

REPORT OF THE COMMITTEE ON ACCESS TO JUDICIAL PROCEEDINGS

INTRODUCTION AND SUMMARY

It is well-established that the public and the press have a qualified First Amendment right of access to criminal proceedings, and that courts can restrict access only when there is a compelling governmental interest and the restriction is narrowly tailored to serve it. *See, e.g., Globe Newspaper, Co. v. Superior Court*, 457 U.S. 596, 603, 606-07 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). The same right of access applies in civil proceedings as well. *E.g., Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1066-71 (3d Cir. 1984); *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91-92 (2d Cir. 2004).

The Connecticut Supreme Court has also clearly recognized that “the public has a presumptive right of access to court proceedings and documents.” *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 216 (2005). “The public has a real and legitimate interest in the workings of our courts and vindication of that interest requires, as a general matter, that the courts’ business not be conducted covertly.” *Id.* at 223. *See id.* at 224 (party opposing press access “bear[s] a heavy burden of establishing a compelling interest” in preventing disclosure).

It is with this background in mind that the Committee on Judicial Proceedings approached the task of seeking to expand public access to the courts. Cognizant of the fact that the public today gains meaningful access to, and an understanding of, judicial proceedings primarily through the media, and in particular through electronic media, the committee has focused heavily on expanding electronic access to and coverage of court proceedings.

First, the Committee endeavored to articulate certain general principles -- establishing a presumption of access of the public and the press, including electronic media. These principles are intended to ensure that, when there are important, countervailing interests, they will be considered promptly and thoughtfully, and that close questions will be resolved with full recognition of the public's right to have access to judicial proceedings, in accordance with the "guiding principles" adopted by the committee and the Task Force.

Second, sensitive to Justice Borden's charge that the Task Force not merely articulate ideals, but propose changes that can be adopted immediately, the Committee has made a number of recommendations that we believe can and should be promptly implemented. These include: a) installation of remotely operated television cameras in the Supreme Court and Appellate Court to permit expansive televised coverage of judicial proceedings in those courts, and amendments to the rules governing such coverage; b) amendments to the rules and policies of the Judicial Branch to expand electronic and other media coverage of certain civil proceedings in Superior Court (not including family or juvenile matters); c) for out-of-court arraignments and other off-site judicial proceedings, adoption of a policy ensuring a publicly available transcript, and the entry of a summary of those proceedings in open court the next day; d) affirmation of the existing policy ensuring that the public is permitted to take notes during all judicial proceedings; e) adoption of a standing Judicial Department media access committee and the establishment of a subcommittee, comprised of selected judges and reporters, to provide an informal process for prompt, same-day resolution of disputes concerning access to judicial proceedings.

Third, the committee has also made recommendations for certain more sweeping changes to be adopted on a pilot basis, so that they can be further refined and developed during the pilot period and expanded thereafter. Specifically, the committee recommends a pilot program

allowing for electronic coverage of all criminal trials and sentencings in a single judicial district, with certain logistical and procedural guidelines that will be refined during the program. The program is intended to continue at the end of the pilot period, absent action by the judicial branch to discontinue it, and it is presumed that the program will be expanded to other judicial districts at the end of the pilot period after evaluation and refinement by the judges.

Finally, also pursuant to Justice Borden's charge, we have identified certain topics for further review. These include further study of expanding access to proceedings in family and juvenile court, use of other media - including videoconferencing, streaming media and other internet media - for covering the courts. The committee also recommends further consideration of: security concerns and privacy concerns of those affected by electronic coverage of judicial proceedings, including jurors, victims, and witnesses; the use of camera phones; education efforts to make the public aware of changes in access policies and rules; and training to ensure compliance with new policies and rules.

PROCESS FOLLOWED BY THE COMMITTEE

At the first Public Access Task Force meeting on May 25, 2006, the members of the Task Force engaged in an exercise to identify issues within the scope of the charge delivered by Senior Associate Justice David M. Borden. That exercise produced a long list of issues relating to public access. Those issues were then grouped under five general headings, the third of which was labeled: Access to court proceedings and how do we insure access and who are the gatekeepers? In order to facilitate the study necessary to address the myriad issues, three committees were formed around those five general headings. This chapter addresses the work of the Committee on

Access to Judicial Proceedings, whose charge is to address the issues included under that heading.

