Minutes of the Public Access Task Force Meeting
And Summary of Public Hearing Testimony
August 24, 2006

Summary of Testimony

Task Force members in attendance: Justice Richard Palmer, chair, Judge Jon Alander, Attorney Aaron Bayer, Dr. William J. Cibes, Judge Patrick Clifford, Ms. Heather Collins, Ms. Erin Cox, Judge Julia DiCocco Dewey, Judge William Lavery, Judge Douglas Lavine, Mr. Zach Lowe, Attorney Alan Neigher, Mr. Patrick Sanders, and Judge Barry Stevens.

Justice Palmer opened the public hearing at 1:35 p.m. Speakers were to be taken in the order in which they had signed up. Justice Palmer indicated that two people had signed up to speak to the Task Force. The first person to speak was Mr. Pat Sheehan, the Chairman of the Board of Connecticut Public Affairs Network/CTN.

Mr. Sheehan made several points in connection with the work of the task force and the draft reports of the committees. First, he urged the task force to stand firmly behind the presumption of openness and be cautious in adding qualifiers to that openness of proceedings. He asked why a camera would have to be shut off when a person would be permitted to be present at a proceeding. That position would seem to undercut the presumption of openness.

His second comment was that there is a difference between permitting access and providing access to the public through the media. He urged the task force to make appropriate revisions to the rules drafted in the 70's that required prior approval and provided a "veto" power to the attorneys, witnesses, victims, defendants, and the bench, resulting in little, if any media coverage of proceedings. If the public is allowed into the courtroom, a camera should be no different.

His final point was that opening the process to the media also presents the opportunity to go further than merely permitting access. It is possible to provide access as well through video or still pictures, an audio feed or a digital download, while still preserving the decorum of the court and protecting the rights of all the parties. He suggested that the task force has the opportunity to provide outreach to the public by wiring courthouses in such a way that the general public would have the ability to obtain access. Through the Judicial Branch website, it would be possible technically to provide streaming video feeds or transcripts. The tools are available - leave it to the legislature to figure out how it should be paid for. That kind of access to proceedings would provide the whole picture to the public rather than a single perspective on the proceedings.

Mr. Sheehan responded to several questions from the members of the task force. In response to the question of how he would define media, he acknowledged that defining media is difficult, but the public is no different from the media if the courts provide the kind of access that they can technologically, providing access to the public. As to whether the electronic media should be required to televise an entire proceeding, Mr. Sheehan again stated that the electronic media should be treated no differently from the public coming in and out of a courtroom. In general, the marketplace will determine whether the media does an acceptable job of coverage, and the media does have an

obligation to cover proceedings fairly. He acknowledged that issues of decorum, safety, and propriety in the courtroom are the province of the judge. Mr. Sheehan also explained that with the technology that exists, there is very limited reaction to the cameras; they are simply accepted.

The next speaker was Mr. Francis Knize, who was at the hearing as a member of the public who has done research on public access. Mr. Knize expressed concern about public confidence in the judicial system and his interest in assisting the Branch in improving that confidence. He had several recommendations for the task force:

- Judges should not target pro se defendants. Pro se defendants should be given more leeway so that their substantive claims are heard.

- The Legislature should implement, through the Constitution or the statutes, the office of Inspector General. The Inspector General would have grand jury powers to investigate situations when a judge engages in misconduct, breaks the law, or fails to uphold the Constitution.

- There should be a provision written specifically into the Constitution providing that when fundamental rights are disregarded, a strict scrutiny test should be implemented and the state's compelling interest be probed on the record.

- The Judicial Review Council should unseal their cases as soon as they find probable cause.

- Handheld scanners should be permitted into clerks' offices

- Clerks should call back when parties call the clerk

- Recordings of transcripts should be made available to the litigants in cases

- Litigants should have electronic Internet access to notices in court cases.

- Comments regarding the Public Access Task Force should be posted online.

Justice Palmer asked if there were any additional speakers. There being none, upon motion made and duly seconded, the public hearing was adjourned at 2:30 p.m. with the understanding that if any other member of the public appeared and wished to be heard, the task force would hear those comments. There will be a second public hearing on September 7th, as posted on the website.

Regular Meeting

Task Force members in attendance: Justice Richard Palmer, chair, Judge Jon Alander, Attorney Aaron Bayer, Dr. William J. Cibes, Judge Patrick Clifford, Ms. Heather Nann Collins, Ms. Erin Cox, Judge Julia DiCocco Dewey, Judge William Lavery, Mr. Zach Lowe, Attorney Alan Neigher, Mr. Patrick Sanders, and Judge Barry Stevens.

