MINUTES OF THE MEETING OF THE
BAR - BENCH - MEDIA CONFERENCE

The fourth meeting of the Bar-Bench-Media Conference was held on Wednesday, December 5, 1990 at 2:00 p.m. at the office of WHYY TV Channel 12 in Wilmington. The meeting was opened to the public. Notice of the meeting had been posted. Richard G. Elliott, Esquire was in attendance. No other members of the public were in attendance. The members of the Conference in attendance were:

Members from the Print News Media

Mr. Henry Freeman
Ms. Judith Roales
Mr. John H. Taylor

Members from the Electronic News Media

Mr. Allan R. Loudell
Mr. Michael Sigman
Mr. Robert A. Mercer
Mr. William D. Osborne

Members from the Bench

Justice Randy J. Holland
Vice Chancellor Jack B. Jacobs
President Judge Henry duPont Ridgely
Judge Jay James
Judge Arthur P. DiSabatino

Members from the Bar

Howard M. Handelman, Esquire
Mary Pat Trostle, Esquire
J. Dallas Winslow, Esquire
Roderick R. McKelvie, Esquire

The meeting was opened by the Chairman, Howard M. Handelman. The minutes of the October 11, 1990 meeting were reviewed and were unanimously approved.

The first item of business was to discuss the proposed Statement of Principles. Justice Holland's November 28, 1990

memorandum and Mr. John Taylor's December 2, 1990 memorandum concerning the Statement of Principles were discussed. It was decided that Mr. Taylor's Statement of Principles (which were a restatement of existing paragraphs 1, 2 and 3 except the phrase "news representatives" was changed to "media representatives") attached to his memorandum and existing paragraph 6 of the Statement of Principles would be adopted as the Statement of Principles. A motion was made, seconded and approved.

The second item of business was to discuss the availability of the Bench to media representatives. Mr. Freeman, on behalf of the media, was interested in taking a more active role in explaining to their membership the availability of judges to the media and the areas that could be discussed. Justice Holland said that judges can talk about general, procedural, or academic matters but not case specific matters. Justice Holland said that the Bench could assemble a representative group of judges from the various courts to explain how the courts function for any interested media group. Any media representative that was interested in pursuing Justice Holland's offer was directed to contact Steve Taylor.

Mr. Sigman said that his station had done a documentary on the effect that a trial had on a judge and that the judge had received criticism for taking part in the documentary. Justice Holland said that he was surprised that a judge had taken part in the documentary because it would be difficult for a judge to make any comments that were innocuous. Justice Holland indicated that a judge should not comment on how a judge was personally affected by

a proceeding that the judge presided over. The expression of any personal views by a judge could lead to a post trial relief motion. The integrity of the system is preserved if everything is done in public.

Mr. Taylor indicated that reporters had difficulty in gaining access to court records. He indicated that Rita Ferrell had the greatest problem with the Court of Chancery in obtaining depositions. It was noted that not all depositions are filed in some courts. Furthermore, Mr. Taylor and Mr. Freeman talked about the need to access DELJIS computerized records.

Justice Holland said all courts have dockets, and media representatives could get case related information from such dockets. In the Court of Chancery, all papers are filed and docketed, but there is limited confidentiality as to some documents that are filed. However, nothing is sealed except by court order. In the Federal Court and in the Superior Court, depositions are not filed because of space considerations. However, in each court, there are procedures by which media representatives can obtain access to unfiled depositions.

Judge DiSabatino discussed the records management project that the court system had undertaken. He explained that papers that had no historic or legal significance were purged from court files according to each court's records retention schedule.

Mr. Handelman said that a public trial is public, and any document that is presented to the court for consideration is a public document. He felt that the media should not have access to

depositions unless the depositions become a part of the court's record.

There was general discussion as to the availability of court records to the media in the various courts. It was noted that the Supreme Court and the Court of Chancery have confidentiality rules and that the Superior Court was in the process of drafting a confidentiality rule. It was further noted that all matters in Family Court are confidential by statute. Mr. Elliott said that his media clients would like to help in drafting a Superior Court rule on confidentiality. Mr. Elliott will contact the Superior Court Rules Committee concerning the proposed Superior Court rule. Media representatives agreed to contact John Taylor as to any court rules or rulings that might impact media access to court proceedings or court records. Each judge present at the meeting indicated that the court administrator for their respective court should be contacted by media representatives when they need to obtain information as to court proceedings or records.

There was a discussion as to why the courts conduct side bars and what happens during a side bar conference. President Judge Ridgely said that most side bars concern administrative matters including scheduling. President Judge Ridgely said that the Supreme Court through case law requires that all substantive side bars be reported on the record. If a media representative wishes to find out what was discussed at a side bar, the representative may ask to be recognized by the judge, talk to the attorneys, or talk to the court reporter. Justice Holland said that the presence

of the court reporter at the side bar conference would indicate that the conference was significant, and the media representative should talk to the court reporter to ascertain the substance of the side bar conference.

Mr. Elliott asked about gaining access to arguments held in a judge's chambers. President Judge Ridgely said there may be significant reasons to have arguments in chambers rather than in court but that the media should ask the judge if they may be present during any such argument.

The next item for discussion was the need for a press room in the Public Building. It was noted that there was no space available.

The final topic of discussion was the issue of television and radio access to court proceedings other than in the Supreme Court. Mr. Taylor noted that the previous Bar-Bench-Press Committee had recommended an experiment in the trial courts. Mr. Sigman said all parties involved in any litigation as well as jurors and witnesses must be comfortable with the presence of radio and television coverage. He said that a number of surveys have been done concerning media coverage of trials. Justice Holland said the experiments of other states would be instructive and suggested monitoring the new Federal Court media access experiment. Mr. Mercer said that the issue of media coverage had been discussed for fifteen years, and the same issues were still being discussed. It was decided that media representatives would attempt to gather information or studies concerning recent experiments with media

access to trial courts.

At the conclusion of this meeting, Mr. Handelman advised the Conference that the next scheduled meeting would be on Thursday, February 28, 1991 at 3:00 p.m. in the Wilmington Chambers of the Supreme Court, 11th Floor, Carvel State Office Building. Any members wishing to submit agenda items for the next meeting should submit said items to Mr. Handelman. Mr. Handelman will prepare an agenda for the meeting and circulate it to the Conference. The meeting was adjourned.

Respectfully submitted,

February 21, 1991

Mary Pat Trostle
by Stephen D Taylor