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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY

In re: Senate Bill No. 1

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Stenographic report of hearing  
held in Room 22, Capitol Annex  
Harrisburg, Pennsylvania, on

Wednesday,  
June 10, 1987  
at 9:30 o'clock a.m.

HON. H. WILLIAM DEWEESE, CHAIRMAN

MEMBERS OF COMMITTEE ON THE JUDICIARY

- |                            |                            |
|----------------------------|----------------------------|
| Hon. William E. Baldwin    | Hon. David Heckler         |
| Hon Gerard Birmelin        | Hon. Lois S. Haggarty      |
| Hon. Michael E. Bortner    | Hon. Gerard Kosinski       |
| Hon. Kevin Blaum           | Hon. Paul McHale           |
| Hon. Thomas R. Caltagirone | Hon. Nicholas B. Moehlmann |
| Hon. Michael Dawida        | Hon. Robert D. Reber, Jr.  |

ALSO PRESENT:

- Michael P. Edmiston, Chief Counsel Majority Committee
- Mary Woolley, Chief Counsel Minority Committee
- Robert Priest, Budget Analyst
- Mike Rosenstein
- Paul Muench

\* \* \* \*

HALONE REPORTING  
EUGENE W. HOLBERT  
Registered Professional Reporter  
135 South Landis Street  
Hummelstown, Pennsylvania 17036

1987-096

1 THE CHAIRMAN: Good morning, ladies and  
2 gentlemen. We are going to commence this morning's  
3 proceedings, and our first person scheduled to testify is  
4 the Honorable James E. Rowley, Chairman of the Judicial  
5 Inquiry and Review Board. Good morning, sir, and thank you  
6 for coming to share some of your observations with us  
7 today.

8 JUDGE ROWLEY: Thank you.

9 Mr. Chairman and members of the Committee, I am  
10 Judge Rowley of the Superior Court, and I am here in my  
11 capacity as Chairman of the Judicial Inquiry and Review  
12 Board. Mr. Robert Keuch, our General Counsel and Executive  
13 Director, is here with me, and we appreciate the opportunity  
14 to appear before you and this Committee to give some  
15 comments and some thoughts concerning the board and its  
16 activities.

17 I know that your schedule this morning is very  
18 tight and therefore, I have submitted a statement for the  
19 record, and I would like now to provide you with a brief  
20 outline of that statement and I'll be happy to try to answer  
21 any questions that you may have. As outlined in more detail  
22 in that statement, there have been, in the past two and one  
23 half years, substantial changes in the board's membership,  
24 staffing and location of offices.

25 The staff is completely changed. We have

1 closed the Pittsburgh and Philadelphia offices and  
2 consolidated them in one operation here in Harrisburg near  
3 the State Capitol. The board, itself, is now completely  
4 changed in the last two and one half years. There is a  
5 totally new membership and the development and institution  
6 of specific and detailed procedures for the processing of  
7 matters brought to the board's attention has been one of the  
8 priorities of the new board.

9 A major goal, of course, of the board is to  
10 institute methods and procedures that will expedite and  
11 shorten the time consumed in processing complaints received  
12 or matters brought before the board that is thought to  
13 require investigation.

14 At the same time, the board has tried to,  
15 insofar as possible, under constitutional restraints, expand  
16 or add to the understanding of the public, that is of the  
17 board's functioning in the performance of its  
18 responsibilities.

19 As to the latter, the so-called confidentiality  
20 provision found in the Constitution is a critical obstacle,  
21 in our view. All papers and proceedings, as you know,  
22 before the board are confidential and may not be commented  
23 upon by board members or staff unless and until there is a  
24 finding of misconduct following the formal hearing, and a  
25 recommendation for discipline to the Supreme Court of

1 Pennsylvania.

2           The majority of our board, as presently  
3 constituted, is very strongly in favor of an amendment to  
4 the Constitution that would provide for public access to the  
5 proceedings once it has been determined that formal charges  
6 should be filed.

7           I recognize that the present proposal before  
8 the committee as has been passed by the Senate does not go  
9 quite that far in relaxing the confidentiality provision.  
10 This Bill, as I understand it, would not provide public  
11 access until such time as the board has completed its formal  
12 hearings and made a finding and entered an order in the  
13 matter. Within ten days after that, the matter becomes  
14 public knowledge. At least a part of it does.

15           On the other hand, we would, the majority of  
16 the board and myself, especially --

17           THE CHAIRMAN: The majority of the board  
18 meaning --

19           JUDGE ROWLEY: The Judicial Inquiry and Review  
20 Board.

21           THE CHAIRMAN: Yes, but how many?

22           JUDGE ROWLEY: Five.

23           THE CHAIRMAN: Thank you.

24           JUDGE ROWLEY: The others, there are a couple  
25 that would join this Bill, and there are a couple that would

1 like to keep it the way it is.

2 THE CHAIRMAN: Thank you.

3 JUDGE ROWLEY: The majority of us feel that in  
4 order to be backed up further and provide public access at  
5 an earlier stage in this connection, we would recommend and  
6 urge the Committee to propose to the General Assembly and  
7 urge the adoption by the General Assembly of a provision  
8 containing immunity from liability for members of the board  
9 such as has been done in similar situations, to people who  
10 are performing governmental services.

11 As I am sure you are aware, every member of the  
12 board serves without compensation. They have other jobs,  
13 other responsibilities. They give a great deal of time to  
14 this task but yet they are exposed to potential liability  
15 and we are, as you know, undergoing a series of Federal  
16 lawsuits at the present time, all claiming violations of  
17 civil rights. Yet the committee unanimously, the board  
18 unanimously urges that a provision for immunity be provided  
19 here.

20 I think under the proposed Bill, it's even more  
21 important that such a provision be inserted. You know, this  
22 proposed Bill entirely changes the character and the thrust  
23 of this Committee's responsibilities and authority. For  
24 example, as presently constituted, the board is merely a  
25 fact gathering agency and a recommending agency to the

1 Supreme Court.

2 The Supreme Court then reviews the matter on  
3 the record and makes a determination on its own. Under this  
4 Bill, the board suddenly becomes the adjudicative body.  
5 That is, they can order suspensions; they order the final  
6 and ultimate sanction. And those decisions of the board are  
7 only subject to appellate review which is much narrower  
8 standard or responsibility imposed upon the Supreme Court.

9 As a result, it seems clear to me that this  
10 proposed Bill will greatly increase the exposure of board  
11 members to potential liability in civil rights actions and  
12 other types of actions for their conduct. And in the  
13 statement I have presented, I have mentioned a couple of the  
14 other boards and executive agencies in the Commonwealth that  
15 now have the type of immunity we are talking about, and we  
16 would urge your serious consideration of that.

17 Finally, I realize and we realize, excuse me,  
18 that the Committee's not involved particularly at this time  
19 with our budgetary problems, but I think I would be remiss  
20 if I did not note that the board is facing, at this time, a  
21 very serious budgetary crisis. It is necessary to a proper  
22 and effective carrying out of the board's constitutional  
23 mandate to have the adequate resources to carry on those  
24 responsibilities.

25 Because of sharp and substantial increase in

1 the number of formal proceedings and disciplinary  
2 recommendations made by the board over the past year, we  
3 ended the fiscal year -- we are going to end this fiscal  
4 year with a deficit of approximately \$150,000.00.

5 More importantly, an increase in the budget we  
6 requested for the next fiscal year is necessary, and that  
7 request was decreased to \$480,000.00 by the Governor's  
8 Office.

9 We recognize that provision, but we would urge  
10 the Committee to, in drafting this type of a Bill, to  
11 recognize that the ultimate success of whatever kind of a  
12 board is created is dependent upon two things. One is the  
13 character of the persons who are appointed to the board, but  
14 the other is the provision for adequate financing and  
15 funding to provide adequate staff, investigators and counsel  
16 to carry out the board's functions.

17 I notice -- and I am happy to see that this  
18 constitutional amendment or proposed amendment does  
19 recognize the creation on the board of its own in-house  
20 legal staff department, which is the direction the board  
21 took approximately a year ago when the former director  
22 resigned and we were fortunate to obtain the services of Mr.  
23 Keuch as General Counsel and Executive Director, and we are  
24 trying to develop our own legal department to handle these  
25 matters.

1 I would be happy, with that summary statement,  
2 Mr. Chairman, and Members of the Committee to attempt to  
3 answer any questions that anyone might have.

