

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Judicial Reform

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HOUSE JUDICIARY COMMITTEE'S
SUBCOMMITTEE ON COURTS

Majority Caucus Room (140)
Main Capitol Building
Harrisburg, Pennsylvania

Thursday, July 14, 1994 - 9:30 a.m.

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BEFORE:

Honorable Frank Dermody, Subcmt. Majority Chairman
Honorable Kathy Manderino
Honorable Chris R. Wogan

Honorable Mark B. Cohen, House Majority Whip

Honorable Dan Clark, Subcmt. Minority Chairman
Honorable Andrew J. Carn
Honorable Harold James
Honorable Albert Masland

KEY REPORTERS

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X

ALSO PRESENT:

**Karen Dalton, Counsel of House Judiciary Cmt.
Bill Kent, Asst. Dir. of Legal Research Office
John Fulton, Research Analyst**

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1 CHAIRMAN DERMODY: I would like to call
2 to order this Subcommittee on Courts Hearings on
3 Judicial Reform.

4 Before we get stated, I would like to
5 have the Members that are here who are present
6 please introduce themselves. Starting on my
7 right here.

8 REP. COHEN: Representative Mark Cohen.

9 REP. CLARK: Representative Dan Clark,
10 the Republican Chairman of the Subcommittee.

11 CHAIRMAN DERMODY: Frank Dermody from
12 Allegheny County.

13 REP. MADERINO: Kathy Manderino,
14 Philadelphia County.

15 CHAIRMAN DERMODY: I want to thank you
16 all for coming this morning. And before we
17 begin, I would also like to thank the Chairman
18 Tom Caltagirone, the Joint Chairman of the House
19 Judiciary Committee. He was very helpful to the
20 Subcommittee in arranging these hearings and has
21 been very supportive in getting these hearings
22 set up for the summer and what we will be doing
23 in the fall.

24 We are very happy to be here this
25 morning. It will be the first of several

1 hearings on the subject of judicial reform in
2 Pennsylvania that the Subcommittee will be
3 conducting during the next few months.

4 During today's hearing, we will be
5 hearing from a number of distinguished observers
6 of our judicial system, who have consented to
7 share their considerable expertise with the
8 Subcommittee. On behalf of the Subcommittee
9 Members, I wish to thank Pennsylvania Common
10 Cause, the Pennsylvania League of Women Voters,
11 and Pennsylvanians for Modern Courts for
12 agreeing to appear before us.

13 This afternoon, we will be hearing from
14 two other important sources of knowledge about
15 the judicial system, namely the State Court
16 Administrator and the Senior Staff Attorney for
17 the National Center for State Courts.

18 There can be little doubt that the need
19 for judicial reform must be thoroughly evaluated
20 at this time. Over the past decade, numerous
21 proposals designed to bring about reform and
22 improvements to the judicial system have been
23 offered by a variety of sources. Some of these
24 proposals may be accomplished by legislative
25 action. Others may be achieved only through

1 actions taken by the Supreme Court or through
2 Constitutional amendments. All of these are
3 under consideration.

4 In preparation for the Subcommittee's
5 efforts this summer and fall, we have examined
6 several studies of the judicial system conducted
7 during the past decade, such as the Pomeroy
8 Committee Report and the Beck Commission Report.
9 As a result, we have a list of some 30
10 recommendations which will be studied by Members
11 of the Subcommittee. That list of court reform
12 proposals includes the following major
13 categories: Court Administration, The Role of
14 Advisory Bodies in Court Administration,
15 Financial Accountability, Supreme Court Practice
16 and Procedure and Judicial Selection and
17 Retention. In other words, we are not
18 approaching this effort in a vacuum, but are
19 making ourselves fully aware of all of the valid
20 and significant proposals for court reform that
21 have been offered in recent years. Furthermore,
22 we welcome and invite the new ideas and
23 proposals that, I am certain, will be offered by
24 the speakers today and at subsequent hearings.

25 We have also examined the various

1 court reform bills that have been introduced in
2 both the House and Senate over the past two
3 legislative sessions. During the 1993-1994
4 session, at least 32 such bills were introduced
5 and at least 28 bills were introduced during the
6 1991-1992 session. For the most part, these
7 proposed bills fall into the same categories
8 that I cited earlier.

9 One additional major source of
10 information will be available to the
11 Subcommittee will be relevant court practices
12 and methods in other states, which we might wish
13 to emulate in Pennsylvania. These sources
14 include the National Center for State Courts,
15 which is on our agenda today, as well as the
16 American Judicature Society and the American Bar
17 Association, among others.

18 I wish to emphasize that this effort by
19 the Subcommittee on Courts will result in more
20 than a report and yet another set of
21 recommendations for future consideration. It is
22 my intent as Chairman of the Subcommittee that
23 the end result will be the introduction of
24 legislation in order to provide the types of
25 improvement that can be accomplished through

1 legislation. I know that I speak for the other
2 Subcommittee Members when I say that our intent
3 is to fashion a more efficient and accountable
4 court system -- one that is better able to
5 administer justice to the citizens of this
6 Commonwealth.

7 Representative Clark, do you have any
8 opening comments?

9 REP. CLARK: Thank you, Chairman
10 Dermody.

11 Many of us in the state legislature
12 have been concerned for a number of years about
13 the geographic representation by our appellate
14 courts. That geographic representation question
15 or problem is also raised in a grand jury report
16 which was issued as a result of the
17 investigation of Justice Rolf Larsen. So I
18 think that many of the members are affixed to an
19 idea that all parts, in all regions and all
20 areas of the Commonwealth of Pennsylvania,
21 should be represented on our appellate courts.
22 The question is: how do we select those
23 members, whether we do regional merit selection
24 or whether we do regional election?

25 And if we do decide on a regional

1 election basis, then, of course, we need to look
2 at and implement some reforms on how those
3 elections are conducted, how candidates can
4 raise money for those elections and how to
5 conduct themselves during the process which they
6 must go through in order to receive the number
7 of votes necessary to win an election.

8 So we need to look at the hard truths
9 of running for election, what you need to do to
10 get elected, and we need to reform that system
11 if we are going to elect judges on a regional
12 basis. And if there are too many pitfalls in
13 that, then we need to also consider merit
14 selection by regions. So I am glad that -- and
15 that was recently on the board, so to speak, or
16 on the agenda, for the House to consider, but
17 didn't get to before the summer recess.

18 So I thank Representative Dermody for
19 putting that on the agenda this morning because
20 of its timeliness and, hopefully, there will
21 still be some time, maybe when we come back in
22 September and October, to consider those issues
23 and to find out the correct path and get a
24 consensus on where we want to go.

25 Thank you.

1 CHAIRMAN DERMODY: The first witness
2 this morning is Susan Mitchell from Pennsylvania
3 Common Cause.

4 Miss Mitchell.

5 MS. MITCHELL: Chairman Dermody,
6 Chairman Clark and distinguished Members of the
7 House Subcommittee on the Courts, I thank you
8 for this opportunity to share some of the views
9 of Common Cause/Pennsylvania on the need to
10 reform this state's judicial system. My name is
11 Susan Mitchell. With me is Barry Kauffman, our
12 Executive Director. I serve as the Chair of the
13 Judicial Reform Project Team for Common Cause/
14 Pennsylvania, a public interest advocacy
15 organization representing 13,000 Pennsylvanians
16 that for 20 years, as of yesterday, has been
17 active in promoting openness, accountability and
18 responsiveness in governmental institutions.

19 Few issues have captured our
20 organization's interest as much as improving the
21 courts of Pennsylvania. On previous occasions
22 we have testified before various bodies on
23 court-related issues. And, certainly, there are
24 several avenues to pursue in making the
25 judiciary more effective and more responsive to

1 the demands of democracy. To gain a clear
2 understanding of what lies at the heart of our
3 current judicial crisis, we can reflect on the
4 warning of Lyman Patterson who stated in The
5 Profession of Law: "The fundamental problem is
6 this: a judge exercises more power with less
7 accountability than any other official in our
8 society. A recognition of the judge's lack of
9 accountability does not constitute an indictment
10 of either judges or the legal system, but it
11 does mean that effective and competent judges
12 are essential to the administration of justice
13 in our society."

14 And by the way, that particular idea
15 was also reflected by Warren Hatch yesterday in
16 an interview with the National Public Radio
17 System on the confirmation hearings.

18 Common Cause has supported a dual
19 approach to judicial reform in Pennsylvania --
20 preventative and corrective. Earlier in this
21 session, the corrective aspect was addressed
22 when the Pennsylvania General Assembly approved,
23 and the voters ratified, a constitutional
24 amendment which was designed to discipline
25 errant judges. But, we still have a seriously

1 flawed method for selecting judges. It seems we
2 have gotten the cart before the horse. A system
3 that helps us to select the best individuals to
4 serve as judges obviously would diminish the
5 need for discipline and removal.

6 Therefore, the most essential and most
7 significant improvement which can be enacted is
8 the proposal to replace an elected appellate
9 judiciary with one whose members are appointed
10 on the basis of merit.

11 The arguments supporting merit
12 selection are compelling. It is the only system
13 that seeks candidates solely on the qualities
14 for being an ideal judge -- intelligence,
15 experience, integrity, effectiveness, and
16 temperament. It also is probably the best
17 system for broadening representation on the
18 court. An effort to achieve diversity
19 recognizes that, while formal education in the
20 law may not vary much from school to school, the
21 living experiences by which that learning is
22 filtered and reflected may vary greatly.

23 Merit selection supports the mission of
24 the judiciary and enhances its credibility,
25 because weighing appeals calls for great depth

1 of understanding, and great skill in reasoning
2 and debate. When properly constructed, it
3 should assure the highest standards of ethics --
4 a court which is shielded from the influence of
5 money, power, and political cronyism.

6 There seems to be only one compelling
7 argument against merit selection. Some
8 observers and legislators insist that an elected
9 judiciary empowers the people. That sounds
10 reasonable. That sounds sincere. You can
11 almost smell the apple pie and hear the brass
12 band in the background.

13 Elections are appropriate for selecting
14 legislators and executives whose jobs are to
15 mold and execute public policy. Through debate,
16 compromise and salesmanship, they balance the
17 needs of a diverse and ever-shifting public.
18 But the combat skills necessary to survive
19 elective politics do not translate well to
20 attracting and promoting the best judges. Their
21 role requires them to be reflective and
22 analytical, capable of making decisions based on
23 constitutionality and on fairness, and not on
24 popular opinion. The nature of their role in
25 the democratic process requires that they be

1 somewhat removed from the public's passions of
2 the moment. The obvious example comes from the
3 civil rights movement. If federal judges would
4 have had to face the electorate in the South
5 during the 1950s and 1960s, would they have had
6 the courage to do what was right?

7 A further problem is that voters only
8 have choices among a very narrow field of
9 candidates. These candidates are most often
10 chosen and nurtured by political organizations.
11 Their preferred qualities most often include
12 party loyalty, a track record of being a "team
13 player", and those imprecise attributes which
14 make a person capable of winning an election.
15 They are groomed by spin doctors and ad
16 agencies, and funded by sources which should
17 make any reasonable person squeamish.
18 Democratic elections generally produce the best
19 form of representative government, but election
20 of judges, obviously, is not designed to advance
21 the people with the best judicial
22 qualifications.

23 Imagine an exit poll during a judicial
24 election. "Excuse me sir. Would you tell us
25 what influenced your choices in this election?"

1 "Certainly. I voted for Catherine
2 Grace. She recently published an excellent
3 article on Trends in Environmental Law. Also,
4 she's quite a Constitutional Scholar -- it's
5 clear her perspectives on Article 1 Section 28
6 could create a dynamic shift in civil rights
7 cases...."

8 Of course, I'm kidding about that
9 scenario. Our pollster would get this, instead:
10 "I voted for the guy on the top of the list -- I
11 think his name starts with L. I'm fairly sure
12 he's the one with the TV ads where he's driving
13 a tractor. He says he's tough on crime. That's
14 good enough for me."

15 That candidate -- now Judge
16 What's-his-name/starts-with-L-I-think -- was
17 chosen because of his love of justice, or his
18 hard work in becoming a knowledgeable,
19 compassionate jurist. He had the top ballot
20 position. His fundraisers and media consultants
21 found and funded the right hooks, and gave him
22 name recognition. Lets not forget the 1987
23 Philadelphia judicial elections in which three
24 judges, who had been suspended for many months
25 for allegedly accepting inapprorpirate gifts in

1 the Roofers Union scandal, were reelected. They
2 apparently were reelected because their names
3 sounded familiar -- never mind that it was
4 because of the notoriety they achieved through
5 scandal.

6 Furthermore, the public appears to be
7 quite uneasy with, or at least uninterested in,
8 electing judges. In the 1993 general elections,
9 a hotly contested, high profile, race for the
10 state Supreme Court, only 35 percent of
11 Pennsylvania's registered voters participated.
12 Compared with the 83 percent turnout in the 1992
13 elections in which the President and all state
14 representatives were chosen, it appears that
15 voters do not feel prepared to fulfill their
16 role in judicial selection.

17 Obviously, we cannot and will not
18 accept a judiciary based on form rather than
19 substance. Respect for governance, and respect
20 for the law, falls when citizens lose their
21 confidence in those who create, enforce and
22 interpret the law.

23 There is some debate over what
24 components and what approaches would provide the
25 best system of merit selection. Some of our

1 perspectives are as follows:

2 1. The nominating process should be as
3 open as possible. If we are, indeed, anxious to
4 include "citizen empowerment" in judicial
5 selection, we must include knowledgeable
6 laypersons on the selection panel, and we must
7 require demographic balance on the nominations
8 commission. The commission structure must
9 overcome the power of politics. Our hope, under
10 any system, is that there is assurance that
11 appellate judgeships are not, in any way,
12 patronage positions.

13 2. The nominating panel's criteria for
14 choosing judicial nominees should be well
15 established and well known to the public. The
16 criteria should include demographic balance as
17 one significant factor in selection.

18 3. A reasonable period of public
19 comment on nominees before confirmation is
20 appropriate. An open process should also
21 include frequent reports to the public on
22 nominees and their qualifications, the status of
23 vacancies and pending vacancies, and the general
24 deliberations of the commission.

25 4. Confirmation by a simple majority

1 of the Senate is preferable to a supermajority
2 requirement. We believe that the appropriate
3 time to screen out any candidate whose
4 credentials are less than superb, is during the
5 nominating commission's review process.

6 5. There must be realistic, built-in
7 safety valves to prevent prolonged vacancies on
8 the bench in cases where the Governor and the
9 Senate are at odds over a particular nominee or
10 group of nominees.

11 Merit selection in other states has
12 given us ample evidence that this is an
13 appropriate and effective reform. Common Cause,
14 therefore, has asked the Governor to call the
15 General Assembly back for a special session this
16 month to deal with this long overdue
17 constitutional amendment.

18 We recognize, of course, that even with
19 strong arguments favoring merit selection, and
20 public frustration with the current court, there
21 is no assurance that this measure will pass in
22 the immediate future. For this reason, we would
23 like to briefly comment on other reform
24 proposals.

25 Please understand, it is the position

1 of Common Cause that other reforms are not
2 substitutes for Merit Selection, but are
3 complimentary to that change. Merit Selection
4 remains the ultimate goal.

5 Common Cause has long supported
6 campaign finance reforms, such as those now
7 before the House in HB-2873. By restricting the
8 amount of money individuals and PACs can give to
9 judicial candidates, by limiting the amount of
10 money a judicial candidate can spend on a
11 campaign, and by providing partial public
12 financing to encourage a broader field of
13 candidates, we can enhance the fairness and
14 quality of judicial elections. Furthermore,
15 public financing of judicial campaigns would
16 remove at least some of the uneasiness and
17 suspicion that blight the current system -- a
18 system which sees lawyers and their high-powered
19 clients making large contributions to judges'
20 political campaigns, and then showing up in the
21 courtrooms of those same judges. Very public
22 disclosure of private campaign funding sources
23 might greatly increase the public's confidence
24 in blind justice.

25 This particular reform can be more

1 easily accomplished, because it requires only
2 the modification of the state Election Code. It
3 is an essential action to take while merit
4 selection is still pending.

5 Administrative improvements within the
6 court system has also been a topic of recent
7 commentary, particularly in light of
8 recommendations by the Grand Jury convened to
9 hear the issues involving Justice Larsen.
10 Reform efforts ought to include ongoing
11 discussions of court administration by experts
12 convened to discuss and recommend reform within
13 a context of wide participation and public
14 review. A good starting point would be for the
15 Subcommittee to conduct a thorough analysis of
16 various studies which have already been
17 commissioned -- the Beck Commission Report, the
18 Pomeroy Commission Report, the Senate's "The
19 Image of Justice" Report, the Committee of 70
20 Report, and the Larsen Grand Jury Report --
21 especially since they often reach similar
22 conclusions.

23 Your draft report on court reform
24 proposals, for example, is an excellent
25 beginning. Common Cause/Pennsylvania supports

1 many of its recommendations.

