

**RISKY BUSINESS:
NEW HAMPSHIRE'S EXPERIENCE
INVITING CITIZENS TO
EXAMINE THE STATE
COURTS**

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In April 2005 the New Hampshire Supreme Court embarked on a unique experiment in citizen participation. The 103-member New Hampshire Citizens Commission on the State Courts was created to engage non-lawyer citizen volunteers in an independent examination of Judicial Branch operations. The Commission's charge was to examine the court system from the viewpoint of the public and develop recommendations aimed at making the system more accessible, affordable, and efficient.

A little over a year later, after nine Commission meetings and 11 public "listening sessions," in June 2006, the Commission delivered its report to the New Hampshire Supreme Court with 30 recommendations covering areas it said warranted action by state policy makers: customer service, alternative dispute resolution, access to legal services, family courts, sentencing and public outreach. The Citizens Commission report became the framework for a Judicial Branch Strategic Plan intended to guide long-term decision making, including

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budget requests to the state legislature. This paper presents an insider's look at the value—and challenges—that come with encouraging large-scale citizen engagement in assessing a court system to see whether it is meeting consumer needs. The logistics of managing a group of citizen volunteers (two-thirds of whom were not lawyers and many with little knowledge about the courts) are discussed, as are organizational strategies used by Commission leadership to produce a comprehensive report in a limited period of time. Practical demands facing the citizen volunteers are also addressed. Because it was completely independent of the courts, the Commission was required to raise substantial funds, construct and maintain a website, hire administrative help and publish a final report—without assistance from court personnel or funds.

Introduction

“It forced us to consider a range of issues and ideas we would not otherwise have sat down and methodically discussed and analyzed,” the state court administrator, Donald D. Goodnow said. The result, Goodnow said, is “a renewed sense of who we are and where we are going.”²

The New Hampshire Citizens Commission on the State Courts (the Commission) gathered for the first time on April 18, 2005, on the granite steps outside the entrance to the Supreme Court building in Concord for a photo opportunity. The new “commissioners” included business executives, educators, a freelance writer, civic activists, members of the legislature, the former chief operating officer of Autodesk, one of the world’s top software companies, a retired surgeon, the current and former directors of the state chapter of the AFL-CIO, and advocates for the disabled and the elderly. Chief Justice John T. Broderick Jr. stood at a microphone, with the four associate Supreme Court Justices at his side, and declared the occasion “a historic day.”³ No “citizen” driven effort to evaluate the courts from the public’s view point, chaired by non-lawyers, had ever before been undertaken in New Hampshire.

2. Interview with Donald D. Goodnow, Director, Admin. Office of the Courts (Nov. 7, 2007).

3. Nancy Meersman, *100 People Take on the NH Courts*, Manchester Union Leader, Apr. 19, 2005.

Katharine Eneguess, a community technical college president who had agreed to serve as a Commission co-chair, declared that “all the brainpower” that stood behind her “will be used to really think out loud about where we need to go and what we need to do to get there.”⁴ Eneguess and her co-chair, Will Abbott, then the executive director of the Mount Washington Observatory,⁵ had already been hard at work for months devising a plan to carry out the Chief Justice’s request that the Citizens Commission “take a comprehensive look at improving the administration of justice in New Hampshire”⁶ from the viewpoint of court users. When it was Abbott’s turn to speak, he said he was looking forward to working with the commissioners, and the court system. Then he paused: “Until this morning, we didn’t appreciate just how daunting a task this really was going to be,” he said.⁷

In June 2006, just 14 months after they first met, the commissioners returned to the Supreme Court to present Chief Justice Broderick with 30 recommendations for improvements and change in the courts. The Commission process was guided from the start by the tradition of a New England town meeting, listening with neighborly respect, and then engaging in orderly and efficient decision-making. The Commission divided into eight research groups, each of which proposed recommendations that were voted on in two sessions at the statehouse in Concord. Its final report was incorporated into a new Judicial Branch Strategic Plan—the first long range planning document the New Hampshire courts had produced since 1990.⁸ The process was a catalyst for change in the way the New Hampshire court system does business.

4. *New Hampshire Outlook: Citizens Commission on the Courts* (New Hampshire Public Television broadcast Mar. 22, 2006).

5. The observatory is a private, non-profit scientific and educational institution which maintains a weather station at the summit of Mt. Washington. See <http://www.mountwashington.org>. Abbott is now vice-president for policy and land management at the Society for the Protection of New Hampshire Forests.

6. Chief Justice John T. Broderick, Jr., State of the Judiciary Speech, Feb. 23, 2005.

7. *New Hampshire Outlook*, *supra* note 4.

8. As *New Hampshire Approaches the Twenty-First Century* (New Hampshire Supreme Court Long-Range Planning Task Force July 19, 1990). Of the 67 Task Force members, 14 were non-lawyers, principally business executives and academics. The chair and vice-chair were lawyers.

This paper presents an insider's look at the value and challenges faced by the Commission, including the logistics of managing a group of citizen volunteers; organizational strategies used by Commission leadership to produce a detailed report in a set period of time; and the practical demands the citizen volunteers faced because the Commission's operations were independent of the courts.

Why Do It?

My colleagues and I believe that the challenges confronting the judicial system over the next decade and beyond need urgent attention. In order to reform the system to meet tomorrow's challenges, we are anxious to have substantial public input. The court system belongs to the people of New Hampshire and it is only fitting that they help identify the necessary changes so that justice can remain efficient, affordable and accessible.⁹

In his book "Creating the Judicial Branch: The Unfinished Reform," Robert W. Tobin, a longtime consultant at the National Center for State Courts, puts citizen involvement in decisions about court administration among the issues in an "emerging reform agenda" which Tobin predicted "will change the way courts deal with the public and affect the culture of the judiciary and the legal system."¹⁰ Compared to what he calls "feudal courts" that insisted on putting their own house in order, he wrote, the new agenda is decidedly more open door.¹¹

"The newer agenda is more external and person oriented, actively involving the courts in social problems, in collaboration with the citizenry, and in opening up the courts. Courts are being forced to consider lay concerns about the legal process and take on issues that go to the heart of the legal culture."¹²

Tobin traces development of the new reform agenda to influential public surveys¹³—dating back to 1978—which showed wide public dissatisfaction with courts and the legal system.

9. Letter from Chief Justice John T. Broderick, Jr. to Future Members of the Citizens Commission (Mar. 9, 2005).

10. ROBERT W. TOBIN, CREATING THE JUDICIAL BRANCH: THE UNFINISHED REFORM X (1999).

11. *Id.* at xi.

12. *Id.* at x.

13. *Id.* at 196 n.1 (citing YANKOLOVICH, SKELLY AND WHITE, INC., THE PUBLIC IMAGE OF COURTS: HIGHLIGHTS OF A NATIONAL SURVEY OF THE GENERAL PUBLIC, JUDGES LAWYERS AND COMMUNITY LEADERS (1978)).

Twenty years later, after surveys reaffirmed that attitude, the American Bar Association and major court organizations began focusing on what remains a very prominent theme in court administration—building public trust and confidence in the judicial system.¹⁴ As Tobin recounts, much of what the surveys reported from citizens was about “the need to be served and to be treated with respect.”¹⁵ According to Tobin, they wanted the courts “to reach out to the community and involve citizens to a larger extent in the operations of the courts.”¹⁶

David C. Steelman, a principal court management consultant for the National Center for State Courts, includes the New Hampshire Citizens Commission as part of the judicial reform effort in which court leadership tries to be “more responsive to the needs of society.”¹⁷ Steelman, who lives in New Hampshire and has worked with the court system there for decades, says what made the New Hampshire initiative unusual was that while other states have created “futures” commissions,¹⁸ or assembled groups to study specific topics,¹⁹ Broderick’s charge

14. For example, in May 1999, the first ever conference on “Public Trust and Confidence in the Justice System” was held in Washington DC, attended by representatives from 46 states and sponsored by the ABA, the League of Women Voters and the Conference of Chief Justices, of which Chief Justice David A. Brock of New Hampshire was then president. Since then the National Center for State Courts has maintained a “Public Trust and Confidence Forum” on its website addressing the top three agenda items identified in 1999: unequal treatment in the justice system, the high cost of access to justice and lack of public understanding. http://www.ncsconline.org/projects_Initiatives/PTC/index.htm.