Justice Palmer called the meeting of the Task Force to order at 3:00 p.m. The first item on the agenda was the approval of the minutes. A motion to accept the minutes was made, seconded, and unanimously approved.

The next item on the agenda was the revised committee reports and recommendations. Attorney Neigher presented the revised report and recommendations of the Committee on Access to Administrative records and meetings. He said there were minor changes made as a result of the comments from the task force at the last meeting. The first change was in connection with photographic access to meetings in courthouses by members of the media. The language was revised to state that a marshal would ensure that equipment was utilized in connection with the meeting and in accordance with the rule.

The next revision addressed complaints received by the Branch regarding a particular judge that warrant administrative action but do not require referral to the Judicial Review Council, such as admonishments. Such complaints should continue to be handled in accordance with Connecticut General Statutes § 51-45a. That statute permits access to performance evaluations, including admonishments, by members of the judiciary committee and members of the judicial selection committee. The committee had also added language to the provision on closed sessions to clarify the intent of subsection (c).

Attorney Neigher said that the committee had not resolved the question of public access to the civil jury and criminal jury instruction committees. Initially, the consensus was that these two committees not be open. The committee will attempt to resolve this question before the next meeting of the Task Force.

Judge Alander asked about the meaning of and necessity for including “a single member public agency” in subsection (b) of the definition on meetings. After discussion, it was agreed that in terms of the Judicial Branch, it would be more appropriate to change the language from FOI to: “a single-member committee or task force.” The committee will make this change in the definition.

Judge Alander then reported on the Committee on Access to Court Records. The committee reconsidered the issue of family financial affidavits but remains divided on the issue. At Justice Palmer’s request, outlines of the arguments in favor of retaining or changing the current rule along with comments from various sources were distributed. The task force will review this material for discussion at the next meeting.

The next area of concern was the risk of identity theft in connection with the posting of criminal docket and criminal conviction information. That information posted online would include the birth date of the defendants. The committee discussed the concern and concluded that it was not sure that the posting of the birth date with the name would

create a serious risk of identity theft. Therefore, the committee recommends that the Judicial Branch determine whether there is a serious risk of identity theft. If so, the revised recommendation suggests that that Branch post only a redacted version of the birth date, i.e., the month and year of birth, which would still allow accurate identification of a defendant.

The next recommendation that the committee reconsidered was the inclusion of police reports in the court file in all cases, whether or not probable cause is found. The committee discussed this issue and determined that no change was warranted since the Judge could seal the police report to prevent the disclosure of inappropriate information. The task force agreed to hold discussion until all the revisions were presented.

The next recommendation on extensions of orders sealing search warrant affidavits was revised to permit the extension of the order upon the oral representation of certain specific circumstances by the State's Attorney in open court. This revision was in response to the concern expressed by members of the task force about requiring the disclosure of information on the record. This revision would allow the judge to decide if the oral representation was sufficient under the circumstances then before the Court

The next concern the task force had raised was whether the recommendation permitting handheld scanners should be expanded to permit the use of portable copiers in the clerk's office. The committee determined that portable copiers should not be permitted at this time since the copiers differ from handheld scanners in that the copiers require the disassembling of the file, which is unacceptable in terms of maintaining the integrity of the court file and insuring the efficient use of judicial resources.

The task force had also raised concerns about the automatic unsealing of competency evaluations upon their use by the Court. After discussion the committee made no change to its recommendation because the Court could seal portion of these evaluations after their use if deemed necessary.

The Committee had also considered Justice Palmer's suggestion that the recommendation on amending the statute on erased records permit the defendant to choose whether the information would be made public. Based upon the two-fold rationale behind this recommendation, the public's right to know and the unrealistic nature of the concept of an "erased record" in an electronic age, the committee determined that no change in the recommendation would be made.

The committee also revised Sec. 4.20 (e) of the proposed policy to remove reference to real property liens and to limit the subsection's applicability to civil and family cases only.

Finally, based upon the comments received from the Reporter's Committee on Freedom of the Press, the committee reconsidered its position on the public availability of juror questionnaires. After discussion, and review of the applicable Connecticut statute, no change was made; however, the following caveat was added: juror questionnaires will remain closed to public, but the Branch should still provide public access to the name and town of the jurors on any given case. That language was added to Sec. 4.60 of the proposed policy on access.