4 THE CHAIRMAN: We have time for two or three  
5 questions only. We are constrained rigorously this morning  
6 by our floor schedule. However, there will be other  
7 opportunities, either through correspondence or additional  
8 meetings, to touch base.

9 So are there a couple of questions? Ms.  
10 Haggarty from Montgomery County.

11 REPRESENTATIVE HAGARTY: Thank you, Mr.  
12 Chairman. Judge Rowley, you did not comment this morning  
13 on the composition of the board, and I wondered do you have  
14 any comment with regard to the proposed constitutional  
15 amendment that would substantially change the appointments,  
16 thereby the composition of the board?

17 JUDGE ROWLEY: I do. Initially, let me say  
18 that the board unanimously -- that's all nine members,  
19 including the present two lay members -- believe the that  
20 the present number and composition is sufficient and is  
21 appropriate.

22 As I said before, there is no question in my  
23 mind that regardless of how the board is structured, the  
24 ultimate success of the board will be in the quality of the  
25 persons that are appointed to it. However, I understand



1 that the Pennsylvania Trial Lawyers have or are going to  
2 propose an amendment to the Bill that would provide for an  
3 increase to 15. The board, or myself, would support that  
4 amendment if there is to be a change, which I suspect there  
5 will be, for several reasons.

6 When this gets back to the matter I mentioned  
7 earlier, and that is the new direction that this new board  
8 will take, that is, this board will impose sanctions. It  
9 will impose discipline. It becomes an adjudicative body.

10 The thrust of all of these lawsuits against the  
11 board, one of the principal thrusts is that in our present  
12 constitutional system, there are combined in this board,  
13 investigative, prosecutorial and adjudicative functions. We  
14 become the policemen. We become the investigator. We  
15 become the district attorney. We become the jury and  
16 ultimately, in a sense, with a recommendation, at least, a  
17 quasi judge.

18 It seems to me that the present proposal, by  
19 increasing the responsibilities and authority of this board  
20 to make it an adjudicative body strengthens the argument of  
21 those who are contending that even our present system is a  
22 violation of due process as far as the Federal Constitution.

23 For that reason, I would recommend -- and I am  
24 only speaking for myself, now -- I would recommend that the  
25 board or the Committee or the General Assembly seriously

1 consider a board of 15, but a two-tier board, a double level  
2 board, so to speak. There are some jurisdictions in this  
3 country that utilize such a system for judicial discipline.

4 The initial level, initial stage or tier of the  
5 board receives complaints, investigates them, makes a  
6 determination whether charges should be filed. If the  
7 decision is to file charges, they file the charges and they  
8 provide the counsel.

9 If that is done, you then go to a second level,  
10 the second tier of the board. Those are entirely different  
11 members of the board who sit as a court or a jury, and they  
12 hear the evidence. They listen to the arguments and the  
13 charges.

14 In other words, you separate the prosecutorial  
15 from the judicial functions in the board and insulate the  
16 board from a federal due process attack or challenge. I am  
17 truly concerned about combining them in this kind of a board  
18 with this kind of authority. But I would support --

19 REPRESENTATIVE HAGARTY: Judge Rowley, can I --

20 THE CHAIRMAN: We are going to have to keep it  
21 very short.

22 REPRESENTATIVE HAGARTY: On the same question,  
23 just to clarify the question.

24 THE CHAIRMAN: Make it very short, please.

25 REPRESENTATIVE HAGARTY: The composition of

1 Senate Bill shifts the membership to a majority of lay  
2 people. You have not commented on that. The composition is  
3 actually laid out in Senate Bill 1. I wonder if you would  
4 indicate whether you thought that would present problems?

5 JUDGE ROWLEY: Maybe I could answer that by  
6 saying that the present two lay members, non-judge,  
7 non-lawyer members of the board feel it would. They are  
8 adamant that there should be at least a majority of judges  
9 or in the alternative, as the Pennsylvania Trial Lawyers  
10 have or are going to recommend, law trained people. And  
11 that's not to say that lay people can't do the job.

12 As I have said -- and I'll say it again -- I  
13 think in the long run, the success of the Committee and the  
14 quality of their work has been determined by the quality of  
15 the people who are appointed.

16 REPRESENTATIVE HAGARTY: Thank you, Judge.

17 THE CHAIRMAN: Representative Caltagirone from  
18 Berks County will ask the final question.

19 REPRESENTATIVE CALTAGIRONE: Concerning the  
20 overall budget and request you make; your manpower problem.  
21 Would you please succinctly address that issue. I know you  
22 are always running short of the funds to do the proper kind  
23 of job that irregardless of what system finally is  
24 developed, if you don't have adequate funding, you are  
25 aren't going to be able to function properly. I want to hit

1 right at the heart of that. Give us a brief summary on that  
2 problem.

3 JUDGE ROWLEY: Would you like Mr. Keuch -- he's  
4 more familiar with the figures. There is no question that  
5 we need and are developing an in-house staff, but we need  
6 more investigators. We need more counsel. Investigators  
7 are the key; trained, professional investigators that can  
8 get out and get the evidence and facts for us.

9 MR. KEUCH: The present staff is two  
10 investigators and two legal counsel, including myself and  
11 three secretaries.

12 REPRESENTATIVE CALTAGIRONE: The two  
13 investigators cover the entire State of Pennsylvania?

14 MR. KEUCH: Yes, sir.

15 REPRESENTATIVE CALTAGIRONE: That's the point I  
16 wanted to make.

17 MR. KEUCH: We submitted a budget request of  
18 \$250,000.00, which would have been a modest increase of  
19 \$100,000.00, large in percentage because of the size of our  
20 budget. That would have permitted an increase, double the  
21 investigative staff to four in this next fiscal year. It  
22 would have also permitted some additional law clerk services  
23 in support for the legal staff; not an additional attorney,  
24 but research and library assistance.

25 That budget was reduced to \$480,000.00, which

1 would permit absolutely no increase in staff. We might have  
2 a difficult time finding, as we have in the past, we have  
3 come off this fiscal year, as the Chairman has indicated,  
4 with a deficit \$138,000.00, caused by the increase in formal  
5 hearings and increase in formal charges being filed.

6           The combination of the rejections that have  
7 occurred of our \$500,000.00 request having been denied, the  
8 supplemental which has taken place, would create a crisis.  
9 With the denial of the supplemental, it would be necessary  
10 to absorb that have that increased the way we would like to  
11 see increased, to 650. That won't permit a modest increase  
12 in staff.

13           REPRESENTATIVE CALTAGIRONE: The point I wanted  
14 to share with the Members the Committee, you had over 300  
15 some complaints last year, 70 of which you had followup and  
16 work that was done on it, with two individual investigators  
17 to cover this entire Commonwealth with all the judges, all  
18 the district attorneys and with all the DJ's and everybody  
19 else, common pleas court, let alone the appellate courts.  
20 It's impossible for two investigators to cover this entire  
21 Commonwealth.

22           I think, you know, if were talking about doing  
23 the right kind of thing with this body -- and basically, you  
24 are an investigative body looking at what the judges are  
25 doing -- if there's any infractions or complaints you have

1 that have to be analyzed, you have to have somebody to  
2 collect that information.

3           You need a battery of additional  
4 investigators. If we are going to do the proper job and  
5 play watchdog on the judiciary in this state, then I think  
6 you need to beef that up with competent, skilled people, and  
7 they need the budget and the money to go with it to do that.

8           JUDGE ROWLEY: I am aware personally of one  
9 case, before I got on the board, where the complaint was  
10 dismissed with a private admonishment because the board's  
11 investigators were spread too thin. They couldn't get  
12 enough information and facts about the case.

13           It was dismissed with a private admonishment,  
14 and later on when another state agency got to investigating  
15 with a bigger staff and more experienced and trained  
16 investigators, they discovered the existence of criminal  
17 contact. Since then, the individual involved has been  
18 convicted by the Court.

19           THE CHAIRMAN: I have one followup in reference  
20 to the young lady from Montgomery County. Quickly, the  
21 Senate says that this Bill is okay. John Stauffer is  
22 adamant in his insistence that a change in the composition  
23 of the board will be unacceptable to him and other Senators  
24 on both sides of the aisle have asserted the same thing to  
25 me.

1           Would you rather have this or something pretty  
2 close to it than nothing at all or would you rather have the  
3 same system that you have?

