

*MASSACHUSETTS TRIAL COURT PUBLIC ACCESS TO
COURT RECORDS COMMITTEE MEETING
JUNE 15, 2015*

*Suffolk County Superior Courthouse
Three Pemberton Square
Boston, MA 02108.*

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1 JUDGE LAURIAT: Okay. Good afternoon, everyone, if everyone
2 can hear me. My name is Peter Lauriat. I'm an associate justice
3 of the superior court, and chair of the Massachusetts Trial
4 Court's Public Access to Court Records Committee. We welcome you
5 all here this afternoon. Let me briefly tell you about the
6 committee. And then I'm going to ask the committee members to
7 introduce themselves so that you know who is who. And then we'll
8 talk a little bit about today's public hearing, to which we have
9 invited everyone to attend.

10 The committee was appointed by Chief Justice Paula Carey in
11 the fall of 2013. It is comprised of judges and administrators
12 who are clerks of court from each of the seven trial court
13 departments, along with representatives from the supreme judicial
14 court, the appeals court, the trial court information services,
15 and the public information office of the supreme judicial court,
16 along with senior staff from the executive office of the trial
17 court.

18 The list of committee members is available for everyone at
19 the front desk, if you'd like. And I'm going to ask the committee
20 members to simply introduce themselves one at a time. We'll pass
21 the microphone along and we'll start down at this end, and if
22 you'll just tell us your name and affiliation.

23 JUDGE SRAGOW: I'm Judge Roanne Sragow, First Justice of the
24 Cambridge District Court.

25 MR. HOGAN: My name is Dan Hogan, and I work in the clerk's

1 office of the Boston Municipal Court.

2 MR. DITKOFF: I'm Joseph Ditkoff. I'm the general counsel of
3 the district court.

4 MR. SULLIVAN: Dan Sullivan. I'm the general counsel of the
5 trial court.

6 MR. STANTON: I'm Joe Stanton. I'm clerk of the appeals
7 court.

8 JUDGE LAURIAT: I'll step up here first to the back row.

9 MS. JOSS: Sarah Joss, Deputy Legal Counsel, Probation.

10 MS. MEDONIS: Good afternoon. Linda Medonis, Deputy Court
11 Administration of the Probate and Family Court.

12 MS. DONAHUE: Jennifer Donahue, Public Information Office,
13 SJC.

14 JUDGE LAURIAT: All right. We'll start right here.

15 MR. BURLINGAME: I'm Craig Burlingame. I'm the Chief
16 Information Officer for the Judiciary.

17 MR. SULLIVAN: Michael Sullivan, Middlesex Superior Court.

18 JUDGE PIERCE: Steven Pierce. I'm chief justice of the
19 housing court department.

20 MR. AMBROSINO: Tom Ambrosino. I'm the executive director of
21 the supreme judicial court.

22 MS. WRIGHT: Hi. I'm Kim Wright. I'm a senior assistant for
23 Judicial Policy in the Executive Office of the Trial Court.

24 JUDGE LAURIAT: Okay. Thank you, all. A couple of
25 housekeeping matters before begin. Although this is technically a

1 courtroom within a courthouse, we will happily allow recording
2 devices and cameras, if anyone would like to use a recording
3 device or a camera during the course of the proceedings, you may
4 do so. Hopefully, it will not interfere or interrupt the
5 proceedings themselves. And we have 23 or 24 registered speakers.
6 And the original plan was 10 minutes per speaker during the hours
7 of 4 to 6 p.m. And just doing the mathematics, that works out
8 more to like eight o'clock or 8:15, given the minutes or two
9 between speakers. So what we'd like to do is, if possible, have
10 you limit your remarks to five minutes. We have a machine up on
11 the podium. And I'll ask each speaker to come to the podium.
12 I'll ask each speaker as well to use the other handheld
13 microphone, if you would, that's on the podium.

14 And we'll ask you to limit your remarks to five minutes, if
15 you can. And if not, a minute or two over, we certainly
16 understand. But we do -- we would like to give everyone the
17 opportunity to be heard today. And, as well, we certainly are
18 willing to accept -- more than willing to accept -- written
19 remarks or comments, either in expansion of those remarks that you
20 make here, or further remarks you'd like to make and submit to the
21 Committee.

22 The Committee's proceedings today are being recorded. And we
23 anticipate having a transcript available for the Committee members
24 to review, those who are not here. Not every Committee member
25 could make it. And we do anticipate that one or two Committee

1 members may come or go during the process. But we are definitely
2 all here, and definitely all here to hear from everyone today.

3 The charge of the Committee, as you may know, is deceptively
4 simple and straightforward. It is to develop a uniform trial
5 court policy relative to public access to records, both in written
6 and electronic form. The Committee has worked steadily, in both
7 large and small groups, to analyze the issues and understand their
8 complexity, in light of the trial court's migration to a single
9 electronic civil and criminal case management system called
10 MassCourts that will be integrated across the seven very different
11 trial court departments. It has been, I think as you may know, in
12 process for some time. It continues. It is not complete. And we
13 are working to get it installed in all seven trial court
14 departments.

15 As I said, MassCourts is a work in progress, just as the full
16 implementation by this Committee of a set of rules is a work in
17 progress. Nothing is final at this point in the process. The
18 drafting process will not be complete until after this public
19 hearing, and a public comment period, which as soon as we get a
20 draft set of rules to present, we will send off to, I believe,
21 Chief Justice Carey. We will post them with a period of comment
22 for everyone, and we'll receive comments during that comment
23 period. Then we will take those comments, along with all of the
24 comments and remarks from today's hearing, and those additional
25 remarks you may wish to file today, and we will prepare a final

1 set of draft rules or proposed rules. And ultimately, they will
2 have to be considered and approved by the Supreme Judicial Court.
3 That's the ultimate organization for determination of these rules,
4 and for implementation or issuance or adoption of these rules.

5 As I've said, as part of our work, we would like to hear from
6 those who have an interest in, or who might be affected by the
7 concept of public access to court records, both in the courthouse
8 and remotely via the Internet. Thus the reason for today's
9 hearing.

10 As I said, we have a number of individuals and organizations
11 who've registered to speak. So we'll try to ask you to limit your
12 remarks. Everyone's remarks will, as I say, be recorded. And we
13 will invite additional written comments as well.

14 I believe we're going to call on our speakers alphabetically.
15 We've tried to find a way to do that. If, when your name is
16 called, you are not here, you'll certainly have a chance to be
17 heard, but it will probably be at the end of the list. We'll just
18 have to move the list along. But we will ensure that everyone has
19 an opportunity for hearing. And again, we thank you all very much
20 for coming.

21 So we'll begin with the first speaker, letter A, Scott Allen,
22 from the Globe Spotlight Team.

23 MR. ALLEN: Thank you.

24 JUDGE LAURIAT: I'll let you be the keeper of the remarks.

25 MR. ALLEN: Good afternoon. Good afternoon, Judge Lauriat,

1 members of the Committee, and thank you for giving me the
2 opportunity to speak this afternoon as you develop a 21st Century
3 policy for public access to documents and records.

4 I'm Scott Allen, the editor of the Globe's Spotlight
5 investigative team. And I speak to you as a journalist today and
6 share with you some of the frustrations that we face trying to
7 cover the Massachusetts Trial Court. At a time that extraordinary
8 information is increasingly available at our court system lags far
9 behind.

10 Let me say at the outset that the Trial Court has been
11 extraordinarily helpful to the Globe on many occasions when we
12 were investigating the Probation hiring scandal a few years ago.
13 The court was terrific about providing the public documents,
14 explaining what they meant; very, very helpful. And I'd also like
15 to say that your chief spokesperson, Jennifer Donahue, is
16 unfailingly polite and patient, and really good with us in
17 answering our deadline needs. So we have a lot to be happy about.

18 However, we as journalist sometimes feel that the public is
19 -- there's a larger mindset in the courts that views the public as
20 a nuisance or as an afterthought. And the fact that this is your
21 first public meeting after 19 months speaks to that fact. And so
22 does the fact that, you know, when the long-awaited Massachusetts
23 MassCourts computer system started to be rolled out, reporters
24 found they weren't going to gain public access, they were losing
25 it in some ways, losing online access because it would now be

1 available to attorneys and not us.

2 And in courthouses across the commonwealth, journalists
3 encountered this low regard for public access on a daily basis.
4 District courts with no computer terminals to look up criminal
5 case information, policies that make us pay a dollar a page for
6 copies, rather than letting us scan the images ourselves; clerks
7 that are understandably busy, but they're too busy to copy our
8 documents promptly.

9 It's not just an inconvenience for working journalists, it's
10 a disservice to the public. My colleague, Maria Sacchetti, just
11 finished a major report on foreign nationals who commit more
12 crimes when they're released from prison in the United States. It
13 was a project that required her to review 6,000 individual's
14 cases. In many states, she could do that work from her desktop.
15 But here in Massachusetts, she had to go from courthouse to
16 courthouse to get the information, taking days and days and days
17 for things that would have taken hours sitting at her desk, with
18 online access. And she said to me, you know, a Boston reporter
19 has an easier time searching a case in Alaska than in
20 Massachusetts, and that just doesn't make sense. And it doesn't.

21 We run into similar roadblocks when we ask for data about the
22 courts. In 2012, the Spotlight Team did a series on the high rate
23 of drunk driving acquittals by some members of the judiciary. But
24 the trial court would not provide us with the case data we needed
25 to determine judges' acquittal rates, forcing us to turn instead

1 to district attorneys to help us out. In the end, the Trial Court
2 agreed that this was an important issue and did their own study of
3 the subject. But the lack of help in the first place added weeks
4 to the project for us.

5 We in the press understand very well that you have important
6 responsibilities to protect privacy and the integrity of the
7 judicial system. But many court systems around the country have
8 found ways to do all that, and make far more information readily
9 availability to the public. The federal courts Pacer system is
10 one outstanding example. But there are many more. Alameda County
11 in California, for example, has a system very similar to Pacer.
12 Our next door neighbor in Connecticut lets any member of the
13 public search case information online for free.

14 And as you continue your deliberations, I'd ask you to keep
15 in mind a few guarding principles to make our courts transparent
16 democratic institutions. Err on the side of the public. Take
17 your inspiration from the State Treasurers remarkable Open
18 Checkbook website that allows the public to see the real
19 interworkings of government, how the money's being spent.

20 Put as much information online as possible, including
21 filings. Treat everyone equally. The general public should be
22 able to search all the court data that you make available online.

23 Minimize fees. For many journalists, charging even a few
24 hundred dollars for access is really the same thing as telling
25 them no in the first place.

1 Treat electronic records the same as you would paper ones.
2 Electronic filings should actually make everyone's access to
3 information better, and it should not be a reason to circumvent
4 public scrutiny.

5 And please make your statistical reports on court operations
6 readily available, and consider making underlying data available
7 to us as well. Journalism today is really going in the direction
8 of greater and greater analysis of data. We're in the age of big
9 data. And we would really appreciate being able to study and
10 learn about the court system from the actual data that you've
11 generated.

12 I think we'll all be better served if the courts and the
13 press could find ways to work together on these big picture
14 issues. I thank you for your time. And please let me know if I
15 can be of any further assistance. Thank you.

16 JUDGE LAURIAT: Thank you, Mr. Allen, very much. I guess
17 applause is okay. No one ever applauds judges. If we're
18 indirectly receiving your applause, that's fine.

19 Adam Angione. I apologize if I mispronounce people's names.
20 Please identify yourself and your affiliation.

21 MR. ANGIOINE: Do I press this thing?

22 JUDGE LAURIAT: No. We'll take care of that.

23 MR. ANGIOINE: Sorry. Okay. My name's Adam Angione. I'm a
24 Special Projects Editor with Courthouse News Service. Thank you
25 for your time and all of your efforts.

1 Particularly, I'd like to acknowledge the fact that currently
2 -- which is kind of a new development -- there are two trial --
3 I'm sorry, two superior courts that now have docket information
4 available on MassCourts website. We'd be interested to know if
5 that access is going to be extended to the rest of the state. If
6 it is, then that's a great step forward.

7 JUDGE LAURIAT: We're going to try not to have a discussion.
8 But the answer is yes.

9 MR. ANGIONE: Okay. Okay, excellent. We commend you for
10 that decision, in fact.

11 The media and the public has had the same access remotely
12 that attorneys have had for 15 years, until it was taken away a
13 few months ago, at the outset of the new MassCourts website.
14 Returning that access now returns the tradition of open and equal
15 access to public records that has been a long-standing tradition
16 in Massachusetts courts.

17 Despite that, because of the preferential treatment that
18 attorneys have had over the past several months, we still have
19 some concerns about -- at Courthouse News, about public access to
20 electronic documents themselves.

21 Before that, let me just tell you a little bit about
22 Courthouse News Service. We're a 25-year-old nationwide legal
23 news service. Among our subscribers are the Boston Globe, Harvard
24 Law School, Boston College, and Boston University. We have pretty
25 good presence here in the Massachusetts area. We have 220

1 reporters covering the courts in every state in the country. So
2 we have a nationwide reach. And that nationwide reach allows us
3 to have dealt with courts transitions from or to electronic
4 records and e-filing, on a pretty regular basis, from the media's
5 perspective.

6 What we see in Massachusetts is a court that's in the midst
7 of its transition to electronic court records, and probably on the
8 cusp of e-filing. When e-filing is put into place in courts,
9 often electronic documents follow.

10 Our main concern here is that access to the documents
11 themselves be equal to everyone, regardless of the medium they're
12 filed in, whether it's paper or electronic.

13 Currently, if the media or the press -- sorry -- or the
14 public, or an attorney, or anybody else wants to see an actual
15 document, we all have to go to the courthouse to see it. And that
16 idea of equal access for everybody should be extended to
17 electronic documents as well.

18 When a court chooses to put its documents online, it should
19 do so for everybody, on the same terms, across the board. No one
20 group should have favored access to any court information, whether
21 it's at the courthouse or online, particularly online, unless
22 we're talking about a court of -- or, I'm sorry, an attorney of
23 record in a case. Then they have certain privileges that the rest
24 of us don't.

25 As my colleague previously mentioned, Connecticut

1 information, both document information and documents are available
2 online for free to anybody with an Internet connection. And
3 that's a great model to use.

4 So while returning the media's and the public's access to
5 online docket information to the state is a great first step
6 forward. It truly is, given the experience over the past several
7 months. We do still have some concerns about the electronic
8 access to documents. So we encourage the next step that this
9 Committee take to ensure open and equal access to those documents
10 so that everybody's treated the same.

11 Thank you very much.

12 JUDGE LAURIAT: Thank you very much. I, for one, am not used
13 to sitting below the level of the speaker. The idea of looking up
14 is a new perspective for me.

15 Let's see. Our next speaker, Aliana vonRichthofen, will you
16 come forward. I hope I pronounced your name correctly.

17 MS. vonRICHTHOFEN: Well enough. Thank you.

18 JUDGE LAURIAT: And if you would hold the mic in your hand,
19 if you could, and just hold it a little closer to you. Thank you.

20 MS. vonRICHTHOFEN: Honorable justices, Committee members, I
21 much appreciate being able to comment here today on the important
22 matter of how to best achieve greater transparency and access to
23 court records. And I'm here on behalf of the residents of
24 Massachusetts, and as somebody who's been personally affected by
25 some of what we are talking about today.