Each committee of the Task Force included representation from the various groups represented on the Task Force as a whole. The members of this committee were:

Attorney Aaron Bayer, Wiggin & Dana
Mr. Patrick Sanders, Associated Press
Judge Patrick Clifford, Chief Administrative Judge, Criminal
Ms. Heather Collins, Manchester Journal Inquirer
Ms. Erin Cox, WTNH News Channel 8
Judge Douglas Lavine, Connecticut Appellate Court
Mr. Ken Margolfo, FOX 61
Judge Barbara Quinn, Chief Administrative Judge, Juvenile

The Committee held eight meetings throughout June, July and August. With the assistance of the Judicial Branch staff, the Committee first reviewed, categorized, and prioritized the list of issues identified by the full Task Force. This gave rise to a shorter list of issues to be addressed in the brief time available to the committee.. Discussion of specific, real-world examples provided by committee members enabled the committee to consider the practical implications of the issues raised. This also enabled every member to view the issues from the perspective of other members of the committee.

In order to further inform the work of the committee, and consistent with the first category of issues questioning policies regarding public access to judicial proceedings in other jurisdictions, additional sources of information were identified and utilized. A number of recommendations reflect practices successfully adopted by other jurisdictions. The Committee also benefited from comments received as a result of the solicitation of comments via the Task Force web site generally as well as in response to direct communication from members of the Task Force.

In all aspects of its work, the Committee benefited from the extraordinary talent, dedication and hard work of the Judicial Branch staff, including Attorneys Joseph D'Alesio, Joseph DelCiampo, Alice Mastrony, Stephen Ment and Holly Taylor Sellers, who tirelessly provided valuable research and information to the Committee and coordinated all of its efforts. Their contributions are greatly appreciated.¹

GUIDING PRINCIPLES

To guide the decision-making process, the committee members next identified the underlying principles that would provide a constant point of reference. Those were:

- 1. All judicial proceedings are presumed to be open to the public.**
- 2. Exceptions to the presumption of openness of judicial proceedings should be articulated, limited, well-defined and consistently applied.**
- 3. Public access to judicial proceedings should be limited only if there is a compelling reason to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the compelling interest at issue.**
- 4. There should be an expeditious and open process for resolving disputes regarding access to judicial proceedings.**

The Committee reviewed the existing Practice Book Rules on closure of judicial proceedings to the public, P.B. 11-20 (civil cases), 42-49 (criminal cases); *see also* P.B. 77-1

¹ The Committee wishes to thank the members of the public who provided valuable input to the Committee, including attorney Stephen Nevas, who attended many of the Committee's meetings, and Mr. Paul Giguere of CT-N, who provided important information and resources about electronic coverage of government proceedings in Connecticut and coverage of court proceedings in other states."

(providing for expedited appellate review of any order closing judicial proceedings). These recently adopted provisions allow closure or restriction of public access to a judicial proceeding only when “necessary to preserve an interest which is determined to override the public’s interest in attending such proceeding.” They also require that alternatives to closure be considered and that a closure order to be “no broader than necessary to protect such overriding interest,” and that any closure decision be based on specific findings after public notice and hearing. These provisions are consistent with the Guiding Principles adopted by the Committee, and the Committee sees no basis for recommending changes to them.

RECOMMENDATIONS

The Committee makes the following recommendations, for consideration by the full Task Force.

PROPOSAL TO EXPAND ELECTRONIC ACCESS TO THE SUPREME AND APPELLATE COURT

Based on its review of the existing Practice Book Rules governing cameras in the Supreme and Appellate Courts (Practice Book §§ 70-9 and 70-10) and the protocol for videotaping or photographing Supreme Court oral arguments, the Committee makes the following recommendations for expanding electronic access to the proceedings in the Appellate Court and Supreme Court.

