MINUTES OF THE PUBLIC ACCESS TASK FORCE MEETING
August 10, 2006

Task Force members in attendance: Justice Richard Palmer, chair, Judge Jon Alander, Attorney Aaron Bayer, Dr. William J. Cibes, Jr., Judge Patrick Clifford, Ms. Heather Nann Collins, Judge Julia DiCocco Dewey, Judge William Lavery, Mr. Zach Lowe, Mr. Ken Margolfo, Judge Aaron Ment, and Judge Barbara Quinn, Judge Stevens.

Justice Palmer called the meeting to order at 1:40 PM.

Justice Palmer began the meeting by thanking the members of the Task Force for all of their time and effort. He then discussed the revised timeline (attached to and incorporated into these minutes), covering the period from today's meeting through September 15th. He pointed out that as a result of the time constraints, members of the Task Force interested in submitting a minority report should begin drafting that report as early as possible. There were no other questions or comments on the timeline.

The next item was the review and approval of the minutes of the last meeting. The minutes were unanimously approved.

The next item was the presentation of committee reports. The draft reports were e-mailed to members of the Task Force and posted on the website. The first report was from Judge Ment, who reported on behalf of the Committee on Access to Administrative Records and Meetings. Judge Ment said his co-chair, Attorney Neigher, could not attend the meeting but had several comments in connection with the report. His comments would be brought up at the appropriate points in the report.

Judge Ment said the committee had defined the word "meeting" in both a general and specific way, by listing specific types of meetings as well as categories of meetings in the definition in subsections (a). The definition contains certain limited exceptions listed in subsection (b). It also contains a section identifying examples of committees that would be open and others that would not be open. In response to a question from Attorney Bayer, Judge Ment said that the list is not intended to be exhaustive, but rather was "including but not limited to" these committees. Attorney Neigher had asked that the committee reconsider the closing of the civil and criminal jury instruction committees. The committee will look again at these committees. The committee made provision for restrictions on opening meetings on limited occasions, i.e., when matters under discussion are of a sensitive nature; therefore, the committee included a section defining a "closed session." That section defines the parameters of when and how a session may be closed and provides examples of the limited circumstances when this would be appropriate. Although almost all decisions of the committee were made by consensus, on this particular definition, Mr. Lowe was not in agreement with the language of subsection (c)(3). Judge Ment requested that members of the Task Force make any suggestions regarding that language in particular.

The committee also believes that there is a need for rule changes to permit the electronic coverage of meetings that take place in courthouses. The committee report suggests that such coverage be permitted upon notice to the administrative judge of the judicial district in which the courthouse is located. On the day of the meeting, a marshal would escort members of the media with equipment for broadcasting, televising,

recording, or photographing the meeting to the meeting location. Attorney Neigher said this attempt to safeguard the proceedings could be construed as insulting by the media, where the primary concern is to assure compliance with any rules and appropriate use of equipment. Judge Ment requested input from the Task Force on a method to safeguard the proceedings in accordance with Attorney Neigher's comments.

The committee was also charged with addressing public access to administrative records. By defining the term "administrative records," the committee concluded that records that fall within that definition were already open in most cases, whether under FOI or otherwise. Those currently closed by statute (i.e., financial statements of judges' spouses and children) would remain closed. The committee had to consider the status of only a few other records, including judges' attendance records. The recommendation on these records is that they are and should be available to the public. A more difficult issue involved the handling of complaints about individual judges made to the chief court administrator. The recommendation of the committee on these complaints is that the complaints should be reviewed by the chief court administrator. If the allegations merit further investigation by the Judicial Review Council, the complaint should be forwarded and governed by the statutes on Judicial Review complaints. Other types of complaints, i.e., those without merit, those that are sent to the wrong place, those that involve an appeal, should not be open unless probable cause is found.

Judge Ment thanked the members of the committee for their cooperation in looking at the issues with an open mind.

Justice Palmer said that the purpose of today's meeting was to discuss the reports and recommendations of the committees, not to vote on these recommendations.