4           JUDGE ROWLEY: The Bill as it's written there.

5           THE CHAIRMAN: With some slight amendment. I  
6 don't mean anything overwhelming. I just mean if you don't  
7 get the composition factor that you want, will that impede  
8 your individual or collective enthusiasm on the board for  
9 change?

10          JUDGE ROWLEY: I would prefer to have it the  
11 way it is now with maybe a few amendments. As to the rest  
12 of the Bill, frankly, I like it.

13          THE CHAIRMAN: Thank very much, and thank you  
14 for joining us this morning. I'm sure that our staff and  
15 members would like to share some additional time or  
16 correspondence with you in the upcoming days and weeks.

17          JUDGE ROWLEY: Thank you for the opportunity,  
18 and we'll be glad to furnish the information.

19          THE CHAIRMAN: Our next witness is Bob Surrick  
20 from West Chester, Pennsylvania.

21          MR. SURRICK: Good morning. Thank you for  
22 inviting me. Before I turn to some preparation, I would  
23 like to say that five years ago, when I began to speak out  
24 for openness in the Judicial Inquiry and Review Board and  
25 for taking judges out of the majority on that board, I

1 sustained a great deal of abuse from the judge members on  
2 the board and judges around the state because they  
3 considered that an attack on their integrity.

4 I am glad to hear, and I am gratified to hear  
5 people of the stature of Judge Rowley coming here today and  
6 saying the same thing for openness on the board. He didn't  
7 go as far as I would like with regard to the composition of  
8 the board. At least the openness issue has been addressed,  
9 and that is gratifying.

10 I really believe the time has passed for that,  
11 and I would like to make some proposals. I am aware of your  
12 time constraints, and I'll try and finish within the allotted  
13 time.

14 In 1980 Governor Richard L. Thornburgh asked me  
15 to serve as member the Judicial Inquiry and Review Board. I  
16 am an active lawyer, having been admitted to practice in  
17 1961, and having been perhaps one the most active trial  
18 lawyers in Southeastern Pennsylvania for a number of years,  
19 I know my way around a courtroom, and judges is are not  
20 unfamiliar with me individually. I have been trained as a  
21 lawyer to respect judicial authority and to protect the  
22 image of the judiciary.

23 I firmly believe that the judiciary is the last  
24 bastion of a free and democratic society. Stated  
25 differently, there is significant distrust in our democratic



1 society in the Executive and Legislative Branches of  
2 government. If the public comes to distrust the judiciary,  
3 we border on anarchy.

4 That doesn't mean rioting in the streets. It  
5 does mean increased disrespect for the law and failure to  
6 abide by the law, which degrades the quality of life in our  
7 community.

8 Following my appointment, I devoted significant  
9 time, energy and money to try to become an expert in  
10 judicial accountability. I attended seminars and symposiums  
11 in Denver, New Orleans and Philadelphia and began regular  
12 communication with experts on judicial accountability in  
13 other states. I established a working relationship with the  
14 Center for Judicial Conduct Organizations in Chicago.

15 It did not take long for me to begin to  
16 understand that the Pennsylvania Judicial Inquiry and Review  
17 Board, dominated by judges and acting behind a shroud of  
18 secrecy, was frequently a vehicle to obscure judicial  
19 misconduct. It was not carrying out its responsibility to  
20 investigate complaints and recommend discipline where  
21 appropriate.

22 It was, and to the best of my knowledge, still  
23 is a good old boy system where judges will speak no evil,  
24 hear no evil, and see no evil concerning other judges unless  
25 the conduct is so publicly outrageous as to require action,

1 such as the Judge Snyder case.

2 In my four year tenure on the board, I  
3 witnessed and fought against numerous instances where  
4 complaints against judges were dismissed without adequate  
5 investigation or conversely, where there was clear evidence  
6 of misconduct.

7 As I have previously testified before the  
8 Senate Judiciary Committee, just by way of one example, if  
9 the public could see the record with regard to the Semeraro  
10 matter, it would be appalled. I know from firsthand  
11 experience that a judicial accountability system dominated  
12 by judges and operating in secrecy cannot and does not work.

13 Because the judicial selection system in  
14 Pennsylvania has broken down, the quality of the judiciary  
15 has deteriorated to the point where many judges in the urban  
16 areas don't know right from wrong or don't care, and when  
17 these judges are placed in positions of responsibility in  
18 the judicial accountability process, the system doesn't  
19 work.

20 By the way, I completely agree with what Judge  
21 Rowley said about quality of appointments. Judge Mirarchi  
22 chaired the Larsen Hearings for the board. During the  
23 course of the hearings, he went hat-in-hand to the Chairman  
24 of the Democratic State Committee for support to run for the  
25 Supreme Court.

1           This chairman was, at the time, the law partner  
2 of Larsen's attorney, and never mind that Larsen's attorney  
3 had represented Judge Mirarchi as a named plaintiff in a  
4 lawsuit just two years earlier. Even the most  
5 unsophisticated person on the street can understand that  
6 this kind of conduct reflects serious and fundamental flaws  
7 in the system.

8           I also happen to know something about attorney  
9 discipline. It has been reported in the news media that I  
10 voted for the removal of Justice Larsen from the Supreme  
11 Court at the conclusion of twenty eight months of hearings  
12 before the Judicial Inquiry and Review Board.

13           Less than two months following the reported  
14 vote in May of 1983, on July 6, 1983, Justice Larsen filed a  
15 formal complaint against me with the Disciplinary Board of  
16 the Supreme Court of Pennsylvania. Please note that the  
17 complaint is by a Supreme Court Justice to the Supreme Court  
18 Disciplinary Board. The charges are spurious, without basis  
19 in fact or law, and constitute, in my opinion, a political  
20 prosecution.

21           Over two years later, on August 7, 1985, based  
22 upon this complaint, the Disciplinary Board filed a Petition  
23 for Discipline against me. It has been four years and the  
24 complaint remains open. My practice has been ruined. I  
25 have spent many thousands of dollars in legal fees in my

1 defense, not to speak of the staggering number of hours of  
2 lost time out of the office. In spite of my demand that the  
3 proceedings be open to the public, the news media and public  
4 were excluded from large portions of the hearings.

5 We have gone too far to reverse the process by  
6 attempting to replace those in authority who are responsible  
7 for the degradation of the judicial and attorney  
8 accountability processes. Please don't listen to those who  
9 will tell you that by and large, the system works and just  
10 needs some fine tuning. Many of those who will pooh-pooh  
11 the problems have a vested interest in the system. They are  
12 the establishment.

13 Public disrespect for the law and the legal  
14 system is markedly increasing. Our lawyers have abdicated  
15 their responsibility, adopting a go-along, get-along  
16 approach. Many Pennsylvania lawyers subscribe to the  
17 pragmatic policy that it's good to know the law, but it's  
18 better to know the judge. All around us, we see evidence of  
19 lawyers, by many means, currying favor with judges, and with  
20 many judges being willing subjects. Favors and gifts seem  
21 to abound.

22 Let me give you an example of what I mean when  
23 I say that the system is not working and there is little or  
24 no likelihood that the problems can be corrected under the  
25 present structure. In November of 1983, I met with Justice

1 Roberts over the need for quality appointments to replace  
2 two Superior Court judge members of the Judicial Inquiry and  
3 Review Board whose terms were about to expire.

4 Let me give you an example. A lot depends on  
5 that and that will be the touchstone for what I am going to  
6 say in a minute. Without giving any particulars, I pointed  
7 out to Justice Roberts that there were several serious  
8 matters before the board and that it was imperative from the  
9 standpoint of public confidence that there could be no  
10 question with regard to the appointments to the Judicial  
11 Inquiry and Review Board.

12 Several months later, the Supreme Court  
13 appointed Judge Hoffman, a senior judge, who clearly, in my  
14 opinion, was not eligible to serve as a member of the  
15 Judicial Inquiry and Review Board and Judge McEwen, a judge  
16 of the Superior Court, who even his friends say, is a man  
17 who just cannot find fault with other lawyers or judges.

18 Here we had a situation where a respected and  
19 nationally known jurist who had served on the Supreme Court  
20 of Pennsylvania for twenty years either would not or could  
21 not do what was required to make the system work.

22 If the trend is to be reversed and public  
23 confidence fostered in the judiciary, it will be necessary  
24 to perform major surgery. This surgery requires that  
25 lawyers and judges be removed from the accountability

1 process, and a completely independent disciplinary system be  
2 established. While Senate Bill 1 is an attempt to remedy  
3 the obvious problems, the laborious effort at passage of  
4 this constitutional amendment can only result in more of the  
5 same as we are now seeing. It is only the application of a  
6 band-aid to the bleeding area of judicial and professional  
7 accountability.