15. TOBIN, *supra* note 10 at 196.

16. *Id.* at 197.

17. Interview with David Steelman, Consultant, National Center for State Courts (Oct. 2007).

18. For example, in 1987, Virginia was the first state to launch a court “futures” commission, followed up almost ten years later with the Virginia Commission on Courts in the 21st Century (2006). A Commission on the Future of the New York State Courts was specifically charged in 2006 with modernizing the “archaic structure” of the state’s trial courts. *See* Press Release, NY State Unified Court System, Chief Judge Appoints Special Commission on the Future of the New York State Courts Panel Charged with Redesigning State’s Arcane Trial Court Structure (July 17, 2006).

19. In 1991, the Citizens Commission on the Texas Judicial System, with 74 members, was created by the state Supreme Court and charged, in a court order, with making recommendations on court system organization, budgeting, staffing, facilities and equipment. The court appointed the former dean of Duke University Law School to chair the commission. *See* Citizens Commission on the Texas Judicial System: Report and Recommendations, (Jan. 5, 1993), http://www.courts.state.tx.us/tjc/publications/cc_tjs.pdf.

was wide open.²⁰ Traditionally, in the world of court committees, the inclination would be for the high court to control the whole process: frame the charge, set the task to be completed and construct the committee from insiders, primarily members of the Bar, judges and court administrators.²¹ In New Hampshire, Chief Justice Broderick chose many of the commissioners he named, but he also appointed people he did not know at all but who were recommended by others, which accounts, in part, for the Commission's large size.²² Both co-chairs were non-lawyers, as was two-thirds of the Commission membership, which resulted in a consumer-driven effort directed at customer service, access, timeliness and cost.

A significant factor that contributed to the manageability of the New Hampshire project was the State's small size—fifth smallest in the country by geography and ninth by population (1.3 million residents). The distance from the border north to south is a four-hour car ride and east to west is two hours, making travel around the state to collect public input easy. As the Chief Administrative Officer of the New Hampshire courts, as well as a full time Supreme Court Justice, Broderick is in effect the CEO of a small company: 56 judges, about 600 employees, handling 225,000 cases per year with an annual budget of about \$69 million. There are five components to the New Hampshire court structure: the five-member Supreme Court is the only appellate court; jury trials are held in the Superior Court by 22 judges around the state; the district courts handle small claims, landlord tenant, traffic and minor criminal cases in 35 locations, each of the state's ten counties has a probate court and there is a Family Division. The most significant change in the New Hampshire court system structure in 20 years has been the statewide expansion of the Family Division²³—where judges

20. Interview with David Steelman, *supra* note 17.

21. See TOBIN, *supra* note 10, at 234 (discussion of citizen collaboration in court committees).

22. For example, Chief Justice Broderick and Abbott met for the first time when Broderick invited Abbott to take the job as Commission chair. Abbott recommended Eneguess as co-chair.

23. Justice Moving Forward: A Time for Change, State of New Hampshire Judicial Branch 2003-2004 Report, <http://www.courts.state.nh.us/supreme/rpt03.04.pdf>.

and marital masters²⁴ now do the work once spread among the Superior Court, district and probate courts. New Hampshire is one of only three states in which judges are appointed to lifetime terms²⁵ (in New Hampshire, they must step down at age 70).²⁶ During the first 14 months of his tenure as Chief Justice, Broderick visited every court facility around the state, stopping at every desk to shake hands and talk, from the northern most towns in the White Mountains down to the congested corridors of the state's southern tier, along the Massachusetts border. The Citizens Commission also took advantage of the state's relatively compact geography, beginning its work with a series of 11 "listening sessions" around the state during which citizens were invited to talk about their experiences with the court system, and offer suggestions for improvement.

Author Robert Tobin says that citizens do not expect to be invited to take a look at insulated institutions, like the courts, especially since they have little contact with them.²⁷ "I think most people think judges just shape everything for lawyers and it's kind of an inside job," Tobin said. Citizens are summoned into the courts when there is a need for a jury, for example, but otherwise "they resent the legal culture."²⁸ Still, Tobin said, recruiting citizens to take a look at the courts can serve an important purpose, especially if those citizens perceive the invitation is sincere.

"The purpose is people are glad you asked. That's what it boils down to."²⁹

Taking a Risk: Recent History and Public Perception

To ensure that the Citizens Commission's review of court operations would be independent, no one from the Administrative Office of the Courts (AOC), which oversees the Judicial Branch budgeting process, accounting, technology and person-

24. Marital masters, confirmed by the governor and executive council, are assigned to preside over cases involving family law. Their orders must be signed by a judge.

25. N.H. CONST. part II, art. 73.

26. N.H. CONST. part II, art. 78.

27. Interview with Robert Tobin (Jan. 4, 2008).

28. *Id.*

29. *Id.*

nel, was named to the Commission, but the staff there were frequently called upon to answer questions from commissioners and to provide records and documents. The AOC director, Donald Goodnow, who is a former trial court clerk and a lawyer, felt it was not clear at first what the Commission was supposed to accomplish and it seemed “risky” to bring in people who did not know about the court system.³⁰ In hindsight though, Goodnow said he agreed that the open-door invitation to citizens was what the New Hampshire Judicial Branch needed to do at that point in time—demonstrate to citizens, and lawmakers, that the courts were open to change and innovation, committed to transparency and intent on creating a “customer service environment” by asking those customers what they wanted to see happen.

The formation of the Commission, and its examination of the state courts through the eyes of the public, came not long after a very difficult period of time for the New Hampshire Supreme Court. Just five years earlier, in 2000, the Supreme Court was the target of relentless criticism from lawmakers, editorial writers, and members of the public, involving court practices and procedures and was portrayed as a secret institution averse to public scrutiny and oversight.³¹ Investigations by the Attorney General’s office and the legislature, and lengthy public hearings, ended with impeachment charges³² against the Chief Justice at that time, David A. Brock, who had been on the Supreme Court for 25 years, 17 as Chief.³³ After a dramatic public trial,³⁴ Brock was fully acquitted³⁵ and immediately returned to

30. Interview with Donald D. Goodnow, Director, Admin. Office of the Courts (Oct. 5, 2007).

31. See Jeffrey Toobin, *The Judge Hunter: An Unlikely Crusader Goes After New Hampshire’s Political Establishment*, THE NEW YORKER, June 12, 2000.

32. N.H.H.R. Jour. 991-1071, 1095 (2000). The House brought four articles of impeachment against Brock, which it said amounted to “maladministration” and “malfeasance” in office; N.H. CONST. part II, art. 38. Chief Justice Broderick, who was then an associate justice, and a second justice, now retired, were also investigated by the House, but no charges were brought against them.

