

CONNECTICUT JUDICIAL-MEDIA COMMITTEE

SUBCOMMITTEE ON AUDIO
RECORDING OF COURT
PROCEEDINGS

2009 FINAL REPORT



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May 4, 2009

Honorable Douglas S. Lavine
Connecticut Appellate Court
75 Elm Street
Hartford, CT 06106

Mr. Claude Albert
39 Tims Hill Road
Haddam, CT 06438

Dear Judge Lavine and Mr. Albert:

Please find enclosed the report of the Subcommittee on Audio Recordings of Court Proceedings. The Subcommittee worked diligently on this issue but was unable to reach consensus on a recommendation for any particular rule changes. This report, however, provides a summary of our investigation and the perspectives of the members of the committee, together with a recommendation that the entire Judicial Media Committee consider this issue and provide further guidance if it believes further action is appropriate.

We look forward to presenting this information to the Committee at our meeting on May 11.

Very truly yours,

Charles L. Howard

CLH:trb
Enclosure
C: Subcommittee on Audio Recordings of Court Proceedings (w/enclosure)

EXECUTIVE SUMMARY

The Subcommittee on Audio Recording of Court Proceedings was formed in January, 2009 by the Judicial-Media Committee and charged with evaluating audio recording of court proceedings by the public, an issue arising out of recommendations by the Judicial-Media's Survey Committee.

The members of the Subcommittee are Attorney Charles L. Howard (Chair); Deputy Chief Court Administrator, the Honorable Patrick L. Carroll III; the Honorable David P. Gold, Presiding Judge, Part A, Hartford Judicial District; Ms. Nancy Brown, Judicial Branch Program Manager in the Court Transcripts Services unit; Mr. Thomas B. Scheffey, Senior Writer, Connecticut Law Tribune; and Mr. Patrick Sanders, Connecticut News Editor, The Associated Press.

The Judicial-Media Committee's objective is to "foster and improve better understanding and relationships between the Judicial Branch of government and the media." To gauge the concerns of judges and media members about court coverage, access to documents and proceedings, and other general concerns or problems, the Committee created a Survey Subcommittee in May 2007.

The Survey Subcommittee developed questionnaires for judges and media members, which were distributed and collected by the Judicial Branch External Affairs Division in the fall of 2007. In all, seventy-seven members of the judiciary responded to the twenty-question survey for judges, and thirty-three members of the press answered the seventeen-question media survey.

Based on the judges' and reporters' responses, the Survey Subcommittee developed a report with twenty-two recommendations related to facilities, public service, outreach and education, judicial-media relations, and judicial process.

At the Judicial-Media Committee meeting of October 6, 2008, the members voted to approve twenty of the report's twenty-two recommendations, tabling action on two. One of the tabled items was a recommendation that the Rules Committee of the Superior Court "should promulgate rules for the audio recording of court proceedings by members of the public."

At its January 12, 2009 meeting, the Judicial-Media Committee voted to establish the Subcommittee on Audio Recording of Court Proceedings, with a directive to return with a report after studying the issue.

The Subcommittee began its research and deliberations with the expectation that it would develop a recommended rule on public audio recording of court proceedings for consideration by the Judicial-Media Committee. However, after many meetings and hours of discussion; a review of current Practice Book rules, Judicial Branch policies, and other states' policies; and after receiving input from the public, the Subcommittee was unable to reach agreement on a proposed rule. Thus, even though no proposed rule is being recommended, the Subcommittee has prepared this report, as charged by the Judicial-Media Committee, describing the work that was done and identifying issues for discussion by the Judicial-Media Committee.

Five Subcommittee members — Attorney Howard, Judge Gold, Judge Carroll, Mr. Scheffey and Mr. Sanders — believe that Practice Book Rule 1.10 and related guidelines issued by the Chief Court Administrator presently allow audio recording of court proceedings with the express, prior permission of the court or judicial authority.

Yet, despite the near-unanimous agreement on that issue, the Subcommittee members have different opinions and concerns whether the Rule and guidelines should be altered or expanded and other procedures adopted to facilitate audio recording of court proceedings. Those opinions, suggestions and concerns are contained within this report. (Attachment 1)

The Subcommittee also respectfully submits to the Judicial-Media Committee for further consideration a recommendation that it consider this report and the issues related to audio taping, the public's right to know, and appropriate guidance to a court in ruling on any such request. If a consensus emerges after consideration by the Judicial-Media Committee, the Subcommittee is willing to draft a proposed set of rules for further discussion and, if approved, presentation to the Rules Committee of the Superior Court.

THE PROCESS

The Subcommittee on Audio Recording of Court Proceedings met six times: February 9 and 23, March 9 and 25, April 20 and 28, 2009.

An Internet webpage was created and linked from the Judicial-Media Committee's Branch Webpage, <http://www.jud.ct.gov/Committees/media/audio/default.htm>.

All meetings of the Subcommittee were publicly noticed on the Webpage and with the Secretary of State. The agendas, draft minutes, and approved minutes were posted on the Subcommittee's Webpage within the time requirements of the Freedom of Information Act.

Judge Carroll, because of other commitments, was unable to attend the meetings but reviewed the materials that the other Subcommittee members received, as well as the minutes of each meeting. Judge Carroll concurs with Judge Gold's opinions as expressed in this report.

Mr. Sanders resigned from the Subcommittee on April 15, 2009 but his written remarks, submitted prior to his resignation, are included.

BACKGROUND: WHAT WAS CONSIDERED

The Subcommittee examined and discussed current Connecticut Practice Book rules and Judicial Branch policies and guidelines related to audio recording; reviewed other states' policies on audio recording by the public; and considered the availability of the official court record. The Subcommittee also received and considered comments made at its public meetings by court reporters, court monitors, union representatives of court reporters and monitors, and the owner of a private firm that provides court reporting services. The comments from the public also included more than three dozen letters sent to the Subcommittee by court reporters and monitors.

I.) CURRENT PRACTICE BOOK RULES AND ADMINISTRATIVE GUIDELINES

The Subcommittee began its task by reviewing and discussing existing Practice Book rules and Judicial Branch guidelines and policies related to audio recording.

The 2009 Connecticut Practice Book includes a rule, Section 1-10, that is applicable to the issue of recording court proceedings. P.B. Rule 1-10 states:

Section 1-10: Possession of Electronic Devices in Court Facilities :

(a) Personal computers may be used for note taking in a courtroom. If the judicial authority finds that the use of computers is disruptive of the court proceeding, it may limit such use. No other electronic devices shall be used in a courtroom unless authorized by a judicial authority or permitted by these rules.

(b) The possession and use of electronic devices in court facilities are subject to policies promulgated by the chief court administrator.

Additionally, the Practice Book Commentary following Section 1-10 states in part: “The Revision to subsection (a) allows the judicial authority to limit the use of personal computers in a courtroom if finds that such use is disruptive of the proceedings. The changes also allow other electronic devices to be brought into a courtroom, but provide they may not be used unless authorized by a judicial authority of permitted by rule.”

The Subcommittee also discussed Judicial Branch guidelines regarding electronic devices in courtrooms. In particular, Chief Court Administrator Judge Barbara M. Quinn issued memoranda on August 1, 2008 and January 5, 2009, pursuant to Practice Book Rule 1-10, entitled, “The Use and Possession of Electronic Devices in Superior Court Facilities” to provide guidelines for the application of P.B. Section 1-10. (Attachment 2)

The guidelines provide that a person may have certain electronics — including digital or tape audio recorders — in court facilities, but a person is “prohibited from using” such an electronic device to, among other things, “make sound recordings.” The guidelines also articulate exceptions may be made to the general rule prohibiting electronic devices “with the permission of the judge or other judicial authority.” Those exceptions include:

- A person who is a participant in a hearing or trial may use a personal computer or other electronic device in a courtroom.
- Other electronic devices may be used in a courtroom if permitted by the judge or other judicial authority or permitted by court rules.

Based on the present language in P.B. Section 1-10, together with its commentary and the guidelines from the Chief Court Administrator, five members of the Subcommittee conclude that a member of the public may at present record court proceedings with the permission of the trial court. It was the sense of the Subcommittee, however, that this interpretation of the present rule and policies is not well known or understood by judges or members of the public.

II.) OTHER STATES: AUDIO RECORDING BY THE PUBLIC AND MEDIA

In Connecticut is not alone in permitting members of the media to have at least some electronic access to its courts. In considering what if any changes should be made to the Practice Book and guidelines, the Subcommittee also examined audio recording rules in other states.

While all states had provisions relating to audio recording of court proceedings, only the states of Arizona, California, Georgia, Maine, New Hampshire, New Jersey, North Carolina, Ohio and Vermont had rules with language that arguably would permit audio recording of court proceedings by members of the media *and* general public.

Georgia, Maine, New Hampshire, North Carolina, Ohio and Vermont are silent on language particular to the use of *personal* tape recorders. The Subcommittee found that two states, New Jersey and Arizona, specifically allow ‘bona-fide’ members of the press corps to use personal recording devices in courtrooms for note-taking or as newsgathering tools.

(Attachments 3 and 4)

The Subcommittee found that while New Jersey and Arizona permit **journalists** to use tape recorders, only one state — California — permits the **public** to use audio recording devices specifically for note-taking or personal use. (Attachment 5).

The California Rules of Court contain an extensive list of rules and procedures related to the media. Among other provisions, the California rules require a member of the public to seek advance permission from the judge before using any recording device:

Rule 1.150 (d):

- The judge may permit inconspicuous personal recording devices to be used by persons in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a personal recording device must obtain advance permission from the judge. The recordings may not be used for any other purpose than as personal notes.

In addition to requiring prior judicial authority for the personal recording of court proceedings, the California rules also provide for sanctions against those who violate the recording rules. Specifically:

Rule 1.150 (f):

- Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings of the court and may be the basis for an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions as provided by law.

The Subcommittee sought information about the history and scope of Rule 1.150 from Philip R. Carrizosa, the Communications Officer from the Judicial Council of California. (Attachment 6)

According to Mr. Carrizosa, the California rule allowing audio recording for personal use was initiated more than 20 years ago by members of the press corps. He reported that few media members today apply for permission to audio record court proceedings because most have determined it is far too time consuming to listen to the recording while writing on deadline. What has been useful, according to Mr. Carrizosa, is the accuracy of a tape recording; when there is doubt about what has been said, a tape recording provides clarity.

Mr. Carrizosa said that he is unaware of any problems that have occurred with audio recordings — something he attributes to a lack of knowledge about the rule among the California public. He said that there have been no reports of personal recordings being manipulated or posted on Internet sites, which he thought may be due to the fact that most personal recorders are of mediocre quality. Mr. Carrizosa said that those who do use personal recorders tend to be those who are parties to proceedings and having a personal audio recording saves the cost of paying for an official court transcript from court reporters.

III.) CURRENT PRACTICES IN CONNECTICUT

In Connecticut, the only audio recordings of court proceedings regularly made are made by Judicial Branch employees assigned to the official court reporter. Some proceedings are recorded as electronic or paper notes on stenographic machines; others are audio recordings made by court recording monitors using cassette tape or digital audio equipment.

As of March 1, 2009, the Judicial Branch employs 197 full- and part-time court reporters or court monitors. Those employees are represented by the American Federation of State, County, and Municipal Employees (AFSCME) union. In addition to their base salaries, as determined by the collective bargaining agreement, many court reporters earn

additional income by providing certified court transcripts upon request. The Judicial Branch also regularly employs up to 62 temporary court recording monitors.

Each of the state's 270 courtrooms and hearing rooms is equipped with an audio recording system; of those, 158 courtrooms have cassette tape recorders. Since 2001, the Judicial Branch has installed computer-based digital audio recording systems in 112 courtrooms, located in 30 court facilities in all 13 Judicial Districts. The computer-based digital audio recording systems are known commonly as "For The Record," or "FTR", and the audio can be copied to a compact disc. (Attachment 7)

It is current Judicial Branch policy not to distribute or sell copies of audio records, including cassette tapes and compact discs, of court proceedings, to the public. (Attachment 8)

The Survey Committee's recommendation report, under the Public Service section, No. 5, says that, "Audio recordings of court monitors should be available at cost." However, Chief Justice Chase T. Rogers, in her January 2009 response, said, "Not only does this implicate statutory issues, but also union contract rights." (Attachments 9 and 10)

While audio copies of cassette tapes and discs are not currently available for purchase, copies of the official court record as a typed document may be purchased in accordance with the Connecticut General Statutes. Fees charged by court monitors/reporters for official court transcripts are governed by Connecticut General Statutes Section 51-63(c), while the Chief Court Administrator determines how much the court reporters/monitors may collect for overnight or expedited transcripts. Fees currently range from \$3 per page to \$6.35 per page for members of the public. State officials and other entities are statutorily entitled to pay lower fees, ranging from \$2 to \$4.45 per page.

In 2008, Branch court reporters and monitors reported that they fulfilled requests for 27,183 transcripts; the actual number of pages created is not known. (see attachment 10)

SUBCOMMITTEE MEMBERS' ANALYSIS

While the majority of the Subcommittee agrees that audio recording of court proceedings by the public currently is permitted with the trial court's prior approval, after considering the scope and implications of the Chief Court Administrator's guidelines on Practice Book Rule 1-10, the members of the Subcommittee could not reach an agreement on whether a new rule should be proposed or, if so, what it would provide. Consequently, this section will present separately the opinions and concerns of the Subcommittee members.

Regarding the Current Rule and Guidelines

There was substantial discussion by the Subcommittee on the meaning of Practice Book 1-10 and the intent of the Chief Court Administrator's guidelines.

Attorney Howard, Judge Gold and Judge Carroll believe that the current Rule, as written, and the related guidelines lack standards and accountability.

The existing Rule and Chief Court Administrator's guidelines do not: specify which proceedings may be recorded; prohibit recording of sidebars or other privileged courtroom communication between attorneys, judges, and defendants; require the prior notification to or permission of victims, witnesses and other parties to the proceeding or provide a procedure for those who object; limit the distribution of the recordings; or make a differentiation between the official recorded record (of the court reporter/monitor) and one made by a member of the public. Additionally, the current Rule and guidelines provide no

standards for a court to use in considering an application for audio recording and no express authority for the court to take action against those who misuse a recording, such as to harass or intimidate parties to proceedings with the intent of disrupting those proceedings.