Judge Clifford spoke about the civil and criminal jury instruction committees, saying they are very informal groups that meet every couple of months. Judge Ment said that under the definition, a meeting as a group would be open. The issue of open meeting would come up when two members of the committee meet or talk on the phone in the course of doing the work of the committee. Judge Lavery expressed concern about the practical aspects of the committee being able to complete its tasks in a timely and efficient manner. It was noted that the work product of the jury instructions committees – the actual jury instructions - are available on the Judicial Branch website. The committee will revisit the issues raised regarding its draft report to try to reach consensus on this issue. In that Judge Lavery's concerns could arise with other committees formed by the chief court administrator, Judge Ment said each group would have to be looked at separately. Dr. Cibes suggested that FOI rulings might provide some guidance in this area.

The next committee report was presented by Judge Alander on behalf of the Committee on access to Court Records.

Judge Alander acknowledged the members of the committee for their work and provided background regarding the process the committee used in formulating its recommendations. The basic guiding principle the committee followed was that all court records are presumptively open unless there is a compelling reason to close a record. The committee reviewed a list, prepared by staff, which included 71 records or categories of records currently sealed by statute, court rule, or policy. The vast majority

of decisions of the committee were by consensus, which is a testament to the committee's willingness to look at all sides of an issue. With respect to the current rule addressing family financial affidavits, the committee could not reach consensus and tied in a vote on the matter. Accordingly, the motion to change the rule failed and no corresponding recommendation was brought forward.

Judge Alander briefly reviewed the committee's recommendations. First, the committee recommends the adoption of a policy on access to court records. The committee worked with the CCJ/COSCA guidelines and after extensive discussion, adopted many of the guidelines without substantial change and revised others to reflect Connecticut's statutes and structure. The recommended policy will be discussed later in this report. The committee also recommends that the mission statement of the Judicial Branch be revised to include the word "open." It would read: "It is the mission of the Connecticut Judicial Branch to resolve matters brought before it in a fair, timely, open and efficient manner."

The committee also recommends the posting online of criminal docket information. Judge Lavery was concerned about identity theft and asked why the Branch would post online the date of birth, which is currently a part of the information posted with the docket at the courthouse. This date is used for identification purposes. Judge Alander said the committee would review the recommendation to see if there is a way to insure proper identification of the defendant while minimizing potential identity theft. Another recommendation of the committee suggests ongoing revisions to Judicial Branch forms to insure that they do not request personally identifying information that might lead to identity theft unless such information is necessary for the adjudicative process.

The committee is recommending that criminal conviction information be available to the public online to the same extent it is currently available for sale, with the exception of motor vehicle operator license numbers and defendants' addresses.

The committee is recommending that the form requesting the sealing of an arrest warrant affidavit be revised to provide for the insertion of a specific date in order to clarify the date that the sealing order expires. Judge Clifford emphasized that this date would be put into the form by the Judge. With respect to the sealing of search warrant affidavits, which are currently not subject to the provisions of the Practice Book on sealing, the committee is recommending that once an arrest is made, any extension of the sealing of the affidavit must be done in open court. A discussion ensued on this recommendation and Judge Clifford and Judge Dewey expressed their concern with this change, including the risk of revealing information that could be detrimental to a continuing investigation or dangerous to a witness or victim. Judge Lavery also expressed concern and suggested that the committee reconsider this recommendation, perhaps allowing the representation of counsel to be acceptable as the basis for continuing a sealing order on a search warrant. The committee will review the recommendation and consider adding some indication to reflect the concerns on protecting confidential information of members of the Task Force.

The next recommendation of the committee was that a police report used as the basis for determining probable cause shall be made a part of the court file, whether or not probable cause is found. Judge Lavery said the reports could contain hearsay on top of

hearsay and in situations where no probable cause is found, could needlessly ruin someone's reputation. Judge Alander said that the police report could be sealed pursuant to the Practice Book, and said that the rationale behind including the police report, regardless of the finding, is to provide the public with access to information the Judge used to reach a decision. Judge Clifford also raised his concern that the police report might contain information or material, i.e., a victim's name and address or witness information, which should be redacted. This concern is a practical one about the handling of the police report. Judge Stevens said that sealing may not address the issue raised by Judge Lavery. The current sealing rules would not result in the sealing of all information that might appear in a police report that might be damaging to an innocent party. Judge Alander said the committee would review this recommendation in light of the comments by members of the Task Force.

