

SUMMARY OF MINUTES

PUBLIC SAFETY COMMITTEE

6:30 P.M., MONDAY, NOVEMBER 8, 2010

COMMITTEE ROOM

ROOM 239, CITY HALL

MEMBERS PRESENT: Council Member Vivian H. Burke, Chair
Council Member James Taylor, Jr., Vice Chair
Council Member Wanda Merschel
Council Member Derwin L. Montgomery

OTHERS PRESENT: Council Member Molly Leight
Council member Robert C. Clark (in at 6:48 p.m.)

Chair Burke called the meeting to order and introduced Mr. Christopher Langham, the newest Assistant Chief in the Fire Department. She then stated that without objection, the Committee would first consider the Consent Agenda and asked if any items needed to be removed for discussion.

Council Member Montgomery requested to pull Item C-6. Chair Burke requested to pull Item C-4. No other items were pulled.

Council Member Merschel made a motion to approve the balance of the Consent Agenda. The motion was duly seconded by Council Member Taylor and carried unanimously.

CONSENT AGENDA

- C-1. ORDINANCE AMENDING SECTION 42-122(f) OF THE CITY CODE RELATING TO 25 MILES PER HOUR SPEED LIMITS ON CITY STREETS - *Huntscroft Lane; Weisner Street; and Neighborhood Limits: Yeaton Glen Drive, Yeaton Glen Circle, Wood Glen Court, and Glen Meadow Drive.*
- C-2. ORDINANCE AMENDING SECTION 42-122(c) OF THE CITY CODE RELATING TO 45 MILES PER HOUR SPEED LIMITS ON CITY STREETS - *Lansing Drive.*
- C-3. ORDINANCE AMENDING SECTION 42-124 OF THE CITY CODE RELATING TO SCHOOL ZONES - *Lansing Drive, Highland Avenue, 11th Street, and 12th Street.*
- C-5. UPDATE ON CELL TOWER LEASES.

C-7. APPROVAL OF PUBLIC SAFETY COMMITTEE SUMMARY OF MINUTES - *October 11, 2010.*

C-4. INFORMATION ON TWENTY-FIVE MOST DANGEROUS NEIGHBORHOODS IN AMERICA FOR 2010.

Mr. Scott Cunningham, Chief of the Winston-Salem Police Department (WSPD), indicated that the neighborhood of East 21st Street was identified incorrectly, and he believes the methodology of NeighborhoodScout.com to be faulty, reckless and inaccurate. He also indicated that the WSPD data collected for the area shows a different result.

Chair Burke noted that she met with residents of that area on Friday and wanted the public to be aware that everything possible is being done to keep the neighborhood safe. She requested that more officers walk through the area and increase their visibility. One resident recommended the WSPD members should meet with neighborhood residents to discuss and clarify any safety measures that are being taken.

C-6. REPORT ON MOTORIZED WHEELCHAIRS.

Council Member Clark in at 6:48 p.m.

Mr. Gregory M. Turner, Assistant City Manager/Public Works, stated that rules for the use of a motorized wheelchair on the street is the same as those rules applied to pedestrian traffic. Pedestrians are required to use a sidewalk if one is present and if not, they are to walk on the far left side of the street, facing oncoming traffic. He also stated that there are roads throughout the city where pedestrians and smaller vehicles are not allowed, such as Interstate 40, Highway 52, and others.

In response to Council Member Clark's question, Mr. Turner indicated that most sidewalks now include an incline ramp for wheelchair access and where they are not present, staff has identified those areas and efforts are being made to construct those.

Council Member Montgomery noted that New Walkertown Road has sidewalks on either side, but as it has heavy vehicular traffic, it is difficult for pedestrians to travel safely. He requested to know what could be done to aid in the safe passage across a street for pedestrians and wheelchairs.

In response to Council Member Taylor's question regarding what is being done to allow the safe passage of motorized wheelchairs, Mr. Turner stated that the City has a Vehicular Safety program, as well as an overall program to install more pedestrian accommodations, such as replacing curb and gutter with wheelchair drops.

GENERAL AGENDA

G-1. RESOLUTION AUTHORIZING ACCEPTANCE OF A 2010 COMMUNITY ORIENTED POLICING SERVICES TECHNOLOGY GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE COPS OFFICE TO FUND TECHNOLOGICAL UPGRADES IN THE CITY/COUNTY PUBLIC SAFETY TRAINING FACILITY.

Chief Cunningham noted that this is a special, \$1 million technology grant designed with the City in mind, as it would be the sole recipient, in partnership with the firearms training facility. It will allow the City to install newer, more current technology in the firing range offering the best capabilities for training and documentation. It also provides equipment the City may not otherwise be able to acquire, and reduces the cost for a state of the art facility.

Mr. Lee Garrity, City Manager, noted that this grant originated as an earmark obtained by the City's federal lobbyist.

In response to Council Member Taylor, Chief Cunningham stated that the facility will draw economic development attention to the area, will offer more police presence in the area, will help motivate building within the airport business park, and will help build up the North Liberty Street area.

Council Member Taylor made a motion for approval of the item. The motion was duly seconded by Council Member Montgomery and unanimously carried.

G-2. RESOLUTION APPROVING CONSTRUCTION AND OPERATION OF EMERGENCY SERVICES TRAINING CENTER AND FIRING RANGE FACILITY.

Mr. Turner noted that the firing range facility will be built and owned by the City, while the County has built and will own and operate the fire training facility in King. There will be joint use of the facilities between both entities.

Council Member Merschel noted that it seemed ironic that the County will own and operate the fire training facility when fire service provided by the County is generally volunteer-based and noted that this could be an opportunity for consolidation of services.

Mr. Turner indicated that the County does have a fire department located at the airport and volunteers do operate a number of their stations within the county.

Mr. Garrity noted that the County paid for and built the fire training facility with a bond referendum but its operation is delegated to Forsyth Technical Community College.

Council Member Taylor made a motion for approval of the item. The motion was duly seconded by Council Member Merschel and unanimously carried.

G-3. CONSIDERATION OF LEGISLATIVE PACKAGE FOR THE NORTH CAROLINA GENERAL ASSEMBLY SESSION THAT BEGINS ON JANUARY 26, 2011.