Attorney Howard would clarify the Rule and guideline to permit recording generally by the public, but with more controls and standards to assist both the public and the trial judge. Among the controls he recommends: requiring a prior written application to be made to the trial judge; limiting the use of the recording to personal use only and not for distribution or broadcast; notifying parties in a proceeding in which such a recording has been permitted that recording permission has been granted; explicitly barring the recording of attorney-client conferences, sidebars with the court, the voir dire or other interactions with jurors, with the exception of the rendering of a verdict; and providing that personal recordings are not permissible as evidence. Attorney Howard would also ban recording certain proceedings, absent exceptional circumstances, including family cases, juvenile proceedings, or sexual crimes.

Judge Gold and Judge Carroll, in a joint analysis, believe that even with an expansion of rules or guidelines limiting audio recording by the general public, the risks in allowing members personal recording devices to record court proceedings are too great and would very likely negatively impact the entire judicial system and peoples' willingness to take part. They believe that witnesses and victims in criminal cases are already suffering by the time they are called to court. Accordingly, they believe that the idea that a person's testimony — particularly graphic testimony in certain crimes — could be played and replayed for others would have a chilling effect on some people.

The Judges also believe that attempting to further expand the existing rule to place limits on what could be recorded for personal use would be futile given constitutional issues

concerning prior restraint. Judge Gold and Judge Carroll maintain that once a recording is made, the owner would be free to amend it, doctor it, reproduce it, distribute it, upload it to the Internet or sell it, and it is unlikely the court would be able to prevent distribution or sanction an unapproved use.

Judge Gold and Judge Carroll, when considering the applicability of the California Rule to Connecticut, believe that the restrictions in 1.150 (d) make clear the rulemakers' intent to strictly limit the use of personal recorders for the sole purpose of notetaking. However, the Judges say, defining or implementing a "personal notetaking" rule is not achievable.

And finally, Judge Gold and Judge Carroll expressed concern about the logistics involved when judges are faced with trying to enforce audio taping rules from the bench. While members of the media who today audio or video tape proceedings currently allowable under the Branch's existing pilot program are easily identified — and, indeed, must adhere to a defined set of rules before being permitted by the court to proceed, including prior authorization — the Judges say it would be nearly impossible to ensure that members of the public who would audio tape proceedings would fully follow the rules.

Mr. Sanders and Mr. Scheffey take a contrary view of expanding the existing rule. They start with the proposition that most court proceedings are open to the public. The public is free to come in to most courtrooms and take handwritten notes about the proceedings. And yet, Mr. Sanders and Mr. Scheffey believe that the vast majority of the public's knowledge about the judicial process comes solely from media accounts. They believe that a recorded version of court proceedings for personal use — whether the individual is a party to the proceeding, a news reporter, or simply a curious bystander — provides a much more accurate transcription of what has transpired. Therefore, Mr. Sanders and Mr. Scheffey conclude that providing an accurate accounting of what transpires in the peoples' judicial

system only further strengthens the public's understanding of the Judicial Branch and its processes, and as such should be allowable as a matter of practicality.

Mr. Scheffey further believes that the Subcommittee's focus has been misplaced. He believes it is clear that Practice Book Rule 1-10 clearly permits audio recording of court proceedings. Given the mission of the Judicial-Media Committee to promote more openness in court proceedings, Mr. Scheffey believes the Subcommittee should have focused more directly on how the public's right to record court proceedings can be clarified and expanded, including recommendations for making court reporter records more publicly accessible.

Mr. Scheffey also believes that the Practice Book rule could be expanded to include "practical procedures" to allow a trial judge to authorize notetaking with "other electronic devices."

Mr. Sanders suggests that guidelines or rules similar to those already in place for the Hartford Superior Court media pilot program could be extended to the public with no effect on the integrity of the judicial system. If a person wishes to make a recording, he or she could ask the court, which would then notify interested parties of the request. Objections to the request could be handled as they are in the current Standing Orders for the pilot program, requiring notice of the objection and a hearing on the objection with participation by interested parties. He believes that the Judicial Authority should have the authority to limit or restrict the use of a personal recorder only if there exists a compelling reason to do so, if there are no reasonable alternatives, and if such a limitation or preclusion is no broader than necessary to protect the compelling interest at issue.

Ms. Brown, while taking no position on whether the current Rule or guidelines allow the public to audio record proceedings, is opposed to the creation of any audio recording with the exception of the official record.

Regarding Court Reporters and Access to Court Recordings

The Subcommittee received some three dozen e-mailed letters from court monitors and court reporters — employed in both the public and private sectors — who oppose allowing the public to make personal recordings of court proceedings. Three members of the court reporting community also addressed the Subcommittee at the Subcommittee’s February 23 and March 9, 2009 meetings. (Attachments 12 and 13)

In addition to the potential for lost income by a reduction in the number of requests for an official, typed court transcript, the court reporters and monitors and their representatives told the Subcommittee in e-mails and testimony that they have concerns about the likelihood of personal recordings being used to challenge the official court record.

Ms. Brown believes that if personal recordings were made by the public, the very real possibility exists that such recordings could be manipulated or altered and then used to challenge the official court record. She also is concerned that fraudulent or inaccurate transcripts made from personal recordings could be produced and sold.

Early on in the information gathering process, Ms. Brown surveyed Judicial Branch court reporters. A loss of income was one concern about allowing the public to personally record proceedings, but others cited the need to maintain the official court record. An individual’s personal audio recording could be used to challenge the validity of the court record, the court reporters said — and Ms. Brown concurs — causing delays, appeals and other ultimately unnecessary proceedings. The lack of any real ability to keep a “personal” recording personal was also a concern and such recordings could be manipulated, Ms. Brown believes.

Judge Gold and Judge Carroll support Ms. Brown’s views and echo her concerns about the possibility of personal recordings being misused or of the official record being repeatedly

challenged. They also cite the potentially negative financial impact on the court reporting community.

Mr. Howard believes that with the provisions he recommends, if audio recording were permitted, the concerns expressed by the court reporters and monitors would be adequately addressed. They would remain the only source for official transcripts and personal recordings would not be admissible evidence.

Mr. Scheffey and Mr. Sanders maintain that what occurs in Connecticut's courtrooms belongs to the people of Connecticut, and therefore recordings made of those proceedings should be available to the public in the way that official paper transcripts are available.

Mr. Sanders believes that while court reporters and court monitors are currently protected by collective bargaining rights, the need for an open judiciary is paramount. Further, he believes that court reporters and monitors are the designated producers of the official court record but they should not have exclusive rights to record court proceedings to sell and distribute for their personal gain.

Mr. Scheffey concurs with Mr. Sanders' position that the official court record belongs, collectively, to the public. Policies that affect access to the public record must take in to account a broad range of stakeholders, he says, including historians, academics, librarians and journalists in multiple media.

In the absence of an expansion of the existing Rule or guidelines to allow the public to record court proceedings, Mr. Scheffey supports the Judicial Media Committee's Survey Subcommittee recommendation that the Judicial Branch implement a process or procedure by which court-made recordings are available for purchase by the public.

Currently, many other states and some federal courts allow the public to purchase compact discs of the court-made audio record. There also exists a pilot program within the

federal courts that makes digital audio recordings publicly available for purchase online through the Public Access to Court Electronic Records (PACER) system. The pilot program was expanded in mid-April and now includes nine federal courts. (Attachments 14 and 15)

RECOMMENDATION

The Judicial Media Committee should consider the background information provided in this report and formulate a recommendation on whether any further action or revision to the Rules and guidelines are appropriate and, if so, whether the Rules and guidelines be amended to more specifically set forth the parameters of this right by defining and delineating the circumstances in which recording devices may be utilized.

ATTACHMENTS

1.	Written opinions of each member of the Subcommittee.....	Pg. 21 - 34
2.	Connecticut Practice Book (2009) Rule 1-10	Pg. 35 - 36
2a.	Chief Court Administrator Guidelines Memoranda.....	Pg. 37
3.	Supreme Court Guidelines for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey	Pg.38 - 46
4.	Rules of the Supreme Court of Arizona: XII: Miscellaneous Provisions: Rule 122, effective January 1, 2009.....	Pg. 47 - 49
5.	California Rules of Court: Title I: Rules Applicable to All Court, Chap. 6 ...	Pg. 50 - 56
6.	Letter from Philip R. Carrizosa, Communications Officer, Judicial Council of California, March 5, 2009	Pg. 57
7.	Conn. Judicial Branch Overview of Court Transcript Services, Jan. 12, 2009: Source: Deputy Director Scott Hartley, Judicial Branch Transcript Services	Pg. 58 - 62
8.	Connecticut Judicial Branch internal memorandum, January 8, 2009: Source: Director of Administration James R. Maher.....	Pg. 63
9.	Judicial-Media Committee, Survey Subcommittee Report, 2008.	Pg. 64 - 66
10.	Connecticut Supreme Court Chief Justice Chase T. Rogers response, January 11, 2009	Pg. 67 - 68
11.	Connecticut Judicial Branch Court Transcript Services: 2008 requests: Source: Nancy Brown, Program Manager, Court Transcript Services.....	Pg. 69

12. Judicial-Media Committee Subcommittee on Audio Recording of Court

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13. Judicial-Media Committee Subcommittee on Audio Recording of Court

Proceedings: Minutes of meeting of March 9, 2009 **Pg. 73- 75**

14. The Third Branch: Newsletter of the Federal Courts, June 2008..... **Pg. 76 - 79****15. News release: USCourts.gov, April 2009 **Pg. 80 - 81****

Remarks of Atty. Charles L. Howard

I start from the proposition that I think recording is presently permitted by the rule at the court's discretion, but that the application of the rule to this situation may not have been intended.

As is, the rule has no standards and is unknown by most people. If we are going to have a rule, I think it should be more clear and should have standards.

I would clarify the rule to permit recording by the public but require an application to be made in writing to the trial judge. That would enable the judge to know and perhaps to advise counsel and the jury and to be alert to potential issues during or following the trial. I would also have some basic rules, such as for personal use only, not for broadcast, not admissible in evidence, and that it cannot be disruptive.

I would have the rule state that conversations between counsel and clients, side bars with the court and statements by jurors (except the verdict) cannot be recorded.

I would also have some categorical exclusions where it would not be permitted absent exceptional circumstances, such as family, underage parties, or sexual crimes.

With these basic rules, I think the interests of the public and the court in properly handling cases could be balanced.

Charles L. Howard

Remarks of Judge David P. Gold and Judge Patrick L. Carroll III

Our subcommittee was charged with promulgating rules for the audio recording of court proceedings by members of the public. As two of the members of this subcommittee, we have concluded that such audio recording by the public presents significant risks to and may often interfere with the orderly and efficient administration of justice. As a result, we are opposed to any rule that would afford members of the public a broad right to utilize recording devices within the courtroom, or to create a presumption that such recording shall be permitted. Recognizing that the Practice Book, as currently written, would appear to permit, in the discretion of the judicial authority, audio recording by members of the public, we are of the opinion that no new rules are necessary in order to ensure openness in court proceedings or to protect the public's right to access.

In reaching this decision, we have considered the following:

1. **What the current rules do and do not permit.** Under Sec. 1-10 (a) of the Practice Book, members of the public are already given the right to use personal computers in a courtroom for the purpose of taking notes of the proceedings. The exercise of this right does not appear to require the prior approval of the judge; to the contrary, it appears that the use of computers for notetaking is presumed proper and is permitted—unless such use is deemed by the judicial authority to be disruptive of the court proceedings.

This same subsection of the Practice Book also appears to recognize that there may be circumstances in which members of the public may wish to utilize other electronic devices, such as audio recording devices, for notetaking.¹ Unlike the use of personal computers, however, use of any other electronic device requires the prior authorization of the judicial authority.

¹ Although the current Practice Book language does not expressly limit the use of other electronic devices to notetaking, such an interpretation appears warranted given the limitation attendant to the use of personal computers—restrictions which are set forth in same subsection. It would appear prudent, however, if Sec. 1-10 (a) is to be revised or amended, to make clear that electronic devices may be used only for purposes of notetaking, and for no other purpose. In fact, given that personal computers either now have, or doubtless soon will have, audio recording capability, the rule should also make clear that personal computers can only be used for *typing*, and not for recording—at least without the permission of the court. While these clarifications may well raise more questions than they answer (see discussion of the California rule, below), we believe that it is appropriate to set forth these restrictions nonetheless.

So, while this subcommittee was charged with promulgating rules regarding the use of audio devices by members of the public, it is important to keep in mind that current rules already afford members of the public the right to seek permission from the judicial authority to make such recordings of court proceedings.

2. The bona fide media already has in place procedures to follow when it wishes to make audio recordings, and, at least under the "Pilot Program" enjoys a presumption which counsels in favor of granting media requests to record.

Under Sec. 1-11C, the so-called "Pilot Program," the media may seek permission from the judge to record court proceedings. While this right has most frequently been exercised by television and print media and has involved the video recording or still photographing of proceedings, the rules currently in place would cover audio recordings as well. In other words, there is already a system in place for media representatives to make audio recordings of court proceedings, and to use those recordings not just for personal notetaking, but for broadcast purposes as well. A reporter seeking to audio record court proceedings—for whatever reason—needs merely to follow the rules and procedures now in place to seek permission of the court.

3. A survey of the court rules in other states appears to disclose that only California permits audio recordings of court proceedings by members of the public.

Based upon the research conducted by Ms. Collins of our subcommittee, it appears that, with the exception of California, no state currently has court rules in place which authorize members of the public to make audio recordings of court proceedings, even with the permission of the court. While we have not ourselves researched the rules of every state, those rules which have been examined (with the notable exception of the court rules of California) expressly limit their scope and applicability to the audio recording of proceedings by bona fide media outlets only. These rules make no reference whatsoever to audio recording by members of the public. While the view of our sister states is, of course, not binding upon us, the absence of a rule in any other state granting a public right to record should, at the very least, signal that we are entering into what are largely uncharted waters.