The next recommendation was that a written policy permitting the use of handheld scanners be implemented by the Judicial Branch. Dr. Cibes asked if the policy would also apply to portable copiers, but at this time, the recommendation is limited to handheld scanners.

The committee is also recommending the formation of a Judicial/Media Committee on Public Access. This recommendation is being put forth by the committee on access to judicial proceedings and the committee on access to court records is joining in that recommendation.

Judge Alander said that the first ten recommendations involved only policy or rule changes, but the next several recommendations require legislative changes as well. The first recommendation of the committee is that the pretrial diversion programs currently sealed upon application should no longer be sealed. The three pretrial diversion programs are Alcohol Education, Drug Education, and School Violence Prevention. Judge Lavery said that the legislature was tasked with making policy decisions, but Judge Clifford said that the committee's review of the programs did not indicate any reason for treating these three programs differently. Judge Alander said the committee had been charged with recommending proposed changes in legislation based upon its review of access to court files and records.

The committee is also recommending that the Judicial Branch should make pending criminal case information available online. Such information is not currently available because a pending criminal case may contain sealed information. If and when the legislature acts on the prior recommendation, the Judicial Branch should make such information available.

The committee also looked at competency evaluations completed pursuant to C.G.S. § 54-56d to determine whether a criminal defendant is competent to stand trial. Currently, the statute is silent as to whether the evaluation should be sealed from public access. The practice of judges varies as to whether and when to seal a competency evaluation. The committee recommends that the statute be amended to expressly provide that a court-ordered evaluation is sealed upon filing but is automatically unsealed and open to the public, if and when it is considered by the court. Discussion ensued as to these evaluations, including concerns as to the sensitive nature of the information found in these evaluations (i.e., psychiatric and psychological records), the fact that defendants

many times object to the competency hearing, the interest of the public in knowing such information, and the difference between such records and medical records put into evidence by a party in a civil trial. Judge Stevens suggested that rather than making these evaluations automatically unsealed, allow the court to decide whether it should be unsealed based on the content. Judge Lavery agreed that a Judge should enter an order on unsealing the documents. The committee will discuss this recommendation further.

The committee is recommending that the Alternate Incarceration Assessment (AIC), currently submitted as part of the Presentence Investigation Report and therefore, sealed, be made available to the public if the plan is granted by the court. Typically, these assessments do not contain the same level of information as that contained in the Presentence Investigation Reports and the public has the right to know information which is the basis for a judge's decision.

The committee is also recommending that the docket number, the case name, the date of birth, the charges, the date of disposition, and the nature of the disposition be made available to the public in the case of dismissals, nolles after thirteen months, declined prosecutions pursuant to the Practice Book, pardons, and not guilty verdicts. Currently records of these kinds of cases are erased. This recommendation would insure that the public would know the disposition of the criminal case, and a defendant would not be harmed to the extent that the information about the arrest remains available while the disposition information disappears. The underlying court records in such cases would not be available. Discussion ensued as to this recommendation. Judge Dewey did not want the original charges to be available because such charges rarely reflect the actual charges that a person ultimately faces. Dr. Cibes said that he felt it was important to let the public know that in fact a good outcome occurred. Mr. Margolfo said such a recommendation would be helpful in allowing the public to know what happened to the charges that they had been hearing about. Justice Palmer asked if it would be possible to add to the recommendation the possibility of a defendant's opting not to have this information remain public. Attorney Bayer asked if there were a retention schedule associated with the recommendation. Judge Alander said that the committee had not addressed retention schedules in this context, although it had reviewed the retention schedules currently in effect. Judge Ment suggested that it is not only what the Judicial Branch has in terms of information on these types of cases, and the Task Force should keep that fact in mind in looking at the retention schedule.

Judge Alander then briefly reviewed the sections of the policy contained in Appendix A of the draft committee report. There were some questions regarding the policies, including an inquiry as to the availability of appellate court docketing information (currently in process), the feasibility of the Judicial Branch's posting information on liens that affect title to real property (not a necessary provision in Connecticut where liens must be recorded on the land records), a question as to electronic records (the committee recommended further study of the issues associated with electronic filing because of the limited time it had available), and a question as to the meaning of "pretrial" in Sec. 4.60 (b).