2 There is a concern over a lack of
3 documentation and written procedures for some
4 critical Supreme Court activities. It is our
5 understanding that some changes in this area are
6 already underway -- particularly with regard to
7 the system for determining which appeals to
8 hear, for allocatur petitions, and the potential
9 for abuses that can come with large unvouchered
10 expense accounts. We strongly urge that the
11 Larsen Grand Jury recommendations be given
12 serious consideration, and we hope that momentum
13 is not lost before the task is completed.

14 Common Cause/PA urges this panel to
15 move forward as boldly as possible on the issues
16 of Judicial Reform. Our strongest
17 recommendation is that the state legislature act
18 decisively on merit selection, and present a
19 carefully-crafted proposal to the voters in
20 1995. The legislature also should take decisive
21 action on campaign finance reforms which will
22 improve judicial elections until we achieve a
23 responsible system for merit selection.
24 Improvements in the courts' administrative
25 processes and accounting activities would

1 increase the effectiveness of the courts as well
2 as improve public perceptions of the judicial
3 branch's integrity.

4 The quality of justice is greatly
5 influenced by the quality of Justices. We have
6 recently witnessed some painful,
7 faith-destroying disclosures about our courts.
8 We have had absolute, irrefutable proof that our
9 current system does not inspire confidence. We
10 have evidence beyond a reasonable doubt that
11 major reforms are long overdue.

12 This is a time for legislative courage,
13 for legislative responsibility, for taking a
14 stand in support of the best interests of the
15 public. We hope that efforts toward real
16 judicial reform will move ahead with swiftness
17 and sincerity.

18 Thank you.

19 CHAIRMAN DERMODY: Thank you. Just a
20 few questions.

21 Representative Manderino.

22 REP. MANDERINO: Thank you.

23 Miss Mitchell, the Common Cause
24 Judicial Reform Committee, who is on the
25 committee, what is the makeup of your

1 membership?

2 MS. MICHIGAN: Primarily, our
3 membership actively is based, about half of them
4 are members of the State Government Board.
5 There are attorneys, as well as laypeople.
6 There are people whose primary concern is in the
7 best interests of justice, whether it comes from
8 the perspective of a trial attorney or a person
9 who just simply read enough newspaper reports to
10 realize that something needs to be done.

11 REP. MANDERINO: I mean, is it a large
12 committee, is it a working committee?

13 MS. MITCHELL: No.

14 REP. MANDERINO: I don't know how the
15 Common Cause is structured.

16 MS. MITCHELL: There are seven active
17 members on the committee now. Generally, we
18 meet in conjunction with the Board, we have
19 frequent telephone calls. Often, there is an
20 issue that requires response. Letters are made
21 and we work with the executive committee on
22 forming position papers.

23 REP. MANDERINO: And then how does a
24 position such as the Common Cause supports merit
25 selection or any of these other reforms, how

1 does that conclusion get arrived at by your
2 organization?

3 MS. MITCHELL: Sometimes it is a
4 reactive to a piece of legislation opinion.

5 REP. MANDERINO: I mean, is it like a
6 board of directors, is it a survey of all the
7 members of Common Cause? That's more what I am
8 asking.

9 MS. MITCHELL: Yes, it is a
10 recommendation committee to the State Governing
11 Board. The State Governing Board takes the
12 position, the project teams make recommendations
13 to the Board, and the Board votes.

14 REP. MANDERION: One of your comments,
15 when you were discussing the values of merit
16 selection, is that you said it shields judges
17 from various, what I guess I could call,
18 downfalls. But one of the terms that you used
19 is, it shields them from political cronyism,
20 which I think is your way of saying, if I can
21 paraphrase, from political influence, is that a
22 correct ...

23 MS. MITCHELL: Yes, that would be fair.

24 REP. MANDERINO: And then my question
25 is, many of the critics of a selection process

1 say that that is a naive point of view and that
2 you are naive to be thinking that there won't be
3 politics involved in a selection process. And I
4 guess I want to throw that out to you and ask
5 you to respond. I am sure you have heard that
6 argument before.

7 MS. MITCHELL: Yes. And, frankly, we
8 are in Pennsylvania, the land of politics. It
9 is hard to keep politics out of anything, from
10 the selection of school board members, whatever.

11 But our feeling is that the committee
12 has a very serious responsibility in getting a
13 nominations commission that is as far removed
14 from politics as usual, as possible. And
15 reading different drafts of the bill, the
16 Governor likes one person and the court
17 nominates one person and whatever. Most of
18 those drafts come close to finding a way to get
19 ordinary citizens who don't have a vested
20 interest in a particular party, a particular
21 political theory. It can't be done absolutely,
22 but we certainly would like to see some system
23 for removing politics, the process, as much as
24 possible. Certainly, it would be less political
25 than it is now.

1 MR. KAUFFMAN: May I just add
2 something. One thing our board has struggled
3 with, even since before the Beck Commission, in
4 dealing with merit selection, is, who picks the
5 pickers? And, what is the composition of the
6 commission?

7 Even all the drafts which we have
8 currently supported, we still struggle with that
9 problem and still aren't completely comfortable
10 with the various commission compositions.

11 We think this Committee certainly ought
12 to look at some other states which have
13 commissions. Some of them have a mandatory
14 requirement, by law schools being in some of
15 their commissions and things of that nature.

16 So I would strongly encourage you to
17 look at how other commissions are constructed in
18 other states and see if there are any creative
19 ways to broaden the membership beyond the
20 traditional caucus leaders picking various
21 members out of the commission.

22 REP. MANDERINO: And my last question
23 goes to another comment you made about voters
24 not feeling fully prepared to fulfill their role
25 in judicial selection elections and you used an

1 example of the voter turnout, etc.

2 MS. MITCHELL: Yes.

3 REP. MANDERINO: I have my own theories
4 as to why I think that's true. And I do think
5 that's true. But I am interested in hearing
6 your theories of why you think that is true.
7 And how do you respond to critics who say, well,
8 then, the solution is not to change the process
9 from an elective one to a selective one, but
10 rather to allow judges to talk about issues or
11 allow judges to talk more about things so that
12 people can know more information about them.

13 MS. MITCHELL: I think most of the
14 anecdotal evidence -- you know, there are
15 certainly a lot of people who go to the polls to
16 vote for a particular candidate for Senate, for
17 President, for Governor. I don't think I have
18 ever met someone saying I am going to go to the
19 polls because I think this person should win a
20 judgeship.

21 In terms of the rest of your question,
22 I am not sure. I really am not. It just seems
23 to me that when you put a judge on the spot --
24 Well, frankly, we do have information about
25 judges' positions, at least on specific issues.

1 You know, the National Rifle Association and the
2 National Right to Life Committee, whatever.

3 Often, special interest groups will
4 give candidates' positions on specific issues,
5 but that leads to one-issue voters and I am not
6 sure that that is at all in the best interests
7 of justice. I think that many of the issues of
8 the judiciary are so esoteric, I am not sure
9 that the entire electorate would be interested
10 and willing to listen to long-involved
11 explanations. Although, the recent hearings on
12 Judge Byer, I personally find very interesting
13 and I think some people do, but, perhaps, most
14 don't.

15 REP. MANDERINO: Thank you, Mr.
16 Chairman.

17 CHAIRMAN DERMODY: Representative Jim
18 Clark.

19 REP. CLARK: Your perspective back here
20 on page five, you talk about: number two, a
21 criteria which should include demographic
22 bounds.

23 My question is, your proposals for
24 merit selection, would they guarantee a
25 geographic bounds on the court and would rural

1 Pennsylvanians, with the largest rural
2 population of any state in the nation, be able
3 to participate in your appellate court system?

4 MS. MITCHELL: I hesitate to use the
5 word guarantee, because certainly if there is
6 great inequity in credentials, geography can't
7 be the deciding factor.

8 Personally, as a person who spent 20
9 years living on a farm five miles outside of the
10 borough of Clarion, Pennsylvania, I think rural
11 Pennsylvania needs its interests. But judges
12 are not chosen to represent a geographical
13 population. They are chosen to represent the
14 best interests of the nation and the best
15 interests of the Constitution. On the other
16 hand, when certain documents need to be filed in
17 person, people from Erie or Williamsport or
18 Scranton are at a disadvantage.

19 REP. CLARK: My understanding is the
20 judges do not represent the regions from where
21 they come. The purpose of that is to bring
22 their environment, their upbringing, their
23 values, those items and those basics to the
24 Supreme Court as a way to interject those in
25 decision making.

1 MS. MITCHELL: Certainly.

2 REP. CLARK: They don't represent. You
3 know, that's one of the myths. Well, they will
4 represent to their district and then that has
5 never been a question of people who are
6 interested in having geographic bounds. I think
7 that we all have to maybe admit or examine that
8 people are reared different, depending on where
9 they are from. You appreciate that from your
10 upbringing.

11 So when people counter that with
12 saying, well, they don't represent, we don't
13 want people to represent various regions. And
14 that is true. However, we do want the
15 upbringing, the rearing, and those environmental
16 factors to come in as a consideration, to be
17 brought forth on the bench for input into any
18 decisions. Does the Common Cause agree with
19 that?

20 MS. MITCHELL: Certainly. Or, our
21 position is that, diversity, in its broadest
22 sense, has to be looked at.

23 And you are right, a person's
24 background and experience doesn't make them
25 necessarily read the law differently, but the

1 thinking process is different, based on their
2 background and experience. But we are talking
3 about diversity in its broadest sense to make
4 the court less like the people that come from
5 the same cookie cutter.

6 REP. CLARK: Okay. I am not going to
7 get a guarantee out of you, but I would like you
8 to take that back to the board and look at the
9 guarantee and when you talk about diversity,
10 make that on a regional basis.

11 Thank you.

12 CHAIRMAN DERMODY: Representative
13 Cohen.

14 REP. COHEN: Thank you.

15 Does this Common Cause believe there
16 are any differences between democratic judges
17 and republican judges?

18 MS. MITCHELL: I don't think we have
19 ever taken a position on that.

20 REP. COHEN: Well, I am not asking if
21 you could formerly take a position. I guess, do
22 you personally believe that the person's party
23 affiliation to the judge has any bearing on how
24 he or she may vote?

25 MS. MITCHELL: Well, cross-filing of

1 judges, there should be a belief that there is
2 not a difference.

3 Could I approach it from a different
4 aspect?

5 A person who is enthusiastically
6 democratic, enthusiastically republican, may
7 hold a set of beliefs or come from a frame of
8 reference which is different than members of the
9 other party.

10 REP. COHEN: You do think that when
11 William Cleckner (phonetic) replaced George Bush
12 as President of the United States, that is going
13 to lead to any change in the direction of the
14 judiciary, or that everything really remains the
15 same?

16 MS. MITCHELL: I haven't a clue.

17 REP. COHEN: You don't have any
18 knowledge of whether the judiciary changes in
19 democratic or republican administrations?

20 MS. MITCHELL: Well, I recall, when
21 Justice Blackman was first put on the bench,
22 again, here is strict constructionist and we
23 predict that he will be just like that and he
24 was not. So, certainly, a president who is
25 selecting a person for a political appointment,

1 on a federal bench, assumes that he is getting a
2 particular frame of reference and a particular
3 future, but there is not a guarantee with that.

4 REP. COHEN: Have you ever heard of Sol
5 Wachtler?

6 MS. MITCHELL: No.

7 REP. COHEN: If I identify him as the
8 former Chief Justice of the New York Court of
9 Appeals, would that bring back knowledge of who
10 he is?

11 MS. MITCHELL: Is he the one that left
12 the court under shame because of involvement
13 with stalking a woman?

14 REP. COHEN: I am sorry, with ...

15 MS. MITCHELL: Involvement with
16 stalking a woman, is that ...

17 REP. COHEN: Yes.

18 MS. MITCHELL: Yes. My recollection,
19 he was one of the last elected judges.

20 REP. COHEN: He was also picked by a
21 merit selection panel to serve as Chief Justice
22 of the Court of Appeals. In New York, he was
23 widely viewed as one of the outstanding justices
24 in the legal profession. There is an excellent
25 article, Vanity Fair, demonstrating his numerous

1 speaking engagements before judges all over the
2 United States at the time he was stalking his
3 victim.

4 How he could be cited, is it either an
5 example of merit selection, that is how he got
6 the Chief Justiceship, or is it an example of
7 election basis, depending on one's preferences?

8 But certainly the merit selection panel
9 in New York in 1985 that recommended him made a
10 mistake. How do we stop merit selection panels
11 from making mistakes?

12 MS. MITCHELL: I wish I had that
13 answer. I wish I could find ways to keep any
14 people in the position of responsibility from
15 making honest human errors.

16 You know, in that particular case, the
17 voters made a mistake by selecting him in the
18 first place. The merit selection panel,
19 perhaps, made a mistake by looking at his
20 judicial qualifications and not for his personal
21 life. And there is a great difference there. I
22 don't know if it is possible, constitutionally,
23 to have a system where you investigate a person
24 so thoroughly and so seriously that no one could
25 pass muster.

1 REP. COHEN: You just said that other
2 states are happy with merit selection and they
3 are satisfied with it. What information do you
4 have to that effect?

5 MS. MITCHELL: There was a Committee 70
6 Report.

7 MR. KAUFFMAN: The American Judicature
8 Society has done extensive studies in that. And
9 it is my recollection, in one of the most recent
10 studies noted, that no state which has
11 transferred from elections to merit selection in
12 the past century has ever reverted to elections
13 again.

14 REP. COHEN: Would that be an example
15 of the power of legal profession?

16 MR. KAUFFMAN: I am sure that may have
17 played a role in it, but I can't say what all
18 the reasons are. I can't answer that question.
19 It would be good to contact the American
20 Judicature Society and see if they have a basis
21 for that.

22 REP. COHEN: And, finally, to what
23 degree does merit selection differ, as you see
24 it, from the federal system? Is it basically
25 the same as the federal system?

1 Senator Bortner, who is in the House,
2 said flatly in the House debate: merit selection
3 is precisely the system that the federal
4 government has used for the past 200 years. Do
5 you agree with that?

6 MS. MITCHELL: No, I disagree very
7 strongly with that. It is an appointed system
8 that is based heavily on politics rather than
9 the qualities of the candidate. Certainly, no
10 president would be seriously considering someone
11 who is absolutely unfit for the bench. But what
12 we are looking for is a panel, as I say, are
13 outside the political process, who will choose
14 judges on the basis of their merit and not on
15 anything that is massive political favoritism.

16 REP. COHEN: Thank you very much.

17 CHAIRMAN DERMODY: Representative Carn.

18 REP. CARN: Thank you, Mr. Chairman.

19 I am very interested in finding out how
20 Common Cause feels about the voters themselves.
21 Are you saying that you don't think that voters
22 are smart enough to select good judges?

23 MS. MITCHELL: I think it has nothing
24 to do with intelligence.

25 REP. CARN: What is it?

1 MS. MITCHELL: I think the primary
2 thing is that the average voter doesn't have
3 access to adequate information to make an
4 informed decision.

5 REP. CARN: Is the issue, access to the
6 information so that they can make wise
7 decisions?

8 MR. MITCHELL: Access to more
9 information would be an improvement, but I don't
10 think it would be necessarily the best and most
11 important. Certainly, there is some information
12 available that the League of Women Voters has
13 information in the local newspapers, the Bar
14 Association rates candidates and often that is
15 published in a local paper. But I think that
16 these issues that are decided by -- anything,
17 appellate judge, are probably beyond most
18 people's interests.

19 REP. CARN: So why do you think most
20 Americans don't do it in the first place? Does
21 Common Cause have a view of that? Because I am
22 just looking at the purpose of your
23 organization: looking for open and accountable
24 and responsive government. It seems to me that
25 you are discounting the ability of the voter. I

1 am just trying to get a feel where Common Cause
2 is coming from.

3 MR. KAUFFMAN: Mr. Carn, if I could
4 just kind of briefly?

5 I think Common Cause has infinite
6 wisdom, and faith and wisdom in the electorate,
7 that's why we are one of the public, and
8 state's, lead organization in advocating an
9 issue of a referendum for the public.

10 However, as I think as we stated in our
11 testimony, the very nature of the role of the
12 judiciary is so different from that of the
13 legislative and executive branch that it
14 requires a different methodology for selection.
15 We would never -- I can't ever imagine any
16 circumstances under which Common Cause would
17 ever advocate merit selection for legislators or
18 for the executive branch. That is a wholly
19 appropriate role there. But it either needs to
20 be distanced between the passions of the moment
21 of the judiciary.

22 The nature and the role of the
23 judiciary is so different from legislators, the
24 types of skills needed, that voters just
25 basically seem to be disinterested. As you

1 noted there is a lack of information and to a
2 large degree, that lack of information may be
3 appropriate because judges may have to rule on
4 the very specific issues and there may be
5 nuances of those issues which those may feel
6 they were lied to about. So I don't think a
7 judge can ever be held to a particular position
8 because every issue that comes before the court
9 is going to have its own nuances.