1 However, why is the public only invited to comment two days
2 after behind closed doors meetings? It seems to me it would have
3 been more efficient to listen to us first, and then incorporate
4 what we might bring to the table in terms of incorporating those
5 thoughts and experiences.

6 However, it would not surprise me if the secret meetings were
7 a consequence of my complaints to the SJC since 2010, on the gross
8 mishandling of court files by two clerks who were dismissed last
9 year.

10 To begin with, the SJC, as interested party, cannot possibly
11 be the authority to determine appropriate conduct, when it itself
12 is in severe violation of the proper keeping and disseminating of
13 public records. It's like sending the cat for the milk.

14 The lack of transparency and access to court files that we're
15 here to discuss seem to me in part are merely secondary symptoms
16 to the scores of favoritism and corruption that permeate the
17 courts all the way through the SJC, where records are routinely
18 falsified to give the appearance that proper process was followed,
19 when, in fact, it was not; hence, in part, maybe, the denial or
20 obstruction of access to these records when they're requested.
21 Otherwise, it's so much easier to just hand out a file. Why?
22 What I've experienced, the laborious exercise of prolonged acts of
23 stonewalling. And the SJC should actually be included, not just
24 the Trial Courts, because no court should stand above the law.

25 The recent scandal at the Probation Department brought to

1 light how records were doctored to favor well-connected parties
2 for lucrative jobs. The same process is prevalent throughout the
3 Massachusetts court system to favor well-connected litigants.
4 Here is how I came to find out. I was told in 2010 by clerks of
5 the SJC that the entire physical file of my appeal had gone
6 inexplicably missing. Inexplicably missing was the exact term
7 that was used. When I asked for it subsequent to discovering the
8 multitude of filing errors and omissions in the electronic docket
9 online, it had disappeared, I was made to believe, into thin air.
10 In fact, security was called on me when I asked. The little, old
11 lady asking for the file on her appeal, security had to call
12 because I was perceived as such a major threat to security of
13 what? Corruption at the SJC?

14 I had made the major boo-boo of asking how if a file has gone
15 missing, could there possibly be a running record that would show
16 us who last had it and how we could find it? That was the
17 ultimate insult, I guess, threat. And I have to followup and say
18 I did write to security, because I wanted to know what my offense
19 had been. And security wrote back to me that they had no record
20 of being called that day. So that's another can of worms. But
21 let's not talk about the record keeping at security at the SJC.

22 Only after the threat of an impending investigation was I
23 eventually given what was terms the reconstructed file. Of
24 course, the obvious question, reconstructed from where, from what,
25 if the original file is missing? No one would tell me.

1 But importantly, this alleged reconstructed file
2 inadvertently released to me that the SJC's lawyer, Attorney Moran
3 [phonetic], I think was his name at the time, actually exposed the
4 evidence for why this file had been declared inexplicably missing.
5 Reviewing it, I discovered that of the 17 documents submitted by
6 both parties, appellants, and appellees in the appeal, in total,
7 and of these only ours, the appellants, nine were missing, more
8 than 50 percent, and only from the appellants side; either missing
9 in total, missing significant attachments, or altered/classified
10 on a crucial date. We all know dates can be very crucial in the
11 filing of documents.

12 In addition, no assurances could be made to me as to whether
13 any justice of the seven justices had actually ordered a very
14 questionable denial on my appeal. This was signed by one clerk,
15 and later amended, and rendered invalid by hand by another clerk,
16 and ultimately leaving the appeal hanging without an actual
17 decision, in fact, after 15 years of litigation. I don't have to
18 explain to you the stress, financial and emotional stress, of 15
19 years of litigation when you have been bullied out of your job at
20 this part of the --

21 JUDGE LAURIAT: Ms. vonRichthofen, you have about a minute
22 left. I'm going to ask you to wrap up.

23 MS. vonRICHTHOFEN: Yes. I will. I have one more page.
24 Everything I have tried to do is verified, documented in writing,
25 and available to anybody who has an interest to see it. But this

1 is simply one example of the unconscionable level of fraud,
2 coverup, and disregard for the constitutional rights of every
3 Massachusetts resident to equality and due process prevalent in
4 our court system; egregious violations at the SJC, the highest
5 court in the state, that sets the standard for propriety, or lack
6 thereof, in all the lower courts.

7 The brazenness of the actions of the clerks and the clerks'
8 stoicism in face of the damming of the evidence only indicates
9 that mine isn't the only case that was mishandled by the SJC. In
10 fact, I have come to know the great number more such cases, hardly
11 all, since most litigants or even their lawyers, don't ask to see
12 the content of their files.

13 Two more short paragraphs. Honorable justices, Committee
14 members, if you're genuinely interested in improving the public
15 trust in government and the judiciary, then clearly the way to
16 reasonable transparency and access to court records must be a
17 two-prong endeavor. We're fighting the metastasized corruption
18 that has permeated our court like a cancer, and become routine
19 practice, as many lawyers have told me, and part of the system.

20 Any serious effort must begin with the establishment of
21 reliable oversight over the SJC by abundant of citizens from
22 outside the legal community, similar to a grand jury, along with
23 the implementation of enforceable rules and regulations on how
24 documents are to be recorded, stored, both in hard copy, as well
25 as electronically, and disseminated.

1 JUDGE LAURIAT: Thank you, Ms. Richthofen. We have your
2 written remarks here. We'll put those in the record.

3 MS. vonRICHTHOFEN: You won't allow me to do one more? Just
4 one more paragraph. I want to be able to say goodbye.

5 JUDGE LAURIAT: Ms. Richthofen, there are 23 people behind
6 you who would also like to have the opportunity to speak. If you
7 insist, you may ask your -- you may read your last paragraph.

8 MS. von RICHTHOFEN: Well, I won't insist. But it'd be nice
9 if you would let me.

10 JUDGE LAURIAT: Okay. We have your written remarks. We
11 thank you very much.

12 Next, Esme Caramello. Thank you.

13 MS. CARAMELLO: Judge Lauriat and members of the Committee,
14 thank you very much for taking such care with this rollout, and
15 paying so much attention.

16 I'm here -- I'm a -- I teach in the Clinical program at
17 Harvard Law School. I'm also a practicing lawyer. I practice in
18 the Housing Court mostly in Boston, also in the Cambridge and
19 Somerville District Courts in landlord-tenant cases. So I want to
20 talk to sort of a narrow issue that comes up in those cases. And
21 it's really something that's an unintended consequence of the free
22 online remote access. And that is that there's an over-inclusive
23 blacklisting of very vulnerable tenants that arises, that has
24 arisen since the roll out of free online access.

25 So it's well known that MassCourts is used as a free online

1 screening tool for tenants. It's well known -- I'm going to be
2 submitting written testimony which has, of course, proof of all
3 these things. But I'll just say them now. It's well known. So
4 it's well known that it's used as an online screening tool. And
5 there are a couple of problems with this. One of them is that the
6 many landlords who are using it as an online screening tool, are
7 just looking to see whether somebody appears or does not appear in
8 the database. That's it. So if somebody appears in the database,
9 they're out. They refuse to rent to them. Again, this has been
10 documented, not just in Massachusetts, but in other -- other
11 places all across the country.

12 And the problem with this, of course, is that if a tenant
13 comes in, the heat is off, it's Christmas. The tenant comes in
14 needing the court to help get the heat back on in the middle of
15 the winter, the tenant is blacklisted. If a tenant fixes the heat
16 herself, and then exercises her right to repair and deduct under
17 Massachusetts law, she's blacklisted.

18 If a tenant's living in her apartment for 25 years, suddenly
19 she finds herself being priced out of her gentrifying
20 neighborhood. She's evicted. She's blacklisted.

21 So clearly, this is an unintended consequence. It's not
22 something that we want to see. Unfortunately, MassCourts
23 facilitates and encourages this. And by doing so it shows the
24 exercise of tenant's rights in the commonwealth, and effectively
25 creates a barrier to access to justice. So I'm concerned about

1 that, and I just want to make sure that the Committee is aware of
2 that as you consider how to proceed from here.

3 And I also just want us to remember that the people who are
4 being affected by this are, of course, the people with the most
5 restricted access to housing in the first place, and the primarily
6 low income tenants, and people of color.

7 A second issue with MassCourts as a free online tenant
8 screening tool, is that the data in MassCourts -- and I want to
9 emphasize that this is not the clerks' fault, but the data is
10 inaccurate in ways, in specific ways that harm tenants. And
11 again, I do want to emphasize and I recognize that the court
12 system is dramatically underfunded. And that's why I'm concerned
13 about this, because I don't think it's an easy fix, unless we're
14 going to pour a lot of resources into this.

15 So let me just give a couple of examples. Last spring, a
16 student of mine named Nora Mahlberg, took the 47 cases, summary
17 process cases, from the Housing Court that we had closed the
18 previous year. Forty-seven cases, and she looked -- she compared
19 our case files with the MassCourt system, and what the case
20 disposition was in MassCourts. And she found that in four of the
21 47 cases, MassCourts displayed a judgment of eviction against the
22 tenant, when, in fact, there was no judgment of eviction against
23 the tenant. So that's four of forty-seven cases. And I think the
24 statistic that I heard was that in fiscal year 2014, something
25 like forty -- upwards of 40,000 summary process filings in the

1 commonwealth. So I recognize it's not a statistically
2 significant, you know, -- statistical sample. But if you were to
3 scale that up, we're not talking about four tenants who were
4 improperly deemed as having been evicted. You know, we're talking
5 about now probably hundreds, if not thousands of people.

6 Another example, a Legal Services colleague of mine very
7 recently entered her name in to MassCourts -- she's a lawyer --
8 and pulled up 36 active cases. So she went in to each one of the
9 36 active cases, and it showed, you know, "*This tenant has an*
10 *active eviction case against her.*" In every single one of the 36
11 cases, the case had already been resolved, and the tenant was not
12 in active summary process litigation.

13 A third issue that we see in Legal Aid is that sometimes I'll
14 generously say in an abundance of caution, landlords, and
15 particularly subsidized landlords, will over include people in the
16 summary process summons and complaint. So they'll add more
17 defendants than they need. They'll add everybody in the
18 household, 'cause they're nervous that if they don't get a
19 judgment against somebody in the household, they won't be able to
20 evict, when, technically that's not true.

21 So what happens is that people who -- let's say you have a
22 subsidized tenant, and she's got an adult child, an 18-year-old,
23 and a 19-year-old, and a 12-year-old, and all of those people are
24 going to be listed in MassCourts, and all of those people are
25 going to have judgments against them that then bar them from

1 subsidized housing in the future, that then bar them from shelter
2 in the future, that bar them from access to public apartments,
3 just through the online screening tool function.

4 So what I would ask -- we would ask the Committee to do,
5 please, is to consider putting in place, if this is going to be
6 free to everybody and online for everybody to get to equally, if
7 the Committee would consider putting in place some of the
8 following safeguards. And again, these'll be included in my
9 written testimony.

10 The first thing we'd like to see is parties' names in housing
11 cases and landlord-tenant cases, entered as initials, or made
12 available as initials, or some other kind of signifier that is not
13 quite so easy at the fingertips of someone to find. Now, of
14 course, if people go into the courthouse if they want more
15 information, of course, all that information is publicly
16 available. But it's just not available, you know, at 11:30 at
17 night at the press of a finger.

18 Second of all, we ask that there be a protocol for tenants to
19 easily correct inaccurate information, and that that protocol be
20 simple, because a lot of these folks are unrepresented,
21 unsophisticated; and just something that's public, you know,
22 publicized in the courthouse and simple to use, maybe through the
23 AOTC.

24 And the third is -- and this is the hard one -- that if we're
25 going to be making this information available, that resources be

1 devoted to making sure it's accurate, and particularly on these
2 kinds of inaccuracies that end up making people look like problem
3 tenants when they're not, and that some resources be devoted to
4 ensuring that the case outcomes are accurately put in the system.

5 So those are my asks. Thank you very much for hearing me.

6 JUDGE LAURIAT: Thank you very much. Next, Peter Caruso.

7 MR. CARUSO: Good afternoon. Boy, it's nice being up here
8 and having the judges a little bit --

9 JUDGE LAURIAT: I know it is.

10 MR. CARUSO: My name is Peter Caruso. I'm an attorney, a
11 practicing attorney. I've been representing media since 1977.
12 I'm here today representing the Massachusetts Newspaper Publishers
13 Association, and also several smaller newspapers. Since 1977 when
14 reporters had been seeking access, we actually had an easier
15 process back in the '70s and '80s to get access. And what's
16 happened now has become more difficult to get information and
17 court records from the court system. And that's the irony behind
18 all of this. We're in the electronic age and we're in the
19 revolutionary age where information should be easier for reporters
20 to obtain. It's actually more difficult. And one of the reasons
21 why I'm here is that when a reporter and a reporter's call me and
22 wants to get information from the court system, they need, of all
23 things, my bar card. They need a BBO card in order to get
24 information from the superior court system. That should not be
25 the case. Any citizen, any reporter, the public, should be able

1 to access electronic information by just accessing the court
2 system.

3 And maybe there's been a thought -- I know you're going
4 through a revolutionary process, and possible as a computer
5 platform, maybe should run parallel. Maybe you should have access
6 for -- as you're developing your system, that we still can get
7 access to the courts and to records, the way we have been for the
8 past, at least centuries, but for when I've been practicing for
9 the past 40 years. It's easier to walk into a courthouse and get
10 a record than it electronically.

11 Now, all due respect to the other speakers, there should be
12 absolutely no difference what we can see on the Internet than what
13 we can get at the courthouse; none. If we can walk into a
14 courthouse and see a public record -- because these are public
15 records in Massachusetts -- we should be able to see that same
16 public record on the Internet, without having to say, "*Okay, we*
17 *have a limited version.*"

18 And a screening -- we cannot screen public records. You
19 can't. A public record is -- and I say this regularly in court.
20 A public record is a public record. If you're going to put it on
21 the Internet, it needs to be accessible just as the same as if you
22 walk into a courtroom. There can't be any exceptions to that.
23 And if there are, then we're going to run afoul of what are public
24 records law and open meeting laws actually have. So that's one of
25 the chores that you have.

1 We are, the media and reporters, are really affected by what
2 you're doing. And again, I think one of the issues we need is not
3 a BBO card to get access, but their own identity.

4 Now, it's been suggested that possibly we need to identify
5 who the person requesting the records are. That's never been the
6 case, especially here in Massachusetts. Now, when you ask for a
7 record, whether it's anonymity or, we should not be able to
8 identify -- we don't have to identify who we are. If we're asking
9 for something, we should just ask for the public record, because
10 we are citizens. It's America. We have that right. We have that
11 First Amendment right to records.

12 And again, standing here -- and I'll only take one more
13 minute, is that my purpose here is to show for the Mass.
14 Publishers Association and for reporters, is to get equal access
15 at all times for records, the same access we've had for 30 years,
16 the same access we had a couple of months ago, but that we don't
17 have now that we need a BBO card.

18 And finally, -- not finally, but the cost factor's been an
19 issue. It's been mentioned that possibly we can scan. We have
20 all these abilities now to scan records. It doesn't cost
21 anything. It doesn't even take any time and effort for the clerks
22 and from the personnel. It actually assists. It helps. The same
23 as we do in the Registry of Deeds. We can go the Registry of
24 Deeds and actually scan records now, or we can scan them and it
25 doesn't cost anything. There shouldn't be a cost to scan. There

1 shouldn't be a cost to see records.

