

Victim/Witness Information in Court Records
Open Meeting
February 9, 2006
District Court Conference Center

Those Present:

Hon. Alan M. Wilner, Court of Appeals
Hon. Lynne A. Battaglia, Court of Appeals
Hon. Diane O. Leasure, Circuit Court for Howard County
Hon. Essom V. Ricks, Jr., Anne Arundel County District Court
Kathy P. Smith, Clerk, Circuit Court for Calvert County
Joseph Rosenthal, Chief Clerk, District Court of Maryland
Diane Pawlowicz, District Court Headquarters
David W. Weissert, Coordinator of Commissioner Activity
Sally Rankin, Court Information Officer
Sandra Haines, Esq., Rules Committee
Sherie Libber, Esq., Rules Committee
Cookie Pollock, Judicial Information Systems
Mary Hutchins, Judicial Information Systems
Debra L. Kaminski, Administrative Office of the Courts
Brian Zavin, Office of the Public Defender
Neal Augenstein, WTOP Radio
Paul Ethridge, MSBA Committee
Dilip Paliath, GOCCP
Matt Wilson, Capital News Service
Tisha Thompson, WMAR-TV
Cynthia Lifson Golomb, MNADV
Russell Butler, MCVRL
Carol Melamed, The Washington Post
Nathan Siegel, MD/DC Press Association
Sue Schenning, Esq., Maryland State's Attorneys' Association
Linda Mack, MSIA and NAPBS
Kathy Morris, Maryland Investigators and Security Association
Tom Marquardt, The Capital
David Rosenthal, The Baltimore Sun
Allan Vought, The Aegis/Homestead Publishing
Michael Crowley
Andrea Siegel, The Sun
Richard Montgomery, MSBA

The meeting began at 9:35 a.m.

Judge Alan M. Wilner, Court of Appeals, began the meeting by thanking everyone for attending. He informed everyone that this is an open meeting and that a notice was posted on the Judiciary's website and special notices were sent to the media.

Judge Wilner gave a brief history of the rules governing access to court records. In December 2002, an open meeting of the Court of Appeals was held whereby the Court adopted the principles recommended by a committee appointed by Chief Judge Robert M. Bell and chaired by Judge Paul Alpert. Some of the principles were (1) court records should remain open to public access; (2) access should be the same for paper and electronic records; and (3) electronic records do not require specific protection and dial-up access should be allowed. At this point, there was no opposition to these principles which were developed after several meetings and public hearings. Judge Bell asked Judge Wilner and Judge Battaglia to draft rules following those principles. This committee of two worked with representative Clerks, news media, commercial compilers and others to develop rules that would offer uniform guidelines and standards for access to public records with specific emphasis on electronic records.

In February 2004, the draft rules were circulated and made available for comment through the Judiciary's website and published in the Maryland Register. In addition, several newspapers published articles on the new proposed rules. Several comments were received at this point in time. Another open hearing was held and no one expressed opposition at that time so the Court adopted the rules. The rules became effective October 1, 2004. Judge Bell then appointed an implementation committee, chaired by Judge Diane O. Leasure and Judge Keith Mathews.

In March 2005, this implementation committee brought to the Court's attention the concerns of victims' rights advocates and prosecutors regarding the electronic access of

identifying information; therefore, possibly creating safety issues for victims and witnesses.

In June 2005, another Court of Appeals open hearing was held in which several victims' rights advocates testified.

In July 2005, Judge Wilner and Judge Battaglia met with two prosecutors, victims' rights advocates and Judiciary personnel to explore practical proposals. Specifically, they discussed what procedures and forms would need to be modified in order to address the safety issue of victims and witnesses. After the meeting, a proposal was drafted and forwarded to those who attended for feedback. Having gotten no response, the proposal was abandoned.

Instead, efforts were made through the Rules Committee process. Rules language was proposed that would block electronic access to criminal records regardless of crime but did not address the issue of the paper record located in the courthouses. When the proposal came before the Court of Appeals in an open hearing, the Court deferred the vote on a motion to adopt the language. Judge Bell asked if Judge Wilner and Judge Battaglia would consider how to combine the proposed language from the Rules Committee with the proposal they developed last July. Judge Wilner explained their goal was to develop a practical and effective way to address safety and noted that the public's trust and confidence depends on transparency.

Recently, legislation was introduced in both the House and the Senate that would require courts to deny access to any identifying information on a victim or witness in the electronic records. The bills did not address access to paper records. Judge Wilner informed the Judicial Proceedings Committee that the Judiciary did not oppose or support

the bills and, subject to any Constitutional challenges, would implement them if they were enacted, but explained how the Court's rules were developed and the issues that needed to be considered. He pointed out two possible problems – one being that the pending bills were cast as emergency measures that would take effect immediately upon signature by the Governor and that the Judiciary would likely be unable to make all of the necessary adjustments to implement them that quickly, and the other being the lack in SB 162 of any ability of a court to open a record in any given case, which might present a separation of powers problem.