33. See Cynthia Gray, *Supreme Court/Legislature at Odds in New Hampshire*, JUDICATURE, March-April 2001, at 291-292.

34. New Hampshire Public Television provided gavel to gavel coverage of the House hearings and impeachment trial.

35. Day 15 Transcript of the Proceedings Held Before the New Hampshire Senate Court of Impeachment, Administrative Office Building, 33 North State Street, Concord, New Hampshire, 148-59 (Oct. 10, 2000). (On file with N.H.State Library, Concord, NH).

work with the court. (He had taken a leave pending the outcome of the impeachment proceedings.) In the aftermath of a long period of public turmoil,³⁶ there was a clear need to rebuild confidence in the court system, in the eyes of the public, the legislature, and the organized Bar, and to do that by demonstrating that the court was committed to a new level of openness and public inspection. The working dynamic within the five member Supreme Court itself was also reenergized following the appointment of three new justices.³⁷

In March 2001, four months after his return to the court, Brock and the four associate justices asked the National Center for State Courts to conduct an “operational review” of the Supreme Court. That project was followed by a series of reviews which would become required reading material for the Citizens Commission. In November 2003, after negotiations with the Supreme Court about the scope of the work and issues of judicial independence, legislative auditors completed a “Performance Audit Report” which had been suspended during the impeachment period. The report examined six years of court administrative operations and made recommendations to improve efficiency. With the audit’s release, the Justices established a new “Committee on Justice System Needs and Priorities,” chaired by a former Bar president and comprised of judges, lawyers and court administrators, to make recommendations to the judicial branch “for meeting challenges in the future.”³⁸ Brock retired in December 2003 and six months later Broderick was sworn in as Chief Justice, pledging to continue the effort by the courts to build “cooperation and dialogue” with the gover-

36. See Pamela M. Walsh, *Lawmakers Throwing the Book at Judges*, CONCORD MONITOR (Jan. 21, 1999) (Supreme Court decisions in a long-standing battle over school funding and accusations that a local judge had stolen more than \$1 million in client funds (he fled the state and committed suicide) had prompted a raft of court “reform” bills in the legislature during the year before the impeachment.).

37. Justice Joseph P. Nadeau, who had been chief justice of the trial court, was appointed in 2000, to a seat vacated by a retirement. Justice Linda S. Dalianis, another veteran trial court judge, came to the Supreme Court six weeks later following the resignation of the justice whose conduct led to the impeachment investigation. The third new appointee, also following a retirement, was Justice James E. Duggan, a former law professor who had represented hundreds of criminal defendants before the Supreme Court as the state’s chief appellate defender.

38. Press Release, Judicial Branch, Chief Justice Commends State Auditors; New Committee to examine needs and priorities (Nov. 19, 2003), <http://www.courts.state.nh.us/press/auditors.htm>.

nor and members of the legislature, noting that they all “answer to the same constituency.”³⁹ He set the stage for creating the Citizens Commission, by stating:

In an ever-changing world, increasingly diverse and complex, the doors to our courthouses must be truly open and accessible to all who seek and deserve justice. My focus in the years ahead will be on the needs of those who use the courts so that we can timely, fairly and intelligently resolve the disputes that have impacted their lives.⁴⁰

Three months later, in September 2004, the Committee on Justice System Needs and Priorities⁴¹ delivered its report to the Supreme Court, endorsing a wide range of customer- service oriented improvements: more efficient case processing and scheduling, improved training of judges and staff, and more low cost legal services.⁴² The Committee said its recommendations and report “set the stage for examination by a broad cross-section of public officials and citizens.”⁴³ At a press conference in his Supreme Court chambers with the Committee’s chairman, former Bar president Bruce W. Felmly, seated beside him, Broderick set in motion what would eventually become the Citizens Commission on the State Courts:

Now that this detailed analysis has been completed by those who work so closely within the justice system on a daily basis, I will ask a broad constituency of the public to take this work and suggest how we can further improve access to justice for all citizens as they see it. . . . This is their court system.⁴⁴

As Broderick saw it, if a large group of non-lawyers was invited to identify court system needs and propose changes, their independent review would carry weight with lawmakers, who sign off on the court budget, with the public at-large and inside the court system itself, where resistance to change is routine. The process would also contribute to much needed strategic planning.

39. Chief Justice Broderick, Remarks After Taking the Oath of Office (June 4, 2004), available at <http://www.courts.state.nh.us/supreme/chiefoath.htm>.

40. *Id.*

41. A Vision of Justice, The Future of the New Hampshire Courts, Report of the New Hampshire Supreme Court Committee on Justice System Needs and Priorities (Sep. 2004), available at <http://www.courts.state.nh.us/press/felmlyreportweb.pdf>.

42. *Id.* at 6.

43. *Id.* at 3.

44. Press Release, NH Judicial Branch, Report Recommends Wide-ranging Enhancement of Court System Services (Sep. 22, 2004).

“We had nothing to hide and very real needs,” Broderick said later, “[I]f citizens attested to that, it would be nothing but helpful.”⁴⁵ The formation of the Citizens Commission also supported the message that Broderick, and the full Supreme Court, had repeatedly emphasized to lawmakers, the public, and the media that the New Hampshire court system is open and transparent.

The Commission’s Charge

The Chief Justice, in his letter inviting the commissioners to their first meeting, cited four major court reports which he said “will help set the parameters for your work. . . .”⁴⁶ All had been produced by court insiders: judges, state bar leaders, legal assistance lawyers, public defenders and court staff. One was the report from the Committee on Justice System Needs and Priorities.⁴⁷ The others examined the most prominent challenges facing the New Hampshire courts: the growing number of self represented litigants and the statewide consolidation of all family-related cases, from adoption to divorce, into a single “Family Division” designed to improve efficiency and reduce the adversarial atmosphere that too often surrounds these very difficult cases.⁴⁸

The invitation letter from Broderick also introduced the Commission co-chairs. Before focusing his career on environmental issues, Will Abbott, had been a field organizer for top New Hampshire Republicans, and he had been the state political director for President George H.W. Bush during the 1988 primary campaign. Eneguess, then serving as president of two

45. Interview with Chief Justice Broderick (Oct. 2007).

46. Letter from Chief Justice John T. Broderick, Jr. to Members of the Citizens Commission (Mar. 28, 2005).

47. A Vision of Justice: The Future of the New Hampshire Courts, Report of the New Hampshire Supreme Court Committee on Justice Needs and Priorities, *supra* note 41.

48. Challenge to Justice: A Report on Self-Represented Litigants in the New Hampshire Courts and Family Division Implementation Committee Report and Recommendations are available at <http://www.courts.state.nh.us/cio/index.htm#reports>. The fourth report, Findings and Recommendations of the Family Law Task Force, is available at <http://www.nhbar.org/pdfs/FamLawTFRep04CL.pdf>.

community technical colleges 100 miles apart,⁴⁹ had been a longtime public policy analyst for the state's Business and Industry Association. She and Abbott had known each other for 15 years. Chief Justice Broderick established a broad mandate for the Commission:

You have a stake in the quality of our justice system, whether or not you have ever spent a day in court or even read a line in the State Constitution. The health and welfare of our communities and our state depends on the ability of the justice system to fairly and efficiently resolve disputes that are inevitable in daily life—for men, women, children and families, business and government. The goal of the Citizens Commission is to determine if we are living up to that responsibility.⁵⁰

Even before agreeing to participate in the Citizens Commission, co-chairs Abbott and Eneguess, had discussed the Commission with legislative leaders and colleagues in public policy circles. Both knew that the Citizens Commission needed support from lawmakers and the players in the state capitol who worked with them. “I just point blank asked a few Senators ‘Do you think this is a skill for the courts?’” Eneguess said. The response was that the integrity of the Commission depended on keeping the public's view, not the courts', in the forefront. “It was going to have to be about keeping the court at arms length and making it truly a public discussion,” Eneguess said.⁵¹ Abbott was concerned that the public would see the Commission as an attempt to “whitewash” the whole impeachment period. Broderick, whom Abbott described as “a particularly good salesman,” convinced him otherwise. In the end, Eneguess remembered, “Will (Abbott) and I were both clear that this could work.”⁵²

Creating and Executing a Game Plan

“I was really happy to be part of this.”⁵³

49. Each campus now has its own president; Eneguess remained as president of the technical college in Berlin, which is now known as White Mountains Community College.

