

Minutes of the Meeting  
Access to Judicial Proceedings  
June 27, 2006

Those present: Judge Clifford, Erin Cox, Judge Lavine, Ken Margolfo, Judge Ment, Stephen Nevas, Judge Quinn, and Patrick Sanders

The meeting was called to order at 8:25 AM by Patrick Sanders, co-chair.

The Minutes of the June 16, 2006 meeting were accepted as distributed.

The next item was a review of the Guiding Principles for the Committee that had been revised in light of the discussion at the full Task Force. After brief discussion, the motion to accept the principles as revised was made, seconded, and unanimously approved. (A copy of these revised principles is attached to and incorporated into these minutes.)

The third item on the agenda was continuation of the discussion of specific access proposals under consideration by the committee. The first proposal addresses the camera and electronic media access policy for Supreme and Appellate Courts. Discussion began with CT-N's proposed coverage and whether it would be used as the official record of proceedings before the courts. Essentially, CT-N is providing a conduit for other media to tap into in order to cover proceedings. Just as CT-N's coverage of a legislative committee is not the official record of that committee's proceedings, its coverage of a judicial proceeding would not be the official record of the court, nor would it be archived for official court record purposes.

Further discussion ensued as to the advisability and the feasibility of designating CT-N as the conduit for pool coverage of the appellate courts. The suggestion was made that CT-N should be required to consult with other media regarding when and which proceedings would be covered, and obligate them to cooperate in that regard.

There was then a discussion as to whether audio and still cameras should be included. The consensus was that audio was implicit, but that explicit language should be added regarding still cameras. Discussion addressing language should be added to the proposal to address concerns about disruptions in the courtroom and the need for photographers to have the ability to effectively do their jobs. The point was made that today's technology permits the use of smaller cameras that are entirely silent in operation and do not require any additional light. After discussion, the following language was suggested and added to the proposal by consensus:

The rules governing still photography in the Supreme and Appellate courts should be reviewed in light of technological changes. The rule should permit one pool still photographer with adequate equipment provided that the court determines that the equipment does not disrupt court operations.

A copy of the full proposal is attached to and incorporated in these minutes.

The committee will submit this recommendation to the full Task Force at the meeting in July. Judge Lavine said that Judge Flynn has put the issue of expanded coverage of the appellate courts on the agenda for July 26<sup>th</sup> so that the proposal will be discussed at that time.

The next item discussed was a proposal to add a statement validating the right of anyone to take notes in court. An extensive discussion ensued about this issue. A variety of problems and perspectives were presented, including the need for leaving discretion to the judge, the question of the impact of a blanket rule on the right of a juror to take notes, and the potential for abuse of a blanket rule by a judge or a member of the public. After a long discussion, a motion to amend the first paragraph of the proposal stating that note-taking by the public should be permitted was made; the motion failed for lack of a second. Although the committee agrees strongly that note-taking by the public is now and should continue to be permitted by all courts, there was a consensus that a rule was not needed, and could have additional unintended consequences.

The next item for discussion was the recommendation regarding cameras and media in Superior Court. The current rule governing cameras in the courtroom is quite restrictive, limiting camera coverage to trials only. Prior discussions contemplated an amendment recommending that cameras be allowed in arraignments and in sentencings. The suggestion was made that the recommendation should be revised to include "hearings" or "proceedings," rather than being limited to those two specific proceedings. There was discussion of including language that would allow cameras in proceedings in which the judge feels the public has a strong interest along with other types of proceedings that might be of interest. A discussion then ensued regarding the possible location of a pilot project, the need for a rule change to implement any pilot program, the need for a more modern courtroom for the pilot, and the possibility of not limiting a pilot program to a specific location, but rather allowing cameras in a proceeding that engenders strong public interest. The suggestion was made to recommend a pilot of proceedings other than trials, limited in some way, but not limited by location. There was discussion as to how to determine the limits on such a pilot project. A suggestion was made that it might make lawyers and Judges more comfortable with the use of cameras in various proceedings if a demonstration were set up to give people the opportunity to observe how it works and address some of their concerns. Ms. Cox indicated that a pilot would still be beneficial so that it could be demonstrated that cameras in the "real world" would not be disruptive to the operation of the court. A suggestion was made that it would be possible to change the word "trial" to "proceedings" in Practice Book Sec. 1-11. The committee agreed that this is a complex issue and needs further study. Judge Ment volunteered to prepare a proposal and circulate it for review by the committee. The sense of the group was that a pilot program of some kind was the best option. No formal vote will be taken until a proposal is drafted, circulated, and reviewed.

The next item discussed was the judicial-media committee based on the Massachusetts model. Mr. Sanders had provided information on the "Fire Brigade," a group that provides an informal forum for the resolution of access issues. Judge Ment commented that an informal "fire brigade" exists currently through the External Affairs Division of the Judicial Branch. The information provided by Mr. Sanders was reviewed. Judge Lavine said that the judicial-media committee's charge should be limited to issues of access, not substantive issues so that a judge is not giving up control of the courtroom. The point was made that these recommendations are not binding on the Judges or the media, but are simply suggestions to resolve access issues. After discussion, the committee agreed that the formation of such a committee to resolve access issues would be helpful. The committee also agreed that a smaller number of members would be sufficient for Connecticut. Mr. Sanders, who has already spoken to an "external affairs"

person from Massachusetts, will also obtain information to contact one or two of the judges that sit on the Massachusetts panel so that comments regarding the operation of their committee may be obtained.