Although California does provide for audio recording by members of the public, it is important to take note of the narrow parameters of the right there provided. California Rule 1.150 (d) not only requires any member of the public seeking to audio record to secure in advance permission from the judge, it provides further that recording is only to be allowed for the purpose of making personal notes of the proceedings. Moreover, the rule specifies that the recordings, once made, must not be used for any purpose other than as personal notes. These restrictions are notable for two reasons. First, they make clear that the rulemakers in California wanted to ensure that audio recordings by members

of the public would be created and later used only for the benign purposes of notetaking, and for no ulterior motive which might impact upon the fairness of the court proceedings. Second, the language of the restrictions demonstrates the near impossibility of carrying out, and ultimately enforcing, the rulemakers' intention in this regard. In our view, the concept of a "personal notetaking limitation" is likely incapable of definition and implementation. Presumably, a member of the public need only say that he or she wanted to record the proceedings instead of taking written notes in order to satisfy this requirement, and then a court would be left with the unenviable task of determining the truth of what was represented. Equally impossible, of course, would be the court's duty later to assess whether a party who had recorded certain proceedings had made any use of the recording which could be considered "other than as personal notes."

For these reasons, while the California rule is cited with approval by those on this subcommittee who favor the adoption of a similar rule in Connecticut, the shortcomings of the California rule and the obvious problems such a rule would create, actually counsel against its use here in Connecticut.

4. The risk that recordings could be used for illegitimate purposes is too great. In our opinion, it borders on the absurd to suggest that the court could effectively limit the use of a recording after its creation by a member of the public. In addition to the obvious constitutional issues concerning prior restraint, the idea that the court could reliably identify the party responsible for the misuse of the recording, and could fashion a sanction appropriate to such misuse, assumes a set of facts which is wholly unwarranted. Once the recording was made, its owner would be entitled to amend it, doctor it, reproduce it, distribute it, upload it, sell it, or frankly do anything he or she wanted with it. And it is unlikely at best that the court could prevent any such desired use before it was undertaken, or sanction such use if it wished to do so after the fact.

The specter of misuse of such a recording is a very real concern, not merely some pie-in-the-sky scenario. Should a witness to a crime be forced to be subject to the possibility that his or her testimony could be uploaded for the world to listen to on the net? Should a victim who is required in court to describe in graphic detail the crime he or she was forced to endure face the same possibility? For that matter, should any witness ever have to wonder who in the courtroom audience might be recording the proceedings, and the possible use to which that recording may later be put? We believe that the answer to these questions is certainly "no." Victims and witnesses are already subject to extraordinary burdens placed upon them by our justice system. The additional fear and intimidation which would be engendered by the routine use of recording devices in the courtroom by members of the public is wholly unnecessary and unwarranted. The public may attend the proceedings, take notes of what occurs, and even use a personal computer to aid in notetaking. The public can also rely on the media, who now have been granted unprecedented access to court

proceedings, to monitor those proceedings and to ensure that the courts are open and accessible to all.

In this regard, it is in our view simply not enough to say that audio recording should be permitted because the courts are public and what is said in open court is public as well. Nor is it enough to say that audio recording is nothing more than a mechanical alternative to written notetaking which will serve only to heighten or ensure accuracy. These statements may not be untrue, but their simplistic nature does little to inform the complex questions which are raised by the public's audio recording of court proceedings.

In an age where insurance executives from Fairfield County are unwilling to appear at our General Assembly because they are fearful of having their faces and voices broadcast by the media, the justice system must recognize and pay due deference to the very real concerns of victims and witnesses who are forced to endure the same type of fears as they give testimony in the course of a criminal trial involving a defendant who resides in the same community as they do. The specter of audio recording of court proceedings by members of the public will add substantially to the burdens already borne by these victims and witnesses, will likely cause these participants to grow even more reluctant to appear and give testimony, and will impact adversely on the court's effort to get to the truth. The system should be endeavoring to reduce the burdens upon these individuals, not to increase them.

5. The use of audio recording devices by members of the public would also present logistical issues for the judges and marshals. Presumably, if a rule would be adopted that would allow for the use of audio recording devices, there would be certain restrictions on the type of proceedings and the type of witness that could be recorded. Indeed, those supporting audio recording often concede that these types of restrictions would be appropriate, and cite to the similar restrictions that are placed on the media's right to record proceedings for later broadcast. But the ability to enforce the media restrictions is a far easier task than that that would be presented were members of the public allowed to use recording devices. While it is one thing to direct the cameraman from a responsible media outlet to turn off the camera (an instruction which experience shows is quickly and unquestionably followed), it is something else entirely to locate those members of the public in the audience who are recording, direct them to stop recording, and then to ensure that they have heeded the court's order and ceased their recording. Would marshals be required to confiscate the devices during periods where the court has ordered no recording to occur? Should a court merely accept the assurance of a member of the public that the machine was off—where the person's connection to the case and reason for recording was unclear? These questions, and others too numerous to recount here, will certainly arise if public recording is permitted, and just as certainly, have not received anywhere near the attention they deserve before such a radical change to our court procedures is adopted.

6. There should be one, and only one, record of the proceedings.

Subcommittee member Nancy Brown and other representatives of the court reporters and monitors have raised important questions regarding the potential misuse of audio recordings, the potential for frequent challenges to the accuracy of the official record, and genuine concerns about the financial impact such a rule would have on reporters and monitors. We have concluded that these issues are deserving of significant attention, and serve to counsel against the adoption of any rule which broadens the right of the public to make audio recordings of court proceedings.

Conclusion: The concerns expressed above are offered to explain our opposition to the promulgation of rules for the routine audio recording of court proceedings by members of the public.

Remarks of Nancy Brown

My recommendation to the Judicial-Media Committee would be that the public not be allowed to record judicial court proceedings through the use of a personal tape recorder.

My concerns relate primarily to the court record, court reporters and court recording monitors and the affects this could have on them:

- I feel the official, unbiased record being made by the court reporter or monitor should stand as THE record.
- Any recording media is subject to inaudible sections which may cause a person to fill in what they thought was said.
- Discrepancies between and among the official transcript and the "unofficial transcript.
- Labor relations concerns: It is likely that orders for typed transcripts will lessen which will reduce income for the court reporters and court recording monitors.
- Oftentimes things are said off the record such as a sidebar or discussions between counsel and their client that are not intended for the record.
- How could we ensure that the recordings would only be used for personal use? And what is "personal" use?
- People could actually type an inaccurate or altered transcript from an audio recording, and who is to know if it is certified or not? Many times when a transcript is used during a proceeding, nobody looks to see if it is certified. And an interpretation of the recordings could be different so there would be more than one record on one case.
- The audio could be used to challenge the accuracy of the official record resulting in appeals.
- How will one identify who is speaking when listening to the audio?
- The use of recording devices may cause interruption or disturbance in the courtroom.

Remarks of Patrick Sanders

Simply put, I believe that there should be a presumption of openness, as expressed by the Chief Justice, in allowing audio recording of court proceedings. Much as executive and legislative public meetings and hearings are open to citizens and reporters who are using personal recording devices, so should actions taken in a public forum by the state's judiciary. The Judicial Branch cannot justify holding itself to a different standard than other equal branches of state government.

It is clear, from the Branch's communications with the Judicial Council of California that audio recording in that state's courts is a non-issue and has been for more than 20 years. Personal recording devices are incapable of picking up sidebar conversations and don't provide the quality needed to manipulate them or post them on the Internet. They are good for one use – the personal use of the user, to recount the events of a court proceeding.

The arguments from the state's court reporters on this issue are passionate. However, the need for open government, and specifically an open judiciary, overrides the collectively bargained rights of the state's court reporters. It could be argued that the Judicial Branch already allows audio recording of selected court proceedings, through its recently enacted Practice Book rules that allow electronic coverage. I agree that it is completely appropriate for the court to continue to designate court reporters as the only producers of the official court record. However, I disagree with the court reporters' opinion that their members have exclusive rights to record court proceedings for sale and distribution for their personal gain. Courts are a public domain, not monopoly.

Specifically, my proposal is:

A rule should be enacted that permits the use of personal recording devices. Any party, attorney, witness or other interested party should have the opportunity to object in advance if there is a substantial reason to believe that the use of a personal recording device will undermine the legal rights of a party, or will significantly compromise the safety of a witness or other interested person or impact significant privacy concerns.

To the extent practicable, notice that an objection has been filed, and the date, time and location of the hearing on such objection should be placed on the Judicial Branch website. Any person whose rights are at issue may participate in the hearing to determine whether to limit or preclude a personal recording device.

The burden of proving that personal recording devices should be limited or precluded shall be on the person who filed the objection.

The judicial authority, in deciding whether to limit or preclude the use of a personal recording device, shall consider all rights at issue and shall limit or preclude such usage only if there exists a compelling reason to do so,

there are no reasonable alternatives to such limitation or preclusion, and such limitation or preclusion is no broader than necessary to protect the compelling interest at issue.

If the judicial authority has a substantial reason to believe that the use of a personal recording device will undermine the legal rights of a party or will significantly compromise the safety or significant privacy concerns of a party, witness or other interested person, and no party, attorney, witness or other interested person has objected, the judicial authority shall schedule a hearing to consider limited or precluding such usage.

Objections raised during the course of a proceeding to the recording of specific portions of a proceeding will be based on the same standards as above.

Remarks of Thomas B. Scheffey

In theory, the Judicial Media committee was set up to improve understanding and intelligent interaction between the judiciary and journalists. In theory, the current administration under Supreme Court Chief Justice Chase T. Rogers is in favor of transparency, accountability, and demystifying the Judicial Branch as a public institution.

In theory --and in fact -- new Practice Book rule 10-1 and its guidelines allow individuals to tape record arguments and trials, by leave of court. There are, however, no guidelines or procedures spelled out yet to effectuate this, either in the Practice Book or as internal Judicial Branch regulations. At this writing, PB 10-1 has apparently never been used to allow in-court recording.

Last summer, 20 recommendations were made by the Survey Committee. One was to improve courtroom acoustics. Another was to create greater courtroom audio recording feed capability. The time seemed right to make an incremental forward step toward authorizing individual recording devices as a method of improving the accuracy of note-taking during court proceedings. In appellate court oral arguments, and in civil and criminal trials, the concepts at issue are often complex, the distinctions often subtle. Arguments are often made rapidly, with shorthand references by case citation. Fewer and fewer media organizations can afford a full-time court specialist these days, so the work falls to harried, multi-tasking reporters.

Our subcommittee on court recording was given the opportunity to make progress in this important realm, if only by making practical policy recommendations. It appears to me we have come tantalizingly close to making real progress, but ultimately fell short.

We began our four-month effort by narrowing what court recording we would consider. The Judicial Branch has, for decades, made audio recordings of open court proceedings at the trial and appellate levels. These have mostly been on tape, but many are now recorded digitally as computer files.

At the U.S. Supreme Court, audiotapes of oral arguments are available going back to the 1950's. There is even a CD of its "Greatest Hits." It gets glowing five-star reviews on Amazon.com, as a tool for understanding the development of the law and the judicial process.

Nothing similar could be created in Connecticut. Due to a lack of vision in the past, Connecticut has routinely destroyed its audiotapes, under general paper document retention rules. It only stopped doing so in 1999, under Chief Court Administrator Robert Leuba. This information, and other valuable insight into the state of court recordings nationally, came to light through the research of the subcommittee's dedicated staffer, Heather Nann Collins.

One of the more stunning things we learned was that our federal court system has a strikingly different approach to digital court recordings. Through its nationwide PACER document retrieval system, digital recordings of court hearings and trials in many federal courts can be obtained for \$26 per compact disk, or just eight cents for a computer download of an audio file of an entire trial.

In the federal courts, written transcripts purchased through official stenographers are, by rule, available to the public after a 90-day period, after their peak commercial value to litigants has diminished.

In contrast, written transcripts of Connecticut trials, no matter how old, never officially enter the public domain. Evidently, there is a complete vacuum of Judicial Branch policy about the legally and historically important archive of tapings and transcripts. However, to save time, our subcommittee decided not to explore it at any level.

Instead we limited our scope to the use of recording devices in court by members of the public. As reflected in his position paper, Hartford Superior Court Judge David Gold was the staunchest opponent of audio recording on our six person subcommittee. The two media representatives were outnumbered, even before Patrick Sanders resigned. Judge Gold's questions were demanding, and impossible to answer to his satisfaction. He wanted to know how judges could limit subsequent copying of a recording made in open court. He asked how a judge could prevent such material from winding up on the Internet. He wanted to know how the court could be assured that no one would commercially profit from a recording of what is said in open court.

First Amendment limits on the restriction of free speech mean a judge's powers would be limited.

Judge Gold posed other situations where in-court recordings might be used in connection with a tort or crime.

In the various hypotheticals he posited -- court recordings used to threaten people, or to commit fraud -- the inherent remedy is the punishment for the underlying crime or tort itself. Civil or criminal contempt sanctions could also be imposed. The court is far from powerless.

He wanted to know how a judge could be sure that statements in court would not wind up being ridiculed, parodied or lampooned, or taken out of context. Gold expressed apprehension that people in pain would be victimized. If our free-speaking nation's history is any indicator, the ripest targets for satire are those who wield their power with arrogance, not the "little people."

One of the reasons the proceedings and judgments of our courts command the public's respect is because they are open, accountable and verifiable. Public trust and confidence in the system are only enhanced when the process unfolds in the light.

Our only area of discussion was the detriments of recording, with virtually no time spent discussing the benefits or reasons to do so.

In the subcommittee's deliberations, there was much discussion of court participants' alleged rights to privacy and confidentiality in open court. There were concerns expressed that attorney to client, lawyer to lawyer or sidebar conversations would be improperly overheard or recorded. I believe those fears are greatly exaggerated, and have never experienced or heard about a problem in this area.

