Bill as Introduced

SB 300- AS INTRODUCED

2000 SESSION

00-2724
03/01

SENATE BILL ***300***

AN ACT establishing a committee to study the administrative functions and procedures of the state court system.

SPONSORS: Sen. Brown, Dist 17; Sen. Roberge, Dist 9

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a committee to study the administrative functions and procedures of the state court system.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 300- AS INTRODUCED

00-2724
03/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT establishing a committee to study the administrative functions and procedures of the state court system.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Committee Established. There is established a committee to study the administrative functions and procedures of the state court system.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study the administrative functions and procedures of the state court system. The committee shall examine the court system from the perspective of the consumer, and shall develop recommendations for reducing the costs of litigation and appeals, improving public access to court information, and increasing public confidence in the judicial system. The committee's study shall include, but not be limited to: Access to court records, documents, and resources; transcript services and costs; fair and impartial assignment of judges; and effective handling of complaints against judges. The committee is authorized to conduct hearings at any location in the state to receive public input.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2000.

6 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: **JANUARY 12, 2000**
Time: **10:20 AM**
Room: **103 State House**

The Senate Committee on **Judiciary** held a hearing on the following:

SB300 ***establishing a committee to study the administrative functions and procedures of the state court system.***

Members of Committee present: *Senator Pignatelli*
Senator Gordon
Senator Brown
Senator Cohen
Senator Wheeler

The acting Chair, Senator Katherine Wells-Wheeler opened the hearing by introducing Senator Mary Brown, prime sponsor of the bill.

Senator Katherine W. Wheeler, D. 21: Senator Gordon is in the Education Committee right now, and will be over shortly, I trust. So, I will open the hearing on SB300, and I'll call on the prime sponsor, Senator Brown, who has already indicated that some of the supporters, or, people who are interested in the bill, were unable to come at the short notice given by our calendar. And, I know that other committees have ... Senator Cohen gave me the courtesy of recessing a hearing to a later date when more people could be here.

So, I'm assuming, that as I'm going to turn over ... any second ... as soon as he [Senator Gordon] sits down, that the Vice Chair of the Committee, Senator Gordon, that he, too, will be amenable to the notion of recessing this hearing, rather than closing it. Welcome ... Senator Gordon, and you're in charge now. The only person besides Senator Brown, who is here as sponsors, is Judge Kelly ...

Senator Mary E. Brown, D. 17: Good morning ... thank you, Senator Wheeler, Senator Gordon. There is one other person who wants to speak, but didn't put her name on the list.

This bill, I think, is pretty straight forward. And, looking over it ... it speaks for itself. I don't know about you folks, but I've been getting calls since I was elected to the Senate, from constituents who seem to have some concerns. I don't if those concerns are founded, or upset people, or what they are. But, I

think that this bill will look at a number of issues that they seem to be talking about, so therefore I think it's worthwhile. I'm not going to say anymore, I think there will be other folks who will have a lot more to say about it, and I do appreciate it if you could recess it.

Senator Edward M. Gordon, D. 2: Just ... if I could just ask a question ... the scope of this seems to be pretty broad. Do you have something more narrow ...

Senator Mary E. Brown, D. 17: You want to narrow it down?

Senator Edward M. Gordon, D. 2: Yes. This is "...establishing a committee to study the administrative functions and procedures of the state court system." This seems ... like a ... just a huge ....

Senator Mary E. Brown, D. 17: I think later in that paragraph it gets a little more specific, it talks about access to court records, documents and resources, transcript services and costs. Fair and impartial assignment of judges. Effective handling of complaints against judges ... I don't know if that's narrow enough, but ... perhaps we can discuss it.

Senator Edward M. Gordon, D. 2: Okay, thank you. Judge Kelly?

Senator Katherine W. Wheeler, D. 21: Did Senator Roberge want to testify?

Senator Edward M. Gordon, D. 2: Senator Roberge, I forgot ... I'm sorry. You're a co-sponsor of the bill ...

Senator Sheila Roberge, D. 9: Oh, yes ... I agree with Senator Brown, I would like to ask for a recess and postpone this hearing.

Senator Edward M. Gordon, D. 2: Okay, thank you. And, Judge Kelly, did you want to speak? You recognize that this is going to be heard again? Would you rather speak today, or would you rather ... later?

Judge Edwin Kelly: I'd just as soon speak to you, it'll only take two or three minutes. Thank you, Mr. Chair, for the record my name is Ed Kelly, I'm the Administrative Judge of the District Court, and I'm here this morning for the Judicial Branch to speak in opposition to the bill. But, I want to be careful that you don't misunderstand our opposition to this. I think that after HHS and DCYF, the Judicial Branch is probably the most studied governmental entity in NH, and that's not necessarily a bad thing, from my point of view. But, it is precisely the point.

I think there comes a time when the number of studies that are ongoing at any given time can actually be ineffective in terms of achieving what your goals are. And, there are a considerable number of committees and studies that are ongoing right now, and have been ongoing. I think it's important just to acknowledge those, and frankly that those committees have covered a lot of the issues that are included within this bill. It may be possible that people who are unaware of those committees who are not on those committees could be added to

them so that some of these concerns can be addressed there, instead of two or three different places. So, for example, there's the Inter-Branch Criminal and Juvenile Justice Council that includes members of the Legislature, members of the public and so forth. That council has just recently been looking carefully at alternatives to incarceration and there've been two conferences held and have invited a large number of people to study those issues. There is a technology committee on that council that is working very hard to integrate the technology of the courts with the technology of the rest of the criminal justice system. For example, the Department of Safety is heavily involved in that as well.

The JC as you know, studied family law in the courts, and that inspired the Family Division, and the reports that came out of that. It is also now, the JC is studying full time judges in the District and the Probate Courts. That's a study that's ongoing, and again, the JC includes members of the Legislature and members of the public.

There is the ... of course, the fiscal committee under the Family Division that is going to be heard this afternoon. There is a further study of the fiscal committee audit of the entire judicial branch, that is going to be done later on this year. The court improvement project in the District Court that's looking at abuse and neglect cases, and specifically, how those cases are processed that involves children being removed from homes, and so forth.

Then ... there were things like the flexible scheduling committee out of the House, that Senator Pignatelli worked on that looked at how cases were scheduled in the District Court and so forth. So, there's a large number of them ... the JC Committee ... speaking about complaints against judges ...you know that there has recently been a change in the rules followed here, by the Supreme Court, having to do with the way those complaints are handled. And, the Conduct Committee is constantly looking at these issues ... and that committee itself, actually contains more lay people on it now, than it does judges. So, there is some significant involvement there.

The bottom line is ... I think ...that there are many, many of these studies ongoing, and it's not to say that there aren't other issues that ought to be studied, but what I'm trying to say is ... I think there does come a time when there are so many studies ongoing that it does become an ineffective way of trying to get to the problem. And, one last think that I'd mentioned is ... it is a common occurrence for me, as an administrative judge, and I know the other two admin. judges share this experience ... to receive letters and communications from citizens who have cases pending in the courts who have difficulties either getting access to records, or getting their cases heard speedily. And, those cases ... those letter and those complaints are dealt with on an individual basis as we try and look at our system to see what it is that may be causing the problem. And, one brief example, it had been very difficult to get copies of anything that happens in the District Court ... you would have to actually get a transcript, which is a very expensive process, and within the last two years, we have changed our rules so that someone can actually just get a copy of the tape that's made of the proceedings, which is a very inexpensive way to get a record of the case that you had in a DC.

So, again, I think that many of these things that are ongoing ... and from my perspective anyway ... they are addressing, and have addressed many of the issues that in the bill. I'd be happy to answer any questions right now.

Senator Burton J. Cohen, D. 24: I believe Senator Fernald ...

Senator Mark Fernald, D. 11: You went through all those studies faster than I can write them down, and that's not a criticism. This bill ... in Section 3 goes from the general to the specific real quickly. It talks about the administrative function, which is pretty general, but then it starts ..."examine the court system from the perspective of the consumer," ... "develop recommendations for reducing the costs of litigation and appeals." And ... I guess my first question for you would be ... the list of studies that you went through, do you feel that these particular limited topics have been studied?

Judge Edwin Kelly: I ... I think that they have. And ... they either have, or in the process of being studied. The access to court records, for example, there's a committee between the Administrative Council of the Court and the Bar Association that is looking at how we can make our records electronically available to lawyers and to the public ... so that someone can come to a counter instead of having to put a request in writing for a record, they can just call it up on a screen. That day is not far off ... I don't know when it is, but it certainly is being studied actively right now.

Cost of litigation ... I think, is wrapped up in things like the ADR studies that the Superior Court has been involved in over the last five years, and has instituted that I think, has dramatically reduced the amount of waiting time to get into court, and ... I'm sure, the expense.

So, I think ... I think those issues are being studied again. It's not to say that there aren't other issues ... and there will always be issues that we ought to be taking a look at. It's just that to say from my point of view that we have ... we are in the midst of a time when the Judicial Branch is being heavily studied, both internally and externally by a number of groups, and it might be more effective to take a look around at all the various committees that are at work to make sure that these issues are being addressed by them, and if they are not, to see whether these issues can be fit into those other studies, as opposed to creating another study committee that's going to be another study on top of these.

Senator Mark Fernald, D. 11: Follow up? The part that jumped out at me was the perspective of the consumer, in part. I think there's been an attempt at different layers of government ... different parts of the country, to encourage government to treat the public as consumers ... who the government exists to serve the public, and they should get the same respect and response that a private, for profit organization would give. And ... I think the reason why this has been a movement in the country, is because too often the response that the public gets from government is not as you would expect as a consumer. It's not timely, and it's not to the point ... and, from my own personal experience with the court system, I think that sort of criticism is perhaps, valid with the

courts. And, when I see costs of litigation as an issue here, it's not so much ... can we win litigations the way they are? I mean I think it's valuable ... but, it's more a question of how is the court functioning in a way doing it's job? Whether a case has to go ... when a dispute is brought to the judiciary to be resolved, is it being done in a way that is efficient ... not just for the courts, but for the consumer. And, it seems as though too often the perspective of the courts is, this is worth a try, so it must be working. And, yet, there's too much that isn't working for the consumer ... and, since you're from the District Court level, I'll give you an example ... which is, the DC that asks everyone to show up at nine in the morning ... civil and criminal ... knowing full well that they always have at least an hour of criminal arraignments from nine to ten. And, the civil people show up at nine, perhaps five cases with two lawyers on each case, and the clock is running on whatever per hour ... and there's no recognition that it's costing people money for no good purpose.

And, sometimes the clock is running on DCYF type cases, or even criminal cases where there's counsel being paid by the state ... we're costing ourselves money, because of the way we schedule cases. And, I'm concerned ... I don't know whether that's been addressed anywhere ... the studies that you've brought up, and ... at least from my own experience ... that's the one thing that has irritated me from the start, and continues to irritate me. I hate to bill clients for time when I'm twiddling my thumbs ... but the courts require me to do that.

Judge Edwin Kelly: You raised a terrific point ... I mean, I don't disagree with anything that you've said. I think that happens to be one of my irritants as well. It's an issue that we've dealt with in several courts around the state, fairly effectively, to get them to look at other ways of managing their caseload.

Ah ... if I were to know about that court, or those courts, that are doing that on a routine basis, then I would speak with those courts directly. And, that's what I was referring to earlier ... about information that I get from members of the public or members of the Bar, about different problems in the various courts around the state. I'm not sure that a statewide study is going to necessarily address those issues any more effectively than you and I having a conversation about a court that you're dealing with on a regular basis that does that, would in fact ... in fact, I think that our conversation would be a much more effective way of dealing with that.

