Commission on Child Protection
State of Connecticut

JUDICIARY COMMITTEE
Public Hearing: Feb. 16, 2007

RE: Raised Bill- 7039

Testimony of Carolyn Signorelli
Child Protection Attorney

Senator McDonald, Representative Lawlor and Committee Members, my name is Carolyn Signorelli and I am the Chief Child Protection Attorney for the State of Connecticut. I'd like to thank you for this opportunity to address Raised Bill 7039 regarding public access to juvenile matters. On behalf of the Commission on Child Protection, I am here to testify in opposition to RB 7039.

The Commission on Child Protection is responsible to provide and improve the system of legal representation for children and families in child protection matters in our juvenile courts. I consider the Commission's primary duty to be to protect the rights of the clients our system serves: children and parents subject to petitions of neglect, abuse, termination of parental rights, and Family with Service Needs Petitions, as well as alleged Juvenile Delinquents in need of guardian ad litem services.

It is the Commission's position that the interest in increased accountability of the stakeholders in the system will not be sufficiently enhanced by this legislation to justify the intrusion into the private lives of the families it seeks to serve or the harm it will cause to some children, even if only a "handful."

My reasons are as follows:

The goal of greater accountability and resulting improved performance and outcomes by system participants can be achieved without destroying the existing confidentiality protections for children and families whose lives have already been disrupted and intruded upon by the state.

The perception that media coverage and public access to child protection proceedings will promote greater accountability for judges, lawyers, social workers and perhaps parents in these cases, thus improving system performance and outcomes, is insufficiently documented to justify answering the problems in the system by sacrificing individual privacy rights. The argument that resulting public awareness will lead to increased support for child welfare and protection reforms, is also not borne out by any evidence that I'm aware of and therefore does not warrant further intrusions upon the rights to family integrity and privacy necessitated by DCF and court involvement.

Child protection cases are different than most other court matters. The litigants are primarily innocent children and disadvantaged, cognitively and emotionally challenged, low income parents – who find themselves in the system and in court involuntarily. Yet they have not committed acts, in most cases, with the necessary mens rea to justify criminal sanctions. Therefore the jurisprudence regarding the openness of criminal courts and the right of media and public access to those proceedings does not strictly apply in the child protection context. And the Supreme Court has consistently exempted juvenile matters

from that scrutiny. Rather we have a process where the state, employing the doctrine of parens patriae, interferes with a family, judges the parents as unfit and in need of assistance or substitution, and then, in too many cases, creates new problems for the children, exacerbates their traumas, and routinely performs poorly itself managing its own procedures, schedules, service provision and parenting. So what's our solution: shine a light on the private lives of these unfortunate families we forced into court and risk further trauma to the very children we seek to protect – all for the sake of getting the adults and professionals in the system to do their jobs right.

One of the arguments I've heard in response to my antipathy for the concept of strangers or perhaps neighbors sitting in on these hearings and influencing the decision making of litigants whose intimate lives are on display, is that it's done in other states and they report little effect as practically no one ever shows up. The National Center for State Courts' Key Findings from the Evaluation of Open Hearings and Court Records in Juvenile Protection Matters in Minnesota supports that argument and in turn supports my belief that these measures will have little to no effect upon their stated goals. However, will likely, in one too many cases, have a deleterious effect whenever there is an objection to public presence and the court needs to take time out from resolving the substantive problems in the case to grapple with the question of access. Any decent attorney, charged with zealously advocating for their client's interests, absent their client's informed agreement, will object to the presence of strangers

or non-parties in order to assert their client's privacy rights. It's not their job or the client's to help fix the system as a whole when handling an individual client's case. Therefore, most cases where the public or the media does seek inclusion will require an ancillary, potentially time consuming and disruptive hearing, taking precious time away from the pertinent issues of the case.

I reviewed the National Center for State Courts' Key Findings because I've been told it supports the arguments for opening courts. I did not interpret the report that way. In the Executive Summary "Concluding Remarks" it states: "There are clearly costs attached to open hearings/records ... paid by the parties to child protection cases, especially children and parents who risk losing privacy. On the other hand, real and potential benefits result from open hearings/records including enhanced professional accountability, increased public and media attention to child protection issues, increased participation by the extended family foster parents and service providers....".

