

## Transcript of Remarks

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Thank you to the Center for Children's Advocacy and to the law school, particularly to those of you affiliated with the Connecticut Public Interest Law Journal for brining us all together today so that we can discuss and perhaps even debate at some point the pros and cons of openness.

I am also very honored that Chief Justice Sullivan of the Connecticut Supreme Court is here, and Judge Pellegrino who came to greet me this morning. Thank you very much for your presence. I know that you two have a full schedule. It's been great to see Judge Gills and Judge Mack, and I know that there are so many distinguished people in the audience. I see Senator Harp whose been working on these issue, and so thank you for having me.

I echo the comments of Judge Lopez that this is indeed a controversial topic and when I've spoken out about it to national organizations, I usually say at some point, "Stay with me," during my speech, because I'm afraid that as I go through, page by page, I'm losing you one by one, like if I haven't lost you on the ninth point, I'll lose you on the tenth. But I just ask that you stay with me today just to hear at least one perspective on this issue, and you have your own, and we need to bring these together. I think it's good that you are going to hear not only from proponents but, importantly, if you look at the brochure here today, you're going to get so many different perspectives, from professors, from journalists, from advocates, from legislators. I think it's important that you give people who are involved in this system, and certainly not just a chief justice, but trial judges—everybody—in at the table, and that you listen to the criticism. I find that quite humbling, and in my life, I think I've had more than my fair share or criticism, and I'm just going to share two examples.

One was when I was a trial judge. I had a defendant on a relatively routine matter, and he had been around the block a few times,

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and I think he knew half of the judges on the bench the bench I served, which is Hennepin County District Court, where Minneapolis is located, and it's the biggest court in our state. He knew a lot of judges by first name. After I sentenced him—he didn't like my sentence—he wrote me a letter, and he said, "Dear Judge Blatz, next to Judge Solom, you are the dumbest judge in Hennepin County." You can imagine my chagrin when Judge Solom retired the next year!

Another piece of memorable feedback that I got was from a good friend, actually. When I was appointed chief justice, he sent me a card and it had a block print of a fish on the cover. When you opened the card, it said, "The fish rots from the head down." This was my congratulations card for becoming chief justice. He went on and wrote a message in it, and his point was that good leadership can strengthen organizations as quickly as poor leadership can weaken them. And that's why he sent me this card—to try to inspire me. I have to tell you, I took that fish card to heart. It's the only one that I know verbatim, and I had some beautiful cards.

It came at the same time—I was an associate justice on the supreme court, so I had been working on some juvenile issues. At the same time I was moving ahead to try to open Minnesota's child protection cases to the public in a twelve-country pilot project by a court order and not through legislation. We have eighty-seven counties in Minnesota. We were opening not only the hearings to the public, but many of our records as well. And about one week before I was to assume the role of chief justice—it had been announced about four months before—I signed the order, the chief let me sign the order, and it went into effect. So for three years, we were to test the waters to make sure that no harm came to children and families as a result of the pilot project, and then, we were going to evaluate the results.

As you might imagine, if my goal had been to become the most popular and beloved chief justice in Minnesota, forging ahead with such a controversial order, even before I had taken the oath of office, was not exactly the smartest thing to do. A respected trial court judge who is on our council of the chief judges in Minnesota (we have ten chief judges) met with me, came to see me. And I respect him so much to this day because we really did not know each other very well. And he strongly urged me to reconsider not signing that order. He went so far—and he did this with the utmost respect and support for me—he went so far as to say that my position on this issue would be a blight on my entire tenure as chief justice.

So at the outset, no one thought we were headed in the right direction. I signed the order because at that point, it was a critical decision for me personally. I had been in public service for a long time. Did I really want to be somebody, or did I want to do something? And this is an issue I cared passionately about, and I signed the order, but knowing full well that I had that concern out there, because you need to lead, too. You need to have people to have confidence in you, and you earn that respect. But I felt like I'd almost have to betray myself in order to balance it, and then not respect myself. So I signed it.

