Judicial Council of California. Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2011

Title
Bench-Bar-Media Committee: Final Report

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Hon. Judith D. McConnell, Member, Bench-Bar-Media Committee
Hon. William J. Murray, Jr., Member, Bench-Bar-Media Committee
Hon. Steven Z. Perren, Facilitator to the Bench-Bar-Media Committee
Mr. Ralph Alldredge, Member, Bench-Bar-Media Committee

Agenda Item Type
Action Required

Effective Date
December 13, 2011

Date of Report
November 28, 2011

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Executive Summary

The Bench-Bar-Media Committee recommends that the Judicial Council receive the final report of the committee and direct the Interim Administrative Director of the Courts to refer the recommendations in the report to the appropriate Judicial Council advisory committees, Administrative Office of the Courts divisions, and other entities for further study and consideration. In its report, the committee proposes recommendations to improve media access to court proceedings and records, enhance education about the roles and responsibilities of the courts and media, and help resolve media access conflicts in a manner that protects and promotes the administration of justice.

The Bench-Bar-Media Committee was formed by Chief Justice Ronald M. George 2008 to foster better relationships among judges, attorneys, and journalists. The committee met over a two year period and in August 2010 submitted a draft report with eleven recommendations for public

comment. The primary recommendation called for a change in the court rule dealing with cameras in the courtroom: It would allow a presumption that cameras and other recording devices should be permitted in the courtroom unless the court finds sufficient reasons to exclude them. This recommendation was almost unanimously opposed by bench officers commenting on the report. (By contrast all but one bench officer on the committee voted for the recommendation.) In light of this opposition, the committee withdrew the recommendations and modified several others. It also asked the new Chief Justice to extend the life of the committee and appoint additional members in order to continue discussing the issues. The Chief Justice declined the request "due to the fiscal crisis facing the judicial branch and all levels of government".

The committee is not asking the Judicial Council to adopt its final recommendations today. Instead, the committee recommends that the Judicial Council receive its final report and recommendations, and direct the interim Administrative Director of the Courts to refer the committee's recommendations to the appropriate Judicial Council advisory committees, Administrative Office of the Courts Divisions, and/or other entities for further study and consideration. In its final report, attached, the committee proposes recommendations that it believes will improve media access to court proceedings and records, enhance education about the roles and responsibilities of the courts and media, and help resolve media access conflicts in a manner that protects and promotes the administration of justice.

It is the committee's intention that the recommendations presented in this final report, *A Balancing Act, Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice, Bench-Bar-Media Committee Final Report, October 2011*, will begin to address concerns long-held by the bench, bar, and media. (See Attachment A). The committee also hopes that the final recommendations serve as a new starting point for a continuing dialogue between these three stakeholders.

Recommendation

The Bench-Bar-Media Committee recommends that the Judicial Council:

1. Receive the final report of the Bench-Bar-Media Committee; and

2. Direct the Interim Administrative Director of the Courts to refer the committee's recommendations to the appropriate Judicial Council advisory committees, Administrative Office of the Courts divisions, and other entities for further study and consideration.

The recommendations are made because of the controversy surrounding the August 2010 draft report, *A Balancing Act, Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice, Bench-Bar-Media Committee Draft Report*. There were three central criticisms of the committee and its proposed recommendations: Media interests dominated the committee, the committee failed to adequately research and analyze the problems it identified, and the recommendations encroached on judicial discretion. Critics said the committee did not address

the operational and administrative impact of the recommendations on the courts and that it did not fully consider the legal rights and interests of persons and institutions other than the press. At its last meeting on December 16, 2010, the committee members discussed the criticisms and said they did not fairly reflect the committee's make-up, work, or its methodology. However, the criticisms did underscore the need to vet the recommendations further with appropriate advisory committees.

Previous Council Action; Rationale for Recommendations; and Comments, Alternatives Considered, and Policy Implications

These sections are addressed in the *Summary of Bench-Bar-Media Committee Final Report* portion of this report.

Implementation Requirements, Costs, and Operational Impacts

In the draft report, the committee previously proposed that the council direct the Administrative Director of the Courts to appoint a Bench-Bar-Media Implementation Working Group to help AOC staff develop and apply a plan to implement the committee recommendations. The committee also proposed that the council direct the Administrative Director to provide for consideration at a designated 2011 council business meeting an implementation plan for the committee's recommendations. Because of the criticisms to the draft report and the need for further study, these recommendations were not included in the final report.

Receiving the committee's final report has no cost consequences. However, evaluation of the recommendations by some of the council's advisory committees and some AOC divisions will entail AOC staff time. Whether a particular recommendation will be modified and ultimately implemented will depend on the committee's or division's evaluation and the rule-making or amendment process if a rule of court were adopted or amended, which includes additional public comment periods. However, evaluation of the recommendations by some of the council's advisory committees and some AOC divisions will entail AOC staff time**.**

Subsequent approval of recommendations at a later date would affect superior court operations and AOC operations.

Relevant Strategic Plan Goals and Operational Plan Objectives

The purpose of the committee was to foster improved understanding and working relationships among judges, lawyers, and journalists, thereby improving the system of justice to the public. The following Judicial Council strategic plan goals are addressed by the recommendations:

- Goal I: Access, Fairness, and Diversity
- Goal IV: Quality of Justice and Service to the Public
- Goal V: Education for Branchwide Professional Excellence

Summary of Bench-Bar-Media Committee Final Report

This section of the report presents the nine recommendations proposed by the committee in its final report and explains previous council action; rationale for recommendations; and comments, alternatives considered, and policy implications for the recommendations.

Access to court proceedings

Use of cameras and other recording devices in the courtroom (Recommendation 1). Add commentary to rule 1.150 of the California Rules of Court that discusses (1) examples of good cause for the public filing of *Media Request to Photograph, Record, or Broadcast* (form MC-500) in less than five court days before the portion of the proceeding to be covered; and (2) relevant case law that conveys the benefit of stating judicial findings whenever requests for cameras are denied or permitted.

Gag orders (Recommendation 2). Adopt a uniform statewide rule similar to those governing orders sealing records and consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, which would:

A. Require specific findings of a legitimate competing interest that overrides the public's right of access and justifies a form of gag order;
B. Limit the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified;
C. Require a written order that serves as a public record specifying the terms of the order;
D. Provide for a simple form that would facilitate challenges to gag orders; and
E. Encourage judicial education regarding the law and the proper use of gag orders.

Orders sealing records (Recommendation 3). This recommendation would:

A. Amend California Rules of Court, rule 2.551(e)(2) to provide that there must be a public record of every application or motion that is filed to seal a record;
B. Develop a simple form that would facilitate challenges to orders sealing records; and
C. Encourage judicial education regarding the proper procedure for determining when a record should be sealed as set forth in California Rules of Court, rule 2.550 et seq.

Enhanced education and training

Educational content and programs (Recommendation 4). Support creation of educational content and programs to enhance relationships and cross-communication among the bench, bar, media, court staff, and public. Support the cost-effective development of the following:

A. Content and programs that are designed for trial and appellate court justices, judges, and court staff, as well as for the bar and media;[1]
B. Content and programs that provide guidance on how to create and maintain local superior court bench-bar-media committees;

[1] Attachment A: *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in Pursuit of Justice, Bench-Bar-Media Committee Final Report* (October 2011), Appendix 2, pp. 39–54.

C. Local or regional superior court academies for interested courts with resources from the Judicial Council for their development; and
D. Creation and maintenance by the Administrative Office of the Courts of an online repository of resources to help courts strengthen their educational programs regarding media relations and media access.

Judicial officer training on clear presentation of court decision summaries (Recommendation 5). Develop training for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by litigants, the media, and the public. This training should address when and how to prepare a court decision summary.

Explanation of legal terminology (Recommendation 6). Encourage trial courts to create links from their websites to the existing legal glossary provided on the California Courts website at *www.courts.ca.gov/selfhelp-glossary.htm* for the benefit of the media and general public.

Additional online training materials for court staff and judges (Recommendation 7). Post media-related training materials for the courts on a secure internal online website, such as Serranus.

Conflict resolution among the bench, bar, and media

Regional media access plan (rapid response plan for access to the judicial process) (Recommendation 8). This recommendation would:

A. Implement a regional media access plan to help the courts address conflicts among the bench, bar, and media regarding access to the judicial process;[2] and
B. Seek the opinion of the Supreme Court's Committee on Judicial Ethics Opinions (CJEO) to determine whether there are any ethical constraints on judges participating in the regional media access plan. Specifically, seek clarification about whether it is proper for a judge who has communicated with an attorney or media member with an interest in a particular case to offer advice or assistance to the judge sitting on that case.

Creation of regional public information officer (PIO) positions (Recommendation 9). Support the creation of three public information officer (PIO) positions, with one position assigned to each of three regional offices of the Administrative Office of the Courts (AOC), when funds are available. The primary responsibilities of the regional PIOs would include assisting local courts, upon request, with: (1) coordination of media activities in high-profile cases, (2) responses to other complex media situations, and (3) community outreach efforts and general media relations. Until the creation of these regional positions, the AOC Office of Communications should continue to provide the trial courts with assistance on high-profile cases and other media matters on an ad hoc basis when requested by the courts and according to AOC resource availability.

Declaration: Reducing the cost of trial transcripts for the media

2 *Id.*, Appendix 3, pp. 41–44.

The Bench-Bar-Media Committee concluded that representatives of the California Newspaper Publishers Association and other media should meet with representatives of court reporters unions and associations to discuss a special protocol and pricing formula for copies of transcripts. The intent is to give the media an opportunity to obtain limited partial transcripts at a reasonable cost to assist them in preparing accurate accounts of court proceedings for publication. Court reporters would have the opportunity for additional income without jeopardizing their current right to compensation from litigants for preparing transcripts. If those representatives met and agreed to a modification of the current system that requires some change in rules of court and California statute, they would make an appropriate joint recommendation to the judicial branch or the Legislature.

Previous Council Action Regarding the Bench-Bar-Committee Final Report

Regarding the recommendations set forth in the final report, a history of council action exists for Use of cameras and other recording devices in the courtroom (Recommendation 1); Orders sealing records (Recommendation 3); and the Declaration: Reducing the cost of court reporter transcripts. There is no prior council action associated with the other committee recommendations.

Use of cameras and other recording devices in the courtroom

For almost 50 years, the Judicial Council has considered the issue of cameras in the courtroom. The council first adopted rule 980 of the California Rules of Court in 1965, under the leadership of then–Chief Justice Roger J. Traynor.[3] Several years of study led the council to conclude that media coverage of court proceedings interfered with the individual's right to a fair trial, so rule 980 prohibited photographing, recording, and broadcasting in the courtroom during court sessions or recesses.

In 1966, at the request of the Assembly Interim Committee on Fair Trial and Free Press, the council adopted temporary rule 981, which permitted a limited number of experiments in courtroom photography for use in connection with the committee's studies. The photographs taken during the experiments could not be used for general broadcast or commercial purposes.

The issue of cameras in courtrooms resurfaced in 1979, when then–Chief Justice Rose Elizabeth Bird appointed the Special Committee on the Courts and the Media to consider the question of media coverage of court proceedings. The council adopted an experimental rule specifying a trial period of film and electronic coverage beginning on July 1, 1980, after which the effects of the coverage were evaluated. This study culminated in the adoption of new rule 980 in 1984 that allowed film and electronic media coverage of criminal and civil courtroom proceedings at the trial and appellate levels.

[3] The following rule history is taken from the Judicial Council of Cal., *Photographing, Recording, and Broadcasting in the Courtroom: Guidelines for Judicial Officers* (1997), pp. 1–2, www.courts.ca.gov/xbcr/cc/photo.pdf.pdf.

Rule 980 again came under examination by the council in 1995 when the Task Force on Photographing, Recording, and Broadcasting in the Courtroom was appointed by then–Chief Justice Malcolm M. Lucas and charged with evaluating the following: (1) whether rule 980 should be amended; (2) if criteria to be applied by the court in determining whether to allow film and electronic equipment in courtrooms should be revised; (3) whether film and electronic media coverage should be prohibited in all state court proceedings, in certain types of proceedings, or in certain portions of proceedings; (4) whether there should be an expansion of the circumstances under which film and electronic media coverage of state court proceedings should be permitted; and (5) the criteria for the operation of cameras and other electronic recording equipment, including pool cameras, in courtrooms.

After considering the final report and recommendations of the task force, the council voted to retain judicial discretion over the use of cameras in state courts. Rule 980, which specified the conditions under which electronic media coverage is permitted in state courtrooms, was amended, effective January 1, 1997. The amended rule (1) retained judges' discretion over the use of cameras in all areas, including all pretrial hearings in criminal cases; (2) prohibited camera coverage of jury selection, jurors, or spectators in the courtroom; and (3) listed 19 factors a judge must consider in ruling on a request for camera coverage.

In May 2000, the AOC's Research and Planning Unit provided a summary of data related to the implementation of rule 980 in *Cameras in the Courtroom: Report on Rule 980*.[4] Over a two-year span, the unit collected copies of the *Media Request to Photograph, Record, or Broadcast* (form MC-500) and *Order on Media Request to Permit Coverage* (form MC-510) from superior courts. The report set forth findings based on a review of these forms. Data collected indicated the following:

- Courts granted most requests for media coverage.
- Courts were more likely to grant a request for coverage if the media adhered to the five-day notice rule.
- There was substantial variation on requests granted among the counties.
- The most numerous requests for media coverage had been for arraignments followed by verdicts and sentencing.
- Neither the type of media equipment nor the type of proceeding for which coverage was requested seemed to affect whether the court granted permission.

Rule 980 was again amended, effective January 1, 2006, to address changes in technology. Specifically, it provided definitions of "photographing," "recording," and "broadcasting" that encompassed digital technology and mixed-use devices (such as cell phones) that could be used

[4] Judicial Council of Cal., *Cameras in the Courtroom: Report on Rule 980* (May 2000), *www.courts.ca.gov/xbcr/cc/cameras.pdf.*

to take photos or make oral recordings. Rule 980 was amended once again effective January 1, 2007, and renumbered as rule 1.150.[5]

Orders sealing records

The council first adopted rules 243.1 and 243.2 in 2000 to guide the resolution of motions to seal records in the courts. At that time, there were no comprehensive, statewide rules for the appellate and trial courts on the sealing of records. In 2003, the council approved amendments to the rules that addressed the following issues: (1) clarifying the standard to be considered for unsealing records in the trial and appellate courts, (2) specifying that express factual findings are required to seal records, and (3) providing a party who has asserted that confidential documents were obtained through discovery with notice and an opportunity to request a sealing order in the trial court when another party intends to use the documents for adjudication but does not intend to request that they be sealed. In 2007, rules 243.1 and 243.2 were amended and renumbered as rules 2.550 and 2.551 to conform to new formatting and organization requirements.

Rules 2.550 and 2.551 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law.[6] The rules for sealed records also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication.[7]

Declaration: Reducing the cost of trial transcripts for the media

The rate for certified transcripts is set by Government Code section 69950. From 2002 to 2004, the council's Reporting of the Record Task Force met to discuss numerous issues surrounding court reporting services in California, including the cost of criminal transcripts. While court reporters are employees of California's superior courts, they are independent contractors when producing and finalizing the transcript and, as such, sell transcripts to the courts. The task force focused only on the cost of criminal transcripts because most transcripts purchased by the superior courts are for criminal proceedings. The task force developed recommendations to recalculate the cost of criminal transcripts. In 2005, the council accepted the task force's report, but no action has been taken on the recommendations.

Rationale for Bench-Bar-Media Committee Final Report

The Bench-Bar-Media Committee, appointed in 2008 by then–Chief Justice Ronald M. George, was created to foster improved understanding and working relationships among California

[5] The full text of the California Rules of Court is at *www.courts.ca.gov/rules.htm.*

[6] Examples of confidential records to which public access is restricted by law include records of the family conciliation court (Fam. Code, § 1818(b)), in forma pauperis applications (Cal. Rules of Court, rule 3.50–3.63, and search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948.

[7] See *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, pp. 1208–1209, fn. 25.

judges, lawyers, and journalists. Chaired by Associate Justice Carlos R. Moreno (Ret.) of the Supreme Court of California, the committee included appellate court justices, superior court judges, attorneys specializing in the First Amendment, a prosecutor, a criminal defense attorney, journalists, an academic, a superior court executive officer and a superior court public information officer (PIO). The committee's term ended in December 2010.

The committee developed the following purpose statement to guide its work:

> The Bench-Bar-Media Committee should work to improve the system of justice and foster public trust and confidence in that system through cooperative and positive relationships among these three stakeholders on a statewide and regional basis. To address the committee's purpose, seven strategies were identified. [8]

Three working groups identified issues and produced initial drafts of the committee's recommendations.[9] These working groups focused on three key areas: (1) access to court proceedings and records, chaired by Mr. Ralph Alldredge; (2) resolution of conflict among the bench, bar, and media, chaired by Associate Justice Judith D. McConnell; and (3) development of educational programs for the courts, bar, and journalists, chaired by Associate Justice William J. Murray, Jr. The working groups held numerous conference calls over two years to arrive at proposed recommendations for consideration by the committee. Associate Justice Steven Z. Perren served as liaison from the council's Criminal Law Advisory Committee and agreed to facilitate committee discussions on the proposed recommendations. Each recommendation was the result of lively debate, both at the working group and committee level.

The work of the committee culminated in its final report, *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice.* The final report proposes nine recommendations. The recommendations are followed by a summary of the deliberations in order to provide a better understanding of the development process and alternatives that were considered.

Public Comments, Alternatives Considered, and Policy Implications

The committee's draft report was available on the California Courts website for public comment from August 27 to October 29, 2010. Staff contacted various organizations and other entities that were likely to have an interest in the committee's recommendations and invited them to comment on the draft report.[10] In total, 124 commentators responded. Comments were received

[8] The seven strategies are listed in Attachment A, *Final Report*, Executive Summary, Purpose Statement, pg. 3.
[9] See Attachment A, *Final Report,* Roster of the Bench-Bar-Media Committee by Working Groups, Appendix 4, pg. 45.
[10] The following organizations and entities were invited to comment: California Judges Association, California Newspaper Publishers Association, California Channel, California District Attorneys Association, California Public Defenders Association, California Attorneys for Criminal Justice, New America Media, Society of Professional Journalists, State Bar of California, California Radio and Television News Directors Association (Northern and Southern regions), California Official Court Reporters Association, California Court Reporters Association, and specific council advisory committees (Access and Fairness Advisory Committee, Appellate Advisory Committee,

from individuals, organizations, and entities representing the general public, the judicial branch, and justice partners. A list of commenting entities is provided in Attachment B. Comments are provided in Attachment C. Because of the size and complexity of the comments, letters received from the Executive Committee of the Superior Court of Los Angeles County, the Judicial Council's Appellate Advisory Committee, *Los Angeles Times* Communications, and the California Judges Association are provided in Attachments D–G.

There were three central criticisms of the committee and its proposed recommendations: Media interests dominated the committee, the committee failed to adequately research and analyze the problems it identified, and the recommendations encroached on judicial discretion. Critics said the committee did not address the operational and administrative impact of the recommendations on the courts and that it did not fully consider the legal rights and interests of persons and institutions other than the press. These issues and others are addressed in appropriate sections of the final report.

Judges and court executive officers commenting on the draft recommendations overwhelmingly opposed them—especially a proposal to facilitate the use of cameras in the courtroom. Media members and First Amendment advocates supported the recommendations, and attorneys both supported and opposed the recommendations depending on their area of practice.

At the final committee meeting on December 1, 2010, the committee members acknowledged the courts' overwhelming opposition to the recommendations and recognized that any recommendations must be supported by the bench. Therefore, committee members endorsed less-sweeping recommendations that they believed would increase access and transparency while still protecting the integrity of court proceedings.

These recommendations will necessitate further study and review, possible development of new rules of court or revision of existing rules, and review of educational and training materials for the courts, judicial officers, and the public.

Use of cameras and other recording devices in the courtroom

This recommendation received the most opposition from judicial officers and court executives; accordingly, the committee significantly amended this proposal.

In the draft report, the committee proposed amending rule 1.150 to (1) set forth an explicit presumption that cameras and other recording devices be allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use, and (2) require judges to make specific findings to prohibit or limit the use of cameras and other recording devices. The committee also recommended that the *Order on Media Request to Permit Coverage* (form MC-510) be

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Court Executives Advisory Committee, Criminal Law Advisory Committee, Governing Committee of the Center for Education and Research, and Trial Court Presiding Judges Advisory Committee).

revised to require judges to state their findings regarding the use of cameras and other recording devices. The committee recommended informing judicial officers and court staff of the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment.

In response to the strong opposition, the committee decided to not proceed with the above-described recommendations. Instead, the committee now proposes adding commentary to rule 1.150 of the California Rules of Court that discusses (1) examples of good cause for the public filing *Media Request to Photograph, Record, or Broadcast* (form MC-500) in less than five court days before the portion of the proceeding to be covered, and (2) case law that conveys the benefit of stating findings whenever requests for cameras are denied or permitted. While the committee believes the issues that served as the impetus to the previous recommendations still exist and require attention, it has determined that the subject of cameras in the courtroom requires much more consideration and dialogue.

Gag orders

In the committee's draft report, it proposed a version of this recommendation that required the courts to (1) provide a means for the public and the media to be notified of the filing of a gag order, and (2) to provide notice of any application for or entry of a gag order by posting on local court websites within five court business days or posting such notice on the judicial branch website. The committee withdrew these provisions of the draft recommendation in response to public comments from the courts that conveyed that these notice requirements would be burdensome for courts already experiencing reduced staff and greater workloads.

In its very early deliberations, the committee considered recommending a new rule of court to require judges to hold a hearing and weigh an enumerated list of factors to determine if a gag order should be issued. After some discussion, it was determined that requiring a hearing would be unduly burdensome for the courts. The committee concluded that providing the media with a mechanism to voice its opposition and a subsequent forum to challenge a gag order were sufficient.

Orders sealing records

In the draft report, the committee proposed requiring the superior courts to post, within five court business days, applications for and entries of orders sealing records to their local court websites or to one central website, such as the California Courts website (the site for the California judicial branch). Because of concerns expressed by the courts about the workload this requirement would create, the committee decided to withdraw this notice requirement and instead propose that a public record be required of every application or motion that is filed to seal a record.

The committee had also proposed a recommendation that would have requested that the council support statutory authorization specifically permitting the award of attorney fees and costs—in civil matters only—to any party successfully challenging an order sealing a record or an

application for sealing a record, with such fees and costs to be paid by the party or parties making the application. Committee members had raised the concern that litigants often make frivolous requests to seal records. However, the cost to challenge a sealing order can be prohibitive and can therefore prevent others from challenging sealing orders. The committee had concluded that awarding attorney fees and costs in civil matters to any party successfully challenging an order sealing a record or an application for sealing a record would discourage future frivolous requests to seal records. This version of the recommendation would have applied to civil cases only, not to criminal matters. However, in response to judicial opposition to this clause in the draft recommendation and the difficulty in obtaining statutory changes, the committee agreed to delete the language regarding the award of attorney fees.

Education and Conflict Resolution

As with the previously discussed recommendations, these recommendations received opposition from most judicial officers and support from the media and First Amendment advocates. The committee carefully considered all of the comments received and determined that it should continue to propose the recommendations because they offer cost-efficient ways to better educate all stakeholders and reduce conflict among them. Only slight changes were made to some of these recommendations and these are discussed in the final report.

Attachments

1. Attachment A: *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in Pursuit of Justice, Bench-Bar-Media Committee Final Report* (October 2011)
2. Attachment B: Individuals and Entities Who Commented on the Draft Report (August 2010)
3. Attachment C: Public Comments on the Draft Report (August 2010)
4. Attachment D: Letter from Executive Committee of the Superior Court of Los Angeles County by Presiding Judge Charles W. McCoy, Jr.
6. Attachment E: Letter from the Judicial Council Appellate Advisory Committee by Justice Kathryn Doi Todd, Chair
7. Attachment F: Letter from *Los Angeles Times* Communications, LLC, by Attorneys Karlene W. Goller, Thomas W. Newton, David Tomlin, and David McCraw
8. Attachment G: Letter from California Judges Association by Judge Keith D. Davis, President

Attachment A

A Balancing Act

Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice

Bench-Bar-Media Committee

Final Report

October 2011

JUDICIAL COUNCIL
OF CALIFORNIA

ADMINISTRATIVE OFFICE
OF THE COURTS

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Additional information about the Bench-Bar-Media Committee may be found at *www.courts.ca.gov/10842.htm*.

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Contents

Executive Summary

The Bench-Bar-Media Committee was formed by former California Chief Justice Ronald M. George in March 2008. It was created to foster improved understanding and working relationships among California judges, lawyers, and journalists. Chaired by former Associate Justice Carlos R. Moreno of the Supreme Court of California, the committee included appellate court justices, superior court judges, attorneys specializing in the First Amendment, a prosecutor, a criminal defense attorney, journalists, a university professor, a superior court executive officer, and a superior court public information officer (PIO).

Public Comment Process and Subsequent Revisions

This final report and its recommendations represent a substantial revision of the committee's draft report, which was issued in August 2010. The draft report was posted on the California Courts website for public comment from August 27 to October 29, 2010. Various committees, and organizations were invited to comment.[1] A total of 124 letters, e-mails, and zoomerang comments were received from the public and the judicial branch. The draft recommendations are provided in Appendix 1.

Comments to the draft report were received from committees and organizations, including four Judicial Council advisory committees: Appellate, Court Executives, Court Technology, and Trial Court Presiding Judges. The California Judges Association and county district attorneys' and public defenders' offices responded. Eight superior courts sent in opposition letters representing their entire benches. The ACLU, media outlets, and court reporters' organizations commented, along with numerous individuals in and out of state.

Judges and court executive officers commenting on the draft recommendations overwhelmingly opposed them—especially a proposal to facilitate the use of cameras in the courtroom. (By contrast, all but one bench officer on the committee voted in support.) Media professionals and First Amendment advocates supported the recommendations, and attorneys either supported or opposed the recommendations depending on their areas of practice.

There were three primary criticisms of the committee and its proposed recommendations: that media interests dominated the committee; that the committee failed to adequately research and analyze the problems they identified; and that the recommendations encroached on judicial discretion. Critics said that the committee did not address the operational and administrative impact on the courts of its recommendations and did not fully consider the legal rights and interests of persons and institutions other than the press. These issues and others are addressed in the pertinent sections of this report.

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[1]The following organizations and entities were invited to comment: California Judges Association, California Newspaper Publishers Association, California Channel, California District Attorneys Association, California Public Defenders Association, California Attorneys for Criminal Justice, New America Media, Society of Professional Journalists, State Bar of California, California Radio and Television News Directors Association (Northern and Southern Regions), California Official Court Reporters Association, California Court Reporters Association, and certain Judicial Council advisory committees (Appellate Advisory Committee, Court Executives Advisory Committee, Trial Court Presiding Judges Advisory Committee, Criminal Law Advisory Committee, Access and Fairness Advisory Committee, and Governing Committee of the Center for Education and Research).

At the final committee meeting on December 1, 2010, the members acknowledged the courts' overwhelming opposition to their recommendations. For the most part, the committee recognized the futility of making recommendations not supported by the bench. Instead, committee members endorsed less sweeping recommendations that they believed would increase access and transparency while still protecting the integrity of court proceedings. The committee's term was not extended nor was a new committee appointed; therefore, draft recommendations 9 and 10—developing an implementation plan and appointing an implementation working group, respectively—were not included in the final recommendations.

It is the committee's intention that the recommendations presented in this report will begin to address concerns long held by the bench, bar, and media. The committee also hopes that the recommendations serve as a new starting point for a continuing dialogue between these three stakeholders.

Issue Statement

A free and open society relies in part on an independent and accountable judiciary, a fair and just legal system, and a free and robust media. Although the roles and responsibilities of the bench, bar, and media can overlap, they can also compete. As early as 1965, the Judicial Council attempted to address competing interests by creating rules of court that would protect the integrity of the judicial process while providing access to court records and proceedings. In subsequent years, the council revisited the issue of media access and amended the rules of court to allow cameras in proceedings under certain circumstances. The rules of court have continued to be re-examined in response to [CWt1]changing media and significant changes to its tools of the trade. In 1997, Chief Justice George addressed the long-standing tension between the rights to a fair trial and a free press: "While the courts have a fundamental duty to protect the fair and equal administration of justice, the public's understanding of the justice system depends in large part on information provided by the media. There are times when the rights to fair trial and free press are at odds with each other. The ultimate duty of our judges is to balance these competing interests and find the best solution for all concerned."[2]

In an effort to address the competing interests of the bench, the bar, and the media, the committee proposes recommendations to increase media access to court proceedings and records, enhance education about the roles and responsibilities of each group, and help resolve media access conflicts in an effective manner that protects and promotes the administration of justice.

[2] Judicial Council of Cal., *Photographing, Recording, and Broadcasting in the Courtroom: Guidelines for Judicial Officers* (1997), preface by Chief Justice Ronald M. George, *www.courts.ca.gov/xbcr/cc/photo.pdf.pdf*.

Purpose Statement

Rather than receiving a formal charge, the committee was asked to identify and address the critical issues surrounding the relationships among the courts, attorneys, and media. Accordingly, the committee developed the following purpose statement to guide its work:

> The Bench-Bar-Media Committee should work to improve the system of justice and foster public trust and confidence in that system through cooperative and positive relationships among these three stakeholders on a statewide and regional basis. To address the committee's purpose, the following strategies have been identified:
> - Identify and address the key issues affecting interactions among the three stakeholders;
> - Encourage fair and accurate reporting;
> - Propose recommendations on a variety of issues, such as the use of cameras in the courtroom, media access to public records, appropriate interaction with Internet-based media not aligned with traditional media, creation of local or regional bench-bar-media committees, and development of media outreach programs that would include all three stakeholder groups;
> - Eliminate unnecessary conflicts between the stakeholders without legal action, where possible, and improve the process of identifying and resolving those conflicts that require legal resolution;
> - Discuss the creation of local or regional committees to communicate with the media and the courts on urgent or sensitive matters affecting all three stakeholder groups;
> - Encourage the public and the media to learn about the judicial system, and the judicial branch to learn about the media; and
> - Provide a forum for ongoing dialogue.

Summary of Recommendations and Declaration

Recommendations 1–3: Access to Court Proceedings

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom

Add commentary to rule 1.150 of the California Rules of Court that discusses (1) examples of good cause for the public filing of *Media Request to Photograph, Record, or Broadcast* (form MC-500) in less than five court days before the portion of the proceeding to be covered; and (2) relevant case law that conveys the benefit of stating judicial findings whenever requests for cameras are denied or permitted.

Recommendation 2: Gag Orders

Adopt a uniform statewide rule similar to those governing orders sealing records and consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, which would:

A. Require specific findings of a legitimate competing interest that overrides the public's right of access and justifies a form of gag order;

B. Limit the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified;
C. Require a written order that serves as a public record specifying the terms of the order;
D. Provide for a simple form that would facilitate challenges to gag orders; and
E. Encourage judicial education regarding the law and the proper use of gag orders.

Recommendation 3: Orders Sealing Records

This recommendation would:

A. Amend California Rules of Court, rule 2.551(e)(2) to provide that there must be a public record of every application or motion that is filed to seal a record;
B. Develop a simple form that would facilitate challenges to orders sealing records; and
C. Encourage judicial education regarding the proper procedure for determining when a record should be sealed as set forth in California Rules of Court, rule 2.550 et seq.

Recommendations 4–7: Enhanced Education and Training

Recommendation 4: Educational Content and Programs

Support creation of educational content and programs to enhance relationships and cross-communication among the bench, bar, media, court staff, and public. Support the cost-effective development of the following:

A. Content and programs that are designed for trial and appellate court justices, judges, and court staff, as well as for the bar and media;[3]
B. Content and programs that provide guidance on how to create and maintain local superior court bench-bar-media committees;
C. Local or regional superior court academies for interested courts with resources from the Judicial Council for their development; and
D. Creation and maintenance by the Administrative Office of the Courts of an online repository of resources to help courts strengthen their educational programs regarding media relations and media access.

Recommendation 5: Judicial Officer Training on Clear Presentation of Court Decision Summaries

Develop training for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by litigants, the media, and the public. This training should address when and how to prepare a court decision summary.

[3] Attachment A: *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in Pursuit of Justice, Bench-Bar-Media Committee Final Report* (October 2011), Appendix 2, pp. 39 of 54.

Recommendation 6: Explanation of Legal Terminology

Encourage trial courts to create links from their websites to the existing legal glossary provided on the California Courts website at *www.courts.ca.gov/selfhelp-glossary.htm* for the benefit of the media and general public.

Recommendation 7: Additional Online Training Materials for Court Staff and Judges

Post media-related training materials for the courts on a secure internal online website, such as Serranus.

Recommendations 8 and 9: Conflict Resolution Among the Bench, Bar, and Media

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)

A. Implement a Regional Media Access Plan to assist the courts when asked to address conflicts among the bench, bar, and media regarding access to the judicial process.[4]
B. Seek the opinion of the Supreme Court's Committee on Judicial Ethics Opinions (CJEO) to determine whether there are any ethical constraints on judges' participating in the Regional Media Access Plan. Specifically, seek clarification as to whether it is proper for a judge who has communicated with an attorney or media member with an interest in a particular case to offer advice or assistance to the judge sitting on that case.

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions

Support the creation of three public information officer (PIO) positions, with one position assigned to each of three regional offices of the Administrative Office of the Courts (AOC), when funds are available. The primary responsibilities of the regional PIOs would include assisting local courts, upon request, with: (1) coordination of media activities in high-profile cases, (2) responses to other complex media situations, and (3) community outreach efforts and general media relations. Until the creation of these regional positions, the AOC Office of Communications should continue to provide the trial courts with assistance on high-profile cases and other media matters on an ad hoc basis when requested by the courts and according to AOC resource availability.

Declaration: Reducing the cost of trial transcripts for the media

The Bench-Bar-Media Committee concluded that representatives of the California Newspaper Publishers Association and other media should meet with representatives of court reporters unions and associations to discuss a special protocol and pricing formula for copies of transcripts. The intent is to give the media an opportunity to obtain limited partial transcripts at a reasonable cost to assist them in preparing accurate accounts of court proceedings for publication. Court reporters would have the opportunity for additional income without jeopardizing their current right to compensation from litigants for preparing transcripts. If those representatives met and agreed to a modification of the current system that requires some change in rules of court and California statute, they would make an appropriate joint recommendation to the judicial branch or the Legislature.

[4] See Appendix 3, Regional Media Access Plan—Recommendation 8 of the Bench-Bar-Media Committee.

Committee: Background, Issue Statement, Purpose Statement, and Process

Background

In March 2008, then–Chief Justice Ronald M. George formed the Bench-Bar-Media Steering Committee and appointed 14 members. The committee was established to foster improved understanding and working relationships among California judges, lawyers, and journalists. Chief Justice George appointed then–Associate Justice Carlos R. Moreno of the Supreme Court of California as chair of the committee.

"By working together, the bench, bar, and news media can improve our understanding of each other's functions and develop practices in areas of common concern that will improve the operation of the legal system and promote greater public understanding of the courts," said Chief Justice George.[5]

The Bench-Bar-Media Committee was originally created as a steering committee; it was intended that a larger committee would be formed later to study the areas identified by the steering committee. The original steering committee included a justice, superior court judges, journalists, First Amendment advocates, a prosecutor, and a criminal defense attorney. At their first business meeting, the members concluded that instead of continuing as a steering committee, the Bench-Bar-Media Committee should serve as a full committee and delve into the relevant issues. They also decided that new members with extensive media experience should be recruited to serve on the committee and should include:

- An academic;
- A superior court executive officer;
- A superior court public information officer; and
- Journalists who cover legal issues and the courts.

Accordingly, in December 2008, the committee was asked to nominate qualified professionals to serve on the expanded committee. Chief Justice George reviewed the candidates in March 2009 and appointed new members, bringing total committee membership to 24. The superior court executive officer eventually resigned after the committee began meeting, however, a replacement was never appointed.

The committee served a two-year term ending in December 2010. The members met in person at the AOC's San Francisco offices on December 16, 2008; May 12, 2009; October 29, 2009; April

[5] Judicial Council of Cal., "Chief Justice George Names Bench Bar Media Steering Committee," News Release No. 12 (March 18, 2008), *www.courts.ca.gov/xbcr/cc/NR12-08.PDF*.

12, 2010; and December 1, 2010. In addition, working groups held numerous conference calls. At its final in-person meeting, the committee reviewed the public's comments on the draft report and revised the recommendations.

Process for Development of Recommendations

Justice Moreno formed three working groups within the committee to further identify the related issues and produce draft recommendations.[6] The working groups held numerous conference calls during the two-year term to arrive at recommendations proposed for consideration by the committee. Associate Justice Steven Perren of the Court of Appeal, Second Appellate District, Division Six, served as liaison from the Judicial Council's Criminal Law Advisory Committee and agreed to facilitate committee discussions on proposed recommendations.

The working groups and their areas of focus were:

- **Access to Court Proceedings Working Group**, which explored the sealing of case records and cases, gag orders, the use of cameras and other recording devices in the courtroom, and the cost of court reporter transcripts.
- **Conflict Resolution Working Group,** which looked at ways to resolve conflicts that arise between the bench, the bar, and the media during coverage of court proceedings. The working group also explored the need for court public information officers to assist in high-profile cases, respond to complex media situations, help with community outreach efforts, and generally enhance the courts' media relations.
- **Educational Programming Working Group**, which developed suggestions to enhance relationships and cross-communication among the bench, bar, media, court staff, and general public. The working group also suggested training for judges and justices on how to clearly present the meaning or substance of court decisions in a way that can be easily grasped by litigants, the media, and the public. Additionally, it explored the dissemination of online legal glossaries to aid the public and creation of an online repository of training materials that the courts can use to interact more effectively with the media.

Media access issues described in the report are anecdotal and not supported by formal research or data. Each issue and draft recommendation was the product of numerous conference discussions among the working group members. Draft recommendations were presented by working group chairs to the full committee and debated and considered by all members. Committee members refrained from talking about pending high-profile cases, because judicial ethics require judicial officers not to comment on pending cases.

The committee could not reach unanimous consensus on a number of recommendations, which were eventually approved or rejected based on a majority vote. The recommendations as

[6] See Appendix 4, Roster of the Working Groups of the Bench-Bar-Media Committee.

presented in this final report reflect the committee's consideration of all comments received during the public comment period. Summaries of dissenting viewpoints are also included.

Additional information about the Bench-Bar-Media Committee can be found at *www.courts.ca.gov/10842.htm*.

Access to Court Proceedings
Recommendations 1–3

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom

Add commentary to rule 1.150 of the California Rules of Court that discusses (1) examples of good cause for the public to file the Judicial Council form *Media Request to Photograph, Record, or Broadcast* (form MC-500) in less than five court days before the portion of the proceeding to be covered, and (2) relevant case law that conveys the benefit of stating judicial findings whenever requests for cameras are denied or permitted.

Recommendation 2: Gag Orders

Adopt a uniform statewide rule similar to those that govern orders sealing records and consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, which would:

A. Require specific findings of a legitimate competing interest that overrides the public's right of access and justifies a form of gag order;
B. Limit the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified;
C. Require a written order that serves as a public record specifying the terms of the order;
D. Provide for a simple form for challenges to gag orders; and
E. Encourage judicial education regarding the law and proper use of gag orders.

Recommendation 3: Orders Sealing Records

This recommendation would:

A. Amend rule 2.551(e)(2) of the California Rules of Court to provide that there must be a public record of every application or motion filed to seal a record;
B. Develop a simple form to facilitate challenges to orders sealing records; and
C. Encourage judicial education regarding the proper procedure for determining when a record should be sealed as set forth in rule 2.550 et seq. of the California Rules of Court.

Declaration: Reducing the Cost of Trial Transcripts for the Media

The Bench-Bar-Media Committee has concluded that representatives of the California Newspaper Publishers Association and other media groups should meet with representatives of court reporters unions or associations to discuss a special protocol and pricing formula for copies of transcripts. The intent is to give media outlets an opportunity to obtain limited partial transcripts at a reasonable cost to assist them in preparing accurate accounts of court proceedings for publication. Court reporters would have the opportunity for additional income without jeopardizing their current right to compensation from litigants for preparing transcripts. If those representatives meet and are able to agree on a modification of the current system that requires

some change to the rules of court or California statute, they could make an appropriate recommendation to the judicial branch and Legislature.

Background on Recommendations 1–3

The recommendations in this section relate to the following strategies of the committee's purpose statement:

- Identify and address the key issues affecting interactions among the three stakeholders; and
- Propose recommendations on a variety of issues, such as the use of cameras in the courtroom, media access to public records, appropriate interaction with internet-based media not aligned with traditional media, creation of local or regional bench-bar-media committees, and development of media outreach programs that would include all three stakeholder groups.

When the committee was first formed, the judicial branch was not subject to statutes governing access to judicial administrative records. However, in fall 2009, the Legislature required the Judicial Council to create court rules that gave greater public access to court administrative records. New rules 10.500 and 10.501[7] of the California Rules of Court went into effect January 1, 2010. The rules essentially create greater public access to judicial administrative records held by all of California's courts, the Judicial Council, and the Administrative Office of the Courts. The adoption of the rules represents a trend toward greater transparency in the California judicial branch. They also form a context for discussions by the working group and the committee as a whole.

Previous council action on cameras (recommendation 1)

The Judicial Council first adopted rule 980 of the California Rules of Court on November 9, 1965, under the leadership of Chief Justice Roger J. Traynor.[8] Several years of study had led the council to conclude that media coverage of court proceedings interfered with the individual's right to a fair trial, so the original rule 980 prohibited photographing, recording, and broadcasting in the courtroom during court sessions or recesses. Exceptions were made for media coverage of ceremonial proceedings and coverage before and after daily court sessions.

In 1966, at the request of the Assembly Interim Committee on Fair Trial and Free Press, the council adopted temporary rule 981, which permitted a limited number of experiments in courtroom photography for use in connection with the committee's studies. These experiments were held from June 1 to December 31, 1966, with the permission of all trial participants. The

[7] The full text of rules 10.500 and 10.501 of the California Rules of Court may be found online at *www.courts.ca.gov/rules.htm*.

[8] The following rule history is taken from the Judicial Council of Cal., *Photographing, Recording, and Broadcasting in the Courtroom: Guidelines for Judicial Officers* (1997), pp. 1–2, *www.courts.ca.gov/xbcr/cc/photo.pdf.pdf*.

photographs taken during the experiments could not be used for general broadcast or commercial purposes.

The issue of cameras in courtrooms resurfaced in 1979, when Chief Justice Rose Elizabeth Bird appointed the Special Committee on the Courts and the Media to consider the question of media coverage of court proceedings. The Judicial Council adopted an experimental rule specifying a trial period for film and electronic coverage beginning on July 1, 1980, after which the effects of film and electronic media coverage were evaluated. This study culminated in the adoption of new rule 980, which provided for judicial discretion in making the determination in allowing film and electronic media coverage of criminal and civil courtroom proceedings at the trial and appellate levels. The new rule took effect on July 1, 1984.

In October 1995, rule 980 again came under examination by the council when Chief Justice Malcolm M. Lucas appointed the Task Force on Photographing, Recording, and Broadcasting in the Courtroom and charged it with evaluating:

- Whether rule 980 should be amended;
- If the criteria to be applied by the court in determining whether to allow film and electronic equipment in courtrooms should be revised;
- Whether film and electronic media coverage should be prohibited in all state court proceedings, in certain types of proceedings, or in certain portions of proceedings;
- Whether there should be an expansion of the circumstances under which film and electronic media coverage of state court proceedings are now permitted; and
- What criteria apply for the operation of cameras and other electronic recording equipment, including pool cameras, in courtrooms.

The 13-member task force, chaired by Associate Justice Richard D. Huffman of the Court of Appeal, Fourth Appellate District, Division One, consisted of judges, attorneys, and court administrators who had extensive experience with high-profile cases covered by the media. No representatives of the media participated on the committee, yet a statewide survey was conducted, a public hearing was held, and comments were received by interested parties.

After considering the final report and recommendations of the task force, the Judicial Council on May 17, 1996, voted to retain judicial discretion over the use of cameras in state courts. Rule 980, which specifies the conditions under which electronic media coverage is permitted in state courtrooms, was amended, effective January 1, 1997. As amended, the rule:

- Retained judges' discretion over the use of cameras in all areas, including all pretrial hearings in criminal cases;
- Prohibited camera coverage of jury selection, jurors, or spectators in the courtroom; and
- Listed 19 factors a judge must consider in ruling on a request for camera coverage, including the importance of maintaining public access to the courtroom, the privacy rights of the participants in the proceedings, and the effect on the parties' ability to select an unbiased jury.

In May 2000, the AOC's Research and Planning Unit published *Cameras in the Courtroom: Report on Rule 980,*[9] a summary of data relating to the implementation of the rule.

In 2007, Chief Justice Ronald M. George requested that the superior courts send the AOC copies of all required forms filed under rule 980. Over a two-year span, the Research and Planning Unit collected filed copies of *Media Request to Photograph, Record, or Broadcast* (form MC-500) and *Order on Media Request to Permit Coverage* (form MC-510). The report set forth findings based on review of these forms. The collected data indicated that courts grant the majority of requests for media coverage; courts are more likely to grant a request for coverage if the media adhere to the five-day notice rule; there was substantial variation on requests granted among the counties; the most numerous requests for media coverage have been for arraignments followed by verdicts and sentencing; and neither the type of media equipment nor the type of proceeding for which coverage is requested seems to have an effect on whether the court will grant permission.

Rule 980 was amended again effective January 1, 2006, to address changes in technology. Specifically, it provided definitions of "photographing," "recording," and "broadcasting" that encompassed digital technology and mixed-use devices (such as cell phones) that could be used to take photos or make oral recordings. Rule 980 was amended again effective January 1, 2007, and renumbered as rule 1.150.[10]

Rationale for recommendation 1
Both judicial and media members of the committee cited legitimate reasons for the media to file *Media Request to Photograph, Record, or Broadcast* (form MC-500)[10] in less than five court days before the portion of the proceeding to be covered. A trial judge on the committee suggested these reasons should be highlighted in the commentary. Media members of the committee expressed their dissatisfaction with trial judges who summarily deny their requests for cameras without stating their findings. Again, a trial court judge on the committee suggested that existing case law conveys the benefit of stating findings whenever requests for cameras are denied or permitted and suggested that this relevant case law be included in the commentary with rule 1.150.

Alternatives considered and policy implications for recommendation 1
In its draft report circulated for public comment, the committee proposed amending rule 1.150 to (1) set forth an explicit presumption that cameras and other recording devices should be allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use and (2) require judges to make specific findings to prohibit or limit the use of cameras and other recording

[9] Judicial Council of Cal., *Cameras in the Courtroom: Report on Rule 980* (May 2000), *www.courts.ca.gov/xbcr/cc/cameras.pdf*.
[10] The full text of rule 1.150 may be found online at *www.courts.ca.gov/rules.htm*.
[10] See Appendix 5, *Media Request to Photograph, Record, or Broadcast* (form MC-500).

devices. The committee referred to the presumption of openness found in General Rule 16 (Courtroom Photography and Recording by the News Media) of the Washington Rules of Court.[11] In the draft report, the committee also recommended that *Order on Media Request to Permit Coverage* (form MC-510)[12] be revised to require judges to state their findings regarding the use of cameras and other recording devices. The committee also recommended informing judicial officers and court staff of the importance of providing court security personnel with a copy of any order concerning the presence or use of cameras or other recording equipment.

Committee members had observed that judges frequently appear to deny the use of cameras and other recording devices in courtrooms without providing any reasons for the prohibition. Per rule 1.150(e)(4), "[t]he judge ruling on the request to permit media coverage is not required to make findings or a statement of decision." Committee members representing the media said that when a judge issues an order denying the use of recording devices without any express findings, the media are left without any grounds to challenge the order. Additionally, committee members from the media related their own experiences and views that judges are increasingly denying electronic recording in the courtroom as a matter of course. They said that such prohibition is often extremely broad, banning the use of audio recorders, laptops, and other electronic devices. After extensive consideration, the committee reviewed rule 1.150 and concluded that it should be changed to support greater access to court proceedings. Trial court judges would still retain discretion to permit or deny cameras but would be required to give their reasons for doing so.

Judges issue their orders regarding photography, recording, and broadcasting on Judicial Council form MC-510. Item 3 of the form includes space for judges to state their findings, but filling in the item is currently optional. The committee made a preliminary recommendation that this form be revised to require judges to expressly state the findings that support their orders.

The committee previously recommended that information be provided to judicial officers and court staff on the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment, because committee members noted that, although a judge may issue an order allowing the use of recording devices, court security personnel are often not informed of the order. As a result, security personnel sometimes mistakenly confiscate recording equipment. The committee proposed this recommendation to better ensure that the judge's order is followed and that the media has the ability to photograph, record, and broadcast when authorized to do so.

Public comment on recommendation 1

Judicial officers and court executive officers commenting overwhelmingly opposed the draft recommendation because they said it encroached on judicial discretion and created an undue burden on the court during a time of diminished resources. The Trial Court Presiding Judges

[11] See Appendix 6, General Rule 16 (Courtroom Photography and Recording by the News Media) of the Washington Rules of Court.
[12] See Appendix 7, *Order on Media Request to Permit Coverage* (form MC-510).

Executive Committee, for example, pointed out that a rule change would create more demands on the time of judges, court staff, and litigants and create the potential for additional continuances and appellate proceedings.

In response to the strong opposition expressed in the comments of judicial officers, the committee reluctantly decided not to proceed with the draft recommendation in this final report. Several committee members believe that the conditions giving rise to the original recommendation still exist and require attention. All committee members agreed that the topics require much more consideration and dialogue.

Implementation requirements, costs, and operational impacts of recommendation 1
The addition of commentary to an existing rule of court will require AOC staff time, specifically from the Office of the General Counsel. The impact of the revised recommendation on the courts is unknown.

Relevant strategic plan goals and operational plan objectives
Goal I: Access, Fairness, and Diversity

Previous council action on gag orders (recommendation 2)
None.

Rationale for recommendation 2
The issuance of gag orders was the subject of numerous committee discussions and debates. Media and bar members said gag orders appear to be increasingly common and issued not only in high-profile cases but in those of little interest to the public. On occasion, the breadth of gag orders is unnecessarily broad. For instance, they said, gag orders often state that the parties and their agents cannot release any information or opinions concerning the case or issues that may be raised by the case. In addition, they said gag orders sometimes make only a broad reference to fair trial concerns and do not state any findings to explain the judge's decision to issue the gag order. This leaves the media unclear as to why they cannot receive additional information from the parties or their attorneys.

Another concern raised by media professionals and media lawyers was the frequent lack of opportunity to challenge a gag order. Because judges are not required to hold hearings when issuing such orders, they said, the media often do not have an opportunity to assert their legal opposition. Also, retaining counsel to oppose a gag order is often too costly. The issue of standing was discussed in depth. Committee members noted that some judges have questioned whether journalists have standing to oppose such orders.

In response to these concerns, the committee developed the five-pronged recommendation 2. Currently, there is no single authority governing the issuance of gag orders. Instead, there is a wide array of federal and state case law that addresses gag orders in a fractured and disparate

manner. Accordingly, the committee recommends that a new California rule of court be developed.

Recommendation 2A (specific findings). So that the media and public better understand the rationale behind a gag order and the content it appropriates, the committee recommends that judges make specific findings of a legitimate competing interest that overrides the public's right of access and justifies some form of gag order.

Recommendation 2B (limits to gag orders). The committee has concluded that the scope of gag orders is unnecessarily broad and should be as narrow as possible to preserve the public's right to know. It recommends that the rule require judges to limit the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified.

Recommendation 2C (written order). The committee recommends that a written court order be required so that the public and the media have notice of the filing of a gag order and are thereby given an opportunity at the earliest possible time to challenge it. The media members of the committee have asked for the opportunity to be heard in court. Accordingly, the committee as a whole agreed that representatives of the media, along with the public, should receive notice via a written court order so that they have the ability to assert their legal opposition to gag orders.

Recommendation 2D (form for pro per parties). The committee concluded that a standard form should be developed to assist pro per individuals (including members of the media and public) with challenges to gag orders. Because pro per challenges are made without the assistance of legal counsel, the Judicial Council should introduce a form that will enable pro pers to easily provide the information needed by the court to evaluate the merit of their arguments.

Recommendation 2E (judicial education). The committee concluded that information and education on the proper use of gag orders would reduce the issuance of gag orders that are overly broad. It therefore recommends that education for judicial officers on the topic of gag orders be developed and that judicial officers be encouraged to take this training.

Alternatives considered and policy implications for recommendation 2

In the committee's draft report circulated for public comment, it proposed a version of this recommendation that also required the courts to (1) provide a means for the public and the media to be notified of the filing of a gag order, and (2) to provide notice of any application for or entry of a gag order on local court websites or the California Courts website within five court business days. The committee withdrew these provisions of the draft recommendation in response to comments from the courts that these notice requirements would be burdensome for courts already experiencing reduced staff and greater workloads.

In its very early deliberations, the committee considered recommending a new rule to require judges to hold a hearing and weigh an enumerated list of factors in determining if a gag order should be issued. Judicial officers on the committee expressed their concern that the trial courts are not in a position to add such determinations to their workloads. After review of comments and discussion, the committee concluded that requiring such hearings would be unduly burdensome for the courts and that providing the media with a mechanism to voice opposition and a subsequent forum to challenge gag orders was sufficient.

Public comments on recommendation 2
Judicial opponents commented that this recommendation infringes on judicial discretion and places significant burden on the trial courts. Further, they said the media and public can learn of filed motions for a gag order, calendar settings for motions for a gag order, or the entry of such an order through the court docket and court filings. Advance notice of a hearing on a gag order would be problematic in that it permits public dissemination of information before the hearing can be held, which could make the ultimate order moot.

Implementation requirements, costs, and operational impacts of recommendation 2
The development of a new rule of court and Judicial Council form will require AOC staff resources, specifically from the Office of the General Counsel. In addition, staff from the Education Division/Center for Judicial Education and Research would need to revise the current media training content and resources for the above-described judicial education. The impact on the courts is not known.

Relevant strategic plan goals and operational plan objectives
Goal I: Access, Fairness, and Diversity
Goal IV: Quality of Justice and Service to the Public

Previous council action on sealing records (recommendation 3)
The Judicial Council first adopted rules 243.1 and 243.2 on October 27, 2000, to guide the resolution of motions to seal records in the courts. At that time, there were no comprehensive, statewide rules for the appellate and trial courts on the sealing of records. In October 2003, the council approved amendments to the rules (effective January 1, 2004) that addressed the following issues: (1) clarifying the standard to be considered for unsealing records in the trial and appellate courts, (2) specifying that express factual findings are required to seal records, and (3) providing a party who has asserted that confidential documents were obtained through discovery with notice and an opportunity to request a sealing order when another party intends to use the documents for adjudication but does not intend to request that they be sealed. Effective January 1, 2007, rules 243.1 and 243.2 were amended and renumbered respectively as rules 2.550 and 2.551 to conform to new formatting and organization requirements.[13]

[13] The full text of rules 2.550 and 2.551 may be found online at *www.courts.ca.gov/rules.htm*.

Rules 2.550 and 2.551 provide a standard and procedure for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. These rules apply to both civil and criminal cases and recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law.[14] The rules for sealed records also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. (See *NBC Subsidiary, supra,* 20 Cal.4th at pp. 1208–1209, fn. 25.)

Rationale for recommendation 3

Committee members representing the media said that they are often not aware when courts have sealed records or even that some cases exist. These concerns were echoed when it came to light that one California superior court judge had sealed an entire civil case that could have become a high-profile case because of the identity of parties involved. Because the entire case was sealed, it did not appear on the court's docket. However, a reporter inadvertently discovered the case while sitting in the courtroom to observe another case. After extensive discussion, the committee concluded that new measures should be taken to disclose the sealing of records to the media and public and also to ensure that orders to seal are made in accordance with rules 2.550–2.551.

Recommendation 3A (public record). The primary concern of members was providing the media and public with some form of notice as to when an application for a sealing order has been made and when the court has issued an order to seal a record. The committee discussed various options for notifying the media and public and concluded that requiring a written public order would provide adequate notice. As with all other public orders, an interested individual can merely review the court's case file to view the order.

Recommendation 3B (form to facilitate pro per challenges). The committee also concluded that the judicial branch should develop a standard form to assist pro per litigants with challenges to sealing orders. The proposed form would enable pro pers—including representatives of the media—to easily supply the information needed by the court to evaluate their arguments against the sealing of records.

Recommendation 3C (judicial education). Committee members recounted occasions where judges have issued orders that stated vague or minimal factual findings to justify the sealing of records, with insufficient detail to explain why the records were sealed. The committee reviewed the factual findings expressly required by rule 2.550(d) and concluded that they are sufficient. Rather than modifying subdivision (d), the committee determined that additional training for judges on the proper process for determining when a record should be sealed under rule 2.550 et

[14] Examples of confidential records to which public access is restricted by law include records of the family conciliation court (Fam. Code, § 1818(b)), in forma pauperis applications (Cal. Rules of Court, rule 3.50-3.63), and search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948.

seq. would be valuable. Such training modules or courses should be provided by the AOC Education Division/CJER, and judges should be encouraged to take this training.

Alternatives considered and policy implications for recommendation 3
In the earlier stages of discussion, the committee considered significant amendments to rules 2.550 and 2.551. However, the committee came to the conclusion that the existing rules are adequate. What appeared to be lacking was consistency in how judges applied the rules. Consequently, the committee proposed additional judicial education and that appropriate educational courses and resources be developed.

In the draft circulated for comment, this recommendation also required the superior courts within five court business days to post applications for and entries of orders sealing records to their local court websites or to one central website such as the California Courts site. Because of concerns expressed by the courts as to the workload this would create, the committee withdrew this requirement and instead proposes requiring that a written public order be placed in the case file for every application or motion filed to seal a record.

The committee's draft version of this recommendation also requested that the Judicial Council support statutory authorization specifically permitting the award of attorney's fees and costs—in civil matters only—to any party successfully challenging an order sealing a record or application for sealing a record, with such fees and costs to be paid by the party making the application. Committee members raised the concern that litigants often make frivolous requests to seal records. However, the cost to challenge a sealing order can be prohibitive and therefore prevent others from challenging sealing orders. The committee had concluded that awarding attorney's fees and costs in civil matters to any party successfully challenging an order sealing a record or an application for sealing a record would discourage future frivolous requests to seal records. This version of the recommendation would have applied to civil cases only. However, in response to judicial opposition to this clause in the draft recommendation and the difficulty in obtaining necessary statutory changes, the committee deleted the language about attorney fees.

Because the committee has identified problems with the public not having notice of the sealing of records and cases, it proposes the amended recommendation 3 as stated above.

Public comment on recommendation 3
During the public comment process, judicial officers stated that the current rule, along with leading cases, provided sufficient guidelines for judges to address this issue. Conversely, media representatives commented that the media and the public would benefit greatly from a system that allows individuals to challenge applications to seal records before a judge has made a decision. They stated that it is far easier to contest an application in advance of an order than to persuade a judge to reconsider an order that has been issued. In response, the committee decided to withdraw the provisions regarding online notice of sealing orders and the award of attorney fees.

Implementation requirements and operational impacts of recommendation 3
The amendment of an existing rule of court and the development of a simple form to facilitate challenges to orders sealing records will require AOC staff time, specifically from the Office of the General Counsel in amending the rule and the Education Division/CJER in developing judicial or administrative staff training. Comments from the courts raised concerns regarding holding additional hearings for those parties wishing to discuss or litigate the request for a sealing order, further congesting the courts.

Relevant strategic plan goals and operational plan objectives
Goal I: Access, Fairness, and Diversity
Goal IV: Quality of Justice and Service to the Public

Previous council action on declaration dealing with court reporters
The rate for certified transcripts is set by California Government Code section 69950. From 2002 to 2004, the Judicial Council's Reporting of the Record Task Force met to discuss numerous issues surrounding court reporting services in California, including the cost of criminal transcripts. While court reporters are employees of California's superior courts, they are independent contractors when producing and finalizing the transcript and, as such, sell transcripts to the courts. The task force focused only on the cost of criminal transcripts because the majority of transcripts purchased by the superior courts are for criminal proceedings. The task force developed recommendations to recalculate the cost of criminal transcripts. In 2005, the council accepted the task force's report, but no action has yet been taken on the recommendations.

Rationale for the declaration
Committee members representing the media stated that civil and criminal transcripts are sometimes extremely costly. Reporters and news outlets often use transcripts to prepare their stories. The committee concluded that the high price of some transcripts essentially hinders media access to court proceedings and thus the public's knowledge about cases and proceedings. The committee determined that media leadership should attempt to communicate directly with court reporter leadership to discuss this concern and determine if any agreement can be reached. Because the committee is not requesting any council action at this time and the committee is not taking any formal action as a whole, this issue is presented in the form of a statement rather than a recommendation.

Alternatives considered and policy implications
The Access to Court Proceedings Working Group considered recommending development of a new Judicial Council advisory group to address the cost of certified transcripts. The committee was informed of the Reporting of the Record Task Force's attempt to address this issue. Because significant effort had been made by this earlier task force, the working group determined instead that the media should address their concerns directly to court reporters. If those representatives meet and reach agreement on modification of the current system that requires some change in

rules of court and/or California statute, they will make an appropriate recommendation to the judicial branch or the Legislature. Such a joint recommendation should be thoroughly vetted by judicial branch leaders and trial courts for possible impacts on court operations and budgets.

Public comment on declaration
Mixed comments were received from the public on this declaration. Those opposed to the declaration stated that the Judicial Council should stay out of the private business relationship between reporters and their media clients. Some stated that other parties and groups are more deserving of reduced fees (e.g., public defenders, legal aid groups). Members from the judicial branch conveyed that the proposal places more burden on court reporters with the courts paying for the extra work entailed, all to the benefit of the media. Court reporters commented that the declaration runs counter to ethics for court reporters as impartial guardians of the record. The California Court Reporters Association and the California Official Court Reporters Association did not share their views on the declaration but said they are willing to participate in discussions with media organizations.

Implementation requirements, costs, and operational impacts of declaration
The independent meetings between representatives of the media and court reporters will not create any implementation requirements, costs, or operational impacts for the judicial branch.

Relevant strategic plan goals and operational plan objectives
Goal I: Access, Fairness, and Diversity
Goal IV: Quality of Justice and Service to the Public

Future consideration—access to appropriate juvenile court proceedings and records
Some committee members expressed a desire to discuss and make recommendations to improve media access to appropriate juvenile court proceedings and records. These members recognized, however, that the committee lacked the time to adequately address this issue. In addition, such a comprehensive review and discussion would require the participation of additional groups that were not represented on the committee.

Enhanced Education and Training
Recommendations 4–7

Recommendation 4: Educational Content and Programs
Support creation of educational content and programs to enhance relationships and cross-communication among the bench, bar, media, court staff, and public. Support the cost-effective development of the following:

A. Content and programs that are designed for trial and appellate court justices, judges, and court staff, as well as for the bar and media;[15]
B. Content and programs that provide guidance on how to create and maintain local superior court bench-bar-media committees;
C. Local or regional superior court academies of interested courts with resources from the Judicial Council for their development; and
D. Creation and maintenance by the Administrative Office of the Courts of an online repository of resources that the courts can use to strengthen their educational programs regarding media relations and media access.

Recommendation 5: Judicial Officer Training on Clear Presentation of Court Decision Summaries
Develop training for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by litigants, the media, and the public. This training should address when and how to prepare a court decision summary.

Recommendation 6: Explanation of Legal Terminology
Encourage trial courts to post links on their websites to the existing legal glossary provided on the California Courts website at *www.courts.ca.gov/selfhelp-glossary.htm* for the benefit of the media and the public.

Recommendation 7: Additional Online Training Materials for Court Staff and Judges
Post media-related training materials for the courts on a secure internal online website, such as Serranus.

Background on Recommendations 4–7
The recommendations set forth in this section relate to the following strategies of the committee's purpose statement:

- Encourage the public and the media to learn about the judicial system, and the judicial branch to learn about the media;
- Provide a forum for ongoing dialogue; and

[15] See Appendix 2, Recommended Educational Content—Recommendation 4 of the Bench-Bar-Media Committee.

- Encourage fair and accurate reporting.

The Educational Programming Working Group crafted preliminary versions of the recommendations discussed in this section and presented them to the committee. The resulting recommendations are therefore the product of discussions within both the working group and the entire committee and subsequent consideration of public comments regarding the recommendations. The impact of the state's fiscal climate is also reflected in the final recommendations.

The current statewide landscape shows massive media layoffs, reduced budgets for newsgathering, reductions in court staff, and fewer local bench-bar-media committees. Novice media representatives and courtroom staff frequently lack knowledge regarding pertinent court rules and the handling of media requests. Education and training are therefore even more critical.

The media are eager to have greater access to the courts, and, therefore, are enthusiastic about strengthening relations with the bar and judicial branch. The committee recognized a need for the judicial branch and bar to take the initiative in improving communications with the media. Education and training for judicial branch leaders, bar members, and the media were determined to be the cornerstone of mutually supportive relationships. At this time, the number of local bench-bar-media committees is unknown.

The committee recommends the following to develop effective and lasting communication among the courts, media, and bar:

- Leadership at the statewide level to provide forums for dialogue and encourage participation in educational events;
- Active participation and presence of the courts' presiding judges, court executive officers, and public information officers at meetings with the local media; and
- Creation of regional public information officer positions and interdisciplinary teams to assist in resolving free press–fair trial conflicts.

The committee believes that the development of regional bench-bar-media academies organized around media markets and court regions is a key element in the establishment of productive relationships. Academies would be a two-way street by which the courts would provide information to the media within media markets, and the media would be given the opportunity to provide judges and court staff with insight into the media's concerns and needs. Faculty should be comprised of judges, court staff, attorneys, and journalists within the region. Educational programs should include local committees and provide online support materials.

The final report of the Judicial Council's Commission for Impartial Courts includes a recommendation that supports the educational recommendations of this committee. The commission concluded that media-related training was needed to better inform the public of the role and operations of the state court system through accurate reporting of judicial matters.

Commission recommendation 41 states that "[j]udges and court administrators should be better trained on how to interact with the media, and training for the media in reporting on legal matters should be supported and facilitated."[16]

Previous council action on recommendations 4–7
None.

Rationale for educational content and programs (recommendation 4)
The committee developed educational guidelines for four categories of professionals: (1) justices, judges, other judicial officers, and court administrative staff; (2) counter and courtroom staff and security personnel; (3) the bar; and (4) the media.[17] This recommendation was originally proposed by judicial members of the committee. The programs would be voluntary rather than mandatory. The committee revised the draft recommendation to emphasize that the educational programs should be conducted only to the extent fiscally feasible. Various formats should be explored so that the programs can be developed in the most cost-effective ways possible (e.g., web conferencing, Internet classes, online resources).

The committee discussed a number of resources and opportunities. Local court efforts to improve bench-bar-media communications were praised.[18] For example, the Legal Academy for Journalists, developed by Bench-Bar-Media Committee of San Joaquin County, provided education on the court system. The academy and committee later dwindled away due to poor media participation.

Members noted that presiding judges are currently required to (1) "[m]eet with or designate a judge or judges to meet with any committee of the bench, bar, news media, or community to review problems and to promote understanding of the administration of justice, when appropriate;" and (2) "[s]upport and encourage the judges to actively engage in community outreach to increase public understanding of and involvement with the justice system and to obtain appropriate community input regarding the administration of justice…." (Cal. Rules of Court, rule 10.603(c)(8)(B) and (C).

Members suggested that education and training could be included as a component or module of existing judicial training sessions. Though in-person training was the most effective method and humanizes the courts and media, remote participation via online courses and video training were more cost-effective alternatives. In the past, the AOC has facilitated meetings and trainings for

[16] Judicial Council of Cal., *Commission for Impartial Courts: Final Report—Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California* (December 2009), www.courts.ca.gov/xbcr/cc/cicfinalreport.pdf .
[17] See Appendix 2, Recommended Educational Content—Recommendation 4 of the Bench-Bar-Media Committee.
[18] Local programs include the Sacramento County Media Boot Camp; a similar model has been offered in Fresno County. Also mentioned as excellent examples of media programs were those offered in the Court of Appeal, Fourth Appellate District, Division One; the Superior Court of San Diego County; and the Superior Court of Santa Clara County.

court public information officers and other court staff performing this function. The AOC Education Division/ CJER has offered both stand-alone and general courses into which content on media relations has been integrated.[19] Currently, the only required training for judicial officers on media matters is 20 minutes during the New Judge Orientation course. Attendance has been very low for elective courses offered during the past 10 years. Judicial committee members said most judges do not feel that they will be faced with media-related issues. Nevertheless, the committee believed that media training for judges and administrators should be enhanced and should continue to be offered in programs such as the New Judge Orientation course and the Judicial College.

Additional resources include the *Judicial Conduct Handbook*, published by the California Judges Association, which contains a section that deals with the media.[20] The Judicial Council's *Media Handbook for California Court Professionals* provides guidelines for communicating with the public through the media.[21] The Commission for Impartial Courts developed "Responding to Press Inquiries: A Tip Sheet for Judges."[22]

The AOC can serve as a clearinghouse for available education and training programs.

Public comment on recommendation 4
This proposal received comments in opposition from most judicial officers. Some stated that it would be fiscally irresponsible to implement new educational programs and would result in wasteful government spending. Others remarked that the AOC's Education Division/CJER already offers a sufficient number of courses. Some commented that additional educational requirements should not be imposed on bench officers based on the fact a judge may have issued an order a committee member found lacking in detail. Other commentators noted that trial courts should have discretion to develop appropriate committees at a local level depending on resources and the levels of interest demonstrated by potential participants. Those in support of the recommendation commented that some training would be helpful.

The committee members reviewed the comments and unanimously determined that despite the opposition to the recommendation, they would still propose the recommendation, with revised language to emphasize that courses should only be done to the extent fiscally feasible. They also unanimously agreed to adding discussion in the final report regarding the voluntary nature of the proposed training and a reference to rule 10.603(c)(8)(B) and (C) of the California Rules of Court.

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[19] See Appendix 8, Media-Related Courses Offered by the Education Division/Center for Judicial Education and Research (CJER), 1999–2010.
[20] David Rothman, *Judicial Conduct Handbook* (California Judges Association, 2007).
[21] Judicial Council of Cal., *Media Handbook for California Court Professionals* (2007), *http://serranus.courtinfo.ca.gov/reference/documents/media_hdbk_07.pdf*.
[22] See Appendix 9, Judicial Council of Cal., Commission for Impartial Courts, *Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California* (December 2009), Appendix J: "Responding to Press Inquiries: A Tip Sheet for Judges," *www.courts.ca.gov/xbcr/cc/cicfinalreport.pdf*.

Rationale for training for court decision summaries (recommendation 5)
A well-explained court decision is an opportunity to educate the public about the decision-making process of a judge and leave little room for misinterpretation. The committee believes that judicial officers should summarize and explain court decisions in language that is easily understood by litigants, the media, and the public. This summary can appear at the beginning of an opinion. The committee is not recommending that judicial officers alter the way that they write their opinions or in any way tailor them for the broader public. The committee does recommend, however, that the judicial officer provide a short summary of an opinion that the public can quickly read and understand. In the summary, the judicial officer can explain that the laws applied are those enacted by the Legislature and were not arbitrarily decided. Since writing a plain-English summary is an acquired skill, the committee believes that guidelines should be developed detailing when it is particularly important to draft a brief summary and how to draft a summary. Publications are also available to assist with developing clearer writing skills.[23]

The U.S. Supreme Court and California Supreme Court routinely prepare summary statements along with some appellate and superior court judicial officers. This recommendation is supported by both judicial and media members of the committee.

The final report of the Commission for Impartial Courts includes a recommendation similar to this committee's recommendation. The commission concluded that judicial officers play a critical role in informing the public of the role and operations of the state court system through accurate reporting of judicial matters. Commission recommendation 39 states "[t]raining should be developed for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily understood by litigants, their attorneys, and the public."[24] In the commission's view, many judicial opinions are not written in a manner that is easily understood by nonattorneys. Introductory remarks or paragraphs could summarize a case and the court's decision in a way that can enhance media accuracy. The commission recognized that this has been a controversial issue.

Public comment on recommendation 5
Judicial officers who commented said that current training provided to judicial officers is sufficient. They commented that judges should not be trained to tailor their rulings or decisions for the benefit of the media. One commentator stated that if the training is elective and not mandatory, there might be fewer objections.

The committee members discussed the comments and unanimously voted to retain the recommendation despite the opposition expressed by some commentators. Their reasoning was

[23] Byran A. Garner's *Legal Writing in Plain English: A Text with Exercises* (2001) was mentioned by members as an outstanding guide for lawyers.
[24] Judicial Council of Cal., Commission for Impartial Courts, *Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California* (December 2009), *http://www.courts.ca.gov/xbcr/cc/cicfinalreport.pdf*.

twofold: The commission already presented a nearly identical recommendation that was neither opposed nor controversial, and the instantaneous demand for information has created a greater need for judges and justices to clearly convey the substance of court decisions to the public.

Rationale for explanation of legal terminology (recommendation 6)
Members noted that the superior courts should be encouraged to add links on their websites to the master legal glossary on the Self-Help Center of the California Courts website at *www.courts.ca.gov/selfhelp-glossary.htm*. Some courts, such as the Superior Courts of Los Angeles County[25] and Sacramento County,[26] have created their own online glossaries.

Public comment on recommendation 6
Judicial officers opposed this recommendation. They commented that a sufficient number of legal dictionaries already exist online and there is no need for the courts to post glossaries on their own websites. They stated that requiring courts to do so would be burdensome and could create confusion when multiple definitions of terms exist. Some commentators agreed with the recommendation but suggested that the courts link to the existing legal glossary on the California Courts website so court users would have access to consistent definitions of legal terms.

Committee members reviewed the comments and unanimously voted to revise the recommendation to state that courts should be *encouraged* to add links from their websites to the legal glossary on the California Courts website.

Rationale for online training materials for court staff and judges (recommendation 7)

There is a need to provide judicial officers and court staff with greater media training support through online resources that have no cost implications for the courts. This information could serve as a toolbox for many courts that lack available funds to develop and conduct training. Some courts (e.g., the Superior Courts of San Diego County and San Joaquin County) provide support materials on their websites for the media. Serranus, a password-protected website for California's judges and court staff, was suggested as an ideal location for posting educational materials for court personnel.

Public comment on recommendation 7
Judicial officers commented that posting training materials should not be a priority during the current state fiscal crisis. Those commentators in favor of the recommendation thought that online training is a good idea because it is easily accessible and can be done at a judge's leisure. Others noted that online resources could benefit those superior courts lacking training materials.

[25] See *www.lasuperiorcourt.org/courtnews/Uploads/14200972484357MediaGlossary-pdf_Layout1.pdf*.
[26] See *www.saccourt.ca.gov/general/legal-glossaries/legal-glossaries.aspx*.

Because posting materials online is an extremely cost-effective way of sharing resources and AOC staff already regularly post materials online in the course of their project work, the committee determined that this recommendation posed no negatives and could benefit the courts.

Alternatives considered and policy implications of education recommendations
In the alternative, education and training could be offered on a statewide level but would require considerable funds.

Implementation requirements, costs, and operational impacts of education recommendations
Staff of the AOC's Education Division/CJER have expressed to the committee an interest in working with an implementation body to modify existing courses or launch new ones for judicial officers and court staff.

The creation of local regional academies would require the courts to commit to educating their judges and staff. Curricula could be developed and facilitated by the Education Division/CJER and the AOC Office of Communications in conjunction with judicial officers, bar members, and journalists. Specifics of how these academies should be formed and what training they will provide must still be explored.

Relevant strategic plan goals and operational plan objectives
Goal V: Education for Branchwide Professional Excellence

Conflict Resolution Among the Bench, Bar, and Media

Recommendations 8 and 9

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)

A. Implement a Regional Media Access Plan to assist the courts when asked to address conflicts among the bench, bar, and media regarding access to the judicial process.[27]
B. Seek the opinion of the Supreme Court's Committee on Judicial Ethics Opinions (CJEO) to determine whether there are any ethical constraints on judges participating in the Regional Media Access Plan. Specifically, seek clarification as to whether it is proper for a judge who has communicated with an attorney or media member with an interest in a particular case to offer advice or assistance to the judge sitting on that case.

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions

Support the creation of three public information officer (PIO) positions, with one position assigned to each of the AOC's three regional offices, when funds are available. The primary responsibilities of the regional PIOs would include assisting local courts, on the request of the court, with the following: (1) coordination of media activities in high-profile cases; (2) response to other complex media situations; and 3) community outreach efforts and general media relations. Until the creation of three regional PIO positions, the AOC Office of Communications should continue to provide the trial courts with assistance on high-profile cases and other media matters on an ad hoc basis when requested by the courts and according to AOC resource availability.

Background on Recommendations 8 and 9

The recommendations set forth in this section relate to the following strategies of the committee's purpose statement:

- Eliminate unnecessary conflicts between the stakeholders without legal action, where possible, and improve the process of identifying and resolving those conflicts that require legal resolution; and
- Discuss the creation of local or regional committees to communicate with the media and/or the courts on urgent or sensitive matters affecting all three stakeholders.

