

Testimony of Senior Associate Justice David M. Borden
Judiciary Committee
January 17th, 2007

Good morning, Senator McDonald, Representative Lawlor, members of the Committee.

I am David Borden, and I am the Senior Associate Justice of the Connecticut Supreme Court. It is my pleasure to be here today to discuss public access to Connecticut's courts. Regrettably, Justice Richard Palmer, who served as the chairperson of the Judicial Branch's Public Access Task Force, is attending the funeral of a close family friend this morning and is unable to attend today's hearing. However, I have asked Judge Aaron Ment, a member of the Branch's Task Force to join me, and he will be glad to answer any questions that you may have.

I would like to begin my remarks by thanking the Judiciary Committee for scheduling this informational forum on the Judicial Branch's Public Access Task Force and on the Report of the Governor's Commission on Judicial Reform. As you know, I recognize that matters of openness and accessibility of the courts are of great importance to the public, and I welcome the opportunity to discuss these matters with you today.

On May 25th of this past year, I created the Judicial Branch's Public Access Task Force – a diverse group of judges, media members, attorneys, and a former chancellor of the Connecticut State University system – and charged them with making concrete recommendations for the maximum degree of public access to the courts, consistent with the needs of the courts in

discharging their core functions of adjudicating and managing cases. My goal then, as it is now, was to ensure that our court system is open, transparent and accountable.

On September 15th, thanks to the tireless and selfless effort of the Task Force members and the Judicial Branch employees who served as their staff, I was presented with 38 recommendations designed to maximize public access to the courts, 35 of which I subsequently endorsed. With the Committee's indulgence, I would now like to take a few moments to discuss many of these recommendations, as well as the implementation steps that have been taken by the Judicial Branch. For your convenience, I have submitted with my testimony a progress report on the implementation of each initiative and will seek to summarize here many of the more notable accomplishments.

Changes great and small have occurred since September 15th. One large change occurred just yesterday, so I thought that would be an ideal place to begin. Effective yesterday, Task Force recommendation number 11 – posting criminal docket information online – was implemented. The criminal docket, including docket number, defendant's name, date of birth, and charges will now be publicly accessible online as soon as it is available and shall remain available for one day, until the next posting. The genesis of this proposal was a bill brought before the General Assembly last session, so due credit belongs to legislators who championed this initiative. The purpose of the limitation to a one day posting is to make it consistent with the fact that some of the cases will subsequently be sealed by statute, such as upon application by a criminal defendant for participation in a pretrial diversion program.

In addition, we are now in the process of implementing recommendation number 29, which calls for increased electronic coverage of oral arguments in the Supreme and Appellate Courts. Those courts have endorsed that recommendation, with certain modifications, and have forwarded their recommendations to the Appellate Rules Advisory Committee for its

consideration of revision of the current restrictive rules on television in those courts. Moreover, just yesterday the Supreme Court adopted a revised protocol for televising proceedings under the currently applicable rules. The revised protocol will make the televised proceedings more easily viewable.

Another significant advancement occurred at the last meeting of the judges held on December 19th. At that meeting, our judges voted overwhelmingly to open a number of judicial committees to the public, consistent with the Task Force recommendations. These meetings include: the Annual Meeting of the Judges of the Superior Court; the Rules Committee of the Superior Court; the Executive Committee of the Superior Court; the Board of Examiners for Court Reporters; the Legal Specialization Screening Committee; and the Code of Evidence Oversight Committee. I believe that this action demonstrates that the members of the judiciary, who perform with distinction and honor, are committed to conducting business in an open and transparent fashion, and I thank them for their commitment to public service.

Also in the realm of meetings, the Judicial Branch is evaluating which of its committees are subject to the Freedom of Information Act based on the recent decision of Clerk of the Superior Court, Geographical Area Number Seven Et Al. v. Freedom of Information Commission. Later this month, the Branch will hold a training session for the chairs and staff members of these various committees to ensure that they comply with the Freedom of Information Act and all applicable Judicial Branch policies and procedures.