But I want to tell you that I have very little support. I mean I had enough support from the court, from the Minnesota Supreme Court, to do this. We talked about it, I push-push-push, and they said, "Let's do it for three years; what the heck." But most of the stake-holders, be they judges, lawyers, social workers, guardian ad litem, were opposed to opening up the courts. Of our judges, fully seventy-five percent opposed opening up juvenile courts. But we went ahead, and why I forged ahead is most central to our discussion today from my perspective. But let me just tell you, just so you have this in the background, what the order that I signed did. It opened up the public hearings for child protection, and it opened up our records, unless a judge finds exceptional circumstance to close it. And that language is also what we have in a rape trial in adult court. They can close down—I think most states allow this—if there is some particularly vulnerable witness, you can close it down, you might have to make a record, it has to be sealed, but you could do that. And then we also had a lot of records that were protected because of federal law, and I'm going to talk a little about that later. But that's what our order did. I know every state has a variation of the same.

So why did I sign the order? I've been a practitioner in the child protection system for years. And prior to being appointed to the Minnesota Supreme Court, my career took a variety of turns which involved the child protection system at some junctures. I was a social worker (I got my masters in social work), and then an attorney who spent several years prosecuting child protection cases. As a state legislator, I chaired the Minnesota House of Representatives Crime and Family Law Committee, and I authored many child protection laws. As a trial court judge in Minnesota's busiest and most diverse county, I spent a part of my time working exclusively in the juvenile court on child protection and delinquency matters.

So in essence, I always say I'm the poster child for the system. I'm not trying to pick one facet of the system and call that child protection. I am a poster child for the system, and with that, I own the

fact that I have responsibility, at some level, for the system's problems, and to address the problems that exist. And it's from this totality of perspectives that I've come to the conclusion that we—and by we, I mean all of us working on the system—that we simply must do a better job with abused and neglected children when we first have the chance. Make no mistake about it: there are good people in the child protection system—people who represent children, and people like the many social workers, prosecutors, defenders, guardian ad litem, and judges who do their best every day because they care deeply about their work.

But despite our best efforts, something is wrong in the system. It's not working. And I think it's time we have the courage to face this fact.

The National Commission on Children had this to say in a major report about the state of child protection in America about twelve years ago. The report boldly stated the following, and I quote:

If the nation had deliberately designed a system that would frustrate the professional who staff it, anger the public who finance it, and abandon the children who depend on it, it could not have done a better job than the present child welfare system. Marginal changes will not turn the system around.

While some improvements have occurred, since that report from the National Commission on Children was released, I do not believe they are enough. Some argue that all the system needs is more money. While resources are certainly part of the equation of any functioning system, all of the money in the world, by itself, just won't make a significant enough difference for children until we change some of the fundamental ways the system is administered.

I'm sure I'm not the only one here who doesn't need the National Commission on Children to alert me to the fact that there is something wrong in child protection. That too many children fall through the cracks, and that the system often fails in its greatest obligation and its namesake to protect abused and neglected children. I say this not to assign blame to others, but to acknowledge my own role and responsibility, and our collective roles and responsibilities, in our respective branches of government, for the end result.

I saw the shortcomings of the system when prosecuting child protection cases and I saw it again and again as a trial court judge in Minneapolis where it was clear that children who, once came in the

doors of child protection, returned as delinquents and later as adult criminals. Children with five, ten, fifteen, sometimes over twenty different placements. Parents who'd been given nearly unlimited chances to stop abusing and neglecting their children. The way critical information about each kid and each family seems to disappear in the growing case file that gets shuffled from one courtroom to the next. Children who languish year after year, losing hope that somehow, they will have someone in their lives who will love them unconditionally. Children who had no one to represent their best interests in court, even though someone is required to appear on their behalf under state and federal law. And even though federal and state law says that the paramount goal of child protection proceedings is to seek the child's best interests, too many kids don't have someone representing those interests.

So it is from this perspective—that the system must do a better job—that I approached the issue of openness in child protection proceedings. As I presided over juvenile court, and watched the dysfunction day after day, I was profoundly struck by the seclusion of it all. If you took the average person off the street and let him or her watch a day of juvenile court in Hennepin County, they would have been shocked at the same things I was: the parade of placements, the lost information, the languishing children. But the average couldn't watch a day in juvenile court. In fact, extended family members often couldn't watch a day of juvenile court to see what happened to a grand child or cousin. And the media couldn't report on the things I saw each day, unless there was an accompanying criminal case in "adult" court. The legislators who created the juvenile court system couldn't see how it was functioning, and just like Albert Einstein's definition of insanity, we kept doing the same thing day after day, while blindly hoping that the results would change. And ultimately, this is why I signed the order for the pilot project: to shine the bright light of accountability into the darkest corners of a malfunctioning system, and to give the public a window on the welfare of children.

