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NORCOTT, J., with whom BORDEN and KATZ, Js., join, dissenting. I disagree with the majority's conclusion that ''the judicial branch's administrative functions consist of activities relating to its budget, personnel, facilities and physical operations and that records unrelated to those activities are exempt'' from the scope of the Freedom of Information Act (act), specifically General Statutes §§ 1-200 (1) (A),[1] 1-210 (a)[2] and 1-200 (5).[3] The majority then applies this improperly restrictive definition to affirm the judgment of the trial court, concluding that records kept in the criminal/motor vehicle computer system (computer system) by the plaintiffs, the clerk of the Superior Court, geographical area number seven (clerk), and the state judicial branch (judicial branch), are not ''administrative'' records that are subject to disclosure under the act, as ordered by the defendant, the freedom of information commission (commission), pursuant to a request filed by an attorney, Russell Collins. Because the majority's flawed definition is the product of its miscomprehension of our case law, misplaced reliance on New York law, and failure to credit properly the legislative history of the act, I respectfully dissent.

I

I begin by noting my agreement with the undisputed facts and procedural history as described in the majority opinion, as well as the standard of review stated therein. I do, however, have serious misgivings about the majority's analysis of the primary issue on this appeal, namely, whether the computer system records are subject to disclosure under the act, which provides in relevant part that ''any judicial office, official, or body or committee thereof'' is a '' '[p]ublic agency' '' subject to the act, ''but only with respect to its or their administrative functions . . . .'' General Statutes § 1-200 (1) (A). Although the act does not define the term ''administrative functions,'' this court explained in *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, 192 Conn. 234, 243, 472 A.2d 9 (1984), that they are matters that ''relat[e] to the management of the internal institutional machinery of the court system.'' (Internal quotation marks omitted.) I believe that this court's subsequent decision in *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, 209 Conn. 204, 550 A.2d 633 (1988), provides helpful elaboration on which matters ''relat[e] to the management of the internal institutional machinery of the court system''; *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 243; and that the majority does not give that case its due regard. Before turning, however, to *Connecticut Bar Examin-*

ing Committee, it is instructive to explore the genesis of the ''internal institutional machinery'' standard.

In *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 235–37, a citizen had requested, and had been denied, notice of and access to all meetings of the rules committee of the Superior Court (rules committee), which is the body that considers and suggests proposed changes to the rules of practice. The trial court sustained the rules committee's administrative appeal from the decision of the commission concluding that the ''[r]ules [c]ommittee performed an administrative function within the [j]udicial [d]epartment,'' and ordering the rules committee to admit the citizen to its meetings. Id., 238.

This court affirmed the decision of the trial court, concluding that the rules committee's activities were outside the scope of the act. Id., 239. The court stated that, the ''central issue before us is the proper construction of 'administrative function' . . . since it is undisputed that the [act] itself applies, with respect to the [j]udicial [d]epartment, only to officials or bodies who perform administrative functions.'' Id. At the outset, the court noted the ambiguity of the term '' 'administrative,' '' as well as the lack of a ''sharp line of demarcation . . . between activities which are adjudicatory and those which are administrative.'' Id. The court also emphasized, in the context of applying the act to the courts, ''the extraordinarily sensitive issues surrounding the delicate balance among the coordinate branches of our state government.'' Id., 240.

The court first stated that the legislative history of the act, while ''provid[ing] little guidance for construction of the 'administrative functions' of the [j]udicial [d]epartment . . . does, nevertheless, reveal a legislative concern for the independence of the judiciary and a legislative intent to avoid a collision with the prerogatives of the constitutional courts.''[4] Id. The court concluded that ''[a]n interpretation of 'administrative functions' that excludes the judicial rule-making power is consistent with the analytic distinctions developed by scholarly commentators.'' Id., 242. It stated that, ''[i]t is the distinction between procedural and administrative rules that is at issue in this case. That distinction turns upon whether we are dealing with matters involved in the adjudication of cases, which are procedural, or with matters involved in the internal organization of large and complex systems of courts, which are administrative.'' Id. The court held that, ''[f]ollowing this analytic model, we believe it is appropriate to confine 'administrative functions' . . . to matters relating to the management of the internal institutional machinery of the court system.'' Id., 242–43.

