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JUDICIAL BRANCH

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Testimony of Judge William J. Lavery
Judiciary Committee Public Hearing
February 16, 2007

House Bill 7039, An Act Concerning Public Access to Proceedings in Certain Juvenile Matters

Good morning. My name is William Lavery and I am the Chief Court Administrator for the Connecticut Judicial Branch. I appear before you today to testify on **House Bill 7039,** ***An Act Concerning Public Access to Proceedings in Certain Juvenile Matters.***

This proposal would create a presumption that proceedings in the Superior Court for Juvenile Matters concerning children who are abused and neglected are open to the public. Although the Judicial Branch believes that the decision on whether to allow public access to these proceedings is a policy decision best left to the Legislature, we are concerned that we will have substantial difficulty implementing this proposal.

The first problem that we will be presented with, should this bill become law, is that several of our juvenile matters facilities simply cannot accommodate public access. Many of the courtrooms are barely large enough to hold the parties to a case, let alone the public. Some of these facilities would have to be substantially altered, or the business moved to a facility with larger courtrooms, in order to allow for public access. This would entail a significant cost. I have attached to my testimony photographs of two of our most problematic juvenile matters court facilities – Norwalk and Rockville -- for your information.

Another problem that this proposal, if enacted, will present is that it may cause considerable delay in processing child protection cases because additional proceedings, which may include evidence and testimony, will be necessary to determine if exclusion of the public is warranted based on the five criteria set out in the bill. This will create delay in the disposition of cases, to the detriment of the children involved.

A third practical problem that implementation of this proposal will present involves subsection (c), which would allow judges presiding over these cases to issue an order, if there is a compelling reason, prohibiting the members of the public from using or disseminating information that was disclosed during the hearing. Enforcement of this provision is simply not practicable. The court will not know who is in the courtroom or whether any of them discloses information to others in contravention of the order. In addition, the proposal does not provide the court with any sanction for such violations.

In addition to these practical concerns, as I have previously testified, I have personal concerns about this proposal. I do not believe that it is in the best interest of the children who are the subject of these proceedings. As many of you know, I care passionately about children's issues. I consider improving the situation for the children and youth involved in our state's justice system the top priority of my tenure as Chief Court Administrator. I strongly believe that all of us who work in the system have an obligation to ensure that the best interests of children involved with the juvenile court – whether in delinquency or child protection matters – are protected.

Having sat as the presiding judge in the Superior Court for Juvenile Matters in Bridgeport, Norwalk, Stamford and Waterbury, I am acutely aware of what goes on in these very sensitive cases. I must tell you, some of the most disturbing testimony I heard as a trial judge was in child protection cases, many of which involved extremely serious allegations. Opening these proceedings will allow the public to learn intimate details about the abuse and neglect perpetrated on children in their community, not in the abstract, but with a name and face attached.

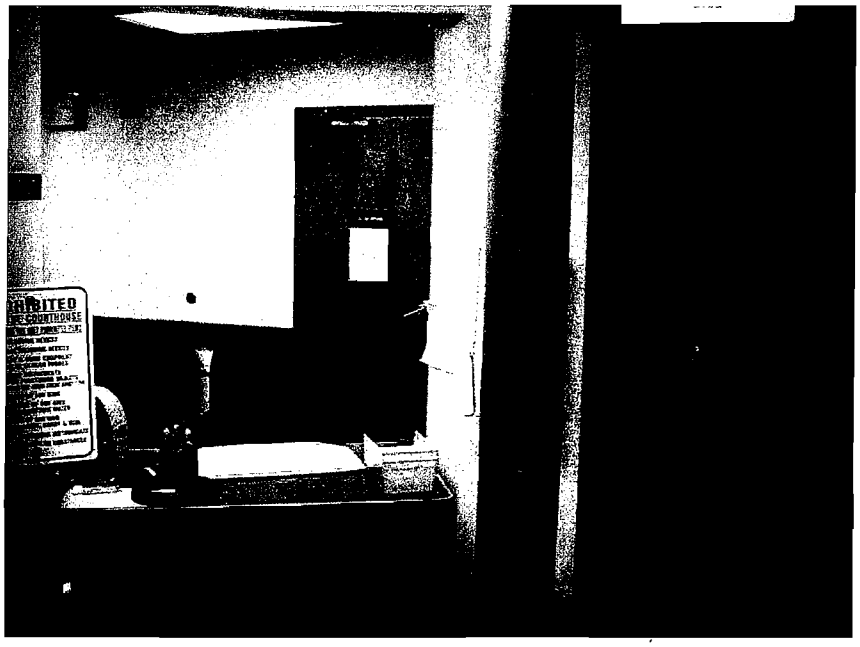
I understand that the proponents of this change believe that it will result in an improvement to the child protection system. I do not believe that improvement of the child protection system as a whole should come at the expense of the individual children involved in these cases. I worry that the public airing of the very serious allegations of abuse and neglect that are heard during these proceedings will have a damaging effect on the children who are the victims of these behaviors. I do not believe that the names of these child victims should be in the public domain.