10 REP. CARN: Thank you, Mr. Chairman.

11 CHAIRMAN DERMODY: Any questions?

12 REP. MANDERINO: I want to follow up on
13 Andy's question and ask you for your response,
14 Barry or Susan.

15 My view of, or how I find it easiest to
16 articulate the difference between a political
17 legislative body and a judicial body, is, that
18 I, as a legislator and the way the legislative
19 branch of government is designed, my role is to
20 be directly accountable and responsive to the
21 voters and to the political winds, I guess if
22 you would call it that way.

23 The way in my view the judicial branch
24 of our government is structured, their
25 constituency, if I could call it that way, is

1 much different. Their constituency, in my view,
2 is the laws, as passed by the legislative body
3 which are supposedly expressing the will of the
4 people. But their constituency is to interpret
5 and apply the law to the facts of the particular
6 case in front of them. So their constituency is
7 the law and the facts. And I guess I would ask
8 you to comment on my view, or philosophy, and
9 whether or not that is what you see as the
10 distinction. Or, if that's not what you see as
11 the distinction, how you would articulate it?

12 MR. KAUFFMAN: I think you just have
13 succinctly and very eloquently stated what we
14 just tried to state between the two of us. I
15 think you are right on target there.

16 MS. MITCHELL: Obviously, the judge is
17 more of a technician than a politician. And it
18 is like you couldn't -- it is like voting for a
19 surgeon. You know, you only find the best
20 person, with the best qualifications, and
21 choosing them from a list is not necessarily the
22 best way to do it.

23 REP. CARN: Is that merit selection,
24 choosing them from lists?

25 MS. MITCHELL: I consider it more like

1 a job interview: bring me your references, give
2 me your resume, tell me what you know.

3 REP. CARN: And who is making those
4 decisions? And what are the politics of those
5 persons? Because everybody in life has
6 political actions and reactions, you see. So,
7 again, even if you promote this non-political
8 entity, which I think is impossible, personally,
9 but even if one existed, those individuals are
10 political in themselves.

11 MS. MITCHELL: Yes, but we would hope
12 certainly much less political than the current
13 system.

14 REP. CARN: Let's hope.

15 Again, I am asking the question because
16 you are promoting something that I don't see as
17 fair to the masses of people. I am just trying
18 to understand how you get past hoping.

19 MR. KAUFFMAN: You put your finger on
20 part of the problem with merit selection. Merit
21 selection is not a perfect system unto itself.

22 As I said, the one thing Common Cause
23 has struggled with in advocating this -- Let me
24 go back to a more historical perspective in
25 Common Cause.

1 Back in the late '70s and early '80s,
2 because we did not think that merit selection
3 ever had a chance of passing this legislature,
4 we advocated and devised a system called merit
5 election, sort of a commission and a no bad
6 choices for the electorate.

7 Now, after a further review of that in
8 the last five or six years, we doubt that kind
9 of system is even constitutional. We are trying
10 to find the marriage of the best. Find people
11 that could evaluate candidates on their merit
12 and then allow election. I doubt that kind of
13 system would be constitutional. But we share
14 your concerns about the formulation of a
15 commission and it is something we continue to
16 struggle with in making recommendations of how,
17 who picks the pickers, what is the best way to
18 form that commission.

19 CHAIRMAN DERMODY: Thank you very much.

20 MS. MITCHELL: Thank you.

21 CHAIRMAN DERMODY: The next witness
22 this morning is Wincy Peirce from the League of
23 Women Voters.

24 Miss Peirce.

25 MS. PEIRCE: Thank you for inviting the

1 League of Women voters of Pennsylvania to
2 participate in this hearing on court reform
3 proposals. I have here my formal name, Winifred
4 Peirce, and I speak on behalf of all our members
5 in local Leagues across the state. I would like
6 to comment briefly on some of the court reform
7 proposals listed for consideration.

8 And this is based on a draft of
9 proposals that was sent to me by Mr. Dermody's
10 office last week.

11 However, the main thrust of the
12 League's testimony will concern our support for
13 changing the way Pennsylvania's judges are
14 selected.

15 Regarding judicial administration, the
16 League's position statement on judiciary reads,
17 in part:

18 The League of Women voters supports a
19 unified court system.....and the Chief Justice
20 of the Supreme Court, supported by an adequately
21 staffed administrative office, should be
22 responsible for its administration.

23 We have no comment on the specific
24 proposals regarding administration of the
25 Supreme Court.

1 Our support is suggested improvements
2 to administration of the lower courts, such as
3 the establishment of minimum standards for local
4 court systems, is based on the League's
5 historical concern for equal justice under the
6 law for all people. For this reason, we also
7 support state funding of all courts in the
8 unified system. To quote from the Beck
9 Commission Report, page 120, "the quality of
10 justice a person receives should not depend on
11 residence. Yet in many Pennsylvania courts
12 services are dependent on the funds available to
13 those courts and are, therefore, neither equal
14 nor uniformly adequate."

15 Obviously, the first step toward
16 implementation of state funding should be a
17 codification of exactly what is included in the
18 unified court system. Also, in regard to
19 administration of the lower courts and of
20 support agencies and staff, the League
21 recommends the following:

22 - Clearly defined areas of
23 responsibility assigned to the Administrative
24 Office of Pennsylvania Courts (AOPC), the
25 president judge and the court administrator.

1 - There be increased administrative
2 support by the AOPC, including regular and
3 timely procedural audits and corrective action
4 where necessary; and

5 - Mandatory instruction by the
6 Commonwealth for court administrators.

7 Regarding financial accountability, the
8 League believes that Pennsylvania deserves a
9 judiciary that abides by a code of ethics and is
10 accountable to the public for disclosure of
11 personal finances and conflicts of interest.
12 Based on that position, we have repeatedly
13 stated our support for financial disclosure
14 requirements for judges that are at least as
15 stringent as those for other government
16 employees.

17 The League cannot comment specifically
18 on suggestions regarding Supreme Court practice
19 and procedure, such as the allocatur process.
20 However, one of our basic concepts is that
21 government should be open and accountable to the
22 public; the citizens have a right to know about
23 the actions of all its branches. When the U.S.
24 Supreme Court is in session, in addition to
25 covering decisions that are made, the media

1 report frequently on cases that have been
2 appealed to the court and on whether or not
3 those cases have been accepted for review. Our
4 own Supreme Court would do well to follow that
5 example by reporting frequently on appeals
6 proposed, pending, and accepted or rejected.
7 Recent events, including the report of a special
8 grand jury, have given the public an impression
9 of a state supreme court that operates in an
10 atmosphere of secrecy. Openness about the
11 court's activities could be very helpful in
12 restoring public trust in our highest court.

13 We come now to the final section,
14 Judicial Selection and Retention. I will
15 comment on some of the specific proposals, but
16 first must say that the League of Women Voters
17 continue to support the merit selection of
18 judges, as it has done since 1948. Merit
19 selection was proposed by both the Pomeroy and
20 Beck Commissions and, over the years, has gained
21 the support not only of the League and other
22 public interest groups, but a long, long list of
23 individuals, organizations and companies that
24 have come to believe that judges should be
25 removed from partisan politics. The testimony

1 that follows paraphrases statements made to
2 other committees of the General Assembly, to
3 individual legislators of both houses, to the
4 Governor - and to the general public through the
5 media.

6 The League was founded almost 75 years
7 ago, after passage of the nineteenth amendment,
8 to educate newly-enfranchised women on the
9 issues of the day so that they could cast an
10 informed vote. And that has been our mission
11 ever since -- the informed participation of
12 citizens in government. The point is stressed
13 as an answer to some who have criticized the
14 League's long-standing support of merit
15 selection because it would "take away the power
16 of the people to choose their judges." Our
17 position is that, under the present system, it
18 is virtually impossible for voters to have
19 sufficient data about judicial candidtaes -
20 particularly those running for the appellate
21 courts - to be able to cast an informed vote.

22 The process of choosing judges by
23 partisan election presents many problems.
24 Meaningless and uninformative campaigns,
25 conducted solely for maximum name exposure, are

1 not much help to the voter faced with a long
2 list of candidates about whom he or she knows
3 little or nothing. A judge, by the very nature
4 of the job, should be someone who, in reality
5 and appearance, is independent from partisan and
6 political considerations. This is difficult to
7 achieve when judicial candidates must seek
8 partisan endorsements, support from special
9 interests, and political contributions to fund
10 the enormous costs of a statewide campaign.

11 In early 1993, nominating petitions
12 were filed by 24 candidates planning to run for
13 election to Pennsylvania's three statewide
14 courts. In addition, five judges and one
15 Supreme Court justice filed for retention on the
16 appellate courts after adding those names to the
17 list of candidates for the courts of common
18 pleas, district justice and traffic courts,
19 voters were faced with a long list of potential
20 jurists, about most of whom they knew little or
21 nothing.

22 The parties decided which candidates
23 they would endorse, giving guidance of a sort to
24 voters, but telling them virtually nothing about
25 the candidates' qualifications to hold judicial

1 office. Members of special interest groups
2 favored one candidate or another based on a
3 perceived bias toward one side of an issue or
4 issues, but this was guesswork at best, since
5 judicial candidates are quite rightly prohibited
6 from discussing matters that might come before
7 them.

8 Other voters may have made their picks
9 by starting at the top of the list (why else do
10 we have a "lottery" for a ballot position?), or
11 by not starting at the top, or by choosing women
12 candidates over men, or vice versa. Some always
13 vote for (or against) any candidate who is from
14 Pittsburgh or Philadelphia. What most cannot
15 do, even if they wish to, is cast a truly
16 informed vote based on the qualifications of the
17 candidates for judicial office, particularly at
18 the appellate level.

19 Merit selection of judges was
20 recommended in the forties by a national bar
21 commission and has been adopted by a majority of
22 states since that time.

23 And this repeats some of what Common
24 Cause said.

25 None of these states has reverted to

1 partisan election of all their judges. And the
2 principle has been endorsed by The American
3 Judicature Society.

4 The League believes that merit
5 selection would be more democratic than partisan
6 election of judges by voters with insufficient
7 information to make informed choices. We
8 sincerely hope that legislation very similar to
9 that introduced in the 1993-94 session will be
10 passed by the General Assembly as soon as
11 possible. It is past time for Pennsylvania
12 voters to be given a choice as to how their
13 judges should be selected. The League of Women
14 Voters asks that legislators vote to let the
15 people decide.

16 Until a merit selection referendum
17 reaches the ballot - and that date has been set
18 back once again by the General Assembly's
19 failure to act on the legislation - some of the
20 proposals for improving the present system of
21 judicial selection deserve consideration.

22 - Requiring voters to vote for judicial
23 candidates by name, and not by voting for a
24 straight party ticket. This should, as stated
25 in the Beck Report, underscore the significance

1 of the judicial election in the minds of voters
2 - particularly since judicial candidates,
3 including those for the statewide courts, appear
4 on the ballot in municipal election years.

5 - Requiring all candidates to reveal
6 publicly information about contributors is part
7 of campaign finance reform legislation strongly
8 supported by the League. The requirement should
9 certainly apply to judicial candidates as well,
10 for as long as they must compete in partisan
11 elections.

12 - The suggestion that each registered
13 voter should receive a written pamphlet
14 containing information about judicial candidates
15 is certainly one the League could support as
16 part of our mission to promote the informed
17 participation of citizens in government. At
18 present, the League does publish voter Guides,
19 which I hope you are all familiar with. The
20 Guides include biographical information and a
21 statement of qualifications submitted by each
22 candidate, as well as his or her answer to a
23 question posed by the League. (In 1993, that
24 question was, "What specific suggestion[s] do
25 you have for improving the administration of

1 justice in Pennsylvania?") In the interest of
2 fairness and because of newspaper space
3 limitations, we impose a strict word limit on
4 the candidates' replies. And it is quite short.
5 A pamphlet mailed to voters might allow them
6 more space for stating their qualifications. If
7 this suggestion were implemented, the League
8 would be pleased to help in any way possible, if
9 requested.

10 - All appellate court justices should
11 be selected on the basis of merit. And we all
12 wholeheartedly agree.

13 The last proposal on the list, that
14 Supreme Court justices be selected by region, is
15 the only one that does not cite Pomeroy, Beck,
16 or the Grand Jury as a source. The League
17 believes that regional selection is a bad and
18 unworkable idea. To begin with, judges should
19 not represent particular voters or groups of
20 voters, and an impartial statewide judiciary
21 should not include judges representing different
22 regions of the Commonwealth.

23 It is basic to our system that voters
24 elect legislators whom they believe will
25 represent their interests when making laws or

1 setting policy, but judges must be accountable
2 only to the law and the Constitution. If by
3 regional "selection" the proposal means regional
4 "elections," there are even more problems, the
5 principal one being compliance with the Voting
6 Rights Act. Dividing the state into roughly
7 equal geographical districts would almost
8 certainly trigger a challenge based on the "one
9 person, one vote" principle.

10 Finally, regional selection would
11 address only the lack of geographic diversity on
12 the Supreme Court. States that have instituted
13 merit selection of judges report that, over
14 time, the system has resulted in greater
15 diversity on the bench and greater opportunity
16 for women and minorities. And none of the
17 states that have instituted merit selection of
18 judges has returned to a partisan election
19 system. Certainly, most of Pennsylvania's
20 judges are well qualified, trustworthy, and
21 committed to the law. But there have been
22 exceptions - and the League believes that a good
23 merit selection system would lessen even the
24 possibility for wrongdoing or lack of
25 impartiality by reducing the influence of

1 politics and money on the process.

2 And I have included, with my testimony,
3 a copy of the League's position paper on
4 selection of judges. Thank you.

5 CHAIRMAN DERMODY: Thank you very much.
6 Would a few questions be all right?

7 MS. PEIRCE: Sure.

8 CHAIRMAN DERMODY: Representative
9 Cohen.

10 REP. COHEN: Do you see any difference
11 between democratic judges and republican judges?

12 MS. PEIRCE: That is a difficult
13 question. I listened to Common Cause's answer
14 to that.

15 Certainly, when the Administration
16 changes in Washington, the President does make
17 appointments to the courts and sometimes changes
18 the makeup of courts, the district courts and so
19 forth. There should not be a difference. I
20 hope there is not.

21 REP. COHEN: Do you believe there is,
22 though, whether you hope or not?

23 MS. PEIRCE: There may be. And if
24 there is, that is not a good thing. They should
25 not be deciding anything on the -- because of

1 set of beliefs. And I agree that that --

2 REP. COHEN: They should not be
3 deciding --

4 MS. PEIRCE: I think party membership
5 implies a set of beliefs.

6 REP. COHEN: Okay. And you believe the
7 basic beliefs about the direction of society is
8 irrelevant to serving as judge, is that your
9 basic belief?

10 MS. PEIRCE: That what?

11 REP. COHEN: Is it a basic belief in
12 society, as how society ought to be governed, is
13 irrelevant to the qualification for judge, is
14 that your basic belief?

15 MS. PEIRCE: No, I don't think that
16 that's true.

17 REP. COHEN: I agree with you, that
18 that's what party affiliation generally means.

19 MS. PEIRCE: I don't think that's true.

20 The point is, I think, and it has been
21 stated before, that a judge is obliged to
22 interpret the law and the law is made by
23 legislators who do reflect the interests of
24 their party and the people who vote for them.
25 But the judge has to interpret the law and the

1 Constitution.

2 REP. COHEN: Then do you believe there
3 is any discretion involved in the judges'
4 interpretations of the law, or that it is merely
5 just a technical thing that if you had a hundred
6 experts, they would all interpret the law ...

7 MS. PEIRCE: No.

8 REP. COHEN: ... in the same way?

9 MS. PEIRCE: No. I am sure there can
10 be different interpretations.

11 REP. COHEN: And do you believe the
12 interpretations differ by party affiliation?
13 That like of a hundred democrats, 95 democrats
14 might interpret it one way or a hundred
15 republicans might interpret it another way?

16 MS. PEIRCE: No, I don't think that is
17 true.

18 REP. COHEN: Okay.

19 You talk about the influence of special
20 elections on the political process.

21 MS. PEIRCE: Special ...

22 REP. COHEN: I am sorry, special
23 interests. I won in the special elections so I
24 guess I am more conscientious of them.

25 The League of Women Voters, every year,

1 have very commendable public rallies of your
2 major financial supporters and your fund raising
3 dinners and you list this corporation and that
4 corporation and you know huge numbers of
5 corporations and the other groups. Major
6 financial supporters of these groups, in other
7 contexts, are generally considered special
8 interest. But, obviously, the League of Women
9 Voters does not feel it is being compromised by
10 its support of 200 major corporations in
11 Pennsylvania. Why do you think candidates would
12 be? If those same organizations contributed to
13 the League of Women Voters every year, will you
14 publically disclose contributors?

15 MS. PEIRCE: Are you still talking just
16 about judicial candidates?

17 REP. COHEN: Yes. For instance,
18 General Motors, any corporation, AMP. If AMP
19 gives a thousand dollars to the League of Women
20 Voters and an executive gives a thousand dollars
21 to a judicial candidate, why is the judicial
22 candidate compromised but the League of Women
23 Voters is not compromised?