I think the whole issue of cost of litigations ... it's a big issue, and it doesn't just obviously involve the courts. It involves members of the Bar as well, and it isn't just those times when people are sitting around waiting for their cases to be heard that the costs are driven up. But, you know ... I do think that ... again, I don't want to say that study is not a good idea. I'm one who believes that study is a very good idea. Because I think that as parts of a government, we need to have people who are constantly looking at us and criticizing us and causing us to do self-evaluation. My sole point is, that there are so many studies ongoing, and there are other avenues by which problems that you've raised today can be addressed even more effectively, that we ought to be looking at those.

You know ... this is probably not relevant to this particular bill, but my own sense inside the judicial branch is that if we're not there now, we certainly ought to be at a point where we're able to have this discussion about problems within the branch ... in a way that doesn't require such formality. We ought to be able to sit down with you or any member of the legislature that says we think you have a problem in this particular area, and come up with a solution to it. Or, you ought to at least be able to say to me, what do you think about that practice ... and if I were to say, I think it's a great practice, they ought to making people sit around, well, then you've got a real issue with me.

And, if I say ... I think it stinks, and I'm going to address it ... then, you don't get [sic] an issue with me. But, I think that we ought to be able to communicate on a less formal basis and without massive studies.

Senator Mark Fernald, D. 11: Just one further point, which is ... certainly we can have a conversation ... most people in the legislature aren't lawyers, and so, they don't have the same experience and sometimes a study committee is valuable because it sheds light on an issue, and it makes people in different seats take notice. And, again, I'll speak to my experience as a lawyer ... it's difficult for lawyers to speak up and say ... there's a problem here. Because, we know that the squeaky wheel gets the grease, but as a lawyer in court, the squeaky wheel gets stomped. And, you're afraid that ... you may get a negative reaction from the judiciary.

And, the one time I raised this issue about scheduling at the Superior Court level, it was ... dismissed ... it was a non-issue. And, it certainly is an issue. And, as a lawyer, I didn't feel that I could squeak any more than I had that one time ...

Senator Burton J. Cohen, D. 24: Further questions from the committee? I see none, thank you.

Judge Edwin Kelly: Thank you very much.

Senator Burton J. Cohen, D. 24: Chair number 3 calls Carolyn Douglas?

Carolyn Douglas: I'd be happy to speak, but I understood that we were recessing this? I'd reserve my comments, because I have a big packet of exhibits that aren't fully prepared and I'd like to have the exhibits into the record.

Senator Burton J. Cohen, D. 24: Anyone else wishing to speak? At this point in time ... Mr. Haas ... did you want to say something?

Joe Haas: Same thing, I'd like to reserve a spot until next time, please.

Senator Burton J. Cohen, D. 24: All right. I see no one, we will recess the hearing to the call of the Chair. Thank you.

THE HEARING ON SB300 RECESSED AT 10:35 AM on January 12, 2000

NEW HAMPSHIRE SENATE
107 North Main Street
Concord, NH 03301-4951
(603) 271-2111
TDD Access: 1-800-735-2964

TO: Senate Judiciary Committee
FROM: Shannon Gorrell
DATE: January 13, 2000
RE: **Preliminary hearing report on SB 300,** establishing a committee to study the administrative functions and procedures of the state court system **(Senate Judiciary Committee, 1/12/00)**

Sponsor: Sen. Brown, Sen. Roberge

What the bill does: This bill establishes a committee to study the administrative functions and procedures of the state court system

At the request of the sponsors, this hearing was opened and recessed until a later date. Sponsors and members of the public were invited to give testimony at this hearing or make an introductory statement only and give full testimony on the rehearing date. Therefore, the following information is incomplete.

Who supports the bill: Carolyn Douglas, Joseph Haas

Who opposes the bill: Judge Ed Kelly, for the District Court;

Testimony report: Judge Kelly testified that there are already several studies of the court system underway, including those with legislative participation. These include the Court Improvement Project, as well as studies involving the Flexible Schedule Committee, the Judicial Conduct Committee, the Judicial Council, the Legislative Fiscal Committee Audit (reporting on both the family division and the entire court system), and the Interbranch Criminal & Juvenile Justice Commission. In addition, complaints received by the courts are investigated on an individual basis. Judge Kelly feels that undertaking too many studies would prove ineffective, and that the issues set out in SB 300 could all be approached either through an existing study or group, or addressed informally.

Senator Fernald pointed out that SB 300 focuses on how the court system works for the consumer, whereas many of the efforts Judge Kelly mentioned are focused on how the courts function from an insider perspective.

Funding: N/A

Future Action: Rehearing pending

Date: February 7, 2000
Time: 10:20 a.m.
Room: Room 103, State House

The Senate Committee on Judiciary held a hearing on the following:

SB 300 establishing a committee to study the administrative functions and procedures of the state court system

Members of Committee:

Senator Pignatelli
Senator Gordon
Senator Wheeler
Senator Squires
Senator Brown
Senator Trombly
Senator Cohen
Senator Fernald

Transcriber's Note: This transcript is from the re-opened hearing on SB 3000, the hearing on January 12, 2000 having been recessed to a call of the Chair.

The Chair, Senator Pignatelli, opened the hearing on SB 300, by calling on Senator Brown, prime sponsor of the bill, to provide testimony.

Senator Brown: Thank you Madam Chairman. I appreciate very much the Committee extending the courtesy to let the others get here. I think I said all I needed to say last week, so very briefly, I will just introduce the bill and let the other folks have their say.

Senator Pignatelli: Thank you very much, Senator Brown. Senator Roberge, did you want to speak on this bill?

Senator Roberge: I will just reiterate Senator Brown. I think that, at this time, a study committee studying the state court system is very appropriate. Thank you.

Senator Pignatelli: Representative Bickford, you didn't check whether you wanted to speak but, as a courtesy, we let our Representatives and Senators speak first.

Representative Bickford: Yes, I am sorry. I will say a few words. Thank you.

SB 300 went into the area, it is a study committee, and one of the areas it went into that caught my particular interest was transcript services and costs. That was an area that we had talked a great deal about in the study committee that we had on the New Hampshire Constitution, Part II, Articles 41, 72a and 73-a. That was sort of a study committee that appeared after the Fairbanks issue, it was sort of an extension of that.

I was looking at the report and one of the, on page 5 of the report, it says "Legal fees and other financial relations were topics of considerable concern. Lawyers have an economic interest in cultivating and prolonging not only divorce cases, but any legal litigation." Then, it listed (a) through (i) issues and one of the issues was exorbitant charges by the Court for photocopies and transcripts of other Court documents.

I recall at the time that we had talked a little bit about putting some sort of committee together to deal with this. I remember the Pamela Smart case, her mother had showed up and said, "I believe $15,000 to just get the transcripts" so they could do an appeal, let alone the cost of writing the appeal. So, I did go back into the transcripts of that where we had discussed this and I did find, in our committee, October 29th of '98 I spoke to Alf Jacobsen and myself spoke to Justice Brock about the transcripts and making them cheaper.

Justice Brock said, "We would be happy to. This is an area that needs resolution, but it has been very difficult. With your interest in this, it may help us resolve this sooner than later." He said, "I will be sure that Miss Fox is in touch with you on that". She and I did speak to it and spoke about perhaps getting some sort of committee together. Since then, it hasn't happened, but I thought this bill would be an excellent vehicle for us to get those transcripts at a reasonable cost and maybe some kind of electronic process to make them more available to the public.

I think that is all I want to speak to that issue.

Senator Pignatelli: Let me ask you a question, Representative Bickford. So, is it your understanding that Justice Brock and the administrative group in the courts are not able to control the cost of transcripts right now? They need the Legislature to help control those costs and to monitor them?

Representative Bickford: No, I don't think that is quite the right way to go, to say that they are unable to. I think it is just a matter of us getting together and getting it done. Sometimes that is what it takes. A lot of times that is what it takes, just all of us working together.

An issue that Judge Brock often brought up to us is the Legislature and the courts working together to come up with these ideas. That was a big issue with him and it really hit home with me when we came to vote the other day in the House, a week or so ago, on the issue of courts making the rules and the Legislature would not be in conflict, what the Legislature might make for statute. I had a hard time with that myself and I am worried about the Legislature actually being able to trump the court rules. So, I came out against that and that was very hard for me to do, but it was based on Judge Brock constantly telling us that we need to work in unison with this and that is why I want to see the Legislature and the courts working together on these issues. But, if we don't do some sort of committee or something a little bit official, it doesn't get done. There is always something else taking us in another direction.

Senator Pignatelli: So, it sounds like one of your concerns is the cost of copies and is it your understanding that that has to be mandated by the Legislature or the Court cannot control that right now?

Representative Bickford: The Court cannot control that now.

Senator Pignatelli Do we need legislation that mandates the cost of copies?

Representative Bickford: Well, there is more than copies; there is transcripts.

Senator Pignatelli: Do we have legislation that mandates the cost of transcripts in our courts?

Representative Bickford: I don't believe we, no.

Senator Pignatelli: Thank you. Senator Wheeler has a question for you.

Senator Wheeler: Thank you very much. Representative Bickford, in your discussions about this, is there anything in statute right now that prohibits giving audiotapes of proceedings to people instead of the written transcripts?

Representative Bickford: I don't know. If a person wants to go for an appeal, they have to get the transcript and work from that. It has to be all transcribed and it is a very expensive process. Does that help you?

Senator Wheeler: Yes, thank you.

Senator Pignatelli: Senator Gordon?

Senator Gordon: So, we can believe that, when representing a client in a case and we want a transcript from the Superior Court, that there is a Superior Court rule that says that you can't have a transcript unless you tell the Court what you want it for?

Representative Bickford: That's right.

Senator Gordon: And, they refused to provide a transcript until they were told what it was for.

Representative Bickford: That's right. I had forgotten. That's right, I heard that. Thank you for reminding me.

Senator Pignatelli: I don't see any other questions. Thank you for your testimony. Representative Paul Mirski?

Representative Paul Mirski: Thank you very much. For the record, my name is Paul Mirski, from Grafton District #12, which is the Town of Enfield. I have a similar bill in the House. However, my bill doesn't have anything to do with the cost of transcripts.

The reason why I think it is important to examine the issue of whether or not we should create an independent office of the court has to do with a fundamental conflict, which Part I, Article 73-a creates with respect to the requirement that the judiciary be as impartial as the laws of humanity will admit. What 73-a does is establishes the chief justice as the principal administrator of the courts. It is impossible for a justice to be an administrator, to act politically and simultaneously present an appearance of impartiality. It is impossible.

I think a well-meaning perhaps amendment in whatever it was, 1966 or '74, a date I can't recall, that has turned into a source of nightmares for the court because it demands that the justices interject themselves in these conflicts on a regular and daily basis. I think it is somewhat immaterial as to whether or not we in this room think that those judges can act impartially given the administrative authority and responsibility. Public perception is, I think, quite different, and unfortunately for the members of the Court, perception is reality. So, I would like to encourage you to think about this.

The model that I examined sort of cursory was the model which was used in the federal courts, which does have an independent office. The independent office becomes the advocate for the judiciary. The judiciary is intimately engaged and involved with the administrative office of the court, but the justices themselves are not put in position in the front, having argued for changes and has a consequence of being charged with acting in their own interests or in the interests of others. So, I happen to think, if we could create an independent office of the courts, it would be of great benefit to the Supreme Court justices in particular and I think it would help to take some of the heat of the fire away from the whole business of judicial reform.