The subcommittee heard and read testimony from professional court monitors and reporters. They predicted that allowing anyone besides themselves to have a right to record – no matter how limited – would have serious negative consequences. All their worst-case scenarios were hypothetical.

No common ground?

A great deal of potentially productive time was lost because the subcommittee did not agree, until near the end, that PB 10-1 actually allowed use of a recorder with a judge's permission. The meaning of the policy on the subject, promulgated by the Chief Court Administrator, was verified in writing through the court's office of Internal Affairs, but still was deemed a debatable issue. The one subcommittee member who could have authoritatively vouched for the CCA's intended meaning, Assistant Chief Court Administrator Patrick Carroll, had a perfect record of non-attendance.

This was unfortunate. It is highly unlikely that this subcommittee would have been launched but for the fact that the CCA expressly authorized the possibility of in-court recordings by members of the public, in written Judicial Branch policy.

Although Judge Carroll didn't engage in any discussion with the non-judge members of the subcommittee, he has endorsed Judge Gold's positions.

Very late in the process, the two judges posit that the media guidelines in the Practice Book should cover the recording process. This idea was never raised or discussed in any meeting. The audiovideo guidelines appear to be designed with full-blown coverage of high-profile trials, calling for at least three days advance notice, appointment of a press pool representative, and logistical planning by the office of External Affairs and courthouse officials. Unlike 10-1, the media rules would not permit a reporter or a litigant to conveniently memorialize a critical

segment of the proceedings, such as a ruling or instructions from the bench, even if the judge wished it to happen.

In California, where the public and the press have been allowed to use recorders in court for many years, a three-day advance notice requirement for recording has proved impractical, and very often had to be waived. There, judges issue a written permission on a single sheet form. It prompts the judge to consider a list of the benefits and detriments of using a recorder in court.

Much of the research unearthed by and for our subcommittee is surprising and very current. During the four months that we have been meeting, the federal courts have expanded the number of courts offering eight-cent-per trial audio file downloads. Courts in other states have experimented with allowing reporters to “Twitter” about the developments in an ongoing trial – a form of inside-the-courtroom broadcasting. In Boston, a federal judge allowed the New York-based Courtroom View Network to webcast a much-followed music-sharing case brought by the Recording Industry Association of America. The judge considered the court’s 1990 restrictions on recording to be ‘advisory,’ but was reversed by a First Circuit panel. Although concurring that the rule applied, one judge questioned its current relevance, since it required “such a disagreeable outcome.” Judge Kirmet V. Lipez (sic) concluded that the new technology creates “an unprecedented opportunity to increase public access to the judicial system in appropriate circumstances.”

Another controversial issue is currently unfolding in Florida, where judges are considering whether to create a rule making the written transcript the official record, and reversing the “open records” status of the court’s electronic recording. According to testimony by Florida media companies, journalists had previously been able to use inexpensive audio recordings to write about trials they had not been able to attend, or to double-check facts on trials they had covered.

Compromise avoided

In our subcommittee discussions, the media members were asked their views on ways a judge could limit or control who is granted permission to use a recorder in court. As a general matter, Connecticut journalists have not been eager to claim greater legal rights or protections than those enjoyed by the general public. They have even been divided on whether a press shield law is appropriate. The process of coming to a compromise was impeded by our method of communicating our views at the end. Each committee member, except Judge Carroll, wrote statements emailed to the chair. Members did not share their views with each other before writing and it was not clear whether our statements –or others—could be circulated with other outside groups, and they were not.

Our chairman concluded that the judges and the journalists' views were irreconcilable, even before a single proposal was recommended. I believe there has been common ground all along.

California has a lengthy history of allowing members of the public to record trials. Collins, our staff person, wrote to court officials there, and found that a rule allowing public recording has not been a source of difficulties. She was told it has spared some litigants the cost of purchasing a court transcript, but it is not clear whether those parties would actually have been customers for an official written transcript. An individual's unofficial tape recording, or a transcript of it, cannot substitute for the official record needed to bring an appeal, in any state.

Another way that other jurisdictions' courts regulate who can use a tape recorder is with a brief licensing program. It specifies any court-imposed limitations on who, what and when proceedings can be recorded. Canada takes this approach, Collins found.

In another unexplored realm of compromise, the subcommittee did not consider limiting recording to appellate courts. It did not attempt to integrate PB 10-1 with the Practice Book restrictions on media recording, which already excludes juvenile, family, sexual offense and trade secret cases.

I feel that the rule for the public use of recording devices could mesh with media recording rules in a practical manner, and that the research to date has established a sound foundation for moving forward on this issue.

Thomas B. Scheffey

Exhibit 2: Connecticut Practice Book Rule 1-10 (2009)**Sec. 1-10. Possession of Electronic Devices in Court Facilities**

(Amended June 29, 2007, to take effect Jan. 1, 2008.)

(a) Personal computers may be used for notetaking in a courtroom. If the judicial authority finds that the use of computers is disruptive of the court proceeding, it may limit such use. No other electronic devices shall be used in a courtroom unless authorized by a judicial authority or permitted by these rules.

(b) The possession and use of electronic devices in court facilities are subject to policies promulgated by the chief court administrator. (P.B. 1978-1997, Sec. 7B.) (Amended June 20, 2005, to take effect Oct. 1, 2005; June 26, 2006, subsection (b) extended for a one year period commencing Oct. 1, 2006; amended June 29, 2007, to take effect Jan. 1, 2008; June 29, 2007, subsection (b) extended for a one year period commencing Oct. 1, 2007; amended June 30, 2008, to take effect Aug. 1, 2008.)

HISTORY—2009: Prior to August, 2008, this section read:

"(a) Personal computers may be used for note-taking in a courtroom, but no other electronic devices shall be allowed in a courtroom unless authorized by a judicial authority or permitted by these rules.

"(b) An attorney in good standing in this state, who has in his or her possession a picture identification card authorized by the office of the chief court administrator indicating that he or she is an attorney, may possess in a court facility an electronic device, including, but not limited to, a cellular telephone, portable computer, or personal digital assistant, which device has the capacity to broadcast, record, or take photographs. Such devices shall not be used in any court facility for the purpose of broadcasting or recording audio or video, or for any photographic purposes, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use such devices in such office. Cellular telephones may be used in a court facility for telephonic purposes to transmit and receive voice signals only, but in no event shall they be used in any courtroom, lockup, chambers, or offices, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use a cellular telephone in such office. Personal computers may be used, with the permission of the judicial authority, in a courtroom in conjunction with the conduct of a hearing or trial. A violation of this subsection may constitute misconduct or contempt. This subsection shall be in force for a period of one year from its effective date, unless terminated sooner or extended beyond said period by vote of the judges

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of the superior court, to enable an analysis of the effects of this subsection to be made and reported to such judges. This subsection shall not apply to attorneys who are employees of the Judicial Branch. Such attorneys shall comply with Judicial Branch policies concerning the possession and use of electronic devices in court facilities. This subsection shall not be deemed to restrict in any way the possession or use of electronic devices in court facilities by judges of the superior court, judge trial referees, state referees, family support magistrates or family support referees."

COMMENTARY—2009: The revision to subsection (a)

allows the judicial authority to limit the use of personal computers in a courtroom if it finds that such use is disruptive of the proceedings. The changes also allow other electronic devices to be brought into a courtroom, but provide that they may not be used unless authorized by a judicial authority or permitted by rule.

Subsection (b) recognizes that the chief court administrator has the supervision, care and control of court facilities. See General Statutes §§ 4b-11 and 6-32f.

Sec. 1-10A. Definition of "Media"

For purposes of these rules, "media" means any person or entity that is regularly engaged in the gathering and dissemination of news and that is approved by the office of the chief court administrator. (Adopted June 29, 2007, to take effect Jan. 1, 2008.)

Sec. 1-10B. Media Coverage of Court Proceedings; In General

(a) The broadcasting, televising, recording or photographing by the media of court proceedings and trials in the superior court should be allowed subject to the limitations set out in this section and in Sections 1-11 through 1-11C, inclusive.

(b) No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

- (1) Family relations matters as defined in General Statutes § 46b-1;
- (2) Juvenile matters as defined in General Statutes § 46b-121;
- (3) Proceedings involving trade secrets;
- (4) In jury trials, all proceedings held in the absence of the jury;
- (5) Proceedings which must be closed to the public to comply with the provisions of state law;
- (6) Any proceeding that is not held in open court on the record.

(c) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(d) No broadcasting, televising, recording or photographing of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(e) There shall be no broadcasting, televising, recording or photographing of the process of jury selection nor of any juror.

(Adopted June 29, 2007, to take effect Jan. 1, 2008.)

Exhibit 2a: Connecticut Chief Court Administrator's Guidelines**The Use and Possession of Electronic Devices in Superior Court Facilities**

The following guidelines are subject in all cases to a judge or other judicial authority issuing additional specific orders or guidelines for the use of electronic devices in his or her courtroom or hearing:

A person *may have* any of the following electronic devices:

- A cell phone
- A camera phone
- A personal computer with or without video or audio recording capabilities
- A digital or tape audio recorder
- A personal digital assistant (PDA) with or without video or audio recording capabilities
- Any other electronic device that can broadcast, record, or take photographs

A person *may use* a cell phone:

- to make phone calls, send and receive e-mails and/or send and receive text messages only, but not in a courtroom, lockup, chambers, or offices

A person is *prohibited from using* a cell phone, or any other electronic device to:

- take pictures
- take videos
- make sound recordings
- broadcast sound
- broadcast still or moving images (video)

Exceptions with the permission of the judge or other judicial authority;

- A person may use a personal computer for note-taking in a courtroom.
- A person who is a participant in a hearing or trial may use a personal computer or other electronic device in a courtroom.
- Other electronic devices may be used in a courtroom if permitted by the judge or other judicial authority or permitted by court rules.

Miscellaneous:

A person may use an electronic device to make an audio recording of a public meeting taking place in a court facility.

Any person employed in a state's attorney's office or a public defender's office that is located in a court facility may use a cellular telephone or other electronic device in such office and may authorize another person to use a cellular telephone or other electronic device in such office.

These guidelines do not apply to employees of the Judicial Branch who must comply with Judicial Branch policies concerning the possession and use of electronic devices in court facilities.

These guidelines do not restrict in any way the possession or use of electronic devices in court facilities by judges of the superior court, judge trial referees, state referees, family support magistrates or family support referees or the authority of such judicial authorities to permit others to use electronic devices in chambers.

Hon. Barbara M. Quinn

Chief Court Administrator

Effective August 1, 2008 and revised on January 5, 2009

in accordance with Practice Book § 1-10

Electronic Devices in Supreme and Appellate Courts

Exhibit 3: New Jersey:**Supreme Court Rules for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey****GUIDELINES FOR STILL AND TELEVISION CAMERA AND AUDIO COVERAGE OF PROCEEDINGS IN THE COURTS OF NEW JERSEY****Supreme Court Guidelines for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey**

[Approved October 2003]

PURPOSE

Canon 3A(9) of the Code of Judicial Conduct, adopted by the Supreme Court effective September 1994, presumes open access for bona fide media to broadcast, televise, electronically record, or photograph proceedings in the courts. The purpose of these revised guidelines is to establish the procedures that are to be followed to effectuate the Canon.

Code of Judicial Conduct Canon 3A(9)

“A judge should permit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court and subject to the restrictions contained therein.”

GOALS

The goals of these revised *Supreme Court Guidelines* are as follows:

- to provide access to the courts while ensuring fairness;
- to avoid delay or interference in court proceedings;
- to maintain appropriate courtroom decorum;
- to provide clear and unambiguous procedural requirements;
- to maintain appropriate security, in accordance with local court or county security plans;
- to provide general applicability that will avoid the need to revise these guidelines frequently.

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GUIDELINE 1. GENERAL CONSIDERATIONS AND DEFINITIONS

(a) Fair Administration of Justice. It is incumbent upon the court and trial judge in supervising media coverage to ensure the fair administration of justice and to issue such orders as are required to ensure that this goal is met.

(b) The Court. These guidelines apply to proceedings in the Supreme Court, Appellate Division, Superior Court, Tax Court, and Municipal Court. Whenever these guidelines refer to a decision to be made by "the court," such decisions shall be made by the Chief Justice or the Supreme Court Clerk for matters in the Supreme Court; by the Presiding Judge for Administration or the Appellate Division Clerk for matters in the Appellate Division; by the Assignment Judge for the vicinage where the court facility is located or by a judge designated by the Assignment Judge for matters in Superior Court; by the

Presiding Judge of the Tax Court for matters in the Tax Court; and by the Presiding Judge or a judge designated by the Presiding Judge for Municipal Court matters.

(c) Persons Authorized.

(1) Only media representatives with bona fide press credentials or with identification issued by a bona fide media outlet, with those credentials or identification including a photograph of the operator, are permitted to photograph, provide live broadcasts and/or electronically record for future broadcast, using audio and/or video equipment, at court proceedings.

“Bona fide press credentials” are defined as those issued by the New Jersey Press Association, in association with the New Jersey Broadcasters Association and the New Jersey Cable Association and authorized through the New Jersey State Police and the Office of the Attorney General.

“Bona fide media outlet” is defined as an organization that reports the news and whose news reports are made available to the general public by being published or broadcast on a regular schedule by television, radio, retail sales, or by subscription where there is no membership or dues requirement to subscribe.

(2) Print media representatives, with bona fide press credentials as described above or with identification issued by a bona fide media outlet showing a photograph of the journalist, may tape-record proceedings as an additional reportorial tool, with the following conditions:

(a) The recording device shall be unobtrusive, limited to the size category commonly known as hand-held, mini-cassette, micro-cassette or standard portable cassette.

(b) The recording device shall be placed in an appropriate position and may not be moved in any way as to attract attention.

(c) The recording device shall not produce distracting sound, either from the equipment or its operation. The tape may not be rewound or played back while court is in session.

(d) The court may order that tape recording cease if at any time it determines that the equipment or its operator is interfering with the proceedings.