- All judicial proceedings in the Appellate and Supreme Courts should be presumed to be open to the public and to electronic access.
- Unless a timely objection is made to the broadcasting, televising, videotaping, audio recording or photographing of an appellate proceeding by one of the parties or counsel or victims involved in the case, all such proceedings may be so broadcast, televised, recorded or photographed.
- If an objection is made, the Court shall determine whether to preclude or limit electronic coverage of the proceeding, bearing in mind the Guiding Principles discussed above.
- The policy on the use of cameras should be revised to permit more flexibility in the placement, use (e.g., close-ups, split screens, informational graphics), and the number of cameras allowed, in order to more accurately depict the proceeding.
- In light of legitimate concerns and possible disruptions associated with numerous video cameras' being set up and operated to record appellate proceedings, the Committee recommends the installation by CT-N of three permanently mounted, remotely operated video cameras, creating a feed or tape available to other networks and news media.
- The rules governing still photography in the Supreme and Appellate courts should be reviewed in light of technological changes. The rule should permit one pool still photographer with adequate equipment that will not disrupt court proceedings.
- A decision to close any appellate court argument to the public or disallow or restrict electronic coverage of such a proceeding, should itself be made openly, with the reasons for the decision stated on the record.

PROPOSED PILOT PROGRAM ON MEDIA ACCESS TO CRIMINAL PROCEEDINGS

Introduction

The Committee recommends the establishment of a 2-year pilot program in a single judicial district in which all types of media coverage of criminal proceedings would be permitted, in accordance with the principles and limitations set forth below.

A pilot program is appropriate because coverage of criminal proceedings -- and the use of cameras and video cameras in particular -- raises complicated issues that would benefit from the insight that can be gained from practical experience. It is the Committee's expectation that, during the 2-year pilot period, the rules governing media coverage of criminal proceedings will be evaluated based on the actual experience of the judges, lawyers, parties, witnesses, victims, jurors, and reporters, and ultimately refined so as to permit maximum media access with limited disruption and without undermining the rights of criminal defendants, victims and others whose interests may be affected.

The Committee recommends that the Supreme Court's judicial-media committee (the subject of a separate recommendation of this Committee) be charged with evaluating the pilot program and making recommendations for its expansion. The Committee anticipates that, based on the evaluation of the pilot program, the Superior Court judges will refine and extend the program to other districts. In the absence of any action by the judges, the pilot program will continue to operate in the pilot district.

The Committee recommends that the pilot program be established in the Hartford Judicial District at Hartford including Geographical Area Court 14, for logistical reasons, including ease of access for the media, the physical ability of the courthouse to accommodate such a pilot program with due regard to security concerns, the fact that both G.A. and J.D. criminal matters are heard in that courthouse, and the proximity of the courthouse to the administrative offices of the Judicial Branch.

The Current Rules

Currently, Practice Book Section 1-10 prohibits generally the broadcasting, televising, recording and the taking of photographs in the courtroom and in areas immediately adjacent thereto. A judicial authority may, however, authorize the photographic or electronic recording and reproduction of appropriate court proceedings if the means of such recording will not disrupt the participants or impair the dignity of the proceedings; the parties, and the witnesses to be depicted, have consented; the reproduction will not be exhibited until after the conclusion of the proceeding and all direct appeals have been exhausted; and the reproduction will be exhibited only for instructional purposes in educational institutions.

Section 1-11 of the Practice Book governs the broadcasting, televising, recording or photographing of court proceedings by news media in criminal (and civil) trials in the Superior Court. Permission for media coverage of a criminal proceeding must be requested by a media or pool representative at least three days prior to the commencement of such trial. Disapproval of such requests by the trial judge shall be final. Approval of the request by the trial judge shall be based on that judge being satisfied that the permitted coverage will not interfere with the rights of the parties to a fair trial. The approval by the trial judge shall not be effective unless confirmed by the administrative judge.

No media coverage of any of the following proceedings is currently allowed: family relations matters; sentencing hearings except in trials in which media coverage has been allowed; trials involving trade secrets; in jury trials, proceedings held in the absence of the jury; in trials of sexual offense charges; and in trials closed to the public pursuant to state law. Other limitations on media coverage of a criminal trial include the times and the parts of a trial during which such coverage may or may not occur, and the participants in a trial who may or may not be the subject of such coverage. The trial judge has broad discretion to prohibit media coverage of a trial, and the logistics of the coverage, i.e., the types and location of equipment to be used and the limits on the number of camera operators, are particularly circumscribed.