However, a review of the entire report reveals the following actual evidence and findings which do not actually support the assertion of "enhanced professional accountability." On the key goal of the initiative, accountability, the following was stated: "we found evidence that *suggests* that there has been *somewhat* of an increase in accountability" and "we found *tentative* evidence of *some* improvements in professional accountability." On the media serving as the eyes and ears of the public and increasing public awareness, the findings revealed that media interest waned quickly and remained rare, except in the

most sensational cases. In fact only 0.6% of record requests came from the media in Hennepin Co. "All things considered, however, the evidence suggests that open hearings/records, to date, have had virtually no effect on general public awareness of child protection issues." On the impact of court efficiency, although the length of the hearing process was not impacted in *most* cases "*some* are *significantly* impacted" and anecdotal "information ... suggests that open hearings/records might have had somewhat of a chilling effect on in-court discussions among child protection professionals." Finally, on the key countervailing interest and concern, privacy rights and harm to children, the report notes, "it appears that there may have been a very few isolated instances where photographs, and name and addresses of children and parents had been published" and "nor were we able to document more than a handful of instances where open hearings/records caused problems for the parties to the case." [1]

It is the position of the Commission on Child Protection that those handful of cases are too many; that the concept of cost-benefit analysis does not apply when it comes to further trauma to just one child versus the "suggestion" of "somewhat of an increase in accountability". When Pennsylvania opened up its child protection courts to the media, the violation of a child's privacy in two immediate instances caused difficulties for the child, including a refusal to attend school, followed by a change in schools in one case.

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[1] The inability to document certainly does not mean there were not more instances of harmful effects. There's no evidence from the study that actual children or parents were interviewed.

Additionally, given the issues of overwhelmed court dockets, slow moving time intensive cases, and the statutory imperative to achieve permanency within reasonable time frames for these children, to add a further procedural layer for decision-making about whether or not a member of the public, who has no legal interest in the outcome of the case, should be permitted to remain, is inimical to the current efforts being made to improve the efficiency and outcomes of the system. Even if this process only slows down permanency for just a few children, it's still a few children too many in light of the lack of significant systemic gains as a result of openness.

In virtually all of these cases there is a mental health component or a substance abuse problem or both for one or more of the parties that needs to be addressed. In light of the confidentiality laws surrounding treatment records and information about these issues, allowing members of the public into the proceedings will violate these privileges and the exception of a compelling reason to close the proceedings in many cases will swallow the rule.

Our system has other means in place to hold its participants accountable. If a Judge is consistently not performing his or her functions in keeping with the Rules of Judicial Conduct, then we have review processes to address that concern. Having members of the public present at juvenile court proceedings will not add to the information already available from attorneys, court administrators, and the pubic in other types of proceedings about Judges. The system simply needs to be employed, as opposed to relying on "public access" as

a quick fix for judge accountability. Social workers who don't do their jobs should be held accountable by their employer. Attorneys who don't meet their professional responsibilities should be held accountable by the other members of their profession, Judges and the Commission on Child Protection.

The legislature has recently seen fit to create the Commission on Child Protection in order to improve the system of representation in the child protection field. Knowledgeable, zealous, skilled attorneys are the most effective means to hold the court system, DCF and other attorneys accountable to ensure that children's rights and well-being are protected, that various federal and state entitlements to benefits and services are honored, that creative solutions are fostered to resolve cases consistent with their client's interests, and if necessary, that the State be required to prove its allegations before it can disrupt or remain in a family's life. Promoting a legal system that provides for such representation will be much more effective in achieving the goals of accountability, than relying on the presence of a few members of the public in a handful of cases or on the media to capture those rare sensational cases, that have little to do with the day to day, chronic problems of the system as a whole.

I therefore request that this committee reject RB 7039 and maintain the existing protections of children's and parents' privacy rights. Confidentiality actually assists the appropriate resolution of these cases. To introduce an additional collateral influence upon the litigant's decisions about case strategy – to settle, to go to trial – would have a greater negative impact upon case

outcomes, than any potential positive influence over the actions of the judges, attorneys or social workers. Children are complete victims in these cases. They should not be re-victimized by publicity because the system is not operating as it should and the players in the system are not willing to hold themselves or each other accountable.

Respectfully Submitted

Carolyn Signorelli