

Legal Assistance Resource Center ♦ of Connecticut, Inc. ♦

44 Capitol Avenue, Suite 301 ♦ Hartford, Connecticut 06106
(860) 278-5688 x203 ♦ FAX (860) 278-2957 ♦ RPodolsky@larcc.org

Testimony of Raphael L. Podolsky

Task Force to Study Converting Legislative Documents from Paper to Electronic Form Public Hearing -- November 18, 2010

In last year's final budget revisions, P.A. 10-179, the General Assembly required reductions in the Legislative Management budget. The *Connecticut State Budget 2010-2011 Revisions*, issued by the Office of Fiscal Management, implemented the budget revisions in part by eliminating funding for the transcription of public hearings (\$215,000) and for the printing of loose bills, booklets, lists of bills, files, and engrossing (\$411,000). This allocation of funding reductions to implement the budget is not part of the budget act itself but rather an administrative implementation of P.A. 10-179. The adverse consequences of saving \$626,000 in this manner are only now coming to the surface. I urge the Task Force to recommend that this method of cost reduction be revised by the Legislative Management Committee and, if necessary, by the legislature as a whole so as (1) to continue the transcription of public hearing testimony and (2) to assure that any reduction in the printing of "loose" bills preserves the ability of the general public to conveniently obtain copies of such bills at the Legislative Office Building. Required savings in the Legislative Management budget should be accomplished by other means.

Public hearing transcripts

It would be a serious mistake to discontinue the transcribing of legislative public hearings. Such a change will have an enormous adverse impact on the judicial interpretation of statutes and ultimately on the power of the General Assembly itself to influence interpretation through legislative history. Unlike issues regarding the adequacy of on-line availability of bills, there will be no on-line alternative for public hearing transcripts. This is a fundamental difference between the two forms of cost reduction.

The principal sources of legislative history are the floor debates and the committee hearings. Floor debates, however, are sometimes abbreviated, often do not discuss a bill in detail, and rarely speak to more than a few parts of any bill. Since it is inherently unpredictable as to which parts of a bill will prove problematic in application, legislative debates often miss the portions that result in litigation. Indeed, in the Senate, because of the way in which large numbers of bills are placed on the Consent Calendar with no presentation of the bill, there is often no floor legislative history at all. In contrast, the testimony of the witnesses at a public hearing often provides useful information to help the courts understand what the purpose of the legislation is. For example, in the recent Supreme Court decision in Fairchild Heights, Inc. v. Amaro, 293 Conn. 1, at p. 11-12 (2009), the Supreme Court, quoting from the 2008 decision in Jim's Auto Body v. Commissioner of Motor Vehicles, 285 Conn. 794, at p. 812 (2008), reaffirmed what has been the law in Connecticut for many years:

It is now well settled that testimony before legislative committees may be considered in determining the particular problem or issue that the legislature sought to address by the legislation.

Fairchild Heights is a Supreme Court case that quoted public hearing testimony by Joseph Mike, me, and three other witnesses in interpreting a mobile home park statute. As an experiment, I searched my name in WestLaw to find out how often my own public hearing testimony had been cited in judicial decisions. I got 17 hits, which consisted of 12 Supreme Court opinions, two Appellate Court opinions, and three trial court opinions. I claim no bragging rights from this. It illustrates, however, the tip of a large iceberg. Witness testimony at legislative hearings is important, and the higher you go in the court system, the more important it becomes and the more likely it is to be used. I am sure that a more comprehensive search would find many, many more judicial opinions in which public hearing witness testimony was cited.

The alternative of taping public hearings without transcription is simply not workable for the purposes that I have described. Short of sitting for hours and hours listening to tapes, there is no way to use tapes for legislative history. The very purpose of the tape is so that it can be transcribed, filed, indexed, and made available to researchers (and, I would add, to the public) – it is not effectively usable in raw form. It would be extraordinarily difficult to retrieve information and would effectively make public hearing testimony unusable in court cases. A copy of an article from the Connecticut Law Tribune is attached.

"Loose" bills

The plan to completely eliminate the printing of "loose" bills and similar public legislative documents, particularly those that are ordinarily available to the public on public hearing days, presents other problems. I am not sure if this also includes bill books that are provided to legislators. I do think it is possible to reduce the print runs on such items. The legislature, however, also has an obligation to make bills reasonably available to the public. Total elimination will have a major adverse affect on public access. The Task Force should instead be looking at ways to reduce printing of loose bills without eliminating such printing entirely.

There is no question that ability to access bills and files on-line reduces the need for printed bills. Printed bills, however, need to be available to members of the general public when they come to the LOB or the Capitol for public hearings and to speak with legislators. Unless copies of these documents are preprinted in some manner, it will not be practical for committee clerks to provide them on the days that members of the public are most likely to come to Hartford. Printing out individual bills one at a time is extremely time-consuming, labor-intensive, and inefficient. The longer the bill, the more difficult this task becomes. Moreover, at the times when individual copies are most needed – before and during public hearings, before and during committee meetings, etc. – there will be no one available to print or make copies. These are the busiest times for committee staff, who must prepare materials for legislators and often must be in the hearing room itself. It just won't happen.