The court then provided some explanation of the concept of the ''internal institutional machinery of the court system.'' (Internal quotation marks omitted.) Id.,

243. The court cited *Adams* v. *Rubinow*, 157 Conn. 150, 160, 251 A.2d 49 (1968), and stated that, in *Adams*, "[i]n rejecting the . . . probate judges' claim that [a statute providing for the appointment of a judge of the Superior Court to act as administrator of the unified Probate Court system] encroached on their inherent judicial authority to manage the affairs of their courts, we emphasized the limited responsibilities of the administrator, which 'concerned [only the] . . . efficient administrative, accounting and record-keeping procedures to be followed in the Probate Court . . . .' " *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 243. The court stated that the statutes describing the "duties of the chief court administrator and the executive secretary, respectively, provide further examples of administrative tasks. Those statutes speak mainly to the accounting, personnel, scheduling and record-keeping activities of the [j]udicial [d]epartment. They do not purport to extend delegation of legislative authority to the rules of practice."[5] Id., 245–46. The court noted that the "[r]ules [c]ommittee . . . plays no role in the management of the internal institutional machinery of the court system. It is charged, instead, with the responsibility of formulating rules of practice and procedure that directly control the conduct of litigation. It sets the parameters of the adjudicative process that regulates the interactions between individual litigants and the courts. Accordingly, we hold that the [r]ules [c]ommittee does not perform 'administrative functions' . . . and is not subject to the provisions of the [act]." Id., 246.

Several years later, this court discussed the "internal institutional machinery" standard in *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 204, wherein we considered an appeal by the commission from a judgment of the trial court sustaining an appeal by the bar examining committee (examining committee) from an order of disclosure by the commission. That order of disclosure was far-reaching. It required the examining committee to disclose "the following information pertaining to the bar examination given on July 27 and July 28, 1983: a list of the persons who read, scored or graded the essay answers; a list of all independent readers used by the [examining] committee for such examination; a list of readers, graders or scorers for each of the twelve essay questions; the criteria used to determine the competency of the [examining] committee's examiners, readers and scorers; the review procedure used to determine the competency of examiners; the standard deviation of both Part A and Part B scores; the average of Part A and Part B scores; guidelines as to conditions under which the bar examination answers may be graded; names of individuals who select examiners for the bar examination; names of the monitors of the examination; the criteria for determining that the number 264 quali-

fies an individual to practice law in the state of Connecticut; the purpose and meaning of that number as established in any rules or guidelines which the bar examining committee may have promulgated; and the criteria for using the numbers 254 and 274 as numbers which automatically require a rereading of essay answers by an independent reader.'' Id., 207.

The court concluded that, ''in selecting candidates for admission to the bar the [examining] committee is acting as an arm of the judiciary, but that in such a role some of its functions are administrative and . . . its records that relate solely to those functions must be made available to the public pursuant to [§ 1-210].'' Id., 206. Accordingly, this court remanded the case ''for further proceedings in the trial court to determine (1) which portions of the information [that] the [commission] has ordered to be disclosed concern only the performance of the [examining] committee's administrative functions, and (2) whether public access to the pertinent records may interfere with the performance of the [examining] committee's judicial functions.'' Id.

In so concluding, this court determined that, although the examining committee's task of determining whether an applicant is qualified for admission to the bar is analogous to adjudication, ''[i]t is not at all clear . . . that all of the records generated in this adjudicative process are wholly unrelated to the internal management of the court system or that all of them must be withheld from public view to avoid interference with that process. *For example, the duty of the [examining] committee set forth in Practice Book § [2-9] to certify to the clerks of the Superior Court in each county the names of the successful applicants to the bar can hardly be classified as adjudicative.*'' (Emphasis added.) Id., 209–10.