The committee recognizes that a smooth, organized response to media requests for access to information or court proceedings increases transparency and enhances the public's confidence in the courts. On the other hand, a disorganized, uncoordinated response to the media can result in days, weeks, and even months of unflattering media attention and can negatively impact the

[27] See Appendix 3, Regional Media Access Plan—Recommendation 8 of the Bench-Bar-Media Committee.

public's confidence in the judicial branch. Currently, there is a lack of consistency by the courts in responding to requests for media access.

A judge currently faced with a high-profile case or a complex media situation can enlist the assistance of the court's presiding judge and PIO (if the court has a PIO), discuss the issue with court administration, contact another judge with experience in this area for advice, and request assistance from the AOC Office of Communications or appropriate AOC regional office. Many of the larger courts have PIOs who sometimes advise other small- to medium-size courts. The committee believes that greater support should be provided, particularly to smaller courts facing a high-profile trial or other complex media situation.

To enhance judicial branch communication and better provide assistance to the courts, the AOC established three regional offices—the Bay Area/Northern Coastal Region (representing 16 counties), the Northern/Central Region (representing 31 counties), and the Southern Region (representing 11 counties). AOC staff have been assigned to each region, and the superior courts within the region meet regularly to discuss timely issues.

To further enhance relationships among the courts, bar, and media and to reduce unnecessary conflicts among these stakeholders, the committee recommends (1) the implementation of a regional media access plan; and (2) when resources permit, the creation of three PIO positions, one in each of the AOC regional offices. This recommendation originated with a trial court judge on the committee. The use of a media access team (as proposed in the draft regional media access plan) or PIO would only be at a court's request and this use would be at no cost to the court. At its final meeting, committee members discussed opposition to these recommendations, but reiterated the need for such services.

Components of the regional media access plan
The components of the proposed regional media access plan are:

Purpose. The regional media access plan would be called into action whenever a court, attorney, or media representative believes the plan could assist in recommending ways to resolve conflicts that emerge before or during media coverage of a court proceeding.

Examples of conflicts. The plan could be helpful in resolving conflicts such as restrictions on media coverage of a particular proceeding, obscure local procedures regarding access to court documents or administrative information, or lack of explanation by a judge of the reasons for rulings affecting the media.

Teams and structure. After careful consideration, a model corresponding to the AOC's three-region structure was considered the most viable and effective. Numerous other structures were considered, such as a centralized statewide plan, a plan using California's 12 media markets as

the boundaries, a plan using the six appellate court districts as boundaries, and media markets combined into seven regions.

The committee considered whether the teams would be capable of developing and maintaining expertise if team membership is continually changing. One media member of the committee was concerned that the regional team structure would not help the court craft an access plan that would accommodate the needs of a national or global audience.

Composition of response teams. The committee carefully considered the composition of the response teams and suggested that each regional team include the following: a judge, a court executive officer or designee (e.g., PIO), representatives of the media, a representative of the State Bar, a local PIO or other court employee with equivalent experience, an AOC regional administrative director, and staff from the AOC Office of Communications.

The plan also includes guidance about the selection and qualifications of team personnel. Experience with high-profile cases and media access issues is recommended. The judicial officer on each team would serve as lead.

Program oversight. General program direction would be provided by both the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. Staff from the AOC Office of Communications would continue to be available for support and advice.

Call to action. Three types of conflict resolution could trigger action by a regional media access team: proactive, easily solvable, and complex.

Judicial members of the committee emphasized that small- and medium-size courts could significantly benefit from a regional plan. Committee members representing the media reiterated their support of this recommendation and the need to enhance the manner in which conflicts are addressed. The members also agreed that additional education throughout the branch is needed as to the purpose and benefits of a regional media plan.

Consequently, at its final meeting, the committee voted unanimously to retain this recommendation, with modifications to clarify that assistance of the regional media access teams would *only be provided at the request of a court and at no cost to the courts*.

Seeking opinions regarding ethical constraints

The committee had concerns regarding the ethics of ex parte conversations involving the judge presiding over a case. Specifically, is it proper for a judge who has communicated with the bar and the media on a particular case to offer assistance or advice to a trial judge sitting on that case?

The committee recommends seeking a legal opinion from the California Supreme Court's Committee on Judicial Ethics Opinions on the propriety of the proposed conflict resolution plan. In essence, the committee asks that the Supreme Court committee explore any ethical issues that may arise when a judicial officer speaks with another judicial officer about disputes involving media access.

The committee discussed the following as they apply to judicial officers seeking advice from other judicial officers: California Code of Judicial Ethics, canon 3(B)(7)(b); the American Bar Association Model Code of Judicial Conduct, rule 2.9(A); and the California Judges Association's *Judicial Conduct Handbook.*

Previous council action on recommendations 8 and 9
None.

Rationale for regional media access plan (recommendation 8)
The committee discussed various court/media scenarios where a PIO or media access team could have mitigated regrettable situations where the media were not allowed access to the courtroom. In one such incident, court security personnel denied the media entrance to a proceeding for a case that had garnered much attention locally. Committee members acknowledged that some courts could benefit from a readily accessible resource for input on complex media matters.

The proposed regional media access plan for the California judicial branch was modeled after the Washington Fire Brigade. The Fire Brigade is called into action whenever anyone feels it has the potential to be helpful in resolving an incipient free press–fair trial dispute that has arisen or may arise in the course of a legal action.[28]

The goal of the proposed regional media access plan for the California judicial branch is to assist courts with resolving disagreements with the media quickly and amicably and to promote better working relationships among the bench, bar, and media. The committee notes that the plan's proposed regional media access teams are not decision makers. Rather, their purpose is to act as a resource to courts that wish to have their assistance.

[28] The Washington judicial branch implemented a Liaison Committee of the Bench-Bar-Press Committee of Washington, commonly known as the "Fire Brigade." Judge William Downing (King County Superior Court, Seattle, Washington) has served as chair of the Fire Brigade for more than 10 years and met with the Conflict Resolution Working Group to convey his experiences. A judicial member of the team makes the initial contact with the judge presiding over the high-profile case or case involving the media access issue. The Fire Brigade then works with the media, other judges, and attorneys to sort out conflicts regarding courtroom coverage. For additional information concerning the Bench-Bar-Press Committee of Washington and its Liaison Committee, see *www.courts.wa.gov/committee/?fa=committee.home&committee_id=77*.

The regional media access plan envisions the assembly of three media access teams appointed by the presiding judges and court executive officers within the three superior court regions supported by the AOC regional offices—the Bay Area/Northern Coastal Region, the Northern/Central Region, and the Southern Region. The committee emphasized that the access teams should be localized and, if possible, proactive. It is likely that the teams will encounter fluid situations, so team members will need to be able to respond quickly.

The committee recommends that a superior court judge serve as the primary liaison to the courts, attorneys, and media in more difficult situations or high-profile matters. The committee also noted that it is critical to have a judge who is sensitive to, and knowledgeable of, ex parte issues be responsible for conversations with the sitting judge. A judge presiding over a case is more likely to trust the guidance of a local judge possessing this unique experience. The presiding judge of the involved court is the decision maker regarding the resolution of media access issues for his or her court.

The committee advises that the sitting judge consult with his or her presiding judge before consulting with an external judge to avoid inappropriate ex parte communications.

The committee noted that it is critically important for a court's presiding judge, the sitting judge, the court's PIO, and the press to discuss logistical issues so that the case proceeds smoothly. It would be ideal to involve all stakeholders. It is imperative to keep this process simple so as to address media concerns quickly. One member suggested that, ideally, the sitting judge would hold such conversations with participants in open court.

Public comment on recommendation 8
Numerous judicial officers conveyed their opposition to this recommendation, while representatives of the media conveyed their support. The comments from judicial officers emphasized that the presiding judge is the spokesperson for the court. Judges stated that the plan and its regional teams should be an optional resource to courts, not a requirement. They also expressed the view that contacting a regional dispute group is not a timely way to address a media issue when an immediate response may be needed. Other judicial officers viewed the proposed plan as an unnecessary. In their comments in support of the recommendation, representatives of the media noted that, in addition to resolving conflicts regarding high-profile cases, the proposed plan could also be useful in resolving day-to-day problems accessing public records.

Alternatives considered and policy considerations for recommendation 8
As previously discussed, the committee considered other models including a single statewide media access team structure. The committee concluded that a statewide structure would lack the needed in-depth familiarity with the court and its local media representatives.

Implementation requirements, costs, and operational impacts of recommendation 8
The creation of three regional media access teams would require time and consideration by the council's Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, and the AOC regional administrative directors to discuss the concept and to nominate initial team members. A moderate amount of time would be required by staff of the AOC Office of Communications to support these efforts.

Relevant strategic plan goals and operational objectives
Goal I: Access, Fairness, and Diversity
Goal IV: Quality of Justice and Service to the Public

Rationale for creation of regional public information officer (PIO) positions (recommendation 9)
This recommendation originated with a trial court judge on the committee. In general, members believe that superior courts can significantly benefit from the expertise of those experienced in media relations and who are familiar with the individual courts (i.e., the court's facility, the court's personnel, the county the court serves, the governmental and police agencies in that county, and the media agencies in the relevant media market). According to an informal estimate by a judicial member of the committee, approximately 42 superior courts do not have any staff persons designated to perform PIO responsibilities. While approximately 6 trial courts do have a full-time PIO, another 10 courts assign other staff to perform PIO duties when the need arises. These 10 staff persons have other major responsibilities and perform PIO duties only as needed. Courts that do not have a full- or part-time PIO sometimes contact the AOC's Office of Communications for assistance. At this time, the AOC's regional offices have no staff dedicated to aiding the courts with media matters. In summary, large superior courts have a full-time PIO and often additional supporting staff, but medium and small courts usually do not and could benefit from a regional PIO.

The committee recognizes that due to the state's fiscal crisis, funding for these positions will not be available in the near future. However, because of many courts' critical need for media assistance, the committee proposes that the positions be created when it is fiscally feasible to do so.

The committee agreed that a desired qualification would be bilingualism or multilingualism. The committee also stresses that the assistance of the regional PIOs would only be provided upon request of the superior court and at no cost to the court.

Public comment on recommendation 9
During the public comment period, this recommendation received overwhelming opposition from the judiciary and broad support from media representatives. Some commentators stated that regional information management in high-profile cases may add to miscommunication, inconsistencies, or delays. Others noted that this recommendation addresses duties delegated to

the trial courts and emphasized that the presiding judge is the spokesperson of the court. Some commentators advocated for the provision of training for individual trial court public information officers instead. Commentators representing the media noted that regional PIOs may prove valuable in smaller counties without sufficient resources.

When the committee discussed the public's comments at its last business meeting, it noted that most of the opposition to this recommendation came from judges representing large superior courts or attorneys practicing in the larger courts. As noted earlier, the larger courts have the resources to employ on a full-time basis a professional PIO and often supporting staff. Medium and small courts delegate PIO duties on an ad hoc or part-time basis to a staff person who usually has little or no expertise in media relations. When such courts face high-profile trials that will garner significant media attention, often at the national or worldwide levels, they often request assistance from other courts or the AOC Office of Communications, which works in direct consultation with court leadership to attempt to reconcile court and media needs. A regional PIO would better serve local medium and small courts, as this professional would be familiar with area media and the local courts' policies and practices.

The committee stresses that this recommendation was originally proposed by a judicial member of the committee and was unanimously supported by other judicial members on the committee.

After balancing the opposition expressed in some of the comments with the ongoing need for media assistance in the medium and small court levels, the committee decided to retain the recommendation as proposed in the draft report.

Alternatives considered and policy considerations for recommendation 9
The committee discussed continuing the practice of courts informally lending assistance to each other through the relatively few court PIO positions that exist statewide or continuing to contact other judges, court administrators, or the AOC for advice. These are not optimum measures because of the extensive responsibilities already assigned to the current PIOs and the lack of in-depth familiarity they often have with the court requesting assistance. Regional public information officers working in conjunction with the requesting courts, AOC regional administrative directors, the AOC Office of Communications, and the regional media access teams would create consistency in responding to access issues.

Implementation requirements, costs, and operational impacts for recommendation 9
The committee agreed that while the state's current fiscal crisis will prevent the funding of three new positions in the near future, it was still critical for the committee to state this recommendation with the condition that it should be considered when the creation of such positions is more feasible. The committee recommends that the AOC entirely fund any new positions and employ the new PIOs; it does not recommend that the superior courts assume any of the costs associated with the creation and maintenance of these positions. The costs and

operational impacts of creating and maintaining three regional PIO positions are unknown at this point.

Resources
At the committee's request, staff developed a list of judges who have experience handling high-profile cases and who have volunteered to assist other judges with media access questions. The list is currently maintained by the AOC Office of Communications. In the future, this list will be posted to an internal judicial branch website.

Also at the committee's request, Office of Communications staff initiated discussions with court PIOs and other court representatives to develop a checklist of issues or a set of guidelines for judges and court staff handling high-profile trials. This preliminary resource will be finalized by staff in the Office of Communications and made available to the courts.

Relevant strategic plan goals and operational objectives
Goal I: Access, Fairness, and Diversity

Future consideration: credentialing
The subject of how courts can properly identify legitimate reporters and provide appropriate access to court proceedings remains an unresolved issue. The committee discussed this subject several times but was not able to come to any recommendation because of the difficulty of determining who is a journalist in today's rapidly changing media forums. Several courts have reported difficulties with this issue during high-profile trials, especially when seating for the media is limited. As the demand for access to court proceedings increases, this subject will ultimately necessitate the development of recommended practices or guidelines for the superior courts.

Appendix 1: Draft Recommendations and Declaration of the Bench-Bar-Media Committee (August 2010)

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom

A. Amend Rule 1.150 of the California Rules of Court to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use.
B. Amend rule 1.150 to require judges to make specific findings to prohibit or limit the use of cameras and other recording devices.
C. Revise Judicial Council Form MC-510 *(Order on Media Request to Permit Coverage)* so that judges are required to state their findings regarding the use of cameras and other recording devices.
D. Inform judicial officers and court staff of the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment.

Recommendation 2: Gag Orders

Adopt a uniform statewide rule similar to those governing orders sealing records and consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, which:

A. Requires specific findings of a legitimate competing interest that overrides the public's right of access and justifies some form of gag order;
B. Limits the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified;
C. Provides a means for the public and the media to be notified of the filing of a gag order and gives them an opportunity to challenge at the earliest possible time any gag order that may be proposed or is entered;
D. Provides for public notice of any application for or entry of a gag order by posting on local court websites within 5 court business days after filing or entry or, if that is not possible for any reason, forwarding such notice to the Judicial Council for publication on its website within the same 5 court business days required for posting online; and
E. Develop a simple form that will facilitate challenges by pro per individuals to gag orders.

Recommendation 3: Orders Sealing Records

A. Develop a rule of court that requires all courts to post notice of any application for, or entry of, an order sealing a record on their local website within 5 court business days after filing or entry or, if that is not possible for any reason, send such notice to the Judicial Council for publication on its website within the same 5 court business days required for posting online;
B. Provide judicial education regarding the proper process for determining when a record should be sealed as set forth in California Rules of Court rule 2.550 et seq.;

C. Support statutory authorization specifically permitting the award of attorney's fees and costs—in civil matters only—to any party successfully challenging an order sealing a record or an application for sealing a record, with such fees and costs to be paid by the party or parties making the application; and
D. Develop a simple form that will facilitate challenges by pro per individuals to orders sealing records.

Recommendation 4: Educational Content and Programs

Support creation of educational content and programs to enhance relationships and cross-communication among the bench, bar, media, court staff, and public. To that end, the committee recommends the following:

A. The content and programs should be designed for trial and appellate court justices, judges, and staff, as well as for the bar and media;
B. The Judicial Council should facilitate the creation of regional superior court academies and provide the superior courts with resources for their development;
C. The content and programs should provide guidance on how to create and maintain local superior court bench-bar-media committees: and
D. The AOC should create and maintain an online repository of resources that the courts can use to strengthen their educational programs regarding media relations and media access.

Recommendation 5: Judicial Officer Training on Clear Presentation of Statements

Develop training for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the media and the public. This training should address (1) when to prepare a statement and (2) how to prepare a statement.

Recommendation 6: Explanation of Legal Terminology

Encourage trial courts to post glossaries or explanations of legal terminology in multiple languages to their websites for the benefit of the media and broad public.

Recommendation 7: Additional Online Training Materials for Court Staff and Judges

Post media-related training materials for the courts on a secure internal online site, such as Serranus.

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)

A. Implement a Regional Media Access Plan to address conflicts among the bench, bar, and media regarding access to the judicial process.
B. Direct the Bench-Bar-Media Implementation Working Group to seek the opinion of the Supreme Court's Committee on Judicial Ethics Opinions (CJEO) to determine whether there are any ethical constraints on judges participating in the Regional Media Access Plan. Specifically, the working group should seek clarification as to whether it is proper for a judge who has communicated with an

attorney or media member with an interest in a particular case to offer advice or assistance to the judge sitting on that case.

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions
Direct the Administrative Director of the Courts to create and fund three public information officer positions, with one position assigned to each of the AOC's three regional offices, when funds are available. The primary responsibilities of the three recommended regional PIOs would include assisting local courts with the following: 1) coordination of media activities in high-profile cases; 2) response to other complex media situations; and 3) community outreach efforts and general media relations.

Recommendation 10: Implementation Working Group
Following the Judicial Council's receipt of the final report, direct the Administrative Director of the Courts to appoint a Bench-Bar-Media Implementation Working Group to assist AOC staff with developing a plan to implement the committee recommendations and to assist AOC staff with implementation.

Recommendation 11: Implementation Plan
Following the Judicial Council's receipt of the final report, direct the Administrative Director of the Courts to provide for consideration at a designated 2011 Judicial Council business meeting an implementation plan. This plan would address:

- The cost of implementing each recommendation in terms of estimated expenses and court and AOC staff resources.
- Whether any of the recommendations will necessitate referral to internal and/or external entities (e.g., other council advisory committees, other AOC divisions).
- Whether implementation of any of the recommendations will require legislative action.
- A timeline for implementation of each recommendation.
- Prioritization of the recommendations for implementation.

Declaration: Reducing the Cost of Trial Transcripts for the Media
The Bench-Bar-Media Committee has concluded that representatives of the California Newspaper Publishers Association and other media should meet with representatives of court reporters unions and/or associations and attempt to develop a special protocol and pricing formula, which could both provide court reporters with opportunities for additional income without jeopardizing their current right to compensation from litigants for preparing transcripts, and also give the media an opportunity to obtain limited partial transcripts at a reasonable cost to assist them in preparing accurate accounts of court proceedings for publication. If those representatives meet and are able to reach agreement upon a modification of the current system that requires some change in rules of court and/or California statute, they should make an appropriate joint recommendation to the judicial branch and/or the Legislature.

Appendix 2: Recommended Educational Content—Recommendation 4 of the Bench-Bar-Media Committee

I. Educational content and programs should include the following subjects for *justices, judges, other judicial officers, and court administrative staff:*
   A. Judicial ethics in relation to communications with the media (e.g., judicial misconduct)
   B. Working with the media on high-profile cases
   C. Cameras and other technology in court buildings, including the courtroom
   D. Imposition of and scope of gag orders
   E. Access to court records, courtroom, and sealed records
   F. Developing and maintaining effective, long-term relationships with the local media
   G. Nuts and bolts of reporting (e.g., how the media works, plain English, and deadlines)
   H. Disclosure of information on jurors (e.g., voir dire, testimony, and questionnaires)
   I. Court administration issues (e.g., inquiries regarding sensitive issues, such as labor relations)

II. Educational content and programs should include the following subjects for *counter and courtroom staff and security personnel:*
   A. Judicial ethics in relation to communications with the media (e.g., judicial misconduct)
   B. Working with the media on high-profile cases
   C. Cameras and other technology in court buildings, including the courtroom
   D. Media and the general public's access to court records, courtroom, and sealed records

III. Educational content and programs should include the following subjects for the *bar*:
   A. Ethical restrictions—when you can and cannot talk about a case
   B. Sealing of records (e.g., protective orders)
   C. The same subjects as outlined above for judges, but developed for attorneys

IV. Educational content and programs should include the following subjects for the *media*:
   A. Access to court records, the courts (including courtrooms), and sealed records
   B. Search warrants
   C. Cameras and other technology in court buildings, including the courtroom
   D. Gag orders
   E. Access to jurors and juror information, anonymous juries, and guidelines for contact and interviews
   F. High level overview of divisions of the court and judicial branch
   G. Explanation of court procedures that are commonly covered by the media (e.g., arraignments, sentencing hearings)
   H. Judicial ethical considerations, related rules, and why the rules must be followed
   I. Contact information at the court and other important practical information:

1. Names and phone numbers to quickly obtain information (e.g., the court's public information officer or its designated spokesperson).
2. How to navigate the court's Web site

J. Pet peeves of both the media and the courts
K. Do's and dont's while in the court: a checklist.
L. Additional resources and links to information

Appendix 3: Regional Media Access Plan—Recommendation 8 of the Bench-Bar-Media Committee

Purpose

The Regional Media Access Plan would be called into action whenever a court, attorney, or media representative believes the plan could assist in recommending ways to resolve conflicts that emerge during media coverage of a court proceeding. The goal of the plan is to create an effective mechanism to assist the court in resolving disagreements quickly and amicably and to promote better working relationships between the bench, bar, and media. The proposed access teams are not deciding bodies; their purpose is to act as a resource to courts that request assistance. A trial judge should consult with his/her presiding judge prior to consulting an external judge to avoid inappropriate ex parte communications.

Types of Conflict (Examples)

- Restrictions on media coverage of a particular proceeding
- Obscure local procedures regarding access to court documents or administrative information
- A judge neglects to publicly articulate the reasons for rulings affecting the media

Regional Media Access Teams and Structure

Because of the size of the state, three media access teams would be assembled according to the three actively operational trial court regions supported by the regional offices of the Administrative Office of the Courts as follows:

BAY AREA/NORTHERN COASTAL REGION (16 counties)

County	Media Market
Alameda	San Francisco
Contra Costa	San Francisco
Del Norte	Eureka
Humboldt	Eureka
Lake	San Francisco
Marin	San Francisco
Mendocino	San Francisco
Monterey	Monterey
Napa	San Francisco
San Benito	Monterey
San Francisco	San Francisco
Santa Mateo	San Francisco
Santa Clara	San Francisco
Santa Cruz	San Francisco
Solano	San Francisco
Sonoma	San Francisco

NORTHERN/CENTRAL REGION (31 counties)

County	Media Market
Alpine	Reno
Amador	Sacramento
Butte	Chico
Calaveras	Sacramento
Colusa	Sacramento
El Dorado	Sacramento
Fresno	Fresno
Glenn	Chico
Kings	Fresno
Lassen	Chico
Madera	Fresno
Mariposa	Fresno
Merced	Fresno
Modoc	Medford
Mono	Reno
Nevada	Sacramento
Placer	Sacramento
Plumas	Sacramento
Sacramento	Sacramento
San Joaquin	Sacramento
Shasta	Chico
Sierra	Sacramento
Siskiyou	Medford
Stanislaus	Sacramento
Sutter	Sacramento
Tehama	Chico
Trinity	Chico
Tulare	Fresno
Tuolumne	Sacramento
Yolo	Sacramento
Yuba	Sacramento

SOUTHERN REGION (11 counties)

County	Media Market
Imperial	El Centro/Yuma
Inyo	Los Angeles
Kern	Bakersfield
Los Angeles	Los Angeles
Orange	Los Angeles
Riverside	Los Angeles/Palm Springs
San Bernardino	Los Angeles
San Diego	San Diego
San Luis Obispo	Santa Barbara
Santa Barbara	Santa Barbara
Ventura	Los Angeles

Composition of Regional Media Access Teams

Each media access team should be made up of members of the judicial branch, bar, media, and AOC staff with experience in high-profile cases and media access issues. The judicial member of the team would serve as lead. Suggested team members for each region include:

- Judge from a trial court within the district with experience in high-profile trials and media access issues: The presiding judges within each of the Media Access Team's regions would nominate the judge who will serve as lead for their region's team.

- Court executive officer or designees: The court executive officers within each of the Media Access Team's regions would be responsible for nominating a court executive officer or designee to serve on their regional team.
- Member of the media (one or more): The presiding judges and court executive officers within each Media Access Team region would identify national and local media entities and ask them to select representatives. If the media entities do not select representatives, the presiding judges and court executives will extend invitations to members of the media with whom they have experience or familiarity.
- Member of the State Bar practicing in the region (one): The presiding judges and court executive officers within each Media Access Team's region would identify local bar groups and ask these entities to select one representative. If the bar groups do not select a representative, the presiding judges and court executives will extend invitations to attorneys with whom they have experience or familiarity. The selected attorney must be knowledgeable of First Amendment and media access issues.
- Local court public information officer or other court staff with equivalent experience (if any).
- AOC regional administrative director or his or her designee.
- Staff from the AOC's Office of Communications.

Program Oversight

General program direction would be provided by both the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee.

Call to Action

Three types of conflict resolution exist:

1. ***Proactive*:** When made aware of a possible access issue in a court without a public information officer, staff from the AOC's Office of Communications would contact the court's presiding judge or executive officer and offer to share experience gained from assisting other courts with similar situations.
2. ***Easily Solvable*:** For easily solvable situations, the trial judge could continue to enlist the assistance of the court's public information officer, discuss the issue with court administration, seek advice from another judge with pertinent experience, or contact the AOC's Office of Communications.
3. ***Complex*:** Members of the news media with concerns about access on a complex or urgent matter could contact the Media Access Team (most likely the media member of the team) for guidance. Any court officer or member of the bar could also contact the team to discuss access issues. Additionally, the team's judicial member could contact the judge who is directly involved with the access issue or presiding over the high-profile case. (Note: Whether a judicial member from the Media Access Team may contact another judicial officer about a particular case depends on the approval of an ethics opinion from the Supreme Court's Committee on Judicial Ethics Opinions.) A conference call with team

members and court personnel would be scheduled to discuss the issues in an expedited manner and within the bounds of judicial ethics.

High-Profile Cases

A judge, court executive officer, or public information officer preparing for a potentially sensitive, controversial, or highly visible case can contact the AOC's Office of Communications to gain insight on what to expect and how to handle significant press attention.

References: California Rules of Court, Code of Civil Procedure, Penal Code, and Forms

References on the following subjects and others should be made readily available online for the bench, press, and bar:

- Access to Court Records
- Cameras in the Court
- Gag Orders
- Juror Issues
- Sealed Records
- Media Coverage and Pooling
- Order Permitting Delegation of Media Coverage

Appendix 4: Roster of the Working Groups of the Bench-Bar-Media Committee

Access to Court Proceedings Working Group

Lead:
Mr. Ralph Alldredge
Vice-President, California Newspaper Publishers Association
Publisher, *Calaveras Enterprise*

Ms. Cristina C. Arguedas
Attorney/Partner,
Arguedas, Cassman, & Headley, LLP

Mr. Ed Chapuis
News Director, KTVU-TV

Hon. Peter Paul Espinoza
Judge of the Superior Court of California,
County of Los Angeles

Mr. David Lauter
California Editor, *Los Angeles Times*

Hon. Judith D. McConnell
Administrative Presiding Justice of the
Court of Appeal, Fourth Appellate District

Mr. Greg Moran
Legal Affairs Writer, *San Diego Union-Tribune*

Mr. Royal F. Oakes
Legal Commentator and Attorney/Partner,
Barger and Wolen, LLP

Hon. Steven Z. Perren *(Liaison)*
Chair, Criminal Law Advisory Committee
Associate Justice of the Court of Appeal,
Second Appellate District, Division Six

Ms. Kelli L. Sager
Attorney/Partner,
Davis Wright Tremaine, LLP

Mr. Peter Scheer
Director, California First Amendment Coalition

Mr. Jonathan Shapiro
Writer/Producer

Educational Programming Working Group

Lead:
Hon. William J. Murray, Jr.
Judge of the Superior Court of California,
County of San Joaquin

Mr. John Fitton *(resigned from committee)*
Court Executive Officer
Superior Court of California,
County of San Mateo

Dr. Félix Gutiérrez
Professor of Journalism and Communication
University of Southern California
Annenberg School for Communication

Mr. Rex S. Heinke
Attorney/Partner,
Akin, Gump, Strauss, Hauer & Feld, LLP

Hon. Jamie A. Jacobs-May *(Retired)*
Presiding Judge of the Superior Court of California,
County of Santa Clara

Ms. Kelli L. Sager
Attorney/Partner
Davis Wright Tremain, LLP

Conflict Resolution Working Group

Lead:
Hon. Judith D. McConnell
Administrative Presiding Justice of the
Court of Appeal, Fourth Appellate District

Mr. Anthony P. Capozzi
Attorney,
Law Office of Anthony Capozzi

Mr. Steve Cooley
District Attorney, County of Los Angeles

Ms. Karen Dalton
Public Affairs Officer
Superior Court of California,
County of San Diego

Mr. John Raess
Bureau Chief, Associated Press

Mr. Peter Scheer
Director, California First Amendment Coalition

Mr. Jonathan Shapiro
Writer/Producer

Mr. Stan Statham
President and CEO,
California Broadcasters Association

AOC Staff to Working Groups

Mr. Peter Allen
Senior Manager
Office of Communications
Administrative Office of the Courts

Ms. Leanne Kozak
Senior Communications Specialist
Office of Communications
Administrative Office of the Courts

Ms. Claudia Ortega
Senior Court Services Analyst
Court Programs and Services Division
Administrative Office of the Courts

Ms. Linda Theuriet
Special Assignments
Office of Communications
Administrative Office of the Courts

Appendix 5

MC-500

MEDIA AGENCY *(name)*: CHANNEL/FREQUENCY NO.: PERSON SUBMITTING REQUEST *(name)*: ADDRESS: TELEPHONE NO.:	*FOR COURT USE ONLY*
Insert name of court and name of judicial district and branch court, if any:	
TITLE OF CASE:	
NAME OF JUDGE:	
MEDIA REQUEST TO PHOTOGRAPH, RECORD, OR BROADCAST	CASE NUMBER:

1. PORTION OF THE PROCEEDINGS TO BE COVERED *(e.g., particular witnesses at trial, the sentencing hearing, etc.)*:

2. DATE OF PROPOSED COVERAGE *(specify)*: . *(File this form at least five court days before the proposed coverage date. If not feasible, explain good cause for noncompliance)*:

3. TYPE OF COVERAGE
   a. ☐ TV camera and recorder
   b. ☐ Still camera
   c. ☐ Motion picture camera
   d. ☐ Audio
   e. ☐ Other *(specify)*:

4. ☐ SPECIAL REQUESTS OR ANTICIPATED PROBLEMS *(specify)*:

5. ☐ INCREASED COSTS. This agency acknowledges that it will be responsible for increased court-incurred costs, if any, resulting from this media coverage *(estimate)*: $
   ☐ Amount unknown

6. PROPOSED ORDER. A completed, proposed order on Judicial Council form MC- 510 is attached *(required by Cal. Rules of Court, rule 1.150)*.

CERTIFICATION

I certify that if the court permits media coverage in this case, all participating personnel in this media agency will be informed of and will abide by the provisions of California Rules of Court, rule 1.150, the provisions of the court order, and any additional restrictions imposed by the court.

Date:

..... (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE)

Telephone No.:

_____ (SUPERVISORY POSITION IN MEDIA AGENCY)

NOTICE OF HEARING (*A hearing is optional.*)

A HEARING will be held as follows:

Date:	Time:	Dept./Div.:	Room:
Address of the Court:			

Clerk, by _____, Deputy

Appendix 6: General Rule 16 (Courtroom Photography and Recording by the News Media) of the Washington Rules of Court

Washington State Court Rules: General Rules

General Rule 16

COURTROOM PHOTOGRAPHY AND RECORDING BY THE NEWS MEDIA

(a) Video and audio recording and still photography by the news media are allowed in the courtroom during and between sessions, provided

(1) that permission shall have first been expressly granted by the judge; and

(2) that media personnel not, by their appearance or conduct, distract participants in the proceedings or otherwise adversely affect the dignity and fairness of the proceedings.

(b) The judge shall exercise reasonable discretion in prescribing conditions and limitations with which media personnel shall comply.

(c) If the judge finds that sufficient reasons exist to warrant limitations on courtroom photography or recording, the judge shall make particularized findings on the records at the time of announcing the limitations. This may be done either orally or in a written order. In determining what, if any, limitations should be imposed, the judge shall be guided by the following principles:

(1) Open access is presumed; limitations on access must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption;

(2) Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge; and

(3) Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views.

[Adopted effective December 27, 1991; amended effective January 4, 2005.]

Comment

Before 1991 when GR 16 on "Cameras in the Courtroom" was first adopted, the subject had only been addressed in the Code of Judicial Conduct's Canon 3(A)(7). The intent of the 1991 change was to make clear both that cameras were fully accepted in Washington courtrooms and also that broad discretion was vested in the court to decide what, if any, limitations should be imposed. In subsequent experience, both judges and the media have perceived a need for greater guidance as to how that judicial discretion should be exercised in a particular case. This 2003 amendment to GR 16 is intended to fill that practical need.

While not providing much guidance for the court's exercise of discretion, the Canon did contain some "illustrative guidelines" on how media personnel should conduct themselves while covering the courts. Although these guidelines were no longer a part of the rule once GR

16 was adopted, they continued to be published in the accompanying Comment. Some portions of those guidelines have now become outdated and others are superseded by language in the new GR 16. Because there continues to be potential value in some of the remaining guidelines, they will be here set out in redacted form:

ILLUSTRATIVE BROADCAST GUIDELINES

1. Officers of Court.

Broadcast newspersons should advise the bailiff prior to the start of a court session that they desire to electronically record and/or broadcast live from within the courtroom. The bailiff may have prior instructions from the judge as to where the broadcast reporter and/or camera operator may position themselves. In the absence of any directions from the judge or bailiff, the position should be behind the front row of spectator seats by the least used aisle way or other unobtrusive but viable location.

2. Pooling.

Unless the judge directs otherwise, no more than one television camera should be taking pictures in the courtroom at any one time. It should be the responsibility of each broadcast news representative present at the opening of each session of court to achieve an understanding with all other broadcast representatives as to how they will pool their photographic coverage. This understanding should be reached outside the courtroom and without imposing on the judge or court personnel.

3. Broadcast Equipment.

All running wires used should be securely taped to the floor. All broadcast equipment should be handled as inconspicuously and quietly as reasonably possible. Sufficient film and/or tape capacities should be provided to obviate film and/or tape changes except during court recess. No additional lights should be used without the specific approval of the presiding judge.

4. Decorum.

Camera operators should not move tripod-mounted cameras except during court recess. All broadcast equipment should be in place and ready to function no less than 15 minutes before the beginning of each session of court.

An accompanying set of "Illustrative Print Media Guidelines" contained substantially the same provisions from print media personnel. The only additional matters addressed were that still photographers should use cameras operating quietly and without a flash and they should not "assume body positions inappropriate for spectators."

General Rule 16 may be found online at: *www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr16*.

CASE NAME:	CASE NUMBER:

FACTORS CONSIDERED BY THE JUDGE IN MAKING THIS ORDER (Rule 1.150)

1. Importance of maintaining public trust and confidence in the judicial system
2. Importance of promoting public access to the judicial system
3. Parties' support of or opposition to the request
4. Nature of the case
5. Privacy rights of all participants in the proceeding, including witnesses, jurors, and victims
6. Effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding
7. Effect on the parties' ability to select a fair and unbiased jury
8. Effect on any ongoing law enforcement activity in the case
9. Effect on any unresolved identification issues
10. Effect on any subsequent proceedings in the case
11. 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
12. Effect on excluded witnesses who would have access to the televised testimony of prior witnesses
13. Scope of the coverage and whether partial coverage might unfairly influence or distract the jury
14. Difficulty of jury selection if a mistrial is declared
15. Security and dignity of the court
16. Undue administrative or financial burden to the court or participants
17. Interference with neighboring courtrooms
18. Maintaining orderly conduct of the proceeding
19. Any other factor the judge deems relevant

PROHIBITED COVERAGE (Rule 1.150)

This order does not permit photographing, recording, or broadcasting of the following in the court:

1. The jury or the spectators
2. Jury selection
3. A conference between an attorney and a client, witness, or aide
4. A conference between attorneys
5. A conference between counsel and the judge at the bench ("sidebars")
6. A proceeding closed to the public
7. A proceeding held in chambers

MEDIA PERSONNEL AND EQUIPMENT (Rule 1.150)

NOTE: These requirements apply unless the judge orders otherwise. Refer to the order for additional requirements.

1. No more than one television camera
2. No more than one still photographer
3. No more than one microphone operator and no obtrusive microphones or wiring
4. No operator entry or exit or other distraction when the court is in session
5. No moving equipment when the court is in session
6. No distracting sounds or lights
7. No visible signal light or device that shows when equipment is operating
8. No disruption of proceedings, nor public expense, to install, operate, or remove modifications to existing sound and lighting systems
9. No media agency insignia or marking on equipment or clothing

SANCTIONS FOR VIOLATING THIS ORDER (Rule 1.150)

Any violation of this order or rule 1.150 is an unlawful interference with the proceedings of the court. The violation may result in an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions.

MEDIA AGENCY *(name)*: CHANNEL/FREQUENCY NO.: PERSON SUBMITTING REQUEST *(name)*: ADDRESS: TELEPHONE NO.:	*FOR COURT USE ONLY*
Insert name of court and name of judicial district and branch court, if any:	
TITLE OF CASE:	
NAME OF JUDGE:	
ORDER ON MEDIA REQUEST TO PERMIT COVERAGE	CASE NUMBER:

AGENCY MAKING REQUEST *(name)*:

1. a. ☐ No hearing was held.
   b. ☐ Date of hearing: Time: Dept./Div.: Room:
2. The court considered all the relevant factors listed in subdivision (e)(3) of California Rules of Court, rule 1.150 *(see reverse)*.
3. ☐ **THE COURT FINDS** *(findings or a statement of decision are optional)*: ☐ Attached ☐ As follows:

THE COURT ORDERS

4. The request to photograph, record, or broadcast is
   a. ☐ **denied.**
   b. ☐ **granted** subject to the conditions in rule 1.150, California Rules of Court, **AND** the following:
      (1) ☐ The local rules of this court regulating media activity outside the courtroom *(copy attached)*.
      (2) ☐ The order of the presiding or supervising judge regulating media activity outside the courtroom *(copy attached)*.
      (3) ☐ Payment to the clerk of increased court- incurred costs of *(specify)*: $ ☐ to be determined.
      (4) ☐ The media agency shall demonstrate to the court that the proposed personnel and equipment comply with California Rules of Court, rule 1.150, and any local rule or order.
      (5) ☐ Personnel and equipment shall be placed ☐ as directed ☐ as indicated in the attachment ☐ as follows *(specify)*:

      (6) (i) ☐ The attached statement of agreed pooling arrangements is approved.
      (ii) ☐ A statement of agreed pooling arrangements satisfactory to the court shall be filed before coverage begins.
      (7) ☐ This order
      (i) ☐ shall not apply to allow coverage of proceedings that are continued.
      (ii) ☐ shall apply to allow coverage of proceedings that are continued.
      (8) ☐ Other *(specify)*:

5. Coverage granted in item 4b is permitted in the following proceedings:
   a. ☐ All proceedings, *except* those prohibited by California Rules of Court, rule 1.150, and those proceedings prohibited by further court order.
   b. ☐ Only the following proceedings *(specify type or date or both)*:
6. ☐ The order made on *(date)*: is ☐ terminated ☐ modified as follows *(specify)*:
7. ☐ Number of pages attached:

Date:

JUDGE

(See reverse for additional information)

Form Adopted for Mandatory Use
Judicial Council of California
MC-510 [Rev. January 1, 2007]

Cal. Rules of Court rule 1.150
www.courtinfo.ca.gov

Appendix 8: Media Courses Offered by the Center for Judicial Education and Research (CJER), 1999–2009, and National Programs

Stand-Alone Courses

- *When Judges Speak Up: Ethics, the Public and the Media:* One-day course offered at the Summer 1999 and Winter 2000 CJSP
- *Dealing with the Media in High-Profile Cases:* 90-minute course offered at the 2007 Bench-Bar Biannual Conference
- *Media and Judges:* One-day course offered at the Spring 2004 Continuing Judicial Studies Program (CJSP)

Courses That Include Some Content on Media Relations

- *Managing the Capital Case in California:* This 2009 course included a segment on managing media issues
- *Criminal Institute*: The 2006 program included a courtroom security course that included media issues in high-profile cases
- *CJSP:* The 2006 Summer program included media in high-profile cases at the Selected Criminal Issues course
- *CJSP:* The 2005 Fall program included media in high-profile cases at the Selected Criminal Issues course
- *Criminal Institute*: The 2004 program included the Ethics and Media course

National Programs

- Law School for Reporters: The National Judicial College, in collaboration with the National Center for State Courts and media representatives, conducts classes aimed at journalists, judges, and court administrators.
- Reynolds National Center for the Courts and the Media: Through its educational work, the center ensures that judges and journalists develop insight into their respective roles.
- NewsTrain: A project of the Associated Press Managing Editors (APME), NewsTrain offers practical advice and techniques to help frontline editors polish their editing and leadership skills and to become more effective editors for print and online news coverage. Nationally recognized trainers teach skills that editors can immediately use on the job. The program features workshops in management/leadership, editing/coaching, online news, and credibility/ethics as an educational model.[29]

[29]. See *www.apme.com.*

Appendix 9: "Responding to Press Inquiries: A Tip Sheet for Judges," ***Commission for Impartial Courts: Final Report, Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability*** **(Appendix J), December 2009.**

Responding to Press Inquiries

A Tip Sheet for Judges

- Canon 3B (9) prohibits a judge from commenting publicly about a pending or impending proceeding in any court. A judge is still permitted to talk to the media, however. This tip sheet contains some general guidelines.
- Consider responding to press calls via speakerphone, with a member of staff or court administration in the room to ensure accuracy. Alert the reporter at the beginning of the call that the other person is present to take notes and provide supplemental answers and information.
- CJA maintains a hotline at 415-263-4600.

1. **Explain your ruling on the record.** To the extent possible, judges involved in high-conflict litigation should try to anticipate and prepare for press inquiries in advance of hearings. The best time for you to explain the reasons for a controversial ruling is on the record in open court and in a detailed written ruling that begins with a summary paragraph that clearly presents the facts of the case, legal issues, and basis for the ruling. When the press inquiry is made, court staff can supply the reporter with a transcript and the ruling that contains the summary paragraph.
2. **Consult a trusted colleague.** If you are the subject of public criticism, consult a trusted colleague for objective guidance. Is the criticism warranted? Is there any action that you should take? Avoid isolating yourself or making a hasty or reactive public statement.
3. **Determine who is the most appropriate person to return the reporter's call.** Because it is generally considered good practice to return a press call, you should evaluate who should return the call. It might be more effective to have the presiding judge, court executive officer, court staff, or other knowledgeable person returns it. In deciding who should return the call, you might consider:
    a. Are you embroiled? If you're feeling attacked, emotional, or defensive, you probably won't make the most effective statement.
    b. Is there a pending case? If so, have someone else in the court return the press inquiry, give the reporter a copy of canon 3B(9), and provide the reporter with any appropriate case information, such as court minutes, rulings, transcripts, pleadings, online information, and access to court files.
4. **Prepare your statement before returning any press inquiries.** You should be extremely careful about speaking to the press without first thinking through your remarks. If a reporter catches you off-guard, ask for a return number or an e-mail address

so that you can speak at a more convenient time. Find out what the reporter would like to discuss in advance so you can prepare yourself. Consider taking the following steps:

a. Obtain the court file.
b. Review the transcript with your court reporter.
c. Write out your statement in advance.
d. Keep in mind that e-mail and voicemail are very effective ways to respond to press inquiries and to ensure the accuracy of your message.
e. Make your quote a complete statement about the message you want to deliver. Say only what you want to say. Make your message brief, clear, and understandable.
f. Practice your message first so that it is professional and reasonable and doesn't sound emotional or reactive.
g. Avoid saying "No comment." Instead, circle back to your core message. (e.g., "I appreciate your interest. What I want to emphasize is . . .")
h. Stress your overriding concern that justice be administered fairly and that the courts operate effectively to serve the community and that you are committed to accountability.

5. **Call the CJA hotline at 415-263-4600.**

Attachment B: Individuals and Entities Who Commented on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Draft: 11/29/10

	Commentator
	Judicial Officers/Courts
1.	Hon. Bradford L. Andrews, Superior Court of Los Angeles County
2.	Hon. Andrew P. Banks, Superior Court of Orange County
3.	Hon. Grant Barrett, Superior Court of Calaveras County
4.	Hon. Candace J. Beason, Superior Court of Los Angeles County
5.	Hon. Martha E. Bellinger, Superior Court of Los Angeles County
6.	Hon. Charles Burch, Superior Court of Contra Costa County
7.	Hon. Richard G. Cline, Superior Court of San Diego County
8.	Hon. John D. Conley, Superior Court of Orange County
9.	Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County
10.	Hon. William L. Downing, King County Superior Court (Seattle, Washington)
11.	Hon. Maureen Duffy-Lewis, Superior Court of Los Angeles County
12.	Hon. Kim G Dunning, Superior Court of Orange County
13.	Hon. Laurie M. Earl, Superior Court of Sacramento County
14.	Hon. Greta Fall, Superior Court of Sacramento County
15.	Hon. Frank F. Fasel, Superior Court of Orange County
16.	Hon. Elden Fox, Superior Court of Los Angeles County
17.	Hon. William Froeberg, Superior Court of Orange County
18.	Hon. George Genesta, Superior Court of Los Angeles County
19.	Hon. Christian R. Gullon, Superior Court of Los Angeles County
20.	Hon. Stephen M. Hall, Superior Court of San Mateo County
21.	Hon. Stephen J. Kane, Court of Appeal, Fifth Appellate District
22.	Hon. Harry S. Kinnicutt, Superior Court of Solano County
23.	Hon. William M. Kolin, Superior Court of Contra Costa County
24.	Hon. Barbara A. Kronlund, Superior Court of San Joaquin County
25.	Hon. Runston Maino, Superior Court of San Diego County
26.	Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County
27.	Hon. Gary Medvigy, Superior Court of Sonoma County
28.	Hon. Douglas V. Mewhinney, Superior Court of Calaveras County
29.	Hon. Kevin R. Murphy, Superior Court of Alameda County
30.	Hon. Dan Thomas Oki, Superior Court of Los Angeles County
31.	Hon. Robert F. O'Neill, Superior Court of San Diego County

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Draft: 11/29/10

	Commentator
32.	Hon. Adrienne A. Orfield, Superior Court of San Diego County
33.	Hon. Terrence Van Oss, Superior Court of San Joaquin County
34.	Hon. Jaime Rene Roman, Superior Court of Sacramento County
35.	Hon. Michael A. Savage, Superior Court of Sacramento County
36.	Hon. Mark Tansil, Superior Court of Sonoma County
37.	Hon. Richard F. Toohey, Superior Court of Orange County
38.	Hon. Kenneth C. Twisselman II, Superior Court of Kern County
39.	Hon. Joan P. Weber, Superior Court of San Diego County
40.	Hon. Charles Wieland, Superior Court of Madera County
41.	Hon. Geanene Yriarte, Superior Court of Los Angeles County
42.	Court of Appeal, Second Appellate District, Division Five, by Hon. Paul Turner
43.	Superior Court of Amador County, by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer
44.	Superior Court of Butte County, by Hon. Steven J. Howell
45.	Superior Court of Contra Costa County, by Hon. Mary Ann O'Malley
46.	Superior Court of Kern County, by Hon. Michael B. Lewis
47.	Superior Court of Los Angeles County, by Hon. Charles W. McCoy, Jr., and the Executive Committee
48.	Superior Court of Marin County, by Hon. Terrence Boren
49.	Superior Court of Nevada County, by Hon. Thomas M. Anderson
50.	Superior Court of Orange County, by Hon. Ronald Bauer, Chair, Rules & Forms Committee
51.	Superior Court of Riverside County, by Hon. Thomas H. Cahraman
52.	Superior Court of Sacramento County, by Hon. Steven White
53.	Superior Court of San Francisco County, by Hon. James J. McBride
54.	Superior Court of Siskiyou County by Hon. Laura J. Masunaga
55.	Superior Court of Solano County, by Hon. D. Scott Daniels
56.	Superior Court of Sutter County, by Hon. Christopher R. Chandler
57.	Superior Court of Tuolumne County, by Hon. James A. Boscoe
58.	Superior Court of Ventura County, by Hon. Kevin J. McGee
59.	Superior Court of Yolo County, by Hon. David Rosenberg
60.	Alliance of California Judges, Bakersfield, Directors: Hon. Andrew P. Banks; Hon. Tia Fisher; Hon. Maryanne Gilliard; Hon. Daniel B. Goldstein; Hon. W. Kent Hamlin; Hon. Dodie A. Harman; Hon. Thomas E. Hollenhorst; Hon. Charles Horan; Hon. David R. Lampe; and Hon. Lisa Schall
61.	California Judges Association, by Hon. Keith D. Davis, President

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	Commentator
62.	Rural Judges Forum: Superior Court of Alpine County, Superior Court of Amador County, Superior Court of Calavaras County, Superior Court of Colusa County, Superior Court of Glenn County, Superior Court of Inyo County, Superior Court of Mariposa County, Superior Court of Mono County, Superior Court of San Benito County, Superior Court of Sutter County, Superior Court of Tuolumne County, Superior Court of Tehama County, Superior Court of Trinity County, and Superior Court of Yuba County
63.	Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County
64.	Name not provided, Superior Court of Santa Clara County
	Judicial Council Advisory Committees
65.	Appellate Advisory Committee, by Hon. Kathryn Doi Todd, Chair
66.	Court Executives Advisory Committee (CEAC), by Michael M. Roddy, Chair; Kim Turner, Vice-Chair
67.	Court Technology Advisory Committee (CTAC), by Hon. Ming W. Chin, Chair, Associate Justice of the Supreme Court; Hon. Terence L. Bruiniers, Vice-Chair, Associate Justice of the Court of Appeal
68.	Trial Court Presiding Judges Advisory Committee, by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair
	Bar/Legal Community
69.	Shelly Albaum, Attorney at Law, Sebastopol
70.	Herbert M. Barish, Attorney, Law Offices of Herbert M. Barish, Glendale
71.	David Brobeck, Partner, Beam, Brobeck, West, Borges & Rosa LLP, Newport Beach
72.	Ben Coats, Partner, Engle Carobini Covner & Coats LLP, Ventura
73.	Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles
74.	Laurence Dornstein, Attorney, Beverly Hills
75.	Douglas Fee, Collins Collins Muir and Stewart LLP, South Pasadena
76.	Madelyn A. Enright, Partner, Murtaugh Meyer Nelson & Treglia, Irvine
77.	Robert E. Gallagher Jr., Partner, White, Oliver, Amundson & Gallagher, San Diego
78.	Patrick L. Graves, Attorney, Graves & King LLP, Riverside
79.	Martin Moreno, Attorney, Pettit Kohn Ingrassia & Lutz, Los Angeles
80.	Edward Opton, Jr., Of Counsel, National Center for Youth Law
81.	Patrick G. Rogan, Partner, RoganLehrman LLP, Santa Monica
82.	Thomas C. Sanford, Attorney, Thomas C. Sanford and Assoc., Pasadena
83.	Linda Miller Savitt, Ballard, Rosenberg, Golper & Savitt LLP, Glendale
84.	Eric Schwettmann, Attorney, BRGS, Glendale
85.	Friedrich W. Seitz, Attorney, Murchison & Cumming LLP, Los Angeles

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Draft: 11/29/10

	Commentator
86.	George Stephan, Shareholder, Buchalter Nemer, Los Angeles
87.	Donald Wilson, Carmel & Naccasha, Paso Robles
88.	American Civil Liberties Union (ACLU) – California Affiliates, by Alan Schlosser, Legal Director, ACLU of Northern California; Hector O. Villagra, Legal Director, ACLU of Southern California; and David Blair-Loy, Legal Director, ACLU of San Diego & Imperial Counties
89.	Association of Southern California Defense Counsel, by James R. Robie, President
90.	California Advocates, California Defense Counsel, Sacramento, by Michael Belote, Lobbyist
91.	First Amendment Coalition, by Peter Scheer, Executive Director, San Rafael
92.	Los Angeles County Public Defender's Office, by Michael P. Judge, Public Defender
93.	San Bernardino County Public Defender's Office, by Doreen B. Boxer, Public Defender
94.	San Diego County Public Defender's Office, by Vic Eriksen, Writs & Appeals Special Projects
95.	Ventura County District Attorney's Office, by Michael D. Schwartz, Special Assistant District Attorney
	Media/Media Vendors
96.	Ed Chapuis, News Director, KTVU Channel 2 News, Oakland
97.	Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco
98.	Bill Girdner, Editor, Courthouse News Service
99.	Charity Kenyon, Counsel for the McClatchy Company, Sacramento
100.	Pamela A. MacLean, Legal Editor, RedwoodAge.com
101.	Tom Vacar, Consumer Editor & Investigative Reporter KTVU Chanel Two News, (San Francisco / Oakland / San Jose)
102.	Debora Villalon, Reporter, KTVU-TV, Oakland
	Joint Comment By: Goller, Tomlin, Newton, and McCraw
103.	A) Los Angeles Times Communications LLC, by Karlene W. Goller, Esq.
104.	B) The Associated Press, by David Tomlin, Esq.
105.	C) California Newspaper Publishers Association, by Thomas W. Newton, Esq.
106.	D) The New York Times, by David McCraw, Esq.
107.	Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President
108.	Courthouse News Service, by Rachel Matteo-Boehm, Holme Roberts & Owen LLP (San Francisco)
109.	Courtroom Connect, by Michael Breyer, Chairman & President (Comments prepared by Boies, Schiller & Flexner LLP)
110.	KFMB News 8 San Diego, by David Gotfredson, News Producer
111.	KGO-TV, ABC7 News, by Kevin Keeshan, Vice-President, News Director
112.	OpenGovernmentRadio.com, by Stephen Buckley, Program Host
113.	Reporters Committee for Freedom of the Press, by Lucy A. Dalglish, Executive Director

Attachment B: Individuals and Entities Who Commented on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Draft: 11/29/10

	Commentator
114.	San Jose Mercury News, by Bert Robinson, Managing Editor
115.	Society of Professional Journalists, Los Angeles Chapter, by Linda Bowen, Ph.D. President, and Richard D. Hendrickson, Ph.D., FOI Chair
	Other
116.	Fred Altshuler, Retired Partner, Altshuler Berzon, San Francisco
117.	William Bennett Turner, Lecturer, UC Berkeley
118.	Donna Domino, IMV Info, Reporter, San Rafael
119.	Laurence Dornstein, Beverly Hills
120.	Earl Maas (No title or organization given)
121.	California Official Court Reporters Association, by Gordon F Aiavao, President
122.	Sacramento Official Court Reporters (SOCR), by Dianne Coughlin, President
123.	San Mateo County Official Court Reporters Association, by Stacy Gaskill, Court Reporter
124.	Pat McPherron (Title and affiliation not provided)

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

The chart is organized by the following sections and recommendations:

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

Executive Summary and Committee Section		
Commentator	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	Currently, court rules prohibit TV stations from adequately covering court procedures and deny the public the ability to see and hear testimony that is made in open court, viewable by anyone in attendance. Court trials and documents are important public events that serve to educate. It should be our country's policy to provide open, transparency in everything we do unless there is a specific, overwhelming reason not to do so. Even then, it should be considered on a case-by-case basis. In all cases, the presumption should be on openness.	**1**
Hon. Robert F. O'Neill, Superior Court of San Diego County	The issue statement is nothing more than a piece of puffery catering to political correctness. What is the problem that we are trying to address? I am aware of no problem! The manner in which this is worded is that there will be a presumption that cameras will be allowed. We have rule 980----nothing is broken so why this proposed "fix"? I make specific findings when I here a 980 motion & I state them on the record. All this proposed document does is set up another layer of AOC intervention in the workings of the trial courts. Can someone explain to me what the problem is that needs to be addressed? The composition of the committee defies logic. There are no representatives of victim rights groups, law enforcement or the criminal defense bar. There should be equal representation from all interested parties. The party line of "speakease" runs rampant throughout the report. Getting back to my seminal question: "what is broken that needs to be fixed"?	**2**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	I am commenting on the medias changes as put forth by the bench bar committee. I oppose these changes. With the proposed changes we would end up with constant litigation as to what "sufficient reasons" means or what the threshold is...that should be reached.....all of this invades the courts discretion to assure a level playing field and that the court maintains control of a courtroom and proceedings....for the advancement of the "Interests of Justice."	**3**
Hon. Gary Medvigy, Superior Court of Sonoma County	I am a fairly new judge, but have studied comparative law for the past twenty years and applied constitutional principles to judicial sector reform in Bosnia and Afghanistan working with U.S. Embassy and primarily Italian Embassy staff. The function of the local and international Press and the information programs on rule of law for the general public were always a vital component of reform and an important tool to constrain corruption. I have been as press friendly in my courtroom as possible; I perceive I am in the minority in my county. I whole heartedly agree and support this initiative. As much as we need to remain independent and neutral, we need to be transparent in our proceedings and publically pronounce the court's rulings and the reasons for them. An important aspect of these rule changes, I hope will address the policy and capability to promulgate court news to the public. We don't have a press office locally and I hope that a central AOC office can help fill gaps in smaller counties. So, aside from providing a press	**4**

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

Executive Summary and Committee Section		
Commentator	**Comment**	
	release on cases of state-wide impact, I hope you will also focus attention on local cases. In the long run our independence will be enhanced with a fully informed public.	
Earl Maas	The goal should not be media access, but assuring justice to the persons involved in the litigation, whether criminal, civil or family.	**5**
Hon. Greta Fall, Superior Court of Sacramento County	I strongly disagree with the most of the recommendations made in the Executive Summary. Every judge should have been directly contacted, as was done in the past.	**6**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	After discussion with members of the criminal bar it is the unanimous opinion that these proposals should not be imposed.	**7**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	This recent suggestion from the AOC, however well intentioned, troubles me on several levels. **Point 1:** Committee Composition In reviewing the composition of the committee members, it is not too surprising that the Issue or Problem Statements, or Processes suggested by the majority of the committee are the results. The outcome, notwithstanding the committee's best intentions, was foreordained. Recommendations from press representatives would only seek to foster more accessibility--never less. **Point 2:** Courtroom Focus Presently, our society is largely focused on "reality" shows. Courtrooms, despite the attendant drama, are not entertainment forums. Proceedings are conducted with a gravity appropriate to the concerns and interests of the litigants. Evidence introduces matters sensitive and private to litigants, witnesses, and victims. Even in jury selection judges and attorneys are frequently confronted with jurors who want to speak privately about matters that, for others, are hardly private, but to that individual juror, it is. And, thusfar, judges and attorneys, with due regard to such privacy interests, accommodate that interest. But of singular import is that courtrooms function within a process that presumes that each defendant in a criminal case is innocent. The introduction of media introduces an additional dimension that may elevate dramatical performances by some attorneys, jurors, witnesses or victims playing to cameras; or, for others, may introduce an element that provides a chilling effect. Victims, witnesses, including children and the mentally challenged, may be less apt to even report crimes or seek redress if they believe or perceive that they will be on television. Further, a defendant who, in accord with "central casting" standards looks guilty, is less articulate, mentally challenged, or, frankly, an illegal alien or a member of whatever group is the current pariah may perceive justice denied by how he is portrayed by media. California is no longer a collection of towns and villages where community members know each other. California is host to a civilization where electronic media has the capacity to probe into many aspects of peoples' lives. A courtroom provides a contrast--a sanctuary--to litigants where their issues can be brought and decided without external influence on the court, the jurors, the participants. While the public should and must	**8**

Executive Summary and Committee Section		
Commentator	**Comment**	
	certainly know how judicial proceedings are conducted--there are a multitude of reasons why common law procedure long ago discarded the Greek, Roman, and medieval public forums and moved proceedings into forums, while still available to the public, nevertheless provided a modicum of privacy and respect for the litigants and the process. It is completely understandable why the media would want courtrooms with television cameras, radio feed, or cameras; the judicial branch should question their propriety. Frankly, I am not sure that defense counsel; victims of sexual assault, domestic violence, fraudulent scams; children of tender years or mentally challenged persons testifying as witnesses or victims share the same interest in public access the media purportedly seeks. Mindful that the press, unlike attorneys, have no licensure or professional ethical code of conduct, the judicial branch should question the propriety and prudence of proceeding down this path. **Point 3:** Dissemination of AOC Draft Mindful of the particular interests courtrooms serve for [Text ended this way in the online comment form.]	
Michael D. Schwartz, Special Assistant District Attorney, Ventura County District Attorneys' Office	I have reviewed the Draft Report of the Bench-Bar-Media Committee and respectfully respond to the Invitation to Comment. I appreciate the importance of public access to the judicial process and the rights of both the news media and the public to obtain information about court cases. However, I have several concerns about the recommendations in the report. The report is entitled "A Balancing Act," and recognizes that the rights to fair trial and free press sometimes compete. With all respect, it appears to me that both the composition of the committee and the resulting report weighted in favor of the news media to the detriment of litigants attempting to obtain fair trials. My comments regarding specific recommendations are as follows.	**9**
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	On behalf of lawyers specializing in the defense of civil litigation, the California Defense Counsel is concerned that the composition of the Committee was not broadly representative of civil practitioners. While high-profile cases of interest to the media may be primarily criminal in nature, this is far from universal. The composition of the Committee does not appear to include any members whose practice is dedicated to civil defense. The Committee is made up of high quality lawyers and jurists, but the failure to include civil defense practitioners is a major defect and raises questions about the credibility of any recommendations which apply to civil litigation. The California Defense Counsel recommends that the Committee membership be reconstituted to include civil defense practitioners, or that the recommendations be limited in all aspects to criminal proceedings.	**10**
Hon. Charles Wieland, Superior Court of Madera County	I agree with the conclusions expressed by the Sacramento Superior Court.	**11**
Hon. Frank F. Fasel, Superior	Can't believe that a California Supreme Court Justice would float such a rules modification based upon	**12**

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Court of Orange County	recommendations made by a committee made up of media lawyers and non-lawyers who are clueless and/or uncaring about judicial independence. The current rules of court are both fair and adequate. Trial judges don't need AOC mandates to administer justice.	
Hon. John D. Conley, Superior Court of Orange County	I do not feel that there is now "a problem" with judges' exercising their discretion.	**13**
Patrick G. Rogan, Rogan, Lehrman LLP, Partner, Santa Monica	Film and tape recording of court proceedings should not be permitted except upon application and consent of the parties.	**14**
Robert E. Gallagher Jr, White, Oliver, Amundson & Gallagher, APC, Attorney, San Diego	This is a very bad idea. It will intimidate witnesses and parties, and turn ordinary civil trials into a new reality show, which do not need!	**15**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	I am opposed to the suggested rule in whole.	**16**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	Existing law permits the media to request the presence of cameras in the courtroom. Why is it necessary to give the media a presumptive right to have cameras in the court in every case, and to put the burden on the individual bench officers to justify a refusal. Why shouldn't the media have to justify the request? The recommendations seem to ignore the fact that much of what occurs in the courtroom is often personal and private, any being open to the public is very much different than being broadcast to the public. How many times have we all watched a television broadcast where the reporter places a microphone to the face of a crying relative who has just lost a loved one to tragedy, only to ask them how they "feel" about their loss. The media is often unconcerned with the privacy of individuals, and that fact seems apparent in this push for more broadcasts of often times private matters. I sit in a family law and domestic violence courtroom, and can for see that victims of domestic violence, or persons from dysfunctional families will be very reluctant to come to court if there is a possibility that their private tragedies might broadcast as "news" or entertainment.	**17**
Hon. Mark Tansil, Superior Court of Sonoma County	This is completely unneeded. It surenders judicial independence.	**18**
Earl Maas	The committee is overweighted with press, whose interests are generally economic, not justice for the parties/victims.	**19**
Hon. Richard Toohey, Superior Court of Orange County	I have been on the Bench for over 21 years, six as a Municipal Court Judge and 15 years after my appointment to Superior Court. I have been on the Felony Trial Panel for 14 years. Prior to that, I was a Deputy District Attorney for 12 1/2 years, working on the homicide panel for the last 7. I strongly disagree	**20**

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Executive Summary and Committee Section		
Commentator	**Comment**	
	with the recommendations of the Bench Bar Media Committee's Draft Report, and concur with concerns expressed by the CJA and the Presiding Judge of Sacramento, Steve White. I recently completed a trial which had national media exposure (People v. Gallo, involving the deaths of three persons, including a prominent major league baseball pitcher). In that case, the victims' families filed briefs regarding their position as to media access. The committee did not appropriately address the rights of crime victims. One of the many shortcomings of the Draft Report.	
Hon. Joan P. Weber, Superior Court of San Diego County	When I looked at the composition of the Committee I noticed that there were only three trial judges on the Committee as compared to many people from the media. I suspect that if the Committee had included a larger number of trial judges, you would have heard my objections more often. In conclusion, I think the Committee's proposal will involve an undue consumption of time and will place the trial court in a difficult position.	**21**
Hon. Runston Maino, Superior Court of San Diego County	The first problem with this report is that the Committee was not balanced. There were 24 members in the Committee. There were three trial judges and two justices. Justices do not face the same publicity issues as do trial judges. There were nine "press types" on the committee. The rest were lawyers, AOC members and court staff members. There were no members of victim's rights groups; there were no members of the defense community; and there were no members of law enforcement. This Committee was not balanced and diverse and as a consequence their recommendations were not balanced and diverse. My recommendation is that this report be withdrawn and this Committee be disbanded. You should form a new Committee which is balanced and diverse. The number of trial judges of the Committee should be increased. The number of "press types" should be decreased. Members of law enforcement and victim's rights groups should be added.	**22**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	See letter Attachment D	**23**
California Judges Association by Hon. Keith D. Davis	See letter Attachment G	**24**
Herbert M. Barish, Attorney Law Offices of Herbert M. Barish, Glendale	The report repeated over and over the trendy term, *stakeholder*. Despite the claim by the committee, the media is no more a stakeholder in the court system than it is in road building, wars, weather, or the sex lives of famous people. The desire to make an easy buck does not a stakeholder make. Stakeholders, according to this Judicial Council Committee, do not include litigants and witnesses. While mentioning attorneys as supposed stakeholders, they too are ignored.	**25**

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	While much of the report merits ridicule, a meaningless throw away portion is revealing enough. Cheap transcripts for the media (media not defined) ". . . which could provide court reporters with the opportunity for additional income . . ." Are we to believe the committee is actually interested in improving the financial condition of stenographic reporters? The media should get transcripts cheaper than litigants? Is the report satire?	

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Committee: Background, Issue Statement, Purpose Statement, and Process		
Commentator	**Comment**	
Hon. Greta Fall, Superior Court of Sacramento County	The Committee was not balanced. The recommendations would greatly affect trial judges and court staff. Judges made up less than 25% of the committee. The committee was not balanced.	**26**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	The Committee did not contain a sufficient number of trial court judges.	**27**
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	Because the composition of the Committee did not include representatives from the civil defense community, we did not have an opportunity to participate in an evaluation of the degree to which media access problems exist in civil litigation. Comments about the need for rules changes, changes in statutes, additional judicial education, and more seem to be exclusively anecdotal, at least in the civil context. Absent additional exploration of the issues, the California Defense Counsel is unprepared to say whether changes in rules or statutes are necessary.	**28**
Hon. Charles Wieland, Superior Court of Madera County	I agree with the conclusions expressed by the Sacramento Superior Court.	**29**
Hon. John D. Conley, Superior Court of Orange County	I agree with the Judge Steve White letter of 10/13/10 on this topic.	**30**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	You lost your compass. Reporting of proceedings is always permitted except in special circumstances. Unobtrusive presence of the press is ok. Cameras and recording distract the parties and the jurors and tend to cause posturing and pandering for the tv exposure.	**31**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	I am opposed to the suggested rule in whole.	**32**
Hon. Mark Tansil, Superior Court of Sonoma County	This is completely unneeded. It surrenders judicial independence.	**33**
Public Defender Los Angeles County by Michael P. Judge, Public Defender	The nature of the recommendations contained in the August 2010 draft prompted a number of observers and potential commentators to review the composition of the Committee that developed the proposals. The following includes what was communicated to me by others. The Committee was **not representative** of the court system at least on the criminal side, and was disproportionately stacked with media people. The Committee had 25 members. 10 were judges, justices or court staff. There was one criminal defense attorney, one prosecutor, and one other attorney. The remainder of the Committee (12 members) appear to be persons directly connected to the media. This make-up restricted relevant meaningful input from current Public Defenders who handle the vast majority of crimma1 cases in California. Public Defenders harbor different allegiances and have different priorities than others. For Public Defenders, being portrayed on television does not result in paying customers. Nor in the case of	**34**

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	Public Defenders does it sell commercials or attract advertisers that support the financial bottom line of a "for profit" business enterprise. I personally know or am aware of the reputations of many of those who served on the Committee. I am comfortable saying they are honorable and highly accomplished professionals. They are motivated by civic mindedness and public policy objectives. However, there is a lack of balance. Hopefully, it is not too late to add the perspective of a current Public Defender.	

