

**Minutes**  
Judicial-Media Committee  
Meeting of September 14, 2009

Present: Claude Albert and Judge Douglas Lavine, co-chairs; Tom Appleby, Judge Patrick Clifford, Melissa Farley, Karen Florin, Paul Giguere, Judge Robert Holzberg, Chuck Howard, Judge Barbara Jongbloed, Morgan McGinley, Chris Powell, Tom Scheffey, Judge Barry Stevens, Adriana Venegas, and Dave Ward.

Also attending: Judge David Gold, Nancy Kierstead, Rhonda Stearley-Hebert (secretary).

**I. Open meeting**

Judge Douglas Lavine opened the meeting at approximately 2 p.m. He informed committee members that Melissa Bailey, managing editor of the New Haven Independent, is now a member of the committee.

Judge Lavine introduced to the committee Ms. Jane Mills, a freelance journalist who had requested to address the group. Ms. Mills said she has had access problems at the New Haven Judicial District court clerk's office and added that she believes she has been retaliated against, stemming from her action in response to a situation that occurred there. She added that she has sent a copy of her complaint to the co-chairs of the committee. She also wanted the media and the Judicial Branch to be aware of it. She added that, as the media changes and news operations have fewer resources, other reporters may turn to the committee when access issues arise.

Judge Lavine said that the committee is concerned about any access issue. He added it was his understanding that the Judicial Branch is reviewing the incident specific to Ms. Mills. Director of Court Operations Nancy Kierstead confirmed that is the case.

Ms. Mills concluded her remarks and thanked the committee for its time.

**II. Approval of minutes**

Committee members unanimously approved the minutes from their meeting of May 11, 2009.

**III. Committee reports**

a) Pilot Program – Judge Clifford and Mr. Appleby presented copies of the committee's final report to members of the Judicial-Media Committee. In short, Judge Clifford said, the main recommendation is to expand the Pilot Program statewide. Mr. Appleby added that there was unanimity among members of the Pilot Program Committee regarding the recommendations. Judge Clifford suggested that the Judicial-Media Committee schedule a meeting for October to discuss the recommendations. Judge Lavine and Mr. Albert thanked Judge Clifford and Mr. Appleby, as well as the members of the Pilot Program Committee, for their efforts.

b) Events – Ms. Florin told the group that plans are getting under way to prepare for a second “Law School for Journalists,” to be held in 2010.

IV. Potential future topics for Judicial-Media Committee meetings

Judge Lavine invited committee members to submit any ideas they might have for discussion. Mr. Albert responded that he would like to have a discussion regarding the posting of electronic court documents. Attorney Howard suggested that the topic of blogging; Mr. Scheffey suggested a review of the Branch’s records retention policy.

V. Discussion of committee term limits

Committee members discussed briefly term limits, staggered terms and categories of membership but took no action on the matter. Judge Lavine noted that term limits will be established in due course.

VI. Audio Recordings of court proceedings

Judge Lavine began the discussion by explaining that three motions offered by him and Mr. Albert were intended only to frame the discussion and keep it focused. The three motions presented to the committee were:

- 1) The Judicial-Media Committee recommends that the Practice Book rules and/or guidelines authorized by the Chief Court Administrator for electronic devices in courtrooms be clarified to give judges the discretion to expressly allow recognized media, and parties to litigation, to make audio recordings of court proceedings, subject to any conditions that the court establishes. Any such decision shall not be appealable.
- 2) The Judicial-Media Committee recommends that that Practice Book rules and/or guidelines authorized by the Chief Court Administrator for electronic devices in courtrooms provide that a judge may permit or prohibit members of the public who are neither litigants nor members of the recognized media, to make audio recordings of a court proceeding subject to conditions established by the court. Any such decision shall not be appealable.
- 3) The Judicial-Media Committee recommends that the rules and/or guidelines for electronic devices in courtrooms should state that the only official transcript and/or audio tape of the proceeding will be that prepared by the court reporter or monitor.

Regarding No. 1, Mr. Albert said that this situation doesn’t appear to come up with judges very often and that the intent is to clarify the current rules and/or guidelines. He added that No. 1 also seemed to be the threshold issue to consider.

Although the rules/guidelines allow members of the news media to bring in electronic recording devices, Judge Clifford said that it was not clear to him that they could use them beyond what is allowed under the Pilot Program rules. Attorney Howard said there seems to be some authority for allowing news organizations to make audio recordings

(beyond the Pilot Program) but agreed that it was unclear. Judge Clifford responded that his belief was that any recommended changes going forward would be in regard to the news media. He added that he wasn't sure why parties to litigation would need to be included.