2 And the same with if you have a land court and you go to
3 probate court, we can -- and U.S. District Court, you can
4 download. And if we see a record -- at the Registry of Deeds, if
5 we see a record on the screen, we should be able to download that
6 at no cost. There shouldn't be a cost for that.

7 And again, we applaud what you're doing. It's a tough job.
8 And for us, we would like to have input, the media and the press.

9 I recommend also that many of the committees, I noticed that
10 they've had a broad spectrum of committee members. But you don't
11 have anyone from the media. You don't have anyone from the press,
12 who is really affected by your decisions and by your meetings,
13 more than anyone. We are the public. The public can't come to
14 all your meetings. They can't see all your records. So possibly
15 it might be suggested that -- I know we're late in the game, but
16 maybe to have someone from the media on the Committee to give some
17 input; not even a voting member, just to give some input on what
18 we go through to gain public records.

19 Again, it's been my experience in getting public records from
20 the courts and the clerks, there's been no problem. We've got
21 complete access. We ask for records, we generally get them. This
22 is the controversial case, and then there's the roadblocks that we
23 have to go through.

24 But other than that -- Judge. Again, thank you for listening
25 to us. And again, we request that there be a member of the press

1 media as part of the Committee to hear input. Thank you very
2 much.

3 JUDGE LAURIAT: Thank you very much. Next, Robert
4 DeFabrizio.

5 MR. DeFABRIZIO: Thank you very much. Good afternoon. My
6 name is Robert DeFabrizio. I'm the current president of the
7 Association of Boston Law Librarians, ABLL for short, and I'm
8 pleased to be here to provide comments on behalf of our
9 organization.

10 ABLL includes over 100 members from Boston area law firms,
11 law schools, federal and state libraries, as well as businesses.
12 As outlined in its mission statement it exists to develop an
13 increase the usefulness of law libraries and other informational
14 resources and services related to the practice of law in the
15 greater Boston area.

16 My comments will focus on the new system, new docket system,
17 and how it affects private law librarians. I believe the other
18 constituencies are well represented here today. And it is a core
19 segment of our membership.

20 Until the recent rollout of the portal, private law
21 librarians had access to all court dockets. ABLL contends that
22 access should be reinstated for the following four reasons: one,
23 we are respected team members. Private law librarians are
24 recognized members of the legal profession, possessing a
25 combination of education and experience commensurate with the high

1 standards of the practice of law. Two, we are managed and
2 supervised by attorneys. As employees, private law librarians are
3 bound by the same rules of professional conduct as the attorneys
4 they work for. Three, we are trusted professionals. Private law
5 librarians are entrusted with client and firm confidentiality on a
6 daily basis. We are adept in balancing the privacy concerns with
7 those of our attorneys' information needs. And we recognize that
8 is a concern of the Committee. Four, our access reduces burden on
9 the courts. Reinstating access will lessen the need for our
10 members to actually have to go to the court to retrieve documents,
11 benefitting an already budget-strained court department.

12 As noted in the Mass. Trial Court Strategic Plan of June
13 2013, the public expects better service and more self service.
14 The retrieval of docket information is part of many private law
15 librarians job descriptions. We access federal and state dockets
16 throughout the country on a daily basis. And although balancing
17 the dual interest of public access and privacy is a challenge,
18 private law librarians have proven to be a group of professionals
19 who have a long history of prudent, responsible practices.

20 I would like to thank the Committee for holding this hearing,
21 and affording ABLL the opportunity to testify. ABLL welcomes the
22 opportunity to assist the Committee, and encourages further
23 discussion regarding access and enhancements to the docket system.

24 I believe law librarians are very facile in the workings of
25 the system, and we could provide a lot of good input to the

1 Committee to enhance any further developments for this system.

2 Thank you.

3 JUDGE LAURIAT: Thank you very much, sir. Peter Elikann.

4 MR. ELIKANN: Good afternoon. I'm Peter Elikann. I'm
5 representing and speaking on behalf of the Massachusetts Bar
6 Association. I'm also a practitioner in the courts, primarily the
7 criminal courts here in Massachusetts.

8 At first blush it didn't seem to me to be a very complex
9 issue that this Committee is considering. Obviously, we're all in
10 favor of the Sixth Amendment presumption, particularly in criminal
11 courts, to access, open courts, let's all be transparent, and in
12 this day and age to have it be much less burdensome with
13 electronic benefits that we can get. And it's clearly inevitable
14 in some form that many of us that somehow more and more of this is
15 certainly going to be out on the Internet.

16 However, there is a reason why it should not be
17 unconditional, unfettered access, in the same way that we all
18 cherish free speech in this country, but we also know free speech
19 is not unconditional. We really need to balance and open the --
20 there's kind of two competing things here, the openness and
21 accountability of the courts, with privacy interests and privacy
22 rights, particular when it comes to sensitive personal
23 information, because in some cases, this could ultimately result
24 in having acquiring new victims.

25 There should be stringent safeguards and guidelines to this

1 access, because there's a plethora of troublesome areas in various
2 areas of the law that could come up with this. And I'll just kind
3 of go through some -- for example, many court files are filled
4 with mental health information. We're not just talking about
5 mental health cases, commitment, that sort of thing. But we're
6 talking about actual -- criminal cases are usually filled with
7 very often mental health evaluation. You wouldn't want that to
8 just be out there on the Internet.

9 The probate courts have a variety of concerns. When we think
10 about all the custody cases, divorce cases. Wouldn't it be
11 terrible the concept that a child could look up their parents
12 battles there. You could look up the battles of your friends'
13 parents there. And it's just out there for everybody.

14 There's a lot of financial information, not just in these
15 family court files, but in other files. And there's a concern
16 about identity theft, people's information getting out there.
17 Certainly we don't want information to be going out about victims,
18 particular victims of violent crimes. A lot of victims I know are
19 concerned even that -- they feel that they're victimized or their
20 abuser could even get more incited if they see the information --
21 that he suddenly sees the information about him out there in
22 public.

23 We've made great strides in CORI reform in this -- in the
24 commonwealth, where, unless you're -- until you're really
25 convicted of an offense, the information's not going to be out

1 there. However, if there's simply open season on criminal files,
2 there are people who are probably -- you know, are truly factually
3 innocent, who either have their cases dismissed, get found not
4 guilty, and it's open season on files, then this could be kind of
5 an end run around all the progress we've made in CORI reform.

6 There is a concern also that frequently there's errors on
7 docket sheets and in files and that information get out there.
8 And once that's out there, you know, you can't put the toothpaste
9 back in the tube. We have private companies, we're all aware,
10 that are out there trolling for information on people. And they
11 really don't have to answer to anyone. And I think the court,
12 while we want to facilitate public scrutiny of the judicial
13 process, we don't want inform -- the purpose is not just to have
14 information out there being exploited for commercial reasons, but
15 completely unrelated to public oversight of the judicial system.

16 There's a concern about elderly and mentally disabled people
17 who are undergoing such things -- you know, in conservatorship
18 hearings, for example. It'd be terrible that people with access
19 to that could get information about them, and then could exploit
20 them. They'd be vulnerable to con artists and con artists and
21 criminals. I wouldn't want information to get out about certain
22 adoption cases, guardianship. We heard examples in
23 landlord-tenant system where somebody may truly be an upright
24 citizen, and yet they may find themselves on some sort of a
25 blacklist.

1 So I know it sounds like I'm just kind of giving you this
2 long laundry list where I'm kind of hopping from area to area.
3 But these are the concerns why it just can't be unconditional,
4 unfettered access.

5 And someone may ask, *"Well, if you have access if you can*
6 *actually walk into files, why shouldn't the electronic records,*
7 *the Internet records, be the same?"* And there really is a
8 difference to have that out and that easy to get. And the courts
9 have recognized this. And I'll give you -- the best analogy I can
10 think of really is I know everybody is probably familiar with we
11 had some legislation a few years ago, anti-gang legislation where
12 for the first time we criminal practitioners -- very often would
13 be ordered -- we couldn't give copies of police reports and grand
14 jury minutes to our clients. They could come, and we could tell
15 them about it, and they can review it in our office. We can't
16 give them pieces of paper on it, because there were reports about
17 people who were -- they were taking grand jury minutes and
18 actually putting them out in their neighborhoods, putting them on
19 lampposts to try to terrify the people who were, what they
20 considered snitches.

21 So even though that person, that defendant does have a right
22 to review their information, they couldn't have actual copies of
23 it. So I think the court has recognized that in some areas.

24 So again we're looking to strike a balance. And it's been
25 done in other courts I know. I practice in the federal courts

1 also and they're -- even though I can look at a docket, I can't --
2 you can't look at just anybody's presentence report with all kinds
3 of information on them. Much of the information in court the
4 judges seal. So I think there is precedence to it, but it is --
5 it is -- this is complex.

6 I also share the concern as expressed before that I wish and
7 the Mass. Bar Association also wishes that -- I mean, we know this
8 group has been meeting for 19 months, and that it also have an
9 additional composition, where people, practitioners in all these
10 courts, and the media could have also have input early on. And
11 maybe from now, from this point on I can do that. This is not a
12 knock on this panel. I either know you or I probably have at
13 least heard of everybody here. And this is absolutely an all
14 star, certainly, panel. I just wish the composition could have in
15 addition had other people to it.

16 As myself as a former television news reporter and newspaper
17 reporter, certainly the presumption is always going to be in favor
18 of public access. And that is our belief. Nevertheless, the
19 access just should not be absolute. There really should be
20 safeguards that are absolutely implanted in the system.

21 And I thank you.

22 JUDGE LAURIAT: Thank you, sir, very much. Francisca Fajana.
23 Again, I apologize if I've mispronounced names.

24 MS. FAJANA: No, that's correct.

25 JUDGE LAURIAT: And if you could hold the microphone close to

1 you, that'd be great.

2 MS. FAJANA: Good afternoon, Your Honor, members of the
3 Committee. I'm Francisca Fajana, a staff attorney at the
4 Massachusetts Law Reform Institute where I've worked for the last
5 14 years to help reform the Criminal Offender Record Information
6 system, known by its acronym CORI. I've counseled many clients
7 with CORI, looking to find employment, enter a job training
8 program, access housing, and other opportunities of mainstream
9 living. I've brought litigation where necessary, including
10 against the Criminal History Systems Board, formerly known as the
11 CORI board, or now known as the Department of Criminal Justice
12 Information Services.

13 I also worked -- also helped to lead legislative advocacy
14 resulting in CORI reform in 2010. It is in this capacity that I
15 come before you to respectfully oppose or argue against wholesale
16 availability of criminal docket sheets on the court's website.
17 There's several reasons for my position. And they're fully
18 fleshed out in my written submission. But I'm going to focus on
19 three reasons here.

20 The first is the potential of a likelihood for unraveling
21 CORI reform. The second is the possibility of undermining the
22 newly implemented iCORI system. And the third is concerns about a
23 process or mechanism for correcting records, once criminal docket
24 sheets are uploaded onto the court's website.

25 Let me acknowledge at the outset that the First Amendment

1 guarantees the public a right to access criminal proceedings. I
2 discuss several cases in my written submission, including the
3 SJC's 2013 decision in *Commonwealth v. Winfield*. Let me also
4 acknowledge that we live in a technologically advanced, fast-paced
5 information age, where information is readily available on our
6 handheld devices, on demand everywhere and any time.

7 Having said that, in 2010, our legislature struck a balance
8 between the public's right of access and the State's compelling
9 interest in enabling former offenders to reenter society as
10 productive and contributing members.

11 And in striking that balance, the legislature made
12 significant changes to the CORI system. On the one hand, it gave
13 the vast majority of employers, housing providers, occupational
14 licensing agencies, access to criminal record information. On the
15 other hand, to promote rehabilitation and reentry, it narrowly
16 tailored the types of criminal records that can be available. For
17 example, felony convictions that are 10 years or older, excluding
18 convictions for murder, manslaughter, and sex offenses, are not
19 accessible. Misdemeanor convictions that are five years or older
20 are also not accessible. Non-convictions, including dismissed
21 cases, not guilty cases, are not accessible.

22 The expectation being that those who've been processed
23 through the criminal justice system have an opportunity to reenter
24 to get employment, to get housing, and pursue other opportunities
25 of mainstream living.

1 The wholesale availability of criminal docket sheets on the
2 court's website threatens to undermine the State's interest in
3 restricting access to all criminal records, undermines the State's
4 interest in enabling former offenders to reenter society, and
5 could unravel CORI reform.

6 Two, with CORI reform also came online access to CORI. In
7 May 2012, the Department of Criminal Justice Information Services,
8 CJIS, rolled out its iCORI system. Requestors can now request and
9 access CORI online. And according to the Department, records are
10 provided instantaneously. Given that CORI's already readily
11 accessible online and instantaneously making criminal docket
12 sheets available on the court's website could encourage requestors
13 to circumvent the CORI law, thereby undermining the iCORI system.

14 Third, and lastly, we have concerns about the process or
15 mechanism that a person's alleged inaccuracies on a record will
16 sue to make record corrections. Again, with CORI reform, the
17 department of CJIS is mandated to receive and review complaints
18 and cooperate with entities in the criminal justice system,
19 including OCP, the Office of the Commission of Probation, to make
20 record correction. It is not clear if this mechanism will be
21 retained or replaced and with what.

22 Because wholesale unregulated availability of docket sheets
23 on the court's website would likely unravel CORI reform, undermine
24 the new Internet iCORI system, and could cause significant harm to
25 those with inaccuracies on their records, I respectfully urge the

1 Committee not to make criminal docket sheets available online.

2 Should the Committee determine that dockets sheets will be
3 posted online, we ask that they be uploaded in a manner consistent
4 with CORI reform. Thank you.

5 JUDGE LAURIAT: Thank you very much. Next, George
6 Gialtouridis. Again, with apologies.

7 MR. GIALTOURIDIS: You did very well. Thank you, sir.

8 JUDGE LAURIAT: I'm getting better.

9 MR. GIALTOURIDIS: Good afternoon. My name is George
10 Gialtouridis. I am the owner of New England Risk Solutions, LLC,
11 a Massachusetts-based company which provides public records
12 information services for data retrieval. The company contracts
13 certified collectors who document tax lien, small claims, and
14 civil case information, which in turn is made available to data
15 technology and business information solutions providers. We
16 provide information technology and analytics to a wide range of
17 public and private sector industries to help them predict, assess,
18 and manage risk and to prevent fraud, waste, and abuse.

19 As public records, Massachusetts court cases are integral to
20 the data which we provide to our customers. Our trained and
21 certified associates collect civil and small claim case
22 information from all the courthouse throughout Massachusetts, as
23 well as state and federal tax lien data from the registers of
24 deeds of the commonwealth. Timely and accurate reporting of
25 public records information is a vital part of the credit risk

1 management cycle. It provides a number of advantages to the
2 general public and to the industries which we serve.

3 On a national level, it aids in the battle against fraud, and
4 helps keep credit interest rates low. On the local level, it
5 allows businesses and property managers to adequately assess
6 consumer risks before engaging in business. It keeps the
7 community's overall costs of goods and services down by reducing
8 the amount of loss incurred due to bad debt. It also keeps
9 federal, state, and local taxes down, because of improved
10 recoveries of governmental debts, such as tax liens, court costs,
11 and fees.

