

## Salem Listening Session

Kathy Eneguess: Good afternoon and welcome to the final listening session for the New Hampshire Citizens Commission on State Courts. I welcome you this afternoon to Salem High School and we look forward to anything you have to say. If you haven't had a chance yet, we do have some cards in the back of the room with some, an outline if you wish to have further information. I'm just going to walk through kind of who we are and what we're about at this point. So, again, welcome, this is our final listening session to be held. We have now held including this one, eleven listening sessions throughout the state. My name is Kathy Eneguess and I am from Jaffrey and also I'm the President of the New Hampshire Community Technical College in Berlin and my colleague here is our co-chair for the Citizens Commission, Will Abbott who is from Holderness and the Executive Director of the Mount Washington Observatory. Today's sessions will have two parts, this afternoon from three to five and then this evening from six to eight. Just a word about who the commission is. We are a group of one hundred individuals that were appointed by the Chief Justice of the Supreme Court in April of 2005 to independently assess the foundation and structure of the delivery of justice by the state court system from the perspective of the 1.2 million citizens of this state and to make recommendations for improvement. Thomas Jefferson once wrote that the price of liberty is eternal vigilance. The commission sees its role as providing part of this eternal vigilance to assure that the courts of this state are doing what they were intended to do under the New Hampshire Constitution and that in doing so are meeting the expectations of the people whose liberty the Constitution protects. If public trust and confidence in the judiciary cannot be sustained, our liberty itself could be placed in jeopardy. The commission is interested in your thoughts about how the state courts work. We are interested in learning what you think the key issues facing the New Hampshire courts to provide jurisprudence. We are interested in your ideas that you may have for improvement in the judiciary and its delivery of services. Your input can be had in many ways. Not only in form of oral comments this evening and this afternoon, but at...the other listening sessions are certainly gone by but we still have a couple of ways. If you'd like to join us on our web site, I can give that to you. That is [www.nhcritcourts.org](http://www.nhcritcourts.org). We also have the availability for comments by email and that email address is [public01@nhcritcourts.org](mailto:public01@nhcritcourts.org). Keep in mind that all of your comments made today by email, or by snail mail, which you can find at post office box 419 in Concord, New Hampshire. The zip code is 03302-0419. All of your comments, keep in mind, are part of the public record and will be distributed to all one hundred members of the commission. We've also conducted a public opinion survey, the results were released last week. And the results are now part of the commission's work. We have moved into our research phase and the survey will continue to inform the commission. All of your comments are part of the public input. The public input will be shown to all of the commission members and the commission will be continuing to seek public comment through December fifteenth through not just the web site but as I stated by snail mail at our post office box. We will be then deliberating over the course of the beginning of 2006 and we hope to conclude our work by May of 2006. We have met now four times as a full commission, our next meeting for our public commission is going to be Tuesday, January 17<sup>th</sup> in Concord. Meetings are open to the public but as you can imagine because we have one hundred

members, all of whom like to have their participation time, we have limited our, the participation time at the full commission meetings to observation only. We have had many people come but then send us comments following the commission meetings. Just a few things about how we conduct ourselves this afternoon and this evening. I will serve as moderator of this session, from three to five and Will will do the same this evening. My role is to assure that each person attending who wishes to make comments has the time to do such and in an effort, initially, if many people do come this afternoon, and to make your time as productive as possible, we will ask that you try to limit your comments to a fairly short period of time so that everyone that does come has an opportunity to speak. We do request that you fill out the three by five card. I have noticed that a couple of you have and I will take those cards in order. We have asked for your name, address and phone number so that if we have further question, we can get back to you. And you can turn those cards into Julie Morris who sits over here and Julie will then bring them up to either myself and or Will. I have a couple of suggestions as you think out loud about your comments. We do suggest that you avoid any temptation to retry any case that you have been involved in, but we do ask that you do think about what are the types of things that you took away from that experience. What suggestions you would make to the courts and to the commission for improvements. And what improvements can be made if you believe that the courts function well or maybe not so well. Does anybody have any questions as we proceed at this point in time? (pause) Go ahead, sir? (unknown speaker): Can this be an open dialogue with folks asking questions?

KE: No, we are here just to listen, so this will very much be a one-way conversation. We have designed this as a listening session for ourselves as well as other members of the commission who will introduce themselves shortly, but it will not be a dialogue. If you do have questions and you have other suggestions, as I suggested earlier, you can send them into the web site, but at this point in time it is not a back and forth and even if you do that for the web site we are not promising to have a conversation. Any other questions about our process this afternoon? I see other members of the commission in the audience, would you like to identify yourselves? How about starting right up here in the back yard? Ray Taylor: Ray Taylor. I'm from Rockingham County Superior Court.

KE: Thank you, Ray. Paul?

Paul Clements: I'm Paul Clements and I represent divorced fathers.

Larry Gilpin: Larry Gilpin from Amherst, New Hampshire.

KE: Thank you very much. Well at this time I'd like to call on the first individual to join us. Again I just want to reiterate that we would also request that you avoid using individual judges names or individual lawyers names. This is really about the experience that you had and how we can improve anything to do with the judiciary. Yes, sir, may I help you?