The following motion was made by Judge Ment, seconded by Judge Clifford and passed unanimously:

- The Committee should recommend the formation of a judicial-media committee, to be a function of the Connecticut Supreme Court. The committee should be chaired by a member of the Supreme Court and a media executive.
- The Committee should recommend that the Judicial-Media Committee be charged to form a response team, structured similarly to that organized in Massachusetts, which would be able to informally resolve disputes regarding access to judicial proceedings.

The next meeting of the Judicial Proceedings committee is scheduled for July 6<sup>th</sup> at 8:15 AM. Subsequent meetings are scheduled for July 18<sup>th</sup> at 8:15 AM and on the subsequent Tuesdays through the summer.

The meeting was adjourned at 9:50 AM.

GUIDING PRINCIPLES  
COMMITTEE ON ACCESS  
TO JUDICIAL PROCEEDINGS (Revised)

1. All judicial proceedings are presumed to be open to the public.
2. Exceptions to the presumption of openness of judicial proceedings should be articulated, limited, well-defined and consistently applied.
3. Public access to judicial proceedings 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.
4. There should be an expeditious and open process for resolving disputes regarding access to judicial proceedings.

**PROPOSAL CONCERNING EXPANSION OF ELECTRONIC ACCESS  
TO THE SUPREME AND APPELLATE COURT**

The Committee on access to judicial proceedings of the Public Access Task Force formed by Justice Borden is looking at public and electronic access to proceeding of all types. As part of that process, the Committee reviewed and discussed the existing Practice Book Rules governing cameras in the Supreme and Appellate Courts (Practice Book §§ 70-9 and 70-10) and the protocol for videotaping or photographing Supreme Court oral arguments. Following that review and discussion, the Committee expressed interest in expanding electronic access to the proceedings in the Appellate Court and Supreme Court. The Committee has reached a consensus on the following recommendations to allow expanded electronic access to the appellate courts.

- All judicial proceedings in the Appellate and Supreme Courts should be presumed to be open to the public and to electronic access.
- Unless a timely objection is made by one of the parties or counsel to the broadcasting, televising, recording or photographing of an appellate proceeding, all such proceedings may be so broadcast, televised, recorded or photographed.
- The policy on the use of cameras should be revised to permit more flexibility in the placement, use (e.g., close-ups, split screens, informational graphics), and the number of cameras allowed, in order to more accurately depict the proceeding.
- In light of legitimate concerns and possible disruptions associated with numerous video cameras' being set up and operated to record appellate proceedings, the Committee recommends the installation by CT-N of three permanently mounted remotely operated video cameras, creating a feed or tape available to other networks.
- The rules governing still photography in the Supreme and Appellate courts should be reviewed in light of technological changes. The rule should permit one pool still photographer with adequate equipment provided that the court determines that the equipment does not disrupt court operations.
- 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.

The Committee on Judicial Proceedings also will recommend the following:

- The Committee is recommends the formation of a judicial-media committee, to be a function of the Connecticut Supreme Court. The committee should be chaired by a member of the Supreme Court and a media executive.
- The Committee recommends that the Judicial-Media Committee be charged to form a response team, structured similarly to that organized in Massachusetts, which would be able to informally resolve disputes regarding access to judicial proceedings.

### **Massachusetts judicial/media committee**

Massachusetts formed its judicial-media committee more than a decade ago following the O.J. Simpson trial in California. The Chief Justice was concerned about the sensational nature and coverage of the trial and the acrimonious relationship between the courts and the Massachusetts media.

The committee is an official committee of the Supreme Court, chaired by an associate Supreme Court justice and the publisher of the Springfield, MA newspaper. It is comprised of about 30 members, which include print and electronic media, judges, members of the state bar association and others. Members are added by invitation only, selected by the two chairs.

Discussion is centered on any issue of concern. Past discussion has included why stories are covered in a specific manner, or why judges and their cases are portrayed in a certain light. When the committee was formed 10 years ago, it met monthly because there were many issues to wade through. In recent years, however, the committee only meets 3 or 4 times a year.

The committee also has published a guide to court access, which has been distributed to the media and to judges. The guide is frequently used as a tool to help solve access issues.

The committee also has one subcommittee, called the response team. It is also referred to internally as the "fire brigade." Reporters and judges across the state are encouraged to call a member of the response team if there's an urgent access issue requiring immediate attention. Although the recommendations of the team are not binding, it's considered very successful. Here's how the team works:

- Members of the team agree to have their names and office telephone numbers listed on a laminated card that is circulated to journalists and judges.
- Someone who has an access issue calls a member of the team to explain the situation.
- The team member calls another member of the response team – this "cross-referral" is considered a very important step. The two team members discuss the issue. Sometimes they may call others for more information, including the judge and editor/producer at the center of the issue.
- The response team gets back to the complainant the same day to relay the team's advice and, at time, explain the court of reporting process so there's a clearer understanding of the decision in question. Sometimes the advice isn't what the complainant wants to hear, but the speed of response seems to negate a lot of hard feelings.

The Massachusetts judicial public affairs office is sending additional information about the committee and the response team, which I'll relay when it arrives. The committee is also eager to host a delegation from Connecticut at its next meeting, which will be sometime this fall.

### **Recommendation**

I suggest that this committee propose the formation of a judicial-media committee, to be a function of the Connecticut Supreme Court. The committee should be chaired by a member of the Supreme Court and a media executive. I also suggest that the committee be charged to form a response team, structured similarly to that organized in Massachusetts.