8 I recommend that this committee give  
9 consideration to a disciplinary system which I will  
10 immodestly call the "Surrick Plan." The system is simple  
11 and it will work. Implementation of this system will result  
12 in immediate heightened sensitivity by the Bench and Bar to  
13 ethical standards, and in a few short years, will raise the  
14 quality of the Bench and Bar significantly.

15 The constitutional authority for the Judicial  
16 Inquiry and Review Board should be repealed. It probably  
17 doesn't belong in the Constitution anyway. The Legislature  
18 should create an independent body called the Office of  
19 Disciplinary Counsel. Chief Disciplinary Counsel might be  
20 selected by a committee consisting of the Chief Justice of  
21 Pennsylvania, the Governor and the President Pro Tem of the  
22 Pennsylvania Senate.

23 The office should be funded by the lawyers and  
24 judges in the manner in which the lawyers now fund the  
25 disciplinary system. The budget for the Office of

1 Disciplinary Counsel should be recommended by Chief  
2 Disciplinary Counsel to this Committee of the Chief Justice,  
3 Governor and President Pro Tem of the Senate and upon  
4 approval, it would be implemented by Supreme Court rule.  
5 Additional appropriations, as needed, might be supplied by  
6 the Legislature.

7 Chief Disciplinary Counsel, who would be  
8 appointed for a fixed term, and who could only be removed  
9 for cause, would appoint a staff to monitor the conduct of  
10 lawyers and judges throughout the state, investigate  
11 complaints, and conduct hearings before a hearing examiner.  
12 The hearing examiners would be full time paid positions and  
13 at all times, the proceedings would be open to the public.

14 The hearing examiners would make recommenda-  
15 tions including findings of fact to the Supreme Court of  
16 Pennsylvania. The Supreme Court of Pennsylvania would have  
17 thirty days to approve, modify or reject the  
18 recommendations. Failing to act within thirty days, the  
19 recommendations would become final.

20 At every step in the proceedings, the accused  
21 lawyer or judge would have the right of counsel and the  
22 right to be heard. I don't suggest for a minute that any of  
23 the rights anyone now enjoys should be reduced. I do  
24 recommend that we get on with it. I have cited my  
25 particular problem with the Disciplinary Board. It is not

1 unusual.

2           The Larsen hearings went on twenty eight months  
3 and actually took almost four years from beginning to end.  
4 This is not necessary and not in the best interest of the  
5 judiciary, the lawyers or the citizens of Pennsylvania.

6           As our practice becomes more urbanized and  
7 judicial standards as well as ethical standards of lawyers  
8 are diluted, we must turn to a system of judicial and  
9 attorney accountability that is independent. The  
10 politicians won't like this. The judges won't like it, and  
11 the lawyers won't like it, which tells me that it is  
12 probably right on target.

13           THE CHAIRMAN: Why won't the politicians like  
14 it?

15           MR. SURRICK: The politicians, in my opinion,  
16 Representative DeWees, favor the present system of both  
17 electing judges and all the other things that are going on  
18 because they have some access to the judges.

19           THE CHAIRMAN: Okay.

20           Ladies and gentlemen, the hemorrhaging must  
21 stop. You can sit here for the next one hundred days or one  
22 hundred months and debate the legal niceties of modification  
23 of the existing system. You can compromise and compromise  
24 and compromise, giving everyone a little bit of something,  
25 or you can do nothing.



1           Any of these actions or inactions will result  
2 in more of the same, and worse. Only if you, the full  
3 House, the Senate and the voters of Pennsylvania promulgate  
4 an independent accountability system, will the losses be  
5 reversed.

6           Please don't make the mistake of listening to  
7 those who want to maintain the status quo and who will  
8 charge that the system will become unbalanced or that there  
9 is room for overreaching, corruption, or fraud with a strong  
10 and independent Chief Disciplinary Counsel. The fraud,  
11 corruption and the overreaching are here now, and we are all  
12 the worse for it. We lawyers and judges have met the enemy,  
13 and it is us.

14           THE CHAIRMAN: Two quick questions from people  
15 who haven't asked. The representative from Philadelphia,  
16 Gerry Kosinski, do you have any questions for Mr. Surrick?

17           REPRESENTATIVE KOSINSKI: Why don't you let the  
18 House have a piece of the action in appointing the  
19 Disciplinary Board?

20           MR. SURRICK: I have no objection to that.  
21 That's just a suggestion.

22           REPRESENTATIVE KOSINSKI: I am getting sick and  
23 tired of us not being treated on an equal basis on --

24           MR. SURRICK: I want three because two out of  
25 three of anything is a majority.

1                   REPRESENTATIVE KOSINSKI: Two out of three  
2 might be republicans out of the --

3                   MR. SURRICK: I have no fixed feelings.

4                   REPRESENTATIVE KOSINSKI: We are certainly  
5 faced with a crisis, I agree with that. Something is needed  
6 if we are going to maintain the status quo, but your  
7 proposal here will take five years to implement.

8                   MR. SURRICK: I am aware that what I have  
9 proposed is something that would be perhaps difficult to  
10 sell because it's taken five years just to get openness in  
11 the proceedings and judges out of the majorities.

12                   REPRESENTATIVE KOSINSKI: It's not difficult to  
13 sell. I have a feeling if we put it up to a vote today,  
14 this Committee would approve. I am looking at the  
15 constitutional aspects of it.

16                   MR. SURRICK: We have to start sometime, sir.  
17 I am really gratified to hear what you say, if it's  
18 representative, that this Committee would go for something  
19 like this. Let me say this. I have stuck my neck out for  
20 five years. Let somebody else stick it out. Come on.  
21 Let's get going with this and let's get a system that  
22 works. I am not here to castigate the judiciary or  
23 lawyers. I am trying to improve the system, as you are.

24                   THE CHAIRMAN: Thank you. Dave Heckler?

25                   REPRESENTATIVE HECKLER: Mr. Surrick, I take it

1 from your comments that you would agree with me that  
2 appellate court judges, at least, would be better appointed  
3 than elected.

4 MR. SURRICK: Absolutely. I totally favor  
5 merit selection. It's not an elitist way to do this. I  
6 point to governors in the past in Pennsylvania who have had  
7 their own problems with their aides and legislative  
8 assistants and or indictees or what have you. The thought  
9 goes almost uniformly to appointed, good judges. The same  
10 thing happens on the federal level. The man at the top in  
11 the Governor's seat seems to have, while he may be fooling  
12 around in some other area, he seems to have a certain  
13 respect for judiciary and appointments to the judiciary.

14 THE CHAIRMAN: McHale for 30 seconds.

15 REPRESENTATIVE MCHALE: Mr. Surrick, on page 4  
16 of your testimony, you state, "In spite of my demand that  
17 the proceedings be open to the public, the news media and  
18 public were excluded from large portions of the hearings."  
19 Why?

20 MR. SURRICK: Because they said, the  
21 representation was made that testimony would involve matters  
22 that went before the Judicial Inquiry and Review Board and  
23 was therefore, constitutionally confidential, and the public  
24 had a right to know. I was faced with a situation where  
25 testimony would be against me in secret, and I had to try

1 and answer in public. That's not right.

2 REPRESENTATIVE MCHALE: Who's the they?

3 MR. SURRECK: The disciplinary board.

4 THE CHAIRMAN: Was there a formal decision on  
5 that?

6 MR. SURRECK: No.

7 REPRESENTATIVE MCHALE: Thank you, Mr.  
8 Chairman.

9 THE CHAIRMAN: Thank you. We'll open the  
10 Committee Members to correspondence or to talk with you on  
11 the phone. We are going to be moving. You are going to see  
12 some action one way or the other.

13 MR. SURRECK: Good.

14 THE CHAIRMAN: Hopefully it will be the way you  
15 and I feel. I feel parallel with you on a variety of  
16 things. Although I am a politician, I recognize the  
17 inherent limitations of what we'll be able to do. I have a  
18 quick question to you, yes or no. It's a yes or no. Would  
19 you rather have the changes embodied here with some House  
20 amendments than the system we have today?

