

*Committee on Access to Court Records
Summary of April 23, 2001 Meeting*

The meeting was convened in Baltimore at 200 St. Paul Place (the Office of the Attorney General). Those present were Judge Paul Alpert, Julia Andrew, John Baer, Deborah Eisenberg, Delegate Joseph Getty, Delegate Sharon Grosfeld, Senator Patrick Hogan, Lesa Hoover, Senator Philip Jimeno, William Leighton, Alice Lucan, Carol Melamed, Sally Rankin, Ari Schwartz, Carole Shelton, Suzanne Smith, Albert “Buz” Winchester, and Judith Wood.

After Judge Alpert provided an overview, Julia Andrew gave a brief historical perspective of the circumstances that led to this committee’s creation. In the fall of 1999, Ms. Andrew, as Counsel for Courts in the Attorney General’s Office, wrote to Chief Judge Robert Bell about various problems, existing and potential, and inconsistencies of practice relative to requests for access to court records, including requests made to the circuit court clerks by out-of-state law enforcement agencies and others for criminal background information on individuals. With increasing computerization of court records, requests also were being submitted directly to the Judicial Information Systems (JIS), the Judiciary’s computer support division, including requests that would require programming work to satisfy. Questions were raised about how JIS staff is supposed to deal with such requests, and whether JIS is a “custodian” of court records for purposes of receiving and responding to PIA requests. One suggestion made by Ms. Andrew to Judge Bell in her 1999 memorandum was to have either the Rules Committee or a specially appointed task force study the issues and develop solutions that would apply uniformly.

Chief Judge Bell created a small committee for the purpose of drafting a policy to provide interim guidelines consistent with the Public Information Act (PIA). That committee identified problems, such as who should be deemed the “custodian” of certain records, and whether records should be created to satisfy requests for new compilations of data derived from such court records, e.g., docket entries, as exist in electronic format. The committee looked at Maryland laws, rules and statutes from other states, treatises, etc. As a result of its examination of Maryland law, the committee identified a potential problem resulting from the unrestricted access to computerized, centralized data accumulated from court records of criminal cases. Under Maryland law, a central repository for criminal history record information (CHRI), known as CJIS (Criminal Justice Information System), was created in 1976. It was created to facilitate and enhance law enforcement purposes by providing a comprehensive, accurate, centralized accumulation of criminal history information about individuals. CJIS is fingerprint-based, thereby safeguarding against problems of misidentification. While law enforcement agencies have access to conviction and non-conviction records, access for others is restricted. By statute, certain parties, e.g., those seeking background checks for workers in child care or health facilities, are given limited access to conviction records.

The committee reviewed a list of subscribers making use of dial-up access to the JIS database. Fifty-nine percent were not law enforcement or court-related. Rather, they were commercial entities using the data largely for hiring and housing decisions, as learned from the testimony in the public hearing. By allowing quick access to the dial-up JIS database, was the Judiciary undermining CJIS?

What about the identification problems inherent in JIS data? Should the Judiciary ask the General Assembly to remove the Judiciary from the PIA so that court rules could be developed specifically for court records as a long-term solution? What about the interim problems? These were questions the original committee considered and addressed in the draft policy to supplement the PIA and an administrative order to address only criminal records. As a result of publication of the committee's proposed policy and administrative order and a hearing held, many objections were submitted. One suggestion common to several of the submissions was to have a larger committee, including representatives of the industries and organizations that have particular interests in having access to the court records, study the issues and recommend solutions. In its report to Judge Bell, the original committee so recommended. Judge Bell then appointed this committee.

Judge Alpert asked committee members to introduce themselves and the issues of most concern to them reflecting the viewpoint they represented. Generally, the issues identified by the group were (in the general order of discussion):

- C JIS dial-up database not easily understood; data considered a tool in the background checking process
- C the background checking process takes too long
- C conflicting messages from the Maryland General Assembly with regard to the need for safeguards and the desire for access to criminal records; implications for further automation of CJIS
- C need to understand constitutional, statutory framework for public access to court records
- C need better understanding of what data is available now through JIS and CJIS
- C look to other states and federal courts to see what they have done
- C differentiation between restrictions on access to paper versus electronic records; committee's discussion focused on electronic records access
- C need better definitions of terms
- C want to maintain current access to JIS database
 - C liability issues for employers and landlords for not checking criminal backgrounds of potential employee and tenants
 - C quick results
- C if limitations placed on access to JIS database, want input
- C consider report soon to be issued from SEARCH on privacy and access
- C computerized records can be manipulated in ways not possible with paper records

Based on the issues discussed, Judge Alpert formed four subcommittees and assigned committee members:

- 1) Identification of the interests and values associated with privacy and access — Ari Schwartz, Carol Melamed, Suzanne Smith, Del. Grosfeld, Bill Leighton, Lesa Hoover
- 2) Legal framework, including definition of terms — Alice Lucan, Judi Wood, Sen. Jimeno
- 3) Technological aspects of JIS and CJIS databases including what is available, how it is being used, and what problems are created by this access — Sen. Hogan, Del. Getty, John Baer,

Carol Shelton

- 4) Comparisons with other states and the federal courts — Buz Winchester, Deborah Eisenberg, Bob Davis, Marcia Reinke

Staff will coordinate the work and progress of each subcommittee to eliminate duplication in overlapping areas and to facilitate the sharing of resources. Each subcommittee is expected to provide a report at the July meeting encompassing the breadth of views on their assigned issue.

The committee is invited to an educational program on privacy and access issues associated with criminal justice records on May 29, and the committee will meet immediately after the program concludes. **The next committee meeting is scheduled for July 5 at 5:30 p.m. at 200 St. Paul Place, Baltimore (the Office of the Attorney General).** Further information about the specific location will be provided.