- a. RESOLUTION ADOPTING THE CITY OF WINSTON-SALEM'S LEGISLATIVE PROGRAM FOR THE 2011 LEGISLATIVE SESSION.
- b. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINSTON-SALEM, NORTH CAROLINA SUPPORTING THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES EFFORTS REGARDING ANNEXATION.
- c. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINSTON-SALEM, NORTH CAROLINA SUPPORTING THE ISSUANCE OF LOCAL PRIVILEGE LICENSES.
- d. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINSTON-SALEM, NORTH CAROLINA SUPPORTING PEDESTRIAN AND BICYCLE FRIENDLY PROJECTS.
- e. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINSTON-SALEM, NORTH CAROLINA FINDING THAT A LOCAL PREFERENCE ON CONTRACTS LET BY INFORMAL AND FORMAL BIDS IS NECESSARY TO STIMULATE THE LOCAL ECONOMY.
- f. AN ACT AMENDING STATE ENABLING LEGISLATION FOR CITY-COUNTY PLANNING AND ZONING IN FORSYTH COUNTY AND WINSTON-SALEM, NORTH CAROLINA.
- g. AN ACT AMENDING N.C.G.S. § 40A-42 FOR THE CITY OF WINSTON-SALEM TO INCLUDE PUBLIC TRANSPORTATION SYSTEMS.
- h. AN ACT AUTHORIZING THE CITY OF WINSTON-SALEM TO ESTABLISH A LOCAL PREFERENCE FOR CONTRACTS LET ON BIDS.
- i. AN ACT TO EXTEND THE POLICE JURISDICTION OF THE CITY OF WINSTON-SALEM TO ENCOMPASS INCORPORATED MUNICIPALITIES WITHIN THE COUNTY OF FORSYTH.
- j. AN ACT AUTHORIZING CERTAIN CHANGES TO N.C.G.S. §158-7.1 RELATING TO LOCAL DEVELOPMENT FOR THE CITY OF WINSTON-SALEM.
- k. AN ACT AMENDING N.C.G.S. §159-32 AUTHORIZING WEEKLY DEPOSITS.
- l. AN ACT AMENDING N.C.G.S. §160-319 REGARDING UTILITY FRANCHISES.
- m. AN ACT AMENDING SESSION LAW 2006-246, SENATE BILL 1566 TO ALLOW THE CITY TO FOLLOW THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION'S BEST MANAGEMENT PRACTICES FOR LINEAR TRANSPORTATION PROJECTS SUCH AS ROADS AND GREENWAYS.

*ADDITIONAL RESOLUTION FOR LEGISLATIVE PACKAGE***RESOLUTION SUPPORTING THE N.C. METROPOLITAN MAYORS' COALITION
2011 ADVOCACY AGENDA**

Chair Burke noted that this item was discussed at the Finance Committee meeting and Committee members should pose any additional questions to Mrs. Angela I. Carmon, City Attorney.

Council Member Taylor questioned what would be an example of an inappropriate location within the North Carolina League of Municipalities (NCLM) Advocacy Agenda regarding alcoholic beverage control (ABC) stores, as he considers Northwest Boulevard and Patterson Avenue inappropriate locations given their affect on those communities.

Mrs. Carmon noted that the NCLM is developing standards to allow the local government to have more input in the location of those facilities.

In response to Council Member Taylor's question, Mr. Garrity indicated that in discussions with the NCLM, the frustration lies with beer and wine being sold in convenience store locations and subsequent activities stemming from those locations and the State's reluctance to revoke those licenses. He also indicated that the State may be considering possible privatization of ABC package liquor stores.

Council Member Montgomery requested a listing of any prohibitions for ABC stores in proximity to certain institutions.

Council Member Merschel questioned if there were additional aspects of this item that Council Members needed to review to ensure the fullest protection of those areas surrounding ABC stores.

Mrs. Carmon noted that staff would review the NCLM Advocacy Agenda and include any additional information for next month's discussion.

Council Member Leight noted that in the past, there was an attempt to deny an ABC store the ability to have a location within a shopping center and whether they agree or disagree, individuals need to understand these businesses still have a right to operate where they choose within legal limits.

Chair Burke noted that there is quite a bit of history surrounding ABC stores and requested that any information requested today be provided to all Committee members.

G-4. SILK PLANT FOREST REVIEW.

VERBATIM COMMENTS

COUNCIL MEMBER BURKE: This is the...this is the item that we have done an awful lot of communicating and talking about and people have been involved. Our citizens, our Committee and we've had a lot of dialogue. Before we even start a discussion, would the people who are here that, especially, all of us are interested, I'm sure, but the ones who worked so long and hard, the

volunteers of this Silk Plant Forest... would you just raise your hand so we'll know that you're here? All you people who's been part of the Committee. Alright, and those who are here interested in what about the Committee's report? Alright. So we do have interest. So far, we only had one person, if I understand City, City, from the group. Chief Cunningham will get started please.

CHIEF CUNNINGHAM: Yes mam and thank you. What we have here today is, we've submitted our report to the Council. It is a very in depth review of the case, the investigation, the legal proceedings, the recommendations by the Citizens' Committee, and recommendation by the internal committee. You also have a, you have an in depth report and you have a summary, which, and the summary is not a summary of the report per se, it is a summary of the actions of the internal committee. And we're going to start with the presentation that talks about the internal committee's actions, specifically, and then go into other matters. We did create after the Citizens' Committee issued their report, they have numerous recommendations in that report that needed to be dealt with, so what we did is we created an internal committee. We did take guidance from the City Manager's Office and we created a committee and as you see listed on the, the report and on the board is the members, are the members of that committee. I chose to personally sit on that committee for a variety of reasons. In some cases, one would argue that the chief of the agency should not get involved in that level. I however, didn't believe that that would be appropriate importance of this, our report is subsequent with the previous reports the issues of importance to our community. I felt, wanted to be involved in it from the start given that knowledge, plus I also, as an outsider of the agency really had no vested interest in it one way or the other. Obviously I sat on the committee. Ms. Lori Sykes, and we do have the committee members here...

CHAIR BURKE: would you like to call the names of those?

CHIEF CUNNINGHAM: Yes. Ms. Lori Sykes, she is the Public Safety Attorney that is representing the Police and Fire Department attached through the City attorney's office. Captain Alonzo Thompson. He is the Commander of our Professional Standards Division.

CHAIR BURKE: Just stand when the Chief calls yalls names, Ms. Sykes.

CHIEF CUNNINGHAM: We also have Captain, over there at the podium that's working the Power Point, is captain David Clayton. He is the Commander of our Criminal Investigations Division. Not present and recently retired is Lieutenant David Kiger, a key member of the management staff with the Criminal Investigations Division. He is out of the state at this point but will be back for other meetings as you so desire. The committee is, when it was formed, it created several of its own objectives. Certainly, to give us some guidance as to what we were going to do. The first one was, one of the most important, was to review the actual recommendations of the Citizens' Committee and then to develop appropriate response to those recommendations. Also, we decided that we were going to address those specific concerns and issues raised by the Citizens' Committee. We also decided to review the actions of all Winston-Salem Police Department personnel during the actual Silk Plant investigation so many years prior. In according, we would make recommendations regarding enhancements to procedures, policies and other practices of the Winston-Salem Police Department consistent with best practices, most current state of the art technology, but also consistent with the recommendations of the Citizens' Committee. We also decided to go beyond simply responding to the recommendations of the Committee. We felt that due to the interest in the

community, that we needed to do some other things instead of just a technical response.