21 MR. SURRECK: Absolutely. It's a problem.

22 THE CHAIRMAN: Next witness, Joe Jones,  
23 Esquire. President, Pennsylvania Bar Association. Good  
24 morning, Joe.

25 MR. JONES: Thank you Mr. Chairman. We are

1 pleased to be here. I understand the time and I shall make  
2 my prepared statement and be prepared to answer any  
3 questions.

4 The Pennsylvania Bar Association is composed of  
5 26,000 members. It is committed to judicial reform and has  
6 been committed to merit selection since 1947.

7 We are disappointed that the merit selection  
8 proceedings are not included in the Bill but recognizing the  
9 practicality of the situation, are anxious to move judicial  
10 reform ahead, although on a basis which will not compromise  
11 the independence of the judiciary, a fundamental principle  
12 upon which this Commonwealth and this country is based,  
13 although there is much in Senate Bill Number 1 of which the  
14 bar association approves, it is our view that the Bill  
15 requires substantial amendments. Our comments are initially  
16 directed to Section 10, paragraph 2 relating to the Attorney  
17 Disciplinary Board.

18 While it has always been the position of the  
19 association that certain rule changes should be made in  
20 connection with the board, it was never the position of the  
21 association that it should be a constitutionally mandated  
22 board.

23 This elevated status gives rise to another  
24 issue, and that's the cost of operation which is presently  
25 met by an assessment of the lawyers, but if established as a

1 constitutionally operated or mandated board, the burden of  
2 finance may very well fall upon the Commonwealth.

3 We favor direct discipline of the members of  
4 the bar by the board as proposed in Section 10(d), thereby  
5 relieving the Supreme Court of its burden of imposing an  
6 order of discipline in every case where one was found to be  
7 warranted, rather than endorsing a constitutional mandate  
8 which takes a period of time. The DPBA would recommend such  
9 change to be made by a simple revision of the present  
10 Supreme Court Rules.

11 In addition, the provisions of 10(d) with  
12 respect to appeals procedure raises some questions of a  
13 different scope of review for the parties, since an attorney  
14 being investigated may have a full appeal, but the counsel  
15 for the disciplinary board actually acting as counsel for  
16 the public, may not appeal unless approved by a vote of the  
17 designated number of members of the board which issued the  
18 discipline in the first place, and the jurisdiction of the  
19 Supreme Court in such an appeal is limited in its scope of  
20 review. The Supreme Court's review should not be a narrow  
21 one on such an important issue.

22 I respectfully submit that Section 10(d) should  
23 be deleted from the Bill and the changes with respect to  
24 increasing the power of the Attorney Disciplinary Board to  
25 discipline directly, attorneys, by reprimand, censure or

1 other action should be provided by an amendment to the  
2 Supreme Court Rules.

3 With respect to the Section 10 -- I'll skip  
4 over that, but Judicial Council is advisory. We don't have  
5 any objection to that but we don't think it should rise to  
6 the status of the constitutionally mandated board as just an  
7 advisory board.

8 We are also supporters of the concept of  
9 financial disclosure as contained in Subsection 17. We are  
10 aware of the substantial media and editorial pressure on the  
11 Legislature to amend the present constitutional provisions  
12 as they relate to the Judicial Inquiry and Review Board.

13 The alleged evil to be cured is the domination  
14 of the board by lawyers and judges who are said to be too  
15 inclined to protect their own. We do not see lawyers and  
16 judges having common interests other than achieving the  
17 highest level of integrity and quality in the judiciary.

18 Lawyers are not judges and should be considered  
19 as a separate group, not handmaidens of the judiciary.  
20 Judges, although they are lawyers, a separate and distinct  
21 constituency from lawyers, the public.

22 The Judicial Conduct Board, regardless of its  
23 size -- and we would favor increasing the size, in the  
24 interest of the group it is to serve -- should be composed  
25 of an equal number of members from the board's three

1 constituencies; public, the bar and the judiciary.

2 Past lack of confidence and the performance of  
3 the existing board actually arises, in our view, not because  
4 of its composition, but because of the confidentiality which  
5 surrounds it. The association endorses the changes in the  
6 Bill regarding confidentiality of the board's proceedings  
7 and respectfully represents that the removal of the aspects  
8 of the confidentiality as described by Senate Bill 1 would  
9 alleviate most, if not all, of the present criticism.

10 We are opposed to the method presented in  
11 Senate Bill 1 for the selection of the members of the  
12 Judicial Conduct Board. First we do not agree that the  
13 chief justice alone should make an appointment, but that if  
14 the present structure of the Bill is maintained, those  
15 appointments should be made by the Supreme Court, itself.

16 Second, we believe that the Senate Bill 1  
17 politicizes the Judicial Conduct Board in that a majority of  
18 the appointees could be selected without any public notice,  
19 without public review of qualifications, and serving on a  
20 purely political basis.

21 The provision for three appointees by the  
22 Governor and four by the leaders of the House and Senate may  
23 be useful in having the Bill adopted, but in our view, poses  
24 a serious threat to the independence of the Judicial Branch  
25 of the government.



1           Given the particular situation, it would be  
2 possible if Senate Bill 1 is enacted, for a combination of  
3 six political appointees to remove or directly affect the  
4 Supreme Court and the third branch of the government. This  
5 is not beyond the realm of possibility. FDR tried to do it  
6 for many years.

7           We continue to believe and advocate that the  
8 members of the board should be appointed by the Governor,  
9 subject to confirmation by a simple majority of the Senate.  
10 While not removing the appointments from the political  
11 arena, they will be exposed to fresh air, open public  
12 hearings on their qualifications.

13           This is a process used for other important  
14 offices and one which is generally accepted. In addition,  
15 the appointments by the Supreme Court by itself, provided by  
16 the Chief Justice, makes the Supreme Court both the  
17 appointing authority and the reviewing authority and those  
18 functions should be separate.

19           The provisions of the Bill, Section 16(d) which  
20 authorizes the Judicial Conduct Board to consider the  
21 conduct of a justice, judge or justice of the peace,  
22 district justice, with respect to discipline whether or not  
23 such conduct occurred while acting in a judicial capacity or  
24 as provided by law should certainly be prohibited by law as  
25 it relates to the action of the Judicial Conduct Board.

1           Section 18(h)(4) gives rise to a possible  
2           absurdity, assuming an effort by the board to conceal a  
3           serious situation. By ordering a private censure, for  
4           example, the board would preclude any review which the  
5           Supreme Court on its own motion or on the petition of four  
6           or more members of the board.

7           Because the section referred to prescribes such  
8           review only in the event the board does not order  
9           suspension, removal, discipline, censure or compulsory  
10          retirement. We support the provisions of 19(a) and (b)  
11          relating to budgetary and appropriation procedures.

12          Section 19(c) refers to fees assessed by the  
13          Attorney Disciplinary Board. But assessments presently made  
14          by the Supreme Court for the functioning of the various  
15          boards and our procedures should not be altered since  
16          otherwise, there would be no watchdog over the board or  
17          agency spending the money. We object to any board having  
18          power to assess and spend without accountability.

19          Section 19(d) empowering the Attorney General  
20          to audit the accounts of the Unified Judicial System is a  
21          positive step. It is the position of the Pennsylvania Bar  
22          Association that Senate Bill 1, in its present form, should  
23          not be enacted but should undergo substantial amendment and  
24          revision.

25          Governor Casey has indicated publicly his

1 intention to appoint a task force on judicial reform.  
2 Pennsylvania Bar Association hopes to participate in that  
3 task force and perhaps it would be best to wait until this  
4 report is issued after a thorough and careful study prior to  
5 enacting or approving such far reaching constitutional  
6 amendments.

7 THE CHAIRMAN: With all due respect, I think  
8 Mr. Surrick is right. I think we have waited long enough.  
9 We have time for one question. One question. No, you have  
10 asked one, unless nobody else has one. Gerry Kosinski.

11 MR. KOSINSKI: I want to make it known that we  
12 are the Committee who's been examining this for four years,  
13 Mr. Jones, and I think we are ready to make our decision.  
14 The Governor could appoint every committee he wants under  
15 the sun. We are ready to move. We are going to do it.

16 MR. JONES: We agree that it's time to move but  
17 we do not agree that this Bill should be enacted without  
18 substantial amendments.

19 THE CHAIRMAN: That's why we wanted you to  
20 participate, but I am almost insulted by the idea of another  
21 blue ribbon panel to discuss these kinds of issues. That's  
22 what Stuart Greenleaf and his folks are talking about, and  
23 ourselves and our folks are not incredulous at the idea of  
24 another blue ribbon panel. I don't think we need it.  
25 Again, I share that with you.