The pilot project was carefully monitored and at its completion in the year 2001, we contracted with the National Center for State Courts to perform an independent evaluation of what had occurred. This was the first evaluation of its kind. In short, the results of the evaluation showed that children were not harmed by opening child protection proceedings and records to the public. So Minnesota jointed sixteen other states that at that time had already charted the course, and we made our pilot project a state-wide standard, expanding it to all eighty-seven counties. And I can just say, as a side note, that it was the biggest nonevent since I've

been chief justice—honestly. It was just nothing when we spread it. It was very controversial getting the pilot—a non-event spreading it statewide.

At its core, opening child protection hearings is about greater accountability, and by accountability, I mean to everyone, but mostly to the children. There is a growing assessment by the public and by many in the system that children are not protected to the extent they should be. With a closed court, nobody with objective eyes can be present. And one's critics can often be the most helpful. Critics, or at least objective observers, ask questions because everybody else is too busy. The volume is just that great. And you see it up close, you don't see it from afar. In my view, the bottom line is that government works best under the scrutiny of the people we serve. A system that serves some of the most vulnerable citizens or maltreated children certainly needs to be the best that it can be. And while we are not responsible for the harm that forces these children and their families into our courtrooms, we do have a responsibility to ensure that the system doesn't contribute to or exacerbate the problems.

And one way to help ensure that we don't unwittingly exacerbate problems facing our children is to have more openness. I say this recognizing that openness is, by itself, not a solution to our problems. It is a conduit in which problems can better be solved. This last point is important. What is wrong with the child protection system will not be fixed by openness alone. But it is a first step on which other reforms can be built.

And I'm not here today to hold Minnesota out as some shining example. I would be the first to say that we have much work to do to protect children and have only recently begun our long journey toward making the state safer for our neediest children.

But I do hope that we can provide you with some of what we have learned over the last few years so that you can all have a more informed debate about the choices that many states are pondering. My experience has been that the fear of the unknown becomes a formidable force. Because the issue is often imbued with so much emotion and because children's lives are at stake, the status quo often appears to be the best route.

But if we're serious about accountability, and doing what's best for children, we must challenge ourselves to think ever more critically, and logically, about the problem and its possible solutions.

While there may be little value in my recounting all the arguments against openness that we have heard and grappled with along

the way, I think it would be helpful for me to recount the most repeated arguments against opening up juvenile court proceedings so we can view them in light of the facts. So I have really ten reasons offered of why we should not open the courts.

Reason one. If we open up all proceedings, everyone will show up, causing a circus-like atmosphere in the court. This fear was articulated by a wide variety of people who were opposed to the opening. They believed that if the doors to the proceedings were thrown wide open, juvenile court would be filled with on-lookers, gawkers, and worst of all, the media—*especially* the media. In reality, our evaluation and anecdotal evidence showed that a few more people than usual showed up, most of the new participants were members of the extended family, foster parents, and service providers—people whom we *want* attending there hearings so that they can serve as resources for the child and the family. There was also evidence that participation by these groups was on the increase.

Now the second argument not to open it up—the first is everybody’s going to show up—the second argument was no one will show up, and no one showed up so it’s a failure. And I think it’s important to note that a lot of the people, after we opened it up, whose number one criticism is that nobody show up are the same ones that said everybody will show up. I just thought that you couldn’t have it both ways. But the reason we opened up the proceedings was not to fill the courthouse—that was never a goal. The presumption of openness is one of the hallmarks of democracy, and the mere fact of openness matters far more than the actual number of people who avail themselves of the opportunities it affords.

Humans are not gods. We are not perfect. It matters just as much that people, such as members of families or the media, *may* show up, as it does that they *do* show up. People act more accountable if they know they may be held more accountable.