General Principle of Access

All forms of media, including still cameras, video cameras, and audio recordings, are to be allowed to cover all aspects of criminal trials and sentencing, subject to the rules and guidelines set forth below.

Proposed Rules for Coverage in Pilot Program

The Judicial Branch will take appropriate steps to ensure that litigants, the press, the bar, the bench, staff, and the public are aware that any criminal trial and sentencing may be subject to media coverage including being broadcast, photographed, videotaped or audio-recorded. To the extent practicable, the media should 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.

Any party, attorney, witness or victim may object in advance of pre-trial proceedings, trial or sentencing to the use of cameras, video cameras, or audio recording if there is a substantial reason to believe that such media coverage would undermine the rights of a criminal defendant or significantly compromise a witness's safety or legitimate privacy concerns. The burden of proof will be on the party seeking to restrict electronic access to make such argument.

The judge will decide after a hearing whether to preclude or limit the use of cameras, video cameras, or audio recording, taking into account the rights asserted and bearing in mind the "Guiding Principles" adopted by the Committee and the Task Force – in particular the principle that "Public access to judicial proceedings should be limited only if there is a compelling reason to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the compelling interest at issue." The judge shall take into account special considerations that may arise, such as the testimony of children, alleged victims of sexual offenses, confidential informants and undercover officers.

To the extent practicable, objections to the use of still cameras, video cameras and / or audio recordings, and the date, time, and location of the hearing on those objections, will be posted on the Judicial Branch web site, so that affected parties may attend the hearing. To the extent their rights are implicated, the press and victims (or victim's services advocates) may participate in the hearing.

Objections made during the course of a pre-trial proceeding, trial or sentencing to photographing or video taping or audio recording specific aspects of the proceeding (e.g., testimony of a juvenile or sexual assault victim), specific individuals (e.g., sexual assault victims or witnesses whose identity is protected) or exhibits (e.g., autopsy photographs), will be heard and decided by the trial judge, based on the same standards and principles used to determine whether to preclude or limit access based on objections raised before the start of a trial.

Cameras, video cameras and audio recording equipment may be used in the courtroom, but not used in other parts of the court house.

To ensure coverage and minimize disruption, pool representatives should ordinarily be utilized for video, still cameras and radio, with each pool representative to be decided by the relevant media group.

Cameras, video cameras, microphones and other related equipment are to be placed in the courtroom in the location designated by the Judicial Branch to ensure maximum coverage of the proceedings while minimizing disruption. To minimize disruption, cameras, microphones, video cameras and related equipment may be set up and taken down only when the court proceedings are in recess. During a trial, operators of cameras and video cameras and audio recording equipment may be required to be present for the entire day's proceedings.

There is to be no video taping, recording or photographing of jurors, or of trial proceedings held when the jury has been excused.

Nothing in this proposal is intended to eliminate the trial courts' existing authority to take reasonable measures to preserve order in the courtroom and to ensure a fair trial.

Proposed Rules Governing Coverage of Arraignments

The Committee recognizes that there are significant logistical concerns involved in electronic media coverage of arraignments. Because of the large number of arraignments and the rapid pace of processing arraignments, it may be difficult to put into practice meaningful limitations, e.g., precluding or limiting videotaping or photographing of domestic violence victims, sexual assault victims, or minors.

The Committee recommends that expanding media coverage of arraignments be the subject of additional inquiry – including further discussion with criminal judges and review of the experience of other states that allow media coverage of arraignments with limited restrictions – with additional recommendations to follow. In the interim, the Committee recommends that electronic coverage of specific arraignments be considered on a case-by-case basis upon reasonable notice by the press (recognizing the last-minute nature of some arraignments), and that, to the extent practicable, judges consult with the press to coordinate the logistics of such coverage.