Discussion then ensued on the revised report. The revision to Sec. 4.20 of the proposed policy was revised to include the following language: "(e) The fact that a judgment, order, or decree has been entered in a civil or family case."

The next area of discussion was in connection with the retention of police reports when there is no finding of probable cause. Judge Lavery was opposed to the retention of the police report when no probable cause is found because of the potential damage to a person's reputation. He said the public does not have the right to know baseless allegations against a person. Attorney Bayer asked if the position in this instance was inconsistent with the position taken by the prior committee in connection with complaints about judges for which no probable cause is found. Judge Alander said the two are very different because a finding of probable cause is a public court proceeding, which is presumptively open, as opposed to the statutory procedure of the Judicial Review Council. Justice Palmer added that in the probable cause situation a person's liberty is taken away, a situation substantially different than that which is before Judicial Review.

Judge Clifford said that the finding of no probable cause that is being discussed is only for purposes of determining whether a defendant would be released. It does not result in a dismissal of the case. This recommendation only relates to police reports and probable cause findings in connection with warrantless arrests and release of a defendant. Mr. Sanders said that if a Judge is going to look at a police report and make a ruling, that document should be part of the court file. This position was also strongly taken by Ms. Griffin and Ms. Collins. Ms. Cox said that the name of the person along with the charges is already public. Dr. Cibes said if the allegations are baseless and egregious, the Judge can order the police report sealed, thus protecting the person's reputation. He also said it was important for the public to see what does and does not constitute probable cause over time to see what standard is being used by the Judiciary. Mr. Lowe said a finding of no probable cause is a relatively rare thing, making it even more important to have access to the underlying police report. Mr. Sanders said that the retention of the police report would serve to provide accountability for the person submitting the report. He is concerned that in our zeal to protect the person arrested inappropriately we are protecting the police department that made the arrest without basis. Justice Palmer indicated that he had talked with a prosecutor whose view was that these police reports should be kept in terms of having a record, for the protection of the judge, the prosecutor, and the defendant.

Extensive discussion continued. Concerns raised included the potentially inequitable impact of this provision on poor people, the effectiveness of the option of sealing the police report pursuant to Sec. 42-49A, the potential for the subsequent opening of a sealing order, the possibility of presumptively sealing the police report, the possibility of sealing only portions of the police report, the various reasons for a finding of no probable cause, the possibility of permitting sealing of a report in the event the Judge finds that the report is wholly without basis or merit, and the possibility of relying on the oral representation of a prosecutor with respect to the contents of the police report. Judge Clifford said he did not think an oral representation would be sufficient pursuant to Section 37-12 of the Practice Book. He again emphasized that the issue here is probable cause to hold a defendant; the case itself is not being dismissed, even if no probable cause is found. After further discussion and attempts at compromise, the task force decided to table the discussion and move on to another issue.

Ms. Cox asked about the availability of juror questionnaires that are created by the Court in a specific case, i.e., a death penalty case. Judge Alander said that the committee's recommendation did not contemplate those specially prepared questionnaires, but rather focused on the forms produced by the Judicial Branch. The committee did not discuss or arrive at a conclusion with respect to those questionnaires created or used by a judge in an individual case. The sense of the task force is that the blank form of the special juror questionnaire should be available to the public.

Attorney Bayer then presented the revisions to the report of the Committee on Access to Judicial Proceedings. The first concern the committee sought to address in its revisions was that of Judge Lavery regarding electronic access to certain kinds of cases on appeal where privacy interests would be impacted, i.e., insufficiency of evidence cases involving a juvenile or a sexual assault where damaging and traumatic facts might come up. The committee asked CT-N to contact its counterparts in other states in order to ascertain how frequently this situation occurred in those jurisdictions. The response indicated that such a situation has not occurred yet. The committee, nevertheless, attempted to address the possibility, including in the proposal for electronic coverage of appellate proceedings a provision that would allow the Court, on its own motion, to seek to limit or preclude coverage in a limited group of cases. Such limitation or preclusion of electronic coverage would have to be consistent with the underlying guiding principles on access, including the principle that there would have to be a compelling interest, the limitation would be no broader than necessary to meet that interest, an opportunity would be provided for people affected by the decision to be heard, and the reason for any limitation would be stated on the record.