50. Letter from Chief Justice Broderick, *supra* note 46.

51. Interview with Katharine Eneguess, Co-Chair, New Hampshire Citizens Commission on the State Courts (2007).

52. *Id.*

53. Interview with Donna Davey, Commissioner, Citizens Commission (Oct. 18, 2007).

From the start, Eneguess and Abbott believed it was important for them to define their own roles as the Commission leaders. “We consciously made a decision that we would manage the process and would let others advocate,”⁵⁴ Abbott said later. Their job would be to run meetings—which was no small task considering the size and diversity of the group—and keep the work on track and on time: “When people saw we were sticking with that it helped establish the trust that made the process work.”⁵⁵

An operational structure had to be put in place to tackle the task of effectively managing 103 commissioners during what was expected to be at least a year of work.⁵⁶ The Commission itself had to start collecting public input immediately, since that was its core charge, and then decide what to do with it. Abbott called this process “managing the dynamic for decision-making.”⁵⁷ Most importantly the members themselves had to decide how the Commission would operate and what its objectives would be. “We had to have a process that everybody bought into and had an opportunity to create,”⁵⁸ Abbott said.

All the commissioners left the initial April 2005 meeting at the Supreme Court with an e-mail link to the reports produced by other committees.⁵⁹ Abbott and Eneguess devised a “homework assignment” to launch the information gathering process and, perhaps most importantly, to keep the commissioners invested in the process until the next scheduled meeting in two months.

The “homework” included an informal survey, which asked “What would you like to see this Commission accomplish?”⁶⁰ The commissioners were also asked, based on their reading of the four major court reports, to list five items for the Commission to focus on, in order of priority. Finally, each commissioner was given a six-question “interview guide” which

54. Interview with Will Abbott, Co-Chair, New Hampshire Citizens Commission on the State Courts (Oct. 2007).

55. The co-chairs’ insistence upon facilitating rather than directing avoided the traditional “top-down” approach experienced in government committees. See TOBIN, *supra* note 10.

56. Ultimately, 99 citizens made up the Commission.

57. Interview with Will Abbott, *supra* note 54.

58. *Id.*

59. See *supra* notes 47 & 48.

60. Commissioner survey (Apr. 18, 2005).

asked about his or her experience with the courts and knowledge of the courts and their operations. The commissioners were encouraged to interview family and friends for their input as well.

To provide overall structure for the Commission, Abbott and Eneguess formed a nine-member steering committee “to provide governance for the Commission as it does its work.”⁶¹ Except for one judge member, there were no lawyers or court staff on the steering committee.⁶² An ambitious game plan was set: ten months of information gathering (including the 11 listening sessions); formation of research committees based on the information collected; three months of deliberation; submission of recommendations by each subcommittee; voting and then two months to compile the final report, for delivery on June 1, 2006.⁶³

The information gathering process continued throughout the summer. The survey led to a seven-page single-spaced “feedback list” of what the commissioners wanted to accomplish. Survey responses ranged from developing a plan for a paralegal or lawyer for every person in court, creating user-friendly court rules and improved relations with the legislature to better technology, more mediation services and help for self-represented litigants and more public education about the court system. Small group discussions during one Commission meeting produced another long list of topics for discussion, including customer service, public access to the courts for disabled citizens, the need for interpreters, services for persons with mental health and substance abuse issues, judicial accountability, and greater flexibility in sentencing.

Since no administrative help was available from the court system, a project manager was hired to supervise and monitor communications (primarily e-mail and conference calls), sched-

61. The steering committee also prepared agendas for full Commission meetings, provided organizational guidance, and was responsible for assuring “full transparency of the Commission’s work.” The Commission’s research committees were each chaired by a steering committee member who regularly reported back to the full steering committee. See New Hampshire Citizens Commission on the State Courts: Commission Meeting Minutes (July 25, 2005), available at http://www.nhkitcourts.org/meetings/pdf/2005-07-25_c_mtg-minutes.txt.

62. The author attended all steering committee meetings.

63. “Nobody is laughing out loud yet. Good!” Eneguess said after she announced the proposed calendar. See Commission Meeting Minutes, *supra* note 61.

ule Commission meetings, produce documents, keep records and make telephone calls. The co-chairs also were determined, and the commissioners agreed, that a public record would be available of all meetings and listening sessions—complete transparency again seen as key to the Commission’s credibility with citizens and lawmakers. The Commission launched its own website, *www.nhcritcourts.org*, fully independent of the court system, which included schedules, mission statements, committee charges, transcripts of meetings and “listening sessions,” and an “electronic library” of reports and other resources. The website content was assembled by the Commission’s project manager, Julie Morris, who maintained it from her home office, on a laptop that had been purchased for the Commission. Morris also attended each of the 11 listening sessions and transcribed them from tape recordings for posting on the website.

In order to build a sense of cohesiveness and collective identity within the very diverse group of commissioners during their early meetings, the co-chairs invited Kathy L. Mays, the longtime director of judicial planning for the Virginia State Court Administrator and a key player in that state’s 1987 “Futures” commission,⁶⁴ to brainstorm with them about techniques for effectively collecting and using citizen feedback. David Steelman also was there to talk about resources available to the Commission from the National Center for State Courts. Eneguess recalled it was Steelman who was able to reinforce with the commissioners that the job could be done, that it was a unique, and critical assignment, and that the process that she and Abbott were developing—drawn from the New England town meeting tradition of listening to your neighbors and making decisions—could work.

The composition of the Commission, and whether it was truly a “Citizens” Commission, was an ongoing topic of discussion. Commissioner Sally J. Davis, former president of the State League of Women Voters, said some commissioners thought there were too many judges and “people from the courts” in the

64. Interview with David Steelman, *supra* note 17.

group.⁶⁵ Seven judges (two retired) and the three top judicial administrators⁶⁶ were members, along with one marital master, more than 18 lawyers, including the current Attorney General and her predecessor, the head of the Public Defender Service, several well known trial court practitioners, Bar leaders and advocates of legal services for the poor. Since the commission membership lists on the website did not include titles or occupations, there was no way for fellow commissioners to see the occupational distribution of the membership.⁶⁷ There were just too many commissioners to gather or write even short biographies for the Commission website, which would have shown that there were many commissioners with no court connections at all.⁶⁸ Chief Justice Broderick and his staff, in assembling the committee early on, used a state map to make sure Commission membership was fairly distributed by population, and that non-lawyers were included from all geographic areas.

Commissioner Byron O. Champlin, a member of the steering committee, said that while the expertise of the lawyers and court personnel was important, in retrospect, the Commission “seemed weighted down with legal professionals. I think we felt we were empowered to talk, but you could certainly feel you are not as knowledgeable as these folks.”⁶⁹ Nevertheless, no “non-lawyer” was shy about speaking up, he said.⁷⁰

While others on the Commission may have understood more about politics and the court process, commissioner Donna Davey, a retiree, said she believed she had something to offer.⁷¹

65. Interview with Sally J. Davis, Commissioner, Citizens Commission (Oct. 2007).

66. Chief Justice of the Superior Court Robert J. Lynn, Judge Edwin W. Kelly and Judge John R. Maher (now retired) were members of the Judicial Branch Administrative Council which meets monthly and advises the Supreme Court on matters involving court system operations.

67. Both co-chairs had reviewed Chief Justice Broderick’s appointments to the Commission, and then added 15 members themselves whom they knew to have had experience with statewide issues, public policy and citizen engagement.

68. Interview with Sally J. Davis, *supra* note 65.

69. Interview with Byron O. Champlin, Member, Citizens Commission Steering Committee (Nov. 1, 2007). Champlin, who spent seven years working in communications for the state legislature and is active in many civic organizations, is assistant vice president and program officer of the New Hampshire office of a national financial services firm.