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Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**35**
Donna Domino, IMV Info, San Rafael	**A**	In the interests of maintaining the maximum transparency of the court systems and allowing public to access information about important cases that affect everyone in every day matters, I want to express my strong support for allowing maximum access of cameras and other recording devices in state court, as well as limiting as much as possible gag orders and sealing orders. These cases often pertain to invaluable information that the public needs to make informed decisions of all kinds that affect their lives on a daily basis.	**36**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**37**
California Judges Association by Hon. Keith D. Davis	**N**	See letter Attachment G	**38**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**39**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**40**
Laurence Dornstein, Beverly Hills	**N**	This is a very bad idea. There is enough pressure during a trial that one shouldn't have to have the additional pressure of performing to a camera. No good can come of this.	**41**
Patrick G. Rogan, Rogan Lehrman LLP, Partner, Santa Monica	**N**	ABSOLUTELY AND COMPLETELY AGAINST THE PROPOSAL TO PERMIT FILM, TV AND RECORDING. I am a trial attorney with over 125 civil and criminal cases tried to verdict. The press is attracted only to "sensational" e.g. OJ; Dodger owner divorce; Kim Basinger divorce; Hillside slasher; sex crime matters; major auto product liability cases etc. The presence of TV media and cameras is a HUGE distraction for the attorneys, court, parties and jury. The press can attend just as any member of the public. They cannot be permitted to cause distraction...which cameras absolutely do.	**42**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**	An explicit presumption to allow recording is perhaps one of the worst, most chilling, ideas I have heard of in a long time.	**43**
Robert E. Gallagher Jr, White, Oliver, Amundson & Gallagher,	**N**	Dump the idea. It will have a chilling effect on the civil judicial process.	**44**

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Commentator	**Position**	**Comment**	
APC, Attorney, San Diego			
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**45**
Superior Court of Yolo County by Dani Rogers, Supervising RA	**N**	Regarding Item A: Presently, the rule states that it creates no presumption either way in granting permission to photograph, record, or broadcast court proceedings. It should remain as written. Making photographing, recording, and broadcasting a presumption creates a rule of substantive law which goes beyond the Judicial Council's constitutionally delimited role of "adopt[ing] rules for court administration, practice and procedure." The press does not have a special right to access, but instead enjoys the same right afforded to the rest of the public. (Branzburg v. Hayes (1972) 408 U.S. 665, 684.) CRC 1.150(e)(3) already requires the Court to consider factors in deciding whether to allow recording, and the press already enjoys the same right to attend proceedings as the general public. In criminal cases, recording may detract from the solemnity of proceedings, may unduly protract them, and can create a "circus"-like atmosphere in the courtroom. A criminal defendant's right to a fair trial counsels against creating a presumption that applies to all cases. If, as the proposal states, "this change in presumption would not in any way limit or modify a judge's discretion to allow or deny recording," then why create a presumption? Regarding Items B and C: CRC 1.150(e)(4) does not require that the judge make findings or issue a statement of decision. The new rule will increase the amount of judicial time necessary to process media requests, which can be voluminous in high- profile cases. Regarding Item D: The Court already promptly informs its security personnel of any order granting media access. Further education for judges on this issue is not needed.	**46**
Name not provided Superior Court of Santa Clara County	**N**	I am a criminal law judge with a calendar devoted exclusively to misdemeanor and felony domestic violence offenses. All day, every workday, I hear cases in which the defendants, often but not always male, claim that physical violence is justified because his or her partner, often but not always female, failed to follow the defendant's orders. Daily, I try to keep the parties, attorneys and witnesses focused on the legal issues, not the emotional ones. It is an uphill battle, since many of them see the courtroom as an audience for	**47**

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom			
Commentator	**Position**	**Comment**	
		their relationship grievances. The last thing that would help is an AOC policy favoring media publicity, expanding the potential audience, to the detriment of criminal justice. Perhaps if the committee had more trial judges as members, this problem could be understood. My job is to understand and apply the law, not to provide media content. All hearings in Dept. 44 of the Santa Clara County Superior Court, where I work, are open to the public. You are welcome to come in, sit in the audience, and take notes. But leave the cameras outside.	
Hon. Kim G Dunning, Superior Court of Orange County	**N**	The proposed amendments would permit the public to do what courts themselves cannot do, i.e., electronically record court proceedings. Trial court calendars are already congested and the responsibilities of trial court judges are great. The current rule places the burden of seeking permission to record on the public or the media. The proposed amendments would switch the burden to the bench. To require a trial judge to make findings on every case re: cameras and electronic reporting imposes an onerous burden. Virtually every member of the public comes to court with a cell phone that is capable of still and video photography and audio recording. It will be disruptive to court proceedings for the litigants and public to be recording and photographing. For media -- although media equipment is more compact and less disruptive than in the past -- a presumption permitting cameras and recording devices makes it more difficult for the judicial officer to limit and control the number and location of media equipment in the courtroom. Court time that is better spent on the merits of each case will be diverted to the "housekeeping" issues concerning cameras and other recording devices.	**48**
Hon. William Kolin, Superior Court of Contra Costa County		I agree with "D" but not A,B or C. The current court rule should remain in place.	**49**
Hon. Charles Burch, Superior Court of Contra Costa County	**N**	The present rule is workable. Creating a presumption of access to cameras and other recording devices in criminal cases poses a great risk of adverse consequences including changes of venue, pre-trial publicity challenges, and mistrials. It also unduly burdens the court with making detailed findings every time such a request is denied.	**50**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	There is no need for a presumption that cameras and other recording devices be allowed in the courtroom! Why a presumption? Is the presumption rebuttable? What about a victim's right to privacy, for example on autopsy results, etc.? We have rule 980!	**51**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**N**	The recommendation places the burden on the court...not the proponents of media material.	**52**
Hon. Harry S. Kinnicutt, Superior	**N**		**53**

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Commentator	**Position**	**Comment**	
Court of Solano County			
Hon. Stephen J. Kane, Court of Appeal, Fifth Appellate District	**N**	There should be a presumption that cameras NOT be allowed in the courtroom. They are a distraction to the court, counsel, parties, jurors and witnesses. People react differently when a camera is present whether in a courtroom or somewhere else. Courts are in the business of ensuring that proceedings are fair and without unnecessary distractions. Additionally, the media will typically only broadcast short snippets of the court proceedings which often give an inaccurate portrayal of the proceedings. The primary purpose of court proceedings is to apply the law in such a way that the parties are treated fairly under the law, not to entertain TV viewers nor to accommodate the media. I am afraid that this proposal will make it more difficult for trial judges to deny media requests with the result that cameras will become more of distraction to the rightful business and purpose of the courts.	**54**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**55**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	See letter for the comments on the recommendation.	**56**
Hon. Grant Barrett, Superior Court of Calaveras County	**N**	I have primarily a Family Law assignment, and given the nature of the issues that must be addressed openly and honestly, recording and broadcast of such discussions could be damaging to the parties, their friends and families and the children involved. In order to protect themselves from public shame, parties may not feel free to present all pertinent evidence on an issue in dispute which could lead to a serious miscarriage of justice.	**57**
Hon. Gary Medvigy, Superior Court of Sonoma County	**AM**	Leave the subject of sealing court documents alone (or fine tune the rules for later release, akin to declassification of classified public records)	**58**
Earl Maas	**N**	There should be no presumption in favor of cameras. Each case is different and it should be up to the litigants, judge, accused and victim whether justice will be served by cameras, not up to the media.	**59**
Hon. Michael A. Savage	**N**	These proposals are completely unnecessary. Judges should be able to continue, on a case by case basis, to determine whether to allow cameras and other recording devices into their courtrooms. There is no justification for instituting a presumption in favor of allowing cameras.	**60**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	This idea is terrible. The current rule and process work well and should not be changed. It has been said that the history of the social sciences during the 20th Century was to replace what	**61**

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Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom			
Commentator	**Position**	**Comment**	
		worked with what sounded good. This entire proposal falls into that category.	
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**	I am opposed to the suggested rule in whole.	**62**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**	While I appreciate the need to provide appropriate media access, I believe these recommendations go much too far. Trial judges should be granted discretion as to whether they believe it is appropriate to have cameras in the courtrooms. There should be no presumption in favor of a camera's presence. I've spoken to many of our trial judges who may wish to submit their own related concerns. The recommendations raise operational concerns, security risks and increased costs during a period of greatly reduced financial and personnel resources. While I respect the hard work of the members serving on the committee, I do not agree with these recommendations.	**63**
Hon. Kenneth C. Twisselman II, Superior Court of Kern County	**N**	I have been a Superior Court judge since 1988. I have frequently allowed cameras and recording devices in my courtroom when I felt it was appropriate, considering all the circumstances. I have personally observed that the presence of cameras may in some situations have an adverse impact on the conduct of attorneys, witnesses and jurors. I believe each judge should have broad discretion to allow or exclude cameras and other recording devices after considering all the factors under Rule 1.150. Creating a presumption in favor of allowing them in the courtroom places the judge in unreasonable peril of being subject to discipline by the CJP for abusing discretion. I certainly don't think such a presumption should apply to the jury trial stage of a case, or any pretrial evidentiary hearings.	**64**
Hon. Joan P. Weber, Superior Court of San Diego County		I read the draft report of the Bench, Bar, Media Committee and was very disappointed with several of the recommendations reached by the Committee. I have been a trial judge in this state for over 20 years. After having tried many high profile criminal and civil cases in San Diego County over that time period, I have developed an interest in media issues and have been a member of a Bench, Bar, Media Committee in San Diego County over the last 12 years. I have lectured on this topic many times and have taught a CJER class on how to try high profile cases. Based on this background I think several of the Committee's proposals are ill advised. First, I do not agree that Rule of Court 1.150 should be amended to provide for an explicit presumption that cameras are allowed unless sufficient reasons exist to prohibit or limit their use. I think the rule should remain that the trail judge can decide on his/her own whether cameras should be allowed. The worst example of televised trials in California history is the O.J. Simpson case. Both the district attorney and the defense team turned the	**65**

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom			
Commentator	**Position**	**Comment**	
		case into a media circus, and that case damaged the reputation of the California justice system for years. As you know the amendments to Rule 980 came out of that infamous trial and the rule eliminated any presumption. If we trust trial judges in California, then we should give the trial judge absolute discretion to decide whether cameras will be permitted. If the presumption is in the Rule, then trials will be delayed so that legal counsel for the media can file briefs, etc. Once the judge has ruled, the trial will need to be delayed to writ the judge on whether he/she has articulated sufficient reasons to prohibit cameras. The trial will be held in abeyance until the appellate court rules. For these reasons I do not think this amendment will allow the trial court to conduct trial proceedings in an orderly fashion. Second, I strongly disagree that Rule1.150 should be amended to require the judge to make specific findings in order to prohibit or limit the use of cameras. I rarely prohibit cameras in my courtroom. On those limited occasions when I have prohibited coverage, however, there are several times when it would have been difficult for me to make a record explaining the decision without placing the court, the attorneys or the parties in a difficult position. For example, I have prohibited coverage on several occasions where I have a lawyer in front of me who plays to the cameras and tries to turn the case into a media circus. I have also prohibited coverage occasionally when I have a party or victim who is seeking notoriety from the case and craves the media attention. In either of those instances, it would be difficult for the trial court to honestly discuss those types of reasons for denying coverage, but in my judgment they are examples of cases where cameras should be prohibited to maintain the orderly conduct of the proceedings and to maintain the public trust in the judicial system.	
Hon. Candace J. Beason, Superior Court of Los Angeles County	**N**	The changes are unnecessary and would create problems and issues where none currently exist. I adopt the comments and concerns of the Alliance.	**66**
Pamela A. MacLean, Legal Editor RedwoodAge.com	**A**	I am pleased the committee has recommended that the California Rules of Court, Rule 1.150, be amended to create an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit use. This is long overdue. In time, I believe judges will find that it enhances public understanding and appreciation of the difficult work the courts perform.	**67**
Hon. Greta Fall, Superior Court of Sacramento County	**N**	Rule of Court 1.150 should not be amended. There should not be a presumption that cameras and recording devices be allowed in courtrooms, nor should judges have to state their reasons for denying cameras and recording devices. Judges currently exercise their discretion utilizing the factors set forth in Rule 1.150.	**68**

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Pat (Title and affiliation not provided)	**A**	Full information clears markets. I think the idea for allowing cameras in courtrooms is long overdue. For example, the OJ Simpson trial exposed a great many issues in our nation's justice system. If allowing for cameras is combined with the fact, not yet ruled on but possibly coming up for review, that absolute immunity for judicial and quasi-judicial acts induces violations of the 8th Amendment, then the market for justice will properly price judges, quasi-judicial actors, justice and the costs of fabricating evidence in the US.	**69**
Hon. Bradford L. Andrews, Superior Court of Los Angeles County		This comment concerns the recommendation that a presumption in favor of cameras in the courtroom be made a part of Rule 980. My concern is that there is no limitation on the types of proceedings to which the presumption would apply, including jury trials. It has been my experience that cameras do not interfere with proceedings such as arraignments, pre-trial conferences, and preliminary hearings, but cameras can be very disruptive during jury trials. The presence of cameras during a jury trial distracts the jury from their primary duty of determining the facts of the case. In addition, the presence of cameras, and media attention generally, may cause the jury to seek out media coverage of court room proceedings, even when instructed otherwise. My practice has been to allow media free access for pre- trial proceedings, but to preclude cameras when a jury is present. Photos taken during pre-trial proceedings usually satisfy the media's need for visual aids when reporting upon cases of interest. I have found that by allowing free access during pre- trial proceedings I have had only rare requests for cameras during jury trial. I would suggest that the presumption not be applied to jury trial proceedings. If you wish to discuss this matter further, please telephone me at (xxx)xxx-xxxx.	**70**
Superior Court of Riverside County by Hon. Thomas H. Cahraman	**N**	Specifically, I think that recommendation 1 represents an impermissible infringement upon judicial decision-making, and I believe that some trials will be adversely affected (that is, witness testimony will be less accurate) if that recommendation becomes a Rule of Court. I am startled by the statement on page 13 of the draft report: "This change in presumption would not in any way limit or modify a judge's discretion to allow or deny recording." Please understand that trial judges take any legal presumption very seriously. For instance, the presumptions set forth in Family Code sections 3044 and 4325 are applied every day, and as a result many child custody orders, and many spousal support orders, are different than they otherwise would be. Those family law presumptions may benefit society overall, though reasonable minds can differ, but I don't think that a *presumption* in favor of recording devices	**71**

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Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom			
Commentator	**Position**	**Comment**	
		in the courtroom will benefit anybody. Such a presumption will have the effect of permitting recording in many cases where now such a request would be denied. As a result some witnesses will play to the camera, and others will modify their testimony out of fear or social inhibition. Ultimately the result will be some verdicts based upon defective evidence. Also on page 13 of the draft report we read: "The public relies increasingly on television and the Internet for news. ...Courts should be responsive to the public's increasing reliance on electronic technology and consider how they can support such newsgathering...." I really disagree with this reasoning. In the first place, members of the public who rely on electronic news reporting are free to use TV or the internet to find out what is happening in a high profile case, even if the trial is not electronically recorded by the media. (No one is proposing to exclude the media from trial attendance.) More importantly, I would suggest that courts should not worry about being responsive to every social trend, but rather should be responsive to the Due Process Clause, no matter how much society changes. I note that recommendation 1 was passed on a split vote of the committee. Clearly the dissenting member got it right--the current system works fine, and judicial discretion should not be limited by imposition of a presumption or a requirement of findings. I believe I speak for the Riverside County judges in setting forth these points. Of course individual bench officers may also wish to offer their views. The Bench Bar Media committee has proposed that California Rule of Court 1.150 be amended to establish an explicit presumption that cameras and other recording devices are to be allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use. Additionally the committee recommends that judges be required to explicitly state their findings. This radical amendment is proposed without any evidentiary justification for revision of the existing law. The judiciary is "responsible for ensuring the fair and equal administration of justice". CRC 1.150(a) presently acknowledges this obligation, and entrusts the court with proper exercise of its discretion. The rule recognizes the judiciary adjudicates civil and criminal controversies "in the calmness and solemnity of the courtroom". The existing rule appropriately "does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings." As the forum for the adjudication of civil and criminal controversies, the courts of California	

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		must assure that litigants receive a fair trial in accordance with the guarantees afforded by the Fifth, Sixth, Seventh and Fourteenth Amendments of the United States Constitution and Article I, Sections 1 and 7 of the California Constitution. Likewise, the trial courts are concerned with the safety and security of the courtroom and the privacy rights of victims, witnesses and jurors. Similarly, the First Amendment of the United States Constitution guarantees freedom of the press and the Sixth Amendment assures the right to a *public* and speedy trial. Therefore, there is no logical or legal basis for concluding that one right or group of rights takes precedence over others by declaration of a presumption having the force of law. Rule 1.150(a), in its present form, correctly establishes no presumption in favor of or against the application of constitutional rights in relation to media access to court proceedings. Recognizing that these interests are often competing, the courts are tasked with identifying and establishing the appropriate balance between the due process rights of litigants and the first amendment rights of a free press.	
Superior Court of Sacramento Count by Hon. Judge Steven White	**N**	The Bench Bar Media committee has proposed that California Rule of Court 1.150 be amended to establish an explicit presumption that cameras and other recording devices are to be allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use. Additionally the committee recommends that judges be required to explicitly state their findings. This radical amendment is proposed without any evidentiary justification for revision of the existing law. The judiciary is "responsible for ensuring the fair and equal administration of justice". CRC 1.150(a) presently acknowledges this obligation, and entrusts the court with proper exercise of its discretion. The rule recognizes the judiciary adjudicates civil and criminal controversies "in the calmness and solemnity of the courtroom". The existing rule appropriately "does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings." As the forum for the adjudication of civil and criminal controversies, the courts of California must assure that litigants receive a fair trial in accordance with the guarantees afforded by the Fifth, Sixth, Seventh and Fourteenth Amendments of the United States Constitution and	**72**

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		Article I, Sections 1 and 7 of the California Constitution. Likewise, the trial courts are concerned with the safety and security of the courtroom and the privacy rights of victims, witnesses and jurors. Similarly, the First Amendment of the United States Constitution guarantees freedom of the press and the Sixth Amendment assures the right to a *public* and speedy trial. Therefore, there is no logical or legal basis for concluding that one right or group of rights takes precedence over others by declaration of a presumption having the force of law. Rule1.150(a), in its present form, correctly establishes no presumption in favor of or against the application of constitutional rights in relation to media access to court proceedings. Recognizing that these interests are often competing, the courts are tasked with identifying and establishing the appropriate balance between the due process rights of litigants and the first amendment rights of a free press. Accordingly, to establish an "explicit presumption" in favor of the use of cameras and other recording devices automatically subverts the basic rights to due process to those created by the First Amendment. Stated somewhat differently, our law most frequently employs "presumptions" to effectuate an underlying strong public *policy, e.g.*, a gift to a fiduciary is presumptively the result of undue influence. Yet in the case of the conflict between the fair trial guarantees and the rights of media access, the policies underlying each guarantee cannot be set against one another, and certainly neither can be said to predominate over the other in importance. For this reason, the use of a "presumption" such as that recommended in the Report is ill-conceived, and constitutionally improper. Moreover, creation of such a presumption interferes with the unfettered exercise of discretion by individual trial judges. Rule 1.150 currently establishes a framework and a process by which trial judges apply the criteria in subsection (e)(3) in balancing the competing interests between a fair trial and media access. Trial courts consistently exercise their discretion within the parameters of these criteria. There is no basis for the committee's assertion that California judges have failed to properly and fairly exercise discretion on this subject, and that, therefore, the existing rule should be	

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		changed. The sole rationale offered for the proposed revision is the assertion that "*judges appear to frequently deny the use of cameras and other recording devises in courtrooms without providing any reasons for the prohibition*." According to the committee, "*it appears that judges are increasingly denying electronic recording in the courtroom as a matter of course*." No facts are presented in support of this claim**.** It is neither necessary nor desirable to establish a presumption in favor of the media to assure the proper exercise of judicial discretion continues. The committee also failed to meaningfully explore the practical impact and costs of the significant changes being proposed. In the sole paragraph in which the committee purports to address the "*implementation requirements, costs and operational impacts,*" the lack of input from the bench is apparent. Aside from the acknowledgement that the courts "*might encounter an increase in the number or requests from the media to record proceedings,*" no consideration is given to the practical consequences of this significant alteration in the law. In criminal cases, the court will frequently encounter vigorous opposition to the use of cameras from the defense. In many cases, this opposition may be joined by the prosecution. In these circumstances, the court may be required to hold an evidentiary hearing, enabling those who oppose the use of cameras, to present evidence or, at a minimum, present oral argument on the record to overcome or rebut the presumption in favor of recording. The extent to which all of those who may be potentially affected by the ruling would be permitted to be heard is not clear. In addition to the litigants, the court may also consider the potential affect of its decision on prospective jurors and witnesses. As a practical example, assume a judge is assigned a "last day" preliminary hearing. Under a master calendaring system, even if a request to broadcast had been timely filed five court days in advance (current Rule 1.150), the judge and counsel will not learn of it until the case is assigned out for hearing. We point out that in Sacramento, 90% of the requests are filed on the day of the hearing. Assume the district attorney objects to broadcasting the preliminary hearing on two grounds: First, identification of the alleged shooter is likely to be an issue at trial, which disseminating	

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		the defendant's photo will complicate; and second, witnesses to the gang shooting may be intimidated. Assume two requests to record the proceeding: One by the local television station, and one by a blogger who wants to post the proceedings on his web site: *Norteños.com*.[1] Under the proposed rule, to deny either request the court must "make specific findings." (Report at page 2.) Rule 1.150(e)(3) provides a list of factors the judge is currently required to consider. Will these be incorporated into the new rule? The district attorney, unaware of the request, is not prepared to put on evidence supporting such findings. The district attorney thus requests a continuance. Defendant objects. Is there good cause to continue the preliminary hearing over defendant's objection? One concern the district attorney intends to argue is: "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." (Rule 1.150 (e)(3)(K).) Must the evidence supporting this contention also be broadcast? If so, is there now a pre-hearing on whether the hearing must be broadcast? Our judge wants to consult with the judge next door for advice on the new procedures. However, the Report cautions: "The committee advises that the sitting judge consult with his or her presiding judge before consulting with an external judge to avoid inappropriate ex parte communications." (Report at page 33.) This is troubling. Presently, it is not inappropriate for one judge to consult another for advice. (Canon 3B(7)(b).) Indeed, Rothman states, "It is desirable for a judge faced with any question in a case to discuss the matter with other judges to aid the judge in arriving at a correct decision. (Rothman, rule, a judge faced with a request to broadcast would be having an "inappropriate ex parte communication" were he or she to ask the "external" judge next door for advice. What is the basis for this prohibition? Where does this come from? Perhaps it comes from the Report's additional (*ipse dixit*) conclusion: "The presiding judge of	

[1] The proposed rule is not limited to requests by "accredited media." Rather, the report states courts must be "responsive to the public's increasing reliance on electronic technology." (Report at page 13.)

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		the involved court is the *decision maker* regarding the resolution of free-press-free trial disputes." (Report at page 33.) What does this mean? Under the new rule, if a request to broadcast is denied, may the requesting party "appeal" the trial judge's decision to the presiding judge for "resolution"? In deciding how to resolve our judge's "dispute" with the press, the presiding judge is presumably expected to turn to the proposed AOC's new Regional Access Media Plan for guidance and assistance: "The regional media access plan would be called into action whenever a court, attorney, or media representative believes the plan could assist in recommending ways to resolve conflicts that emerge before or during media coverage of a court proceeding." (Report at page 33.) Does the party whose request to broadcast is denied have independent standing to "call into action" the AOC's response plan? Thus, in addition to requiring new evidentiary hearings, the Report raises a number of troubling procedural, administrative and ethical uncertainties.	
Hon. Laurie M. Earl, Superior Court of Sacramento County	**N**	The presence of cameras or other recording devices in a trial judge's or high volume courtroom is always challenging to the preservation of the integrity of the proceeding. It is paramount in balancing the rights of the media and the rights of the litigants, that judges have complete control of the analysis and ultimate decision of whether to permit cameras or other recording devices in the courtroom. Amending CRC 1.50 to create an explicit presumption allowing the presence of cameras or other recording devices dilutes, if not eradicates the judge's control over this important decision. This presumption will work against us and threaten that integrity.	**73**
Patrick L. Graves, Attorney Graves & King LLP, Riverside	**N**	This is a BAD idea. Witnesses will be reluctant to testify in depositions for the fear of being called at trial. Please defeat this effort.	**74**
Hon. Richard G. Cline, Superior Court of San Diego County	**N**	I strongly disagree with Recommendations 1A-D. I have been a judge for twelve years. I have presided over numerous jury trials and have tried many cases without a jury. One of the crucial duties of the trier of fact in every trial is to determine the credibility of each witness. Body language and demeanor are important indicators, however subtle, bearing upon the issue of credibility. Body language and demeanor can be affected by numerous external factors, such as the presence of family or victims in the courtroom, noise and other distractions. I have personally observed the demeanor of witnesses to change subtly when becoming aware of the	**75**

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		presence of cameras or media personnel. The court has a duty to ensure a fair trial and to control his or her courtroom. This duty includes the duty to eliminate unnecessary influences and distractions that may impair the trier of fact from performing its duty. This should include the right to exclude all media or such media as the judge determines.	
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	**N**	The California Defense Counsel is not convinced that a sufficient problem exists with respect to media access to civil litigation such that an explicit presumption in favor of access is necessary or appropriate. Requiring judges to issue findings on the use of cameras or other recording devices will further burden a judicial system already struggling to accommodate civil litigation, and is not based upon any clear demonstration of necessity. Lawyers specializing in the defense of civil litigation should be consulted before changing current rules applicable to civil cases, which appear to be adequately addressing access issues.	**76**
Hon. William Froeberg, Superior Court of Orange County	**N**	I would like to add my comments to the proposed media access rules. I have been a trial judge for almost 25 years; during that the past 15 I have handled several high profile criminal matters. I allow media coverage of opening statements, final arguments, verdict and sentencing. As far as I can tell, the television stations and newspaper companies are satisfied with this arrangement. My reasons for not allowing full coverage, which are based on experience and common sense, are as follows: 1) Most media requests for in depth coverage are not for the reporting of news, but are for entertainment show purposes. Trials should not be relegated to "reality show" status. Courts are the last public governmental forum where dignity, reason and logic take precedence over public opinion polls and ratings numbers. Court proceedings are real life and should not be used to sell advertising. 2) Felony trials carry with them an inherent amount of tension; knowing that their every word will be recorded and possibly broadcast nationwide will add to the stress of the participants. Stress causes mistakes, mistakes often result in a miscarriage of justice. 3) Motions for change of venue due to pretrial publicity are problematic as it is. Adding cameras to the mix will undoubtedly result in more motions and more transfer of cases. 4) Many felony cases involve allegations of criminal street gang activity. The vast majority of witnesses are fearful of deadly retaliation. The specter of having a witness's testimony shown on television will not only exacerbate that fear and result in fewer witnesses coming forward to report crimes, but would undoubtedly significantly increase the risk of harm to the witnesses who do testify. I strongly urge the Judicial Counsel not to adopt the proposed rule change.	**77**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Commentator	**Position**	**Comment**	
Hon. Runston Maino, Superior Court of San Diego County	**N**	There is no reason for an explicit presumption that cameras and other recording devices are to be allowed into the courtroom. The presumption should be that a judge will know the law and enforce it. The presumption should be that in balancing the rights of the defendant, the witnesses, the public and the press the judge will do what is right under the circumstances. There is no reason for the Committee to hold that the 1st Amendment is more important than the right to a fair trial or to the rights of privacy of the witnesses. I find the presumption of the Committee that the press is too stupid or ignorant to understand court proceedings so that there has to be training for judges to explain things to them in simple language to be insulting. The press does not need to be fed pabulum by judges.	**78**
Hon. Charles Wieland, Superior Court of Madera County	**N**	Leave the rules as they are.	**79**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**	I concur with the criticisms expressed by the California Alliance of Judges. This recommendation is will be a source of mischief and damage to the judicial system. It is another example of the pernicious influence of television and a shortsighted attempt to placate the media.	**80**
Friedrich W. Seitz, Attorney Murchison & Cumming LLP, Los Angeles	**N**	As a litigator who tries cases I strongly disapprove of cameras in the court room. The court room is intimidating enough for witnesses and jurors as it is without having to be confronted with cameras for the networks. It will affect how jurors and witnesses respond to questions with a fear that their picture and testimony may appear on some reality TV show in the evening. The court room is not a theater were people perform and worry how they might appear on the screen. The court room is an institution that deserves dignity and respect and should not be turned into a stage. There can be no doubt that cameras in the court room are a distraction. The court's attention and efforts should be directed to the case at hand, rule on questions of law and procedure and it should not be burdened to make specific findings to overcome an explicit presumption allowing cameras and recording devices into the a court room. If there is a true interest in a case there is nothing against a reporter attending the trial as an observer, take notes and report through the media accordingly. Cameras and recording devices are not necessary to protect any constitutional rights dealing with free speech. Except for rare circumstances there is no prohibition to report on a particular trial or court proceeding based upon personal observations. There is no rule or procedure that would prevent any reporter or journalist to take notes during a trial or hearing. Cameras or other recording devices in the court room are not necessary and serve no valid public purpose that cannot be	**81**

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		served with other means.	
Herbert M. Barish, Attorney Law Offices of Herbert M. Barish, Glendale	**N**	The following comments were originally intended solely toward cameras in the courtroom. However, the content of the report compels comments about what happens when such a committee is stacked with media folks and media advocates. *A Balancing Act* is a questionable title considering the document is an obvious one sided lobbying effort on behalf of established media. What simpletons did the Committee members think would fall for such obvious propaganda? Maybe they expected the report to be read only by journalists? The authors failed to mention any issue questioning the presence of cameras in the courtroom. Some of those issues are discussed in the attached article, *TV's Siren Sings to the Courts*. That article is incorporated by reference as part of this comment. Under the present and proposed rules, litigants and witnesses are not notified of the intention to televise the proceedings. The media need only notify the judge. Apparently the concerns of attorneys, parties, and witnesses don't matter. Television influences participants. One need only recall that goofy judge in Florida who was dealing with a minor issue following the death of celebrity Anna Nicole Smith. We're all influenced by cameras. How and how much depends upon the individual. Cameras point anywhere. Attorney client privilege is threatened. Cameras pointing at what people are reading or writing has long been a concern. Notes among counsel and client are fair game. Lindsay Lohan held her notes upside down. Unreadable to the spectators, unless provided with a camera that can give a clear picture that can be enlarged and the picture then displayed upside down. Her notes were subsequently published on the internet. (See attachment *Lindsay Lohan*, which is incorporated by reference in this comment.) The report ignores any possible abuses by the media. Participants are aware of the cameras. As with the Florida judge, Ms. Lohan adjusted her conduct because of cameras. A celebrity who we would expect to be comfortable with	**82**

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		cameras sought to cover her face to hide from courtroom cameras. She likely would have preferred to direct her attention solely to the proceedings, as her notes reveal that she was intensely concerned with the presentations. Privacy and an interest in not being displayed are ignored in the report. How important is it not to display others in a society in which were told that privacy no longer applies. We need not worry as the victim of such display will get over it. Maybe not. Within the last few weeks, there are a couple of examples of public discomfort apparently leading to suicide. One was Mr. Rigoberto Ruelas who was rated as a below average teacher by the L.A. Times. The paper decided it would bravely publish its analysis of teacher performance by naming teachers. The other was Mr. Tyler Clementi, a student at Rutgers who ended his life following the publishing, on the internet, of a video displaying his apparent homosexual behavior. Massive public exposure, regardless of its nature, is worrisome to some and terrifying to others. To the committee members, litigants and witnesses are to be treated as cattle on the way to being slaughtered. Personal interests, privacy interests, and individual concerns of those litigants and witnesses are of no importance. All that matters is that the media be given an opportunity to indulge the curiosity of the masses. Most judges attempt to be accommodating to those who visit their courtrooms. It is preferred that court rules reflect those same ideals. Court rules should be no less solicitous to the needs and concerns of courtroom participants than are trial judges.	
Boies, Schiller & Flexner LLP by Michael Breyer, Chairman & President	**A**	We write in support of the recommendations made in the draft report of the Bench-Bar-Media Committee particularly in respect to the California court system revising rules on media access (California Rules of Court Rule 1.150) to create a presumption in favor of coverage and require the judge to explain in writing a denial of coverage to ensure a judge considers a media application seriously before denying it. To that end, we enclose a submission from Boies, Schiller & Flexner LLP, our outside counsel, which explains the history of camera access in California and elsewhere, identifies and describes the empirical evidence, discusses the merits of camera access, proposes specific revisions to Rule 1.1.50 and responds to common concerns.	**83**

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		Over the last several years we have made progress in gaining camera access to court proceedings throughout California. Our video/audio access has provided tremendous benefits to the legal community and the public at large. Many lawyers, financial institutions, legal journalists and interested citizens watch the cases we cover. Over 50 of the country's leading law schools receive unlimited access to our video recordings for their students. Professors critique live courtroom arguments giving students a real life simulation that helps train them to litigate. Our coverage is gavel to gavel and advertisement free. The cases we cover are not sensational, but often are of great interest to sub-sections of the public such as class members or professionals with a relevant area of expertise. Not once has our coverage negatively impacted the fairness of the judicial process. We ensure that there is a professional environment that preserves the dignity of the Court. Best practice for video coverage of courtroom coverage is typically a setup with two discreet cameras. While we at all times defer to the preference of the Judge, we would recommend removing the "No more than one television camera" requirement from the California rules. Recently even the federal Judicial Conference has approved a pilot project to have camera access in district court. We hope the California state Court, which is not limited by federal restrictions, will lead the country in promoting an open and transparent judiciary. Providing a benefit to students, lawyers and the public at large; and instilling a greater understanding and faith in the judiciary.	
Hon. Frank F. Fasel, Superior Court of Orange County	**N**		**84**
Douglas Fee, Collins, Collins Muir and Stewart LLP, South Pasadena	**N**	It is a VERY BAD IDEA to presumptively permit cameras and other recording devices in the courtroom. To allow them would intimidate witnesses and allow collateral use of trial proceedings in a way not consistent with sound administration of justice. Remember the OJ trial? I do. Allowing the trial to be televised was a farce that did nothing to advance the cause of justice or insure a fair trial for the participants. I strongly recommend that the proposed amendment be dropped, utterly and completely.	**85**
Thomas C. Sanford, Attorney,	**N**	Presumption of right to cameras in court is intrusive, invasive, does not advance the	**86**

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Thomas C. Sanford and Assoc., Pasadena		administration of justice and can be counter productive. Further it is easily subject to abuse. This matter should be handled on a case by case basis with a presumption against allowing cameras in court.	
Donald Wilson, Carmel & Naccasha, Paso Robles	**N**	Permitting cameras absent court order otherwise, would be distracting, disruptive to the judicial process and not promote the end goal of judicial justice. Interested parties can attend in person now and the camera would only serve limited commercial interests of some and could intimidate witnesses, sway testimony and invade personal privacy and security.	**87**
Ben Coats, Engle Carobini Covner & Coats LLP, Ventura	**N**	This change is a bad idea. It will be either intimidating or provocative to witnesses, parties, jurors and attorneys alike. The prospect of making news, or appearing on television will effect the manner in which trials are conducted by influencing the behavior of all participants.	**88**
Hon. John D. Conley, Superior Court of Orange County	**N**	Leave Rule 1.150 the way it is: discretionary.	**89**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	The presumption should be that no camera is allowed in court room unless the Judge makes a specific finding to the contrary	**90**
No name, title, or organization given.	**N**		**91**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**N**	The presumption should be that cameras and other recording devices are not allowed in the courtroom absent consent of all parties and the judge. Trials should be for dispensing justice between the parties and not made into a TV production.	**92**
George Stephan, Buchalter Nemer, Los Angeles	**N**	There is no reason to have a presumption in favor of cameras. Cameras are not needed to have public access to courts. There was public access to courts before there were movie cameras. In many cases, cameras can create a public spectacle of any court proceeding the press chooses to use any day of the week as its “reality TV” component or can even be used as leverage to force a settlement. Witnesses and parties will be intimidated with the prospect of network exposure if they take the stand-- whether or not the testimony they may have available is fair, truthful and important. The mere prospect of having your trial testimony turned into a “TV performance" will dissuade otherwise cooperative witnesses from appearing. The intimidation of witnesses that can be created by cameras is an important factor, especially where the witness' testimony may not be "popular”. Not all attorneys who represent the litigants want to be thrust into the world of reality TV.	**93**
Martin Moreno, Pettit Kohn,	**N**	I strongly disagree with the proposed recommendation to create a presumption that cameras	**94**

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Associate. Los Angeles		and other recording devices be allowed in the courtroom. If adopted, the proposed rule amendment will severely impact trial practice by creating a public spectacle of any court proceeding the press chooses to use any day of the week as its "reality television" component or even being used as leverage to force a settlement. Witnesses and parties will be intimidated with the prospect of network exposure if they take the stand whether or not the testimony they may have available is fair, truthful and important. The mere prospect of having trial testimony turned into a "television performance" will dissuade otherwise cooperative witnesses from appearing. Moreover, as a trial attorney and officer of the court, I do not want to be thrust into the world of reality television.	
Shelly Albaum, Attorney at Law, Sebastopol	**A**	Three other practical changes would make the new rule more workable. First, an expedited appeal process for media denials would be helpful because as a practical matter most courts will not stay proceedings while a camera request is appealed. Second, the rules should require that camera requests be resolved within a week of the application, or be automatically approved, which would prevent day-of-the-event denials, which are essentially unappealable. Third, the current rule 1.150(e)(7) limits the number of cameras to one. This limit appears arbitrary, and perhaps dates back to a prior era when video equipment was large and bulky. The effect of the limit severely degrades the quality of the coverage by ensuring that some aspects of the proceeding will not be easily viewed (e.g., the witness, the attorneys, the judge, the exhibits, the argument) or could only be viewed from the rear. I would recommend that the presumptive limit be removed, and instead be replaced with practical considerations -- the equipment used must be unobtrusive and non distracting.	**95**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**96**
No name, title, or organization given	**N**	Anything that makes cameras in courtrooms more likely, or more routine, threatens the quality of justice in those courtrooms. Interview opportunities suffice. Transcripts are available. In my opinion, the presumption should be against, not for, cameras in courtrooms.	**97**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**	The recommendations seem to ignore that with the presence of cameras in the courtroom, certain attorneys and litigants will act on their irresistible impulse to "grandstand" or to put on a "show". While it is of course the bench officer's responsibility to control the courtroom, keeping it dignified and fair, this becomes much more difficult with the presence of cameras.	**98**
Hon. Mark Tansil, Superior Court	**N**	Drop the effort to cater to the media.	**99**

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of Sonoma County			
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**100**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**N**	Cameras in the courtroom disrupt criminal trial proceedings and tend to create a carnival-like atmosphere in the courtroom. There is absolutely no need for such a paradigm shift to a presumption that cameras are allowed in any courtroom for any kind of proceeding. Such a presumption would prejudice criminal case defendants, wrest control of the courtroom from the judge, and add a component of entertainment that has no place in a solemn trial, especially one involving sensitive subject matter and/or vulnerable witnesses. There should be no presumption at all, and the current system should continue.	**101**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**102**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**103**
Charity Kenyon, Counsel for the McClatchy Company, Sacramento		Our experience in Sacramento is that many, if not most judges are comfortable with still camera access. Modifying the rule to require an articulation of reasons for excluding cameras will not limit the court's existing discretion to limit access, but may encourage less experienced jurists to permit cameras. The recommendations about giving notice to security personnel are practical. We have addressed these security problems in Sacramento through the Bench Bar Media Committee.	**104**
Hon. Adrienne A. Orfield, Superior Court of San Diego County	**N**	The purpose of this email is to comment on the draft report submitted by the BBMC. I currently sit as a judge in the North County branch of the San Diego Superior Court. I hear primarily criminal cases and this year I am handling the misdemeanor domestic violence department. I have served on the court for15 years, again primarily hearing criminal cases for that length of time. I have some serious misgivings about the recommendations made in the BBMC report. In addition, I share the opinion expressed by CJA in the recent letter from its President. One of the most important duties of a judge is to protect the often competing rights of a free press and open courtroom with the right to a fair trial. There has been absolutely no proof that this vital role has been dispatched in any other way but professionally and equitably. No	**105**

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		presumption in favor of cameras is necessary as there is no proof that the judges of this state do not appreciate the rights of the press and public and no longer are capable of balancing the rights of a fair trial and a free press. The presumption strongly favors one of the competing rights, in direct conflict of the right to a fair trial. This is absurd. The rights are basic and co-equal, and only a judge is in the unique position, case by case, to do the crucial balancing. No evidence exists of an abandonment by the judiciary of the right to an open courtroom and a free press. Please reconsider your recommendations.	
Superior Court of Ventura County by Hon. Kevin J. McGee	**N**	*California Rules of Court*, rule 1.150, currently creates no presumption in favor or against the application of constitutional rights in relation to media access to court proceedings and provides the judge with the ability to exercise his/her discretion to balance the right of access with the fair trial rights of the litigants. Without data to support the Committee's finding that California judges have failed to properly and fairly exercise discretion, the Ventura Court does not support the proposed change. Further, Ventura shares the concerns raised by other courts of whether creating a presumption in favor of the press is a proper exercise of adopting rules for court administration, practice or procedure. As stated above, as there has been no data presented that California judges have failed to properly and fairly exercise discretion, there does not appear to be a sound justification for changing the rule; the result of which would increase the amount of judicial time necessary to process media requests.	**106**
Hon. Douglas V. Mewhinney, Superior Court of Calaveras County	**N**	As a member of the Task Force on Cameras in the Courtroom which produced the 1996 final report to the Judicial Council which resulted in the current Rule of Court 1.150, I will limit my comments to the proposed changes to that rule. Our task force conducted extensive hearings and sent surveys to EVERY member of the judiciary at the trial and appellate level. Our recommendations and the Judicial Council's rule properly reflected the constitutional authority of the Trial Court under Article 6 §1. Our Chair, Justice Huffman, was one of the justices in the KFMB case *(KFMB-TV Channel 8 v.* *Municipal Court*. 221 Cal.App.3d 1362) which contained an excellent analysis of the constitutional right of the public and the press as the representative of the public to attend court proceedings and the lack of any right to record proceedings. I am not aware of any	**107**

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		change in court interpretation on this issue. I was thus surprised to see the draft recommendations are: *"A. Amend Rule 1.150 of the California Rules of Court to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use.* *B. Amend rule 1.150 to require judges to make specific findings to prohibit or limit the use of cameras and other recording devices.* *C. Revise Judicial Council Form MC-510 (Order on Media Request to Permit Coverage) so that judges are required to state their findings regarding the use of cameras and other recording devices."* To understand the basis for the complete change in the recommendation from the current rule, I requested staff to the committee provide the data backing up the statement on page 13 of the report as follows: *"Furthermore, committee members from the media conveyed that it appears that judges are increasingly denying electronic recording in the courtroom as a matter of course."* I also inquired what information from the 1996 report the committee reviewed and received the following responses: *… The media members presented no data to back up their perception. We were trying to convey that this is anecdotal evidence only; it's opinion, not fact.* *Peter Allen* *Senior Manager* *Office of Communications* *Administrative Office of the Courts* *Judge Mewhinney—* *They never saw the 1996 report. Unfortunately, we didn't become aware of this report until we were creating this draft.* *--Peter* *Peter Allen*	

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		Senior Manager *EOP--Office of Communications* *Judicial Council of California –* *Administrative Office of the Courts* I then looked at the charge of the committee found on pages one and two of the draft report as follows: *"The Bench-Bar-Media Committee was formed by California Chief Justice Ronald M. George in March 2008. It was created to foster improved understanding and working relationships among California judges, lawyers, and journalists."* If this is the only basis of the charge to this committee, there is no authority in the creation of this committee to take ANY action. The draft report continues: *"Rather than receiving a formal charge, the committee was asked to identify and address the critical issues surrounding the relationships among the courts, attorneys, and media. Accordingly, the committee developed the following purpose statement to guide its work."* Based upon the statement on page one, it is unclear by whom and under what authority this direction was given. In summary, this committee has made this recommendation without any facts and without any rationale for changing the current rule and under questionable authority based upon its lack of charge and in contravention to Article 6 §1 of the constitution. I am thus opposed to the recommendations of the committee.	
Superior Court of Contra Costa County by Hon. Mary Ann O'Malley	**N**	The (UNDERSIGNED JUDGES OF CONTRA COSTA SUPERIOR COURT) has carefully considered the recommendation for changes to California Rule of Court 1.150 and create a presumption of camera access to the courtrooms of California absent specific findings. We enclose a response, which explains why we oppose adoption of the proposed rule. We urge the	**108**

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		Council to consider these comments and reject the Bench-Bar-Media Committee's Draft Report recommendations. The undersigned Judges and Commissioners of the Contra Costa Superior Court have carefully considered the proposed change to California Rule of Court 1.150 that would create a presumption that cameras and recording equipment be allowed in all cases absent specific findings. We oppose the proposed change. The current Rule 1.150, which allows cameras in the discretion of the trial courts, strikes the proper balance between the court's and litigants' interests in administration of justice and the interests of those who wish to broadcast court proceedings. The proposed rule derives from a flawed process, does not adequately consider the proposed rule's problems and costs, and risks serious erosion of fundamental rights and the fair administration of justice. **A. The Scope of this Response.** We are aware of the input already given by the judges of the Sacramento Superior Court to the Draft Report and Proposals. and do not wish to burden the Judicial Council with duplicative responses. We agree with all the points made by the Sacramento Superior Court, as to all the proposals in the Draft Report and Recommendations. We agree in particular with the Sacramento Court's structural concerns about the proposed rule: (1) it may exceed the legitimate authority of the Judicial Council; and (2) if such a significant change in the law is to occur, the process used to reach that conclusion was flawed. We also agree that the proposed rules constitute a serious (if not unlawful) encroachment on the independent exercise of judicial discretion. Sacrificing independent judicial discretion for any reason, much less for political or public relations reasons, should only occur when the there is a clear and convincing need to do so. The Draft Report contains no evidence that constraining judicial discretion is needed. To the contrary, for decades our judiciary has been exercising discretion in these cases in the best tradition of American jurisprudence and it demeans the conscientious judges of our state to propose a policy that presumes otherwise. We focus our response on one particular recommendation: the proposed changes to Rule 1.150. We first address how it creates new rights and fundamentally realigns interests in a way that is ill-suited to a Judicial Council rule change. We then address numerous problems with	

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		the proposed rule itself. **B. The Proposed Rule Creates New Press Rights and Elevates Them Over Fair Trial and Privacy Rights of Parties, Witnesses, Victims and Jurors -A Policy Shift III-Suited to the Rulemaking Process.** The Draft Report is titled "A Balancing Act: Accommodating the Needs of the Bench, Bar and Media in the Pursuit of Justice." That is a misnomer. The Draft Report appears to proceed from a premise that there is a right to record and film courtrooms, and a consequent need to "balance" that right against the rights of the parties involved in the case --litigants, witnesses, victims and jurors. In fact, there is no First Amendment right to film or record court proceedings. The Supreme Court has held, numerous times, that the right to report does not include the right to record. *Estes v. Texas.* 381 U,S. 532, 54445 (1965) (area where press "can go with its cameras" does "not extend into an American courtroom"). See *also Gannett* Co. *v. DePasquale,* 443 U.S. 368(1979) (Sixth Amendment right to a "public trial" belongs to the criminal defendant alone; the "strong societal interest in public trials" does not create a constitutional right on the part of the public (and therefore the press) to attend criminal trials): *Chandler v. Florida,* 449 U.S. 560. 575 (1981); *Nixon v. Warren* 435 U.S. 589 (1978). As Estes makes clear, "the criminal trial under our Constitution has a clearly defined purpose, to provide a fair and reliable determination of guilt. and no procedure or occurrence which seriously threatens to divert it from that purpose can be tolerated." 381 U.S. at 562. Cameras in the courtroom can be such an occurrence. Indeed, for that reason the federal courts bar cameras outright, in all cases. Simply put, there is no media right to balance here. In contrast, parties, witnesses, victims and jurors have long-standing constitutional and statutory rights in the judicial process: the constitutional guarantees of parties and victims to a speedy and fair trial, the statutory rights of witnesses to avoid harassment and embarrassment, the rights of victims to avoid further victimization by the court system, and the rights of jurors to privacy. See, *e.g.,* Cal. Const., art. I, sec. 28, subd.(b)(4) and (c)(4} (Proposition 9 [Marsy's Law) preventing disclosure of sensitive victim information): Cal. Canst., art. I, sec. 29 (People and crime victim have speedy trial rights); Evid. Code 765(b) ("the court shall take special	

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		care to protect [children and witnesses with cognitive impairments] from undue harassment or embarrassment"): Penal Code § 288(d) ("In any arrest or prosecution under this section or Section 288.5, the ... court shall consider the needs of the child victim or dependent person and shall do whatever is necessary. within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process"); Penal Code § 237 (sealing personal identifying information of jurors); Penal Code § 95.2 (misdemeanor to provide juror identification information to defendant or former defendant). The proposed rule does not simply modify procedure. It effects a radical realignment of interests. It creates a new media right to bring cameras into the courtroom. It then creates a presumption that elevates that newly-created right over the long-standing rights of litigants, victims, witnesses and jurors to the trial as a search for truth and a fair adjudication of disputes. A presumption is, at its core, a public policy decision. It assigns values, and effectuates policy by elevating one value over another. See, e.g., Evid Code § 605 (“A presumption affecting the burden of proof is a *presumption established to implement some public policy* other than to facilitate the determination of the particular action in which the presumption is applied, such as the policy in favor of establishment of a parent and child relationship, the validity of marriage, the stability of titles to property, or the security of those who entrust themselves or their property to the administration of others.") (Emphasis added.) Here in proposing a presumption in favor of cameras, the Draft Report expressly makes a policy choice: to "provide greater access to the media." We respectfully submit that such a policy choice is unwise, as we explain below. But more fundamentally, as a matter of process the adoption of policy by Judicial Council rulemaking is unseemly. If such a profound change in the relative rights of the press and others is to occur, it should at the least be done democratically, through the legislative process. It should not be undertaken through a Rule of Court proposed by an appointed committee, much less a committee whose membership is heavily weighted in favor of one interest (the press), with inadequate (or no) input from the people judges. parties. victims, witnesses. jurors) most affected by the change.	

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		C. The Realignment of Interests, And the Presumption Elevating Press Interests Over All Others, Is Unwise Policy. California is not writing on a blank slate on this issue. There is a range of approaches jurisdictions use to deal with cameras in the courtroom.[2] The federal courts and some states take the most restrictive approach –cameras are forbidden outright. *See, e.g.*, Fed. R. Crim. Pro. 53; NY CLS Civ. R. § 53. Other courts take a protective but discretionary approach: cameras are forbidden outright in certain sensitive cases (for example, sex crimes and gang cases) but otherwise permitted in the discretion of the judge. See, *e.g.*, Connecticut Rules of Court, Superior Court Rules §§ 1-10, 1-11 (prohibiting cameras in family, trade secrets and sex-offense trials). Some jurisdictions require parties' consent before cameras are permitted. *See, e.g.*, Alabama Canons of Judicial Ethics, Ala. Code, Vol. 23A, Canon 3A, Many adopt the approach used to date in California: cameras are allowed in the discretion of the trial court. See, *e.g.*, 17 Ariz. Rev. Stat. Ann., Sup. Ct. Rules, Rule 122. The Draft Report proposes a rule on the far extreme of the national range: Presume cameras belong in court, and mandate their presence, unless the court holds a hearing and makes specific findings that cameras should be barred. There is ample data supporting a restrictive -or at least California's current neutral. discretion-based -approach. As Judge Jan E. Dubois testified before Congress in 2005, the Federal Judicial Center conducted a 3-year pilot program in federal civil proceedings to assess the effects of cameras in the courtroom. Hearing before the Committee on the Judiciary, ~Cameras in the Courtroom," November 9, 2005, Serial No. J-109-50. The results raised serious concerns about cameras in the courtroom: • 64% of the participating judges reported that cameras in the courtroom made witnesses more nervous than they otherwise would be. • 46% of the judges reported that the presence of cameras made witnesses less willing to appear in court. • 41 % of the judges responded that the cameras distracted witnesses. • 56% of the judges reported that cameras violated witnesses' privacy. • 64% of judges reported that cameras caused attorneys to be more theatrical in their presentations.	

[2] The First Amendment Center has a comprehensive survey of various jurisdictions' approaches at http;//www.firstamendmentcenter.org/analysis.aspx?id=17283.

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		• 17% of the judges reported that the televised proceedings prompted people who saw the coverage to try to influence juror friends. See "Electronic Media Coverage of Federal Civil Proceedings, An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals," Federal Judicial Center Table 2, p. 14 {1994}. Judge DuBois further explained the additional pressures cameras place on witnesses; "Jurors are told to watch the way a witness responds to a question. If a witness is more nervous because of cameras in the courtroom, a juror might very well misinterpret that to mean the witness is nervous because the witness is not telling the truth. That is a dynamic I never want to see happen in a courtroom in which I am presiding." Hearing before the Committee on the Judiciary, "Cameras in the Courtroom," November *9,2005,* Serial No. J-109-50 *["2005* Senate Hearings"] at p. 15. If those concerns arise in civil cases, they are only magnified in criminal cases. As Senator Sessions noted in the Hearing before the Committee on the Judiciary, a Northwestern University survey in New York found that 4 out of 10 potential victims would be less willing to testify in a criminal case if cameras were present. [2005 Senate Hearings, p 16.] Cameras may also inhibit a criminal defendant from exercising his or her right to testify. "As with witnesses, cameras in the courtroom may affect the accused's demeanor and willingness to testify. More fundamentally, the prospect of extended media coverage may discourage the accused from exercising their right to trial in the first place. This may be of particular concern in cases involving notorious, repugnant or humiliating accusations or corporate defendants unwilling to expose themselves to negative publicity. Even when the accused is acquitted, the stain on their reputation is not easily erased! and camera coverage may exacerbate this unwarranted punishment. Televised trials also may subject the accused (or other participants) to harassment or physical threats during the course of the trial, necessitating additional security measures at public expense." Written statement of Barbara Bergman, President of the National Association of Criminal Defense Lawyers, 2005 Senate Hearings, p. 44. These findings, and our own experiences in our courtrooms, convince us that cameras in the courtroom should not be California's default presumption. Cameras can be disruptive of	

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		proceedings, intimidate witnesses, and significantly affect the course of a trial. It is a species of the Heisenberg principle: the fact that proceedings are being observed changes what is being observed. People (lawyers, witnesses, jurors and, yes, even judges) act differently when they know there are cameras. Lawyers know that cameras can mean more business, which can tempt lawyers to grandstand. Stipulations may be less likely, lest a lawyer fear the press's exploitation of agreement. Parties may be more (or less) likely to settle, depending on the collateral benefits or disadvantages to them of televised press coverage. All of this perverts the trial as a search for truth, and can lead to a waste of court and jury time. Witnesses know that cameras can make them celebrities -or targets. Camera coverage can embarrass or intimidate witnesses, especially in criminal cases involving gangs, stalking, or sex crimes. Our county has a serious gang problem, and prosecuting gang members is already a challenge; the "don't snitch" message is strong, and witnesses often come to the stand in chains after evading service or ignoring subpoenas. In one recent homicide case in our county, a witness, in custody on a witness warrant, bolted from the stand out of fear of retribution and had to be restrained by bailiffs in front of the jury. Two jurors were excused for cause in that case; both said that after seeing the witness's fear, they would vote based on their safety rather than the evidence. Cameras would only increase the risk of such occurrences. Cameras also may affect the criminal defendant's decision to testify; defendants would have a legitimate concern that nervousness at being broadcast might be mistaken for lying under oath. Jurors know that cameras mean public and press interest and attention, and possibly lucrative post-trial possibilities. All of us who have presided over notorious press cases understand the challenge jurors already face in following the instruction to reach a just verdict regardless of "public opinion or public feeling." CALJIC 1.00. Cameras only exacerbate the risk that jurors will be enthralled at the possibility of celebrity and compensation and distracted from their task as fact-finders. And as the federal study found, cameras increase the risk that others will seek to influence the jurors. Again, all of this subverts the trial as a search for truth. It is no answer that most cases won't be televised. The truth is that the most salacious, violent, and disturbing cases -precisely the cases most needing discretion and protection --are exactly	

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		the cases where the presumption is most likely to be invoked. It also is no answer that technology exists to obscure identities of witnesses, such as a "blue dot" over a testifying witness's face or voice-masking technology. Those options address only some of the many problems of televised trials. Their theoretical availability does not warrant the presumption that they will work even on the limited problems they address, much less alleviate the many other risks to fair trial that no "blue dot" can prevent. Cameras in the courtroom also impose real-world costs. If coverage results in grandstanding and longer trials, that diminishes the volume of cases courts can handle. Any jury taint occasioned by press interest translates into a juror-inquiry hearing (at best) and mistrial (at worst) --again, potentially a huge cost. Cameras also increase security costs. Televised cases immediately translate to public interest, which translates to more people seeking entry to the courtrooms, which translates to increased needs for court security. Judges already get their share of threats in the blogosphere. Cameras in the courtroom will only make them more attractive and identifiable targets. All these challenges stress our courtroom security systems, and impose a heavy burden on our already-underfunded courts. The Draft Report does not address any of these concerns. It also does not address the survey conducted in 1996 by Justice Richard Huffman that led to the current Rule 1.150. in which 69% of judges favored "strengthening judges discretionary authority," not limiting it. See Report from the Task Force on Photographing. Recording, and Broadcasting in the Courtroom. Before proposing radical changes in the law in the name of administration of justice, shouldn't we at least acknowledge -and grapple with--the serious consequences of those changes? We do not oppose cameras in all cases, or advocate a federal-style ban on cameras in the courtroom. There are cases where the risks cameras pose are limited or can be avoided with specific orders and the use of technical protection tools. But the undersigned judges of this County, with hundreds of collective years of experience, do not think a presumption is either necessary to get us to allow cameras in those cases, or appropriate to burden our ability to deny cameras where our experience and discretion tells us they do not belong. In sum, cameras in the courtroom can hijack a trial, transforming it from a search for truth to	

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		reality TV. The Supreme Court recognized as early as 1965 the power of television to change the trial it purports to record, and held that there is no press right to so arrogate the process: "The right of the communications media to comment on court proceedings does not bring with it the right to inject themselves into the fabric of the trial process to alter the purpose of that process." *Estes*, 381 U,S. at 585. California's core presumptive value should be fair trials, not televised trials. Trial courts should retain discretion to allow or exclude cameras, with no Judicial Council thumb on the scale. D. The Requirement of Specific Findings Elevates the Rights of Non-Parties Over Parties, Threatens Speedy Trial Rights, And Is Potentially Expensive. The proposed rule does not explain what procedures courts will be expected to follow to make the specific findings the Draft Report proposes. The Draft Report suggests the point is to supply an appellate record. If so, that would appear, at a minimum, to require courts to conduct evidentiary hearings with notice to the parties sufficient for them to present their concerns to the Court. That raises a host of concerns for those of us who conduct criminal trials. As a practical matter, in criminal cases the press requests are last-minute affairs. Often they are received by fax. moments before the proceeding or trial is to begin. This usually is not the press's fault; it is a consequence of criminal speedy trial rights and calendar assignment systems that make advance scheduling of such hearings difficult. Whatever the reason, adding a specific finding requirement in criminal cases is an enormous burden, last minute, with potentially awful consequences for parties, witnesses and jurors. Sacramento County's letter posits the example of a press request to film a tenth-day preliminary hearing. Must a judge delay proceedings in that case until it can hold a hearing on the camera request? Is that good cause for a continuance? There are more questions even than Sacramento asked: Is an in-custody defendant entitled to be released under Penal Code section 859b if good cause for a continuance is found based on the need for a press hearing? If the preliminary hearing starts, but cannot be completed that day because of a press-hearing delay, must the judge then clear the next day's calendar to comply with the one-session rule? What is the domino effect from that calendar adjustment? Can a court consider that in exercising its	

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		discretion in denying a press request? This is not a farfetched scenario. Nor is it the only one. For example, our county operates its felony criminal court on a master calendar system. Cases are set on a Monday and assigned out within 10 days of that date as courtrooms become available and parties announce they are ready. Subpoenas are served and jurors summoned based on the assumption that trials will begin when assigned to a courtroom. But only upon assignment can the press seek a hearing on camera access. A specific finding requirement thus necessarily mandates a hiatus in the proceedings after a case is assigned to allow a hearing. That elevates the press right over everyone else's --the parties' rights to start their trial, the witnesses' right to avoid Sitting idly by after responding to a subpoena, and the jurors' rights to avoid waste of their time. If parties need time to summon witnesses to address the problems with cameras, the mandate of a hearing may require hours (or even days) of trial delay. As a consequence, the court will have summoned scores of jurors who are doomed to wander the halls for hours or be excused without ever seeing the courtroom, only to be replaced the next day by new jurors whose time may be similarly squandered. Either way, the waste of juror time is costly to courts and jurors. And if trial witnesses are reluctant to testify to begin with, how likely are they to remain at the courthouse pending resolution of press issues? If a trial must be continued to re-serve or find AWOL witnesses, must the court start the hearing process anew the next time? The Draft Report justifies the specific finding requirement based on a desire to educate the press and public, and to facilitate appellate review. But neither warrants the change and. in truth, invoking education and appeals points the other way. In *Estes,* the Supreme Court explained that "the function of a trial is not to provide an educational experience; and there is a serious danger that any attempt to use a trial as an educational tool will both divert it from its proper purpose and lead to suspicions concerning the integrity of the trial process." 381 U.S. at 575. We are courts, not schools. Our primary task is to adjudicate cases fairly, fully and efficiently. That primary function should never be compromised by any concern for public relations. As for appellate review, the costs of enabling fuller review far exceed the benefits: The court's decision on cameras is discretionary and unlikely to be reversed; press appeals will only divert the parties from the trial, creating additional burdens, and costs; and	

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Superior Court of Contra Costa County by Hon. Mary Ann O'Malley *(Continued)*		the cameras may occasion their own risks for appeal. Indeed, *if* any appellate issue should be considered, it is the potential for the inarticulable but irremediable harm to the criminal defendant forced into a televised trial. As *Estes* explained, the cameras' effect may be prejudicial but "so subtle as to defy detection by the accused or control by the judge." 381 U.S. at 544-45. In conclusion, the view of the Contra Costa Superior Court is this: There should not be a presumption in favor of audio or video coverage. The propriety of cameras should be decided case by case, in the discretion of the trial court.-as the current law provides. There is wisdom in the old adage, that "if it ain't broke, don't fix it." We respectfully submit that adage applies here. The Draft Report's recommended revision of Rule 1.150 should not be adopted.	**109**
Ming W. Chin, Chair of CTAC, and Associate Justice of the Supreme Court, Terence L. Bruiniers, Vice-Chair of CTAC, Associate Justice of the Court of Appeal	**N**	Rule 1.150 of the California Rules of Court concerns photographing, recording and broadcasting in court. The current version of the rule resulted from the work of a task force established in 1996. Based on extensive study and discussion, that task force recommended amending the rule (then rule 980) to retain judges' discretion over the use of camera in all areas; to prohibit camera coverage of jury selection, jurors or spectators; and to specify 19 factors that a judge must consider in ruling on a request for camera coverage. The rule provides: "This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings." (Cal. Rules of Court, rule 1.150(a).) The BBMC recommends amending rule 1.150 to include an explicit presumption that cameras and other recording devices are allowed in a courtroom unless sufficient reasons exist to prohibit or limit their use. The burden would be placed on the trial judge to make specific written findings justifying any restrictions. CTAC opposes changing the rule in the proposed manner for several reasons. First, the BBMC report provides no compelling factual basis for changing the current rule. Its recommendations are apparently based on anecdotal statements by some committee members who stated that judges appear to frequently deny the use of cameras and other recording devices in the courtroom. (Draft BBMC Report, page 12.) However, the report does not attempt to provide any systematic information about the number of media requests for cameras in the courtroom or about the number of such requests that have been denied. It	**110**

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		provides no specific information showing that the current rule is not working well and effectively. On the other hand, a study in 2000 indicated that 81 per cent of the orders granted the media's request. [3] That study also indicated that the media and legal community were not discussing the rule (then rule 980) as often as they had in the years immediately preceding the amendment of the rule. Only one newspaper article and no law review articles discussed the rule between 1997 and May 2000. Thus, the BBMC report does not demonstrate a problem or a need to change the law. Second, the BBMC recommendation will impose unnecessary burdens on the courts. The current rule already requires a court ruling on a media request to consider 19 factors and provide a written order. The BBMC would add an additional requirement that the judge make specific findings in every case where there is a media request. Such a blanket rule is unnecessary and may result in delays in the conduct or proceedings and trials. Third, creating a general presumption permitting the use of "recording devices" within the courtroom is particularly problematic in what the draft BBMC report acknowledges is the "growing universe of electronic devices that can capture images and/or record sound (e.g., mini-video cameras, WIFI transceivers, cell phones, smartphones, personal digital assistants (PDAs), and laptop computers)." The ubiquitous nature of these devices prompted amendment of the Rules of Court in 2006 to expand the definitions of "photographing," "recording," and "broadcasting" to encompass digital technology and mixed-use devices (such as cell phones) that could be used to take photos or make audio recordings. As the BBMC report admits, recordings with such devices have made their way online inappropriately and in violation of court orders. Also, the issue of who is the "media" in this age of blogging is becoming increasingly difficult to determine. While the focus of the report appears to be on access by recognized print and broadcast media, the report recognizes that the ability of a court to properly identify what it refers to as "legitimate reporters" is "an unresolved issue" on which the BBMC itself was unable to reach consensus. (Draft BBMC Report, page 37.) In this context, amending rule1.150 to provide a presumption that "photographing, recording, and broadcasting" shall be permitted and requiring judges to make specific findings to allow, prohibit, or limit their use	

3 See *Cameras in the Courtroom, Report on Rule 980* (Administrative Office of the Courts, Research and Planning Unit, May 2000) available at http://www.courtinfo.ca.gov/reference/documents/cameras.pdf

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		in every case would be more than challenging. Finally, CTAC is concerned that this proposal will have the unintended consequence of jeopardizing the delicate balance that our Rules of Court have attempted to maintain between transparency in our processes and unwarranted dissemination of sensitive personal information, particularly in family, juvenile, criminal, guardianship, and civil harassment proceedings. Our current rules limit access to court records in such cases to the courthouse. (Rules of Court, rule 2.503(c)) While these are proceedings in most instances open to the public, and therefore the media, we continue to believe that there is a qualitative difference between keeping the door to the courtroom open, and broadcasting intimate personal details inherent in certain types of cases well beyond the limits of the courthouse.	
Superior Court of San Francisco County by Hon. James J. McBride	**N**	We are opposed to the proposal. If it is indeed true that "[t]he change in presumption would not in any way limit or modify a judge's discretion to allow or deny recording," then we are at a loss to understand why the explicit presumption is proposed. It seems that it is proposed *precisely* to modify and strongly influence a trial Judge's determination, and to provide a basis for appellate review and reversal of orders which limit cameras in the courtroom. Current law is more than adequate and correctly provides the trial Judge with the discretion he or she needs to control the courtroom. Trial Judges are in a unique position, often not easily ascertainable from the record, to determine the impact of cameras. Specifically, trial Judges know the lawyers and may have information about witnesses, which impact decisions on the use of cameras. Some attorneys are known to perform badly and for ulterior reasons before the media and cameras. Trial Judges properly may be reluctant to set forth in agonizing, sometime humiliating detail as to why a given lawyer may engage in bad behavior before the cameras. There remains wide disagreement, both on state and federal levels, concerning the propriety of cameras in the courtroom. Reasonable minds differ. For example, United States Supreme Court Justice Scalia and Justice Souter are determined not to have cameras in the courtroom, although their judicial philosophies often diverge. There is no reason for the AOC, through the presumption embodied in the proposed rule, to put a thumb on the scale of factors determined by courts as they navigate this issue.	**111**

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		As trial Judges, we suggest that the factors are more complex and more case specific than at the appellate level. Indeed, those of us who serve both as trial Judges and on the appellate division of the Court believe that while cameras may routinely be innocuous at appellate argument, the situation is far different at trial, where the behavior of lawyers and witnesses may be modified by the presence of cameras, thus impacting the impressions of the jury We do not oppose a requirement that Judges be required to indicate their reasons. The most efficient way to save judicial resources while shedding light on an order denying media coverage is to amend Form MC-510 with a list of the factors for Judges to consider when making findings "to allow, prohibit or limit the use of cameras and other recording devices." (Report at 14) The proposal encourages appeals of trial court decisions without any thought given to the standards on appeal. Unless the basis for reversal is simply the trial court's failure to exercise its discretion, the net effect of the committee's proposals appear to contemplate appellate courts second guessing trial decisions that of necessity assess the impact of personalities, issues, sensibilities of particular jurors and a host of other facts intimately known to the trial Judge but generally not decipherable from the written record. Perhaps appeals will be handled otherwise; the point is that the committee appears to have given no thought to the issue it has created.	
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	I am in total agreement with the LA Courts official response to the proposed Bench-Bar-Media committee's recommendations. There is no evidence that the current set of laws in place harm the public and its access to information.	**112**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**113**
Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County	**N**	6B/C- While I believe it would be a good idea for judges to make specific findings to prohibit or limit the use of cameras and other recording devices in court, so that the media and public have a better understanding as to why their requests have been denied, this could end up being very time consuming for judicial officers. 6D-I do not oppose. Our staff and judicial officers already provide copies or debrief court security personnel regarding the presence of cameras, etc.	**114**
William Bennett Turner, Lecturer,	**AM**	I strongly agree that there should be an explicit presumption that cameras and recording	**115**

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UC Berkeley		devices be allowed. Existing Rule 1.150 gives the trial judge unfettered and unreviewable discretion to grant or deny camera coverage. This is inconsistent both with the rule of law and with enhancing public knowledge and support of the judicial system. For the reasons stated by Judge Kozinski in Of Cameras and Courtrooms, 20 Fordham Intell. Prop. Media & Ent. L.J. 1107 (2010), cameras ought to be part of the furniture of every courtroom, and no judge should allowed arbitrarily to deny camera coverage.	
Superior Court of Amador County by Hugh Swift, CEO	**N**	The rationale for this proposed rule amendment seems to be primarily based on the subjective opinions of committee members. The report fails to include any empirical data to support the committee's conclusion that, "judges appear to frequently deny the use of cameras and other recording devices in courtrooms without providing any reasons for the prohibition". Or that, "judges are increasingly denying electronic recording in the courtroom as a matter of course." The right to access court proceedings is not without limits. Certain proceedings, i.e. juvenile and paternity actions, are statutorily confidential. Furthermore, the Court can limit access to other proceedings if the Court determines the privacy rights of a party outweigh the right to access or it is necessary to restrict the disclosure of confidential information. (People v. Dixon (2007) 148 Cal.App.4th 414.) Requiring a judge to articulate, in detail, specific reasons for the restriction of proceedings may compromise those very privacy rights the order is designed to protect. The right to access does not include a constitutional right to televise or photograph court proceedings. (People v. Dixon, supra.) A rule which creates a presumption in favor of cameras in the courtroom appears to be in conflict with established authority. Arguably, the proposed amendment creates a rule of substantive law and therefore, exceeds the rule- making authority of the Judicial Council. The court has the duty to provide for the orderly conduct of the proceedings before it. (Code of Civil Procedure Section 128.) This duty exists independent of any request or objection of a party. If the Judicial Council adopts the recommendations as a rule, the burden of coming forward with the evidence to rebut the presumption could potentially fall on the trial judge, if none of the parties object to the media request. A rule which requires the trial court to affirmatively produce a factual basis for denying a request for cameras in the courtroom is	**116**

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		contrary to the judge's broad grant of authority to control the proceedings. The Judicial Council may not adopt rules inconsistent with statute. (Cal. Const. Art VI, Sec. 6(d); People v. Hall (1994) 8 Cal.4th 950, 960.) - The draft report states, "[t]here are times when the rights to fair trial and free press are at odds with each other. The ultimate duty of our judges is to balance these competing interests and find the best solution for all concerned." If a presumption against cameras weighs too heavily in favor of the right to a fair trial, it would seem to follow that a presumption favoring cameras in the courtroom gives undue weight to the rights of a free press.	
Hon. Kevin R. Murphy, Superior Court of Alameda County	**N**	I strongly disgaree with a rule that sets forth "an explicit presumption" that cameras or other recording devices should be allowed in courtrooms.	**117**
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	I am the News Director at KTVU Channel 2 News in Oakland and write to you today in support of the12 recommendations outlined in the draft report: *"A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice."* Overall, KTVU and Cox Media Group support the committee's goal of improving access and transparency to the California Courts and to Court Records. We recognize, appreciate and support the two years of work by the Bench, Bar, Media Committee to bring these proposals to the public. In particular, as the leading television news station in the Bay Area, we devote considerable efforts to cover important court cases, and we strongly support the changes being proposed to Rule 1.150 that sets forth an explicit presumption that cameras be allowed in the California courtrooms unless sufficient reasons exist to prohibit or limit their use. It is significant to note that judges still retain complete discretion to prohibit cameras. The rule change simply provides some measure of transparency to the decision making process. As journalists, our goal is to provide a 100% accurate portrayal of what happens in court. Television is the best means to do this. The camera is unbiased and neutral. It can be recorded and played back for accuracy. If no cameras are allowed in proceedings, the media becomes reliant on sketches and written notes that aren't nearly as accurate. Cameras provide court access to thousands of people, rather than just a handful of people who	**118**

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		can attend in person. Cameras allow more observers, both journalists and the general public, to watch, learn and make observations and conclusions. These changes have great potential for providing a terrific learning experience for the public about the courts.	
ACLU of Northern California, by Alan Schlosser, Legal Director; ACLU of Southern California, by Hector O. Villagra, Legal Director; ACLU of San Diego & Imperial Counties by David Blair-Loy	**A**	The three California affiliates of the ACLU write to express their strong support for the recommendations made by the Bench-Bar-Media Committee in its report entitled *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*- specifically its recommendations regarding use of cameras and other recording devices in the courtroom. These recommendations, if adopted, promote media access to and public knowledge of and trust in the courts without compromising the administration of justice. The use of cameras and other recording devices in the courtroom undoubtedly implicates vital constitutional and civil liberties concerns: the right of the media to report news to the public, the right of the public to be informed about judicial proceedings, and the rights of all persons to a fair trial and to protection against unwarranted invasions of privacy. As a leading advocate for all these rights, the ACLU firmly supports broad media access to judicial proceedings. The ACLU has long supported a presumption in favor of unfettered access by the media generally and use of cameras or other recording devices generally -unless a court determines that the risk is too great that a criminal defendant's rights to a fair trial will be damaged, the health or safety of a witness or victim will be compromised, or a person's privacy will be invaded. The Bench-Bar-Media Committee recommends amending Rule 1.150 to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use. The proposal strikes a careful balance in promoting open access, while preserving judicial discretion. The presumption in favor of cameras and other recording devices promotes core democratic values by facilitating public access to information about judicial proceedings. By adopting this proposal, the California courts would join a growing list of state and federal courts that have recognized the importance of media access.[4] Washington state court rules, for example, have	**119**

[4] Critically, the proposal also rejects the unfounded assumption that cameras would necessarily disrupt judicial proceedings. A study of electronic media coverage of federal civil proceedings, conducted by the Federal Judicial Center, reported "small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice." Federal Judicial Center, *Electronic Media Coverage of Federal Civil*

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		long provided that "open access [by the media] is presumed," and that "limitations on access [and courtroom photography or recording] must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption ...." Wash. Rules of Court, Rule 16(c)(I). At the same time, the proposal preserves judicial discretion to manage the courtroom. The committee expressly stated that "[t]his change in presumption would not in any way limit or modify a judge's discretion to allow or deny recording." Indeed, notwithstanding the presumption in favor of media access, Rule 1.150 would continue to provide significant discretion for judges to bar it in order to protect the fairness and integrity of court proceedings. Ru1e 1.150 delineates -and presumably would continue to delineate -nineteen factors for a judge to consider in determining whether to grant a request. Cal. Rules of Court, Rule 1.150(e)(3). These factors, which are not exhaustive, include among others: the nature of the case; the parties' support of or opposition to the request; the privacy rights of all participants in the proceeding; the effect on any minor who is party, prospective witness, victim or other participant in the proceeding; and 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 witnesses. Id. Accordingly, amending Rule 1.150 to create a default position in favor of permitting recording devices in the courtroom would permit judges to deviate from the default position and bar their use when circumstances warrant it.[5] The Bench-Bar-Media Committee's additional recommendation to require judges to make specific findings to prohibit or limit the use of cameras and other recording devices is essential. No valid interest is served by permitting summary denials for such requests: the entity making the request has no basis to understand the decision or challenge it, and public confidence is undermined when judges refuse even to state the reason for denying the public a full opportunity to see what goes on in the courts.	

Proceedings: An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals 7 (1994).

[5] The current proposal preserves more judicial discretion than other states, which, for example, have imposed strict restrictions on trial judges' discretion to prohibit recording or broadcasting. Montana has made it an act ofjudicial misconduct for a judge to refuse without good cause any request by the media record or broadcast court proceedings. Canon 35, *Montana Canons ofJudicial Ethics.*

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		Accordingly, we strongly support the Bench-Bar-Media Committee's recommendations regarding use of cameras and other recording devices in the courtroom.	
Linda Miller Savitt, Attorney Ballard, Rosenbert, Golper & Savitt LLP, Glendale	**N**	I am writing as a civil defense lawyer to express my opposition to the proposals set forth in the Bench-Bar-Media Committee Report. "A Balancing Act". While it is always easy to be a Monday morning quarterback, I am concerned about not only the conclusions reached by the committee, but some of the premises contained in the report. Of significant concern to me is that the report does not provide any empirical data or refer to any specific studies relative to the denial of requests for the use of cameras in the courtroom. Rather, the report states that it simply relies on committee members opinions that "judges appear to frequently deny the use of cameras and other recording devices, ..." (p. 12) and it "appears" that judges are increasingly denying electronic recording in the courtroom. I don't know that these "appearances" are accurate perceptions or real and am inclined to believe they are not. In any event, without some actual data showing this to be the case, this proposal is likely unnecessary in the first instance. Moreover, without some factual evidentiary support for its premises, it should be rejected. I don't think anyone who practices in the court system or sits on the bench denies that the public has a right to know. The real question, however, is the reporting of events by the media. Reviewing a few recordings will not substitute for understanding the nature of the dispute and accurately reporting what transpired. While the public has a right to know, it does not have a right to be titillated. Discrete and possibly salacious sound bites taken out of context will not enhance the reporting of events but merely sensationalize otherwise complex proceedings. The fundamental obligation of the courts is to protect the fair and equal administration of justice. The primary stakeholders in a given court proceeding are the litigants. Litigants have the right to have their disputes aired in a public forum, but most forums don't deprive litigants of their status as private citizens. The presumption that the media can come in may have a chilling effect upon some litigants who do not want their dispute thrust onto the public airways. Attorneys also are stakeholders in this process and their effectiveness and relative anonymity may be lost by the media choosing their case for publicity.	**120**

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		My particular practice area is defense of employment litigation, which frequently involve allegations of harassment and discrimination. I have successfully defended at trial over 85% of my cases. However, the allegations are particularly damaging to my clients' reputations and my concern is that if snippets are shown in the media, all that will be remembered about the case is the allegation and not the outcome. Reporting a sound bite of testimony that may be salacious and titillating without the context in which it is delivered, and the other side of the case being presented, can be very damaging and destructive to defendants falsely or improperly accused. Similarly, many plaintiffs who have been legitimately harassed in the workplace and had the courage to come forward with their claims may be chilled by virtue of the fact that the specific details of their cases (they are after all private, ordinary citizens) are going to be televised. Such uninvited notoriety, quite frankly, can have a devastating effect on our judicial system. Lastly. there is no analysis in the report as to the effect this proposal can have as leverage to try and force settlement in an otherwise non-meritorious case out of the fear that such a case will be televised. I strongly urge that this report be rejected.	
Superior Court of Kern County by Hon. Michael B. Lewis	**N**	The recommendation for the explicit presumption that cameras and recording devices be allowed is neither desirable, necessary, nor demonstrated to be justified on the basis of any data or documented incidents. There is no showing that judges are being arbitrary or capricious in the exercise of discretion under the current rules. There is no reference in the August 2010 Draft Report to the Task Force report of May 2000 reporting on the 1997 changes to the same rules. At that rather recent point, it was concluded that there were no changes needed, the rules were accomplishing the objectives, and the rules were working. Now it appears the media, based upon the miniaturization of electronic devices, is concerned with being "scooped" in some fashion by the unaccredited members of the public which the media believes are violating the rules through the use of electronic devices and publishing blogs. The recommendation subverts the statutorily mandated requirement that the rules of court must ensure the authority of local courts to manage their day-to-day operations.	**121**

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		The recommendation exceeds the purview of the Judicial Council by seeking to enact substantive law by creating an affirmative presumption controlling judicial proceedings. The recommendation subverts judicial discretion. Each judge must have the discretion to control the conduct of proceedings in his or her courtroom to ensure the integrity and dignity of proceedings and ensure public access to each proceeding as appropriate. Judges must ensure a fair trial for all parties. On an individual case basis, the judge must deal with safety, security, and the rights of victims, witnesses, jurors, and parties.	
Superior Court of Solano County by Hon. D. Scott Daniels	**N**	Rule 1.150{e)(3) of the California Rules of Court currently sets forth nineteen factors that a judge must consider in exercising discretion to permit, refuse, limit or terminate media coverage. The rule does not confer any greater or lesser importance to any of the factors, but rather provides the judge with discretion to weigh each factor based on the particular circumstances of each case. The Committee recommends that one of the nineteen factors be deemed to have greater importance than all of the others in every case by amending Rule 1.150 to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom. Our court recognizes and fully supports the importance of promoting public access to the judicial system, but we do not agree that it should, in every case, be given more importance than any of the other factors such as the effect of cameras and recording devices on the willingness of witnesses to cooperate, the risk that media coverage will engender threats to the health and safety of a witness, the effect on minors who are participants in the proceeding, the effect on the ability to select a fair and unbiased jury, the effect of coverage that might unfairly influence or distract the jury, the effect on ongoing law enforcement activity, and the effect on the security and dignity of the court. Further, a judicial officer must have discretion to control the courtroom so as to ensure a fair court proceeding. Cameras and recording devices may, in certain circumstances, have an adverse effect on the ability to ensure a fair courtroom proceeding by influencing the behavior and demeanor of attorneys, litigants, witnesses and even courtroom personnel as has been seen in several high profile cases. In addition, issues of safety of the parties, attorneys, witnesses, jurors, and court personnel are now more pronounced than ever by the ability to easily disseminate photographs of those individuals not only in newspapers and on television, but on the internet, thereby making them highly visible and potential targets. The judge must	**122**

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		have the discretion to weigh all of these factors in the context of the circumstances of each particular case without a preconceived weighting of one factor as having more importance than any of the other factors. Our court has found that Rule 1.150 in its current form has worked very well, and we see no reason for modification at this time.	
Society of Professional Journalists, Los Angeles by Linda Bowen, Ph.D. President; Society of Professional Journalists, Los Angeles by Richard D. Hendrickson, Ph.D., FOI chair	**A**	The Los Angeles Chapter of the Society of Professional Journalists strongly supports the recommendations the Bench-Bar-Media Committee made in its August 2010 draft report. We specifically endorse the proposed rule change (Rule 1.150) to create an "explicit presumption" that cameras and other recording devices be allowed in courtrooms. We understand that judges would still have discretion to limit the use of such devices, but that the new rule would require them to justify such choices on the record. We encourage the Judicial Council to adopt the recommendations of the draft report as a means of creating greater public access to the courts through cameras and other recording devices. These steps will encourage public understanding of the work of the courts, expand public access to judicial proceedings and foster better reporting on legal affairs. If the council or the committee need additional information or have questions for SPJ, please contact one of us.	**123**
The Reporters Committee for Freedom of the Press by Lucy A. Dalglish, Executive Director	**A**	The Reporters Committee supports the BBMC's recommendations regarding the use of cameras and other devices in the courtroom. The recommendations strengthen the opportunity for meaningful public access to courtroom proceedings while appropriately protecting the interests of judges, parties, witnesses and juries. **a. The recognized right and benefit of public access to the court** Courts have long recognized that public access to courtroom proceedings offers benefits both to the judicial system and to the public. In *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982), the U.S. Supreme Court observed that the right of public access to criminal trials "plays a particularly significant role in the functioning of the judicial process and the government as a whole." The Court has noted that increased public access to judicial proceedings "enhances the quality and safeguards the integrity of the fact finding process," *id.*, by discouraging perjury, the misconduct of participants, and decisions based on secret bias or partiality. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980) (plurality	**124**

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		opinion). Moreover, the Court has found that public access "heighten[s] public respect for the judicial process," and allows the public to "participate in and serve as a check upon the judicial process – an essential component in the structure of self-government." *Globe Newspaper Co.*, 457 U.S. at 606. The public benefits greatly from increased access to the judicial process. The Supreme Court has noted that there is a "therapeutic value" to the community by allowing it to reconcile conflicting emotions about high profile cases. *Richmond Newspapers*, 448 U.S. at 570. Additionally, public access reassures the public that its government systems are working properly and correctly, and enhances public knowledge and understanding of the court system. *Id*. In more recent times, the public has relied greatly on the media serving as a surrogate at courtroom proceedings. The U.S. Supreme Court recognized as much, noting that most people acquire information about the court system "chiefly through the print and electronic media." *Richmond Newspapers*, 448 U.S. at 573. Allowing cameras to take the courtroom to the people, either in part or in whole, allows the media to best-serve as public surrogates by providing unfiltered, unfettered, uncorrupted access to the judicial system. Viewing courtrooms through the lens of a camera allows the public to get as close to the courtroom as possible and directly observe the administration of justice. Importantly, these benefits come with few strings attached. Technological advances have eliminated the concerns that cameras will create a physical disturbance in the courtroom. Cameras now operate in near silence without potentially distracting bright lights and can easily fade into the background in a courtroom setting. In fact, as the New Hampshire Supreme Court noted, a number of studies have reached the same conclusion: cameras in the courtroom cause very limited, if any, physical distractions. *In re Petition of WMUR Channel 9*, 813 A.2d 455, 459 (N.H. 2002) ("Advances in modern technology, however, have eliminated any basis for presuming that cameras are inherently intrusive. In fact, the increasingly sophisticated technology available to the broadcast and print media today allows	

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		court proceedings to be photographed and recorded in a dignified, unobtrusive manner, which allows the presiding justice to fairly and impartially conduct court proceedings"). Moreover, those same studies indicate that cameras in the courtroom ultimately affect participants in a judicial proceeding in the same way as a reporter standing outside the courtroom asking questions after a proceeding concludes. *Id.* at 460. **b. The recommended presumption of camera access will promote public access while retaining safeguards.** The BBMC's recommendation for creating a presumption of camera access will strengthen public access to courtroom proceedings while continuing to provide basic procedural safeguards to protect the legitimate interests in sometimes shielding a particular courtroom proceeding from the lens of a camera. A presumption of access does not prevent a court from limiting court access for good cause; it is simply a presumption in favor of access. The same procedural safeguards currently found in the current rule would remain. Indeed, the recommended amendment preserves the strong and important protections already in place under the current formulation of the rule, requiring the judge to consider a multitude of factors including the fair trial rights of the parties, the privacy and safety of parties, witnesses and jurors, the risk of distraction, the adequacy of the courtroom's facilities, and any other factor that may influence the fair administration of justice. **c. Specific court findings on camera access promote judicial administration and the rights to appeal** The Reporters Committee also strongly supports the BBMC's recommendation to amend Rule 1.150 to require specific court findings in support of a court's allowance, prohibition or limitation on the use of cameras or other recording devices. The current rule already requires the court to consider specific factors in deciding a camera request; this recommendation would simply require the court to disclose the grounds for its decision. Such a requirement is a net positive for both the administration of justice and the appellate process: it helps to ensure that the trial court makes well-informed decisions after hearing all interested parties and provides the parties with a means for understanding of the court's rationale for its action. Moreover, requiring such findings would also help to ensure that the courts follow the	

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		important demands of the U.S. Supreme Court in restricting camera access to the courtroom. In *Chandler v. Florida*, the Court dismissed the claim that cameras in a courtroom unduly prejudiced the specific criminal trial before them because there was "no evidence that any participant in this case was affected by the presence of cameras" and therefore "no showing that the trial was compromised by television coverage." 449 U.S. 560, 582 (1981). By demanding basic evidentiary findings, the safeguards proposed by this committee set forth guidelines for a judge to consider the evidence the Supreme Court referred to in *Chandler*.	
First Amendment Coalition by Peter Scheer, Executive Director, San Rafael	**A**	Experience has amply shown that the presence in the court room of broadcast TV or other cameras does not compromise a defendant's fair trial rights, even as it brings ubstantial educational and informational benefits to the public. Indeed, we would go further and argue that the transparency made possible by cameras in the court has significantly enhanced the legitimacy of the California court system in the eyes of the public. True, there are rare and isolated exceptions to this general rule. The Committee's recommendation, by creating a rebuttable presumption in favor of camera access, provides adequately for the exclusion of cameras in those very exceptional cases.	**125**
Debora Villalon Reporter, KTVU-TV Oakland	**A**	I understand that you are accepting public comment on expanded media access to California Courts. As a television journalist, let me chime in, wholeheartedly in favor! I'm enough of a veteran to remember when cameras were finding a tentative place in our courtrooms years ago, before the O.J. Simpson trial triggered a sea-change in attitude, and courtroom doors seemed to slam shut overnight. My career in the San Francisco Bay area has given me the opportunity to cover high-profile cases, and others that were little-known, but deserved attention. In both cases, the cursory denial of video coverage, makes it all but impossible to communicate the court's activity. We often walk away in frustration, knowing that an important story will be relegated to the newspaper, and under-reported by broadcasters, not by choice, but because our medium is discriminated against. Time and time again, I hear, "if we have cameras, people will play to the camera". If that was ever true, (Judge Ito and company aside), it certainly isn't now. In this era of you-tube, people shrug off the presence of cameras as never before. To suggest that court officers, attorneys, witnesses and others would be so bowled over by a camera that they could not conduct themselves, is an insult to everyone's intelligence and professionalism. Finally, the educational value of being able to "show" people	**126**

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		what goes on in the courtroom is invaluable. It will nurture the public's respect and understanding of the justice system, as it has for reporters like myself. Thank you for considering my perspective.	
Association of Southern California Defense Counsel by James R. Robie, President	**N**	ASCDC believes that the line between "transparency" and "titillation" is clearly crossed with this proposal. We cannot imagine a Superior Court Judge having to allow cameras in the courtroom to watch direct and cross-examination of witnesses who will suffer mightily at seeing their performance displayed on the evening news, YouTube or the like. We believe the presence of a camera in the courtroom affects the performance of the attorneys, witnesses and court staff, and places enormous additional pressure on trial judges whose job is already difficult and challenging. The mere prospect that a party's or witness's testimony will be the subject of a soundbite will chill the prosecution of legitimate civil lawsuits and discourage defense of righteous cases for fear of unnecessary notoriety. This proposal, if enacted, will become a bludgeon to chill legitimate civil lawsuits based on the press exposure and the "spin" which will plainly follow from television and internet presentation of witness testimony. The media's zeal to attract attention with a salacious clip dashes the parties' right to have judgment based on all the evidence at conclusion of a case, This proposal does not contemplate full and complete coverage of anything. It facilitates out of context capture of sensational out of context proceedings. ASCDC also cannot imagine the wisdom of requiring trial judges, who are already notoriously overworked, to write an opinion specifying all the reasons why the "presumption" of camera approval should be rejected in a particular case. Most judges, ASCDC fears, will simply not want to enter that fray. In effect, this proposal will allow the press a new "reality TV" opportunity which will unfairly hurt both plaintiffs and defendants in their pursuit of even-handed justice. ASCDC opposes this proposal in the strongest possible terms.	**127**
Hon. William L. Downing King, County Superior Court, Seattle WA	**A**	I write in the hope that it may be of interest (and perhaps value) to consider the experience of Washington State judges when our state adopted a rule on cameras in court very similar to the one California is now considering. Up through 2004, we had a broad rule that simply left it to the trial court's discretion whether or not to allow news media cameras in the courtroom. When it was proposed that the rule be amended to incorporate a presumption of access and to require specific findings to justify any	**128**

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		restrictions, the initial response of some judges was that this was a "takeaway" of their discretion. A little deeper analysis quickly led them to realize that was not at all the case. In fact we have long had case law (and I suspect California does too) discussing what it means to engage in a proper exercise of discretion. This requires a judge to (a) provide an opportunity to be heard to anyone with an interest in the issue before the court, (b) rationally weigh the competing private and public interests, and (c) articulate particularized findings on the record to support the conclusion reached. All that the new rule took away was the ability to exclude cameras for uninformed, generalized and/or unstated reasons, something that never did constitute a proper exercise of discretion. Our new rule was deliberately structured to make its application straightforward and sensible and its results more predictable. Since public access to court proceedings involves constitutional rights and always carries with it a strong public interest, it seemed clear that the burden should be placed upon any objecting party and that any limitations must be narrowly drawn. These considerations, which should always have been implicit in the analysis, were made explicit under the new rule in order to provide all with a more clearly lit path through disputed questions regarding courtroom photography. Our new rule has been in place since January of 2005. Coincidentally, I was Chair of our statewide Bench-Bar-Press Liaison Committee for the six years before that date and the six years since. In the second period, the problems that were so prevalent in the first period have all but disappeared. (There do remain occasional photography disputes at arraignments and preliminary appearances but virtually never at trials or sentencings.) Since the new rule has been in effect, it is from judges that I most often hear expressions of appreciation for the way in which the rule assists them in wisely exercising their discretion. I want to congratulate the Bench-Bar-Media Committee on its comprehensive and insightful Report and Recommendations. It is an outstanding product in all its aspects. Perhaps I have chosen to address only the cameras in court issue because it seems so straightforward and easily accomplishable.	