Finally, a discussion ensued regarding the handling of the financial affidavits filed in family cases. Currently there documents are sealed upon filing and are automatically

unsealed only when there is a contest over a financial matter. Justice Palmer said that it would be appropriate for the full Task Force to address this issue since the committee was evenly divided on a proposal to change the current rule to make such financial affidavits open to the public. To facilitate the full Task Force review, Justice Palmer asked that with respect to this particular matter, the Task Force be provided with copies of the comments reviewed by the committee along with a breakdown of the arguments on both sides of this issue. The committee will provide this information to the Task Force by August 28th. There were no further comments or questions and the Task Force took a brief recess.

Upon return, the draft report of the committee on access to judicial proceedings was presented by Attorney Bayer, co-chair, on behalf of the committee. The committee found that in-person access to judicial proceedings was not a problem and that the current rules on sealing courtrooms are heavily weighted in favor of public access. The committee, therefore, focused on increasing media and electronic access to proceedings, recognizing that the public obtains much of its information from these sources today. Attorney Bayer said that the committee had adopted guiding principles, anchored by a basic principle that all proceedings are open to the public, and those principles formed the basis for the committee proposals.

The committee recognized that there were different concerns in different courts for different proceedings, and that some of the more complicated issues (i.e., juries, witnesses, evidence, and constitutional right to fair trial) do not exist at the appellate level to the same extent as they exist at the trial level. Therefore, the committee began with a proposal to expand coverage in the appellate courts. Currently, the rules governing electronic access to these proceedings are quite restrictive with respect to the number of cameras and types of shots permitted. Specifically, the current rules permit only a single fixed camera, no zoom, and no graphics. At the time they were implemented, these rules were innovative and reflected a substantial opening of the Court to cameras, audio, and video. Today, however, these rules preclude effective video coverage of Supreme Court arguments – the type of coverage CT-N provides in the other branches of government. CT-N has expressed an interest in covering the Supreme Court, if the rules governing video cameras were changed. The committee is recommending that cases argued to the Supreme and Appellate Courts be presumed open to electronic access. (The Committee saw no basis for distinguishing between the Supreme and Appellate Courts in terms of the rules governing electronic access.) The rules should presume electronic coverage will take place, and it would be up to the parties or victims to object to video or audio taping of a proceeding in these courts. Such objections would be ruled on by the Court, bearing in mind the Guiding Principles adopted by the Committee and the Task Force. The rules should also be made more flexible in terms of numbers and use of cameras.

A discussion ensued addressing a variety of issues in connection with this proposal. Judge Lavery raised an issue about arguments in certain cases where the sufficiency of evidence is an issue on appeal. In some of those cases, information from the record that could identify and adversely affect a victim or a juvenile might be disclosed. It is not just the names that can identify a person, but also places, relatives' names, and other references. Judge Lavery suggested that, in those cases, the Court should be free to limit or preclude electronic coverage. Attorney Bayer said that in those situations the

parties are free to object and argue against coverage. He is concerned about creating exceptions for which the Court has no procedures to follow and no standards it must use in determining whether to preclude electronic coverage. Judge Lavery asked what happened if the counsel for the person did not recognize the potential problem. Judge Quinn said that her reading of the proposal would permit the court, on its own motion, to close an argument, stating the reasons on the record. She does not believe the proposal takes away a Judge's discretion in this regard. After extensive discussion, the committee will take into consideration the various concerns about openness of proceedings, judicial discretion to preclude electronic access in certain types of cases, adequate notice to interested parties of the court's intention to close a proceeding, and the protection of the interests of people where their interests might not be adequately represented.

Attorney Bayer continued on to the next recommendations of the committee addressing civil and criminal trials. The committee recommends implementation of a two-year pilot program for criminal trials, in which issues could be worked out through the experience gained in a single judicial district. Given the concerns that are likely to arise in allowing video and audio recording of criminal trials, the committee opted for a pilot program with more expansive coverage in a single district, rather than proposing far more limited coverage on a state-wide basis. Based upon the recommendation of Judge Ment, the committee recommended the Hartford Judicial District for the criminal pilot program. Judge Lavery said Hartford would be a problem because of security issues. He suggested Middletown instead. He does not want the pilot program in a courthouse in one of the larger cities, including Bridgeport, New Haven, Hartford, or Waterbury.