70. *Id.*

71. Interview with Donna Davey, Commissioner, Citizens Commission (Oct. 17, 2007).

She had had her own emotional experience with the court system, without a lawyer, and now she could speak to the lawyers and judges on the Commission from the perspective of a “regular citizen” trying to deal with the difficulties of going to court alone. She also served as the note-taker for the “Third Branch” research committee and found herself in a meeting with the Governor, and several prominent lawmakers. On another occasion, she had a seat at the table during a meeting with the Supreme Court justices in their conference room.⁷²

Reaching Out to the Public

In the fall of 2005, either Abbott or Eneguess (sometimes both) attended the “listening sessions” scheduled around the state. They had urged commissioners to join them. (Commissioner attendance at these hearings was limited, although one commissioner, a former television executive, attended every session.) Afternoon and evening sessions were scheduled to make it as convenient as possible for citizens to attend, but building an audience was a difficult task. These listening sessions were not public hearings, as Eneguess pointed out, where pros and cons are debated. These were *listening* sessions. Citizens talked about their experiences with the court system without interruption or challenge, although they were politely advised that this was not the place to attempt to retry their case. Every word was recorded, transcribed and posted on the Commission’s website by the project director, Julie Morris. “Will and I believe very strongly in the town hall concept of listening to the people,”⁷³ Eneguess said. Regardless of the sparse numbers in attendance at some sessions, the Commission co-chairs agreed that conducting these sessions conveyed to the public that the judiciary—long the least accessible and most reclusive branch of government—had launched an aggressive public outreach effort through the Commission.

72. See New Hampshire Citizens Commission on the State Courts: Minutes of the Subcommittee on the Third Branch (Dec. 14, 2005), available at <http://www.nhcitcourts.org>.

73. Interview with Katharine Enguess, Co-Chair, Citizens Commission (Oct. 2007).

The Commission's records show that 71 members of the public attended the 11 listening sessions. The commissioners heard from a prominent public defender, a well-known public policy analyst and a newspaper reporter concerned about access to court proceedings. Overwhelmingly, however, the testimony focused on the court system's role in overseeing the aftermath of divorce.⁷⁴ During a listening session in Tamworth, New Hampshire, a small village near Mount Chocorua, an emergency room doctor expressed his frustration with the way the marital master in his divorce case computed child support. The doctor testified, as his nine-year old son did his homework in a nearby room: "[T]he court system, I really felt like they didn't care, like it was rubber stamps(sic). . . . [W]hat is it here, is it political pressure . . . is it just the norm we say, well you know what, the mother gets preferential treatment."⁷⁵ Later, at a listening session in the town of Salem, a divorced mother of two who said she had been following the Commission's online forum, praised the commissioners "for their utmost patience in listening to what I perceive as constant ramblings and negativity towards the courts from disgruntled ex-husbands."⁷⁶ Her own case, which began in 1982, has been "long and painful," she said, but "through no fault of the court system."⁷⁷

Overall, the Commission received 194 "contacts" from the public, including surveys and e-mails, and 93 of those contacts involved the Family Court.⁷⁸ By far the top concerns raised were the expense of going to court and "court bias" against fathers in divorce cases, followed far behind on the list by stories of denial of due process, court delays, false reporting of domestic vio-

74. The fathers' rights groups have a well-established communications network, and that, combined with the emotional impact of divorce issues and the high number of family cases, may account for the frequency of testimony about child support and custody issues at the listening sessions.

75. New Hampshire Citizens Commission on the State Courts: Tamworth Listening Session, at 7-8 (Nov. 7, 2005), http://www.nhcritcourts.org/public_participation/pdf/Listening_Session_Transcript_Tamworth.pdf.

76. New Hampshire Citizens Commission on the State Courts: Salem Listening Session, at 3 (Nov. 14, 2005), http://www.nhcritcourts.org/public_participation/pdf/Listening_Session_Transcript_Salem.pdf.

77. *Id.*

78. New Hampshire Citizens Commission on the State Courts: Report and Recommendations, app. at 44 (June 1, 2006), http://www.courts.state.nh.us/press/cc_report.pdf [hereinafter *Citizens Commission Report*].

lence and “ineffectiveness” of the committee responsible for complaints against judges.⁷⁹

Broderick had appointed one of the most vocal “fathers’ rights” advocates to the Citizens Commission, Paul M. Clements, the founder of the state chapter of “Dads Against Divorce Discrimination,” who for years has pressed his case in newspapers and on television, contending that the court system is biased in favor of wives and mothers. Clements’ own experience “shook him to the core” as Abbott described it, and while his very public crusade for fathers is fiercely determined, it is often laden with tension which made meetings uncomfortable. On the Commission’s Family Court research committee, of which Clements was a member, the discussions were “polite and inclusive” and Clements “always got to speak from his perspective,” said Michael Ostrowski, the president of a statewide mental health and child welfare agency and a co-chair of the research committee.⁸⁰

Kathy Mays from the Virginia Futures Commission, and others had emphasized early that if the Citizens Commission wanted credibility it had to include well-organized court critics, including those with an established agenda, like the “fathers’ rights” group. Abbott and Eneguess wanted to make it clear that the Commission was willing to listen, but also that no group would be permitted to dominate the discussion. At Clements’ request, Abbott and Eneguess eventually agreed to meet privately with a group of fathers on a Sunday afternoon in October, in a church hall in Concord, the state capital. According to Abbott, at least 50 people, mostly men, showed up for the meeting and almost all of them wanted to be heard. They were allotted five minutes each, and the meeting lasted for almost three hours.⁸¹ After listening to a wide range of testimony, from passionate to matter-of-fact, Abbott said it became clear to him that legitimate concerns had been raised by fathers who felt “the courts had wronged them.” Abbott also felt that the turn-

79. *Id.*

80. Interview with Michael Ostrowski, Co-Chair, Family Court Research Committee, Citizens Commission (2007).

81. Since this was an informal meeting, and not part of the Commission’s official business, the co-chairs asked to meet with the group privately to help them better understand the issues involved with the fathers’ rights groups. There is no transcript of the meeting.

out alone that Sunday afternoon meant that the Citizens Commission had established credibility as a group that was willing to listen to all sides, including the harshest, and most fervent, critics of the judicial system.

The entire process required a “thick skin” as Abbott put it. Clements’ aggressive approach on behalf of his issue did not waiver. A year after the Commission delivered its report to the court, he wrote a harshly critical letter to Chief Justice Broderick published on the op-ed page of a local newspaper and labeled the Commission “a group hug by friends of the court” and a “cruel joke.”⁸²

The Importance of Financial Support

The Commission’s final expenses totaled \$80,000.⁸³ Abbott and Eneguess believed that the credibility of the Commission, in the eyes of the public and particularly the state legislature, hinged on demonstrating that it was fully independent from the court system, so no court administrative staff, funds, or equipment were used for Commission operations. Both co-chairs are experienced fundraisers, but this particular assignment posed a series of unique constraints in the search for money. The Commission could not solicit gifts from private, individual or corporate donors because litigation involving their work might someday come before the state courts.

Funding for the Commission came in large part from two major, non-profit institutions each of which has a long and respected history of providing grant support for public-interest projects: The New Hampshire Charitable Foundation and the New Hampshire Bar Foundation.