1           MR. JONES: We appreciate that. The suggestion  
2 was the Governor's and we don't -- the suggestion was not  
3 mine.

4           THE CHAIRMAN: We share with the Governor.

5           REPRESENTATIVE HAGARTY: Were the Governor  
6 here, we could blame him, instead.

7           THE CHAIRMAN: One last comment. On page 3 of  
8 your testimony, quote, "We do not see lawyers and judges  
9 having common interests other than achieving the highest  
10 level of integrity and quality in the judiciary." Again,  
11 Mr. Surrick -- I never saw the guy until today. I don't  
12 know him any more than I know Ortega's brother-in-law, and I  
13 think this guy is right and you are wrong.

14           I want to state that for the record, I do not  
15 believe that. And that's why I think John Stauffer and his  
16 colleagues in the House of Representatives has to move at  
17 least in this direction. I say that with all due respect to  
18 you, sir.

19           MR. JONES: I appreciate your comments and I  
20 agree with Judge Rowley, and I agree with what Mr. Surrick  
21 says. The key, really, is in the qualifications of the  
22 people who are appointed. It's the people who are appointed  
23 who are going to make this work and if the people who are  
24 appointed are under this system, I think it's a serious  
25 threat to our third branch of government.

1 THE CHAIRMAN: Thank you very kindly, and we'll  
2 be in touch with you also. We look forward to working with  
3 you, at least I do, during the biennium.

4 MR. JONES: Our facilities, which are  
5 extensive, are available to you and to the Committee.

6 THE CHAIRMAN: Thank you, sir. The next  
7 witness and the fourth of five witnesses, Mark Sonnenfeld,  
8 Esquire, Philadelphia Bar Association. Mark will have to  
9 excuse me about three minutes. Gerry Kosinski will chair in  
10 my absence. Welcome.

11 MR. SONNENFELD: Thank you, Mr. Chairman,  
12 Representative Kosinski and distinguished members of the  
13 Judiciary Committee. I am Mark Sonnenfeld, Chair of the  
14 Board of Governors of the Philadelphia Bar Association.

15 Philadelphia Bar Association has long  
16 recognized the need to strengthen and improve the judicial  
17 discipline process and also the need for government  
18 selection of our judges, including the appellate judges. As  
19 I mentioned to one representative this morning, prior to the  
20 hearing, we presently really have two lotteries in  
21 Pennsylvania; one to raise funds for the elderly and the  
22 other to select our appellate judges.

23 With respect to Senate Bill Number 1, the  
24 matter before us today, the Philadelphia Bar Association  
25 objects to the provisions of Senate Bill Number 1, which

1 would replace the current Disciplinary Board of the Supreme  
2 Court of Pennsylvania with a new Attorney Disciplinary  
3 Board.

4 With all due deference to Mr. Surrick's  
5 accounts, who I do hold in high regard, the current  
6 disciplinary board appears to be functioning well and  
7 indeed, despite intense public scrutiny of the entire state  
8 judicial process, has largely escaped criticism.

9 We would urge adhering to the old maxim, if  
10 something is not broken, it should not be fixed. Under  
11 Senate Bill Number 1, the new Attorney Discipline Board  
12 would be empowered with the authority to impose public  
13 discipline. Thus the proposed disciplinary board would have  
14 only limited accountability to the Supreme Court because the  
15 amendments would give the authority to the board and not to  
16 the court to impose public discipline.

17 Pennsylvania thereby would become virtually the  
18 only state in the nation whose Supreme Court would not have  
19 the final authority to discipline attorneys who are members  
20 of its bar.

21 Senate Bill Number 1 also would eliminate  
22 disciplinary counsel's right to appeal to the Supreme Court  
23 absent the concurrence of three members of the board from a  
24 decision on an attorney disciplined by the board and  
25 instead, as Senate Bill Number 1 would permit an appeal only

1 by the respondent attorney or by the Disciplinary Counsel  
2 with the concurrence of three members of the board.

3 As a result, Senate Bill Number 1 could,  
4 indeed, have the unintended effect of lessening the degree  
5 of discipline imposed, since, as a practical matter, the  
6 proposed procedure would place the sole discretion as to  
7 whether an appeal would be taken in the hands of the  
8 respondent attorney.

9 We can hypothesize the situation were the board  
10 to impose discipline in the form of a public censure or a  
11 discipline of a nominal degree in that instance the  
12 disciplinary counsel would not be able to appeal.

13 As recent as last week's session, the  
14 disciplinary counsel had recommended to the board, had  
15 recommended to the Supreme Court a lesser degree of  
16 discipline and there was an appeal to the Supreme Court  
17 which last week recommended the disbarment of a lawyer who  
18 had been accused of bribing a labor official.

19 Under this Bill, the Supreme Court would not  
20 have had opportunity to disbar that lawyer and would have  
21 been bound, with no ability to review a decision by the  
22 disciplinary board, to impose a lesser discipline.

23 Finally, Senate Bill 1 would subject the  
24 Attorney Disciplinary Board to an audit requirement imposed  
25 by the General Assembly, who appeared to overlook the fact

1 that the present board is self supporting from fees paid by  
2 attorneys, and is annually audited by an accounting firm.

3 With respect to the judges, the Philadelphia  
4 Bar Association has repeatedly recognized the need to  
5 strengthen and improve the Judicial Inquiry and Review  
6 Board, among other things, by requiring that a majority of  
7 its members not be judges and providing a full time  
8 executive director, counsel and staff, and as Judge Rowley  
9 noted, adequate funding. As far as composition, our  
10 recommendation would be three lawyers, three judges and  
11 three non-lawyers.

12 We are concerned that several aspects of the  
13 Judicial Conduct Board proposed by Senate Bill Number 1 as  
14 presently drafted could have the unintended effect of  
15 impairing the disciplinary process.

16 Most controversial, I believe, are the  
17 provisions concerning when the proceedings of the board  
18 become public. And here, as I read the Bill there twice  
19 appeared to me to be a very serious drafting in the Bill  
20 which could not possibly have the intended effect that would  
21 result.

22 Section 18(g) of Senate Bill Number 1 provides  
23 that the new Judicial Conduct Board or proposed Judicial  
24 Conduct Board, rather would file the record of any hearing  
25 conducted by it with the Supreme Court, whether or not an it



1 either disciplines, and that the Judicial Conduct Board  
2 would make public the nature of each charge and its finding,  
3 an opinion, regardless of whether or not it imposes  
4 discipline.

5           Going on in the Bill, Section 18(h)(5) provides  
6 that upon the expiration of 60 days after a request for  
7 review by the Supreme Court, the entire record of the  
8 Judicial Conduct Board and the Supreme Court would be made  
9 available for public inspection at the principal offices of  
10 the Judicial Conduct Board. This raises in my mind a number  
11 of questions as to when a record would become public.

12           In the event, for example, that no review is  
13 sought by the judge; take, for example, the Judge Snyder  
14 situation, suppose Judge Snyder had determined not to appeal  
15 from the decision of the board that he be disciplined.  
16 Under Senate Bill Number 1, all that would have been made  
17 available for public inspection would have been the  
18 conclusion and finding, an opinion of the board, but not the  
19 record, that is, not the transcript of the proceedings,  
20 itself. Those, that record, that is, the transcript, would  
21 only have been public in the event there was an appeal, and  
22 upon the expiration of a 60-day period.

23           From what I understand of the concern before  
24 this Committee and the comparable committee on the Senate  
25 side, this cannot possibly have been what was intended

1 because it would shield the very thing from public  
2 disclosure that has caused, I think, a lot of concern of  
3 this Committee. It also raises the question of what was  
4 intended by filing the record with the Supreme Court.

5           Generally, any document filed with the Supreme  
6 Court is filed with the Prothonotary and becomes public upon  
7 its filing. Here the Bill calls for a filing and public  
8 disclosure at a different location and a different time  
9 subsequent to the filing.

10           Finally, I have addressed the composition,  
11 which we feel is a critical one. The present, the  
12 composition proposed by Senate Bill Number 1 having only  
13 three judges, only two of them may be trained in the law,  
14 since one could be a district justice not trained in the  
15 law, could result in a board with only four out of five  
16 people trained in the law.

17           This would be a board empowered to discipline  
18 -- not a recommendation -- a board empowered to adopt its  
19 own rules and regulations as compared to the present board,  
20 whose rules were adopted by the Supreme Court.