Judge Wilner pointed out that the legislation appeared to address privacy whereas the Court was concerned about safety, and that some parts of the Court's proposal would be rendered moot if the legislation passed. He said that he had informed Senator Frosh that he would report back to the Judicial Proceedings Committee with the results of this meeting.

In preparation for this meeting, Judge Wilner invited representative Judiciary personnel to add more detail to the proposal developed last July. This workgroup met earlier in the week. David Weissert, Coordinator of Commissioner Activity for the District Court, reported that this workgroup agreed the Judiciary could offer:

1. The ability to advise constituents at the point of entry of their right to confidentiality;
2. That once a record is shielded, it remains shielded through all court levels unless a motion to unshield is granted by a judge; and
3. The ability to support shielding in current systems, both in electronic and paper format.

Mr. Weissert explained specific details related to the District Court Commissioner system:

1. A statement of charges is entered, including victim information.
2. Establishes a protocol for commissioners to follow.
3. A list of notices for the applicant appears on the back of the form. An advisement could be added to this list regarding shielding victim/witness identifying information such as address and telephone number. In addition, it could also be made part of the verbal advisements given by the commissioner.
4. A field could be created to supply a reason why the applicant is requesting that information be shielded.
5. An oath and signature field could be added to the supplemental form (DC/CR 1S). This form is not printed along with the statement of charges.

Mr. Weissert has recently implemented a new civil database for commissioners. This system allows information to be protected by a gray area. This feature could also be made available on the criminal system.

With regard to circuit courts, if the case originates in the District Court, shielded information would remain so until lifted by a judge upon motion. If the case is initiated by a State's Attorney, that office would have to request information be shielded and clerks would have to note the shield when entering data. He added that commissioners are not responsible for printing witness summons requests. They are handled by the District Court Clerk's Office. In some cases, they are prepared by the State's Attorney's Office; therefore, it would be their responsibility to shield the information.

Judge Wilner pointed out that witness and victim names would still appear; only

the addresses and telephone numbers will be shielded.

David R. Durfee, Esq., Legal Officer for the Administrative Office of the Courts, made reference to Rule 16-1009 that states if a motion is made to unshield a record, the motion must be served to all those involved in the case. In addition, information related to court personnel, attorney of record, police officer or *pro se* defendant would not be shielded. Protecting victim and witness information in cases initiated by State's Attorneys would be handled differently from cases originating in the District Court under this proposal. Instead of the identifying information being automatically shielded until challenged, State's Attorneys would have to request information be shielded.

Judge Diane O. Leasure, Circuit Court for Howard County, noted that in circuit courts, judges have five days to hold hearings on motions to seal or unseal information. This proposal would create additional work for clerk office employees. Sue Schenning, Maryland State's Attorneys' Association, added that this could cause between 700-1,000 additional hearings in Baltimore County alone. Currently, they are using the PROMIS system which does not include any identifying victim or witness information. The public does not have access to PROMIS.

Carol Melamed, a vice president of The Washington Post, asked if there were statistics about how many indictments involved violent crimes statewide.

Allan Vought, from The Aegis/Homestead Publishing, suggested that increasing penalties for defendants that misuse information because they and their attorneys have a right to that information.

Cynthia Golomb, Maryland Network Against Domestic Violence, requested an

explanation of the courts' plan to move forward with the public data warehouse project.

Judge Essom V. Ricks, Jr., Anne Arundel County District Court, replied that, currently, a dial-up system is in place that is controlled by a subscription. It will be phased out and in its place will be a public data warehouse. A feature of this warehouse, called the Maryland Judiciary Case Search, has been created to permit individual record searches. Eventually, data compilations and bulk transfers will be permitted. These features will not be offered until the policies are developed concerning information access.

Nathan Siegel, MDDC Press Association, felt that, in order to reduce the number of shielding requests, the proposed language should have a higher threshold of acceptable reasons why information should be sealed. In addition, there are other documents in a particular case that could divulge identifying information about the witness or victim, such as location of the crime and where the witness was standing at the time.

Judge Wilner replied that anything discussed in an open courtroom automatically becomes public record. He added that in domestic violence protective order cases, the perpetrator will usually know where the victim lives if they shared a residence and the victim does not seek shelter elsewhere.

Judge Battaglia noted that as a victim herself of a random stabbing, she could understand those in similar circumstances not wanting the defendant to know their addresses. She would have requested that information be shielded.

Kathy P. Smith, Clerk, Circuit Court for Calvert County raised the issue of sealing identifying information relating to defense witnesses. A *pro se* defendant would not

request that witness information be sealed because they wouldn't know to ask. The focus of this proposal has been prosecution witnesses.