(inaudible)

KE: Another question.

(inaudible)

KE: I'm sorry, I, wait until the (laughing) (PA system overheard). Thank you, I'm sorry. I missed the last section.

(unknown speaker): If we are reading in honor of or quoting from an (inaudible) or we have information relating to a (inaudible) document, is that possibly (inaudible) right to know law? (inaudible) use that individual name?

KE: What we would suggest is that you outline what is the issue and it doesn't necessarily have to be that individual's name but if there's a specific order that you want the commission to read that is a public document at this time, then we will get that information to the entire commission. But we would-

(unknown speaker): Is there any specific reason because my understanding is that we're trying to be as open as possible and the fact that we can't use an individual's name that may appear on a public document seems to me that that may be somewhat a contradiction.

KE: Well, that's how we've been running all the sessions and we have decided to continue to run them all the same, but if you have other information that you'd like to share that is already on the public record then we will get that to all the members of the commission. Any further questions before we begin? (pause) Ok, I'd like to call on Anne Burgess to join us up here. If you'd like to come down and join us at this table then all of your comments can be put on the record. (pause) Yup. Welcome.

Anne Burgess: Thank you and thanks for listening to me ahead of time. With great interest I have been following online your open forum and those who have been speaking to the commission. First I would like to commend the commission for their utmost patience in listening to what I perceive as constant ramblings and negativity towards the courts from disgruntled ex-husbands. Speaking as an ex-wife and mother of two children, I can only express gratitude that there is a court system in this great state of New Hampshire that is in place where there is hope for justice. My experience since 1982 until the present time with the Rockingham County Superior Court has been long and painful but through no fault of the court system. The court has fulfilled its obligations eloquently and respectfully time and time again. It is the ex-husband who has not. Now, unfortunately we will go forward to the Supreme Court where I pray this matter of child support will finally be put to rest. It appears to me that certain individuals could be relying on the hopes that by having their verbiage documented here in this forum and then sent forward to the Supreme Court for viewing that their outcome in their own upcoming hearings in the Supreme Court could be swayed. In other words, it appears as though they are attempting to pre-try their Supreme Court hearings in this forum. My recommendation: it is my wish that instead of wasting your valuable time listening to these individuals attempting to retry their cases and slanting their stories in their favor, that you would request them to stay on track with facts and solutions instead of desecrating their ex-wives. And I realize of course that you have been repeatedly, repeatedly stating that request. From my personal perspective, the court system in New Hampshire is doing their utmost to expedite cases as best they can with understaffed personnel. My recommendation is to fund the court systems appropriately in order to fully staff the courts so that they in turn would have the ability to keep the never ending cases flowing more timely. Thank you for allowing me this opportunity to express my opinions. Thank you.

KE: Thank you very much. And next we have Gary Grimaro.

Gary Grimaro: Good afternoon.

KE: Welcome, Gary.

GG: Thank you. I do have copies of a few specific items that I'd like the commission to-

KE: Ok.

GG: - consider, I guess.

KE: Thank you.

GG: But in general, I think um, my comments are about family law, or family court in particular. And I believe that the problems associated with family law or family court is that there is very little in the way of law that governs the family court. And I think judges are put in a precarious and awkward position having to rule on things without having law to abide by. Now I say that, obviously they do have some laws, but very few laws that they can use to determine specifics, and I know you can't litigate or write laws to govern all instances and there are cases where flexibility and the judges best understanding is required. But the family law system needs to have more guidelines, more structure and more standards that to take away from the judges, I guess, inability to be expert in so many different fields. Tax accounting, business evaluation, real estate law, child psychology, etceteras. So, it's an unrealistic expectation to have judges...allowed to rule on things of such magnitude. One particular case or one area that I think the court system does have a nice structure to use and that's the support payment guidelines. It's a formulaic process and even though both sides may not agree on the results, at least there's a standard formula by which they can follow to determine what those payments are. I think that's great and it removes a lot of the acrimony involved in, you know, allowing the judge to make rulings based on his personality, how he feels one particular day or another. So the more law that can be supported for decisions, the better off the whole system will be, in my opinion. Now I have a few specific items...let's see, you're probably familiar, I'm sure you've heard many times at these sessions the House Bill 529 which will standardize a fifty-fifty custody split for children between the husband and the wife. I believe that there's no argument to the contrary to that when two people are married, the court system does not have any involvement in the upbringing of those children. When the family is broken apart then the court all of a sudden can decide how much time the children should spend with one parent or the other. That to me doesn't make any sense, it should start out logically with fifty-fifty. Fifty percent to the dad, fifty percent to the mom, paternal and maternal influence is required in all children upbringing and to have a heavier weight put on maternal or paternal influence doesn't make any sense and I don't think the court should have, they don't have the ability necessarily to decide who gets what. So it should start out as fifty-fifty unless there's a obviously legitimate reason to not have fifty-fifty whether it's a whatever, abuse case or something like that that's proven through the court system. The second item would be temporary hearings, so the first temporary hearing or temporary hearings, I understand don't and pardon my lack of civics understanding, but my personal experience, I had a temporary hearing and it was done by offer of proof and I understand that the way the law works, it's either by offer of proof or an evidentiary hearing. By offer of proof there's virtually a waste of time in most cases because you submit stacks of documents to the judge, the judge never has time to read those documents, so the rulings are made based on, you know, an attorney's philanderings in front of the judge without any, without any ramifications to whatever they say. So in other words, they're not under oath, they can say basically whatever they want. Both parties can, etceteras, etceteras. If the temporary hearings, and I understand the argument against that was because temporary, if it's done by evidence would take too long, well the fact is if the temporary order is written in favor of one or the other then the acrimony begins and depending on how it works out, there's no interest in getting the divorce complete if it turns out to be favorable for one or the