12 Prior to the rollout of MassCourts, the Intranet platform
13 Civil BasCOT, or Civil Basic Court Operations Tool, was the case
14 management system used on the public terminals in courthouses
15 throughout the commonwealth. Complete civil and small claim case
16 information was available on these terminals for our associates to
17 collect, including the names and addresses of the defendants in
18 each case.

19 Ever since Massachusetts courts gradually transitioned to
20 MassCourts, the new platform does not make complete case
21 information available to view. As a result, in order for us to
22 retrieve complete case information, we must now request from court
23 staff to remove stacks of docket files from storage, and then
24 refile them following our review. We are able to do this only
25 during the limited hours of the week we're allowed to access these

1 files, and only in the clerks' offices where there's ample space
2 on the counter to place the files for review, along with room for
3 a laptop that each collector uses, all without interfering with
4 the court's normal course of business.

5 According to the FY2014 Annual Report on the State of the
6 Massachusetts Court System, there are approximately 84,000 civil
7 cases, and 103,000 small claims cases filed throughout the
8 commonwealth in 2014. That's close to 200,000 combined cases
9 annually.

10 Electronic access to complete case information for these
11 hundreds of thousands of cases will benefit everyone as we can
12 again be totally independent of the office staff to perform our
13 work, just as we were only a few years back before the MassCourts
14 rollout.

15 While expressing my concerns in conversations with various
16 Trial Court administration officials during the past few years, I
17 have noticed that a few officials expressed just one reservation,
18 and that is regarding the addresses of persons who have obtained
19 restraining orders in harassment and domestic violence cases, and
20 that such information should not be revealed. I totally agree. I
21 am sure that there is software available which can address that
22 issue by simply filtering out such case information.

23 In regards to federal tax -- federal and state tax and
24 collection, all of the Commonwealth's Registers of Deeds have
25 scanned images available to the general public to view on their

1 online websites, all with complete information, including
2 addresses, and even more information.

3 The MassCourts case management platform is supported by the
4 Ohio base provider, Court View Justice Solutions. The same
5 company supports similar case management systems in a growing
6 number of jurisdictions throughout the country. Many of these
7 same jurisdictions have complete case information available to the
8 general public on their respective Internet quotas.

9 New England Risk Solutions, LLC also conducts business
10 activity in other New England states. For instance, last year in
11 Rhode Island, a new e-filing paperless system was implemented
12 where scanned images of case documents are now available to view
13 on the public terminals inside the various Rhode Island courts
14 with complete case information.

15 I am also the owner of New York Risk Solutions, LLC., another
16 Massachusetts-based company, which provides public records
17 information for 57 out of the 62 New York State counties. In New
18 York, court records are available through the county clerks'
19 offices. And each individual county contracts its own case
20 management system provider. All of these counties have complete
21 case information available to the general public through the
22 public terminals in their respective clerks' offices, and many of
23 them on their respective Internet portals, including scanned
24 images of case documents. Access to some of these online portals
25 is on a subscription basis, while access to others is free.

1 And I would like to close with the May 11th Boston Globe
2 editorial titled *Technology Shift Should Not Block Access to Court*
3 *Records*, as I agree with the following statement in the editorial:
4 The advent of new technology for the court record system should
5 promote wider record transparency, not limit it.

6 I kindly request that the complete case information for civil
7 and small claims cases is made available again -- again to the
8 general public on either the public terminals within the
9 courthouses, just as it was available in BasCOT, or on the
10 MassCourts.org Internet portal.

11 I would be happy to provide the Committee with any additional
12 information that would assist it in restoring complete electronic
13 access to this public information. Thank you. Thank you very
14 much for your time.

15 JUDGE LAURIAT: Thank you very much. Next, Lloyd Godson.

16 MR. GODSON: Good afternoon, Judge Lauriat, members of the
17 Committee. Thank you for allowing me to speak today. My name is
18 Lloyd Godson. I've been a family law attorney for 23 years. I'm
19 the author or editor of two family law practitioners manuals
20 published by LexisNexis. I am the past president of the Middlesex
21 Bar Association, and an active member of the Massachusetts Bar
22 Association.

23 I am before you today as a private attorney. I'm extremely
24 concerned with the ability of the public to review the sensitive
25 nature of material contained in court filings in family law

1 matters. Parties involved in a divorce are known throughout the
2 industry as good people at their worst. The Trial Court has done
3 their best to protect sensitive information by impounding
4 financial statements and guardian *ad litem* reports.

5 Unfortunately, in some of the most damaging material, whether it's
6 true or not, ends up in motions and affidavits. The information
7 can severely damage lives by damaging businesses, careers,
8 reputations, and other relationships. If the parties are of a
9 higher profile, the damage can even be worse, simply by the public
10 display that goes along with being a public figure.

11 The issue of Internet access creates greater risk for parties
12 in family court matters because it involves the children who are
13 at risk in these matters. Not only will the children have access,
14 but their friends, teachers, and child predators will also have
15 access.

16 I encourage you to limit the public's access to this material
17 as much as possible, and to make sure that the material is not
18 available on the Internet. Thank you.

19 JUDGE LAURIAT: Thank you very much. Lee Hammel.

20 MR. HAMMEL: Hi. My name is Lee Hammel. I was a reporter
21 for 40 years for the Telegram and Gazette in Worcester until
22 taking a buyout in 2012. And I've been a freelancer since then.

23 I thank the Trial Court Public Access to Court Records
24 Committee for holding this public hearing.

25 Justice and good government demand that the public have easy

1 access to the court's records. While I've covered the state's
2 district and superior courts, most of my court coverage involved
3 the federal system. I want to compliment the state courts for
4 being ahead of the federal courts in allowing access for the most
5 part for tape recorders and cameras to the courtrooms. But sadly,
6 the state courts are far behind the federal courts in electronic
7 access to court records.

8 It used to be possible to get at least limited information
9 online about the State's criminal and civil cases through the
10 Trial Court Information Center. However, one had to know in which
11 court the case was filed in. And even then one could only get
12 limited information, such as the caption of documents or the dates
13 of previous and upcoming hearings. Also available were the names
14 of lawyers and charges in a criminal case.

15 Unfortunately, you could not see or copy the contents of
16 documents online. For that, you had to go physically to the
17 court's office -- to the clerk's office to get copies. I believe
18 the charge could vary from 50 cents to a dollar per page. Now,
19 after 19 years and reportedly more than 75 million dollars, even
20 that minimal amount of online access is no longer available for
21 the majority of counties. If you want any information whatsoever
22 about cases in Worcester and most of the other counties, you
23 either have to prevail over the telephone upon the reduced, busy
24 staff of clerks' offices, or get yourself to the clerk's office
25 whenever that -- whenever the case -- wherever the case may be

1 from Hampshire to Dukes County.

2 Contrast that to the federal court's Pacer system, in
3 addition to court dates, charges, parties, and attorneys, it is
4 possible to view and get copies online of entire motions and other
5 documents, provided they're not impounded. Throughout the Pacer
6 system, the public can be knowledgeable -- through the Pacer
7 system, the public can be knowledgeable about cases even before
8 attending a hearing in court.

9 The cost of viewing dockets, motions, and other indictments
10 online through Pacer from one's own office is ten cents per page.
11 There's no charge for judicial opinions. Viewing any documents at
12 public access terminals in the clerk's office is free. And the
13 charge for having the clerk print out the documents is 10 cents
14 per page. It's possible to get documents through Pacer from any
15 of the three divisions of the U.S. District Court in
16 Massachusetts, and from the 93 other federal district courts in
17 the country, from the 13th Circuit Courts of Appeals and from
18 bankruptcy courts across the country.

19 In addition, at least in Massachusetts, the federal district
20 court has set up a system called Virtual Press Box in which
21 credentialed journalist are notified by e-mail each time there is
22 a docket entry in cases in which the journalist wishes to be
23 notified.

24 I'm told that Pacer pays for itself with the per page fees.
25 With the kind of access to records available in the federal

1 courts, it is frustrating to deal with the State courts, even with
2 many of the members of the clerks' offices trying to be as helpful
3 as possible under the circumstances. So it's hard to understand
4 why the State can't simply replicate Pacer, which has been online
5 for 14 years.

6 Thank you very much.

7 JUDGE LAURIAT: Thank you very much. Next, John Hawkinson.
8 Go ahead, sir.

9 MR. HAWKINSON: Good afternoon, Justice Lauriat, and members
10 of the Committee. My name is John Hawkinson. I'm a freelance
11 news reporter, usually writing for Cambridge Day. My interaction
12 with the court system generally focuses on the city of Cambridge
13 and its large institutions such as MIT and Harvard. With respect
14 to the superior court, I deal with the Middlesex and Suffolk
15 Counties. I'm concerned both with electronic access and the
16 physical access to paper records. I've had problems with both.

17 I'm also concerned with the veil of secrecy that rests over
18 your Committee. During March and April of this year, I directed a
19 number of queries regarding this Committee to the Public
20 Information Office. I received no substantive response. That
21 includes straightforward questions like the membership of this
22 committee and the name of the chair. In response I was told, "*The*
23 *Executive Office of the Trial Court doesn't have any information*
24 *beyond what we already provided,*" which was merely that the
25 committee existed.

1 Frustration with that process led me to write to you on April
2 13th of this year. I hope you have my letter. Since that time, I
3 haven't heard from the Committee or the Public Information Office,
4 but last week the mass court system took a substantial, positive
5 step. And that's very much appreciated.

6 Electronic access is the wave of the future. And it's
7 important to get it right. I appreciate the Committee's care,
8 concern, and deliberate steps in this case. When something is
9 done, it can be hard to undo. Once information is out there on
10 the Internet, it can be impossible to remove. So care is
11 appropriate.

12 I would suggest two guiding principles for the Committee.
13 One, do not reduce the level of access from that of the prior
14 system. Any information available in the Trial Court system
15 should remain available in the MassCourts system. It's not
16 accessible to remove -- it's not acceptable to remove access to
17 information from the press, or from the public at large. And
18 second, as you've heard earlier today, look to the federal CM/ECF
19 system, the Pacer system, for guidance. Pacer does not do
20 everything right. But if your system has more restrictive access
21 than Pacer, it should give you substantial pause.

22 As you know, transitions from any Trial Court to MassCourts
23 stopped access to civil docket information by members of the
24 media. [Unintelligible @ 5:08:08 due to brushing against the
25 microphone] it's my practice to query the system on a daily basis

1 for updates to cases of interest and parties I care about, like
2 the City of Cambridge, or Harvard, or MIT. When Middlesex
3 transitioned in January, I lost that access and I admit several
4 stories went unreported or delayed, because I was not aware of
5 their information in a timely fashion.

6 No explanation has been provided why members of the media
7 cannot have the same access given to members of the bar during the
8 transition phase. I've heard privately that there's a technical
9 limitation on giving access to individuals without bar numbers, as
10 well as giving access to judges and court clerks, all who have
11 been refused. This is an excuse that simply can't withstand
12 scrutiny. If the MassCourt system is so horribly designed that it
13 truly requires a bar number for every user, assign temporary
14 numbers to the media, beginning with 999, or something like that.
15 This is not a technical problem.

16 But I'm incredibly pleased that last week public access to
17 civil dockets in Middlesex and Barnstable went live. Because
18 Middlesex holds the bulk of my attention, it solves much, but not
19 all of the MassCourt system problems for me.

20 I'd urge the Committee to recommend similar access for the
21 remaining counties soon. If they can't be immediately
22 accomplished, please credential the media for electronic access to
23 the system, the same access as the bar. Because the court already
24 has a registration process for news media, with 138 organizations
25 and 60 individuals registered, this should not be burdensome.

1 But beyond criminal dockets, you have hard decisions on the
2 criminal -- sorry. Beyond civil, you have hard decisions on the
3 criminal side. I understand the desire to keep criminal docket
4 information confidential within the confines of the CORI law and
5 others. But ultimately records do need to be available at some
6 level. In the Trial Court -- in the Trial Court system, the
7 superior court criminal cases were available to the press and to
8 the bar over the Internet, as long as you had the docket number.
9 If you didn't, you were stuck. The MassCourts system must provide
10 that level of access, or more. And you'd be able to check the
11 status of a criminal case from my office and recheck it on a daily
12 basis to determine if there'd been filings, rulings, or decisions.
13 A phone call to the courthouse or a trip there is not adequate
14 substitute. It is not practical to call on a daily basis for any
15 but the most critical cases.

16 In the MA Trial Court system, searches by party name for
17 criminal cases were not available over the Internet, only at the
18 terminal in a courthouse. That was an annoyance, and I imagine
19 was viewed as a compromise between public disclosure and
20 confidentiality. An analogous setup in the MassCourts system
21 would be something we could live with; not the best or most
22 convenient, but an adequate balance between competing factors.

23 In the Pacer system, all criminal case dockets are available
24 to anyone with a Pacer account, and anyone can sign up for one,
25 though there's a 10 cent per page charge. By requiring accounts

1 in the system, Pacer effectively places an appropriate limit on
2 the spread of criminal information.

3 Because of confidentiality concerns, I'd urge the MassCourts
4 system to allow access to criminal dockets to members of the press
5 and bar by registration, and to also consider public access to
6 registered members of the public. It's hard to balance the public
7 interest and the media interest.

8 As a journalist, my heart cares about the free act of
9 information by the public, and I want to strongly argue for the
10 public having easy access to all information, including criminal.
11 But by background -- I'm a computer scientist and engineer -- I
12 understand the dangers of public dissemination of some kinds of
13 information. Should it be the case that Googling a person's name,
14 they return a link to the MassCourts system if the person was
15 charged with a crime but not convicted? Yes, if the case rose to
16 the level of being written about in the press. A Google search
17 will surely return press articles. But most cases do not get that
18 level of publicity.

19 There's also a question of the significance of the case.
20 Stakes are higher in federal cases in the Pacer system. They're
21 far lower at the county district court level, or the Boston
22 Municipal Court. They're also higher in the superior court. A
23 compromise that allowed online access to criminal information in
24 the superior court but not the district courts could be quite
25 reasonable. It's also consistent with the principle of not

1 reducing the level of access.

2 Media and the bar had access to superior court dockets
3 before. We should have that access again, even while the court
4 considers what to do about access to the general public, also, on
5 physical access.

6 In the federal Pacer system, all documents are available
7 electronically. Maybe we've been spoiled, but as reporters we
8 have electronic access to briefs, affidavits, and opinions that we
9 can posted electronically and reach and search electronically. My
10 practice is to bring a portable scanner to the courthouse and scan
11 several hundreds of pages of dockets for later review. But this
12 practice has been frustrated by the strict policies of different
13 courts. In the superior court in Middlesex, I can use my scanner.
14 But in Suffolk Superior Court, upstairs, I have to write a letter
15 to the judge presiding over a civil case, requesting permission to
16 use my scanner. Sometimes it's granted, sometimes it's not. Some
17 judges require the written request be live pursuant to Rule 9A,
18 and the parties be given a chance to object. But this makes
19 little sense, since parties don't get to object when I go review
20 the file at the table at the desk upstairs. Otherwise, I can use
21 their photocopier, which charges between 50 cents, 40 cents, 50
22 cents, a dollar a page. I don't have the budget to make hundreds
23 of pages of copies at those rates. The result is I write a worse
24 story. It's not that I pay money to the Commonwealth or the court
25 system.