In fact, there was some interesting testimony from members of the Bar, which was quite conflicting on this. I think their reactions, my impression was that, while they react defensively to any proposed change in the system, at the same time, they would voice an interest in the same kind of administrative operation that is utilized in the federal system.

So, I think it is worth studying. I think, if it puts some distance between the chief justice and the administrative activities in order to improve the public's perception of impartiality, that would be a good thing and that is why I am supporting this bill.

Senator Pignatelli: Senator Wheeler has a question for you.

Senator Wheeler: Representative Mirski, first of all, what is your bill number?

Representative Mirski: I can't ever remember that.

Senator Wheeler: Then, forget that. Does your bill establish an independent office of the courts or a study committee?

Representative Mirski: No, it asks for a study committee. Quite frankly, I came to this without really any communication between the sponsors and myself.

Senator Wheeler: Thank you.

Senator Pignatelli: Thank you very much. Phil Cobbin, are you still a Representative?

Attorney Philip Cobbin: No, but still honorable.

Senator Pignatelli: Right. I would have called on your first because you signed up first, but you didn't have Representative here.

Attorney Cobbin: Thank you, Senator Pignatelli and members of the Committee. For the record, my name is Philip Cobbin and I am a former Representative of the New Hampshire House. I was the guy who started that, started these study bills with the Fairbanks legislation a few years ago.

If you look at the history of the New Hampshire legislative process compared to, say, federal, the investigative arms of the House and the Senate are pretty non-existent to limited in the New Hampshire tradition, as opposed to the federal system, where you would have a lot of investigative staff. So, we tend to do it more by these special bills and I am here today to testify in support of this. I think it is an excellent vehicle for the Legislature, which has authority.

A lot of these Courts are actually creatures of the Legislature, the court, the jurisdiction of the district courts. For the legislative body to go out and take a look at how the machinery of government is working. The early comments today, if I could just amplify that a little bit, the access to court orders, all the machinery of how the paper gets generated in court to something really would benefit, I think, from some legislative review. I have some experience in that area. Some of the early bills that I had put in years ago when I was in the House were the result of incidents with transcripts. Transcripts come up again and again.

I had a client who could not afford transcripts and we were trying to write an appeal and he had been pro se below. I found that transcript was in the file and I said, "Wow, go up and get it" and we found that he could not get a simple copy of the transcript unless he paid an exorbitant fee, which would have been something like $500. The transcript was part of the judge order and they wouldn't let him have a copy of it, but he could look at it. I had to have him go up to Grafton County Superior Court and sit there with a yellow pad and hand copy the transcript so I could know what was in it. While he was there, another fellow had this problem and there were two people in the Grafton County Superior Court sitting there hand transcribing transcripts in possession of the Court that the Clerk, unless they could fork over hundreds of dollars, was not going to give them some fairly small items.

I have been in the federal circuit, First Circuit Court of Appeals, client was very disturbed about a statement that he thought was made by somebody in the Attorney General's Office and that might have generated some motion traffic and really ground up a lot of wheels in the First Circuit over that issue but for the fact that the clerk's office in the First Circuit, you go to the

pharmacy and pick up some audio tapes and you give them the tapes, and I think it was like for $3.00 and wait a half an hour. I had an audiotape of a proceeding I had just been in and we could replay it and go over it.

It is very important because people's ears get tricked and I think even attorneys' ears get tricked. When you have to expend the amount of money that is required oftentimes for transcripts to try and find what the issues are in cases, it really generates a lot of money and a lot of resources out there and the bang for the buck really isn't there. The irony is that, because of technology changes, there are some things that make it much simpler. I have a recent example of that.

As you may recall, there were some issues in the Nashua voting process on some petition articles and there had been a case down in Hillsborough South where a group of citizens brought a challenge to a refusal to put a name on a ballot. They, to get an appeal, they were pro se below, and to be able to handle an appeal, you really need to know what happened below and those people had apparently had quite a battle with the Court over it, but they got the security video tape. A lot of these courts now have an ongoing security video in the room. It splits the view of the room into four panels. I don't really care what people look like; I am listening to what they are testifying too. You get an excellent audio and you also get the visuals.

To write an appeal just based on people's secondary recollections without the transcript would be practically impossible. The turn around time to get transcripts, because you have very tight appellate windows in New Hampshire, you really need a transcript to effectively write the appeal documents for the New Hampshire Supreme Court. So, the time frame to get them really puts a lot of pressure on counsel. The irony is a lot of things could readily be thrown out as people's recollections of issues once you have been able to have somebody sit down and rather coldly and dispassionately just watch the tape and review the tape and pick off the issues. I think that would streamline actually a lot of the appellate work for the courts, because it would really allow counsel to cull out a lot of these issues where people, even with counsel with notes, to get it wrong.

Large law firms may not care one way or the other and would be happy as clams to spend all that money for transcripts. But, for sole practitioners, I think it particularly is a problem because they do not have the benefit of a second seat there taking notes during a trial, for example, trying to pick up what they think they have in for evidence, what they have on the issues. A lot of attorneys in divorce cases, generic divorce case, for example. The appellate system is sort of a crapshoot because of the technology and appellate work.

So, when I saw this bill here talked about access to court records and my experience in the Legislature with those issues and some of the complaints that I have heard over the years about how difficult it was to statistically get information on how cases are disposed of and what not. I think this would be an excellent area for the Legislature to take a look at the mechanics of how the courts operate administratively.

I have just a couple of suggestions and then I will finish. I would suggest that, if you kick this type of committee off, that you also look at how some of the other states do it, particularly with regard to appellate. If you are in the federal system, filing appeals is pretty straightforward. The initial documents are almost trivial. Then, I would ask for and look at samples of what is required for appellate documents. In New Hampshire, I think you will get a very rude surprise as to the amount of detail required to file an appeal in the State of New Hampshire in the State's Supreme Court. So, you might want to take a look at how some of the other states do it.

But, I would particularly look at the technology related to court records and how that information is made available and I think you will find, if you look at it from a business standpoint as to what technologies are available and the cost of using them, I think you will find the legal system is very technologically behind the times by a number of years and I think we can speed that up. They are making headway in that regard.

One final note is, on the federal system, federal court is probably at the leading edge in the use of technology in the courtroom. The Committee should range through the federal delegation, with various clerks to arrange for a tour of the federal facility just to see some different facilities on how they can operate.

Thank you for your time.

Senator Pignatelli: Are there any questions? I don't see any. Thank you for your testimony.

Attorney Cobbin: Thank you Senator.

Senator Pignatelli: Frank Amsden?

Hank Amsden: Good morning, Madam Chairman. My name is Hank Amsden. I have testified before this Committee, but I do see some new faces over the years.

I want to make two suggestions, if this committee is formed to study the court system. But, before that, I want to mention a personal experience I was personally involved in in response to Senator Wheeler's inquiry regarding the use of audio tapes.

Depending on the Superior Court which you are in, the judge, and you must appeal to the judge, to ask for copies of the videotape. I believe that is a Superior Court rule. The judge may grant it, the judge may deny it. In the experience that I had, the judge denied it. The parties were practically indigent and they were into an expensive appeal to the Supreme Court. By which time they received, let's say, a favorable response to the Supreme Court, the audiotape would have been meaningless. At any rate, I am sure you will find plenty of gist for the mill which you wish to run.

The two requests I would have of this committee, if it is formed. When our State, current State, was formed in 1784, the two branches of government – legislative and executive – were formed ex nihilo, out of nothing. The day before this happened, there was no general court. The day after, or whenever elections were completed, there was a general court. The day before, there was no government. After the Constitution was passed and a Governor was elected, you had the beginning of an executive branch. That is not true of the court system. The court system came into our State as is. When it came into our state, it brought with it hundreds of years of common law, case law, and numerous powers, which are often called inherent, and certainly, any capable attorney could argue for inherent powers of our court system as of 1784. But, our people also passed Article 4, I believe it is Part First, and in that the people of our State reserved the right, through the general court, to erect judicatories forever. As they say, the 12th of never, that is a long, long time.

In the '60s a referendum was held to establish our Supreme Court as a Constitutional Court. You are a Constitutional Senate. We have heard from our people from our Constitutional House of Representatives. We probably have people here from the Constitutional Executive branch.

In 1966, I believe, we decided that our court system would be a Constitutional Court, the Supreme Court could be constitutional and you could not abolish it any longer. This brings us back to what happened in 1813. Our court system came in just as it is and until 1813, the first of five times, you people, your predecessors, said, "done". They abolished the court system and this was such a powerful move that Representative Bickford gave to me a little squawking over this. Some people represented some of the judges, "Well, we don't like this. We are out of a job". They were informed, "Your job doesn't exist any more. We have a new court system".

In 1966 or beginning in that area, an amendment was prepared to go to the people to allow our court system to become constitutional. If you look at the proceedings of the convention, you will find that they also had a provision to alter Article 4. Now, remember, Article 4 says we can do this forever, but there is a problem. That question was never put to the voters, Senator Pignatelli. I am certain of this. This is no question about this. The prohibition which was in the convention was not brought forward, was not put into the ballot to ask the voters to alter Article 4. Consequently, you have Article 72-a, which says that our Supreme Court is a Constitutional Court. You can't get rid of it any longer, except by a constitutional process. You still have Article 4, which said that you can do this forever, but Article 4 has been altered. It says, "except as provided in Article 72-a". If you people pass a law that contradicts an earlier law and fail to repeal the earlier law, what do you do? You don't have to answer me. I just hope you know what to do. But, you can't have a law that says, "Yes, you can do this. It is not a crime" if you have another law that says, "No, you can't do this. It is a crime". You have to repeal one before the first one can take effect. Lots of luck.

My second request of this Committee concerns a matter which is to do with the executive branch and I am hoping that the Committee, perhaps with explicit language in the bill, would be permitted to consider the same kind of problem that maybe involves the other branch, quote, "the other branch", the executive branch. I will give you this, Senator, when I am done. It is dog-eared and you can peruse it as your wish. I am very grateful to Colonel John Chandler from Hill, who is no longer in the Legislature, for digging out this material. I never would have known it otherwise.

This took place in 1992. It appears that there was a statute, which gave regulatory authority to the executive branch, which was giving people problems, and it was giving some of the Representatives and Senators problems. In this manual, you will find also a committee transcript of how they discussed this. Representative Welch, I believe Sytek, I won't try to mention other names because it will take too much time. You will recognize most of the names. They were concerned because people were coming to them in their towns, saying... A very simple example. A truckdriver lost his license over a very menial thing. He wasn't a bad guy; he was just a screw up. He needs that license to operate, to feed his family and send his kids to college. To undo what was wrong with the statute meant going here, going there, and it was practically impossible to do anything about it. The statute, which enabled the people in the Department of Safety to make this rule, was such that they were making law and you people had virtually no power to undo it. In paper, it looked as though you did. But, practically, you didn't.

Tape change...

Apparently a band-aid approach was proposed. Since we passed this law, which was quite apparently RSA 541-A back in the '70s, we will now ask for permission from the voters to do this. Surely you jest. Yes, that is the way I read it. If I am wrong, I hope you will check this out yourself. And so, this went to the voters. "Are you in favor of amending the Constitution to provide that the Legislature may delegate regulatory authority to executive branch officials, but that any proposed rules may be disapproved by the Legislature or an appropriate legislative committee as prescribed by law?" If you look into the committee that brought this, which I think was the old ...(inaudible)... committee, I think it was 23-1 in favor. On the ballot passed by the House 331 to 2. You can figure out the percents. It is pretty good. Less than 1%. Senate 24 to nothing. So, what happened to the bill? What happened to the question? Did the people OK this, the backdoor method? Madam Chairman, out of a million people, some infirm, some children, some out of the country, some who didn't vote, a quarter of our entire resident population said no. 52%, 225,000 people said, "Don't you do it".