A number of other recommendations have also been implemented administratively. For example, recommendation number 3, which permits members of the public to broadcast, televise, record or photograph Judicial Branch meetings held in court facilities, has been implemented. Recommendation 35, the creation of a Judicial-Media Committee, which is designed to foster and improve a better understanding between the Judicial Branch and the media, has similarly

been implemented. In this connection, I am pleased to report that the committee will be co-chaired by Appellate Court Judge, and former journalist, Douglas S. Lavine, and G. Claude Albert, managing editor of the Hartford Courant.

The burgeoning crime of identity theft, and how best to protect records in our custody, permeates a number of the recommendations. Therefore, the Branch has established the Identity Theft Committee, chaired by Judge Trial Referee Joseph Pellegrino, which has already begun to meet. The committee has begun its work and is reviewing all Judicial Branch forms to identify those that require the inclusion of certain information, such as social security or financial account numbers, and to ensure that this information is being properly protected.

Many, if not most, of the recommendations put forward by the Task Force have been, or will be, implemented administratively or by a vote of the judges. I believe this is proper; our judges – who are in the trenches, so to speak – can and will provide valuable insight on how best to implement certain recommendations, such as increased electronic coverage of trial court and appellate level proceedings.

Our state judges work hard every day in our courts, dispensing justice openly, conscientiously, and with fairness and dispatch. I am proud to have them as my colleagues. They know their job, and they do it well. This includes establishing the rules of court under which they must work to ensure the proper dispensation of justice. Because they are the people who work with the rules every day, they have the knowledge and experience that is necessary for proper procedural rule-making. I can assure you that the rule-making process will be open, with ample opportunity for public comment.

That is not to say that I do not foresee a role for the General Assembly; on the contrary, I believe that there are a significant number of issues exclusively within the purview of the legislature. For example, the Judicial Branch Task Force did not make a recommendation as to

whether child protection proceedings ought to be open to the public. I believe that this is a legislative policy decision that can be made only after long and deliberate review; after all competing viewpoints have been heard. Furthermore, I did not endorse two recommendations of the Task Force, which again, involve fundamental legislative policy. I would certainly hope, though, that legislators give due consideration to the thoughts expressed in these recommendations regarding pretrial diversion programs.

Some recommendations of the Task Force can only be effectuated by legislative action. For example, revising the procedure on the continued sealing of search warrant affidavits (recommendation number 15), providing for the availability of the contents of competency evaluations in certain instances (recommendation number 20), and establishing an administrative waiver of copying fees (recommendation number 24) require statutory change. In these instances, I would ask for this committee's assistance in shepherding these proposals through the legislative process.

I believe that we are at the threshold of a new spirit of cooperation between the branches of government. The citizens of this state demand this of us. To this end, I ask that you refrain from codifying the Task Force recommendations, as seems to be the intent of Senate Bill 126, which I understand will be before you in a hearing this afternoon. The Task Force recommendations, embodied in that bill, were written as policies and principles with the general intent of pointing the way for a more open Judicial Branch. Although I agree that they provide a valuable platform for discussion, they were not written to be placed in statutory or even in rule-making form. Moreover, as we have gone through the implementation process we have recognized that the recommendations require much thought and revision in order to be fully workable. I therefore strongly urge you to refrain at this juncture from enacting those recommendations into statutory law.

I believe that the actions taken over the past six months by the Judicial Branch generally, and the judges specifically, in implementing these recommendations clearly demonstrate our willingness to make our courts more accessible. I am confident that this movement will continue. Progress once started is difficult to derail.

I have been a proud member of the state judiciary for nearly thirty years. As I told the Task Force members at the inception of their work, I believe that the more transparency and openness with which we do our jobs, the greater the degree of trust, confidence and respect the public will have in us, because the public will see what I have seen: that the judiciary – both judges and staff – does perform its job properly. I truly believe that the hard work done by members of the Judicial Branch’s Public Access Task Force and by the Governor’s Commission on Judicial Reform will only make this more so.

Thank you for the opportunity to appear here today. I would be pleased to answer any questions that you may have.