Those two issues were, that we decided to do were actually determine the position of the Winston-Salem Police Department relative to case status. So we've done a lot of discussion but we wanted to specifically look at should the investigation be reopened or not. And then ultimately to prepare and disseminate a report outlining all the relevant issues and concerns and documenting that so our entire community would have that information available. We did that and we will go quickly through the recommendations, the key recommendations of the committee. We made recommendations in several different areas. One of them dealt with polygraphs. We made some recommendations and basically what we did, is we took those and as much as we could legally, we adopted those into various policies. All of our polygraphs are fully recorded. Not only is the polygraph equipment, but audio and visually. They're also computer recorded and analyzed so we'll have the ability to score them with human interaction also. But we did this with new equipment that was purchased which is truly state of the art equipment. It is not only recorded just on the machine, but we also do it in our rooms where it is on video and audio recorded. So every interaction, every discussion, every nuance, is fully recorded and available for later review. We did decide or agree with the Citizens' Committee that the polygraph would be administered, as much as possible, when there was a plausible doubt about the reliability of any witness, victim or suspect. The Committee asked that we do this for prosecution witnesses. We felt that it would be most appropriate to do it with everyone involved in the case, if we have a reason to have some denial in there. But the one issue that is very key to polygraphs is, is that we have no mechanism whatsoever to force or order someone to take a polygraph and if they do, they are currently, generally not admissible in court, the results. It is an investigative tool that we utilized to develop leads and to help develop the voracity of the people that we're talking with.

Another area that the Committee had, some recommendations, were dealing with the investigative interviews that our detectives perform. We have since additionalized the requirements and that includes that the detectives, if they're out in the field, they activate the audio recorders when they start the interview and they keep that on the whole time. That's in many cases, fairly standard and is still ahead of what most other agencies in this state do. One of the big issues is, is that we are way ahead in the amount and number and type of investigative interviews that the Police Department does, that are fully audio and visually recorded. Several years ago, Council approved funding so that we could build some enhanced interrogation and interview rooms. Those are some of the most well-equipped, with the most modern equipment and technology that still exist to this day, in the state. State law does require that in a homicide situation, that those interviews are audio and visually recorded. It does not go any further. Our policy and practice is, is that for any serious crime, there will be audio and visually recorded and they are kept on a server that has preventions to have them, so that there's no problems with any type of data retrieval. We also clarified what actions are appropriate for our investigators, what they can say, what they can't say. There really was no change in that we were very consistent with what constitutional requirements were and court decisions were as far as what is appropriate as what you can say to a person that you're investigating or talking with. Going through with these quickly is that the Silk Plant Citizens' Committee report, and they made a quote that talked about some of these things. And it basically, is, is that if our current policy had been in effect, and they found at the time of the Silk Plant Forest investigation much of the present (*inaudible*) about interviews, witness statements, and interviewing techniques, would probably have been avoided. So the fact that we have this in there, long after the, the case happened, the

Committee, Citizens' Committee recognized the importance of our new procedures and the validity of them.

Another area of concern was photographic lineups. We use a computerized system that once again is state of the art and we've written in many new procedures that we've had in place for several years. The prior chief, with the approval of the Council and with the guidance of the funding authorities that you have, allowed us to create new software and put into place different procedures. These procedures are truly best practice in the United States. Captain Clayton has gone around the country talking with other agencies, he even, I believe he testified before the Washington, D.C. City council when they were looking for ways to implement and enhance their interviews. He testified and talked about that at the Dallas, Texas Police Department, how his research, how our processes and has implemented them as best practices. Should there be any issues as to how we are conducted or anything else, we also review that, we do it through our disciplinary process, lead it through training process but we conduct regular investigations to see if we're still doing it and it is computerized and software protected so that there is a permanent record. The Citizens' Committee is in agreement with this policy.

Another big area was supervision of detectives, the documentation, prosecution booklets and we made significant changes in the, in our policies on this. Some of it is through evolution, some of it is through the fact that this is what needs to be done. Our detectives are required to take and submit notes and supplements on a very timely basis. One of the issues that was basically standard practice at the time, in '95, 6 and 7, was that the detectives would do their investigations, but they were allowed to write their supplements later on. There wasn't an expectation that it be done the next day, the next week, that type of thing. It was a current practice in the profession to do it that way, but as we've seen that was not sufficient, so a lot of that was changed and in recent times we have also increased that. The bottom line is, is that over 90 days of an arrest, the District Attorney's Office is presented an electronic prosecution file and that has a copy of every bit of information and evidence that the Police Department possesses and they are given that within 90 days of the arrest and that is a significant change. That is probably, we are probably the only agency in the state that requires that timely of a report going to the District Attorney's Office. Now, what helps with that is, is that before the detectives may do the investigation interviews and then they'd write about the week, two weeks, three weeks, maybe even a month later. This process requires them to do it on a contemporaneous basis that they do the interview, they get it documented, they've got it, one audio recorded, one video recorded, that plays into the server and it's immediately available for the District Attorney to have it via submitted package. All of the reports are also submitted with that package and it's updated as we get additional reports back in from lab testing or other sources that can't generate that 90 day turnaround. The detective's entire case file is submitted on a regular basis and updated to our Records Division and put on a protected server and to the district Attorney's Office. We did strengthen the expectations of our personnel, that while they are here, they are expected to work together to build the community quality of life, but also when they are separated from the department, that there is the expectation that they will assist and cooperate. And this was one of the issues that the Citizens' Committee had. We did as strong as we could with requiring, but there is that expectation.

After that, we dealt with the recommendations, we looked at a lot of other things as detailed in the actual report. We conducted some original investigations, followed up on things that were provided

to us by other personnel, some outside the department. We did an extensive review of the evidence that we held. We did identify there was some items that had never been tested. These are not items that were not known to exist. Frankly, everyone knew that the victim was clothed in the store and no one ever asked that that property, her clothing be tested. We did maintain it for the last 14 or so years after the initial investigation. We did maintain all of that as we have a long history of maintaining evidence. It was in such a system, in a state that we could actually send it to other labs. We had that, those pieces of clothing and some other property that hadn't been tested, we sent that out to the SBI lab. They did a round of testing on it and gave us some information and then we sent it out to LabCorp for additional testing and provided us with some additional information, nothing that really changed the course of where we were, but it did provide additional information and was appropriate to do. So we looked at other things and we didn't just take the report and respond to it.

We did make several conclusions after we reviewed all this. We did this over the course of a year. The first conclusion is, is that the handling of the original Silk Plant Forest Case or Investigation, could have been better documented. This would have eliminated many of the issues, concerns and perceptions that exist today. And that is basically looking at the timeliness of the documentation. When you're dealing with cases and the human memory, sometimes things slide away. Better documentation is always much better and preferred. The Toys R' Us tape. It should have been kept regardless of whatever perceived value existed at that time. We have drastically, since this time frame, revamped the evidence procedures. We also have a lot more storage capability with the new facility that you've allowed us to build online and that has alleviated some of those problems. But there is no doubt that the tape should have been kept so it could be fully reviewed based on new technologies. We also came to the conclusion that there is no evidence whatsoever to indicate that the Winston-Salem Police Department or any of its personnel, conducted themselves improperly or that the investigation was fatally flawed. There is aspects of the investigation could have been handled better though. But there is no indication of any conspiracy to convict the wrong person. Last and perhaps mainly the most of interest finding and conclusion that we have as an internal committee, is that after exhaustive review of the documents, evidence, proceedings, and previous administrative reviews, the committee has determined that there are no further viable avenues of investigation, therefore the case and the investigation should remain closed at this point. These findings, especially this last one are based on what you have in your complete report and is based on the facts as best they can be determined at this point. The full committee report provides the history of the investigation and is the foundation of our findings. That is the core document with which we have based our findings.

