

MINUTES OF THE PUBLIC ACCESS TASK FORCE MEETING
May 25, 2006

Task Force members in attendance: Justice Richard Palmer, chair, Judge Jon Alander, Attorney Aaron Bayer, Dr. William J. Cibes, Jr., Judge Patrick Clifford, Ms. Heather Nann Collins, Ms. Erin Cox, Judge Julia DiCocco Dewey, Ms. Alaine Griffin, Judge William Lavery, Judge Douglas Lavine, Mr. Zach Lowe, Mr. Ken Margolfo, Judge Aaron Ment, Attorney Alan Neigher, Judge Barbara Quinn, Mr. Patrick Sanders, and Judge Barry Stevens.

Justice Palmer called the meeting to order at 1:31 PM.

Justice Palmer welcomed the members of the task force and the members of the press and the public. He indicated that all task force meetings will be open to the public and all are welcome to attend. He then introduced each of the members of the task force. Justice Palmer indicated that the mission of the task force was ambitious and challenging, and would require commitment and hard work. He expressed his appreciation for the members' willingness to devote their time and effort to the task.

Justice Palmer then introduced Justice Borden, Senior Associate Justice of the Connecticut Supreme Court. Justice Borden addressed the task force, outlining the mission, rationale, and timeline for the group, thanking the members for their willingness to serve, and pledging the full support of the administrative staff of the Judicial Branch. A copy of his remarks is attached and incorporated into these minutes.

Justice Palmer then spoke regarding the scope of the task force's charge and the relatively short amount of time available for accomplishing the work needed before the deadline of September 15, 2006. Given the number of issues and ideas involved, Justice Palmer observed that absent some type of organization, it would be impossible to accomplish anything meaningful by September 15, 2006. He then introduced Joseph D'Alesio, the Executive Director of Court Operations, to lead the group in an organized brainstorming session with the intent of identifying clusters of issues and forming the framework for committees.

Attorney D'Alesio described the process of using a modified affinity diagram to facilitate issue identification and categorization of those issues in a single step. An extensive discussion ensued regarding issues, questions, and comments connected to the task force mission. The ideas were written on multiple flipcharts by staff, with each list representing related issues. Members of the public were also given the opportunity to address the task force; their input was also included on the charts.

Once the process of generating the lists of ideas and issues was complete, the group crafted a phrase to describe each general category of issues, including:

- Implementing access rules
- Meetings - What are open, how notice of meetings is provided and when meetings are open
- Access to court proceedings and how do we insure access and who are the gatekeepers;

- Maximize and facilitate access to judicial records with proper regard for legitimate privacy interests; and
- What Judicial administrative records are open and how should they be open?

A typed copy of this material from the flip charts is also attached and incorporated into these minutes.

Justice Palmer indicated that there will be some issues that this Task Force cannot reach, and therefore, it may simply be identifying some issues rather than resolving them. Attorney D'Alesio pointed out that every state is wrestling with these issues at this time.

Justice Palmer then suggested that three committees be formed to address:

- Access to court records
- Access to judicial meetings and administrative records
- Access to judicial proceedings

There was general agreement on this breakdown. Justice Palmer then asked the members of the Task Force to e-mail Attorney Holly Sellers with their first, second, and third choices for a committee by the end of the day on Friday. He would then look at the preferences, assign people to the committees, and identify a chair for each committee. He asked that members of the Task Force let Holly know if they were not interested in being the chair of a committee.

Justice Palmer further stated that the chair would be responsible for making sure the work is done in a timely manner. The chairs need to be sure the committees meet with sufficient regularity to get the work of identifying and studying the issues completed so that the committees come up with recommendations which would then be reviewed by the full task force. In response to a question from Judge Ment, Justice Palmer indicated that interim recommendations from committees are welcome.

Justice Palmer reiterated that all meetings of the task force and the committees are open to the public. Anyone interested in making a comment to the Task Force should direct it to Justice Palmer. Meetings of the committees may be held in the attorney conference room at the Supreme Court building, and the meetings of the whole Task Force will be in the courtroom of the Supreme Court. The work of the Task Force is of the highest priority for the Branch, and all committees will be fully staffed. Justice Palmer asked that all committees attempt to meet twice before the next meeting of the whole Task Force scheduled for June 15, 2006. Justice Palmer thanked the members of the Task Force and Attorneys D'Alesio, Sellers, and Stephen Ment for their work.

