFFICER: You may ask it through me.

MR. GITLEN: I'll except to that procedure. I'd like the Hearing Officer to ask

the Chairman whether or not the Agency has authorized the Chairman or the Hearing Officer to rule on the applicability or constitutionality of any New York State law and, in particular, Civil Rights Law Section 52.

THE HEARING OFFICER: I'm going to entertain an objection on behalf of the Hearing Officer to the question and sustain the objection. You may have an exception.

MR. BROOKS: In other words, you refuse to answer the question or refuse to allow Mr. Flacke to answer that question?

THE HEARING OFFICER: I determined the question was objectionable as a matter of law. And you have an exception.

MR. GITLEN: On what grounds, if I may ask?

THE HEARING OFFICER: We don't state grounds.

MR. BROOKS: Well, I would ask the grounds. You refuse to state your grounds?

THE HEARING OFFICER: Of course.

Now, I would like to call as our next witness -- Mr. Nardiello from one of our local radio stations. Mr. Nardiello.

By the way, there are microphones throughout

counsel table that have been previously tested and will, in fact, pick up the voices of those counsel who wish to be heard in the back of the room. They are connected to the public address system of this hearing room. The public address system is, in turn, linked to recording equipment so that those remarks will, in fact, be recorded. Those of you who wish to be heard may turn your microphones on. Those of you who do not wish to be heard except indirectly may turn them off. That is your privilege as counsel.

DONALD A. NARDIELLO,

called as a witness by the Hearing Officer, upon examination, stated as follows:

DIRECT EXAMINATION BY THE HEARING OFFICER:

Q. Now, Mr. Nardiello, will you give us your full name and address for the record?

A. Donald Anthony Nardiello, 46 Hillcrest Avenue, Lake Placid, New York . . .

A. I'm the manager of radio station WIRD, Lake Placid, New York

Q. Will you describe the type and kind, in substance, of radio station you operate?

A. Briefly, it's at 920 on the dial, 5,000 watts, sun-up to sun-down operation.

A. We serve Lake Placid and the tri-lake area,

Lake Placid, Saranac Lake, Tupper Lake, Wilmington, surrounding area.

Q. Are these areas in the Adirondack Park, to the best of your knowledge?

A. Yes, they are.

Q. Do you provide news coverage and coverage of local events?

A. Yes, sir.

Q. Do you do this on a regular basis?

A. Yes, sir.

Q. Have you covered the activities of the Adirondack Park Agency in the past?

A. Yes, sir.

Q. Do you intend to cover the hearings here present?

A. Yes, sir.

Q. And have you so intended since the first meeting?

A. Yes, sir.

Q. Have you had representatives here present since the first preliminary meeting?

A. Yes, sir.

Q. Have you made recordings of the substance of the proceedings heretofore had during the first two meetings?

A. Yes.

Q. Is it your intention to continue such coverage if allowed?

A. Yes.

Q. Now, what is the end use of the recordings made and the information retained by your electronic media in these hearings?

A. The end, the basic use is to inform the public within our listening market of the hearings.

Q. Are these commercial or noncommercial broadcasts?

A. It is a commercial radio station.

Q. Yes, but are these hearings being broadcast with a commercial sponsor or in the public interest?

A. Combination of both. Yes, it is commercial and a public.

Q. Are they being conducted as part of your news service?

A. Yes.

Q. Does your news service have to conform to any requirements of the Federal Communications Commission?

A. Yes, we do.

Q. Do you have to provide information on a regular

basis at license renewal time to the Federal Communications Commission as to the extent of your local news coverage?

A. Yes, we do.

Q. Will the coverage of these hearings be utilized as part of that local news coverage (report) in support of your license application for renewal?

A. Yes, they will.

Q. Do you consider this coverage a significant part of that application?

A. Yes, sir. Yes, very much so.

Q. How long have you been associated with WIRD?

A. November 22nd, 1961.

Q. And you predate in this area the establishment of the Adirondack Park Agency, do you not?

Q. You were here before the Agency was established, weren't you?

A. Yes.

Q. And you saw the Agency established and go into operation, did you not?

(Donald A. Nardiello)

A. Yes.

Q. Now, how do you, as an individual broadcast journalist view the significance of these hearings as a part of the Agency operations?