There are several facts that we have been able to identify that bear repeating at this point. These are facts that have been verified and looked at and maybe differences as to the validity and that type of thing but the bottom line is, is that there was a robbery and assault that occurred and it left the victim, Ms. Jill Marker, with devastating, debilitating and permanent injuries. That is a fact. Potential suspects were identified and investigated. There were nine total suspect identified and three primary suspects in this investigation that were followed up on. The victim, Ms. Marker, indicates that the attacker was a black male. She was specifically questioned and the order of the questions were: Was your attacker a white male? And she indicated to the extent that she could, by shaking her head or nodding her head, that it was not a white male, but that it was a black male. Calvin Michael Smith, the eventual person charged and convicted in this offense, he was not surfaced or brought to the attention of anyone by the Police Department, internally. He was brought

to the Police Department's attention by citizens who made the call to the Police Department. They called on their initiative and identified him to us. Independent witnesses have said that and testified to, that Calvin Michael Smith bragged about the attack. Some of them have later recanted but the court, that is the proper jurisdiction to look at a lot of these issues, gave low credibility and recognized, did not recognize those recantations. And a lot of this overlays between the court and the Police Department. The court is absolutely the, the most appropriate to hear these arguments and decide. The victim, Ms. Marker, indicates that her attacker was Calvin Michael Smith in one of the federal lineups that was conducted. Calvin Michael Smith admits being at the scene when the robbery and assault occurs. He admits a conspiracy to rob the business and he writes this in his own statement indicating he was present. Calvin Michael Smith did take one original polygraph and there is a lot of issues surrounding how many polygraphs, what the conclusions were, but to the best that can be determined by the reports that exist and the information that exists, is that he did take one original polygraph. There was debate at that time as to what it was scored. But it was subsequently scored inconclusive. He refused a second polygraph at the time he was arrested and he subsequently refused to take a third polygraph during the Citizens' Review Committee. The first polygraph, however, was later rescored by three independent polygraphists and they all classified it as deceptive. There is no significant physical evidence in this case to either rule Calvin Michael Smith in or anyone else in or out. The physical evidence in this case simply is not there to give us some of the definitive answers that we would all like to have.

Lastly, the fact is, is that there was a jury that was seated and Calvin Michael Smith was convicted. There were appeals of two motions for appropriate relief and those upheld the convictions and dealt with the issues that were brought forward. All the courts through hearings, (*inaudible*) issues to support a new trial and also did not find any information or evidence that the Police Department acted inappropriately. They also ruled definitively that the confession, the statement rather, the written statement, was lawfully obtained and that there was no issues, that at this point, to warrant a retrial. Judge Doughton who wrote the last reports for the motion for appropriate relief, very specifically and in a detailed manner talks about the different issues that were brought forward. The bottom line is, is that this is a very important case in this community. There are certain things that the Police Department can do and look at and we have gone beyond the realm of a normal report, or response to another report. We have conducted original investigation in this matter and this is where we are. We have professionally reviewed this matter and the reality of it is, is that at this point, the evidence points to that there is no reason at this juncture to reopen the investigation. We will be glad to answer any questions that you might have. Certainly if there are in-depth questions, we will write up a written response for you to digest and look at. As you go through and look at the report itself even more in-depth, should you have any questions, we would be glad to do that. But the bottom line is, is that, if there was any reasonable doubt that there was a miscarriage of justice in this case, we would spend whatever it takes to follow up on that. It just does not exist at this point.

CHAIR BURKE: Thank you for your report, but before I have questions, I did, I did not introduce or present Attorney Carmon and her staff, Attorney Alan, who worked very hard with this also and we thank you for all your time and effort with this particular item. Now it is time for us to have...do you want to, I have one person who's going to, who has signed up to speak. Do you all want to start talking and ask some questions of the Chief now and then the person who's gonna speak, Mr. Jim Coleman, he is from the Duke Law School. What, what's the pleasure of this Committee? What do you want?

COUNCIL MEMBER MERSCHEL: I would recommend as part of the presentation that Mr. Coleman perhaps present, then conversation among Council Members.

CHAIR BURKE: Mr. Coleman, would you please come up and give your name and your address and sit at the table with us, please. Right here at the table so we all can, so you can be comfortable and you know.

MR. JAMES COLEMAN: My name is James Coleman and I'm a law professor at Duke University. I've written out a very brief statement so that I won't waste your time. Chair Burke and members of the Committee, thank you for the opportunity to come and briefly on the report that Chief Cunningham has presented to the Committee tonight. I am one of the faculty advisors for the Duke Innocence Project and a co-director of the Duke Wrongful Convictions Clinic. Professor Teresa Newman is also in the audience...

CHAIR BURKE: Where is she please...professor?

MR. COLEMAN: She's in a cast.

CHAIR BURKE: Okay, thank you for being here.

MR. COLEMAN: She and I advise the Innocence Project and receive investigations by the project and we are co-director of the Duke Wrongful Convictions Clinic. Both the Innocence Project and the Wrongful Convictions Clinic have worked on the investigation of Kalvin Michael Smith's claim of actually innocence. In the seven years that we have done so, we have become firmly convinced that he is innocent. I won't try to address point by point the committee, the Chief's report or the summary of what he, at the end, indicated he thought the evidence showed. I think that there is a pulled record out there. I think the, the Silk Plant Forest Citizens' Review Committee has created a complete record of both the investigation and the evidence against Mr. Smith and so I think that there's no need to revisit that. One of the most troubling aspects of the work that we do is the official indifference that often greets our effort. That's not always the case. We continually seek to work with prosecutors and law enforcement officials in the cases that we have investigated. We did that in this case, included in the Winston-Salem Police Department's current review that resulted in the report that Chief Cunningham has just given you. We believe that the work we do serves the purpose, the public interest. We do not view ourselves as the adversaries of the prosecutors or of the police. Our goal is to seek the truth. We pursued that course in this case with little success, I believe, ultimately. Many officials looked at the case, but few have done so, I believe, objectively.