(e) The recording may not be used in any court proceeding and may not be used to contest the accuracy of the official court record.

(f) The recording may not be represented as an official transcript in any manner and for any purpose.

(g) The recording may not be broadcast or offered for broadcast.

(d) Consent of Parties Not Required. Permission for media representatives, as defined in these guidelines, to electronically record and/or broadcast public court proceedings using audio and/or video equipment shall not be conditioned on obtaining consent of any party, any party's attorney, or any witness or participant in a proceeding.

(e) Protection of Conference with Counsel. To protect the attorney-client privilege and effective right to counsel, there shall be no video images recorded or broadcast or audio pickup recorded or broadcast of conferences that occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the trial judge held at the bench.

(f) Jury Sequestration. In any case where a jury has been impaneled, the jury shall not be sequestered solely because of any activity authorized by these guidelines. The right of the trial judge to order sequestration for other lawful reason is preserved.

(g) No Photographing or Recording of Jurors. For jury trials, there shall be no photographic or electronic images or audio recordings of the jury or of any individual juror that would permit recognition of any juror. This proscription shall continue throughout the entire proceeding.

(h) Order to Exclude or Vary Coverage. Subject to law, during the conduct of any hearing or trial, cameras and broadcast sound recording equipment may be ordered excluded by the judge. The Assignment Judge, either upon recommendation by the trial court judge or on the Assignment Judge's own motion, may terminate, limit, or otherwise vary the conditions of coverage previously permitted in any case or proceeding.

(i) Fair Proceeding. Television, audio, or still photography coverage may be excluded in any proceeding where such coverage would cause a substantial increase in the threat of or the potential for harm to a participant in the case or would otherwise interfere with the achievement of a fair proceeding.

(j) Appellate Review. Any party or media representative aggrieved by any decision concerning coverage may move for leave to appeal the decision to the Appellate Division where the decision was by a trial court or to the Supreme Court where the decision was by the Appellate Division. Such motions shall be made promptly after any such decision and, if possible, no more than one day thereafter. Such motions shall be granted only where the moving papers clearly demonstrate manifest abuse of discretion by the court.

GUIDELINE 2. REQUESTING PERMISSION TO PHOTOGRAPH, ELECTRONICALLY RECORD OR BROADCAST

(a) Permission Required. Media representatives with bona fide press credentials as defined in these guidelines may, with reasonable advance notice, ask the court for permission to photograph, electronically record and/or broadcast specific court

proceedings. Any such requests to cover proceedings shall be in writing unless because of time constraints an oral request is necessary.

(b) Proceeding in Progress. Applications to cover a proceeding already in progress may be considered at the discretion of the court.

(c) Certain Proceedings Excluded. Not every court proceeding is open to photographers or electronic media for recording and/or broadcasting.

(1) Television, audio or still photography coverage is prohibited at the following: matters involving trade secrets; juvenile proceedings, even under those circumstances where reporters are permitted to be in attendance; termination of parental rights proceedings; child abuse/neglect proceedings; proceedings involving custody of children; proceedings under the Prevention of Domestic Violence Act; proceedings involving charges of sexual contact or charges of sexual penetration or attempts thereof when the victim is alive. When the victim in a matter involving charges of sexual contact or charges of sexual penetration or attempts thereof is deceased, the court may deny permission for coverage in consideration of the victim's survivors or analogous concerns.

(2) Television, audio or still photography coverage of victims of crime under 18 years of age at the time of trial and of witnesses under 14 years of age at the time of trial shall be allowed only at the discretion of the trial judge.

(3) While television, audio or still photography coverage is prohibited at juvenile proceedings, coverage of defendants 17 years of age who are charged with motor vehicle violations is permissible.

(d) Pretrial Conference. The court may, at its discretion, require the media to attend a pretrial conference prior to making a decision on a request for coverage. The purpose of such pretrial conference is limited to decisions on camera and audio coverage and not to substantive matters unrelated to these guidelines. Any such required pretrial conference should include the court, the attorneys, media personnel assigned to cover the proceedings, and any others as identified by the court, with all matters discussed to be consistent with these guidelines.

(1) At such pretrial conference, the judge shall review with all present the provisions of these guidelines. Any objections to electronic video/audio recording or still photography media coverage in the particular matter shall be considered at this conference. The judge shall consult with representatives of the news media before imposing any special limitations or restrictions on electronic video/audio recording or still photography.

(2) No formal pretrial order is required. However, the court, subsequent to the pretrial conference, must reduce to writing or establish a stenographic record of the decisions reached at the pretrial conference, including setting forth any and all conditions imposed on the media representatives covering the proceedings.

GUIDELINE 3. GENERAL MEDIA REQUIREMENTS AND RESPONSIBILITIES

(a) Video Cameras and Operators. Not more than two portable electronic video television cameras, each operated by one person, shall be permitted at any proceeding in any court, except that the judge will have discretion to allow additional cameras and/or personnel upon application and for good cause shown. Any reporter seeking to use any other technology to record images shall make a specific application to the court in advance for permission to do so.

(b) Still Cameras and Operators. Not more than two still cameras, with no more than two lenses and related equipment for print purposes, each operated by one photographer, shall be permitted at any proceeding in any court, except that the judge will have discretion to allow additional cameras and/or personnel upon application and for good cause shown. Any reporter seeking to use any other technology to record images shall make a specific application to the court in advance for permission to do so.

(c) Audio Systems. Not more than one audio system for broadcast purposes shall be permitted at any proceeding in any court. Audio pickup for all broadcasts shall be accomplished from existing audio systems present in the court facility. If no technologically suitable audio system exists in the particular court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the court. Any reporter seeking to use any other technology to record sound for broadcast shall make a specific application to the court in advance for permission to do so.

(d) Pooling Capability Requirements. Any media representative who obtains permission from the court to cover proceedings shall provide pooling capabilities so that other media representatives may share in the coverage. For electronic media, pooling requires, at a minimum, that the pooling supplier have available capabilities to pool by providing multiple electronic connections for other media representatives desiring participation by the use of their own recording equipment or by direct-line hook-up. Any media representative who has obtained court permission to cover proceedings shall pool its video/audio signals or photographs at the request of other media representatives without requiring said other representatives to obtain further court approval.

(e) Pooling Arrangements. Participating members of the electronic media and participating still photographers are to make their own pooling arrangements, including the establishment of necessary procedures, the provision of appropriate pooling equipment as described in these guidelines, and selection of a pool representative without calling upon the court to mediate any dispute as to the appropriate media representative, costs or equipment authorized for a particular proceeding.

GUIDELINE 4. EQUIPMENT, SOUND AND LIGHT CRITERIA

(a) Sound or Light Distractions. No electronic video television cameras, still photographic cameras, or audio broadcast equipment that produces distracting sound or light either from the equipment itself or from its operation shall be used to cover judicial proceedings. The court may, at its discretion, require proof that equipment meets these guidelines before approving the equipment for use at a particular proceeding. Further, the court may order operation of any equipment to cease if that equipment does not meet these guidelines.

(b) Temporary Artificial Light. Absent prior approval from the court, no temporary artificial lighting device of any kind shall be employed in connection with any electronic video television camera or still photographic cameras.

(c) Adding Light Sources. With the approval of the court and the concurrence of the owner of the building in which a court facility is situated, modifications and additions may be made to light sources existing in the facility, provided that any such modifications or additions are installed and maintained at media expense.

GUIDELINE 5. PLACEMENT OF EQUIPMENT AND OPERATORS

(a) Placing/Removing Equipment. Photographic equipment and electronic equipment, including still cameras, microphones, and audio/video recording equipment for print, broadcast and television coverage, shall be placed in or removed from the courtroom facility only prior to commencement or after adjournment of proceedings each day, or during a recess in the proceedings.

(b) Courtroom Placement. Still photographers and camera equipment, electronic video television camera equipment, and operators and broadcast audio equipment shall be positioned only in areas designated by the court. Video recording equipment that is not a component part of the television camera shall be located in an area remote from the courtroom. The areas designated shall provide reasonable access to coverage.

(c) Placement in Other Areas. When the need arises, the court may provide additional rooms or areas where media representatives may view the proceedings. The media may, at their own expense and with their own equipment, make the necessary pooling arrangements to bring an electronic signal into such additional rooms or areas for viewing and for video/audio recording of the proceedings. All television camera and audio equipment not designated by the court to be in the courtroom shall be positioned only in such rooms or areas.

(d) Fixed Locations for Operators and Equipment. Operators of still cameras, microphones, and audio/video recording equipment shall assume fixed positions within the designated location in the courtroom and, once positioned, shall not move or be

moved about the courtroom in any way in order to photograph or record court proceedings. Noncompliance with this provision may be cause for the court to order the operator and equipment out of the courtroom.

GUIDELINE 6. PHOTOGRAPHING AND AUDIO/VIDEO RECORDING OUTSIDE THE COURTROOM

(a) Courthouse Corridors. No photographs may be taken or electronic audio/video recording made in the corridor immediately outside a courtroom, or on the floor on which a courtroom is located, without express advance authorization by the court and the appropriate facility security authorities.

(b) Courthouse Grounds and Environs. Except as otherwise provided in these guidelines, the court will place no limitations on photographing or electronic audio/video recording on the courthouse grounds or environs. However, media representatives are cautioned to seek appropriate approval from facility security authorities and the owner of such facility before doing so.

(c) Clear Entrance and Exit. In cooperation with appropriate facility security authorities, the court will take appropriate measures to ensure that the entrances and exits to the courthouse are kept clear in order that all participants in the proceedings may enter and leave the courthouse safely and without harassment.

(d) Events Not Court-Related. Media representatives must seek approval from the appropriate non-Judiciary authorities to photograph or electronically record persons, places, or events in any building where a courtroom is located where those persons, places, or events have no relation to the courts, a courtroom or to a court proceeding.

GUIDELINE 7. CEREMONIAL PROCEEDINGS

Permission for all still photography, electronic video television cameras, and audio coverage of ceremonial proceedings involving the Judiciary must first be obtained from the court, but will be granted routinely, subject to compliance with the foregoing guidelines where applicable.

Electronic and Photographic Coverage in Court



Supreme Court Rule 122

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Electronic and Photographic Coverage of Public Judicial Proceedings

Electronic and still photographic coverage of public judicial proceedings in the court room and areas immediately adjacent thereto during sessions of court may be permitted in accordance with the following guidelines:

- a. No electronic or still photographic coverage of juvenile court proceedings shall be permitted, except that such coverage may be permitted in adoption proceedings for the purpose of memorializing the event, with the agreement of the parties to the proceeding and the court.
- b. Electronic and still photographic coverage of public judicial proceedings other than the proceedings specified in paragraph (a) above may be permitted in the sole discretion of the judge of the particular proceeding giving due consideration to the following factors:
 - (i) The impact of coverage upon the right of any party to a fair trial;
 - (ii) The impact of coverage upon the right of privacy of any party or witness;
 - (iii) The impact of coverage upon the safety and well-being of any party, witness or juror;
 - (iv) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings;
 - (v) The adequacy of the physical facilities of the court for coverage; and
 - (vi) Any other factor affecting the fair administration of justice.
- c. Electronic and still photographic coverage of the appearance or testimony of a particular witness may be prohibited if, in the sole discretion of the judge of the proceeding, the judge determines that such coverage would have a substantially greater adverse impact upon the witness or his or her testimony than non-electronic and non-photographic coverage would have.
- d. Nothing in paragraph (b) or (c) above shall be construed as requiring the judge of the particular proceeding to state grounds or make findings in support of the determination to permit, limit or preclude electronic and still photographic coverage, and the exercise of the judge's discretion in limiting or precluding such coverage shall not be subject to judicial review.
- e. The law generally applicable to inclusion or exclusion of the press or public at court proceedings or during the testimony of particular witness shall apply to the coverage hereunder.
- f. Requests by the media for coverage shall be made to the judge of the particular proceeding sufficiently in advance of the proceeding or portion thereof as not to delay or interfere with it. The judge shall notify all parties and witnesses of the request.


<http://www.supreme.state.az.us/media/archive/misc/rule122.htm> (1 of 3) [5/1/2009 2:21:47 PM]

Electronic and Photographic Coverage in Court

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- g. Objections of a party to coverage must be made on the record prior to commencement of the proceeding or portion thereof for which coverage is requested. Objections of a non-party witness to coverage of his or her appearance or testimony may be made to the judge at any time. Any objection not so made will be deemed waived. This provision shall not diminish the judge's authority to preclude or limit coverage of a proceeding in the judge's sole discretion as above provided.
 - h. Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.
 - i. Individual journalists may use their personal audio recorders in the courtroom, but such usage shall not be obtrusive or distracting and no changes of tape or reels shall be made during court sessions. In all other respects, news reporters or other media representatives not using cameras or electronic equipment shall not be subject to these guidelines.
 - j. No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in such proceeding or in any retrial or appeal thereof.
 - k. Coverage of jurors in a manner that will permit recognition of individual jurors by the public is strictly forbidden. Where possible, cameras should be placed so as to avoid photographing jurors in any manner.
 - l. There shall be no audio recording or broadcasting of conferences in the court room between attorneys and their clients, between attorneys, or between attorneys and the court.
 - m. It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures which meet the approval of the judge of the particular proceeding prior to any coverage and without disruption to the court. If necessary the media representatives shall elect a spokesperson to confer with the court.
 - n. No more than one television camera and one still camera mounted on a tripod, each with a single camera operator, shall be permitted in the court room for coverage at any time while court is in session. The broadcast media shall select a representative to arrange the pooling of media participants. The court shall not participate in the pooling agreement.
 - o. The judge of a particular proceeding shall, in a manner which preserves the dignity of the proceeding, designate the placement of equipment and personnel for electronic and still photographic coverage of that proceeding, and all equipment and personnel shall be restricted to the area so designated. Whenever possible, media equipment and personnel shall be placed outside the court room. Videotape recording equipment not a component part of a television camera shall be placed outside the court room. To the extent possible, wiring shall be hidden, and in any event shall not be obtrusive or cause inconvenience or hazard. While the court is in session, equipment shall not be installed, moved or taken from the court room, nor shall photographers or camera operators move about the court room.
 - p. All persons engaged in the coverage permitted hereunder shall avoid conduct or dress which may detract from the dignity of the proceedings.