This court also stated that ''[t]here is an obvious distinction between the functions of the [examining] committee in determining whether applicants have satisfied the requirements for admission to the practice of law and in announcing the results of its deliberations. The role of the [examining] committee in establishing the criteria for determining the qualifications of applicants is similar to that of the rules committee of the Superior Court in formulating rules of procedure for adoption by the judges, a role that we have held is a judicial function within the meaning of § [1-200]. *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, [192 Conn.] 246. *Nevertheless, the promulgation of those criteria, like the publication of the rules of practice, plainly is an administrative matter.* The application of the standards for admission to a particular candidate, however, like the application of the law to the facts of a case, is a function of the [examining] committee that must be regarded as essentially judicial. *Some aspects of this*

adjudicative process, however, such as the compilation of scores on the examinations in a manner similar to the preservation of records of judicial proceedings in the clerk's office, may properly be classified as administrative.'' (Emphasis added.) *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 210.

In my view, the reasoning in *Connecticut Bar Examining Committee* demonstrates that ''records generated in [the] adjudicative process'' may be related entirely ''to the internal management of the court system,'' and, therefore, properly classified as administrative under the act.[6] Id. Put differently, a record may be administrative, and, therefore, subject to the act, even if it emerges from the process of deciding cases. See id. (noting that ''*aspects* of [the] *adjudicative* process . . . may properly be classified as *administrative*'' [emphasis added]); see also id. (comparing ''the compilation of scores on the [bar] examinations . . . *to the preservation of records of judicial proceedings in the clerk's office*'' and classifying *both* as ''*administrative*'' [emphasis added]).

I would, therefore, conclude that the computer system information in the present case pertains merely to the ''internal institutional machinery'' by which the judicial branch schedules and tracks pending criminal cases, and is not information affecting the decisional process in those cases, which is exempt from the act.[7] Under the reasoning of *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 210, the computer system information, which does not include records such as pleadings, briefs or memoranda of decision, is more closely analogous to the *promulgated* qualifications criteria or the *published* rules of practice. These are tasks that this court concluded were administrative in nature, as contrasted with the deliberative process of determining and applying the specific qualifications criteria or rules of practice, which we considered adjudicatory.[8] Accordingly, I would hold that the trial court improperly concluded that the computer system records in the present case are not administrative records within the meaning of § 1-200 (1) (A).

My conclusion that this case is controlled by *Connecticut Bar Examining Committee* is not swayed by several New York trial court cases that the majority considers illustrative of the difference between administrative and adjudicative functions. See, e.g., *Daily News Publishing Co.* v. *Office of Court Administration*, 186 Misc. 2d 424, 425–26, 718 N.Y.S.2d 800 (2000) (criminal court case records stored in computer database ''wherever located'' are not subject to freedom of information law because that law does not apply to state's courts); *Quirk* v. *Evans*, 116 Misc. 2d 554, 559, 455 N.Y.S.2d 918 (1982) (office of court administration is

not ''court,'' but rather ''agency'' subject to freedom of information law). These cases lack persuasive authority because both New York's court system and freedom of information statutes are structured differently than those of Connecticut. In New York, the state and local courts are completely exempt from that state's freedom of information law, but the office of court administration, which ''is not itself a court, but rather the courts' own support office'' has been held subject to it. *Daily News Publishing Co.* v. *Office of Court Administration*, supra, 426. Accordingly, although New York's office of court administration performs functions such as personnel, facilities and budgeting that are similar to those of Connecticut's chief court administrator, that office of court administration remains organizationally separate from the courts themselves, which are not ''agencies'' subject to the freedom of information law. See *Babigian* v. *Evans*, 104 Misc. 2d 140, 142, 427 N.Y.S.2d 688 (1980) (rejecting office of court administration's argument that it was exempt ''court'' rather than subject ''agency,'' because office ''does not exercise a judicial function, conduct civil or criminal trials, or determine pretrial motions'').[9]

Thus, New York's distinct organizational structure renders that state's cases wholly unpersuasive illustrations of the line between administrative and adjudicative functions that exist under Connecticut's act as applied to our court system. Had our legislature wished to do so, it could have used language limiting the applicability of the act to the office of the chief court administrator or to the judicial branch's nonjudicial business, rather than to the ''administrative functions'' of the judicial branch.[10] General Statutes § 1-200 (1) (A). Because our legislature did not so act in this case, I would not go down the majority's road of supplying limiting language that the legislature reasonably might have omitted intentionally, particularly when other statutes demonstrate clearly that it knows how to use such specific language. See General Statutes § 51-5a (powers and duties of chief court administrator);[11] General Statutes § 51-8 (a) (establishing office of executive secretary ''for the administration of the nonjudicial business of the Judicial Department under the direction of the Chief Court Administrator'');[12] see also *Ventres* v. *Goodspeed Airport, LLC*, 275 Conn. 105, 160, 881 A.2d 937 (2005) (''[w]e are not permitted to supply statutory language that the legislature may have chosen to omit'' [internal quotation marks omitted]).