Having said that, however, I realize that these are my personal opinions. It is possible that I could be proven wrong. I am certainly willing to listen to any evidence to the contrary. Therefore, I would respectfully suggest that a reasonable alternative to enacting this proposal would be to mandate that the issue be studied by a group of representatives from the branches, departments, agencies and advocacy groups that work in this area. This committee would thoroughly examine the issue and submit a report, with a final recommendation, to the legislature. On an issue of this importance, where you have people who care deeply about children on both sides of the issue, surely it would be preferable to try to reach consensus prior to making a change. The decision on this issue will affect the lives of countless children. It should not be a political decision.

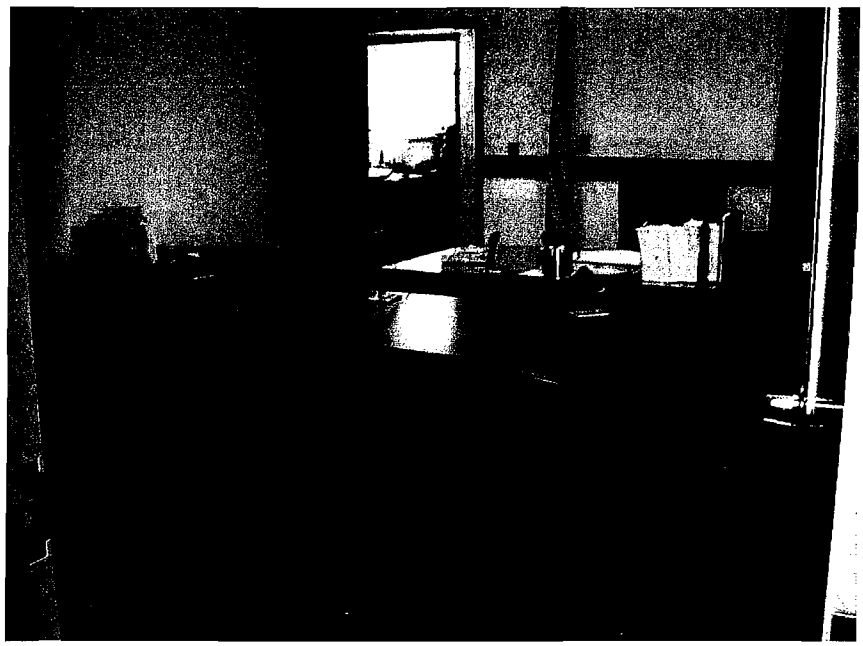
Thank you for the opportunity to testify.

