

**Statement by Chris Powell
on behalf of
the Connecticut Council on Freedom of Information
Judiciary Committee, General Assembly
Hartford, Connecticut
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My name is Chris Powell, I live in Manchester, I'm the managing editor of the Journal Inquirer there, and I'm speaking for the Connecticut Council on Freedom of Information.

So much work by so many people is before you today -- the work of the judiciary's Public Access Task Force and the work of the Governor's Commission on Judicial Reform.

This work was a matter of compiling and considering the many judicial rules and practices and the many provisions in state law that exclude the public from court proceedings or restrict public access to court documents. This now may mean a lot of work for you.

The Connecticut Council on Freedom of Information hopes that you will approach this work with two questions.

First, how did this blizzard of obstruction to open government arise and how can it continue in a state whose Constitution commands, without the slightest qualification: "All courts shall be open"?

And second, how did the judiciary get the authority to legislate the public out of its right to open courts when that Constitution also prescribes the separation of the legislative and judicial powers?

If you can answer these questions, your work may become much easier and the public's constitutional rights to open courts and the separation of the powers of government may be restored much faster.

Of course you don't *have* to do this work. The judiciary will remain delighted to do it for you, as the judiciary long *has* been doing it for the legislature, usurping democracy.

The reports before you have raised many issues of detail. The Connecticut Council on Freedom of Information favors greater openness in *every* detail and would be grateful for any formal or informal opportunity to review those details with you. But whether you act on these reports or let them pass, the big issue you will be deciding will be whether the General Assembly reclaims the legislative power from the judiciary.

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That is, the big issue here is not the rules themselves but who makes the rules.

This issue may be especially hard for many of you because of your dual office holding -- your being both legislators and commissioners of the Superior Court. But if *you* won't stand up for the legislature, nobody will. If you reclaim the legislative power on behalf of the people who elected you, you may exercise that power well or poorly but at least it will reside again where there is regular democratic redress.

If you leave the legislative power with the courts, they soon may tire of openness and revert to unaccountability. Indeed, the chief court administrator, Judge William Lavery, has already warned us, and has particularly warned *you*, committee members, that the judiciary's openness kick is just for show, some convenient public relations to help preserve the judiciary's monopoly on rule making until the recent scandals in the judiciary fade. Judges are like surgeons, Judge Lavery wrote recently in several newspapers, and no mere citizens should presume to have any more to say about the rules of court operations than mere citizens should have anything to say about brain surgery operations. Further, Judge Lavery wrote, *you legislators yourselves* are too "partisan" to be given any part in making rules for the courts.

That arrogance remains the *real* attitude of Connecticut's judiciary -- that the judiciary must remain the law unto itself. Please bring the judiciary back under the law.



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