Reason number three. It will cost too much. This is a point—Professor Patton is here today, and we’ve had an opportunity to be together speaking on this, and I know this argument was, at least in his law review article on openness, one argument against opening courts. Some opponents felt the cases would take much longer because there’d be disruptions as courtroom participants navigated issues of confidentiality. In reality though, the evaluation found that there was little evidence that the duration of the hearings was affected by having them be open. In addition, there was no compelling evidence that the nature of in-court discussions had changed. However, there was

anecdotal evidence that because they perceived that others would be watching, the system's professionals, everyone from judges to social workers to guardian ad litem, seemed to be more "on their toes" and more prepared to fully discuss the issues during the hearings.

The suggestion that there would be protracted litigation over whether to open or shut a case was simply not borne out at all in our state. Others felt that the workload on staff would be so onerous that it would cripple the system. This is for unlocking the door that it would just overwhelm people. There was a significant increase in the workload of court staff at the onset of the pilot. Mostly, it revolved around how to handle the different court records. Some are protected, some are not. We followed Michigan, and we put the protective reports, psychological, chemical dependency, in a file that nobody has access to, but you have to train staff on how to split these records out in that way, and we did that. Because certain records were open under our pilot program, comprehensive guidelines of accessible and inaccessible documents were provided to the court administrators along with new training. We also met with the media in the state about our expectations that they ought not put pictures of children in the paper, which they never did. We spent a total of twenty-five thousand dollars.

The argument of expense could be used to derail any meritorious project, and I'm aware that at least one state asked for several millions of dollars. I still don't understand why. I think the fear was there because it's always so hysterical to open up these courts. I think New York asked for five million dollars. I don't know if they ever even got the money, and I can't imagine how they would spend it on unlocking the doors. But given the system's grave obligation to protect children, I would submit that we would be driven first and foremost by what is best for children and lastly by what will inconvenience our patterns and resources. Anyone close to the government knows that there is always some new project entailing an infusion of money. The question is whether the change is necessary, and in my view, the value of openness trumps the rather modest expense devoted to training personnel how to handle the records.

Reason number four. You can't trust the press. Many opponents have opened proceedings to tap into society's collective distrust of the fourth estate, i.e., the media, and say that these are the people who brought us *Hard Copy* and talk radio. I've never watched *Hard Copy* and really don't like talk radio. Can we really trust them to do the right thing when it comes to protecting children and families? The answer is yes. These same people are the ones who almost without exception

protect, and I believe this to be true in all fifty states. They're open to the public. The names of sexual assault victims, rape victims in criminal rape cases, they don't put the rape victims' pictures in the paper. They don't put their names in the paper. The media protects the victims, and there's no statute as I understand it in any state saying that they can't put it in. I mean, it would be a constitutional challenge to that, I'm sure. But this is the same media that we're allowing into our court system, and I have no lower expectation of how they handle children than they do rape victims.

Secondly, our three year evaluation involved twelve rural, suburban, and urban counties, and showed us, and I quote, "Opening hearings records have not resulted in documented direct or indirect harm to any parties involved in child protection proceedings with the possible exception of a sensational case in Hennepin County." This was in the National Center's report. It's worth noting that in that one case in three years, it had an accompanying criminal case and that information was released as part of that proceeding, not as result of relating child protection proceedings. And training on how to cover open child protection cases and accessibility of the documents was provided to the media. I think in that case the family went to the press, which we can never control anyway.

I'm not here to promise anyone that the media will always do the right thing, but I do believe that their presence is essential to keeping the public informed. Good, bad, and ugly, the press has fulfilled a vital role in our democracy and the oversight of our institutions. To suggest the press reporting on the, for example, the O.J. Simpson or Peterson case or whatever the issues of the day, how they did it is not a reason not to shed light on child protection cases. It's just a disconnect for me. If the premise is that the media does a bad job covering cases and this justifies keeping them out of juvenile court, then it justifies keeping them out of *all* court proceedings. And if that's the case then why wouldn't the same argument apply to other government hearings? I think you would agree with me that it's absurd. It would be flatly rejected by the citizens, not to mention the courts.

