

**Minutes of Public Access Task Force
Committee on Access to Judicial Proceedings
June 9, 2006**

The Committee on Access to Judicial Proceedings met in the Community Court Conference Room at 80 Washington Street in Hartford on Friday, June 9, 2006 from 9:05 AM to 10:50 AM.

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

The meeting was called to order by Atty. Bayer, co-chair, at 9:05 AM.

Atty. Bayer welcomed the group and explained that there was a great deal of work to do. Mr. Sanders, co-chair, then invited Holly Sellers to refresh everyone's recollection about the issues identified by the full Task Force. Atty. Sellers described to the committee the process utilized by the staff in organizing and prioritizing the issues raised by the full Task Force at its meeting on May 25, 2006. (Copies of these materials are attached and incorporated into these minutes.) Wall charts of the issues regarding access to judicial proceedings were displayed and explained. The committee is free to add or remove issues or to rearrange categories or priorities.

Atty. Bayer raised the idea of "low-hanging fruit" in connection with the openness of court proceedings. Currently there is a restriction on the number of cameras permitted in the Appellate and Supreme Courts. Specifically, there is a single fixed camera in the appellate courts. There are not the same issues in the appellate courts as you have in the trial courts (i.e., influence on the jury or privacy and security concerns about witnesses in particular cases) since arguments in the appellate courts involve matters of law as opposed to matters of fact. He suggested looking at this limitation on openness of proceedings.

A general discussion ensued regarding access to judicial proceedings. The consensus of the group was that access to judicial proceedings will mostly impact on Criminal, Juvenile, and Family courts. A discussion then ensued about reaching out to groups that might have an interest or have some input for the group, for example for Juvenile proceedings, perhaps the Commission on Child Protection, attorneys general, and the chief child protection attorney. For criminal, public defenders, states attorneys, the State Victim's Advocate, and the Office of Victims Services might have input. How to get this input and the manner that the input would be provided to the committee will need to be determined. Possibly the committee will divide up the proceedings that need outside input and identify some key groups for each one.

There was a discussion regarding the types of information that might be discussed in a family proceeding, including psychological reports and testimony when there are problems in the family. In such instances, the courtrooms are closed.

Mr. Sanders proposed adding to the first issue regarding what other states do in terms of access. He felt it should specifically include the question of any process to appeal decisions regarding access. He made reference to the "Fire Brigade" in Massachusetts, an informal dispute resolution group, comprising members of the media and judges. After a discussion about this type of group, Mr. Sanders agreed to obtain some

additional information about the Massachusetts group's process and circulate that information to the members of the committee. It was suggested that the proposal to create such an informal group be raised with the full Task Force at the meeting on June 15th, with the possibility of putting such a group in place as soon as possible. Atty. Bayer observed that the formation of this type of group would extend beyond this committee since it would be applicable to court records, Judicial Branch meetings, and administrative records as well.

Atty. Bayer returned to the idea of contacting different types of groups that might have an interest in different types of proceedings. Judge Quinn agreed to act as the contact person for juvenile and family since that issues overlap. Judge Clifford will be the contact person for criminal. Judge Quinn will contact several groups (family law section of the CBA, psychologists, therapists that work with the child protection docket, *inter alia*) and will coordinate with Judge Abery-Wetstone and Judge Dewey on family issues.

A discussion ensued regarding access to proceedings that take place outside of courts, i.e., at a hospital. Ms. Cox indicated she has been unable to gain access to arraignments taking place in a hospital. Judge Clifford indicated that this situation is rare. Ms. Cox agreed to contact hospital administrators in order to determine who is actually making the decision in the hospital situation and then report back to the committee.

A discussion ensued regarding permitting cameras in courtrooms and the potential issues and concerns about the use of cameras (influencing a jury if only a particular witness is filmed, creating a distraction in the courtroom). The suggestion was made that allowing camera access to arraignments and sentencings would be a good starting point, since many of the issues regarding cameras in trials would not be present in such proceedings. The consensus was that dealing with the less problematic proceedings first before tackling the issues with trials and juries would be a good approach. The current rule allows cameras and video cameras at sentencings only if the entire trial has been covered. Arraignments are not specifically excluded or included in Rule 1.11 (a) or (d) of the Practice Book. There was further discussion regarding potential privacy issues (i.e., child sexual abuse sentencings), the capacity of the courthouses to handle cameras/video cameras, and the method for securing a rule change. The group then agreed to recommend a pilot program permitting cameras/video cameras in sentencings and arraignments in a newer courthouse (i.e., Stamford, which has cameras in place for security purposes). There was a further discussion of allowing expanded access to cameras and video cameras in appellate proceedings, resulting in a preliminary proposal regarding such a change. It was suggested that the committee should solicit the comments and concerns from the Judges and Justices of the Appellate and Supreme Courts on this matter.