The second issue that the committee revisited was the concern expressed at the last task force meeting about the location of the proposed two-year single district pilot program for electronic coverage of criminal proceedings. The original recommendation of the committee had been Hartford, but concerns regarding security were expressed at the task force meeting. After a discussion, the committee's decision was to revise the proposal by listing considerations, including various aspects of courthouse facilities, i.e., including security and cost concerns. No single consideration was thought to be dispositive. Coupled with those considerations, the committee also proposed seven locations it thought would meet the criteria, leaving to the Judicial Branch the final determination for the pilot location.

The next issue that the Committee had reconsidered was the concern expressed by members of the task force that the ability of the Court to address the logistics of media coverage might be compromised if there were no notice of intent to cover a proceeding. The committee discussed this issue and incorporated language requiring some advance notice, "absent good cause shown."

The next area of concern raised by the task force involved the coverage of proceedings in civil and criminal jury trials when the jury has been excused. The original proposal of the committee did not permit coverage of those proceedings, but the task force said that such proceedings might be of significant interest to the public and do not necessarily impact on the defendant's right to a fair trial. The revision to the recommendation retained the ban on photographing, videotaping, or audio recording the jury, and does

not permit the coverage of trial proceedings held when the jury has been excused from the courtroom unless the trial court determines that such coverage does not create a risk to the defendant's rights or other fair trial risks under the circumstances.

Two other items were considered by the committee in response to the comments made at the last task force meeting. The first was the question of defining who constitutes a legitimate member of the press or media. After discussion, the committee decided to recommend the adoption of the definition used by the Legislature in the reporter's shield law, Public Act No. 06-140, An Act Concerning Freedom of the Press. The last issue raised related to the possession of cell phones with cameras. After discussion the committee determined that the issue as it related to the public was not an access issue with the implementation by the Judicial Branch of the program to bag and hold such cell phones at the entrance to the courthouse. A related issue, jurors' camera cell phones, was determined not to be an access issue, but it is a matter of concern for the Branch.

A discussion then ensued as to the various proposals. Judge Stevens asked why the Court on its own motion would only be permitted to raise the issue of limiting or precluding coverage in particular kinds of appellate cases when any party, counsel or victim, may make a motion or file an objection regarding broadcasting of the proceedings in any type of case. He did not believe the discretion of the supreme and appellate court should be so limited. Judge Stevens said that there may be various situations in which closure may be appropriate, and whether or not objection is raised, the Court itself should be able to do so upon hearing and articulation of reasons on the record. Attorney Bayer said if the task force decided that the Court's discretion in raising objections to coverage should be expanded, then he strongly recommended that the standards enunciated in the guiding principles should be maintained. Justice Palmer asked what types of cases Judge Stevens was concerned about. A discussion ensued regarding other possible cases: child abuse, neglect cases, cases involving children where general information might impact the child and the child's welfare, and other cases that could arise. Attorney Bayer said that the language in the proposal should really read, "in appeals involving sexual assault cases of any kind and, and crimes involving children." Dr. Cibes preferred saying "cases involving children." Part of the reason for identifying specific areas that would warrant the preclusion of cameras is to try to overcome the culture that might oppose the use of cameras in the courtroom. Ms. Cox reminded the members of the task force that these proposals on judicial proceedings include all electronic access and not merely television cameras. Attorney Bayer pointed out that in other states, Michigan, Alaska, and Washington, for example, the media has never been precluded from covering a Supreme Court proceeding. In fact, electronic coverage has been a positive experience in those jurisdictions that have permitted it.

After extensive discussion wherein the members of the task force expressed their concerns regarding the interest of the court in retaining discretion, the presumption of openness, the need for public access to the courts, and the need to protect the rights of litigants, victims, and witnesses, Attorney Bayer said he would attempt to incorporate the suggestions that the task force had made into the proposal. The language would seek to provide discretion to the judges while also providing standards for the exercise of that discretion, including notice to interested parties, opportunity to be heard, and statement of the decision and the specific and concrete reasons for that decision on the record. Attorney Bayer also was concerned over the lack of an appeal procedure for limitation or

preclusion of certain types of coverage. Judge Lavery and Judge Stevens both said that if there were a rule voted on by the Judges saying that reasons must be specifically delineated and narrowly drawn, then the judges would exercise their discretion in accordance with that rule.

Judge Lavery also requested that the proposal regarding civil cases make clear that it does not apply to family and juvenile cases. The sentence that currently states this will be moved from the first paragraph to the last page of the recommendation.

Justice Palmer asked if there were any further comments. There being none, it was moved and seconded that the meeting be adjourned. Upon unanimous vote, the meeting was adjourned at 6:15 p.m.