A discussion ensued on a variety of issues and questions, including: the difficulty of trying a case in front of cameras, the reluctance of some judges to have such coverage because of concerns about a defendant's constitutional right to a fair trial, how and whether to define "media" for purposes of the committee's proposals, the appropriate extent of judges' discretion to restrict electronic coverage, the number of criminal and civil trials that might be covered by electronic media, whether the criminal pilot proposal should include civil trials as well, and whether the civil and criminal proposals should propose more specific rule changes on electronic coverage.

There was also discussion of the difficulties with electronic coverage of arraignments, the coverage of sidebar conferences in terms of what the jury might be able to see, and the issue of requiring notice from the media regarding its intent to cover a particular proceeding. With respect to notice, the committee was concerned about the impact of a compulsory notice provision, but also recognized the judges' legitimate concerns about having advance notice so that they can deal with numerous issues in connection with the proposed coverage. The hearing and resolution of these issues could delay a trial. Judge Alander suggested that it would not be too much of an imposition to have the media let the judge know that they want to cover a trial. Without some kind of advance notice, someone might object, and a hearing would be held without the judge's knowing whether or not there is even any interest in covering the proceeding. He suggested that the media be required to provide some advance notice, absent a showing of good cause. Judge Stevens said that he would want some kind of notice, even if it is only shortly before he goes on the bench. Judge Clifford said that he would not want a compulsory notice provision to have the unintended effect of making the media submit a

notice in every proceeding, just in case they might want to cover the case. Justice Palmer suggested that Attorney Bayer work out some additional language providing for reasonable notice and circulate it to the members of the Task Force.

Attorney Bayer then turned to the remaining recommendations of the committee. The committee is recommending that when there is an out-of-court judicial proceeding, a transcript or recording of the proceeding shall be made and the record shall be available to the public and the judge shall state on the record in open court by the next court day a summary of what occurred at the proceeding.

The committee, while acknowledging that note-taking by the public is permitted in any courtroom, is recommending that the policy be reaffirmed and that the Office of the Chief Court Administrator inform all Judicial Branch employees of this policy. A discussion ensued on rules governing sketch artists, tape recordings, and note-taking on laptops or palm pilots. Dr. Cibes mentioned a letter the Task Force received expressing concern about the ban on camera cell phones in courthouses. Judge Lavery said that a program to hold cell phones for people coming to court will be in place by November. Attorney Bayer mentioned the letter expressing the concerns of jurors who were not permitted to keep their cell phones. These issues will all need to be considered in the future.

The committee also proposed the formation of a Judicial – Media Committee, to be composed of representatives of print and electronic media, judges, members of the state bar association, and others whose experience and expertise could benefit the committee. The committee would be charged to form a quick-response team, a "Fire Brigade," which would be available to review questions and disputes over access to judicial proceedings and recommend a resolution on the same day the question is presented. In addition, the Judicial – Media committee would take steps to educate the public on access to judicial proceedings. This proposal is modeled after the committee in Massachusetts. The committee strongly recommends this proposal.

Justice Palmer thanked the committee chairs for their reports. The next meeting of the Task Force is August 24th, when the Task Force can consider the revisions resulting from today's discussions, and also have a public hearing. There will be no meeting on September 15th. The location of the public hearing in September was briefly discussed.

The meeting adjourned at 5:29 PM.

PUBLIC ACCESS TASK FORCE
PROPOSED TIMELINE

August 18, 2006	Revised Committee Reports Complete
August 21, 2006	Distribution of Revised Committee Reports
August 24, 2006	Public Hearing and Meeting of Task Force 1:30 – 3:30 – Public Hearing 4:00 – 6:00 – Meeting
September 1, 2006	Distribution of Task Force Draft Report
September 5, 2006	Information Session with Judges 4:00 – 6:00
September 7, 2006	Public Hearing 2:30 – 5:00 and 6:00 – 8:30
September 8, 2006	Distribution of Comments from Public Hearings
September 11, 2006	Meeting of Task Force 1:30 – 5:00
September 12, 2006	Circulate changes/edits from 9/11 meeting
September 13, 2006	Deadline for approval of final report
September 13, 2006	Deadline for submission of minority reports to be distributed with the Task Force Report
September 14, 2006	Distribution of final report to Task Force
September 15, 2006	Final Report to Justice Borden