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Commentator	**Position**	**Comment**	
		In Washington, when our similar rule on cameras was being considered, we were lucky to have a Chief Justice who was a strong advocate for an informed citizenry. He –and the rest of the Supreme Court –could foresee how this rule would serve the public interest by facilitating the common efforts and goals of an open court and a responsible press. I hope you will have similar good fortune and I am equally confident in saying that, with this new rule, the public will benefit and your judiciary will be pleased and gratified.	
Hon. George Genesta, Superior Court of Los Angeles County	**N**	I have read and reviewed the proposed rules covering media coverage in the court, especially video cameras in the court room. I have also read and reviewed the responses of the Sacramento and Los Angeles Superior Courts. I whole heartily endorse their analysis and recommendations. I have been a Judge for over 13 years in the Los Angeles Superior Court. I have held various assignments, including: misdemeanor calendar and trial court; family law; probate; and felony trials. I have also held the position of Supervising Judge of the East District of the Los Angeles Superior Court. That assignment included supervising four court houses and over 40 bench officers. Over the years I have consulted or advised numerous colleagues regarding media requests. My trial experience includes approximately 300 jury trials including at least two dozen murder trials. I presided over a capital murder trial through sentencing. Many of my trials have had various levels of media coverage including video cameras in the court room. In each instance, where there was a media request for a video camera in the court room, I carefully reviewed the request and the nature of the proceeding to be covered. Depending on the stage of the proceeding, the issues involved and the public interest, among other factors, I engaged in a weighing process fully understanding the defendant's due process rights and the media's first amendment rights. I also considered whether print media was also covering the proceedings in assessing the request for video coverage. I have no predisposition of allowing or disallowing video cameras in my court room. Each case and circumstance is unique as are the competing interests at any given proceeding. When I allow a video camera in the court room I set forth protocols that are strictly enforced. I have never had a video request withdrawn due to the protocols I set forth nor has there ever been an instance of violation of my protocols.	**129**

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom			
Commentator	**Position**	**Comment**	
		Based on my experience handling high publicity/public interest cases, I am not convinced there is a problem in need of a solution. The problems expressed by the committee that are seen in need of a solution are from my experience a straw man's argument without empirical evidence. The solution presented by your committee of a *presumption in favor of video cameras in the court room* is itself a bias in favor of one competing interest over another. The additional idea of a super administrative body empowered to review a judicial officer's ruling out side of the normal judicial and constitutional process is mind boggleing. Please register my opposition to the proposed rule change and I invite the committe to reconsider its recommendation.	
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**N**	Rule 1.150 of the California Rules of Court, in its current state, resulted in part from the work of the Judicial Council Task Force on Cameras in the Courtroom, which produced a lengthy report in 1996 documenting its research, analysis, and subsequent recommendations for the rule. The group conducted extensive hearings and sent surveys to every member of the judiciary at the trial and appellate level. The rule, as written, creates no presumption in favor or against the application of constitutional rights in relation to media access to court proceedings. It provides the judges with the ability to exercise his/her discretion to balance the right of access with the fair trial rights of litigants. The committee's proposed revision establishes the presumption that recording devises are to be allowed in the courtroom, significantly limiting judicial officer discretion and burdening the judge to defend in writing a decision to prohibit or limit their use. Assuming all constitutional rights should be considered equally under the law, this presumption appears to favor those of the press over those of the litigants and others testifying in a trial. Proposing to limit judicial discretion to such a degree warrants serious and lengthy research, review and discussion, far more than is indicated by the BBMC draft report. There appears to be little or no impartial data gathering and analysis to support the proposed recommendations, and the primary document responsible for the current rule (the 1996 Cameras in the Courtroom Task Force Report) was not considered in the process. Additional attention must also be given to the growing problem in which litigants or attorneys feel that their or others'	**130**

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Commentator	**Position**	**Comment**	
		recordings of the proceedings differ from the court's official record. The TCPJAC Executive Committee also opposes the implementation of any rule of such significance without documented evaluation of the operational and administrative impact to the courts. The cost of this specific proposal in terms of judicial officer, court staff, and litigant time devoted to a case, along with the depletion of court resources, and the potential for additional continuances and appellate proceedings will greatly exceed "the increase in the number of requests from the media to record proceedings" that the BBMC report states as potential impact.	
Superior Court of Tuolumne County by Hon. Boscoe	**N**	According to the Executive Summary of the Bench Bar Media Committee Draft Report, the Bench Bar Media Committee was formed to "foster improved understanding and working relationships among California Judges, lawyers, and journalists". With questionable authority and based on what appears to be, at best, anecdotal evidence, the Committee has made recommendations that substantially alter the existing rule 1.150 regarding public access to court proceedings. Contrary to the existing provisions of Rule 1.150 which specifically stated that the rule did not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings, Recommendation 1 creates a rebuttable presumption that cameras and other recording devices are to be allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use. It also requires judges to specifically state their findings to prohibit or limit the use. The proposed presumption may increase the number of requests for media access placing an even greater burden on already limited court resources, especially in smaller Courts. Moreover, a rule that requires that judges make findings or issue a statement of decision when denying a media request will also increase the amount of judicial time necessary complete the evaluation of a request for media access and impose a further financial burden on the courts. The existing rule 1.150 leaves the decision with respect to media requests for access to the discretion of the trial judge who is guided by specific factors that the judge must consider in ruling on such a request. These factors require the trial judge to balance the competing	**131**

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Commentator	**Position**	**Comment**	
		interests of the media's right to access and the parties' right to a fair trial. These specific factors allow the trial court to evaluate the media request in the context of the factors involved in the particular case. If, as the Draft Report states, the "change in presumption would not in any way limit or modify a judge's discretion to allow or deny recordings" there appears to be no evidentiary basis for the proposed modifications of Rule 1.150. One of our judges was a member of the Committee that crafted the current rules regarding media access to courtrooms and this court follows those rules and allows media access to courtrooms when appropriate. There is no need to create a presumption in favor of the media or to require that judges prepare written findings or a statement of decision in order to guarantee that judges properly exercise their discretion.	
San Bernardino Public Defenders Office by Doreen B. Boxer	**N**	Draft Report Recommendation 1 urges the Judicial Council to amend the California Rules of Court Rule 1.150 to create a presumption in favor of the media recording courtroom proceedings. This presumption would constitute an historic departure from longstanding California law which has always entrusted these decisions to sound judicial discretion. Such a fundamental change merits thorough and sober examination by all directly affected stakeholders; however because integral partners were excluded from BBMC, vital information was not considered. Despite the media's intense interest in crime and punishment, institutional public defenders that typically handle more than 80% of their jurisdictions' criminal court caseloads, and law enforcement which provides courthouse security, as well as transportation and housing for defendants and witnesses held in-custody, were unrepresented. Among other costly burdens, creating this presumption would limit judicial discretion, violate criminal defendants' due process right to a fair trial, jeopardize the safety of defendants, witnesses, and custody facility staff, and result in additional costly litigation. Consequently, the Draft Report's Recommendation 1 should be rejected. B. The proposed presumption unconstitutionally impairs criminal defendants' fundamental liberties. The right to a fair trial is a fundamental liberty, secured by the Fourteenth Amendment. Courtroom procedures that affect a criminal defendant's fundamental right to a fair trial are subject to close judicial scrutiny.	**132**

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Commentator	**Position**	**Comment**	
		"[W]hile the public and the press may have a First Amendment right to attend [court] proceedings, the press does not have a constitutional right to have a camera in the courtroom." *(People* v. *Dixon* (2007) 148 Cal.App.4th 414, 420.) "Reliance on the right to access cases is entirely inapposite to the question of whether to allow cameras in the courtroom." (Id, at p. 438.) Against this background, the proposed presumption impairs criminal defendants' fundamental right to a fair trial in several ways: ***Impact on potential jurors: Negative Pretrial Publicity Causes Juror Bias against Defendants*** Negative pretrial publicity biases prospective jurors against the publicized defendants, anq for the prosecution; the greater the prospective juror's exposure to negative pretrial publicity, the more antidefendant/pro-prosecution the bias. The proposed presumption facilitates a cheap source of nearly unconstrained news programming in an industry that thrives on racism and the most negative images of crime. Even now. the availability of images enhances the likelihood of a story being selected for reporting. As a result, if this presumption is implemented, we can expect significant increases in negative pretrial publicity in cases that charge the most violent crimes against persons from racial minority groups. ***Impact on witnesses: the Misinformation Effect*** Human exposure to photographic and/or narrative information can create memories of facts - even false autobiographical information -in the unsuspecting minds of its viewers. Thus, information contained in media coverage can affect how witnesses recall an event they experienced; such a phenomenon is termed "the misinformation effect." This effect is potent when images are combined with narrative. Consequently, if a trial witness is exposed to information about a case, his memory of the media exposure can influence his memory of the event to which he will testify at trial. ***Impact on witness testimony: Television Limelight Will Affect Witness Behavior and***	

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Commentator	**Position**	**Comment**	
		Testimony, and the Jury's Ability to Adjudge Credibility On the other hand, behavior of testifying witnesses, otherwise unaccustomed to being filmed, will likely be affected by the limelight of the nightly news. Jurors observing such testimony not only will need to evaluate credibility of witnesses, a difficult job in any case, but will also need to measure the *effect* of the recording on the witness. ***Impact on witness safety: Safety Concerns Will Influence Witness Testimony*** Witness safety, and a witness's perception of his own safety, is also of significant concern. For instance, even without the possibility of television notoriety, witnesses in cases involving criminal street gangs are notoriously reluctant to speak with police during investigations and to testify in court, due to safety concerns. The potential that their testimony will be broadcast will heighten this fear and negatively impact the entire justice process. Indeed, where a witness's testimony against a particular gang is publicized, the likelihood of legitimate safety issues arising will be enhanced. ***Impact on in-custody witnesses and defendants: Custody Safety Concerns Will Impact Trial*** Safety of inmates and pre-trial custody institution staff, both primary custody facility considerations will be jeopardized. For instance, a pretrial defendant held in-custody who is charged with sexual abuse of a minor are targets for sometimes fatal physical assaults from other inmates, if the nature of his charges is disclosed On the other hand, the safety of a televised witness held in-custody also can be compromised, for example, when he testifies against a popular inmate or on the behalf of an unpopular inmate. To accommodate an increase of these often unpredictable issues brought on by media broadcast, custody facilities will need to devote more resources from their shrinking budgets to ensure custodial security and the safety of staff, inmates and the public. Most important, however, the content and delivery of testimony may be impacted by the unwanted publicity. ***Impact on rules of evidence and court processes*** Recording hearings pertaining to exclusion or inclusion of evidence would obviate the usefulness of such hearings. Thus, instituting a presumption that the media can record proceedings begins the unraveling of hundreds of years of legal precedent designed to ensure only admissible evidence and permissible tactics are used during court proceedings.	

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Commentator	**Position**	**Comment**	
		Impact on jurors and witnesses: Displaying a Defendant in Jail Clothes Undermines Presumption of Innocence Because compelling the accused to be filmed and broadcast in jail clothing, "operates usually against only those who cannot post bail prior to trial," this presumption may also violate the Fourteenth Amendment concept of equal justice. (Id.) ***This Infringement on Criminal Defendants' Fundamental Uberties is Unconstitutional Since the Proposed Presumption Does Not Address* a *Compelling State Interest and Is Not Narrowly Drawn*** Thus, the proposed presumption limits criminal defendants' fundamental liberties. Nothing in the Draft Report indicates media's right to access courtroom proceedings has been infringed upon, much less violated. C. Already limited defense resources will need to be diverted to litigating against the presumption thereby increasing costs to counties and jeopardizing the defendant's right to a fair trial. Because of the profoundly negative effects these recordings will have on the fairness of a defendant's trial, defense counsel will need to litigate against the presumption during the trial. This added litigation against media outlets will drain defense resources from defending the underlying criminal charges. Funding for indigent defense is already critically low, especially when compared to the resources given to prosecutorial adversaries with whom we must compete in court. D. There is no legitimate reason to adopt this presumption; consequently California should continue to trust judicial officers to exercise discretion properly. We support the recommendation that the Administrative Office of the Courts educate judicial officers and court staff on the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment.	

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom			
Commentator	**Position**	**Comment**	
		The San Bernardino County Public Defender recommends education for judicial officers and court staff regarding the importance of providing defense counsel proper notice of any media requests prior to the court ruling thereon. Judicial officers should be further educated regarding the importance of enforcing Rule 1.150(e)(1).	
Superior Court of Marin County by Hon. Terrence Boren	**N**	The Bench-Bar Media Committee recommends that California Rule of Court 1.150 be amended to set forth an explicit presumption that cameras and other recording devices be allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use. This amendment, in our opinion, would have a negative impact on our ability to efficiently manage our business and would likely result in extended protracted hearings on issues unrelated to the controversy at hand. We also believe strongly that the amendment would have a chilling effect on a litigant's ability to speak freely in a courtroom without fear of being broadcast on television or websites. In addition, "media" is not specifically defined. There is concern that "media" may include anyone with a cell phone or a device connected to the internet. Private parties, litigants or attorneys who claim to be members of the media might then record proceedings and then publish drastically edited or distorted versions of what happened in court. Even if "media" is specifically defined, this amendment would then require a judicial determination regarding whether the cameras/recording devices in the courtroom fall within the definition of "media." This will require courtroom time and expense relating to an issue unrelated to the controversy at hand. California Rule of Court 1.150, as currently written, allows judicial officers to permit photographing, recording and broadcasting of courtroom proceedings if such recording(s) can be executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected. It requires that the judicial officer consider the needs of the media as well as any competing interests or needs before he/she makes a decision. California Rules of Court1.150 places the responsibility of ensuring the fair and equal administration of justice on those judicial officers who preside over those hearings. We believe that the trial court judge is in the best position to make those decisions and do not believe that there should be a presumption in favor of *or* against news media in the courtroom. If the Media Committee is concerned that news media requests are being summarily denied without proper judicial	**133**

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Commentator	**Position**	**Comment**	
		consideration, the Committee might recommend an amendment to the rules of Court which would require the judicial officer to state his or her reasons for the approval or denial of the request on the record.	
Appellate Advisory Committee by Hon. Kathryn Doi Todd, Chair		See letter Attachment E	**134**
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**N**	The rationale for this proposed rule amendment seems to be primarily based on the subjective opinions of committee members. The report fails to include any empirical data to support the committee's conclusion that, *"judges appear* to *frequently deny the use of cameras and other recording devices in courtrooms without providing any reasons for the prohibition"*. Or that, *judges are increasingly denying electronic recording in the courtroom as a matter of course."* The right to access court proceedings is not without limits. Certain proceedings, juvenile and paternity actions, are statutorily confidential. Furthermore, the Court can limit access to other proceedings if the Court determines the privacy rights of a party outweigh the right to access or it is necessary to restrict the disclosure of confidential information. (People v. Dixon (2007) 148 Cal.App.4th 414.) Requiring a judge to articulate, in detail, specific reasons for the restriction of proceedings may compromise those very privacy rights the order is designed to protect. – The right to access does not include a constitutional right to televise or photograph court proceedings. (People v. Dixon, supra.) A rule which creates a presumption in favor of cameras in the courtroom appears to be in conflict with established authority. Arguably, the proposed amendment creates a rule of substantive law and therefore, exceeds the rule-making authority of the Judicial Council. The court has the duty to provide for the orderly conduct of the proceedings before it. (Code of Civil Procedure Section 128.) This duty exists independent of any request or objection of a party. If the Judicial Council adopts the recommendations as a rule, the burden of coming forward with the evidence to rebut the presumption could potentially fall on the trial judge if none of the parties object to the media request A rule which requires the trial court to affirmatively produce a factual basis for denying a request for cameras in the courtroom is contrary to the judge's broad grant of authority to control the proceedings. The Judicial Council may not adopt rules inconsistent with statute. (Cal. Const. Art VI, Sec. 6(d); People v. Hall (1994) 8 Cal.4th 950,960.)	**135**

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Commentator	**Position**	**Comment**	
		– The draft report states, *if there are times when the rights* to *fair trial and free press are* at *odds with each other. The ultimate duty of our judges is* to *balance these competing interests and find the best solution for all concerned."* If a presumption against cameras weighs too heavily in favor of the right to a fair trial, it would seem to follow that a presumption favoring cameras in the courtroom gives undue weight to the rights of a free press.	
Los Angeles Times Communications LLC by Karlene W. Goller, Esq.; California Newspaper Publishers Association by Thomas W. Newton, Esq.; The Associated Press by David Tomlin, Esq.; The New York Times by David McCraw, Esq.	**A**	See letter Attachment F	**136**
Court of Appeal, Second Appellate District, Division Five by Hon. Paul Turner	**N**	Fifth, the creation of a presumption that all court proceedings will be subject to extended coverage is a very bad idea as is the suggestion that written findings be required. In the cases where testimony is presented or victim impact statements are made at sentencing, creating a presumption that televised, audio or photographic coverage occur is *very poor public policy*. The presence of cameras affects witnesses. Both courts and journalist have the same duty-to engage in the search for truth. And cameras or audio coverage create too great a risk of interfering with that duty where testimony is presented or victim impact statements are made at sentencing. Further, I am unaware of a single case where the search for truth by a journalist was ever denied, interfered with or compromised when cameras or audio coverage were excluded. Moreover, there is no documentation in the draft report concerning the number of extended coverage requests which are denied or even informed speculation as to how often the result would have been different with the proposed presumption. As in other areas, the draft report does not document the justification for the change in policy. Additionally, no findings requirement needs to be imposed under any circumstances. I strongly urge the committee retain California Rules of Court, rule 1.1S0(e)(4) in its entirety. Virtually every judge in this state is honest to the core. And if a judge decides to exclude	**137**

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Commentator	**Position**	**Comment**	
		cameras or audio coverage in any case, I think the Judicial Council needs to respect the integrity of that judge. Requiring findings in this situation is a subtle way of stating to a judge, we do not believe you when you exclude cameras or audio coverage for sound reasons. Apart from situations where testimony is presented or victim impact statements are made at sentencing, I agree with the proposed presumption. In fact, it seems to make sense that so long as proper notice is given, extended coverage, absent an overriding interest, ought to be mandatory in this latter situation where no testimony is presented or no victim impact statements are made at sentencing.	
Public Defender Los Angeles County by Michael P. Judge, Public Defender	**N**	The first recommendation constitutes a major shift regarding the operation of cameras in the courtroom. Presently there is no presumption that cameras are allowed in the courtroom. A request is made each time the media desires cameras to operate in the courtroom. A request is made each time the media desires cameras to operate in the courtroom and the court decides the matter in its sound discretion, with or without a hearing, and may make specific findings. (Rule of Ct. 1.150.) Recommendation One would create a presumption expressly favoring and allowing in all cases) photography, recording, and broadcasting unless someone manages to adduce evidence to overcome the presumption in order to prohibit or limit the use of recording devices. Under that proposal the court would also be required to make specific findings to allow, prohibit, or limit the use of cameras and other recording devices. **Analysis:** There is no need for such a drastic change. There should be a level playing field for persons whose liberty or life are at risk, by which each application is decided on its own merits. In addition, under the factors to be considered by a judge in ruling on a media request is the effect on ongoing law enforcement activity III the case. There should be a corollary for ongoing defense investigation and for protecting the integrity of testimony of witnesses who will testify later in the case. The purported problems which are the genesis of that flawed proposal can be remedied by requiring courts to make findings for or against media access and by better judicial education. The media hopes to be able to litigate denials. Such legal maneuvering would serve as a distraction and require a diversion of time, energy and attention from the criminal justice process. Such appellate litigation is also potentially costly to the actual litigants. Especially in cases of indigents accused of crimes this would impose a costly	**138**

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Commentator	**Position**	**Comment**	
		unfunded mandate. The media should not have such standing.	
David Brobeck, Beam, Brobeck, West, Borges & Rosa LLP, Newport Beach	**N**	As a civil trial lawyer for 40 years, I am strongly against the proposal for cameras in the courtroom. Having seen the effects of cameras on attorneys (and Judges) behavior when cameras are present, I believe our justice system will suffer if this proposal is adopted. Trial courts will not benefitt and justice will not be served by making trials "entertainment" in this fashion. Thank you for considering my views... Very Truly, David J. Brobeck.	**139**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**140**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**141**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**142**
Hon.William Kolin, Superior Court of Contra Costa County	**A**		**143**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**144**
California Judges Association by Hon. Keith D. Davis	**N**	See letter Attachment G	**145**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	No need for a uniform statewide gag order.	**146**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**147**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	**See executive summary**	**148**
Laurence Dornstein, Beverly Hills	**N**		**149**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**150**
Hon. Grant Barrett, Superior Court of Calaveras County	**AM**	I agree with the restrictions on "gag orders" provided there is no presumptive right to record and broadcast court proceedings.	**151**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**152**
Earl Maas	**N**		**153**
Hon. Michael A. Savage	**N**		**154**
Hon. Andrew P. Banks, Superior	**N**	Leave judges to individually shape any gag orders consistent with the requirements of	**155**

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
Court of Orange County		applicable statutes and case authority. Stop trying to have all inclusive Rules in areas where Judges should have and traditionally have had discretion to fashion appropriate orders. Let Judges be judges and keep their discretion.	
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**	The rule isn't necessary.	**156**
Hon. Kenneth C. Twisselman II, Superior Court of Kern County	**N**		**157**
Hon. Greta Fall, Superior Court of Sacramento County	**N**	The current procedures used by judges are appropriate and should not be modified.	**158**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**N**		**159**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**160**
Donald Wilson, Carmel & Naccasha, Paso Robles	**N**		**161**
Martin Moreno, Pettit Kohn, Associate Los Angeles	**N**		**162**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**163**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger	**N**		**164**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**165**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**166**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney	**N**	Regarding Items A and B: These are not rules of "court administration, practice and procedure." The law already requires that findings be made to justify a gag order. (See e.g., Hurvitz, p. 1241.) Rules of Court should not be promulgated to merely reiterate substantive rules of law. If findings are not made, the failure to make appropriate findings may be challenged on appeal. Regarding Items C and D: Requiring the Court to post notice of applications for or notice of	**167**

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
		entry of gag orders within 5 court days of filing is an unnecessary burden on understaffed trial courts. It is equally burdensome to forward such notices to the Judicial Council for posting. It is also overbroad to the extent it requires posting of orders in cases where they may be little or no media interest. Present rules (e.g., CRC 2.503(e)) regarding posting of case documents in cases deemed to be high-profile by the presiding judge ensure that such orders/notices are posted only in cases where there is sufficient public/media interest. Courts do not need a rule of court stating that the media has standing to challenge gag orders. Such a statement is reiterative of substantive law. (See e.g., Application of Dow Jones & Co., Inc. (2d cir. 1988) 842 F.2d 603, 208 [press has standing to challenge trial court restraint upon trial participants].) Regarding Item E: Developing a form will increase the amount of challenges to gag orders, and take increased judicial time.	
Michael D. Schwartz, Special Assistant District Attorney, Ventura County District Attorney's Office	**N**	Subparts A (findings of compelling interest) and B (narrowest scope of gag orders) reasonably implement the legal obligations described in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, upon which the Committee relies. But Subparts C (notice), D (online notice) and E (Pro per form) are not required by *Hurvitz v. Hoefflin* and are unwarranted. Advance notice of a hearing on a gag order would be problematic in that it permits public dissemination of information before the hearing can be held, which may make the ultimate order moot. The report appropriately recognizes this by permitting notice after a gag order is entered. (Report, p. 17, Subparts C and D). But the current public access to information through the court docket and court filings in that affected case provides adequate notice. Devising a system of special public notice or website notice is necessary. If members of the public or the news media are interested in a particular case, they may learn of filed motions for a gag order, calendar settings for motions for gag order, or the entry of such a order, through the court docket and court filings. Such information is increasingly available to the public through internet access to the dockets for the affect cases. A special website announcement every time a gag order is sought or issued will attract not those who are following a particular case, but those litigants who are searching for First Amendment battles. Such an announcement will have the unfortunate effect of publicly highlighting those cases in which there are legitimate reasons to impose a gag order, such as the danger of	**168**

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
		tainting the jury pool in a capital case. Creating a special form for pro per defendants to Challenge gag orders appears inappropriate for corporate news organizations that by law must appear through counsel. (*Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal. 3d 724.) It is also unbalanced because it assists only those who wish to challenge gag order without creating a similar form for those who seek gag orders. The proposal presumes that those who seek to challenge gag orders need assistance, but those who seek to defend gag orders do not. If the committee believes that a form is appropriate, it should also create a form for those who seek gag orders. Such a form would be used, not only by pro per litigants, but would also assist the court and litigants represented by counsel by including suggested grounds, findings, etc.	
Superior Court of Sacramento County by Hon. Steven White	**N**	Although the Committee concluded that a rule of court should be established concerning gag orders, there is no factual information within the recommendation to support such a conclusion. Based upon this court's experience, there is no demonstrated need to implement this rule or incur the attendant increased operational costs that would result. Sacramento Superior Court is, and long has been, a structurally "underfunded" court. The current state budget crisis has had a tremendous negative impact upon our operations. By way of example, litigants have waited in lines for as long as five hours to file legal documents at our Family Law Courthouse. We *cannot* afford another unfunded mandate imposed upon our court; especially where absolutely no justification of any actual need for the rule has been shown to exist. Aside from the fiscal impact to our court, we have other concerns about this recommendation. There was a dissenting committee member who opposed the recommended notice requirements. Interestingly, that dissenting member's viewpoints were not provided within the committee's report for others to consider. Moreover, the committee members acknowledged that judges "*…have questioned whether journalists have standing to oppose such* [gag] *orders.*" A practical concern is the potential detrimental effect that any notice requirement would have on an individual's constitutional rights. By way of example, a court may receive an	**169**

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
		application for a gag order, where the basis of the request is to ensure that a criminal defendant's right to a fair and impartial trial is preserved. The committee's recommendation is to give five days notice so that the "public and media" is "given an opportunity to challenge at the earliest possible time any gag order that may be proposed or is entered." During the pendency of the five days notice, the persons that would have been restricted from discussing the case would be free to talk about any of the issues and facts surrounding the case with anyone, including the news media. Those statements could then be published and read or heard by potential jurors, with the result being the deprivation of a defendant's right to a fair trial. This could not have been the intent of the committee. Furthermore, our court opposes any rule of court that would grant any non-party standing *per se*. According to the committee's Report, the issue of standing was actually questioned by "some judges." Yet the resolution of the committee is to "clarify" this by *automatically* granting standing to the media. Such a recommendation improperly usurps the role of the judge to determine questions of fact and law. Oftentimes parties to litigation, for a variety of reasons, have no objection to (or request) the issuance of a gag order. In the event a non-party subsequently challenges the order the parties should be given an opportunity to be heard, which would include the ability to contest the challenger on all legal grounds. One of the legal grounds would be the challenger's standing. This recommended rule of court effectively eliminates a party's ability to fully litigate all relevant issues and to seek a judicial determination where necessary. Again, this could not have been the intent of the committee. We also observe there is considerable decisional authority holding the legal analysis applicable to prior restraints is not implicated where the gag order applies only to the participants in the litigation and is not directed at the news media. Appellate courts have concluded there is a difference between a gag order challenged by the individual restricted and one challenged by a third party. An order objected to by the former is properly characterized as a prior restraint, while the other is not. Because the views of the dissenting committee member were not In the event any rule of court is proposed, it should be firmly rooted in long established legal principles stemming from statute as well as legal precedent. Although the	

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Commentator	**Position**	**Comment**	
		committee's rationale for proposing the rule is that, "*…there is no single authority governing the issuance of gag orders. Instead, there is a wide array of federal and state case law, which addresses gag orders in a fractured and disparate manner . . . .*" the legal principles can be found in the case cited by the committee in its report – *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232.	
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	**NR**	While gag orders may be more common in criminal cases than civil, the proposal should either be modified to address only criminal trials, or civil defense practitioners should be consulted before any changes are made. In particular, subdivision C. should be evaluated for possible effects on the conduct of civil trials.	**170**
Hon. Charles Wieland, Superior Court of Madera County	**N**	Leave the rules as they are.	**171**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**172**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**173**
Thomas C. Sanford, Attorney, Thomas C. Sanford and Assoc., Pasadena	**N**		**174**
Hon. John D. Conley, Superior Court of Orange County	**N**		**175**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**A**		**176**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**N**		**177**
Superior Court of Riverside County by Hon. Thomas H. Cahraman	**N**	As Presiding Judge I have put the draft report before all bench officers in Riverside County, and have received back a large number of responses. I regret to inform you that all responses, including my own, have been negative. As I understand it, the California Judges Association is also opposed to the proposals. Most of the responding judges oppose all aspects of the report. The portions generating the greatest opposition are recommendation 1, which would create a presumption in favor of	**178**

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Commentator	**Position**	**Comment**	
		permitting cameras and other recording devices in the courtroom unless the judge makes findings to the contrary; and portions of recommendations 2 and 3, which would impose certain posting requirements on the local courts. Our court executive, Sherri Carter, will be responding separately with regard to the posting requirements. With regard to the proposed presumption, and requirement for findings, I will leave it to CJA and others to state an academic response to the report. My own comments will be brief.	
Donna Domino, IMV Info, San Rafael	**A**		**179**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**180**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**181**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**182**
Hon. Mark Tansil, Superior Court of Sonoma County	**N**	This is a bad idea.	**183**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**184**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**N**	This recommendation appears to be more of a convenience measure for the media and others who want to photograph, film, or otherwise record court proceedings. Again, there is no need for such a paradigm shift. Requiring the posting of requests for gag orders simply invites civil litigation which could adversely affect the rights of the parties in criminal cases.	**185**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**186**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**187**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
Charity Kenyon, Counsel for the McClatchy Company, Sacramento		We have no comment on these recommendations. Our main communication issues have arisen outside of Sacramento County, when a court has imposed such a broad gag order that counsel and court personnel feel they cannot say, much less explain, anything about what has or is scheduled to happen in the course of a given proceeding. Recommendation 2 should assist with this problem. Gag orders are rare in Sacramento. Nevertheless gag orders were issued in two high profile cases in Sacramento last year. Overly broad orders make reporting on a given proceeding nearly impossible and result in unnecessary errors and misunderstandings. The recommendation is practical because it simply points courts to existing precedent, *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, and lays out the required findings and procedures to support issuing a gag order. If this recommendation is adopted (and existing precedent is followed), gag orders will continue to be rare.	**188**
Superior Court of Ventura County by Hon. Kevin J. McGee	**N**	These are not rules of court administration, practice or procedure, but merely a recital of current law that already requires the Court to make findings to justify a gag order. Without supporting data demonstrating an identifiable problem, the Court is concerned with placing additional burdens on staff that is already overburdened due to lack of resources. Further, there should be research on whether or not courts have the resources and technology to be able to implement these procedures. It is frustrating for courts when a policy is adopted without consideration as to whether or not courts have the practical capabilities to implement the procedures.	**189**
Ming W. Chin, Chair of CTAC, and Associate Justice of the Supreme Court, Terence L. Bruiniers, Vice-Chair of CTAC, Associate Justice of the Court of Appeal	**N**	The Draft BBMC Report makes recommendations for the creation of a rule on gag orders and amending the existing rules on orders sealing records. For both gag orders and sealed records orders, the BBMC recommends the adoption of rules requiring that notice of any application for, or entry of, such an order be posted on the court's local Website within 5 court business days after filing or entry or, if that is not possible for any reason to send such notice to the Judicial Council for publication on its Website within the same 5 court business days of posting online. CTAC opposes imposing a new responsibility on the courts to review all filings and post	**190**

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
		applications and orders. The recommendations that courts be required to post on the Internet applications for gag and/or sealing orders and the orders assume a level of automated technology not available in most courts at this time. It will be difficult, time-consuming, and costly for all the courts to undertake the file review and posting required to implement any such new rules. Thus, the BBMC recommendations will create administrative burdens and costs well beyond what the authors anticipated. Eventually, the courts throughout the State of California will be creating electronic registers of actions and providing case filing information online. This is already available in some courts. As electronic registers of action become more generally available, the media will have a readily available means to directly access the registers themselves on a regular basis. By this means, they will be able to search for the filing of applications and orders. Thus, through court technology, the limitations of the current system in terms of case information should be overcome.	
Superior Court of San Francisco County by Hon. James J. McBride	**N**	We are opposed to the requirement of public posting within five days of applications for, and entries of, gag orders. Our rationale and an alternative proposal are provided below in the context of sealing orders. We do not oppose providing standing to the media to oppose gag orders or the requirement that Judges explain the reasons for their rulings.	**191**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**		**192**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**193**
Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County	**N**	8C/D - Requiring the Court to post notice of applications for or notice of entry of gag orders within 5 court days of filing is burdensome especially for courts that are understaffed and under-resourced. These recommendations are excessive to the extent it requires posting of orders in cases where they may be little or no media interest. I believe in keeping the media informed and answering questions when they come up, but the media should have some responsibility to do their own homework and track cases.	**194**
William Bennett Turner, Lecturer UC Berkeley	**A**		**195**

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Commentator	**Position**	**Comment**	
Superior Court of Amador County by Hugh Swift, CEO	**N**	As to Items A and B, the Court in *Hurvitz v. Hoefflin* provided trial judges with very clear direction regarding the standards to be applied before issuing a gag order. (*Hurvitz v. Hoefflin*(2000) 84 Cal. App. 4th 1232, 1242.) If the trial court fails to properly apply these standards, the gag order is subject to challenge. A rule of court which repeats these standards is unnecessary. The public notice requirement (Item C) potentially deprives the trial judge of the ability to control the proceedings and protect the parties' right to a fair trial. Situations arise which require judges to consider issues outside of the presence of the jury and public because of the potential prejudice to the parties. There are times a judge must issue a gag order on his/her own motion, without prior notice to the public and press in order to protect the integrity of the proceedings. The posting requirement creates an affirmative duty on courts to monitor their caseloads for the filing of an application for, or issuance of, a gag order. An analysis of the workload impacts on trial court staff and budgets of this requirement should be conducted before the rule is considered for adoption. Likewise, the operational impact of creating forms specifically for use by self-represented litigants should be evaluated, particularly if the filing of a challenge triggers a hearing on the court's calendar. The posting requirement also raises the issue of what consequences would result if a court fails to comply with the rule. For example, a rule adopted based on the proposed recommendations would provide the public at large the right to notice. If a court, for whatever reason, fails to provide the required notice does a non-party have the right to seek reconsideration of the court's ruling, although a party would be procedurally barred from doing so. (Code of Civil Procedure Section 1008.) There should be a thorough evaluation of the potential liability of the Court for its failure to comply with the posting requirement before the recommendation is adopted as a rule.	**196**
Ed Chapuis, News Director, KTVU Channel 2 News		We strongly support the changes being proposed in Recommendation 2 and 3: Gag Orders and Orders Sealing Records. For similar reasons outlined in our argument favoring cameras in the courts, the changes being proposed to have uniformed statewide rules for issuing gag orders and articulating clear guidelines for sealing records are very important for the public's right to	**197**

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Commentator	**Position**	**Comment**	
		know. Allowing court officers and principals in court cases to speak freely without onerous gag orders being imposed is critical to free speech. The proposed rule changes for sealing orders make it very clear that certain records can be closed, but we need to make sure there is a documentation that these records exist and have been sealed.	
Superior Court of Kern County by Hon. Michael B. Lewis	**N**	Recommendations 2A. and 2B., which seek to develop a "uniform statewide rule" governing the issuance of gag orders (and limiting their scope and duration), can best be described as a solution in search of a problem. It is not readily apparent why such a rule is necessary or beneficial to the administration of justice. The recommendation proposes a rule "consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 123." Unfortunately, the proposal fails to clarify what this means. If the proposed rule merely sets forth the existing principles of law a trial court must follow in issuing a gag order, it is duplicative of decisional law and hence unnecessary (and potentially confusing). If "consistent with" implies modification, the proposed rule is not one of "court administration, practice, and procedure," but in fact a substantive rule of law not appropriately made by means of a rule of court. These proposals are unfortunately consistent with the thrust of many of the provisions of the report, which seek to limit the case-by-case exercise of judicial discretion and to impose "one size fits all" requirements on the operations of the 58 individual trial courts in the state. Rules made in this manner ignore the diverse individual needs and working environments of the different courts; rules for dealing with the media in each county should primarily be made, within the rules set by decisional law, by local trial court judges who better know the media in their communities. Recommendations C., D., and E., proposing rules for the posting of all "gag orders," are unclear as to the scope of their application and unduly burdensome to the clerical and administrative staff of the trial courts. Trial courts make a wide variety of orders limiting disclosure (protective orders regarding discovery information, for example) might be characterized as "gag orders." It is not clear whether these are within the scope of the proposed rules. Most of the cases in which these orders are made are of no interest to the media, as demonstrated by the fact that no effort is made to cover or report on them. It is thus unnecessarily burdensome to require posting or notification of, or facilitate challenges to, the majority of these orders. Existing law is entirely adequate to provide sufficient notice of gag	**198**

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
		orders and permit challenges to them.	
Superior Court of Solano County by Hon. D. Scott Daniels	**N**	Existing case law already requires specific findings and limits the scope of gag orders. The Committee's recommendation for notice of gag orders improperly places the public and the media in the status of a party, and will create an unnecessary financial burden on the Court.	**199**
Society of Professional Journalists, Los Angeles by Linda Bowen, Ph.D. President; Society of Professional Journalists, Los Angeles by Richard D. Hendrickson, Ph.D., FOI chair	**A**	In addition, we support the recommended rule change for "gag orders" that would require judges to make "specific findings of a legitimate competing interest that overrides the public's right of access."	**200**
The Reporters Committee for Freedom of the Press by Lucy A. Dalglish, Executive Director	**A**	The Reporters Committee strongly supports the BBMC's recommended uniform rule on the issuance of gag orders. The creation of a uniform rule would provide the parties, the court, and the media with needed guidance on the issuance of such orders. Identifying a specific procedure for third parties to challenge such orders would also streamline challenges and provide greater assurance that the media and public have a meaningful opportunity to be heard. Restrictions on commentary about judicial proceedings are most likely to be instituted in cases that are exceedingly newsworthy because they involve politicians, famous people, or particularly egregious crimes. Suppressing the free flow of information in such cases, however, restricts the public's knowledge about politically significant issues, creating a significant First Amendment burden. *See, e.g., Bridges v. California*, 314 U.S. 252, 268-269 (1941) (noting that limits on comment about pending cases are "likely to fall not only at a crucial time but upon the most important topics of discussion" and finding no suggestion in the Constitution that "the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression.") Gagging speech about judicial proceedings not only deprives the public of socially and politically important information, but also hides a powerful branch of government behind a veil of secrecy. When judicial actions are obscured, the actors cannot be held fully accountable. *See, e.g., In re Oliver*, 333 U.S. 257, 270-271 (1948) (". . .[T]he forum of public opinion is an effective restraint on possible abuse of judicial power. . . . Without publicity, all	**201**

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Commentator	**Position**	**Comment**	
		other checks are insufficient: in comparison of publicity, all other checks are of small account."); *Gentile v. State Bar*, 501 U.S. 1030, 1035 (1991) (opinion of Kennedy, J.) ("The judicial system, and in particular our criminal justice courts, play a vital part in a democratictate, and the public has a legitimate interest in their operations.") To acknowledge the overwhelming importance of the free flow of information, courts must employ great restraint in restricting access. Because gag orders can constitute a prior restraint on speech, they must also be narrow in scope and based on a standard that safeguards the First Amendment rights of the speaker. Although the law nationally is unsettled as to the exact standard that is appropriate for issuing gag orders to attorneys,[6] every federal circuit that has considered the issue has held that *some standard* is clearly necessary to protect the First Amendment rights of the parties. *See United States v. Brown*, 218 F. 3d 415, 426-427 (5th Cir. 2000) (summarizing standards from sister circuits). The rule must also be narrow enough in scope to pose the least possible amount of First Amendment harm. The Reporters Committee believes that the BBMC's recommended rule will establish necessary parameters for ensuring that any gag orders meet those requirements. Specific findings by a court on the need for a gag order, consistent with the standards outlined in *Hurvitz v. Hoefflin*, 84 Cal. App. 4th 1232 (2000),[7] will assist the parties, public and any reviewing court in understanding the issuing court's reasoning, and provide a means for assessing whether the order is sufficiently tailored. Establishing a uniform procedure for providing the public with notice and an opportunity to be heard on any gag order will similarly help to promote the rights of non-parties to challenge the issuance of orders that will affect their access to information.	
First Amendment Coalition by Peter Scheer, Executive Director, San Rafael	**A**	Gag orders must be disfavored, given the fact that they constitute a type of "prior restraint" against speech. No less important is the proposed guarantee of public notice, using the internet. This change addresses the central fact that the parties who might object to a gag in a	**202**

[6] The United States Supreme Court held in *Gentile v. State Bar*, 501 U.S. 1030 (1991), that court limitations on *attorney* speech do not violate the attorney's First Amendment rights where there is "a substantial likelihood of material prejudice." *Id.* at 1063.

[7] The California Court of Appeals' decision in *Hurvitz* adopts the "clear and present danger or serious and imminent threat to a protected competing interest" standard, which the Third, Sixth, Seventh and Ninth Circuits have also followed, as well as other states. *See, e.g., Johnson v. Eighth Judicial Dist*., 182 P.2d 94, 98 (Nev. 2008) (adopting the "clear and present danger" standard for both civil and criminal matters). This standard is the most consistent with the strict scrutiny approach used by the U.S. Supreme Court in other free speech and press issues, and is also the most consistent with the *Hurvitz* court's recognition of free speech as "one of the cornerstones of our society." 84 Cal. App. 4th at 1241.

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Commentator	**Position**	**Comment**	
		given case—the public, or often the press as the public's surrogate in reporting on trials--are often not before the court. Only by providing simple notice on the internet will the court receive the benefit of legal arguments against a gag order.	
Court Executive Advisory Committee (CEAC) by Michael M. Roddy, Chair; Kim Turner, Vice-chair	**N**	[Regarding Subsection D] CEAC believes that this recommendation places a significant burden on the trial courts. Many courts are experiencing a critical lack of resources and are not in a position to absorb the additional workload that this recommendation would impose. CEAC predicts that the average number of court appearances per case would increase in order to accommodate events such as noticed hearings on motions to seal documents or gag participants. Many courts would need to develop manual processes to identify, publish, update, and de-publish required information because their current case management systems would not support the new requirement. In addition, the recommendation is overly broad and recommends the posting of orders for cases where there may not be any media interest.	**203**
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**N**	It is felt that the recommendations related to gag orders are unnecessary. The law already requires that findings be made to justify a gag order. (See e.g., Hurvitz, p. 1241.) The Executive Committee finds no supporting data that identifies a need for rules of court to be promulgated to reiterate substantive rules of law. The TCPJAC Executive Committee also supports the Court Executives Advisory Committee's (CEAC) comment related to this recommendation (excerpted as follows): "CEAC believes that this recommendation places a significant burden on the trial courts. Many courts are experiencing a critical lack of resources and are not in a position to absorb the additional workload that this recommendation would impose. CEAC predicts that the average number of court appearances per case would increase in order to accommodate events such as noticed hearings on motions to seal documents or gag participants. Many courts would need to develop manual processes to identify, publish, update, and de-publish required information because their current case management systems would not support the new requirement. In addition, the recommendation is overly broad and recommends the posting of orders for cases where there may not be any media interest."	**204**
Superior Court of Tuolumne County by Hon. Boscoe	**N**	The recommendation to adopt a uniform statewide rule consistent with the opinion in *Hurvitz v. Hoefflin* (200) 84 Cal.App.4th 1232 is unnecessary as the legal principles that must guide the court in ruling on such a motion are adequately set forth in the above-cited case.	**205**

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Commentator	**Position**	**Comment**	
		Moreover, this rule automatically confers standing on the media to challenge any gag order that is proposed or entered which thereby improperly deprives the trial judge of his authority to determine questions of law and fact related to that issue. The additional requirement of this proposed rule that the court post notice of applications for or notice of entry of gag orders within five court days of filing places an additional unfunded mandate on trial court resources and presents a fiscal impact to our court.	
San Bernardino Public Defenders Office by Doreen B. Boxer	**N**	The Draft Report appears to adopt committee members' statements that the number of gag orders is increasing, for cases with and without detectable public interest, and are written overbroad. These assertions are not supported 'by any evidence. On the contrary, at least in criminal matters amongst the largest defense providers in the state, there are remarkably few gag orders, with only one reported in an informal survey. (See, September 17, 2010 Letter from Michael P. Judge, Los Angeles County Public Defender, to the Judicial Council, p.3.) The Draft Report fails to establish any legitimate need for employment of this Recommendation. On the other hand, by mandating notification of gag order requests will encourage litigation of those matters, increasing costs and overburdening judges and parties alike. Furthermore, this Recommendation is objectionable since it elevates the concerns of the media over that of the public. To spend considerable efforts to devise a system just to post notices of requested gag orders is an inefficient use of scarce resources. This project would only serve the media's stated need. A more appropriate project would be to make all public case information -not just requested gag orders -more accessible to the public by making the existing websites searchable. Furthermore, a better service to the public would be to eliminate the cost to the public for access to information. These two suggested projects would more effectively achieve BBMC's stated goals for this Recommendation of" Access, Fairness, and Diversity" as well as "Quality of Justice and Service to the Public," than posting notices of requested gag orders for the convenience of the media. Apart from joining in the comments from Mr. Judge, I will reserve further comment until such time as the "new California rule of court" designed to achieve this Recommendation's vision	**206**

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Commentator	**Position**	**Comment**	
		takes shape. (Draft Report, p. 16.) As set forth to date in the Draft Report, the San Bernardino County Public Defender opposes Recommendation 2.	
Superior Court of Marin County by Hon. Terrence Boren	**N**	We disagree with the recommendation that the courts should be required to place on the court's website any application for or entry of a gag order. Based upon our court's experience, there is no need to implement this rule as there are no known problems related to gag orders. However, as mentioned in our opposition to recommendation #1 above, if approved, this recommendation would likely result in additional and protracted hearings from the media or other public entities challenging the issuance of gag orders. This will require courtroom time and expense relating to an issue unrelated to the controversy at hand. Moreover, posting information on our website concerning the application for a gag order would likely have the exact effect that we are trying to avoid and potentially infringe upon the parties' constitutional rights. The proposal would require 5 days notice to the news media. During this "waiting period" the attorneys, the parties, and the news media would be free to comment on and investigate the circumstances of the pending matter and attempt to determine the reason for the request. This interim commentary could potentially harm a litigant's right to a fair and impartial jury and create further hearings for change of venue. This is exactly what gag orders are intended to avoid. Additionally, we believe that implementing this recommendation would require additional operational costs. The current state budget has had a significant negative impact on all of our courts. This rule would require us, in an already depleted budget to increase staff hours to post gag order requests on a website when no need appears to exist. Given the reduction in staff resources we object to taking on this additional workload.	**207**
Appellate Advisory Committee, by Hon. Kathryn Doi Todd, Chair	**R**	See letter Attachment E	**208**
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**NR**	– As to Items A and B, the Court in *Hurvitz v. Hoefflin* provided trial judges with very clear direction regarding the standards to be applied before issuing a gag order. (*Hurvitz v. Hoefflin* (2000) 84 Cal. App. 4th 1232, 1242.) If the trial court fails to properly apply these standards, the gag order is subject to challenge. A rule of court	**209**

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
		which repeats these standards seems unnecessary. – The public notice requirement (Item C) potentially deprives the trial judge of the ability to control the proceedings and protect the parties' right to a fair trial. Situations arise which require judges to consider issues outside of the presence of the jury and public because of the potential prejudice to the parties. There are times a judge must issue a gag order on his/her own motion, without prior notice to the public and press in order to protect the integrity of the proceedings**.** The posting requirement creates an affirmative duty on courts to monitor their caseloads for the filing of an application for, or issuance of, a gag order. An analysis of the workload impacts on trial court staff and budgets of this requirement should be conducted before the rule is considered for adoption. Likewise, the operational impact of creating forms specifically for use by self- represented litigants should be evaluated, particularly if the filing of a challenge triggers a hearing on the court's calendar. – The posting requirement also raises the issue of what consequences would result if a court fails to comply with the rule. For example, a rule adopted based on the proposed recommendations gives the public at large the right to notice. If a court, for whatever reason, fails to provide the required notice does a non-party have the right to seek reconsideration of the court's ruling, although a party would be procedurally barred from doing so. (Code of Civil Procedure Section 1008.) There should be a thorough evaluation of the potential liability of the Court for its failure to comply with the posting requirement before the recommendation is adopted as a rule.	
Los Angeles Times Communications LLC by Karlene W. Goller, Esq.; California Newspaper Publishers Association by Thomas W. Newton, Esq.; The Associated Press by David Tomlin, Esq.; The New York Times by David McCraw, Esq.	**A**	See letter Attachment F	**210**
Court of Appeal, Second Appellate	**R**	Sixth, I agree that gag orders are a real problem. Although they are almost never issued (again	**211**

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
District, Division Five by Hon. Paul Turner		the draft report neglects to document the asserted scope of the problem), they restrict public employees generally from speaking honestly to journalists. I suggest the Judicial Council make it materially harder to secure gag orders by requiring: • that applications for gag orders be supported by a specific under oath showing which details each matter which should be the subject of the restriction; • that, in order to be effective, the gag order must be in writing and personally served on the person to whom it applies (mere oral pronouncements from the bench or the service of an order on a lawyer or police chief will not be enforceable against any person not personally served with the order); • that gag orders be effective for only 7 days or less and subject to renewal for the same time period; • any matters that may not be discussed with journalists must be expressly set forth in the written order and any general nonspecific gag order should be deemed void on its face; that any party who successfully litigates the validity of a gag order that has been issued, and served upon him or her, be entitled to recover their attorney fees personally from the party and her or his lawyer who requested the order; and • that any fees imposed in favor of a party attacking a gag order be subject to loadstar enhancements (as in the case of a special motion to strike). Finally, I would bar a judge from issuing a gag order on her or his own motion. The only way a gag order may issue should be on motion supported by the aforementioned specific affidavit. Court orders which bar public employees (and private sector employees and lawyers) from speaking the truth to a journalist about litigation are inconsistent with the fundamental values of our nation and must be strictly limited. With respect, I do not believe the draft report goes far enough, much less takes the necessary first baby steps, to protect the fundamental freedoms of our citizens.	
Public Defender Los Angeles County by Michael P. Judge, Public Defender	**N**	The second recommendation deals with gag orders. The Committee recommends adopting a uniform statewide rule similar to those governing orders sealing records and consistent with the opinion in *Hurvitz* v. *Hoejjlin* (2000) 84 Cal.App.4th 1232, which requires (1) that the speech sought to be restrained poses a clear and present danger or serious and imminent threat to a protected competing interest; (2) the order is narrowly tailored to protect that interest; and	**212**

Recommendation 2: Gag Orders			
Commentator	**Position**	**Comment**	
		(3) no less restrictive alternatives are available. Contrary to Committee contentions that the new rules would not give interested persons entitlement to a hearing (the committee claims it rejected a call for a rule specifically allowing for a hearing), in fact the draft rules require the public and the media to be notified of the filing of a gag order and gives diem the opportunity to challenge at the earliest possible time any gag order that may be proposed or is entered. All gag orders and requests for gag orders would have to be posted on court websites. **Analysis:** The Committee asserts gag orders are a problem. While I do not speak to civil cases, gag orders most certainly are not, and have not been, a 'problem in criminal cases. An informal survey of LA County Public Defenders (using PDNet) revealed NO gag orders in 2010. An informal survey of statewide California Public Defenders Association members (using Claranet) revealed one gag order, in Monterey County in 2010. The Committee's claims that gag orders are a problem is questionable, at least in criminal cases. There appears no need to change anything relating to gag orders in criminal cases except perhaps judicial education. The media demands standing to litigate gag orders and the proposed changes would give them that. The media should not be allowed to litigate gage orders in criminal cases until the case has ended. Appellate litigation is a highly burdensome and unnecessary distraction, and also is potentially costly to the actual litigants. Even though the Committee claims that the trial court is not required to hold a hearing, that fact is not so certain. The proposed rules *require* that the public have the opportunity to challenge gag orders at the earliest possible time -which would be in the trial court. And because all gag orders and requests for gag orders would have to be posted on a website, anyone could mount a challenge -and each challenge will sap the ability of the courts and the parties to actually litigate their underlying cases -whether prosecutors or criminal defense attorneys.	

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**213**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**214**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**215**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**216**
California Judges Association by Hon. Keith D. Davis	**N**	See letter Attachment G	**217**
Donald Wilson, Carmel & Naccasha, Paso Robles	**A**		**218**
Superior Court of Riverside County by Hon. Thomas H. Cahraman	**N**	As Presiding Judge I have put the draft report before all bench officers in Riverside County, and have received back a large number of responses. I regret to inform you that all responses, including my own, have been negative. As I understand it, the California Judges Association is also opposed to the proposals. Most of the responding judges oppose all aspects of the report. The portions generating the greatest opposition are recommendation 1, which would create a presumption in favor of permitting cameras and other recording devices in the courtroom unless the judge makes findings to the contrary; and portions of recommendations 2 and 3, which would impose certain posting requirements on the local courts. Our court executive, Sherri Carter, will be responding separately with regard to the posting requirements. With regard to the proposed presumption, and requirement for findings, I will leave it to CJA and others to state an academic response to the report. My own comments will be brief.	**219**

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

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Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
Laurence Dornstein, Beverly Hills	**N**		**220**
Hon. John D. Conley, Superior Court of Orange County	**N**	Current rule is fine.	**221**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**A**		**222**
No name, title, or agency given	**A**		**223**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**224**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**225**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**N**		**226**
Hon. Mark Tansil, Superior Court of Sonoma County	**N**	This is not broken.	**227**
San Jose Mercury News by Bert Robinson, Managing Editor	**AM**	The San Jose Mercury News would like to raise concerns about one portion of the recommendations for New and Revised Rules proposed by the Bench- Bar-Media Committee, based on our own recent experience with the sealing of court records in Santa Clara County. The language in the recommendations reads as follows: "Orders Sealing Records: Develop a rule of court that requires all courts to post notice of any application for, or entry of, an order sealing a record on their local websites within five court business days after filing or entry. If that is not possible, the proposed rule would require that such a notice be sent to the Judicial Council for publication on the judicial branch's website within the same five court business days required for posting online." The language seems to suggest that courts could comply with the intent of several recent experiences in Santa Clara County in which reporters have discovered, after the fact, that records in a case have been sealed -- often on the flimsiest of rationales. We and the public would benefit greatly from a system that allows us to challenge applications to seal records before a judge has made a decision. It is far easier to contest an application in advance of an order than it is to persuade a judge to reconsider an order that has already been issued. And it would ultimately be more efficient for the courts to have all arguments submitted to the judge before a decision is made. For that reason, while we appreciate the current recommendation as an improvement over the status quo, we favor	**228**

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Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		provisions that would: 1.) guarantee prompt notice of the initial application for sealing, and 2.) impose a waiting period before any order is issued of sufficient length to allow interested parties to submit arguments against sealing. Thank you for your consideration.	
Hon. William Kolin, Superior Court of Contra Costa County	**A**		**229**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	No need.	**230**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**231**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	I am commenting on the medias changes as put forth by the bench bar committee. I oppose these changes. With the proposed changes we would end up with constant litigation as to what "sufficient reasons" means or what the threshold is...that should be reached.....all of this invades the courts discretion to assure a level playing field and that the court maintains control of a courtroom and proceedings....for the advancement of the "Interests of Justice."	**232**
Edward Opton, Jr., Of counsel, National Center for Youth Law	**A**	Secret sealing of records is incompatible with a democratic system of government and carries a grave risk of protecting oppressors and cheaters at the expense of the public. I strongly endorse this recommendation.	**233**
Hon. Gary Medvigy, Superior Court of Sonoma County	**N**	My only concern with the proposed rules relates to sealed documents. This is a sensitive area where local courts need more authority and the danger in public access should not be exacerbated by press access rule changes; risk benefit analysis weighs in favor of maintaining the status quo.	**234**
Earl Maas	**N**	The system works fine the way it is.	**235**
Hon. Michael A. Savage	**N**		**236**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	The current Rule of Court 2.550 et seq. together with the leading cases provide sufficient guidelines for Judges to deal with this issue. Stop trying to "make work" and expand on education requirements. It is a simple process under the Rule of Court, it only needs to be read. I see this issue several times a month and most get denied - I think the atty's. know they don't qualify but figure it's worth a try. But if a Judge reads the rule it is basic.	**237**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**	We do not have the financial or physical resources to comply with this recommendation. Does this recommendation mean that each time there is a request for a Hobbs sealing order we are to provide notice and conduct a hearing?	**238**
Hon. Kenneth C. Twisselman II,	**N**	There are numerous situations in a criminal case where the judge may need to seal a portion of	**239**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
Superior Court of Kern County		the record, e.g., privileged communications between the defendant and defense counsel in Marsden motions.	
Hon. Greta Fall, Superior Court of Sacramento County	**N**	Rule of Court 2.550 and 2.551 comprehensively address orders sealing records. Placing a requirement on courts to post applications and orders to seal records on web sites is unnecessary, costly and highly inappropriate.	**240**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**N**	This does not consider Marsden motions, Pitchess motions, juror confidentiality issues.	**241**
Pamela A. MacLean, Legal Editor RedwoodAge.com		There is one area of concern not addressed by the Draft Report that I would like to bring to the committee's attention. Journalists and the public may be prevented from accessing court files without any formal sealing order, but through routine court practices. In some courts, while a case is pending, the judge may retain the official filings in chambers. This is particularly true in rural county courts in which digital copies are unavailable and clerk's offices do not have a second copy for public use. In effect, the court is unofficially sealing a record. This has occurred on numerous occasions in my reporting experience, but most recently in August 2010 in Humboldt County. The only means to cover a court hearing there and to see filings was to drive250 miles to Eureka. Records are not online, or otherwise electronically available. After arriving in Eureka, I learned the judge had the files and the clerks would not retrieve them to make a copy. (Nor would lawyers provide them because settlement talks were in progress.) This is a typical experience. I would ask that the committee's proposed educational projects include discussion of routine filing practices in county courts to guarantee that one set of public records be maintained by clerks during the pendency of cases. This may be accomplished by requiring lawyers to file an electronic copy or an extra hard copy if that is the only alternative. Some county courts also routinely hold closed-door sessions with lawyers without officially sealing the matter. This may be a discussion to postpone a set hearing date while settlement talks continue, which was the situation in my recent visit to Humboldt County. But it has also occurred in preliminary injunction hearings in San Francisco County, in which parties present arguments to the court, sometimes through law clerks. These are done behind closed doors, despite the public/media interest in the subject of the injunction request.	**242**

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Commentator	**Position**	**Comment**	
		These sorts of hearings become a pattern of practice by local tradition, rather than court rule. As a common practice, participants lose a sense that it may be inappropriate or a violation of Rules of Court.	
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**243**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney	**N**	Regarding Item A: Same as above. Requiring the Court to post notice of applications for or notice of entry of sealing orders within 5 court days of filing is an unnecessary burden on understaffed trial courts. It is equally burdensome to forward such notices to the Judicial Council for posting. It is also overbroad to the extent it requires posting of orders in cases where they may be little or no media interest. Present rules (e.g., CRC 2.503(e)) regarding posting of case documents in cases deemed to be high-profile by the presiding judge ensure that such notices/orders are posted only in cases where there is sufficient public/media interest. Regarding Item D: Developing a form will increase the amount of challenges to sealing orders, and take increased judicial time. If adopted, the Rule should expressly exempt juvenile matters in accordance with confidentiality afforded by statute and California Rules of Court.	**244**
Michael D. Schwartz, Special Assistant District Attorney, Ventura County District Attorney's Office	**N**	Rule 2.551 already requires a filed motion or application before a record may be sealed. Public access to the court docket and court filings in the case is adequate without creating a new system of internet notices. A form to challenge sealing orders is not necessary, but if one is created, under the committee's desire for balance, it should be accompanied by a form to request sealing. The Legislature should not authorize attorneys fees or costs for those successfully challenging sealing orders. While some such motions may serve a public purpose, many are motivated by the desire of news media to sensationalize the private lives of Hollywood celebrities. The First Amendment permits such activity, but news organizations should be able to pay their own way. More importantly, the proposal is unbalanced because it does not award attorneys fees to a litigant who was required to fight, not only the opposing party in the litigation, but a	**245**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		third party news organization or member of the public who unsuccessfully sought access to private records. Finally, if attorneys fees or costs are awarded at all, they should be limited to cases in which a party *unreasonably* opposed the request and not those who in good faith litigated an arguable issue on behalf of their clients. (See Code Civ. Proc. § 2023.030 (a) [court shall not impose monetary sanctions for misuse of civil discovery process if person "acted with substantial justification or that other circumstances make the imposition of the sanction unjust."])	
Superior Court of Sacramento County by Hon. Steven White	**N**	Rules of Court 2.550 and 2.551 currently set forth comprehensive processes governing sealed records and procedures for filing records under seal. Rule 2.550(c) provides that unless confidentiality is required by law, court records are presumed to be open. Rule 2.550(d) requires the court to make express factual findings when a record is sealed and Rule 2.550(e) governs the content and scope of sealing orders. Rule 2.551 sets forth detailed procedures for filing records under seal, including a requirement under Rule 2.551(e)(1) that, "[i]f the court grants an order sealing a record, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating SEALED BY ORDER OF THE COURT ON (DATE)," and must replace the cover sheet required by (d)(3) with a file endorsed copy of the court's order." The committee recommended that the Judicial Council: 1. Develop a rule of court that requires all courts to post notice of any application for, or entry of, an order sealing a record on their local Website within5 court business days after filing or entry or, if that is not possible for any reason, send such notice to the Judicial Council for publication on its Website within the same 5 court business days required for posting online; 2. Provide judicial education regarding the proper process for determining when a record should be sealed as set forth in Rule 2.550 et seq; 3. Support statutory authorization specifically permitting the award of attorney's fees and costs – in civil matters only – to any party successfully challenging an order sealing a record or an application for sealing a record, with such fees and costs to be paid by the party or parties making the application; and 4. Develop a simple form that will facilitate challenges by pro per individuals to orders sealing records. With the possible exception of the second recommendation (providing judicial education on the current Rule 2.550(d)), the recommendations are completely unwarranted.	**246**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		At the outset, it must be pointed out that the current rules of court extensively address all aspects of orders sealing records. The committee made no effort to distinguish records sealed by statute and records sealed by motion. The committee provided no fiscal analysis of staff time to locate, scan or reproduce and post all applications for, or entry of, all sealing orders. The committee failed to point out that case files contain a copy of the sealing order. Claims by committee media members that they are often unaware that courts have sealed records are unpersuasive: they can make themselves aware of the existence of a sealed record by a simple review of the case file itself. Additionally, pursuant to Sacramento's Local Rules of Court, Law and Motion departments and the Civil Case Management Program departments already post the court's tentative ruling on the court's website one court day ahead of a scheduled Motion to Seal. This proposed rule would require us to either: 1) publish rulings on Motions to Seal twice -one time for the benefit of the media and one time for the benefit of the attorneys or 2) violate the proposed rule of court by publishing the tentative ruling within the time period mandated by our local rules or 3) violate our own rule of court by not publishing the ruling the previous court day. Finally, given this court's congested law and motion and case management calendars, imposing a requirement to review these motions so far in advance of the hearing date would essentially give them priority in their handling over and above all other scheduled motions. Identifying and posting requests and orders to seal to the Web or providing them to the Judicial Council for posting creates serious logistical and staffing problems for the courts. Court resources are at an all-time low, with no improvement in the foreseeable future. The logistical issues relate to the format and process of posting the orders and applications on the Web. Most courts have multiple case management systems (CMS) that will make posting to the Web time consuming and costly. Many courts do not image documents or have a CMS that images their documents. Even in courts that have CCMS where images of minute orders or petitions are available, staff would still have to process a sealing application or order to export it and post it manually to the Web, or provide it to the Judicial Council for posting.	