24 MS. PEIRCE: In fact, the corporations
25 do not give money directly to the League. We

1 solicit support for educational projects and
2 they are sometimes funded with grants from
3 companies. And then in the case of judicial
4 candidates, most of their campaign funds come
5 from major law firms and individual lawyers who
6 are going to appear before them. It is not
7 usually corporation support, it is not a variety
8 of special interests, as you might get with the
9 legislators. It is more direct than that.

10 REP. COHEN: Would the League --

11 MS. PEIRCE: And I think not
12 appropriate.

13 REP. COHEN: Well, one thing I am
14 curious about: in various selection advocacies,
15 nobody talks about like what happens, say, if a
16 lawyer works for a corporate law firm for ten
17 years and earns an average of \$300,000 a year,
18 which is not an off-the-wall, unbelievable
19 salary -- for some firms, that would be a low
20 figure -- and then that law firm appears before
21 him on the court, would you favor that law firm
22 being disqualified to appear before the judge,
23 or it may be the judge ought to be disqualified
24 from voting in any case involving the law firm
25 with which he has previously worked?

1 MS. PEIRCE: I don't know whether that
2 would be grounds for him to recuse himself or
3 not. I am not that well trained in the law.

4 REP. COHEN: Well, do you think he --

5 MS. PEIRCE: It sounds as though it
6 might be appropriate.

7 REP. COHEN: Under the Judicial Canons
8 of Ethics, there is no requirement of
9 disqualification in that case. So the question:
10 should there be disqualification in that kind of
11 a case?

12 MS. PEIRCE: It sounds that way to me.
13 Again, it is not something I am really qualified
14 to speak on.

15 REP. COHEN: Okay. Thank you very
16 much.

17 CHAIRMAN DERMODY: Miss Peirce, thank
18 you very much.

19 Representative Masland and
20 Representative James have joined us.

21 And the next witnesses this morning are
22 Lynn Marks from Pennsylvanians for Modern Courts
23 and Judge Spaeth, the former Judge from the
24 Pennsylvania Superior Court.

25 HON. EDMUND SPAETH, JR.: Good morning.

1 We very much appreciate the chance to appear
2 before you. We have been present during periods
3 that you have been conducting and welcome the
4 questions and the public discussion that is so
5 important an issue.

6 Lynn and I, with the Chair's
7 permission, would rather like to divide our
8 presentation.

9 If I may, I would like to speak largely
10 on the basis of personal experience, why I
11 believe so deeply that the appellate judges
12 should be selected on a merit selection basis.
13 And, as I say, I welcome any questions. And
14 after we concluded that, then if Lynn could
15 respond to some of the items on the very
16 extensive agenda that the Committee is
17 considering.

18 You will find, with the material that
19 PMC has submitted to you, a statement, a
20 transcript of testimony that I gave earlier to a
21 Senate committee under the Chair of Senator
22 Lewis. I won't repeat that because it would be
23 wearisome to you if I were to read a statement.
24 But, as I say, I would like to explain the
25 position of Pennsylvanians for Modern Courts and

1 of many other organizations and individuals in
2 support of merit selection.

3 I have been down this road. I ran in
4 three statewide elections for the Superior
5 Court; the first one was in 1973. I had been
6 nominated by Governor Shapp to a vacancy on the
7 Superior Court. And when I ran for the primary
8 election, I was defeated in the primary.

9 Subsequent to inquiry, lead to the realization
10 by the democratic party leadership that, because
11 of its failure to run really any campaign,
12 voters thought that my republican opponent was a
13 democrat so I didn't get nominated.

14 As it happened, I continued to serve on
15 the Superior Court, the balance of the term to
16 which I had been appointed, and another vacancy
17 arose and Governor Shapp appointed me to that so
18 I ran in another primary; this time, the party
19 had a higher-ran and a much more effective
20 campaign and I was nominated and then as a
21 democratic candidate for the Superior Court, and
22 then ran in the fall election and was elected,
23 and as it happened, by a substantial margin.

24 Now, it would be nice, perhaps, and
25 some of the questions from the Committee

1 indicate that, perhaps, I ought to think that my
2 election was an exercise of popular will. That
3 the people had decided, oh, yes, we want Spaeth
4 to be elected to the Superior Court.

5 I know that that is not the case.

6 When I ran, it is a fine exercise for
7 anybody who has a high opinion of himself to run
8 for appellate judge. I used to go to audiences
9 and say my name is Edmund Spaeth and I am
10 running for the Pennsylvania Superior Court. Of
11 course, they were polite. And I would say, is
12 there anybody here who knows me? Well, usually
13 there wasn't, except, perhaps, the local
14 democratic leader, who had just met me and
15 introduced me, and maybe a few lawyers.

16 And then I would say, is there anybody
17 here who knows anything about the Superior
18 Court? And almost nobody did.

19 So I was able to take the opportunity,
20 at least to inform the audience about the
21 responsibilities of the Superior Court and why
22 it was a very important court and, therefore,
23 why it really was important to give some thought
24 as to who should be on that court. But I
25 couldn't tell them anything about why I should

1 be on that court, rather than my opponent.

2 I remember particularly clearly, but it
3 was not unique. It was this woman was just
4 particularly articulate. After one of these
5 meetings, she came up to me and said, well,
6 Judge Spaeth, you said that you couldn't tell
7 what positions you would take, why did you say
8 that?

9 And I explained to her that a judge's
10 responsibility is to decide each case according
11 to the particular facts of that case and
12 according to the particular principles of law
13 applicable to those facts; and the judge only
14 does that after listening very carefully to the
15 lawyers on both sides.

16 I said, how would you feel, madam, if I
17 had said that I thought that, in child custody
18 cases, the mother should always get the child,
19 or at least in most cases?

20 I said, how would you feel if a friend
21 of yours, who was a father, came before me as a
22 judge and you knew that that was my position?

23 How would you feel if you were accused
24 of a crime and I had just told you, in this
25 meeting we had, that I thought practically

1 everybody accused of the crime was guilty and
2 ought to go to prison for long terms?

3 I said, you must understand that I
4 can't express a position which commits me ahead
5 of time.

6 Well, she said, I do understand that,
7 but isn't that the responsibility of every
8 judge? Why is that a reason why I should vote
9 for you?

10 Now, of course, there is no answer to
11 her and I had to tell her that I had no answer
12 to give her.

13 Representative Clark -- I am sorry he
14 is not here -- asked a most pertinent question,
15 which I will take the liberty of responding to,
16 because I am sure it is a question that others
17 of you have in mind. And Representative Cohen
18 just asked a very similar question.

19 It isn't that the people are not smart
20 or don't have access to information about the
21 judge, it isn't a situation that can be cured by
22 giving them access: it is an inherent problem
23 in the judicial system.

24 When somebody runs for Governor, or for
25 congress -- you have been through it, I am

1 telling you things that you know better than I
2 -- but the statewide candidates are Governor,
3 Senator, Attorney General and Treasurer. When
4 somebody runs for Governor, not only do the
5 people expect the candidate to say but they are
6 entitled to have the candidate take positions:
7 I am for lowering the budget, I am for greater
8 support for free enterprise, what have you, all
9 sorts of issues; that is exactly what a judge
10 cannot do, or should not do.

11 A candidate for judicial office should
12 not -- and most of them don't -- tell the voters
13 what other people running for statewide office
14 do and, therefore, it isn't a question of the
15 voters not being smart enough or it isn't a
16 question somehow the media or other
17 organizations not getting the information before
18 the voters, the problem is you can't give the
19 voters information on judicial positions because
20 to do so would be improper. And, therefore,
21 when I ran, when anybody runs for statewide
22 judicial office, they are presenting themselves
23 to the voters as somebody that the voters can't
24 know, really.

25 So how do the voters choose?

1 Well, I found out how they choose. And
2 it is no great secret. They choose by chance.
3 I lost my first election because they thought
4 that my opponent was the democrat and not I. My
5 second election, I did very well in areas that
6 liked my German name. I won the election, not
7 because the voters thought that I was the better
8 of the two people running. I won the election
9 because there was a very rigorous mayoral
10 election going on at the same time in
11 Philadelphia. The democratic party in
12 Philadelphia put me on their sample ballots. I
13 came out of Philadelphia, I think it was
14 something like a 300,000 lead and my opponent
15 couldn't top that. He was no more defeated on
16 merit than I won on merit. He was a victim of
17 political chance. I was a beneficiary of
18 political chance.

19 Now, it has been suggested that,
20 anyway, at least the people choose. Maybe it
21 isn't a knowing choice, but at least they are
22 choosing and that merit selection somehow will
23 take away the people's choice. Well, believe
24 me, they are not. They don't know who they are
25 voting for and, again, it is not because of

1 ignorance or lack of information, not a bit of
2 it. They cannot know. It is inherent.

3 So who does choose?

4 Well, I found out who chose. I was
5 chosen by the Governor and then the democratic
6 party supported me, and that is the way it
7 works.

8 In an elected system, somebody who
9 judge is somebody who has two attributes,
10 neither of which has anything to do with
11 judicial qualifications. The first attribute is
12 that the judge has political friends of
13 importance, and the second attribute is that the
14 judicial candidate has the ability to raise
15 money, a lot of money.

16 The last couple of judicial appellate
17 races, over a million dollars was raised by the
18 candidates. Where does the money come from?

19 Well, it comes principally from
20 lawyers.

21 Now, one thing that is distressing to
22 me about these statements, and it is
23 distressing, is that some will believe that I am
24 criticizing members of the bench as though they
25 were incompetent, as though they were political

1 tools, as though they were dependent upon
2 contributions that they received. I am not
3 doing that.

4 I was a judge on the Philadelphia
5 Common Pleas Court for nine years, on the
6 Superior Court for 13 years. I was very proud
7 to be a judge. I know many judges. I worked
8 with many judges. Some of them are among my
9 closest friends. I have a very high regard for
10 judges. I know many, many lawyers. Most
11 lawyers are perfectly honorable men and women
12 and when they make a contribution to a judicial
13 candidate, they do it because they want that
14 person elected. They don't expect a quid pro
15 quo. But none of that is the point.

16 The point can be illustrated simply by
17 supposing -- and this happens -- how would you
18 feel if you were before a judge and you knew
19 that your opponent's lawyer had made a
20 substantial contribution? Are you going to ask
21 your lawyer: well, did you contribute to the
22 judge's campaign?

23 And how does the judge feel?

24 Representative Cohen asked a question
25 of recusal. I respectfully disagree with you,

1 sir. The Judicial Canons would require recusal
2 when you had so close an interest. And even if
3 not required, the discrete and careful judge
4 would recuse himself.

5 When you run, you inevitably give the
6 appearance of being partisan. When I ran, I
7 appeared before some non-partisan audiences, but
8 very few. Almost all of the audiences were at
9 functions arranged by the democratic party and
10 my opponent's audiences were almost all
11 functions arranged by the republican party. And
12 that made me very uncomfortable and it makes
13 other judicial candidates very uncomfortable.
14 There is no such thing, or there should be no
15 such thing, as republican or democratic justice.

16 Of course, Representative Cohen, there
17 are differences in political philosophy, but the
18 very fact that we think of a court as a
19 republican court or as a democratic court is
20 most regrettable.

21 I should hope that when it comes to
22 issues of fundamental constitutional nature that
23 there aren't differences. That when it comes to
24 respect for the law that there aren't
25 differences. I should hope that we are not

1 going to decide cases, the validity of a tax
2 assessment, for example, because I am a
3 democratic judge and a democratic party passed
4 it.

5 But the problem is one of appearance.
6 It is not one of what actually happens. It is
7 one of the public having confidence that the men
8 and women on the Bench are impartial and are
9 applying, not individual political prejudice,
10 not favoritism for lawyers who have supported
11 them, but doing their best to decide the case
12 according to the law.

13 Of course, according to the law as
14 interpreted by the needs of society. I would
15 not dream to say that interpreting the law is a
16 matter of some technician lining up. Nobody
17 suggests that, Representative Cohen.

18 And you don't have, you cannot have the
19 appearance, which is just as important as the
20 fact, of true impartiality if you have a judge
21 who has campaigned before partisan audiences,
22 who has gotten to the position by partisan
23 political support, who is funding the campaign
24 by contributions from lawyers, some of whom will
25 appear before the judge; those are fundamentally

1 inconsistent with the appearance of impropriety.

2 And so, in 1986, when my ten year term
3 was over, I was 65 at the time, had I been
4 elected on the retention election, I would have
5 had five more years on the Bench. And I loved
6 being on the Bench. I was President Judge of
7 the Superior Court; I regarded that as a high
8 privilege. But I wasn't going to run for
9 election to continue to have the privilege of
10 exercising that office because I had become
11 convinced that I could not do it in the way that
12 a judge should be selected.

13 Now, of course, that brings me to the
14 question that Representative Clark asked: well,
15 who does select the judges under merit
16 selection?

17 Well, we know who selects them under
18 the present system. Somebody said -- and I
19 think it is perfectly accurate -- that the
20 present system is an exercise of the political
21 backroom masquerading as popular choice.

22 There is no perfect system. To
23 castigate the merit selection system because it
24 isn't perfect is setting up a straw man. Nobody
25 in favor of merit selection suggests it is

1 perfect. The point is, it would be much better.
2 It would be, for one thing, much better than the
3 federal system.

4 The federal system is an appointed
5 system. The federal system would be like merit
6 selection, in that, the Governor, the President,
7 makes the nomination and the Senate confirms,
8 but there the resemblance ends.

9 What saves the federal system is that
10 the appointments are for life tenure; and
11 because they are for life tenure, they are taken
12 seriously. And once appointed, a judge, even if
13 appointed for highly partisan reasons, quite
14 often manifests a sort of independence that a
15 judge should have.

16 Just to take one of the things, I will
17 give an illustration. President Eisenhower is
18 supposed to have said that his nomination of
19 Earl Warren was the worst mistake he made. He
20 had nominated Warren, a distinguished
21 republican, thought Warren would decide cases in
22 ways that the republican party wanted them
23 decided and Warren didn't do that. Once Warren
24 got his life term, he developed an independence.

25 But the merit selection that you are

1 considering, the General Assembly is
2 considering, that we are recommending, is not a
3 life appointment system. It is not a system in
4 which, as in the federal system, the nominations
5 would be made on the basis of politics, as is so
6 often the case. Certainly, politics would be
7 part of the process. Politics should be part of
8 the process. Politics is an honorable and
9 critically important profession. A politician
10 serves the people. A politician learns about
11 what the people need. It is a good experience
12 to have been a politician.

13 The merit selection system that we
14 recommend would, therefore, not exclude politics
15 and it should not exclude politics. What it
16 would do, and what it has not done now, is that
17 it would give weight to judicial temperament,
18 experience, legal qualifications. Now, anybody
19 with enough political clout and enough ability
20 to raise money can run for judge, and do.

21 I have been through some merit
22 selection panels: Governor Shapp. I was first
23 nominated by one: by Governor Scranton. When
24 President Carter made nominations to the federal
25 bench, he voluntarily adopted a merit selection

1 system. He appointed merit selection panels. I
2 was interviewed by two of those. Governor Shapp
3 nominated me on the basis of a merit selection
4 committee. Voluntary, because it was not
5 required by the Constitution.

6 I assure you, a merit selection
7 committee can learn a great deal about people
8 who are suggested to it, or who apply to it, as
9 worthy of nomination to be a judge.

10 What is your legal experience? What
11 sort of practice have you had? How long have
12 you practiced? What are the principal cases
13 that you have argued before the Supreme Court?
14 What civic associations have you participated
15 in? All sorts of things.

16 Now, the experience in merit selection
17 states has been that that process is much more
18 democratic than the present election process.
19 In the first place, a great many highly
20 qualified lawyers, who wouldn't be paid to run
21 for judge in a partisan election but who are
22 eminently qualified, are willing to be
23 considered. They know they don't have political
24 clout, they don't want to raise a lot of money
25 because they know that compromises the judicial

1 independence, but they would make fine judges.

2 Now, the result of that is, you get a
3 much wider pool. And in merit selection states,
4 you get a bench that has a much wider variety of
5 lawyers in practice, in geographical diversity,
6 in gender, and in ethnic background.

7 It is so tiresome. I don't know how
8 many times I have heard it said by opponents of
9 merit selection: all the big law firms would
10 pick the judges.

11 Look at the merit selection benches.
12 They are not big law firm benches. Look at New
13 York, the Court of Appeals, they have a woman
14 Chief Justice. They have judges, they call them
15 there, not justices. They have judges from
16 throughout the state from small practice. Are
17 they a court picked by the giant New York law
18 firms? Not a bit of it.

19 And look at our present bench. It is
20 all Pittsburgh and it is all Philadelphia and it
21 is all white male except for the Chief Justice.

22 So you start out being much more
23 democratic, because you get a much wider pool.

24 Now, do you somehow loose the
25 democratic process because then instead of the

1 person nominated being elected, they are
2 appointed? Not a bit of it.

3 The election process isn't democratic
4 because that is a lottery. But the appointment
5 process is. It is the Governor who chooses from
6 the list and it is the Senate who decides
7 whether or not to confirm. The Governors and
8 the Senators are politicians elected for and
9 accountable to the people. And, furthermore,
10 after that, after the judge has served, if the
11 Senate confirms, there is a retention election.
12 So it is a very, it is a much more democratic
13 process.