other. So then you have umpteen hearings which end up taking much more time than the original evidentiary process would have taken. So, if the court system gets it right in the temporary hearing, then that would eliminate a lot of the acrimony going forward, in my opinion. The third is limited enforce, so these are now specifics, interrogatories. This is part of the structure and laws that seem to be totally up in the air and obscure or limited in this family court process. The number of interrogatories, I understand there is a standard, it's fifty interrogatories, but that's left to anybody's, you know, guess, nobody can say yes there are fifty interrogatories during discovery or not. How those interrogatories are counted, is it question number one with twenty five sub, sub-questions, are those twenty five individual questions or is it one, that to me just should be plain. It's every question, it was one question or not, I don't know, but it should be a standard and nobody apparently follows a standard. So that should be left as a standard. If it's going to be fifty questions, fifty questions and how those questions counted. If they want to have more questions, there should be requested by a process, whether it's motioning the court or whatever. Sorry, two more. The rules for support payments as outlined by these guidelines, how are those, how is the income specified. That again is seemingly arbitrary and there should be a rule that says it's based on your current income that should be supported by a standard document, pay stub, most recent pay stub, most recent six pay stubs, what have you, along with prior years tax returns and then if there are corrections that need to be made because there might be some question as to the validity of those pay stubs, then the, the coming years tax returns should be used as a statement to, you know, the verification of those pay stubs. Let's see....and I guess the presumption of innocence. The family law does not seem to proceed the same way and again, pardon my civics misunderstanding, but does not proceed the same way as criminal law does in that allegations can be brought forward without any proof or any evidence and those are accepted by the court, the family law court. And then it ends up ninety nine percent of the time the burden ends up being on the accused to prove their innocence. That's not the way the court system normally operates is my understanding and that's not the way family court should operate. That's it.

KE: Thank you very much. So, you're going to leave those for us?

GG: Sure.

KE: Great.

GG: Bring them to you?

KE: Yup. Thank you. Thanks, Gary. Dave Coltin?

Dave Coltin: Ok, thank you for the opportunity to speak to you, I've been following this online and looking forward to speaking today. If anyone is interested once you hear what I have to say I do have some documents here and simply pick them up if you like and review them.

KE: And would you like those filed with the commission as well, sir?

DC: Yes.

KE: Ok, thank you.

DC: Ok. I prepared information. What I'm going to do is just briefly go over it. Some of it I'd like to go over in more detail. So if there is time after I make my comments and everyone else has been heard then what I'd like to do is to come back so I'll just briefly go over some of the prepared comments. It is my intent to provide you with sufficient information to warrant an in depth look at my complaints in order to justify my

recommendations which are: provide a scan of all documents on which a judge's decisions are made and make these available for public view. One of the worst things a judge can do is ignore or misstate the critical facts or critical issues in a case. Scanning is now implemented in other states at various levels of the justice system. It needs to be implemented in this state both in the court system and in particular the professional conduct committee and the judicial conduct committee. The second proposal will be met with vigorous opposition, just explain that if they can't see that they've brought this upon themselves then they have no argument. The first proposal will be argued against because of cost simply cite your motto, the price of liberty is eternal vigilance. Second recommendation, recommend that the Attorney General's office model its right to know law not being used in the state of Florida where state agencies commissions and other governmental bodies are encouraged to seek advice. The state of Florida publishes opinions on a weekly basis, I have not seen any published by our Attorney General here to date and only two in 2004. My third recommendation is provide a hard copy of the rules of professional conduct and the code of judicial conduct to all individuals who come in contact with the legal system. My fourth recommendation, ask for and implement the recommendations of halt dot org, a professional conduct committee watch dog and restore the time period of six years in which to file a claim. Now these recommendations are based on my experience in the judicial system and it's been going on now, well actually since my divorce and that was back in '88 but I'm really just going to cover 1994 to the present and I'll make it as brief as possible. But eleven years ago I was arrested in Rockingham County on two misdemeanor offenses of stalking. I asked for a jury trial and was prosecuted in Portsmouth District Court. The case was dismissed after three months of pre-trial hearings. Seven months later I returned to Portsmouth District Court and filed charges against my accusers and asked for a preservation of video-tape evidence. I also indicated that I was filing charges against the present county attorney at the time. I was denied access to the court, I was told by the judge, who was the judge that had actually sat on the case and who actually issued the dismiss order, dismissed order, that lacked jurisdiction. It was quite obvious that what he was doing was simply protecting the county attorney. That falls under the guise of not being allowed access to the court system. Three years later I re-filed charges. This time against the Rockingham county attorney, also members of the Londonderry Police Department. In 2001 and 2002 I filed Professional Conduct Committee complaints and then I filed what's called a rule eleven petition which is what's called an original jurisdiction petition and it simply states as I understand it that if the case had originally gone to the Supreme Court then hopefully the Supreme Court would have ruled differently on the case. Central to all of my filings and all of my arguments is the fact that the state up to this point has refused to...give me certain probable cause documents. And the reason that they haven't is simply because they don't exist. Every attempt that I try to get them or every attempt that I try to make the state make an admission that they don't exist meets in failure. There was one positive result that took place just actually less than two weeks ago and I received a letter from the present Attorney General and hopefully I'll have time to discuss that letter in more detail, but there's a very strong statement that I want to make. Let me give you a little bit of background. Um...beginning in September of last year I wrote to the Attorney General stating my case and I began writing to the Governor shortly thereafter. On May eleventh of this year I received a letter from the Governor indicating that he had received my