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		CCMS does not have the functionality to extract and post applications and orders to seal records without human intervention. Moreover, prioritizing the processing and posting of sealing applications and orders over other statutorily mandated court processes would create an undue burden on the functions of the court to the detriment of the public. We believe the practical result of this recommendation would further deplete the inadequate resources of the court. Without question this would negatively impact the services we must provide to all members of the public who use our courts. This recommendation would impose a costly, unnecessary, labor intensive burden on the courts to locate and reproduce documents which must be posted within 5 court days after the filing or granting of a sealing application so the media can peruse it to see if they can find something of interest. Clearly, this is not the purpose of the courts and such a requirement would result in an improper expenditure of public funds to the detriment of appropriate court functions. In addition, the Committee recommended supporting statutory authorization specifically permitting the award of attorney's fees to any party successfully challenging an order sealing a record or an application for sealing a record. We note there is no similar proposal to award attorney's fees to the party successfully defending a challenge to sealing a record or making application to seal a record. This is, on its face, one sided, biased and unfair. The articulated rationale of the committee is that "*litigants often make frivolous requests to seal records. The cost to challenge a sealing order can be prohibitive and can therefore prevent others from challenging sealing orders.*" This rationale – devoid of factual support in the Report – directly suggests that judges grant frivolous requests to seal records. In addition, the committee fails to address the issue of who advocates the correctness of the trial judge's order on appeal when the party who requested or obtained the sealing order cannot afford the "prohibitive" cost of defending the sealing order. The committee further recommends that a form be developed to facilitate challenges by pro	

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		per individuals to orders sealing records. This recommendation is designed to increase litigation challenging the orders of trial court judges and adopts the general tone of the committee – that trial judges grant frivolous motions to such an extent that the creation of such a form is necessary. There is no recommendation that a responsive form be created to assist pro per individuals in defending against challenges to orders sealing records. Again, a very one sided, biased and unfair recommendation.	
Hon. Richard G. Cline, Superior Court of San Diego County	**N**	I strongly disagree with Recommendation 3A. This recommendation has the effect of making the court do the job of the media. Currently the majority of court files are open to the public. The media can determine when a request for sealing a case has been filed. In significant cases, the media currently keeps track of developments such as sealing records. The recommendation will place an administrative burden upon the court that is not justified.	**247**
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	**N**	Sealing orders can be of major importance, or even be dispositive in matters of settlement, in civil litigation, including products liability cases. For this reason, the California Defense Counsel is particularly concerned about recommendations in this area, made without input from civil defense practitioners. While we note that subdivision C. recognizes that statutory changes would be necessary to permit the award of attorney's fees when successfully challenging a sealing order, no decision about Judicial Council support for such a proposal should be made without broad input from practitioners. Such a statutory change could discourage sealing requests and ultimately discourage case settlement.	**248**
Hon. Charles Wieland, Superior Court of Madera County	**N**	Leave the rules as they are.	**249**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**250**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**251**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**A**		**252**
Donna Domino, IMV Info, San Rafael	**A**		**253**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**254**

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Comment Chart Date: 09/20/11

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**255**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**256**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**257**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	This is not broken.	**258**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**259**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**N**	Again, court records are usually sealed when the court is trying to protect somebody deserving of protection or secrecy. We should trust the courts to seal only the most sensitive records, which the courts do routinely. While the media may dislike somebody holding secrets, it is often necessary in a criminal case to protect the rights of the accused.	**260**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**261**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**262**
Charity Kenyon, Counsel for the McClatchy Company, Sacramento	**A**	As already noted, Rules 2.550 and 2.551 have already lessened the need for formal intervention by the news media. Yet sealing still occurs based on informal requests that the news media learn about only after the fact. Again, the recommendations are practical ways to ensure that courts comply with existing rules. We often get notice of sealing orders because we have an active Bench Bar Media Committee. The recommendations formalize such notice. The provision for attorney's fees is consistent with the Public Records Act and recognizes the monetary burden assumed by the news media when they intervene to protect public access, consistent with existing precedent and rules.	**263**
Superior Court of Ventura County by Hon. Kevin J. McGee	**N**	*California Rules of Court*, rules 2.550 and 2.551 already set forth comprehensive processes governing sealed records and procedures for filing records under seal. Without data demonstrating an identifiable problem, it does not appear prudent to grant a priority of posting	**264**

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Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		sealing applications and orders over other statutorily mandated court processes. Further, the Court is concerned with the additional burden that will be placed on staff and technology to comply with these new processes. There is no opposition to the general premise of providing access to judicial education. However, without data showing that judicial officers are not using the proper process, the Court's view is that already limited resources are better allocated to areas of education that have wider impact. No factual information was provided by the Committee to support that there is a problem of parties filing erroneous or frivolous requests to seal records. The Ventura Court has very few motions filed to seal records.	
Ming W. Chin, Chair of CTAC, and Associate Justice of the Supreme Court, Terence L. Bruiniers, Vice-Chair of CTAC, Associate Justice of the Court of Appeal	**N**	The Draft BBMC Report makes recommendations for the creation of a rule on gag orders and amending the existing rules on orders sealing records. For both gag orders and sealed records orders, the BBMC recommends the adoption of rules requiring that notice of any application for, or entry of, such an order be posted on the court's local Website within 5 court business days after filing or entry or, if that is not possible for any reason to send such notice to the Judicial Council for publication on its Website within the same 5 court business days of posting online. CTAC opposes imposing a new responsibility on the courts to review all filings and post applications and orders. The recommendations that courts be required to post on the Internet applications for gag and/or sealing orders and the orders assume a level of automated technology not available in most courts at this time. It will be difficult, time-consuming, and costly for all the courts to undertake the file review and posting required to implement any such new rules. Thus, the BBMC recommendations will create administrative burdens and costs well beyond what the authors anticipated. Eventually, the courts throughout the State of California will be creating electronic registers of actions and providing case filing information online. This is already available in some courts. As electronic registers of action become more generally available, the media will have a readily available means to directly access the registers themselves on a regular basis. By this means, they will be able to search for the filing of applications and orders.	**265**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		Thus, through court technology, the limitations of the current system in terms of case information should be overcome.	
Superior Court of San Francisco County by Hon. James J. McBride	**N**	We oppose the proposal. The burden imposed by the proposal is significant. In San Francisco, the sheer burden of filings, coupled with the deep reduction in staff caused by the State's budget issues, results in our inability to process most documents in less than about three days after they are presented at the clerk's window. Due the extreme volume of cases in our Law and Motion departments, orders routinely are not processed for many weeks after a hearing. The courts simply do not have the resources to meet the deadlines of the proposal. We suggest an alternative rule: the *parties* (not, as the proposal has it, the local court) file copies of all applications for, and entry of, orders and sealing documents with the AOC. The AOC then could publish these items on the AOC Web site. The Report (page 25) notes of the economic conditions afflicting the media, stating that there have been "massive media layoffs, reduced budgets for newsgathering." This is precisely the condition in which the judicial branch finds itself after a three-year state budget crisis that shows no signs of abating. Under our proposed scenario, local courts are relieved of an extreme burden, and the media has a single point of contact to review all relevant orders and applications. We note that the Report observes, "Committee members representing the media conveyed that they are often not aware that courts have sealed records or even that some cases exist." This concern will not be significantly ameliorated with postings on the sites of 58 counties, whereas the media can with ease check a single AOC site to determine the matter. The committee's proposal, without explanation, effectively causes the courts to act as a clipping service for the media. Court records generally are open for inspection by the public, including applications and court orders. While we understand the current interest in gag and sealing orders, we predict that the media would also be interested in class actions, certain high profile family matters (divorces) and other types of cases. Surely, it cannot be the intent to have the courts comb through their files and select and post filings in all such matters? Yet the rationale of the committee extends that far. We also note that the "media" often do not provide five days, or routinely more than a few minutes' notice of their request that cameras be allowed. This makes it difficult if not impossible to provide the consideration such requests deserve, and almost always makes it	**266**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		impossible for the parties to consider the issue. Accordingly, if new rules are enacted, we strongly suggest the following: (i) confirm that all such requests be served 5 days in advance, (ii) require the media to simultaneously serve the parties with the request, and (iii) require the parties to serve and file any objections at least the day before the hearing. We strongly oppose the proposed attorneys' fees award and legislative proposal. We note that the award is a *one-sided* award, directly contrary to the usual California policies which strongly favor two-way or mutual award provisions (CC § 1717). This will further contribute to litigation since there is disincentive to refrain from opposing sealing orders. Overall, the schema ensures that virtually every sealing application may be the subject of litigation. For parties with few resources but serious concerns about protecting their trade secrets, personal information, or other materials subject to sealing, the proposed schema will be a serious financial disincentive to using the court system. The Report indicates that the "committee concluded that awarding attorney's fees and costs in civil matters to any party successfully challenging an order sealing a record or an application for sealing a record would discourage future frivolous requests to seal records." (Report 20-21) Yet, the committee apparently gave no thought to the possibility of frivolous motions to unseal records.	
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**267**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**268**
Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County	**N**		**269**
William Bennett Turner, Lecturer UC Berkeley	**A**		**270**
Superior Court of Amador County by Hugh Swift, CEO	**N**	Please see comments to Recommendation 3. - Judicial Education – The Committee recommends judicial education "regarding the proper process for determining when a record should be sealed pursuant to California Rules of Court, Rule 2.550". This recommendation is apparently based on reports from Committee members who reported that "on occasion" judges issued orders to seal records based on factual findings the members found to be "vague" or "minimal". The basis of this recommendation is purely anecdotal. Additional education	**271**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		requirements should not be imposed on bench officers based on the fact a judge may have issued an order a committee member found lacking in detail. Attorneys Fees and Costs - The Committee declares parties often make "frivolous" requests to seal records and this practice could be deterred by the award of attorney fees and costs to an individual who successfully challenges such a request. The Committee fails to support either premise with data or evidence other than the opinions of its own members. Attorney Fees and Costs – As proposed, the award of attorney fees and costs is not conditioned upon a finding the request to seal records was "frivolous". A Court can deny a request to seal for many reasons. Therefore, the unilateral attorney fees recommendation would discourage the filing of any request. - Attorney Fees and Costs – It is inherently unfair to grant attorney fees to a party who successfully challenges a request to seal records, but not to a prevailing requesting party.	
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	In addition, we strongly support the changes being proposed in Recommendation 2 and 3: Gag Orders and Orders Sealing Records. For similar reasons outlined in our argument favoring cameras in the courts, the changes being proposed to have uniformed statewide rules for issuing gag orders and articulating clear guidelines for sealing records are very important for the public's right to know. Allowing court officers and principals in court cases to speak freely without onerous gag orders being imposed is critical to free speech. The proposed rule changes for sealing orders make it very clear that certain records can be closed, but we need to make sure there is a documentation that these records exist and have been sealed.	**272**
Superior Court of Kern County by Hon. Michael B. Lewis		Like most of the Draft Report Recommendations, this recommendation is also a solution in search of a problem. The proposals seem to be based upon unsubstantiated and isolated anecdotal reports of single instances which in no way can be said to represent a significant institutional problem. The rationale for the recommendation appears to be the report of one reporter stating that a case was sealed in its entirety so that it did not even appear on the court's docket. It is hard for our court to believe that this case was actually absent from the alleged offending court's public Register of Actions or calendaring docket. Has any member of the committee or any staff person actually investigated to determine if the stated rationale is the truth? Although the media serve an important role under the First Amendment, and an important societal and political role, most major media outlets are also "for profit" business, designed to attract commercial advertisement. It is not the job of the courts or judges to do the media's work for it at public expense. All filed cases that are not deemed confidential by law	**273**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		ate made public through the Register of Actions. It is the responsibility of the media to review these filings like any other member of the public in order to ascertain if there are cases of interest. Once these cases of interest are identified by the media, it is the media's responsibility to monitor the public record to determine if there are any calendared matters or applications that the media has an interest in reporting. California Rules of Court, rule 2.550, et seq., comprehensively and effectively set out the procedures for sealing records. The Kern Court believes that the views of the dissenting member of the committee are well taken. The proposal for posting notice of application for or entry of an order sealing records within five days is completely unworkable. The committee has made this recommendation without any input from local courts to determine the workload demands that would" be imposed by this requirement and the fiscal and budgetary impact. Imposing this requirement as a statewide rule improperly contravenes Government Code section 77001 which mandates local control of the day-to-day management of the trial courts. It is the responsibility of each trial court's local management to determine if the court staff should devote its time and resources to do the commercial media's job at public expense. Applications for sealed records and orders sealing records are public records already available to the media. The recommendation for judicial education on the rule for sealing records is unnecessary, as these courses already exist within the programs offered by CJER. It is entirely inappropriate for the Judicial Council to support attorney's fees legislation for one side of a litigation dispute. The recommendation is based upon the unfounded anecdotal belief of some "members" that requests to seal records are "often" frivolous. What is the actual evidence for this proposition? Our judges rarely experience any frivolous requests, and any such frivolity would meet with summary denial in our court. If the media wants such fee legislation, its representatives should sponsor such legislation at their own expense. This would allow competing special interests, such as child advocates, family law advocates, public defenders and prosecutors, and trial lawyers to offer legislative opposition without the imprimatur of Judicial Council approval for only one side of the debate.	

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Commentator	**Position**	**Comment**	
		The same reasoning applies to our objection to the creation of "simple" forms for pro per opposition to sealing requests. This recommendation seems designed to promote an easy method for news organizations (who, if incorporated, cannot appear pro se in any case) or reporters, to obtain standing in a litigated proceeding with a preferred method of easy and inexpensive access not granted even to the litigants. Furthermore, this proposal is one sided, favoring only one side of a disputed matter.	
Superior Court of Solano County, by Hon. D. Scott Daniels		Rules 8.46 and 2.550 of the California Rules of Court already provide a comprehensive procedure for the sealing of records. Notice to the media of a request for a sealing order will create an unnecessary financial burden on the court. Our court strongly supports the availability of judicial education on all topics relating to the administration of justice.	**274**
The Reporters Committee for Freedom of the Press by Lucy A. Dalglish, Executive Director	**A**	The Reporters Committee also supports the BBMC's recommendation on the sealing of court records. Current law already creates a presumption of open access to court records, which counsels against the sealing of records absent good cause. *See* California Rule of Court § 2.550; *Hurvitz*, 84 Cal. App. 4th at 1246-47 (court records are publicly available absent an "overriding public interest to justify the dissemination . . ."); *see also In re Washington Post Co.*, 807 F.2d 383, 388-390 (4th Cir.1986) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), in explaining that the First Amendment right of access to criminal trial, extends to documents submitted in the course of a trial as well as other pretrial proceedings and filings). As with the BBMC's recommendations on camera access and gag orders, requiring that the public have notice and opportunity to be heard on a court action that could limit public access would help to effectuate the presumption of open court access and ensure that interested parties have an opportunity to be heard. Authorizing the award of attorney fees for successful challenges to sealing orders or sealing requests would also help to ensure that parties take into account the presumption of open court access and not attempt to seal records without good cause. A successful challenge to the sealing of records is a vindication of the public's right of court access; the prohibitive costs that can be associated with such a legal challenge should not be barrier to such a challenge.	**275**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		For the same reason, the Reporters Committee also supports the recommendation of a simple form for pro per challenge.	
First Amendment Coalition by Peter Scheer, Executive Director, San Rafael	**A**	The excessive sealing of court records in California courts is not a function of defects in the law. California case law and court rules could not be clearer on the imperative of restricting sealing in order to protect the "public" nature of court trials and to give full effect to the First Amendment's right of access to judicial records. Excessive sealing persists in spite of the law, not because of it. The proposed rule seeks to achieve better compliance with existing law by "shining a light" on the deliberations leading to a sealing order. This, by itself, will have a positive, prophylactic effect. In addition, public notice will alert members of the public, and the media, who may wish to object to what they perceive as an improper sealing. The recommendation also clarifies that one may interpose an objection to a sealing without being required to hire an attorney—a prohibitive expense for many potential objectors, including, in today's economy, the media. Also, the recommendation provides for fee-shifting to prevailing objectors who do retain counsel. This crucial change will operate as a strong deterrent to sealing requests that demonstrably fail to meet California's rigorous standards.	**276**
Court Executive Advisory Committee (CEAC) by Michael M. Roddy, Chair; Kim Turner, Vice-chair	**N**	CEAC believes that this recommendation would also place an undue burden on the trial courts. The trial courts would need additional staff to complete the new requirements associated with this recommendation, including monitoring timeframes for compliance and data entry. This recommendation, as with Recommendation #1, would require many courts to develop manual processes in order to complete the proposed requirement. This recommendation will increase costs to the courts as additional training for bench officers and court employees in implementing the new procedures would be required.	**277**
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**N**	California Rules of Court, rules 2.550 and 2.551 deserve further review to determine if they adequately set forth comprehensive processes governing sealed records and procedures for filing records under seal, in particular a consideration to repeal rule 2.550 (e)(2) that allows the sealing of the order granting the sealing of records and other aspects of the case. Though there may exist the potential, if not the practice, of interpreting the current rules in a manner beyond that for which they were intended, considering the operational and technological burdens that these proposals would place on the court if implemented, more research is	**278**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		needed to identify and determine the scope of the problem.	
Superior Court of Tuolumne County by Hon. Boscoe	**N**	Rules of Court 2.550 and 2.551 already establish a complete and thorough process governing the sealing of records and the filing records under seal, including the requirement that the court make express factual findings when a record is sealed. Requiring the court to post notice of application or notice of entry of sealing orders within five court days of filing places an additional unfunded mandate on trial court resources and imposes an additional fiscal burden on our court. Moreover, this proposed rule is likely to increase litigation as it encourages challenges to orders sealing records by pro per litigants further taxing limited court resources.	**279**
San Bernardino Public Defenders Office by Doreen B. Boxer	**N**	The Draft Report notes one case in which a judge sealed an entire civil case, "which could have become a high-profile case because of the parties involved." (Draft Report, p. 20.) The committee also noted generalized complaints from the media members of BBMC that sometimes they find themselves in the dark when it comes to discovering records were sealed in a case. From this evidence, BBMC recommends a system of notification of requests for orders to seal records. Like Draft Recommendation 2, Draft Recommendation 3 is objectionable since it elevates the concerns of the media over that of the public. Once again, the public would be better served·to have a free, searchable database of all public information about cases. Moreover, while searchable access to information does not encourage litigation, highlighting a few cases with notification of specified actions can obviate appropriate protection of sensitive information. Consequently, the San Bernardino County Public Defender opposes Recommendation 3 as it is presently constituted.	**280**
Superior Court of Marin County by Hon. Terrence Boren	**N**	Rules of Court 2.550 and 2.551, as currently written, set forth the process for filing records under seal. Rule 2.550(c) provides that unless confidentiality is required by law, court records are presumed to be open to the public and available for public (and media) review. In addition, Rule 2.550(d) requires the presiding judicial officer to make express findings before he or she can order a record sealed. The Bench Bar Media Committee recommends that the Judicial Council develop a rule that would give notice to the public of the request to seal records. We strongly believe that the current Rules of Court adequately address all aspects of sealing court	**281**

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Commentator	**Position**	**Comment**	
		records and that no revision is necessary. We further believe that if this recommendation is followed, we will be faced with additional and protracted hearings from public entities who wish to discuss and litigate the request for a sealing order. This will cause further congestion for our calendars and judicial officers will be obligated to respond to motions filed by non·parties to an action before us. Moreover, posting information on our website concerning the application for a sealing order would likely have the exact effect that we are trying to avoid and potentially infringe upon the parties' constitutional rights. The proposal would require 5 days notice to the news media. During this "waiting period" the attorneys, parties and the news media would be free to comment on and investigate the circumstances of the pending matter and attempt to determine the reason for the request. This interim commentary could potentially harm a defendant's right to a fair and impartial jury or create a dangerous situation for potential witnesses. This is exactly what sealing orders are intended to avoid. We believe that the Rule as written provides the needed safeguards required to avoid a judicial officer from improperly and unfairly granting sealing orders. We do not believe the current rules need to be changed. Additionally, identifying and posting requests and orders to seal on the web or providing them to other agencies (AOC) for posting creates additional staffing problems for the court. We are at a budgetary low and there is no need to add this to our already burdened staff. This requirement would be overly burdensome on court staff especially in cases that have little or no public interest.	
Appellate Advisory Committee by Hon. Kathryn Doi Todd, Chair		See letter Attachment E	**282**
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**N**	Please see comments to Recommendation 2. Judicial Education -The Committee recommends judicial education "regarding the proper process for determining when a record should be sealed pursuant to California Rules of Court, Rule 2.550". This recommendation is apparently based on reports from Committee members who reported that "on occasion" judges issued orders to seal records based on factual findings the members found to be "vague" or	**283**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		f1minimal". The basis of this recommendation is purely anecdotal. Additional education requirements should not be imposed on bench officers based on the fact a judge may have issued an order a committee member found lacking in detail. Attorneys Fees and Costs -The Committee declares parties often make frivolous" requests to seal records and this practice could be deterred by the award of attorney fees and costs to an individual who successfully challenges such a request. The committee fails to support either premise with data or evidence other than the opinions of its own members. Attorney Fees and Costs -As proposed, the award of attorney fees and costs is not conditioned upon a finding the request to seal records was frivolous". A Court can deny a request to seal for many reasons. Therefore, the unilateral attorney fees recommendation would discourage the filing of any request. Attorney Fees and Costs -It seems inherently unfair to grant attorney fees to a party who successfully challenges a request to seal records, but not to a prevailing requesting party.	
Los Angeles Times Communications LLC by Karlene W. Goller, Esq.; California Newspaper Publishers Association by Thomas W. Newton, Esq.; The Associated Press by David Tomlin, Esq.; The New York Times by David McCraw, Esq.	**A**	See letter Attachment F	**284**
Court of Appeal, Second Appellate District, Division Five by Hon. Paul Turner	**N**	First, the draft report fails to recommend deletion or modification of California Rules of Court, rule 2.550(a)(2) which states, "These rules do not apply to records that are required to be kept confidential by law." The effect of California Rules of Court, rule 2.550(a)(2) is if another court rule or statute requires a document be sealed, it must be sealed, even if nooverriding interest is present. California Rules of Court, rule 2.550(a)(2), as it applies to nondiscovery materials, is unconstitutional. *(Burkle* v. *Burkle* (2006) 135 Cal.App.4th 1045, 1070.) I would recommend that California Rules of Court, rule 2.550(a)(2) be deleted or modified as no statute or court rule may lawfully permit sealing of court records or closure of	**285**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
		proceedings absent the presence of an overriding interest. California Rules of Court, rule 8.46(a), which applies to the Courts of Appeal and Supreme Court, has the same defect. Second, I would recommend there be real documentation in a final report of any asserted problems. To be candid, the draft report documents very little. If parts of this draft report were presented by a nervous young reporter to an old grizzled editor as a story, the young journalist would be scolded, "Kid, you bring this back to me when you have some real numbers and thus a real story; otherwise clean out your desk." I agree with the tenor of the report that journalists' access rights have been violated. But other than a few anecdotes, there is very little proof in the draft report. In that vein, let me offer what incomplete documentation I can based on the filing of papers in the Court of Appeal only in Los Angeles. I review sealed papers filed on appeal and in writ proceedings in only one of the seven Court of Appeal divisions in Los Angeles to verify whether they can be filed under seal. I do not review sealed documents which are sealed discovery matters including peace officer personnel records which are not introduced as a basis for adjudication of the merits and closed hearings conducted pursuant to *People* v. *Marsden* (1970) 2 Cal.3d 118, 122. In the past 7 years, there have been 28 occasions where I can document that a Los Angeles County Superior Court bench officer sealed a document and I raised the issue of whether it should be filed under seal in Division Five. Invariably, I ordered the documents unsealed as permitted by now California Rules of Court, rule 8.46(f). There may have been 10 other cases where handwritten orders were issued by me in connection with individual transcripts and the like. I have no written records of those matters. And no doubt there have been cases about which I have forgotten. To sum up, in the last 7 years, there may have been 50 cases at most where a document was sealed which I ordered unsealed. And we have maybe one writ petition per year involving court documents. We have had only 1 writ petition in the22 years I have been in Division Five which involved a prior restraint. In my view, the experience of one justice in one division over a seven-year period in Los Angeles is insufficient documentation for the public policy initiatives in terms of sealing rules urged by the committee. We need the facts as they relate to the trial courts, Courts of Appeal and Supreme Court and then let the chips fall where they may.	
Public Defender Los Angeles	**N**	This recommendation deals with sealing of court records and would mandate the courts to	**286**

Recommendation 3: Orders Sealing Records			
Commentator	**Position**	**Comment**	
County by Michael P. Judge, Public Defender		develop a rule of court that requires all courts to post notice of any application for, or entry o~ an order sealing a record on their website. In addition, the Committee urges supporting legislation a11owing the award of attorney's fees and costs-in civil matters only-to any party successfully challenging an order sealing a record or an application for sealing. **Analysis:** The public posting of sealing proceedings can easily result in the evisceration of the exact benefit the court intends to confer by granting such a remedy after a showing of good cause. The media wants to litigate sealing orders and to even get paid for their trouble. The law dealing with sealing is well-established and is found in the Rules of Court and case law. Again, judicial education would seem to be the key, not changes to well-established rules. The media should not be able to litigate sealing until after a case has terminated and should not be able to obtain attorney's fees.	

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Recommendation 4: Educational Content and Programs			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**287**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**288**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**289**
Hon. William Kolin, Superior Court of Contra Costa County	**A**		**290**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**291**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	This should be left up to each individual superior court.	**292**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**293**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	See previous above.	**294**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**295**
Earl Maas	**N**	This is a bad idea. Judges are not supposed to be concerned with how they are portrayed in the media. They are supposed to be interested in fairness and justice for the parties appearing before them.	**296**
Hon. Michael A. Savage	**N**		**297**
Laurence Dornstein, Beverly Hills	**N**		**298**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**A**		**299**
Hon. Andrew P. Banks, Superior	**N**	In these times of critical funding shortages and the mood of the electorate towards excessive	**300**

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Recommendation 4: Educational Content and Programs			
Commentator	**Position**	**Comment**	
Court of Orange County		and wasteful government spending I am surprised that anyone could make such a recommendation with a straight face.	
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**	It does not appear that there are sufficient financial and physical resources to allow judicial officers to take the currently available training.	**301**
Hon. Greta Fall, Superior Court of Sacramento County	**N**	Creation of regional academies is fiscally irresponsible.	**302**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**AM**	That the Legislature fund this additional training, not supplant funds presently used for court operations.	**303**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**304**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney	**N** **A**	Trial courts should have the discretion to develop appropriate committees at a local level depending on resources and levels of interest demonstrated by potential participants. Opposition is made to development of judicial branch education of the media. Support more substantial educational content for judges and staff on media issues.	**305**
Hon. John D. Conley, Superior Court of Orange County	**AM**	Some training would certainly be helpful.	**306**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**307**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**308**
Superior Court of Solano County by Hon. D. Scott Daniels	**AR**	Our court strongly supports the availability of judicial education on all topics relating to the administration of justice, including programs to enhance communication among the Bench, Bar, media, court staff and public, provided that such programs are in compliance with the Judicial Cannons of Ethics. The recommended development of Bench-Bar-Media Academies may violate the Judicial Cannon of Ethics prohibiting judicial officers from associations and activities that have political views and agendas.	**309**
Superior Court of Sacramento County by Hon. Steven White	**N**	Our court questions the need to impose a top-down mandate that assumes local courts have not or are incapable of forming their own Superior Court Bench-Bar-Media Committees. In fact, many of these committees exist and operate throughout the state and somehow have been able to function without AOC staff involvement. This appears to be another solution in search of a problem.	**310**

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Recommendation 4: Educational Content and Programs			
Commentator	**Position**	**Comment**	
		Likewise, Sacramento has been a leader in the creation of its own "Media Boot Camp" without need of AOC involvement or staff. Our court is more than willing to freely share our innovative educational media outreach program with any other court in the state. We will do this without the costly overhead inherent in the AOC Education Division/CJER and the staff-intensive AOC Office of Communications.	
Hon. Charles Wieland, Superior Court of Madera County	**N**	Leave reality as it is.	**311**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**312**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**313**
Donald Wilson, Carmel & Naccasha, Paso Robles	**AM**	Fine, if there is already money to pay for it.	**314**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	We don't have the money	**315**
Donna Domino, IMV Info, San Rafael	**A**		**316**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**317**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**318**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**	Apparently we are going to disregard the fact that as sitting bench officers, we are prohibited from making public comment on pending cases.	**319**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**320**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	Local courts can do this.	**321**
Hon. Dan Thomas Oki, Superior	**N**		**322**

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Recommendation 4: Educational Content and Programs			
Commentator	**Position**	**Comment**	
Court of Los Angeles County			
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**323**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**324**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**325**
Charity Kenyon, Counsel for the McClatchy Company, Sacramento		We have no comment on these recommendations. Our main communication issues have arisen outside of Sacramento County, when a court has imposed such a broad gag order that counsel and court personnel feel they cannot say, much less explain, anything about what has or is scheduled to happen in the course of a given proceeding. Recommendation 2 should assist with this problem.	**326**
Superior Court of Ventura County by Hon. Kevin J. McGee	**N** **A**	The formation of committees should be left to the discretion of the trial courts as a local matter. Additional AOC training for judges and court staff could be beneficial. Training for the media should be accomplished through utilizing the AOC's website, as opposed to a classroom course during this period of limited resources.	**327**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**328**
Hon. Richard Toohey, Superior Court of Orange County	**N**	What a farcical idea...regional superior court academies!!	**329**
Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County	**A**		**330**
William Bennett Turner, Lecturer UC Berkeley	**A**		**331**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**332**

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Recommendation 4: Educational Content and Programs			
Commentator	**Position**	**Comment**	
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	**333**
Superior Court of Kern County by Hon. Michael B. Lewis	**N**	Our court strongly objects to every aspect of these recommendations. These recommendations strike at the very heart of what it means to be a judge. These proposals foster the concept that a judge must concern himself or herself with media reaction or media characterization of judicial decision-making. This is evident in the recommendation that judges and the media must cozy up together in regional "academies" to promote "respectful relationships" and "on-going dialogue." The hallmark of being a judge is independence and courage. Perhaps we simply need to take our cases to the editorial boards of our major newspapers and ask them how they want us to decide them. This type of intermingling of social and political functions is precisely what the judiciary should be attempting to avoid rather than promote. This "two-way" street proposed by the committee is an astonishing assault on judicial independence. Why stop with the media? Should we have regional academies to promote a "two-way" street with the oil industry? With Agriculture? With Education? With environmental advocates? With the ACLU? With the American Nazi Party? This recommendation is so contrary to the basic charge of the court that it demonstrates the problem with having too few judges sitting on this committee. The idea of having regional academies is once again an attack upon the autonomy of local courts. This "regionalization" of our courts appears to be a long-standing goal of the AOC and has little to do with the issue of media relations. These responsibilities belong solely in the hands of the constitutionally mandated independent trial courts of each county.	**334**
Superior Court of Solano County by Hon. D. Scott Daniels	**AR**	Our court strongly supports the availability of judicial education on all topics relating to the administration of justice, including programs to enhance communication among the Bench, Bar, media, court staff and public, provided that such programs are in compliance with the	**335**

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		Judicial Cannons of Ethics. The recommended development of Bench-Bar-Media Academies may violate the Judicial Cannon of Ethics prohibiting judicial officers from associations and activities that have political views and agendas.	
Trial Court Presiding Judges Advisory Committee, by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**R**	Drawing from its past experience in judicial officer education, the group also stresses the importance of flexibility, accessibility, discretion, and attention to local court needs in the development and implementation of training and resource materials. Also important is prioritizing the overall training curriculum for the bench through evaluation of the training needs of judicial officers in proportion to available funds and resources.	**336**
Superior Court of Marin County by Hon. Terrence Boren		We do not oppose this recommendation although we do not believe it is necessary. Additionally, since we do not believe that the recommendation is necessary, if there would be any fiscal impact on our court, we would oppose it as unnecessary.	**337**
Appellate Advisory Committee by Hon. Kathryn Doi Todd, Chair	**A**	See letter Attachment E.	**338**
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**A**	No objection as long as the AOC can create programs within its current budget and trial court participation in academies is voluntary.	**339**
Court of Appeal, Second Appellate District, Division Five by Hon. Paul Turner		In terms of education, it occurs now. The draft report neglects to document what occurs now. I have attached the PowerPoint slides used in the new judges orientation for Los Angeles Superior Court. There is also continuing education provided by the Center for Judicial Education And Research which again the draft report does not discuss. I have also enclosed PowerPoint slides and documents I have used in Center for Judicial Education And Research programs.	**340**
Public Defender Los Angeles County by Michael P. Judge, Public Defender		I take no issue with Recommendations 4, 5, 6, and 7.	**341**

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Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**342**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**343**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**344**
Hon. William Kolin, Superior Court of Contra Costa County	**N**	I think judges have sufficient training and experience to write their decisions without further training.	**345**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**346**
Hon. Charles Burch, Superior Court of Contra Costa County	**A**		**347**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	Judges know the law and the last thing we need is another "training" program to allow aoc to dictate to us.	**348**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**349**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	See comment above.	**350**
Hon. Gary Medvigy, Superior Court of Sonoma County	**N**		**351**
Earl Maas	**N**	This is offensive. Judges and Justices have gone through years of school and experience to get where they are.	**352**
Hon. Michael A. Savage	**N**		**353**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**354**
Hon. Andrew P. Banks, Superior	**N**	The law is an often complicated and certainly a sophisticated creature in many respects.	**355**

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Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
Court of Orange County		Newspapers now write to an eighth grade level or less. We should not be going in this direction. I would respectfully suggest that if the media does not understand the meaning or substance of a court decision (or proceedings for that matter) it is the media's responsibility to educate their own reporters, producers etc. There have been many distinguished reporters who actually went to law school to educate themselves about the law. That self education process to better understand the areas they are assigned to cover should remain with them and the media in general. As for the public, we have the public education system that has sent forth into adulthood their former students. We should not be trying to write down to some arbitrary level like the newspapers do. Learned Hand, Felix Frankfurter, and how many other great jurists do you think will be rolling over in their graves at the idea of writing opinions down to the lowest common denominator of education?	
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**		**356**
Hon. Jaime Rene Roman, Superior Court of Sacramento County		It would appear that this recommendation suggests judicial officers write for the press--not the litigants.	**357**
Hon. Kenneth C. Twisselman II, Superior Court of Kern County	**N**	Judges already have enough educational requirements to meet in order to properly perform their duties without requiring them to also assume the duties of a public information officer. If this training is elective, and not mandatory, I have no objection.	**358**
Hon. Greta Fall, Superior Court of Sacramento County	**N**	Judges should not be trained to tailor their rulings for the benefit of the media.	**359**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**360**
Superior Court of Yolo County, by Dani Rogers, Supervising Research Attorney	**N**	While writing clearly is an important judicial skill, it is not the Judicial Council's role to advise to judges how to draft decisions. Whether the media understands a judicial decision is less important than whether the decision lays a proper legal framework for the parties or fo r appellate review. The Judicial Council should not be advising what "[i]ntroductory remarks or paragraphs" should be included in judicial decisions. This is not a proper rule of "court administration, practice and procedure." There is no objection to general courses regarding how to how to write clearly. Objection is made to training on how to tailor decisions to a particular audience other than participants in the case.	**361**

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Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
Superior Court of Sacramento County by Hon. Steven White	**N**	This Recommendation leads with the following statement: "Judicial officers need to be able to better summarize and explain the court's decision (at the beginning of an opinion) in language that is easily understood by the media and the general public". This Recommendation assumes, without any apparent evidence, that judges lack the ability to effectively communicate their rulings to the press and public. We view this assertion as both baseless and condescending. It fails to account for the fact that judges are independently elected constitutional officers tasked with dispensing justice – not writing headlines or "sound bites" for the press. The report goes on to assert, *"Since writing a good news lead is an acquired skill, the committee believes that guidelines should be developed detailing when it is particularly important to draft a brief summary and how to draft a summary"*. We question under what authority the AOC or Judicial Council acts when it purports to mandate that the judges of this state follow "guidelines" which require a certain writing style. We view any attempt to craft such a "guideline" as an attack upon the discretionary power that judges inherently possess. There is simply no demonstrated need to micromanage such aspects of the trial courts' operations, nor is the AOC or Judicial Council possessed of authority to do so.	**362**
Hon. Richard G. Cline, Superior Court of San Diego County	**N**	I strongly disagree with Recommendations 5, 6 & 7. These recommendations presuppose that the work product of the courts, that is, their decisions, should meet the needs of the media. This is a false premise in that the duty of the court is not and never has been to provide information to the media. The court dispenses justice, resolves controversies, and decides cases involving the parties before it. The media is only a peripheral player watching from the sidelines. If the media wants better "news" from the court, it is incumbent upon it to educate its reporters and journalists. If the reporters and journalists cannot understand the workings of the court, then the media should expend the time and money to train its own people. This should not be a burden upon the court.	**363**
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	**N**	We are not convinced that judicial officers need to spend their limited time being trained in how to write statements which can be "easily grasped" by the media and public.	**364**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**365**

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Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**366**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**367**
Hon. Charles Wieland, Superior Court of Madera County	**N**	I have a degree in broadcast journalism. I worked in broadcasting for a decade. If I had wanted to be a public information officer, then I would not have gone to law school. I have no trouble explaining myself from the bench or in my written rulings. I'm not going to dumb it down for media representatatives, bloggers, or others with recording equipment who are too intellectually challenged to read the forms that they are presently required to fill out and submit. Besides, when we provide them with forms telling them what must be done and when to do it, and they still don't comply, how much training does a JUDGE need to more effectively communicate? We should not be rewarding those who are ignorant and proud of it. We should be protecting the rights of those who seek justice from the court as litigants before the court. The right of a free press, no matter how one defines "press", comes with certain obligations. Those obligations include educating oneself on the requirements of the reporter's job, the process, procedures, and duties of the court, and the rights of those who appear in court. My small court doesn't have the resources to reinvent this wheel that doesn't need a tire change.	**368**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**369**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**370**
Donald Wilson, Carmel & Naccasha, Paso Robles	**AM**	Fine, if we have the money to pay for it.	**371**
Laurence Dornstein, Beverly Hills	**N**		**372**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**373**
Hon. John D. Conley, Superior Court of Orange County	**N**	Unnecessary	**374**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	We don’t have the money.	**375**

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Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**376**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**A**		**377**
Donna Domino, IMV Info, San Rafael	**A**		**378**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	This is arrogant and offensive.	**379**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**380**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**381**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**382**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**383**
Superior Court of Ventura County, by Hon. Kevin J. McGee	**N**	While writing clearly is an important judicial skill, whether the media understands a judicial decision is less important than whether the decision contains a proper legal basis for the parties or for appellate review. It is also concerning that training would be provided on how to write decisions more understandable by the media instead of the participants to the proceeding. This issue appears to be better addressed by education for the public and media regarding legal proceedings.	**384**
Superior Court of San Francisco County by Hon. James J. McBride		• Develop judicial training on clear presentation of statements. This recommendation is intended to teach Judges and Justices how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the media and the public. *Comment*: The proposal is of dubious utility and scope. First, scope: Does this refer to statements of decisions only, for example, or all rulings a Judge might make, including all law and motion matters? If the latter, the burden is intolerable. Second, utility: either it means that	**385**

Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
		Judges must change the manner in which they write statements of decision, which is unlikely to be effective, or it will require Judges to write yet another document, a form of executive summary or syllabus (this is implied by the Report's language, quoted below), which will burden busy Judges, and will create a document which could be interpreted (and therefore *will* be interpreted) differently than the document it purports to summarize. We note the Report's statement, "The U.S. Supreme Court and the California Supreme Court routinely prepare summary statements along with some appellate and superior court judicial officers." However, we also note that trial courts do *not* have the legal staffing available to the appellate bodies, and are far, far below staffing needs for the current load of legal research and writing work. We do not oppose, and indeed we encourage, instruction at e.g., Judicial College and continuing education sessions on the subject of clear writing, the avoidance, when possible, of legal jargon, and sensitivity to the fact that Judges' work product should be understandable, to the extent possible, by the public.	
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**386**
Hon. Richard Toohey, Superior Court of Orange County	**N**	We need Judges on the Bench trying cases...not at an academy being indoctrinated!!	**387**
William Bennett Turner, Lecturer, UC Berkeley	**A**		**388**
Superior Court of Amador County by Hugh Swift, CEO	**N**	Often, given the complexities of the law and procedure, it may be difficult to present a ruling or decision in a manner that can be easily grasped by someone who does not have a background in the law or an understanding of the unique facts of the case. The Court's primary obligation should be to rule in a manner that takes into consideration all relevant and admissible evidence presented in the context of the applicable law.	**389**
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I	**390**

Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
		appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	
Superior Court of Kern County by Hon. Michael B. Lewis	**N**	Our judges all desire to express themselves in clear terms, and they believe that they presently accomplish that desire. This recommendation appears to be based on the flawed assumption that judicial rulings are unclear. It is important that, of necessity, judges communicate in legal terms that have evolved over centuries. The judge, in his or her statements of decision, is applying the rule of law to the facts of the case so that the litigant has a ruling which not only can be relied upon, but also will withstand appellate review. A suggestion that a judicial legal ruling should be expressed in terms convenient or comfortable to some "non-target" audience, rather than in the terms compatible with stare decisis and legal clarity is counter-productive and a danger to the rule of law. Legal terms and expressions of thought in those terms have well recognized meaning. The judge has spent a minimum of three years in law school or reading the law, has passed a written bar exam, has practiced law for ten years, and has sat for some period as a judge expressing his or her legal thoughts in the terms which this recommendation appears to assail. The recommendation is at worst insulting to the system, and at best unnecessary. There are currently legal writing classes available to any judge who desires to improve writing skills.	**391**
Superior Court of Solano County by Hon. D. Scott Daniels	**R**	Our court strongly supports the availability of judicial education on all topics relating to the administration of justice, including programs to enhance communication among the Bench, Bar, media, court staff and public, provided that such programs are in compliance with the Judicial Cannons of Ethics. The recommended development of Bench-Bar-Media Academies may violate the Judicial Cannon of Ethics prohibiting judicial officers from associations and activities that have political views and agendas.	**392**
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**N**	Judicial Officer Training on Clear Presentation of Statements, though the Executive Committee recognizes the importance of a judicial officer's writing skills and subsequent training in those areas, it advises against the development of training to write for a specific audience, particularly if it comes at the expense of whether the written decision lays a proper legal framework for the parties or for appellate review.	**393**
Superior Court of Tuolumne County by Hon. Boscoe	**N**	This recommendation assumes that judges lack the ability to effectively communicate their rulings to the press and public. Objection is made to training or guidelines on how to craft decisions to a particular audience rather than lay a proper legal framework for the decision. It is not the Judicial Council's role to attack judicial discretion or to micromanage trial courts'	**394**

Recommendation 5: Judicial Officer Training on Clear Presentation of Statements			
Commentator	**Position**	**Comment**	
		operations. Offering training to all judges that is designed to improve writing style may be appropriate as a part of continuing judicial education, but this training should not be mandated by a rule of court.	
Superior Court of Marin County by Hon. Terrence Boren	**N**	We are opposed to this recommendation. The recommendation would require judicial officers to write and state their opinions/decisions in a manner that will be understood by the news media. In addition, it would require the court to commit to an educational program which would instruct judicial officers on how to write in a manner that the media can understand and potentially use in a news story. The recommendation suggests that we, as judicial officers, should assist news media in writing a "good news lead." It also suggests that while writing an opinion, we explain which decisions are discretionary and which are not. It further suggests that we explain the difference between the legislative Branch of government and the Judicial Branch of government in situations where that might be misunderstood by the media. We really do not understand' the need for this recommendation. Nor do we feel that we should be required to speak to the media while rendering an opinion. Our rulings are for the litigants. It is our duty to explain it properly to them, not to the media.	**395**
Appellate Advisory Committee, by Hon. Kathryn Doi Todd, Chair	**AM**	See letter attachment E.	**396**
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**R**	The recommendation to develop training for judges specifically designed for the benefit of the media and non-parties should be subject to careful review by CJER and the TCPJAC. Judicial education funds are limited. The overwhelming majority of written decisions issued by trial judges are never read by anyone other than the parties and possibly an appellate court. Therefore, a cost-benefit analysis is required to determine whether the need for this type of specialized training should take precedence over the development of other education courses.	**397**
Public Defender Los Angeles County by Michael P. Judge, Public Defender		I take no issue with Recommendations 4, 5, 6, and 7.	**398**

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Recommendation 6: Explanation of Legal Terminology			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**399**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**400**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**401**
Hon. William Kolin, Superior Court of Contra Costa County	**N**	That is plain ridiculous.	**402**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	In multiple languages?	**403**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**404**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**405**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	See executive summary.	**406**
Edward Opton, Jr., Of counsel, National Center for Youth Law	**A**		**407**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**408**
Earl Maas	**N**	In the age of the internet, this is silly.	**409**
Hon. Michael A. Savage	**N**		**410**
Laurence Dornstein, Beverly Hills	**N**		**411**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	We can't keep spending taxpayer money to duplicate information already available to people. There are dictionaries - on line no less- that can explain all this to those who actually want to know. How many people will be hired to develop, operate and update this program?	**412**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**		**413**

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Commentator	**Position**	**Comment**	
Hon. Kenneth C. Twisselman II, Superior Court of Kern County	**N**		**414**
OpenGovernmentRadio.com by Stephen Buckley, Program Host	**A**		**415**
Hon. Greta Fall, Superior Court of Sacramento County	**A**	Sacramento County already does this.	**416**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**N**		**417**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**418**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney	**AM**	Recommend that the Judicial Council prepare, post, and maintain the glossary with trial courts to provide a link to courtinfo.ca.gov.	**419**
Superior Court of Sacramento County by Hon. Steven White	**AM**	Our court has no objection to this Recommendation provided the AOC has the "available resources" to undertake a review and consolidation of online glossaries currently available. However, we object if the implementation of this Recommendation would require additional resources at a time when trial courts are exercising fiscal restraint.	**420**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**421**
Hon. Richard G. Cline, Superior Court of San Diego County	**N**	I strongly disagree with Recommendations 5, 6 & 7. These recommendations presuppose that the work product of the courts, that is, their decisions, should meet the needs of the media. This is a false premise in that the duty of the court is not and never has been to provide information to the media. The court dispenses justice, resolves controversies, and decides cases involving the parties before it. The media is only a peripheral player watching from the sidelines. If the media wants better "news" from the court, it is incumbent upon it to educate its reporters and journalists. If the reporters and journalists cannot understand the workings of the court, then the media should expend the time and money to train its own people. This should not be a burden upon the court.	**422**
Hon. Charles Wieland, Superior Court of Madera County	**N**		**423**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**424**

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Commentator	**Position**	**Comment**	
Donald Wilson, Carmel & Naccasha, Paso Robles	**A**		**425**
Hon. John D. Conley, Superior Court of Orange County	**AM**	If this is a valid goal, it should be done by AOC statewide, not 58 different glossaries. It is a "nice to do" goal, not really important.	**426**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	We don't have the money.	**427**
No name, title, or organization given.	**N**		**428**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**429**
Eric Schwettmann, BRGS. Attorney, Glendale	**A**		**430**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**AM**	I do not object as long as there is no significant expense attached.	**431**
Donna Domino, IMV Info, San Rafael	**A**		**432**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**433**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**434**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**435**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**A**		**436**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	This should be a matter of local court discretion.	**437**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**438**

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Commentator	**Position**	**Comment**	
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**439**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**440**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**441**
Superior Court of Ventura County by Hon. Kevin J. McGee	**A**	Concur with this recommendation based on the AOC preparing and maintaining the glossary for consistency for use by the trial courts.	**442**
Superior Court of San Francisco County by Hon. James J. McBride	**N**	• Explanation of Legal Terminology. Encourage trial courts to post glossaries or explanations of legal terminology in multiple languages to their websites for the benefit of the media and broad public. *Comment:* We oppose the proposal. Glossaries are widely available online. (A Google search on "legal glossary" in 0.12 seconds reveals 25,100,000 results.) Having the 58 "trial courts" post their view on the meaning of various terms will (1) create confusion with multiple definitions of the same terms, (2) severely burden overworked staff and Judges, and (3) suggest the adoption, by the courts, of certain meanings of terms which may interfere with a case by case determination of the term.	**443**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**444**
Hon. Richard Toohey, Superior Court of Orange County	**N**	The internet already exists for all to utilize!!	**445**
Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County	**AM**	AOC to maintain and trial courts to link from their websites to courtinfo.ca.gov	**446**
William Bennett Turner, Lecturer UC Berkeley	**A**		**447**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**448**
Ed Chapuis, News Director,	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training,	**449**

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Commentator	**Position**	**Comment**	
KTVU Channel 2 News		explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	
Superior Court of Kern County by Hon. Michael B. Lewis	**AM**	The rule is not necessary. Reporters have access to published legal dictionaries. Both Black's Law Dictionary and Webster's New World Law Dictionary are available for purchase through on line vendors. In this county, the Kern County Law Library is open during normal business hours. If the AOC considers it a reasonable expenditure of its currently available funds, without impacting the trial court funding, this court does not have any further objection to the production and linkage of a glossary, so long as it is accessible without cost to all members of the public.	**450**
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon Gary Nadler, Vice-Chair	**AR**	Committee supports the BBMC position that unless the participants, the public, and the press are able to understand the judicial process, there is no meaningful access to justice. The Executive Committee recommends additional research into existing resources available to the public regarding definition of legal terms to avoid the development of potentially redundant services. Drawing from its past experience in judicial officer education, the group also stresses the importance of flexibility, accessibility, discretion, and attention to local court needs in the development and implementation of training and resource materials. Also important is prioritizing the overall training curriculum for the bench through evaluation of the training needs of judicial officers in proportion to available funds and resources.	**451**
Superior Court of Marin County by Hon. Terrence Boren	**AM**	Our court has no objection to the AOC providing their own website devoted to legal terminology. Although we point out that there are several websites already in existence that are easily accessible for anyone wishing to view them. (see www.law-dictionary.org; ww.nolo.com/dictionarv). However, if this recommendation would require any financial resources from the court, we object to its implementation. We do not have the resources to produce a glossary on the courts	**452**

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Recommendation 6: Explanation of Legal Terminology			
Commentator	**Position**	**Comment**	
		website, especially when there are alternatives readily available to the public.	
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**A**	In order to ensure consistency of use, the AOC, in consultation with CJER and the TCPJAC, should develop a glossary and make it available to all courts for posting on their websites.	**453**
Public Defender Los Angeles County by Michael P. Judge, Public Defender		I take no issue with Recommendations 4, 5, 6, and 7.	**454**

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Recommendation 7: Additional Online Training Materials for Court Staff and Judges			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**455**
KGO-TV, ABC7 News, by Kevin Keeshan, Vice-President, News Director	**A**		**456**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**457**
Hon. Kim G Dunning, Superior Court of Orange County	**A**		**458**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**459**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**460**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**A**	On line training is good, easily accessible & can be done at a judge's leisure!	**461**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**462**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	We have enough.	**463**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**464**
Earl Maas	**N**		**465**
Hon. Michael A. Savage	**N**		**466**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	This seems like just another "make work" program that will require additional staff to develop, operate and maintain it. Enough already.	**467**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**A**		**468**
Hon. Kenneth C. Twisselman II,	**A**		**469**

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Recommendation 7: Additional Online Training Materials for Court Staff and Judges			
Commentator	**Position**	**Comment**	
Superior Court of Kern County			
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**A**		**470**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**471**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney	**A**		**472**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**AM**	I agree as long as the site is truly secure and only available to authorized personnel.	**473**
Superior Court of Sacramento County by Hon. Steven White	**N**	Our State is battling a fiscal crisis. This Recommendation cannot be a priority at a time where the judiciary's budget has been severely cut. We only recently experienced court closures as a result of budgetary problems. If any funds are available, they should be appropriated for the critical operational needs of the courts. That should be the first priority of the Judicial Council.	**474**
Hon. Richard G. Cline, Superior Court of San Diego County	**N**	I strongly disagree with Recommendations 5, 6 & 7. These recommendations presuppose that the work product of the courts, that is, their decisions, should meet the needs of the media. This is a false premise in that the duty of the court is not and never has been to provide information to the media. The court dispenses justice, resolves controversies, and decides cases involving the parties before it. The media is only a peripheral player watching from the sidelines. If the media wants better "news" from the court, it is incumbent upon it to educate its reporters and journalists. If the reporters and journalists cannot understand the workings of the court, then the media should expend the time and money to train its own people. This should not be a burden upon the court.	**475**
Hon. Charles Wieland, Superior Court of Madera County	**N**		**476**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**477**
Hon. Frank F. Fasel, Superior	**N**		**478**

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Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

Recommendation 7: Additional Online Training Materials for Court Staff and Judges			
Commentator	**Position**	**Comment**	
court of Orange County			
Donald Wilson, Carmel & Naccasha, Paso Robles	**A**		**479**
Laurence Dornstein, Beverly Hills	**N**		**480**
Hon. John D. Conley, Superior Court of Orange County	**A**	Can't hurt.	**481**
No name, title, or organization given.	**A**		**482**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**483**
Eric Schwettmann, BRGS. Attorney, Glendale	**A**		**484**
Donna Domino, IMV Info, San Rafael	**A**		**485**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger	**N**		**486**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**487**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	The bureaucrats should find something better to do.	**488**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**489**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**490**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**491**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**492**

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Commentator	**Position**	**Comment**	
Charity Kenyon, Counsel for the McClatchy Company, Sacramento		We have no comment on these recommendations. Our main communication issues have arisen outside of Sacramento County, when a court has imposed such a broad gag order that counsel and court personnel feel they cannot say, much less explain, anything about what has or is scheduled to happen in the course of a given proceeding. Recommendation 2 should assist with this problem.	**493**
Superior Court of Ventura County by Hon. Kevin J. McGee	**A**		**494**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**495**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**496**
Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County	**AM**	Agree so long as it remains an optional resource	**497**
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	**498**
Superior Court of Kern County by Hon. Michael B. Lewis	**AM**	We have no opposition to this recommendation, if adequate and existing AOC funding is available.	**499**
Superior Court of Solano County by Hon. D. Scott Daniels	**AR**	Our court strongly supports the availability of judicial education on all topics relating to the administration of justice, including programs to enhance communication among the Bench, Bar, media, court staff and public, provided that such programs are in compliance with the Judicial Cannons of Ethics. The recommended development of Bench-Bar-Media Academies may violate the Judicial Cannon of Ethics prohibiting judicial officers from associations and activities that have political views and agendas.	**500**
Trial Court Presiding Judges Advisory Committee by Hon.	**AM**	The TCPJAC has been a long-standing proponent of identifying and addressing the educational needs of judicial officers. The group has participated extensively in the review	**501**

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Recommendation 7: Additional Online Training Materials for Court Staff and Judges			
Commentator	**Position**	**Comment**	
Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair		and development of judicial officer curriculum and resource materials. The Executive Committee would like to offer and encourage its involvement in further exploring the need and development of the BBMC-recommended educational opportunities. Drawing from its past experience in judicial officer education, the group also stresses the importance of flexibility, accessibility, discretion, and attention to local court needs in the development and implementation of training and resource materials. Also important is prioritizing the overall training curriculum for the bench through evaluation of the training needs of judicial officers in proportion to available funds and resources.	
Superior Court of Marin County by Hon. Terrence Boren	**AM**	Our court has no objection to this recommendation as long as there would be no financial impact on our court.	**502**
Public Defender Los Angeles County by Michael P. Judge, Public Defender		I take no issue with Recommendations 4, 5, 6, and 7.	**503**

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Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**504**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**505**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**506**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**507**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**508**
California Judges Association by Hon. Keith D. Davis		See letter Attachment G	**509**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	No need, another level of government.	**510**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**511**
Edward Opton, Jr., Of counsel, National Center for Youth Law	**A**		**512**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**513**
Earl Maas	**N**	This is easy, it is not appropriate.	**514**
Hon. Michael A. Savage	**N**		**515**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	This seems to also be a "make work" "expand staffing levels" type of program. See prior comments, please.	**516**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**A**		**517**
Hon. Greta Fall, Superior Court of Sacramento County	**N**		**518**
Hon. Jaime Rene Roman, Superior	**N**		**519**

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Commentator	**Position**	**Comment**	
Court of Sacramento County			
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**520**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney	**N**	The proposal fails to appreciate that these are duties delegated to the trial courts. The Presiding Judge is the spokesperson of the Court (Cal. Rules Court, rule 10.603(b)(1)(E)) and is responsible for meeting with or designating a judge or judges to meet with the news media (Cal. Rules Court, rule 10.603(c)(8)(B)) when appropriate. It should be within the discretion of the Court Executive Officer and Presiding Judge to determine what actions should be taken with respect to media inquiries.	**521**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**	What are these people thinking of? Have they forgotten the wisdom of not trying to be all things to all people?	**522**
Laurence Dornstein, Beverly Hills	**N**		**523**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**N**	judges should not pander to the press	**524**
Eric Schwettmann, BRGS. Attorney, Glendale	**A**		**525**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**A**		**526**
Donna Domino, IMV Info, San Rafael	**A**		**527**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**528**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**529**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**530**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**531**

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Commentator	**Position**	**Comment**	
Superior Court of Sacramento County by Hon. Steven White	**N**	This Recommendation assumes that local trial courts are engaged in disputes with their local media and do not have the resources or ability to "address" such" conflicts". The Report cites a single instance in which the sheriff's staff excluded the public from a hearing, which occurred without the court's knowledge – much less authorization. When the presiding judge learned of the situation, he immediately took appropriate action assuring full public access. The fact that one sheriff, in one county, inappropriately excluded the public from one hearing, in one case, without the court's knowledge, hardly calls for creation of AOC regional media plans and response teams statewide. This is yet another example of a grand and bureaucratic solution in search of a problem. Our court enjoys a positive and professional working relationship with the media. Our one Public Information Officer (PIO) is called upon daily to respond to numerous media inquiries. Our court's PIO is timely and responsive and is trusted to provide accurate information to the media. We point out that she does this without any help or advice from the AOC's Office of Communications. Our court is able to manage its own relationships with the media. Finally, we are concerned with the proposed composition of the "regional teams", which would comprise a "judge, court executive officer or designee(e.g., PIO), members of the media, member of the State Bar, local PIO or other court staff with equivalent experience, AOC regional administrative director, and staff from the AOC Office of Communications". Apart from lacking balance due to insufficient trial court participation, this structure and composition will undoubtedly result in a slow response to whatever media issue is brewing at the time. In our court's experience, most media inquiries have a short turnaround time as the media operates on deadlines. However this plan may look on paper, it cannot succeed in reality. To the contrary, it is much more likely the proposed solution will slow responsiveness to media inquiries.	**532**
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	**N**	While Recommendation 8 recognizes the need to obtain further guidance on ethical issues raised by the implementation of regional media access plans, the question is not merely whether judges should be offering advice or assistance to judges sitting in cases. Additional questions about ex parte communications with the judge should be explored and evaluated.	**533**
Hon. Charles Wieland, Superior	**N**	We don't need more people outside our court telling us what to do, slowing down our	**534**

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Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
Court of Madera County		operations, or adding unfunded costs.	
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**535**
Donald Wilson, Carmel & Naccasha, Paso Robles	**A**		**536**
Hon. John D. Conley, Superior Court of Orange County	**N**	We don't need a "Regional" approach, nor more bureaucracy.	**537**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	we don't have the money	**538**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	What is this: the Soviet Union?	**539**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**540**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**541**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**542**
Charity Kenyon, Counsel for the McClatchy Company, Sacramento	**A**	Again, we have limited comment. In Sacramento and Stanislaus Counties, in particular, we have had very able assistance of PIO's and judicial officers assigned to Bench Bar Media Committees. Through these contacts and committees we have developed some of the procedures that have been used with success in other counties, when high profile cases have threatened to swamp the abilities of court personnel to interact timely with news media. While we would not want to do anything that would threaten those contacts and relationships, we recognize that regional PIO's may prove valuable in smaller counties without these resources. In our experience intervention of the AOC was helpful in a single instance in Yolo County and, with the AOCs assistance, a new Bench Bar Media Committee was born. In such counties the existence of resources within the AOC or regional groups to resolve disputes may be a welcome addition to the toolbox. As noted at the outset, the Fire Brigade system has worked well in the state of Washington. The proposed new structure can only help, where help is needed, and will not disrupt existing, longstanding relationships in larger counties	**543**

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Commentator	**Position**	**Comment**	
Superior Court of Ventura County by Hon. Kevin J. McGee	**AM**	This recommendation should be an optional resource for the trial courts based on the need of each court, not a requirement.	**544**
Hon. Runston Maino, Superior Court of San Diego County	**N**	Recommendations 8, 9, and 10 are what I call "AOC full employment recommendations". In my opinion the taxpayer is already paying for an AOC that is bloated and there is no reason to increase this bloat.	**545**
Superior Court of San Francisco County by Hon. James J. McBride	**N**	We oppose the proposal. This appears to create a clumsy procedure involving far too many people to respond to what is, by definition, a situation requiring rapid response. We are also concerned that the proposal appears to call for one Judge (a liaison "sensitive to and knowledgeable of ex parte issues") in effect to stand in for and in some respect represent the Judge involved in the specific case. It is perfectly reasonable to have resources available to the Judge presiding over the case (such as the CJA hotline) and for Judges to routinely confer privately among themselves on various issues, including media access. However, only the Judge presiding over the case should be designated and have the authority to handle media requests. The formal involvement of multiple Judges will dilute the authority of the presiding trial Judge and create deep confusion on matters of responsibility and thus accountability. We note this language in the Report, "Rather, their [the regional access team] purpose is to act as a resource to courts that wish to have their assistance. The presiding judge of the involved court is the decision maker regarding the resolution of free press–free trial disputes." If the proposal is to have the cited team available should a trial Judge desire to consult, we note two residual issues. First, the proposal creates an unnecessary expense. Second, we believe that there are insuperable ethical issues in having a trial Judge, directly or indirectly, consult with a non-judge in the exercise of the trial Judge's duties.	**546**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**547**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**548**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**549**
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth	**550**

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Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
		adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	
Superior Court of Kern County by Hon. Michael B. Lewis	**N**	This recommendation is an absurd proposal that presumes that there is a problem. Our judges can think of few instances in which there was ever any need of a "fire brigade" concept to resolve media coverage disputes. If the media is unhappy with any restrictions in a particular case, the media have recourse through regular judicial process. It is entirely inappropriate under principles of the common law and stare decisis to impose a committee composed of all stakeholders" to attempt to intervene in a litigation dispute and "mediate" an independent judge's decision without normal appellate process. This is ex parte communication, unlawful interference with judicial decision-making, and an unconstitutional proposal for a process that undermines the integrity of the public judicial record in any proceeding in which it would be invoked.	**551**
Superior Court of Solano County by Hon. D. Scott Daniels		Our court questions whether funding for the recommended Regional Media Access Plan and the three Public Information Officer positions is actually available, and if such funding is available, whether other higher priority uses of the funds should be first addressed.	**552**
CNS, Bill Girdner, Editor	**A**	I write in response to the Judicial Council's invitation for comments on the Bench-Bar Media Draft Report. I make these comments in my personal capacity as the founder and editor of a news service I started 20 years ago in Pasadena called Courthouse News Service. Courthouse News is submitting a separate set of comments, made in its organizational capacity and through its attorneys. I submit these comments in my personal capacity so that I may convey my individual observations as a longtime journalist covering California's courts. I have worked as the editor of Courthouse News Service for the last 20 years, and worked as a journalist covering legal stories primarily for the *Los AngeLes Daily JournaL,* the *The Boston Globe* and *The New York Times* for the preceding ten years. The opening sentence of the Issue Statement of the Bench Bar Media Committee Draft Report is one that is central and critical to understanding the role of the press in covering California's	**553**

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
		courts: "A free and open society relies, in part, on an independent and accountable judiciary, a fair and just legal system, and a free and robust media." Similar sweeping and lofty words are etched into stone or included on plaques at courthouses around California. For example, carved into a rock pillar at San Diego Superior Court, near the ground-level cafe, are the words, "The salvation of the state is in the watchfulness of the citizen." But as with any statement of ideal, it is not just the thought that counts. The principal needs to be applied. While the Draft Report addresses important aspects of the relationship between the media and the justice system, I believe it omits a key area of that relationship: access to the court record. The importance of the court record was underscored in the Trial Court Records Manual, which was proposed by the Court Executives Advisory Committee and the Court Technology Advisory Committee and offered for comment one month ago. That Manual describes the record as "fundamental." Traditionally, journalists review that fundamental aspect of the court's work through a longstanding and widespread institution called the "press box," where the day's new record is placed by court employees for review by reporters covering the courthouse beat. As the word beat suggests, the reporter is making his or her rounds, and checks the press box in the course of looking for news. But the press box is disappearing. What I have seen in the 30 years I have been covering California's courts is that, contrary to the great ideals of our courts and our nation, administrative changes have interfered with or undermined the press box and its equivalent methods for press review of the court's daily record. The result is that the judiciary is less accountable, the fairness of the legal system is harder to see, and the media is thereby less free and its ability to report on the courts less robust. As the most recent example -and there are so many stretching over the years, up and down the state -Kern County Superior Court traditionally allowed members of the press to go behind the counter and review the record in "the media room," as it is called by the Court staff. About a	

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
		month ago, our reporter was by told by the Court staff that, based on a new policy, the media room can now only be used by certified photocopiers. Under California's statutory scheme, certified photocopiers are not members of the media and perform an entirely different job. That policy change in Kern County is merely one example among a host of small moves at individual courts that restrict press access to the record. But there is one major, statewide administrative initiative that is centrally driven and that has had a clear slowdown effect on access. We have experienced a one-to-one correlation between a slowdown on access to new filings and the four courts that have adopted the new California Case Management System, in San Diego, Orange, Ventura and Sacramento counties. Sacramento County Superior Court is perhaps the most poignant example of an effort by the press and a local administrator to improve media access, an effort that was promptly rolled over by the statewide CCMS program. After a meeting in May 2007, a Civil Division Manager in that Court set up a pilot program that for a brief golden period provided same-day access to new matters which were indeed placed in a press box. The press box lasted only a few months and met its formal demise when the court rolled out the new statewide CCMS system, which puts press access at least a day behind and just as often two days behind, by which time news value is vastly diminished. The helpful Civil Division Manager left the court around the same time. Across the state and over the years, when the press has taken a stand on such matters, it generally falls to the presiding judge to resolve conflicts with administrators over access. But with the power of the administrators in long-term ascendance and the power of presiding judges limited by their two-year terms, that avenue of appeal has become increasingly fraught with inaction. That is why I support the creation of the Regional Media Access Plan as a potentially effective way to restore open press access where it has been choked. I believe the Plan would reassert the influence of judges in the process. The Draft Report's recommendation for such a plan is based on Washington State's Fire Brigade system. Some years ago, a member of that brigade, King County Superior Court Judge William Downing, played a central role in allowing our news service to obtain a	

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
		meeting with the King County Superior Court Presiding Judge Richard Eadie. With a bit of arm twisting, Judge Eadie then persuaded the Court's administrative staff to give the press prompt and full access to the paper record in that Court. So I have direct experience with that system and can recommend its effectiveness. The Media Committee in Los Angeles County Superior Court performs a similar function, where judges, lawyers and reporters meet to resolve problems in press coverage. Thus, Judge Elizabeth Grimes, now on the Second District Court of Appeal, was highly effective as the co-chair of that committee in returning same day access to the record. The current co-chair, Judge Amy Hogue, has been equally effective in returning access when it was removed altogether. With respect to that portion of the Draft Report recommending a Regional Media Access Plan, I found one aspect of the report puzzling. The draft cites as an example of matters that the plan would address: "obscure local procedures regarding access to documents." Indeed, there is nothing obscure about procedures regarding access. There is often something onerous about them. But there is nothing mysterious or obscure about them, nor about their effects on press coverage. By and large, the press walks away. At the Orange County Superior Court, reporters for the *Los Angeles Times* and the *Orange County Register* as well as smaller papers regularly checked the press box holding that day's new actions. After Court's staff changed the procedure and began placing only the previous day's new actions in the box, those reporters stopped checking it. Because a journalist cannot justify to an editor writing a story today about yesterday's news to be published in tomorrow's newspaper. Speed and immediacy have always been essential elements to news reporting, all the more so today. In those courts that take away or undermine the press box, press coverage becomes less "free and robust."	
Courthouse News Service by Rachel Matteo-Boehm, Holme Roberts & Owen LLP (San Francisco)	**A**	Courthouse News strongly supports the implementation of the Regional Media Access Plan ("RMAP"). Although the Report focuses on the RMAP mainly in terms of high profile court proceedings, it could also be useful in resolving day-to-day problems accessing the public court record. Indeed, Courthouse News has found the Bench-Bar Press Committee of Washington (the so-called Fire Brigade), on which the Plan is evidently modeled, to be effective in resolving routine access issues. A similar committee of the Superior Court for the	**554**

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
		County of Los Angeles has also intervened to successfully address problems with access to the court record. Courthouse News thus respectfully suggests that the Committee consider amending the Report to explicitly state that the RMAP procedures need not be limited to court proceedings, but can also be used to resolve other types of problems involving media access to courts and the court record.	
Court Executive Advisory Committee (CEAC) by Michael M. Roddy, Chair; Kim Turner, Vice-chair	**AM**	[Regarding subsection A] Pursuant to California Rules of Court 10.603(b)(1)(E) and 10.603(c)(8)(B), the presiding judge is spokesperson for the court and is responsible for meeting with or designating a judge or judges to meet with the news media when appropriate. CEAC's concern is that a recommendation requiring contact with a regional dispute group is not be a timely way to address a media issue where an immediate response may be needed. The requirement of a regional media access will result in additional work for the court and its employees who coordinate media activities as they work to mediate disputes regarding access to the judicial process. CEAC believes the use of a regional dispute group should be an optional resource available to the trial courts and for use at their discretion.	**555**
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**N**	Pursuant to California Rules of Court, rules 10.603(b)(1)(E) and 10.603(c)(8)(B), the presiding judge is the spokesperson for the court and is responsible for meeting with or designating a judge or judges to meet with the news media when appropriate. CEAC's concern is that a recommendation requiring contact with a regional dispute group may not be a timely way to address a media issue where an immediate response may be needed. The requirement of a regional media access will result in additional work for the court and its employees who coordinate media activities as they work to mediate disputes regarding access to the judicial process. CEAC believes the use of a regional dispute group should be an optional resource available to the trial courts and for use at their discretion.	**556**
Superior Court of Tuolumne County by Hon. Boscoe	**AM**	Our court's Presiding Judge and Court Executive Officer are able to manage our own relationships with the media. We are responsive and provide accurate information and enjoy a positive working relationship. This recommendation for a Regional Media Access Plan if implemented should be an optional resource.	**557**
Superior Court of Marin County by Hon. Terrence Boren	**AM**	We do not see a need for this recommendation. However as long as there is no financial impact on the court, we do not object to it.	**558**
Superior Court of Amador County by Hon. David S. Richmond; Hugh	**N**	The Regional Media Access Plan seems cumbersome and would likely prolong resolution of conflicts between the media and the Courts. The plan calls for gathering a team comprised of	**559**

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)			
Commentator	**Position**	**Comment**	
K. Swift, Court Executive Officer		members from across an AOC region to resolve disputes between the court and media quickly. As a practical matter, it is difficult to conceive how this would be an effective means of resolving these disputes. Judges, CEOs, PIOs, AOC Regional Administrative Directors and members of the press are typically very busy. It is questionable whether the team could come together on short notice to meet or even participate in a conference call.	
Los Angeles Times Communications LLC by Karlene W. Goller, Esq.; California Newspaper Publishers Association by Thomas W. Newton, Esq.; The Associated Press by David Tomlin, Esq.; The New York Times by David McCraw, Esq.	**A**	See letter Attachment F	**560**
Public Defender Los Angeles County by Michael P. Judge, Public Defender	**AM**	As to Recommendation 8, it should only be approved if commensurate resources to counter the fire brigades efforts are provided to the defense in criminal cases. Likewise, with Recommendation 9.	**561**

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Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**562**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**563**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**N**	With the fiscal realities of local government I have a hard time justifying salaries for these positions. We've managed to deal with high profile trials without extra people so far. I would suggest that an outside media coordinator be hired on a case by case basis, funded by the various media organizations, not taxpayers.	**564**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**565**
Hon. Kim G Dunning, Superior Court of Orange County	**N**	This proposal creates another bureaucratic layer and has the potential to interfere with a local court's interactions with the public it serves.	**566**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**567**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**568**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	Absolutely not, why do we need another level of highly paid administrators? Local superior courts should deal with their own issues.	**569**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**570**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	no more expenditures	**571**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**572**
Earl Maas	**N**		**573**
Hon. Michael A. Savage	**N**		**574**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	There is no need for these positions in my opinion. My prior comments in large part apply to this as well. The AOC does not need to have its staff expanded. This proposal seems to totally ignore the current mood of the People of California towards wasteful and unnecessary	**575**

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		government spending by way of expanding bureaucratic positions.	
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**	We do not have the resources to fund the current mandates.	**576**
Hon. Kenneth C. Twisselman II, Superior Court of Kern County	**N**	If such funds are available, we have higher priorities to spend it on, such as keeping the courts open and properly staffed.	**577**
Hon. Greta Fall, Superior Court of Sacramento County	**N**	Creation of three regional public information officers is unnecessary and fiscally irresponsible.	**578**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**AM**	That the Legislature fund these positions, rather than supplanting court operation funding	**579**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**580**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**N**	waste of precious resources to fund an admin position of this type.	**581**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**	NO MORE SPENDING.	**582**
Donna Domino, IMV Info, San Rafael	**A**		**583**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**584**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney	**N**	The proposal fails to appreciate that these are duties delegated to the trial courts. Trial courts should retain/designate their own public information officers to the extent they deem appropriate. Trial courts are in a better position to know and evaluate media issues than regional public information officers. The Presiding Judge is the spokesperson of the Court(Cal. Rules Court, rule 10.603(b)(1)(E)), is responsible for meeting with or designating a judge or judges to meet with the news media (Cal. Rules Court, rule 10.603(c)(8)(B)) when appropriate, and has a duty to support and encourage the judges to actively engage in community outreach to increase public understanding of and involvement with the justice system and to obtain appropriate community input regarding the administration of justice (Cal. Rules Court, rule 10.603(c)(8)(C)). When trial courts are struggling with adequate staff and the possibility of layoffs, no further positions should be authorized for the Administrative Office of the Courts. Support	**585**

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		specialized training for individual trial court public information officers.	
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**AM**	I would only agree when funds are available. Before then, all vacant judicial positions must be filled, all support staff positions need to be filled and the courts neeed to be returned to full work weeks (i.e. no cost cutting dark days). I do not think these positions should be added until our judiciary and support staff are at full force.	**586**
Superior Court of Sacramento County by Hon. Steven White	**N**	It is extraordinary in these difficult financial times that the cost analysis of this plan has been reserved to a later determination by AOC staff. Any analysis involving potential financial consequences should have those considerations set forth in the report purporting to have been prepared following "vigorous debate and thorough discussions". That apparently did not happen here. The *Rationale for Recommendation* set forth in the report states: The committee believes that superior courts can significantly benefit from personnel experienced in media relations and who are familiar with the individual courts (i.e., the court's facility, the court's personnel, the county the court serves, the governmental and police agencies in that county, and the media agencies in the relevant media market). Only 6 of our larger superior courts have professional PIOs on staff, while another 10 superior courts have staff who perform PIO duties as needed in addition to their other primary administrative responsibilities. At this time, the AOC's regional offices have no staff dedicated to aiding the courts with media matters. There is no supporting analysis indicating why additional AOC staff is needed to assist the trial courts in addressing media concerns. Nor is there any indication from any of the trial courts that they need support handling media matters. There are no figures breaking down the number of media requests from the individual counties, the staff hours dedicated to handling media matters, the number of requests presenting new or complex issues, the number of requests which were denied, or whether each of the counties even have media requests. There is no factual information which would lead any reasonable person to conclude that regional offices are required, useful, and/or necessary or, conversely a gross waste of taxpayer funds. It is equally troubling that this report calls for the creation of three new AOC positions to address this unsupported premise of "need". The AOC was responsible for the development	**587**

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		of this report which then, without financial transparency, calls for an increase in the size of its own administrative agency. Also, of course, the unstated premise here is that the AOC will do a better job than the courts (though at considerable public expense). We are aware of no evidence which supports that premise. The report concedes that, *"[t]he costs and operational impacts of creating and maintaining three regional PIO positions are unknown at this point."* However, it would appear likely that additional positions would be created to provide staff support to the three new PIO positions. The notion of adding more staff to the AOC is even more disconcerting when one considers that recent budget constraints have resulted in layoffs and the elimination of critical positions by California's trial courts. The report specifies that the *"primary responsibilities of the three recommended regional PIOs would include assisting local courts with the following: 1) coordination of media activities in high-profile cases; 2) response to other complex media situations; and 3) community outreach efforts and general media relations."* Yet this description provides no specifics about what the AOC employees would actually be doing. There is no analysis of how many "high profile cases" exist in the individual counties. In fact, there is no description of what the committee deems to be a *high profile* case. More significantly there is no data from which one could conclude the "high profile cases" are not being handled appropriately by the counties that encounter these cases. There is no inquiry as to what percentage of the counties handle "high profile cases" or the numbers they are called upon to address on a monthly or yearly basis. There is likewise no explanation of what "coordination of media activities" means or why there should be taxpayer-funded positions to perform this undefined task. The second of the "primary responsibilities" for these new positions is to assist in providing a "response to other complex media situations." What? The report contains no description of what this amorphous term means and there is no examination of whether the counties these new positions are intended to assist have any need or desire for such an expenditure of tax dollars. The final item, "community outreach efforts and general media relations" is likewise	

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		undefined – with a similar lack of any scrutiny of the underlying necessity for such a broad and potentially expansive responsibility.	
Hon. Laurie M. Earl, Superior Court of Sacramento County	**N**	I oppose funding three fulltime public information officers to be assigned to each of the AOC's three regional offices to assist local courts with coordination of media activities in high-profile cases. The frequency of "high profile cases" is largely a function of population. Larger counties like Los Angeles, San Diego, Riverside, Sacramento, see these types of cases more often than smaller counties. The majority of these larger courts have their own PIO to serve the purpose proposed by this amendment. The frequency of smaller counties having high profile cases significantly less. It seems to me that the goal of this amendment could be served, without spending significant money hiring 3 fulltime employees, by having the AOC Regional Directors or their delegates serve as PIO for those counties who do not have their own and, work with court PJs, APJs and CEOs, to develop plans for community outreach efforts and general media relations.	**588**
Hon. Charles Wieland, Superior Court of Madera County	**N**	I would prefer having the AOC and Judicial Council fully explain its recently-questioned decisions regarding hiring, promoting, and pay-raising its employees, the Case Management System boondoggle, the ongoing attempt to take control of the local courts away from the local courts, etc. rather than creating and paying three more AOC gurus to stick their noses into local affairs.	**589**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**590**
Donald Wilson, Carmel & Naccasha, Paso Robles	**N**		**591**
Laurence Dornstein, Beverly Hills	**N**		**592**
Hon. John D. Conley, Superior Court of Orange County	**N**	We do not need a regional approach to this problem, nor more bureaucracy.	**593**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**		**594**
Donna Domino, IMV Info, San Rafael	**A**		**595**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**596**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**597**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**598**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**599**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	God save us from the AOC. This is scary.	**600**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**601**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**602**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**603**
Charity Kenyon, Counsel for the McClatchy Company, Sacramento	**AM**	Again, we have limited comment. In Sacramento and Stanislaus Counties, in particular, we have had very able assistance of PIO's and judicial officers assigned to Bench Bar Media Committees. Through these contacts and committees we have developed some of the procedures that have been used with success in other counties, when high profile cases have threatened to swamp the abilities of court personnel to interact timely with news media. While we would not want to do anything that would threaten those contacts and relationships, we recognize that regional PIO's may prove valuable in smaller counties without these resources. In our experience intervention of the AOC was helpful in a single instance in Yolo County and, with the AOCs assistance, a new Bench Bar Media Committee was born. In such counties the existence of resources within the AOC or regional groups to resolve disputes may be a welcome addition to the toolbox. As noted at the outset, the Fire Brigade system has worked well in the state of Washington. The proposed new structure can only help, where help is needed, and will not disrupt existing, longstanding relationships in larger counties.	**604**
Superior Court of Ventura County	**R**	This recommendation needs further review and analysis to determine if there is an actual need	**605**

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Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
by Hon. Kevin J. McGee		for these positions. Twenty-five of the fifty-eight trial courts have designated PIO representatives in some form. While it may be beneficial for the remaining thirty-three trial courts to utilize a regional PIO, this has not been substantiated at his point. A study should be conducted to make a determination.	
Superior Court of San Francisco County by Hon. James J. McBride	**N**	• The AOC should hire 3 new regional Public Information Officers. The new PIOS would be assigned to each of the AOC's three regional offices when funds are available. The duties of these PIOs would be to assist local courts with 1). Coordination of media activities in high-profile cases; 2). Response to other complex media situations; and 3). Community outreach efforts and general media relations. *Comment*: This appears to be waste of public resources for a role that is ill-defined. It may be that smaller courts might benefit from a generally available information officer, but small courts can easily benefit from the existing knowledge and substantial experiences of PIOs in larger courts who likely would be more than happy to advise smaller courts, or indeed other larger courts, as requested. Furthermore, while a regional PIO may be useful for a court that does not employ its own PIO, we have a concern that a regional PIO could disseminate inaccurate or incomplete information that otherwise would be provided by a knowledgeable and experienced court-employed PIO familiar with the issues, including imperatives important to court leadership. In short, we do not support a system that could have the effect of bypassing a local court-employed PIO to a PIO outside the court. This proposal creates a clumsy PIO bureaucracy that would have the potential to hinder, not complement, effective media relations.	**606**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**607**
Hon. Richard Toohey, Superior Court of Orange County	**N**	The monies our Court spends on the existing position is a waste of money!!	**608**
Stephanie Bohrer, Management Analyst, Superior Court of San Joaquin County	**AM**	Agree so long as the regional PIO is an optional resouce as requested by the individual court.	**609**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**610**