1 On one memorable occasion, having been granted written
2 permission to use my scanner, I was told I couldn't break a
3 binding on the bound brief, so I used a camera to photograph the
4 pages. Then I was told that my letter didn't authorize use of the
5 camera, only to the scanner. I'd have to write another letter to
6 a judge and get another response permitting me to photograph the
7 pages.

8 In the land court, just two flights up, I can use my scanner.
9 I don't know what the rule is at Suffolk Criminal, but I think it
10 may be an unconditional no.

11 The system needs to be made more consistent and more
12 permissive. Until electronic downloading of court documents is a
13 reality, the press and public should be permitted to use scanners
14 and cameras on case documents, subject to reasonable time, place,
15 and restrictions.

16 Thanks very much.

17 JUDGE LAURIAT: Thank you very much, sir. Next, Todd Kaplan.

18 MR. KAPLAN: Thank you. Good afternoon. Thank you for the
19 opportunity to speak before you. My name is Todd Kaplan. I'm a
20 senior attorney at Greater Boston Legal Services in the Consumer
21 Rights Unit.

22 And these comments are intended to assist you in the
23 difficult task of balancing public access to court records with
24 concerns about how Internet access would make it easier to
25 properly use these records. I think it's -- as all of you know,

1 because you work with the court system, what we're trying to do is
2 move something, use a basically a database court management system
3 and call it something else. We're trying to call a court record
4 system. It is not a court record system as all of you know. It
5 is something that was designed originally to help the courts
6 docket documents; make sure the calendars are accurate; put some
7 basic information in; and allow people to -- and it evolved, and
8 allows people to show how fast cases are moving through the
9 system. It's basically there to assist the court in court
10 management.

11 Now we're trying to turn that system, which we all recognize
12 has its flaws, because we're all human beings, and this is a
13 strained system. It's becoming more strained every day, because
14 of diminished resources. We're trying to turn that into a record
15 system. It is like fitting a square peg in a round hole. It does
16 not fit. Now what happens is unintended consequences.

17 So as you've heard several times today from advocates and
18 impacted individuals, court records are often used as a basis for
19 denying credit, housing, employment, insurance, and I'm sure lots
20 of other things. And this is often regardless of the accuracy of
21 the records. Let me give you one example. As Esme Caramello said
22 earlier, I want to reiterate that in housing court summary process
23 cases, often adult members who are not the head of household, who
24 are not the person that will sign the lease, who are not the
25 person that pay the rent, are named in summary process complaints.

1 Why? Because landlords think they have to do that.

2 Well, as you heard from New England Risk Management, those
3 people are now labeled evicted if that eviction goes through, even
4 though they had no responsibility for that apartment. They are
5 now effectively -- got a mark against them just because they're
6 listed in the court record database. I think we can all agree
7 that is not fair. And it's probably something that can't be
8 resolved easily. So you are really stuck with a hard, hard
9 problem about balancing these different interests.

10 But I think I want to talk about a little bit about some of
11 the work that I've done with people who've been evicted or had
12 evictions filed against them. I worked with many, many people who
13 stopped paying rent because of bad conditions in their apartments,
14 elder is one of those people, et cetera. And we often come to
15 agreements, agreements where that's what the court encourages to
16 do. And many, many times these end up with agreements where
17 people can stay in their homes. But there are concessions.
18 Sometimes I pay a little bit less rent, the landlord comes in and
19 makes those repairs. They move forward. Well, guess what? New
20 England Risk Management now says that because we filed an
21 agreement for judgment, that they say a judgment was entered
22 against the tenant, even though that very well -- that agreement
23 might very well say, *"I'm going to pay \$500, landlord can make*
24 *these repairs, and after six months we're going to move on and*
25 *continue that landlord-tenant relationship."* New England Risk

1 Management effectively said that person was evicted, and if they
2 move on to new housing, that's going to be a bad mark against
3 them.

4 So the real question's whether access at a courthouse
5 fulfills the public's need, and whether you can balance Internet
6 access with the unintended consequences and administrative burden
7 that is necessary, or even makes sense. So the question is
8 really, should we just say people can actually go to the
9 courthouse, verify the accuracy of the information? And I just
10 want to say, where is the accurate information? You all know it.
11 When the court wants to find out what's really going on with a
12 case, they look at the docket. They don't -- if there's a
13 discrepancy between what the computer record says and what the
14 docket says, of course the docket holds.

15 If there's questions about the accuracy of whether an entry
16 is made correctly or something's scheduled properly, you look at
17 the docket. Well, that's what we can do at the courthouse.

18 So I'd like you to think about whether, when you're trying to
19 balance these different interests, whether you should just say,
20 *"You have to come to the courthouse"* for those records that you
21 decide should be available to the public. And there may be some
22 that are restricted; you know, restraining orders, et cetera. But
23 for those that you decide those should be available and continue
24 to be available at the courthouse is where we all know the most
25 accurate information is available.

1 I want to also suggest that if you decide that public access
2 is important for some functions, like for example someone wants to
3 know when their next court date is, that that might be a
4 reasonable thing to do, that you have scheduling information that
5 is available on the Internet, but not other information as to
6 outcome or even parties' names, as was suggested earlier.
7 Initials would suffice. If someone knows their docket number,
8 they can look up and they can determine what the next scheduling
9 information date is.

10 I want to just also say about what happens when this
11 inaccurate information gets out there. Well, today, after you're
12 denied employment, after you're denied housing, after you're
13 denied insurance, you might get a notice that there is something
14 bad in your record that said that you had a bad mark. New England
15 Risk Management sent out a report you have a bad mark. Guess
16 what? It's after the event. It's after you're denied employment
17 if you get that report. So what is available today -- and a lot
18 of people talked about putting the genie back in the bottle. The
19 information is out there. It's used against you in a negative
20 manner. And even if you might successfully challenge it later --
21 again, thinking about the burden on the courts, all those people
22 that have to go to the courts to fix their information,
23 repeatedly, *"Come on, I need you to fix it, because I'm being*
24 *denied housing, I'm being denied employment, I'm being denied*
25 *insurance or what have you."* Now we're going to be faced with a

1 situation of all those people having to go to the court system to
2 ask you to fix it.

3 So I guess my final statement is that I think with all these
4 measures I've identified do not prevent all abuse in the court's
5 large court system. Once this information's electronically
6 available and widely distributed electronically, we will have no
7 ability whatsoever to ensure that this information is not abused.
8 Now is the time to step back and ensure that the public in-person
9 access is provided to a limited subset of court records, as I've
10 mentioned, in a thoughtful manner that ensures that the abuses of
11 widespread distribution are limited.

12 Thank you for your time.

13 JUDGE LAURIAT: Thank you very much. Next, Melinda Kent.

14 MS. KENT: Good afternoon, members of the Committee. My name
15 is Melinda Kent. I'm the manager of the Research Services
16 Department at the Harvard Law School Library, and president of
17 LLNE, the Law Librarians of New England. LLNE members work in
18 college and university libraries, law schools, law firms, and
19 trial court libraries throughout New England. In each of these
20 settings, we, as librarians, and the lawyers, paralegals, faculty
21 students, and members of the public who are our patrons, rely on
22 the availability of court records for their work, study, and for
23 access to the justice system.

24 Public access to court proceedings and records is a
25 fundamental principle of our judicial system. Access to court

1 records is necessary for both those involved in a specific case
2 and for the general public. In previous guidelines and policy
3 statements, Massachusetts courts have recognized that general
4 public access to court documents allows the public to learn about
5 the operation of the judicial system, and fosters discussion of
6 public matters.

7 General public access to court records supports fairness,
8 accountability, and public confidence in the judicial system.
9 Court docket access is particularly crucial to members of the
10 public who come to law libraries for help navigating the justice
11 system. Any system for providing public access to court records
12 should be tailored to make access technologically, financially,
13 and physically easier for those whose access to the courts already
14 face significant barriers.

15 A system which provides open online access to docket sheets
16 and court documents would allow librarians to help these
17 self-represented litigants, and would remove barriers to access
18 created by requiring litigants and researchers to come to the
19 courts during business hours. In turn, this could alleviate the
20 burden on court clerks and other court staff who'd otherwise be
21 needed to provide onsite help.

22 In law school, college, and university libraries, scholars
23 and students all seize court records in a number of ways. As law
24 schools move towards providing more experiential education, access
25 to court documents becomes even more important. Professors use

1 real court dockets and filings to provide realistic models for
2 students learning trial practice and the nuts and bolts of
3 lawyering. And in addition, many of our students participate in
4 legal clinics, representing real clients who would otherwise have
5 limited access to legal representation.

6 As more court dockets and records become available online,
7 scholars are also able to use these records to empirically study
8 trends in justice and court administration. These studies, in
9 turn, may be the catalyst for increases in fairness and efficiency
10 in the courts.

11 As more material is put online, more is expected to be
12 online. We do our banking via our phones, and check out library
13 books in the middle of the night. Modern research as a lawyer is
14 to expect quick and easy access to documents and dockets. When I
15 started as a librarian 15 years ago, getting court documents
16 involved phone calls, letters, paid researchers, and trips to the
17 court. But increasingly, docket sheets and case documents from
18 other jurisdictions are available online, saving the time and
19 effort of both users and overworked court staff.

20 Many states currently provide online public access to
21 dockets. And you've heard many people talking about the access
22 available through Pacer. According to the National Center for
23 State Courts, over a dozen states, including our neighbor,
24 Connecticut, also provide online access to some case documents.
25 These systems serve as a model for expanded Massachusetts access.

1 We ask that any new rules or systems created to provide
2 public and online access to Massachusetts court records, take into
3 account the wide range of librarians, lawyers, and other members
4 of the public, both in and outside of Massachusetts, who have a
5 vital interest in the work of the Massachusetts courts. With
6 carefully drawn exceptions to protect safety and privacy, the
7 guiding principles for any system should be transparency and open
8 access. Systems permit access should include at minimum, online
9 docket access, and ideally should also provide access to court
10 documents as well.

11 Electronic and remote access should mirror onsite access
12 whenever possible. And systems for remote access should also
13 support accessibility and access to justice for all users, rather
14 than creating separate classes of access to general court
15 information.

16 I'd like to say thank you to members of the Committee for
17 your work on this very difficult issue, and for giving me the
18 opportunity to express my views and to the views of LLNE. Please
19 also let us know if there's any way that we, as information
20 professionals, can assist your committee. I look forward to the
21 continued opportunities to provide public comments on this issue.
22 Thank you.

23 JUDGE LAURIAT: Thank you very much. Given our limited
24 resources, there is a collection plate at the door if anyone would
25 like to lose additional money. Maybe I'll swap mics. I'll just

1 swap mics. See if it's the mic.

2 Okay. We'll give it a shot. We'll keep going. Next,
3 Patricia Levesh, if I've pronounced your name correctly. I
4 apologize.

5 MS. LEVESH: Good afternoon, Judge.

6 JUDGE LAURIAT: Afternoon.

7 MS. LEVESH: Members of the Committee. Sorry.

8 JUDGE LAURIAT: That's fine.

9 MS. LEVESH: My name is Patricia Levesh. I manage the Family
10 Law Practice at Greater Boston Legal Services. We represent
11 thousands of victims of domestic violence, elder abuse, and sexual
12 assault in probate and family court and district court and the
13 Boston municipal courts.

14 I am joined in this testimony by the Victim Rights Law
15 Center, which provides civil legal services to victims of sexual
16 assault, the Boston Area Rape Crisis Center; Jane Doe, Inc., the
17 umbrella organization for domestic violence shelter and -- shelter
18 and other service providers; the Second Step, a domestic violence
19 service provider; Northeast Legal Aid; Northeast Justice System;
20 and others whose constituencies include victims of domestic abuse
21 and sexual assaults.

22 I want to briefly make six points. I have -- will be filing
23 written testimony that more fully fleshes out these six points.
24 The first is that the Federal Violence Against Women Act, also
25 known as VAWA, prohibits Internet publication of key protected

1 order -- protective order information. 18 USC, Section 2265(d)(3)
2 says a state shall not make available publicly on the Internet,
3 any information regarding the registration or filing of a
4 protection order, a restraining order, or an injunction if such
5 publication would be likely to publicly reveal the identity or
6 location of the party protected under the order. Any information
7 likely to reveal the identity or location of a victim.

8 This means that court dockets should not contain the name or
9 address of any person who applies for a protective order from any
10 trial court. The prohibition of information likely to publicly
11 reveal the identity or location of the party protected could
12 include information beyond the name and address of those persons.
13 For example, revealing a defendant's name can flag a victim who is
14 married to or otherwise associated with that defendant. Anyone
15 familiar with the defendant can easily determine the name of the
16 petitioner.

17 This prohibition could be extended to domestic relations
18 cases, because they're cross-referenced with any prior or existing
19 orders of protection, and are often consolidated with other
20 matters concerning the same parties and families.

21 Online availability of domestic relations matters therefore,
22 is not just likely to publicly reveal identifying and location
23 information of victims, it is almost guaranteed to do so. As
24 such, to make these files, as well as abuse prevention files
25 available online, would violate the protective provisions of VAWA.

1 Secondly, if victims and survivors know that their
2 information will be publicly available online, they would be less
3 likely to approach the courts for the protection that they so
4 desperately need. People caught in dangerous and abusive
5 situations or have been sexually assaulted, already find it
6 difficult to approach the courts for protection for a variety of
7 reasons, such as shame, stigma, or fear of retribution by the
8 abuser. Listing the names of victims and defendants on the
9 Internet will further inhibit victims from reporting abuse or
10 seeking help to escape the violence.

11 Third, the privacy and safety interest of domestic violence
12 and sexual assault victims, survivors, and their children, are
13 jeopardized by public access to restraining order and domestic
14 relations cases. As Attorney Godson mentioned previously, abuse
15 prevention and domestic relations case files contain very
16 sensitive and intimate information that should not be made public
17 to protect the privacy and safety interest of the litigants and
18 their children and other family members. The files can contain
19 sworn statements outlining potentially embarrassing, intimate
20 information, pleadings with allegations of parental deficits,
21 mental illness, substance abuse, child abuse, and Department of
22 Children and Families involvement.

23 Orders are frequently entered requiring psychological
24 evaluations, drug and alcohol screening, batterers treatment, and
25 other remedies that obviously reveal negative family dynamics.

1 Care and custody of children is a central issue in these
2 matters. And courts try to take pains to prevent children from
3 being harmed by the proceedings. But none of these documents
4 should be publicly available online.

5 In addition, batterers and stalkers are adept at using
6 technology to further their aims of maintaining control and
7 finding their victims by applying a variety of telephone,
8 surveillance, and computer technologies to harass, terrify,
9 intimidate, coerce, and monitor former and current intimate
10 partners. Examples include sending multiple e-mails or text
11 messages a day, monitoring computer activity with spyware,
12 tracking the location of a victim's car with GPS, watching the
13 victim through hidden cameras, intercepting phone calls and
14 messages, and impersonating the victim.

15 Permitting unfettered access to court records online in
16 domestic relations and protective order cases, gives these
17 perpetrators more ammunition for their technology arsenal.

18 Fourth, public access to restraining orders in domestic
19 relations cases, could be to discrimination against victims of
20 domestic abuse and sexual assault. As you heard earlier,
21 landlords often use the information they find in district court
22 and housing court records to discriminate against tenants. Some
23 people still have negative assumptions about the dynamics of
24 family violence, or blame the victims.