Norwalk Juvenile Court
(11 Commerce Street)

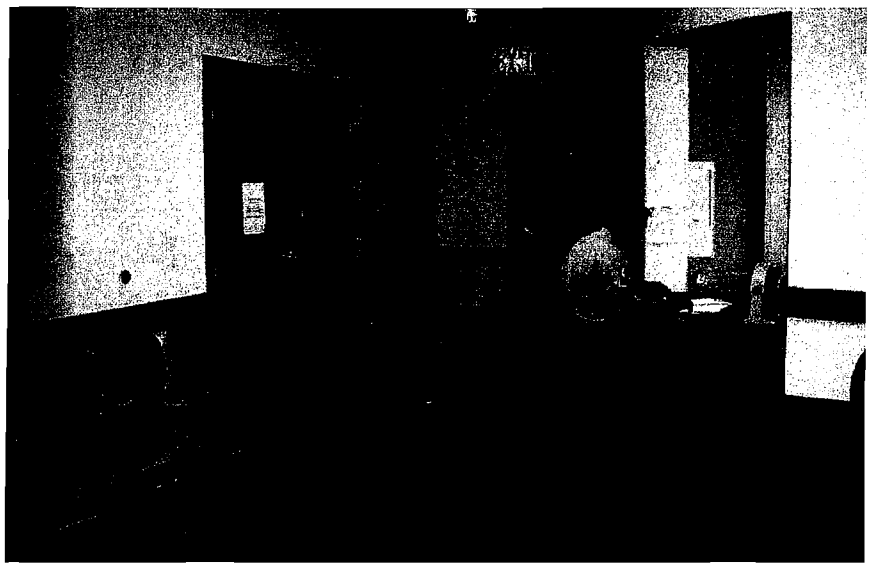
Metal Detector To Lobby



Rear Of Courtroom



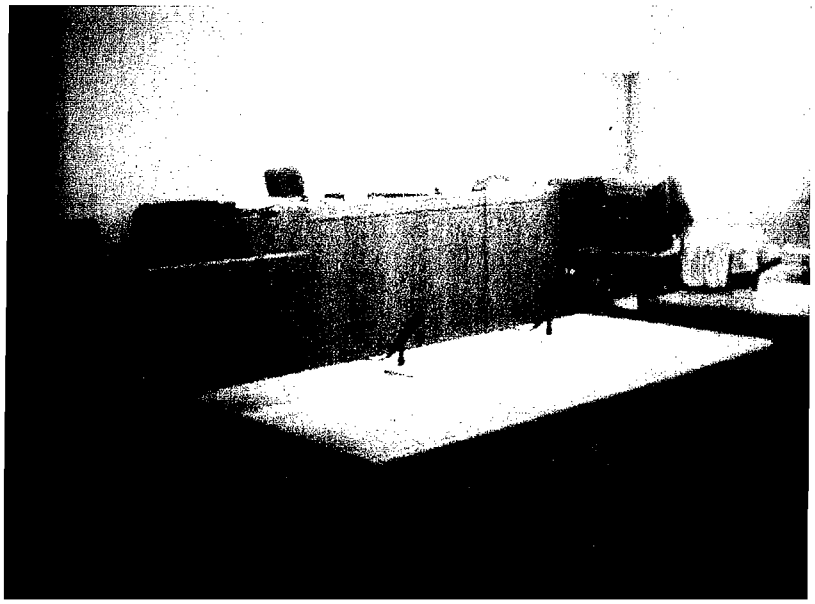
Front Lobby



Rockville Juvenile Court
(25 School Street)

1st Floor Lobby

Courtroom



3rd Floor Lobby

Judge Lavery

CONFERENCE CLIPS

Openness in Civil Dependency Proceedings

by Claire Sandt

A growing number of states are opening their juvenile dependency court doors to the public and press. The practice draws staunch support as well as dubious doubt. Supporters push for increasing accountability in the child welfare system, while doubters pull for protecting family privacy and avoiding further trauma to the child.

Amidst the tug between open and closed is a recognition that valid arguments exist on both sides. Efforts to reconcile competing interests are starting to be made.

To open or close dependency courts was the subject of a May 12, 2004 webcast conference sponsored by the Legacy Family Institute. A researcher, a judge, and a law professor shared how states are responding to open courts, pros and cons of openness, and approaches to balance interests in increasing accountability and protecting privacy.

