Minutes of the Public Access Task Force Meeting
And Summary of Informational Session Comments
September 5, 2006

Task Force members in attendance: Justice Palmer, Judge Alander, Dr. Cibes, Judge Clifford, Judge Lavery, Mr. Margolfo, Judge Ment, Attorney Neigher, Judge Quinn, and Mr. Sanders.

Justice Palmer called the session to order at 4:10 p.m. He invited the judges to express their concerns, comments, or questions on the recommendations and reports of the three committees of the Task Force. He also pointed out that the judges had been given an unofficial summary of the votes and recommendations to date of the Governor's committee. Justice Palmer also reiterated that no undertaking or recommendation that requires a rule change would be accepted and implemented without the necessary change in the rules.

The concerns, comments, and questions raised in the course of the session included the following:

1. The Fire Brigade that is proposed as a part of the Judicial-Media Committee should perhaps include not only judges and media representatives, but also members of the bar association.

2. Prior to the implementation of the pilot program for criminal proceedings, it would be a good idea to solicit feedback from members of the criminal bar and victim's advocacy groups on issues such as potential witness intimidation and victim reaction to the proposal.

3. The definition of media should be amended to exclude reference to any person who "has been an employee, agent, or independent contractor…" or "has been engaged in gathering, preparing,…" since the language is not relevant for purposes of the recommendations. Also, the question as to where bloggers and any person with a camera would fit into this definition was raised. This issue is a problem in Connecticut because there is no statewide formal mechanism for credentialing the media, but the hope is that the pool feed which is a part of the proposal will limit coverage to those who can tap into the feed.

4. The coverage of arraignments is not a part of the pilot, but coverage of a specific arraignment could be permitted, but such coverage would be permitted completely in the discretion of the judge.

5. A fixed camera in the criminal pilot proposal means that the camera could stay in one place and not move around during a proceeding, not that it is permanently installed.

6. The need for a means for a judge to stop coverage when cameras are in the courtroom was raised. For example, no coverage of jurors would be permitted and coverage of proceedings when the jury has been excused from the courtroom is solely in the discretion of the judge. Either a person would be manning the camera in the courtroom or the camera would be controlled remotely from outside of the camera so that a judge would be able to control camera coverage.

7. A question was asked about the impact of cameras in a courtroom on Judicial Branch staff. That question will be addressed.

8. A discussion ensued about whether the court would have to provide representation for a witness or a victim if they object to electronic media coverage of a proceeding in which they are involved. In theory, in a criminal case, a prosecutor would almost invariably assist the witness in this kind of situation, but in practice that might not be so. An individual could be afraid of being televised for legitimate safety and privacy concerns, and the courts have an obligation to protect these witnesses and victims.

9. An extensive discussion of the recommendation regarding competency evaluations ensued. The recommendation is that a competency evaluation would be filed under seal and would be automatically unsealed upon use by the court. Concern was expressed about the involuntary nature of these evaluations in many cases, the tremendous amount of personal and psychiatric information in these evaluations, the potential privacy issues for others outside of the defendant, the possibility of this information's being copied and circulated among inmates, and the fact that not all information contained in these evaluations is relevant to the issue of competency. A comparison was made between these evaluations and the Presentence Investigation Reports, which will remain sealed. The suggestion was made that the presumption should be that the evaluation would not be disclosed except to the extent that the judge relies on it. It was also suggested that disclosure should be limited to those items relied upon by the court in making its finding of competency or no competency or to information placed on the record in open court by a party. Alternatively, the judge could articulate on the record the information upon which he or she relies, and release only those portions of the report that are relevant. The committee, although aware of these concerns, said that sealing the entire report is overbroad. The concerns expressed could be addressed by a judge's order to seal the report or portions of the report as necessary.

10. An extensive discussion ensued regarding the recommendation on handling of police reports in connection with findings of probable cause or no probable cause. Issues raised included the applicability of this recommendation to weekend probable cause hearings, the practical problems of redacting the identifying information about witnesses, complainants, and victims contained in police reports if they are to be retained in a court file, the inconsistency in the information contained in these reports, the possibility that it would be more difficult to obtain information from people if these reports are kept in a court file, the benefit of keeping all police reports to have a check of some kind on police departments, and the inherent unfairness in keeping a police report that contains rumor, innuendo, scurrilous allegations, and no basis for probable cause. Suggestions were made including: upon a finding of probable cause based on a police report, the report would be retained in the court file and subject to sealing or redacting; upon a finding of no probable cause, the police report could be retained in the file under seal; upon a finding of no probable cause, the report should be returned to the prosecutor; or the judge could state on the record the reasons that support a finding of probable cause, rather than making the police report public; police reports should be revised so that the sensitive information that is not needed for a finding of probable cause would not be included; or the judge

could seal only portions of the police report in accordance with the current rules of practice.