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Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	**611**
Superior Court of Kern County by Hon. Michael B. Lewis	**N**	Because our judges believe that the issues at hand are best dealt with at the local level, for the reasons expressed above, we believe that this position, which would have adverse fiscal impact, is unnecessary.	**612**
Superior Court of Solano County by Hon. D. Scott Daniels	**R**	Our court questions whether funding for the recommended Regional Media Access Plan and the three Public Information Officer positions is actually available, and if such funding is available, whether other higher priority uses of the funds should be first addressed.	**613**
CNS, Bill Girdner, Editor	**AM**	In addition to finding an effective way of resolving conflicts over press access, there are two other elements to effective press coverage in California's courts, one that is touched on by the Draft Report and one that is not. The first is the role of public information officers. Public information officers can be very helpful, but their role in California's courts needs further definition. I suggest that the definition include a responsibility to act as a go between, someone who can and should advocate for the press and for greater access to court records while at the same time representing the interest of the court in maintaining an orderly and dignified hall of justice that provides fairness to the litigants and gets its work done. As it stands now, public information officers are much more likely to act on behalf of the court's administrators -and indeed at times have acted directly to curtail press access -and almost never act as advocates for the press.	**614**
Courthouse News Service by Rachel Matteo-Boehm, Holme Roberts & Owen LLP (San Francisco)	**AM**	As noted in the Report, the courts' public information officers play a critical role in the press' relationships with the courts. Over the years, Courthouse News has worked with many outstanding public information officers who have promoted the public's understanding of the judicial process through their positive intervention in access issues and facilitation of press coverage by, among other things, coordinating interviews with judicial personnel. A court's public information officer would seem to be the natural ally of the press, intervening where	**615**

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Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		necessary to resolve conflicts between the court and the press and educating court staff about the importance of media access. Unfortunately, Courthouse News has encountered a number of situations in the past few years in which a court's public information officer served as a *barrier* to press access, showing little or no interest in addressing media concerns and sometimes displaying outright hostility to requests for access to public court records. Courthouse News' negative experiences suggest that the courts' public information officers may increasingly view their function as protecting the court from the media, rather than serving the public by fostering positive relationships between court personnel and members of the press and improving the flow of information from the court to the media. While such an approach might be acceptable for a public information officer in a for-profit corporation, it is antithetical to the role of a information officer for a government institution, particularly as to matters relating to public documents and proceedings critical to the public understanding of the judicial system. For example, one Superior Court's public information officer directed a Courthouse News reporter to send all requests for interviews with judges or court administrators to a particular e-mail address. Requests sent to this address were initially accommodated but now simply go unanswered. Requests for substantive information about the court have required a number of attempts and even then typically resulted in one-word answers and, in the last six months, no reply at all. Another public information officer rebuked a Courthouse News reporter for failing to observe the proper "etiquette" for obtaining interviews -etiquette that involved visiting the officer at her office and meeting her for lunch or coffee. Another public information officer intervened to *remove* press room computer terminals that had previously provided same-day access to newly filed civil complaints. Ensuring timely press access to judicial records and proceedings will sometimes require effort by court personnel who may not appreciate the fundamental importance of such access to the sound functioning of our government. In those cases, Courthouse News respectfully submits that it is the duty of the court's public information officer to understand the importance of press access and to intervene to encourage it. Because awareness of that duty seems to be increasingly diminished, Courthouse News respectfully suggests that the Committee consider measures to emphasize the responsibility of a public information officer to foster bench-media	

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		relations and promote access to judicial records, proceedings, and personnel. As a practical matter, one way to accomplish this would be to define the role of the public information officer to explicitly include the role of ombudsman with respect to the media. In other words, the job description of the public information officer would specify that his or her responsibilities include being aware of the importance of press access to the courts and, where necessary, acting as an intermediary and even an advocate for the press. In addition, the Committee might consider advocating the adoption by courts of core principles for public information officers. As a point of reference, Courthouse News directs the Committee to the Code of Ethics adopted by the California Association of Public Information Officials (available at http://www.capio.orglour-mission-and guidelines!), which includes the following tenets: *I will be dedicated to the concepts and principles of democratic government.* *I will affirm the dignity and worth of public service and continually strive to maintain the public's confidence by serving the public interest and putting the public trust before all else.* *I will respect the public's right to know the public's business and will strive to create and maintain effective relationships with the media to foster those important communications.* Such an explicit mandate might also include an acknowledgement of the constitutional dimension of the public information officer's role in protecting the people's ability to be informed through the media, about the judicial branch.	
Court Executive Advisory Committee (CEAC) by Michael M. Roddy, Chair; Kim Turner, Vice-chair	**N**	Per California Rules of Court 10.603(b) (1) (E) and 10.603(c) (8) (B), the trial court presiding judges are responsible for handling media issues, and they should continue to retain or designate their own public information officer. Regional information management in high profile cases may add to miscommunication, inconsistencies, or delays. CEAC is concerned that regional information management in high profile cases could lead to inconsistencies or	**616**

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		delays in communication as a result of having media inquires directed to the regional PIO and not directly to the court. Given the current economic climate when trial courts do not have adequate staff, no new positions should be authorized for the Administrative Office of the Courts. CEAC would instead support specialized training of trial court public information officers and those who coordinate media activities within the trial courts on how to effectively work with the media. The AOC can also facilitate the compilation and sharing of best practices among the trial courts.	
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**N**	Recommendation 9 requires further review and analysis to determine if there is an actual need for or benefit from these positions, particularly at a time when budget concerns are questioning the need for existing positions across the courts. The proposal also fails to appreciate local court discretion related to staffing. Several courts employ their own public information officer (PIO), and the benefits and challenges of additional regional support should be researched and determined. The courts without a PIO should also be surveyed to determine if they have shared wants or needs for which a regional officer could provide cost-effective service.	**617**
Superior Court of Tuolumne County by Hon. Boscoe	**N**	This recommendation fails to appreciate that these are duties delegated to the trial court. We are in a better position to know and evaluate media issues than a regional public information officer. By Rule of Court, the Presiding Judge is the spokesperson of the court and is responsible for meeting with or designating a judge or judges to meet with the news media when appropriate. Creating three new AOC positions to address this unsupported need at a time, when trial court staff are suffering unpaid furlough days and layoffs, is an unnecessary public expense.	**618**
Superior Court of Marin County by Hon. Terrence Boren	**N**	This recommendation comes at a time where the State budget is in crisis. On that ground alone, we oppose it.	**619**
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**NR**	– The Presiding Judge is the spokesperson of the Court (California Rules of Court, Rule 10.603(b)(1)(E)) and is responsible for meeting with or designating a judge or judges to meet with the news media. – As a rationale for this recommendation the Committee states it *"believes that superior courts can significantly benefit from personnel experienced in media relations and who are familiar with the individual courts (i.e., the court's facility, the court's personnel, the county the court serves, the governmental and police agencies in that county, and the media agencies in the relevant media market).*	**620**

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions			
Commentator	**Position**	**Comment**	
		It is difficult to argue with this proposition if considered on its own. However, it is equally difficult to understand how this rationale could support a recommendation to assign one PIO to 31 different courts spread across an area that ranges from Mono County to the Oregon border. A PIO assigned to the North Central Region would need to become familiar with at least 31 different facilities, 31 presiding judges, 31 CEOs, etc. It is doubtful the objective of providing courts with spokespersons familiar with the local courts, governmental agencies, media and culture will be met by the use of regional PIOs. – The AOC, under the direction of the TCPJAC and CEAC, should conduct a cost benefit analysis to determine if the expense of creating three new Regional PIO positions can be justified at the present time or at any time in the future.	
Los Angeles Times Communications LLC by Karlene W. Goller, Esq.; California Newspaper Publishers Association by Thomas W. Newton, Esq.; The Associated Press by David Tomlin, Esq.; The New York Times by David McCraw, Esq.	**A**	See letter Attachment F	**621**
Court of Appeal, Second Appellate District, Division Five, by Hon. Paul Turner	**N**	Fourth, the recommendation to create regional press staff should be rejected. There is no demonstrated justification for creating such positions particularly in the context of where the state is broke. Not one single instance of where it would have been beneficial to have such a staffer appears in the draft report. At present, judicial branch employees are experiencing a five percent pay cut and to create these new positions is unwarranted and unfair in my respectful view.	**622**
Public Defender Los Angeles County by Michael P. Judge, Public Defender	**AM**	As to Recommendation 8, it should only be approved if commensurate resources to counter the fire brigades efforts are provided to the defense in criminal cases. Likewise, with Recommendation 9.	**623**

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Recommendation 10: Implementation Working Group			
Commentator	**Position**	**Comment**	
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**624**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**625**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**626**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**N**	The committee recommendations are inappropriate. Trial lawyers are virtually universal in opposition to tv cameras in the courtroom. You do not appear to have trial lawyers with any experience on your committee.	**627**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	Another level of government, waste of taxpayer money.	**628**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**629**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**630**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	enough expenditures	**631**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**632**
Earl Maas	**N**		**633**
Hon. Michael A. Savage	**N**		**634**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	Let this proposal die a quiet death.	**635**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**		**636**
Hon. Greta Fall, Superior Court of Sacramento County	**N**	The recommendations should not be implemented.	**637**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**AM**	That the bench be more represented on the Working Group.	**638**

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Commentator	**Position**	**Comment**	
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**639**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney		No opposition to this specific proposal, except to the extent already set forth herein.	**640**
Superior Court of Sacramento County by Hon. Steven White	**N**	In view of our objections to the substantive Recommendations contained in the Report, we believe that the formation of a working group is unnecessary.	**641**
Hon. Charles Wieland, Superior Court of Madera County	**N**	The recommendations should be rejected.	**642**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**643**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**644**
Donald Wilson, Carmel & Naccasha, Paso Robles	**A**		**645**
Laurence Dornstein, Beverly Hills	**N**		**646**
Hon. John D. Conley, Superior Court of Orange County	**N**	We don't need any more Working Groups.	**647**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	we don't have the money	**648**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**649**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**AM**	Agree if my other concerns are met.	**650**
Donna Domino, IMV Info, San Rafael	**A**		**651**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**652**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**653**

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Recommendation 10: Implementation Working Group			
Commentator	**Position**	**Comment**	
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**654**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	This is unwanted. Please don't inflict us with more bureaucracy. Unbelievable.	**655**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**656**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**657**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**658**
Superior Court of Ventura County by Hon. Kevin J. McGee	**AM**	The Court does not oppose the formation of a working group, but the scope of the working group focus needs to be clearly defined upfront and based on the final report.	**659**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**660**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**661**
William Bennett Turner, Lecturer UC Berkeley	**A**		**662**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**663**
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	**664**
Superior Court of Kern County by		Appointment of an implementation group and development of plans for implementation are	**665**

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Recommendation 10: Implementation Working Group			
Commentator	**Position**	**Comment**	
Hon. Michael B. Lewis		premature until there is an acceptable final report regarding the substantive recommendations of the Committee. Any implementation group, however, should not be composed solely or primarily of those who had a hand in developing the recommendations themselves, and should have broad based and substantial trial court representation.	
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair		Until significant further research, analysis, and revision is undertaken on the draft report and recommendations, the Executive Committee feels that the appointment of a Bench-Bar-Media Implementation Working Group is premature.	**666**
Superior Court of Marin County, by Hon. Terrence Boren		We do not believe that there is any necessity for this. However, if there will be no financial impact on the court we will not oppose it.	**667**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Recommendation 11: Implementation Plan			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**668**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**669**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**670**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**671**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**		**672**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**673**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**674**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**	no more expenditures	**675**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**676**
Earl Maas	**N**		**677**
Hon. Michael A. Savage	**N**		**678**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	Let this proposal die a quiet death.	**679**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**		**680**
Hon. Greta Fall, Superior Court of Sacramento County	**N**	The recommendations should not be implemented.	**681**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**N**	This plan, as presently drafted, is not ready for implementation or action	**682**

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Recommendation 11: Implementation Plan			
Commentator	**Position**	**Comment**	
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**683**
Superior Court of Yolo County by Dani Rogers, Supervising Research Attorney		No opposition to this specific proposal, except to the extent already set forth herein.	**684**
Laurence Dornstein, Beverly Hills	**N**		**685**
Hon. John D. Conley, Superior Court of Orange County	**N**	We do not need more bureaucratic "implementation" by well meaning people--but who have no experience dealing with the problems.	**686**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**687**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**688**
Superior Court of Sacramento County by Hon. Steven White	**NR**	Recognizing that the report is not yet final, it is still troubling to our court that there was no cost analysis done as part of the draft report. Again, our court feels strongly that the Judicial Council has a responsibility to consider the fiscal impact of any proposal that would increase the cost of its operations or to the judiciary as a whole. This responsibility would include an analysis of that cost at the front end. Informed decisions are, by definition, tethered to reality. The Committee has sent up a number of proposals, some quite radical, all of them purporting to respond to a problem for the existence of which no evidence has been adduced. And never are the costs – to an independent judiciary and to the taxpayer – given any apparent consideration. The Sacramento Superior Court urges the Judicial Council to reject the Bench-Bar-Media Committee proposals.	**689**
Hon. Charles Wieland, Superior Court of Madera County	**N**	The recommendations should be rejected.	**690**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**691**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**692**
Donald Wilson, Carmel &	**A**		**693**

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Recommendation 11: Implementation Plan			
Commentator	**Position**	**Comment**	
Naccasha, Paso Robles			
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	we don't have the money	**694**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**N**	Dump the whole project	**695**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**696**
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**AM**	Agree if it does not take funding from other needed judiciary needs.	**697**
Donna Domino, IMV Info, San Rafael	**A**		**698**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**699**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**700**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	This is all unwelcome.	**701**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**702**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**703**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**704**
Superior Court of Ventura County by Hon. Kevin J. McGee		This recommendation should be delayed until Recommendation 10 is formulated and the report is finalized.	**705**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**706**

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Recommendation 11: Implementation Plan			
Commentator	**Position**	**Comment**	
Hon. Richard Toohey, Superior Court of Orange County	**N**		**707**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**708**
Ed Chapuis, News Director, CTV-Oakland	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting. As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	**709**
Superior Court of Kern County by Hon. Michael B. Lewis	**N**	Appointment of an implementation group and development of plans for implementation are premature until there is an acceptable final report regarding the substantive recommendations of the Committee. Any implementation group, however, should not be composed solely or primarily of those who had a hand in developing the recommendations themselves, and should have broad based and substantial trial court representation.	**710**
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	**N**	The issue of operational and administrative impact should be adequately addressed before the recommendations are considered for approval and not after. Courts are already struggling to comply with legislation and rules that were not adequately funded or researched prior to taking affect. This is an opportunity to show by example how to develop and implement sound policy.	**711**
Superior Court of Marin County, by Hon. Terrence Boren		In light of our positions expressed above it is difficult to respond to this proposal. However, if any of the recommendations are approved, we object to any financial cost associated with implementation of those proposals.	**712**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Declaration: Reducing the Cost of Trial Transcripts for the Media			
Commentator	**Position**	**Comment**	
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**713**
KFMB News 8 San Diego by David Gotfredson, News Producer	**A**		**714**
Hon. Kim G Dunning, Superior Court of Orange County	**N**		**715**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**716**
Superior Court of Los Angeles County by Hon. Charles W. McCoy Jr.	**N**	See letter Attachment D	**717**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	YOU WANT TO PLAY, YOU PAY!	**718**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**719**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**		**720**
Hon. Gary Medvigy, Superior Court of Sonoma County	**N**		**721**
Earl Maas	**N**	The media has more money than most of the parties. Besides, this would be a violation of the Court Reporter's Union contract	**722**
Hon. Michael A. Savage	**N**		**723**
Laurence Dornstein, Beverly Hills	**N**		**724**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**	The Judicial branch should stay out of this private business relationship between the media (a private enterprise business) and the costs that they (like others) must pay to get transcripts. We should not be promoting discounts for private businesses, after all we don't promote them for our own officers, i.e. the attorneys appearing at the trials, hearings etc. This is a bad idea and we should stay away from it.	**725**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**N**	I am unclear as to why the press, as opposed to the litigants, are obtaining a reduced rate	**726**

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Commentator	**Position**	**Comment**	
Michael C. Denison, Towle Denison Smith & Maniscalco LLP, Los Angeles	**AM**	Agree as long as it does not interfere with the parties' ability to obtain transcripts or cost the litigants more than it currently does to get transcripts. For example, if the parties do not want to pay for an expedited transcript, the should not be forced to do so because the media wants one.	**727**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**728**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**729**
OpenGovernmentRadio.com by Stephen Buckley, Program Host		It is not clear what is meant by "other media". Some news sources only exist "on-line" (e.g., Denver Post, Politico.com, etc.). If a journalist only reports "on-line" (e.g., a blog), then is that considered "other media"? I could not find any definition in the proposal that makes clear what it means by the "media". And, if "media" is meant to exclude "on-line" journalists (because the Court does not consider them to be bona-fide), then that new aspect needs to be offered for public comment, since it was not made clear in the original draft. Thank you for your consideration. Stephen Buckley host: OpenGovRadio.com blog: Ustransparency.com http://www.Ustransparec	**730**
Hon. Greta Fall, Superior Court of Sacramento County	**N**		**731**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**732**
California Official Court Reporters Association by Gordon F Aiavao, President	**A**	COCRA supports the goal of providing public access to legal proceedings while safeguarding issues of accuracy, privacy, judicial province, administrative duty, and other necessary concerns. Towards this end, COCRA welcomes a discussion to explore needs/uses for the verbatim record and the logistical/cost issues attached thereto.	**733**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**	In a time of limited judicial resources, the suggestion seems to be to place more burden on court reporters, and have the court pay for it, all to the benefit of the media.	**734**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**	This idea is really offensive. Asking the Courts or our employees to subsidize private businesses.	**735**
Sacramento Official Court	**N**	The Sacramento Official Court Reporters (SOCR) respectfully submit the following	**736**

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Declaration: Reducing the Cost of Trial Transcripts for the Media			
Commentator	**Position**	**Comment**	
Reporters (SOCR) by Dianne Coughlin, President		comments to the August 2010 Draft Report published by the California Bench-Bar-Media Committee of the AOC Judicial Council entitled "*A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*": All members of SOCR honor and abide by the policies and stated goals of the Sacramento Superior Court Media Access Policy No. 2-A-1 as it pertains to the duties of official court reporters as follows: *"To assist the media and public in maintaining their basic right of access to civil and criminal proceedings";* *"To assist the news media representatives to carry out their responsibilities to inform the public";* *"To provide appropriate information in a timely manner, and to assure appropriate access to records."* SOCR members have always endeavored to honor all media requests for transcripts of court proceedings as expeditiously and efficiently as is practicable. We enjoy a positive working relationship with representatives of the local media who are assigned to our court, as well as outside media outlets which have occasion to request our services and work product. We recognize that in our respective professions both court reporters and representatives of the media share a common goal: to provide access to justice for all citizens of California. We would like to address two excerpts of the draft report as follows: *"The Bench-Bar-Media Committee has concluded that representatives of the California Newspaper Publishers Association and other media should meet with representatives of court reporters unions and/or associations and attempt to develop a special protocol and pricing formula, which could both provide court reporters with opportunities for additional income without jeopardizing their current right to compensation from litigants for preparing transcripts, and also give the media an opportunity to obtain limited partial transcripts at a reasonable cost to assist them in preparing accurate accounts of court proceedings for*	

Declaration: Reducing the Cost of Trial Transcripts for the Media			
Commentator	**Position**	**Comment**	
		publication. If those representatives meet and are able to reach agreement upon a modification of the current system that requires some change in rules of court and/o r California statute, they should make an appropriate joint recommendation to the judicial branch and/or the Legislature." While we very much appreciate the committee's thoughtful consideration to provide court reporters with opportunities for additional income, the idea of court reporters entering into any kind of financial arrangement for services with one specific industry or entity runs contrary to our obligation to avoid any real or perceived appearance of impropriety in performing our duties as impartial guardians of the record. Such an arrangement has the potential to erode and negatively impact the confidence in our profession currently enjoyed by the public and the customers we serve. Additionally, such an arrangement has the potential to breach state and national professional court reporting codes of ethics which we strictly adhere to. The relevant codes of ethics are as follows: *California Court Reporters Code of Professional Conduct for Official Reporters:* *"A member should be totally impartial and disinterested in all aspects of reporting and transcribing proceedings, treating all participants in like manner."* *"A member should guard against actual impropriety and/or any appearance of impropriety."* *National Court Reporters Association Code of Professional Ethics:* *"A member shall guard against not only the fact but the appearance of impropriety."* Draft Report Page 23 *"The committee concluded that the high price of some transcripts essentially hinder the media's access to court proceedings and, thereby, the public's knowledge of various cases and proceedings*."	

Declaration: Reducing the Cost of Trial Transcripts for the Media			
Commentator	**Position**	**Comment**	
		The Sacramento Superior Court guarantees access to justice by conducting all proceedings in open court pursuant to federal law: *"The First Amendment right of free speech carries with it the right to listen. Therefore, court proceedings are presumed open, unless specifically closed by law or a party proves that an overriding interest in justice requires closure. (Richmond Newspapers, Inc. v. Virginia, 44 U.S. 555 (1980); Globe Newspapers v. Superior Court, 457 U.S. 596 (1982); NBC Subsidiary Inc. v. Superior Court, 20 Cal. 4th 1178 (1999)).*" In California, there is nothing which precludes members of the media or the general public from attending any court proceeding in order to directly gain and/or disseminate knowledge of various cases and proceedings. To assert that the so-called high cost of transcripts somehow interferes with the flow of information between court proceedings and the general public ignores the simple fact that complete and open access to court proceedings already exists. The desire to obtain a certified transcript of a court proceeding is wholly unrelated and secondary to the public's actual legal or practical ability to access any information occurring during a court proceeding. In conclusion, The Sacramento Official Court Reporters appreciate the hard work of our media colleagues working in the courts in Sacramento and across California. We remain committed to providing the assistance you request, as well as maintaining our high level of impartial and unbiased access to justice which our California Certified Shorthand License demands of us.	
Michael D. Schwartz, Special Assistant District Attorney, Ventura County District Attorneys Office		We have no position regarding the cost of transcripts for members of the media. My only concern is with persons who obtain transcripts posting them on the internet. Doing so would interfere with the court reporter's proprietary rights to the transcripts. In addition, in some cases, doing so may make witnesses reluctant to testify openly and honestly in court. It is often difficult for a witness to testify about a matter that they find embarrassing in front of a few people in a courtroom. If the witness believes that their entire verbatim testimony will be published to the world through the internet, they may be unwilling to testify truthfully.	**737**
Hon. Laurie M. Earl, Superior Court of Sacramento County	**N**		**738**

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Declaration: Reducing the Cost of Trial Transcripts for the Media			
Commentator	**Position**	**Comment**	
Hon. Charles Wieland, Superior Court of Madera County	**N**		**739**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**740**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**741**
Donald Wilson, Carmel & Naccasha, Paso Robles	**AM**	"Special pricing" for the media should be the same as paid by the parties.	**742**
Laurence Dornstein, Beverly Hills	**N**		**743**
Hon. John D. Conley, Superior Court of Orange County	**N**	Talk about throwing a "bone" to the media. How about reduced fees for Legal Aid, Public Defender clients, and other deserving parties!	**744**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	can't afford to reduce the cost	**745**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**746**
Eric Schwettmann, BRGS. Attorney, Glendale	**A**		**747**
Robert E. Gallagher Jr, White, Oliver, Amundson & Gallagher, APC, Attorney, San Diego	**N**		**748**
Donna Domino, IMV Info, San Rafael	**A**		**749**
San Mateo County Official Court Reporters Association by Stacy Gaskill,	**N**	With the limited information provided, we do not support this declaration at this time. However, we welcome the opportunity to meet and confer with the California Newspaper Publishers Association and other media representatives. Any meeting should also include all unions representing official court reporters. The San Mateo County Official Court Reporters are represented by SEIU Local 521.	**750**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**751**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	Why?	**752**
Hon. Dan Thomas Oki, Superior	**N**		**753**

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Commentator	**Position**	**Comment**	
Court of Los Angeles County			
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**754**
Julia Cheever, Legal Affairs Reporter, Bay City News Service, San Francisco	**A**		**755**
Fred Altshuler, Retired partner, Altshuler Berzon, San Francisco	**A**		**756**
California Court Reporters Association by Debby Steinman, President; Carolyn Dasher, Immediate Past President; and Tom Pringle, Chair Judicial Procedures Committee		The California Court Reporters Association (CCRA) was recently contacted regarding whether or not CCRA was willing to enter into a discussion as recommended in the above-mentioned committee's declaration. The answer is CCRA is willing to participate in the recommended discussion; however, all parties, stakeholders, organizations, etc., must understand that CCRA's primary duty is to the court reporting profession and to our members.	**757**
Superior Court of San Francisco County by Hon. James J. McBride		We do not oppose this proposal. However, the media must also educate themselves on how the courts work by, among other things (1) assigning reporters who have *substantial* experience and understanding of the legal system; (2) routinely meeting with representatives of the courts, including (i) tours of courthouses, (ii) undergoing sustained exposure to various types of proceedings, and (iii) engaging with court personnel and Judges who can explain how the justice system works; (3) routinely meeting with justice partners, such as representatives of e.g., the DA, PD, Attorney General, and City Attorney's offices.	**758**
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**759**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**760**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**761**
Ed Chapuis, News Director, KTVU Channel 2 News	**A**	The advice outlined in recommendations 4-12 that relate to education, judicial officer training, explanation of legal terminology, online training, regional media access plans, regional public information officers, and reducing the cost of transcripts are all excellent ideas worth adopting.	**762**

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Declaration: Reducing the Cost of Trial Transcripts for the Media			
Commentator	**Position**	**Comment**	
		As a member of the Judicial Council of California's Bench-Bar-Media Committee, I appreciate the tremendous amount of work everyone has put into this effort and I encourage passage of these change.	
Linda Miller Savitt, Attorney Ballard, Rosenbert, Golper & Savitt LLP, Glendale	**N**	I am also concerned about the proposal to reduce the cost of trial transcripts for the media. Quite frankly, I am at a loss as to why the media is entitled to preferential' treatment as to pricing over the litigants. Obviously, if there is a reduced cost for trial transcripts to the media, those costs would be transferred onto the litigants. As it is, it is becoming increasingly costly in California for parties to litigate their cases and this will just put an additional financial burden on them. Moreover, the rationale for this particular proposal as stated in the report is simply that "some members of the media cannot afford to purchase them." Again, there is no finding or data provided as to what percentage of the media are included in the "some" or how true that assumption is. The counter against the argument in totality. Of course, is that many members of the media, if not most, can afford to purchase transcripts and to shift the cost of the transcripts onto the litigants is patently unfair.	**763**
San Bernardino Public Defenders Office by Doreen B. Boxer	**N**	The Draft Report included a suggested Declaration intended to bring together private media interests and court reporter associations to achieve special protocols and reduced pricing on transcripts for the media. The Draft Report reasons the reduced price should be feasible since litigants still will pay court reporters the same compensation currently prescribed by law. (Draft Report, pp. 5, 22.) In effect, for example, the $25.7 million of public funds spent by the California's trial courts in FY 2009-10 would have subsidized cheap transcripts for private enterprise. Such a Declaration by the Judicial Council to assist the media in their efforts to reduce production costs would constitute an improper exercise of judicial power. As set forth in California Judicial Canon 2B(2), "A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others .... " For these reasons the San Bernardino County Public Defender opposes this Declaration. Thank you for the opportunity to contribute to the discussion of these important matters.	**764**
Superior Court of Marin County by Hon. Terrence Boren	**N**	The Bench Bar Media Committee recommends that court reporters meet and confer with a media representative in an effort to agree on a reduced transcript rate for those in the news media. We strongly oppose this recommendation. Marin County has lost several court	**765**

Declaration: Reducing the Cost of Trial Transcripts for the Media			
Commentator	**Position**	**Comment**	
		reporters due to budgetary concerns. In addition, our remaining court reporters are currently being paid at a rate that is far inferior to reporters in other counties. Court reporters are an integral component of our court and any further reductions in their compensation would be unfair and unwarranted. Additionally, we do not see a need to provide the news media with a better transcript rate than those whose lives are significantly impacted by the case itself.	
Superior Court of Amador County by Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	**N**	Allowing the media to purchase transcripts at a lower price than charged to the parties or the public in general may create a perception the Court is providing preferential treatment to a particular class. It would also put the Court in the difficult position of determining who qualifies as "media" and would therefore, be entitled to a reduced rate	**766**
Court of Appeal, Second Appellate District, Division Five by Hon. Paul Turner	**N**	Third, I disagree with the recommendation to provide a special rate to any news gathering organization on any fees. To begin, I do not believe it is appropriate for the judicial branch to be advancing the financial interests of profit making organizations (and those which seek to be). The News Corporation posted profits for the last fiscal year of$2.5 billion. We should not be advancing the financial interests of the News Corporation or any other news gathering organization. And news gathering organizations are litigants before us with some regularity. The draft report fails to document a need for such special treatment of organizations which are often litigants before us. Also, defining what is a journalist presents problems. Review the litigation involving title 42 United States Code sections 2000aa-2000aa-12, which protects journalists from the execution of search warrants except under specified circumstances. The definition of what is a journalist has caused substantial litigation-is a blogger a journalist? The answer is probably yes. Finally, the state is broke and in deciding to accord special treatment to profit making organizations which are litigants before us, the failed condition of the state's finances need to be considered.	**767**
Public Defender Los Angeles County by Michael P. Judge, Public Defender	**N**	Regarding Recommendation 11, if discounts are to be made available to the media they should be provided to other high-volume users. For example, when there are instances of prosecutorial, law enforcement or judicial misconduct that cannot be effectively remedied by a writ or appeal on behalf of a defendant in a criminal case, such a discount should obtain. That would facilitate the reporting of improper conduct to the appropriate regulatory agency oversight body or employer	**768**

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Appendix 1: Recommended Educational Content			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**769**
KGO-TV, ABC7 News, by Kevin Keeshan, Vice-President, News Director	**A**		**770**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**771**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	On line courses only!	**772**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**		**773**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**774**
Earl Maas	**N**		**775**
Hon. Michael A. Savage	**N**		**776**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**		**777**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**		**778**
Hon. Greta Fall, Superior Court of Sacramento County	**N**		**779**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**A**		**780**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**781**
Hon. Charles Wieland, Superior Court of Madera County	**N**		**782**
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**783**
Hon. Frank F. Fasel, Superior	**N**		**784**

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Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

Appendix 1: Recommended Educational Content			
Commentator	**Position**	**Comment**	
court of Orange County			
Donald Wilson, Carmel & Naccasha, Paso Robles	**AM**		**785**
Laurence Dornstein, Beverly Hills	**N**		**786**
Hon. John D. Conley, Superior Court of Orange County	**N**		**787**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	We don't have the money	**788**
Patrick G. Rogan, RoganLehrman LLP, Partner, Santa Monica	**A**		**789**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**790**
Donna Domino, IMV Info, San Rafael	**A**		**791**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	**N**		**792**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**793**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**794**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	Scrap it.	**795**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**796**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**797**
Julia Cheever, Legal Affairs Reporter, Bay City News Service,	**A**		**798**

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Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Appendix 1: Recommended Educational Content			
Commentator	**Position**	**Comment**	
San Francisco			
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**799**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**800**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**801**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Appendix 2: Regional Media Access Plan			
Commentator	**Position**	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	**A**		**802**
KGO-TV, ABC7 News by Kevin Keeshan, Vice-President, News Director	**A**		**803**
Hon. William Kolin, Superior Court of Contra Costa County	**N**		**804**
Hon. Robert F. O'Neill, Superior Court of San Diego County	**N**	Not necessary	**805**
Donald Wilson, Carmel & Naccasha, Paso Robles	**AM**		**806**
Hon. Elden Fox, Superior Court of Los Angeles County	**N**		**807**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	**N**		**808**
Hon. Gary Medvigy, Superior Court of Sonoma County	**A**		**809**
Earl Maas	**N**		**810**
Hon. Michael A. Savage	**N**		**811**
Hon. Andrew P. Banks, Superior Court of Orange County	**N**		**812**
Hon. Stephen M. Hall, Superior Court of San Mateo County	**N**		**813**
Hon. Greta Fall, Superior Court of Sacramento County	**N**		**814**
Hon. Jaime Rene Roman, Superior Court of Sacramento County	**N**		**815**
Hon. Harry S. Kinnicutt, Superior Court of Solano County	**N**		**816**
Hon. Charles Wieland, Superior	**N**		**817**

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Appendix 2: Regional Media Access Plan			
Commentator	**Position**	**Comment**	
Court of Madera County			
Hon. Terrence Van Oss, Superior Court of San Joaquin County	**N**		**818**
Hon. Frank F. Fasel, Superior court of Orange County	**N**		**819**
Laurence Dornstein, Beverly Hills	**N**		**820**
Hon. John D. Conley, Superior Court of Orange County	**N**		**821**
Madelyn A Enright, Murtaugh Meyer Nelson & Treglia, Irvine	**N**	We don't have the money.	**822**
Eric Schwettmann, BRGS. Attorney, Glendale	**N**		**823**
Donna Domino, IMV Info, San Rafael	**A**		**824**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger	**N**		**825**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	**N**		**826**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	**N**		**827**
Hon. Bruce F. Marrs, Judge, Superior Court of Los Angeles County	**N**		**828**
Hon Mark Tansil, Superior Court of Sonoma County	**N**	Scrap it.	**829**
Hon. Dan Thomas Oki, Superior Court of Los Angeles County	**N**		**830**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	**A**		**831**

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Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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Appendix 2: Regional Media Access Plan			
Commentator	**Position**	**Comment**	
Hon. Christian R. Gullon, Superior Court of Los Angeles County	**N**	see my previous comment	**832**
Hon. Richard Toohey, Superior Court of Orange County	**N**		**833**
Superior Court of Amador County by Hugh Swift, CEO	**N**		**834**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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General Comments		
Commentator	**Comment**	
Central Coast News (KION-TV, KCBA-TV, KMUV-TV) by Paul Dughi, President	Again, thank you for reviewing these items of immense public interest. We agree wholeheartedly with the recommendations and thank the committee for its work.	**835**
Hon. Greta Fall, Superior Court of Sacramento County	This draft report should never have been prepared without the committee directly contacting all judges and seeking their input.	**836**
KFMB News 8 San Diego by David Gotfredson, News Producer	Judicial Council, As a member of the media, I appreciate the opportunity to comment on the Bench-Bar-Media Committee Draft Report. I am particularly excited about your proposals to allow for simple, pro per forms to challenge gag orders and record sealing. I am also in favor of the proposed changes in the procedures for allowing cameras in the courtroom. Thank you for your efforts! I noticed in the draft report that media access to juvenile records is being put off for "future consideration." I feel strongly that the Judicial Council needs to address the issue of media access to those juvenile records that, under law, are public documents. As the draft California Trial Court Records Manual states: "There is also an exception to this rule of confidentiality for certain records in cases brought under Welfare and Institutions Code section 602, in which the minor is charged with one or more specified violent offenses. (Welf. & Inst. Code § 676.) In such cases, the charging petition, the minutes, and the jurisdictional and dispositional orders are available for public inspection (Welf. & Inst. Code, § 676, subd. (d))…" Currently, obtaining juvenile records for such cases is virtually impossible, and for a member of the media usually requires hiring an attorney and filing a motion. This, for juvenile records that are presumed to be public by law. Please consider implementing an online system for granting public access to these juvenile records. On a related issue, Welfare and Institutions Code 676(g) mandates that: "The juvenile court shall for each day that the court is in session, post in a conspicuous place which is accessible to the general public, a written list of hearings that are open to the general public pursuant to this section, the location of those hearings, and the time when the hearings will be held." I feel it would be a fairly easy task to mandate that such notices of public hearings under 676(g) be posted online. Currently, members of the media must drive down to court to view the list posted in the juvenile court lobby. Thank you for an opportunity to comment on your draft report. Sincerely, David Gotfreds on KFMB News 8 San Diego	**837**
Hon. Robert F. O'Neill, Superior Court of San Diego County	Withdraw this entire report. Is the process even necessary? Rule 980 covers it!	**838**
Superior Court of Los Angeles County by Hon. Maureen Duffy-Lewis	First of all the ability to comment is too involved....and time consuming I have lawyers outside waiting for me. These changes are unnecessary and invade the discretion of the court. If judges are to ever get their work done they should not have to be asked to defend in writing every single discretionary action....this is a suffocating requirement and not one judge I have spoken to who does jury trials feels that it is	**839**

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General Comments		
Commentator	**Comment**	
	appropriate.... judges exercise discretion....if that is not wanted then just use a computer and feed in the info and get a faceless response....	
Earl Maas	This is a silly, bad idea.	**840**
Hon. Michael A. Savage	These proposals are completely unnecessary. Judges should be able to continue, on a case by case basis, to determine whether to allow cameras and other recording devices into their courtrooms. There is no justification for instituting a presumption in favor of allowing cameras.	**841**
Hon. Andrew P. Banks, Superior Court of Orange County	I think there is a disconnect between this report's recommendations and the real world that I and many trial judges live and work in.	**842**
OpenGovernmentRadio.com by Stephen Buckley, Program Host	It would be Nice to be able to see the comments that have already been received, in order to consider the concerns that have already been raised.	**843**
Hon. Rocky L. Crabb, Commissioner, Superior Court of Los Angeles County	Although our courts are public, there is a big difference between a public courtroom where a few people observe your personal problems, and a broadcast, where the world now gets to know about your personal problems. There is seldom good reason to have the most personal and often times embarrassing and humiliating situations of litigants and witnesses, "aired" on the evening news. In the case of family law and domestic violence matters, the possibility of having cases "aired" on television, will no doubt deter victims from coming to court at all. In that case we have sacrificed the privacy rights of families and victims for the convenience of the media, and opportunity for the media to put together a more interesting television program.	**844**
Pamela A. MacLean Legal Editor, RedwoodAge.com	The difficulty of identifying who is a "legitimate reporter" is a difficult question even among journalists. Many reporters have expressed concern to SPJ over various government efforts to define "journalist" for the purpose of access. Yet, with limited court space, seats have been assigned in the past. I believe the question can be largely avoided by expanded use of cameras in court. If live broadcast of proceedings has been denied, then use of closed-circuit video feeds to overflow areas may alleviate the issue of limited courtroom space. In addition, education session with judges and court staff can alert them to a variety of options to deal with high profile cases, including: use of media pools, assignment of seats to media by industry type, such as two seats for broadcast TV, two for radio, two for wire services, two for print and two for bloggers, etc. The selection may be by lottery. These are just two suggestions among a variety of options to accommodate reporters through equitable methods.	**845**
California Official Court Reporters Association by Gordon F Aiavao,	COCRA would like to reiterate that we believe that it would be in the best interest of the courts to have court reporters on any committee that deals with court transcripts and or issues connected with official court	**846**

General Comments		
Commentator	**Comment**	
President	reporters. We thank the members of the Bench Bar Media Committee for this opportunity to comment.	
Michael D. Schwartz, Special Assistant District Attorney, Ventura County District Attorneys Office	I appreciate the opportunity to comment on the report. While I appreciate the importance of open proceedings, I hope the committee will consider the comments above to better balance the right of litigants to a fair trial.	**847**
Superior Court of Sacramento County by Hon. Steven White	The Sacramento Superior Court has considered carefully the draft report and proposals of the Judicial Council's Bench-Bar-Media Committee. Attached is our response. We detail serious concerns about the committee's recommendations—both in terms of the merits and the process. We urge the Council to consider our comments and reject the Bench-Bar-Media Committee's Draft Report Recommendations. In August 2010 the Judicial Council's Bench-Bar-Media Committee published a Draft Report summarizing the work of that Committee. The Committee proposed a number of revisions to the California Rules of Court to address certain perceived problems in the interactions between California's courts and the media. The Draft Report was made available for analysis and public comment, with a response deadline of October29, 2010. In mid September, 2010 Presiding Judge Steve White appointed a committee consisting of Sacramento Superior Court judges to examine the Draft Report and prepare an analysis of the draft proposals on behalf of the Court. This response to the request for public comment constitutes the result of our committee's examination and analysis of the proposals contained in the Draft Report. This response consists of three components. We first identify a series of core values that we believe all such proposals must accommodate, and explain how those values inform our analysis of the substantive recommendations set forth in the Draft Report. Next, we articulate certain concerns regarding both the manner in which the Judicial Council Committee was structured and the methodology by which it conducted its analysis; we believe that these structural issues may have contributed to certain recommendations that will prove problematic to California's trial courts. Finally, we set forth our substantive analysis of the Recommendations in the Draft Report. **<u>Framework for Analysis</u>** In approaching the task of analyzing the Draft Report and proposed Recommendations, we developed a necessary framework for analysis which measures the proposals against certain core values. These core values are rooted in our constitutional and statutory law, and are essential to the judicial function.	**848**

General Comments		
Commentator	**Comment**	
	Accordingly, this framework dictates that any proposal such as this must, 1) respect the boundaries that limit the purview of the Judicial Council in its interactions with local courts; 2) preserve and enhance the exercise of judicial discretion essential to the faithful discharge of the judicial function; and 3) reflect a clear appreciation of the practical, as well as theoretical, implications of the proposed action. Because the proposals embodied in the Draft Report contravene all three of these core values, we conclude that with the few exceptions identified below, the Recommendations set forth in the Draft Report should be rejected in their entirety. With respect to the first issue—whether the Draft Report and Recommendations adequately respect the boundaries that limit the purview of the Judicial Council in its interactions with local courts—we are compelled to note that the Judicial Council's grant of constitutional authority is a limited one. Article VI, Section 6(d) provides that: "To improve the administration of justice the council shall survey judicial business and make *recommendations* to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute." In this connection, California Government Code section 77001 expressly requires the council to adopt rules that establish a decentralized system of trial court management, in order to "ensure" that local trial courts have the exclusive authority to "manage their day-to-day operations." The Draft Report and Recommendations conflict with the foregoing Constitutional and statutory precepts in at least two ways. First, the Draft Report purports to mandate a series of statewide, "one-size-fits-all" requirements for dealing with media access issues which, at a bare minimum, conflicts with the statutory requirement that the rules ensure the authority of local courts to manage their day to day operations. The second way in which the Recommendations exceed the purview of the Council is more fundamental. In departing from historical deference to judicial discretion as embodied in the current version of Rule 1.150, the proposed Recommendations purport to enact *substantive* law by creating an affirmative presumption—which would hereafter control in all judicial proceedings—that media access is warranted. The proposed action therefore cannot be characterized as proposing a rule for court administration, practice or procedure, but instead would compel a particular legal conclusion in a discrete legal dispute. Such action plainly exceeds the authority of the Judicial Council.	

General Comments		
Commentator	**Comment**	
	The Draft Report does violence to our second core principle as well, because its Recommendations interfere with – rather than preserve and support – the exercise of judicial discretion. Every day throughout California, trial judges are called upon to balance competing interests in order to decide difficult and sensitive issues. In doing so, judges act in the best tradition of the American judiciary by exercising reasoned discretion – a discretion informed by the unique circumstances of discrete cases. Yet the Recommendations set forth in the Draft Report are premised on the curious proposition that the opposite is true, and hence a presumption regarding the outcome becomes the predicate, and extensive records regarding the judge's reasoning must be created. The Report sets forth no empirical evidence that any circumstance exists warranting such invasive steps or justifying such wholesale interference with a judge's discretion to control the proceedings in his or her courtroom. Stated otherwise, and as demonstrated more specifically below, the Draft Report proposes an intrusive solution in search of a problem. Finally, we believe that in a number of instances, the recommendations utterly fail the "workability" test. As will be demonstrated in the pages that follow, a number of the Recommendations fail to appreciate the actual workings of California's trial courts, and in some instances would impair a court's ability to perform its essential functions. **<u>An Observation Regarding Methodology</u>** Before moving to our substantive analysis of the various Recommendations, we feel compelled to comment on our concerns regarding the methodology by which the Recommendations were developed. In general, we feel that the composition of the Committee undercuts the title of the report: "A Balancing Act". In this regard, a preordained outcome was assured by the disproportionate number of Committee members with media connections and allegiances (at least 12 of the 24 members.) Conversely, there was no apparent participation from victims' organizations, Public Defenders or law enforcement except one elected District Attorney who is running for statewide office and is from the largest media market in the state. Perhaps most fundamentally, only three trial court judges served on this committee. This represents some 13% of the total membership on a committee proposing to significantly rewrite the rules affecting every trial court in California. Although we note there was one Court of Appeal Justice and one Supreme Court Justice on the committee, almost never do these types of issues come before the appellate courts in the first	

General Comments		
Commentator	**Comment**	
	instance. By comparison, we note that the 1996 member task force referenced below consisted of 7 trial court judges – 54% of the task force's makeup. Additionally, we question why the methodology and procedure from the 1996 "Report from the Task Force on Photographing, Recording, and Broadcasting in the Courtroom," chaired by the Honorable Richard Huffman, was abandoned here. In that report, reference was made to the fact that, "In order to gain input from all California judges, the task force distributed survey questionnaires to each member of the judiciary at the trial and appellate levels". (See section 2, page 7.) Interestingly, the results from that survey demonstrated that an overwhelming majority of judges (69%) "favored strengthening the discretionary authority of judges to deal with film and electronic media." (Report at page 8.) We therefore question why a similar survey was not undertaken before the committee recommended wholesale, drastic revisions of the *California Rules of Court*. With the foregoing Introduction and observations as background, we set forth below our analysis of a majority of the proposed recommendations in the order in which they appear in the report.	
California Advocates, California Defense Counsel, Sacramento by Michael Belote, Lobbyist	Thank you for the opportunity to comment on the draft report.	**849**
Hon. John D. Conley, Superior Court of Orange County	I agree with PJ Steve White (from Sacramento)letter of 10/13/10 to CJ George.	**850**
Superior Court of Los Angeles County by Hon. Martha E. Bellinger,	Media's access to any courtroom should be within the sound discretion of the individual judicial officer provided the public's right to be present in open proceedings is not abridged.	**851**
Hon. Geanene Yriarte, Superior Court of Los Angeles County	I am opposed to the suggested rule in whole.	**852**
Charity Kenyon, Counsel for the McClatchy Company, Sacramento	These comments on the recommendations set out in the Bench-Bar-Media Committee Draft Report are presented on behalf of the newspapers published by the McClatchy Company in Califol11ia, The Sacramento Bee, The Modesto Bee, The Fresno Bee, the Merced Sun-Star, and the San Luis Obispo Tribune. The McClatchy Company has a 153-year history of journalism and is the third largest newspaper company in the United States. Its reporters, publishers, and counsel have been active in bench bar media activities	**853**

General Comments		
Commentator	**Comment**	
	throughout the Central Valley. The Bench Bar Media Committee associated with the California Superior Court, County of Sacramento, is one of the State's oldest committees. The Sacramento Bee was a founding member and continues to be active with the committee. The Committee has been invaluable in fostering excellent, respectful relations among the local bench, bar, and·media. And The Sacramento Bee promoted formation of one of the State's newest Bench Bar Media Committees: the committee associated with the Superior Court in Yolo County. The Modesto and Fresno Bees have similar records of support for bench bar media activities. The Company also publishes four newspapers in the state of Washington, where the "Fire Brigade" discussed in Recommendations 8-9 (see discussion below) bas worked well. In every state where it publishes newspapers the Company has devoted substantial monetary and staff resources to the issues addressed by the Draft Report. As parties, intervenors, and amici, the McClatchy newspapers have litigated innumerable times in state and federal cOll1is at all levels to protect the public's and press's constitutional, common law, and statutory rights of access to records and proceedings of all branches of government, including the state and federal judicial branches. In California the Company has often been joined in these efforts by the television broadcasting companies and by professional organizations including the California Newspaper Publishers Association, The First Amendment Coalition, and Californians Aware. Yet often the ability to work through a bench bar media committee has allowed access issues to be resolved by a phone call, a fax, or an email, without formal litigation. Similarly, Rules 2.550 and 2.551, the rules of court governing sealing of court records, adopted following *NBC Subsidiary(KNEC) v. Superior Court* (1999) 20 Cal.4th 1178, have proved invaluable tools for reporters by protecting access without necessarily requiring formal intervention or objection. The Draft Report makes recommendations consistent with this tradition. If the recommendations are adopted they likely will lessen the burden on the news media to intervene or file formal objections, when parties or the courts act inconsistently with existing constitutional precedents, statutes or rules to limit or preclude public access to court records or proceedings. The recommendations are practical and respectful of the needs of pro se litigants and other unrepresented members of the public. They promote education of the public about judicial processes and protect media access as the primary source of that education. Consistent with existing United States and California	

General Comments		
Commentator	**Comment**	
	Supreme Court precedents, they require courts to articulate reasons for curtailing access, to make reviewable findings, and to give notice to potential objectors. There is nothing radical here. The report proposes practical implementation of existing law, which puts the evidentiary burden on those seeking to curtail public access. We commend the Committee for its thorough and practical approach to its open-ended assignment. The suggestions implement and give meaning to existing constitutional, statutory, and regulatory requirements. They may significantly lessen the burden on the news media to intervene to protect rights of public access to court records and proceedings. They appropriately recognize the roles of the bench, the bar, and the media to ensure a free, fair, and just legal system.	
Hon. Charles Wieland, Superior Court of Madera County	I'm in favor of the court working to help people, whether litigants, members of the press, or other citizens, become educated about what we do, how we do it, and why we do it. I have a Bachelor of Arts degree in broadcast journalism. I worked in broadcasting for a decade. I get it. But I get it from the perspective of one who has witnessed with disgust the de-evolution of his former profession. When I was getting my degree from 1970-1974, Richard Nixon was president and the word "Watergate" was as instantly recognizable as the word "Elvis". That political affair highlighted the best of journalism. While the Washington Post was publishing articles regarding the affair, the paper's managing editor, Ben Bradley, refused to publish any story without two NAMED sources. Therefore, the Deep Throat sourced material was used to lead the reporters to persons whom they could name in their articles, to fill gaps in story lines, and otherwise tell the world what was going on with credibility. Fast forward more than 15 years to the San Francisco-Oakland World Series earthquake. I saw a television reporter on a San Francisco television station return to his studio after having witnessed the devestation in San Francisco's Marina District. A news anchor asked him about casualty reports. The reporter admitted that he had no information, but, given the property damage that he had seen, he SPECULATED that scores of persons had died. He speculated. Can you imagine how relatives and friends of those who lived and worked in the area must have felt? No amount of education from a judge is going to cure those who are ignorant and proud of it. And, then, we get to today. We have a 24/7 "news cycle" with the pressure to publish anything and everything without named source, much less verification. The squeakiest wheels in our society get the grease of media attention. Andy Warhol was wrong, unfortunately. Too many people are getting more than 15 minutes of fame. Lastly, we have on line information providers who can say almost anything with no accountability. And now we have an AOC recommendation that creates a presumption that this is a good thing? I strongly disagree. I respect the	**854**

General Comments		
Commentator	**Comment**	
	freedom of the press no matter how one defines "press". But with that right comes the obligation of the press to know what that right means and how that right plays against just-as-important, if not more important, rights of others. Excercising the right of a free press by members of the press starts with reading the media request form, entirely, and then complying with what is stated on that form. I have yet to see that when reporters show up with their request on the day of a hearing that has been scheduled for three weeks. It would also help if the relevant rules of court were read and understood. Of course, with the AOC proposed presumption in favor of recording devices, how do we know who is truly a member of the press? How do we deal with the situation in which a mother-in-law wants to record the domestic violence court hearing so that she can show her grandkids what a jerk their dad is, in her opinion? But I digress. I'm opposed to this recommendation in its entirety.	
Hon. Terrence Van Oss, Superior Court of San Joaquin County	No one can dispute that this whole project is costing money. I am spending my taxpayer paid time on it right now. If the Judicial Council and AOC has the money to spend on this at a time we cannot afford to keep the courthouses supplied with toilet paper, they should agree to a voluntary cut in our budget.	**855**
Writs & Appeals, Special Projects, by Vic Eriksen, Deputy Public Defender, San Diego County	We are in favor of the bench, bar, and media collaborating as recommended, but we strongly oppose the proposed new rules and presumptions pertaining to cameras in the courtroom of criminal court proceedings, gag orders in criminal cases, and orders sealing records in criminal cases.	**856**
Ming W. Chin, Chair of CTAC, and Associate Justice of the Supreme Court; Terence L. Bruiniers, Vice-Chair of CTAC, Associate Justice of the Court of Appeal	The Court Technology Advisory Committee (CTAC) appreciates the opportunity to comment on the August 2010 draft report and recommendations of the Bench-Bar-Media Committee (BBMC). CTAC makes recommendations to the Judicial Council for improving the administration of justice through the use of technology and for fostering cooperative endeavors to resolve common technological issues with other stakeholders in the justice system. Our charge includes the responsibility to review and recommend legislation, rules, or policies to balance the interests of privacy, access, and security in relation to court technology. (Cal. Rules of Court, rule 10.53(b)(3)) Our membership includes trial court judges and executive officers, appellate justices and administrative officers, a representative of the bar, and a professor of law. CTAC has played an active role in promoting the use of technology to enhance public access to court records and court proceedings. We therefore support the concept of providing the media, as proxy for the public, with the benefits of this enhanced access. At the same time, CTAC has recognized that providing remote electronic access to court proceedings, and to files and documents as they become digitized, particularly through the internet, can threaten the	**857**

General Comments		
Commentator	**Comment**	
	legitimate privacy interests that those who must use court services have the right to expect. CTAC was instrumental in drafting Rules of Court, approved by the Judicial Council, which "are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests." (Cal. Rules of Court, rule 2.500(a).) The California Office of Privacy Protection has characterized the balancing of the competing values of public access to government records with individual privacy rights "as one of the most significant public policy issues Americans face today." In reviewing the draft report and recommendations, CTAC has focused on issues relating to the use of technology in the courts and the impacts that the proposed recommendations would have in that area. It is our understanding that other advisory committees will be commenting on additional issues raised by the draft BBMC report and its recommendations. CTAC thanks the BBMC for the opportunity to comment on its draft report. We hope that CTAC's comments are useful and look forward to the final BBMC report to be presented to the Judicial Council next year.	
Directors, Alliance of California Judges, Bakersfield, Hon. Andrew P. Banks; Hon. Tia Fisher; Hon. Maryanne Gilliard; Hon. Daniel B. Goldstein; Hon. W. Kent Hamlin; Hon. Dodie A. Harman; Hon. Thomas E. Hollenhorst; Hon. Charles Horan; Hon. David R. Lampe; Hon. Lisa Schall	The Alliance of California Judges objects to the recommendations of the Bench, Bar, Media Committee, "A Balancing Act. Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice." The many trial courts and many of our individual members have already submitted comments, and we fully expect no action will be taken on the various improvident recommendations of the report, at least until the composition of the committee is adjusted to provide a "balance" of viewpoints not present in the current composition of the committee. In addition to the many comments received form others, the Alliance notes that this committee makes a proposal of substantive law in favor of media access. This proposal continues a worrisome trend by Judicial Council task forces and committees advising the Judicial Council toward unconstitutional actions, taking the Judicial Council into areas of policy properly exercised by the Legislature. Under article III, section 3 of the California Constitution, the legislative powers of the state are reserved to the Legislature under the doctrine of separation of powers. Correspondingly, the judicial power is reserved to the court under article VI, section 1. A "legislative act" is one which predetermines what the law shall be for the regulation of future cases, while a "judicial act" is a determination of what the law is in relation to some existing thing done or happened (*City Council of City of Santa Barbara v. Superior Court* (1960) 179	**858**

General Comments		
Commentator	**Comment**	
	Cal.App.2d 389.) It is the province of the judiciary to declare the law as it is and not as the court deems it. It is imperative upon the courts to abstain from exercise of legislative functions. (*Collins v. City & County of San Francisco* (1952) 112 cal.App.2d 719.) It is the primary function of the courts to see that justice is done among the litigants (*In re Noonan's Estate* (1953)119 Cal.App.2d 831.) The Legislature, and not the courts, is vested with the responsibility to declare the public policy of the state. (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66.) Here, the proposal by the Committee impinges upon these imperative constitutional distinctions. It is not for the courts or the Judicial Council to establish a substantive policy in favor of media access. That issue belongs with the Legislature. The proposals should be rejected upon this issue alone. Furthermore, the Alliance wishes to point out that the Committee may not have fully examined the resources already available to judges within this area. In addition to other matters referenced by other commentators, the Alliance points out that this area of law is exhaustively addressed and recently updated in the California Judges Benchbook: Civil Proceedings, Trial (CJER 2010) Controlling and Conducting Trial, section 5.140, et seq., page 315, and following. This treatise details the issues and matters that a judge should consider in dealing with the media and discusses guidelines, accommodating the media, the do's and don'ts of media relations, the rules and factors to consider in limiting any media access, pooling, equipment, conditions, and sanctions. Section 5.162 exhaustively discusses the criteria for sealing records. Since the copyright to this material is already owned by the Judicial Council, it seems that it could be extracted, copied, and disseminated to all trial judges. That would seem to be the end of the inquiry. The Committee can then be disbanded, and much money, time, and effort will be saved without further waste.	
Superior Court of San Francisco County by Hon. James J. McBride	The San Francisco Superior Court has carefully reviewed and considered the draft report and proposals of the Judicial Council's Bench Bar Media Committee. Attached is our response. With very limited exceptions, we urge the Judicial Council to reject the Committee's report and its recommendations. The Superior Court of California, County of San Francisco, respectfully submits comments to the Judicial Council's Bench-Bar-Media Committee's draft Report, dated August 2010. The Court drafted these comments for consideration after Presiding Judge James J. McBride convened a judicial committee to review the Report's recommendations.	**859**

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Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

General Comments		
Commentator	**Comment**	
	1. We begin by noting that the committee had no "formal charge" (Report at 2, 7). Although asked to "identify the critical issues surrounding the relationships among the courts, attorneys, and media," the committee went far beyond that. While the committee reportedly engaged in "vigorous debate," (Report at e.g. 10) and "significant consideration" (Report at 13), it appears to have consulted no one apart from its own members. We are alarmed at the absence of evidence that the changes urged by the committee are necessary. For example, the Report is devoid of support for the assertion: "Committee members stated that judges appear to frequently deny the use of cameras and other recording devices in courtrooms without providing any reasons for the prohibition" (Report at 12). Certainly, members of the committee may have anecdotal stories of such events, e.g., "Furthermore, committee members from the media conveyed that it appears that judges are increasingly denying electronic recording in the courtroom as a matter of course." (Report at 13). Similarly, the Report announces, "Committee members expressed concerns about their frequency, breadth, sense to predicate the statewide changes proposed in the absence of substantive evidence. Moreover, we submit that good faith adherence to existing rules moots virtually all of the committee's concerns. The Committee gave little thought to the definition of the "media." This is a fundamental omission which creates great uncertainty in most of the committee's recommendations. The issue of defining legitimate media has arisen in the contexts of first amendment protections and state immunity for journalists. Generally speaking, the courts interpret the protections broadly, and reasonable arguments can be made for extending the protections to bloggers and other "private" individuals who publish on the Internet. As such, almost anyone might qualify as the "media." This poses serious problems when it comes to cameras in the courtroom. For example, the "media" may be gang members or others with ulterior motives. Permitting anyone to take pictures, oppose gag and sealing orders, or otherwise have the status of the "media" in the committee's proposed rules, poses serious issues not addressed by the Report. (Report at 14). The Report treats the "media" as a special case, recommending special burdens on the courts, and suggesting special treatment for traditional media, to serve the distinct interests of the media. For example, "special protocol and pricing formula" for transcripts (Report at 5); "[j]ournalists increasingly rely on video and audio feeds for their newsgathering" (Report at 13), justifying presumptions of cameras in the courtroom; addressing "whether journalists" have standing regarding gag orders (Report at 16); recommendations of "regional bench-bar-media academies" (Report at 25) apparently designed for	

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General Comments		
Commentator	**Comment**	
	traditional media entities; and suggesting the "the key stakeholders… [are] the bench, bar, and media," (Report at 36). The authors of the Report have forgotten that the "media" is no more (and no less) than a conduit for the public. The "rights" and entitlements of the media are precisely those of the public. Thus, the legal 2 premises of the sealing rules (CRC 2.550) are those that underlie the public's right to attend trials, not a distinct right of the media as such. See, NBC Subsidiary v. Superior Court, 20 Cal.4th 1178 (1999). Indeed the word "media" is derived from this sense of being an "intermediate agency." Our rules of court, such as those on sealing and public access to court records (CRC 2.500 et seq.), uniformly refer to public access generally, and do not provide preferential treatment for the "media." The recommendations of the Report diverge from the traditional justification for open courts, and unwisely suggest the existence of distinct rights of access in the media as such. In summary, the Report assumes problems without a basis. It proposes solutions which have severe consequences for public safety affecting jurors, witnesses, and litigants. The Report's proposals severely burden local courts. The Report's suggestions would effect the delicate Constitutional balances among defendant's rights, individual privacy, the First Amendment, among other issues, without adequate, or indeed much, consideration. For these reasons we oppose its recommendations.	
Superior Court of Orange County by Hon. Ronald Bauer	As part of its regular review of proposed rule changes and additions affecting our court, the Rules and Forms Committee of the Orange County Court has undertaken an extensive study of the August 2010 Draft Report of the Bench-Bar-Media Committee. While we appreciate that this is merely a preliminary set of proposals and that the implementation contemplated by Recommendations 10 and 11 will only follow the Judicial Council's receipt of a final report, we strongly believe that the first nine Recommendations are so seriously and irreparably flawed that they should be rejected now. Among our reasons are the following: General comments. A recurring theme in these proposals is an effort to intrude into the decision-making of the courts and the individual judges throughout the State of California. There is no hint in any of these materials or recommendations that California's judges are not following the law and performing their sworn tasks properly. There is no reference to any appellate opinion chastising a trial court for its incomprehensible terminology or its failure to teach the uneducated or its lack of wisdom in any decision about cameras in the courtroom. Courts should be permitted to perform their constitutional functions pursuant to the oath taken by each bench officer. These proposed invasions and distortions of the judicial	**860**

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	function are ill-conceived responses to deficiencies perceived not in the bench, but rather in others who should be expected to elevate their own standards of performance. — Recommendation 1. This report summarizes the extensive history of multiple studies of the issue of cameras in the courtroom, extending over a period of more than forty years. Those previous groups repeatedly reached the conclusion that judges' obligation to control their courtrooms and ensure fair trials includes the discretion to determine whether or not there should be cameras or audio recording in the courtroom. A woefully-unbalanced committee has now reached a different conclusion and proposed a presumption in favor of the use of cameras. The justification given for this change is the media's evident belief that the judges of this state are not adhering to the law and applying the nineteen factors listed in the California Rules of Court when making these decisions. — Among all those interested in the judicial system, only the bench officers have taken an oath to insure a fair trial and have reinforced this commitment with training and experience. Their experience has shown that, where cameras are present, attorneys and witnesses play to the media. This is hardly conducive to our goal of a fair trial. — The profit-driven media necessarily have different goals. We have no interest whatsoever in censoring the reporting of courtroom events. But reporting that has the ultimate goal of economic survival can encourage the use of titillating sound bites that are not fairly representative of these proceedings and can undermine our goal of a fair trial. — Implicit in some of these recommendations is the acknowledgement that the media often do not understand what is happening at trial. How does it benefit anyone if that ignorance produces visual misrepresentations of this process? — Judges have long been entrusted with the task of making significant decisions affecting all segments of society. They have sworn to do so fairly and justly. They make decisions about cameras and rec [Text ended in this manner in the online comment form.]	
Superior Court of Sutter County by Hon. Christopher R. Chandler	I have carefully read and considered the Bench-Bar-Media Committee's Draft Report, *Accommodating the Needs of the Bench, Bar and Media in the Pursuit of Justice*, and appreciate the opportunity to offer public comment. Each of the five judges of the Sutter County Superior Court concurs with the October 21, 2010 letter from Keith D. Davis, President of the California Judges Association, and the views and concerns expressed therein. For the reasons expressed in Judge Davis' letter, we urge that the recommendations of the Bench-Bar Media Committee be withdrawn, reconsidered, or sent out for further study before the Bench, Bar Media Committee submits its final report.	**861**

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Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

General Comments		
Commentator	**Comment**	
Superior Court of Butte County by Hon. Steven J. Howell	On Friday, October 22, 2010, the Board of Judges of the Superior Court of California, County of Butte met to discuss the Draft Report presented by the Bench Bar-Media Committee. As a Board we have also reviewed the responses and comments prepared by the California Judges Association, which were presented to the Committee in a letter dated October 21,2010. We thank the Committee for the opportunity to respond to the Draft Report. Our comments and positions on the Report's recommendations mirror those proffered by the CJA. We adopt these comments as our own, and urge the Committee to take them into full consideration on behalf of our Court.	**862**
Superior Court of Kern County by Hon. Michael B. Lewis	The Kern County Superior Court has reviewed the draft report and recommendations of the Judicial Council's Bench-Bar-Media Committee. We enclose our response and comments, As detailed in the enclosed response, our court strongly objects to the recommendations. We have concerns that only three trial judges were represented on the Committee. The recommendations, for the most part, strike at the very heart of judicial independence. The Kern County Superior Court urges that the Judicial Council reject these recommendations and terminate the project. The Judges of the Kern County Superior Court take this opportunity to comment on the Bench-Bar-Media Committee Draft Report. Our Court embraces the concept that our Courts are open, free and independent. We agree that the media should have appropriate access consistent with due process and the First Amendment. However, the recommendations contained within the report, for the reasons set forth below, will not result in more efficient, open, and independent courts for the taxpayers of California. Our judges are puzzled and concerned over several themes that appear to permeate the entire report. Initially, there appears to be no mention of the litigants—those people for whom the Courts exist. Failure to mention the parties may be because the committee believed the interests of litigants were assumed implicitly. However, many of the recommendations imply that the interests of the parties before the Courts are not a concern. We are also concerned that any fiscal impact of the recommendations, which we believe is substantial, is deferred to the future for study. California's current budget crisis makes it clear that unfunded mandates are unworkable. Our Court, we believe, has ongoing, good relations with our local media. That local media serves a local	**863**

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Commentator	**Comment**	
	market located, for the most part, in Kern County. Our Court thus believes that any Bench-Bar-Media issues are best handled at the local level, with involved community, rather than at the state or regional level. Finally, we are greatly concerned about the apparent philosophy expressed both implicitly and explicitly, that judicial discretion should be limited. This is contrary to the often expressed idea that the strength of the California judiciary is its independent judges.	
Superior Court of Solano County by Hon. D. Scott Daniels	The Solano Superior Court appreciates the opportunity to comment on the Bench-Bar-Media Committee's Draft Report. As the Presiding Judge, I am providing the comments of the Solano Superior Court to the Draft Report by this letter. Members of the media are welcome in Solano Superior Court to attend any and all public court proceedings. I believe that our court enjoys a very good relationship with the media. Our bench officers recognize the importance of the media's first amendment rights and the importance of keeping the public informed of court proceedings. Our bench officers also recognize the importance of ensuring the rights of litigants to a fair trial, the necessity of providing secure and safe courthouses, and the duty to maintain dignity and decorum in courtroom proceedings. Our court has significant concerns that the Committee's recommendations will adversely impact judicial discretion in balancing these various interests and rights, and will require the expenditure of funds not presently available. The concerns and comments of the Solano Superior Court are set forth below. The Solano Superior Court appreciates this opportunity to comment on the Committee's recommendations. Our court looks forward to working collaboratively with the Judicial Council and the Bench-Bar-Media Committee on these issues.	**864**
The Reporters Committee for Freedom of the Press by Lucy A. Dalglish, Executive Director	The Reporters Committee for Freedom of the Press submits the following comments in response to the August 2010 Draft Report of the Bench-Bar-Media Committee (the “Draft Report”). We thank you for this opportunity to comment. The Reporters Committee strongly supports the proposed recommendations contained in the Draft Report. Although we are limiting our comments below to the Draft Report’s first three recommendations, we believe that the Draft Report commendably articulates the reasons for implementing the remaining recommendations as well.	**865**

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Commentator	**Comment**	
	We also urge the BBMC to consider adopting one additional recommendation: a requirement that courts provide identifying information about jurors to the public, absent a written finding of exceptional circumstances. Courts have recognized that juror information is presumptively public, as required by the First Amendment, *see, e.g., United States v. Wecht*, 537 F.3d 222, 239 (3rd Cir. 2008), and the common law, *In re Baltimore Sun Co.*, 841 F.2d 74, 76 (4th Cir. 1988). We encourage the BBMC to consider recommending the implementation of such a requirement in both civil and criminal cases. The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors working to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970, and it frequently files amicus curiae briefs in significant media law cases. The Reporters Committee also serves as a First Amendment clearinghouse, monitoring and compiling information about significant legal and statutory developments affecting journalists' and the public's right to know, and produces several publications to inform journalists and lawyers about media law issues, including a quarterly magazine and Internet web site, which is updated several times daily. In addition, the Reporters Committee operates a hotline to assist journalists with legal problems as they arise in their work. Often, these legal defense requests come from journalists who seek access to court proceedings, records and information. This contact with reporters, editors and media lawyers around the country drives home the importance of court access in the everyday performance of journalism. As both a news organization and an advocate of free press issues, the Reporters Committee has a strong interest in the policies governing the rights of reporters to access information from the judicial system. It is through this dual role that the Reporters Committee can offer a unique perspective on the following recommendations. Although section 230 of the California Code of Civil Procedure already provides a presumption of public access to juror identification information prior to a final verdict, some local court practices are in conflict. We urge this Committee to recommend that juror identification information cannot be withheld by way of a blanket local order, but rather must be presumed to be public absent specific findings of exceptional	

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	circumstances. It is our understanding that the current practice in Los Angeles Superior Courts is to refer to jurors in criminal cases only by number and to hide juror information from the public. This practice conflicts with established constitutional and common-law principles, and it conflicts with state statutory law as well. It also fails to take into account the benefits of public knowledge of court proceedings. The public and press have a presumptive First Amendment right of access to judicial proceedings in criminal cases. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality opinion) ("a presumption of openness inheres in the very nature of a criminal trial under our system of justice"). The Supreme Court explicitly extended this constitutional presumption of openness to voir dire proceedings in *Press-Enterprise Co. v. Superior Court* (*Press-Enterprise I*), 464 U.S. 501, 505 (1984). In these and many other cases, courts have relied on this presumption in striking down restrictions on access to state court records. *See, e.g., Bellas v. Sup. Court*, 85 Cal. App. 4th 636, 642 (2000) (describing *Press-Enterprise I* as"explicitly exalt[ing] the right of public access to criminal proceedings over the privacy right of jurors generally.") In determining whether the presumption of openness applies to particular records or proceedings, the Supreme Court requires a consideration of "whether the place and process have historically been open to the press and general public" and "whether public access plays a significant positive role in the functioning of the particular process in question." *Press-Enterprise Co. v. Superior Court* (*Press-Enterprise II*), 478 U.S. 1, 8 (1986) (citations omitted). Where a constitutional presumption of access applies, the court may close proceedings only after making specific, on-the- record findings: (1) that closure is necessary to further a compelling governmental interest; (2) the closure order is narrowly tailored to serve that interest; and (3) that no less restrictive means are available to adequately protect that interest. *Id.* At 14.[8] The decision to empanel an anonymous jury is "a drastic measure, which should be undertaken only in limited and carefully delineated circumstances." *United States v. Krout*, 66 F.3d 1420, 1427 (5th Cir. 1995). The scope of a trial court's discretion to empanel an anonymous jury remains unsettled nationally, but	

[8] Relying on *Press-Enterprise I* and *Waller v. Georgia*, 467 U.S. 39 (1984), the U.S. Supreme Court earlier this year reaffirmed the demanding showing required to exclude the public from the jury selection process in a criminal trial, reversing a conviction in which the trial court did not consider alternatives to closing the *voir dire* process and did not identify any "any overriding interest likely to be prejudiced." *Presley v. Georgia*, 130 S. Ct. 721, 724-25 (2010) (per curiam).

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	federal and state courts throughout the country have recognized a "limited or qualified right" to juror names and addresses, either under either a common law right or "premised on the *Press-Enterprise* rationale that openness in all aspects of our justice system promotes fairness to litigants and promotes public faith in our jurisprudence." *In re Disclosure of Juror Names and Addresses*, 592 N.W.2d 798, 799 (Mich. App. 1999) (citations omitted); *see also, e.g., United States v. Wecht*, 537 F.3d 222, 239(3rd Cir. 2008) (the "presumptive First Amendment right of access to the identities of jurors attaches no later than the swearing and empanelment of the jury"); *United States v. Blagojevich*, 612 F.3d 558, 563 (7th Cir. 2010) (the "common-law right of access by the public to information that affects the resolution of federal suits" creates a "presumption in favor of disclosure" of juror names); *In re Baltimore Sun Co.*, 841 F.2d 74,76(4th Cir. 1988) (recognizing a common-law presumption in favor of access to juror and alternate juror names and addresses after the jury is impaneled, noting that the "risk of loss of confidence of the public in the judicial process is too great to permit a criminal defendant to be tried by a jury whose members may maintain anonymity."). In addition, the Los Angeles courts' blanket practice of referring to jurors solely by number not only conflicts with the First Amendment, but is also at odds with state law. California Code of Civil Procedure § 237(a) provides: The names of qualified jurors drawn from the qualified juror list for the superior court shall be made available to the public upon request unless the court determines that a compelling interest, as defined in subdivision (b), requires that this information should be kept confidential or its use limited in whole or in part. A local court practice cannot stand if it conflicts with state statute. *Erickson v. Sup. Court*, 55 Cal. App. 4th755, 758 (1997). We recognize that the California Court of Appeals decided thirteen years ago that the Los Angeles practice – which the court emphasized was meant to be an "interim measure" – was "not fatally inconsistent with any statute and thus not invalid," and also did not violate the defendants' right to a public trial. *People v. Goodwin*, 59 Cal. App. 4th 1084, 1091, 1092-93 (1997). But we respectfully disagree that the court's decision justifies the local practice, for two reasons. First, the *Goodwin* court incorrectly reasoned that a system in which jurors remained anonymous to the public did not constitute an "anonymous jury" as long as the parties and their counsel knew the jurors' identities. This analysis misses the point of California Civil	

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	Procedure Code § 237(a), which instructs courts to release the names of jurors "to the public." Second, the *Goodwin* opinion also expressly relied on the fact that there was no record to indicate that "interested members of the public or the news media were precluded from ascertaining jurors' names during the trial." *Id*. at 1093 n.6. Regardless of the record in that case, it is beyond peradventure that the Los Angeles court practice has in fact prevented reporters and the public from learning the names of jurors in criminal cases, as members of this Committee are no doubt aware. The juror numbering system used by the Los Angeles courts casts secrecy over the entire proceedings and undermines the presumption of openness required by the U.S. Supreme Court in *Richmond Newspapers, Inc. v. Virginia* and *Press-Enterprise I.* As the Third Circuit recently observed, a "criminal jury trial vests twelve randomly-selected citizens with the power to decide the fate of someone who the state has targeted for prosecution." *Wecht*, 537 F.3d at 238. It is hard to "reconcile the Supreme Court's conclusion that the public has the right to see the process in which this power is exercised (*Richmond Newspapers*) and to see the process that selects those who will exercise the power (*Press-Enterprise I*), with the conclusion that the public has no right to know who ultimately exercises this power." *Wecht*, 537 F.3d at 238. That is the exact result of the local Los Angeles court practice. We urge the BBMC panel to consider an additional recommendation to remedy this practice. We thank you for the opportunity to comment on the Committee's proposed recommendations. The Reporters Committee supports the proposed recommendations while also urging the adoption of a new recommendation to disallow the use of anonymous juries absent a specific showing of exceptional need.	
CNS, Bill Girdner, Editor	The other element of effective press access is a press room where journalists can work. Newer courthouses are being built without press rooms. The courthouse in Contra Costa County, for example, was built without a press room. I would urge the authors of the Draft Report to address the matter of press rooms in future courthouse construction. In conclusion, I would like to take this opportunity to warn that over the last 30 years a great change has come over the relationship between the courts and the press in California. As a young journalist at the *Los Angeles Daily Journal,* I had easy access to then-Presiding Judge Ronald George and the court's Clerk. That	**866**

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	has all changed. To get access to a judge or a clerk, a journalist must go through a public information office in most big courts, where such requests regularly get shunted aside. Over the years, the administrators have grown more insular, more obdurate, and more powerful. It does not have to be this way. In federal courts, journalists can have direct access to the Clerk and can call a judge's chambers and ask for a talk. All four federal districts in California provide the press with same-day access to new actions, by one means or another. Public information officers in those courts often act to facilitate press access. The same can be true in California courts. A few years ago, I visited Del Norte Superior Court, a spare and open courthouse where a reporter can talk across an open counter to the staff. When I asked to review the new cases, a court employee told me that a reporter for the local newspaper in Crescent City, *The Daily Triplicate,* checked the new filings regularly as part of his beat. She gave me a manila folder with the face pages of the current filings and said that I simply needed to ask for the documents, which were provided promptly. This was top-quality, traditional press access -essentially a press box -the kind of access that is fast disappearing in California's courts.	
First Amendment Coalition by Peter Scheer, Executive Director, San Rafael	On behalf of the First Amendment Coalition, I am writing to register our strong support for the recommendations the Bench-Bar-Media Committee presented in its August 2010 draft report. While we support all the recommendations, we wish in particular to emphasize the importance of the recommendations regarding cameras in the courtroom, so-called “gag orders,” and the sealing of court records. Thank you for your consideration of the First Amendment Coalition’ views.	**867**
Courthouse News Service by Rachel Matteo-Boehm, Holme Roberts & Owen LLP (San Francisco)	On behalf of Courthouse News Service ("Courthouse News"), we are pleased to make this submission in response to the invitation for written comments on the Bench-Bar Media Committee's Draft Report, "A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice" (the "Report"). Courthouse News commends the work of the Committee and its efforts to improve understanding and working relationships among California judges, lawyers, and journalists. We write to offer Courthouse	**868**

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Commentator	**Comment**	
	News' views as a member of the press dedicated to comprehensive coverage of civil litigation in California. Although Courthouse News supports most of the recommendations in the Report, it respectfully suggests that the Report does not go far enough with respect to some of the issues faced by news reporters who cover the courts on a daily basis, particularly with respect to the written court record. **I. About Courthouse News Service** Courthouse News is a legal news service for lawyers and the news media. The majority of Courthouse News' nearly 2,500 subscribers nationwide are lawyers and law firms, including many prominent California firms. In addition, other news outlets are increasingly looking to Courthouse News to provide them with information about the court record, which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News' media subscribers include such well-known entities as the *Los Angeles Times*, the *San Jose Mercury News*, the *Houston Chronicle*, *The Dallas Morning News*, *The Boston Globe*, the *Detroit Free Press, The Atlanta-Journal Constitution,* and *Forbes.* In addition, a number of academic institutions-including Harvard Law School, Loyola Law School, and UCLA -subscribe to Courthouse News' reports. **II. Delays in Access to the Court Record** While the Committee has addressed access to the court record in the context of sealing, Courthouse News respectfully suggests that court record access is also under serious threat in the form of delays in access to newly filed documents –that traditionally were placed in a "press box" by court staff for review by members of the media. Unlike sealing situations, where a judge explicitly considers whether the public may be denied the right to see a particular document, these access delays involve no court order to restrict public access but instead are typically the result of shifting policies denying access to newly filed documents until the administrative tasks associated with those documents have been completed. Yet these delays -though limited in time -are the functional equivalent of denials of access. Because the impact of such procedures on access is rarely considered, this delay problem is particularly insidious and, in fact, is steadily worsening in California courts. **A. Importance of Timely Access to the Court Record** As the Report recognizes, "[a] free and open society relies, in part, on an independent and accountable judiciary, a fair and just legal system, and a free and robust media." While these interests might sometimes be said to compete -as, for example, when a criminal defendant's right to a fair trial is balanced against the	

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	right of access to judicial records and proceedings -it is more often the case that these interests support each other. In particular, keeping the public informed about what transpires in the courts is critical to an independent and accountable judiciary and a fair and just legal system. *See, e.g., Phoenix Newspapers* v. *Superior Court*, 418 P.2d 594, 600 (Ariz. 1966) (Bernstein, V.C.J, concurring) ("In order to maintain a working democracy; it is essential that the people, the final arbiters of all rights, have knowledge of the operations of their government, including the courts."). A key component of keeping the public informed about what happens in the courts comes from the daily court record, as reflected in the First Amendment right of timely access to court documents. As the Ninth Circuit has recognized, even short delays constitute "a total restraint on the public's first amendment right of access even though the restraint is limited in time, and are unconstitutional unless the strict test for denying access has been satisfied." *Associated Press* v. *U.S. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983). *Accord, e.g., Grove Fresh Distribs., Inc.* v. *Everfresh Juice Co.*, 24 F.3d 893,897 (7th Cir. 1994) ("[i]n light of values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous"); *Globe Newspaper Co.* v. *Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) ("even a one to two day delay impermissibly burdens the First Amendment"); *Courthouse News Service* v. *Jackson*, 2009 WL 2163609, *4-5 (S.D. Tex. 2009) (issuing preliminary injunction ordering court to provide same-day access to new complaints). As a practical matter, delays in permitting the press to see a new court record mean there is a far greater chance that the public will not learn about the record at all. This is because the "newsworthiness of a particular story is often fleeting," *Grove Fresh*, 24 F.3d at 897, and given the vast amount of information competing for its attention, it is only while new court actions are still "current news that the public's attention can be commanded." *Chicago Council/Lawyers* v. *Bauer*, 522 F.2d 242,250 (7th Cir. 1975). Thus, a court record that cannot be accessed on the day it is filed or issued has a far lower chance of being reported on, which means a far lower chance of coming to the attention of interested members of the public. This is particularly true in today's world, when information is exchanged instantaneously over the Internet Given the extent to which the public depends on the press for information about what happens in the courts, the result can only be a less informed citizenry. **B. Sources of Delays in Accessing the Court Record** In keeping with these principles, same-day access to newly filed court actions used to be the norm, with	

General Comments		
Commentator	**Comment**	
	courts typically placing the day's record -including new actions and, in some courts, subsequent filings and rulings -in designated media bins so that news reporters could review them at the end of each day as part of their regular courthouse beat Increasingly, however, courts are interposing various administrative tasks between the filing of a document and its being made available to the press. For example, court staff may insist that they must first scan, docket, put in folders, verify, accept, complete intake tasks associated with the new California Case Management System, or perform any number of other clerical processes before new filings will be made available for review, which almost always results in delays. Courthouse News understands that the intake process for new filings necessarily takes time, and it is *not* suggesting that the problem of delayed access should be solved by speeding up these tasks. To the contrary, it has been Courthouse News' experience that attempts to remedy access delays by, for example, speeding up processing, scanning, or posting online rarely result in lasting improvements in access. Whether due to staffing issues or a simple relaxation of effort, delays almost always crop back up over time. Rather, the most effective and reliable way to ensure same- day access to new filings is to develop procedures so that reporters who visit a court every day can review new records on the day they are filed, even if processing, scanning, or other similar tasks have not been completed. Newly filed documents are not being actively worked on all the time; to the contrary, they spend much of their early lives sitting on a staff person's desk pending completion of these administrative tasks. This means there is almost never an actual conflict between permitting press access and completing intake since arrangements can be made for the press to see those filings that are not being actively worked on, returning later to see the documents that were being actively worked on at the time of their initial request While many courts, including several in California, have adopted procedures for media access that allow review of newly filed records while they are not being actively worked on, these procedures have not been broadly implemented throughout California as we respectfully believe they should be. Along with the growing trend to delay press access pending completion of administrative tasks, Courthouse News has observed a shift in the behavior of many court personnel away from working cooperatively with the press to facilitate the dissemination of news about the court record to the general public. Instead, court personnel seem to increasingly adopt a combative position towards the press, as if they view the press primarily as an impediment to court operations. Procedures that have traditionally promoted press access are, with disturbing frequency, unceremoniously dismantled or scaled back. and reporters have been told that the procedures were offered only as a "courtesy" to the media.	