25 Employers may believe that hiring a victim or a survivor

1 poses a threat to the workplace, or that the employee's family
2 drama will lead to unsatisfactory work performance, or excessive
3 absence. Landlords may believe that the abuser will cause trouble
4 at the property, and that the victim has a financial -- has no
5 financial stability and will be an unreliable rent payer.

6 Making even more information that is private available online
7 would give employers, property owners, and others, an increased
8 ability to discriminate against victims of abuse and sexual
9 assaults, thereby making it more difficult for them to get
10 employment and housing that they need to escape the violence.

11 Fifth, incapacitated individuals may be preyed upon if files
12 are made available online. Probate and family court hears cases
13 involving incapacitated persons and minors in guardianships,
14 Rogers cases, and conservatorships. District courts handle civil
15 commitment proceedings. The very nature of these cases flags the
16 existence of mental illness, substance abuse, dementia, cognitive
17 incapacity, and parental unfitness, as well as financial
18 information. The subject of these matters are typically very
19 vulnerable and in need of protective oversight, making them easy
20 prey for unscrupulous scammers and criminals.

21 Finally, Internet access to domestic relations and abuse
22 prevention cases would increase the use of case-related
23 information for purposes unrelated to the litigation or to public
24 oversight of the judicial process. One is identity theft. Public
25 disclosure of court records online will facilitate identity theft

1 by providing easy access to personal identifying information to
2 unscrupulous persons. The other is abuses by data brokers.
3 Technology has enabled data brokers to amass vast amounts of
4 information to aggregate and use for commercial purposes. They
5 compile and sell information gathered from multiple sources,
6 including court records. Once the victim's information is
7 remotely lifted from a court record, there is no way to control
8 the use of that information, or the dissemination of it further.
9 There's no way to correct it, and no way to expunge it. Providing
10 this information to data brokers does not in any way further the
11 court oversight public policy reasons for access to court files.

12 For these reasons and the reasons more fully stated in my
13 written testimony, GBLS and its cosigners respectfully request
14 that no case file information from the probate and family court or
15 from any protective order or civil commitment proceeding in
16 district court and Boston municipal courts be made publicly
17 available online.

18 I thank you for your time.

19 JUDGE LAURIAT: Thank you very much. Next, Bharani
20 Padmanabhan. She's not checked in? Okay. Jeffrey Pyle. Thank
21 you very much.

22 MR. PYLE: Good afternoon. My name is Jeff Pyle. I'm a
23 partner at the law firm of Prince, Lobel, Tye, here in Boston.
24 And I'm here on behalf of a group of news media and public
25 interest organizations that have a profound interest in the

1 matters that are before you. They are the New England Newspaper
2 and Press Association, the New England First Amendment Coalition,
3 Courthouse News Services, and Bloomberg BNA.

4 On May 1st, our office sent a letter to this committee, asking
5 it to take steps to restore civil superior court docket
6 information to the public, and to overturn what had been a -- what
7 I understand to be an unintentional restriction of that civil
8 docket information to attorneys only. And we're gratified to hear
9 that there are plans to make those civil dockets once again
10 available to the public. But at present, only Middlesex and
11 Barnstable Counties currently have access to civil superior court
12 docket information, whereas the counties of Essex, Nantucket,
13 Dukes, Bristol, Hampshire, Franklin, Berkshire, and Worcester are
14 all on MassCourts.org, but you need to be an attorney to see those
15 cases. And we'd be interested to know if there's a timetable for
16 flipping the switch to allow those to be accessible without an
17 attorney log-in.

18 As we explained in our May 1st letter, public access to court
19 records is not just a good public benefit in the here and now, it
20 is a part of this commonwealth's proud legal heritage. The Body
21 of Liberties of 1641 provided that every inhabitant of the county
22 shall have free liberties to search and review any rolls and
23 registers or records of any court; 1641.

24 Docket sheets, in particular, which our letter was about,
25 permit the public to actually assert the essential oversight

1 function that people have spoken to about today about why we have
2 public access. And just as Oliver Wendell Holmes identified that
3 oversight restriction in a case going -- that oversight purpose in
4 a case going back to 1884.

5 More recently in the *Pellegrino* case out of the Second
6 Circuit, the court held that docket sheets must be public under
7 the First Amendment because they endow the public and the press
8 with the ability to exercise the access rights that are such an
9 important part of our legal heritage. And you've heard from
10 journalists today about the importance of access to court records.

11 We understand the Committee's going to continue its work to
12 look at these rules. And as many other speakers have done, I'd
13 like to offer what our coalition considers to be the important
14 guiding principles.

15 First, as has been said by other speakers, dockets and court
16 documents should be every bit as public online as they are on
17 paper. It is certainly true that putting information online makes
18 it more conveniently available to the public. That serves the
19 longstanding principle of publicity and oversight that I just
20 mentioned. It may also be true that putting stuff online makes it
21 more convenient and means less practical obscurity for those
22 documents, making public dissemination of that information more
23 likely. But that is exactly what our legal system intends.

24 The Supreme Court in 1975 pointed out that, "*The freedom of*
25 *the press to publish information and public records is of critical*

1 *importance to our type of government, in which the citizenry is*
2 *the final judge of the proper conduct of public business."* That's
3 the *Cox v. Cohn Broadcasting* case.

4 And the law has been pretty clear for a long time that
5 strictly speaking there is no privacy interest in court records
6 and information that are publicly available in a courthouse.
7 There is no such privacy interest.

8 There are legitimate privacy interests that come up in court
9 proceedings all the time. And we have a well-developed body of
10 case law to deal with that. It's an impoundment, and the
11 Massachusetts Uniform Rules of Impoundment Procedure. It may be
12 that putting court documents online might result in attorneys
13 being more keen to the privacy interests of their clients and
14 perhaps more likely to move to impound court documents. But it is
15 -- what the Rules of Impoundment Procedure say that the courts
16 have to take impoundment matters on a case by case basis,
17 considering the public's right of access to the particular
18 information being sought to be impounded, and balancing that
19 against the privacy interests involved.

20 So what this Committee, we respectfully suggest should not
21 do, is go through different types of documents to be filed in
22 court, and which are routinely found in court, and say, "*Well,*
23 *those may be public in the courthouse, but they should not be*
24 *public online.*" There is already a well-developed body of case
25 law on impoundment. And it ought to be -- and impoundment ought

1 to be the solution to the privacy issue, to the extent that there
2 is one.

3 We've also heard folks talking about inaccurate docket sheets
4 as a reason to withhold docket sheets from the public. That, I
5 respectfully suggest, is an argument for more accurate docket
6 sheets, not an accurate for restricting access to the public.

7 Certainly also the issue of personally identifying
8 information and identity theft has been raised before you. The
9 answer to that question rests in the court's interim guidelines
10 about personally identifiable information, which put the onus
11 squarely on attorneys to redact such information before it gets
12 filed.

13 On all of these questions, the Committee, we respectfully
14 suggest, ought to rely on attorneys to do their jobs, keep matters
15 out of the public record, if they can satisfy the good college
16 standard for impoundment, and redact personally identifiable
17 information; not to take wholesale measures to restrict access to
18 documents which may or may not have such information in them.

19 The second principle, very briefly, we'd like to suggest is
20 that there should be no differing types of access between
21 different classes of people. Access to documents, whether they
22 are put up in full text online, or in dockets, should be equally
23 available to attorneys and non-attorneys, including journalists,
24 *pro se* litigants, and the general public. And we're pleased to
25 see that MassCourts.org appears to be moving in that direction.

1 But the court should also take the same approach when it gets
2 to the point of putting full text court documents online. That,
3 of course, is what the Supreme Judicial Court itself said in its
4 2003 policy statement about online records, where it said
5 attorneys, litigants, and the media should have no greater access
6 than the general public has to information about cases in which
7 they're not directly involved. That is the Supreme Judicial
8 Court's current statement on the issue.

9 Finally, and I'll wrap up with this, is, documents should be
10 available free of charge, if possible. Court documents, as has
11 been said before, are public documents. And the court should not
12 be creating any barriers to access, if they can be avoided. If
13 any fees are charged for access, they should be reasonable, and
14 should be applied equally among all different people seeking
15 access to those court documents.

16 So on behalf of NENPA, NEFAC, the Courthouse News, and
17 Bloomberg BNA, I'd like to thank you again for the opportunity to
18 make these remarks today, and to suggest we'd be happy to help the
19 Committee in the future in any way we can. Thank you.

20 JUDGE LAURIAT: Thank you very much. Pauline Quirion.
21 Again, if I've pronounced you correctly, I -- thank you very much.

22 MS. QUIRION: Hello. My name is Pauline Quirion. I'm from
23 Greater Boston Legal Services from the CORI and Re-Entry Project.
24 I'm also a long-time Legal Services attorney. I've been a lawyer
25 for over 30 years.

1 First I'd like to respond to Attorney Pyle's comment that
2 impoundment would be the solution to the problem of access. It's
3 important for the Committee to recognize that providing Internet
4 access to dockets, particularly in criminal cases, really would be
5 unfair to the poor. You know, the right to counsel in a criminal
6 case doesn't extend to litigating, for example, privacy issues, or
7 even the collateral consequences of a criminal record.

8 Similarly, in civil cases, nowadays people appear *pro se*.
9 There's been an explosion in *pro se* litigants over the past few
10 decades. Those litigants are not going to be aware of their --
11 that there's any possibility that their cases would be online,
12 particularly past litigants. They had no idea. Myself, as an
13 attorney, for all the people I've represented over the years, I
14 never had a notion that the information might become public on the
15 Internet.

16 In a nutshell, it's really unfair to poor people to put the
17 information online, because in terms of the floodgates it may open
18 up and the bad things that'll happen, the disparate impact will be
19 on the poor.

20 And in terms of Legal Services attorneys, there aren't enough
21 of us to represent all the poor people in the state. So if you
22 have electronic access, Legal Services will basically be the
23 dustpan that follows the electronic access elephant. And we're
24 just not going to be able to handle all of the particular
25 problems.

1 Internet access also would really cause a lot of damage to
2 people who are trying to seal their criminal records. We recently
3 had a whole overhaul of the criminal record sealing system. And
4 if there's court access on the Internet, and a record ends up in a
5 database of one of these data mining companies, or, for example,
6 there's just some malicious person out there, once on the
7 Internet, you can't take it back. And the Internet operates 24
8 hours a day. We all know that cyberbullying, malicious tweets,
9 identity theft, harassment, and the commercial sale and
10 exploitation of personal information happens every day on the
11 Internet. It's a routine occurrence. And you really can't unring
12 the bell once the information is released.

13 So a lot of the people I represent every day -- GBLS sees
14 about 800 people a year -- most people come to our office because
15 they can't get a job because of their criminal record. And the
16 only way for them to get employment is to seal that record. And
17 then once the record's sealed, they can get a job. Then they
18 don't have to be on public assistance. It's not so expensive for
19 the State. But if you start putting records online, basically
20 you're going to get rid of that remedy. And again, you're going
21 to have large scale unemployment.

22 I won't belabor the point about the background checking
23 companies, because other people have testified about that. I do
24 want to touch upon the issue of errors in court records. You
25 know, our sealing practice, we routinely go and look at docket

1 sheets. And by the way, if there was electronic access, that
2 would make my life, personally, a lot easier. I wouldn't have to
3 go to Roxbury or Dorchester. But as an officer of the court, and
4 someone who cares about justice, you have to look at who's
5 involved in the justice system. There's the Commonwealth. There
6 are defendants. There are witnesses. There are other people
7 involved in the system. And too much is lost by virtue of the
8 convenience that would enure to me because I'd be able to just go
9 on the Internet. I prefer to keep schlepping to Dorchester and
10 Roxbury, whatever court I might need to go to, and actually get
11 those dockets the old fashioned way.

12 And if you have an iPhone I have an app. It's called
13 TurboScan. It takes me about two seconds. You know, I haven't
14 found it to be onerous. And I don't spend a dime getting my
15 copies of the docket sheets in particular.

16 One final thing I would mention, picking up on the comments
17 of Fran Fajana from Mass. Law Reform, you know, there is the CJIS
18 system out there that's available if somebody wants to get access
19 to criminal records. So that's available in addition to the
20 person going to review files at the courthouse. So there's no
21 need to reinvent the wheel and create a system that it's beyond
22 access to the records just so that newspaper companies and other
23 people who want to make money on the particular records have
24 easier access.

25 And my final comment would be if the Committee were

1 considering expanding itself -- though it seems that 22 people,
2 that seems plenty enough members to come up with a policy on these
3 issues -- I would also suggest that you get input from the Legal
4 Services community.

5 JUDGE LAURIAT: Thank you very much. Matthew -- that's the
6 signal. It's six o'clock. Time for everybody to go. Goodbye.

7 Okay, there we are. Those few who remain will go forward.
8 Matthew Segal, sir, if you'd come forward.

9 MR. SEGAL: Thank you, Your Honor, and members of the
10 Committee. I set that up to make sure everyone would be awake for
11 this.

12 I want to thank you for the opportunity to speak. Given the
13 great points that have been made before this point in the session,
14 I just want to mention three things, three principles, really,
15 that in the view of the ACLU of Massachusetts, where I'm legal
16 director, can guide this Committee's work going forward.

17 The first principle is that courts and court records should
18 be as open as possible to as many people as possible. And you've
19 heard today about the equality principles underlying that ideal,
20 and the First Amendment principles underlying that ideal. Of
21 course there should not be undue distinctions between who can --
22 the people who can access records. But also, it's important to be
23 sensitive to the fact that the First Amendment, Article 16 of the
24 Massachusetts Declaration of Rights, and the Common Law, all
25 guarantee access to records. And that guarantee should guide this

1 Committee's work.

2 The second point is that openness should be the default; not
3 just in the Committee's thinking about this issue, but in the
4 mechanics of how access works. So some of the very good ideas
5 that you have heard today about the situations in which access
6 material is sensitive, material might need to be limited in who
7 should see it, they all derive from systems in which it is the
8 responsibility of lawyers and judges at the front end to designate
9 something that is needing to be impounded or redacted, and not at
10 the back end with wholesale impoundment of entire records or
11 entire cases. This is really the virtue of the idea that has been
12 suggested to you again and again today of the Pacer rule. That
13 principle is in play there.

14 And the third point that I want to make has less to do with
15 the fight that's -- some of the debates that you've heard today,
16 but really the opportunity that this entire process represents.
17 This is an enormous opportunity for the State. And just listening
18 to the testimony here today, or the comments you've heard, I mean
19 we've heard from lawyers, we've heard from journalists, we've
20 heard from librarians, we've heard from people who represent the
21 poor. There are also social scientists, academics, all kinds of
22 people who are lucky enough to be here and who we're lucky enough
23 to have access to in Massachusetts. And so many of them have been
24 stymied by the restrictions on access.

25 So, you know, we could be the commonwealth or the state in

1 which we do marvelous things with the data in our court systems.
2 But instead, last week we were the state in which there was a
3 hearing on mandatory minimums. And the only people who could
4 bring data to bear on that hearing were the chief justice and the
5 district attorneys, because everyone else is effectively shut out.

6 And we are also the state in which we had this enormous drug
7 lab scandal which my office was involved in litigating, the Annie
8 Dookhan scandal. And instead of the state that is on the front
9 lines of data, we are the state in which years after Dookhan's
10 misconduct was disclosed, we don't even have a list yet of the
11 cases on which she worked.