The discussion of generating some guiding principles on access to judicial proceedings then ensued. A list of the guiding principles generated as a result of that discussion and the subsequent circulation to the committee is attached to and incorporated into these minutes.

Atty. Bayer then suggested that the committee take a look at the information about what proceedings are open and which ones are closed. Atty. Del Ciampo provided a packet

of statutes and Practice Book provisions that might impact on access to court proceedings and gave a brief overview closed/open proceedings. He will provide a list of the statutes and the corresponding Practice Book provisions, where applicable. This information will assist the committee since changes in the Rules are more readily accomplished than changes in the statutes. Judge Clifford pointed out that criminal proceedings are rarely closed and Judge Quinn pointed out that closing of family and juvenile proceedings is generally by statute, and the statute is then duplicated in the Practice Book.

Atty. Bayer then summarized the preliminary proposals that the committee had discussed during the meeting. A copy of these proposals is attached and incorporated in these minutes.

Atty. Bayer suggested that members of the committee open the lines of communication and seek comments from the various groups and organizations. Judge Quinn, Judge Clifford, and Mr. Sanders will provide Holly with a list of organizations and groups which will then be circulated to the committee as a whole for review. It was suggested that one coordinated e-mail from the Task Force as a whole, followed up by an e-mail from a specific person would be the best way to obtain comments since the issues are common to all committees, but people will be more likely to respond to a specific person. The address on the website for public comment is Public.access@jud.ct.gov. Any e-mail to that address is directed to Holly Sellers and Alice Mastrony.

The committee then discussed the time and days for future meetings and it was determined that early morning would be best. The next meetings will be June 16th from 8:00 – 9:30 AM, June 27th from 8:00 – 9:30 AM, and July 6th from 8:00 – 9:30 AM. Coffee will be provided.

The meeting adjourned at 10:50 AM.

ISSUES FROM THE FLIP CHARTS

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

LIST OF ISSUES FROM MEETING NOTES – 5-25-06

Access to Proceedings

- What are the press and public allowed to have and use in a courtroom to transcribe what transpires? Who decides?
- Should access to proceedings in all types of cases be the same?
- Current rules and statutes regarding accessibility to court proceedings should be followed.
- What privacy concerns do we have to consider when opening hearings?
- Can the process of allowing cameras in the courts be simplified?
- Should microphones be allowed court?
- Should settlement conferences/pretrials be open to the public?
- Should all court proceedings be open?
- Are there aspects of hearings that are presently closed that should be open to the public and are there safeguards for the opening of such hearings?
- Can we more effectively communicate with the public when there are delays during the court day?
- Under what circumstances is an *in camera* proceeding appropriate?
- Should transcripts of *in camera* proceedings be made available to the public?
- Should plea bargain negotiations be made public?
- Should there be public access to offsite arraignments? (hospital rooms)
- Should there be a policy allowing electronic recording of court proceedings?
- In terms of electronic recording of court proceedings, should any distinction be made between the various levels of courts?
- In terms of electronic recording of court proceedings, should there be a distinction among case types or stages of cases?
- Should there be an expedited appeals process in the event of denial of access to a court proceeding?
- What do other states do in terms of providing access to court proceedings?
- To what extent should security concerns impact on access to court proceedings?
- Does access include the ability to walk away with something?
- Should the process of determining whether a court proceeding is open be open to the public?
- Review statutes regarding closing of proceedings

Categories of Issues for Judicial Proceedings

WHAT DO OTHER STATES DO IN TERMS OF PROVIDING ACCESS TO COURT PROCEEDINGS, INCLUDING ANY PROCESS TO APPEAL DECISIONS REGARDING ACCESS?

WHAT TYPES OF JUDICIAL PROCEEDINGS ARE/ARE NOT OPEN AND TO WHOM, AND SHOULD ACCESS TO PROCEEDINGS BE THE SAME FOR ALL TYPES AND LEVELS OF PROCEEDINGS?