correspondence, thanking me in sharing me for my thoughts and suggestions. As I mentioned, I received a letter dated October twenty eighth, 2005 from the Attorney General and she indicated in the letter that she disclaims any acts of wrongdoing by certain individuals that I had stated in a previous letter. This in itself presents a very serious situation for it implies that the Attorney General has made a determination of fact by reviewing documents that do not exist. It also implies that one of us is lying. I have been threatened by the Londonderry Police and the Rockingham County Attorney's office. The only reason they have not been sued is because they would then have to produce the documents I've been asking for. The Attorney General ignored my concerns from December of last year until I received this present letter. It is my belief that in June of 2005, the Governor asked the Attorney General to review my concerns and that she purposely ignored him until the issue of the Attorney General's appointment was resolved. I believe that the Governor made a recent follow-up request and she could no longer ignore him. Frankly by submission of this letter, the Attorney General has extended the cover-up to her office. It also questions her willingness to hold accountable members of the justice system who have violated the law. Now this is a strong statement and it can easily be resolved simply by requesting the Attorney General to submit the documents in question before this commission. I am forwarding a copy of this letter to the Attorney General and therefore it will serve as a request. I understand that she's a member of the commission, based on the guidelines of the commission to be open based on the fact that these documents are documents that should have been provided to me initially based upon my arrest and based upon the fact that there has been a right to know order that exists from the Rockingham County Superior Court. There shouldn't be any question that she should release these documents. This will, this will give her an opportunity to show that she's worthy of the praise that was bestowed upon her by the Governor and members of the Executive Council one month ago. Ironically it may also require that Governor Lynch may have to make a decision on his Attorney General for covering up whereas Governor Benson was forced to make a decision on his Attorney General for not covering up. This also raises questions as to why it took six months for her to issue a statement and was the delay politically motivated. Additionally I have serious concerns that she's set up her senior investigator to act as a scapegoat something that I will expand later, probably in writing.

KE: Sir, do you have a specific recommendation. I, I'm, I'm hearing you share with us your experience and a letter that you've received but what would you take away from that experience?

DC: Ok, what we take from this is really access to, access to the court and access to certain documents and in particular whether or not an individual who was then filing complaints against the state is going to be allowed to receive the documents that he's entitled to. The reason that I bring this up and actually I was hoping to come back but let me go over it right now because really what we're talking about is really important state interest. And the reason I say that is because this case has been going on for eleven years and as I said it has gone through a, a District Court, a Superior Court, it's gone through Professional Conduct Committees, it's gone to the state Supreme Court and it even went to the U.S. Supreme Court. And as I said, central to all the arguments is the fact that the state has made certain allegations and then refused to put forth those documents or refused to provide them. So, based on what the intent of the commission is to correct

hopefully the injustices that we're seeing, my issue is that if the Attorney General were to be forthcoming immediately, that we can clear up a lot of these issues and it certainly would give you a lot more credence and credibility to all these other statements that you're hearing that we have a judiciary that simply does not account. So why don't I stop there and we'll listen to what everyone else has to say and then I'll give you a little bit more details to support some of the facts. Thank you.

KE: Thank you. And the documents that you'd like the commission to see are located here, if you would give those to Julie or you can bring them to this table is fine. I have no more cards at the moment, would anyone else like to join us this afternoon? (pause) Dave, if you'd like to join us for a few more minutes, I would suggest again to try and help us with some recommendations and not to retry your case because we really can't do anything about that.

DC: Ok. Ok. In my package of documents I have a letter from a federal court judge. And I'm going to read that letter and I understand you're probably going to stop me midway, that's your prerogative, but I'll ask you not to do it. And the reason I'm going to read it is because obviously this gentleman was well known, he was a county attorney and obviously he'd been making a number of mistakes and errors in the system. And my argument is that because we don't have an effective measure of accountability standards, that rather than move this gentleman out of the system simply what they did was allow him to continue doing his job and there's no doubt in my mind that there are probably a number of people who have been in jail or probably are in jail simply because the committees or the people that should be overseeing his work didn't do their job.