The Charitable, as it is known in the state, is a non-profit public charity with more than \$400 million in assets, and a board of trustees that includes former public officials, community leaders, educators, benefactors and others. The foundation provided a \$30,000 grant to give the Commission the basic sup-

82. See Paul M. Clements, Op. Ed., *Citizens Commission on Courts Yet Another Sham*, CONCORD MONITOR, August 30, 2007.

83. *Citizens Commission Report*, *supra* note 78, at 46.

port it needed to get off the ground,⁸⁴ but, before it did so, the board met with Broderick and Eneguess⁸⁵ for assurance that this would be a “citizen-based” project and that the bar and the courts would let the process run its course without interference. The Charitable’s president, Lewis M. Feldstein, said that the Commission needed to overcome “the suspicion and dubiousness and rank skepticism that these government things don’t really go anywhere.”⁸⁶ Feldstein joined the Commission and said it “seemed like a great opportunity to broaden the sense of a public stake in the courts” as part of the broader structure of democracy.⁸⁷

The Public Opinion Survey

“Unless you have a problem and end up in front of the court, the court is like Pluto. It’s out there; you know it’s out there. But you really don’t know a hell of a lot about it.”⁸⁸

The New Hampshire Bar Foundation, a non-profit charitable foundation which supports justice and law-related programs,⁸⁹ gave a \$30,000 grant to conduct a “consumer”⁹⁰ survey that would provide the Commission with “a solid core of information from which they can direct their work over the next 12-18 months.”⁹¹ The grant, which Chief Justice Broderick initiated, also covered administrative help needed to set up the statewide “listening sessions.” In a letter to the Bar Foundation the Chief Justice wrote:

Will [Abbott] and Katharine [Eneguess] are convinced, as I am, that before the Commission can even begin to set out on a course, it has to have a clear picture of how our citizens see the role of the

84. The commission also received another \$17,500 from two “donor-designated” funds administered by the Charitable. See *Citizens Commission Report*, *supra* note 78, at 46.

85. Then Senior Associate Justice Joseph P. Nadeau, and the author, Laura Kiernan also attended.

86. Interview with Lewis M. Feldstein, Commissioner, Citizens Commission (2007).

87. *Id.*

88. Interview with Byron Champlin, *supra* note 69.

89. The Bar Foundation is separate from the state Bar Association and has non-lawyers on its board of governors. See <http://www.nhbarfoundation.org/>.

90. Letter from Chief Justice John T. Broderick, Jr. to Paul Chant, Chair, New Hampshire Bar Foundation (Mar. 30, 2005).

91. *Id.*

courts and what experiences they may have had that will help the Commission devise changes and improvements.⁹²

The survey was conducted by the University of New Hampshire (UNH) in August 2005. The questions asked were similar to those used in a national survey conducted in 2000 by the National Center for State Courts.⁹³ Respondents were asked if they or anyone in their household had personal experience with the courts. They were also asked whether they agreed or disagreed with a series of statements about the courts relating to fairness, timeliness, and cost. It turned out that many New Hampshire residents were unable to rate the courts' performance because few New Hampshire residents have any direct experience with the courts.⁹⁴ In fact, New Hampshire's residents' direct experience with the courts was lower than the national rate. In the New Hampshire sample, "fully 61 percent of the respondents said they had never had any personal involvement with the courts, compared to 37 percent of the national sample."⁹⁵ Only 13 percent of New Hampshire residents had a personal experience with the courts in the year prior to the survey, compared to 38 percent of United States residents in the NCSC national survey.⁹⁶

UNH Survey Center director Andrew Smith told the Commission that New Hampshire residents' lack of knowledge about the courts may be a matter of demographics. New Hampshire has one of the highest per capita incomes in the country; one of the highest number of residents with college degrees; and a low poverty rate, all of which "are correlated with not being in the courts."⁹⁷

92. *Id.*

93. David B. Rottman Ph.D, Randall Hansen, Nicole Mott, Ph.D. & Lynn Grimes, NATIONAL CENTER FOR STATE COURTS, PERCEPTIONS OF THE COURTS IN YOUR COMMUNITY: THE INFLUENCE OF EXPERIENCE, RACE AND ETHNICITY (2003), http://www.ncsconline.org/WC/Publications/Res_AmtPTC_PerceptionsPub.pdf.

94. Telephone interviews were conducted between July 28, 2005 and August 12, 2005 with 765 randomly selected New Hampshire adults. The margin of error was +/- 3.5 percent.

95. ANDREW E. SMITH, Ph.D., NEW HAMPSHIRE STATE COURT SURVEY, at 4 (Nov. 2005), http://www.nhcitcourts.org/resources/NHSCS_report_FINAL.pdf.

96. *Id.*

97. New Hampshire Citizens Commission on the State Courts: Commission Meeting Minutes (Aug. 22, 2005) at 8, http://www.nhcitcourts.org/meetings/pdf/2005-08-22_sc_mtg-minutes.pdf.

Initially, Eneguess recalls, she was skeptical about the value of the survey, although its finding that New Hampshire residents knew little about the court resulted in a Commission recommendation for more civic education about the judicial branch.⁹⁸ She concluded, however, that its results created a helpful baseline for identifying problems.

Forming the Research Groups

Both the steering committee and the full Commission tackled the job of trying to organize all the topics that had been raised during the public input stage into core categories that would eventually guide the research groups. This was “the hard part.”⁹⁹

“Think about important issues, and then, identify manageable tasks,” Abbott told the commissioners,¹⁰⁰ reminding them that a lot of work had already been done by others. “What are the issues that we, as a group of people, can bring to the table?” he asked.¹⁰¹

By November 2005, the steering committee had enough public feedback, including the UNH survey, commissioners’ own interviews, letters, e-mails, and transcripts from the state-wide “listening sessions” to finally designate eight research groups and give each a specific charge:

- ***Alternative Dispute Resolution*** What are the options available now in the court system, how are they made available, and do they/could they work effectively in New Hampshire?
- ***Communication and Customer Service*** How can state courts more effectively meet the information needs and service expectations of New Hampshire citizens who engage with the court system?

98. On the impact of the impeachment, which had been the concern when the survey was first discussed in 2001, the survey found 45% of the adults polled were at least somewhat familiar with the proceedings, but most of them (54%) said it had no impact on their respect for the Supreme Court. . Another 14% said it increased their respect for the court. The survey also found that the education funding decisions “had no serious impact on people’s respect for the Supreme Court.” See *Citizens Commission Report*, *supra* note 78, at 40-41.

99. Commission Meeting Minutes, *supra* note 97, at 25.

100. *Id.*

101. *Id.*

- ***Courts as a Business*** The state courts spend \$60 million annually; what changes should be made to assure that we are getting the best bang for the buck?
- ***Family Courts*** Are we on the right track?
- ***Problem Solving Courts*** Are there programs and/or services the state's courts could offer that would result in a reduction in the demand for state court legal services?
- ***Public Access to New Hampshire Courts*** What barriers exist to public access to the courts and how do we clear them?
- ***Sentencing*** Is sentencing in New Hampshire courts fair?
- ***The Third Branch*** How can the New Hampshire judiciary work more effectively with the legislative and executive branches?

A steering committee member chaired each research group, and commissioners were given their assignments based on their responses to an e-mail survey asking them to state their top three preferences. The steering committee assigned 94 commissioners to the eight groups, each of which had nine to 14 members. Anyone not happy with his or her assignment could ask to be reassigned.¹⁰² A note-taker was named for each research committee, and a summary of each meeting was posted on the Commission website.

“We wanted to focus on big issues and we didn’t want to get dragged down by details,” Abbott said about the effort to narrow down the long lists of potential topics into specific categories. The chair also did not want to get bogged down in research that the commissioners did not have the time or expertise to carry out. “What we wanted to avoid was a 300 page report with all this detail that nobody was going to read.”¹⁰³

The research committees were asked to report back by March with recommendations—no longer than two paragraphs—which would then be discussed and voted on by

102. Interview with Julie Morris, Project Manager, Citizens Commission (Jan. 2008).

103. Interview with Will Abbott, *supra* note 54.

the full Commission.¹⁰⁴ The commissioners were advised they “should be thinking outside the box.”¹⁰⁵

Making Decisions in “The People’s House”

While the research committee work was underway, plans were made to hold the Commission’s voting sessions in Representatives Hall at the statehouse, a cavernous chamber where the 400 members of the New Hampshire House, all volunteers, meet during the legislative session. Abbott thought the location—the people’s house—would publicly underscore the mission of “Citizens” Commission on the State Courts and heighten the commissioners’ own sense of the importance of their work.