A. I think it's very important to the Agency and also to the community that it serves.

Q. How do you, as a journalist and observer of the community view the impact of whatever determination is made by the Agency on this application?

A. I think the future of the area, a large part of the future of this area depends on the particular decision that will be made from these hearings.

Q. If you are prohibited from recording or broadcasting any portion of these proceedings, how will it affect your station and its news coverage of these events?

A. I think it would not be fair to the public that possibly can't make it here. That they have a right to know or hear what's taking place.

Q. Are you a resident of the immediate area?

A. Yes, I am.

Q. Is it difficult to reach this hearing point?

(Donald A. Nardiello)

A. From outside this area, yes.

Q. Is it difficult from portions that are still within your listening area to reach this area during the winter?

A. Yes.

Q. Is it, in fact, under certain circumstances hazardous?

A. Depending -- yes.

Q. In the coverage of these hearings, if you are prohibited from active recording or broadcasting of the material which occurs in this hearing room, will you resort to the taking of statements and (conducting) interviews outside of the hearing room?

A. If that was the last resort that we had to (use to) gather the news, yes, we would.

Q. As a broadcast journalist and a newsman is this a satisfactory way of fairly and accurately representing the substance of the hearings to your listening audience?

A. The actual live broadcast is -- yes, would be a better way of doing it.

(Donald A. Nardiello)

THE HEARING OFFICER: All right, I have no further questions. Thank you very much, Mr. Nardiello.

Mr. Ortloff?

MR. ORTLOFF: Yes, sir.

MR. GLENNON: Mr. Examiner, may I be heard at this point?

THE HEARING OFFICER: Yes.

MR. GLENNON: May I ask you, is it your intention to continue to call the media representatives for factual inquiry as to the necessity of broadcasting the hearings?

THE HEARING OFFICER: (yes).

MR. GLENNON: Are we not then conducting an irrelevant factual inquiry on what is essentially a legal issue?

THE HEARING OFFICER: Perhaps. We're going to make a record on the issue, however, under oath with testimony.

MR. GLENNON: If we have a legal issue, why do we not brief it? Why do we not all agree to decide it?

THE HEARING OFFICER: It is my

position as your Hearing Officer, unless otherwise directed by the Agency, to encourage wherever possible the resolution of issues by the taking of testimony from witnesses with actual knowledge of the facts or subject matter.

MS. NICHOLS: However, Mr. Hearing Officer, you have indicated these witnesses are not sworn.

THE HEARING OFFICER: Madam, please, it's my hearing at this time. This is a preliminary conference. If you seriously object, you can leave.

The purpose of making this record is to establish actual factual evidence. Briefing is for legal arguments. Briefing does nothing but demonstrate the erudition of lawyers. Briefing does not, in most instances, deal with the actual factual matters. It is my position as a matter of law that even legal issues that are eventually to be resolved solely on a matter of law depend upon and arise out of specific factual situations. It is my intention, on behalf of the Agency, to conduct sufficient preliminary inquiry to establish a

factual basis for the briefing of legal issues.

Now, Mr. Ortloff, do you wish to be sworn or do you wish to testify unsworn?

MR. ORTLOFF: It makes no difference to me, sir.

THE HEARING OFFICER: All right, will you be sworn?

MR. ORTLOFF: Yes, I will.

GEORGE CHRISTIAN ORTLOFF, called as a witness by the Hearing Officer, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE HEARING OFFICER:

Q. Please give us your full name and address for the record.

A. My name is George Christian Ortloff. My address is Riki Hill, Town of North Elba;

Q. Your present occupation and job title?

A. Journalist, and I'm a reporter for WNBZ radio.

Q. Prior to your employment with WNBZ, Where were you employed?

A. Well, I was employed at WUOM in Ann Arbor, Michigan.

Q. All right. How long have you been a professional journalist?

A. Seven years.

Q. And during that time, how long have you lived in this area?

A. I was born in this area. During that time I lived in this area for approximately a year and a half.

Q. Now, during that time have you had occasion to observe -- as a journalist, the preliminary activities with reference to the 1980 Olympics?