One important exception was the Silk Plant Forest Citizens' Review Committee, which was assisted by two veteran police detectives from the Winston-Salem Police Department. We believe that Committees' conclusion about the inadequacy and unreliability of the police investigation of this case and the lack of credible evidence that Kalvin Michael Smith was present when Ms. Marker was attacked are the only reasonable conclusions one can reach from an objective and comprehensive and fair examination of the case. That's why we're so disappointed in the report that Chief Cunningham has presented to the Council. There's little or no analysis in the report about what went wrong in the investigation or about the integrity of the evidence developed against Kalvin Smith. Instead, the report merely sets out what is said in various police reports and makes no attempt to

resolve material conflicts in the reports or to assess their truthfulness, accuracy or reliability. The report assumes that every omission, error, failure to document or lost or misplaced piece of evidence was the reverse, was the result of inadvertence and not intentional conduct. Each such deficiency is considered only an isolation and not as part of a pattern. I would like to point out three such instances of this and then to ask the Committee to reject this report as woefully inadequate. First, as a result of the continuing investigation that was, that's being done by the Duke Innocence Project, we located a witness named Jeana Schopfer, interviewed her and obtained an affidavit from her. Indicating that she called the police on the morning after Jill Marker was attacked and urged them to investigate the involvement of Kenneth Lamoureux, who as you know was the prime suspect during the first five months of the investigation. It's clear from the records that Ms. Schopfer's call was the reason police focused on Mr. Lamoureux. She called the police the day after Ms. Marker was attacked because on the night that Ms. Marker was attacked, Ms. Marker called her, fearful of Mr. Lamoureux, who was angry because she had, she had turned down his invitation to have dinner that night. This telephone conversation occurred within minutes of Ms. Marker being attacked. There's nothing in the original police investigation about that telephone conversation. Not a hint that it occurred. We thought we were the first to discover it. We brought Ms. Schopfer to the attention of Chief Cunningham. We met with him, we gave him the materials that we had developed about the telephone conversation that she had with Ms. Marker. I, and, the, I, and the Chief, I, I interviewed on his committee, I interviewed Ms. Schopfer. I, and what she told, what she told him according to the report, or told the committee according to the report, was that she had told some member of the Winston-Salem Police Department about her conversation with Jill Marker the night that she was attacked. We know that detective Williams interviewed Ms. Schopfer during his investigation and yet there is nothing in the record, either of the conversation between Ms. Marker and Ms. Schopfer, or of the possibility that the police knew about the conversation. That conversation clearly was important. It showed that immediately before Jill Marker was attacked, she called a friend to express her fear of Mr. Lamoureux. How could that not become part of the police record of the case? Chief Cunningham does not answer that.

A second instance involved the testimony of Andra Wilson. The Chief mentioned her. She's a witness that Calvin Michael Smith admitted in front of her and several other people that he had beaten Ms. Marker in order to get out of the store. That was one of the few legs on which the State's case stood at trial. But the Chief reports conclude without comment that the first time that Andra Wilson told Detective Williams about the story, about that incident, she said that Calvin Smith denied beating the woman, not that he admitted that he beat her but that he denied beating her. That is consistent with the statement that another person at that, who did not testify, but another person who was present who had no reason to lie, also said that at that, when that incident occurred, Calvin Smith denied beating Ms. Marker. The only, the only report that Andra Wilson said that Calvin admitted beating Ms. Marker is contained in Detective Williams and the report of another detective. The report that the Chief has given to the Committee does not explain how the first statement that Calvin did not beat, became the story that Andra Wilson told at trial. It doesn't explain the discrepancy, it doesn't explain why or how or when Andra Wilson changed her story.

The final instance is when also that the Chief referred to the surveillance tape. I don't know if the Committee appreciates what he was talking about. He mentioned a surveillance video from Toys R' Us. The significance, the significance of the video is that Eugene Littlejohn, who claimed that he was with Calvin when this attack occurred, also told police that after he left the Silk Plant Forest, he

went into Toys R' Us, stole the video and that Calvin came in behind him. So the question is, whether the video would show that they entered Toys R' Us. Now Detective Williams said that the quality of the video was not very good but he admitted and, you know I think the Chief will acknowledge this, he admitted that the quality was good enough to tell whether the person entered was a man or woman or whether the person was black or white. So what that means is, that if he reviewed the tape as he said he did, after he arrested Calvin Smith, then he would have been able to tell whether two black men entered Toys R' Us at around 9:00 that night. Either they did or they didn't. If they did, I doubt that the tape would have disappeared. If they didn't, then the tape is relevant evidence. So it doesn't matter that the tape was grainy, the fact is that either way, the tape would have been relevant evidence and I don't think you can just simply say that the, that the, the department can't account for what happened to the tape and therefore, too bad.

Let me conclude that the Committee should reject this report. It has the quality of asking the Committee to give the Winston-Salem Police Department a pass for the inadequate and unreliable investigation they conducted in this case and they promise that they will do better in the future. We commend Chief Cunningham for all of the changes that he's made. Hopefully, in fact, they will prevent another Calvin Michael Smith case from occurring in the future. But both Calvin Smith and the citizens of this Winston-Salem deserves more than simply fixing the problem for the future. The question is, there ought to be justice in the case for Calvin Michael Smith. The Citizens' review Committee report that (inaudible) the investigation of this case was unprofessional and unreliable. There's no credible evidence that Mr. Smith was involved in the attack of Jill Marker and there's nothing, that is the only in-depth review that has been done of this case and there's nothing in the latest internal examination by the Winston-Salem Police Department that caused them to question either conclusion of the Committee. Thank you.

CHAIR BURKE: Thank you, thank you. Now we gonna have questions. Now you may stay up here, please.

COUNCIL MEMBER CLARK: Mrs. Burke do you want to see if anyone else would like to speak?

CHAIR BURKE: Yes. Would anyone else like to speak concerning this matter? If you do, you come up and give your name and address. If not, then we will move forward. Are you going to come up to speak Reverend Eversley?

REVEREND CARLTON EVERSLEY: Madam Chair, I'm Carlton Eversley and I've been at 115 Dellabrook Road here in Winston-Salem for the last 26 years. I simply would like to point out that there are three organizations, Mothers for Justice, the Darryl Hunt Project for Freedom and Justice and the Minister's Conference of Winston-Salem, which has been in support of the work of Professor Coleman over these years and stated the, is in alignment, full alignment with the remarks he's made to you tonight. I will point out that it's important that the internal Police Department report does not emphasize the fact of the conclusion of the Citizens' Review Committee. It seems to have an undermining of the work of Lieutenant Ferrelli and Sergeant Byrom which gave the Committee the two conclusions, that there was no credible evidence that Calvin Michael Smith was present when Ms. Marker was beaten and whether all members of the Committee were in agreement with that first conclusion or not, all of them realize that there was no confidence for the citizens to have in this investigation.

CHAIR BURKE: Thank you. Yes, come up please.

MS. BETTY BOYD: Good evening. My name is Betty Boyd, 4719 Leinbach Drive, here in Winston-Salem. I hadn't planned on speaking but I'm looking at two pages of notes that I took from the Chief's presentation of things that they had taken from the Citizens' Review Committee, that needed to be changed for all investigations. And as I look at two pages of critical things, recording interviews, polygraphs, you know, things that are critical to every investigation. As I look at these and I can't imagine just stopping here. Even risking that an innocent man is in prison because these are improvements that have been implemented now but were not at the time.