My question, and I hope the Committee will begin to resolve this, if the people don't want you to delegate regulatory authority to the executive branch, have they not made any attempt to do so unconstitutional?

Thank you.

Senator Pignatelli: Thank you for your testimony. Theodore Kamasinski?

Theodore Kamasinski: Hi. My name is Theodore Kamasinski. I live in Pittsfield, New Hampshire.

I would just like to hope that this doesn't become a bill concerning court transcripts. Transcripts are very, very important. However, the idea of who controls the issuance of transcripts and the whole purpose of the bill is more important. I would like to answer Senator Gordon's question about the rule of the judiciary that you have to ask a judge to get a transcript. That rule has been proposed for amendment by the Rules Committee and there is going to be, I think at the next public hearing, there will be comments about that. The process of amending the rules and doing and changing that is a multiple year process. It takes a long, long time. I think the problem with that rule is how it was initiated. It was initiated by the administrative judge who said, "I think we should have a rule like this". The reason for putting in that rule is to prevent, basically, the State from assuming costs of transcripts that are not necessary for indigent people. The problem with that rule and with a lot of other rules that have been initiated by the State, by the judiciary instead

of the Legislature, is that it overtakes the rights of people to access to the courts. My problem with this is that it takes forever to get a change.

What I would like to just distribute amongst you is the change that came about changing of the judicial conduct organization to make themselves public. That started in 1993 and the letter I wrote to the Executive Director of the Committee on Judicial Conduct, and it has taken years of continual thumping at the door of this organization and at the Court and numerous lawsuits until it came about. Basically, it is because the Legislature wouldn't take the responsibility of doing this. I remember, in 1994, I went and spoke to numerous legislators and they said, "We can't do anything about this" and I have gone through numerous lawsuits, two federal lawsuits, an enormous sum of money, and enormous amounts of mail that I distributed, just to get rid of this one silly problem, which is basically unconstitutional. It was unconstitutional from the get up. I will just distribute the letter I wrote, which is in 1993 and that is an awfully long time to get rid of an unconstitutional implementation by the judiciary.

Right now, there is a confirmation process going on about a judge to sit as a Supreme Court justice. That confirmation process involves finding out what the judge did and how he did it and what his rulings are. In the process of doing that, we have come up against a very big problem in the administrative office of the courts and with the administrative judge. And, that is, there are thousands of decisions by Justice Nadeau, which are hidden, which are not available to the public because they have a rule that the public can only look at cases that they know of. We cannot ask the clerk of the courts to sort and find us all the cases on Justice Nadeau.

One of those cases concerned an access to transcript issue where a criminal defendant asked Justice Nadeau, "May I have a transcript of my proceeding so that I could find out whether or not it would be worthwhile to appeal or whatever I wanted to do". That is because there is a rule in effect, which I believe Justice Nadeau put into effect, which says you have to ask the judge. That is what Senator Gordon asked about. Justice Nadeau said, "No, you can't have it because basically it won't do you any good". He went off to the Court, his lawyer went off to the Supreme Court and as soon as they got it, they reversed and said that was an abuse of discretion.

That is an unreported decision that nobody will ever know about because it is not available unless you specifically ask the Supreme Court to look through all your non-published decisions and find it. The Supreme Court will do that, providing it is convenient for them to do so. The Superior Court will not.

So, we have a nominee now who is going to possibly be confirmed and which we don't know what his record is on constitutional reversals. We don't know what his record is essentially in lower court rulings insofar as they affect his ability to be a fair jurist and a student of the Constitution.

The problem here is administratively, that the administrative office of the courts and the Chief Administrative Judge of the courts, has set up a scheme where it is very, very difficult to supervise them. The bureaucracy that exists in the courts and the bureaucracy that exists basically here in the Legislature, prevents quick fixes. What we need here is too obvious. We need separation. We need the administration functions of the courts to be carried on by independent, by the Legislature. The judges should be in the business of adjudicating the law and applying the Constitution. They shouldn't be in the business of preventing or even facilitating public access to court decisions and to the records that should be easily available to the public.

This is the only state in the country that I can't go to the Court and get a complete listing or all the trial court slip opinions that I want. They are not published in this State. Many states do not publish as well. Some of the bigger states they are, like New York, but, they are not available. I can go to the court and I can ask for a case if I know the number of the case, I can get it and I can look it, but I can't ask, like I want to ask right now. I want Justice Nadeau to release every decision that he has ever written, and it is not available. Now, the problem here is that we are about to confirm a Supreme Court judge who has the lock and key on his abilities and we can't scrutinize those abilities until we get ahold of the decisions. I think administratively, the courts cannot make their own administrative rules and they cannot keep us from accomplishing the goals of scrutinizing the Court through public access.

I urge you to set up a committee to study the administrative rules and to do it seriously. Again, as I said at the beginning, I hope this doesn't become a transcript issue, but the transcript issue is an important element of it and I would just like to mention one more thing.

In the State of Connecticut, I had a lawsuit against the court reporters in Connecticut because the costs of transcripts were too high. At the end, the lawsuit was ultimately dismissed because the federal court did not want to get involved in such an issue. But, the court administration of the state investigated and found out there was a consistent overcharging to the extent of approximately $18 million. What occurred next is that they revised the system. They put in very stringent rules. All done by the Legislature, which made the availability of transcripts at a much more economical rate.

Right now there is equipment available which effectively enables a reporter to give a daily transcript. Basically, when they are finished with the transcript and they leave the courtroom, except for the names, it is all done. Except for the names and the things that are phonetically understood that have to be checked, the transcript is essentially done. It is a spelling check. It is all automatic. The equipment is so automatic now that the amount of effort is inconsequential.

The system in this State is also different than any other state. When you want to appeal a case, you buy the transcript of the other side and the Court. You pay for the transcript. If you win your appeal, the other side pays, but you still pay for the Court's copy essentially. That is somewhat unjust. In the case that I was involved in, the Judith Thayer case, the Court ordered the transcript, so the State paid initially. There is some argument now if her case is accepted, she may be required to pay for the Court's transcript and she is definitely required to pay for the other side's transcript. This is not fair.

If you want access to the courts to be fair, everyone has to pay their own toll. The cost of transcripts is bloody enormous. It is $3.75 a page essentially for under two hundred words and that is really exorbitant. It is about half that in the state I mention, Connecticut, in which there was successful modification by the court administration. I am sorry, but the Legislature that regulated the rates. There is no reason why this State, the Legislature doesn't regulate everything that has to do with court administration and leave to the judges only what the judges should be doing – making decisions on law and facts and applying the Constitution.

Thank you.

Senator Pignatelli: Mr. Kamasinski, do you have time for question?

Mr. Kamasinski: Sure.

Senator Pignatelli: Senator Wheeler?

Senator Wheeler: I have just one question although I recall Mr. Kamasinski testifying before, he didn't identify himself today, or at least I didn't hear him. Are you a lawyer licensed to practice in New Hampshire?

Mr. Kamasinski: No. When I go to court, I do it under that Section 311:1, which permits a lay person to practice before the courts, providing he is of good character.

Senator Pignatelli: Thank you. Edward Mosca? Did you want to testify on SB 300 or were you here for SB 412? Then, you can go back and sit down. I apologize. Bill Cushman?

Bill Cushman: My name is Cushman, Bill Cushman, from New Castle. I have something to add on the transcript thing.

When my original lawyer in the divorce screwed up and didn't submit the witness list, we had to try to get permission from the judge to bring witnesses. We were denied, so we had a hearing. At that hearing, I finally asked for a transcript, but I had to explain, my lawyer had to write a letter explaining why I wanted it. We said we wanted it for our records. Now, the thing was going to cost $700, I think it was, for two copies of a very short hearing. The Clerk of Court, Bob Goodnow, told me that these things are copyrighted and are his personal property. We could not even take them to a xerox machine and run off copies. So, in order to give the other side their copy, I took my copy to lawyer Bach's office, made him sign a receipt for it so that I can prove that he had it in his hands. He made a receipt and then I gave him back another receipt saying that I had regained it. That is how he got his copy for free.

OK. Back to Bill 300. I think it is very sorely needed.

Please see Mr. Cushman's typewritten testimony, attached hereto and referred to as Attachment #1.

Thank you.

Senator Pignatelli: Thank you for your testimony.

Mr. Cushman: I will give you a copy of the sheet on "Flawed System".

Senator Pignatelli: Thank you. If you will just give it to Laurel, that would be wonderful. Judy Thayer?

Judy Thayer: Good morning. Thank you for giving us an opportunity to testify at this very important hearing. I am not here really to talk about my own situation, which I am sure everybody is well aware because of the news coverage, but I do have a couple of comments I would like to make that maybe you would find somewhat helpful as you study this bill and try to figure out how to proceed. I have a couple of comments that I have prepared and then I have some particular issues that would be specific to my case.

Today, we have a crisis of philosophy, which is the root problem of the crisis in the court system. It is reflected in the Fairbanks case or the Claremont case, whether one is pro or con on that issue. It is really not unlike the crisis in education which I dealt with for eight years on the Board of Education, or health care that we are now experiencing. The technical or the administrative implementation of the justice system today should reflect, it does reflect, the disconnect between the state principles upon which the system derives its direction and the actions of the judges and the court clerks that occur today.

We as citizens talk the talk about our courts and our justice system and we have high expectations. But, do the courts walk the walk? Under the Constitution, there was one principle and right that is guaranteed and is the foundation of our culture and our democratic republic. Justice is that principle that we can seek in the court system and that justice will be blind. Education is a right; health care is a right in this State; and there have been exhaustive study and reform to insure that implementation and administration of those two issues, those two rights, are consistent with the principles that we believe in. You, as legislators, know and I, as a former appointee to the Board of Education, know that the devil is always in the details.

The Bar Association at this point should welcome the move to make consistent the promise and expectation of justice with the actual impediment that exists in the current administration of justice. The justice system does not exist for the Bar or the Judiciary, just as health care does not exist for the doctors or the hospitals, or education exist only for the administrators and the teachers. The citizens are the ultimate consumers and they are the ones that insure that the institution of justice is facilitating its constitutional mission rather than impeding it.

I have a couple of a comments on related bill 300. In Part 3, the Duties, I have had particular problems, and I am sure there are many other citizens that could be here today and could testify to this, with access to court records and to documents and to resources. Transcript services and costs. Mr. Kamasinski just testified, that the costs are outrageous. The system almost seems to be set up so that one is not able to pursue justice in their case.

I have a particular problem right now which I hope will be resolved, that I have a copy of a transcript, which I paid over $1,000 for, and there is information missing in the transcript of the proceedings. In order to get, to make sure that I could review, there is no audiotape I am told now. I can review the notes, but the notes will come in stenographic form, which means that I will have to hire a stenographer. I will be allowed, with a court person

and other person of my choice, a lawyer or whatever, to look at these tapes in a room after they have been deciphered by the stenographer and am not allowed to have a copy. I have already paid for this transcript. This is my transcript, this is my hearing, and I believe that this is absolutely unfair. I should not have to withstand the costs now of hiring a stenographer whom I have already paid because this is the way the court system, I understand, pays stenographers, is that they let them set the rate of the cost per page. Now, I have asked this woman for over a year for her notes and I was totally ignored.