Moreover, while seeking to divine the legislature's intent as to the meaning of the ambiguous phrase ''administrative functions,'' the majority gives inappropriately short shrift to the act's legislative history, which this court acknowledged in footnote 10 of *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 242 n.10. I note that the commission cites that footnote in support of its

contention that this court has considered jury dockets listing the names of litigants and counsel, the assigned judge, and the time and place of hearings to be records that are ''administrative'' in nature. In that footnote, the court discussed the legislative history of the 1977 amendment expanding the act's application to all courts, following the merger of the Court of Common Pleas with the Superior Court as follows: ''The limited scope of the act's intended application to the judiciary is evidenced by the remarks of the [commission's] representative, who testified before the [j]udiciary [c]ommittee in support of the 1977 amendment that, in the one case presented to the [commission] in its first two years of operation involving the [j]udicial [d]epartment, the [commission] had ordered the release of jury dockets listing the names of litigants and counsel, the judge to whom each case was assigned and the time and place each case was to be called. The [commission] representative further testified, 'I think that's a good example of what an . . . [administrative record] of the court is.' '' Id., quoting Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 1977 Sess., p. 548, remarks of Cliff Leonhardt, deputy secretary of the state.

Although this testimony is not a statement of a member of the legislature, and the record of the judiciary committee proceedings reveals no response to it from any legislator, it nevertheless is helpful to the extent that it demonstrates, at the very least, this court's tacit understanding in *Rules Committee of the Superior Court* of the breadth of the term ''administrative,'' as well as the parameters of the debate before the legislature. See *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 314, 819 A.2d 260 (2003) (''testimony before legislative committees may be considered in determining the particular problem or issue that the legislature sought to address by the legislation . . . because legislation is a purposive act . . . and, therefore, identifying the particular problem that the legislature sought to resolve helps to identify the purpose or purposes for which the legislature used the language in question'' [internal quotation marks omitted]).[13]

The majority's entirely new definition of ''administrative functions'' is, then, drawn primarily from New York trial court cases interpreting an entirely different statutory scheme from ours. Moreover, the majority's new definition functionally overrules the definition that *this court*—not a New York trial court—has fashioned and applied in both of our precedents to date. Thus, the majority has emasculated the act's application to the judiciary so that it applies only to those records of the judiciary that the public would be least interested in.[14] This has been done, moreover, without a shred of evidence, either from the legislative language, history or purpose, that that is what the legislature intended.

I, therefore, find the majority's analysis highly unper-

suasive and, accordingly, I reject its adoption of a bright line rule that ''administrative records are records pertaining to budget, personnel, facilities and physical operations of the courts and that records created in the course of carrying out the courts' adjudicatory function are categorically exempt from the provisions on the act.''[15] Indeed, if the legislature had intended the bright line demarcation that the majority endorses, it would hardly have drawn such an elastic and ambiguous phrase as ''administrative functions.'' Accordingly, I see no reason not to continue making the administrative/adjudicative determination on a case-by-case basis, and I can find no reason under the ''internal institutional machinery'' standard set forth in *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 243, to exempt a record from the purview of the act solely because it is in some way related to the mechanisms by which the judicial branch processes cases. I would, therefore, reverse the judgment of the trial court.