CHAIR BURKE: Thank you. Alright, anyone else would like to speak. If not, then Council people. Yes.

COUNCIL MEMBER TAYLOR: Madam, madam Chair, I just want to make a couple of comments. I know we've been here for quite some time so I won't belabor the point. I would just like to add that I think we all would agree at this table that we are all public servants. Not only am I now a public servant, but I happen to be a citizen of this great city and I think that everybody has an opinion. I do think that my opinion is that we may possibly have an innocent man in prison. It took a lot of time and the Committee members, we spent countless, hundreds of hours reviewing this information so I won't get into it but I do think that we may have an innocent man in prison. I's really just like to make a comment Chief on your summary of investigative findings. I do think that the summary of investigative findings are somewhat one-sided. When I thought in terms of, of police report, I was hoping to see both sides of the issues and when I think investigative findings, I don't think that we're getting both sides of the equations here. Now, if those of you who can see, I have a whole list of things here on this side of the paper that I would love to discuss but I think that you know, if we're going to put out a report, we need to put everything out in the open. There are instances where, you know, I understand it that Kalvin Smith passed a polygraph. We got three witnesses here who gave statements but those three witnesses recanted. You know, there was a situation where Kenneth Lamoreaux was found to be in deception of a polygraph. He had three or four 50-Bs out on him. I mean there are, there's a hundred things we can put on this side of the paper. If you read the investigative findings, it looks like this gentleman s guilty, but there's so many more pieces to the puzzle. So I guess in the future, I would have liked to have seen a better summary of investigative findings. If it's any report, a lot of people are just gonna turn to the back of the page and look at what the commission found out. What did you discover. Now I think that this is somewhat misleading and I'll, I'll say it again, I've said it before, nobody knows what happened that night but in my humble opinion, I do feel like we may have an innocent man in prison. I could talk for another hour, another hour, but thank you.

CHAIR BURKE: Council Member Montgomery.

COUNCIL MEMBER MONTGOMERY: I, I have several comments in regards to this and I'm gonna try to be as brief as I can. But, when I got this, the review on Thursday night, I, I did just as Council Member Taylor said, I turned to the back and to see what was exactly the findings of the committee. And then I spent my weekend reading the entire, entire review, and I, I have to say that prior to reading this, I, I actually came first in contact with this case as a student at Winston-Salem State University in my Criminal, Criminal Law class where we actually did this case, tried this case, and I

was on the side of the prosecution in this case. So, went through the entire case and so, coming back and reading this and, and reading others, at, at best I have to say that I'm a bit disheartened. And, and to say that is because there's so many things again I feel that are missing from this report. And I would have to say that in going down that one end, we, we put a whole lot of blame here in this case about identification that Ms. Marker made of her, of her attacker that night and there is video footage that I've been able to see of Ms. Marker in 1996 where she did an interview. And, and at some points of that interview she was able to answer questions and others she was just unable to, to, to respond adequately to the questions that were being asked for her by Mr., by Detective Williams. And I don't see any of that in, in this review. And he later went and interviewed her again without recording what he had recorded before. And I think that again, if we trying to, if you recorded the first time, then you would want to record it the second time in order to validate your statement. And again I don't see that validation here in, in, in this report in terms of (inaudible) why wasn't that followed in that process.

And furthermore, just in regards to saying that we come to the conclusion and again I looked at this completely objectively, my, my comments here are not to say innocence or guilt, because I, I cannot, I cannot say it simply in terms of where we are in going forward with this, that I, I have to say that to say that we come to the conclusion that no individual in the Winston-Salem Police Department conducted themselves inappropriately, that, that's very difficult for me to support that conclusion to say that nobody conducted themselves inappropriately. Because I believe if you didn't follow policy then you therefore conducted yourself inappropriately. And there is a conclusion here that is stated that there were policies in place that someone followed but also policies that at this point would not have been followed. So to say that nobody conducted themselves inappropriately is a conclusion that I cannot support. And one other thing is a simple question to ask, that at the time, as it is concluded in this report that the Police Department took a blood sample of Mr. Lamoureux. My question is that, is that have any of that information been compared to the information that was recently sent off to, to be tested? Was that information compared from to what we recently sent off to, to be checked with Mr. Lamoureux?

CHIEF CUNNINGHAM: Yes. The bottom line is, is that his blood and the blood tests of Calvin Michael Smith were submitted and as was stated before, there is no physical evidence to either compare to rule in or rule out any person. This is not a physical evidence case unfortunately. But yes, it was. And along those lines, reality of it is, is that some of these issues are the appropriate venue of the court, whether we agree with or not agree with, it is not our place to substitute our opinion for that of the court. Now, unless the six charges have looked at this and looked at it from various angles with various items to consider and the one reality is, is Kenneth Lamoureux was the number one suspect out of the chute. No doubt about it. One of the things that wasn't mentioned by the professor is, is that we did do a follow up interview, this committee did, sent two of the committee members to meet with Ms. Schopfer, interviewed her and tape recorded that. That is detailed in this report. Not the full transcript because we didn't do it that way, but the meat of it is talked about here and those tapes are available. The reality is, is that she does say that she talked with Jill Marker that night, that Jill Marker said he was there, that Lamoureux was there and left. She did not express fear or concern because she said he, she watched him walk out of the store. Now, do we think he was there? Personally, after reviewing it, yeah I think he was there. But, Kenneth Lamoureux is a white male and I've got a victim that says her attacker was a black male. It was not Kenneth Lamoureux according to her. Now, we can all debate the quality of her ability to

identify but once again that is not our purview to make that judgment. That is the purview of the court. And a judge heard those issues, charged the jury to make the decisions as to the reliability, validity and voracity of the witnesses. On appealing, those have been upheld. Do I know what happened that night? No, I was not there either. But all I can do is go by what information we do have, as far as (*inaudible*). It is documented in here that the first time, when D.R. Williams I believe it was, talked with her at her residence, it is documented in there that she says, nah, didn't happen. But it's also documented that in the subsequent interviews, she says why she told that, and she says there were people at my house, I didn't want to get involved in it. She is also the one person that has throughout the entire time of this case and investigation who has never recanted her statement. And as far as recantations of the other people, once again, we documented it, we listed it every time someone said something, it was documented. Eugene Littlejohn was interviewed three times and gave different stories and versions of it each time. Each time it was fully documented. Defense attorney has allowed all that information as appropriate, had the opportunity to do whatever they needed to do with it. The people have (*inaudible*) by the defense attorney and could have been cross-examined, many were cross-examined at the trial and it was the judge's decision and jury's decision, as to whether there was voracity. The latest motion for appropriate relief with Judge Doughton specifically dealt with the issue of recantation and in not the professional terms that he worded, he basically said you know I think a lot of you are lying, but I can't tell which time you're lying, whether you're lying in front of me right now, or lying on that trial stand, but you have not presented any information that indicates you lied back then. And so we have to rely on what the judge and the court, we may not like, we may not agree with the court decision, but I cannot substitute my opinion for what the court does because that's what they are charged with. As far as the Toys R' Us tape, we acknowledge, it should have been kept. But paint whatever picture you want on that tape, it doesn't change the fact. You could have, that tape could show you that Kenneth Lamoureux went into Toys R' Us and was there. It doesn't show you that he committed the crime. That tape could show you that Calvin Michael Smith went into Toys R' Us with Eugene Littlejohn or alone. It doesn't show us whether he did or did not commit that offense.