KE: If we are going to have this as part of our record, anyway, I would again suggest please let us know what your recommendation is. The entire commission can read this document.

DC: Ok. I'd like to read the document. Are you saying that I can't?

KE: Well, why don't you begin and if I need to stop you, I shall.

DC: Ok, well let me just say what it is this a letter that I acquired from the town of Londonderry Police Departments as a result of a right to know request. The particular letter was written by the Londonderry attorneys to the town of Londonderry simply informing them of a pre-trial hearing that took place in federal court and Judge (name omitted) actually was the-

KE: We're asking no-

DC: Ok.

KE: - names and I am asking, sir, that we find out what the lesson is you learned from this and what you're suggesting.

DC: Well, I think I was pretty clear up front and what I'm saying is that rather than allow certain individuals to remain in the judicial system and have a serious impact upon people's lives there should be a mechanism by which these individuals are held accountable. And what we need to do is we have to look at the work of the...Professional Conduct Committee and I cited that initially but if you look at it from the standpoint of how many people have been held accountable, it's really minimal. And those facts are on record and I suggest that you take a look at them.

KE: Well, that's a very helpful part of your suggestion, but reading an individual letter is really not what the commission is interested in, they're interested in a broader perspective. So, that will be helpful.

DC: Well, I understand that, I understand that may be your opinion however it is a public document and I would like to read it.

KE: Well, you're going to whether I ask you to or not-

DC: (laughs)

KE: - so it's very clear to me you're going to.

DC: Well, again this is from a federal judge commenting on a certain county attorney. And what he says is after hearing only Mr. Coltin's resertation of the facts of this case, this particular federal judge expressed his opinion that the plaintiff has an excellent case and it seems quite clear that both the Londonderry Police Department and the Rockingham county attorney whom the judge claim to know as the source to numerous problems and errors had acted inappropriately in their dealings with Mr. Coltin. Frankly, I never observed this particular judge to be quite so free with his criticisms and opinions as he was during this particular conference. Obviously in light of the magistrate judge's strong feelings in favor of the plaintiff in this case we did not agree to have this case assigned to him as we had previously discussed. Now the point that I'm making is that we have some serious issues here in New Hampshire when we allow this type of individual to continue to do his practice and again I'm going to get back to the, the Professional Conduct Committee and what took place there if I can.

KE: If you have a specific recommendation that would go very broadly, not about an individual.

DC: Ok.

KE: But what can we take away as a full commission.

DC: Ok, what you can take away as a full commission is that if you are responsive, if you are here for the benefit of making this open and you want to make some strong recommendations, then what you are going to do is you're going to discuss, hopefully and you'll come to the conclusion that you're going to ask the present Attorney General to provide certain documents. Now either she's going to provide the documents or she's not going to provide the documents. If she provides the documents then she can come back and she can file slander against me. If she doesn't file the documents then all the information that you've been hearing, the fact that we have biased judges, they're not accountable, they act in their own interest and whatever will have a lot more credibility. And in particular what we're saying is that now we have a certain situation where a particular criminal case was tried and prosecuted in the county. It was then heard at the federal level, it was then heard in the Professional Conduct Committee and then it was heard in the Supreme Court and not one person was willing to say that hey we have a problem here. They have not provided the documents simply what they did is they covered up the fact and I think this is consistent. We can't forget the fact that we had the first impeachment trial of a Chief Justice in the United States in over two hundred years. And I regard this particular case as a report card and I think it should be addressed and I'm looking for comment from the members as to whether or not you're going to ask the present Attorney General to provide those public documents that she should have turned over when I first contacted her back in September of ninety four. Thank you very much.

KE: Thank you. Does anyone else wish to join us this afternoon? (pause) Thank you. It's twenty minutes of four, we will be here until five PM if anyone else wishes to join us and have comment to, for the commission, we will reopen this listening session. Thank you.

KE: It is five PM and we are closing the listening session now.

END OF AFTERNOON SESSION.

EVENING SESSION TO FOLLOW:

Will Abbott: - We're interested in learning what you think are the key issues facing the courts and their work to provide jurisprudence to the state and we're interested in your, in ideas that you may have for improving the New Hampshire judiciary and its delivery of jurisprudence. Thomas Jefferson once wrote that the price of liberty is eternal vigilance. The title of the book there. And we look at this work that we're doing as part of that eternal vigilance. The input that you provide is going to be posted on our web site. We will transcribe all of the comments made, we're recording the session tonight so we can transcribe it verbatim. You can also submit written comments via our web site at [www.nhcitcourts.org](http://www.nhcitcourts.org). Or by mailing through the regular mail to the commission at post office box 419, Concord, New Hampshire, 03302. We recently completed a public opinion survey with the University of New Hampshire's Survey Research Center. The results were released last week to the public through the media. And the web site will have this, the detailed public opinion survey with all of the questions that were asked and the responses posted shortly. The public input gathered by the commission here is actually going to be used, thanks, as part of a deliberative process that will start early next month for two and a half months from the middle of December through the end of February. We will be dividing or breaking the commission up into eight separate or actually nine separate research groups. These nine groups will report by March first specific recommendations that they would like to see discussed by the full commission and the full commission in March and April will go through a deliberative process of deciding which of those recommendations brought by the research committees that the majority feel should be advanced to the Chief Justice. It's our hope that we will have this project wrapped up by the end of May and so far we're on schedule. I will serve as moderator of the session. My role is to assure that each person attending who wishes to make comments has the time to do so. In an effort to make your time as productive as possible, I'm going to ask everybody to limit their comments. Ordinarily I'd say five minutes but since we have only two people who are scheduled to speak so far, we're not going to be too harsh with the gavel. I would request that if you wish to speak, you fill out a card with name and address. Julie, over here, would take that and give it to me. I also want to state just for the record that you avoid the temptation to try and retry a case you may have been involved in before the courts. First of all it's probably not possible to do this in five minutes and secondly the commission doesn't have an opportunity to reverse court orders. We're not an adjudication body here, we're simply a public, a group of public volunteers who are trying to get information to make constructive recommendations to the judicial system itself. So, if you can direct your comments to recommendations that you believe we ought to consider as we deliberate, that's really what we're here to listen about. Before we get going, does anybody have any questions on process? (pause) Michael?

Michael Brewster: You said you're volunteers, but yet you're being paid.

WA: I am? By who?

MB: I'm not sure. I thought there were some paid employees here.

WA: No.

MB: Ok. All right.

WA: No, I, my paying job is as the Director of the Mount Washington Observatory and quite honestly some of my trustees are beginning to wonder when I work for them, but I am a volunteer here tonight, so and I have been, I agreed to do this as a volunteer.

MB: Ok. (inaudible)

WA: Well,-

MB: Thank you for volunteering.

WA: Right. Any other questions? (pause) Ok, well we'll get going. Katie? I'm not going, Mennow?

Katie Merrow: Merrow.

WA: Merrow, I'm sorry. M E R R O W. Ok. Welcome, if you could have a seat over here Katie and just speak into the microphone so we get the ability to transcribe your remarks. I appreciate it.

KM: Thank you. How's that?

WA: That's good.

KM: It doesn't sound like you can hear it but Julie will be able to later.

WA: Right.

KM: My name is Katie Merrow. I'm from the New Hampshire Center for Public Policy Studies. We are an independent data-based non-partisan research group. We study a variety of issues that affect public policy in New Hampshire from corrections policy at the state and county level to education funding, county government, juvenile justice, Medicaid, health data, we work on a variety of issues. We have been hired by the courts to evaluate the juvenile drug court programs in New Hampshire by the Office of the Administrative Justice of the District Courts as well as the Robert Wood Johnson Reclaim the Futures Program which is a grant program to improve alcohol and drug treatment for youth in the court system. The Center takes a keen interest in the availability, public availability of data and the quality of data around state programs and the court programs in New Hampshire. And the issues I want to speak to tonight are in that area. I'd like to ask the commission to consider two areas in that, first the collection of data on race and gender and second just the availability, public access to aggregate court data and de-identified case data. Those are the areas we wanted to bring to your attention. First, regarding gender and race. Currently the courts do not collect any data on the race or ethnicity or gender of people involved in the court system. Therefore they do not have the ability, the courts do not have the ability to determine with certainty whether the courts respond fairly and the same to people from different racial and ethnic groups. As an example of why this is important, we know from, the Center did some research on commitment rates to the Youth Development Center, or the YDC, which is the state's only secure institution for juveniles and we found that rates of commitment to the YDC varied very significantly by court jurisdiction even when we controlled for types of offenses. For example, certain jurisdictions had higher rates of commitment although they did not have higher rates of violent offenses brought before that court. We were not able to see whether it correlated to ethnic or racial differences in the offenders because that data wasn't available in the courts. The Division for Juvenile Justice Services recently has done their own research from their database and, and has reported that there is disproportionate confinement of minority youth in New Hampshire that is, that the percentage of minorities, that there's a higher percentage of minorities locked up in the