21           For that reason, we would urge the composition  
22 of three, three and three as I suggested. I thank you very  
23 much for your time and attention and would be happy to answer  
24 any questions.

25           THE CHAIRMAN: I am going to allow one

1 question.

2 (No response.)

3 THE CHAIRMAN: Seeing no questions, thank you  
4 very much.

5 MR. SONNENFELD: Thank very much, Mr.  
6 Chairman.

7 THE CHAIRMAN: Mr. Mundy. Our final witness is  
8 Jim Mundy, Esquire, member of the Disciplinary Board of the  
9 Supreme Court of Pennsylvania, friend of Bob Casey.

10 MR. MUNDY: Thank you, Mr. Chairman. Thank you  
11 for the warm welcome. I'll try to stay in my time. I am  
12 here in my capacity as a member of the board, Disciplinary  
13 Board of the Supreme Court of Pennsylvania. I am going to  
14 confine my remarks to what is on pages 2 and 3 of this Bill,  
15 and that is the proposed change in the Disciplinary Board.

16 I think it's important for this Committee to  
17 recognize that the disciplinary system in Pennsylvania is a  
18 far more elaborate system -- that system for lawyers -- than  
19 is the system for judges. It has to be. There are 38,000  
20 lawyers in Pennsylvania.

21 The system for disciplining lawyers, therefore,  
22 has to be a great deal larger and more expansive than the  
23 judiciary. It is not a simple matter of addressing the  
24 disciplinary boards. You're addressing the system.

25 The system is really a three-tiered system;

1 three independent segments working together under the aegis  
2 of the Supreme Court. It was created by the order of the  
3 Supreme Court in March of 1972. The three-tier system  
4 consists of an independent prosecutorial office, Office of  
5 Disciplinary Counsel, which consists of the 20 law, full  
6 time lawyers, eight investigators and 18 officers who staff  
7 four offices across the state by district.

8 In the second segment in the hearing committee  
9 there are 36 hearing committees consisting of volunteer  
10 lawyers who volunteer their time to act as the trial court  
11 where the accused lawyer brought to the Hearing Committee  
12 under charges brought by the Office of Disciplinary Counsel,  
13 receives his or her trial. The disciplinary board operates  
14 above the two as sort of an intermediate appellate court,  
15 but also one with procedural jurisdiction over both.

16 That is the disciplinary system and the way the  
17 system works is a lawyer starts at one level, the case is  
18 heard there, and an appeal record then goes to the  
19 disciplinary board who hears the case the second time  
20 together with oral argument, briefs on exceptions from  
21 either or both sides, and then the entire record goes to the  
22 Supreme Court and it is the Supreme Court that issues the  
23 discipline. That's the system that we have in Pennsylvania  
24 today. It is regarded around the country as a model  
25 system.

1           It has been responsible for the fact that  
2 25,000 complaints against lawyers have been investigated to  
3 their finality in the 15-year existence of this system. 200  
4 lawyer complaints a month are investigated fully under this  
5 system.

6           Over 5,500 lawyers in the 15 years have  
7 received some form of public discipline. 8 percent of those  
8 received discipline requiring the loss of that lawyer's  
9 license to practice either by suspension or disbarment for a  
10 period of time.

11           That's the system that we have. It is, when  
12 you compare it to the other professional disciplinary  
13 systems that we have in the State of Pennsylvania, not only  
14 a more expansive one, but probably the most effective one.  
15 You will not find architects, engineers, doctors or anyone  
16 else having a record of discipline such as the ones lawyers  
17 have imposed upon themselves through this system.

18           The changes that are proposed in Senate Bill 1  
19 are far reaching. First of all, it focuses on one segment,  
20 the board only, the intermediate appellate court, if you  
21 will, of the system and suddenly creates that as a  
22 constitutional vehicle.

23           What happens to the rest. What happens to the  
24 hearing committee in the Office of Disciplinary Counsel who  
25 were proscribed by Supreme Court order if the board is now

1 the constitutional entity. How does it have jurisdiction,  
2 who has jurisdiction over what and what's independent of  
3 what?

4 The whole system is changed by one simple act  
5 of making the board constitutional. We have very clever  
6 lawyers out there are who represent respondents, and I can  
7 think of a number of novel arguments that I would use were I  
8 representing one of them if I suddenly had a constitutional  
9 vehicle created in the board and I was subject to the  
10 jurisdiction of these others who had been created by prior  
11 court order, but that is only one of two major changes that  
12 this would enact only the system that I think the committee  
13 must focus on.

14 The second and the far more important one is  
15 that we would become the only state in the United States  
16 that have the discipline of lawyers belonging in some body  
17 created other than by the Supreme Court, of the highest  
18 court of that state. In every other state, that's the way  
19 discipline is done.

20 We would change that. You would change that in  
21 such a way as to give the edge to lawyers. You would be  
22 protecting lawyers. And the reason you would be doing that  
23 is because if the lawyer were unhappy with the discipline  
24 that the board handed out, the lawyer would have the right  
25 to appeal to the Supreme Court.

1           If the Office of Disciplinary Counsel, the  
2 prosecutor were unhappy with the results, the Office of  
3 Disciplinary Counsel would have no such right.  
4 Historically, we on the board have been known to be more  
5 gentle with our brethren than has been the Supreme Court.

6           The Stern case that was mentioned by Mark  
7 Sonnenfeld here earlier was an example. There are others.  
8 I have spent five years in hearing complaints and another  
9 three years on this board. There's 78 years in the system  
10 and I can tell you that the system has historically worked  
11 that way.

12           If we do have a record for being a modest state  
13 of lawyer discipline and according to the ABA, we do, then  
14 most of that credit belongs to the Supreme Court and belongs  
15 in the fact that the Supreme Court is the ultimate  
16 disciplinary body.

17           This change, then, would change things in two  
18 very substantial ways; one, by creating a constitutional  
19 entity in the middle of a system that is now working very  
20 well. It raises questions as to whether the whole system  
21 should fall and second, by changing the disciplinary board  
22 from the Supreme Court to the board, I think it weakens the  
23 system or will have the effect of weakening the system.

24           It will go to the benefits of the lawyers whose  
25 type of practice has been subject to discipline in the past

1 and that way work against the public, and the only other  
2 remark I would make with respect to the disciplinary board  
3 is if it is the position of this Committee to address it in  
4 a constitutional way, then for the reasons that Judge Rowley  
5 mentioned with the JIRB, the expansion of 15 from our  
6 present 13 would make sense.

7 We, too, operate in panels of three as does the  
8 JIRB and when that panel operates in a preliminary fashion  
9 to determine whether or not an action should be brought, we  
10 disqualify those three individuals from final resolution of  
11 the matter. So expanding the board in that way would help  
12 us.

13 THE CHAIRMAN: Questions? Lois?

14 REPRESENTATIVE HAGARTY: Thank you. Mr. Mundy,  
15 you have described what I think most of us who have followed  
16 the JIRB and the Attorney Disciplinary Board, accurately as  
17 to our perception of the Attorney Disciplinary Board  
18 functions very effectively. What do you see as the reasons  
19 why that board is so effective and the JIRB is recognized as  
20 so ineffective?

21 MR. MUNDY: We have a far more elaborate  
22 system. Judge Rowley was correct. The system, the JIRB  
23 would benefit from having a two-tiered system which is  
24 really a shortcut and a cheaper way of doing what we have  
25 done. By creating an Office of Disciplinary Counsel, we



1 have a separate prosecutorial arm away from the judicial  
2 arm, and we have a three-tiered system.

3 Judge Rowley's suggestion within the confines  
4 of his budget is to try to address that by creating a  
5 two-tiered JIRB. In either event, I think if the JIRB is at  
6 least expanded to 15 members, they would, at least, have the  
7 same option that we now exercise, and that is to have the  
8 three members, three-member panels, appear at a matter  
9 preliminarily disqualify themselves from hearing the final  
10 adjudication.

11 REPRESENTATIVE HAGGARTY: Just as followup, are  
12 there any other suggestions as a result of your serving on  
13 the disciplinary board that you could recommend to make the  
14 JIRB more effective?