A. Yes, sir.

Q. And at the present time, have you been present at the two prior preliminary meetings on this hearing?

A. Yes, sir.

Q. What is your function at these hearings for WNBZ?

A. My function, because we are not physically able to broadcast these hearings live today is to make recordings thereof for purposes of excerpting in news broadcasts and for editing later for possible broadcast use.

Q. What is the listener service area of WNBZ?

A. WNBZ is a 1,000 - watt daytime station, 250-watt nighttime station, and the listener area is the Tri-Lakes, Tupper Lake, Saranac Lake, Lake Placid.

Q. Is it AM or FM?

A. AM.

Q. What is the position of WNBZ with reference to coverage? Does it intend to record the entire substance of the hearings for subsequent editing or edit as the hearings go along?

(George Ortloff)

A. It intends to record the entire substance of the hearing eliminating those portions where you have to turn the cassette over.

Q. Does it intend to make those recordings onsite or at a remote location?

A. They're being made right here, sir.

Q. Now, are you in charge of making those recordings?

A. Yes, I am.

Q. Will you be in charge of the editing of those recordings?

A. Yes, also with Mr. Rogers, the station manager.

Q. Will this be part of the news function of WNBZ?

A. It is my understanding that it will. I'm not in a position to make that judgment.

THE HEARING OFFICER: All right, I have no further questions.

THE HEARING OFFICER: Before you go,

(George Ortloff)

I'm adjourning the formal opening of the formal hearing until 1 o'clock.

Yes, Mr. Gitlen?

Mr. Hearing Officer, I'd like to correct the record. I appear here as Assistant Counsel for the Department of Environmental Conservation, and I assume you want me to propound the question to the witness through yourself.

THE HEARING OFFICER: No, I want to get your appearance straight. You're not acting as an Assistant Attorney General?

MR GITLEN: Not only am I not acting as one, but I am not one.

THE HEARING OFFICER: All right. We're going to suspend for two minutes.

THE HEARING OFFICER: All right, I'm reconvening the preliminary meeting asking Mr. Rogers, do you wish to be sworn or testify unsworn?

MR. ROGERS: Whichever.

THE HEARING OFFICER: Will you rise and be sworn?

JAMES ROGERS, III

called as a witness by the Hearing Officer, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE HEARING OFFICER:

Q. Please give your full name and address to the reporter.

A. James Rogers III, 10 Hillcrest Avenue, Lake Placid.

A. I'm owner and General Manager of WNBZ in

Saranac Lake.

A. Since March 1st of 1963.

Q. Do you reside in the immediate area?

A. I do.

Q. And do you reside within the area serviced by your station?

A. I do.

Q. Is that area within the Adirondack Park?

A. It is entirely.

Q. Now, as Owner and General Manager, are you responsible for directing Mr. Ortloff's coverage of this hearing?

A. By law, I am responsible for everything that's done at WNBZ.

Q. Will you tell us what your intention as owner and General Manager is in covering these hearings?

A. The intention is to inform as best possible -- our audience, of the proceedings here.

Q. And do you consider this (coverage of) any public interest or value to the people you serve?

A. I feel it an extreme public interest.

Q. You have been a resident of this area since the time before the Adirondack Park Agency was created, have you not?

A. Yes, sir.

Q. And you have seen the birth and the early years of development of the Adirondack Park Agency, have you not?

A. Yes, sir.

Q. Have you covered the actions of the Adirondack Park Agency as part of your news service with your radio station?

A. Yes, sir.

Q. How do you view these hearings in the context of the Adirondack Park Agency activities in the area?

A. In the immediate area they're probably the most important procedures to the immediate area.

Q. Is it part of your function as a local radio station to inform the public of events such as this?

A. Absolutely.

Q. And do you consider this part of your station mandate?

(James Rogers III)

A. Absolutely.

Q. Do you intend to broadcast the portions of this hearing that you do broadcast as commercial or non-commercial activity?

A. We will probably carry them only as non-commercial activity.

Q. And will that be in the nature of public interest or public service?

A. Absolutely.

Q. Do you, in the regular course of your professional activities as the Owner and General Manager of the WNBZ station have to report to the Federal Communications (commission) on your activities?

A. Yes, sir.

Q. And as part of those activities, are you required to report the extent of your coverage of local news activities?

A. Yes, sir.

Q. And do you intend to utilize your coverage of these hearings as an element of that report?

A. I do.

Q. Do you consider that a significant element?

A. Yes, sir.

(James Rogers III)

Q. In the event that you are prohibited from broadcasting portions of these hearings, how do you feel that will affect your coverage in the public interest?