Finally, I wrote to Judge Nadeau and he wrote back and said he didn't want anything to do with the case any more, but he had appointed the judge and he had sat on the Supreme Court for me. But, when it came time to looking at the transcripts, he was not interested in doing that. He appointed Judge Vangones and now I am told that, in order to see these tapes, I have to make another motion, which means that I would have to hire a lawyer again to make a motion, hire a stenographer, review the tapes and have them deciphered and I am not allowed to have a copy.

The third issue is the fair and impartial assignment of judges. I had a judge that had my case and I was inexplicably assigned another judge by Judge Nadeau for no reason. I know that this is his usual action, that he insinuates himself into cases and I believe that there should be some rule promulgated by the Legislature to insure that, if there is a special assignment, that there are reasons given and that the litigants have the opportunity to understand what the reasons are. In some cases, you feel like you are dealing not with people that you are paying, judges, clerks, lawyers, to help you get justice. You are really a victim or you are treated as if they really have control over your life. I don't think that is the way the system was supposed to be set up.

Lastly, an effective handling of complaints against judges. Unfortunately, today, a former member of the Professional Conduct Committee was going to come in and testify. She couldn't be here, and she will be sending in her testimony. The complaints against judges, I guess the Supreme Court is going to allow that to be public as of April, but there should be some vehicle or way during a trial that, if there are improprieties that come to light, the litigants, citizens, may be allowed to stop the process or to at least complain during that time and have that complaint looked at, rather than waiting until the trial is finished.

And then again, the system is set up so people aren't able to get their day in court, but if they don't get their day in court, the Judiciary's and the Bar Association's attitude is, "Well, don't worry about it. You can appeal it". Well, I don't know many people that can withstand the onerous cost of

litigation, know that there are problems during a hearing, during a trial, and then the onus is on them to again seek to have justice determined. My experience with education and health care shows that people that are in charge of those various institutions, and the Bar Association is very much like a union, and the Judiciary, with the integrated Bar, they are very concerned about maintaining their level of control rather than being accountable to the citizens. With this hearing, this is the only way people can come in and alert you to the fact... I am one of many. I had tremendous amount of phone calls from people that watched my case. My appeal will certainly take care of my problem. Other people are not going to have that ability to continue that type of process.

Again, I do think, too, that the recusal of judges is a very important issue. If, during a hearing, you have an attorney, in my case, an attorney from a well-established law firm, and a formal federal judge, ask the judge to recuse herself for bias and prejudice, and it is absolutely ignored, there should be a process in place where that particular complaint can be heard.

Tape change....

...in the study of this issue that, if you are going to establish a committee to study the administrative function and procedures of the state court system for the benefit of the citizens, that you have no lawyers or retired judges on the committee. I believe that, just as in other areas, when the citizens, this is a fundamental right of all citizens to have justice, the citizens should run the committee and they should have ample opportunity to hear the testimony of judges and lawyers giving advice, or could be hired as consultants. But, I believe it is an innate conflict of interest just as it is, as I found in education or in the health care field, to have people that have a vested interest to be giving most of the testimony and the direction. You will find that the people that come to you from the Judicial Conduct Committee or the Professional Conduct Committee that have been one or two public members that the people on the committee, because they are dealing with people in these areas, whether it be the Bar Association or the Judiciary, that they are not able to really use their own ability because these committees look to the people that are in the area and they say, "You are the experts. You tell us what to do" and that really defeats the whole purpose.

So, my last comment is that in this State, because we have this difference of philosophy where we look at justice not determined by principles, but determined as this new pragmatic philosophy, that we are going to look at it in terms of trends. We have situational justice. We have situational justice that is masked in terms of judicial discretion and it is time for the Legislature to step in and monitor that discretion, study it, and try to come

up with some kind of rules, regulations that are not going to give us unequal application of the law, but equal application of the law.

And, I think that you also should study the facts, as they have in Europe, when specifically in a marital case, when one is confronted with a marital issue and one of the parties does not have the ability to hire competent counsel, that the State make some kind of recommendations or compensations for that, because there is no way where you have one person with financial resources, a career, law firm, whatever, that is funneling $200 to $600,000 a year into their pockets and a woman has no resources. How is she going to be able to attain, obtain legal representation that is going to give her the ability to litigate the case on a level playing field? I think that argument could be used as well for a man in that position, but unfortunately, it seems to be that it is mostly women.

So, if you have any questions, I would be glad to answer them.

Senator Pignatelli: I don't see any. Thank you for your testimony.

Ms.Thayer: Thank you.

Senator Pignatelli: Caroline Douglas?

Attorney Caroline Douglas: Thank you members of the Committee for the opportunity to talk about this bill. Why do we need this bill? We heard from Howard Zibel at the last hearing that there is multiplicity of committees and study committees that have been around for two and three years. He named off nine that I listed. It was eight or nine that I listed and he said there is no need for this bill, there is no problem. If you go back and are able to review the transcript or if you were present at the last hearing, I would submit to you that those committees are attorney, Bar and Court committees. That is the lobby, that is the union, that has been studying itself.

This bill is unique because it is from a consumer perspective and I think it is important for the Legislature to hear from a consumer, from a user point of view, what is happening in the court system because there are two different perspectives on what is happening. One is we have incredible court administration that is designed to streamline cases, have a very high number of cases decided quickly, very fast and funneled through the system, in and out. But, the question is, do we have justice coming out of the court system? I believe we don't. I think that we have a problem in our court system.

One of the many books that I have bought and studied is called *The Moral Compass of the American Lawyer*, and the subtitle of it is, *Truth, Justice,*

Power and Greed. I think that the problem we have in the administration of courts, it seems to me that the administrative area of courts, as you have heard from earlier people testifying, people testifying earlier, is that the court system has gotten away from the administration of justice and the interpretation of the Constitution and the study of the Constitution, and even a study of the laws that the Legislature passes.

Personally, as a divorced attorney, who has practiced law for ten years in this State, what I see is that the statutory framework the Legislature has set up doesn't work, it is ignored by the courts. Under statutory guidelines, there may be, for example, in modification of child support or alimony, there are thirteen mandatory guidelines. Thirteen enumerated things that are mandatory for a Court to apply. They don't have to give alimony or support, but in circumstances when they do, they have to go through a checklist. That is totally ignored. The courts are ignoring you. They are ignoring themselves and prior case law that comes down.

Mr. Kamasinski testified to you about how cases are lost or not found. The specific areas that are covered in this bill, I want to go over them quickly and then I want to come back and give you a broad perspective.

I don't have to give you all of the complaints that I expect you will hear if you open up a series of traveling hearings around the State. I am urging you to go back up to Colebrook. Two years ago, there was an incredible blowout in Colebrook, but what it distills down to is a litigant in court who felt he couldn't get justice. Whatever his emotional state, his lack of family background, lack of ties to society, whatever it is, he blew out and he took five people with him. Start in Colebrook; travel all over this State and listen from a consumer point of view about what is happening in the court system.

The criticism you are hearing today isn't covered by any of those study committees that are designed to show you how fast we get cases through the court system. There is a system in place right now that is an experimental system for family law that totally eliminates the emotional and psychological dealing of a family breakup, but boy does it whip that case through the court system on a deadline that you wouldn't believe and it gives judges really good records.

For example, the cattle calls that we have at 9:00 and 10:00 is attorneys, when we go into the courtroom, are designed to make sure that the judges have no downtime. Boy, they whip those cases through and there is always somebody waiting in the chute to come in and try their case. There is no downtime and they have very high national statistics for the number of cases per judge that are heard regularly on an annual basis. We are very, very

high. We have a very efficient court system. But, I think New Hampshire uniquely lacks justice. So, when you have an attorney who shows up at 9:00 and there are thirty other attorneys, thirty other cases scheduled at 9:00 and 10:00, the Court Clerk knows. Judge Kelly came in and testified the last time. He knows there is a problem. Senator Fernald was here and he specifically asked about it. What we had was Judge Kelly saying, "Yes, I actually studied that. We had a study on that" and yes, we spend thousands and thousands of dollars. I am going to give you one example.

I was the only private attorney in a DCYF case where there were a total of seven attorneys, six state appointed attorneys, $60 an hour. We came back three times to Nashua to have this case heard and extended, three different days. I waited a total of twenty-seven hours for that case to be called. I was the only attorney who was privately paid. I was embarrassed. It broke my heart. I can give my clients a break on the bill, but what we had was six attorneys at $60 an hour that waited twenty-seven hours. That was In Re: Shayna D. I finally filed a motion with Judge Holworth asking for a special appointment of time so I wouldn't have to keep driving from Concord down to Nashua. But, even if I cut my bill, I mean, I am still looking at twenty-seven... My clients are looking at a tremendous amount of money of standing around waiting time. I submit to you that that happens on a daily basis in courts all over the State in order to keep the judges' numbers high. I think we have the wrong group of people making those rules and I would like to see the rules come out of the Legislature.

We have a beautiful new $1.3 million building up on Supreme Court Drive, Noble Drive. That is a wonderful building that the Legislature could use with that share of the judicial budget to run the administrative function of the courts. There is nothing in the Constitution that says judges or the Bar Association or the Supreme Court has to run that. I don't think it has to cost any more and I think it could cost a whole lot less.

I did have a long list that I was going to give you for each of these five functions, but I think you are going to hear it if you are able to travel around the State and you can hear it from other people. I want to give you what I consider egregious examples in each. If anybody wants to talk to me, my office is across the street. I would be happy to meet with any one of your Senators. I can put you in touch with the hundreds of people who have contacted since, as an attorney, my case became public and it was perceived that I was being treated unfairly. People who wanted a voice contacted me and told me their story until my ear hurt. I thought I had an ear infection. I have listened to so many hundreds of hours of abusive stories about the court that I am asking you, if you want names of people, if you want testimony, I can put in touch with lots and lots of people. Attorneys are aware of this, but

for the most part are afraid to come forward. There is a huge perception of retaliation by the people who administer the rules and I will attest that I believe there is significant retaliation against me personally because I have stood up.

I am going to talk about transcripts. You have heard a little bit about it, but I think that it is important for you to understand that there is a huge problem with transcripts. In this State, the transcript system is private. I don't understand, under the administrative functions of the court, why we can't hire staff just as we hire clerks for the Legislature, why we can't hire transcriptionists. People are allowed to make money privately and it is a private business in this State.

What I found in my own personal transcripts, Mrs. Thayer is correct, I have found significant pieces eliminated from the transcript that need to be in there. I have alleged an impropriety by Judge Nadeau involving his friendship with the Guardian ad Litem in my case and some wrongdoing. When I go look at the transcript, that part of the transcript has been eliminated. Tommy Dean's case in prison, I know three significant parts of his transcript were eliminated from the transcript. Which means that people who are doing transcripts are not doing accurate transcripts or they are covering up when they know judges are doing wrong.

I know of an attorney who filed a complaint with Joseph Nadeau, who was the administrative judge, that is where you file a complaint. But, when a judge lost his temper, lost control of himself in a courtroom, this is in the Laconia Superior Court courtroom, this woman attorney was sitting in the courtroom watching and she noticed the transcriptionist had stopped taking notes. This was in 1986 when they were still doing that. She totally eliminated from the record all of the bad behavior by the judge in order to make the transcript look clean.

