

Minutes from April 21, 2008, meeting of Judicial-Media Committee

Judicial-Media Committee members present: Mr. G. Claude Albert, Judge Douglas Lavine, co-chairs; Justice David Borden (ex-officio); Judge Patrick Clifford; Joe D'Alesio; Paul Giguere; Judge Robert Holzberg; Attorney Charles Howard, Judge Barbara Jongbloed; Ken Margolfo; M. Morgan McGinley; Chris Powell, Patrick Sanders; Judge Barbara Quinn; Tom Scheffey; Judge Michael Shay; Attorney Stan Twardy Jr.

Also present: Tom Appleby (co-chair, Pilot Program Committee); Karen Florin (co-chair, Survey Subcommittee, Fire Brigade), Judge Thomas Corradino, Peter Pach.

Agenda Item No. I – Call meeting to order

Mr. Albert opened the meeting and welcomed everyone.

Agenda Item No. II – Approval of minutes

The committee approved minutes from its meeting on Dec. 10, 2007.

Agenda Item No. III – Subcommittee reports by respective chairs

A) Pilot Program – Judge Clifford, who is co-chair along with Tom Appleby, reported that the committee had its first meeting on March 24, 2008. The committee decided on its mission and is including arraignments in its evaluation of cameras in the courts. The question of how the evaluations will be done is the subject of the committee's next meeting, he said.

Judge Clifford added that if arraignment requests have been denied, it's often because the court proceeding (excluding those in the Hartford Judicial District Pilot Program) is not an arraignment, and thus camera coverage is not allowed under the current rules. He explained how requests are handled, adding that the news media has been very cooperative. He stressed that these are "baby steps," and that the evaluations will deal only with criminal proceedings.

Judge Lavine asked what sort of issues have arisen since the Pilot Program began. In one case, Judge Clifford said, an employee did not want to be videotaped; in another, a portion of proceeding that the judge did not want filmed was inadvertently shown by another station because they did not know they weren't supposed to show it. The media was cooperative in addressing that particular situation, Judge Clifford said.

The media is working out its own issues, Mr. Appleby said, such as if someone comes in late, can they be part of a pool?

According to Justice Borden, the rules regarding cameras at arraignments originally were to have been only a subset of the Pilot Program and not as expansive as the rule ended up being. He added: "Usually, unintended consequences are worse than what you thought they would be. This is a case where the unintended circumstances are better."

One issue that has arisen among the judges is whether shackles should be shown, Judge Clifford said. Mr. Sanders then asked whether there should be specific standards across the board, or are people comfortable with letting things go as they have. Judge Clifford responded that he prefers that the judges have the discretion to decide.

Mr. Albert cited a couple of instances where judges allowed video cameras but not still cameras, on the assumption that a newspaper could get photos from a TV station. Judge Clifford responded that this is a matter of educating the judges about the differences between print and electronic media, and why that's not easily done.

B) Events

Attorney Twardy reported that 32 journalists attended the Law School for Journalists on March 19, 2008. The program was very well-received, according to Judge Holzberg, (he participated in the event and helped organize the program). Judge Susan Handy, who moderated a panel that discussed how sexual assault cases are handled, did a great job, he added.

Mr. Albert, who attended the program, said he learned a lot, adding: "What became apparent is that these cases are like an iceberg. There's a tremendous amount of thought and work going on that you may not see."

Judge Lavine indicated that the next program will be a Journalism School for Judges.

***The Survey Subcommittee provided its report following Items IV, VI, and VII of the meeting.**

IV. Discuss judges writing op-ed pieces

(Please note that Judge Corradino and Mr. Pach attended the meeting for this portion of the agenda.)

Mr. Albert introduced Mr. Pach; he is principally responsible for the op-ed section of The Harford Courant.

Some weeks ago, Judge Corradino said, he suggested that having judges write such pieces might be fruitful. For a democracy to work, he continued, people need to know what the various branches of government are doing. And if people read the newspaper, they might think that the only cases judges handle are arraignments, murders, rapes and robberies, Judge Corradino said. However, there are "a whole slew of cases that directly impact on people's lives" and aren't reported in the newspaper, he said. He added that he's not blaming the papers; they can only do so much.

Justice Borden suggested that a subcommittee of editors and judges be established to develop guidelines for writing op-eds/commentary. Potential topics could include what it's like for a judge to sit in a GA, what goes into deciding what bond to set, and what it's like to sit in family court. The whole concept of judges writing such pieces "is a terrific idea," Justice Borden added.

Mr. Powell agreed, suggested that both general essays and weekly and monthly summaries of monthly cases could be considered.

Judge Lavine added that he did not think it would be a good idea to have one judge writing a column about another judge's decision.

Mr. Pach explained that the Courant's op-ed section is not interested in copy that reads like legal text. Some judges have written columns in the past, but typically "it's a very quiet community," he said. He added that there's no barrier for judges getting published in the newspaper provided the copy is clear and to the point. The judges also have to feel comfortable writing in the newspaper, he said.

At this point, Judge Lavine recessed the business portion of the meeting to accommodate the tight schedule of the meeting's speaker, Judge Rudy Kass.

VI. Introduction of Massachusetts Judge Rudy Kass

VII. Presentation by Judge Kass

Judge Lavine introduced Judge Kass, whose topic was: *Pending Cases: What A Judge Can and Cannot Say.*"

In his presentation, Judge Kass addressed the Code of Judicial Conduct, which prohibits judges from commenting on pending cases. He added that he also believes it's always better for a judge to respond to a reporter, even if it is to cite the canon that prohibits comment on pending cases.

The group touched on several topics as a result of comments from Judge Kass, including lawyers responding to criticism about judges; a proposal in Massachusetts that would allow judges to issue a memorandum of explanation; and the question of defending the institution from within rather than relying on others, such as the bar.

"I would much prefer that defending the institution come from within the institution," Mr. Powell said. "Don't hide behind someone else."

"You lose either way," Judge Holzberg responded. "We'll then be accused of circling the wagons – judges protecting judges."

Other topics of discussion included the case of a state judge being criticized for upholding the rule of law and the lack of response from Judicial (the case was pending, and the Branch could not comment under the Code of Judicial Conduct, Judge Quinn said); the responsibility and lack of the media in following up on stories; the lack of knowledge among the media about court; and what role academia could play in responding to the media.

After Judge Kass concluded his remarks, the committee returned to the business portion of its meeting, and Judge Jongbloed provided a report regarding the Survey Subcommittee.

Judge Jongbloed, subcommittee co-chair, noted that the surveys of judges and journalists have been tabulated and the results circulated among the subcommittee members and posted on the Branch's Internet web site. There are a number of "difficult issues," Judge Jongbloed said, and recommendations on the results are forthcoming, including the creation of educational programs for Branch staff. With respect to the Judicial-Media Committee's earlier discussion about the Branch's ability to respond to unfair or inaccurate criticism, Judge Jongbloed said the larger committee may want to consider engaging the Fire Brigade.

She added that the subcommittee is preparing a whole range of recommendations from the survey results and needs a little time to finalize them. The subcommittee also wants to make sure that its recommendations don't overlap with the strategic plan prepared by the Public Service and Trust Commission. Judge Jongbloed anticipated that the recommendations would be provided to the full committee prior to its next meeting on July 14, 2008.

VIII. Adjourn meeting

The committee adjourned. Its next meeting is scheduled for Monday, July 14, 2008.