<http://www.supreme.state.az.us/media/archive/misc/rule122.htm> (2 of 3) [5/1/2009 2:21:47 PM]

Electronic and Photographic Coverage in Court

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- q. If possible, media equipment shall be connected to existing court room sound systems. No flash bulbs, strobe lights or other artificial lights or any kind shall be brought into the court room by the media for use in coverage of a proceeding. Where the addition of higher wattage light bulbs, additional standard light fixtures, additional microphones or other modifications or improvements are sought by the media, the media, through their spokesperson, shall make their recommendations to the presiding judge of the Superior Court, who may direct whatever modifications or improvements deemed necessary. Any such modifications or improvements shall be made and maintained without public expense.
 - r. Television or still cameras which produce distracting sound shall not be permitted. In this regard, the presiding judge may consider a still camera acceptable so long as it is contained in a "blimp" system or is the type of camera such as a Nikon F4 with a Nikon CS-13 camera blimp (otherwise known as a "corduroy sock") which effectively muffles camera sounds.
 - s. Cameras and microphones used in the coverage permitted hereunder shall meet the "state of the art." A camera or microphone shall be deemed to meet the "state of the art" when equal in unobtrusiveness, technical quality and sensitivity to equipment in general usage by the major broadcast stations in the community in which the court room is located. The current "state of the art" for television cameras shall be met by cameras meeting or exceeding the performance levels of the RCA TK-76 camera system or the Ikegami HL-77 camera system or the Sony BP300 camera system.
 - t. Any questions concerning whether particular equipment complies with these guidelines shall be resolved by the presiding judge of the Superior Court or designee.
 - u. To facilitate implementation of this rule, the presiding judge of the Superior Court may appoint an advisory committee to make recommendations regarding improvements affecting media coverage of judicial proceedings.
 - v. In the case of coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, references herein to the "judge of the particular proceeding" or the "presiding judge of the Superior Court" shall mean the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as the case may be.

Added June 15, 1993, effective Sept. 1, 1993. Amended nunc pro tunc July 27, 1993; nunc pro tunc August 30, 1993.

27 January 2005

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a determination made by a presiding judge or another judicial officer within 10 days of the date of the notice of determination by filing a petition for extraordinary relief in a court of superior jurisdiction.

(Subd (g) amended effective January 1, 2006.)

(h) Duration of accommodations

The accommodation by the court must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified. The court may provide an accommodation for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

(Subd (h) amended effective January 1, 2006.)

Rule 1.100 amended and renumbered effective January 1, 2007; adopted as rule 989.3 effective January 1, 1996; previously amended effective January 1, 2006.

Chapter 6. Public Access to Court Proceedings

Rule 1.150. Photographing, recording, and broadcasting in court

Rule 1.150. Photographing, recording, and broadcasting in court

(a) Introduction

The judiciary is responsible for ensuring the fair and equal administration of justice. The judiciary adjudicates controversies, both civil and criminal, in accordance with established legal procedures in the calmness and solemnity of the courtroom. Photographing, recording, and broadcasting of courtroom proceedings may be permitted as circumscribed in this rule if executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected. This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings.

(Subd (a) adopted effective January 1, 1997.)

(b) Definitions

As used in this rule:

- (1) “Media coverage” means any photographing, recording, or broadcasting of court proceedings by the media using television, radio, photographic, or recording equipment.
- (2) “Media” or “media agency” means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, in-house publication, professional journal, or other news-reporting or news-gathering agency.
- (3) “Court” means the courtroom at issue, the courthouse, and its entrances and exits.
- (4) “Judge” means the judicial officer or officers assigned to or presiding at the proceeding, except as provided in (c)(1) if no judge has been assigned.
- (5) “Photographing” means recording a likeness, regardless of the method used, including by digital or photographic methods. As used in this rule, photographing does not include drawings or sketchings of the court proceedings.
- (6) “Recording” means the use of any analog or digital device to aurally or visually preserve court proceedings. As used in this rule, recording does not include handwritten notes on the court record, whether by court reporter or by digital or analog preservation.
- (7) “Broadcasting” means a visual or aural transmission or signal, by any method, of the court proceedings, including any electronic transmission or transmission by sound waves.

(Subd (b) amended effective January 1, 2007; adopted as subd (a) effective July 1, 1984; previously amended and relettered as subd (b) effective January 1, 1997; previously amended effective January 1, 2006.)

(c) Photographing, recording, and broadcasting prohibited

Except as provided in this rule, court proceedings may not be photographed, recorded, or broadcast. This rule does not prohibit courts from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the courthouse or between court facilities if the broadcasts are controlled by the court and court personnel.

(Subd (c) amended effective January 1, 2006; adopted effective January 1, 1997.)

(d) Personal recording devices

The judge may permit inconspicuous personal recording devices to be used by persons in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device must obtain advance permission from the judge. The recordings must not be used for any purpose other than as personal notes.

(Subd (d) amended effective January 1, 2007; adopted as subd (c) effective July 1, 1984; previously amended and relettered as subd (d) effective January 1, 1997; previously amended effective January 1, 2006.)

(e) Media coverage

Media coverage may be permitted only on written order of the judge as provided in this subdivision. The judge in his or her discretion may permit, refuse, limit, or terminate media coverage. This rule does not otherwise limit or restrict the right of the media to cover and report court proceedings.

(1) Request for order

The media may request an order on *Media Request to Photograph, Record, or Broadcast* (form MC-500). The form must be filed at least five court days before the portion of the proceeding to be covered unless good cause is shown. A completed, proposed order on *Order on Media Request to Permit Coverage* (form MC-510) must be filed with the request. The judge assigned to the proceeding must rule on the request. If no judge has been assigned, the request will be submitted to the judge supervising the calendar department, and thereafter be ruled on by the judge assigned to the proceeding. The clerk must promptly notify the parties that a request has been filed.

(2) Hearing on request

The judge may hold a hearing on the request or may rule on the request without a hearing.

(3) Factors to be considered by the judge

In ruling on the request, the judge is to consider the following factors:

- (A) The importance of maintaining public trust and confidence in the judicial system;
- (B) The importance of promoting public access to the judicial system;
- (C) The parties' support of or opposition to the request;
- (D) The nature of the case;
- (E) The privacy rights of all participants in the proceeding, including witnesses, jurors, and victims;
- (F) The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;
- (G) The effect on the parties' ability to select a fair and unbiased jury;
- (H) The effect on any ongoing law enforcement activity in the case;
- (I) The effect on any unresolved identification issues;
- (J) The effect on any subsequent proceedings in the case;
- (K) The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;
- (L) The effect on excluded witnesses who would have access to the televised testimony of prior witnesses;
- (M) The scope of the coverage and whether partial coverage might unfairly influence or distract the jury;
- (N) The difficulty of jury selection if a mistrial is declared;
- (O) The security and dignity of the court;
- (P) Undue administrative or financial burden to the court or participants;
- (Q) The interference with neighboring courtrooms;
- (R) The maintenance of the orderly conduct of the proceeding; and

(S) Any other factor the judge deems relevant.

(4) *Order permitting media coverage*

The judge ruling on the request to permit media coverage is not required to make findings or a statement of decision. The order may incorporate any local rule or order of the presiding or supervising judge regulating media activity outside of the courtroom. The judge may condition the order permitting media coverage on the media agency's agreement to pay any increased court-incurred costs resulting from the permitted media coverage (for example, for additional court security or utility service). Each media agency is responsible for ensuring that all its media personnel who cover the court proceeding know and follow the provisions of the court order and this rule.

(5) *Modified order*

The order permitting media coverage may be modified or terminated on the judge's own motion or on application to the judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered under the application must be given to the parties and each media agency permitted by the previous order to cover the proceeding.

(6) *Prohibited coverage*

The judge may not permit media coverage of the following:

- (A) Proceedings held in chambers;
- (B) Proceedings closed to the public;
- (C) Jury selection;
- (D) Jurors or spectators; or
- (E) Conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench.

(7) *Equipment and personnel*

The judge may require media agencies to demonstrate that proposed personnel and equipment comply with this rule. The judge may specify the placement of media personnel and equipment to permit reasonable media coverage without disruption of the proceedings.

(8) *Normal requirements for media coverage of proceedings*

Unless the judge in his or her discretion orders otherwise, the following requirements apply to media coverage of court proceedings:

- (A) One television camera and one still photographer will be permitted.
- (B) The equipment used may not produce distracting sound or light. Signal lights or devices to show when equipment is operating may not be visible.
- (C) An order permitting or requiring modification of existing sound or lighting systems is deemed to require that the modifications be installed, maintained, and removed without public expense or disruption of proceedings.
- (D) Microphones and wiring must be unobtrusively located in places approved by the judge and must be operated by one person.
- (E) Operators may not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction.
- (F) Equipment or clothing must not bear the insignia or marking of a media agency.

(9) *Media pooling*

If two or more media agencies of the same type request media coverage of a proceeding, they must file a joint statement of agreed arrangements. If they are unable to agree, the judge may deny media coverage by that type of media agency.

(Subd (e) amended effective January 1, 2007; adopted as subd (b) effective July 1, 1984; previously amended and relettered as subd (e) effective January 1, 1997; previously amended effective January 1, 2006.)

(f) Sanctions

Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings of the court and may be the basis for an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions as provided by law.

(Subd (f) amended and relettered as subd (f) effective January 1, 1997; adopted as subd (e) effective July 1, 1984.)

Rule 1.150 amended and renumbered effective January 1, 2007; adopted as rule 980 effective July 1, 1984; previously amended effective January 1, 1997, and January 1, 2006.

Chapter 7. Form and Format of Papers

Chapter 7 adopted effective January 1, 2008.

Rule 1.200. Format of citations

Rule 1.200. Format of citations

Citations to cases and other authorities in all documents filed in the courts must be in the style established by either the *California Style Manual* or *The Bluebook: A Uniform System of Citation*, at the option of the party filing the document. The same style must be used consistently throughout the document.

Rule 1.200 adopted effective January 1, 2008.

Exhibit 6, Letter from California Court spokesman

From: Carrizosa, Philip [Philip.Carrizosa@jud.ca.gov]
Sent: Thursday, March 05, 2009 1:38 PM
To: Collins, Heather
Subject: RE: Question from the Connecticut Judicial Branch
Hello, Ms. Collins!

My apologies for the delay in responding. Our communications office has been extremely busy this week preparing for today's California Supreme Court arguments in the same-sex marriage case (which are being argued as I write this). We fielded hundreds of calls from the media and the public, trying to get seats in the courtroom or the overflow room, online access to the arguments and related issues. It took a great deal of preparation, but it's all gone smoothly and everyone was accommodated and is happy.

I am extremely familiar with the rule on audio recordings of court proceedings because I was the one who first lobbied for permission to use tape recorders more than 20 years ago as a reporter for the Daily Journal legal affairs newspaper.

To my knowledge, there have been NO problems with allowing members of the public to use tape recorders in California courtrooms and courthouse, provided that they comply with Rule 1.150, formerly Rule 980. Part of the reason is that very few people know that tape recording is permitted in California.

And even in those instances where members of the public know they can tape record and obtain court permission, there has been no manipulation of the recordings or postings on YouTube. Part of the reason is that the quality of recordings made by personal recorders is generally not good enough to manipulate or post online so the recordings are made for personal note-taking purposes only.

I've heard of no complaints from jurors, in large part because judges do not allow recordings of the jury selection process.

Similarly, I've heard of no complaints about taping of sidebars because hand-held recorders can't pick up the muted conversations between the judge and the attorneys or the attorneys and their clients.

As you suggest, most tape recording made by members of the public are made by the parties to the proceedings and saves them the cost of ordering a reporter's transcript.

By the way, nearly all reporters stopped recording court proceedings in California because they found it took too much of their time to go back and listen to the tape, particularly when they were on deadline. A couple of us kept it up because sometimes we all couldn't agree on exactly what was said, so the tape provided an accurate record and everyone's story was consistent.

I hope this answers your questions. Please feel free to contact me with further questions or clarifications.

Philip R. Carrizosa
Office of Communications
Judicial Council of California - Administrative Office of the Courts
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San Francisco CA 94102-3688
Direct 415/865-8044, Fax 415-865-4334, Cell 415/407-4615
philip.carrizosa@jud.ca.gov
www.courtinfo.ca.gov
"Serving the courts for the benefit of all Californians"

Exhibit 7: Overview of Court Transcript Services**OVERVIEW OF COURT TRANSCRIPT SERVICES****CONNECTICUT JUDICIAL BRANCH**

Source: Scott Hartley, Deputy Director

JANUARY 12, 2009

- Court reporters and court recording monitors – all Judicial Branch employees -- record virtually all court proceedings held in the state's 270 courtrooms and hearing rooms (exceptions to this recording policy, set forth in the statutes, are motor vehicle infractions and small claims matters).
- These recordings can be made either as
 1. electronic or paper notes taken by a court reporter using a stenographic machine, or
 2. audio recordings made by a court recording monitor using tape or digital audio equipment.
- Because the Judicial Branch's combined staff of 260 court reporters and court recording monitors rotate to cover a wide variety of courtroom assignments, every one of our courtrooms is equipped with an audio recording system.
- When one of the Branch's 50 court reporters covers a proceeding using stenographic equipment, an audio recording is **not** made of that proceeding. The record is the court reporter's stenographic notes.
- Most aspects of the court transcript process, as well as the appointment of court reporters and court recording monitors is controlled by Connecticut General Statutes sections 51-60 through 51-74.

COURT RECORDING MONITORS

- The Branch's 210 court recording monitors use two types of audio recording equipment. We still have 158 courtrooms with cassette tape recorders, all manufactured by the Sony Corporation. Since 2001, the Branch has gradually been installing computer-based digital audio recording in 112 courtrooms, in 30 court facilities in all 13 districts. You probably have heard of these systems, commonly called "FTR," short for its manufacturer, "For The Record."

