

REMARKS  
SENIOR ASSOCIATE JUSTICE DAVID M. BORDEN  
ANNUAL JUDGES MEETING  
JUNE 26, 2006

Good morning. I'd first like to thank Judge John Kavanewsky for hosting the annual judges meeting here in this impressive and beautiful courthouse, and for making us feel so welcome. I would also like to thank Chief Clerk John Morrow and his very capable staff for all that they have done to make us feel so comfortable as well.

I am delighted to welcome all of the judges to this annual meeting of the Judges of the Superior Court. As all of you undoubtedly know, this meeting has been specifically opened to the press and the public, and I'd like also to welcome those members of the press and public who have responded to the opening of this meeting by attending. We hope that you will find it interesting, as well as educational.

Many of the judges present attended the Judges Institute last week, and I would like to reiterate my sincere thanks to all of the judges and staff who worked so hard and did such a fine job in providing a first-rate curriculum for the benefit of the judges and the Judicial Branch as a whole. We take great pride in having such an excellent educational program available through the Judicial Branch's continuing education office. The judges who served as faculty, and the judges and Judicial

Branch staff who participated in the planning, put an enormous amount of work into that superb program. I would especially like to thank Judge Lynda Munro, chair of the education committee, Judge Robert Holzberg, chair of the curriculum advisory committee, and Attorneys Faith Arkin and Mary O'Connor for their leadership and their hard work.

Next, I'd like to announce a change that the Chief Court Administrator's Office and I have made that affects you, the judges, and the effect of which you will soon see. That is that, after a hiatus of several years, we are resuming the practice of providing each of you with a subscription to the Connecticut Law Tribune. I think that it is a useful window into the legal profession, and more important, into the publication of trial court opinions that might not otherwise be easily accessible to you. Thus, I think that we can all benefit from having access to it. Of course, if any of you disagrees, you can request that you not be included in the subscription list.

In this connection, however, you should also be aware of a new online feature that will accompany your subscription. That feature will enable you to have access to the full text of all of the opinions for which the Tribune now, in its printed version, provides only simple synopses. Thus, your access to your trial court colleagues' written opinions will be increased, as well as your access to the opinions of the Supreme and Appellate courts and the opinions of the federal courts.

In addition, we are in the process of making special arrangements for similar

subscriptions for those judge trial referees who want them.

Now, I would like to turn my attention to a subject of very pressing importance: the Judicial Branch's Public Access Task Force. You all have received my email about it, but I would like to reiterate some of what I said in that email. My simple message is this: There is much that we do as judges that would inspire trust and confidence in us if the public knew of these things. We have much to be proud of, and the more the public sees of how we do our job, the more trust and confidence we will achieve.

I know some of you may be thinking, "Why is the Task Force necessary? Is this an overreaction to recent events?" Let me explain why I approach these issues of openness with a sense of urgency and why I don't think I am overreacting.

First, it is the right thing to do. It is right that, to the extent possible, we operate with as much transparency and accountability as possible. **We owe that to the public we serve.** I believe that the more the public understands what we do and how we do it, over the long run, the more we will merit the public's trust and respect.

Second, I have taken the steps that I have taken because I have concluded that, in light of recent events, it is necessary to take the initiative so that it will not be taken for us.

In my present position, I am exposed to a stream of information that many of you may not see. I have been reading newspaper accounts and editorials from

across the state, commenting on the Branch in unfavorable ways. There are proposals, in the press and the legislature, for constitutional amendments that would undermine the basic concept of judicial independence. The Governor has appointed a similar task force to recommend, by legislation and, if necessary, by constitutional amendment, ways to make the judicial system more open and accessible.

This is serious business. Unless we, as judges, seize the initiative, our opportunity to affect the ongoing debate will be lost, with serious long-term consequences for the Judicial Branch, judicial independence, and ultimately, the public interest. I agree with the colloquial adage, "If it ain't broke, don't fix it." But I say to you, my colleagues, that in light of recent events, in the eyes of the other two branches of government, the press, and the public with whom those entities communicate daily, the judicial system is perceived as broken in that it is not sufficiently open and accessible. In that regard, there **are** things about the judicial system that need fixing. I assure you that if we don't fix it ourselves, others will be only too willing to do that for us.