General Comments		
Commentator	**Comment**	
	The "courtesies" that have been stripped from the press over the years in courts throughout California include keeping copies of documents filed during the day in a box for reporters to check at the end of each court day. allowing reporters to go behind the counter to review cases directly, permitting reporters to continue reviewing documents filed late in the day after the intake area has closed to the public but while court staff are still working, and providing press rooms that facilitate court coverage. Instead, reporters increasingly face policies that discourage access, including limits on the numbers of files that can be reviewed each day, charges for accessing electronic court records, and prohibitions on reviewing filings in paper form (with the press instead being made to wait until court staff' make the records available electronically. a process that is not instantaneous but rather can often take several days). The principle that seems to go increasingly unrecognized is that ensuring the press can obtain and report information about public court records in a timely manner is not a matter of courtesy -it is critical to the functioning of the judiciary in our democratic system. As one court recently put it: Because it is impossible for the citizenry to monitor all of the operations of our system of justice, we rely upon the press for vital information about such matters. Members of the public simply cannot attend every single court case and cannot oversee every single paper filing, although clearly entitled to do so. Thus, it is critical for the press to be able to report fairly and accurately on every aspect of the administration of justice. *Salzano* v. *N. Jersey Media Group Inc.*, 993 A.2d 778, 790-91 (N.J. 2010). And because reporters function as "surrogates for the public," who cannot observe the court's activities directly, it is appropriate to provide special procedures so that the press can monitor the courts and, in turn, report to the public. *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555,572-73 (1980) (observing in the context of courtroom proceedings that although "media representatives enjoy the same rights of access as the public, they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard"). In other words, facilitating prompt press access to the courts -including the daily court record -is the most effective means of keeping the public abreast of what is happening in their judicial system, and procedures that ensure timely access should be viewed not as courtesies to be offered when convenient but rather as fundamental to the functioning of the courts in our society. Another issue that the Committee may not have had time to consider, but that Courthouse Newsrespectfully	

General Comments		
Commentator	**Comment**	
	urges is deserving of attention, is the disappearing press room. While spaces dedicated to members of the press used to be commonplace in California courts, they are seldom included in new plans for court construction. Maintaining an area where journalists can work throughout the court day and even after a court's public intake area has closed for the day is an extremely effective way of promoting reporting on the court. In fact, Courthouse News has observed that press rooms not only improve access for journalists already covering the court but actually encourage others to begin or expand coverage. Conversely, when press rooms are eliminated, existing reporting suffers and expanded reporting is discouraged. In late 2009, Courthouse News raised the press room issue with the Administrative Office of the Courts' Office of Court Management and Construction. The Office of Court Management and Construction responded with a general explanation of the design and construction process for California courts and said that it "routinely work[ed] with the press on access considerations through the statewide Bench-Bar-Media Committee." Courthouse News then asked to review plans for various courthouses currently in the design phase. so that it could offer a perspective on the extent to which the proposed designs effectively accommodated press access. It did not receive a response. Courthouse News respectfully suggests that the issue of press rooms is deserving of further attention. While the Committee may not have time to address this issue during its two-year term, Courthouse News believes it is an issue that should be identified as an area for follow-up in some other appropriate forum. Courthouse News greatly appreciates the efforts of the Committee throughout its two-year term and hopes that these comments are useful. Should you have any questions or wish to discuss any of these issues further, please do not hesitate to contact our offices.	
Tom Vacar, Consumer Editor & Investigative Reporter KTVU Chanel Two News (San Francisco / Oakland / San Jose)	The undersigned is a reporter for more than thirty years, the last twenty here at KTVU. I am also a graduate of the Cleveland-Marshall College of Law and passed the Ohio & Federal bars. I write in support of the Judicial Council of California's Draft Report outlining twelve recommendations that would give the news media and the public much better and more free access to the courts. One of the reasons coverage of the courts is so sketchy these days is because it is always an "anybody's guess" as to whether or not we'll be allowed in to cover the event. The problem with that is several fold: 1) It denies the greater public access to what should be an open forum for the administration of justice,	**869**

General Comments		
Commentator	**Comment**	
	especially in the media age, 2) It maintains the general cloud of mystery over what the courts do and how they do it, 3) It allows judges too much personal discretion to deny coverage on whatever feeling or whim he or she might have on any given day and 4) It raises the impression that this branch of government, although separate and distinct from the others, is less accountable to public scrutiny. As a result, the courts become less meaningful to the general public as evidenced by the ongoing problem of far too many people blowing off jury duty; seeing it as a unwarranted burden instead of a Constitutional duty. Better access to the courts can only result in better appreciation of the judicial branch and system.	
Superior Court of Nevada County by Hon. Thomas M. Anderson	The Nevada County Superior Court has read the draft report and proposals of the Bench-Bar Media Committee. We have also reviewed the detailed response submitted by the Sacramento County Superior Court. Without repeating the extensive analysis offered by the Sacramento Superior Court please accept our joinder of their response. We appreciate the efforts of the AOC during the tenure of Chief Justice George to provide support and sustainability to the judiciary throughout California. The recognition of the judicial branch as an equal branch of government has occurred because of the Chiefs efforts. Yet, there needs to be more awareness and caution in centralizing all aspects of court procedures. The efforts of the AOC and various committees sometime seem to seek solutions to problems that do not exist. These recommendations addressed by the Bench-Bar-Media Committee are in that category. The courts have routinely and effectively managed this aspect without crisis and without any significant appellate action. The judges need to be respected for our roles and our assumption of our responsibilities. The public place their trust in the judges that they elect and confirm for just that purpose. The recommendations subvert that trust and the role of judges. We respectfully request that the recommendations be rejected.	**870**
Rural Judges Forum, Superior Court of Alpine County, Superior Court of Amador County, Superior Court of Calavaras County, Superior Court of Colusa County,	Upon our review of the draft report, we believe that all recommendations set forth therein must be revisted. We have serious concerns about them. We commend to the committee the thoughtful comments of PJ Steve White, Sacramento, as well as those of PJ Doug Mewhinney, Calavaras and PJ Dave Richmond, Amador. We also adopt the comprehensive comments from CJA President, Judge Keith Davis to Justice Carlos Moreno and committee members dated October 21, 2010.	**871**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

General Comments		
Commentator	**Comment**	
Superior Court of Glenn County, Superior Court of Inyo County, Superior Court of Mariposa County, Superior Court of Mono County, Superior Court of San Benito County, Superior Court of Sutter County, Superior Court of Tuolumne County, Superior Court of Tehama County, Superior Court of Trinity County and Superior Court of Yuba County by F. Dana Walton, Chair		
Court Executive Advisory Committee (CEAC) By Michael M. Roddy, Chair; Kim Turner, Vice-chair	On behalf of the Court Executives Advisory Committee, we would like to provide the following comments on the BBMC recommendations listed below. As a general observation, although the recommendations outlined in the BBMC draft report outline the issues surrounding the relationships among the courts, attorneys, and the media, CEAC believes that many of the recommendations, as proposed, will create significant administrative and operational impacts on the trial courts. CEAC believes it is imperative that additional research and analysis be completed with regards to the administrative and operational impacts of the proposed recommendations to the courts, as well as a comprehensive analysis of the cost of implementing the recommendations as proposed.	**872**
Trial Court Presiding Judges Advisory Committee by Hon. Kevin A. Enright, Chair; Hon. Gary Nadler, Vice-Chair	The Trial Court Presiding Judge Advisory Committee (TCPJAC) Executive Committee is appreciative of the opportunity to provide comment on the Bench-Bar-Media Committee's (BBMC) Draft Report: *A Balancing Act, Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice* and the recommendations it presents. TCPJAC is an advisory committee established by the Judicial Council of California and is made up of the presiding judges of the 58 superior courts of California. The 18-member body of the TCPJAC Executive Committee is providing the following comments on behalf of the full TCPJAC. Following general comments on the report, the Executive Committee will address the recommendations specifically. The TCPJAC Executive Committee's opposition to the draft report arises from four basic inter-related areas of disagreement.	**873**

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

General Comments		
Commentator	**Comment**	
	1 Methodology and Representation: The recommendations were discussed and developed by a committee disproportionally aligned with media interest. Of the 24 member committee, only 6 were judicial officers. And though the concerns of the public were a priority during debate and discussion, actual representation from the public was lacking. • Related to the area of media representation, the report fails to adequately define who or what is included under the term "media." Reporting and recording technology and practices are changing at an ever increasing rate, and the media is having difficulty defining and indentifying itself. The implications of these recommendations grow exponentially if it were interpreted that bloggers, tweeters, and phone videos are included within the scope of the rule proposals. 2. Judicial Discretion: At the core of the initial recommendation and carried through several others is the attempt to limit the discretion of the judicial officer at the fulcrum of this balancing act between bench, bar, media and the public's right to justice, safety, and privacy. The Executive Committee strongly opposes this position. 3. Research and Analysis: Considering the far-reaching implications of these recommendations, it is believed that insufficient research was done to support them, and existing research in critical areas was not included in the analysis. 4. Operational and Administrative Impact: Several of the recommendations, though well intended, will significantly burden already overwhelmed court staff and resources, and an overstretched state budget. This issue is addressed only peripherally in the report, and the recommendations should not move forward without sufficient attention given to all the costs involved. These are difficult issues that impact public access and parties' rights to a fair proceeding. The TCPJAC Executive Committee is willing and able to continue to work with the Bench-Bar-Media Committee to develop policies and procedures in this area.	
San Bernardino Public Defenders Office by Doreen B. Boxer	On behalf of the Law Offices of the San Bernardino County Public Defender, I submit this letter opposing Draft Recommendation 1 made in "A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice, Bench-Bar-Media Committee Draft Report, August 2010," hereafter "Draft Report." As set forth more fully below, this Recommendation, if implemented, will serve to violate criminal defendants' constitutional rights, jeopardize public safety, increase litigation costs, delay case processing, increase case backlog and will further overburden limited judicial, prosecutorial, and defense resources. Additionally, on behalf of my office, and as set forth below, I submit this letter in opposition to Draft	**874**

A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated; R = Research needed.

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
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General Comments		
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	Recommendations 2 and 3 as well as the proposed Declaration on Reducing the Cost of Trial Transcripts for the Media.	
Superior Court of Marin County by Hon. Terrence Boren	The Marin County Superior Court has received and carefully considered the draft report and proposals published by the Judicial Counci1's Bench-Bar Media Committee. The Committee has proposed a number of revisions to the California Rules of Court relating to the interworking relationship between the California courts and the news media. We have serious concerns about the recommendations (see attached) and urge the Council to reject them in their entirety.	**875**
Appellate Advisory Committee by Hon. Kathryn Doi Todd, Chair	See letter Attachment E	**876**
Hon. Barbara A. Kronlund, Superior Court of San Joaquin County	I do not agree with the proposals. I adopt and incorporate by reference the comments of Presiding Judge Steve White from the Sacramento Superior Court, as well as those of the Executive Network members. Their comments adequately express my personal concerns with the recommendations.	**877**
Superior Court of Amador County Hon. David S. Richmond; Hugh K. Swift, Court Executive Officer	Attached hereto is the Amador Superior Court's response to the recommendations of the Bench-Bar-Media Committee. After careful consideration of the recommendations, the Amador Superior Court has serious concerns about the ramifications of adopting the same. We urge the Judicial Council to reject the recommendations for the reasons set forth in the attached response.	**878**
Court of Appeal, Second Appellate District, Division Five by Hon. Paul Turner	Thank you for allowing me to comment on the aforementioned draft report. Some of my views are critical in nature. I want to make it clear, these are not personal criticisms directed at Administrative Office of the Court staff nor the committee members. Seventh, in terms of extended coverage, I suggest any rule require technical staff be dressed in professional attire. The last time our division had video coverage (maybe seven years ago), the camera and sound persons were dressed in shabby tee shirts and the tackiest tatty looking faded worn jeans with frayed cuffs ever worn in a court of law. Senator Statham will tell you the *on-air talent* he ably represents always look perfect. But the need for professionalism in court related journalism should extend to the good folks who haul the cameras around and make certain the sound is dutifully recorded. Please let me end where I began. I mean no personal criticism of those involved in the preparation of the draft report. My criticism extends to the contents and a minority of the recommendations of the draft report- my complaints do not extend to those who prepared it. They have my appreciation as a judge and a taxpayer. The draft report honorably lays out areas where the judicial branch can do a better job of protecting the rights of the public and journalists.	**879**
Public Defender, Los Angeles by	I write to express the concerns of the Los Angeles County Public Defender regarding proposals contained	**880**

Attachment C: Public Comments on *A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice*, Bench-Bar-Media Committee Draft Report (August 2010)
Comment Chart Date: 09/20/11

General Comments		
Commentator	**Comment**	
Michael P. Judge	in the above referenced draft. The report entirely sidesteps a seminal issue of colossal magnitude. It lacks a precise definition of “media.” Consequently the ambit of the ultimate policies is unknowable. In fact, the report admits this fundamental failure, to wit: "The subject of how courts can properly identify legitimate reporters. and provide appropriate access to court proceedings remains an unresolved Issue." This issue is significant and ought to be resolved before any proposed changes are adopted. Otherwise the changes could allow anybody with a camera or a pen or computer to challenge gag orders, camera restrictions, and sealing orders and thereby cause chaos m the courts. Anyone, under the proposal, could demand to record court proceedings with cell phones; self-proclaimed bloggers could bring in their video-cams and demand access' any Joe or Jane Doe can challenge any order issued by the court dealing with cameras, gag orders, and sealing. People who are judgement proof, living on the fringe and who may be entirely irresponsible could do immeasurable damage by disseminating images and sound, edited to create false impressions, riling vulnerable persons, contaminating sitting jurors and/or the venire. Those whose fundamental due process rights to liberty, and even life, are at stake would be hard pressed to chase such purveyors of information or misinformation to bring them before the Bar to ensure fair and just outcomes, at the very same time that their cases are being heard and their attention and energy should be devoted to meaningful participation in such proceedings.	

Attachment D

The Superior Court
LOS ANGELES, CALIFORNIA 90012
CHAMBERS OF
CHARLES W. McCOY, JR.
PRESIDING JUDGE

October 20, 2010

TELEPHONE
(213) 974-5600

Judicial Council
Administrative Office of the Courts
Attn: Claudia Ortega, EOP
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: "A Balancing Act: Accommodating the Needs of the Bench, Bar and Media in the Pursuit of Justice" Draft Report, August 2010

Dear Ms. Ortega:

I have enclosed Comments along with Exhibits A and B to the proposals contained in the above-entitled draft report which were approved unanimously the Executive Committee of the Los Angeles Superior Court on October 19, 2010.

Very truly yours,

Charles W. McCoy Jr.
Presiding Judge

CWM:gp

c: Hon. Lee Smalley Edmon, Presiding Judge-Elect
Hon. David S. Wesley, Chair, Ad Hoc Committee
Hon. Carolyn B. Kuhl, Vice Chair, Ad Hoc Committee

COMMENTS BY THE LOS ANGELES SUPERIOR COURT ON THE PROPOSALS CONTAINED IN "A BALANCING ACT: ACCOMMODATING THE NEEDS OF THE BENCH, BAR, AND MEDIA IN THE PURSUIT OF JUSTICE"

Draft Report August 2010.

INTRODUCTION

The following Comments were approved unanimously by the Executive Committee of the Los Angeles Superior Court on October 19, 2010. They were prepared under the direction of an ad hoc committee appointed by Presiding Judge Charles W. McCoy and Assistant Presiding Judge Lee Smalley Edmon. The members of the ad hoc committee are listed at the conclusion of these Comments.

OVERVIEW

The Judges of the Los Angeles Superior Court respectfully submit their comments on the proposals contained in the Judicial Council's Bench-Bar-Media Committee Draft Report: "A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice." As discussed below, the Judges of the Los Angeles Superior Court (hereinafter referred to collectively as "LASC") have substantial and deep concerns with many of the numerous substantive and procedural law revisions recommended by the Draft Report.

Two themes run through the following comments on specific proposals. First, the Draft Report gives insufficient consideration to whether existing law, experience and hard evidence support the recommendations. Second, the Draft Report does not adequately consider the legal rights and interests of persons and institutions other than the press.

The right to a free press (and accompanying right of the press to gather information) and the right to a fair trial ensured within an independent judicial branch are two of our most important and enduring Constitutional rights. The Draft Report attempts to enhance press rights, but does so without sufficient consideration of (1) the existing case law (developed over decades in the United States Supreme Court and the Courts of the State of California) and existing statutory law and court rules regulating the intersection of these two fundamental Constitutional rights; (2) the previous significant efforts in California to develop and to test empirically rules for appropriate use of cameras in the courtroom; and (3) the views of stakeholders who were not represented on the Bench-Bar-Media Committee (or who were substantially underrepresented).

Before discussing LASC's disagreements with individual recommendations, we pause briefly to explain our concerns related to the limited context and narrow focus of the Draft Report:

(1) Existing Case Law

The legal issues that are presented by the Draft Report will be addressed in the context of the Draft Report's various recommendations. However, it should be noted here that, while our courts are, and must be, open to the public and the press except in highly limited circumstances defined by law, there may be certain *types* of media coverage that conflict with the rights of litigants in civil or criminal proceedings to have a fair trial. These competing interests are not of equal value in a court of law, because a judge's primary duty is to insure a fair trial. (*See Sheppard v. Maxwell* (1966) 384 U.S. 333; *NBC Subsidiary v. Superior Court* (1999) 20 Cal.4th 1178, 1206-1207, *citing Press Enterprise Co. v. Superior Court* (1986) 478 U.S. 1, 14 (the interest in providing a fair trial is an "overriding interest").)

(2) History of Current Rule 1.150

In 1994 and 1995 California experienced extensive media coverage of a few high-profile court cases. On October 27, 1995, Chief Justice Lucas announced the appointment of a special task force to review Rule 980 of the California Rules of Court, which then governed photographing, recording and broadcasting in the courtroom. The 13-member task force conducted a statewide survey of judges, public defenders, and prosecutors and solicited the views of many bar groups. The task force was chaired by Justice Richard Huffman. Task force members attended an educational forum and hosted a public hearing on the topic of cameras in the courtroom. In 1996, the work of the task force culminated in a report (attached hereto as Exhibit A), and the task force circulated a proposed amended Rule 980 for comment. The Judicial Council adopted an amended Rule 980 which went into effect January 1, 1997, as well as two mandatory forms to implement the rule.

To monitor implementation of the amended rule, Chief Justice Lucas requested that the trial courts send copies of all forms filed pursuant to the rule to the AOC. From those forms, the AOC created a database of information about the use of Rule 980.

In May 2000, the Research and Planning Unit of the Administrative Office of the Courts issued a report entitled: "Cameras in the Courtroom: Report on Rule 980" (attached hereto as Exhibit B; hereinafter, the "2000 Report"). The 2000 Report was based on a review of 3,224 media request forms and 2,116 resulting court orders. The 2000 Report found that *81 percent* of the orders *granted* the media's request for coverage. The 2000 Report recommended that Rule 980 not be modified, noting, in addition to the statistical results, that "[i]nformation acquired from sources outside the

AOC data also does not suggest problems with rule 980." (2000 Report at p. 12.) The Report also recommended that the special data collection be terminated.

It is noteworthy that the current court policies concerning cameras and other media in the courtroom are based on the extensive outreach, surveys and empirical evidence summarized above. The Draft Report does not acknowledge these prior efforts and does not attempt to update either prior outreach efforts or empirical research.

(3) Perspectives of Other Stakeholders

The Bench-Bar-Media Committee was formed to foster improved understanding and working relationships among California judges, lawyers and journalists. While the composition of the Committee was appropriate for that function, the recommendations that resulted from the Committee's work affect stakeholders who were not represented in the Committee discussions.

One-third of the Committee members were members of the media and media advocacy groups. All of the civil litigation attorneys who were Committee members either frequently represent media entities in court access cases or are themselves legal commentators. No other civil attorneys were members of the Committee and no public defender was represented. The Committee did not include lawyers who regularly appear in family law proceedings. Only three trial judges were Committee members, and one of those trial judges dissented from the Draft Report's key recommendations.

We do not intend any criticism of the members of the Committee or dispute that the Committee membership could provide useful insights in fostering improved understanding and working relationships between the courts and the media. However, the Committee lacked members who could provide perspective and balance with

respect to litigants' legitimate interests in protecting confidential information and ensuring a fair trial in civil cases. The Committee lacked members with an awareness of the difficult issues of privacy in family law proceedings (as discussed below). And the Committee lacked a public defender to address the fair trial interests of criminal defendants outside the context of coverage that may be advantageous to a criminal defense counsel.[1]

Judges have one duty in service of the community *as a whole*: to assure the fair and equal administration of justice. Without the competent, dignified, and conscientious performance by judges of the duties of their office, respect is lost for the rule of law. It is hard and not glamorous work, but judges are not public relations officers. It is a false priority to try to put the fostering of our public image ahead of the sheer hard work of judging. The public that elects each judge expects that the ultimate duty of each individual trial court judge is to dutifully and diligently guard the parties' right to a constitutionally fair and just hearing, above all other considerations.

RESPONSE TO RECOMMENDATION NO. 1: CAMERAS IN THE COURTROOM

The first U.S. Supreme Court case to examine the presence of cameras in the courtroom was *Estes v. Texas* (1965) 381 U.S. 532, which overturned the defendant's conviction because it found that the use of cameras, and the ensuing disruptive courtroom environment, deprived the defendant of a fair trial. The Court stated that broadcasting a trial does not contribute to its purpose of discerning the truth. (*Id.* at

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[1] See, *The Risks, Rewards and Ethics of Client Media Campaigns in Criminal Cases,* 34 Ohio N.U.L. Rev. 687 ("Lawyers have a powerful interest in receiving and generating publicity about themselves and their cases. The lawyer may find such publicity an enticing source of ego gratification. It might also lay the foundation for a future career in politics or as an author, a consultant for movies, or a 'talking head' legal commentator on television. But the primary reason lawyers find publicity attractive is as a means of attracting future business.")

544-545.) The Court identified four major concerns which arise when cameras are allowed in trial courtrooms:

(1) the impact on jurors,

(2) the effect on the quality of testimony from witnesses,

(3) the burden placed on the trial judge in having to supervise the media, which diverts attention from administering justice, and

(4) the impact on the defendant during and post-trial.

(*Id.* at 545-549.)

In *Chandler v. Florida* (1981) 449 U.S. 560, 582-583, the Supreme Court held that a Florida pilot program allowing electronic and photographic coverage of criminal trials was not *per se* unconstitutional. The Court noted that the defendant was free to challenge his conviction on the basis that the coverage compromised his right to a fair trial. (*Id.* at 574-75.) The Court also considered safeguards in the pilot program, including an admonition to judges that children, victims of sex crimes, informants, or sensitive witnesses be protected from being on camera. (*Id.* at 576-77.)

California Rule of Court 1.150 expressly states: "This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings." (Cal.R.Ct., Rule 1.150(a).) The Rule states that the judge, in his or her discretion, "may permit, refuse, limit or terminate media coverage" as specified. (*Id.*, Rule 1.150(e).) The Rule defines nineteen factors that the judge is to consider in ruling on a request for media coverage. (*Id.*, Rule 1.150(e)(3).)

The absence of a presumption in favor of granting a request for media coverage was not an oversight. It was specifically addressed in the 1996 Report of the task force chaired by Justice Huffman:

> The task force has . . . considered whether the rule should contain a presumption that one side or the other should be required to overcome. We continue to believe the rule should express its neutrality as to the proper exercise of discretion. The draft rule contains a listing of factors for consideration by judicial officers and an expression that findings and statements of decision are not required in ruling on applications for coverage. All of that material is designed to guide the courts in their decision making, but, in the last analysis, leaves the decision to the sound discretion of the judicial officer making the ruling. We continue to recommend the rule expressly declare the absence of a presumption on the issue of coverage.

(Final Task Force Report (May 9, 1996) at p. 19.)

The current Draft Report notes that some Committee members have complained that judges often deny cameras and other recording devices in courtrooms without providing any reasons for the prohibition. The Report recommends that the Rule be modified to add a presumption supporting greater access to court proceedings to the media and the public, while protecting the interests and rights of litigants, witnesses, jurors and others who rely on the integrity of the court system. The Draft Report favorably cites a similar presumption of openness found in Washington Rules of Court, Rule 16, which was enacted in 1991. (Draft Report, pp. 12-13.)

The Draft Report does not explain why the considerations that led the Committee chaired by Justice Huffman to reject a presumption in favor of granting all requests for camera access to courtrooms are no longer valid. The Draft Report does not explain the basis for its conclusion that judges often deny cameras and other recording devices in the courtroom. In 2000, the AOC's extensive data collection efforts provided evidence that 81 percent of media requests for coverage were granted. The Draft Report does not explain whether judges have changed their behavior since that time, or, alternatively, explain why that percentage rate of granting requests for media coverage

is inadequate. The recommendation appears to be supported only by anecdotal comments made by Committee members.

The Draft Report states that a presumption in favor of allowing cameras, recording and photography would not in any way limit or modify a judge's discretion to allow or deny recording. One Committee member who dissented from this recommendation stated that the change in the Rule's presumption would not leave the court with the same discretion to forbid cameras. The dissenting Committee member is indisputably correct. A presumption modifies the proof necessary with respect to the issue to which the presumption applies. The purpose of a presumption is to tilt the scales in favor of a particular conclusion. This is not a solution that flows from any problem identified by the media. It can only be concluded that the solution is not designed to address a particular problem but to create an entirely different framework of decision to favor the media and to diminish the authority and responsibility of the courts to assure the integrity of the proceedings.

In a court-wide survey of Los Angeles Superior Court bench officers, *94.4%* of those responding opposed any change to Rule 1.150 of the California Rules of Court. Many of those responding have had a great deal of experience in high profile cases, which occur frequently in Los Angeles, and in fact make Los Angeles Superior Court unique with the number of high profile cases in progress at any given time.

Considerations Relevant To Criminal Cases

The fair and equal administration of justice is the responsibility of each trial judge who must look to the interests of defendants, victims, witnesses and jurors in criminal law cases. These cases can present unique issues and concerns where a presumption *against* photographic and video coverage may be more consistent with justice and

fairness. For example, the presence of cameras in the courtroom may prejudice the rights of a defendant in a case resting solely on eyewitness identification.

Similarly, in murder cases with gang allegations, other gang members or innocent bystanders who happened to witness the murder often are reluctant to testify for fear of retaliation. The presence of cameras in such cases may further intimidate witnesses who are called to testify and put at risk the personal safety of witnesses and even jurors.

Clearly there are criminal cases where the presence of cameras is appropriate and, in fact, judges routinely permit camera coverage. The creation of a presumption which must be refuted changes the dynamic and fails to consider the complexities of ensuring a fair trial in criminal cases.

Considerations Relevant to Family Law Cases

A presumption of access by cameras and other media may conflict with statutes in particular areas of law. Family law cases present particularly difficult issues. The Legislature has taken great care to construct a statutory scheme in Family Law that considers the delicate balance between public access, victim safety, the well-being of children and the dignity of litigants.

Family Law litigants bring the most intimate and private details of their lives into Court. This can include information about their health, intimate lives, and the well-being of their children, their residence addresses and other personal information. With the implementation of Family Code sections 214 and 7643, the Legislature provides for the protection of litigants, and their children while respecting the independence and discretion of Family Law judicial officers. The recommendation does not provide any accommodation for the conflict that will exist with these important statutes.

Family Law Courts routinely deal with all aspects of child custody and visitation. The Family Code has provided for the handling of these sensitive issues and reports made by Child Custody Evaluators. This recommendation does not recognize this delicate and important evidence.

On a daily basis, Family Law courts deal with all aspects of domestic violence. It must first be noted that the law provides for many domestic violence victims to keep their addresses and other identifying information confidential. Additionally, many victims come to the court while they are working with or staying at a Domestic Violence Shelter. The law firmly provides for the non-disclosure of information regarding Domestic Violence Shelters. This recommendation does not provide for this important need.

Many victims of domestic violence find the process of coming to court frightening and intimidating. Many victims are concerned about the disclosure of the abuse they are suffering. They are concerned about embarrassment in their communities or in the work place. They are concerned about the stigma that may be attached to their children if the violence is made public. This recommendation shows no regard for the special needs of victims of domestic violence, sexual assault and stalking.

Non-Traditional Media

Experienced bench officers increasingly are aware of problems caused by the enhanced capacities of electronic recording devices and by the participation of non-traditional media in coverage of courtroom activities. For example, despite the restrictions of California Rule of Court 1.150(e)(6), which specifies "prohibited coverage," recording devices have been used to record conferences between counsel and the judge at sidebar.

The Draft Report speaks of "media" without definition.[2] Traditional modes of media coverage travel one-way, usually from the newspaper or television to its customers or other potential users. "Social" media bond networks of people, enabling them to interact with the content. Blogs have morphed into video sharing, YouTube, Flickr-photo sharing, Twitter, Facebook and others that may come into existence tomorrow. In this respect, there indisputably have been changes since the California courts' last study of media issues in 2000. Do the proposed rule changes apply to anyone with a cell phone who purports to be in the "social media" business? The Draft Report is silent on this important issue. Any modification of Rule 1.150 should provide guidance to the courts on the Rule's applicability to non-traditional media.

Finally, in large civil cases, requests for media coverage sometimes are filed by entities that purport to wish to use the video and audio recordings for unspecified educational purposes. In fact, however, the requesting entities intend to sell the video and audio feed to litigants and their lawyers so that, for example, corporate clients or lawyers in other cities will be able to follow the proceedings in "real time." The Draft Report does not suggest that it has considered whether a presumption of media access should apply under such circumstances.

RESPONSE TO RECOMMENDATION NO. 2: GAG ORDERS

We agree that the courts should work diligently to educate judges on First Amendment law, including the strong presumption against orders restricting communication about cases that come before them. We do not share the committee's impression that the trial courts frequently issue gag orders or that, when issued, they

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[2]The Draft Report, at page 37, states: "[H]ow courts can properly identify legitimate reporters and provide appropriate access to court proceedings remains an unresolved issue."

are unconstitutional or overly broad. Our perception is that such orders are rarely issued and that the affected parties have an adequate and speedy remedy, because the appellate courts routinely entertain writs involving First Amendment issues on an extremely expedited basis.

It would therefore be prudent, before taking any action, to study the frequency with which such orders are issued by California trial courts, how promptly the appellate courts address petitions for writs of mandate seeking to reverse the orders, and how many are reversed.

Proposed Court Rule Governing Gag Orders

With respect to the Draft Report proposal to adopt a Court Rule governing gag orders, the balancing test that trial courts must employ before restricting publication is well-established and has proven to be effective. We see no reason to displace well-settled United States Supreme Court jurisprudence with a Rule of Court. The principle that the constitution creates a strong presumption against prior restraints on publication is a matter of well established law under *Near v. Minnesota* (1931) 283 U.S. 697 and its progeny. There is also a well established balancing test that courts must apply when freedom of expression threatens to compromise other important rights, such as a criminal defendant's Sixth Amendment right to an impartial jury verdict.

In *Nebraska Press Association v. Stuart* (1976) 427 U.S. 539, 559, the United States Supreme Court reviewed a Nebraska Supreme Court decision that substantially upheld a trial court's order restricting pretrial publication of confessions and other incriminating statements by a murder defendant. The trial judge issued the order in response to intense media coverage of a case involving a small town handyman accused of murdering six family members, some of whom were sexually assaulted. The

press disseminated reports on the matter to prospective jurors in the county where the case was pending, as well as the neighboring county – the only available alternative venue. Based on the extraordinary amount of pretrial publicity, the trial court found a "clear and present danger" to the defendant's right to a fair trial. On appeal, the Nebraska Supreme Court narrowed, but substantially upheld, the order on grounds that the defendant's right to a fair trial was in jeopardy.

The United States Supreme Court reversed. Justice Burger, writing for the majority, confirmed that although guarantees of freedom of expression are not absolute, "prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights." (*Id.* at 559.) The Court applied a balancing test to determine whether "the gravity of the 'evil,' discounted by its improbability," justifies the invasion, taking into account (a) the nature and extent of pretrial news coverage; (b) whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; and (c) how effectively a restraining order would operate to prevent the threatened danger. (*Id.* at 562.) Since the Nebraska court based its order on a mere possibility that publicity would compromise the defendant's right to a fair trial, and failed to consider less restrictive alternatives, it was unconstitutional. (*Id.* at 568-569.)

The Court's balancing test in *Nebraska Press Association* is good law that continues to govern decisions involving court orders restricting publication. (See, e.g., *South Coast Newspapers, Inc. v. Superior Court* (2000) 85 Cal.App.4th 866, 872-874 (gag order overturned); see also *Evans v. Evans* (2008) 162 Cal.App.4th 1157.)

The *Nebraska Press Association* test has proven to be resilient and effective for 34 years because it is clearly articulated and is based on well-reasoned principles of law

identified by the nation's highest court. If, as the Draft Report suggests, there are conflicting lower court decisions, we would defer to the appellate courts to resolve those differences rather than endeavor to craft a California Rule of Court to resolve them. Indeed, the Judicial Council lacks authority to make substantive law. (Cal. Const. art. VI, § 6, clause d.)

The Draft Report's recommendation that California adopt a new rule of court "consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App. 4th 1232" is particularly problematical. (Draft Report, p. 15.) Although the *Hurvitz* court cites the *Nebraska Press Association* decision, it articulates a constitutional test that may be argued to be inconsistent with that decision because, among other things, it requires a finding that "the speech sought to be restrained poses a clear and present danger or serious and imminent threat to a protected competing interest." (*Id.* at 1241.) As noted above, the *Nebraska Press Association* decision rejected the trial court's "clear and present danger" test in favor of a balancing test that makes no mention of that standard.[3] We can find no California Supreme Court decision citing the *Hurvitz* case or applying the "clear and present danger" test in the context of a "gag order."

Based on the *Hurvitz* decision, the Draft Report also recommends a Rule of Court requiring "specific findings." (Draft Report, p. 17.) The *Hurvitz* decision cites *Nebraska Press Association*, *supra*, at 563, for the proposition that "[t]he trial court must make express findings showing it applied this standard and weighed the competing interests." Such a rule is unnecessary because existing case law already requires

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[3] As support for the "clear and present danger" test, *Hurvitz* cites a Ninth Circuit decision, *Levine v. U.S. District Court* (9th Cir. 1985) 764 F.2d 590, 595) which relies on *Wood v. Georgia* (1962) 370 U.S. 375. The decision in *Wood* predates *Nebraska Press Association* and is distinguishable because it addresses the heightened test required when a court exercises its quasi-criminal contempt power to punish someone for making statements about a proceeding open to the public.

express findings to support a trial court's "gag order." We are concerned that a rule of court may attempt to supplant decisional law and will have to be amended to reflect any changes in the law. We agree that judicial education reinforcing the requirement of making express findings is appropriate.

Imposing Notice Requirements on Trial Courts

Recommendations 2C, 2D and 2E would impose new responsibilities on trial courts without legislative approval or funding. Under existing rules, the court generally relies on the parties to give notice of its rulings. The recommendation that the court take on responsibility for notifying the public and the press whenever a judge issues a "gag order" implicates an expenditure of public resources on a task that the Legislature has not assigned to the court and that the court has not traditionally undertaken. Only a small minority of cases garner public attention. Courts have many demands on their time. Before undertaking new responsibilities it is important for the court to weigh the benefits of the recommended rule against the detriment of reducing vital services to the litigants and the public.

The recommendation also would be difficult to draft and to administer because the term "gag order" can encompass various orders issued in various proceedings. One could argue, for example, that routinely issued domestic violence protective orders are "gag orders" because they prohibit communication with the alleged victim. Other orders limiting communication that routinely are issued by courts to assure that parties receive a fair trial include orders instructing jurors not to discuss the case until trial is concluded; orders instructing witnesses not to discuss their testimony with other witnesses until the trial or other proceeding has concluded; and orders to attorneys and parties not to have any contact or conversation with jurors.

Recommendation 2D would require special treatment for self-represented litigants with respect to gag orders. In general, self-represented litigants stand before the court in the same position as attorneys and are not entitled to special treatment. Carving out an exception for "gag orders" has broad implications because it arguably places self-represented litigants in a position superior to represented parties. The repercussions of a special rule for self-represented litigants should be carefully evaluated. In addition, any action should be predicated on an empirical study to determine whether or not the courts frequently issue unconstitutional "gag orders" in cases involving self-represented litigants.

RESPONSE TO RECOMMENDATION NO. 3: ORDERS SEALING RECORDS

A. Five-Day Notice

Recommendation 3A proposes to "[d]evelop a rule of court that requires all courts to post notice of any application for, or entry of, an order sealing a record on their local Website within 5 court business days after filing [the application?] or entry [of the order?] . . . ." (Draft Report, p. 19.) As discussed above in connection with gag orders, requiring the court to give public notice is contrary to a traditional understanding of the nature of the court's work.

The rationale for requiring courts to take on this additional function is that the media "are often not aware that courts have sealed records or even that some cases exist." (Draft Report, p. 20.) However, the existing, detailed court rules concerning

sealing of court records ensure that the court file clearly records what documents are sealed and why the sealing is justified.[4]

LASC agrees with the premise that proceedings, filings and case-related information which are not automatically confidential and non-public by operation of law should presumptively be public unless the requirements and processes set forth by California Rules of Court Rules 2.550 and 2.551 are met. The rule itself is quite detailed, provides for a clear and timely paper trail in the court's records, and allows appellate review if the requirements of the rule have not been satisfied.

This proposed rule is unneeded as the various trial courts' public record of filings and orders already captures and displays this information for the benefit of the media, the parties and all interested members of the public. There is no other process in the ordinary course of litigation which throws off a requirement that a special notice be put up on a trial court public website. This proposed rule requires a significant training burden on court staff and judicial officers who would need to flag these unique events for atypical handling.

Presently when any motion or application (*e.g.*, an ex parte application) to seal a record is filed, the clerk of court is duty bound by the rules of court to file such item and to make the appropriate entry in the court's register of actions, a public document, and typically a public document readily available to the public via the trial court website. As and when a judicial officer acts on such a request, this action generates a ruling, by Minute Order and/or formal written order, which itself must also be noted in the register

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[4] We assume that this proposal does not apply to sealing orders already excluded from the requirements of California Rule of Court 2.550. *i.e.*, "records that are required to be kept confidential by law," and "discovery motions and records filed or lodged in connection with discovery motions or proceedings." (Cal.R.Ct., Rule 2.550(a)(2)-(3).) If this assumption is incorrect, then a more extensive response would be required to address other areas where sealing is required, such as "Hobbs" affidavits and in camera "Pitchess" hearings.

of actions timely, creating a ready means of public notice of any decisions, allowing for a post-order challenge if the media or other interested third party did not become aware of the request sooner.

If the media or third parties are concerned about a given piece of pending litigation, they can routinely check for updates as to a given case. If they are not aware that there is a case of interest pending, they can check the index of actions for party names or simply review all new filings (as many media have traditionally done) to look for matters of public interest. It is not clear why the court should spend scarce resources modifying court internet sites and training staff to provide a clarion call as to some portion of its docket.

False Claims Act cases are statutorily required to be filed under seal under certain circumstances. California Rules of Court 2.570 et seq. provide procedures for filing records under seal in a False Claims Act case. Insofar as there may have been an instance of another type of action having been filed under seal with no public record to indicate that status, this action would appear to have been in error and not in compliance with the Rules of Court. LASC is unaware of other instances of cases having been filed under seal without compliance with the Rules of Court. Changes in the Court Rules are not required under circumstances where existing rules adequately provide appropriate processes.

Insofar as the members of the Bench-Bar-Media Committee believe they are aware of circumstances where sealing orders were entered in error, the most obvious and appropriate solution is for the interested litigants, media representative or interested third parties to take an appeal. A brief review of appellate cases shows that relief is available when a trial court fails to enter a formal order in a timely fashion or makes a

sealing order that does not comply with Rules 2.550 and 2.551. (*See, e.g. In re Marriage of Armour,* B191032 (Cal.Ct.App., Dec. 18, 2008) 2008 WL 5255808.) The appellate decisions to date do not suggest wholesale disregard for these Rules and the authors of the report cite no cases suggesting otherwise.

B. Judicial Education

Common experience in civil courts where Stipulated Protective Orders are frequently adopted to protect privacy interests under Art. I, § 1 of the California Constitution, bona fide trade secrets and similar proprietary information suggests that judicial education on the nuts-and-bolts of how to apply Rules 2.550 and 2.551 would be helpful and that an optional additional Judicial Council form to provide the notice specifically contemplated by Rule 2.551(b)(3)(A)(iii) would be helpful.

Judicial education on the matter of sealing is useful, and the issues which typically arise regarding sealing requests appear to vary according to case type (*e.g.*, civil versus family versus criminal versus docket types where proceedings are almost always confidential, *e.g.*, juvenile). Accordingly, this topic would be a suitable item for inclusion in the "new assignment" training for bench officers addressed in California Rule of Court 10.462(c)(4). Voluntary training on the same subject for judges already in such assignments can be handled in any number of ways, *e.g.*, through lunch-time informal gatherings, CJER update classes, webinars and CJA educational programs.

C. Statutory Proposal To Award Attorneys Fees Only To Prevailing Objectors

There are two fundamental objections to this proposal: It is unneeded as a practical matter based on experience to date, and it unfairly distorts the process by giving one side only leverage in litigation.

As noted above, a review of published California appellate cases since 2000 discloses only a modest number of published and unpublished decisions actually applying or interpreting Rules 2.550 and 2.551 and their direct predecessors, Rules 243.1 and 243.2. Rather, the decisions that can be found tend to show that the process is working in the trial court in most circumstances, that bona fide disputes sometimes arise, and that relief is available on appeal to correct trial court errors.

This suggests that there has not been wholesale disregard for these legal provisions. It also suggests that the media, interested third parties and litigants opposing sealing requests have been reasonably accepting of the actual outcomes when sealing requests have been made in fact. The existing rule provides that a sealing request will be made by either a motion (a process normally taking approximately three or four weeks from start to finish) or by ex parte application (a process that may take only a few days). The litigation burden, therefore, on the party opposing a sealing request is short in duration, and it mostly consists of addressing the adequacy of the pro-secrecy party's written submission to the court, *i.e.,* its attempt to prove up the facts needed to support the kind of detailed express factual findings required by California Rule of Court 2.550(d) and (e).

Larger media institutions already have counsel skilled in the issues and processes, and smaller media units, including even one-person bloggers, can be informed by the fairly clear procedures of the Rules of Court, which are available on the Judicial Council website. Thus, there are no major barriers to media and general public (or litigant) access to the California state courts to challenge erroneous or overreaching sealing requests. Under these circumstances, it is not obvious why a financial incentive needs to be created to bring such challenges.

Further, the proposed rule allows recovery of attorney fees to a party "successfully challenging an order sealing a record," while denying equivalent relief to a party successfully opposing a challenge to a sealing order. Adding attorney fees expenses to any sealing dispute will have a chilling effect on anyone who legitimately wishes to protect privacy rights under Art. I, § 1 of the California Constitution. The judicial branch should not be seen as supporting one side only in a legitimate dispute or advocating the discouragement of the assertion of important fundamental rights through such an attorney fee mechanism.

RESPONSE TO RECOMMENDATION NO. 4: EDUCATIONAL CONTENT AND PROGRAMS

Although the continuing education of judges never stops, this recommendation suggests that education in the area of gag orders, sealing orders, and the media have not been, and are not now available. However, a search of CJA, CJER, CEB or LASC's JES program offerings would demonstrate that training and materials in this area have been available for many years.

In Los Angeles, looking back to 2002, Judge Fidler, Committee member Kelli L. Sager and the court's Public Information Officer presented a program on high-profile cases. Since then the Los Angeles Superior Court's Judicial Education Seminar Program (JES) has provided hundreds of hours of educational programs available to all judicial officers on the Los Angeles Superior Court. In 2009 over 4,000 hours of learning credits were provided to Los Angeles Superior Court judges. Programs have continued to instruct on a wide range of topics that directly or indirectly touch upon California Rule of Court 1.150, sealing orders, gag orders, and access to the courts by all members of the public, including media stakeholders. A sample of courses includes, "Sealing and Access to the Courts," June 25, 2007; "Media Courses," March 24, 2008,

October 27, 2008; "Dealing with Access to Voir Dire and Who is a Journalist?" May 25, 2010.

We encourage our judicial officers to attend these programs. Indeed, Los Angeles County had 100% participation in the voluntary educational standard hours set by the Judicial Council for the last three-year period.

Because statewide education is already available, regional academies would be an unnecessary and unjustifiable expense at a time when courts are severely underfunded and have been forced to take drastic measures just to maintain service to the public. CJER, CJA, and JES provide excellent educational opportunities that can reach every judge in the state and that do reach every judge in LASC. Judicial education curricula are, and should be, constantly reviewed to identify areas where they can be improved. Improvements to judicial education regarding media access issues can be identified and implemented within the context of our existing judicial education providers.

To the extent the Draft Report contemplates that judicial training programs would be conducted by representatives of the media, other concerns arise. Ordinarily judicial training is conducted by judges, for judges. Although, CJA, for example, has presented panels that allow the perspectives of media representatives to be articulated, persons outside the court ordinarily should not be engaged to *train* judges how to follow the law.

RESPONSE TO RECOMMENDATION NOS. 5 & 6: JUDICIAL OFFICER TRAINING ON PRESENTATION OF STATEMENTS AND AN EXPLANATION OF TERMINOLOGY

Although the intent of this recommendation is not entirely clear, it appears to suggest that judges should prepare summaries of their opinions (separate from the opinions themselves) and that the purpose of preparing the summaries is so that

reporters can understand court opinions. The Draft Report states: "The U.S. Supreme Court and the California Supreme Court routinely prepare summary statements along with some appellate and superior court judicial officers." (Draft Report, p. 29.)

To our understanding, summaries of U.S. Supreme Court and California Supreme Court opinions are prepared by court staff for use in the published volumes of the Courts' opinions and for distribution to the press. Justices of the United States Supreme Court and the California Supreme Court do not perform this function and do not receive training to perform this function. The Justices perform the judicial function of writing opinions that provide a statement of the case and the *ratio decidendi* for their decisions, decisions that become part of the fabric of the law by virtue of their value as precedent.

Our trial courts do not have available staff to issue a press release in every case or to summarize each opinion in order to help a researcher find a relevant case or to help a reporter who is on deadline. We simply do not have the resources to do this work. Nor should courts decide which of our cases are "important" enough to have a special summary prepared. We do justice to rich and poor alike in cases that are complex and in small claims cases. We assume that each case is equally important to the litigants in that case. We do not do special work on cases just because they receive publicity. We are to render impartial justice without reference to public opinion.

Judges should write opinions that are clear so that the parties understand our decisions, and because clear writing will provide better precedential guidance. Judicial writing is not, and should not be, comparable to writing for a media publication.

LASC periodically has had meetings between judges and reporters who cover the courts to discuss reporters' general questions about judicial procedure and court

practices. We believe the reporters have found these sessions to be helpful, and the meetings have been congenial. This community outreach to the media is constructive and should be encouraged. The media is capable of reading judicial opinions with understanding, and it skews the role of the courts to suggest that judges should write for the press.

RESPONSE TO RECOMMENDATION NO. 7: ADDITIONAL ONLINE TRAINING MATERIALS FOR COURT STAFF AND JUDGES

We believe that CJER does an excellent job in providing educational programs and materials for our courts. It would be useful to have media related materials available on Serranus or in AOC televised programs.

RESPONSE TO RECOMMENDATION NO. 8: REGIONAL MEDIA ACCESS PLAN

The proposed Regional Media Access Plan seems to require a sitting judge to intervene when a member of the media feels aggrieved by another judge's ruling limiting access. The intervening judge would make ex-parte contact with the judge who made the ruling in an attempt to resolve the "conflict." (Draft Report, p. 32.) Such ex-parte contact could violate California Code of Judicial Ethics, Canon 3(B)(7)(b). The contact could be an impermissible attempt to provide information to a judge that he or she may not receive ex-parte. Additionally, the contact could be an impermissible attempt to influence another judge to make or change a particular decision. (*See* Rothman, *California Judicial Conduct Handbook,* § 5.09.)

The exact nature of this recommendation is difficult to ascertain. The purpose of the Regional Access Plan is stated as: "The regional media access plan would be called into action whenever a court, attorney, or media representative believes the plan could assist in recommending ways to resolve conflicts that emerge before or during

media coverage of a court proceeding." (Draft Report, p. 33.) Three teams are proposed (assigned to the areas of the AOC regional offices), made up of one judge, one member of the Bar, one Court Executive Officer, one court Public Information Officer, the AOC Regional Director, one member of the AOC communications division and members of the media. (*Id.* at 34.) Ostensibly, the teams could be "called into action" by the court, an attorney or the media. However, the only examples of conflicts are instances in which the media need relief from particular court action.[5] (*Id.* at 41.) It therefore appears that such media access teams would be called upon to resolve issues involving the media's desire for increased access.

It is likewise unclear how these conflicts are to be resolved. It appears the judicial member of the access team is to discuss the matter with the trial judge; however, one part of the report states that the court's presiding judge "is the decision maker regarding the resolution of free press—free[6] trial disputes." (*Id.* at 33.) Having a court's presiding judge overrule a trial judge on a matter currently before the trial judge would fundamentally alter the way trials are currently conducted and call into question the authority of the presiding judge. It is more likely that the report's drafters meant to refer to the judge presiding over a particular trial and inartfully referred to the "presiding judge."

Assuming then that the judicial member of the access team would contact the trial judge to address the concerns that the media has brought to the team, this would violate California Code of Judicial Ethics, Canon 3(B)(7)(b). Ex-parte contact between

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[5] "Types of Conflict (Examples) Restrictions on media coverage of a particular proceeding; Obscure local procedures regarding access to court documents or administrative information; A judge neglects to publicly articulate the reasons for rulings affecting the media." (*Id.* at 41.)

[6] This appears to be a typographical error.

judges for the purpose of advice is generally allowed. (*See* Canon 3(B)(7)(b); Rothman, *California Judicial Conduct Handbook*, § 5.09; *People v. Hernandez* (1984) 160 Cal.App.3d 725, 734-739.) However, receiving information that the trial judge should not receive ex-parte is improper, regardless of the source. (Rothman, *California Judicial Conduct Handbook*, § 5.09.) In the circumstance apparently presented by the Draft Report, an aggrieved member of the media would present the arguments against a trial judge's ruling to the Media Access Team. After deciding that the media position should prevail, the judicial member of the Media Access Team would then contact the trial judge ex-parte to resolve the conflict. Since the judicial member of the Media Access Team received information about the case from third persons (the aggrieved media member and other members of the team), imparting that information to the trial judge ex-parte would be just as improper coming from the judicial member of the Media Access Team as it would be coming from any of the third persons.

This scheme would also be an improper attempt by one judge to impair or impose upon the discretion of another judge. As Judge Rothman puts it: "[I]t would be improper for one judge, whether in a supervisorial position or not, to attempt to require or influence another judge to make a particular decision.... Such conduct would, of course, be antithetical to the entire Code of Judicial Ethics." (*Id.*)

The Committee acknowledges this concern by asking the question "is it proper for a judge who has communicated with the bar and the media on a particular case to offer assistance or advice to a trial judge sitting on that case?" (Draft Report, p. 34.) The Committee goes on to recommend that an opinion be obtained from the California Supreme Court's Committee on Judicial Ethics Opinions. However, that Committee has yet to officially meet. The Ethics Committee of the California Judges Association, on the

other hand, has been providing ethics advice to California Judges for many decades. They considered the above-referenced question and responded with an unequivocal "no."

According to the Draft Report, this recommendation is modeled after a similar program in the state of Washington. (*Id.* at 32.) However, a review of the reports prepared by the judge who chairs the "Fire Brigade" in Washington reveals conduct that would seem to violate California's Code of Judicial Ethics. For example, in 2003 "a defense attorney and prosecutor gave the judge an agreed order to seal the certification of probable cause in a murder case and the judge signed it. The request was ostensibly to avoid tainting the jury pool. The editor of the local paper contacted the Brigade, which contacted the judge, and the document was unsealed within 24 hours."[7] Such ex-parte contact would seem to be a clear violation of Canon 3(B)(7)(b).

RESPONSE TO RECOMMENDATION NO. 9: CREATION OF REGIONAL PUBLIC INFORMATION OFFICER

The recommendation appears to be unnecessary. Larger courts have Public Information Officers who are experienced in media relations and are familiar with the court they serve. Having regional PIOs for these courts would be an expensive, less effective redundancy. Smaller courts are less likely to need such services, but when the need has arisen in the past, larger courts and the AOC have always provided assistance. The committee does not appear to have surveyed the courts to discover if this expensive expansion is necessary.

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[7] 2003 Report on Activities – Bench-Bar-Press Liaison Committee (Fire Brigade). http://www.courts.wa.gov/committee/?fa=committee.display&item_id=330&committee_id=77

Currently, sixteen of the fifty-eight courts have personnel who perform media relation duties. (Draft Report, p. 35.) The rationale for the recommendation states: "The committee believes that superior courts can significantly benefit from personnel experienced in media relations and who are familiar with the individual courts...." (*Id.*) The report also notes the committee considered "continuing the practice of courts informally lending assistance to each other through the relatively few court PIO positions that exist statewide or continuing to contact other judges, court administrators, or the AOC for advice." (*Id.* at 36.) The committee found this current condition to be "not optimum" because "of the extensive responsibilities already assigned to the current PIOs and the lack of in depth familiarity they often have with the court requesting assistance." (*Id.*) These two problems with the current system – PIOs are too busy to assist other courts and do not have sufficient knowledge of the court they are assisting – are not supported by any evidence.

There is no stated need for regional PIOs for the sixteen courts with personnel performing PIO functions. While the sixteen counties are not identified, they are likely to be the larger counties, meaning that the majority of the branch is serviced by personnel performing PIO duties.

Not even anecdotal evidence is presented to suggest that these issues are real problems. Before expensive new positions are created, even in flush times, a business need must be established. This should be done by surveying the courts to determine if their current circumstance is insufficient. Courts should also be asked how often they are in need of PIO services.

RESPONSE TO "DECLARATION: REDUCING THE COST OF TRIAL TRANSCRIPTS FOR THE MEDIA," AND TO PROPOSED "GUIDELINES" FOR HANDLING HIGH PROFILE TRIALS

At page five, the Draft Report declares that the Bench-Bar-Media Committee has concluded that "the media" should be provided an opportunity to obtain partial transcripts at reduced costs. This declaration does not suggest how it would be determined which persons or entities would be entitled to this fee reduction. (*See* comments at pp. 10-11, *supra*, regarding non-traditional media.) Moreover, the Legislature recently has addressed in a comprehensive manner when persons should be eligible for fee waivers or reduced fees for court services, and has articulated the principle that "those who are able to pay for court fees should do so...." (Cal. Govt. Code § 68630(c).)

At page 37, the Draft Report suggests that AOC staff will prepare "a set of guidelines for judges and court staff handling high-profile trials." LASC agrees that educational materials concerning high-profile trials would be a useful tool, but suggests that a California Judges Bench Guide would be a more appropriate format to provide guidance to the judiciary.

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LASC Ad Hoc Committee Regarding the Bench-Bar-Media Committee Draft Report

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October 25, 2010

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San Francisco, CA 94102

Dear Ms. Ortega:

The Appellate Advisory Committee appreciates the opportunity to comment on the August 2010 draft report and recommendations of the Bench Bar Media Committee. The Appellate Advisory Committee (AAC) is charged with making recommendations to the Judicial Council for improving the administration of justice in appellate proceedings. In reviewing the draft report and recommendations, the AAC therefore focused on how the issues discussed in the report and the recommendations might apply in or impact appellate proceedings. The AAC has 18 members, including a justice of the California Supreme Court, a justice from each district of the California Court of Appeal, a superior court judge, clerk/administrators from the California Supreme Court, Court of Appeal, and a superior court appellate division, and attorneys who specialize in criminal and civil appeals. The comments below reflect the unanimous view of the members of the AAC.

General Comments

Application to appellate proceedings

As indicated above, the AAC focused its review of the draft report on how the issues discussed in the report and the recommendations might apply in or impact appellate proceedings. In some cases, however, it is not clear from the draft report whether the Bench Bar Media Committee (BBMC) believes particular concerns discussed in the report arise only in the trial court context or both in the trial and appellate context. It is also not clear whether some of the recommendations are intended to apply only in trial court proceedings or in appellate court proceedings as well. For example, some of the recommendations and accompanying text in the report refer to "judges" while others refer to "judges and justices" and the discussion of sealed

records refers to the trial court rules on sealed records (rules 2.550-2.551), but not the appellate court rule on sealed records (rule 8.46).

The AAC suggests that the BBMC clarify which of the perceived problems discussed in its report it believes are of concern in appellate proceedings. If the BBMC does not believe that a perceived problem is an issue at the appellate level, then the proposed recommendations designed to address that perceived problem can be specifically directed only to trial court proceedings. Clarifying the locus of the perceived problems and the intended application of the recommendations would help better focus the policy and potential implementation questions raised by the report. The BBMC could clarify this by including a separate section addressing appellate proceedings under each topic area where there are concerns about appellate proceedings or under each recommendation that is intended to apply to appellate proceedings.

In addition, with respect to those perceived problems the BBMC believes are of concern in appellate proceedings, the AAC suggests that the BBMC consider whether the different structure of the appellate courts or procedures followed in appellate proceedings warrant different approaches to addressing these perceived problems at the appellate level. For example, the dockets for all cases in the Supreme Court and Court of Appeal are already available online, giving the public and the media access to information about the filing of requests or orders to seal records in proceedings in these courts. Any recommendation regarding access to such requests and orders in appellate proceedings should, therefore, reflect this existing access.

Scope of problems

Currently, it is not clear from the report whether the perceived problems motivating some of the recommendations are widespread or isolated occurrences. For example, the report does not discuss the number of requests to broadcast or record court proceedings either at the trial or appellate level or the number of such requests that are denied, with or without explanation. Similarly, the report does not discuss the number of cases in which sealing orders have been requested or issued at the trial or appellate level or in which there have been concerns about the media's opportunity to request unsealing of sealed records. Without at least some information about the scope of the perceived problems, it is difficult to determine whether what is being recommended represents an appropriate response.

The AAC suggests that the BBMC gather and provide additional information about the scope of the perceived problems discussed in the report. If the BBMC finds that problems are isolated, then the recommendations designed to address these problems can be narrowly tailored. If the BBMC finds that the problems are widespread, then recommendations for broad, system-wide approaches may be more appropriate.

Comments on Recommendation 1 – Use of Cameras and Other Recording Devices in the Courtroom

Application of recommended changes

Recommendation 1 includes several suggestions for modifying rule 1.150 of the California Rules of Court. This rule addresses both requests by media representatives to broadcast or record court proceedings and requests by others to record proceedings for their personal use. While the report narrative seems to be focused on media requests, the text of the recommendation does not indicate that the recommendation is limited to media requests. The AAC suggests that the BBMC clarify whether it is only recommending modification of the procedures applicable to media requests or to requests for recording for personal use as well.

Method of challenging decision on request to broadcast or record

There are several places in the report that discuss review of a judge's decision on a request to broadcast or record court proceedings. For example:

- At page 13 – "The committee viewed these concerns as critical and warranting consideration because the media cannot appeal the judge's decision."

- At page 14 – "Without any findings expressly stated, the media has no grounds to appeal a decision."

The AAC is concerned that referring to appeals in this context could cause confusion about the way in which an order denying a broadcasting/recording request may be challenged by persons seeking access. In the experience of AAC members, the most common method of seeking review of such an order is be by way of a petition for an extraordinary writ.[1] Since there are different rights and procedures associated with appeals and writ proceedings, the AAC suggests that the BBMC modify its report to eliminate references to appeals in this context and reflect the availability of writ review.

Part A – Adding a presumption in favor of granting requests to broadcast or record

Part A of recommendation 1 is that rule 1.150 be amended to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use.

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[1] Parties may appeal an order granting a request to broadcast or photograph court proceedings alleging denial of a fair trial if access is granted (e.g., *People v. Dixon* (2007) 148 Cal.App.4th 414).

At a fundamental policy level, AAC strongly believes current rule 1.150 is appropriately neutral with regard to whether requests to broadcast or record court proceedings should or should not be granted. Since 1997, rule 1.150(a) or its predecessor rule 980(a) has specifically provided:

> "This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings."

The AAC believes that rule 1.150's neutrality reflects the fact, acknowledged in the beginning of the BBMC's report, that the rights to a free press and a fair trial are both important in our society. Adding a presumption in favor of allowing broadcasting or recording of court proceedings essentially elevates the importance of the right to a free press over the right to a fair trial. The AAC believes that rule 1.150 should not express a preference for either of these rights over the other and thus should not include a presumption either for or against granting requests to broadcast or record court proceedings.

On a practical level, the AAC believes that adding this presumption would limit the discretion of and place new burdens on judicial officers who must rule on requests to broadcast or record court proceedings. The AAC disagrees with the assertion on page 13 of the draft report that the proposed inclusion of this presumption "would not in any way limit or modify a judge's discretion to allow or deny recording." By its very nature, a presumption in favor of ruling in a particular way limits a judicial officer's discretion to rule in other ways. The language of the BBMC recommendation specifically indicates that the intent is to require judicial officers to rule in favor of allowing broadcasting or recording unless there are "sufficient reasons" justifying a different ruling. This places a new burden on judicial officers who must rule on such requests to justify any ruling denying a request to broadcast or record court proceedings.[2] In its May 10, 1996 report to the Judicial Council recommending adoption of the last set of substantive amendments to the rule on broadcasting and recording court proceedings, the Taskforce on Photographing, Recording, and Broadcasting in the Courtroom similarly expressed the view that inclusion of any presumption in the rule would increase the workload for the courts:

> Also, the importance of not creating an additional workload for the courts was stressed. While wanting to promote appropriate public access to the court system, it was felt that a presumption either for or against allowing electronic media access leads to a burden which must be overcome, possibly through a hearing where evidence and witnesses are offered and findings are made.

[2] The AAC notes that there would not be a similar requirement to justify a ruling granting such a request.

The AAC also believes that adding this presumption would place new burdens on the appellate courts that are asked to review decisions to grant or deny requests to broadcast or record court proceedings. While it is possible that adding this presumption could decrease the number of denials, and therefore the number of writ petitions challenging denials, the AAC believes that adding this presumption is likely to encourage writ petitions by those requesting access in any case where an application was denied, engender appellate litigation over what are "sufficient reasons" justifying the denial of a request to broadcast or record court proceedings, and increase challenges by parties to the granting of petitions on the basis that broadcasting or recording the proceedings will or did interfere with their right to a fair trial, all of which will increase the caseload for the appellate courts. In addition, each case challenging an order on a request would likely be more complex, as the reviewing court would be required to determine whether the lower court's exercise of discretion was within the parameters established by the new presumption.

In addition, establishing this presumption would also likely create new burdens for parties in cases in which requests are made to broadcast or record the proceedings. Because the scales would be tipped in favor of granting such a request, parties concerned about the potential impact of broadcasting or recording on their right to a fair trial would likely feel additional pressure to present information to outweigh this presumption.

The cost of new burdens placed on the trial and appellate courts and on parties in criminal cases would fall largely on the public.

For all of these policy and practical reasons, the AAC suggests that the BBMC delete Part A from recommendation 1.

If the BBMC decides to retain a discussion of this proposed presumption in its report, the AAC suggests that the report be revised to specifically address the existing language of rule 1.150(a) stating that rule does not create any presumption for or against granting requests to broadcast or record court proceedings and the history of this provision. Currently, the draft report does not discuss this provision at all or any of the history concerning previous consideration given to including a presumption in this rule. Instead, the report focuses on language in subdivision (c) of rule 1.150, stating:

> Rule 1.150(c) states the following presumption: "Except as provided in this rule, court proceedings may not be photographed, recorded, or broadcast." The members determined that this wording creates a presumption for the denial of media requests.

The AAC does not believe that rule 1.150(c) is intended to create any presumption for or against granting a request to broadcast or record court proceedings, particularly in light of the explicit statement in (a) that the rule does not create any such presumption. Instead the AAC believes that (c) is intended to convey that anyone who wants to broadcast or record such proceedings must comply with the requirements of rule 1.150, most important of which are that they submit a request and that the request is granted before they begin broadcasting or recording.[3] If the BBMC believes that the intent of 1.150(c) is not sufficiently clear, the AAC suggests that the BBMC recommend that it be clarified. In this regard, while the titles of rule provisions are generally not substantive, the AAC does believe that the title of (c) could be revised to better reflect the content of this subdivision.

Parts B and C – Requirement that judicial officers make findings when they deny or limit recording or broadcasting

Part B of recommendation 1 is that rule 1.150 be amended to require judges to make specific findings to prohibit or limit the use of cameras and other recording devices and Part C is that form MC-510 be revised to reflect this rule change. The reasons given in the draft report for this recommendation are: (1) educating the media as to relevant privacy rights, concerns regarding interference with court proceedings, or other legal issues warranting the denial; and (2) because, "without any findings expressly stated, the media has no grounds to appeal a decision."

Although one Court of Appeal decision from 1990 did urge courts to make this type of finding,[4] the AAC has all of the same practical concerns about this part of recommendation 1 as it does about Part A. The AAC believes requiring judicial officers to make findings would create new burdens for both courts initially considering requests to broadcast or record court proceedings and for courts reviewing orders on such requests. While the existence of findings may make it easier for a reviewing court to understand, and therefore review, the basis for a lower court's denial of a request to broadcast or record court proceedings, the AAC believes that a requirement for findings, particularly when combined with a presumption in favor of granting requests, will create more targets for potential challenges to any order denying a request, encouraging such challenges and increasing the potential issues in each challenge. The Q&A contained in the judicial council publication *Photographing, Recording, and Broadcasting in the Courtroom: Guidelines for Judicial Officers* (1997), published after the last substantive amendments to rule

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[3] There is language in one Court of Appeal opinion – *People v. Dixon, supra* at footnote 1, at 437 – which suggests that rule 1.150 "implies a presumption against opening the courtroom to unlimited media coverage." The AAC does not read this language as suggesting that rule 1.150 creates a presumption against granting requests to broadcast or record court proceedings. Rather, the AAC believes that this language is intended to convey that under rule 1.150 courts are to issue orders tailored to the circumstances present in the particular case.

[4] *KFMB-TV Channel 8 v. Municipal Court* (1990) 221 Cal.App.3d 1362, 1368-1369.

1.150, specifically indicate that it was concerns about these burdens that motivated the earlier recommendation that the rule not require such findings:

> Q: Are findings or a statement of decision required?
> A: No. The task force felt that requiring a statement of decision would take time and energy away from the trial at hand. Such a requirement would also ultimately increase the burden on appellate courts.

The AAC also has further practical concerns about the implementation of a findings requirement given the timing of requests to broadcast or record court proceedings. In the experience of AAC members, many, if not most, requests are filed within a day or less of the hearing date. Even without a findings requirement, this leaves judicial officers little time to receive input on the request from the parties, consider the factors listed in rule 1.150, and issue an order. Adding a findings requirement will exacerbate this problem, putting judicial officers between the rock of potentially delaying the court proceedings to make required findings, which would increase costs for both parties and the court, and the hard place of denying requests as untimely because the findings cannot be made before the hearing, which would not promote increased access.

For the reasons outlined above, the AAC suggests that the BBMC delete Parts B and C from recommendation 1.

If the BBMC decides to retain this recommendation in its report, the AAC suggests that the BBMC clarify what it means by judges making specific findings. For example, is the BBMC contemplating that the judicial officer would be required to state, on the record, one or more factors from rule 1.150 that he or she believes support the order being made? Is the BBMC contemplating that the judicial officer would need to state facts on the record or in writing supporting the conclusion that the particular factors are present in the case? Is the BBMC contemplating that the judicial officer's findings would have to be in writing? Is the BBMC contemplating that the judicial officer would be required to hold a hearing on the request to gather factual information and make findings? The exact nature of what is contemplated is important to identifying the benefits and burdens associated with the recommendation.

In that regard, the AAC also suggests that the BBMC report include more information and discussion about the additional burdens that this recommendation would likely impose on courts and parties. Without this additional information, it will be difficult for the Judicial Council to make a sound policy choice about whether to adopt this recommendation.

Part D – Providing court security staff with broadcasting/recording orders
The AAC supports this recommendation.

Comments on Recommendation 2 – Gag Orders

Application to appellate proceedings
This recommendation urges the adoption of a uniform statewide rule regarding gag orders. The members of the AAC are not aware of situations in which appellate courts issue gag orders. The AAC therefore suggests that the BBMC revise this recommendation and the accompanying discussion to clarify that appellate courts are not intended to be encompassed.

Source of proposed requirements
The BBMC report notes that there is existing case law relating to gag orders and at least some portions of the recommendation appear designed to codify this law. The AAC suggests that the BBMC specifically identify those portions of the recommendation that are intended simply to codify existing law. The AAC believes that this will assist the Judicial Council in reviewing this recommendation.

Part E - Proposed form to facilitate challenges to gag orders
Part E of recommendation 2 is that a form be developed to "facilitate challenges by pro per individuals to gag orders." It is not clear from the BBMC report whether the form contemplated is something that would be used to request reconsideration of a gag order by the court that issued the order or something that would be used to seek review of a gag order in a higher court. The AAC suggests that the BBMC clarify the nature of the form it is recommending be developed.

Comments on Recommendation 3 – Orders Sealing Records

Application to appellate proceedings
As noted above, this recommendation and the accompanying discussion in the BBMC report refer to rules 2.550 et seq. These rules address sealed records in the trial court. There is a separate rule, rule 8.46, which addresses sealed records in the Supreme Court, Court of Appeal and superior court appellate division. Because only the trial court rules are referenced, it is not clear if the BBMC intended that this recommendation apply in the appellate courts. The AAC suggests that the BBMC clarify whether these recommendations are intended to apply only to sealed records in the trial courts or to sealed records in the appellate courts as well.

Part A – Internet notice of sealing applications and orders
Part A of recommendation 3 urges the development of a rule of court that requires "all courts to post notice of any application for, or entry of, an order sealing a record on their local Website" or

on the California courts website. As noted above, the dockets for both Court of Appeal and Supreme Court cases are already available on the California courts website (see http://appellatecases.courtinfo.ca.gov/). Rule 8.46 requires that a party seeking to seal a record in an appellate court must file an application, in redacted form if necessary. The filing of this application and any order on this application will be noted in the court docket. Thus, anyone looking at the online appellate court docket for a particular case will be able to determine that a sealing application and order have been filed in that case. Given the existing availability of this online information, the AAC does not believe that there is a need for any additional posting requirement in the Court of Appeal or Supreme Court. The AAC therefore suggests that the BBMC revise this recommendation to clarify that it is not intended to cover these appellate courts.

Part B – Providing judicial education regarding procedures for sealing records
The AAC supports this recommendation. Given the BBMC's conclusion that the existing sealing rules themselves are adequate, additional educational efforts regarding these rules may be all that is needed to address the concerns raised by the BBMC.

Part C – Attorneys fees for successfully challenging sealing application or order
Part C of recommendation 3 is to support a statutory authorization for the award of attorney's fees and costs to any party successfully challenging an order sealing a record or an application for sealing a record. The AAC has several concerns about this portion of the recommendation.

Statutory attorney fee provisions are generally used as a means to punish or deter inappropriate behavior in litigation. On a policy level, the AAC does not believe the mere fact that a request to seal documents is not granted or that documents that were sealed are later unsealed necessarily means a party acted inappropriately by requesting sealing. Not every unsuccessful sealing request is a frivolous request; a requesting party may have a legitimate basis for making the request even if it is not ultimately granted. The argument that a requesting party has done nothing inappropriate is even stronger when a court has actually issued a sealing order that is later successfully challenged. It seems wholly inappropriate to punish the requesting party when a court considering the facts has concluded that there was a legitimate basis to grant the party's request.