Reason number five. When the press has access to hearings they only cover the sensational cases skewing the public's perception of reality. What some people might forget is that the very definition of news is something that's new or different. We shouldn't expect to see cases chronicling in the day to day happenings of juvenile court anymore than we would expect to see cases or that we would read cases chronicling in the daily happenings of criminal or civil dockets. Can you

imagine opening your morning paper to read a blow-by-blow account of the yesterday's full docket in housing court? That isn't the function of news nor should we expect it to be. But the stories they do cover, including the sensational ones, make a difference. During the course of the pilot project as our evaluation showed, we had our share of high profile headlines. The media would be remiss if they had ignored those stories.

Our community may not have had the benefit of knowing what had happened, and without open hearings, they might have had to reduce the ability to judge for themselves whether justice was ultimately served. And when I say they covered sensational cases, I hope you don't conclude that they put their names in or the faces of any of these children. They did not. So, yes, given this charge to cover what is new and different, the media will focus on controversial cases. But in Minnesota, Michigan, and I'm sure many other states, the media has also published bigger picture pieces about the system, its participants, and the overarching challenges.

In Minnesota, these stories happened both before and after the pilot, but during the pilot we collected approximately a dozen of these system type articles around the state. And here are the headlines from what the press did during the pilot. Headline: "How Did the Child Protection System Work: An Overview." Another headline: "Child Protection System Aims to Keep it All in the Family." Another headline: "Law Puts Child's Right to Stability First." Another headline: "Child Advocates in Short Supply in Overburdened System." Headline: "Minneapolis' Babies Killing Exposes Gap in Child Protection." This was a story about the gaps in information that hampered the system. Another headline: "Mending Lives on a Deadline," a story about a smaller northern Minnesota community and how the permanency timeframes impact families and workers. It's a huge issue. Another headline: "Child Abuse: Intruding to Help," a rural Minnesota story about the difficulty of being a social worker. And I challenge anyone here to make a compelling argument that these stories did not benefit the public, the community, or the child protection system as a whole. And importantly, I challenge anyone to tell me how such stories hurt children.

Reason number six. Open hearings will have a chilling effect on filings because fewer people will seek help or be referred. In Minnesota's experience this did not happen. In fact, dependency and neglect filings increased in eight of our twelve counties. As a corollary to this concern, many people expected appeals of TPRs (termination of parental rights hearings) termination hearings or decisions in child

protection cases to skyrocket. This also did not happen. The evaluation by the National Center reported that “there does not appear to be a strong and consistent trend for appeals to have increased since open hearings’ records have been implemented.”

On a visit to Michigan by our open hearings task force before we did this, a retired judge in Michigan provided compelling evidence related to filing concerns. He was a long standing juvenile court judge who was adamantly opposed to open hearings initially but became a self-described convert after the system was in action. He too observed an increase in filings and believed strongly that openness had led to more people reporting abuse and ultimately more children being protected from harm. This is, of course, is just the opposite of what the critics said would happen. Critics said filings would go down because child protection workers would not want to expose families. Again that was another group who opposed opening in juvenile court. Other judges in Minnesota have volunteered to me that they believed that more information is being shared with the judge and that the practitioners assigned to these cases are doing a better job. The chilling effect argument has failed at both the aggregate and at the specific level.

Reason seven. Opening child protection records to the public will put sensitive materials in the hands of outsiders. Again we have our records are open, so let’s look at the type of document request we’ve received. In Minnesota’s largest county, Hennepin, where nearly a third of all the child protection cases originate, the most common document request was for the judge’s order, accounting for more than half of the requests. Requests for the entire case file amounted to seven percent of the requests that were made.

Second, let’s look at who requested the documents. Examining the requests just in Hennepin County, over three year period, only seven percent of the requests came from the private sources, such as family members, and only .6 percent, little bit like half percent, came from the media. The rest came from those within the courtroom work group, and what I mean by that is social workers, county attorneys, children and family services, guardian ad litem, probation officers, etc.

Reason number eight. Open proceedings and records will result in harm to children when they become adults. This is a very serious concern I believe. On what part of those on the inside and out of child protection system—that there will be negative consequences to these children when they become adults if they have this in their records. The concern is that information accessible in a court database could be mined fifteen years later by someone doing a background check on a loan or

apartment rental for example. For this reason we prohibited direct public access to juvenile court case records that are maintained electronically in our court information system. So you cannot get them on the Internet. Likewise our rules provide that juvenile court records will not be disclosed to the military services or any present or prospective employer. We've also safeguarded the names against future data sweeping by captioning—all the cases are captioned in the name of the parent and not the child at the trial court level, and at the appellate court level all the cases are captioned in initials. Parents' initials and the child in the opinion is referred to by initials. It's hard to read those opinions, I understand that but it does—those are public. Our opinions are public so we don't want to have any names in our opinions.