II

Because I would reverse the judgment of the trial court, I must address the plaintiffs' claim, posited as an alternate ground for affirmance, that the trial court properly concluded that the judicial branch need not disclose the computer system records because doing so would impede significantly the performance of judicial functions. This contention stems from our conclusion in *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 208, that records that are disclosable, as administrative records, under § 1-200 (1) (A), ''must be made available . . . unless doing so would in some manner interfere with the performance of judicial functions.'' In that case, this court noted that ''[w]e have construed the limitation to 'administrative functions' of the public disclosure provisions of the [act] as applied to the judicial department to be designed to accommodate, rather than infringe upon, the independence of a constitutional court in performing its historic functions. . . . To the extent that public access to any of the records ordered by the [commission] to be disclosed may reasonably be considered by the [examining] committee to impede significantly its performance of that [judicial] function, the [examining] committee would be justified in refusing such disclosure.'' (Citations omitted.) Id., 210–11. This court also noted that the trial court had not made any findings on these essentially factual issues. Id., 211. This court, therefore, remanded the case to the trial court for further proceedings for this factual inquiry. Id.

This case presents a similar problem. Before the commission, the plaintiffs presented testimony to the effect that, for the period in question, January 2, 2002, through January 29, 2002, there were between 250 and 500 cases entered into the daybook of geographical area number

seven. Because there were numerous cases involving the sealing of files, such as pretrial alcohol education, pretrial drug education, pretrial school violence prevention, and youthful offender cases, each paper file would need to be checked against the corresponding records in the continually updated computer system in order to redact duly exempt information before permitting disclosure. This was very time consuming; for example, it took four to five hours to check a mere two days' worth of cases that way. There was also testimony to the effect that, if the clerical staff were required to comply with the commission's order, it would impact negatively their ability to assist the court in its judicial functions by providing, inter alia, courtroom coverage, writing up and disseminating court orders in a timely fashion, preparing files for the court, taking oaths and applications for the diversionary programs, and preparing mittimuses.

The commission, in its decision, attempted to craft an order that would accommodate both the legitimate concerns of the judicial branch about performing its adjudicatory functions and shielding exempt information, and the right of the public to those aspects of the computer system that are legitimately open to it. The commission's decision provided as follows: ''Section 1-211 . . . requires a public agency to provide data from a computer system 'if the agency can reasonably make such a copy or have such a copy made.' It is found that new administrative procedures may be required to guarantee the timely entry of new data concerning exempt records into the [computer system], in order that its records can be available for public inspection at certain periodic intervals to be determined by the . . . [j]udicial [b]ranch. However, it is also found that such new administrative procedures would be reasonable, and therefore that the records requested can 'reasonably' be made available from the [computer system] for at least periodic inspection, as envisioned by § 1-211 . . . . 'Periodic' might combine with the concept of 'reasonably' to mean once a month, at the end of every week, or at the end of every day. The definition of a reasonable period might also change over time as technology improves or based upon budgetary and staffing constraints.'' In its formal order, the commission referred specifically to this paragraph as follows: ''The . . . [j]udicial [b]ranch shall periodically allow [Collins] to inspect the requested records of the [computer system]. The enforcement of this order shall be stayed for ninety days, in order to allow the . . . [j]udicial [b]ranch to implement such procedures as it considers appropriate concerning the periods for public inspection and the timely entry of new data by its staff into [the computer system] . . . . These procedures should be designed to continue the guarantee that exempt information is not disclosed due to error.''

The trial court, however, did not make any findings

or rulings with respect to this highly fact intensive issue, which, therefore, I believe would require consideration on remand. Therefore, consistent with our approach in *Connecticut Bar Examining Committee*, I would remand the case to the trial court for a further hearing on this issue, including the closely related questions of whether: (1) compliance with the commission's order would impede the adjudicative process; and (2) the judicial branch reasonably could, after establishing new procedures, make available the information sought.[16]

III

Finally, the plaintiffs presented, as an alternate ground for affirmance, that even if the records are disclosable as administrative records, they are exempt from disclosure pursuant to § 1-210 (a); see footnote 2 of this dissenting opinion; and General Statutes § 54-142k.[17] I disagree with this contention.

The plaintiffs' contention is as follows. Section 1-210 (a) provides that public records are disclosable "[e]xcept as otherwise provided by any federal law or state statute . . . ." The plaintiffs point to § 54-142k as such a statute, arguing that it "requires agencies to make conviction information available to the public, [but that] pending court case information is criminal history record information . . . not conviction information." From this, the plaintiffs argue that Collins "was not entitled to the data pursuant to . . . § 54-142k unless he was the subject of the criminal history record information he was seeking," which he was not because he was neither a defendant nor a defendant's attorney of record.