14 Is it perfect? Of course, it is not
15 perfect.

16 Would it exclude a powerful politician
17 from saying to the merit selection committee,
18 you know, I want you to consider Ed Spaeth, he
19 has been a longtime supporter of mine? Of
20 course it would and it should not. But what it
21 would ensure is that the people's whose names
22 were submitted to the Governor for submission to
23 the Senate for appointment to the bench would be
24 qualified and would have to demonstrate their
25 qualification by their experience. And when

1 they were appointed, they would not be beholding
2 to anybody for their appointment.

3 I have trespassed on Lynn's time, but
4 forgive me for that, Lynn. And any questions, I
5 would be glad to respond to. I am sure I
6 haven't heard all of them.

7 CHAIRMAN DERMODY: Any questions?

8 Representative Cohen.

9 REP. COHEN: Thank you.

10 You do refer to my questions in your
11 testimony. I would like to see if we could get
12 a clarification.

13 What I had said is that, my
14 understanding of the Canon's Judicial Ethics is
15 that, if there is a large law firm -- and I do
16 not use the word large and I will add further if
17 there is a law firm -- yet, again, I believe it
18 is a large one -- and the judge has been a
19 member of that firm, he is not disqualified from
20 hearing a case argued by a member of that firm,
21 do you disagree with that?

22 HON. EDMUND SPAETH, JR.: Well, it
23 depends on the circumstances, sir.

24 The test under the Canons is whether
25 the judge can preside over the case impartially.

1 Now, that requires not only whether the judge,
2 in fact, would be impartial, but whether both
3 parties and the public will perceive the judge
4 as being impartial. Knowing that, the judge
5 must say to himself, or herself: well, my
6 former partner, Mr. Cohen, is about to argue
7 this case, what will Kathy Manderino, the other
8 sides lawyer, think if I sit on the case? What
9 will the public think if, after I sit on the
10 case I decide in favor of my former lawyer
11 partner? That is the question.

12 REP. COHEN: Do we agree, though, there
13 is no requirement for recusal? The mere fact
14 that a judge is a member, had been a member of a
15 law firm, does not require him to recuse. It is
16 his personal decision as to whether he recuses
17 and there is no requirement to recusal, do we
18 agree on that?

19 HON. EDMUND SPAETH, JR.: No, we don't.
20 There is a difference in the law. The federal
21 recusal standards are different than are the
22 state.

23 Under the Pennsylvania law, it is a
24 personal decision for the judge. Under the
25 federal law, it is an objective test. But, I am

1 unable to accent to your way of stating it
2 because you state it as a general proposition.
3 It should not be stated as a general
4 proposition. It depends upon the facts of the
5 case. I, myself, when I was on the bench, did
6 not hear any cases argued by my former law
7 partners.

8 REP. COHEN: Well, I think you made the
9 right decision, not hearing any cases argued by
10 your law firm. I think that ought to be the
11 general principle, that you do not hear any
12 cases argued by your former law firm.

13 And I would further add that, perhaps,
14 it ought to be a general principle that you
15 don't hear any cases argued by a campaign
16 contributor.

17 HON. EDMUND SPAETH, JR.: I am
18 interested that you raise that question, sir,
19 because I gather from your questions that you
20 are opposed to merit selection and yet the line
21 of reasoning that you are pursuing to me
22 suggests that you should favor merit selection,
23 because merit selection would very much lessen
24 the problems that you quite properly point out.

25 REP. COHEN: Well, it seems to me that

1 under merit selection, what you have is the
2 political process is hidden and that all sorts
3 of things about your life that very few people
4 would have any reason to know, such as what bar
5 committee you served on, where you went to
6 college, who your personal friends are, all of
7 those things, I would assure are generally
8 hidden. That there are not very many -- three
9 hundred or four hundred, maybe -- biographies
10 written of judges of the Supreme Court, let
11 alone the Pennsylvania courts. All of those
12 things that are important in determining who you
13 are and what your experiences are, are
14 determinant, I think.

15 You have talked about the elements of
16 chance in the election process. I would agree,
17 based on your record, that you certainly are
18 qualified to serve on any federal court and I
19 think it was a matter of chance that other
20 people who have other qualifications were
21 preferred over you. I think it is a matter of
22 chance, where one goes to law school, what
23 experience one has, and it is a matter of chance
24 who one marries. And maybe if Miss Rendell did
25 not marry Ed Rendell, she would have been on the

1 district court many years ago. She might have
2 saved a lot of time doing political meetings,
3 she might have put more energy in her work and
4 her general excellence might have been
5 recognized a long time ago. And it is also
6 possible had she not married Ed Rendell, she
7 would never be on the federal courts.

8 And the same thing could be said for
9 the federal court members in the State of
10 Delaware, who were married to a former Governor
11 and a current Senator, who are on the federal
12 courts. Maybe they would have been on the
13 courts many years ago, maybe they never would
14 have been on. I think chance is inherent in
15 life and I don't know any way the chance can be
16 avoided. And I don't think the fact that there
17 are elements of chance in the electoral process
18 thereby discredit the process any more than Miss
19 Rendell or Pierre DuPont's wife or Senator
20 Roth's wife ought to be inherently disqualified
21 by chance they married politically powerful men.
22 But I think it is all chance.

23 HON. EDMUND SPAETH, JR.: Well,
24 certainly, nobody suggests there that merit
25 selection eliminates chance.

1 I quite agree with you, there is a
2 great deal of chance. In fact, after I was
3 appointed to the Common Pleas bench, Anna Gomay
4 (phonetic), a very dear friend of mind, at a
5 dinner that was attended in honor of my
6 appointment, said, I know why Ed Spaeth was
7 nominated to the bench, because he was the only
8 -- republican Governor Scranton nominated me and
9 I was a democrat -- because he was the only
10 white male democrat who wore glasses that the
11 Governor could find.

12 Sure, there is a chance. But the point
13 is, to improve your chances, the point is to
14 maximize the opportunity to have persons that
15 demonstrated character and ability appointed to
16 the bench. Merit selection enormously improves
17 that chance.

18 Partisan election works just the other
19 way. There are splendid judges on the bench,
20 but it is not because of the way they are
21 selected, it is in spite of it.

22 Now, as to your point about secrecy, I
23 am not quite sure I followed. There would be
24 nothing secret about the merit selection
25 process.

1 REP. COHEN: Well, the interviews would
2 be open to the public?

3 HON. EDMUND SPAETH, JR.: No, I don't
4 think the interviews would be.

5 REP. COHEN: Oh. Then why did you find
6 that a secret? Are the resumes all going to be
7 open to the public?

8 HON. EDMUND SPAETH, JR.: If I may,
9 sir?

10 I would assume that the interviews
11 would not be. I have never known a merit
12 selection commissioned to. That might embarrass
13 people who were not picked. But once the merit
14 selection committee nominates the persons, there
15 would be no secrecy and there would be hearings
16 before the Senate. You would have a -- well,
17 the Senate Judiciary Committee would have an
18 opportunity to question the persons nominated,
19 those would be public, they would be comparable
20 to what's going on with the nominee Byer right
21 now. So it would be much more open, it would be
22 much more informative, it would be much less
23 secret than the present system.

24 REP. COHEN: I disagree with those
25 conclusions. But I have no further questions.

1 CHAIRMAN DERMODY: Representative
2 Masland.

3 REP. MASLAND: If I could just briefly
4 comment on Representative Cohen's point. I want
5 to ask a question, I want to back up what you
6 said.

7 I think there is going to be chance,
8 but I think there is a difference between a type
9 of chronic endemic, indefensible chance, which
10 we have in the election system, and a type of
11 calculated -- and I mean that in the positive
12 way -- chance through the merit selection
13 system.

14 People in my county, Cumberland County,
15 Central Pennsylvania, republicans will not vote
16 for a judicial candidate who is a democrat from
17 Philadelphia.

18 HON. EDMUND SPAETH, JR.: I lost
19 Cumberland County.

20 REP. MASLAND: I am sure you did. You
21 probably handled it. But you had a 300,000 vote
22 edge, and that, in my opinion, is wrong. I know
23 there are some proposals which would do a
24 regional merit selection process where we have
25 so many people from Central Pennsylvania, this

1 part of the state. I don't really care what
2 part of the state they are from, as long as they
3 are qualified. And as an attorney, I am not
4 confident in our current system being able to do
5 that.

6 I don't think you can do that when you
7 have people just voting because of somebody's
8 county of residence or because of somebody's
9 registration: that is not an informed choice.
10 And especially so in the judicial situation.

11 And I think that maybe we have to put
12 up with some of that, although as you say, Judge
13 Spaeth, in most federal elections, people know
14 at least something about who they are voting
15 for, they know a little bit about the issues.
16 You can't avoid it somehow. But you are not
17 going to see an informed electorate and that's
18 really the crux of our problem.

19 I was talking with a constituent this
20 morning, who said you are going to have to
21 convince the people, before you take their
22 so-called right to vote away from them, that
23 they cannot make informed choice. And that is
24 an uphill, educational battle which we are going
25 to have to wage, hopefully sometime down the

1 road when we get merit selection on ballot.

2 HON. EDMUND SPAETH, JR.: Well, you
3 know, the point about convincing the people,
4 those who argued that in resisting merit
5 selection, they are protecting the people's
6 right to choose, are making an argument that, I
7 think, is disingenuous.

8 REP. MASLAND: I agree.

9 HON. EDMUND SPAETH, JR.: Let the
10 people say whether they want merit selection.
11 Those who are resisting merit selection are not
12 protecting the people's right to choose, they
13 are defeating the people's right to choose
14 because they are depriving the people of the
15 opportunity of saying, yes, we do want merit
16 selection, or, no, we don't want merit
17 selection.

18 So that, I believe myself, especially
19 based on the overwhelming vote for the reform of
20 the judicial discipline system, that if the
21 people are asked, do they want merit selection?
22 They'll say yes. But my desire is to let people
23 say whether they do or not. And the only way
24 under the Pennsylvania Constitution you can do
25 that is to pass a Constitutional amendment and

1 then put it up to the people. If they say, no,
2 we don't want it, you would not hear me speaking
3 for it. Then the people would have chosen.

4 REP. COHEN: Excuse me, Justice Spaeth.
5 While the federal referendum in 1969, in which
6 the people voted no ...

7 HON. EDMUND SPAETH, JR.: Yes.

8 REP. COHEN: ... and you are speaking
9 for it?

10 HON. EDMUND SPAETH, JR.: I accepted it
11 at the time, but there have been lots of
12 developments since then.

13 REP. COHEN: Would you agree that if we
14 put on the ballot that there will be like a
15 hundred-year limit on this question? Or, are
16 you going to come back and say, well, wait a
17 minute, the people decided seven years ago but
18 you were depriving them of the right to vote
19 again?

20 HON. EDMUND SPAETH, JR.: No, no.
21 Under the Constitution, there is a five-year
22 limit, sir.

23 REP. COHEN: So you would feel no
24 compunction about coming back in five years and
25 asking the people to choose still another time?

1 HON. EDMUND SPAETH, JR.: I don't know
2 what you mean by no compunction. I would
3 certainly be legally free to do it.

4 My point is that I invite the General
5 Assembly to put the choice to the people. And
6 just as all of you do when you run for office, I
7 would be very happy to abide by the people's
8 vote. Those who don't want to give the people a
9 chance to vote, I think are showing a fear of
10 how the people would vote that is inconsistent
11 with their position.

12 REP. COHEN: Now, I think we are
13 showing the respect for the numerous public
14 opinion polls that have shown overwhelmingly
15 that the people don't want it, including polls
16 of my planning constituents, including polls of
17 numerous other constituencies.

18 HON. EDMUND SPAETH, JR.: If you have
19 that confidence in them, then put it up to the
20 people.

21 REP. COHEN: I would, sir, if there
22 would be agreement that the advocacy would
23 cease.

24 HON. EDMUND SPAETH, JR.: It must cease
25 after five years.

1 REP. COHEN: No. But if we are going
2 to keep voting on this every five years, then I
3 don't see any point in playing charades, which
4 we demand repeatedly that the people vote on
5 something.

6 REP. MASLAND: Would you have a vote on
7 one thing and then never vote on it ever again,
8 Representative Cohen? Or, are we not allowed to
9 reconsider votes on the Floor of the House? Do
10 we not consider votes ad nauseam on the Floor of
11 the House? And that's after five minutes.

12 CHAIRMAN DERMODY: We are not going to
13 debate merit selection here today so if you
14 would direct your questions to Judge Spaeth,
15 that is fine. The Members will direct their
16 questions to the witness and then you will have
17 your shots.

18 HON. EDMUND SPAETH, JR.: I was a
19 peacemaker.

20 CHAIRMAN DERMODY: Yeah, keep the
21 peace.

22 Representative Masland, are you
23 finished with your questions?

24 REP. MASLAND: Yes. I don't think I
25 really need an answer.

1 CHAIRMAN DERMODY: Representative
2 Manderino.

3 REP. MANDERINO: Thank you, Mr.
4 Chairman.

5 Judge Spaeth, I would like to ask you
6 to expand a little bit. And you did by way of
7 an anecdote about a woman who came up to you in
8 a political meeting and you tried to explain to
9 her why it is that you felt that you could not
10 talk substantively about either why she should
11 vote for you over someone else or where you
12 stood on a particular issue, on a particular
13 legal theory. But I think that that really is
14 the crux of -- You may not have been here
15 earlier when Representative Carn asked the
16 question. Isn't the real problem access to
17 information about the candidates?

18 And, again, when Representative Masland
19 just raised the question of: if this does get
20 to a ballot, there is really an educational
21 process that is going to have to be done about
22 why it is you can't have information.

23 So I guess I would ask you to explain:
24 is there a way that you think that the public
25 can have more substantive information on which

1 to base a decision that does not compromise
2 judicial integrity?

3 HON. EDMUND SPAETH, JR.: There is a
4 well known opinion by Justice Frankfurter, who
5 said that the way you come out on a problem is
6 depending on how you enter.

7 Now, if you define the real problem as
8 access to information, then that leads you to
9 the conclusion that the way to fix it is to
10 provide more information.

11 My response, Representative Manderino,
12 is that isn't the real problem. It isn't the
13 real problem. Because, as I tried to make clear
14 with that little story, you can't give the
15 voters access to information. If you try to
16 give the voters access to information, you
17 necessarily and inevitably compromise judicial
18 independence. That is raised by one of the
19 proposals that your Committee is considering:
20 lifting the so-called gag rule.

21 Those who say, well, if the voters had
22 more information, then they could make a more
23 sensible choice. Quite often go on to say: we
24 know that judges can't give them that
25 information so let's lift the gag rule and let

1 the judges give them that information. That
2 would defeat the very objective that you are
3 seeking; namely, an independent judiciary.

4 Because, yes, the judges could do it.
5 I could have campaigned by saying -- it is very
6 difficult any way -- but I could have campaigned
7 by saying, well, I do think that most criminals
8 should go to jail for a long time, I do think
9 that most claimants in workmen's compensation
10 cases ought to get compensation, I do think that
11 most corporations should lose in products
12 liability actions. There are lawyers who feel
13 that way, there are political candidates who
14 feel that way. They are entitled to feel that
15 way. And, indeed, their constituents are
16 entitled to vote for or against them, according
17 to that.

18 But a judge can't do that because -- or
19 should not -- because the judges prejudge the
20 very case. The judge then becomes known as --
21 and unhappily some judges are known this way,
22 lawyers happily it is not very many -- but every
23 trial lawyer knows that there are some judges
24 that that lawyer does not want to appear before
25 because, for example, that judge used to be a

1 plaintiff's trial lawyer and no way am I going
2 to get a fair shake for my insurance company
3 client, or just the other way around. So it is
4 not the real problem and you cannot cure with
5 access to information.

6 The only way you can go about picking
7 judges -- and it is imperfect but it is the only
8 way you can do -- is to look and see what sort
9 of people they have been:

- 10 - What have they done?
- 11 - What has their civic life been?
- 12 - What do other lawyers think of them?
- 13 - Are they square shooters?
- 14 - Do they keep their word?
- 15 - Are they oppressive?
- 16 - Are they learned?
- 17 - Are they good lawyers?
- 18 - Are they decent citizens?
- 19 - Have they got a track record?

20 You may make a mistake. Somebody who
21 may look wonderful may turn out not to be a very
22 good judge, but you are certainly improving your
23 chances tremendously.

24 REP. MANDERINO: Thank you.

25 Thank you, Mr. Chairman.

1 CHAIRMAN DERMODY: Judge, I just have a
2 few questions, maybe a few observations, then
3 maybe we will get there.

4 I, too, agree with you. You just
5 mentioned some criteria for selecting judges and
6 of the judges, the types of people that have
7 some of the qualities that you mentioned. And I
8 think you will have to agree with me that
9 several of the judges, for that matter most of
10 the judges that we have elected, the
11 Commonwealth Court, the Superior Court, even to
12 our Supreme Court, have been very good judges
13 and justices.