Mr. Albert added that the Pilot Program provides for notice to the court if a reporter wants to bring in a tape recorder. According to Mr. Albert, a lot of reporters would like to use tape recorders during court proceedings for note-taking, and perhaps down the road, as audio for webcasts.

Mr. Scheffey referred to the subcommittee appointed to review the issue of audio taping in the first place (he was a member of the subcommittee). The problem for the judges on the subcommittee, he explained, was their discomfort with allowing members of the public to audio tape court proceedings. Mr. Scheffey said he does not believe there should be any difference between the media and the public but added that perhaps there is a middle ground.

Judge Clifford reiterated his position that he believes there should be a distinction between the media and the public in terms of allowing audio recording of court proceedings. The court has no control over what the public would do with a recording, he said. For example, he said, the audio recording could be used in the case of someone found not guilty.

The logic for including parties to litigation is largely economic, Judge Lavine said. Many people don't have the money needed to order a transcript.

Judge Holzberg raised concerns regarding decorum and problems that could arise if several reporters wanted to set up tape recorders in court. Mr. Albert responded that another option would be to make the actual audio recordings from the court monitor/reporter a public record.

Mr. Powell said he understands that the court needs to maintain order in the courtroom. But, he said, he disagrees with Judge Clifford's position regarding the public and he doesn't understand the judicial interest in preventing anyone from bringing a tape recorder into court, provided there is no disruption. According to Mr. Powell, the media should not be insisting on greater rights than the public.

Attorney Howard (who chaired the audio tape subcommittee) said that now the full committee can see why the subcommittee could not reach consensus. He said he believes there is a middle ground. He said he's not sure that it's right to draw a line between the media and the public, and added he would instead draw a line regarding process. In other words, he explained, a person could not tape record a court proceeding without submitting a written request and getting the court's permission. Mr. Scheffey added that there are laws against intimidating witnesses and that the scenarios described by the judges are hypothetical.

Judge Holzberg questioned why change is needed in the first place, because no need for it has been demonstrated.

Attorney Steve Nevas addressed the committee as a member of the public. He suggested a different approach – that is, to stream the audio in real time to the public. Attorney Howard, citing collective bargaining and budgetary factors, responded that it's not as simple as that.

Judge Stevens asked whether the court reporters/monitors don't have a propriety interest in their work product. Mr. Albert responded that he's not impressed with that argument, because collective bargaining should not undercut public access.

With the exceptions outlined in Practice Book 1-10, Judge Stevens said, a judge currently has the authority to allow audio taping in his/her courtroom. Anything additional would be in place to assist the court in exercising his/her discretion, he added. Attorney Howard responded that it would also be good for the public to know the standards in place.

Attorney Farley suggested the possibility of a recommending a Practice Book change that would allow members of the media to use tape recorders for note-taking. Attorney Howard added that such a rule could say the recording was for personal use only and could not be broadcast. Mr. Albert responded that such a prohibition would be similar to prior restraint. It also would be tough to enforce, Judge Lavine added.

Attorney Howard suggested that reasonable restrictions could be put in place to prevent the situations that concern the judges.

Mr. Scheffey asked whether, as a starting point, some procedure could be put in place to vet members of the media who want to audio tape court proceedings. Although the media would prefer that the largest group possible be allowed to audio tape proceedings, it makes sense to start with one group, he added.

Judge Jongbloed asked whether any recommendations from the committee would be across the board or as a continuation of the Pilot Program. She also asked whether something could be tried on a pilot basis.

Attorney Farley made the following distinction: if the purpose of the tape recorder is for broadcasting, then the request would go through the Practice Book rules governing media requests for cameras and tape recorders. If the purpose is for notetaking, then the request would fall under the current Practice Book rule regarding the use of laptops in court.

Mr. Giguere suggested that the committee could reach consensus on supporting a pilot program that would test allowing more audio recording of court proceedings.

Committee members then discussed whether a recommendation would deal with note-taking purposes only. Mr. Ward said he would have a problem limiting it to note-taking, because an audio recording is an audio recording.

Judge Lavine then suggested that the committee table a vote. He invited committee members to submit proposals for recommendation and said that he and Mr. Albert would meet to craft suggested recommendations and then take a vote at the committee's next meeting.

The committee scheduled its next meeting for Oct. 19.

Judge Lavine adjourned the meeting at 5 p.m.