11. A question was raised with respect to P.B. § 42-49A which would permit a judge on his or her own motion to seal a file or a pleading, without a written motion or hearing. Shouldn't a judge also have to state reasons on the record as to why sealing is necessary? The committee had reviewed the sections on sealing and did not recommend changes because the provisions seemed to be working effectively.

12. An extensive discussion ensued on the recommendation on erased records. Several judges expressed concern about the defendants in cases that result in not guilty verdicts, pardons, nolles, and dismissals. The committee said that the intent of the recommendation was both to provide the public with information regarding the disposition of a case, and to benefit the defendants who might experience repercussions from the availability of information regarding the arrest, but no information regarding the favorable disposition of a case. The suggestion that providing the defendant the option of having the disposition information available was made, but that option continues the fallacy that erased records are unavailable and does not serve the public's right to know. The point was made that the proceedings that result in these dispositions of not guilty or dismissal are all open to the public and the press. Also, the legislature has set forth a strong public policy protecting defendants with respect to erased records, and the values implicit in this policy are so important. Perhaps before changing the policy, it would be a good idea to determine by means of a study if any of these values have had a real social impact.

13. Concern was also expressed regarding the recommendation on unsealing of case files in which a defendant has applied for a pretrial alcohol, drug education, or school violence program. The argument was made that providing such information online seems to defeat the goal of rehabilitation inherent in these programs. Also, often a defendant opts for the program because they cannot afford to go to trial. Making these types of pretrial diversion programs open will impact on these people unfairly. The point of the recommendation is to try to protect people who have been falsely accused, not to make the information available for social voyeurs. In general, the legislature has established a public policy in connection with these pretrial diversionary programs, and this recommendation seems to fly in the face of that public policy. However, one of the things that prompted the committee to look at these programs is that there appears to be a difference in how some programs are treated. Some are sealed upon application; some are sealed only when the program is completed. The public policy, therefore, does not seem to be consistent. Regardless of what the recommendation ultimately is with respect to these programs, there was recognition of the idea that any change should be prospective in nature and not retroactive. To do otherwise would be a violation of innumerable rights of those who had opted for the programs in the past.

14. Although there has been no recommendation regarding the status of family financial affidavits, there was a discussion of those pleadings. Background on the implementation of the current rule, which seals these affidavits upon filing and allows them to remain sealed unless there is a contested financial matter, was passed by the judges several years ago, after years of these affidavits being open in the file. At

the time the current rule was passed, there was the intent to take a second look at the rule in the ensuing years. To date, that has not happened. A discussion ensued regarding public figures, wealthy litigants, the interest of the media in these documents, and the possibility of "sunsetting" the current rule and allowing the legislature to act on this issue. Several comments have been submitted by judges in writing regarding the sealing of these affidavits. All of these comments along with other materials have been provided to members of the task force for their consideration. The task force as a whole will be discussing this issue at its meeting on Monday, September 11th.

15. A question was asked about the recommendation on identity theft and judicial branch forms. Related to this recommendation is the issue of the documents that are currently in the court files. Determining how this information should be handled was beyond the scope of this task force, given the limited time, although the committee on court records had considered the issue. This issue should be looked at in the near future.

16. The committee on access to court records has references to bulk transfer in the proposed policy on access. There is a difference between permitting bulk transfer of information that the branch keeps and the providing of compilations of records that the branch does not routinely create. On the issue of compiled records, the policy provides discretion to the branch bases on such considerations as staff resources, time constraints, and the cost of compiling the information. On the question of bulk transfer of records, the committee recommended further study.

17. A concern was expressed regarding the constitutional validity of a presumption of sealing or closing any proceedings or records. There is a need for discretion and a case-by-case review of proceedings and records in the opinion of some courts. The point was also made that closing a proceeding to electronic media is not closing the courtroom. A judge, who is responsible for conducting a fair trial in a safe and secure environment, needs to retain some discretion. The guiding principles adopted by the committee state the basic premise that anything filed or transpiring in the courts is presumptively open absent a compelling interest in closure.

Justice Palmer then asked for any further comments. There being no additional comments, he asked that anyone who wished to elaborate on any of the points that were made to do so promptly so that the Task Force will be able to consider all input prior to submitting its report to Justice Borden next week.

The session adjourned at 6:05 p.m.