The Commission held two three-hour sessions in the statehouse in March 2006, conducted in traditional New England town meeting style—civilized, orderly, efficient and completely public. The commissioners (a quorum of more than 50 members attended each session) received all 34 recommendations from the research committees in advance and were expected to be prepared to discuss and vote on them. Eneguess acted as the “town moderator” and enforced Robert’s Rules of Order while Abbott acted as the “town manager” guiding the commissioners through each discussion to the vote.

The commissioners endorsed the creation of an office to improve mediation and arbitration in the courts (a Supreme Court committee was already deeply into a proposal to do just that); they wanted to create a “customer service” oriented environment in the courts, including a “greeter” at each courthouse; and they supported increased funding of legal services for the poor. They quickly killed a proposal to create “legal insurance” (too expensive) and another to have lawyers change their billing practices (an issue better left to the Bar).

There was extended debate about a recommendation that would have committed New Hampshire to the concept of a “civil Gideon” in which a state-paid lawyer would be provided for citizens who could not afford counsel in cases in which “es-

104. New Hampshire Citizens Commission on the State Courts: Commission Meeting Minutes, at 2 (Nov. 14, 2005), http://www.nhcritcourts.org./meetings/pdf/2005-11-14_fc_mtg-minutes.pdf.

105. *Id.*

sential rights” are at stake, such as housing, or child custody. The concept, a topic of discussion among legal services advocates nationwide,¹⁰⁶ stems from the right to counsel in criminal cases guaranteed by the U.S. Supreme Court in *Gideon v. Wainwright*.¹⁰⁷ Some commissioners were concerned, however, that the concept carried an enormous price tag and raised the potential of abuse. In the end, the Commission adopted compromise language suggesting that the state “study” the implementation of a “civil Gideon.”

A strong case was made for creating an “Office of Citizen Advocate,” with a citizen advisory board, that would collect citizen input on the courts in the future, after the Commission ceased operations. This office would, in effect, be a permanent successor to the Citizens Commission. Commission member Ralph Littlefield, the executive director of a local community action program and co-chair of the Commission’s Public Access Research Committee, said citizens needed a formal way to raise issues as they do in the Legislative and Executive branches:

I can go to my State Senator in my district. I can come here to the legislative building. I can participate in offering legislation. I can go to hearings. I can lobby. And the Executive Branch, we’re still a small enough state where we can go up and make an appointment with the Governor or his staff. Or we can talk to the folks in government that manage most of the programs that are out there. But in the New Hampshire court system, where do we go? Who do we talk to as citizens?¹⁰⁸

The Attorney General said there were already procedures in place, such as the Consumer Protection Office, to address citizen concerns, and the Chief Justice of the Superior Court, Robert J. Lynn, said he was concerned that an “advocate’s” office would make it seem like the court system was taking sides.¹⁰⁹ The full Commission voted to table the recommendation without further consideration.¹¹⁰ The commissioners did approve a

106. See LAURA K. ABEL, BRENNAN JUSTICE CENTER, A RIGHT TO COUNSEL IN CIVIL CASES: LESSONS FROM GIDEON V. WAINWRIGHT (2006), http://brennan.3cdn.net/99d59f86456a2170c1_dwm6bhbc2.pdf.

107. 372 U.S. 335 (1963).

108. New Hampshire Citizens Commission on the State Courts: Commission Meeting Minutes, at 25 (Mar. 20, 2006), http://www.nhkitcourts.org./meetings/pdf/2006-03-20_fc_mtg-minutes.pdf.

109. *Id.* at 24, 27.

110. Minority report included in the final report of the Citizens Commission, at 22.

recommendation, however, that the court appoint a system-wide “ombudsman,” citing models in the Maryland and New Jersey court systems. “Not only will this service aid the public in voicing concerns and complaints, but the existence of an ombudsman’s office will also provide the judiciary with an important channel through which to obtain information often unavailable to it.”¹¹¹

Ultimately, the Judicial Branch Administrative Council,¹¹² working with court administrators, agreed not to seek funding for an ombudsman saying the position would “introduce [an] unnecessary and costly administrative layer between the public and court officials.”¹¹³ Instead, they said the Judicial Branch would increase access to the courts by promoting better communication with court officials, including establishment of “service centers” to provide more personal service to court customers.¹¹⁴

The Response From the Judicial Branch

The Commission’s final report was officially delivered to the Supreme Court on June 28, 2006 in a brief gathering in the justices’ courtroom, the same place where the Commission had conducted its first meeting 14 months earlier. The Citizens Commission Report contained 30 recommendations divided into six subject areas: Customer Service, Public Access, Alternative Dispute Resolution, Family Courts, Sentencing and Judicial Branch Outreach.

The commissioners understood that the Judicial Branch could not make all things happen in isolation and that some action would be needed by the state legislature, whether it was funding, amending laws or passing new ones to improve the work of the courts. “Formal adoption of many of our recommendations will require the support of all three branches of

111. *Citizens Commission Report*, *supra* note 78, at 6.

112. See *supra* note 66.

113. Judicial Branch Report to the NH Citizens Commission on State Courts (Dec. 18, 2006), available at <http://www.courts.state.nh.us/aoc/budget0809/cs1.pdf>.

114. Interview with Donald D. Goodnow, *supra* note 2.

government, executive, legislative and judicial and of the citizenry itself.”¹¹⁵

Even before the Citizens Commission Report had been released, Chief Justice Broderick asked one of the commissioners, Eric B. Herr, a retired executive with 25 years of management experience in the high-tech, finance and consulting industry, to lead a retreat of 24 judges, court administrators and court staff to begin fashioning a Judicial Branch Strategic Plan that would integrate the recommendations and ideas of the Citizens Commission and the groups whose work had preceded their report.¹¹⁶ A committee of participants, led by a Supreme Court Justice, synthesized those two days of discussion into five goals that would be the basis for the strategic plan: (1) Work to Serve and Educate the Public; (2) Achieve Progress through Change; (3) Keep Our Courthouses Safe; (4) Recognize Staff as Our Most Valuable Resource; and (5) Deliver Results Fairly and Efficiently.

In the months leading up to the opening of budget season in the legislature in January 2007, the court administrator, Donald Goodnow, systematically organized the 60 initiatives proposed by all five study groups into the Strategic Plan goals. He determined which would require legislative financial support, and which could be implemented cost-free, an important point to be made with spending-conscious lawmakers who in New Hampshire, like other states, have very limited money to spend. The Administrative Judges worked with Goodnow to list their requests for state funding in order of priority. At the same time, the Supreme Court reported back to the Citizens Commission on the status of each of its recommendations, some of which (such as establishing two probate court “service centers” for the public) were carried out at no cost.¹¹⁷ All of the documents were also posted on the Judicial Branch website,¹¹⁸ assembled

115. *Citizens Commission Report*, *supra* note 78, at 115.

116. The Task Force on Self-Represented Litigants (January 2004); The Committee on Justice System Needs and Priorities (September 2004); the Supreme Court Committee on Court Security (October 2005) and the Supreme Court Task Force on Public Access to Court Records (February 2006), *available at* <http://www.courts.state.nh.us>.

117. Judicial Branch Report to the NH Citizens Commission on State Courts, *supra* note 113. One Superior Court location will experiment with the service center concept in 2008.