14 HON. EDMUND SPAETH, JR.: I want to
15 make it very plain, sir, I don't like being put
16 in the position of seeming to criticize my
17 former colleagues.

18 CHAIRMAN DERMODY: I understand. But
19 for what, however the voters did it, they
20 elected people, for the most part, who have many
21 of the qualities that you have talked about,
22 with backgrounds that you have discussed, with
23 the civic organizations and the judicial
24 temperament to do a pretty fine job, however
25 that haplessly came about.

1 The other thing I would like to discuss
2 with you a little bit is, I know you mentioned
3 you were, I guess, a merit selection appointee
4 to the Common Pleas Court bench in Philadelphia.

5 HON. EDMUND SPAETH, JR.: Yes.

6 CHAIRMAN DERMODY: There was a
7 commission appointed to select candidates who
8 were appointed to the Superior Court and then
9 you were selected by that merit selection
10 committee who stood for election. And
11 President Carter, when he was President, the
12 Senators, I guess they set up nominating
13 commissions for appointments to the federal
14 bench?

15 HON. EDMUND SPAETH, JR.: He set up the
16 committees.

17 CHAIRMAN DERMODY: So he participated
18 in those merit selection processes?

19 HON. EDMUND SPAETH, JR.: I was
20 interviewed by those.

21 CHAIRMAN DERMODY: And the Senators
22 that Pennsylvania has right now, Senator Specter
23 and Senator Wolford, they themselves, I believe,
24 have set up -- I know Senator Wolford has --
25 nominating committees ...

1 HON. EDMUND SPAETH, JR.: Senator

2 Welford has, yes.

3 CHAIRMAN DERMODY: ... merit selection
4 committees to interview candidates to make
5 recommendations to the bench, to the federal
6 bench. That commission would be similar, I am
7 not saying exactly, but similar to the
8 commission that would be set up in a merit
9 selection process in the Commonwealth. And I
10 participated in one of those commissions and I
11 am not better because I was selected.

12 HON. EDMUND SPAETH, JR.: No.

13 CHAIRMAN DERMODY: And we mentioned
14 also at one point that you were elected and that
15 you were saying that it was not exactly true
16 that the people, when you say you were elected,
17 the people, that you believe it was a back room?

18 HON. EDMUND SPAETH, JR.: Well, the
19 people elected me.

20 CHAIRMAN DERMODY: I think you
21 mentioned at some point the fact that when you
22 were elected, it was a back room deal, it was a
23 back room commission?

24 HON. EDMUND SPAETH, JR.: No, no, I did
25 not mean that.

1 CHAIRMAN DERMODY: Did I hear that or
2 not?

3 HON. EDMUND SPAETH, JR.: No. You
4 misheard me, sir. No, I was elected, but I was
5 very fortunate because I was ...

6 REP. MANDERINO: He was elected because
7 he was on the same ballot.

8 HON. EDMUND SPAETH, JR.: ... I was the
9 beneficiary of a very large democratic -- People
10 didn't split their ticket in the City.

11 CHAIRMAN DERMODY: There was a mention
12 of a back room in there that I thought --

13 MS. MARKS: Political party endorsement
14 process, I think he was referring to.

15 HON. EDMUND SPAETH, JR.: Yes.

16 CHAIRMAN DERMODY: I guess my point is
17 this: the commission process to me, I have some
18 real problems with, and to me, to be the
19 ultimate back room. It certainly does --

20 HON. EDMUND SPAETH, JR.: Well, let me
21 respond, Mr. Chairman, if I may, to both of your
22 points because they are both very thoughtful
23 points.

24 I do agree that, by and large, we have
25 a qualified bench. Even as it is, it could be

1 better, in terms of regional and ethnic and
2 minority diversity. It is not a representative
3 bench. And the Supreme Court is the clearest
4 demonstration of that. It is a bench that
5 reflects the political powerbase of
6 Pennsylvania. And I am very sympathetic with
7 those legislators who feel that they are frozen
8 out. So it is not a representative bench.

9 Also, while I do agree that, by and
10 large, we have an able bench, I wish to return,
11 if I may, to the importance of appearance and
12 not just fact.

13 I know in fact, because I have worked
14 with so many judges, that they are
15 conscientious, able men and women. The
16 important point is that the public must have
17 confidence in the bench, as qualified and
18 impartial, and to the extent that the public
19 have a perception is correct. To the extent
20 that the public perceives the bench as not
21 chosen because of temperament and learning, but
22 by political chance. That undermines confidence
23 in the public with the confidence in the bench.

24 And that is unfortunate. It is more
25 than unfortunate.

1 And your Committee has had a truly
2 tragic illustration of that where the situation
3 presented by one justice has done enormous
4 damage to the judiciary throughout. Very unfair
5 damage. Why should judge X be regarded with
6 less confidence because of what judge Y has
7 done? But he or she is.

8 Now, the second point that you make is
9 about back room. The merit selection committee
10 would be much less, and I would attempt to make
11 this point responding to Representative Cohen,
12 much more open, much less secret than would the
13 present system.

14 Anybody could apply to, the report
15 would be open, they would report who it was that
16 they had nominated. They wouldn't suggest just
17 one person. You can differ as to whether it
18 should be three, five, seven. But it would be a
19 panel and then the Senators would question and
20 would be entirely within their prerogative to
21 return that nomination to the Governor and say,
22 no, no, we don't think this person is the sort
23 of person we want on the Superior Court. So it
24 would be much more open.

25 I hope I have responded to your

1 question.

2 CHAIRMAN DERMODY: You certainly have
3 and I appreciate your testimony. It is
4 significant.

5 HON. EDMUND SPAETH, JR.: Lynn, curtly
6 in soul that she is, I will quote her. She
7 said, since you have taken so much time, should
8 I just submit my statement in writing? And I
9 think the answer to that is that I have taken a
10 great deal of time, she should submit it in
11 writing.

12 CHAIRMAN DERMODY: We have plenty of
13 time.

14 HON. EDMUND SPAETH, JR.: And while I
15 certainly, I want to respond to whatever
16 questions any member of the panel has, neither
17 do I want to entrench upon the executive.

18 CHAIRMAN DERMODY: I will be very, very
19 quick.

20 REP. MANDERINO: We hear from her all
21 the time.

22 MS. MARKS: That's right.

23 CHAIRMAN DERMODY: On the committees'
24 worth (inaudible), recently is the trend, you
25 are right. At least the topic is tragic. And,

1 clearly, we have seen what damage could be done
2 by one justice to the whole system, to lawyers,
3 to judges, to everyone.

4 HON. EDMUND SPAETH, JR.: Right,
5 correct.

6 CHAIRMAN DERMODY: Unfortunately, I
7 think what we have also learned through the
8 research that began in the impeachment process,
9 well over a year ago, is that merit selection
10 doesn't necessarily create less discipline of
11 judges or fewer impeachments, if you will, in
12 those types of problems. That's unfortunate
13 also. But it has not been the cure. We
14 certainly found that in the federal system and a
15 number of disciplinary cases they have had to
16 deal with and, frankly, the number of
17 impeachments that they have had to deal with.
18 However, it is clear that because of, what, just
19 one person, the whole system, the whole
20 judiciary has been damaged significantly. For
21 how long and how deeply? We don't know.

22 WITNESS: Well, sir, PMC worked very
23 hard and I expect everybody on this Committee,
24 too, because I know the Judicial Discipline
25 Amendment was passed, I think unanimously, or

1 almost so, by the Senate, and it was approved
2 overwhelmingly, eighty-odd-percent by the
3 people. I think there is a little bit of a trap
4 there. I know I have heard some say, well, now
5 that we have got a much better discipline
6 system, we don't need merit selection. And that
7 is ...

8 CHAIRMAN DERMODY: I don't agree with
9 that.

10 HON. EDMUND SPAETH, JR.: ... I
11 suggest, a very serious fallacy. That is like
12 the president of a company saying, well, now
13 that I have revised my personnel department so
14 that I know when to fire somebody, I don't have
15 to worry about their qualifications when I hire
16 them. It is starting at the wrong end.

17 CHAIRMAN DERMODY: I certainly don't
18 mean that. I agree with you.

19 HON. EDMUND SPAETH, JR.: Yes. So I
20 assumed you did.

21 About impeachment and discipline, of
22 course you are quite right. I suppose if you
23 count impeachment proceedings, there are very
24 few, whether under the federal system or an
25 elective system. But impeachment is the capital

1 offense. I mean, they are very rare under any
2 system.

3 I think the important point is that
4 under merit selection, states that have adopted
5 merit selection, the public has been very well
6 satisfied. They have never returned to partisan
7 election. Sometimes I get the feeling,
8 listening to the proponents of not changing,
9 that everybody is out of step except
10 Pennsylvania. I mean, almost every state that
11 has examined the problem has chosen merit
12 selection. Pennsylvania is only one of a
13 handful of states, eight or seven, which still
14 elects all its judges.

15 CHAIRMAN DERMODY: Judge, thank you
16 very much.

17 HON. EDMUND SPAETH, JR.: Thank you for
18 the opportunity.

19 CHAIRMAN DERMODY: And, Lynn, do you
20 want to make ... We have time.

21 MS. MARKS: Do we have a little time?

22 CHAIRMAN DERMODY: Yes.

23 MS. MARKS: I am Lynn Marks, I am the
24 Executive Director of Pennsylvanians for Modern
25 Courts.

1 In addition to Judge Spaeth who is
2 here, our Board's Chair, Ellen Kaplan, is with
3 us, who is the Associate Director.

4 I would like to commend the Committee
5 for holding these hearings and also for the very
6 hard work that you have done so admirably on the
7 impeachment proceedings and will continue to do.

8 Something I would add around
9 impeachment, and I know Judge Spaeth and you
10 were talking about how the focus was really on
11 one justice there, but one thing which I think
12 cannot be overestimated was your Subcommittee's
13 finding, as well as the Grand Jury's finding, of
14 this special list that Justice Larsen kept, his
15 VIP list that he kept, or whatever, of campaign
16 contributors and friends. And the reason that
17 is so significant is, even though only Justice
18 Larsen was found to have kept such a list, that
19 as long as we have a system where judicial
20 candidates, in essence to win must go out and
21 seek contributions and endorsements from lawyers
22 and special interest groups, that the specter of
23 the special list really hovers over each and
24 every judge in Pennsylvania and there certainly
25 is an appearance of that.

1 What I will do, because we have already
2 taken up so much time, is not talk about merit
3 selection but touch on some of the suggested
4 reforms really short of merit selection. And in
5 the wake of the House recess in June, without
6 discussing merit selection, and you all up there
7 understand the reasons for that better probably
8 than I do, but a compelling question is raised,
9 and that is: should reforms of the partisan
10 election process short of merit selection be
11 pursued?

12 And PMC's instinctive response is:
13 absolutely not. Believing, as we do, that this
14 would be akin to treating the symptoms of a
15 fatal disease rather than curing the disease
16 itself. However, we know that they will be
17 discussed and we would like to comment on some
18 of them.

19 Certainly, one of the ones which we are
20 very opposed to is eliminating the so-called gag
21 rule, which Judge Spaeth already talked about
22 and so I won't go into it now, but we do have it
23 in our testimony. If we thought that the
24 advertising was bad in the appellate races in
25 1993, and I think that they were the worst that

1 we have seen, I think they get even worse if we
2 eliminate the gag rule: the judicial candidates
3 touting their positions on capital punishment
4 and guns and assault weapons and abortion and so
5 forth.

6 A suggestion I know has been to have
7 caps on campaign contributions. And while
8 legislation capping contributions to statewide
9 judicial candidates is spatially appealing, we
10 are concerned that the loopholes could strangle
11 its effectiveness.

12 There are obvious legal impediments to
13 imposing caps on any selected group of
14 contributors, such as lawyers. Although I know
15 that there has been one bill introduced in the
16 Senate which just had caps on lawyer
17 contributions. But even if caps were extended
18 across the board, there is no way really to
19 enforce the prevention of people who have hit
20 the maximum level from funneling money to their
21 candidates, to their uncles and cousins and
22 secretaries and so forth.

23 And how would the legislation treat
24 contributions from PACs?

25 Well, donations made through PACs will

1 be quietly used to bypass mandatory dollar
2 limitations on an individual's contributions.

3 While imposing caps will undoubtedly
4 please the traditional deep pockets of judicial
5 election campaigns, particularly since there
6 will be several appellate court races over the
7 next few years, but certainly the candidates
8 themselves will feel otherwise, unless they
9 happen to be independently wealthy or have
10 statewide name recognition. And that's because
11 I don't see judicial races getting any cheaper.

12 Since the costs will probably remain
13 constant, or more so, as media costs rise, the
14 pressure to raise money, if there are caps, it
15 will be raised considerably. Instead of seeing
16 100 people to each contribute one thousand
17 dollars to a judicial campaign, a race with a
18 hundred dollar cap would mean that a judicial
19 hopeful would go out and have to find 1,000
20 people to give a hundred dollars so the pressure
21 would even become more so on people
22 contributing. And for these reasons, PMC
23 continues to believe that judicial campaign
24 contributions should be eliminated and not
25 limited.

1 I am going to just talk briefly on the
2 campaign finance reform for judicial candidates
3 because I know there is going to be a hearing
4 later this summer by other House members dealing
5 with this issue, and while we are not opposed to
6 campaign finance reform, I will limit my remarks
7 to those involving judicial races.

8 We fear that laws providing for public
9 financing will not cure the problems caused by
10 campaign fund raising. That candidates can, and
11 no doubt will, reject public money if they are
12 wealthy or if they have access to special
13 interest contributions. I know I probably would
14 if I were running. But for those who do accept
15 public money, a significant amount of private
16 dollars still must be raised in order to qualify
17 and so there still would be all the current
18 problems that we see in having to solicit money.

19 And, finally, I am not sure that there
20 is even a realistic hope of ample public funds
21 for judicial candidates when the available pool
22 is derived from voluntary taxpayer check-offs.
23 Certainly, the experience of the few other
24 states that have public financing for judicial
25 races suggest that there has not been. But we

1 can discuss that further at another time.

2 Another proposal which is sure to come
3 up is rotating the ballot position of judicial
4 candidates and eliminating county of residence
5 designation on the ballot. Top ballot position
6 and county of residence certainly have no
7 bearing on a judicial candidate's
8 qualifications. The former is purely a function
9 of the luck of the draw and the latter is a
10 factor more within a candidate's control but
11 clearly no more relevant. However, to the
12 extent that these factors may have some impact
13 on who gets elected to the appellate bench, PMC
14 would support changes to the election code that
15 would rotate the position of name and remove the
16 designation of county residence.

17 But I must say that we feel compelled
18 to know that these reforms would leave,
19 completely unchanged, the far more profound
20 influence of political connections and money
21 raising ability in determining who wins
22 statewide elections.

23 We could address more of the suggested
24 reforms, and granted, some might help a little,
25 but we believe they are merely tinkering, and

1 that we have a severe problem and a fundamental
2 problem with judicial campaigns as states have
3 outlined. And, therefore, we are really not
4 really hot on any of these proposed legislations
5 because no hemorrhage can really be stopped with
6 band-aids and we believe many of these are
7 band-aids.

8 We mentioned in the testimony, briefly,
9 about some of the grand jury reports,
10 recommendations. Clearly, it is the prerogative
11 of the grand jury, as well as other branches of
12 government and court reform organizations and
13 concerned citizens, to comment, and even
14 criticize, what are, seem to be weaknesses in
15 court practices and procedure. And, indeed,
16 those appraisals often result in welcome
17 improvements, such as we just saw recently,
18 maybe even last week, when the Supreme Court
19 abandoned the longstanding policy of providing
20 justices and judges with unvouchered expense
21 accounts. However, no matter how glaring the
22 deficiency or on-target the criticism, most of
23 these matters which were mentioned in the report
24 involving the inner workings of the court and
25 can only be corrected internally.

1 We were pleased that the Supreme Court
2 has undertaken a self-examination of the
3 appellate petition review process and reviewing
4 how they conduct their internal operating
5 procedures and we await anxiously to hear what
6 comes out of these review efforts.

7 But we do word to the General Assembly
8 in the meantime to appropriate sufficient
9 funding to enable the Supreme Court to establish
10 a task force to study issues of gender, race,
11 and ethnic equity in the court system.

12 I want to just touch briefly -- I think
13 this is the last one I will because of time --
14 on the selection of Chief Justice.

15 In Pennsylvania, as you all know now,
16 the Chief Justice of our State Supreme Court is
17 chosen by seniority. And we suggest changing
18 that method, for changing the chief justice,
19 regardless of whether we continue with the
20 partisan elective process or whether we change
21 to an appointive system based on merit. Simply
22 put, seniority is just the least insensible way
23 to choose a chief justice. It really introduces
24 an element of chance into a process which should
25 be as professionally and carefully thought out

1 as choosing a CEO of a corporation.