State trends

Which states open and which close? Kay Farley, a researcher with the National Center for State Courts (NCSC) who has studied state trends in this area shared some findings. A 2000 survey conducted by NCSC of state court practices regarding open hearings in dependency cases found the following trends:

Open:

- 1 state opened all dependency proceedings
- 11 states made proceedings presumptively open, with judicial discretion to close

Closed:

- 11 states made proceedings presumptively closed, with judicial discretion to open
- 7 states closed all proceedings with some exceptions
- 23 states closed all proceedings

Neither:

- 1 state neither opened nor closed proceedings

Since this survey was conducted, Arizona, Washington, and Utah have passed legislation making dependency proceedings open with judicial discretion to close. Ongoing legislative efforts and pilot projects in a handful of states to open proceedings may further change this data (see sidebar, next page, for detail).

Pilot projects

State pilot projects are a common way to test the open court waters before taking legislative steps to sanction open hearings. According to Farley, the following states have tried open courts in select counties or statewide:

- The **Minnesota** Supreme Court started the most comprehensive pilot project in 1998. In Minnesota's pilot, 12 counties agreed to make proceedings presumptively open with judicial discretion to close. NCSC conducted a comprehensive evaluation of the Minnesota pilot project that found that children were not harmed by open court proceedings.
- In 2003, **Arizona** started a pilot project in Maricopa county at the request of a new governor who wanted to increase accountability in the child welfare system. Courts were opened with judicial discretion to close in 5% of Maricopa county's dependency cases. Features of the pilot included special conditions to protect children's privacy, factors for judges to consider when determining whether to close a hearing, admonishment of those attending hearings, and notice to subjects of investigations of the right to request an open hearing. This pilot has expanded statewide through 2005.
- In 2003, **Utah** established pilot projects in several jurisdictions, at the urging of state legislators and parent groups as a way to increase accountability of the child welfare system. Courts in the pilots made proceedings presumptively open with judicial discretion to close. To close a hearing, the judge was required to find "an open hearing would not (1) [be] in the best interests of the child, (2) impede the fact-finding process, or (3) be contrary to the interest of justice." The pilot led to a statewide policy in 2004 to make dependency court proceedings presumptively open with judicial discretion to close. The three factors for closing proceedings remained, and hearings could also be closed on a motion by the court or a party to the proceeding.
- In 2003, **Nevada** started a pilot in Clark County (Las Vegas) that made courts presumably open with judicial discretion to close.
- In 2004, the **Missouri** Supreme Court started a pilot project in the St. Louis City Family Court that makes dependency proceedings presumably open with judicial discretion to close.

should be open because disclosing children's confidential information severely compromises their psychotherapy.

Lack of press oversight
Once the press is permitted into dependency proceedings, little oversight exists, said Patton. He added that not much can be done to punish the press for publishing confidential information obtained through legal means. As a result, many examples of invasive press coverage exist, including publishing:

- confidential information from central child abuse registries
- an abused child's medical data
- lurid details from child sexual abuse cases
- children's names and photographs

This kind of press coverage portrays a seriously distorted image of the child welfare system, said Patton.

Original motive for openness not being achieved
Accountability, the underlying motivation for opening dependency courts, is not being achieved, said Patton. "Attorneys, judges, and caseworkers are not doing a better job as a result of open proceedings," he said. One sign of this is that hearings have not gotten any longer as a result of openness, a troubling finding since the expectation was that openness would cause professionals involved in the case to be more diligent. This is not the case though, said Patton, as no additional time is being devoted to fact investigation, cross-examination and other key advocacy activities during the trial phase. Patton also noted that some of the most horrific cases are occurring in states with open systems, such as Florida and Michigan.