First, § 54-142k is part of part II of chapter 961a of the General Statutes, which is entitled "Security and Privacy of Criminal Records." That is a comprehensive statutory scheme designed to govern the preservation of criminal history records, and to place appropriate limitations on the disclosure of those records. It is obviously not designed to cover court dockets and the information contained therein. Indeed, if it were, it would mean that, under the plaintiffs' argument, all criminal court dockets of pending cases would not be disclosable under any circumstances—irrespective of the act—to anyone except to the persons involved. That would directly conflict with the constitutional presumption of openness of criminal court records and with the provisions of the rules of practice. See *Hartford Courant Co.* v. *Pellegrino*, 380 F.3d 83, 96 (2d Cir. 2004) ("docket sheets enjoy a presumption of openness and . . . the public and the media possess a qualified [f]irst [a]mendment right to inspect them"); cf. *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589, 597–98, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978). Such an interpretation would generate a potentially grave separation of powers issue. This court does not read statutes to do so, particularly the act. See, e.g., *State* v. *Lutters*, 270 Conn. 198,

217, 853 A.2d 434 (2004) (''in choosing between two constructions of a statute, one valid and one constitutionally precarious, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent'' [internal quotation marks omitted]).

I would, therefore, reverse the judgment of the trial court and remand the case for a hearing to determine whether: (1) compliance with the commission's order would impede the adjudicative process; and (2) the judicial branch reasonably could, after establishing new procedures, make available the information sought. Because the majority fails to reach this conclusion, I respectfully dissent.

[1] General Statutes § 1-200 (1) provides in relevant part: '' 'Public agency' or 'agency' means:

''(A) Any executive, administrative or legislative office of the state or any political subdivision of the state . . . and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions . . . .''

[2] General Statutes § 1-210 (a) provides: ''Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein. Each such agency shall make, keep and maintain a record of the proceedings of its meetings.''

[3] General Statutes § 1-200 (5) provides: '' 'Public records or files' means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.''

[4] The court stated that when the act was ''first enacted in 1975, the reach of the [act] within the [j]udicial [d]epartment was limited to the [administrative functions] of the inferior courts established by the legislature; it did not apply to the constitutional courts at all.'' *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 240. A proponent of the act explained that the reason that this court and the Superior Court ''were not included [in 1975] is that there is a grave constitutional problem in legislative rule-making for constitutional courts.'' (Internal quotation marks omitted.) Id., 241. The constitutional courts were included in the scope of the act in 1977, ''at least partly in response to the merger of the Superior Court with the Court of Common Pleas,'' although the applicability of the act remained ''limited . . . to the undefined 'administrative functions' of the [j]udicial [d]epartment.'' Id.

[5] I note, however, that some of the administrative duties set forth in these statutes, General Statutes §§ 51-5a and 51-9, relate specifically to caseload management. See, e.g., General Statutes § 51-5a (a) (1) (chief court administrator ''shall be responsible for the efficient operation of the department, the prompt disposition of cases and the prompt and proper administration of judicial business''); General Statutes § 51-9 (7) (executive secretary shall

''[e]xamine the state of the dockets of the courts of the [j]udicial [d]epartment to ascertain the need for assistance by any court and to implement programs for the fair and prompt disposition of cases therein''); General Statutes § 51-9 (17) (executive secretary shall ''[d]esign, implement and maintain . . . computerized automatic data processing systems for use in the Supreme Court, Appellate Court and Superior Court or divisions of the Superior Court''); General Statutes § 51-9 (18) (executive secretary shall ''[s]upervise administrative methods employed in clerks' offices and in the various offices of the Supreme Court, Appellate Court and Superior Court'').

[6] I note briefly the plaintiffs' reliance on *Fromer* v. *Freedom of Information Commission*, 43 Conn. Sup. 246, 649 A.2d 542 (1993), aff'd, 36 Conn. App. 155, 649 A.2d 540 (1994). In *Fromer*, the trial court determined that the commission had lacked jurisdiction over the official court monitor's tapes from a pending case because ''the tape recordings of court proceedings are involved in the adjudication of cases and not in the management of the internal institutional machinery of the court system, and, therefore, are appropriately determined to be 'nonadministrative.' '' Id., 251. I consider *Fromer*, like the present case, to be limited to its facts, and, in any event, neither binding on us nor dispositive of the present case. See id., 252 (''this is a case limited solely to whether the commission correctly concluded that it had no jurisdiction to decide the plaintiff's complaint'').