118. <http://www.courts.state.nh.us/>.

into packets and hand-delivered to key lawmakers. “For the first time I can remember we looked at our budget and needs from the outside looking in, and that is an entirely different concept,” said Judge Edwin W. Kelly, a Commission member and chief administrator for the District Court and Family Division.¹¹⁹

“In the past, the starting point for our discussions was an exercise which involved looking at what we currently had for resources—people, equipment and money,” Kelly said, which meant “business as usual.” The Citizens Commission Report and the directive from the Chief Justice that budget requests be based on its recommendations “forced everyone to change the lens. Not only did it give us permission to consider new ways of doing business, we were under a mandate to do that.”¹²⁰ Like Chief Justice Broderick, Kelly believes that the lawmakers responsible for setting the budget appreciated this new direction and openness.

The Judicial Branch appropriation signed by the Governor in June 2007—one year after the Citizens Commission Report—was an improvement over past budget cycles, during which the courts had been flat-funded. For the first time in ten years, the courts received “new” money, which allowed court administrators, among other things, to fill gaps in staffing that had remained unfilled for years. In fact, the legislature voted a 6.1 percent increase the first year of the biennium and an eight percent increase for the second.

Broderick often gives credit for those additional funds to the Citizens Commission, which he called an “influential new voice”¹²¹ in the court budget process, helping to supply legislators with input from people who actually use the courts, instead of solely from judges and court administrators. In an interview with the NH Bar News,¹²² Broderick also acknowledged that an additional factor was a “good working relationship” with the Governor and the legislature, which the Supreme Court has

119. Interview with Edwin Kelly (Nov. 15, 2007).

120. E-mail from Judge Kelly to the author (Jan. 10, 2008).

121. Letter from Chief Justice John T. Broderick, Jr. to the Citizens Commission (July 25, 2007), <http://www.nh.gov/judiciary/FINAL%20citizens%20Commission%20letter%20July%2025%202007.pdf>.

122. *Talk With the Chief Justice, Part 1, Changes in the NH Courts*, 18 N.H. BAR NEWS 10 at 1 (Nov. 9, 2007).

worked hard over the years to develop, through improved communication and institutional transparency.

Five of the six top budget requests from the Judiciary were met:

- Funds were appropriated for 19 new hires, including nine case managers in the trial courts whose job is to help court users—especially self-represented litigants, whose need for assistance had been highlighted by the Citizens Commission;
- Thirteen of the 19 new hires will be in the Family Division—which had been the focus of so much criticism from fathers’ rights advocates;
- One-year start up funds were set aside for the new Office of Mediation and Arbitration (the Commission strongly endorsed “out of court” options);
- \$200,000 was appropriated for staff training directed at improving “customer service” which had been at the top of the Citizens Commission list of recommendations; and
- Four part-time judges were converted to full-time status, another longstanding request from the Judicial Branch that the Citizens Commission had endorsed. The legislature also allocated funds to hire a part-time “web coordinator” to help communicate with court users, with emphasis on improving the electronic “Self-Help” Center for self represented litigants.

However, no funds were allocated by the legislature for salary improvements for existing staff.

Lessons Learned

The New Hampshire Citizens Commission on the State Courts presents a useful model of management and organization for other states to follow. Some decisions like careful compilation of a public record of the Commission, for example, were crucial to its success. Others, like the large size of the commission, deserve more consideration:

- The size of the Commission, 103 volunteer members, was potentially unwieldy. However, considering the inevitable attrition rate for volunteer organizations, the

large number of commissioners at the start assured a fairly large number of participants at the end of the process. More than 50 commissioners attended each voting session.

- Care must be taken in the appointment process to strictly minimize the number of members who are lawyers or judges, while still assuring the expertise the citizen members would need. One paragraph biographies of each commissioner should be posted on the website.
- The Citizens Commission was not really representative of the constituency of the Judicial Branch—namely criminal defendants or non-family civil litigants. One commissioner suggested that focus groups of prisoners or persons who had been through divorce proceedings or other civil litigation would have provided valuable feedback.
- Commission leadership from the beginning has to run meetings with business-like discipline and clearly stated ground rules, including time limits for speakers, so that single-agenda interest groups, like the fathers' rights advocates, are fairly heard, but do not monopolize the discussion. Also, the likelihood that these well organized groups will dominate public hearings may argue for using organized "focus" groups to collect feedback on the courts instead of relying on "open mike" sessions in individual communities.
- Paid administrative assistance is essential to the success of an all-volunteer Commission. Strict independence from the court system was a "uniquely" New Hampshire approach. Other states should consider how to share the administrative responsibilities, to reduce Commission expenses.
- Commission co-chair Eneguess says she would have liked more time to go one-on-one with state lawmakers about court issues. On the other hand, if the Commission's work had gone on longer, there is a risk volunteers would have lost interest.
- Electronic communication and resources are economical and efficient. The website and the detailed record keeping provided a readily accessible bank of informa-

tion about the work. This online resource was available both to the public and to the busy commissioners, allowing them to read minutes and reports at their convenience.

- Guidance from outside experts is helpful. The Court Performance Standards researched by experts around the country for the National Center for State Courts¹²³ are a ready made framework for judges, administrators and citizens oversight groups. Looking to experts—within the institution you are charged with examining—does not compromise citizen independence.
- Attendance at the listening sessions could have been improved if there had been more time to build up community knowledge about the Citizens Commission and its mission—through media advertising or word of mouth. Getting citizens out to meetings is a labor intensive effort.
- It is unclear whether the general public was aware the Commission was looking for public input from non-members even though there was an e-mail link on its website “to have your voice heard.” Commission organizers have to commit the time to get the word out about their work, through free or paid media, or by giving commissioners specific assignments to contact or speak to designated groups.
- Some topics addressed by the Citizens Commission, such as conditions in the Department of Corrections and rehabilitation resources within the prison system, were not under the responsibility of the Judicial Branch but were of special concern to the Citizens Commission. Those recommendations should be sent by the Judicial Branch, or the Citizens Commission itself, to the appropriate state agencies. The incoming New Hampshire Bar president has begun discussions with Chief Justice Broderick to address the Commission recommendations on sentencing and problem solving courts.

123. http://www.ncsconline.org/D_Research/TCPS/index.html.

Where to Go From Here

The real test of the Citizens Commission's work, as one court observer put it, may be how long the enthusiasm lasts within the court system to respond to its recommendations. Like all committee reports, there is no afterlife without follow up and sustained visibility. Customer service (through staff training), arbitration and mediation services, and meeting the needs of self-represented litigants, remain top priorities for Chief Justice Broderick. There is also no doubt that the discussions that were generated about the courts as a business—and the importance of measuring outcomes and productivity to improve effectiveness—has had a continued impact on administrative thinking.

Eric Herr, the retired executive who led the court retreat, emphasized those concepts throughout his tenure on the Citizens Commission. With encouragement from Chief Justice Broderick, Herr continues to push court administrators to take focused steps to improve the way the court does business. In December 2007, at Broderick's request, a second, smaller retreat for judges, administrators and court staff was held to continue discussion of a "Business Model Perspective"¹²⁴ in which Herr determined that funding was not keeping pace with expenditures and unless the court system improved efficiencies, there would be a \$5.9 million funding deficit within ten years.¹²⁵ The discussion focused primarily on how to improve case clearance rates, timeliness of court orders and case processing, staff training (which Herr had emphasized throughout his tenure on the Citizens Commission), and technology and improvements in the court website to better serve self-represented litigants. Working groups were formed and asked to report back by June 1, 2008.

"The question that matters from my perspective is, 'Are we in a different place than we would have been without the Citizens Commission today, in the way we think, the way we

124. Eric B. Herr & Michael Conklin, *A Business Model Perspective on the New Hampshire Judiciary* (2007) (unpublished manuscript, on file with the author).

125. E-mail from Chief Justice John T. Broderick, Jr. to retreat participants (Nov. 16, 2007).

spend money and provide services?”¹²⁶ Eric Herr said. The answer may take time. “Change comes slowly,” he said, “[I]t is way too early to know what it is.”

126. Interview with Eric Herr, Commissioner, Citizens Commission (2007).