CHAIR BURKE: Now Chief, we have some more folks that's going to speak, but before they do, when we looked at the information and we know that our Winston-Salem Police Department did not do a good job, we're the first one to admit it when we went back and looked at it. And I guess I'm the one here, who can tell you sitting here as Chairman of this Public Safety Committee long as I have, I have lived this case. And I know that a lot of times, our Police Department, not all of them, but some of them shortchange people. People who may not have done things like murdering somebody or other kinds of crimes, they were found guilty because of the way our records had been kept. We did a poor job. Go back and find some of those records and you will see. Now, the City of Winston-Salem, the citizens are saying, we want to have a Police Department with credibility. And this is no reflection on you, because you were not even around. You came here as a new chief to give us what we consider more credibility. And it's not all that we have to keep in line. It is not all of our police because we've had some very good police with the Winston-Salem police department. I go back to when Chief Surratt was the Police Chief and he and I had a discussion and the discussion was about this: police who don't do their jobs right. It's just like a bushel of apples. One rotten apple can spoil and all they're trying to do now from this day is to improve so that people can feel good about how our police carry out their duties and responsibilities. I'm not gonna speak because a few more but I may come back. Who, you speak and then, yes.

COUNCIL MEMBER MERSCHEL: Thank you Chairman Burke. This particular case has divided this community for years now and a good portion of this community has spent long and dedicated hours in reviewing this case as has now our relatively new chief and the police department. I'm afraid that this is, what is it, a mystery wrapped in a circle that's encased in a cube. I, I'm not sure, as the Chief says, that having no one in the room or videotape, I'm not sure that this community ever is, is ever going to be able to reconcile the two valid concerns. But I think at the end of the conversation, it comes down to what we are empowered to do and what we have not been charged with and basically, what we can't do. So, I'm not sure professor Coleman when you say that you would like for us to reject the report, I'm not sure what that does. And I guess I would ask our City Attorney or our City Manager. We have now completed everything that the Public Safety Committee has requested and the full Council has gone through the Citizens' Review. We have now gone through an internal, well we went through an internal and then we went through citizens and then we went through an internal review but we are now at the end of what I see as our responsibility. So what are we, what can we do? What are we being asked to do?

CHAIR BURKE: Are you referring to the question, is this to the professor?

COUNCIL MEMBER MERSCHEL: I would direct that to, well Professor Coleman was very clear that he was asking us to reject the report. My question to the City Manager is having received that request from Professor Coleman and given our charge...

CHAIR BURKE: Alright. Answer, City Manager.

MR. GARRITY: Sure, absolutely, thank you Chairman. One thing I want to point out is Professor Coleman used the words of official indifference. I would beg to differ at least with this, this City Council. The last couple of years, we have spent thousands of hours of staff time, we spent thousands of dollars testing every possible thing we could to test to uncover. No one more than this City Council and this Police Department wants, except for Calvin Michael Smith, wants a definitive conclusion. We have tested everything we could find to test. To put this in perspective after the Citizens' Review, the question for Chief Cunningham's department was two, there were two charges: one, to make sure that they are doing everything possible today to have state of the art investigations so it doesn't happen again. Over the last seven, eight years, starting with the Deborah Sykes case, significant changes have been made. We have, in my opinion, a state of the art Criminal Investigation division, one that many, many communities around the country want to emulate because we are the best at that. The other charge there was to ask the Chief to look to see if there was any, any reason to reopen the investigation. Not to retry the case, not to go over all the arguments, as we had, there were lots of different opinions, I don't think any of us know for sure what happened that night. I wish, I know we all wish we did. But where it is today is with the recommendation that a report that says he, he can't find anything else to investigate, any additional leads, any additional witnesses, anything else to investigate that would further enlighten the confusion in this case. So I think that's where we are. As far as legally, what other actions we could take, I would have to defer to the City Attorney.

CHAIR BURKE: Alright, may I let before you come up, I want to let the professor, he has something to say.

MR. COLEMAN: I would just like to address two points. One on the point of official indifference. I did say that, but I said that's one of the troubling things about the work that we do. I said the one exception has been the work of the City Council and the Citizens' review Committee in this case. The reason I say reject this report is because I don't think this report, contrary to what it says, I don't think that it is a comprehensive report. I don't think that it tries to deal with the, the issues that have been raised. I believe that the, the City Council has a comprehensive report. The, it seems to me that if this report is to substitute for the conclusions made by the Citizens' Review Committee, then it has to take those on. It has to say that the Committee, that Committee got it wrong. I don't think you can simply put a report out there that doesn't address the report done by the citizens maybe and say this is our report, let's move one. I think that, I think everybody wants to move on in this case but I don't think that people want to leave Kalvin Michael Smith behind. The question is, you know can we find justice in this case. The, the Chief has argued about what's happening in the courts. I don't think that's relevant to this. Every person who has been wrongfully convicted has been in prison and courts have found that they were, they were convicted legally. This is not about whether he was convicted legally. The question is did this investigation result in an innocent man being put in prison. I think that's really the question. I think the citizens' review committee's report examination was comprehensive. I think their report, you know they lay out what they found, they deal with the issues. I think that if the Chief wants to move on that his report should have taken that on and explained why the citizens' review committee got it wrong. He doesn't do that. He simply says we're gonna adopt their recommendations and let's move on.

CHAIR BURKE: Speak now. Address that so we, excuse me, just a moment, excuse me, can I?

CHIEF CUNNINGHAM: I'll be glad to address that. We didn't want to get into a situation of contradicting, going at, or whatever you may want to call it, another report by another body. The reality of it is, is that their one statement from the citizen review is that they have no faith in the investigation and they find no credible evidence that he was ever at the scene. I'll be glad to provide to anybody, his written statement in his own hand that says he was there, that he watched it start. He was at that scene by his statement. If that was wrong, then that's what he put down. That's what he stated. That's what he did not argue in court. I do think that the Citizens' review Committee that, a lot of the work that they were doing, it's been billed that that was two veteran detectives finding the outcomes there. That is not accurate. The two veteran detectives were assigned to assist that committee. That committee came up with its own report and everything else that may or may not be shared opinion by those detectives that were assigned to it. Those detectives were there not to investigate the case, but to assist in locating materials and helping out with reference materials, interviews, that type of thing for the committee. Not to conduct their own, independent. And the bottom line is, is that yes I do understand that mistakes have been made in other cases. But in the vast majority of the cases, mistakes have not been proven to have been made. If there was anything on a personal and professional level, if there was any reasonable doubt that the wrong man was in jail right now for this offense, frankly I would be spending a million dollars a day to find out what it is. But the reality is, is that the number one suspect was ruled out when the victim said it was not him.