Let me return for a moment to my first point: that it is the right thing to do, to make our system more open and transparent. We in the judiciary have no power of the purse. We have no police powers to enforce our judgments on our own. In order for our judgments to command respect and compliance, we must by our own conduct continue to earn that trust and confidence, and we must be confident, and show our confidence, that by being transparent and open, we will demonstrate to

the public whom we serve that we are dispensing justice fairly, impartially, honestly and conscientiously.

We must manage the people's judicial business, not only fairly and impartially in fact, but fairly and impartially in appearance--and the more transparency and openness with which we do our job, the more likely it is, and the more likely it will be, that we will gain that trust and confidence. It is also true, of course, that in any given instance, openness and transparency must be balanced against legitimate expectations of privacy and legitimate needs of security and confidentiality.

I have, therefore, charged the members of the task force with making concrete recommendations to me 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. The deadline for the task force's report is September 15th.

In brief, there are three specific areas of access to judicial records, meetings and proceedings that I have asked the task force to address. The first is to identify those matters that are already open and accessible to the public, but which the public may not know are accessible and, therefore, which the public may incorrectly presume to be confidential. Of the three areas, this is the easiest to identify and I have asked for recommendations for ways in which this public accessibility may be made more readily known.

The second area is more difficult. I have also charged the task force with

identifying those matters that are **not** currently open and accessible to the public, but which **should** be, either in whole or in part, and to make specific recommendations for the maximum degree of public accessibility to them, while keeping in mind the necessary balance of all of the legitimate interests of expectations of privacy, needs for security, and needs for confidentiality. It is in this area where your experience would be invaluable in helping us to strike the appropriate balance.

The third area for consideration involves identifying those difficult questions that loom in the foreseeable future, such as how best to make electronically filed records accessible on line while, at the same time, guarding, to the extent possible, against identity theft.

I expect that you may also have important and helpful insight into these long-term concerns as well.

Having briefly identified these three main areas of concern, I will leave it to Justice Palmer, in his remarks to you, to address how to go about communicating your suggestions.

From my perspective, there are two more very important points I want to make this morning. First, you - the judges - have a vast reservoir of insight and experience into how things can be made more open - and, on the other side of the coin - what the risks and perils are in going too far in removing legitimate cloaks of privacy, security and confidentiality. I, along with Justice Palmer and the members of the task force, need your insights concerning both sides of this metaphorical

coin. I, therefore, invite each of you to participate in this important process by lending your own experience, expertise and good judgment to that of the task force.

I ask each of you to think hard and long - but not too long, considering the task force's September 15th deadline - about how you think we can become more accessible to the public, while still giving due regard to legitimate concerns for privacy and security, and while still retaining our ability to perform our core judicial functions.

I will also tell you quite candidly that it has come to my attention that there are some who have the perception that they ought not to speak freely in voicing concerns and arguments as to why things should not be made more open. There are some who have a perception of possible adverse consequences to those who speak freely, if they take a position counter to openness and accessibility on any particular issue.

I want to make very clear to you that that is **not** the case and **will not be** the case. We want your thoughtful and candid comments and suggestions, whatever they may be, in whatever direction, and there will be no adverse consequences - direct or indirect - explicit or implied - for any such suggestions. And if any judge wants to communicate in confidence with Justice Palmer, he or she should feel free to do so. Justice Palmer will underscore that assurance. I can also assure you that your thoughts and suggestions will be taken very seriously, as this matter is of the highest priority for the Branch. I can also assure you that any rumors that you

have heard about what I or Justice Palmer have "decided" are false. Nothing has been decided, and nothing will be decided until the Task Force makes its recommendations, and those recommendations have been thoroughly and thoughtfully considered. And it is my intention to circulate them to you for your comments before making any decisions regarding them.

In closing, I would like to emphasize the importance of the endeavor that we have undertaken. It is a rare and historic occasion that affords the opportunity to make positive institutional and cultural change in our judicial system. I hope that you will participate. We need your help.

Thank you.