The FTR equipment relies on courtroom microphones, a digital mixer and specialized software in a standard PC.

- Benefits of digital audio recording over the older analog tape recording:
 1. Improved sound quality
 2. Faster playback when needed in court
 3. Court recording monitors type accompanying notes that are linked to the audio recording, which facilitate locating audio when producing a transcript
 4. Audio recordings and these electronic notes are saved locally, but also stored in a central archiving system at the Judicial Branch's Information Technology Division in East Hartford. (On the other hand, the old cassette tapes and handwritten notes provide the only record of a proceeding. If either a cassette or notes are lost or damaged, we lose those records . . .)
 5. Judges may access the audio and Court Recording Monitor's note using a laptop computer in their chambers.
 6. Judges also may make their own notes that are linked to the audio and monitor's notes, but are accessible only to that Judge.

Further, Sony no longer manufactures courtroom tape recorders. All of our tape equipment is old and requires ongoing maintenance. It also is increasingly difficult to obtain quality cassette tapes to use on this equipment. The FTR equipment, accessories, and software licenses cost about \$7,000 - \$10,000 for each courtroom, depending on individual courtroom needs and resulting staff requirements. Central archiving requirements add to that basic cost.

Newer versions of FTR include a video component, and Branch technical and operations staff have attended demonstrations of this feature, although we have no plans to go in that direction in the near future.

COURT REPORTERS

Although the Judicial Branch has focused on the purchase of modern computer-based digital audio recording, our 50 court reporters still provide an important service to the Judicial process and all that participate in it. Reporters use a variety of stenographic machines and specialized software, and with that are able to produce a typed transcript more quickly than court recording monitors who produce transcripts from audio recordings.

All of our court reporters are certified. All attended and completed court reporting schools on their own, prior to certification and being hired by the Judicial Branch.

Court reporters' equipment is more portable than audio recording equipment, so a court reporter usually will be assigned when a court proceeding must be held outside the courtroom, such as arraignments in hospitals or juror viewing of a crime scene during the course of a trial, and even for conferences in a Judge's chambers.

ORGANIZATIONAL STRUCTURE

Court reporters and court recording monitors work in every courthouse in all 13 of the state's Judicial Districts. The reporters and monitors in each district are managed by an Official Court Reporter, who, by statute, is required to be a qualified court reporter. Usually any communication with a Court Reporters office would be through the Official Court Reporter. All 13 are listed, with addresses and phone numbers, in the Judicial Branch Directory and on the Branch's website.

Two managers, both qualified court reporters themselves, work out of the Judicial Branch's Superior Court Operations Administration Unit in Hartford, to support field operations, conduct staff training, and ensure compliance with all statutory and rules requirements.

- 120 employees are considered permanent full-time, working 40 hours per week.
- Another 94 are permanent part-time, working weekly schedules ranging from 30 to 39.75 hours per week.
- Much court coverage also is provided by temporary court recording monitors, who work up to 35 hours per week. We can have up to 62 temporary court recording monitors – more than 20 per cent of our entire reporter and monitor roster – although generally not all temp positions are filled.

TRANSCRIPTS

The General Statutes define format and style for court transcripts.

Typed transcripts of court proceedings are prepared only when requested by the Court, a party, an attorney, or any other individual or organization. Court rules require the production of transcripts in cases that are appealed to the Supreme and Appellate Courts.

More recently, the Judicial Branch's court reporters and court recording monitors have produced approximately 11,000 transcripts of felony sentencing proceedings requested in the past year by the Board of Pardons and Paroles and the Division of Criminal Justice. Pursuant to Connecticut General Statutes Section 51-63, court reporters and court recording monitors are entitled to charge a per-page fee for any transcript that they produce for a person who requests it. These fees are in addition to the court reporter's or court recording monitor's salary.

The per-page fees vary, with a lowest amount charged to state and municipal officials. The statute establishes fees for government officials and private requesters, and also sets lower fees for subsequent deliveries of a previously produced transcript. The statute also requires the Chief Court Administrator to adopt various policies regarding this section, and to establish a system to fees for the production of "expedited transcripts." This fee schedule defines "expedited transcript" as a transcript that is delivered by the fifth business day after it is ordered, and "overnight transcript" as one delivered by the close of the business day after it is ordered. Reporters and monitors charge the highest rates for these overnight transcripts, that often are requested by attorneys during the course of a trial.

Exhibit 8, Judicial Branch Audio Access Policy Internal Memo**MEMORANDUM**

To: Official Court Reporters
From: James R. Maher
Date: January 8, 2009
Subject: Policy re: Requests for Audio Recordings

In order to assure the integrity of the transcript process, copies of audio recordings shall not be made available to requesting parties absent the showing of good cause (e.g., an order of the Court).

All audio records, including tapes, CDs, and other disks, and notes of court proceedings are the property of the Judicial Branch, and are expected to be retained and stored pursuant to statute and Branch policy.

If any party or other individual challenges the accuracy of a transcript produced from an audio recording, arrangements may be made with the official court reporter for that person to listen to the audio recording and compare its contents with the transcript. The official court reporter or a designee shall be present at all times that the audio recording is being played to the requesting person, and such playing shall be at a time of mutual convenience to the person and the court reporter's office.

C: Scott Hartley
Nancy Brown
Edna Press

Court Reporters/Policy: Requests Audio Recordings

Recommendations From October 2007 Surveys of Judges & Journalists
As Presented to the Judicial-Media Committee on July 14, 2008,
by the Survey Subcommittee

As referenced in the Survey Subcommittee's cover letter, the subcommittee developed a series of recommendations stemming from its review of the surveys distributed in October 2007 to judges and journalists. A total of 22 recommendations are included. They are grouped by categories: facilities, public service, outreach & education, judicial/media relations, and judicial process.

A. Facilities

1. Study courtroom acoustics and audio systems and make improvements to ensure that everyone in the courtroom can hear the proceedings.
2. Study ways to adapt current sound systems to provide the media with adequate audio feeds, while protecting participants' ability to have off-the-record, confidential conversations.
3. New construction of courthouses should provide accommodations for the media. For existing facilities, accommodations should be made available to the media, where feasible.

B. Public Service

1. The Superior Court Operations Division should continue its training of courthouse staff. This subcommittee should review the curriculum used for the training on a yearly basis.
2. Develop a public service/customer service incentive for clerks and other front-line employees. Encourage clerks to greet public immediately. Provide backup when lines form in clerk's office. Provide a way for public to praise/complain about the service. Every effort should be made on the media's part to inform the clerk's office beforehand that they are interested in a case.
3. Create a vehicle for feedback and/or suggestions from judges, judicial employees, the media and the public.
4. The cost of copies produced by the clerk's office should be reduced.
5. Audio recordings of court monitors should be available at cost.

C. Outreach & Education

1. Expand the “frequently asked questions” section of web site and Judicial publications for media. Include sealing policies and procedures, information on availability of court exhibits and a section explaining the typical contents of a court file.
2. The Law School for Journalists should continue. Yearly informational sessions also should be provided by the Judicial Branch for members of the media who are interested in learning about how courthouses function generally.
 - a. External Affairs and court staff should make themselves available to new court beat reporters to provide basic information.
 - b. Expand the Judicial Branch’s Speaker’s Bureau to include judges willing to speak at media organizations.
3. Conduct a panel presentation of media members and judges at the Judges’ Institute relating to the media on the following topics:
 - a. Decision-making concerning editorials;
 - b. Degree of reliability required before publishing investigative articles;
 - c. Decision-making concerning value/need for video coverage;
 - d. Discussion among judges who have had experience having cameras in the courtroom and members of the media;
 - e. Discussion of the pros and cons of “off-the-record” interviews with members of the media.
4. Create opportunities for clerks and other staff to meet with media to learn about their respective jobs and priorities, including tours of courts and news organizations.
5. The *Guide to Court Information* should be updated. Ensure that the *Guide to Court Information* contains a compilation of statutes and Practice Book rules relating to media coverage in the courthouse, including discretionary matters on which judges may differ and rules pertaining to Juvenile Court.
6. The Branch should consider promulgating suggested guidelines for judges as to procedure to follow when:
 - a. contacted by media;
 - b. media coverage inaccurate/unfair.
7. Designate mentors for both judges and media members to consult when issues regarding media in the courthouse arise.

D. Judicial/Media Relations

1. Clerk's office supervisory personnel should receive more extensive /detailed training regarding media issues.
2. Educate and inform judges about potential resources, such as External Affairs and/or the Fire Brigade.
3. The role of the Fire Brigade should be re-evaluated.
4. Clerks should consult judge on a file's availability for public/media review when the judge has the file. Encourage the judge to make available a portion of the file, such as the complaint and latest pleading.
5. Provide opportunities for ongoing dialogue between judges and journalists.

E. Judicial Process

1. The Rules Committee should promulgate rules for the audio recording of court proceedings by members of the public.
2. Review practices regarding sealing of documents, with an emphasis on openness and accountability.

Exhibit 10: Chief Justice Chase T. Rogers' response to Survey Subcom.

January 7, 2009

Hon. Douglas S. Lavine
Co-Chair, Judicial Media Committee
Appellate Court
75 Elm Street
Hartford, CT 06106
Mr. Claude Albert
Co-Chair, Judicial Media Committee
39 Timms Hill Road
Haddam, CT 06438

Dear Judge Lavine and Mr. Albert:

First, let me thank you for your Committee's recommendations. The many wide-ranging suggestions are of interest and timely, given last year's work by the Public Service and Trust Commission to develop a strategic plan for the Judicial Branch. That plan is now in its implementation phase and some of your recommendations overlap with the work of the seven committees established in the first phase of the Implementation Plan. The members of the Judicial Media Committee are to be commended for completing the survey, and I am truly grateful for the work that you all contributed to this effort.

Your recommendations have been shared with Judges Quinn and Carroll, and Joseph D'Alesio, executive secretary to the Judicial Branch, all of whom have made some informal comments to me for my consideration. I have attached, for your review, the details of those aspects of your recommendations which we will be moving forward to implement at this time. Some of your recommendations will be referred to committees established under the Implementation Plan, which I reference in my attached outline. As you know, the details of the Strategic Plan and its Implementation Plan are available on the Judicial Branch's website, should the members of the Committee have an interest in seeing them. In addition, a few of the suggestions the Committee has made cannot be implemented, due to statutory provisions and other limiting concerns.

Moving forward, it is my wish to integrate the Judicial Media Committee into the format and procedure which is used to operate the other formal and ongoing committees of the Judicial Branch. I think that the Judicial Media Committee has been an important addition to the collaborative efforts we seek to foster, and I believe that it should now be placed on a more permanent footing. I think it would be helpful if the Committee articulated its mission going forward and took future action in line

Hon. Douglas S. Lavine

Mr. Claude Albert
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with that articulated mission. Also, I believe it to be helpful for the members of the Judicial Media Committee to have established staggered terms, as do the members on other committees. I invite the media members of the committee to consider categories of membership in their terms that might be useful and to make recommendations about how the process should work. In addition, following the methodology used for the other committees, upon the expiration of the terms of any of the existing members or upon the resignation of members, proposed new members are to be appointed by the Chief Justice. Recommendations from the Committee itself, when that happens, would be most welcome.

If you have any further thoughts that you wish to share with us in the months ahead, please forward them to Judge Barbara M. Quinn, the Chief Court Administrator. Again, let me thank you and your committee for your work in our joint efforts to improve access to justice for all.

Very truly yours,

Chase T. Rogers

CTR:ld

cc: Hon. Barbara M. Quinn, Chief Court Administrator
Hon. Patrick L. Carroll, III, Deputy Chief Court Administrator
Hon. Alexandra D. DiPentima
Joseph D. D'Alesio, Executive Director, Court Operations

Exhibit 11: Connecticut Judicial Branch Transcript Orders 2008**Transcripts Ordered/2008 Statewide**

Location	AM	BT	DY	HD	LI	MX	NB	NH	NL	ST	TD	WI	WY	Total
Transcripts ordered from non-parties or media	8	5	12	50	0	4	13	75	16	28	3	0	56	270
Transcripts ordered for appeals, family matters, juvenile, magistrate, housing, habeas	699	1346	1450	1099	699	733	1210	1282	892	2816	534	246	1926	14932
Sentencings	441	1183	236	2500	400	195	703	2500	480	879	178	219	910	10824
Child Protection Session	0	0	51	0	0	268	25	0	13	3	41	41	96	538
Other/Supreme Court, Appellate Court/Court ordered/Sentence Review/Grievance/Grand jury/fact finders/pro ses	0	0	88	82	0	16	7	75	0	350	0	0	1	619
Grand Total														27183

**Minutes of
The Subcommittee on Audio Recording of Court Proceedings
Monday, February 23, 2009**

The Subcommittee on Audio Recording of Court Proceedings met at 3 p.m. in the fourth-floor conference room at 90 Washington Street, Hartford, Connecticut.

In attendance: Atty. Charles Howard (Chair), Hon. David P. Gold, Nancy Brown, Thomas P. Scheffey, and Patrick Sanders. The Hon. Patrick L. Carroll III was unable to attend.

Guests in attendance: Atty. Joseph Del Ciampo, Branch Legal Services.

Chairman Howard called the meeting to order at 3:05 p.m.

I. The minutes of the Feb. 9, 2009 meeting were read and approved.

II. Review of information regarding effects and parameters of rule change proposal: Mr. Howard noted that he and the Subcommittee members received an e-mailed letter from the Executive Committee of the Connecticut Court Reporters Association, or CCRA, regarding the Subcommittee's charge of recommending a rule regarding the public's ability to tape record judicial proceedings. The CCRA is a professional association of professional court reporters. The CCRA Executive Board's letter expressed numerous concerns about allowing the public to audio record judicial proceedings.

The Subcommittee also reviewed information supplied by members and support staff including: the number of transcripts ordered in 2008; the salaries of Branch court reporters and court monitors; a summary of the numbers of full- and part-time court reporters and monitors; a copy of Practice Book rules on retention of files and records; and a copy of the state statutes governing court reporters.