A. It takes one more step toward the potential of inaccuracy.

Q. And how would you describe the kind of inaccuracy that would occur if you're not permitted to live record or live broadcast?

A. It's possible to get personal reaction from a reporter and not leave the personal reaction up to the listener.

Q. Is it your intention then to report what actually goes on in the hearings in the words of the people who are actual participants rather than in the interpretation of your reporters?

A. Where possible.

THE HEARING OFFICER: I have no further questions. Thank you very much, Mr. Rogers.

(Witness was excused)

THE HEARING OFFICER: All right. I would like to call the representative of the tele-

vision station here present today. Sir, will you testify under oath or do you wish to be unsworn?

MR. LOVEDAY: It makes no difference.

CARL LOVEDAY,

called as a witness by the Hearing Officer, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY THE HEARING OFFICER:

Q. Will you give your full name and address to the reporter please?

A. My name is Carl Loveday. I live at 48 South Acres, Peru, New York. I am the news director of WPTZ, a television station operated in Plattsburgh, New York.

Q. And what brings you to the hearings today?

A. I'm here to cover them, cover the hearings.

Q. What is the listener service area of WPTZ?

- A. The listener service area of WPTZ can best be described as being about two-thirds of the Adirondack Park-Northeastern New York and North-western Vermont and outside of the United States into Montreal and above Montreal, Canada, in a circle-like pattern.
- Q. And is WPTZ a television station duly licensed by The Federal Communications Commission?
- A. Yes, it is.
- Q. In the course of its regular activities with respect to its news division, has it in the past covered activities of significance to the Adirondack Park and the region therein?
- A. Yes, we have.
- Q. Have you in the past conducted as part of your news service any activities or reports with reference to the activities of the Adirondack Park Agency?
- A. Yes, we have.
- Q. And in the course of those activities, have you found it necessary to film or videotape the proceedings?
- A. Yes, we have.
- Q. And have any objections to such filming or video

(Carl Loveday)

taping been raised?

A. None formally, sir.

Q. What are your intentions with reference to the coverage of these hearings?

A. Our intentions are to cover the hearings with video tape, if permitted, for use in our newscasts. We will excerpt certain pieces of that videotape for use in our newscasts.

Q. In the event that you are precluded or prohibited from actual video taping of the proceedings during the course of the hearings, what is your intention with reference to coverage of these hearings.

A. Well, obviously, we'd be limited and I honestly can't answer you right now.

Q. How long have you been news director of WPTZ?

A. I believe five years.

Q. How long have you been in the video news business?

A. I've been a broadcast journalist for thirteen years. I've been in television for the last eight years.

Q. In the course of your regular professional

(Carl Loveday)

activities as a broadcast journalist, have you had occasion to evaluate the effectiveness, in terms of public information, of the interview method following public hearings and court trials as opposed to the excerpting of those proceedings?

A. Yes, the interview method following trials and/or public hearings is not very effective because very often the person being interviewed will not make the same statement that he made at the hearing or the court trial and/or will perform, if you will, for the camera.

Q. Is it a source of potential inaccuracies in public representation?

A. Absolutely.

Q. And even misrepresentation, to rely on outside the hearing comments as opposed to on the record comments?

A. Absolutely.

Q. In the course of the regular professional activities as news director of WPTZ, do you have occasion to make reports of your news gathering and news broadcast activities to the Federal Communications Commission?

(Carl Loveday)

A. Absolutely.

Q. And are you required as a matter of law or a matter of F.C.C. procedures to report on local activities?

A. Yes, indeed we are.

Q. Do you intend to include in such report the coverage of these hearings?

A. Yes, we will.

Q. You have been a broadcast journalist since before the Adirondack Park Agency was established as a matter of law, have you not?

A. Yes, sir.

Q. And you've had occasion to see the development of the area both before and after the establishment of the Agency, haven't you?

A. That is correct.

Q. Have you had occasion to cover Agency activities prior to this hearing?

A. Yes, sir.

Q. And can you give us an opinion with a reasonable degree of professional certitude as a broadcast journalist as to the level of significance of these hearings as opposed to other proceedings by

the Adirondack Park Agency?

