

Minutes of the Meeting
Access to Judicial Proceedings
July 18, 2006

Those present: Aaron Bayer, Judge Lavine, Ken Margolfo, Judge Ment, Stephen Nevas, Judge Quinn, and Patrick Sanders

The meeting was called to order at 8:30 AM by Patrick Sanders, co-chair.

The Minutes of the July 6, 2006 meeting were unanimously approved upon motion by Judge Ment and seconded by Mr. Margolfo.

The second item on the agenda continued the discussion of specific proposals from the last meeting of the committee. Since no meeting of the full Task Force took place on July 13th, this committee now has the opportunity to again review these proposals. Attorney Bayer spoke regarding the proposal for expansion of media coverage of the Superior Courts. His understanding was that the committee would draft and propose an expanded set of principles that would presume openness and access while retaining judges' discretion to control coverage to the extent necessary to preserve order and a fair trial. The proposal would also reflect that there might be additional types of proceedings that should be open. His impression from the prior committee discussions was that the pilot program would involve CT-N installing cameras in a specific courtroom (Hartford), with access based on a set of basic recommendations that the committee would offer (i.e., not show jurors). The concept of the pilot project would be that the judges of that court would, over a period of time and a variety of proceedings, develop rules for coverage, rather than this committee's developing those principles.

Mr. Margolfo expressed concern that limiting the pilot to sentencing would not provide much opportunity for evaluation because sentencing proceedings are not covered as often as other proceedings. Judge Ment stated that sentencings were identified as a proceeding that is ripe for addition to the rule as a pilot. Arraignment would be more problematic because of time constraints. Judge Ment also mentioned the need to take victims into account in providing access to criminal proceedings. Judge Lavine pointed out that victims have special rights under the recent constitutional amendment. In response to the question whether a judge currently has discretion to close a sentencing, Judge Quinn said that closing with respect to media coverage is a different situation when a victim knows that he/she could be photographed and televised. Currently, television coverage is limited to trials only. Mr. Sanders said that the media is not currently banned from sketching jurors or victims, for example, but the media is accustomed to exercising discretion in these situations. Judge Quinn suggested that when making a change to the status quo, it is important to provide a sense of safety to victims in terms of photographing and televising proceedings.

Attorney Bayer asked if the pilot project as proposed says that it will be in effect for a defined period of time. Judge Ment stated that the pilot is designed with a 'reverse sunset provision' meaning that it would continue unless it is discontinued by a vote of the judges. It also calls for consideration of the expansion of the pilot to additional proceedings. Judge Ment also said that current media access to criminal trials is governed by Practice Book Sec. 1-11, which includes, for example, a requirement that such coverage is only permitted if the media is there for the entire trial.

The current language of the proposal refers to sentencings and special civil proceedings "in which there is significant public interest." There was some discussion as to who would decide what constitutes such a proceeding, and why the proposal would not include criminal trials as well. Judge Ment stated that the proposal is a first step in the effort to expand media coverage of the trial courts, and that the proposal should include a strong recommendation that the current rules with respect to trial coverage be amended to permit greater media access.

Attorney Bayer asked if the committee report would make an overarching recommendation that the Judicial Branch move toward electronic coverage of civil and criminal proceedings with limitations recognizing discretion remaining with the trial judge. The report would also contain specific proposals with a recommendation that a task force should be formed. Mr. Sanders suggested that the committee report should suggest the "gold standard" of access that would be implemented by means of a pilot program. Attorney Nevas suggested that the limitations on access be based on Fourth and Sixth Amendment rights along with the appropriate limitations of the State Constitution as well.

Discussion ensued as to what the pilot should entail in terms of breadth of coverage and geographical location. Mr. Sanders said that some coverage, i.e., criminal sentencings, should be implemented right away. Attorney Bayer said it would be easier to implement expanded coverage if it were coupled with CT-N. Judge Ment said it would be preferable to make the recommendation and then let others determine the best way to implement it. Judge Lavine also suggested that a limited pilot would be preferable with the goal and expectation that coverage would be expanded.

Suggestions were made as to possible locations for the proposed "gold standard" access pilot which would last for one year. The Stamford JD was one suggested location, but the sense of the committee was that it would be better to implement the pilot at 101 Lafayette St. in Hartford where there are both JD and G.A. criminal courtrooms. The recommendation for the pilot should eliminate restrictions that currently exist on media access and replace them with the presumption of openness, coupled with limited notice requirements, and acknowledge restrictions based on the due process rights of parties and victims, although the judges would retain the authority to control their courtroom. The pilot would only be in effect for civil and criminal cases. Mr. Sanders agreed to draft a proposal to cover criminal cases, and to circulate the proposal to the committee by Friday. Judge Lavine asked that the proposal contain language that expressly acknowledges the rights of victims.