Ms. Schenning proposed a procedure by which all victim and witness information (other than name) be automatically shielded from the case record until the first appearance in court or first trial date. At this time, the judge would determine whether there was a justifiable reason why the record should be shielded. Requests for shielding could occur throughout the life of the case.

Judge Ricks replied that he did not feel this would fulfill the intention of the Court because Ms. Schenning's alternative sounded like a categorical block. The Court has already dealt with categorical blocks by rule.

Mr. Vought added that police practice is inconsistent with regard to blocking identities; information is available in records other than court records.

Russell Butler, MCVRL, noted the following regarding the Victims' Rights Act of 1977:

1. Victims could request that their names and addresses not be part of the case file.
2. Victims could request no contact from the defendant.

He worked with then-District Court Chief Judge Martha Rasin to provide notice to victims about their rights and the language was added to the statement of charges. In 2002, this notice was removed from the statement of charges and caused a serious problem. People need to be made aware of their rights and before the data is entered into the system. Mr. Butler suggested combining this proposal and the emergency legislation,

taking the best parts of each.

Kathy Morris, private investigator, noted that she assists women involved in domestic violence issues. She expressed concern when the other party cross-files to have the information unshielded. This, too, could pose a safety threat. This will create more paperwork when defendants realize unshielding can be requested. Ms. Schenning replied that approximately 25 percent of assault cases are cross-filed.

Ms. Morris expressed concern regarding investigators, security guards, etc. wishing to renew or obtain certification. If information is shielded in the dial-up system provided by the Judiciary, many times certifications are denied because qualifications cannot be determine due to shielded information. Judge Battaglia pointed out that the Maryland State Police have access to CJIS.

Tisha Thompson, WMAR-TV, noted that there are other ways of finding people besides court records (i.e., the Federal Government's PACER system, police records, Lexis-Nexis). She gets information through credit card records. She asked whether date of birth would be included or sealed in the case record. Ms. Smith replied that date of birth is not included on forms relating to victims or witnesses; therefore, it is not entered into the system. Mr. Weissert added that only the defendant is requested to supply his/her date of birth because of juvenile issues.

Ms. Thompson expressed concern regarding blanket policies. She made reference to the problems related to HIPAA, which is also a blanket policy and, in her opinion, ineffective. There should be high standards for shielding.

Judge Wilner reiterated the Court's concern about safety issues. We are looking

for ways to shield when appropriate. If the legislature sets the public policy through the blanket shielding of electronic records, the Judiciary will implement it, recognizing that paper records are not covered. He added that court records in the future will almost exclusively be electronic, e.g., PACER. If there are total blocks of information in electronic records, it would raise Constitutional issues.

Mr. Butler questioned whether the court records and the electronic records contain the same information. Judge Ricks replied that, currently, the court files are more complete than the electronic records until we begin scanning the documents contained in the files. Mr. Butler inquired as to whether summonses are included in the case file.

Cookie Pollock, Judicial Information Systems, noted that, at one point, summonses were included in the case file because they were multi-part forms. However, now they do not actually appear in the case file in most court locations but recorded on the docket.

Ms. Morris alerted everyone to SB 25 which allows for the assigning of a PO Box to certain victims. In response to questions, Ms. Golomb observed that the numbers of acts of domestic violence has remained about the same. While no link between acts of domestic violence and access to court records has been established so far, we don't want to increase that likelihood. Abusers have used the Internet to track victims.

Mr. Butler asked if the graying process for domestic violence and peace orders could be explained.

Ms. Pollock described the District Court application process. The Clerk has the ability to hide the information in the system so that the public cannot access it. Instead of

the information, they will see the following message: “address information shielded.” On any printed document, the shielded information would be grayed out.

Joseph Rosenthal, Chief Clerk of the District Court, added that identifying information that should be shielded in the paper file is sealed in a confidential envelope and removed by the clerk before giving the case file to a member of the public.

Ms. Pollock noted that circuit courts should be following the same procedure because they were included in the meeting where the procedures were established for both circuit courts and the District Court. Even though Montgomery and Prince George’s Counties do not use the UCS system, they should be following the same procedures.

Judge Leasure believes that most requests to unshield records would arise from domestic cases. So far, her court has had about 15 requests.

Ms. Golomb pointed out that Sen. Gianetti introduced a bill to create a commission to study e-filing of court records.

In response to questions about the next steps, Judge Wilner thanked everyone for their input and informed them that the Judiciary would refine the proposal based on this input and report to the Judicial Proceedings Committee and to the Court. Implementation of the proposal would require changes in court rules. He noted that it will take time to implement either rules changes or any version of the emergency legislation, if it passes. If the legislature proceeds with legislation, the Court’s proposal would be placed on hold. If the legislature defers to the Judiciary to act by court rule, the Judiciary will implement its proposal. He asked that anyone with questions regarding this project to please contact Sally Rankin, Court Information Officer, at (410) 260-1488.

The meeting adjourned at 12:00 noon.