Reason number nine. Opening proceedings and records to the public will harm children. This is one of the most common concerns iterated and an important one obviously. It's really the thing we wanted to measure the most. We said, well I told the media too and I told the people too if this hurts kids we're closing this pilot down. There's no commitment to even three years. It's a reason why one of the key points of our evaluation focused on harm and as I pointed out earlier the study found that our pilot did not result in documented harm. But in deciding whether a pilot project could potentially harm children, we looked at the experience of other studies, other states, and importantly how children are affected by the openness in our state court proceedings today and other courts.

For example, many of the proceedings already open to the public deal with issues which are at the heart of child protection and TPR closings which are closed. It is noted in our open hearings task force report: "Adult criminal proceedings involving malicious punishment of a child or criminal sexual conduct involving a child victim are open to the public and with certain protections for the child victim witness." Dissolutions and custody matters often contain the very same allegations that form the basis of child protection petitions. They're open. In addition, the press is already free to print whatever information that it lawfully obtains from sources outside the juvenile court room, such as witnesses or companion criminal cases. And while all of these cases have always been open in Minnesota, and I presume in your state, where is the evidence that this systematically hurts kids? Any why don't the opponents of opening child protection hearings fight to close domestic abuse hearings affecting the same families? Why don't the opponents try to close the open court hearings of the criminal sex cases involving parents who rape their children?

Other things to bear in mind are that many exceptions to openness that exist in wide open Minnesota. Under our rule we specifically and this is our rule on child protection, we specifically prohibit access to things like transcripts and recordings of testimony regarding any portion of a hearing that was closed to the public because the judge did find exceptional circumstances. So that's protected. Audio or video tapes of the child describing abuse or neglect. The victims' statements. Records that identify the reporters of abuse or neglect. Medical records, chemical dependency records, psychological records that are received into evidence by the court as an exhibit. Sex offender treatment program reports and portions of photographs that identify a child or address of a child.

Furthermore, we have included an escape hatch for the exceptional circumstance instances. Judges can close proceedings along with some of the court files to the public if they feel that it is absolutely necessary. But we have shifted the presumption from closed to open. We used to say that a judge could open and of course judges never did.

Which leads to the final result put forth by the or the reason put forth by the opposition not to open child protection proceedings and records to the public that I'm going to address today and that is one benefits do not outweigh the risks. This is by far the most oft repeated argument against openness that I have heard and like the concern for harm it is important. But the premise I present today is quite different. Those who argue that the benefit versus risk approach start from the position that child protection proceedings are presumed closed so a compelling case must be made for them to be opened in order for the benefits to outweigh the risks. I start from the opposite position, the one I find to be well founded and precedented in our history as a democratic nation. Court proceedings and government hearings in this country are presumed to be open. Those who seek to shut any portion of it down must make a very compelling case in order to do so, and I would argue that with respect to child protection proceedings the case has not been well made.

Barbara White Stack, a reporter from the *Pittsburgh Post Gazette* who is here today and will serve on the panel later, has pointed out that the very first juvenile court in our country, started in Chicago in 1889, was open. In fact, most state juvenile courts were open until, I think, around the 1970s. The balance of history tilts towards openness in our courts and with good reason and you're going to hear from the experts on this today in a panel later. The United States Supreme Court has recognized that "few consequences of judicial action are so grave as to

severance of natural family ties. It is precisely because these consequences are so grave that the public has an interest in having access to this awesome display of power.”

Or to be put more articulately, in Samuel Sokol’s seminal law review article on this topic he said, “Dependency decisions will always be very difficult; they will not always lead to happy endings. The public deserves to see such terrible power wielded in its name. The First Amendment guarantees the public the right to do just that.” And it’s not just about the termination of parental rights. It’s about the rights of children to be protected from harm, from serious neglect and in my view there can be few places where the system’s accountability to the public and the people it serves is more important.