Might there be a way to make this work? Perhaps, but it would require staff to make enough copies of bills before committee hearings and committee meetings so as to make them available without further significant staff time. This itself becomes time-consuming, especially if the bills are long. I expect it is also an expensive way to produce copies. In the alternative, if the public is to be allowed to print bills itself, then the General Assembly would need to invest in a significant number of computers, printers, and the supplies associated with them, to be placed in easily accessible parts of the LOB and the Capitol. It cannot be assumed that everyone in the general public comes to Hartford with their own computers and printers.

The Task Force should also recognize that it is not only the general public that is affected by the lack of paper copies. Legislators themselves need hard copies from which they can work. Bills, especially long bills, are hard to read on a computer and do not lend themselves to note-taking and hand mark-ups. The use of a computer during a committee meeting acting on bills, it seems to me, is not a substitute for a hard copy of the bill in front of members of a legislative committee.

Alternative cost savings

I recognize the need to severely reduce the General Assembly's printing budget, but the transcription of witness testimony at public hearings affects far more than the General Assembly. I hope that, in your recommendations, you will make sure that transcription of such testimony is maintained. I also hope that the Task Force will review the Legislative Management budget carefully and will recommend other parts of that budget that can be reduced without as severe consequences as these cuts. For example, it may be possible to reduce the print run for the General Statutes and the Public/Special Acts (totaling \$536,500 in the current allocation), to reduce the line item for stationery by making greater use of computer templates (\$86,500), or to reduce the budget for mailers (\$582,000). Relatively modest adjustments to these and other Legislative Management accounts might free up enough money to restore the transcription of public hearings (\$215,000) and a portion of the budget reduction for loose bills and similar items.

Legislative History May Become History

LAWYERS OPOSE MOVE TO ELIMINATE

WRITTEN HEARING TRANSCRIPTS

By THOMAS B. SCHEFFEY

When the meaning of a state statute is not clear, one of the first places judges and lawyers look is the carefully-indexed archive of public testimony and discussion in hearing of committees of the Connecticut legislature. Those words have been carefully archived in the state library in Hartford since 1911, said state librarian Kendall Wiggin.

In the modern era, there's another place to find such information. The Web pages of the legislative committees post public hearing transcripts. Thanks to computer word searches, these can be searched effortlessly — even when a day's testimony covers scores of bills and has over a hundred speakers.

Connecticut LawTribune

Week of November 15, 2010
Vol. 36, No. 45 • \$10.00

ctlawtribune.com

An ALM Publication

Transcripts Vital For Determining Legislative Intent

■ From LEGISLATIVE on PAGE 1

In the June special session, the state Office of Legislative Management has stopped transcribing audio recordings of public hearings. The task force's goal is to save money by converting "legislative documents from paper to electronic form." The OLM has lopped the entire \$215,000 annual cost of public hearing transcripts from its current budget. It's also hoping to cut an additional \$430,000 from the legislature's \$2.1 million annual printing costs by halting daily printing of proposed bills.

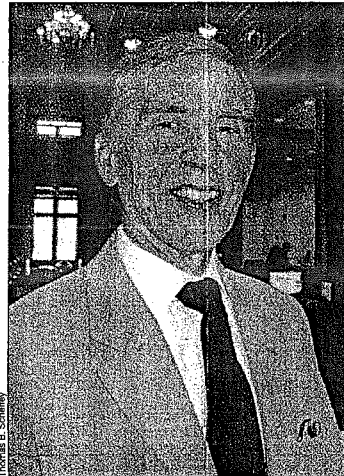
"They're acting like this is a done deal," said Colleen Murphy, a task force member and executive director of the state Freedom of Information Commission. The committee chairs are Sen. Joseph J. Crisco, D-Bridgeport, and Beverly Henry, a legislative administrator for the Public Health Committee.

Judges, appellate lawyers, legislative lobbyists and open government groups are appalled.

"That would be a very, very bad thing, in my view," said senior Judge David M. Borden, the former acting chief justice of the state Supreme Court.

Borden, who currently is active on the Appellate Court, also teaches a course on statutory interpretation at the University of Connecticut School of Law. Early in his career, he was counsel to the legislative Judiciary Committee, and knows first-hand how the legislative process works. Public hearing testimony, and the lawmakers' discussion of policy at those hearings, can be "one of the best sources of the purpose behind a statute, which is a very important part of statutory interpretation."

At these legislative hearings, "You have people coming to the legislature saying, 'Look,



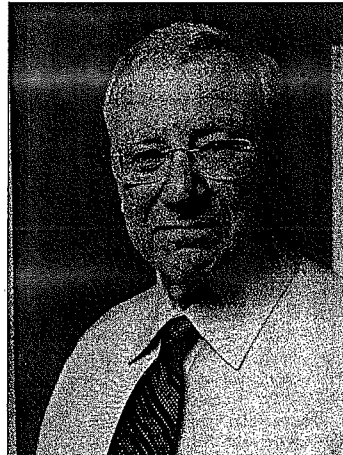
State Librarian Kendall Wiggin said there hasn't been enough discussion of what sort of digital formats would be best for keeping records of committee debates.

clear understanding of the meaning of the bill is, I think, a mistake," he said. "Frankly, more often than not, it would frustrate the will of the legislature because the courts would be driven back to the [statutory] language alone, when the language itself is not always clear. I don't see this as a wise move."