state's secure facility for juveniles than there is, than the minorities appear in the general population. They've been doing some research to see at what points in the judges, the justice system that disproportionality occurs and have found that not only, for example, African-American youths are twice as likely to be confined in the YDC as a white youth, once arrested. And white youth are four times more likely to be diverted from the court system and I wanted to call that in particular to your attention because I know some citizens have raised the issue of court diversion as a way to improve the court process and I would encourage you in supporting those efforts if the commission decides to do that, to do so in a way to ensure that those kinds of programs would be equally accessible to minorities. And there's different ways to do that but one, you know, one thing to consider is certain diversion programs for example charge a fee, or it costs a hundred and fifty dollars to do a diversion. It's, you don't have to pay to go to court and certain families in lower income brackets may make a choice based not on which route they'd rather, they'd prefer but what they're able to afford. So I would call that issue to your attention. The courts have decided, my understanding is that the courts intend to address this deficiency when they go to the statewide Odyssey database and they do have plans, I've been told, to collect information on race and gender. We would urge you to support that effort but also encourage you to suggest that the courts begin collecting data immediately and not wait for Odyssey to be fully implemented. It's going to be at least two years in certain jurisdictions before Odyssey comes on line and to have a two year, an additional two years where we have no data on race, gender or ethnicity of people that come before the court system, to me would, to the Center would be a loss that we could do something about. The courts could begin collecting it in the current database in sustain, it's possible, it's technically possible to do that. They would have to make the decision to address it and decide to do that. So that's the one issue is race, gender and ethnicity, information on that. The second issue is just regarding public access to aggregate data on court operations and de-identified data on court cases and this is an issue that there is a separate task force. The task force on Public Access to Court Records which is addressing this. And we have spoken to that committee and shared our views with them but I did want to call it to your attention, too, as well. The... specifically the Center would recommend that the public have access to the maximum extent possible to aggregate data on court operations. For example, time to trial, salaries, vacancy rates, case loads, anything that could have a bearing on an analysis of cost effectiveness of say court processing versus diversion versus another type of...taking care of a case. That all that information should be publicly available and also data on individual cases provided it's de-identified in a way that protects privacy should also be made publicly available with Odyssey, with the coming online of the new state database, Odyssey database. New Hampshire as they modernize the court database system will have the capability to put all kinds of things online and I know that task force is addressing the choices that the state should make in that regard. But I think the citizens may want to weigh in as well. The, if the data, the data can be encrypted in order to protect confidentiality. It can encrypt a person's name or number or delete towns from information but you can still put that data out and make it publicly available in aggregate or even individual records online in a way that people can track and research the effectiveness of the court system to allow the courts to know whether they're doing a good job as, and not only the courts but also to help measure the effectiveness of other public programs. For example, to study recidivism rates of people

who go through different programs, or different court programs, different public programs or other court programs. The Center would strongly suggest that your commission support that, that that data be made publicly available. The issues of confidentiality can really be addressed, the state RSA-91, Section 10 of RSA-91A, the right to know statute addresses the issue of for example if a, they call it if a cell size is less than four, but basically if there's a certain type of crime or a certain town where you get down to maybe there's maybe four cases in that area that that data would not be made publicly available because even if it were de-identified, a person might be able to determine who the individual was. Those issues are already being addressed by that statute. The courts could use those guidelines to determine how and what they're going to make publicly available on the web, but only if information is made publicly available will we be able to look at the effectiveness of different programs and will the courts be able to manage their own programs and the effectiveness of court operations. I guess in closing, I would say that these issues seem somewhat arcane, related to data collection and quality but I think they are critical to the courts ability to know whether it's responding to all citizens who come before it in a fair and equitable way as well as to know how effective the courts are and different, other state programs, also are, that affect people that are involved with the court system. So those are really the areas we wanted to bring to your attention. I thank you for the opportunity to talk to you.

WA: Thank you for coming.

KM: Ok. I will leave with you one of our reports, just for your reference that contains the data I referenced on disproportionality in terms of minority confinement, minority (inaudible).

WA: Is that available in electronic form?

KM: It's available on the web in electronic form. It's a report on teen drug use and juvenile crime. On page nine it addresses the disproportionate rates of commitment from the YDC as well as confinement in the Youth Detention Center.

WA: Could you leave Julie your card with your web site on it so we can-

KM: Yes.

WA: - put a link-

KM: That's fine.

WA: - on our web site to that?

KM: Sure.

WA: And if there's any other, either reports or information you think we would benefit from...

KM: I'd be happy to pass them on.

WA: Yeah, that'd be-

KM: Because there's a lot of reports but as we continue on the juvenile drug court study I think you might be particularly interested in that. That that, a lot of, we have some interim reports on that but the more final reports will be coming out in a year or two on that because we need time to track the kids as they go through the system. The only thing, other thing I would just note on the disproportionate minority contact is that research is really just beginning in New Hampshire and I would commend the Division for Juvenile Justice Services for investigating the issue but we don't, in a lot of areas they don't know, they know in some jurisdictions but in many jurisdictions they don't know if the disproportionality that is having a higher chance of being confined is due to difference in

severity of offense for example. In some jurisdictions that research has been done, they know it's not. In others it isn't known and to the extent that the courts begin collecting that data it just will let them go farther in figuring out where exactly the problems occur and then determining what interventions, working with those communities to determine appropriate interventions if they are needed at all. But until the information is there, they really can't take those steps. Thank you.

WA: Thank you again for coming.(pause) Michael? I don't have a card but I assume you would like to speak.

Michael Brewster: I'm kind of talked out, but one thing that she brought up as a citizen-WA: Do you want to sit over here so we can record the comments?