And let’s touch on accountability for a moment. In the evaluation that was performed in Minnesota, we had a variety of anecdotal positive response. For instance, a judge said the prospect of potential of having more eyes watching and scrutinizing the legal process results in greater accountability. I mean this is common sense to me. A court administrator said the county attorney and the court administration are more accountable as far as to the content of the petition and attachments—and they try not to be needless things into these things—and the scheduling of cases is more timely. I could go on and on. A public defender said all of this works to make a heretofore system that use confidentiality to cloak incompetence or negligence much more accountable and focused on nurturing plans to help families and children. Judges actually read the files before hearings and the lawyers for the child and the parent are prepared. I could go on.

I realize that these people do not a survey make, but equally true is that men and women’s fear of change coupled with a love of the status quo and the familiar does not relieve the opponents of their burden to answer the question. When the stakes are so high why do we close the system down? Why do we accord parties and proceedings of lesser importance more access to openness and system accountability than we’re willing to give our most vulnerable children?

Another important aspect of accountability is that which we are to the public. It should come to no surprise to us that surveys conducted nationally—the Hearst survey back done in 1999 national—in Minnesota showed that people have lower levels of trust and confidence in our performance in juvenile court as compared to other parts of our court system. Why would they trust what they cannot see?

Our trust and confidence survey done in Minnesota was done before the hearings were opened statewide and we found that one in

three people thought we did a poor job with child protection cases. Nearly forty percent felt that not enough court proceedings are open to the public and that among respondents of color, fifty four percent thought we did not do enough—that they should be open. In the end analysis, if our measure of what must be done with child protection is based on asking the question is this best for children then greater scrutiny and greater accountability to the public and those we serve point us undeniably to the answer yes.

While today we debate the prospect of openness, let's not forget that many states beyond Minnesota have already taken this change and the momentum is in this direction. Since 1997, seventeen states altogether have either enacted laws or as we did in Minnesota enacted court rules allowing open hearings in juvenile child protection cases, including Utah and Arizona. I hope that statistic is right. I don't know if since 1997 or including the ones that were open before. I apologize. I should have clarified that. Two more states have pilot projects underway. Three other states allow media to attend the hearings. And in Minnesota we pay particular attention to Michigan, which had open hearings ten years before we showed up. We sent a team there and they met with judges, public defenders for the parents, guardian ad litems, prosecuting attorneys, child protection workers, everybody, and they said that rule one before they opened up juvenile, their hearings, everyone thought the sky would fall, but it didn't. In fact, they were so glowing in the report of openness that one of our members who went there said that you have to say something negative. You have to tell us something negative cause we're going to have zero credibility if we go back and say that you're all just fine with this project, but they could not come up with anything.

So very clearly the trend is toward openness. The choice before Connecticut, I believe, is whether it will be among the last states to open hearings or whether you will embrace it now as one of the crucial tools for fundamentally reforming and improving your system allowing reform to occur.

And here is my question for those who continue to oppose openness. In light of the seventeen states who have done this, some for years, and in light of the first ever empirical study done in this country that showed no harm—just kind of neutral—no harm resulting from the open hearings, where are the studies and the data to refute that? Where are the side-by-side comparisons of open versus closed states that have proved that the top ten theories we heard today? Where is the hard data that shows children and families were harmed? Filings of cases actually

decreased and more appeals did happen in states that opened their doors. And more appeals more than just growth in case filings, percentage wise of the cases there were more appeals because attributable to openness.

Proponents of openness now have a track record, an objective evaluation in the first amendment in which to base our support, and I ask in states which are still closed, where are the great success stories of your closed system? What are we so proud of about how child welfare works today that we refuse to even consider another alternative that may help it work better tomorrow?

I'm telling you I'm fascinated by the legal history of our children. There was a time not so long ago when children were considered our property. They were legally referred to as chattel. They could be sold or bought or abandoned at the edge of a market place like a piece of furniture or a useless cow. The law evolved as did our conscience, and in the 1960s, child abuse was formally recognized as a medical condition and basic constitutional rights were finally extended to children. In some ways we have come a long ways, but in other ways, we have much farther to go. This will sound shocking to many of you, but I believe closed child protection proceedings are the last vestige of the notion that children are our property and what is done with them is no one else's business. After all, we do not presumptively close court hearings that involve vulnerable adults often abused by family members. We do not close domestic abuse cases involving adults and those often involve the same families and the same children. But we try to make credible arguments that cases involving children should be treated differently. I think the arguments to keep the system closed fail miserably when contrasted with the realities of what is really going on.