According to an Oct. 5 letter to the cost-cutting task force from Office of Legislative Management financial administrator John Harnick, some 33,000 pages of hearing transcripts are produced per year. His office proposes to continue producing transcripts of debates of the full House and Senate, at a cost of \$105,000 annually, but eliminating the committee hearings.

Daniel J. Klau, a Hartford appellate lawyer and president of the Connecticut Foundation for Open Government, said the elimination of written hearing testimony would make it much more difficult to determine the context and historic purpose of a statute.

"These transcripts are an invaluable tool for statutory interpretation," he said, because they provide the context of what the lawmakers were attempting to accomplish. The proposed substitution of audio tapes would require lawyers to monitor hours of hearings. "My understanding is that there is no pro-



Former state Supreme Court Justice David Borden said judges often used transcripts of legislative hearings to figure out what legislators are trying to achieve when passing a law.

posal of a way to index the audio recordings," he said.

State librarian Wiggin, who is also on the task force, is concerned that not enough thought has gone into the preservation and accessibility of important information. The proposal to store records in an "electronic format" could mean any number of things, he said.

"If we're at all concerned about preserving any of this, we need to have some standards and we need to know what we're talking about," he said. Simply making a legislative record digital doesn't make it permanent, Wiggin noted. The task force has not focused on deciding which methods of making digital records would be most practical for the long term, he said.

The state of Connecticut has a valuable resource in its current collection of legislative history, and Wiggin said simply halting transcription to paper and switching to audio might not be wise. "People who are required to file things with us now send us, maybe, a Word document, maybe a PDF, maybe an Excel file. Who knows? Can we at least talk about this before we enact a law that doesn't even define electronic format?" Wiggin asked.

Blue Volumes

At the beautifully restored state library, adjoining the Connecticut Supreme Court, library technician Laura Klotz showed a visitor the well-preserved bound volumes of committee

hearings, including an Appropriations Committee volume from the late 1800s.

The volumes are kept on metal shelves seven stories tall, and solid glass floors float around them. To reduce fire danger, the rich "wood paneling" is actually metal, carefully painted to fool the eye. Because water would be as disastrous as fire, the stacks lack fire sprinklers.

The volumes from the House floor are bound in blue, the Senate floor debate is bound in red, and the public hearing volumes are gold. And they can be a researcher's gold to a lawyer or judge attempting to discern the meaning and purpose behind a cryptic or ambiguous statute.

Many states don't transcribe public hearings, said Rep. Michael Lawlor, co-chair of the legislative Judiciary Committee. While he is in favor of saving money wisely, he said he's "not thrilled" at the idea of losing written transcripts.

"The role of [legislative] committees is minimized in a lot of different states," Lawlor said. "Very little goes on in committee, and almost everything is formulated by the legislative leaders. That's not the case here. A lot of the back and forth [debate], a lot of the content of these legislative enactments, can be gleaned from reading the public hearing transcript. And I say that because I've done it a million times. It's very typical for us to go back and figure out who said what — not just for political reasons, but also for policy reasons."

Borden, the senior appellate judge and teacher, has just concluded his fall lectures on the statutory interpretation process. He said he tells his students about an electrifying 1992 case called *in re Valerie D.*, where legislative history was critically important. In that case, a mother's parental rights were terminated because of her pre-birth use of cocaine, and the Appellate Court used criminal law theories to conclude the state had special rights to control what pregnant women did with their bodies.

The case inflamed women's groups and civil rights advocates, prompting 66 amicus curiae briefs. Borden wrote for the court, which decided the case based on research of legislative history of two different proposed bills. One bill took a punitive approach. It would make all doctors mandatory reporters of their pregnant patients. In public hearings, representatives of the social sciences testified that the punitive approach would deter pregnant women with abuse problems from seeking needed medical help.

"We used legislative history which came out mostly in committee hearings on another statute, that was about how to deal with the problem of substance-abusing pregnant women. If that material had not been printed, it would have been very difficult, if not impossible, to use that information and to make that decision in that way," said Borden. "It was very, very useful." ■

The state of Connecticut has a valuable resource in its current collection of legislative history, and officials said simply halting transcription to paper and switching to audio might not be wise.

here's this problem, and it has to be solved, and here's this statute that's being proposed. You have people speaking against it, and for it. It's a very rich source of the meaning of the statute."

Pound Foolish

Experienced lawyer-lobbyist Bourke Spellacy, of Hartford's Updike, Spellacy & Kelly, said it would be penny wise and pound foolish to stop producing public hearing transcripts.

"To deprive the public and the courts of a