[7] Moreover, as the commission points out, my conclusion that the computer system records are ''administrative'' finds further support in chapter 7 of the Practice Book, which prescribes the court clerks' administrative duties with respect to caseflow management. See, e.g., Practice Book § 7-1 (''[t]he clerk shall keep a record of all pending cases, including applications and petitions made to the court, together with a record of each paper filed and order made or judgment rendered therein, with the date of such filing, making or rendition''); Practice Book § 7-2 (clerk's general duties including record keeping, issuing executions on judgments and receipt of fines and forfeitures); Practice Book § 7-3 (accounting of receipts and disbursements); Practice Book § 7-4 (requiring clerk to keep ''daybooks in which to enter each case on the date upon which the matter is filed on a docket of the court location'').

[8] I discuss briefly the majority's flawed treatment of *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 204. The majority, quoting the court's statement in that case that, ''the application of the standards for admission . . . to a particular candidate . . . is a function . . . that must be regarded as essentially judicial''; id., 210; states that ''[i]t seems clear, therefore, that a request for the names, addresses, dates of birth and status of the pending applications of all applicants to the bar for a particular period would not be covered by the act. If the application of bar admission criteria to an individual applicant is not an administrative function then, a fortiori, the adjudication of individual criminal cases is not an administrative function and records created for the purpose of carrying out that function are not subject to the act.'' The majority then explains that such records are, therefore, exempt from the act because ''the keeping of records for the purpose of scheduling and tracking individual cases and parties is an activity undertaken by the courts for the primary purpose of facilitating their ability to carry out their core judicial function.''

I agree with the majority's conclusion that records such as a list of the bar examination takers are, indeed, analogous to the computer records at issue herein. I part company from the majority because records such as a list of the examination takers do not involve the actual application of the testing criteria. Thus, although the list described by the majority would be subject to the act, the actual score and comment forms used by graders in the evaluation of a particular candidate's examination would be exempt as ''adjudicative'' documents similar to, for example, a pleading, a law clerk's memorandum to a judge, or a draft opinion.

[9] Only ''agencies'' are subject to New York's freedom of information law. N.Y. Pub. Off. Law § 87 (McKinney 1988). Under that law, an '' '[a]gency' '' is ''any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the *judiciary* or the state legislature.'' (Emphasis added.) N.Y. Pub. Off. Law § 86 (3) (McKinney 1988). The '' '[j]udiciary' '' is then defined as ''the courts of the state, including any municipal or district court, whether or not of record.'' N.Y. Pub. Off. Law § 86 (1) (McKinney 1988).

[10] I also must address the majority's contention that reading together

subdivisions (1) and (5) of § 1-200; see footnotes 1 and 3 of this dissenting opinion; yields the conclusion that, although all records are administrative by their very nature, not all records necessarily emerge from an ''administrative function'' of the judicial branch. I view this position as a combination of both stating the obvious, and shedding no light on the core question in this case, namely, what an ''administrative'' function is.

[11] General Statutes § 51-5a provides: ''(a) The Chief Court Administrator: (1) Shall be the administrative director of the Judicial Department and shall be responsible for the efficient operation of the department, the prompt disposition of cases and the prompt and proper administration of judicial business; (2) shall meet periodically at such places and times as he may designate with any judge, judges, or committee of judges, and with the Probate Court Administrator to transact such business as is necessary to insure the efficient administration of the Judicial Department; (3) may issue such orders, require such reports and appoint other judges to such positions to perform such duties, as he deems necessary to carry out his responsibilities; (4) may assign, reassign and modify assignments of the judges of the Superior Court to any division or part of the Superior Court and may order the transfer of actions under sections 51-347a and 51-347b; and (5) may provide for the convening of conferences of the judges of the several courts, or any of them, and of such members of the bar as he may determine, for the consideration of matters relating to judicial business, the improvement of the judicial system and the effective administration of justice in this state.