2 There are two ways that most states
3 select their chief justices. One is by
4 selection by the other justices themselves. The
5 other is by a gubernatorial appointment. I
6 have, in my testimony, what we see are the pros
7 and cons of each and I encourage you to read
8 them. We do not have strong sentiments in favor
9 of either of those methods, but we do think that
10 both of them would be significantly better than
11 what we have now. And this should not be seen
12 as an attack at all on the current chief
13 justice. We might have wonderful chief justices
14 who get there by seniority, but it is just too
15 much chance.

16 If you look at our Superior and
17 Commonwealth Court, both of those courts are
18 chosen by the members of the courts themselves.
19 But we would recommend that the General Assembly
20 adopt a Constitutional amendment to change the
21 way that the chief justice is chosen.

22 And then we have a section on statewide
23 funding of local courts, which I encourage you
24 to read.

25 I would either accept some questions or

1 I understand, if you don't, it is lunchtime and
2 you have heard plenty from our organization.

3 CHAIRMAN DERMODY: Representative
4 Masland.

5 REP. MASLAND: Just for clarification.
6 I was not aware of whether the selection for
7 chief justice had a constitutional basis or not.
8 I assume it is in the Constitution, what you are
9 saying then?

10 MS. MARKS: Yes.

11 REP. MASLAND: Okay. I didn't know
12 whether that was internal or not.

13 MS. MARKS: Yes, sir.

14 CHAIRMAN DERMODY: Thank you both very
15 much for your time.

16 MS. MARKS: Yes. Thank you for
17 inviting us to this hearing and thank you for
18 inviting us.

19 CHAIRMAN DERMODY: We will reconvene at
20 1:00.

21 (Lunch recess taken.)

22 CHAIRMAN DERMODY: Okay. At this time
23 we will reconvene the meeting of the
24 Subcommittee hearing on the Subcommittee on
25 Courts Hearings on Judicial Reform. And we will

1 start off this afternoon, this hearing, with
2 Robert Tobin, Senior Staff Attorney for the
3 National Center for State Courts.

4 Mr. Tobin.

5 MR. TOBIN: Thank you, Mr. Chairman,
6 Members of the Committee. My name is Bob Tobin,
7 I am a staff attorney with the National Center.
8 I would briefly like to describe the National
9 Center.

10 We are a non-profit corporation,
11 headquartered in Williamsburg, Virginia, and we
12 are basically an offshoot of the State Court
13 System. We are a research arm and a
14 clearinghouse for the State Supreme Courts and
15 very often get called upon to make the type of
16 presentation I am being called upon to make
17 today.

18 My personal background, I was a college
19 teacher in Public Administration for about eight
20 years, I was a trial attorney with the
21 Department of Justice for about a similar
22 period, I have been a management consultant.
23 And for about 17 or 18 years, I have been in
24 court administration, primarily in the area of
25 financial management and budgeting.

1 As I understand my purpose here today,
2 is to speak in general terms about the practice
3 and experience in court administration
4 elsewhere, so that, perhaps, you can apply it to
5 the needs of Pennsylvania.

6 I thought what I would do is, just to
7 put some structure to this, perhaps, make it
8 easier to ask whatever questions you may, simply
9 to go through the elements of court
10 administration, comment on it briefly, and then
11 at least feel free to interject as I go along or
12 you can wait till the end and ask any questions
13 you may have then.

14 But quickly the points, that I am going
15 to comment briefly on the following:

16 - One is the administrative decision
17 making process of the Supreme Court level.

18 - Second is the role of judicial
19 counsel and conferences.

20 - The third is State Court
21 Administrative Offices and how they function in
22 conjunction with the Supreme Court.

23 - A little bit about trial court
24 administration, relationships between the state
25 and locals and the relationship between court

1 administrators and judges.

2 Let's talk a little bit about regional
3 court administration. Perhaps, you know
4 regional selection of judges, which is a factor
5 in the way courts administrator and city
6 locations. Those are the points.

7 On the first, which is the
8 administrative decision making of the Supreme
9 Court level, I guess I have got a couple of
10 observations.

11 Court administration is new. If you
12 went back to 1950, there was probably then only
13 one state court administrator in the United
14 States, a handful of trial court administrators.
15 Most of the Supreme Courts were not in the habit
16 of dealing with administrative issues in any
17 significant way.

18 What is involved, at least in these
19 areas, is that the Supreme Courts and all of the
20 trial courts have increasingly have devoted a
21 lot of time to the question of court
22 administration.

23 Now, on the Supreme Court level, this
24 is usually done by what is called administrative
25 docket. That is to say, just as court cases are

1 scheduled for adjudication, administrative will
2 choose their schedule for resolution by the
3 court. This is normally proposed by the state
4 court administrator. And the court will allow
5 the case a certain amount of time to considering
6 issues on this docket, normally with some
7 background briefing papers in advance. This may
8 lead to some administrative rule making.

9 Administrative rule making, as the
10 courts have used it more, is sometimes brought
11 into tense situations with legislatures on the
12 relative ways of administrative rules and
13 statutes. By and large, legislature have
14 deferred quite a bit to the courts in this area,
15 in terms of the way they manage themselves
16 internally.

17 The administrative rule making process
18 in most states is very similar to the procedural
19 rule making process. In other words, you are
20 going to have rules of civil procedure and
21 criminal procedure. The rules of administrative
22 procedure in that order, all you need is the
23 personnel and the variety of things of that
24 nature. And quite often, courts will come up
25 with draft rules to use for a committee to

1 seminate these and go through the same process
2 they would for procedural rule making.

3 One of the big problems, I think, in
4 Supreme Courts, probably is, and makes it
5 difficult for them is, appellate courts
6 generally operate in a group of decision making
7 environment. They tend to carry this over into
8 the administrative environment as well.

9 Now, in some states, you might say the
10 chief justice is sort of a CEO and is clearly
11 designated as such. The tendency, however, is
12 for what we call collegial administration.
13 Even where the chief is sort of a day-to-day
14 executive officer for the judiciary and most all
15 significant decisions are handled collegately,
16 you know, by the court. And the court entrusts
17 the chief to sort out the trivial from the
18 important where he has to come back for a policy
19 decision by the court as a whole. This is
20 particularly true in states where they rotate
21 chief justices frequently because of the lack of
22 continuity there. It makes it difficult to
23 entrust too much to an individual chief because
24 that person is going to be replaced shortly.

25 Now, a couple of things that come up,

1 in some states, the Supreme Court has relatively
2 little control over the intermediate appellate
3 courts and they tend to be somewhat independent
4 administratively. The degree of Supreme Court
5 control over trial court operations varies
6 greatly from state to state. But, by and large,
7 now, I think it is fairly common that the
8 Supreme Courts does have the ultimate
9 administrative authority over the trial courts
10 of their state.

11 There are three states where
12 administrative authority over the trial courts
13 is exercised by a judicial council. Those
14 states are California, Utah, and Georgia.

15 Now, I think the role of the Supreme
16 Court is substantially greater in a state where
17 the trial courts are state financed. I mean, it
18 figures because the amount of the size of the
19 budget, the number of personnel, the complexity
20 of the administrative problems, get kicked up to
21 the state level. And it usually affects the
22 decision making process at the state level a bit
23 when that goes on because the burden on the
24 court increases as a result of this added
25 responsibility.

1 Now, I would say a few words about
2 judicial councils and conferences.

3 CHAIRMAN DERMODY: Before you go to the
4 judicial council, I am just curious, when you
5 first started discussing the court
6 administration, you mentioned that in some
7 states, some courts have administrative problems
8 they have to wrestle with and decide, they place
9 them on what you called the administrator's
10 initiated docket?

11 MR. TOBIN: Yes.

12 CHAIRMAN DERMODY: Is that fair?

13 That is a case docket that lists the
14 cases and the matters pending that they have to
15 decide?

16 MR. TOBIN: It is like that, actually.
17 The ones that I am familiar with, normally, you
18 may have anywhere from, say, 15 to 20 issues,
19 usually listed in manner of priority. And these
20 are proposed to the court, sitting as a group in
21 an administrative session. And, normally, they
22 will resolve a considerable part of these at any
23 time. Like anything else, they will defer them,
24 or refuse to make a decision on them if they
25 don't think the time is right. But it is almost

1 a corollary with case processing, is the way
2 they do it.

3 CHAIRMAN DERMODY: Is it a public
4 document?

5 MR. TOBIN: That varies a little bit by
6 court. And in some places it is. Some of them.
7 But it is not normally, say, the public process,
8 in the sense that you can come in and hear -- I
9 mean, you are not going to hear the
10 deliberations of the court and if they have
11 heard a little argument either.

12 CHAIRMAN DERMODY: Right.

13 MR. TOBIN: And they tend to look at it
14 that way.

15 Some courts have a fairly open
16 administrative procedures. But on the whole,
17 they tend to equate sort of a group session the
18 way they handle the adjudication process with
19 the way they handle the administrative
20 processes.

21 CHAIRMAN DERMODY: I thank you.

22 REP. CLARK: Excuse me.

23 How does an issue or a matter get on
24 the administrative dockets?

25 MR. TOBIN: Well, very often, the

1 chief, and someone, will determine what the
2 agenda is.

3 Now, I think, as a practical matter, in
4 most states, the state court administrator
5 prepares the administrative agenda because many
6 of these things are issues on which the state
7 court administrator needs a decision, he/she
8 needs a positive decision from the court.

9 Normally, the chief will, you know, is
10 the ultimate decider of what goes on the agenda
11 and the priority in which things appear on the
12 agenda. There. Except for the occasional state
13 where we have a highly collegiate system. But
14 that would be the normal way.

15 REP. CLARK: So the administrator would
16 run into a problem or run into an issue that
17 they would need some guidance or decision on it
18 ...

19 MR. TOBIN: ... they would need a
20 policy decision from the court.

21 And I think basically what the chief
22 justice normally does is determine those issues,
23 you know, real issue things, is a policy
24 significance as opposed to sort of a day-to-day
25 indecision that the chief might decide to make

1 personally rather than refer it to the court.
2 And I think most courts rely upon the chief to
3 kind of sort out the important issues that they
4 have to deal with as a group.

5 REP. CLARK: And you also talked about
6 that the administrative issues and you also
7 talked about a rule making process. What would
8 ...

9 MR. TOBIN: Yes.

10 MR. TOBIN: All right. The
11 administrative rules of court, I mean, I
12 distinguished those. I think everyone is
13 familiar with the example of procedural rule
14 making of rules of civil procedure, the rules of
15 criminal procedure. There are, as
16 administrative rules increase, they have come up
17 with a whole series of rules, you know, they
18 make up. And something that would be simple is
19 when a court and things as a dress code and, you
20 know, a whole series of administrative rules of
21 that type.

22 And there are some courts that have
23 sort of not used the same method for doing
24 administrative. Most do. That is to say, the
25 courts have committees. Because then you have a

1 procedural committee for civil, a procedural
2 committee for family, a procedural committee for
3 criminal; and those, the committee may recommend
4 changes in the procedure. That the bar might,
5 the court might. And it goes through some sort
6 of committee process and then this will come
7 back to the court with a draft and the court
8 will approve, or not approve, and that will be
9 disseminated.

10 The administrative procedural rule
11 making is now starting to fall into that
12 process, but it tends to be a little bit,
13 probably not as public as the others. Because
14 the one reason being that the bar involvement is
15 not as heavy, you know, on the administrative
16 side.

17 REP. CLARK: Is there an issue of
18 conflict arising between administrators and the
19 courts over issues, is that typical, or going on
20 today?

21 MR. TOBIN: You mean issues as what
22 issues should appear in the docket, or the
23 resolution of the issue?

24 REP. CLARK: Or both.

25 MR. TOBIN: Oh, yes. Oh, yes.

1 Sometimes I think the court administrator may
2 only have things that part of those things
3 should be priority items or considered in the
4 court. You know, they may not decide to do it
5 or decide it differently than the court
6 administrator wants. But, actually, the court
7 administrator serves usually at the pleasure of
8 the court or at the pleasure of the chief
9 justice and, obviously, defers in these matters
10 till then.

11 REP. CLARK: So the administrator is an
12 employee of whom?

13 MR. TOBIN: Oh, yes. Well, that varies
14 by state. In some states, the administrator
15 serves at the pleasure of the court as a whole.
16 Some states, the administrator serves at the
17 pleasure of the chief justice.

18 REP. CLARK: Thank you.

19 CHAIRMAN DERMODY: I just have one. In
20 the states where you say at least the
21 administrative docket has been created in public
22 ... and do you have any idea with what states
23 reforms are in order to lift public response
24 (inaudible)?

25 MR. TOBIN: Well, it depends. Some of

1 the smaller states, North Dakota, probably, is
2 the one that most comes to my mind as probably
3 being the most open there. It is almost like a
4 Sunshine Law approach to this and then it scales
5 down from that. I would like to, rather than
6 trying to answer that off the top of my head on
7 some of these points, if you want me to follow
8 up on these --

9 CHAIRMAN DERMODY: I would appreciate
10 that.

11 MR. TOBIN: -- we will run it through
12 our research and our clearinghouse and we will
13 come back to you with detailed answers rather
14 than me trying to guess.

15 CHAIRMAN DERMODY: That would be fine.
16 Sorry to interrupt you.

17 MR. TOBIN: On judicial councils or
18 conferences, the idea of having judicial
19 councils and judicial conferences goes back
20 pretty early in the century, actually predates a
21 lot of the court administration stuff that is
22 pretty universal. And these were the early
23 concepts of micro court management, court
24 reform.

25 Judicial council and judicial

1 conference -- I saw them spelled out in some of
2 the materials that were sent to me from
3 Pennsylvania -- a judicial conference tends to
4 be a very broad, large meeting of judges in a
5 particular court system and it is usually for
6 communication, for education, and for strictly
7 what I would call intrabranch sort of bonding.

8 The judicial council had a much more
9 programatic policy rule, usually. They are
10 smaller and they very often include legislative
11 members, members of the administrative branch,
12 like the Attorney General.

13 CHAIRMAN DERMODY: Were you just
14 describing Pennsylvania's model?

15 MR. TOBIN: No, I am talking generally
16 now about these things. It is controversial.
17 Some judicial councils do not like to have
18 legislative members, or they feel that they are
19 strictly a judicial type of thing. And very
20 often they propose legislation. And they
21 wonder, you know, if they should have
22 legislators there. Generally they are.

23 A typical judicial council will have
24 bar representation, usually the ex-officio
25 president of the state bar. They will have

1 public inter-representation of some kind,
2 typically the League of Women Voters, in some
3 states perhaps maybe union representatives.
4 They will have quite a cross-section of judges
5 and court administrators. They usually do put a
6 predominant element on it, but there will be a
7 mixture of people.

8 Their role generally:

9 - The thing is periodically.

10 - Their role is for people that can't
11 spend forever there, but their job is staff
12 support and the staff support is normally
13 provided by the state court administrator.

14 - The judicial council will basically
15 take a look at the needs of the court, pulls
16 back from the day-to-day turmoils of the court
17 and look at basic problems that may have to be
18 solved over time and they usually make a number
19 of improvement suggestions at their meetings.
20 Very often, this will result in proposed
21 legislation. And, traditionally, judicial
22 councils have played that role as sort of
23 innovators of policy and programs to improve the
24 courts.

25 As I mentioned before, in a few states

1 they have played a larger role in matters.
2 They, in effect, are the administrative decision
3 making mechanism for the trial courts and that's
4 where that's not been normal.

5 The state court administrative offices
6 are probably not as well understood as they
7 should be. They have grown up in the last 20 to
8 30 years, play a very, very significant role in
9 the way the courts operate.

10 And what do they do?

11 Well, certain things that they do are
12 things that any administrative governmental
13 agent would do: they would be doing personnel
14 administration, planning, budget accounting,
15 purchasing, technology development, perhaps
16 processing some grants. The types of things,
17 you know, as a basic administrative function you
18 would associate with an executive branch
19 government agency. But there are certain things
20 that they do that they are probably a little bit
21 more, let's say, court oriented.

22 For example, they tend to be the
23 depository for court statistics, caseload data,
24 and that type of information. They also tend to
25 get involved in the whole question of: the

1 whole records in the courts are loaded down with
2 paper. There is some new type technology that
3 is going to be changing that significantly in
4 the next ten years or so, but for the time
5 being, the whole question of that problem very
6 often gets kicked up to the state level, in
7 terms of standardization, uniformity,
8 improvement.

9 Court facilities are normally provided,
10 in most cases, even out of their state funds, by
11 the county. Nonetheless, state court
12 administrative office is very involved in
13 setting up the civil legal standards and
14 basically attempting to see the courts at the
15 state are housed adequately. They also, of
16 course, get involved in court the way standards
17 and case load management from the state
18 perspective. Now, those are more or less, I
19 would say, sort of corollary functions, but they
20 do an awful lot of staffing in the court
21 committees.

22 Most state court administrators use a
23 whole slew of committees associated with any
24 Supreme Court. Under the rules committees, all
25 types of committees, bar, bench committee, one

1 thing or another. And, by and large, these are
2 staffed out of the state court administrative
3 office.

4 The state court is very open. It has a
5 legal component and provides legal advice to the
6 court in administrative areas. In other words,
7 so the court basically, you know, has a legal
8 component that may deal with cases in front of
9 the court, it also will have a legal service
10 unit that provides administrative opinion, which
11 increasingly conflict today. Particularly in
12 personnel alone, it is generally all types of
13 legal issues.