PROPOSAL ON MEDIA ACCESS TO SUPERIOR COURT CIVIL PROCEEDINGS AND TRIALS

Introduction

The Committee recommends that electronic media access be permitted for most civil proceedings and trials, in accordance with the principles and limitations set forth below. The Committee does not recommend permitting electronic media access to family relations matters or juvenile proceedings, proceedings and trials concerning trade secrets, and proceedings and trials now closed to the public, to comply with the provisions of state law, which the Committee believes require further review and consideration.

The Current Rules

Currently, Practice Book Section 1-10 generally prohibits the broadcasting, televising, recording and the taking of photographs in the courtroom and in areas immediately adjacent thereto. A judicial authority may, however, authorize the photographic or electronic recording and reproduction of appropriate court proceedings if the means of such recording will not disrupt the participants or impair the dignity of the proceedings; the parties, and the witnesses to be depicted, have consented; the reproduction will not be exhibited until after the conclusion of the proceeding and all direct appeals have been exhausted; and the reproduction will be exhibited only for instructional purposes in educational institutions.

Section 1-11 of the Practice Book governs the broadcasting, televising, recording or photographing of court proceedings by news media in civil trials in the Superior Court. Permission for media coverage of civil trials must be requested by a media or pool representative at least three days prior to the commencement of such trial. Disapproval of such requests by the trial judge shall be final. Approval of the request by the trial judge shall be based on that judge being satisfied that the permitted coverage will not interfere with the rights of the parties to a fair trial. The approval by the trial judge shall not be effective unless confirmed by the administrative judge.

No media coverage of any of the following proceedings is currently allowed: family relations matters; trials involving trade secrets; in jury trials, proceedings held in the absence of the jury; and in trials closed to the public pursuant to state law. The trial judge has broad discretion to prohibit media coverage of a trial, and the logistics of the coverage, i.e., the types and location of equipment to be used and the limits on the number of camera operators, are narrowly circumscribed.

General Principle of Access

All forms of media, including still cameras, video cameras, and audio recordings, are to be allowed to cover all aspects of civil proceedings and civil trials, subject to the rules and guidelines set forth below and subject to Practice Book Section 11-20 concerning closure of the courtroom in civil cases.

Proposed Rules Governing Coverage of Civil Proceedings and Trials

The Judicial Branch will take appropriate steps to ensure that litigants, the press, the bar, the bench, staff, and the public are aware that most civil proceedings and civil trials are subject to media coverage, including being photographed, videotaped or audio-recorded. To the extent practicable, the media shall provide advance notice of their intention to broadcast, video-tape, photograph or audio-record such proceedings. The trial judge should, to the extent possible, consult in advance with the media about anticipated coverage of proceedings.

The Judicial Branch, in consultation with media representatives, will take appropriate steps to identify those courthouses and courtrooms within such courthouses within the state where there may be special logistical concerns about the placement and operation of media equipment. The Branch shall share such information with media representatives as well as with the judges sitting in such locations.

Any party, attorney, witness or victim may object in advance of pre-trial proceedings or trials to the use of cameras or video cameras if there is a substantial reason to believe that such media coverage would undermine the legal rights of a party to a civil proceeding or civil trial or significantly compromise a witness's safety or impact legitimate privacy concerns. To the extent practicable, the fact that an objection has been lodged to the use of still cameras, video cameras and/or audio recordings, and the date, time and location of the hearing on those objections, will be posted on the Judicial Branch web site so that affected parties may attend the hearing. The press and other affected parties may participate in the hearing. The burden of proof will be on the party seeking to restrict electronic access to make such argument. To the extent practicable, where an objection to electronic media coverage of a proceeding has been filed, media representatives shall provide written notice three days in advance of the proceeding if they intend to broadcast, video-tape, photograph or audio-record the proceeding.

After the hearing, the judge will decide whether to preclude or limit the use of still and/or video cameras or audio recording, taking into account the rights asserted and bearing in mind the "Guiding Principles" adopted by the Committee and the Task Force – in particular the principle that "Public access to judicial proceedings should be limited only if there is a compelling reason to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the compelling interest at issue." The judge shall take into account the special considerations that may arise, including, for example, those involved in the testimony of children and witnesses who are alleged victims of sexual offenses, as well as those matters in which there may be other additional legitimate privacy concerns, as in civil commitment proceedings.