The meeting adjourned at 3:35 PM.

JUDICIAL BRANCH PUBLIC ACCESS TASK FORCE
REMARKS OF SENIOR ASSOCIATE JUSTICE DAVID M. BORDEN
FOR THE OPENING MEETING
MAY 25, 2006

Thank you, Justice Palmer.

I would first like to express, both on my own behalf and on behalf of the Judicial Branch, deep gratitude to each and every member of the task force. You have all taken on a momentous public obligation that will keep you very busy over the next several months--but it is an obligation that will, I am confident, give you deep satisfaction, because you will be serving the public interest in a most significant and historic way. So I thank you.

This is a working meeting, so I will be brief in outlining your mission, the time-line for achieving it, the rationale of the mission, and some general remarks about the ways in which I hope and expect you will go about your work.

Your mission is to make concrete recommendations to me for the maximum degree of public access to the courts, consistent with the needs of the courts in discharging their core functions of adjudicating and managing cases. The deadline for your report is September 15th.

The rationale for this mission is really quite simple. It is that we in the Judicial Branch require the trust and confidence of the public for us to do our job properly and effectively--for us to render our judgments and manage the people's

judicial business, not only fairly and impartially in fact, but fairly and impartially in appearance--and that, the more transparency and openness with which we do our job, the more likely it is and the more likely it will be that we will command that trust and confidence. We have no power of the purse; we have no powers to enforce our judgments on our own. Thus, in order for our judgments to command public respect and compliance, we must by our own conduct earn that trust and confidence; and we must be confident, and show our confidence, that by being transparent and open, we will demonstrate to the public whom we serve, that we are dispensing justice fairly, impartially, honestly and conscientiously.

I have been a proud member of this state judiciary for nearly thirty years, and I have sat on all three of its levels: the trial court; the intermediate appellate court; and for the past sixteen years on the Supreme Court. I know, from my own experience, that, in the main, we in the state judiciary--the trial judges in the trenches, so to speak, those of us on the appellate levels, and the very able staff of the Judicial Branch--do perform our respective jobs with distinction and honor.

Does this mean that there have never been instances that would be awkward and embarrassing if disclosed publicly? No, of course not. Does this mean that there have never been instances that, when disclosed, have justifiably brought criticism to us? No, it does not. But it does mean that, in the overwhelming main, we do perform with honor, and that, accordingly, we should have nothing to hide. To the maximum degree possible, we should work in the daylight so that the public will have the opportunity to scrutinize our work as one

means of public accountability for the trust that we hold. We have much to share with the public that is deserving of respect.

So I repeat: the more transparency and openness with which we do our jobs, the greater the degree of trust, confidence and respect the public will have in us, because the public will see what I have seen: that the judiciary--both judges and staff--does perform its job properly. And, of course, the public has a strong and legitimate interest in such transparency and openness. That is why I have asked you to serve.

On the other side of the scale, however, are other values that you will have to consider. Transparency and openness must always be balanced against other legitimate interests, such as legitimate expectations of privacy, legitimate concerns for security, and legitimate needs of confidentiality. To take just one example, which we in the Branch will have to face in the not too distant future, consider the fact that open, on-line access to all electronically filed judicial records may mean--in, say, credit card collection cases--open, on-line access to private individuals' social security numbers, dates of birth, credit card numbers, and even bank account numbers and related information. That would increase dramatically the risk of judicial records being a ready vehicle for identity theft. I do not suggest that this is inevitable, or that this problem is not solvable by appropriate judicial rules and use of technology; I only give this example to suggest that each issue must be approached carefully and thoughtfully, and with consideration of all of the legitimate interests.

I want you to understand that the Judicial Branch is fully committed to this mission. You will have the complete support of the administrative staff of the Branch. Your recommendations will not be simply placed on a shelf; they will be taken very seriously. The work I am asking you to do is of the highest priority for the Judicial Branch.