The case for opening

The Honorable Heidi S Schellhas, District Court for the Fourth Judicial District in Minneapolis, Minnesota, is a strong proponent of openness. Schellhas was involved in Minnesota's pilot open court project from the start, first as a child protective services attorney then as a judge. "My experience is that children benefit from openness," said Schellhas. During her involvement with open court proceedings for more than six years, she said that the lack of harm to the children and families strengthened her support for openness. Schellhas shared several reasons for keeping courts open to the public and press:

End secrecy surrounding abuse and neglect
"The child protective system should not be used to extend the secrecy surrounding abuse and neglect," said Schellhas. While opening courts may embarrass the child, Schellhas stressed that emotional harm and embarrassment are unavoidable when children are removed from their homes and placed in state custody. In their new life circumstances, they often suffer harm and embarrassment when asked questions by well-intentioned people, such as teachers and classmates. Maintaining secrecy by closing dependency proceedings won't prevent these kids from experiencing embarrassment, she said, whereas "secrecy may afford the parents some privacy."

Increase family involvement/ support
Schellhas finds that when family and community members who know the family are in court or learn of the case through media exposure, they often volunteer to intervene for the children. They may be willing to watch for warning signs of a parent's relapse or signs that the children are at risk of further abuse or neglect. Schellhas cited a case involving a 15-year-old teen who testified in a sex abuse case; in that case, testifying in open court was cathartic for the teen and media coverage of the case led her peers to rally around her.

> . . . when family and community members who know the family are in court or learn of the case through media exposure, they often volunteer to intervene for the children.

Keep parents honest
Parents are less likely to give false information if there are people in the courtroom who they know can refute what they say. For example, a parent is less likely to refute drug allegations if there is someone present who has a different view, said Schellhas.

Hold system accountable
The jury is still out on whether open courts increase system accountability. Recent results of states' child and family service reviews show widespread performance problems among child protective services, with 16 states failing to meet any standards focusing on children's well-being. Schellhas said these findings call for greater public and press access to proceedings to monitor performance.

Recognize protections exist to minimize harm to children
Schellhas stressed that the likelihood of a child testifying in a civil child abuse and neglect case is slim to none. In her experience, few child protection cases are actually tried and children usually don't testify. She recalled that in the four years she has presided over juvenile court

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NAME	OPEN/CLOSED	COMMENTS/CITATION
Accelerated Rehabilitation (AR) • To avoid a permanent criminal conviction for 1st offenders on non-serious offenses	Open for the duration of the AR and for 20 days after the entry of a dismissal. The records are then erased pursuant to C.G. S. 54-142a(a) unless an appeal is filed.	C.G.S. 54-56e
Alcohol Education Program (AEP)	Closed	C.G.S. 54-56g
Community Service Labor • To substitute community service and treatment for incarceration for drug offenders who have minimal or no prior drug convictions	Open. If the person satisfactorily completes the program of community service, the person may apply for a dismissal of the charges.	C.G.S. 53a-39c
Family Violence Education Program • To provide treatment and to avoid criminal conviction and sanctions for otherwise lawful persons involved in their first family violence offence	Open. If defendant successfully completes the assigned program, the charges are dismissed by the court.	C.G.S. 46b-38c
Pre-Trial Drug Education Program • To avoid conviction and provide education on less serious drug offenses	Closed (upon application, the court file is sealed)	C.G.S. 54-56i
School violence • Is available to students charged with an offense involving the use of threatened use of physical violence on the real property of a school	Closed, upon application. If the defendant successfully completes the program, the charges are dismissed by the court. .	C.G.S. 54-56j
Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers • Provides for a suspension of prosecution for two years, with the opportunity to receive a dismissal of charges	Open. If the defendant successfully completes the period of probation, the charges are dismissed. Upon dismissal, all records shall be erased pursuant to C.G.S. 54-152(a).	C.G.S. 29-33(h)
Youthful Offender Program • An alternative to prosecution as adults for youths.	Closed. Records and proceedings of youthful offenders are confidential and YO adjudications are not deemed convictions.	C.G.S. 54-76 at seq.
Treatment of drug or alcohol dependent offenders in lieu of prosecution • To secure treatment and avoid convictions for persons	Closed. Successful treatment may result in the dismissal of prosecution.	C.G.S. 17a-694