They are messing with transcripts in this State and in order to get it, you have to buy the cassette. Now, in my particular case, they told me I can buy the cassettes. They are $25.00 apiece. It is $875 for me to get the cassettes in my case because my case, I believe, was so badly managed, that a four-day trial was moved into nine days. That means anybody doing an appeal has to pay $15,000 to do the appeal. I think I have wonderful valid grounds as an attorney and a good record. Cleveland, Waters & Bass did a great job in my case. I am very pleased with what they did. But, who has $15,000 in order to go back and correct the corruption that happened in my courtroom?

What we are finding under the administrative rules that have been set up by the court is that they keep saying, Mrs. Thayer is correct, they keep saying,

"Take it up on appeal. Take it up on appeal". However, when you have something like abuse of discretion, that is not really an appealable issue because the standard is so high. What it is is a judicial conduct issue. So, there is a whole body of law that is being practiced in this State that you can't remedy on appeal and it can only be remedied in the conduct committee, which is not effective.

We have heard a lot about how the conduct committee rules have been changed, how they are going to be open to the public. I submit to you that I have studied those rules and they are bogus. They are designed to pull a veil over our eyes so we can stand up, the judges can stand up and say, "See, we have corrected the problems". First of all, they didn't correct anything on their own. We have been holding their feet to the fire for over three years. Secondly, they are still not open. I put into legislative hearings copies of the Oregon statute. Seventeen years ago it was passed in Oregon that opens up conduct complaints. Back then, they thought, Oregon thought, the sky was falling. People ran around like Chicken Little saying, "The sky is falling if you open up conduct complaints". Our legislative study committee had a copy of an open conduct rule law that works very, very effectively, and even the Supreme Court justice in Oregon says, "We were wrong. We thought it would be terrible if conduct complaints were opened up and it is not terrible at all."

What I am saying to this Committee is, I believe that the State is one of the last in the country to attempt judicial reform. They do it because there is a lock hold by the Bar on the judiciary. The next bill that is coming up is going to address whether there is a lock holder or not and the Legislature doesn't have to be afraid of reforming the courts. There is nothing wrong. Lawyers and the whole legal system will still survive if we have open fair court systems.

One of the things we have, the rules that are in effect, that are promulgated by the Supreme Court, I believe are an impediment to justice. I think the entire system is set up to give power to a certain few and to make courtrooms into individual fightdoms of power, where they are secretly allowed to ignore the legislative framework, body of case law, and to give judges incredible power for a lifetime without effective oversight.

The effective handling of complaints of judges I submit to you has not been addressed yet and the Legislature, under the administrative office of the courts, could do that, if you were to take over the court administration.

The fair and impartial assignment of judges. I testified last Friday at the Nadeau confirmation hearings of three specific examples where I believe Judge Nadeau, wearing his administrative hat, improperly stepped in and

reassigned cases to certain judges to affect the outcome of the case. That is a very, very serious allegation. I make that knowing that I am a member of the Bar and I make that very seriously. I have asked for special prosecutors. I believe I have asked the Executive Council to investigate. I believe they don't intend to investigate. I think that what they did is they gave the nominee five minutes to rebut. I will submit to you that he stood up and with faculty made four blatant lies and I am going to address that at the next Council meeting.

Maybe this State wants to keep drawing the curtains down on the fact that we have corruption in the court system. That is what has been happening the last three years. We had results that came out of the Fairbanks hearing, but I think if you would pass this bill and allow the citizens to come forward, it would empower this Legislature to stop looking away, to take back the power that belongs to the citizens. One of the ways we can do that is to take over that building and to start running the courts, so that transcripts don't have to cost $4.50 a page. Do you know how many times I have been denied a transcript from a hearing for my clients? My clients come to me and they say, "The judge acted wrongfully in that case and I want to file a complaint". So, I will write a letter on my lawyer's stationery saying, "I request a copy of this transcript". That doesn't mean I want it for free; we are willing to pay for it, and the judge writes back and says, "No, you cannot have a copy of the transcript".

There is no openness in justice if we have to ask permission. You have to state the reason for why you want a transcript and there is a different price. If it is for appeal, it is a different price than if you want to impeach the judge. So, now I just write "impeachment" for every time I want a transcript and, at least half the time, I am denied the right to get the transcript.

Some people you have heard have been denied the right to get videotapes, they have been denied the right to get cassette tapes. Fortunately, I am dogged enough and I am vocal enough that I can usually insist on getting the cassettes. $875 for the cassettes of my divorce hearing.

Then the cassettes come and they come on a machine that no one can use. You have to have a very special, very expensive transcription machine. So, it is not available to you or the words don't make any sense.

Getting the dockets. My Kamasinski has briefly explained to you why we can't get court records in this State, and I want to give you my experience in California. I am of the first class of attorneys, of out-of-state attorneys that were ever admitted to the practice of law in New Hampshire. I have family roots that go back in New Hampshire for four generations, but I was raised

out-of-state. When I applied for the Bar here, it was the first year that the U. S. Supreme Court had ruled that New Hampshire had to open its door to out-of-state attorneys and let us sit for the Bar. I think that is a real opening. I didn't know that. I had no clue that out-of-state attorneys were not allowed to practice in this State. You had a residency requirement that was struck down by the U.S. Supreme Court.

I think that may be why I have a slightly different perspective than many of my colleagues in the Bar, because I know law in California. I studied Constitutional law under Anthony Kennedy of the U.S. Supreme Court. I had a wonderful, wonderful legal background that was very different, and I learned law in California. I am very familiar with family law in other states, too, because I do periodic reviews every year of what other states do. So, I think that I kind of look at New Hampshire laws from a different perspective, and I think that that perspective has allowed me to stand back and say, "Boy, this isn't how it is done elsewhere".

We are very provincial in our practice of law and our legal system. There has been a revolution for over ten years of judicial reform across the country, including recusal of judges. In forty-four other states they have all reformed their laws to allow a litigant in court to remove or to ask to have a hearing to have a judge removed from their case. New Hampshire is living in the dark ages in terms of judicial recusal because, in this State, even if you know that your judge is a pedophile, even if you know that your judge is corrupt, even if you know that your judge has taken a bribe or made money or done any other illegal act, you have to ask your judge to remove themselves from the case and they almost always refuse. Then, if they try your case for the rest of the trial, you are hammered. You won't win a single motion.

My husband bragged to a negotiator two weeks ago, who contacted him again and asked to settle our case and he said, "For three years, I haven't lost a motion. I haven't lost an issue. I have lost nothing". He has won every asset, every asset, and I have a judge who has hammered me for years and years. Now, in order to correct that, I have to spend $10 to $15,000 to get the transcript for appeal.

We are living in a provincial time when I think the Legislature needs to stand up for the people. We have let the court system do it for thirty years, ever since they gave themselves the right to administratively handle the courts. What we have seen is their budget grow bigger and bigger and bigger every year and you look at how bloated the court system is and their administrative budget. Now, they won't give you a breakdown. The sponsor of the bill, when I spoke to her, last year or the year before, I believe went to the court system and asked for a breakdown of the salaries that were in the

appropriations for administration of the courts and they arrogantly told her they would not give her a breakdown. I submit to you that you are entitled to a breakdown and that we can do a much better job. We, the people, we the legislators.

Like, in forty-six other states across the country, you can do a much better job of administering the courts than the court system is. I think that what you have is not only situational justice, but I think you have the fox guarding the hen house. I would say we have a moral crisis in the judiciary and in the administration of the courts, not only across the country, but specifically in New Hampshire.

Thank you.

Senator Pignatelli: Thank you for your testimony. That completes the list of people who have signed up to testify. Is there anyone else who would like to testify on this bill? Judge Maher?

Justice John Maher: My name is John Maher and I am the Administrative Judge of the Probate Court and I am here to testify, not for or against this bill. I particularly wanted to listen today to what was being said because, when I read the bill and it said that it looked to study the administrative functions and procedures of the state court system and litigations and appeals, I said to myself, in the very first instance, "Why not?" I think that sunlight is the best disinfectant. I must tell you, as I have heard today, I don't know if the reasons given today are the reasons I would do it, because I heard a number of people talk about judges having vested interests, but most of the people who spoke today have one themselves. So, I would be very interested in having a dispassionate third party hear the situation. I would, in fact, encourage this Committee to amend it to be a committee of the whole.

So many times in life, particularly in courts when I try cases or elsewhere, I heard the one side of the story and so I would like to have a situation where you hear both sides of the story.

So, I looked at this bill and thought it was a plain kind of vanilla request. I think that is fine. I also thought of the number of times that I personally have sat on committees and we have committees going on right now, audits and study committees, the LBA currently is doing and has done a review of the family division, they are in the process of doing the judicial branch performance audit, we have a Guardian ad Litem study committee. I want to emphasize to you, when I spoke last week, I have a letter coming to you, Chairman Pignatelli, that I am in favor of that, I would like that to go forward. I think that there are issues that have to be resolved and I believe it

would be helpful, and I believe it is the next step. Judge Coffey is working on a committee for pro se requests, which I wouldn't call that, what should I say the right word is, there is an absolute explosion of pro se litigants, not only in New Hampshire, but throughout the country, and how we best serve those people is of interest to the court system.

So, when I heard people talking today and I thought of the specific complaints that I have heard. I have heard complaints myself. As a matter of fact, as the Administrative Judge the Probate Court, may I pass that around...

Tape change

...responsibility and Nadeau's responsibility to try to feel the complaint as best we could and best we saw them. So, what we would do, and I have received a number of complaints as the Administrative Judge of the Probate Court and I would certainly read the complaint and get back to the complainant, talk to the complainant, write the complainant a letter, and then listen to the other side to try to figure out where it is at. I have had people complain to me about filing fees and I said, "Let's get rid of the filing fees. Would the Legislature only please appropriate the $2 million that goes in our budget for the filing fees". People were complaining about court rules and I said, "Well, where would you like due process to stop?" Other parties to the suit are entitled to notice. That was one particular complaint. Scheduling hearings. I personally agree and, in the Probate Court system and I think in most of the other systems, there is a scheduling of hearings. Not all the time. I heard what Ms. Douglas said about the cattle call approach and to my way of thinking, I have never gone along with that and don't today. So, if in fact, this committee or whatever committee you choose to devise, wants to study issues like that, I am all for it.

Are there reduced fees for litigation? I don't really have an answer from inside the court system. I would be interested in perspectives from other people in that regard because it didn't seem to me that it was the court system that was driving up the cost of litigation. It was a motion practice in many instances of attorneys that were driving up the cost of litigation.

I would like to go on record here as saying, I came here saying, "Why not?" In the course of the hearing, I said, "Gee, we have so many committee assignments." I remember talking to a particular Senator the other day and him asking how many committees do I sit on. I sit on a few. I don't know where I put them all, but I am Administrative Counsel for the Supreme Court Advisory Committee on Rules and I, by the way, agree with Theo Kamasinski that it does take a long time to get your rules through. The other

side of that coin is, would you like me to do a rule today? We have a public comment time. We digest that and we try to make the best decisions we can on that. I am on the Court Accreditation Committee, and so are the other Administrative Judges. That is the committee determining what the courthouses need, what kind of courthouses are built and where they are built. The JESC Committee, the Judicial Education Services Committee, the Child Impact Advisory Committee, and Policy, Forms, Procedures and Probate Rules. So, I am saying to you, when I talked with another particular Senator, if we have to come up and essentially case by case document what this particular litigant, who wasn't on the prevailing side, said so that we have a hearing on that and we re-litigate that in front of you. We are ready. But, it is not for the faint of heart or for the short-winded. It is a long-time process.