''(b) The Chief Court Administrator may establish reasonable fees for conducting searches of court records. No federal, state or municipal agency shall be required to pay any such fee.''

[12] General Statutes § 51-8 provides: ''(a) There shall be an office for the administration of the nonjudicial business of the Judicial Department under the direction of the Chief Court Administrator.

''(b) The Chief Court Administrator shall appoint an executive secretary, who shall hold office at the pleasure of the Chief Court Administrator. The salary of the executive secretary shall be fixed by the Supreme Court. The executive secretary shall be a member of the bar of the state and shall not engage in the private practice of law.''

[13] Indeed, I also must note my disagreement with the majority's characterization of this judiciary committee testimony as unpersuasive because it was given two years after the original enactment of the act in 1975. On the contrary, the timing of this testimony makes it particularly persuasive because it was offered in support of the 1977 bill that expanded the applicability of the act to the ''administrative functions'' of the constitutional courts after the merger of the Court of Common Pleas with the Superior Court. Prior to 1977, this simply was not an issue because the act did not apply to the constitutional courts.

[14] I believe, and the majority appears to agree, that much of the material at issue here would be disclosable to the public under traditional constitutional principles of access to judicial records. See, e.g., *Hartford Courant Co.* v. *Pellegrino*, 380 F.3d 83, 96 (2d Cir. 2004); see also *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589, 597–98, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978) (''It is clear that the courts of this country recognize a general right to inspect and copy public records,'' but that the common-law ''right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.''). I do, however, have grave reservations about the result of the majority's decision, and its new, highly restrictive definition of ''administrative function,'' namely, that a member of the public who is wrongfully deprived of such access will be forced to hire an attorney and bring a plenary lawsuit—with its attendant expense and delay—rather than employ the administrative machinery of the commission, which was instituted to guarantee the notion of freedom of access to public records.

[15] In questioning the utility of the ''internal institutional machinery'' standard, the majority expresses concern that other judicial documents might also be considered administrative under that standard, namely, records pertaining to the preparation of trial transcripts, motions and ruling thereon, and ''even records pertaining to the assignment of the writing of appellate opinions to individual judges . . . .'' I emphasize that the present appeal is confined only to the status of the computer system records at issue herein, and that I express no opinion as to the availability or lack thereof under the act of other judicial records, which may well turn on provisions of the act not presently before us. See, e.g., General Statutes § 1-210 (b) (1)

(“[n]othing in the Freedom of Information Act shall be construed to require disclosure of . . . [p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure”).

[16] It may be that the judicial branch could fashion, reasonably and within appropriate staffing and budgetary restraints, new procedures, including new computer programs, that would comply with the commission’s order while also continuing to shield exempt data. It also may be, however, that ninety days is an insufficient period of time for satisfying the commission’s order, or that even with more time, it would be too expensive and too difficult, or take too much “clerkpower” away from the process of adjudication. Alternatively, it may be that some other time period and some other solution, somewhere in between these two extremes, may be more reasonable. I would leave it to the trial court to resolve these issues in the first instance.

[17] General Statutes § 54-142k provides: “(a) Each person or agency holding criminal history record information shall establish reasonable hours and places of inspection of such information.

“(b) Conviction information shall be available to the public for any purpose.

“(c) Any person shall, upon satisfactory proof of his identity, be entitled to inspect, for purposes of verification and correction, any nonconviction information relating to him and upon his request shall be given a computer printout or photocopy of such information for which a reasonable fee may be charged provided that no erased record may be released except as provided in subsection (f) of section 54-142a. Before releasing any exact reproductions of nonconviction information to the subject, the agency holding such information may remove all personal identifying information from it.

“(d) Any person may authorize in writing an agency holding nonconviction information pertaining directly to such person to disclose such information to his attorney-at-law. The holding agency shall permit such attorney to inspect and obtain a copy of such information if both his identity and that of his client are satisfactorily established; provided no erased record may be released unless such attorney attests to his client’s intention to challenge the accuracy of such record.

“(e) Any person who obtains criminal history record information other than conviction information by falsely representing to be the subject of the information shall be guilty of a class D felony.”