15 MR. MUNDY: The one I share with respect to  
16 that is this. If it is the mind of this Committee that a  
17 professional does not have the capacity to judge a fellow  
18 professional, that lawyers and judges shouldn't be judging  
19 judges or that lawyers shouldn't be judging lawyers, then I  
20 think this committee should correspondence with the  
21 engineers or architects or doctors --

22 THE CHAIRMAN: You don't see the difference.

23 MR. MUNDY: Because the public is subject to  
24 the ethics of all professionals, and if we are going to say  
25 that only layman or a majority of laymen can effectively do

1 that job, then you ought to do it across the board and you  
2 shouldn't pick out one professional and say it should be  
3 them, only.

4 THE CHAIRMAN: I don't mean to interrupt. Go  
5 ahead, Lois, and I'll respond.

6 REPRESENTATIVE HAGGARTY: That answered my  
7 question.

8 THE CHAIRMAN: I don't see the difference  
9 between architects and how they impact upon good old boys in  
10 Greene County and how lawyers impact upon good old boys in  
11 Greene County.

12 REPRESENTATIVE HAGGARTY: How about doctors?

13 THE CHAIRMAN: I am asking the witness, Ms.  
14 Haggarty. You don't see any difference? Barbers, real  
15 estate people --

16 MR. MUNDY: I would be very suspect if the  
17 lawyer who represented me in trying to buy the house that  
18 was being built treated me in an unprofessional manner. I  
19 would probably expect that the architect who designed the  
20 house didn't know what he was doing and the House was no  
21 good.

22 THE CHAIRMAN: With all due respect, why do you  
23 think the State Senate sent us this Bill with such an  
24 overwhelming vote and changed it?

25 THE WITNESS: I believe that there has been

1 justified criticism levied against the JIRB in the past in  
2 controversial cases where they have said that judges should  
3 not dominate the JIRB. Perhaps there is something to that,  
4 and perhaps by expanding the JIRB and giving more lay  
5 representation which I would favor. And we have lay  
6 representatives on our Disciplinary Board and they function  
7 very effectively in that capacity, having more lawyers and  
8 fewer judges, more laymen, lawyers and fewer judges would be  
9 a more acceptable body to the eyes of the public.

10 But when you say the JIRB is from then on going  
11 to be the Disciplinary Board, actually issue the discipline  
12 and say you are going to put all that in the hands of  
13 laymen, majority of laymen and you are going to give them  
14 the power to issue their own rules and procedures in  
15 addition to that, I think you you have really wakened that  
16 system.

17 It's difficult for a layman to make that  
18 transition. They are not familiar with all the nuances of a  
19 professional. Those lay people who serve on our board work  
20 very, very hard, longer hours than we do, to try to make up  
21 for that. It's very difficult for them, and I think it  
22 would be putting a burden upon them to put them in the  
23 majority.

24 THE CHAIRMAN: Other questions? Dave Heckler,  
25 then and Mike Bortner. We are not going to have time for a

1 lot.

2 REPRESENTATIVE HECKLER: I would ask the  
3 witness just one question. Would it be fair to say that  
4 your opinion would be that Senate Bill 1, whatever  
5 amendments we consider so far as the JIRB is concerned, the  
6 amendment you would like to see is just removing all  
7 reference to the Supreme Court Disciplinary Board and let  
8 that go as it has under Supreme Court authority.

9 MR. MUNDY: That's the position of the  
10 Disciplinary Board.

11 THE CHAIRMAN: Mike Bortner.

12 REPRESENTATIVE BORTNER: I have a number of  
13 questions. I won't ask them all. I just hope we have an  
14 opportunity to take this subject up again. I think there's  
15 a lot of issues raised today that I'd like to get more  
16 information on and have discussed among the members of the  
17 committee.

18 THE CHAIRMAN: Any further comments? Jerry  
19 Birmelin?

20 REPRESENTATIVE BIRMELIN: You are going to  
21 continue hearings on this Bill?

22 THE CHAIRMAN: We are going to move forward on  
23 this legislation before we leave for the summer recess. I  
24 will discuss the logistics of that question with our staff  
25 and with Nick Moehlmann and respond to you in a day or two

1 or three. I have politely requested after each witness,  
2 that our members feel free to discuss with our witnesses  
3 from the bar association from Philadelphia, Pennsylvania,  
4 Mr. Surrick, Mr. Mundy, and I had mentioned Mr. Jones, Judge  
5 Rowley, we have been discussing this for quite some time.

6 The essence of what we have here is pretty much  
7 what Jubelirer sent to us 16 months into the last session.  
8 I don't have much contrition of not bringing that one  
9 forward. There are a lot of legislative or political  
10 expeditions that have heeded his advance.

11 That's something we saw in March of last year.  
12 We have really been looking at it for over a year. To  
13 specifically get to your question, within the next week or  
14 two, we are probably going to have a committee meeting and  
15 see what the committee wants to do with this particular  
16 proposal.

17 So in response to you, yes, we will have a  
18 meeting. We will have amendments prepared and we will  
19 probably have a vote, but I want to move some kind of effort  
20 to modify the JIRB and to take care of questions that have  
21 been raised. Along with Mr. Bortner, I have other questions  
22 and I don't have the answers and I am smart enough to know I  
23 only have one vote.

24 I am not going to live or die on whether this  
25 prevails or doesn't prevail. The only thing I feel very

1 strongly about is what Mr. Kosinski alluded to earlier in  
2 his remarks. I don't think we need a gubernatorial  
3 commission added, and I think that's our responsibility,  
4 along with Mr. Greenleaf, O'Pake, Hoehlmann and ourselves  
5 among our committee, to send something worthwhile to the  
6 floor.

7 Thank you very much. Meeting adjourned.

8 PREPARED STATEMENT OF THE LEAGUE OF WOMEN

9 VOTERS OF PENNSYLVANIA

10 The League of Women Voters of Pennsylvania is  
11 pleased that the House Judiciary Committee has scheduled a  
12 public hearing on judicial reform. We appreciate the  
13 opportunity to present our views on S1 (805).

14 The League believes that the issue is  
15 accountability. Our perception of public issues and  
16 governmental processes has grown out of our conviction that  
17 government at all levels must be accountable to citizens.  
18 In Pennsylvania, that is not now the case. The Judicial  
19 Branch of government maintains its own rules and regulations  
20 and is less accountable to the public than the Executive and  
21 Legislative Branches.

22 We believe it is important to restore public  
23 confidence in the judicial system. News reports of alleged  
24 judicial misconduct do not destroy trust in the system. But  
25 allegations and investigations that are met time after time

1 with silence, we believe, steadily erode the confidence of  
2 the public.

3 In addition, knowing there is an excellent  
4 chance that no public report of allegations of misconduct  
5 will be forthcoming does not build public trust nor ensure  
6 ethical behavior.

7 S1 (805), the proposed constitutional  
8 amendment, would make government a more open process by  
9 requiring public financial disclosure and ending the  
10 domination of the judicial disciplinary board by lawyers and  
11 judges. We support the requirement that justices, judges,  
12 and justices of the peace provide no less financial  
13 information than members of the legislature. The League  
14 also supports the provision requiring a lay majority on the  
15 Judicial Conduct Board, a provision ensuring more public  
16 participation.

17 We believe that in its expenditure of public  
18 funds, the judiciary should be held no less accountable than  
19 the other branches of government. We support the provision  
20 giving the Auditor General authority to audit the  
21 expenditures of the state courts.

22 Some say there is no public outcry for judicial  
23 reform. But the issue is not a simple one. The average  
24 citizen, perhaps, is too easily intimidated by what seems a  
25 gargantuan task. We believe that a vote for an open,

1 responsible, and ethical government can be easily understood  
2 by citizens. As public confidence in the judicial system  
3 increases, citizens will be appreciative of lawmakers who  
4 took action to build a more accountable and effective  
5 judiciary. Sl (805) is an excellent place to begin.

6 (Whereupon, at 10:50 a.m., the meeting was  
7 adjourned.)

8 I hereby certify that the proceedings and  
9 evidence are contained fully and accurately in the notes  
10 taken by me during the hearing of the within cause, and that  
11 this is a true and correct transcript of the same.

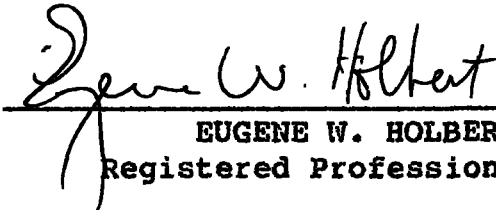
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EUGENE W. HOLBERT, CP  
Registered Professional Reporter

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MALONE REPORTING  
EUGENE W. HOLBERT  
135 South Landis Street  
Hummelstown, Pennsylvania 17036