A. There is a terrific amount of interest in these proceedings and I believe you stated earlier that it is the opinion of several that these hearings, the results of these hearings will have a significant bearing on the 1980 Winter Olympic Games being held in Lake Placid and, as a result of that, there is a great deal of interest.

Q. Do you feel that if you are prohibited from video taping or otherwise recording the substance of these hearings, that your effectiveness as a distributor of public information with respect to these hearings will be limited?

A. Very definitely.

THE HEARING OFFICER: I have no further questions. Thank you very much, Mr. Loveday.

MR. GITLEN: Excuse me, Your Honor, I have a question.

Is the witness under oath, May I ask?

THE HEARING OFFICER: Yes, the

(Carl Loveday)

witness is under oath.

MR. GITLEN: All right. I'd like to ask the witness whether or not he realizes that his own testimony that he has just given indicates that he intends to broadcast portions of this hearing?

THE WITNESS: Yes.

THE HEARING OFFICER: I'll ask the question.

MR. GITLEN: And do you realize that you have, therefore, indicated the requisite intent to be found guilty of a misdemeanor under Section 52 of the Civil Rights Act?

THE HEARING OFFICER: I'm going to entertain an objection by the chair to that question. I'm going to rephrase the question. I'm going to ask the witness if at this time prior to the convening of this formal hearing he has been advised by counsel for his organization, WFTZ and its associated parent company, that he may be in violation of a law in doing what he is doing right now? Have you?

THE WITNESS: No, I have not.

THE HEARING OFFICER: Now I am going to advise all of the journalists here present that I have made a ruling for their benefit that these proceedings we are conducting right now are not those proceedings contemplated by the provisions of Section 52 of the Civil Rights Act. I am also advising those journalists that as the Hearing Officer, I stand prepared to testify on their behalf should anyone attempt to indict or proceed by information alleging a violation of Section 52 for whatever occurs prior to these hearings.

MR. BROOKS: Excuse me. Has the Agency granted you authority to do that and to grant some sort of a limited amnesty?

They're the ones that are going to be indicted, not you.

THE HEARING OFFICER: No. If anyone is indicted, I am indicted because I

supervised this particular proceeding in violation of Section 52, Counselor.

MR. BROOKS: You're not broadcasting though.

THE HEARING OFFICER: I'm participating in a broadcast and the broadcast is being conducted at the present time under my absolute jurisdiction. All right, have we got that abundantly clear for the record? The broadcasting which has occurred so far prior to the formal opening of the hearings which I have adjourned until 1 o'clock today is conducted, operated, and supervised under my jurisdiction and authority. If the Department of Environmental Conservation of the State of New York wishes to lodge charges, all they have to do is go down to the local District Attorney's office or if you do it the way we do in the southern part of the state, to the local precinct, swear out the appropriate information. I will be happy to appear before the appropriate magistrate. I will be happy to stand trial for the alleged violation of Section 52 for a nonhearing.

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MR. GITLEN: Your Honor, my question --

THE HEARING OFFICER: Now that we've made that abundantly clear -- no, Mr. Gitlen.

MR. GITLEN: All right.

THE HEARING OFFICER: You're out of order at the present time. This is a nonhearing. You have no status at the present time. I have some status. This is a preliminary meeting for the purpose of public information. You are all here today by courtesy and sufferance, all right?

Now, I have no further questions of Mr. Loveday. Thank you very much.

MR. GITLEN: Mr. Hearing Officer, if I might, just to clarify the record, my question to the witness was directed towards his intent and not what he was currently engaging in.

THE HEARING OFFICER: And I have sustained an objection to that question.

MR. GITLEN: All right, I understand that.

THE HEARING OFFICER: All right. You have your exception. We will now reconvene at

1 o'clock and commence the formal hearing as set forth in the notice for 11 o'clock.

Ladies and gentlemen, I'm delaying the opening of the formal hearing until 1:20 and concluding the preliminary meeting which began this morning at 11 o'clock approximately, (in order) to resolve the issue of the media in the light of Section 52 of the Civil Rights Law of the State of New York.