MB: Michael Brewster, Pittsfield. As a citizen, why...why am I having so much problem at trying to get an accountability from the government on anything I ask? I mean...there was a Massachusetts court that already came down on DCYS back when they were audited in eighty something saying that they should write down, keep records on cases and...those records ain't kept anymore. They don't...people who write and complain to the Attorney General's office or DCYS, those records should be out there to the public. And there is no place according to (name omitted) that a complaint is filed. Those files, those people who write in complaints as if I wrote in a complaint which I have, I expect the public to see them complaints. I don't expect them to be thrown in the trash and just forgot about. And during their audit, the audit said that they should categorize these and just as aggressive as the courts are, they're beyond that, they're immune from prosecution so they forget it. They don't keep records like that anymore. Um...I think that it's wrong that the government is unaccountable and not responsible for their action. I don't know. I talk too much. It's just a crime, that's all I have to say.

WA: Is there anybody else who would like to make comments? (pause) I think-would you like to-

Nicolette Brewster: I suppose I'd like to make a comment. My name's Nicolette Brewster. I'm the daughter of Michael Brewster. I'm sure you guys all know him pretty well. Um, all of his anger and everything that comes from him basically has stemmed from what happened to me as a child. I'm not really here to complain or anything. I just want to see the checks and balances that the system is supposedly going through to ensure what happened to me doesn't happen to other people. And in doing that, you were speaking about data and stuff. Data on the actual foster families that children end up in, for example before a foster family gets approved to take in children, and this isn't just in my case, this is in multiple cases which I personally know about in different cities, different foster homes, all different sorts of families and race was an issue in one. They were different races in these cases. I know that it's hard to find foster families, you know, but to have them be better evaluated before having the ability to take in children. Spot checks, better background checks, maybe more thorough follow-up in the families. Maybe follow up with the children and such. I know from my case and from other cases of which, no names obviously necessary, abuse did take place in foster homes and foster families weren't necessarily fit. For example in my case, it was very unfit, very unfit.

MB: It's a crime.

NB: Well, outside of that. (laughs)

MB: But who do you report it to?

NB: But exactly, who would you report it to? Now as a child in a home, usually you don't, you know, you don't know, you don't understand why you're there sort of thing and so-

MB: (inaudible)

NB: - a lot of that stuff goes unreported. But when you get older and you get to look back at things you realize, you know, a lot of the things that were wrong and if there's any sort of, I know right now there's no checks and balances on that but maybe more thorough follow-up into these cases. And into the children that are actually put into the situations. Maybe if not right after they get returned to their home, maybe provide an adjustment period but then have someone statistically follow up on these cases to ensure that, you know, that proper families are being used. Cause it's children. (laughs)

MB: Now your sister was in foster care, was she not?

NB: Yeah, actually that was one of the cases.

MB: And now, now did you not have to.....lie, didn't you have a whole program that was set up that was all lies just to sneak, make things float through you and didn't the proper people know about these lies? Just to make things work and slide?

NB: Well, yes but I was not going to use that for a reference. But my mother passed away and I'm well capable of taking care of my sister, but they had initially, right after she had passed away, they put her in a foster home. Now they, she was the oldest, she was twelve, the oldest of multiple children, but they had two, they had a set of twins, two years old. And my sister witnessed the woman smacking one of the kids and I saw the bruise. Now after I saw that I went into the state and I, there's usually a due process where you, you know, you go through the courts but I was able to pull certain strings because...and yet they still have those children. (laughs) Nothing was ever done about that but I was able to get my sister with a little less...little less problems than I probably would have had outside of that because I was so young at the time. But again even with her I still haven't had any check, I haven't had any spot checks. I don't, they could, it wouldn't bother me at all. But even, again after I was appointed full guardianship there was no spot checks. So for all the state knows I could be neglecting her and no one would know, or, you know, there was no follow through with that and it's too bad. Because in my, I mean in my case, you know-

MB: She started smoking at nine. She had an eleven year old kid babysitting and they're stealing kids from parents that had their eleven year old kid babysitting. There's a case right in Concord where they took the child away from the family because the mother had to go to the hospital early in the morning, she didn't have a babysitter. And her husband was gone and so because that woman left an eleven year old child babysitting a seven, they took that child away from the mother. They had an eleven year old babysitting her and they're smoking cigarettes.

NB: That was a long time ago. (laughs)

MB: But who do you complain to when you see damages?

NB: Yeah, well-

MB: Her mother was a junkie. Her mother was allowed to take her two kids and go and get her shots down in Mass and drive from there home and they hit a telephone pole. On a straightaway. You think that the state was responsible for that accident and you think they'd.....

NB: But, anyway to conclude, um, when it comes to children to have more thorough follow-up with the cases that are brought through the state and the foster homes and even after they leave the foster homes. Again my name is Nicolette Brewster.

WA: Thank you, Nicolette.

MB: But then when they're eighteen they forget about them.

NB: Yeah. My sister's eighteen now, going to be eighteen.

(pause)

WA: There being no other people to testify, I think what we'll do is suspend the meeting. We'll stay here until eight o'clock but I certainly don't expect those of you who are here to stay with us.

END OF SALEM LISTENING SESSION