With these general thoughts in mind, I'd like to turn briefly to the three specific areas of access to judicial records, meetings and proceedings that I charge you with addressing.

The first area is the easiest. I ask you to identify those matters that are already open and accessible to the public, but which the public may not know are accessible and, therefore, the public may simply assume are confidential. In this connection, moreover, I charge you with identifying and making specific recommendations for ways in which that accessibility may be rendered easier. Your task force staff has already begun this process of identification.

The second area is more difficult. I ask you to identify those matters that are not currently open and accessible to the public but which should be open and accessible, either in whole or in part, and to make specific recommendations for the maximum degree of public accessibility to them. Again, in identifying these matters and making those recommendations, you should be mindful of both sides of the equation, and balance all of the interests to serve the larger public interest. In drawing that equation, however, you should keep in mind that, although confidentiality will sometimes be necessary, awkwardness and embarrassment are not legitimate bases for confidentiality.

The third area for your consideration is to identify those questions that loom in the foreseeable future. Answering these questions will in all likelihood require more time than is available for this task force. Therefore, in this area, I do not necessarily expect you to make any concrete recommendations--but simply to identify those issues that we in the Branch may, or may not, have already thought about, but which we should be thinking about. The example I gave earlier about on-line accessibility to case-specific information, and the risk of identity theft, would probably be one of these looming questions.

These are three very fruitful areas of inquiry--and, if you are not careful, they could be too fruitful. By that I mean that you will have to prioritize your inquiries, lest you find that you have asked more questions than you can thoughtfully answer. In other words, do not attempt to answer all of the questions that you raise. If you attempt to do that, you will either fail to return with a report on September 15th, or you will return with a report that will only skim the surfaces of your questions.

Instead, I ask you to return with a report that focuses on what can be done now--either by administrative action, by rule change, or by recommendations for legislation. Please do not try to do too much; try, instead, to recommend what can be accomplished in the short term, and to identify what must be considered in the longer term.

I'd now like to turn to a brief discussion of what I think will be one of your most important tasks, and that is the attitude with which you approach your work on this task force. I hope and expect that you will work as a team. As we all know, the value of any product of a group effort is directly proportional to the

degree to which the individual members of the group are willing to work together-- cooperatively--rather than primarily as a group of individuals.

Each of you has been asked to serve on this task force because of your experience, your expertise and your demonstrated good judgment. Each of you comes from a particular professional background. I hope and expect that, in addressing the very difficult and complex questions that you will face, you will bring to bear that particular experience and expertise.

But I also hope and expect that you will not permit your particular background to drive your ultimate decision-making in the public interest. I ask you, in reaching your decisions, to take off your professional hats and address each question, not from the vantage point of a judge or a newsperson or a lawyer representing the media, but from the vantage point of the public interest, informed, however, by your own expertise and experience. You all have much to teach each other and to learn from each other. I ask only that you do so, and that you take to heart what you learn from your colleagues.

This is a most serious and important undertaking. This is one of those rare moments that afford the opportunity to make positive institutional and cultural change in our judicial system. I firmly believe that it can be historic in its final dimensions, and I know that you do as well.

In appreciation of that belief, and in the spirit in which I have established this task force, I am taking this opportunity to announce that this year's annual meeting of the judges, which will be held at the Stamford courthouse on June 26, will be open to the media and the public. I believe that such meetings, which have at

times been open to the press, are precisely among the types of meeting that should be open and accessible, because they will demonstrate to the public whom we in the Judicial Branch serve, that we are in fact serving the public properly, and that we have nothing to hide. Demonstrating that this meeting is open will be a good first step in reclaiming the public's trust and confidence in us--it will help to show that we are, in both fact and appearance, doing the public's work honestly, sincerely, diligently and conscientiously.

With these remarks, I leave you to begin this most important work. I know that you will approach your work energetically and thoughtfully. And I am fully confident that, in performing that work, you will be, in Abraham Lincoln's felicitous phrasing, "touched by the better angels of our nature"--that you will render a report with recommendations that will truly make a difference--and that you will render a report of which you will be proud, the Judicial Branch will be proud, and the people of the state of Connecticut, whom we all serve, will be proud.

