

Minutes of the Meeting of Committee on Judicial Proceedings  
August 1, 2006

Those in attendance: Atty. Aaron Bayer, Judge Clifford, Erin Cox, Judge Lavine, Ken Margolfo, Stephen Nevas, Judge Quinn, and Patrick Sanders.

The meeting was called to order at 8:20 AM by Atty. Bayer.

The first item on the agenda, the review and approval of the minutes, was deferred until later in the meeting.

The next item on the agenda was a review of the recommendations. Attorney Bayer said that the plan for the meeting was to finalize the criminal proceedings proposal, discuss any necessary amendments to the appellate court proposal, and discuss the civil side proposal.

The first of the proposed recommendations to be reviewed was the pilot program regarding media access to criminal proceedings. The proposal had been circulated and reviewed by members of the committee. (A copy of that proposal is attached to and incorporated into these minutes.) Discussion ensued as to including in the proposal a categorical exclusion for coverage of testimony by certain types of witnesses, i.e., juveniles and sexual assault victims. Ms. Cox and Mr. Margolfo said leaving it up to the discretion of the judges, guided by the guiding principles, should work rather than excluding any testimony categorically. Attorney Bayer suggested building in a reverse presumption: it is presumed that absent a showing to the contrary, certain enumerated categories will not be televised or perhaps in certain categories of testimony, put the burden on the party seeking to have coverage. Attorney Bayer also suggested adding a reference to juveniles in the first sentence on the second page of the proposal.

After an extensive discussion regarding the need to provide for situations that might occur at trial, the difference between testifying in a courtroom and testifying when cameras are involved, the possibility of limiting electronic coverage in the least restrictive way, i.e., allow audio coverage only for a particular witness, the problems with respect to identifying information being revealed by other witnesses, how to include the concept of privacy rights, interests, or concerns, and the need for the trial court to allocate time to consider and rule on objections to electronic coverage, the committee came to a consensus.

The committee agreed that language should be added to the proposal to say that the trial judge shall take into account the special considerations involved in the testimony of children, victim's of sex crimes, and others whose safety requires protection of their identity. Also, the trial judge may consider the legitimate privacy concerns of those objecting to coverage.

Judge Clifford said that he was concerned about notice as it affects the efficient operation of the courts. Because of limited resources, it would be helpful to know what proceedings the media would want to cover so that no hearings on objections would be held unless there was a reason to do so. Judge Quinn suggested that there be an informal mechanism whereby the media could say that they are interested in a particular proceeding. Mr. Margolfo said that media would probably know in advance if there

would be interest in a particular trial or sentencing since there is advance notice of these proceedings. Judge Clifford is also bothered that without a notice requirement, the burden would be on the victim to object to media coverage in every instance.

An extensive discussion ensued as to the best way to communicate interest on the part of the media, provide notice to victims, counsel, and witnesses, provide for issues that come up unexpectedly (i.e., unexpected witness, rescheduling of a trial for an earlier date), and handling sentencing coverage in a busy location like Hartford. Ms. Cox said that the pilot program is notice enough. Attorney Nevas expressed concern about requiring too many procedural hurdles. Ms. Cox also said that the committee needed to consider all media because different media outlets press might have different interests in terms of what they would want to cover. For example, the print media might be more likely than the electronic media to cover the voir dire in a trial.

Attorney Bayer then asked if the rules, standards, and burdens of proof would work in the context of pretrial proceedings and arraignments. Judge Lavine said that with respect to the pretrial proceedings (i.e., motion to suppress), the proposal covers the concerns. However, with arraignments, there is an insoluble logistical problem because of the number of people appearing and the possible appearance of victims or others whose identity might be protected, for example. Ms. Cox was concerned that if the committee does not ask for such coverage now, there may never be a proposal to provide access to arraignments.

The committee agreed to include pretrial proceedings within the proposal for coverage of trials, and to recommend additional inquiry into the expansion of media coverage of arraignments. The committee will also recommend that, in the interim, trial judges may permit coverage upon reasonable notice by the media and, to the extent practicable, may consult with the media to determine the details of such coverage.

The next recommendation for discussion was the proposal for access to civil proceedings. Judge Quinn suggested that the Judicial Branch identify buildings and courtrooms where video cameras would not be feasible for logistical reasons, and eliminate the restriction requiring approval from the administrative judge in a particular location. In terms of the substance of the proposal, the other issue was notice by the media of its intent to cover a proceeding. Attorney Bayer said that requiring notice would be okay, but there would have to be an exception built in to any notice requirement.

A discussion ensued as to the concerns in a civil proceeding that might require restrictions on cameras. For example, trade secrets would require some protection. Judge Quinn said that the Practice Book establishes a process to protect trade secrets. Other concerns raised were child witnesses and sexual assault victims. Civil could include administrative proceedings, probate appeals, housing, habeas petitions, involuntary commitment proceedings, foreclosures, and medical malpractice cases, among others. There was also discussion as to what kind of coverage might be involved in these trials since generally the most interested people are the parties themselves. Mr. Sanders pointed out that even the print media now have websites on which they might want to run a video since they are information/news gathering

companies today. Ms. Cox also pointed out that the print media would want a still camera as well.

