

Proposed Revisions to Draft Report
Committee on Access to Judicial Proceedings
August 21, 2006

Following the meeting of the Public Access Task Force on August 10th, the Committee met to address the issues and concerns raised regarding the Committee recommendations. Six areas were identified for further discussion: Coverage of certain proceedings in the Appellate and Supreme Court; Location for a pilot program expanding access to criminal proceedings in trial courts; Notice to the court of intent to provide media coverage; Coverage of proceedings where the jury has been excused from the courtroom; Definition of “media” for purposes of Committee recommendations; and Cameraphones. The following summary highlights revisions to the prior Committee draft.

Expansion of Electronic Access to the Appellate and Supreme Court

The original proposal contained a provision permitting an objection to coverage by a party or counsel or a victim in a case. At the Task Force meeting, concern was expressed that there may be cases in which there are highly charged issues, particularly involving children, who might not have someone to object on their behalf. In addition, in cases raising sufficiency of evidence there is the possibility that oral argument that might reveal information that, in the aggregate, might identify a victim. The committee amended the proposal to address these two concerns.

In appeals involving sexual assault cases of any kind and sex crimes involving children, where discussion of the facts of the case is likely to arise during argument because, for example, sufficiency of the evidence is an issue on appeal, and television broadcast of those facts may identify and cause harm to the child or victim involved, the Court on its own motion may preclude or limit the videotaping or audio-recording of the argument, even if no objection has been filed. In such cases, the Court will give notice to the parties, victim, and the media, and will determine whether to preclude or limit such coverage of the proceeding, bearing in mind the Guiding Principles discussed above.

Pilot Program in Criminal Proceedings

The original proposal included a recommendation for a pilot to be established in the Hartford Judicial District. Based on the concerns identified at the Task Force meeting, discussion by the Committee centered on factors to be considered for any eventual site selection. Additional information concerning the nature of the expansion of coverage possible under a pilot involving CT-N was also discussed. Revised language for the pilot program suggesting criteria for the Judicial Branch to use in selecting a location for the program, rather than one specific location, has been incorporated into the revised recommendation, along with a list of locations that the Committee suggests are most appropriate. The following language has been incorporated into the criminal pilot program proposal:

The Committee recommends that the selection of a Judicial District for the pilot program be based on the following considerations: the courthouse facilities (age of the buildings, their ability to accommodate the media technology involved, and security and cost concerns); the volume of cases and assignment of judges to that district, the likelihood of significant criminal trials of interest to the media in the district, the proximity of the district's courts to the major media organizations, and to CT-N if CT-N has an interest in providing coverage; and the proximity of the courts to the Judicial Branch administrative offices. The committee recommends that the following locations ought to be considered as possible locations for the pilot program: Bridgeport, Hartford, Middletown, New Britain, New Haven, New London, and Waterbury.

Notice of Media Coverage

At the meeting of the Task Force, concern was expressed that the ability of the court to address the logistics of media coverage may be compromised if there is no notice of intent to cover a proceeding. The timing was less of an issue than the fact of notice, whenever it is provided. Accordingly, the Committee added the following to both the criminal pilot and the proposal to expand media coverage of civil matters:

Absent good cause shown, the media shall provide advance notice of their intent to use still cameras, video cameras or audio recording, and the trial judge should, to the extent possible, consult in advance with the media about anticipated coverage of proceedings.

Media coverage of Jury Trials

In the original draft report, electronic coverage was not to be permitted when the jury has been excused. At the Task Force meeting, Justice Palmer suggested that there should be discretion for the judge to make a determination regarding the scope of coverage, if any, and suggested that permitted coverage under certain circumstances could be educational for the public and provide a greater understanding of the way the system works. The Committee reviewed the issues raised by allowing any coverage of these trial proceedings, i.e., fair and unbiased trial, jurors' inadvertent exposure to information that is not allowed in as evidence, the greater risk of such exposure through electronic coverage, and the educational value of public access to such proceedings. After extensive discussion, the committee added language to both the criminal and civil proposals to permit such coverage in the judges' discretion:

There shall be no video taping, audio recording or photographing of jurors. There shall be no video taping or audio recording of trial proceedings held when the jury has been excused from the courtroom unless the trial court determines that such coverage does not create a risk to the defendant's rights or other fair trial risks under the circumstances.

Definition of "Media"

The Committee was asked to consider defining the term "media," particularly for purposes of the Committee's recommendations on media access to judicial proceedings. In considering how to determine whether an individual wishing to record, videotape or photograph a proceeding was a representative of the news media, the Committee was aware of the potential problems involved in having the Judicial Branch and judges make decisions about who is, and is not, a legitimate member of the press. It, therefore, recommends that the Task Force follow the definition adopted by the legislature in the reporter's shield law enacted earlier this year. Accordingly, the Committee recommends that the term "media" be defined as the term "news media" is defined in Sections 1, 2(A) and 2(B) of Public Act No. 06-140, An Act Concerning Freedom of the Press. The above referenced definition is included in the body of the revised report.

Cameraphones

Finally, the Committee again discussed access issues related to possession of certain electronic devices in courthouses and in courtrooms. There were comments submitted to the Task Force pointing out the difficulty occasioned by people who are not permitted to bring their cell phone into the courthouse because the phone has a camera. The Committee also noted that the Judicial Branch instituted a pilot program in Middletown to hold cell phones at the entrance to the courthouse so that people with camera phones would be able to leave them with the marshals while they attended court proceedings. This pilot program is scheduled to be expanded statewide this fall, which should obviate some of the concerns. The other issue that has been raised was the problem with jurors who could not keep their camera capable cell phones. The committee, after discussion, determined that the issue was not an access issue, although it recognized the difficulty of purchasing a cell phone without a camera and the potential hardship of a juror forced to go without a cell phone while in the courthouse serving on a jury.