As I mentioned at onset, openness is not a be all and end all of what's wrong with child protection. So let me give you an example of what we're doing after we open the courts and then I'm going to wrap up here.

We started something called the Children's Justice Initiative in Minnesota (CJI). The goal is to move the children to permanency and more quickly either through reunification with their families or through permanent placement elsewhere. The Children's Justice Initiative's defining principle is a commitment to work in a system through the eyes of a child rather than through the eyes of the people who administer the system, including me, the judge. Is a five year collaborative effort with our Department of Human Services and is yielding better results for our kids. Courts and multidisciplinary teams across Minnesota, every county, are abolishing cattle call calendars, eliminating continuances in

these cases, who needs a continuance case for ninety days at a time, that's a summer for a kid, an entire summer for a kid before we can even move out of foster care or move toward a permanent family. We issue written orders at the end of each hearing, give them to the parents so they have them, using the one judge one family model in improving communication across the system.

We know a culture shift of significant proportions has taken place because long serving social directors tell me repeatedly that the CJI team is a single most important child protection system improvement they have experienced in their entire careers. Even more gratifying is that after several years, judges tell me how honored they are to have an opportunity to work on an initiative they know will be the most important work of their professional lives. I offer you this Minnesota experience not just to suggest that we're doing it better than anyone else, nor do I suggest that what works in Minnesota necessarily will work here, but I offer our experience to highlight the fact that other critical elements of reform must take place for abused and neglected children. And like many of you here today, I'm passionate about children's issues, so in closing I'd like to leave you with a story that has fed my passion about the need to reform the system in Minnesota.

The true story is about a boy I'll call Jacob. Jacob was eight years old and he was beaten by his mother and stepfather when he came into this system. And according to the court records, they beat him and his four year old sister with belts and extension cords. Sometimes because the parents were angry with each other and sometimes just to hear the children cry. This is just out of the records. The boy and his sister slept on the floor without a mattress, with rats biting them at night, and they had empty or turkey carcasses on the floor with them. And according to court records, the mother had minimum emotional attachment to her children and a big cocaine problem. On many occasions Jacob was literally abandoned by his parents, and on one of these occasions, he was taken to a local shelter for children—emergency shelter—and he told the case worker there that when his mother beats him he feels like taking a knife and stabbing himself. As a teen, he took the all too frequent path from maltreatment to delinquency. He was kicked out of six group homes and had been arrested for violently assaulting his classmates and attacking anyone who came to close to him. He's been arrested for possession of a dangerous weapon and selling drugs, and by the age fifteen, he was so dangerous that he was placed in a locked unit in a state institution.

One of the disturbing aspects of this story is that Jacob was in thirty-six child protection placements starting at the age of eight. It's ridiculous for the system to expect Jacob would have any chance for success when we gave him no chance for permanency. They never terminated rights. The thirty-six placements fuel my passion for fundamental reform in the system, but what fuels my passion for openness is the fact that Jacobs' file and the dysfunction that it represents would not be accessible to anyone but for the actions of a juvenile court judge. Although this case and all like it were closed prior to the onset of our open hearings pilot, this judge took it upon herself to autonomously chronicle the case histories of children who've appeared before her, giving them names like Jacob and passing them along to me so I could use them as examples in my speeches. And unless she had taken that extraordinary step, I would not know the story of Jacob nor would you.

Jacob is not just a case number or an anecdote but a real child now almost an adult and we have failed him miserably. And children like Jacob give proof to the fact that we need to hear the true stories of our children because the stories of our children, more than anyone or anything, will be the catalyst for needed change.

Systems like people need windows and sunshine. Too much is at stake. As human beings we are not perfect. I think we just have to accept that, we know that, and systems made up of people and by people are not perfect. We need to accept that. We should not fear making mistakes. We don't want to but we can't fear it. We should fear not knowing we made mistakes. Openness helps us to be better because it allows us to hear the truth, and importantly, because it allows others to know the truth.

Thank you very much for your rapt attention.