The objection has been raised by Counsel for the Department of Environmental Conservation of the State of New York --

MR. GITLEN: Excuse me, your Honor, I have yet to have been given the opportunity to state the objection and the grounds for the objection.

THE HEARING OFFICER: All right. The objection has been raised without necessarily stating grounds therefor by Counsel for the

Department of Environmental Conservation, that the provisions of Section 52 of the Civil Rights Law of the State of New York as previously described prohibit the televising, the broadcasting or the taking of motion pictures of these proceedings.

I propose to find as a finding of fact that, in fact, this hearing scheduled to begin shortly is a proceeding in which the testimony of witnesses by subpoena or other compulsory process is or may be taken; that this proceeding is conducted by an administrative agency, the Adirondack Park Agency which is a tribunal of this state within the contemplation and subject to the provisions of Section 52 of the Civil Rights Law of the State of New York as amended.

I intend to find further as a matter of fact that the exception contained in Section 52 for proceedings conducted by either house of the State Legislature or committee or joint committee of the Legislature or by a temporary state commission which includes members of the Legislature does not apply to these

proceedings.

However, I do intend to find also as a matter of fact that it is my opinion that the public interest in permitting the televising, broadcasting or taking of motion pictures of these hearings does, in fact, exist. To this end, I took testimony ex parte on behalf of the Agency to establish a record from the representatives of the electronic media that were here present and willing to testify this morning. That testimony is a matter of public record.

It is my determination that the provisions of Section 52 do provide that the televising, the broadcasting, or the taking of motion pictures of these proceedings render the person, firm, association or corporation which shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting or taking of motion pictures within this state

I make a further ruling at this time, that it is my interpretation of Section 52, and until some court rules otherwise, it shall remain my interpretation of Section 52, that the recording by electronic means of these proceedings for purposes other than televising, broadcasting or arranging for the televising or broadcasting of such recordings is permissible.

If excerpts or portions of those recordings are subsequently broadcast, the party broadcasting does so at their own peril. However, I believe that the constitutional imperatives of free press and free dissemination of information, the "Sunshine Laws" which hopefully provide that administrative proceedings shall be conducted in an atmosphere of public information and education where the widest possible audience is given access to them, dictate that those who will eventually report these proceedings to the public at large should be permitted, for their own record to maintain such documentary records as necessary to document their subsequent reporting. Those documentary records may include

audio tape records, video tape recordings, motion picture film or notes taken by a reporter. However, the televising, broadcasting or arranging for the televising or broadcasting of those actual proceeding copies is, of course, a violation of the language of the statute of Section 52 and does expose that party to possible prosecution for a misdemeanor, and on that they are on their own.

To this end, any individual present in the hearing room who wishes to make an audio, video or motion picture recording of these proceedings not for the purpose of televising or broadcasting these proceedings may do so fully cognizant of the provisions of Section 52 of the Civil Rights Law which provides that it is a misdemeanor to televise, broadcast or arrange for the televising or broadcasting of these proceedings.

The question of motion pictures is ambiguous accord(ing) (to) the language of Section 52. I read it as being "televise, broadcast or take motion pictures for the purpose.

of televising or broadcasting." If, however, a court of competent jurisdiction rules that the taking of motion pictures is, in fact, absolutely prohibited, then, of course, the party taking the motion pictures is liable for prosecution. Until that matter is resolved, my own personal advice, as an attorney duly licensed to practice law in this State, and before certain federal courts, is that I would not advise a client to take motion pictures.

To this end, at the opening of this hearing, there shall be no televising or broadcasting or the taking of motion pictures, of these proceedings for the purpose of televising or broadcasting them. I will now before the opening of this hearing take any statements on the part of any of the media who feel aggrieved or excluded by this ruling at this time in order to complete the record should there be subsequent litigation directed towards this ruling.

Is there any representative of the media at this time who wishes to make a formal statement for the record? If you do will you please come

forward and be seated and make your statement.

MR. ROGERS: May we consult with you for just a minute? Is that possible?

THE HEARING OFFICER: Come up and consult. It's on the record but it is still preceding the official hearing so nobody is liable but there are no secret proceedings. Mr. Rogers?

MR. ROGERS: Sir, first, if we subsequently broadcast and took upon ourselves the chance of a misdemeanor, could that declare the hearing null and void or could someone --

MR. LOVEDAY: Claim reversible error?