- In terms of electronic recording of court proceedings, should there be a distinction among case types or stages of cases?
- In terms of electronic recording of court proceedings, should any distinction be made between the various levels of court?
- What is the impact of future videoconferencing on access to judicial proceedings?
- Should all court proceedings be open?
- Should settlement conferences/pre-trials be open to the public?
- Should plea bargaining be more transparent?
- Should plea bargain negotiations be made public?
- Under what circumstances is an *in camera* hearing appropriate?
- Should there be public access to off-site arraignments? (hospital rooms)
- Review statutes regarding closing of proceedings
- Are there aspects of hearing that are currently closed that should be open to the public?
- Are there safeguards for the opening of such hearings?
- What privacy concerns do we have to consider?
- Should access to proceedings in all types of cases be the same?

DOES ACCESS INCLUDE THE OPPORTUNITY TO BRING ELECTRONIC EQUIPMENT INTO A PROCEEDING?

- What are the press and public allowed to have and use in a courtroom to transcribe what happens and who decides?
- Can the process of allowing cameras in the courts be simplified?
 - Should microphones be allowed in court?
 - Should there be a policy allowing the electronic recording of court proceedings?
 - Does access include the ability to walk away with something?

TO WHAT EXTENT SHOULD SECURITY CONCERNS IMPACT ON ACCESS TO COURT PROCEEDINGS?

WHAT TYPE OF PROCESS SHOULD THERE BE TO REQUEST ACCESS TO PROCEEDINGS AND APPEAL DECISIONS ON SUCH REQUESTS?

- Should there be an expedited appeals process in the event of denial of access to a court proceeding?
- Should the process of determining whether a court proceeding is open be open to the public?

ADEQUATE TRAINING TO INSURE COMPLIANCE WITH RULES, STATUTES, AND COURT ORDERS

- Current rules and statutes regarding accessibility to court proceedings should be followed.
- Can we more effectively communicate with the public when there are delays during the court day?

**RESULTS FROM THE INTERRELATIONSHIP DIGRAPH
JUDICIAL PROCEEDINGS**

ISSUES	OUT	IN
What do other states do in terms of providing access to court proceedings?	5	0
What types of judicial proceedings are/are no open and to whom, and should access to proceedings be the same for all types and levels of proceedings?	4	1
Does access include the opportunity to bring electronic equipment into a proceeding?	3	2
To what extent should security concerns impact on access to court proceedings?	2	3
What type of process should there be to request access to proceedings and appeal decisions on such requests?	1	4
Adequate training to insure compliance with rules, statutes, and court orders	0	5

GUIDING PRINCIPLES COMMITTEE ON ACCESS TO JUDICIAL PROCEEDINGS

ALL JUDICIAL PROCEEDINGS ARE PRESUMED TO BE OPEN TO THE PUBLIC.

EXCEPTIONS TO THE PRESUMPTION OF OPENNESS OF JUDICIAL PROCEEDINGS SHOULD BE ARTICULATED, LIMITED, AND WELL-DEFINED.

ANY CLOSURE OF JUDICIAL PROCEEDINGS SHOULD REQUIRE A STATED RATIONALE THAT IS MADE PUBLIC.

THERE SHOULD BE AN EXPEDITIOUS AND OPEN PROCESS FOR RESOLVING DISPUTES REGARDING ACCESS TO JUDICIAL PROCEEDINGS.

**DRAFT - THREE RECOMMENDATIONS
COMMITTEE ON ACCESS TO JUDICIAL PROCEEDINGS**

- I. The first recommendation has four parts:
 - All proceedings in the Appellate and Supreme Courts should be presumed to be open to the public and to electronic access.
 - The policy on the use of cameras should be revised to permit more flexibility in the use and numbers of cameras allowed. In particular, the committee is considering recommending changing the current Supreme Court practice of allowing only a single, fixed camera in the courtroom.
 - 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.
 - There should be some expedited means of reviewing decisions to restrict access to appellate court proceedings.

- II. A group composed of judges and media representatives would be created for the purpose of providing an expedited and cooperative process for the resolution of issues regarding access to judicial proceedings, similar to the “Fire Brigade” that currently exists in Massachusetts.

- III. A short-term pilot program permitting cameras and video cameras at sentencing hearings and arraignments would be created and run in a court where it would be logistically feasible. The intent of the pilot program would be to identify the impact of allowing cameras in these types of proceedings and determine whether the pilot program can and should be extended to all courts.