On a practical level, the AAC is concerned that authorizing attorneys fees for successfully challenging sealing orders and applications will encourage the filing of these challenges even when it may not be warranted. Since the recommendation does not contemplate reciprocal attorney's fees for unsuccessfully challenging a sealing order, parties would not face an

equivalent downside to making unwarranted challenges. More challenges would mean an increase in the workload of the courts and in costs for the parties.

For the reasons outlined above, the AAC suggests that the BBMC delete Part C from recommendation 3.

Part D - Proposed form to facilitate challenges to sealing orders

Part D of recommendation 3 is that a form be developed to "facilitate challenges by pro per individuals to orders sealing records." It is not clear from the BBMC report whether the form contemplated is something that would be used to request reconsideration under the sealing rules of a sealing order by the court that issued the order (rule 2.551(h) or rule 8.46(f)) or something that would be used to seek review of a sealing order in a higher court. The AAC suggests that the BBMC clarify the nature of the form it is recommending be developed.

Comments on Recommendation 4 – Educational Programs

The AAC generally supports this recommendation to create educational content and programs to enhance relationships and cross communication among the bench, bar, media, court staff, and public and specifically supports Parts A and D of this recommendation, which appear to be contemplate educational programs and resources for appellate courts as well as trial courts.

Comments on Recommendation 5 – Judicial Officer Training on Clear Presentation of Statements

The AAC generally supports the concept of offering judicial education that encourages the drafting of clear, understandable decisions and believes that CJER currently incorporates this in many of its courses. It is not clear from the BBMC, however, whether the concerns that motivated this recommendation relate to appellate court decisions and whether the portion of the recommendation relating to preparing statements of decision is intended to apply in the appellate context. The AAC therefore suggests that the BBMC clarify any specific concerns it has in connection with appellate court decisions and the intended application of this recommendation. The AAC also suggests that the recommendation be amended to focus on drafting decisions that are clear to parties and the public. In this context, the AAC believes that the interests of the public and the media in clear, understandable decisions are the same and therefore that a separate focus on drafting for media understanding is not necessary or appropriate.

Conclusion

Thank you again for the opportunity to comment on BBMC draft report and recommendations. The AAC hopes that these comments are helpful to the BBMC in considering possible changes to its report and recommendations.

Sincerely,

Hon. Kathryn Doi Todd
Chair

Attachment F

October 29, 2010

Honorable Ronald M. George,
Chief Justice of the State of California, and
Members of the California Judicial Council
Attn: Claudia Ortega
EOP
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Bench-Bar-Media Committee Draft Report

Dear Chief Justice George and Members of the Judicial Council:

On behalf of Los Angeles Times Communications LLC, the California Newspaper Publishers Association, the Associated Press, and The New York Times Company, we respectfully submit the following comments regarding the Judicial Council's Bench-Bar-Media Committee Draft Report: "A Balancing Act: Accommodating the Needs of the Bench, Bar, and Media in the Pursuit of Justice."

Los Angeles Times Communications LLC is the publisher of The Los Angeles Times, the largest metropolitan daily newspaper circulated in California. The Los Angeles Times also publishes, through Times Community Newspapers, the Newport Beach-Costa Mesa Daily Pilot, Glendale News-Press, Burbank Leader, Foothill Leader, Huntington Beach Independent, Laguna Beach Coastline Pilot, and the La Cañada Valley Sun, and maintains the website www.latimes.com, a leading source of national and international news, as well as websites for each of its community newspapers. California Newspaper Publishers Association ("CNPA") represents approximately 850 daily, weekly and student newspapers in California, including The Los Angeles Times. The Associated Press ("AP") is a mutual news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP gathers and distributes news of local, national and international importance to its member newspapers and broadcast stations and to thousands of other customers in all media formats across the United States and throughout the world. The Los Angeles Times, CNPA, and the AP are represented on the Committee that drafted this Report. The New York Times Company is the publisher of The New York Times, the International Herald Tribune, The Boston Globe, and 15 other daily newspapers. It also owns and operates WQXR-FM and more than 50 websites, including nytimes.com, Boston.com and About.com.

As organizations involved every day in informing the public about courts throughout California, The Los Angeles Times, CNPA, the AP, and The New York Times ("Press Commenters") appreciate the opportunity to comment on the Report. Although these comments address some recommendations in more depth than others, we believe that all the proposals outlined in the Committee's excellent Report will significantly improve the public's ability to understand and monitor courts, and will further the principles recognized by the California

Supreme Court more than a decade ago in NBC Subsidiary v. Superior Court, 20 Cal. 4th 1178 (1999).[1]

I. RULE 1.150 OF THE CALIFORNIA RULES OF COURT SHOULD SET FORTH AN EXPLICIT PRESUMPTION THAT CAMERAS AND OTHER RECORDING DEVICES ARE ALLOWED IN THE COURTROOM.

Press Commenters strongly support Recommendation 1, which would amend the California Rules of Court to recognize explicitly the presumption of access to court proceedings for video cameras, still cameras, and other recording devices. We respectfully disagree with the members of the Los Angeles Superior Court who expressed concern that the proposed amendments would "diminish the authority and responsibility of the courts to assure the integrity of the proceedings." LASC Comments at 8. To the contrary, the amendment would correct the mistaken impression that Rule 1.150 disfavors photographing, recording, or broadcasting (see Report at 13), and make the coverage of courts electronically consistent with the general law and policy favoring public access to courts without "limit[ing] or modify[ing] a judge's discretion to allow or deny recording." Id. at 13. Indeed, other states have codified a presumption of allowing cameras and other recording devices in the courtroom. See, e.g., Washington general court rule GR 16 ("Open access [for recording and photography] is presumed; limitations on access must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption"); Florida Rule of Judicial Administration 2.450.

A. Public Policy Supports Permitting Cameras In The Courtroom.

As Justice Anthony Kennedy told Congress, in discussing whether to allow cameras and other recording devices in the courtroom, one "can make the argument that the most rational, the most dispassionate, the most orderly presentation of the issue is in the courtroom, and it is the outside coverage that is really the problem. In a way, it seems perverse to exclude television from the area in which the most orderly presentation of the evidence takes place." Hearings Before a Subcomm. of the House Comm. on Appropriations, 104th Congress, 2d Sess. 30 (1996).

Justice Kennedy is right. If there is a public benefit to public trials – and there is – then there also is a public benefit to complete access to public trials. Two hundred years ago, the courts accommodated the public's interest in court proceedings by moving high profile

[1] Press Commenters note that, contrary to the suggestion of some commenters that criminal defense attorneys were not consulted, criminal defense attorney Cristina Arguedas of Arguedas, Cassman, & Headley, LLP served on the Committee that prepared the Draft Report.

proceedings to larger venues. As the Supreme Court noted in Press-Enterprise v. Superior Court ("Press-Enterprise II"), 478 U.S. 1 (1986), the probable-cause hearing in the Aaron Burr trial "was held in the Hall of the House of Delegates in Virginia, the courtroom being too small to accommodate the crush of interested citizens." Id. at 10. Today's technology affords a much easier way to provide access to members of the public who are interested in following proceeding court proceedings. And as the Chief Justice of the Supreme Court of Georgia wrote recently, "[a] room that is so small that it cannot accommodate the public is a room that is too small to accommodate a constitutional criminal trial." Presley v. State, 285 Ga. 270, 274 (Ga. 2009) (Sears, J., dissenting), rev'd, 130 S.Ct. 721 (2010).

California has long recognized the importance of allowing television coverage of trials. More than four decades ago, well before technological advances permitted the unobtrusive recording of court proceedings, a California State Assembly committee emphasized that cameras in the courtroom are wholly consistent with our tradition of public trials. Because "sprawling urbanism has replaced concentrated ruralism," and because "no courtroom in the land could hold even a minute fraction of the people interested in specific cases," the committee recognized that "a trial is not truly public unless news media are free to bring it to the home of the citizens by newspaper, magazine, radio, television or whatever device they have."[2] In 1981, California adopted rules permitting television coverage of criminal and civil trials.

Fifteen years later, after the O.J. Simpson criminal trial, the Chief Justice of the California Supreme Court appointed a special task force to evaluate whether television coverage of trials should be continued. The task force solicited the views of judges, media representatives, victims' rights groups, public defenders, prosecutors, and other representatives of the bar, and analyzed other states' experiences with television coverage of trials. Based on all the evidence that it gathered, the task force concluded that cameras should remain in California courtrooms. Strikingly, the task force found that judges who had actually presided over televised trials favored allowing cameras in the courtroom. Ninety-six percent of those judges reported that the presence of a video camera did not affect the outcome of a trial or hearing in any way. In addition, the overwhelming majority of them reported that the camera did not affect their ability to maintain control of the proceedings, nor did it diminish jurors' willingness to serve.[3]

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[2] Final Report Of The Subcommittee On Free Press - Fair Trial, Assembly Interim Committee On Judiciary, January 5, 1967. (Press Commenters would be happy to provide copies of this and other reports referenced in these comments, at the Council's request.)

[3] See 1996 Report of Task Force on Photographing, Recording, and Broadcasting in the Courtroom.

At the same time, the electronic media play an indispensable role in informing the public about the conduct of judicial proceedings. In Richmond Newspapers v. Virginia, 448 U.S. 555 (1980), the Supreme Court noted that "[i]nstead of acquiring information about trials by first hand observation or by word of mouth from those who attend, people now acquire it chiefly through the print and electronic media." 448 U.S. at 573. The Court explained that this development "validates the media claim of functioning as surrogates for the public." Id. at 573. Remote access to judicial proceedings through the use electronic devices is especially important given the pace of modern life and the size of our metropolitan areas. With the myriad commitments and responsibilities that each person faces on a daily basis, for most there is simply no time to attend judicial proceedings in person. And even if an individual were available to attend trial proceedings, the sheer number of such interested observers in high-profile cases guarantees that only a small fraction could be admitted at any given time. The Third Circuit acknowledged the practical obstacles that prevent full public attendance at trials, asking rhetorically, "What exists of the right of access if it extends only to those who can squeeze through the [courtroom] door?" United States v. Antar, 38 F.3d 1348, 1360 (3d Cir. 1994). In other words, a courtroom is open only in theory when the general public has no opportunity to view the events transpiring there.

In addition, although written accounts can provide excellent descriptive coverage of court proceedings, they cannot always show the public exactly what happens in the courtroom. As Justice Marshall observed in Richmond Newspapers, "the availability of a trial transcript is no substitute for a public presence at the trial itself. As any experienced appellate judge can attest, the 'cold' record is a very imperfect reproduction of events that transpire in the courtroom." 448 U.S. at 597 n.22 (Marshall, J., concurring). The Second Circuit reiterated this distinction in striking down an order that barred the public and press from observing live voir dire proceedings in ABC, Inc. v. Martha Stewart, 360 F.3d 90, 99 (2d Cir. 2004), noting that "one cannot transcribe an anguished look or a nervous tic. The ability to see and to hear a proceeding as it unfolds is a vital component of the First Amendment right of access – not, as the government describes, an incremental benefit." See also Antar, 38 F.3d at 1360 n.13 ("some information, concerning demeanor, non-verbal responses, and the like, is necessarily lost in the translation of a live proceeding to a cold transcript"); Society of Professional Journalists v. Secretary of Labor, 616 F. Supp. 569, 578 (D. Utah 1985) ("[e]motions, gestures, facial expressions, and pregnant pauses do not appear on the reported transcript. Much of what makes good news is lost in the difference between a one-dimensional transcript and an opportunity to see and hear testimony as it unfolds.") (citation omitted).

B. Experience Shows That Electronic Coverage Is Not Disruptive.

Contrary to the concerns raised by some opponents of camera coverage, there is no inherent conflict between the public's interest in being able to follow court proceedings and the

courts' interest in ensuring the fairness and efficiency of the proceedings. But the responsibility to guarantee a fair trial includes honoring the public right of access, and both the First Amendment and fair trial interests require trial courts to "take every reasonable measure to accommodate" the public. Presley v. Georgia, 130 S.Ct. 721, 725 (2010). As the Supreme Court noted, the public "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing. When a criminal trial is conducted in the open, there is at least an opportunity both for understanding the system in general and its workings in a particular case." Richmond Newspapers, 448 U.S. at 572

Moreover, concerns about disruption arising from the technology itself are wholly outdated. For example, comments submitted by judges of the Los Angeles Superior Court expressed wariness about cameras and other recording devices in the courtroom, noting that the Supreme Court in Estes v. Texas, 381 U.S. 532 (1965), "overturned the defendant's conviction because it found that the use of cameras, and the ensuing disruptive courtroom environment, deprived the defendant of a fair trial." LASC Comments at 5. But that was nearly half a century ago. Modern recording equipment has evolved to the point where concerns about intrusive cables, microphones, and camerapersons simply do not exist. Indeed, even five decades ago, Justice Harlan (the dispositive concurring vote), recognized that the day would come when "television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives the constitutional judgment called for now would of course be subject to re-examination in accordance with the traditional workings of the Due Process Clause." Id. at 595–96 (Harlan, J., concurring).

Justice Harlan's prescience was vindicated in 1981, when a unanimous Supreme Court held that televising a trial over the objections of two criminal defendants was not a violation of their due process rights. Chandler v. Florida, 449 U.S. 560, 576 (1981). Chief Justice Burger's opinion emphasized that Estes did not establish a permanent rule banning states from experimenting with an "evolving technology, which, in terms or modes of mass communication, was in its relative infancy in 1964 …, and is, even now, in a state of continuing change." Id. at 560. The unanimous Chandler opinion also observed that "the data thus far assembled was cause for some optimism about the ability of states to minimize the problems that potentially inhere in electronic coverage of trials." Id. at 576 n.11.

Twenty years later, technology has progressed even further, removing all doubt that electronic media can be present in the courtroom without causing disruption. It is not surprising, therefore, that later courts have had little trouble distinguishing Estes, noting that the Supreme Court in that case "explicitly recognized that its holding ultimately relied on the then-state of technology[.]" Katzman v. Victoria's Secret Catalogue, 923 F. Supp. 580, 589 (S.D.N.Y. 1996) (finding that outdated objections based on potential disruption "should no longer stand as a bar to

televised court proceedings"); see also People v. Spring, 153 Cal. App. 3d 1199 (1984) (presence of television camera during trial did not violate criminal defendant's Sixth Amendment right to a fair trial); State of New Hampshire v. Smart, 622 A.2d 1197 (N.H. 1993) (televised coverage of high-profile murder trial did not prejudice defendant); Stewart v. Commonwealth of Virginia, 427 S.E.2d 394 (Va. 1993) (presence of video cameras during criminal trial did not violate defendant's due process rights).

In fact, any concerns about the adverse impact of full-time camera coverage are belied by the studies in a dozen states, including California, that have reached virtually identical conclusions concerning the impact – or rather, the lack of impact – on trial participants from the presence of cameras.[4] The results from the state studies were unanimous: the claims of a negative impact from electronic media coverage of courtroom proceedings – whether civil or criminal – are baseless. For example, the state studies revealed that fears about witness distraction, nervousness, distortion, fear of harm, and reluctance or unwillingness to testify were unfounded. Indeed, there is good reason to believe that instead of eroding decorum, the presence of cameras in the courtroom puts participants on their best behavior. The positive results of the state court evaluations were further bolstered by the Federal Judicial Center's 1994 study of a three-year pilot program that permitted electronic media coverage in civil proceedings in six federal district courts and two circuit courts. The federal study concluded that no negative impact resulted from having cameras in the courtroom.[5] Thus, the extensive empirical evidence that has been collected on the impact of electronic coverage in the decades following Estes consistently has concluded that such coverage is not detrimental to the parties, to witnesses, to counsel, or to courtroom decorum.

C. The Proposed Changes Recognize An Appropriate Presumption Of Openness In Favor Of Electronic Media.

Some commenters have expressed a fear that revising the rules on audiovisual coverage will create an "entirely different framework of decision to favor the media and to diminish the authority and responsibility of the courts to assure the integrity of the proceedings." E.g., LASC Comments at 8. With respect, the relevant inquiry is not the extent to which the Rules favor the

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[4] See Dienes, Levine, Lind, NEWSGATHERING AND THE LAW (3d ed. 2005) § 4.03 ("[t]he studies report that the majority of jurors and witnesses who experience electronic media coverage do not report negative consequences or concerns. These findings are consistent with what judges and lawyers in the pilot courts observed about jurors and witnesses in those courts.") (citing FEDERAL JUDICIAL CENTER, ELECTRONIC MEDIA COVERAGE OF FEDERAL PROCEEDINGS 3-4 (1994)).

[5] Id. at § 4.02[2]

media, but whether they benefit the public. The law already favors access, and the proposal would simply correct the mistaken impression that Rule 1.150 includes a presumption against photographing, recording, or broadcasting, as well as eliminating the suggestion that electronic coverage is somehow inherently prejudicial.

The First Amendment mandates that court proceedings be open to the public, absent compelling and clearly articulated reasons for closing such proceedings. NBC Subsidiary, 20 Cal. 4th 1209 ("there is no reason to doubt that, in general, the First Amendment right of access applies to civil proceedings as well as to criminal proceedings"); Richmond Newspapers, 448 U.S. at 580 & n.17 ("historically both civil and criminal trials have been presumptively open"). This millennium-old tradition of openness assumes even greater importance in our democratic system, where the government and all of its actions ultimately are held accountable by the voters. The Richmond Newspapers Court recognized that full public access promotes popular acceptance of "both the process and its results." Id. at 571. Similarly, in Globe Newspaper v. Superior Court 457 U.S. 596 (1982), the Court emphasized that "[p]ublic scrutiny of a criminal trial enhances the quality and safeguards the integrity of the fact-finding process, with benefits to both the defendant and the society as a whole[,] permit[ting] the public to participate in and serve as a check upon the judicial process – an essential component in our structure of self-government." 457 U.S. at 606. Conversely, "where the trial has been concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worst has been corrupted." Richmond Newspapers, 448 U.S. at 571 (citations omitted).

To date, California courts have not applied a constitutional presumption of access to electronic media. But the logic behind the presumption of access to court proceedings applies with equal force to electronic media access. Indeed, it may apply with special force because "newsworthy trials are newsworthy trials, and … they will be extensively covered by the media both within and without the courtroom," whether or not cameras are permitted. In re Petition of Post-Newsweek Stations, Inc., 370 So. 2d 768, 776 (Fla. 1979). When cameras and other electronic media are excluded from the courtroom, the only information about what happens in the courtroom comes second-hand from accounts by those few members of the public and the media able to fit inside, or from individuals speculating about what has occurred. Barring electronic media from newsworthy proceedings thus fuels speculation about what has transpired, as well as increasing the odds of inaccurate reports. The antidote for concerns about sensational and speculative media coverage is to provide the public with an accurate and complete view of the actual court proceedings.

Moreover, the experience with the general right of access to court proceedings also offers procedural guidance to judges considering requests for access by cameras and other recording devices. For example, judges from the Sacramento Superior Court have noted that they are responsible for protecting not just the public right of access, but also fair trial rights, security of

the courtroom, and privacy rights. SSC Comments at 4. Similarly, the judges of the Los Angeles Superior Court stated in their comments that some types of proceedings, like certain criminal or family law proceedings, may create special obstacles to access under Rule 1.150. LASC Comments at 9. We do not underestimate the burden on judges to balance competing rights and interests, but judges need not reinvent the wheel in balancing these rights. In decades of cases construing the general right of access to the courts, the Supreme Court determined that the proper way of balancing these interests is precisely what is reflected in the proposed amendment – a presumption in favor of access which can be overcome by a Sixth Amendment fair trial right or a similarly weighty interest in closure.[6] For example, Rule 1.150 would continue to prohibit cameras and other recording devices where proceedings have been closed to the public, and Family Code section 214 expressly permits closures of family law proceedings.

D. Rule 1.150 Should Require Specific Findings Before Limiting The Use Of Cameras And Other Recording Devices.

The Committee has proposed to require "specific findings to prohibit or limit the use of cameras and other recording devices" and to revise Judicial Council Form MC-510 to facilitate these specific findings. Report at 2. The Report notes the perception that "judges are increasingly denying electronic recording in the courtroom as a matter of course." Id. at 13. This finding is consistent with the experience of Press Commenters, all of which regularly work with reporters attempting to get permission for electronic access under Rule 1.150.

There is nothing new about requiring on-the-record findings before limiting public access to the courts. Indeed, the First Amendment requires trial courts to make specific findings on the record to justify closure of court proceedings. This principle has been affirmed by the California Supreme Court. "[B]efore substantive courtroom proceedings are closed … a trial court must hold a hearing and [make] express[] find[ings]" that closure is necessary. NBC Subsidiary, 20 Cal. 4th at 1217-18. See also Press-Enterprise II at 13-14 (closure justified only by "specific, on the record findings"). Absent evidence and specific findings demonstrating that a closure order is necessary, it will not be sustained. "[T]he court may not base its decision on conclusory assertions alone, but must make specific factual findings." Washington Post Co. v. Soussoudis, 807 F.2d 383, 392-93 & n.9 (4th Cir. 1986).

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[6] The Los Angeles Superior Court noted that a 2000 survey found that 81 percent of media requests for coverage were granted. LASC Comments at 3. Even if this is still the case – and the undersigned suspect that this number may have decreased over the last decade – the percentage sheds little light on the justifiability of the 19 percent of requests that were denied, nor does it justify keeping the current rule in place.

As the Supreme Court reiterated just months ago, these particularized findings are essential because they ensure that "a reviewing court can determine whether the closure was properly entered." Presley, 130 S.Ct. 721 (quoting Press-Enterprise Co. v. Superior Court ("Press-Enterprise I"), 464 U.S. 501, 510 (1984)). But the requirement "is not only for the benefit of the reviewing court on appeal. It exists, most fundamentally, to assure careful analysis by the district court before any limitation is imposed, because reversal on review cannot fully vindicate First Amendment rights." Antar, 38 F.3d at 1362. In addition, the requirement of particularized findings reflects the simple truth that "[a]ny step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat" and endangers public confidence in the court. Hicklin Engineering, L.C. v. Bartell, 439 F.3d 346, 348-349 (7th Cir. 2006). Whether or not the First Amendment requires "specific, on the record findings" before requests to photograph, record, or broadcast proceedings are denied, these policies behind the constitutional requirement apply equally to electronic access.

It is true that the proposed requirements could create additional responsibilities for judges – for example, judges of the Sacramento Superior Court worry that they may need to hold an evidentiary hearing or oral argument when faced with a request under Rule 1.150. SSC Comments at 5. But Press Commenters agree with the Report's conclusion "that these new responsibilities are essential to allowing media access when it is appropriate and communicating to the media the rationale for decisions regarding its ability to record proceedings." Report at 15. Indeed, the procedures involved in justifying the exclusion of electronic media would not differ in kind from the well-established (and constitutionally mandated) procedures involved in closing proceedings or records to the public.[7]

II. NEW RULES OF COURT SETTING FORTH THE STRICT STANDARDS FOR EVALUATING THE CONSTITUTIONALITY OF GAG ORDERS ARE NECESSARY.

Press Commenters also favor the Committee's second proposal, which would formalize the strict common law rules governing gag orders. Following on the heels of the Judicial Council's adoption of rules governing the sealing of records (Rules 1.150 and 1.151) and access to the California Judiciary's administrative records (Rule 10.500), these new rules on gag orders would make clear to all California courts the limited circumstances in which restrictions on First

[7] Press Commenters also support the eminently sensible recommendation that judicial officers and court staff should be educated on the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment. Unfortunately, our experience supports the Committee's finding that even where "a judge may issue an order allowing the use of recording devices, court security personnel are often not informed of the order." Report at 14.

Amendment rights may be upheld, and the strict burden that courts must meet to justify imposing such prior restraints. As explained in detail below, some trial courts in recent years have entered gag orders without even adhering closely to the common law principles set forth in the case law, resulting in costly litigation in the trial and appellate courts that media entities have had to undertake to undo the errors. The new rules proposed by the Committee would provide courts and litigants with an easy resource to consult and follow, which should increase predictability and have the salutary effect of decreasing litigation as courts apply the requirements set forth in the rules.

On this point, Press Commenters also respectfully disagree with the Los Angeles and Sacramento Superior Court judges who submitted comments opposing these new rules. The Sacramento County judges' questioning of the media's standing to object to gag orders is not well founded; the issue is beyond dispute, as courts around the country and in California have recognized that the media must be given an opportunity to object when First Amendment rights are jeopardized. Likewise, the Los Angeles County judges' suggestion that there is a conflict in the case law on gag orders is unpersuasive, since both United States Supreme Court and California court decisions require trial courts to examine whether the purported danger is sufficiently compelling to warrant infringement of First Amendment rights, whether less restrictive measures to the gag order are available, and whether the gag order would be effective. Finally, the concerns expressed by the Sacramento and Los Angeles Superior Court judges that the notice provision would present an undue administrative burden are untenable, since the existence of court websites and listserves makes notification a simple matter of posting material on the respective courts' websites.

A. Gag Orders Must Be Limited And Closely Monitored, As They Constitute Prior Restraints On Speech.

Gag orders that restrict or preclude a citizen from speaking or a media organization from publishing in advance are considered to be "prior restraints" that are both disfavored and "presumptively invalid." Freedom Communications v. Superior Court, 167 Cal. App. 4th 150, 153 (2008). The United States Supreme Court has cautioned that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976) (vacating pre-trial gag order). Such an order is a "most extraordinary remedy" that may be used "only in 'exceptional cases' … where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures." CBS, Inc. v. Davis, 510 U.S. 1315, 1317 (1994) (Blackmun, J. in chambers). The Supreme Court has offered two examples of "exceptional cases" where a prior restraint might be justified: to prevent the enemy from learning troop movements during wartime (Near v. Minnesota, 283 U.S. 697, 716 (1931)) and to "suppress[] … information that would set in motion a nuclear holocaust." New York Times Co. v. United States, 403 U.S. 713, 726

(1971). Even where the Court has acknowledged that Sixth Amendment fair trial rights could be impaired because of pervasive publicity, the Court still has refused to uphold the prior restraint because the purported danger was not sufficiently compelling, less restrictive measures were available, and the proper showing could not be made that a prior restraint gag order would be effective. See, e.g., Nebraska Press Ass'n, 427 U.S. at 562-564.

In California, gag orders have been deemed to be unconstitutional unless they meet the following test: (1) the speech sought to be restrained poses a clear and present danger or serious and imminent threat to a protected competing interest; (2) the order is narrowly tailored to protect that interest; (3) no less restrictive alternatives are available. Hurvitz v. Hoefflin, 84 Cal. App. 4th 1232, 1241 (2000); Maggi v. Superior Court, 119 Cal. App. 4th 1218, 1225-1226 (2004) (applying the same standard and finding that order restricting speech of parties in action was unconstitutional); Freedom Communications, 167 Cal. App. 4th at 154 (same). The gag order must be supported by "express findings showing it applied this standard and considered and weighed the competing interests." Hurvitz, 84 Cal. App. 4th at 1241-1242; see also CBS v. Young, 522 F.2d 234, 238 (6th Cir. 1975) (striking down gag order on trial participants in Kent State shooting trial, finding that "[t]he restraint, to meet judicial approval, must pose a clear and present danger, or a serious or imminent threat to a protected competing interest").[8]

The Committee's proposal sensibly recommends setting forth these well-accepted common law principles in a single place, giving courts and litigants the ability to easily access and follow the rules for evaluating the constitutionality of gag orders. The proposed rules incorporate the common law requirement of "specific findings" of danger to a competing interest that justifies infringing on First Amendment rights, and include the additional constitutional safeguards that require restraining orders to be narrowly drawn for the shortest possible time period. The proposed rules also properly include notice requirements, which are essential so that media organizations and individuals may challenge the propriety of orders that impinge on the First Amendment. Because the proposed rules fairly and concisely summarize the basic requirements for evaluating the constitutionality of gag orders, they should be adopted.

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[8] It is well established that gag orders implicate important First Amendment rights, not only of those persons who are directly restrained, but also of the public and press, whose ability to obtain information is impaired. See, e.g., Gentile v. State Bar of Nevada, 501 U.S. 1030, 1052-1054 (1991) (reversing reprimand of attorney for alleged violation of Nevada State Bar rule and holding that attorney's speech about ongoing litigation is protected by First Amendment); In re Application of Dow Jones & Co., 842 F.2d 603, 609 (2d Cir. 1988) (court's imposition of a gag order impaired media's First Amendment right to publish); CBS, Inc. v. Young, 522 F.2d at 241 (gag order interfered with media's First Amendment rights).

B. The Proposed Rules Accurately Capture The State Of The Law On Gag Orders.

As explained in detail below, despite claims made in some of the comments, the proposed rules accurately convey the current state of the law on standing and the controlling test governing gag orders. Moreover, the notice requirement is necessary so that media organizations may vindicate their and the public's robust rights to challenge orders that infringe on their speech.

First, the Sacramento Superior Court judges claim media organizations should not be given standing per se to oppose gag orders. SSC Comments at 7. Obviously, in cases such as Freedom Communications and Hurvitz, where the gag order is directly aimed at publications by the media, the affected media organizations have standing to challenge the abridgement of their First Amendment rights. Yet even where the gag order is directed at non-media trial participants, courts today typically hold that the press may intervene and raise objections if they establish that the order restricted their ability to obtain information about the litigation in our public courts. In CBS v. Young, 522 F.2d at 237-238, for example, the trial court's order enjoined the parties and their associates from speaking to the news media or public about the civil lawsuit concerning the shooting deaths of several Kent State University student protesters. The Sixth Circuit found that CBS had standing even though it was not a party to the litigation: "The fact remains that [CBS'] ability to gather the news concerning the trial is directly impaired or curtailed." Id. "The protected right to publish the news would be of little value in the absence of other sources from which to obtain it." Id.

Other courts around the country also have recognized the standing of press organizations to oppose the entry of gag orders. See Dow Jones & Co., 842 F.2d at (recognizing that news agencies have standing to challenge gag orders where they are potential recipients of otherwise restrained speech); Brown v. Damiani, 154 F. Supp. 2d 317, 320 (D. Conn. 2001) ("news organizations … demonstrate an injury to their First Amendment rights [to gather news] sufficient for standing purposes if they demonstrate that, but for the challenged order, parties to the litigation would have spoken to the news media"); In re Houston Chronicle Publ'g Co., 64 S.W.3d 103, 107 (Tex. App. 2001) (newspaper has standing to challenge gag order directed at trial participants because "order restricts some of [newspaper's] news sources or potential sources"); NBC v. Cooperman, 501 N.Y.S.2d 405 (N.Y. Ct. App. 1986) (press has standing to question validity of gag order); News American Division v. Maryland, 447 A.2d 1264 (Md. App. 1982) (motion to intervene recognized as the appropriate procedural mechanism through which media organizations may challenge a court's gag order on trial participants); Connecticut Magazine v. Moraghan, 676 F. Supp. 38, 43 (D. Conn. 1987) (same). California courts also have a longstanding history of finding that press organizations have standing to challenge orders that restrict sources of information and thereby constrain their ability to gather news. See Rosato v. Superior Court, 51 Cal. App. 3d 190, 230 (1975) (quoting Craemer v. Superior Court, 265 Cal.

App. 2d 216, 218 n.1 (1968)). Given these authorities, it is sensible that the Rules of Court on gag orders also allow for the press to have standing to challenge orders that impact First Amendment rights.

Second, the position of the Los Angeles Superior Court judges only reinforces the need for clear Rules of Court pertaining to gag orders. The Los Angeles Superior Court judges mistakenly reduce the test for upholding prior restraint gag orders to a mere "balancing test," incorrectly stating that the United States Supreme Court in Nebraska Press Ass'n v. Stuart, "rejected a 'clear and present danger' test" for upholding prior restraints and instead endorsed an ad hoc balancing test of First Amendment free speech rights and Sixth Amendment fair trial rights. LASC Comments at 13-14. Respectfully, Nebraska Press Ass'n says nothing of the sort. Instead, the Supreme Court stated in Nebraska Press that any order restraining speech "comes to this Court with a 'heavy presumption' against its constitutionality." Id. at 558 (quoting Organization for a Bestter Austin v. Keefe, 402 U.S. 415, 418-420 (1971)). Thus, far from supporting a run-of-the mill balancing test in deciding whether a prior restraint was constitutional, as the LASC Comments suggest, in Nebraska Press Ass'n "the Court invoked a variant of the clear and present danger test – whether 'the gravity of the evil, discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." Dienes, Levine, Lind, NEWSGATHERING AND THE LAW (3d ed. 2005) § 2.01[4] (quoting Learned Hand test cited in Nebraska Press Ass'n, 427 U.S. at 562) (emphasis added)). Thus, the Court explained, the trial judge must examine the evidence to determine: "(a) the nature and extent of pretrial news coverage; (b) whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; and (c) how effectively a restraining order would operate to prevent the threatened danger." Nebraska Press Ass'n, 427 U.S. at 562.[9]

The concurring opinion authored by Justice Brennan in Nebraska Press Ass'n, 427 U.S. at 592, further clarified that the Supreme Court was rejecting the "ad hoc balancing approach" utilized by the Nebraska Supreme Court whereby the presumption against prior restraints may be overcome by "some perceived 'justification'" such as the blanket invocation of Sixth Amendment fair trial rights. Justice Brennan stated that the four prior restraint orders were issued in Nebraska Press Ass'n because the Nebraska state courts misinterpreted the Supreme

[9] In Nebraska Press Ass'n, 427 U.S. at 543, the Supreme Court noted that the trial court had found that a "clear and present danger" existed that pretrial publicity could impinge on fair trial rights. While disapproving of the "could impinge" analysis as too lax a standard to restrain speech, the Supreme Court never stated anywhere in the opinion that any "clear and present danger" standard was invalid. The LASC Comments' contrary claim that the Court considered and rejected the "clear and present danger" standard is thus unpersuasive. See LASC Comments at 14.

Court's language used in previous cases about the "presumption" against prior restraints, reading it as an invitation "to condone an ad hoc balancing approach rather than merely to state the test for assessing the adequacy of procedural safeguards and for determining whether the high burden of proof had been met in a case falling within one of the categories that constitute the exceptions to the rule against prior restraints." Id. at 595 (Brennan, J., concurring). Only an "event kindred to imperiling the safety of a transport already at sea" in a time of war can justify a prior restraint upon publication, Justice Brennan reminded. Id. at 593 n.21. The purported impact on fair trial rights caused by the media publicity in the notorious Nebraska murder case did not rise to that level, as the Supreme Court held. Id. at 562-567.

The LASC Comments appear to want to turn the clock back 35 years, to the time before Nebraska Press Ass'n, when some courts mistakenly believed that in upholding a prior restraint, the court merely had to balance a perceived interest against the First Amendment. The dangers of this approach were fully evident this past summer, when Los Angeles Superior Court Judge Hilleri Merritt issued a prior restraint order preventing the Los Angeles Times from publishing photographs it had taken at a preliminary hearing in a murder case. Judge Merritt engaged in a "balancing test" where she stated that she had balanced Sixth Amendment and First Amendment rights, and the Sixth Amendment rights won out because of the possibility that witness identification could be tainted by publication of the photographs of the defendant, even though other photographs of the defendant were out on the Internet. Division Five of the Second Appellate District Court of Appeal immediately issued an alternative writ of mandate. After Judge Merritt, who was represented by Los Angeles County Superior Court counsel, declined to change her ruling, the Court of Appeal issued a peremptory writ ordering her to withdraw the prior restraint order that was based on the improper ad hoc balancing test. See Los Angeles Times Communications LLC v. Superior Court, 2010 Cal. App. Unpub. LEXIS 6625 (August 19, 2010).

Two years earlier, the Orange County Register fought a similar prior restraint gag order imposed by Orange County Superior Court Judge David C. Velasquez. Judge Velasquez enjoined The Register from reporting on the trial testimony of any witness during the pendency of the trial in which The Register was a defendant, supposedly to prevent witnesses from being influenced by the testimony of other witnesses. Division Three of the Fourth Appellate District Court of Appeal issued a peremptory writ in the first instance overturning Judge Velasquez's order. In a published opinion, the Court of Appeal stated that gagging The Register and preventing the paper from publishing articles about trial testimony was "an impermissible prior restraint violative of both the United States and California Constitutions." Freedom Communications, 167 Cal. App. 4th at 152. The Court of Appeal applied the test used in California for evaluating prior restraints, under which prior restraints "are unconstitutional unless (1) the speech sought to be restrained poses a clear and present danger or serious and imminent

threat to a protected competing interest; (2) the order is narrowly tailored to protect that interest; and (3) no less restrictive alternatives are available." Id. at 154 (quoting Hurvitz, 84 Cal. App. 4th at 1241). Judge Velasquez's order did not meet this test, because the potential danger used to justify the prior restraint (possible witness taint) was not "sufficiently compelling," and less restrictive alternatives existed, including admonitions by the trial court not to read press accounts of the trial.

The Hurvitz test cited with approval in Freedom Communications for evaluating the constitutionality of prior restraints is binding law in California, as even the Sacramento Superior Court recognizes. SSC Comments at 7 (stating that "the legal principles" utilized in evaluating gag orders "can be found in the case cited by the Committee in its report – *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232"). See also Maggi, 119 Cal. App. 4th at 1225 (applying Hurvitz test to evaluate constitutionality of gag order).[10] The Los Angeles Superior Court judges' suggestion that there is a conflict in the case law is mistaken. As explained above, in Nebraska Press Ass'n, the Supreme Court utilized a version of the clear and present danger standard to find that even a potentially severe impact on Sixth Amendment rights did not justify a prior restraint upon publication. This standard amounts to "a virtual bar to prior restraints on reporting of news about crime." Tribe, AMERICAN CONSTITUTIONAL LAW (2d ed. 1988) 858-859. The Los Angeles Superior Court judges' suggestion that this test is a mere balancing test runs counter to the prevailing case law and should be rejected. Moreover, the mistaken analysis in the judges' comments and the experiences of The Los Angeles Times and The Register in the recent cases demonstrate that trial courts in California continue to have problems identifying and applying the strict rules governing prior restraint gag orders. Adopting Rules of Court that plainly lay out the controlling Hurvitz standard will provide courts with clear guideposts to evaluate whether a proposed gag order is justified or not, and will reduce the emergency litigation that has had to take place where trial courts have departed from these rules.

Third, the Los Angeles and Sacramento Superior Court judges complain about the notice requirements in the proposed rules, but the ability to challenge gag orders and ensure that the strict standards for such orders are being followed necessarily depends on the public learning that sealing orders have been entered or are being contemplated. In recent years, it has been difficult

[10] Neither the Los Angeles Superior Court nor the Sacramento Superior Court cite to any decision in California or elsewhere contradicting the Hurvitz test. As has long been the case, the superior courts in Los Angeles and Sacramento counties are bound to follow the decisional law of the court of appeal, including Hurvitz. See Auto Equity Sales, Inc. v. Superior Court, 57 Cal. 2d 450, 455 (1962) ("Decisions of every division of the District Courts of Appeal are binding upon all the justice and municipal courts and upon all superior courts of this state, and this is so whether or not the superior court is acting as a trial or appellate court. Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.").

on occasion to even find out whether gag orders or sealing orders have been entered, particularly in complex cases where there can be dozens, even hundreds, of individual dockets. Providing a centralized repository on court websites where gag orders can be reported to the public will improve accountability of the courts and make them more transparent. The Los Angeles and Sacramento Superior Court judges assert that the notice requirements unfairly increase administrative costs (LASC Comments at 15; SSC Comments at 6), but requiring the public information office of these courts to collect and post the entry of gag orders and applications for gag orders on their respective web sites is not the kind of unfunded mandate that would noticeably increase court costs. And, of course, the burden on courts could be reduced even further by building into the proposed rules a requirement that litigants who file applications for sealing orders also provide a copy of the caption page to the public information office.

Finally, the Sacramento Superior Court judges raise the specter of paralysis and impairment of fair trial rights if courts are required to give notice within five court days of an application for a gag order or entry of a gag order. SSC Comments at 7. Yet nothing in the proposed rules says that gag orders cannot take effect during the pendency of the five days. The purpose of the notice requirement is to give the public the earliest possible opportunity to challenge the propriety of a gag order. If a trial court finds it necessary to impose a temporary gag order to protect fair trial rights, nothing stands in the way of the court doing so, as long as the strict standards set forth in the proposed rules and in the common law are met.

III. THE RECOMMENDED CHANGES CONCERNING SEALING ORDERS ARE CRITICAL TO PROTECT THE PUBLIC RIGHT OF ACCESS TO COURT RECORDS.

The Report also offers important proposals for applying California's commitment to open records and should be adopted. Press Commenters support these proposals, which are consistent with the state's established protections for the public's right of access to court records.

Rules of Court 2.550 and 2.551 set an appropriately heavy burden on parties that seek to seal judicial records, and recognize the importance of public access to these materials. These rules codify the rigorous tests set forth by the United States Supreme Court and the California Supreme Court before sealing will be ordered. See Press-Enterprise I at 510; NBC Subsidiary, 20 Cal. 4th at 1218-19. The Committee's recommendations in this area will help apply these protections more effectively and uniformly, creating practical and effective means of ensuring that the public's right to access judicial records is safeguarded and that sealing will be an appropriately rare event that requires a substantial showing from the party seeking secrecy.

A. Notice Of Sealing Is Essential If The Right Of Access Is To Have Meaning.

The Committee's first recommendation, to require courts to post notice of applications for and entries of sealing orders, is a necessary complement to the current Court Rules establishing a presumption of openness. This simple step would eliminate the common phenomenon, recognized by the Committee, of an unnoticed sealing order effectively preventing public access. Such cases undermine the guarantee of openness and an opportunity to challenge secrecy. The principle that the press and public generally have standing to obtain and sue for court records is firmly established. See, e.g., Globe Newspaper, 457 U.S. at 610 n.25 (public and press "must be given an opportunity to be heard on the issue of their exclusion"); NBC Subsidiary, 20 Cal. 4th at 1217-18 ("before substantive courtroom proceedings are closed or transcripts are ordered sealed, a trial court must hold a hearing and expressly find" that closure is appropriate under a stringent test); Estate of Hearst, 67 Cal. App. 3d 777, 782 (1977) (recognizing media's right to seek access to judicial records).

But this right to be heard is meaningless if the public and the press are kept in the dark about a proceeding and therefore are unable to challenge its sealing. The Committee's proposal would finish the job of implementing this right by creating a system to notify the public before unwarranted secrecy can cause irrevocable harm. This right of public notice of sealing orders and an opportunity to challenge them is settled as a matter of law, but it has yet to be fully realized as a practical matter.[11] The five-day posting requirement would be a significant step in the right direction.[12]

Judges of the Sacramento Superior Court suggest that a five-day requirement would be administratively burdensome. SSC Comments at 8-9. It is true that honoring the constitutional right of access to court documents does, at times, create administrative burdens. But critics of the proposal have offered no constructive alternative beyond suggesting that journalists and the public should themselves be burdened with sifting through volumes of court filings in order to find a sealing order hiding in plain sight – one that could easily be automated and flagged in a

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[11] See, e.g., Harriet Ryan, Judge admits mistake, unseals lawsuit against Sharon Stone, L.A. TIMES, Apr. 25, 2009, http://articles.latimes.com/2009/apr/25/local/me-stone-courts25 (discussing a lawsuit "hidden from public view for six months").

[12] Indeed, California courts already facilitate public access by posting filings online in high-profile cases. See, e.g., California Rule of Court 2.503(e); http://garrido.eldoradocourt.org/.

system like the one proposed. The five-day period, with the option to use an alternative website for posting, balances the public's right of access with the reality of limited court resources.[13]

B. The Proposed Attorney's Fee Provisions Will Compensate Those Who Challenge Improperly Sealed Records.

Press Commenters also support the Committee's recommendation signaling support of legislative efforts to permit the award of attorney's fees and costs in civil matters to any party that successfully challenges a sealing order or application for such an order. The Committee's proposal is modest with respect to this recommendation; it is simply voicing its support for such a rule if pursued by the Legislature.

The ability to recoup attorney's fees and costs would remove a major obstacle for those seeking to challenge sealing orders, and would be a natural outgrowth of the constitutional presumption in favor of openness. See NBC Subsidiary, 20 Cal. 4th at 1208 n.25 (reiterating a First Amendment "presumption of access … [to any] documents or records … [that] are filed with the court or are used in a judicial proceeding.") The proposed fee-shifting provision already has counterparts in the state's Public Records Act, anti-SLAPP statute, and recently adopted Rule on judicial administrative records. Cal. Gov. Code § 6259; Cal. Code Civ. Pro. § 425.16(c); Cal. Jud. Admin. Rule 10.500(j)(6). Such laws are an established means for encouraging judicial openness and public participation. Braun v. City of Taft, 154 Cal. App. 3d 332, 348 (Ct. App. 1984) ("[t]hrough the [Public Record Act's] device of awarding attorney fees, citizens can enforce its salutary objectives."). The same is true here.

Critics of this proposal characterize it as creating an imbalance between the incentives given to those who challenge sealing orders and those who work to protect them, claiming that not awarding attorney's fees to those seeking secrecy is unfair and biased. SSC Comments at 9. But this same asymmetry is seen in fee-shifting provisions under the Public Records Act and anti-SLAPP statute, and it has improved the ability of the public to access government records and speak on matters of public concern. Granting attorney's fees to those seeking access to court records is entirely in line with the presumption in favor of access and against secrecy. Among other things, it serves to raise consciousness of the presumption of access to court records and

[13] The Committee's recommendation for increased educational opportunities regarding court rules on sealing is appropriate and will, if implemented, help accomplish the goal, already embodied in state law and court rules, of protecting public access to court records.

the need to observe the rules safeguarding that right. As the Legislature recognized in those instances, asymmetry may be appropriate when it works to protect Constitutional rights.[14]

IV. REGIONAL MEDIA ACCESS PLANS AND PIO POSITIONS WOULD HELP PREEMPT POTENTIAL PROBLEMS WITH COVERING THE COURTS

Finally, Press Commenters support the Committee's proposals to create a Rapid Response Plan for Access to the Judicial Process and three new public information officer (PIO) positions. The Rapid Response Plan is precisely the kind of cooperative effort that the public, the media, and the judiciary should be engaged in. As representatives of the press and public that stand to gain from the proposal, we sincerely hope that, as in Washington, a Regional Media Access Plan can be established to protect open courts and reduce misunderstandings between press and judicial officers. Experience teaches that having a sensitive and knowledgeable liaison between the two will go a long way toward reducing tensions and ensuring that the judicial process and newsgathering efforts go smoothly.

Similarly, Press Commenters support the Committee's recommendation to create three new public information officer (PIO) positions. Indeed, perhaps the one area on which all stakeholders agree is the beneficial work done by PIOs in aiding judges, litigants, the press and the public. The existing PIO program has already been an effective resource to the public and the judiciary, and should be a model for new interactions between citizens and the judiciary. Of course, Press Commenters understand the current fiscal crisis affecting the state. But nothing in the proposal requires implementation until budgets allow. In our experience, funds spent on PIO programs constitute money very well spent.[15]

V. CONCLUSION

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[14] Press Commenters also support the Counsel's recommendation that the judiciary develop a simple form that would assist those wishing to challenge sealing orders. It is a practical and simple idea that may go a long way toward the goal of achieving more open courts for the public and the press. Opponents of the idea worry that it may bring too much access, presumably because members of the public would be able to challenge sealing orders without retaining counsel. SSC Comments at 10. But since these records are subject to a constitutional presumption of access anyway, we respectfully submit that this is a point in favor of the proposal.

[15] Press Commenters also support the Committee's declaration on reducing the cost of trial transcripts, which would allow the public to obtain these important court records without forcing court reporters to suffer a significant financial burden.

In closing, Press Commenters commend the Judicial Council for its hard work in developing procedures to facilitate the coverage of the courts. As the Supreme Court recognized, "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." Richmond Newspapers, 448 U.S. at 572. We do not minimize the burdens and costs involved in honoring the public right of access to its courts, although we do believe that all participants may ultimately benefit from the lowered costs of a streamlined process for obtaining access. We respectfully suggest that such burdens are often undertaken in the name of protecting constitutional rights, and that these are the price of democratic government and the high regard in which our state's judiciary is held.

Respectfully submitted,

/s/ Karlene W. Goller	/s/ Thomas W. Newton	/s/ David Tomlin	/s/ David McCraw
Karlene W. Goller, Esq. Los Angeles Times Communications LLC	Thomas W. Newton, Esq. California Newspaper Publishers Association	David Tomlin, Esq. The Associated Press	David McCraw, Esq. The New York Times

cc: Kelli L. Sager, Esq.

Attachment G

CALIFORNIA JUDGES ASSOCIATION

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October 21, 2010

Hon. Carlos R. Moreno, Chair
Associate Justice California Supreme Court
Bench-Bar-Media Committee
c/o Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Justice Moreno and Committee Members:

The California Judges Association (CJA) appreciates the opportunity to offer public comment on the Bench-Bar-Media Committee's Draft Report, *Accommodating the Needs of the Bench, Bar and Media in the Pursuit of Justice.* We will offer some general observations and comments first, and then offer specific responses and comments to the recommendations of the committee.

GENERAL COMMENTS

We have approached these comments from our reality: media representatives already have unlimited access to any and all public hearings. Therefore, it appears the concerns voiced in this draft Report are aimed at the controversial topic of expanding media access to courtrooms for cameras and sound recording equipment.

For 82 years, the California Judges Association (CJA) has represented the interests of its 2,600 members – appellate justices, judges, commissioners, and referees, active and retired –who comprise the judiciary of the State of California. CJA is governed by a democratically-elected, 25-member Executive Board, its representatives drawn from 12 regional districts and also from the Court of Appeal, commissioners and retired bench officers. We are dedicated in our mission statement "to promoting judicial excellence to achieve fair and impartial justice."

No other organization in our state has the depth and breadth of experience in, and knowledge of, our trial courts as CJA. Sadly, our participation was never sought by this committee. During our long history, we have participated in many such committees which seek to promote fairness in our courts, and access to them. We remain ready to assist in whatever ways we can in any future committees which may revisit the issues discussed in this report.

Guaranteed to us through our United States Constitution's first amendment, a free-press provides a powerful tool to help ensure citizens' rights. The sixth amendment enshrines our founders' belief that trials should be "speedy and public." The right of public access to courts, including through interested media, has been zealously protected for over two centuries by the judiciary.

For a variety of reasons, safeguarding a litigant's rights, public safety in the courts, and media access can periodically create legal conflicts. California judges are well aware of the importance of balancing the media's first amendment right against a party's right to a fair trial, the need for dignity and decorum in the courtroom, and ensuring the safety of those involved in the court process. Given the extraordinary number of notorious cases California judges regularly preside over in their courtrooms, understanding how to balance these competing interests has become a critical part of our jobs.

However, an analysis of the Committee's eleven well-intentioned recommendations reveals that many of the recommendations and their subparts have collateral consequences that are unwarranted. A number of the recommendations, if adopted, inappropriately limit judicial discretion in balancing the interests of the public, the press, and the litigants in fair, safe, secure and public courts while imposing new financial burdens on already over-strapped court systems. Some recommendations, such as greater education for judicial officers, are not controversial in theory, but the delivery mechanisms proposed are fraught with ethical and financial minefields.

The creation of a burden of proof in favor of cameras and recording devices in the courtroom, dramatically at odds with existing law, is particularly problematic. Turning the burden on its head with added findings and reporting requirements impacts both public safety and fair trial rights.

The recommendation in favor of this shift does not appear to be supported by anything other than anecdotal observations. There was neither survey data nor best practices studies from other court systems. No broad input from the judiciary and court executive staff or analysis of the cost of implementation of the recommendations on the courts was provided.

CJA did not have a representative on the Committee as it did on the Public Access to Judicial Administrative Records working group. There is little discussion of the impact of the suggested changes on fair trial rights and courtroom security. Definitions of credentialed media and acceptable electronic recording devices are left to another day. There were no public hearings.

Finally, there appears to be no evidence-based survey or study of individual courts and court systems experienced with managing media and the public in high profile cases. Such studies and surveys are critical in shaping any changes to existing practices and procedures. While case law, surveys, and scholarly authority on these subjects abound, none was cited.

Instead, the Report focuses almost exclusively on the issue of media access: This appears inappropriately one-sided when there are competing concerns faced by trial judges in every case.

By contrast, the development of Rule 980, now CRC 1.150, involved extensive tracking of media requests by the AOC, and input from a broad spectrum of the judiciary including the California

Judges Association as well as from trial court staff. Nothing in the current Report provides any evidence-based data suggesting that CRC 1.150 is ineffective in balancing the interests of the courts, litigants, the press and the public. Imposition of the financial and clerical burden upon the courts – without empirical data supporting a change in circumstances from when the original rules were vetted in 2000 – seems unwarranted without extensive further study.

Further, the report offers no funding stream to pay for the increased costs to the courts, which are inevitable if such changes occur. To place greater financial burden on our court system with these proposed changes, at this time, with no revenue stream to pay for them, is almost unconscionable.

CJA supports ongoing discussion among the press, bench, and bar on areas of mutual interest. Our local courts enjoy excellent press relations and many participate in local Bench Bar Media committees. Our members interact with the press not only in our daily assignments but as court leaders providing information through our court public information.

However, our over-arching mission is to protect the fair trial and privacy rights of litigants and to provide the public, litigants, staff and witnesses who come before us secure and safe courtrooms. Judges must protect the fair trial rights for litigants. While we appreciate the work and thought of the Bench-Bar-Media Committee, we have concerns that its recommendations disturb the balance the law requires us to maintain. These recommendations – if adopted – will impair our ability to achieve our mission of fair and impartial justice for all.

We urge that the recommendations be withdrawn, reconsidered, or sent out for further study before the Bench-Bar-Media Committee submits its final report. If further study by the committee is to occur, we ask that there be participation by CJA on the committee. Such participation will be helpful to any future discussions on these issues. Our specific concerns and recommendations are set forth below.

SPECIFIC COMMENTS AND OBSERVATIONS

Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom

A. Amend Rule 1.150 of the CRC to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use.

B. Amend rule 1.150 to require judges to make specific findings to prohibit or limit the use of cameras and other recording devices.

C. Revise Judicial Council Form MC-510 (Order on Media Request to Permit Coverage) so that judges are required to state their findings regarding the use of cameras and other recording devices.

D. Inform judicial officers and court staff of the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment.

Comment: CJA believes that the more the public sees of what happens in a courtroom, the more confidence the public will have in its civil and criminal justice systems.

A judicial officer's primary obligation is to ensure a fair proceeding, whether it is a trial or another type of hearing. Along with many published opinions, Rule 1.150 (governing camera and recording device access to courtrooms) succinctly states our duty:

> "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."

Taken with our desire to have public access to our courts, a judge has a two-fold responsibility: Balancing the right to a fair trial against camera access to the court.

It is beyond debate that cameras and other recording devices may interfere with a fair hearing. Cameras can – among other things – intimidate witnesses (especially children and sexual assault victims), prompt grand-standing by parties, witnesses or attorneys and frighten jurors. Judges are in the best position to determine when a proceeding is sensitive. A judicial officer must retain discretion to control the courtroom – including whether, how and when to allow camera access.

Rule 1.150 correctly rests with each judicial officer the discretion needed to run properly a solemn, dignified courtroom while safeguarding both media access and a fair trial. The Committee's recommendation undercuts our most basic responsibility to the public. First, CJA opposes the proposed rule's requirement that judges make specific findings to prohibit or limit the use of cameras. In a court case, only parties are entitled to a statement of decision. By insisting on findings, and a modification to form MC150, the proposed rule raises the status of the media representative to that of a party.

This is particularly problematic in that the Committee puts off to another day the sticky issues of who should be credentialed as media entitled to the benefit of the rule and what array of electronic recording devices should be authorized. Without some definition, we fear that findings and orders for every blogger interested in a case creating national or international attention would be required, which only increases judicial burdens without justification. Courts who have dealt with media requests in high profile cases are aware of the administrative burdens. To impose similar burdens on trial judges is not warranted.

Regardless of the media's interest in a proceeding, neither the media nor the public has a protected interest rising to the level of an actual litigant. Rule 1.150 correctly recognizes the distinction between party litigants and the public by providing that "[t]he judge ruling on the request to permit media coverage is not required to make findings or a statement of decision." Anything else would result in significant, unintended consequences.

If the press is given the same status as a party, then a media representative would have the same standing before the court as a victim in a rape trial. A member of the press would have the right to have an attorney file briefs regarding camera access in a specific case. If the press member disagreed with the court's ruling regarding camera access, the member could under some circumstances delay critical court proceedings to appeal or take a writ to the Court of Appeal. A delay could, among other things, create scheduling problems or result in a case dismissal before a jury had the opportunity to hear the facts. Clearly, this was unintended by the Report drafters. CJA believes that everyone would agree a press representative should not be accorded the same standing as a litigant in a court proceeding.

Second, the discretion to "permit, refuse, limit or terminate media coverage" CRC 1.150(d) (Media Coverage) is essential to the judge's ability to fulfill the responsibility to ensure the fair and equal administration of justice. The proposed revision would take away that discretion by creating a presumption in favor of permitting media coverage that must be rebutted, apparently, by the judge. This would seriously undermine the judge's ability to maintain the responsibility to ensure the fair and equal administration of justice.

Third, reminding the court to inform its security personnel regarding media access orders appears to CJA to be a "best practice." The court should keep all staff informed of any decision which bears on their courtroom responsibilities.

Recommendation 2: Gag Orders

Adopt a uniform statewide rule similar to those governing orders sealing records and consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal. App.4th 1232, which:

A. **Requires specific findings of a legitimate competing interest that overrides the public's right of access and justifies some form of gag order;**

B. **Limits the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified;**

C. **Provides a means for the public and the media to be notified of the filing of a gag order and gives them an opportunity to challenge at the earliest possible time any gag order that may be proposed or is entered;**

D. **Provides for public notice of any application for or entry of a gag order by posting on local court websites within 5 court business days after filing or entry or, if that is not possible for any reason, forwarding such notice to the Judicial Council for**

publication on its website within the same 5 court business days required for posting online; and

E. Develop a simple form what will facilitate challenges by pro per individuals to gag orders.

Comment: This recommendation and its five subparts appear to arise out of *Hurvitz v. Hoefllin*, although this is not entirely clear.

First, basing a recommendation on this one case is unsound. *Hurvitz* arises out of a significant body of case and statutory law in coming to its conclusions and is based upon its unique facts.

Second, *Hurvitz* should be limited to its facts: a trial judge who erred by seeking to place a gag order on "already public" information. To urge this trial judge's errors as a springboard for a statewide rule on gag orders is not warranted.

Third, the *Hurvitz* gag order held to be unconstitutional related to information that had already been disclosed, rather than information obtained independently and through the discovery process.

It is well established that gag orders on trial participants are unconstitutional unless (1) the speech sought to be restrained poses a clear and present danger or serious or imminent threat to a protected competing interest; (2) the order is narrowly tailored to protect that interest; and (3) no less restrictive alternatives are available. (See, for example, *Levine v. U.S. District Court for C. Dist. Of Cal.* (1985) 764 F.2d 590, 595.) The trial court must make express findings showing it applied this standard and considered and weighed the competing interests. As such, the recommendation and subparts appear largely superfluous.

Thus, we respond to the specific subparts as follows:

A and B: Requiring specific findings and limiting the scope of the gag order are already required by the trial court through case law. Further rules are unnecessary.

C and D: Both concern notification to the public and media. These are troubling because parties and the press thereby become parties to proceedings. Elevating the public and media to the status of a potential party in any cases is both burdensome and unnecessary causing substantial administrative burdens on the courts. As it stands, media have access to a review of court files on a daily basis particularly in cases of interest. Further rules are unnecessary and ill-advised.

E: It is not clear how providing this form to self represented litigants advances bench-bar-media issues.

In sum, the subparts of recommendation 2 are either already covered by existing law, improperly elevate the public and the press to the status of a party, or create unnecessary burdens on the courts.

Recommendation 3: Orders Sealing Records

A. Develop a rule of court that requires all courts to post notice of any application for, or entry of, an order sealing a record on their local website within 5 court business days after filing or entry or, if that is not possible for any reason, send such notice to the Judicial Council for publication on its website within the same 5 court business days;

B. Provide judicial education regarding the proper process for determining when a Record should be sealed as set forth in California Rules of Court rule 2.550 et seq.;

C. Support statutory authorization specifically permitting the award of attorney's fees and costs—in civil matters only—to any party successfully challenging an order sealing a record or an application for sealing a record, with such fees and costs to be paid by the party or parties making the application; and

D. Develop a simple form that will facilitate challenges by pro per individuals to orders sealing records.

Comment: According to the Report, the sole rationale for the recommendation is that Committee members discovered *one* instance where an entire civil case was sealed and did not appear on the docket. There is no indication that the sealing failed to conform to the Rules of Court. This one example does not demonstrate a systemic problem.

Further, it pertains to a situation only of sealing the *entire* civil case, including every single document and all docket references. This is extremely rare, and recommendation 3 is *not* specifically designed and targeted to situations of sealing entire cases. Recommendation 3 fails to present any suggestion of appropriate language revisions to Rule 2.550 and Rule 2.551 to address this sole "problem," but rather seeks to impose a costly and cumbersome burden upon the courts in *all* cases involving *any* sealing whatsoever.

California's current document sealing rule (California Rule of Court 8.46) is clear, robust, and protects all stakeholders' interests. The rule explains when a court can seal a record, stating that a court can seal documents only once certain factual findings are made. (Rule 8.46(e)(6) referring to Rule 2.550(d) and (e).)

The Committee's proposal does not seek to change rule 8.46; rather, it seeks to create a new duty on the court to notify the press when there is a sealing order request. This is not practical.

Comment to 3A: The Report states: "The rules for sealed records also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication." This is incorrect. Rule 2.550(3) states that it does not apply to discovery *motions* and discovery proceedings, but the rules most definitely *do* apply to everything else, including pleadings, motions on the pleadings, motions for summary adjudication of issues, motion to strike, and trial.

Motions to seal confidential discovery materials in the context of pretrial matters occur often in business litigation as well as commonplace personal injury actions. This can include personal financial information, proprietary business information, personal medical data, etc. The suggestion that each motion to seal motion be posted on local court websites or the Judicial Council website is a costly, burdensome, unnecessary procedure.

There is no demonstration by the Committee of a systemic problem with the existing procedures. Indeed, many local courts have public access to electronic dockets already – there is no showing of any benefit to the courts, the public or the litigants to have the information highlighted in website postings. Indeed, the magnitude of such postings on a weekly basis would be unnecessary staffing costs to courts which already are financially struggling to stay open with significantly reduced staffing.

Comment to 3B: The proposal is unnecessary. Judicial education already exists on such topics, and there is no showing whatsoever by the Committee that a significant number of judicial officers are incapable of reading and following Rule 2.550 and Rule 2.551.

Comment to 3C: The proposal is that statutory legislation be enacted to require an award of fees and costs to any party successfully opposing a motion to seal. As acknowledged by the Committee, the Judicial Council cannot make such a rule. No actual evidence of abuse or statistical data demonstrating a systemic problem of frivolous motions is presented with the recommendation. Most troubling is that the request for mandatory sanctions is not proposed to be mutual; rather, the proposal is that a successful opposition can yield an award, but there is no counter-award to a party who successful obtains a sealing order over opposition. If the purpose is to give *non-parties*, such as the press, a right to petition for fees and costs, this would be highly unusual under existing jurisprudence, as there is no statutory right to monetary sanctions payable to a non-party.

Comment to 3D: The proposal is that a Judicial Council form be developed for challenging sealing orders. Although the Committee indicates that it is to assist pro per litigants, the recommendation goes on to say that the form is actually to assist "members of the media" in challenging sealing orders. No data is presented about the extent of instances that pro per parties file oppositions to sealing orders – so no need for this expense of a printed form is demonstrated.

Any non-party must make an application under Rule 2.551(h)(2) to unseal the record. There is no showing that the members of the media, and their attorneys, are commonly incapable of preparing and filing any appropriate motion to unseal. Further, a corporation or other registered business entity would be required to appear through a licensed attorney, so the notion that the press are "pro per" is unfounded.

Recommendation 4: Educational Content and Programs

Support creation of educational content and programs to enhance relationships and cross communication among the bench, bar, media, court staff, and public. To that end, the committee recommends the following:

A. The content and programs should be designed for trial and appellate court justices, judges, and staff, as well as for the bar and media;

B. The Judicial Council should facilitate the creation of regional superior court academies and provide the superior courts with resources for their development;

C. The content and programs should provide guidance on how to create and maintain local superior court bench-bar-media committees: and

D. The AOC should create and maintain an online repository of resources that the courts can use to strengthen their educational programs regarding media relations and media access.

Recommendation 5: Judicial Officer Training on Clear Presentation of Statements
Develop training for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the media and the public. This training should address (1) when to prepare a statement and (2) how to prepare a statement.

Recommendation 6: Explanation of Legal Terminology
Encourage trial courts to post glossaries or explanations of legal terminology in multiple languages to their websites for the benefit of the media and broad public.

Recommendation 7: Additional Online Training Materials for Court Staff and Judges Post media-related training materials for the courts on a secure internal online site, such as Serranus.

Comment: CJA supports education at every stage in the bench life of a duly appointed California justice, judge, commissioner, and referee. CJA supports whole-heartedly the Committee's recommendations that judicial officers be educated in issues related to media access. CJA has agreed and continues to agree that training for judicial officers regarding how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the public, including the media, should be provided. CJA supports the development of online programs, perhaps jointly with CJER, or from within our own organization that provide education.

Indeed, the California Judges Association has a long history of presenting educational programs to all levels of the judiciary with the assistance of media representatives. These programs are specifically designed to assure well-balanced, objective, and informative programs focusing upon the relationship between the media and the courts. In this area, CJA has taken the lead in educating its members, not only through programs, but workshops and member services.

The Committee's Report graciously highlights a few of CJA's contributions to the education of California's judiciary in bench-media relations. Evidence of an ongoing and beneficial partnership is found in CJA's educational programs. For the past 20 years, each annual and midyear conference has devoted at least one course, if not multiple courses, to bench-media issues. Media members such as Nina Totenburg (NPR), Linda Deutsch (AP), Evan White

(KRON-TV), Daniel Lopez (CBS), Alan Abrahamson (LA Times), Charles Roberts (Daily Journal), Greg Jarrett (Court TV), Scott Graham (The Recorder), Warren Olney (KCRW), Manuel A. Medrano (KNBC TV), Jean Guccione (LA Times), and Val Zavala (KCET), to name only a few, have presented at CJA programs related to this Committee's areas of concern since 1990.

Furthermore, in addition to our two yearly conferences, CJA has intermittently over the years hosted a workshop: "Covering the courts: A workshop for Journalists & Judges" which is admittedly due for a reprise performance. The First Amendment Coalition's Peter Sheer participated in the 2010 midyear Meeting panel on the Public Access to Judicial Administrative Records Rule.

CJA's "Response to Criticism" teams exist in every region of the state. Team members are trained in court-media relations and are available to assist a judicial officer who may be the subject of media interest. Through consultation with their local RTC team, judges are educated about media issues.

We have substantial concerns regarding the proposed delivery method in the form of the development of regional bench-bar-media "academies" organized around media markets and court regions. Participating in this educational delivery system, as proposed, may well constitute a violation of the Judicial Canons of Ethics, 1, 2A, and 4A.

In short, it is imperative that the judiciary promote public confidence in the integrity and impartiality of the judiciary, and refrain from engaging in extrajudicial activities that would cast doubt upon a judge's capacity to act impartially. Judicial officers are cautioned against (and have been disciplined for) engaging in educational endeavors that favor one side (or particular sides) over another. Judicial officers must refrain from associations and activities that have political views and agendas.

Freedom of the press and the right of the press to espouse viewpoints or permit viewpoints to be aired all coalesce into organizations that embody views and agendas potentially and probably antithetical to the maintenance of judicial impartiality. CJA knows of no other private organizations permitted to align themselves with the judiciary through specialized educational delivery systems such as the academies proposed herein. It is clear that to do so would give any such organizations aggrandizement not ethically permitted.

Judge Rothman in his California Judicial Conduct Handbook provides the litmus test to determine if a particular judicial act would or could be characterized as biased. He calls it "flipping." This exercise requires the judicial officers to substitute another party or organization or trait in the place of another.

Here, all would concede the impropriety of judicial officers engaging in educational academies with the express goal of the establishment of respectful relationships if the organizations were police departments, political parties, or large corporations. Simply put, such proposed academies are fraught with ethical pitfalls for the judiciary.

Recommendation 6: Explanation of Legal Terminology

Comment: CJA shares the Committee's conclusion that unless the participants, the public and the press are able to understand the judicial process, there is no meaningful access to justice. CJA therefore supports in principle the idea of a glossary of legal terminology translated into multiple languages and particularly supports the idea that the glossaries be consolidated. Much of the work has already been accomplished.

Currently, a glossary explaining hundreds of legal terms in English and Spanish is housed on the Judicial Council's online Self-Help Center at:

> http://www.courtinfo.ca.gov/selfhelp/glossary.htm and
> http://www.courtinfo.ca.gov/selfhelp/glossary.htm.

The Council's Self-Help Center also explains in detail numerous court proceedings in Chinese, Vietnamese, and Korean, as well as English and Spanish. Local court online Self-Help Centers already link to the Council's Self-Help Center and to other local court Self-Help Centers including the Sacramento Superior Court online Self-Help Center, referenced in the Report, providing glossaries in Arabic, Armenian, Hindi, Hmong, Mien, Mong, Punjabi, Urdu, Romanian and Russian in addition to Spanish.

Local Court in-person Self-Help Centers also assist the public in accessing these online glossaries and in providing hard copy glossaries and references explaining legal materials in multiple languages. The United States Administrative Office of the Courts and other state court systems also host on line glossaries in various languages available as links. The Los Angeles Superior Court's *Court Speak for Reporters* is a valuable tool for local courts.

CJA is pleased much has already been accomplished toward fulfilling this recommendation. Consolidation should be the next step.

Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)

A. Implement a Regional Media Access Plan to address conflicts among the bench, bar, and media regarding access to the judicial process.

B. Direct the Bench-Bar-Media Implementation Working Group to seek the opinion of the Supreme Court's Committee on Judicial Ethics Opinions (CJEO) to determine whether there are any ethical constraints on judges participating in the Regional Media Access Plan. Specifically, the working group should seek clarification as to whether it is proper for a judge who has communicated with an attorney or media member with an interest in a particular case to offer advice or assistance to the judge sitting on that case.

Comment to subpart A: As described in Appendix 2, the Regional Media Access Plan would create three Regional Media Access Teams that "would be called into action whenever a court, attorney, or media representative believes the plan could assist in recommending ways to resolve

conflicts that emerge during media coverage of a court proceeding. The Regional Media Access Plan appears to create a nonbinding mediation process "to assist the court in resolving disagreements" concerning such conflicts as disputes over restrictions on media coverage, "obscure local procedures" regarding access to court documents or administrative information, and a judge's failure to publicly articulate the reasons for rulings affecting the media.

Suggested membership of each team would be (1) a judge from a trial court within the region who has experience in high-profile trials and media access issues; (2) a court executive officer from the region; (3) one or more members of the media; (3) a lawyer practicing in the region; (4) a local court public information officer; (5) the AOC Regional Administrative Director of his/her designee; and (6) staff from the AOC's Office of Communications.

CJA is concerned that the Regional Media Access Teams would impinge on judicial officer discretion, give rise to ex parte communication issues (see below) and create an extra-judicial (and unconstitutional) appeals mechanism for parties who otherwise lack standing. In addition, the Regional Media Access Plan appears to create an extensive bureaucratic structure that would undoubtedly require funding without any consideration of the sources of such funding.

In light of these concerns, CJA believes such Regional Media Access Plans and Teams are inappropriate, likely unethical, and lack funding sources, in any event. CJA opposes this recommendation.

Comment to Paragraph B: On the advice of its Judicial Ethics Committee, CJA believes there would be ethical constraints on judges participating in the Regional Media Access Plan. Specifically, a judge member of a Regional Media Access Team should not offer advice or assistance to the trial judge on a case in which the Team is interested because any response the trial judge would provide would be an inappropriate ex parte communication. (California Code of Judicial Ethics Canon 3B(7).)

It would be improper for Regional Media Access Team members to encourage trial judges to commit ethics violations. The Judicial Ethics Committee does not believe the communication would be subject to the exception to the ex parte communication rule that permits a judge to "consult with other judges" because that exception permits judges to confer with judicial colleagues concerning issues that arise in their cases.

Here, the purpose of the communication would be to broker a deal with the trial judge concerning media access. This is not the purpose of the exception. CJA has no comment on whether the Bench-Bar-Media Implementation Working Group should seek an opinion from the CJEO.

Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions

Comment: The Report's recommendation 9 suggests that the AOC "create and fund three public information officer (PIO) positions, with one position assigned to each of the AOC's three regional offices."

These PIOs would assist local courts to 1) coordinate media activities on high-profile cases; 2) respond to "complex media situations"; and 3) assist with community outreach efforts and general media relations.

The Committee suggests that all superior courts would greatly benefit by this additional AOC staff, but especially those in the 52 counties without full-time PIO's. The Committee reasons "that superior courts can significantly benefit from personnel experienced in media relations and who are familiar with the individual courts."

While engagement of the regional PIO is only on the request of and at no expense to the local courts, CJA believes the recommendation should be deferred until a more favorable economic climate. Even courts without PIO's generally have good relations with local media, and the AOC already provides substantial technical support to courts in high profile cases.

Turning to a related issue, the Committee also mentioned its effort to agree on a system for "credentialing" the media, a practice by which a court "identif[ies] legitimate reporters and provide[s] appropriate access to court proceedings. . . ." The committee – after struggling with the issue – could not resolve it, describing

> "the difficulty of determining who is a journalist in today's rapidly changing media forums. Specifically, representatives from emerging social media forums such as blogs and Twitter raise the question of who is a legitimate journalist for the purposes of media access to court proceedings."

There are multiple important concerns presented here. Many courtrooms have limited seating reserved for the press. Having a greater number of interested media representatives makes these places harder to procure, especially for the general public which has access rights as well. How these seats are allotted, on what basis, and to whom are legitimate questions best left to local courts. The idiosyncrasies of specific courtrooms, courthouses, and cases defy a one-size-fits-all solution.

On the broader question of credentialing, as CJA has stated many times in our responses, all people have free access to public proceedings. We cannot give preference to one media representative over another. The implications are many, including an implied endorsement of one outlet over a competitor or having the court give one press organization an edge in the media market place. It is not the court's place to determine who is a "legitimate" press representative. As we've all come to learn, in the new-technology and new-media era some bloggers have larger circulation than traditional print or electronic press outlets. CJA believes the judiciary must issue media credentials irrespective of employer identity.

Finally, the credential issue again underscores the burden on the courts of findings and orders addressed in the comment to recommendation 1. If a court is required to first, determine credentials and then make findings and orders for every press representative applying for camera or electronic recording device coverage in the court room, the burden on the courts is unsustainable.

Recommendation 10: Implementation Working Group

Comment: The Report recognizes the need to substantially broaden the pool of stakeholders in composing the Implementation Working Group, mentioning specifically the California Judges Association and the Judicial Council's Trial Court Presiding Judges and Court Executives Advisory Committees. There are undoubtedly many other stakeholders impacted by the Committee's recommendations. CJA looks forward to contributing its expertise and experience as a participant in the Implementation Working Group.

Recommendation 11: Implementation Plan

Comment: CJA remains available to advise and assist in any implementation plan.

Declaration that reduced rates on transcripts for media be implemented.

Finally, CJA opposes this recommendation as it appears to contradict the legislative intent surrounding providing reduced or waived fees. This recommendation does not conform to the legislative mandate set forth in Government Code Sections 68630 through 68640 dealing with fee waivers and/or reduced fees for court services.

> *California Government Code section 68630 sets forth this basic philosophy:*
>
> *The Legislature finds and declares all of the following:*
>
> *(a) That our legal system cannot provide "equal justice under law" unless all persons have access to the courts without regard to their economic means. California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees.*
>
> *(b) That fiscal responsibility should be tempered with concern for litigants' rights to access the justice system. The procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services. The procedure for determining if a litigant may file a lawsuit without paying a fee must not interfere with court access for those without the financial means to do so.*
>
> ***(c) That those who are able to pay court fees should do so**, and that courts should be allowed to recover previously waived fees if a litigant has obtained a judgment or substantial settlement.*

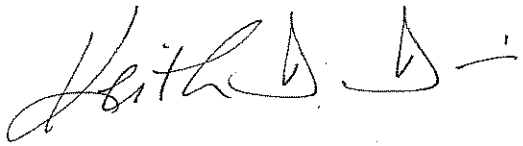
(Emphasis added.)

CJA also desires to point out that it is unaware of any 'for profit' organization's right to acquire services at a reduced rate, and that to permit such for any commercial entity would appear to the public as biased and lacking in impartiality.

CONCLUSION

CJA again thanks the Committee for the opportunity to provide on behalf of its membership public comment on the Committee's recommendations. CJA has enjoyed its many past opportunities to work collaboratively with the Judicial Council and its many committees, task forces, and working groups, on issues of mutual interest. CJA stands ready to provide any input or assistance to the Bench-Bar-Media Committee, or any other similar committee, required to achieve our mutual goals of public access and understanding of our safe, fair and impartial courts.

Very truly yours,



Keith D. Davis
President
California Judges Association

KDD:gk