Objections made during the course of a pre-trial proceeding or trial to photographing or video taping or audio recording specific aspects of the proceeding, specific individuals or exhibits will be heard and decided by the trial judge, based on the same standards used to determine whether to preclude or limit access based on objections raised before the start of a trial.

Cameras, video cameras and audio recording equipment may be used in the courtroom, but not in other parts of the court house.

To ensure coverage and minimize disruption, pool representatives should ordinarily be utilized for video, still cameras and radio, with each pool representative to be decided by the relevant media group.

Cameras, video cameras, microphones and other related equipment are to be placed in the courtroom in the location designated by the Judicial Branch to ensure maximum coverage of the proceedings while minimizing disruption.

To minimize disruption, cameras, microphones, video cameras and related equipment may be set up and taken down only when the court proceedings are in recess. During a jury trial, operators of cameras and video cameras and audio recording equipment may be required to be present for the entire day's proceedings.

There is to be no video taping, recording or photographing of jurors, or of trial proceedings held when the jury has been excused.

Nothing in this proposal is intended to eliminate the trial courts' existing authority to take reasonable measures to preserve order in the courtroom and to ensure a fair trial.

RECOMMENDATION ADDRESSING ACCESS TO OFF-SITE JUDICIAL PROCEEDINGS

The Committee recognizes that the presumption of openness extends to all judicial proceedings. The Committee also acknowledges that access to a proceeding held off-site, such as a hearing at a hospital, may not be within the control of the Judicial Branch. Therefore, the Committee recommends the following policy:

Absent exceptional circumstances, in the case of an out-of-court judicial proceeding, a transcript or recording of the proceeding shall be made and such record shall be available to the public. The judge will also state on the record in open court, by the next court day, a summary of what occurred at such proceeding.

RECOMMENDATION ADDRESSING NOTE TAKING IN JUDICIAL PROCEEDINGS

The Committee acknowledges that note-taking by the public is permitted in any courtroom. Accordingly, the Committee recommends the following:

The taking of notes in any courtroom shall be permitted. The chief court administrator shall inform all judicial branch employees of this policy. Nothing in this rule or policy shall be construed to limit in any way the court's inherent power to prevent the disruption of court proceedings.

PROPOSAL FOR THE CREATION OF A JUDICIAL – MEDIA COMMITTEE

As a means of furthering open communications between the media and the courts, the Committee recommends the establishment of a judicial – media committee, in accordance with the principles listed below:

- The goals of the Judicial-Media Committee are to foster and improve better understanding and relationships between the judicial branch and the media, both print and electronic, and to discuss and recommend resolutions of problems confronted by the media and the public in gaining access to court proceedings and documents.
- The Committee should be operated under the policies governing committees appointed by the Judicial Branch.
- The committee should be chaired by a member of the Supreme Court and a media executive. Membership should include representatives of print and electronic media, judges, members of the state bar association, and others whose experience and expertise could benefit the Committee.
- The committee should be charged to form a quick-response team, comprised of judges and reporters, structured similarly to the committee known as the “Fire Brigade” that has operated successfully in Massachusetts. The mission of this team is to be available to review questions and disputes over access to judicial proceedings and to recommend a resolution the same day the question is presented.
- The committee should take steps to educate the public on issues relating to access to judicial proceedings.
- The Committee should meet on a regular basis.

Similar committees are currently in place in Massachusetts, Indiana and Washington. The Massachusetts Committee has extended an invitation to host a delegation from Connecticut at its next meeting, which will be sometime this fall.

PROPOSAL REGARDING EVALUATION OF IMPLEMENTATION OF COMMITTEE RECOMMENDATIONS

The Committee recognizes the importance of monitoring and evaluating the implementation of its recommendations. Therefore, the Committee encourages the Judicial Branch to engage in an ongoing review of all aspects of its implementation efforts, and makes the following recommendation:

The Office of the Chief Court Administrator should collect and compile information on the implementation of the Committee's recommendations, including statistical information concerning coverage of court proceedings. This information should be made publicly available and shared with the Judicial-Media Committee for purposes of ongoing evaluation and education initiatives.