Judge Quinn said that she and Judge Ment would work on a proposal that will be as similar as possible to the criminal proposal, taking into account the specific concerns on the civil side. The coverage of civil proceedings is not intended to be a pilot program, however, and is a statewide proposal. Judge Quinn will get the proposal to the committee as soon as possible.

Attorney Nevas suggested that the committee recommend that at the end of this pilot, the Judicial Branch commission a study so that we have some objective standard to judge the success of the pilot. Judge Quinn said such a study would be expensive. Mr. Sanders suggested that the committee recommend that the Judicial-Media Committee be charged with evaluating the program.

The committee agreed that the proposal should include a recommendation for evaluation of the pilot program with the intent of expansion, and should suggest participation by the judicial-media committee in any evaluation. Also, the proposal would include "reverse sunset" language, continuing the program in the absence of any action by the judges.

Attorney Bayer will circulate a revised proposal for the criminal pilot and Judge Quinn will circulate the civil proposal.

Attorney Bayer then directed the committee to consideration of Judge Flynn's letter. He pointed out, in terms of the substance of Judge Flynn's letter, that including victims in the proposal on media coverage of the Appellate and Supreme Courts is important. Judge Quinn suggested that the language added to the proposal should include a reference to statutes defining victims.

Attorney Bayer said that much of the letter focuses on sexual assault and abuse and neglect cases. Discussion ensued as to how to protect the victims from the inadvertent disclosure of their identities in these cases when there is electronic coverage of appellate arguments. Attorney Bayer suggested three options for handling this issue: categorical exclusion of these cases, focusing on counsel to keep this information out of the argument, or working with the media. Judge Lavine suggested that a fourth option was shifting the burden from openness to presumptive closure as to broadcasting in certain categories of cases, i.e., sexual assault victims and children. Judge Quinn suggested that the courts need to become accustomed to media access as opposed to the functional anonymity that has existed up until now, but there is a need to articulate fairly stringent requirement for these types of cases. Attorney Nevas said there is a great deal of sensitivity to these things, but Ms. Cox said that sensitivity is not uniform. Discussion continued on this issue, including the fact that there are a relatively small number of these cases in the appellate courts, the possible difference in handling cases that might result in identifying a child vs. those involving a sexual assault of an adult. The committee will discuss this further at the next meeting.

The next committee meeting will be on Tuesday, August 4, 2006 at 8:15 a.m.

The meeting adjourned at 10:05 a.m.

**DRAFT – 7-27-06**  
**MEDIA ACCESS TO CRIMINAL PROCEEDINGS**  
**PILOT PROGRAM**

**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 -- raise 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, jurors, and reporters, and ultimately refined so as to permit maximum media access with limited disruption and without undermining the rights of criminal defendants and victims and others whose interests may be affected. The Committee anticipates that, based on their evaluation of the pilot program, the judges will subsequently extend the program.

The Committee recommends that the pilot program be established in the Hartford Judicial District, 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 Department.

**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 provides specifically for 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 that 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.

## **RULES GOVERNING COVERAGE OF CRIMINAL TRIALS, SENTENCING**

The Judicial Department 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 photographed and/or videotaped.

Any party, attorney, witness or victim may object in advance of trial or sentencing to the use of cameras or video cameras if there is a substantial reason to believe that such media coverage would undermine the rights of a criminal defendant or witness or significantly compromise an individual's safety or right to privacy. The trial judge/sentencing judge will decide after a hearing whether to preclude or limit the use of cameras or video cameras, taking into account the rights asserted and bearing in mind the "Guiding Principles" adopted by the Committee and the Task Force – "Public access to judicial 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 burden of proof will be on the party seeking to restrict electronic access to make such argument.

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 Department 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 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., photographing, recording or videotaping sexual assault victims or witnesses whose identity is protected) or exhibits (e.g., photographing or videotaping autopsy photographs), 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 will be allowed 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 Department 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.

*Query whether testimony by juvenile witnesses, victims of sex crimes, police informants, undercover agents or relocated witnesses shall be exempted from this provision.*

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.

## **RULES GOVERNING COVERAGE OF PRE-TRIAL PROCEEDINGS?**

[No resolution. Issues discussed included concern about suppression hearings and disclosure of evidence ultimately suppressed.]

## **RULES GOVERNING COVERAGE OF ARRAIGNMENTS?**

[No resolution. Concerns expressed focused on logistical difficulty of putting any limitations or constraints – e.g., precluding or limiting filming or photographing of domestic violence or sexual assault victims or inadvertent juvenile defendants – into practice, given the rapid pace and hectic nature of arraignment proceedings. Possible recommendations included allowing still cameras and video cameras without constraint,

precluding by rule photographing or video taping certain defendants or other individuals, allowing the trial court to hear and rule on objections of photographing or video taping certain defendants or other individuals, and not allowing cameras or video cameras at arraignments at all.]