Thank you.

ISSUES FROM THE FLIP CHARTS

Implementing Access Rules

- Clerk e-mails
- Time lag receiving transcripts
- Type of media (CD/tape/DVD) to receive court record/transcript
- Service by marshal-cost as impediment to access
- Insuring court staff is adequately trained in what is open/uniformity
- Insure current laws and rules are enforced
- Streamline record requests
- Cost of records
- Interagency communication e.g. clerks/prosecutor
- Clarity in communicating whether record is open/available with reasons

Meetings – What are open, how notice of meetings is provided and when meetings are open

- Judicial/nonjudicial meetings
- Quasi-judicial bodies – statewide grievance committee governed by rule
- Stage in proceedings where matter may become open
- Constitutional issues
- Rules committee
- Judicial education events
- Public input into rule-making
- Inclusion of public as members of Rules Committee
- Outreach programs, including surveys
- Trust between courts and the public
- Proceedings in Judicial Review Council governed by statute
- What is a meeting?
- When are they open and to whom?
- Experience of other jurisdictions with public access issues
- Default position is meetings are open unless specifically exempt
- Process to alert media about meetings that are open
- Categories of meetings that are open

Access to Court Proceedings and how do we insure access and who are gatekeepers?

- Off-site hearings in court matters
- Who decides when or if electronic devices are allowed in court?
- Cable access
- Emergency appeal from denial of access (interlocutory)
- Open process for determining whether or not a record is open
- Reasons why something is sealed
- Cameras in courts – should permission vary by level of court (trial/appellate)
- Vary camera rule by case type or by stage of case

- Including process to determine whether proceedings are open
- Timeliness of court start times and notification about delays to those in courtrooms
- Revisit closure of records
- Circumstances for in camera hearing
- When are transcripts of in camera available for inspection
- Making plea bargaining more transparent
- Statutory provisions regarding open hearings
- What is the press and public allowed to have and use in a courtroom to transcribe what transpires?
- Simplify cameras in the courtroom
- Use of microphones by news media in courtrooms
- What court proceedings are open
- Safeguards when opening court hearings

Maximize and facilitate access to judicial records with proper regard for legitimate privacy interests

- What records will be available electronically and remotely
- Distinguish individual from bulk requests for records
- Is there a further distinction by case type
- Privacy concerns
- Distinguish records available to parties from those available to public
- Extent judicial databases are available to public
- Are there categories of individuals that should be considered
- What records should not be open to the public
- Identity theft in e-filing
- Redacting information
- Daily docket sheet availability including how long
- Cost for electronic information
- Bulk
- Distinction between availability of information on paper/paperless
- Correcting electronic record
- Retroactive availability of docket information
- What is presently not available
- Access to electronic evidence (DVDs etc.)
- Use of pseudonyms
- Should category of super sealed files exist
- Distinction between openness of electronic and paper records
- Access to daily paper docket for specified period of time
- Should all records/hearings be presumed open unless otherwise specified
- Access to records when someone receives program as disposition
- Non-conviction record information availability
- Closed settlements – and opening
- Access to reasons for granting/denying warrant
- What records are open - or are all open?

- Categories of information that should remain confidential
- Redaction
- Timely release and affordability of transcripts
- Re-examine rules re sealing at parties' request
- Re-visit automatic sealing of financial affidavits in family
- Abuse of sealing of affidavits by attorneys
- Revisit statutory closing of proceedings
- Access to exhibits
- What is a court record
- Distinction between court records and records lodged with the court
- Must we compile records
- When is a court record available
- Privacy concerns
- Timing of release of information, e.g. YO
- Categories of individuals (minors, victims, jurors, juror questionnaires)

What judicial administrative records are open and how they should be open

- Administrative records
- Privacy concerns
- What judges records should be available to the public- and who should decide
- Cost of records and transcripts
- Define what is not available
- Preservation of records
- E-mail records
- Security issues re information being disclosed
- Process for determination of whether record is open