I believe that sunlight is the best disinfectant. I have sat in committee hearings when people said the most outrageous things without any kind of basis behind it because they just felt like saying that. That judge was arrogant. I am not saying that some judges haven't been at certain times. I believe that the new judicial conduct rules that will go in effect as of April 1 will in fact be able to disclose that so that it is a public record.

A lot has been said about transcripts today. I was asked, I asked Eileen Fox, because I wanted to make sure that you had the best information that I could give you. You have heard a lot of numbers, so I asked her to go out and call Don Goodnow in that regard. Transcript costs at the Superior Court, I might tell you that we have never been able to have transcripts in the District Court or Probate Court because we don't have stenographers. We are getting along with tapes. But, stenographers have been an age-old tradition, not only in New Hampshire, but in all of the New England states. I would like you to know that where stenographers' fees are concerned, the fees of the stenographers in the State of New Hampshire are absolutely in line with the other New England states. Now, does that make it right or wrong? I am not saying it does. I personally have never existed with a stenographer. I have always had a court monitor taping it and there are transcription costs to that. But, the transcription costs, just so you know, for the Superior Court, under administrative rule, is $2.25 a page for the original and $.75 a page for each copy. That is $4.00 or some of the other numbers that I heard. That is for appeal. For other purposes, it is the same price, $2.25 for the original, $ .75 for the first and second copy and $ .20 for each additional copy after that. I asked Eileen if she would check on the other states. Other New England states, the fees are consistent. Massachusetts and Rhode Island $3 for the original, $1.50 for copies. Vermont is $2.25 for originals, $ .50 for copies.

We would like to have real time transcription in the State of New Hampshire. We have never been able to get the money for the technology to put that into play. So, I don't quarrel with some of the things that the people are saying. When Theo Kamasinski says he wanted to go back to 1981 so that he could find out what Judge Nadeau, what his orders were, well the technology, it is very hard in the year 2000 to determine what that technology, the sophistication was in 1981. Bill Gates, I think, was a senior in high school. That is where we were. So, to be able to not pull up Judge Nadeau's decisions at that point in time I can understand that.

I would like to close by simply saying there are a number of issues. I don't know that I can go through them all with you. But, to say that I would ask that, if you go forward with the Committee, that it be a committee of the House and Senate. I would hope people just like yourselves, people that don't have an ax to grind, people who have chosen to be on this committee so that they can look at the pros and cons. Is there room for improvement? Of course there is. But, when we do this, please be aware of the fact that it will be bringing people like myself up here, documentation up here. Happy to do that and that will also be taking us away from the other responsibilities we have in the court system.

So, I will close with that. Thank you very much.

Please see Judge Maher's typewritten submission "Role and Responsibilities of the Administrative Judge", attached hereto and referred to as Attachment #2.

Senator Pignatelli: Judge Maher, I have a question or two of you, if you don't mind. On the committees that you serve on and the other committees that the other judges sit on, are there any members of the public who are not lawyers or judges sitting on them?

Judge Maher: Yes. Education Committee, certainly the CIT Advisory Committee is made up of a number of people from all walks of life related to child issues. The Court Accreditation Committee has a number of people who are lay people. The Supreme Court Advisory Committee on Rules has three people who are members of the public, so to speak. When I say members of the public, not lawyers or judges or something like that. My internal committees are made up of usually staff. We did a recent total revision of the Probate Court rules and, in that committee, we had registers, we had attorneys, we had participants, one participant who brought in people from Franklin Pierce.

The only way you can do things in life is to get the broadest perspective, is to bring in as many people as possible. So, we have tried to do that. But, the other side of that coin is that it is tough to get them. It is tough to get them to show up week after week when they don't have a burning interest in it. People who have a burning interest in it, they feel they have been wronged. They have a burning interest and will be at every meeting. People who get paid for it and work at it, we have a burning interest to make sure. But, the people who really are out there that don't have a case in point, it is tough to get them to show up week after week. They are just not interested in that. It is pretty boring stuff for a lot of them. If you are involved with it, it is hot. But, if you are not involved in it, you should take it to bed at night and get to sleep early.

Senator Pignatelli: Thank you. Any further questions? Senator Gordon?

Senator Gordon: My concern with the Committee is that it is so broad in scope. Three members of the Senate and three members of the House. If you look at the responsibilities of the Committee with a reporting day of November 1, 2000, it would seem that you would have to have the six legislators working full time with staff in order to accomplish what needs to be accomplished. So, I am thinking that there might be areas that we could narrow it down to. The transcript area, not the transcript, but access to court documents and information, seems to be a workable area where we could have a legislative committee work on and do in that time frame.

Judge Maher: I think that is excellent. As a matter of fact, I forgot, and I am glad you said that, Senator Gordon. Right now, people pay $10 and they can get a tape of their court proceeding in the District Court or the Probate Court. That is what we give them. For $10 we give them a copy of the tape. That came up before, I think, with Senator Wheeler. I think that is an excellent idea. And, if you wanted to say, "Let's pick that one off this year and then let's go back next year and work on something else", I think that is fine.

Senator Gordon: I am going to give you a more generic, broader fastball. You have heard me describe, we have a system of checks and balances, and you have heard me describe the three branches here as tectonic plates and there is a natural abrasion between the court system and the Legislature. We grind at each other constantly and not always pleasantly.

Judge Maher: I think that is the way it has always been, not only in this State, but other places. The checks and balances system. You are absolutely right. When Jacksonian democracy came in, they didn't like what judges were doing, they said we are going to make them all elected and that was the result of that.

Senator Gordon: But, at the risk of sounding hard, I can tell you that my experience with the court system generally is a reluctance to accept criticism and seems particularly resistant to change, unless it is forced to change, and the Legislature has engaged in the courts doing that over the last few years and we have seen the impact of that in terms of opening up the public process and certain things. I guess, unless you have a process in place which identifies areas that need to be addressed or changed, how do you expect the Legislature to accomplish its job, to hold the Judiciary accountable?

Judge Maher: I thought that the response that you started off with of picking a specific area and focusing in on it was a good one. I don't quarrel with that. There should be nothing, nothing that I or any other member of the court system should, would not want you to see. It is as simple as that. So, if you said, "Let's work on that one for this legislative session or this period of time", I would say, "Let's do it and then go on to the next one" because I also agree with you 100% that if you put all of those in there, the Committee would be exhausted and it would be a five or six year project. People would come and go, we would be starting up with a person that just got on and they would be asking pertinent questions that were resolved or answered two or three years ago. So, I think that the Committee you are talking about should be of sufficiently short duration so that it keeps the interest of all of the participants. Absolutely.

Senator Gordon: Thank you.

Judge Maher: You are more than welcome.

Senator Pignatelli: Senator Brown?

Senator Brown: Thank you. I just have a short question. You sort of implied that the folks we are going to hear from are going to be people who are unhappy with the way their case has turned out.

Judge Maher: I have never heard anyone come up that said, "Gee, I had a great result".

Senator Brown: Excuse me. May I finish?

Judge Maher: I'm sorry. Forgive me, Senator.

Senator Brown: I will start over. I have lost my train of thought here. You sort of implied that we are only going to hear from folks who are unhappy with the way their cases came out. As a citizen legislator who tends to listen

to my constituents, my question to you is, how do we know that they are unhappy or perhaps maybe have a legitimate complaint, at least in some cases?

Judge Maher: I said those are the people you will hear from. I fully expect them to be here and testify and then we will go back and get the records and we will tell you what the perspective was for the judge, or the bailiff, or the clerk, or the register. So, I am looking forward to it. I think that is the way it is going to have to be. I think that Senator Gordon's comment about saying, "Alright, let's focus in on this area. Let's find out all we can know about it and then move on to the next area" is the best way to do it.

Senator Brown: Thank you.

Judge Maher: Forgive me for interrupting you.

Senator Pignatelli: I don't see any other questions.

Judge Maher: Thank you very much.

Senator Pignatelli: Is there anyone else who would like to testify? We have heard from everyone who wants to testify again once already. We have another bill that I sense is going to take just as long.

Mr. Kamasinski: Excuse me, Madam Chairman. There was misrepresentation made about my testimony and I would like to correct that misrepresentation, if I may. I am not a disgruntled litigant.

Unidentified speaker: I have a simple summary remark I would like to make.

Senator Pignatelli: Do you think that you could all keep it under two minutes? Representative Mirski, Mr. Kamasinski, Judy Thayer, and then Representative Bickford.

Representative Mirski: Madam Chairman, I take great umbrage at Judge Maher's disparagement of testimony, earlier testimony, on the grounds that these individuals came here with a vested interest. What I heard were people explaining difficulties they had with the court system and I don't see anything about this bill which in any way grants them any kind of privilege or ways of resolving the problems which they face. I think the remarks were entirely inappropriate and, if we are going to talk about vested interests, we should look at the testimony of the judge himself. I think he owes, quite frankly, to the people who came here to testify an apology and I think, quite

frankly, having a judge come before a forum of this nature raises the question, who in this room would want to appear before this judge after that remark.

Senator Pignatelli: Thank you for your brevity. Senator Wheeler, you had a comment.

Senator Wheeler: I have a comment, too, that I think this has sort of degenerated into personal attacks. I was unhappy to hear a lot of personal remarks about Judge Nadeau. I am sure there are more of them, but I don't think this is the place...

Senator Pignatelli: Thank you, Senator Wheeler. Mr. Kamasinski?

Mr. Kamasinski: Judge Maher is a member of the Rules Committee and he is aware of the modification to the transcript. But, more importantly, he said that I came here and wanted to tell you that I have asked the Court to go back to 1981. I haven't asked the Court to do anything. All I asked the Court to do is, in letters to Judge Nadeau which have never been answered, to give me the cases that you can conveniently give me from your electronic docketing system which is sustained. I don't expect them to do anything other than that.

As a matter of fact, I have a floppy disk that they could stick in their computer and it will automatically generate all the docket numbers involving Judge Nadeau in a matter of fifteen to twenty seconds and that is all the work that is necessary. A program that I used to get that was generated from the program sustained, which I went out and bought a copy of just to see how the docketing system works.

Now, that is a misrepresentation by a judge who really has a vested interest. I am not a disgruntled litigant. I have had good decisions from the courts. When the Court attempted to remove my ability to practice before the courts under 311, I won that before the Supreme Court in a unanimous decision after Judge Bachelder was assigned as referee.

I am not a disgruntled litigant, but let me tell you something simple and easy. Who do you expect to complain to you? Do you expect the one who won the litigation to complain? They are going to leave well enough alone. Disgruntled litigants is all you are going to have, because those people are affected by the litigation, because our system is that somebody wins, somebody loses. The loser is automatically disgruntled, even if he has a good effect. That is a system that is propaganda by the judiciary that only disgruntled litigants apply. I am the only non-disgruntled litigant that

always comes to you to say there is something wrong with the system. I am not disgruntled. They haven't hurt me. I have won my cases before the courts.

Thank you.

Senator Pignatelli: Thank you. Judy Thayer?

Judy Thayer: I would like to second Representative Mirski's comment about the insulting remarks made by Judge Maher. I am not here because I am disgruntled. I am here because I have had a personal experience with the court system. I did not look for that experience. I have had it. And, there were certain issues that surfaced during the last two years that are very, very serious, they are factual, they are objective, and they will be litigated further. I am not here to litigate my case in front of you. As a lay person, I can only give you examples of what this bill represents to me by referring to my case, Senator Wheeler. Judge Nadeau was a part of my case. Not initially, but he chose to insinuate himself into it twice, as a member of the Mock Supreme Court and also a person that assigned a judge who acted very, very inappropriately and is guilty of misconduct, and I am going to pursue this. I am not here to bash Judge Nadeau. I am only giving you my example of what I have been through.