12 So I just want to end there to say that this is an enormous
13 opportunity. Everyone at the ACLU of Massachusetts is grateful
14 for the work that's being done, and is happy to help in any way we
15 can. Thank you.

16 JUDGE LAURIAT: Thank you. Thank you very much. Denise
17 Squillante. It did it again.

18 MS. SQUILLANTE: Good afternoon. My name's Denise
19 Squillante. I know many of you. But for those of you who don't
20 know me, I'm past president of the Massachusetts Bar Association,
21 past president of the New England Bar Association, Fall River Bar
22 Association, and past member of the ABA House of Delegates, past
23 board member of the National Conference of Bar Presidents. I'm a
24 board member of the Bristol County Bar Association, and still on
25 the board of New England Bar, and member of the Court Management

1 Advisory Board. I'm past chair of Family Law, and a board member
2 of the Inner Courts.

3 The only reason -- and those of you who know me, the only
4 reason that I would tell you what my past credentials are, is to
5 let you know that I've been around quite a bit. But I'm here
6 today in my individual capacity, and I appreciate the opportunity
7 to speak to you, and to answer any questions that you have.

8 I've been practicing family law for 32 years this year. This
9 year, walking into the courthouse in the neighborhood on just
10 about a daily basis, sometimes juggling two, three cases, I've
11 seen enormous changes in the law throughout my career. Internet
12 access to probate court records -- and I really want to speak
13 about probate court, because that's really where my expertise is
14 -- is of particular interest to me.

15 Years ago I was on a committee on this issue for the probate
16 court under the leadership of then Judge Chouteau Merrill. I have
17 profound concerns about the balance between Internet access and
18 privacy, and frankly, the risk of harm. More importantly, I have
19 serious concerns about the potential impact of what I'm hearing
20 about open files having on children, in particular in the probate
21 court. Not only children, but incapacitated individuals, wards,
22 victims of domestic violence, or the defendants in victim -- in
23 domestic violence cases.

24 The Internet is a wonderful, and a very, very necessary tool.
25 I'm sure everyone in this room right now would agree with that.

1 However, I've watched over the decades how the Internet, as useful
2 as it is, has wreaked havoc in families. I can't describe to you
3 how many cases in the course of a week involve what's posted on
4 social media, who's done what on social media, who's posted what
5 from the Internet access. And the list could go on and on.

6 And it started out kind of as a vanilla thing. When PC
7 computers came into households, the gripe in family law cases was,
8 *"My spouse is up all night playing games."* And then it went to
9 meeting all kinds of folks on the Internet. And then it goes on
10 to searches. And now we have tons of stories on the news about
11 hacking into records, getting private information. And the list
12 goes on and on.

13 While I recognize fully that the court system has to move
14 into the 21st Century, and that the public litigants and some bar
15 members may be looking for the ease of Internet access, I suggest
16 to you that there are some very serious considerations for the
17 probate court. And I don't profess that I know all the answers
18 about the balancing.

19 Many years ago it was mentioned to me -- and this has got to
20 be at least 15 years ago -- that a friend of a minor child, both
21 two minor children, asked his friend, who happened to be the son
22 of a judge, how to access his parents' divorce file on the
23 Internet. He wanted to read what was going on in his own parents'
24 divorce. Family law cases have significant sensitive family
25 issues. And I would suggest to you that those issues far outweigh

1 any public interest that any media source would seek; disclosure
2 of health factors, for example, in pleadings to support a position
3 under 208, 34. For example, to show how a sexually transmitted
4 disease was passed from one spouse to another. Is there really a
5 public right to know that? As a lawyer, you have to do all of
6 your pleadings to support your case before the court. It would be
7 impossible to have redacted and impounded pleadings on all of
8 those circumstances.

9 Or how about motion for random drug screening? Employers,
10 people that -- the deans at schools are always searching
11 individual's names. So I would respectfully suggest that having
12 those kinds of things up on the Internet could not only chill
13 employment, cause a lack of employment, or could cause some other
14 serious harm to an individual.

15 Motions for supervised parenting time usually are accompanied
16 by affidavits, and some very serious allegations. Affidavits and
17 their contents are replete within the probate court. Victims of
18 domestic violence carry shame. And this could very well be
19 exacerbated by having their information out in the public.

20 Regardless of impoundment under the orders relative to
21 restraining orders, if there is a companion case like a divorce or
22 a separate support action, there frankly would also be other
23 pleadings in that file.

24 Or how about a meritless restraining order, or information
25 about false allegations contained in a file? Identity theft,

1 children in particular. Impacted children. What about when their
2 friends read their friends' divorce file? Could it then result in
3 bullying? Much of unintended results from ease of access could be
4 irreparable.

5 In discussions with bar leaders from all over the country
6 over the years on this issue, the conclusion is once it goes up,
7 you can't take it back. The courts continue to strain from a lack
8 of financial resources and manpower, although we're moving forward
9 in a renaissance in the court and the commonwealth on many fronts.
10 But this adds a whole potentially new dimension.

11 For the interest of families whose lives are disclosed in
12 probate court, my request is that there be a very careful and very
13 exhaustive determination of what should and shouldn't be on the
14 Internet, and also having adequate staffing in the courthouse that
15 could deal with some of these issues; how we handle information
16 when there are significant risks; how do we protect family
17 privacy; how is the court going to ensure that records are not cut
18 and pasted and put up on YouTube or on Facebook; will judges,
19 especially in the probate court, get profiled and put them more at
20 risk?

21 And this is very different, I would suggest, that when you
22 say, okay, federal court, they're all up on the Internet. Well,
23 quite frankly, there you might be dealing with issues where the
24 remedy is money. Here we're talking about serious harms.

25 So in thinking about this -- and I want to suggest to you

1 that when the founders of the First Amendment -- and we had our
2 Public Records Statute which is archaic -- was ever passed, the
3 Internet was never a figment of anybody's imagination. And I
4 would suggest that two things really need to be vetted as this
5 Committee moves forward. One is, what is a public record? I
6 think that needs to be determined in each particular court
7 department.

8 Two, if we're moving forward towards records on the Internet,
9 then I would respectfully suggest that the impoundment rules are
10 really going to need to be looked at.

11 If, as I've heard somebody suggest, that the lawyers need to
12 be the gatekeepers, then I would suggest that the very stringent
13 Rules on Impoundment would need to be reviewed and changed.

14 And third, I would suggest that as you're moving forward,
15 that you really consider members of the bar who practice in the
16 different court departments joining your Committee, or being part
17 of a subcommittee. Thank you.

18 JUDGE LAURIAT: Thank you very much. Horace Smith, who I
19 think we bumped over. I apologize. Small. I'm sorry. I didn't
20 have my glasses on. I apologize.

21 MR. SMALL: Mr. Chairman, I certainly understand what it's
22 like not to have your glasses on. So apology accepted.

23 Members of the Committee, good evening. My name is Horace
24 Small. And I am the executive director of an organization called
25 the Union of Minority Neighborhoods. We're based in the Jamaica

1 Plain section of Boston.

2 What makes it significant for me to be here today was that it
3 was my organization that for seven years led the fight for
4 criminal justice reform in Massachusetts through the Mass.
5 Reliance to Reform CORI, getting legislation through. It took
6 seven years for a lot of reasons. It took seven years because of
7 misinformation and bad ideas; misinformation such as -- what's a
8 good one? Well, if we give people second chances, they will go
9 into neighborhoods and terrorize people. Well, I mean, there's
10 not too many black guys from Mattapan are going to go to
11 Wellesley, you know, to commit crime. That didn't happen.

12 The other line that was told was that if we take people with
13 criminal records, they'll go into companies if they're violent,
14 and kill people and hurt people. Well, that didn't happen either.

15 So, you know, we also were told that if people with criminal
16 records, if we reform criminal justice reform, you know, prison
17 guards, Union might have to lay off people. Well, all that didn't
18 happen either.

19 What's clear for all of us is that -- and I speak today on
20 behalf of the hundreds of thousands of people who were impacted
21 and were affected by criminal justice by CORI reform -- by CORI,
22 very simply is that this is an absolutely bad idea. The reason
23 why we fought for CORI reform was because people wanted second
24 chances. They'd made mistakes in their lives. They wanted second
25 chances. They wanted to go forward. They wanted to get educated.

1 They wanted to raise their family. They wanted to be productive.
2 They wanted to pay taxes. That's why we fought for criminal
3 justice reform.

4 And this, putting this online -- one of the things we
5 absolutely do know is that when you put these things online, you
6 can't take those things back. I remember an e-mail I sent to Tom
7 Menino, which I wish I hadn't of sent. You know, I didn't mean to
8 send it. But it got -- it went out anyway, and I couldn't take it
9 back. So, and that's the dilemma with putting things online.

10 So we learned early on that CORI reform was not just a -- it
11 wasn't a racial issue, because, you know, there's three million
12 people with CORIs, and that's an awful lot of white folks who had
13 criminal records. So it wasn't racial, but it damn sure was a
14 class issue.

15 And this too, again, is a class issue as well. For those of
16 us who care deeply, who want to continue with their lives, who
17 want to work to make their communities better, who want to be
18 contributing factors in their community, this is absolutely,
19 absolutely a very, very bad idea.

20 And as my sister who spoke before me said that lots of people
21 could get access to records; children could get access to records;
22 families could get access to records. This is a -- it would be
23 debilitating and destroy the lives of individuals.

24 We ask you on behalf of hundreds of thousands of people who
25 are affected by CORI re -- by CORI in the commonwealth of

1 Massachusetts, to really, really think about this, and to -- in
2 the words of Nancy Reagan -- just say no. This is a really bad
3 idea for them, because this would defeat everything that folks
4 fought for for seven years.

5 And on that note, thank you. And it's Small, not Smith.

6 JUDGE LAURIAT: Thank you very much. Thank you. Try on my
7 glasses again. Gracemarie Tomaselli.

8 MS. GRACEMARIE TOMASELLI: Should I wait?

9 JUDGE LAURIAT: Just pick it up. Just pick it up. Pick it
10 up. There we go.

11 MS. GRACEMARIE TOMASELLI: See? I solved the problem. My
12 sister and I -- she's the next person on. Would it be all right
13 if we're both here together so that we can save time?

14 JUDGE LAURIAT: Sure.

15 MS. GRACEMARIE TOMASELLI: Do you want to call her
16 up or ...?

17 JUDGE LAURIAT: Joyce Tomaselli.

18 MS. GRACEMARIE TOMASELLI: Thank you.

19 JUDGE LAURIAT: Uh-huh.

20 MS. GRACEMARIE TOMASELLI: I'm honored to have an opportunity
21 to be here today. I've seen your names many times. No one wants
22 to be a *pro se* litigant. And it's not easy being a *pro se*
23 litigant. And it's not easy being in the court system, even when
24 you have an attorney. The hours are incredible. And you don't go
25 there unless you look for justice. And you come to the court

1 system for that. And my sister and I, since 1995, 20 years, we
2 have been seeking justice. And the more we sought justice in
3 every court, all we had to do was have the other side, which was
4 the Town of Salisbury, and their attorneys, Kopelman and Paige,
5 and Coppola and Coppola -- all they had to do was lie to every
6 judge. And because they were so powerful, because municipalities
7 are considered credible, and naturally Kopelman and Paige is
8 considered credible. So what does that make us? That we're not
9 credible?

10 However, I'm grateful that we had the EPA and the State
11 support us, and get documentation. My sister, I have to commend
12 her. She spent months going through EPA and State documents. The
13 Town of Salisbury actually told the court that an 18 million
14 dollar sewer project that was a hundred percent grant funded, they
15 said it was 80 million, under oath, and said they got 90 percent
16 in grant funds, which is 72 million. Thank God I had the EPA who
17 said, *"What are they kidding; do they know how much 80 million*
18 *dollars was in the '80s?"* And we lost at the Appellate Tax Board.
19 But we were the ones telling the truth.

20 So we went to the Appeals Court. Again the lies continued.
21 And the more they won, the more we lost. We went to the Supreme
22 Judicial Court, federal court. When we spoke at the meetings they
23 called us out of the meetings and they put it on the Internet,
24 *"Two Sisters Escorted."* We weren't escorted because we were
25 troublesome. We were trying to get answers.

1 So what happens now is the more we lost and the more they
2 won, the more credible they became in every court, even in the
3 Federal Bankruptcy Court, Federal Court, First Circuit Court of
4 Appeals. We went as far as the United States Supreme Court.

5 I don't know how many attorneys have written a petition for
6 writ of certiorari. But my sister wrote two of them. And she's
7 not an attorney, and neither am I. No one does this if you're not
8 looking for justice.

9 So the reason I'm saying this is it's true you can pick up
10 the Internet and you can look at the findings of fact and report.
11 The facts were not facts at all. I looked at Judge Piper's
12 decision. He used the wrong dates. He used the wrong amounts.
13 He used everything that the Town of Salisbury gave. He didn't use
14 not one document from the EPA, even after we asked for motion for
15 reconsideration to please include the truth, so Your Honor, you
16 can make a decision.

17 I don't want to be in court. We had a beautiful Italian
18 restaurant. As Kevin Cullen said from the Boston Globe, one day
19 my sister said, "*I don't want to be writing motions. I really*
20 *want to be serving linguini.*" And you know, it's true, all we
21 wanted was our little Italian restaurant that the Town of
22 Salisbury took away from us. And now we've lost our home, our
23 foreclosure, and then the Land Court, and actually one of your
24 courts now too, we're going to the Appeals Court.

25 We have to find justice somewhere. So please, when you put

1 information online for people to access, let's make sure it's the
2 truth. It's the truth that we need out there, not the findings of
3 fact that somebody wrote in that's not the truth.

4 And there's another thing that's very important. You know,
5 credible is a very scary word. There are many very powerful
6 people in this world who are credible, but they're not truthful.
7 And we did say that to the court.

8 I know someday I will get court -- I will get justice from
9 one of these courts. I really believe that we will. And I'm
10 looking to you all to please look for the truth. Procedure is
11 great. But why is it that we had 30 days to do something that it
12 took a judge almost three years to make a decision, while we're
13 accruing 16 percent interest? Why was my wrong bill that went
14 into the Land Court, that was under \$50,000, and that was the
15 wrong bill -- why is it over a quarter of a million dollars today?
16 Why, while I've been waiting for the truth?

17 So please. You're very powerful people. You can do a lot of
18 good, and you can do a lot of harm. Please be careful and think
19 about the people who are coming to you as *pro se* litigants.
20 They're not coming to you because they're troublesome. They're
21 coming to you for help. So please remember that. Thank you.

22 JUDGE LAURIAT: Thank you.

23 MS. JOYCE TOMASELLI: Hello. I'm Joyce Tomaselli, as
24 Gracemarie just said. I want to thank you for this opportunity.
25 I advocate for transparency in government. And I have been

1 seeking justice for very many years through the court system.

2 There are some issues I'd like to bring forward. One thing
3 is copies at a dollar a page is excessive, and is prohibitive if
4 you're copying a case file. Many of us just cannot afford this
5 cost.

6 Another thing, please have the courts record all hearings,
7 including sidebar, and have a CD available at a nominal fee. My
8 experience is the first judge made a decision at sidebar, but I
9 didn't know this. He made a decision regarding an assessment
10 date, making me and my sister liable for an assessment. This
11 decision was wrong, and it was based on the Town of Salisbury's
12 fraudulent misrep -- fraudulent representation.