The members discussed the parameters of the focus of the Subcommittee. Mr. Howard, Judge Gold, and Ms. Brown said that they believe the Subcommittee should focus its efforts directly on whether to allow members of the public to use personal tape recorders to tape judicial proceedings.

Mr. Scheffey said he believes that the existing Branch policy, based on the 2009 Practice Book rule 1-10, already allows taping by the public, with a judge's permission, and that the rule is as broad and complete as it can be. The larger question, Mr. Scheffey said, is whether the public should have access to electronic recordings being made by court reporters and court monitors.

Mr. Howard suggested the members focus on determining what if any recommendations or procedures this Subcommittee should make to the Judicial-Media Committee regarding members of the public making recordings, rather

than access to the tapes or records of court monitors and court reporters. He indicated that the latter issue involved significant legal issues regarding the statutes and collective bargaining agreements, technological issues, and had been stated by the Chief Justice not to be a priority of the Branch at the present time. He indicated that the subcommittee may wish to say that this latter issue should be addressed at some later time, but given the current fiscal crisis, it did not make sense to try to do anything at present. Rather, the subcommittee should focus on the issue of whether individual members of the public should be able to record court proceedings, and if so, under what circumstances.

There was extensive discussion about the current Branch policy on the use and possession of electronic devices in Superior Court facilities, as articulated by Chief Court Administrator Barbara M. Quinn.

Mr. Sanders said before this Subcommittee can make any recommendations, the members should consider a single question: should the public be allowed to use a personal recording device in a courtroom? Mr. Sanders said he believes the public should be allowed to use tape recorders for personal use only, with the understanding that personal recordings are not official records of proceedings. There would be no impact on the demand for official court transcripts, Mr. Sanders said, and recording devices would help media to report more accurately.

Judge Gold and Ms. Brown disagreed with Mr. Sanders' position. Judge Gold said the public has the right to take notes during open court proceedings or to purchase transcripts of those proceedings. Judge Gold said allowing tape recorders to be used by the public carries with it the possibility that information could be manipulated, distorted, or used to embarrass, harass or intimidate parties to court proceedings.

Ms. Brown concurred with Judge Gold, and expressed concern that personal recordings could also capture sidebars, private conversations between clients and attorneys, and private conversations between attorneys.

Mr. Scheffey said he believes tape recording will only help ensure accuracy, and said that if the public can attend proceedings and take notes, they should be allowed to record for their own records.

Mr. Howard said he might favor allowing recording devices to be used in some proceedings, but would also require that certain rules be followed if that were to be done. He referred to the list of issues that he had prepared after reviewing the provisions of other states. He thought that reasonable procedures might include the recorder making a written request of the judicial authority, and possibly notifying the parties involved in the proceedings, including jurors.

The members then reviewed the policies of nine other states that have policies regarding recording of proceedings. It appears that California is the only state in

the nation that currently allows anyone, with the permission of the presiding judge, to use a personal recording device for personal note taking. Judge Gold and support staff indicated that they would make attempts before the next meeting to confirm this understanding with court authorities in California.

III. Discussion of possible rule proposal: Mr. Sanders left the meeting at 4:30 p.m. The other members said there is need for further discussion of the issues and concerns raised, and no rule was proposed.

IV. The meeting was adjourned at 4:51 p.m. The next meeting will be at 1:00 p.m. on Monday, March 9, at 90 Washington Street, Hartford, Conn.

**Minutes of
The Subcommittee on Audio Recording of Court Proceedings
Monday, March 9, 2009**

The Subcommittee on Audio Recording of Court Proceedings met at 1 p.m. in the fourth-floor conference room at 90 Washington Street, Hartford, Connecticut.

In attendance: Atty. Charles Howard (Chair), Hon. David P. Gold, Nancy Brown, Thomas B. Scheffey.

Guests: Atty. Joseph Del Ciampo, Branch Legal Services. Two members of the public, John Brandon, and Local 749, AFSCME, AFL-CIO Representative Tricia Cardin, also were in attendance.

Chairman Howard called the meeting to order at 1:22 p.m.

I. The minutes of the February 23, 2009 meeting were approved.

II. Discussion of possible rule on audio recordings by the public: Mr. Howard distributed copies of five e-mailed letters that he has received from court reporters opposing any rule that would allow any member of the public and/or members of the media to make personal recordings of court proceedings.

Mr. Howard acknowledged the two members of the public who wished to address the Subcommittee, Mr. Brandon and Ms. Cardin.

Mr. Brandon said that he has been a court reporter since 1975 and expressed concern that allowing the public to bring their own tape recorders into courtrooms would "open a Pandora's Box." He believes that trained court reporters are better able to monitor and interpret proceedings because they have been specially trained to process what they hear and accurately transcribe it, Mr. Brandon said. Court reporters must also pass certain testing in order to become certified, he said.

Ms. Cardin expressed similar sentiments, indicating that the court reporter and court monitor members of Local 749 oppose allowing personal recording of court proceedings. Ms. Cardin said such a proposal would have an impact on collective bargaining. There are currently 197 full- and part-time court monitors and court reporters who are represented by the union.

Ms. Cardin also stated that the members of Local 749 worry that "unofficial" recordings of court proceedings could lead to discipline against union members if they are unable to hear something and produce a transcript that reflects that (as inaudible). Ms. Cardin also expressed the union members' concerns that the public would possibly try to record off-the-record conversations, sidebars, and private conversations between attorneys and clients, and that such privileged communication could be "reported" to the public.

The Subcommittee members then moved on to their discussion about a possible rule.

The members received a copy of an article written by Mr. Scheffey for his employer, The Connecticut Law Tribune, about a pilot program in some federal courts where proceedings are being digitally recorded. The digital recordings are available for purchase on compact disks, for \$26, or may be downloaded through the federal PACER system for \$0.08, regardless of length. Mr. Scheffey told the members that the CDs and audio downloads are not official records or official transcripts of those proceedings, and that he believes the program has resulted in additional requests for copies of paper transcripts.

Mr. Howard noted that the Subcommittee received a response from the California Court System's public information officer about that state's policy on personal recorders. It appears that California is the only state to allow the devices to be used by the public for personal use. The spokesman said in an e-mail that there have been no problems reported with the rule, and that there have been no reports of manipulation of personal recordings or public postings of such recordings to Internet sites such as YouTube. Most tape recordings made by individuals for personal use appear to be made by parties to the proceedings, because it saves them from having to buy transcripts, the spokesman said.

The members discussed the pros and cons of allowing or making a rule to expand the existing rule to allow personal recordings.

Ms. Brown is opposed to such a practice. She said her concerns include people making recordings and then typing transcripts from the recordings and passing them off as official transcripts.

Mr. Howard said that while he might be able to support such a rule, he would want there to be further articulation as to what the existing Practice Book Rule 1.10 allows.

Mr. Scheffey generally favors audio recording by the public and said that average people, including news reporters, do not have infinite time or infinite money to allow them to purchase written transcripts.

Mr. Scheffey also pointed out that in cases that are currently being recorded by the media in the Hartford Superior Court pilot program, there have been no reports of problems and that people understand those recordings are not official records.

Judge Gold questioned whether anyone believes that all court proceedings should be open to personal recording, including sex assault or other sensitive proceedings, and whether those recordings could be freely distributed to others or to Internet sites where they could be manipulated or used to embarrass the parties to the proceedings.

There was no consensus between the subcommittee members on articulating a rule. The members said they want to consider input from the absent members, Judge Carroll and Mr. Sanders.

Mr. Howard suggested that rather than drafting a proposed rule, it may make more sense to prepare a report to present to the Judicial-Media Committee reflecting the concerns on all sides of the issue may be more appropriate. Mr. Howard asked the members to articulate their thoughts and send them to him. There appeared to be agreement to consider this approach. If so, he volunteered to work with support staff to try to prepare such a report. Before any

such report can be finalized, however, the committee felt that it would be important to have another meeting at which Judge Carroll and Mr. Saunders could be present. The subcommittee decided to hold another meeting later this month. The date and time will be posted on the subcommittee's website.

III. The meeting was adjourned at 2:37 p.m.

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Pilot Project Update:
Digital Audio Recordings Online

Making digital audio recordings of courtroom proceedings publicly available online "has become an operational way of doing business" for the U.S. Bankruptcy Court in the Eastern District of North Carolina, said Judge J. Rich Leonard.

"It's gone from a novel tool to an anticipated product, with fairly high usage," he said. "I consider it a great advance in making our federal courts transparent."

Providing digital audio recordings online has proved "extremely easy" for the U.S. District Court in Nebraska, reported Judge Richard Kopf. "Many lawyers think this is the best thing since sliced bread," he said.

In a pilot project that began last August, five federal courts are docketing some digital audio recordings to Case Management/Electronic Case Files (CM/ECF) systems to make the audio files available in the same way written files have long been available on the Internet. The three other courts are the Eastern District of Pennsylvania, the U.S. Bankruptcy Court in Maine, and the U.S. Bankruptcy Court for the Northern District of Alabama.

<http://www.uscourts.gov/ttb/2008-06/article06.cfm> (1 of 4) [5/4/2009 9:21:50 AM]

The Third Branch

In each court, the extent of accessibility is determined by individual judges, and not every judge in the five pilot courts is participating. "This is a judge-driven experiment," said Mary Stickney of the Administrative Office's Electronic Public Access Program Office. "Because providing digital audio recordings online is done as a convenience for lawyers and the public, each judge has total discretion to decide which proceedings get posted."

The audio files are accessible through the Public Access to Court Electronic Records (PACER) system. Some 840,000 subscribers use PACER to access docket and case information from federal appellate, district, and bankruptcy courts.

Access to the recorded proceeding is through a one-page PDF document on the court's docket. During the life of the pilot project—expected to last through 2008—the cost, regardless of the proceeding's duration, is eight cents to download the entire audio file.

"Going live" with the pilot project was delayed for the Pennsylvania and Maine courts because the digital audio recording program they use creates and stores files differently. Administrative Office developers and court systems staff had to create computer programs to separate the audio files by each proceeding and convert the files into MP3 format.

The bankruptcy court in the Northern District of Alabama had its first audio files available through PACER last October; the Eastern District of Pennsylvania in January of this year; and the bankruptcy court in Maine in April.

In each court, audio files generally are posted online within 24 hours. "If it doesn't get up there quickly, we hear about it," said Alec Leddy, clerk of the bankruptcy court in Maine. "All the feedback has been positive."

A major concern is assuring that personal information—including Social Security and financial account numbers, dates of birth, and names of minor children—not be available on any online digital audio recording. The Judiciary's privacy policy restricts publication of such information. Each of the pilot courts warns lawyers and litigants in a variety of ways that they can, and should, request that recorded proceedings that include information covered by the privacy policy, or other sensitive matters, not be posted.

"If any such issue exists, the judge should not upload that audio file," Leonard said.

In the Eastern District of Pennsylvania, recordings to date have been posted in civil cases only. "We held back on criminal cases to be sure there are ways of protecting cooperators, and otherwise ensuring that confidential information is not disclosed," said Clerk of Court Michael Kunz. He added, however, that the court continues to study the issue of offering digital audio recordings of criminal case proceedings as well.

One goal of the pilot project is to determine the level of public interest. Early indications suggest there is substantial interest. A second goal is to determine an appropriate charge, based on demands on court staff and technological investments to provide adequate bandwidth. (An audio CD of digitally recorded court proceedings, long available at a court clerk's office, currently costs \$26.)

<http://www.uscourts.gov/ttb/2008-06/article06.cfm> (2 of 4) [5/4/2009 9:21:50 AM]

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Audio files from hearings that last four hours or longer can be quite large, and it became clear early in the pilot that the existing PACER infrastructure could be adversely affected if there were a substantial demand for such large files. The pilot courts adopted procedures to break those audio files from all-day hearings into morning and afternoon files.

The pilot was approved by the Judicial Conference last year on the recommendation of its Court Administration and Case Management Committee. That committee subsequently asked the Federal Judicial Center to evaluate the project.

"This has been an exceptional pilot, a model of teamwork between the AO and the courts," Stickney said.

Denise Lucks, clerk of court for the District of Nebraska, agreed. "Working with the AO staff has been terrific—the best pilot we've participated in," she said.

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Project Expanded: More Courts Offering Digital Audio Recordings Online

A pilot project to make digital audio recordings of courtroom proceedings publicly available online has been expanded, from five federal courts to nine, through the end of 2009.

The U.S. Court of Federal Claims and three bankruptcy courts — in the Middle District of Florida, Eastern District of New York, and Rhode Island — are being added to the project. Rhode Island already is offering the recordings online, and the other three courts are moving toward implementation.

They join the five original pilot courts — U.S. District Courts in Nebraska and the Eastern District of Pennsylvania and the U.S. Bankruptcy Courts in the Eastern District of North Carolina, Northern District of Alabama, and Maine.

The audio files are accessible through the Public Access to Court Electronic Records (PACER) system. More than 950,000 subscribers use PACER to access docket and case information from federal appellate, district, and bankruptcy courts.

Digital audio recording has been an authorized method of making an official record of court proceedings since 1999, when it was approved by the policy-making Judicial Conference of the United States. Digital audio recording is used in most bankruptcy and district courts (where magistrate judges account for most of the usage).

In courts with digital audio recording, computer disks of hearings have been available for the authorized fee of \$26, but prospective purchasers have had to make the trip to the clerk of court's office. During the pilot project, Internet access to the same content at the nine pilot courts will cost a minimum of 16 cents — eight cents for accessing the docket sheet and another eight cents for selecting the audio file on PACER.

The Judicial Conference's Executive Committee approved the digital audio recording pilot's expansion in January 2009.

The Public Access and Records Management Division of the Administrative Office of the United States Courts will determine what the appropriate fee should be if such access becomes permanent. The impact on band-width, costs of the required technology, and other factors will be part of that determination.

<http://www.uscourts.gov/newsroom/2009/digitalAudio.cfm> (1 of 2) [4/16/2009 12:52:20 PM]

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