CHAIR BURKE: Thank you. This is such an important item. When several people said that they did not want to be long, well we don't want the citizens to leave with this particular case without questions being answered because we say we gonna be transparent. And we've been here a length of time and we want to give it what we need to give it so we gonna keep this in Committee and then we

come back, we will then continue it. Is that alright? I'm gonna get straight with the Committee. Is it alright to keep it? Alright. We had two other, and when, when the two other Council people speak, then I'm gonna close.

COUNCIL MEMBER CLARK: Thank you Mrs. Burke. Couple things and I will preface all of this by saying I, I'm not an attorney. My extent of my, I do watch a lot of Law and Order shows but that's, that may be dangerous. I mention that in that, it really doesn't in the end matter what we think, it's what the court rules so I would certainly suggest that we give a copy of your report, the Citizens' Review Committee report and all that to both the District Attorney and the attorneys for the, for Mr. Smith and I think that, I don't know if Mr., what is his attorney, Pishko, yeah he's still the attorney. Be sure they get a copy. Because then again, in, in and the Chief has said here, it's what the court says, not what we say. Having prefaced that, Chief I distinctly remember when this started, kind of this second round of looking at this, and I assume it was the District Attorney because it wasn't us, took a doctor, from Bowman Gray School of Medicine who was, I, I guess and expert in people recovering from trauma or whatever, and they went back to Ohio to interview Jill Marker. And I, I don't think I'm making that up, I, I'm just remembering it, but I did ask some folks that were on the Citizens' Review Committee and they did not see the results of that interview and I'm asking have you seen the results of that or does anyone, am I imaging that this took place?
Chair Burke: It did.

COUNCIL MEMBER CLARK: Ok, so I am, ok, have you seen it?

CHIEF CUNNINGHAM: We've seen information that indicated that there was opinion as to whether her abilities were increasing, decreasing, whether she could have made those determinations. But once again, it is beyond my position to interpret and say she could have, she couldn't have. It's, I'm not trying to put the blame anywhere else. I stand behind this report and, and frankly, I have no thought on this (*inaudible*) until I decided to actively take a role on this committee and I did that affirmatively because I believe the importance it is. But the reality of it is, is that the courts ruled that she was competent to make the identification.

COUNCIL MEMBER CLARK: But you have not seen that, this recent report, if I can call it that.

CHIEF CUNNINGHAM: There's a more recent one.

COUNCIL MEMBER CLARK: That's what I'm talking about.

MR. COLEMAN: There is a report. There is.

COUNCIL MEMBER CLARK: Is it public?

MR. COLEMAN: I doubt that it's public but it's available. I'm sure it's available to the Chief.

COUNCIL MEMBER CLARK: Ok.

CHAIR BURKE: Excuse me, but Lieutenant Clayton, were you going to say something concerning that?

CAPTAIN CLAYTON: No mam. I was just going to say that there had been a couple of instances where folks from Wake Forest went up there.

COUNCIL MEMBER CLARK: Ok, so I'm not imagining it. The only reason I mention it, and it may be that her health has deteriorated since, I know she's blind now, so obviously she could not do a, look at a front, a lineup, but if her health was better, maybe she, she could comment on it. One of the critical questions, and you brought it up several times, that I, it's one thing to ask someone who's been beat up to look at pictures if you've, you've got blurred vision, whatever. It's another thing to ask was the guy white or black. And to me, that is a critical piece of the case. Anyway, but I'm just curious if that report was ever public, I would like to see it but it may never, and again, her health may be so she can't do anything else. The other one, the other area that I, I think is one of the important parts of this was the fact that there were several witnesses that testified as to Mr. Smith's, I guess bragging, or assertions that he had done it, and then later recanted. And you know, as you said, Judge Doughton looked at this and, and ruled accordingly. As part of your, if I can call this the third investigation, did you actually talk with any of these people.

CHIEF CUNNINGHAM: No sir, we did not. We did not make an effort to talk with them. The reality is, is that at this point, they have limited credibility. Anything that we would have gained from them, would be an issue of where could we go with it, as far as what could we do with it.

COUNCIL MEMBER CLARK: What, what I struggle with there is, is obviously they're lying, you just don't know when. And, and that makes it tough. Anyway, I thank you for your time.

CHIEF CUNNINGHAM: Yes it does.

CHAIR BURKE: Alright, thank you. Council Member.

COUNCIL MEMBER LEIGHT: Thank you mam. I'd like to just comment on a statement that Mr. Coleman made that about innocent people you know who have been found to be innocent after spending all that time in jail. But in fact, those people are released by a court or judge who has the evidence of their innocence in front of them and I think unfortunately that that's where we are that if, if more evidence can be brought in front of the appropriate court or judges or appeal judges, again I don't know the court system, that maybe we could go further with this. As it stands now, I don't know whether Mr. Smith is guilty or innocent. I would hate like crazy to think that we have is, an innocent man in jail, but I'm not totally convinced of that, certainly the evidence isn't there. The Silk Plant Forest Committee says that they have no credible evidence of Mr. Smith's guilt. The police report says that they have no credible evidence of his innocence. So there we are. We're stuck. In the final analysis, it has to be the court system that makes that decision about guilt or innocence and I do not know where else we as a city can go. Certainly we have, under Chief Cunningham and of course, his predecessors too, there have been enormous changes made in police procedure and I, I firmly believe that this could not happen again. I sure hope not. But I don't know where else we as a City Council, as a city police department, I don't see where we can go.

CHAIR BURKE: Yes. A question, I was going to ask that question. Where do we go from here? We don't have to answer that, something we can think about.

COUNCIL MEMBER TAYLOR: Ten seconds madam Chairman. Chief, I just wanted to say thank you and your staff and everyone for this report. I know firsthand the hours that go into this thing. Quick comment about the court system. I just wanted to say that you know, a jury was selected, a judge was selected, a jury did rule. However, the Silk Plant Forest was given information that the previous jury did not have. What we did would resolve at least if Calvin Smith got a new trial.

CHAIR BURKE: Yes. Well I'm...

CHIEF CUNNINGHAM: The only thing I wanted to say is, is that we would be glad to, if you'll look through it, if you have any questions, you let us know. We'll be, we'll be more than glad to respond and let you know what we think, why we think, what the evidence is, anything. And whatever it is, that Council wants, we will provide you.

CHAIR BURKE: Thank you. And I want to say to the Silk Forest Committee that we represent you too. And we're here to serve you. And we are supposed to have the patience and the tolerance and the love and understanding. We're not gonna all agree, but we're gonna be polite and respectful. And I thank these citizens for working so hard and giving up their time in an unselfish way. I thank the members of the Council. I thank the staff. In fact, I do not believe that any of use of have taken this lightly. This duty and responsibility. Because a city this size needs to have confidence in the police department. And if there are no other information on the agenda? If not, then the meeting stands at adjourned.

END OF VERBATIM COMMENTS

ADJOURNMENT: 8:16 p.m.