THE HEARING OFFICER: Someone could

try. My advice to all of the media is if you wish to preserve the record by filming, recording or making the copies now, you do so but you do not broadcast without a court order authorizing you to broadcast.

MR. LOVEDAY: More to the point he's just talking about, I'm not so concerned about my peril at this stage of the game as the peril of the hearings. Would anything that I do today or in the future jeopardize the end result of these hearings, thus delaying the decisions that may be handed down in these hearings?

THE HEARING OFFICER: No, I would (however) ask you as responsible professional journalists to uphold direct violation of Section 52 by broadcasting in the absence of an opinion by a court of competent jurisdiction. I have permitted you to make a record or I've made a record for you establishing what I believe are the facts and substance and the justification for your appearance here today and as far as I am concerned, on behalf of the Agency, you should

be permitted to broadcast these hearings in the public interest. If a court rules otherwise, then that ruling, of course, binds me and I believe I would suggest it binds all of you.

I would submit that I will ask all the parties who are sworn and take testimony and give testimony here if they object to subsequent broadcast should such subsequent broadcast be authorized by the court. If they do object, you may not broadcast. Whether or not you can film them, I believe is a question that must be resolved by the court and in that case I will suspend the taking of the testimony of that witness until this is resolved. I will give all the media at least a week to get a court ruling on this as to those kinds of people. I do not believe this question will arise this afternoon since we're dealing basically with procedural matters.

MR. ROGERS: For your information, this is why I wanted to talk to Mr. Nardiello before. For your information, WNBZ and, I believe that he would concur, and we had dis-

cussion -- it does not want to be in a position where we jeopardize --

MR. ROGERS: -- jeopardize or delay the process.

THE HEARING OFFICER: You're not going to delay the opening, I'm not going to let you.

MR. ROGERS: I don't mean that, I mean the process of the proceedings.

THE HEARING OFFICER: You're not going to delay the proceedings either.

MR. ROGERS: The process of the proceedings, should we violate or protest, the process of the proceedings could be, as I understand, thrown out and the hearing would have to be done again.

THE HEARING OFFICER: I doubt that.

MR. LOVEDAY: That's what we're concerned about.

MR. NARDIELLO: We don't want that.

MR. ROGERS: We don't want to do that.

THE HEARING OFFICER: It's up to you.
It's up to you what you want to do.

MR. MACK: Whose responsibility would
it be to obtain a legal ruling on this?

THE HEARING OFFICER: Attorneys for
whoever the broadcasters involved are.

MR. NARDIELLO: I think it's in the
good interests to get a ruling.

MR. ROGERS: We will voluntarily with-
draw without protest.

THE HEARING OFFICER: All right, let
the record indicate that all of the representatives
of the media who have testified, Mr. Nardiello as
owner and manager of radio station WIRD, Mr. Rogers
as owner and general manager of radio station WNBZ
and Mr. Loveday as news director of WPTZ-TV have
voluntarily agreed in the public interest in an effort
to prevent any subsequent interference with the con-
duct of these hearings to withdraw today until such
time as they have a legally

enforcible ruling permitting them to do whatever it is they wish to do with respect to these hearings.

I think as far as I am concerned, in the public interest this is a fine act. It's in the spirit of cooperation that we expect from the media and it's in the finest tradition of broadcast journalism and I thank all of you.

We will open the hearing in two minutes.

(Whereupon the pre-hearing conference in the above-entitled matter was concluded.)

STATE OF NEW YORK)
) ss.:
 COUNTY OF ALBANY)

PAULINE E. WILLIMAN, being duly sworn, deposes and says:

That she is a Certified Shorthand Reporter licensed by the University of the State of New York under permanent Certificate Number 297 issued May 21st, 1949; that she acted as the Official Reporter at the Pre-Hearing Conferences in the first above-entitled matter on November 1st, November 11th and November 19th, 1976 at Lake Placid, New York; that the transcripts to which this affidavit is appended comprising pages 1 through 285, constitute an accurate and complete record of all the proceedings at the Pre-Hearing Conferences described to the best of deponent's knowledge and belief.

Pauline E. Williman
 Pauline E. Williman

Sworn to before me this

21st day of November, 1976.

Mary P. Piccinini
 Notary Public