I will say one further thing. When I was Chairman of the Board of Education, we faced the same kind of situation. We would have the teachers come to us, we would have the administrators. We had the special education directors. Every single group had a power base to protect. As representatives of the citizens sitting on the Board, our job was not to listen to the powerful people who had the power, but to listen to the people that felt that somehow they had been wronged. We opened up the process to the parents, the parents of children, who had children with special needs, who had not even been taken into account and we changed the rules in order to give them a chance, in order to help the children who are the consumers of public education.

Now, if you foreclose this opportunity, what you are going to do is force the citizens of this State to do what is happening in education, what is happening in health care, and it is going to happen to the legal profession. It is not a threat. I am one of thousands of people and the only reason I am here is, I would not even know about the problems of the judicial system, the legal system, unless I had a personal experience. It is humiliating for me to have to be here. This is a humbling experience for me. But, I have had hundreds of people call me that are afraid. I have lawyers sitting in this courtroom

that would not take my case because of career suicide, political suicide, retaliation.

Now, I am just telling you, if you let the situation go, if you do not get to the bottom of the problems of this system, there is going to be a citizens resolution of it and you are our representatives and you have to take it as seriously as we took it in education. Give the citizens a chance to tell you. We are not here because my case didn't go the way I wanted. Sorry, Mr. Gordon. My case isn't finished.

Senator Pignatelli: I will take your suggestion as a suggestion, not as a threat.

Ms. Thayer: Thank you.

Senator Pignatelli: Representative Bickford?

Representative Bickford: Thank you, Madam Chair. Senator Gordon kind of reminded me, when he talked about the tectonic plates there rubbing that again, when I refer to the New Hampshire Constitution examination, the testimony from Judge Maher. He pointed out about as Chairman Jacobsen asked about the access to transcripts and the cost of them, a reply, out of context, "there is no question, with the developments of technology that we have at this point, that a dollar page can be deemed excessive. We will address this".

So, I just want to keep that alive and I think that having the Legislature there slipping and sliding on those plates is very helpful.

Senator Pignatelli: Thank you, Representative Bickford, for your brevity. I am going to close the hearing on SB 300.

Hearing concluded at 11:55 a.m.

Respectfully submitted,

Recorded by Laurel Hanlon
Transcribed by L. Gail Brown
8/15/02

2 Attachments

file copy — A

Telephone (508) 283-7130
Telecopier (508) 283-9681
EASYLINK MAILBOX 62048626

THEODORE KAMASINSKI Suite 242, P.O. Box 8008, Gloucester, MA 01931-8008

May 24, 1993

Mr. David Peck
Executive Director
Committee on Judicial Conduct
P.O. Box 1476
Concord, NH 03301-1476

Dear Sir:

I should like to make a misconduct complaint against a New Hampshire Judge, but I am somewhat concerned with the restraint on free speech imposed by your rules, which would effectively prohibit me from disclosing the information contained in my complaint or the information I obtain as a result of my future interaction with the Committee on Judicial Conduct.

Apropos, I am specifically requesting confirmation that if I file a complaint against a New Hampshire State Court Judge, I would not suffer any restraint of my First Amendment rights, or alternatively, confirmation that the restraint would be for a very limited period so as not to offend the First Amendment.

I am certainly aware of the fact that the state would be hard pressed to devise a viable process of reviewing alleged misconduct if all proceedings and investigations were at all times subject to public scrutiny. On the other hand, to avoid the appearance of a clubby indifference to public concerns, procedures for review of judicial conduct must seek to minimize that perception and thus comply with the dictates of the United States Constitution.

Very truly yours,

Theodore Kamasinski

ATTACHMENT #1

Testimony
SB 300 -
Committee to Study Administrative Functions of Courts

In May of 1983 no less a person than the President of Harvard and former Dean of the Law School wrote an article entitled "A Flawed System". calling the American Legal system "Grossly Inequitable and Inefficient." Furthermore he said the law has become so complicated and entangled that Justice is virtually impossible to render. He called for fundamental changes in how lawyers practice and how they are trained.. I am sending him a copy of this bill. Hopefully he might testify.

The system has many problems, I will address one of them now, and more in the following bill S.B. 412

The Sheer Cost of Justice: The O.J. Simpson Trial taught all Americans that Justice is not always honest and is often a purchasable commodity available to only those with huge resources and power. The Clinton scandal reinforced this perception.
Note that O.J. Expended his entire fortune to gain a Not Guilty , so that when The Goldman Family finally won a wrongful death suit, The victory was an empty one. _ the Money had already been spent on legal fees there was nothing left to award the victims Who won the case?

The lawyers !!

Believe me, All of this was not lost on the American Public

So in all states, there is the perception that justice is only for the well funded and wealthy and to a very small fraction of the very poor who get help by Pro Bono work and by Court Appointed Attorneys But the very cost is beyond the average citizen. **His resources** are quickly exhausted if he goes to court.

One ploy used to block participation in justice is used by H,& H.S. Records of a family are sealed but family may sue to obtain. However "Costs shall not accrue to the State unless it be obvious to the Court that the Department acted in bad faith" **Family Pays Both side of costs. which can reach $ 80 to 100,000. and state can throw Huge resources against it. I believe that sentence lifted millions of dollars off shoulders of DCYS. (SB210)**

If Justice is too expensive for the majority, It needs fixing.
One third of our governmental system is being denied to the citizens

I Have been told recently by a retired bureaucrat that the moment a bureaucracy is created the primary objective of that bureaucracy is to perpetuate its' own existence. result is it serves itself and not the people.That's normal. Now, I have seen much that is laudable in the legal system and have met some fine people but I have also run across things that trouble me deeply, one of which I have just addressed.

Passage of S,B, 300 will be a huge step in the right direction
We need to restore the Confidence of our citizen Electorate

William E. Cushman
47 Rivar Road
New Castle, N.H. 03854

A flawed system

Describing the American legal system as "grossly inequitable and inefficient," the president of Harvard calls for fundamental changes in how lawyers practice and how they are trained.

by Derek C. Bok

One half of our difficulty lies in the burdens and costs of our tangle of laws and legal procedures. Contrary to popular belief, it is not clear that we are a madly litigious society.

In Japan, a country only half our size, 30 percent more engineers graduate each year than in all the United States. But Japan boasts a total of less than 15,000 lawyers, while American universities graduate 35,000 *every year*. . . . As the Japanese put it, "engineers make the pie grow larger; lawyers only decide how to carve it up."

The law's response to disputes is cumbersome and expensive even in the best of circumstances. . . . By complicating the rules and insisting on an adversary process conducted by the parties, judges can undermine justice in many types of cases.

Law schools have done surprisingly little to seek the knowledge that the legal system requires. Even the most rudimentary facts about the legal system are unknown or misunderstood. We still do not know how much money is spent each year on legal disputes and services in the United States.

Judge John Maher SB300 #2 Attachment

ROLE AND RESPONSIBILITIES OF THE
ADMINISTRATIVE JUDGE

Pursuant to Administrative Order 90-002 dated November 7, 1990, there shall be an Administrative Judge for the Superior, District and Probate Courts. The administrative judge has general supervisory responsibility for the administration, operation and improvement of the court in order to provide for the expeditious disposition of all cases over which the court has jurisdiction, subject to the policies, rules, orders and guidelines established by the Supreme Court. Pending further order of the Supreme Court, the Chief Justice of the Superior Court shall be its administrative judge. The administrative judge, in addition to the foregoing, shall, when not in conflict with part II, article 73-a of the New Hampshire Constitution, have such duties and responsibilities as may be conferred by statute.

Without limiting the foregoing, the responsibilities of the administrative judge include the following:

1. Exercising supervisory powers over judges, clerks, registers and court personnel;

2. The employment and discharge of all personnel in accordance with budgetary and personnel rules and regulations and such policies as have been established by the Supreme Court;

3. Issuing superior, district or probate court administrative orders as may be required from time to time to carry out the responsibilities of the office;

4. Effectuating compliance by judges and court personnel with all applicable court rules, provisions of law and administrative orders;

5. Counseling, assisting and supervising judges in their conduct and in the performance of their administrative responsibilities;

6. Appointing court personnel to committees of the court;

7. Implementing established policies, orders and regulations concerning the court's internal management and operation, including but not limited to business hours, the timely disposition of the court's business, judicial vacations and leaves of absence, attendance at meetings, and education and training conferences;

8. Supervising caseflow management;

9. Assigning judges and court personnel to court locations when workload and other factors so require, and allocating equipment and other internal court resources where needed;

10. Preparing the court budget requests and supervising the financial affairs of the court;

11. Representing the court on the Administrative Council, and in its relations with other courts, other branches of government, the bar, the general public, the news media, and in ceremonial functions;

12. In the event of unavailability, designating an acting administrative judge, subject to the approval of the Supreme Court;

13. Performing any act or duty incidental to carrying out the purposes of Administrative Order 90-002, dated November 7, 1990.

6/5/92
2248k/ph

Speakers

SB 300 Public Sign In - JUDICIARY

APPEARING: IN FAVOR	APPEARING: TO OPPOSE	DATE: JANUARY 12, 2000 TIME: 10:00 AM NAME / REPRESENTING	WISH TO SPEAK?
	X	Edwin W. Kelly Judicial Branch	Yes
		Carolyn Douglas	

SB 300 *[Continued]* Senate Judiciary Hearing Sign In

APPEARING: IN FAVOR	APPEARING: TO OPPOSE	DATE: FEBRUARY 7, 2000 TIME: 10:00 AM NAME / REPRESENTING	WISH TO SPEAK?
✓		Philip Cobbin ✓	Yes
✓		Rep. David Bickford ✓	Yes
✓		Hank Amsden	Yes
✓		Rep PAUL MIRSKI ✓	YES
✓		Theodora Kamasoroki	YES
✓		L- Cushman (Bill Cushman)	Yes
✓		Judy Thayer	yes
✓		Caroline Douglas	yes
~~✓~~		~~Edward Moss~~	~~yes~~
✓		Judge Mahar admin. judge of probate court	Yes.

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: **MARCH 16, 2000**

THE COMMITTEE ON **Judiciary**

to which was referred **Senate Bill 300**

AN ACT ***establishing a committee to study the administrative functions and procedures of the state court system.***

file copy

VOTE: **4 / 2 [1 abstention]**

Having considered the same, report the same with the following resolution:
Resolved, that it is: **INEXPEDIENT TO LEGISLATE.**

Senator Mark Fernald
For the Committee

|SB300 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: establishing a committee to study the administrative functions and procedures of the state court system.

Date	Body	Description
1/5/2000	**S**	Introduced and refer. to Judiciary; SJ Convening Day, Pg. 6
1/6/2000	**S**	Hearing, Jan. 12 , Room 103 , SH , 10:00 a.m.; SC 1, Pg.3
1/19/2000	**S**	==RECESSED AND WILL BE CONTINUED==, Feb.7, Room 103, SH, 10:00 a.m.
3/13/2000	**S**	Committee Report Inexpedient to Legislate; 3/16/00 SC17, Pg.3
3/16/2000	**S**	Inexpedient to Legislate, MA, VV, = KILLED=; SJ 6, Pg.185

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations