

Minutes
Judicial-Media Committee
May 11, 2009

Present: Claude Albert and Judge Douglas Lavine, co-chairs; Tom Appleby; Justice David Borden; Judge Patrick Clifford; Joe D'Alesio, Melissa Farley, Chuck Howard, Judge Barbara Bailey-Jongbloed, Chris Powell, Tom Scheffey, Judge Barry Stevens, Adriana Venegas, Dave Ward.

Also attending for discussion on audio recordings: Nancy Brown, Heather Collins, Judge David Gold.

I. Welcome

Claude Albert opened the meeting.

II. Approval of minutes

Committee members unanimously approved minutes from meetings of January 12, 2009, and February 11, 2009.

III. Committee/subcommittee reports

A. Events – Claude Albert reported that the *Journalism School for Judges* on March 19, 2009, went well. Judge Lavine agreed and expressed his appreciation to the members of the Events Subcommittee for all of their hard work.

B. Pilot Program – Judge Clifford, co-chair, reported that the committee is preparing a report and recommendations to present to the Judicial-Media Committee this fall.

C. Audio Recordings of Court Proceedings – Attorney Howard, who co-chaired this subcommittee, presented its report. He provided a history of how the subcommittee came to be and added that it was a good group with which to work. However, in the end, the group found that its charge of evaluating the issue of audio recordings of court proceedings by the public was more complicated than they had anticipated.

According to Attorney Howard, subcommittee members could not reach consensus on the matter. As a result, they instead presented the different views in the subcommittee's report, so that the Judicial-Media Committee has them for further consideration. The report also includes research conducted by Heather Collins, the Judicial Branch employee assigned to work with the group.

The subcommittee limited its discussion to whether the public should be allowed to tape record court proceedings. It did not consider whether audio recordings of court proceedings by monitors and reporters should be available to the public at cost, Attorney Howard explained. That is another, separate issue that the Judicial-Media Committee may want to examine, he added.

Attorney Howard then presented his view: that Section 1-10A of the *Connecticut Practice Book* permits members of the public to tape records court proceedings with a judge's permission, but that the rules are vague and need standards.

Tom Scheffey, a member of the subcommittee and Judicial-Media Committee, next presented his position: The subcommittee ended up where it should have started – that is, the rules permit tape recording of court recordings by the public. He added that many of the arguments he heard against tape-recording proceedings were conjectural, i.e. regarding concerns that side bar conversations might be tape-recorded. The group addressed a charge that was too narrow, and Mr. Scheffey, while remaining optimistic, said he didn't feel that the subcommittee took advantage of its common ground. He also criticized the makeup of the subcommittee, saying it lacked more media representation, i.e. a First Amendment lawyer.

Judge David Gold, a member of the subcommittee, spoke next: He said he has no hesitancy in granting a request from the news media to tape record a court proceeding. But, he said, he believes allowing the public to do so is fraught with danger, particularly when crime victims and witnesses may be involved. He also questioned how a judge -- if he or she imposed conditions for a member of the public to tape record a proceeding -- could ever enforce restrictions on a member of the public. The matter is a lot more complicated than the subcommittee thought, Judge Gold said, and needs a lot of thought.

Nancy Brown, another member of the subcommittee, addressed the concerns of the court monitors and reporters, including the effect on their income (through transcripts) of allowing members of the public to tape record court proceedings. Self-represented litigants also might use the tape recordings to dispute the accuracy of the court record, she said.

Judge Clifford commented that the Public Access Task Force ran into this issue as well and decided that the "media" should be defined in terms of public access. The task force didn't want courtrooms to turn into a gallery of cameras and did not want a member of the public to serve as a pool to the news media, he said.

Mr. Albert asked whether the focus of the subcommittee was the right to the press or the right of the public. Attorney Howard answered that the focus was on the public.

Justice Borden asked Judge Gold to explain the difference between his and Judge Carroll's position and Attorney Howard's. Judge Gold answered that he believes Attorney Howard's view is that members of the public should be allowed to tape record court proceeding with the court's approval and written application. However, Judge Gold said, he was worried about what the court would use as criteria in granting a request and also about what happens afterward – how is further dissemination prevented? What would be the sanctions for those who violate the court order? Justice Borden then asked whether Judge Gold's position embraced the right of the news media to tape record court proceedings. Judge Gold answered yes, with permission. He added that the Pilot Program

under way in Hartford allows this, but that the court still needs to be cognizant of the experiences of witness and victims.

Judge Lavine said the full Judicial-Media Committee will devote its next meeting to this topic. He asked whether there is a rough consensus that if tape recording of court proceedings is to be permitted, that there should be a rule that would address the issues that have been raised. Judge Clifford responded that there are standards for the media in the Pilot Program. Judge Lavine answered that he didn't see how there could be one rule for the media and one rule for the public.

Judge Lavine asked committee members to consider the following questions for discussion at the next meeting:

- Do you think tape recording of court proceedings should be allowed?
- If so, should there be a distinction between the public and the media?
- Is the present rule sufficient?
- If it's not sufficient, what should be proposed in its place?

IV. Presentation by guest speaker Melissa Bailey

Melissa Bailey, managing editor of the *New Haven Independent* addressed the group on the topic of: "The Future of Media Coverage: Who Will Be Covering Our Courts?" Ms. Bailey provided a summary of what's occurring with online journalism and provided background on the growth and coverage of the *New Haven Independent*. A staff of six covers the city of New Haven, and the *Independent's* focus is more on court cases that are affecting people's lives, i.e. with foreclosures. The *New Haven Independent*, meanwhile is thriving and soon will be starting a new site that will cover the lower Naugatuck Valley.

Ms. Bailey then answered several questions from the committee about the web site and the work of the staff.

V. Solicit ideas from committee members for future presentation

At Mr. Albert's suggestion, the committee discussed putting on a future agenda the topic of placing court files online. Attorney D'Alesio said an in-depth presentation probably would be required, and that an entire meeting should be devoted to the topic.

VI. Adjourn

The committee adjourned at about 4 p.m. The next meeting, devoted to discussing the tape recording issue, will be on Monday, September 14, 2009, at 2:30 p.m.