With respect to civil proceedings, a pilot was also discussed initially, but after discussion, it was decided to make a recommendation for immediate implementation of changes to the rules. Judge Ment and Judge Quinn will prepare a proposal, effective statewide, that all civil trials and civil proceedings may be televised, recorded, photographed, and broadcast subject to Practice Book Section 1-11 with certain changes to that section. They will make recommendations regarding changes to that section to remove some of the more onerous requirements. The proposal will include the following:

- The media shall inform the court at least seven business days prior to the commencement of a special civil proceeding or civil trial that they will

broadcast, televise, record or photograph the proceeding. The court shall promptly inform counsel for the parties, who shall have four business days to file an objection. If an objection is filed, the judge shall schedule a hearing on the objection at which a media representative shall have the opportunity to be heard. The burden shall be on those opposing the broadcasting, televising, recording, or photographing of the proceeding to articulate their reasons for objection.

- In connection with special civil proceedings and civil trials, the presiding judge shall be permitted to waive the above time constraints if in the judge's view it is in the public's interest.

Judge Quinn and Judge Ment will draft the proposal and circulate it electronically by Friday.

Attorney Bayer reiterated that the committee report will include a set of general principles that recommend a move toward expanded electronic coverage of all proceedings, specific recommendation for a pilot program on criminal matters (including sentencings, arraignments, and trials), specific recommendations for rule changes to permit expanded coverage of all civil matters, including civil proceedings outside of trials, and a recommendation that the more complicated areas (i.e., family and juvenile) be subject to further study by a task force. The committee will also recommend the adoption of the policy explicitly permitting note taking in any courtroom statewide.

Mr. Sanders then asked that the committee discuss the overview of the issues for the committee report that had been prepared by staff. Judge Lavine said that he had received a packet about the Massachusetts "Fire Brigade" that he would review and share with the members of the committee. Attorney Bayer asked that the proposal regarding the "Fire Brigade" be recirculated by staff this week.

The discussion continued on to address the various – and expanding - types of media coverage. Attorney Nevas referred to the availability of web streaming of oral arguments from the D.C. Court of Appeals. Attorney Bayer pointed out that the committee's proposals should not be limited or discriminatory with respect to types of media.

Mr. Sanders asked that Attorney Sellers go over the handout regarding the issues that had been raised by the full Task Force. The staff has taken the list of original issues from the full task force and has indicated areas where the committee has and has not addressed the issues. The intent of this listing is to give the committee the opportunity to address all of the issues so that reports on all issues can be brought back to the full Task Force. Mr. Sanders suggested that after completing the discussion on civil and criminal proposals, the committee should go through the list prepared by staff. Staff will provide copies of the list to all members of the committee.

Attorney Bayer will draft and circulate an introductory set of paragraphs to frame the background for the committee. The intent of the committee is to have the language of the proposals settled for the next meeting.

The committee then discussed general issues that had come up at the first meeting of the full Task Force. On the question of opening plea bargaining to public access, the

consensus was that public access to the process would result in destroying any possibility for negotiation. A second issue was the impact of video-conferencing on proceedings. Attorney D'Alesio indicated that video conferencing is being discussed, but it is not in use yet. Judge Quinn suggested that the capability would be useful in connection with the complex litigation docket, less as a public access issue than an issue of making the court system more user friendly to litigants. Mr. Sanders raised the question of *in camera* hearings. After discussion, the committee agreed that the current rules on sealing and closing a courtroom (Practice Book Sec. 11-20 (civil) and Sec. 42-49 (criminal)) require notice, a compelling interest, and a statement as to the closure on the record. These rules subject closure to a rigorous standard that does not accept merely the agreement of the parties as a reason for closure. The consensus was that no further action by the committee would be necessary other than summarizing the rules in the committee report, and including this item in the list for education topics.

Another issue that was raised by the full Task Force concerned media access to off-site arraignments. Ms. Cox had, on several occasions, been unable to attend an arraignment held in a hospital. Although a decision on access to an arraignment in a hospital room is not within the control of the Judicial Branch, after discussion, the committee unanimously agreed to recommend the following proposal:

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

The next item mentioned was a comment received from Attorney Raphael Podolsky regarding access issues in connection with camera phones. Currently there is a pilot program involving the bagging and tagging of camera cell phones so that members of the public are not denied access to the court if they arrive at court with a camera phone. Attorney Bayer also noted the comments regarding the media coverage of the appellate courts. Judge Lavine said that the expansion of media coverage would be discussed by the Appellate Court judges later this month.

The meeting was adjourned at 10:03 AM.