13 This has cost us 15 to 20 years of litigation. And I have
14 never been able to correct this error. You see, because once a
15 finding is made, it becomes a fact. Even though it was based on
16 fraudulent information, because -- because this decision, what
17 they spoke about, wasn't recorded, I have no access to the
18 discussion that went on at sidebar. And this should be a public
19 record of the entire court proceeding.

20 Please allow parties to videotape all hearings, including
21 sidebar. The transcript to create a public hearing -- a public
22 record of the hearing, the cost is prohibitive for many of us.
23 Example, it was \$7,000 for a two-week trial in the year 2000. I
24 could not afford this charge, and never received the transcript.
25 If I would've had a hearing recorded, I would have had access to a

1 CD. And all I wanted to hear was the truth of what was spoken.

2 This system of transcribing, only transcribing a court
3 proceeding is archayiv [phonetic] and -- is archaic. Thank you.
4 And what happens is, we have no access to what was truly said at a
5 hearing. Not all transcribers do accurate work. And many of them
6 use dashes to replace the words that were spoken. So even though
7 you do an errata sheet, you never really have a true record of
8 what transpired.

9 Another thing, *pro se* litigants need access to dockets and
10 dockets online -- documents online. Example, I didn't know the
11 Appellate Tax Board made a docketing error by not docketing a
12 hearing. Being *pro se*, I had no access to the dockets online. So
13 on our appeal, I referenced this hearing in my brief. The
14 Salisbury Town Council, who attended the hearing wrote in the
15 Town's red brief that we were not being truthful, because the
16 hearing was not listed on the docket. I was so upset to receive
17 this from the Town, I contacted the Appellate Tax Board, and they
18 quickly corrected the docket and provided it to me with the
19 corrected docket information, so I could submit it with my reply
20 brief to the Appeals Court.

21 So the importance of having litigants access to docket
22 sheets, I would have known that there was an error. I understand
23 it was -- it was -- I believe it was a true error on the court's
24 side. But because they made this error, and I didn't know, I was
25 written that I was lying to the court, and I wasn't.

1 Please allow *pro se* litigants to file motions, et cetera, by
2 fax or e-mail in every court. And lastly, but very important,
3 because of my experience, my very difficult experiences, please,
4 judges, please do not make decisions, written decisions, such as a
5 matter of law, the case is denied, the case is allowed. Every
6 decision should have a reason, and it should have the applicable
7 law or the statute, a written reason that becomes a public record,
8 so that people have an opportunity to appeal it if the decision is
9 in error. When you have a decision saying a matter of law, I
10 spent years going, "*What law? What does this mean?*" I never was
11 able to find out the law. It's just -- it's just horrible to have
12 a decision rendered in that way.

13 I'd also have appeal rights written in the decision. So this
14 would give a party enough information to seek review and a remedy.

15 I thank you so very, very much for your time. Thank you.

16 JUDGE LAURIAT: Thank you both very much. Norma Wassel.
17 Oops, I did it again. Speed things up a little bit.

18 MS. WASSEL: Thank you so much.

19 JUDGE LAURIAT: Okay.

20 MS. WASSEL: My name is Norma Wassel. And I'm a licensed
21 social worker. And I also am founder and current Chair of the
22 Steering Committee of the Massachusetts Bail Fund. And I want to
23 talk specifically around the issue of data that needs to be
24 available for a group such as ourselves who are working on public
25 advocacy, and actually impact State public policy.

1 I want to give you a couple of examples of how the lack of
2 data, access to data, the lack of standardization impacts not only
3 groups like ourselves, but people who are actually working on
4 behalf of the State. Even legislators can't get this information.

5 So why did we found a Bail Fund? Social workers, defense
6 attorneys, community advocates, were working and seeing clients
7 being held on low bail across the state; fifty dollars, five
8 hundred dollars. We founded a bail fund where we post bail for
9 people on bail under five hundred dollars. This is happening
10 throughout the commonwealth, and it's still continuing. We get
11 more referrals than we can handle. We post bail. We operate a
12 revolving bail fund. And also, because we were seeing systemic
13 problems throughout the pretrial bail, we also looked at doing
14 advocacy work. And some of this has resulted in actually filing
15 of a bill that people may know about, Representative Sannicandro
16 and Senator Donnelly, who have filed a bill on the act for
17 pretrial process to look at bail reform that other states have
18 implemented, including doing away with a cash bail so that the
19 amount of money you have doesn't impact the justice that you get
20 in this commonwealth.

21 I specifically want to talk about our advocating for access
22 to court information for the public having open records,
23 particularly in the pretrial bail process, and using this as an
24 example of other groups throughout the state who are working on
25 public advocacy areas, whether it be environmental, whether it be

1 a relationship to housing, of needing this information to inform
2 us, and in turn help educate our legislators and people in public
3 policy roles. They often look to us, organizations, for this
4 information.

5 So we were seeing people being held. Currently our average
6 bail for 2013, 2014 is \$364. So we have residents throughout the
7 state of Massachusetts are being held on very low bail that you
8 and I could afford, and have significant collateral consequences.
9 They lose their kids, their housing. Perhaps they're in mental
10 health substance abuse treatment and lose that as a matter of
11 getting into, you know, jail, even for a couple of days.

12 The other thing I wanted you to be aware of is the lack of
13 data also keeps systemic barriers still existing. So for example,
14 we physically have to bail someone out, go to the jail in the
15 evening. There's no systemic way that you can go to court, unless
16 your client is in court that day, and post the bail. So we would
17 like to even have you within your review of looking at the
18 systemic issues that impact the procedures or acts as to justice
19 in our state.

20 We have also wanted to recommend standardization. We have
21 had major problems getting information even when the Commission on
22 Criminal Justice members, or for example, my State Senator, who's
23 Senator Pat Jehlen, who's on the Commission for Criminal Justice.
24 They're asking us in our advocacy work to look at -- should I just
25 put this down?

1 JUDGE LAURIAT: No. You're working out.

2 MS. WASSEL: To actually help them get data, because they
3 have also not been successful. So we were wondering, are what we
4 seeing the tip of the iceberg, wherein some counties that what's
5 happening in New Bedford, Fall River, Holyoke, Worcester,
6 Lawrence, Lowell, areas of extreme poverty? So we're hearing
7 these things anecdotically and we're asking for data from the
8 Mass. Trial Court, but we can't get it. Or we get it in bits and
9 pieces, or what we get from one county doesn't match what we're
10 getting from another. This has been documented in a paper that we
11 did, a report with Northeastern Law School, Massachusetts
12 alternatives, alternatives around the bail system, and also
13 recently by the NIC, National Institute of Correction report that
14 they did on Middlesex County on analysis of their pretrial
15 defendants population. As you know, Middlesex had a closing of
16 the Cambridge Jail. They're looking possibly to build a new one.
17 And they're needing to have data; how many people in their current
18 jail at Billerica is housing people on low bail? Nobody could
19 provide that information to them, except the snapshot that they
20 did under Sheriff Koutoujian's current population.

21 They're estimating as many as 25 percent of the people are
22 held on under a thousand dollars or less. And we want you to
23 analyze it. I live in Middlesex County. Before you're looking at
24 building a new jail, how do we get the data from the court, from
25 the pretrial, to look at do we really need a new jail, or are

1 there other alternatives that could be implemented?

2 The other thing that we are seeing is barriers for when
3 individuals are trying to get information, so when you have these
4 these lack of data in these reports, that we actually try to show
5 the problems. We, for example, trained a group of 60 volunteers
6 to do a random sample of 30 courts throughout every county in
7 Massachusetts to get information from court dockets; just a
8 two-week random sample from 2012, to see if what we were seeing
9 was also true throughout the state, because we couldn't get this
10 systemically from the Mass. Trial Courts. And we found a total
11 range of response of each courthouse. One court has computer
12 access; others said, "*Come back.*" One said, "*We're available at*
13 *4:00*"; intense labor for the court clerks to give you the
14 information, to get to the actual dockets.

15 So there's no standardization. There's lack of information.
16 We're constantly trying to get the information; had to hand sort
17 through dockets, hours, and hours, and hours. We don't know if
18 the State, for example, might have this information or it's just
19 not available to us as a public John Q. Citizen or Jane Q.
20 Citizen, or is it kept in any way. We would like to make
21 recommendations it be kept. So if you're looking at open access,
22 please think of the impact this information has on public policy
23 and saving money.

24 So we now currently have made public access record requests
25 to a range of areas in the court system. And responses vary from,

1 *"Sorry, we're not covered under the Mass. Public Records Law," to,*
2 *"Here is some information"* which is very, very helpful and is
3 going to be used to inform our work in terms of the work we're
4 doing with public officials around reducing the cost of detaining
5 people on very, very low bail, nonviolent crimes that don't need
6 to be incarcerated or are largely there due to substance abuse
7 problems or mental health issues or other areas.

8 So we wanted to make sure that you look at the systemic
9 changes you could put in place that systematize information, and
10 you look at how the open access would impact and inform us around
11 public policy. Thanks very much.

12 JUDGE LAURIAT: Thank you very much.

13 MS. WASSEL: Is there anything that you want to add?

14 JUDGE LAURIAT: Alexander Jones. Is he --

15 MS. WASSEL: He's with us.

16 JUDGE LAURIAT: Yep.

17 MR. JONES: Thank you, members of the Committee. I
18 understand I'm not in alphabetical order.

19 Currently I work for the Massachusetts Bail Fund. I'm also a
20 first-year law student, or a rising second-year law student, at
21 Northeastern University School of Law here in Boston. And I wish
22 to echo what Ms. Wassel was saying, and add a few things, because
23 I've been working on trying to get some of the information on the
24 court system; working to no avail mostly.

25 Louis D. Brandeis, a great justice of the United States

1 Supreme Court and actually a petitioner here in the commonwealth,
2 once said that sunshine was said to be the best disinfectant. And
3 the sunshine in government is public access and citizen
4 involvement. Unfortunately, there's not a whole lot of either in
5 the court system. I've found that when I've tried to access data
6 for the court system, I constantly run into the same brick wall,
7 which is Public Records Law. And I understand that the Supreme
8 Judicial Court has ruled that the judiciary is not covered by the
9 Public Records Law. I understand that. I understand the statute
10 does not cover the judiciary. I understand that.

11 However, I do not understand why some offices will give me
12 information and other offices in the Department of the Trial Court
13 will not. That doesn't make sense. As Ms. Wassel said, there
14 needs to be standardization, not only of the data that goes into
15 the trial system and comes out of the Department of the Trial
16 Court, but also policies. It's all well and good to have a
17 uniform policy of no access. But it's also problematic to have a
18 disparate set of policies of access to some records and no access
19 for others. This leads to confusion. This leads to frustration.
20 And this also leads to clouding of the sunshine that needs to go
21 into government to make sure that it's running well.

22 Louis D. Brandeis also said that the most important office in
23 a democracy is that of a citizen; it is not the president; it is
24 not a judge; it's not a senator; it is a citizen. And the citizen
25 cannot perform their duty, and cannot discharge the duties of

1 their office if they have no information.

2 There is no sunshine in the darkness. Jesus of Nazareth
3 said, *"You do not put a light under a pillow, you let it shine out*
4 *in the darkness."* So let's have a little bit more light.

5 I understand that the judiciary is not covered by the Public
6 Records Law. But that does not mean that people can still not get
7 information. You can have your own policies set forth to allow
8 for individual offices to allow people to come in and get records,
9 or to provide small amounts of information so that people can have
10 a taste of what is in the records.

11 And last but not least, I ask that you urge the Supreme
12 Judicial Court and the legislature to amend the law as it stands,
13 whereby the judiciary is not included in the Public Records Law.

14 Thank you for your time.

15 JUDGE LAURIAT: Thank you very much. Let's see. Brooke
16 Williams or William. Williams, I thought it.

17 MS. McKIM: Hi. My name is Jenifer McKim. I'm not Brooke
18 Williams.

19 JUDGE LAURIAT: You don't look like Brooke Williams. Are you
20 speaking for both of you?

21 MS. McKIM: I am speaking -- yes. She and I are both
22 colleagues at the New England Center for Investigative Reporting.
23 She was not able to come today. But I am also a senior
24 investigative reporter at the New England Center, which is a
25 nonprofit news center based out of WGBH Public Radio and Boston

1 University. I've been a reporter for more than 25 years before I
2 came to NECIR. I worked at the Boston Globe and also at the
3 Orange County Register in Southern California.

4 Court records are a key tool for watchdog reporters to use in
5 telling stories that make a difference; prompt legislative changes
6 for good; and focus public scrutiny on systemic flaws and bad
7 actors. I'm continually surprised at how difficult it is to
8 access public records in the state of Massachusetts, and in
9 particular in the convoluted court system.

10 Particularly, I was dismayed to find that the court had
11 started to reduce the public for access to superior court records.
12 Indeed, we believe the court should not only not limit them, but
13 expand records to provide full text of these records.

14 I wonder why attorneys should have easier access to such
15 information that is not available to the rest of the public.
16 Already we've used the limited access in superior and district
17 court documents to write important stories that affect
18 marginalized people in the commonwealth, including most recently a
19 story I wrote on people who lost their homes to foreclosure and
20 were being pursued by debt collectors for financial losses they'd
21 never be able to cover.

22 We also use Land Court records to document a growth in
23 foreclosure filings from third-party investors, who increasingly
24 are buying up tax liens from cities and towns, an issue that
25 housing advocates say is affecting a growing number of elderly and

1 disabled residents.

2 Without publicly available court information, our ability to
3 do our work, serving as the eyes and ears of the community, is
4 seriously curtailed. Already I spend countless hours driving to
5 local courthouses to get court information that would be publicly
6 available at our desks in other states.

7 In addition to time and transportation costs, we generally
8 are asked to pay a dollar a page for these records at courthouses.

9 And one other thing I was thinking about as I was sitting
10 here is, I've also spent a lot of time and energy getting court
11 transcriptions from the courthouses, which is also a confused
12 process of tracking down court reporters or recorders to tell us
13 where the information is.

14 We at the New England Center for Investigative Reporting urge
15 you to expand both free and public access to court records.

16 Thank you.

17 JUDGE LAURIAT: Thank you very much. I believe that
18 concludes our list of registered speakers for the evening. Let
19 me, on behalf of the Committee, thank everyone who has come today,
20 everyone who has submitted verbal comments and written remarks.
21 We've received a wide variety of views and approaches to the
22 difficult issues that confront us relating to public access to
23 court records.

24 We intend to read, to review, and to consider all comments,
25 both those made here today and those in writing. And we will

1 continue to work to develop a set of proposed rules to govern
2 access to public access to court records.

3 As I indicated at the outset, our plan and hope is to draft
4 or complete drafting a proposed set of rules, which will then be
5 given to the Chief Justice of the Trial Court, to then be posted
6 for public comment. There'll be a period for public comment for
7 everyone. You can send in additional comments at that time.
8 We'll receive those during the comment period. We'll work toward
9 a final set of proposed rules. And then our work will be sent to
10 the Supreme Judicial Court, who will have the final determination
11 and consideration of what rules will come forward on public access
12 to court records.

13 Today's proceedings we anticipate will be compiled in some
14 kind of either transcript or electronic form or both. And we do
15 expect to be able to make that public to everyone at some point.
16 If you check the Trial Court website, it'll give you further
17 information as soon as that is all compiled.

18 So thank you all very much for coming.

19
20 *[Recording Ends.]*
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