14 And I think they will find, of course,
15 the leaders of the executive branch liaison,
16 legislative liaison, bar liaison, a whole
17 variety of groups this office has to maintain
18 contact with, they do want a program
19 development. That is to say, there may be a
20 program come up that it is going to be put out
21 in the trial courts, but the demonstration or
22 the whole concept may be to develop the state
23 court administrator's office with -- pile it
24 somewhere and then it goes off to be implemented
25 by the trial courts.

1 And they are, their relationship with
2 the trial courts is a very interesting one. In
3 some states, very limited. In other states,
4 very, very strong control: if I would be living
5 across to New Jersey, your neighbor, who have a
6 highly centralized sort of court administrative
7 office, and more so then, I would say, most
8 states.

9 Now, if the question of, you know, very
10 big issues is the relationship between the
11 Supreme Court and state court administrator and
12 the trial courts, in some states the presiding
13 judges and some trial judges are appointed by
14 the Supreme Court. That is rare. Most states,
15 typically the presiding judges are elected by
16 their peers or occasionally there is a seniority
17 system, but the most common method is peer
18 election.

19 This, now, there has been some
20 indication of a switch to the choice of deciding
21 judges by the Supreme Courts. It is a very
22 touchy issue and it cuts both ways.

23 Now, the other aspect of this
24 relationship from the state court administrator
25 and trial court administrator, does the state

1 court administrator have to approve the hiring
2 of the trial court administrator and could the
3 state court administrator fire the trial court
4 administrator?

5 The trial court administrator has to
6 work closely with the President Judge in a
7 court, is that solely the choice of that judge
8 or does the state court administrator in the
9 Supreme Court have some say in this matter? And
10 that is a touchy issue of court administration,
11 the extent to which the lines of authority on
12 vertically downward from the state level into
13 the trial courts and then, occasionally, it
14 blows up into a confrontation.

15 Now, another problem is the whole
16 question of state level functions and local
17 level functions. I mean, what do you kick up to
18 the state? What should be left at the local
19 level?

20 What very often, for example in
21 personnel matters of where the job is state
22 funded, the idea would be that the choice might
23 be made locally, but it would have to be
24 according to rules enacted at the state level.

25 It is a very complex sort of

1 relationship growing up in a lot of states now,
2 as to what should be up at the top and what's at
3 the level end. Some tendency, or a few years
4 back, the tendency was to centralize too much.
5 I think the tendency more recently has been just
6 the opposite.

7 And what I say, just the last few
8 points in line here, regional, on that whole
9 question of regional administration. The only
10 reason I know this was, I know there was some
11 material sent to me and some talk of three
12 regions. And also in connection with that, the
13 question of the judges coming predominantly from
14 one part of the state rather than another and
15 what that meant for the functioning of the
16 court.

17 And regional court administration is
18 very big in some states, but it tends to be most
19 common in rural states where it probably is a
20 very natural phenomenon, not to try and have a
21 trial court administration act at county level,
22 to group counties into multi-county units for
23 purposes of trial court administration.

24 The idea of three regions in one state,
25 Pennsylvania, seems, perhaps -- you know, it

1 does not strike me particularly as rural. But
2 the regional administration, regional trial
3 court administration is used, I think quite
4 effectively in the more rural states. In, for
5 example, Iowa and Minnesota and places, North
6 Dakota, Plains state areas where you have fairly
7 diffused population and it seems to be suitable
8 there. Whether it is in a more urbanized state,
9 you know, is debatable.

10 And a question came up on regional
11 selection of judges, of course. It is
12 interesting that I was in Ohio a couple of years
13 ago and they were part of some elections and it
14 just turned out, I think -- and I am not certain
15 -- I think three or four judges from the court
16 were from Columbus just by a fluke of that
17 election. And that happens from time to time.
18 When you have major metropolitan areas by their
19 nature generate a lot of votes in the state, the
20 judges tend to come from those areas. And the
21 same at the local level, judges tend to come
22 from the most populous part of the voting
23 district. And I don't know, there is not too
24 much you can do about that.

25 Some states, actually a very annoying

1 fact, elects its judges on a regional basis, as
2 do some states. As an example, in Illinois, the
3 three judges are elected out of Cook County, and
4 they have four other regions elsewhere and I
5 don't know if any of the judges are elected out
6 there. That has some problems. I think that
7 solves a geographic problem/it creates some
8 other problems.

9 CHAIRMAN DERMODY: What happens in
10 Illinois? I don't know if I heard you.

11 MR. TOBIN: You have seven judges, you
12 have three elected out of Cook County.

13 CHAIRMAN DERMODY: Seven judges on the
14 Supreme Court?

15 MR. TOBIN: Yes. Three elected out of
16 Cook County and then the other four are elected
17 out of regions throughout the state. And it
18 has, over the years, achieved a geographic
19 balance. Of course, that's the purpose of it.
20 It also happens to achieve a political balance
21 by the way the state votes politically. That is
22 what they have done.

23 One question that comes up, and this
24 goes back to the question you were talking
25 initially, was the role of the Supreme Court in

1 administration. And a Supreme Court could
2 delegate to the chief, it could divide up, say,
3 administrative functions within a court, or --
4 and I think this is maybe one of the weaknesses
5 at the regional election -- is sort of divide up
6 administrative responsibilities regionally, and
7 basically to some extent that pits judges
8 against each other, trying to allocate court
9 resources, regionally. And there are some
10 problems inherent in that.

11 And the question -- the last point, and
12 I basically took these remarks on the materials
13 that were sent to me -- the question of whether
14 judges in appellate courts or in the
15 administrative office itself is spread
16 geographically in several locations and what
17 that has. Obviously, I think you lose something
18 by that, but it is very common in states where
19 you have: the capital is not the major
20 population center to have this type of
21 situation.

22 For example, in Illinois, part of the
23 administrative office is in Springfield, a part
24 of it is in Chicago. In California, the
25 administrative offices of the court and the

1 Supreme Court don't even sit in Sacramento, it
2 sits in San Francisco. The Supreme Courts of
3 Louisiana are not in Baton Rouge, they are in
4 New Orleans. The same thing in Maine: no one
5 is in Augusta, everyone is in Portland. So you
6 split between the two.

7 I think that happens. I mean,
8 obviously, there are some problems there, by
9 diffusing people, but it is the better for
10 worse. It is a fairly common pattern when the
11 state capital is not a major population center
12 in the state.

13 And, actually, that concludes any
14 regular statement I had. I would be happy to
15 answer any questions you may have by the
16 Committee Members.

17 CHAIRMAN DERMODY: Representative Cohen
18 from Philadelphia.

19 REP. COHEN: Do you focus at all on
20 considering legal education requirements?

21 MR. TOBIN: Do I personally?

22 REP. COHEN: Yes. Does your center
23 focus at all on it?

24 MR. TOBIN: Yes, we do. Actually, the
25 way the center -- a lot of legal --

1 We deal with legal education. I was
2 speaking about --

3 Legal education with regards to tools
4 or judges, when we are talking about legal
5 education?

6 REP. COHEN: I guess both. And the
7 Pennsylvania Supreme Court recently imposed six
8 credit hours and then it is going to be nine and
9 then twelve.

10 MR. TOBIN: Yes. Obviously, this term,
11 the way, the one thing that it has to do is,
12 there is a trial judge college in Reno, which
13 has traditionally sort of played the lead role
14 in this center. The center, we kind of defer to
15 them in some of these areas that they did
16 traditionally leader in that part of it. But we
17 do provide a lot of courses ourselves, training
18 courses for judges, particularly administrative
19 matters. And so, if you look at the courts
20 here, that you have many things for judges, yes,
21 we are most concerned with that.

22 REP. COHEN: For lawyers, does your
23 center do any research?

24 MR. TOBIN: We do some. But, actually,
25 again, a lot of the -- We endorse, for example,

1 continuing legal education, and so on. And we
2 do provide various project, we are working
3 towards. That normally is probably much more
4 like you come out of bar associations than it is
5 from us. We are involved in it, we are familiar
6 with it, we are supportive of it, but we are not
7 the prime mover.

8 REP. COHEN: Do you have knowledge as
9 to whether Pennsylvania's administrative
10 requirements of twelve credits ... is that
11 average?

12 MR. TOBIN: No, I don't have the
13 personal knowledge to comment on that. I am
14 sorry.

15 REP. COHEN: Okay.

16 CHAIRMAN DERMODY: I just have a couple
17 of questions about judicial councils that you
18 talked about earlier in your testimony.

19 You mentioned several states have
20 active judicial councils?

21 MR. TOBIN: Yes.

22 CHAIRMAN DERMODY: Do you have any idea
23 what states you might be referring to?

24 MR. TOBIN: Well, let me make a point.
25 Judicial councils is kind of ebb and flow,

1 depending very often on the interests of the
2 court and the members who are on the judicial
3 council. Now, the judicial council at this
4 point is extremely active beefing itself up and
5 probably ascertaining itself to the degree it never
6 has in the past, as in California. And they are
7 looking very very carefully. That, look, that
8 is a unique state in the sense that that
9 judicial council has administrative control over
10 the trial court system that's not common in the
11 history of the United States.

12 What judicial councils are extremely
13 active at this point in time? I would have to
14 look that up for you. I would suggest, off the
15 top of my head, usually at any point in time, I
16 would say roughly half the states have judicial
17 councils that are actively, what I would say,
18 proposing changes and reform and similar.

19 Utah, for example, is another state
20 that has a judicial council which is sort of
21 administers to the trial courts and they are
22 going through a transition to state financing
23 and that judiciary council is extremely
24 involved. And those two come to mind. As I
25 say, a little bit atypical.

1 CHAIRMAN DERMODY: Then, indeed, you
2 would be able to supply us with the names of
3 other states?

4 MR. TOBIN: We can.

5 Actually, there have been some very
6 fine studies done of the whole judicial council.
7 We just got through with some ones announced at
8 the Federal Judicial Center, a deputy named
9 Russel Wheeler, who probably has a compendium,
10 really, of experience in this area and I would
11 be happy to supply that.

12 CHAIRMAN DERMODY: Representative
13 Clark.

14 REP. CLARK: In those judicial
15 council's, is it fair to say that they deal in
16 two grounds: one, recommendations of needs of
17 the court; and then, number two, recommendations
18 to the legislature if something falls within
19 their realm?

20 MR. TOBIN: Yes. One of the things
21 that they deal with might require -- in fact,
22 some of them require -- administrative rule
23 making, some of them require legislation. But,
24 normally, they will take a look at what the
25 needs are and then when they get to the

1 implementation aspect of it, they will direct
2 these to the legislature or to the
3 administration side of the court or toward what
4 other groups are necessary to implement it.

5 But they very often do. In fact, it
6 would be rarely. Probably most judicial
7 councils that are active will propose some
8 legislation mostly during the legislative
9 session.

10 CHAIRMAN DERMODY: You indicated that
11 some of them are active as administrators and
12 some of them are just advisory or ...

13 MR. TOBIN: Yes, they are primarily, I
14 would say, advisory. That is to say that I
15 think that judicial councils generally have
16 played a role of looking at the needs of courts,
17 pulling themselves back from the day-to-day
18 operations, looking at the needs of the courts
19 over time, suggesting improvements that will
20 take some time to implement, and, in fact,
21 providing impetus for seeing that these things
22 are implemented. Because, very often, judicial
23 council includes a lot of influential people and
24 all their branches. It is highly atypical for
25 judicial councils to be involved in the, I would

1 say, the administration of a trial court system.

2 And I am not certain that they do it
3 terribly well because so many of them are busy
4 in other things that it is hard, really, for
5 them to deal with that.

6 REP. CLARK: Thank you.

7 CHAIRMAN DERMODY: Mr. Tobin, thank you
8 very much. I appreciate it.

9 MR. TOBIN: Thank you for having me, I
10 enjoyed it. And if you need any follow-up
11 information, I will be happy to supply it.

12 CHAIRMAN DERMODY: Great. There will
13 be.

14 Our next witness, and the last witness
15 today, is Nancy Sobolevitch, the Administrator
16 of Pennsylvania Courts.

17 MS. SOBOLEVITCH: Thank you,
18 Representative Dermody.

19 CHAIRMAN DERMODY: Thank you.

20 MS. SOBOLEVITCH: I am pleased to be
21 here today. And I do have a statement, if it
22 would be satisfactory?

23 CHAIRMAN DERMODY: Yes.

24 MS. SOBOLEVITCH: Although some of you
25 have been here more recently, it is kind of nice

1 for me to be back in this room, since I used to
2 work for the legislature as opposed to this
3 third branch of government that I am now in.

4 I appreciate your kind invitation. And
5 if I sound as though I am racing at any time
6 through my testimony today, it is because I was
7 in Philadelphia earlier for a meeting of the
8 Judicial Auditing Agency and came racing up the
9 Turnpike. I didn't want to contribute to the
10 Judicial Computer Project Fund so I did not have
11 any interaction with any of the State Police on
12 the way so I just want to make sure that you all
13 understand that.

14 As you know, the views of how
15 effectively Pennsylvania's courts function are
16 numerous. And as is true when any large
17 institution is evaluated, some of those views
18 are straight-forward and constructively
19 critical, while others are factually inaccurate
20 and some of them are, frankly, dead wrong.

21 Yet many of the most critical
22 assertions about our judicial system are taken
23 as gospel, often simply by function of their
24 repeated retelling. Today, I hope to offer
25 practical insight into some facts.

1 Like so many other Americans over the
2 past weeks, I have been fascinated at least
3 periodically by events unfolding in a California
4 courtroom. But I am at least as fascinated by
5 the nature and volume of the media's coverage of
6 the proceedings relating to the deaths of Nicole
7 Simpson and Ronald Goldman as I am by the
8 proceedings themselves.

9 Clearly, I have no insight into the
10 facts surrounding the O.J. Simpson case and
11 that's not our purpose here today. But as not
12 one, two, or three, but at least five television
13 networks have offered up day-to-day courtroom
14 drama, and as newspapers have even headlined the
15 story above the fold, one begins to sense
16 something less than a glimmer of responsible
17 public service in the extraordinary coverage.

18 Ironically, given O.J. Simpson's career
19 both on the field and in the broadcast booth, to
20 a very real extent the proceedings in Los
21 Angeles feel almost like competitive sport.

22 Somewhat similarly, in Pennsylvania, I
23 have reluctantly concluded that for a few -- and
24 I certainly do not indicate that these two
25 bodies of the House and Senate are those few --

1 there is an element of sport when our judicial
2 system is the subject of discussion. In fact, a
3 portion of the commentary has become so routine
4 and is so religiously rehashed that it has
5 become almost trite in the retelling.

6 But far worse than trite, such comments
7 can be -- and are -- deeply injurious to a
8 judicial system.

9 I would add that something that is
10 injurious to the judicial system is injurious to
11 all government agencies and branches. It is a
12 pox on all our houses when something is
13 happening in one branch of government.

14 But I think our judicial system in
15 Pennsylvania is one which functions
16 extraordinarily well on balance, particularly
17 given its size, the complexity of the law and
18 the issues which it confronts, the system's
19 geographical scope, and the resources that are
20 available to it.

21 Such comments are also injurious to a
22 judicial system:

23 - which has long been accountable in
24 ways that few recognize and fewer credit,

25 - which has taken enormously successful

1 strides to meet operating challenges head on,
2 - and which has had the foresight, if
3 limited support in some quarters, to try to plan
4 for its future through technological innovation
5 and attempts at critical self-examination.

6 Briefly today, let me touch on a few
7 key topics which I believe are of particular
8 interest to both this Subcommittee and to the
9 Judiciary.

10 First, with regard to caseloads, we are
11 functioning well as a system in one sense and
12 can be seen in a glance in the statistics:
13 statewide, we are generally at least holding our
14 own in keeping up with caseloads. In some
15 areas, enormous successes are being achieved in
16 whittling civil case backlogs dating back many,
17 many years.

18 For example, the most recent statewide
19 caseload statistics available are for calendar
20 year 1992. For that year, the Common Pleas
21 criminal dockets showed slightly more than
22 twenty-five hundred fewer cases pending at the
23 year end than were pending at the beginning of
24 the year notwithstanding a growth in the number
25 of new cases filed.

1 In Philadelphia, herculean efforts by
2 judges there, by the First Judicial District's
3 executive administrator, and by many others,
4 have led to dramatic decreases in civil case
5 inventories, as I believe a press statement in
6 the packet we handed out demonstrates. Those
7 efforts, spearheaded by Administrative Judge
8 Alex Bonavitacola and using the services of
9 members of the bar as voluntary "judges pro tem"
10 and as settlement masters, are continuing.

11 For those successes in swift case
12 management, we can thank a variety of people:
13 judges who are doing their jobs effectively;
14 those who work in support of judges, be they
15 elected row officers, court administrators,
16 court reporters, or the like; volunteers like
17 those in Philadelphia; certainly members of the
18 Bar; and the legislature for periodically
19 assessing the need for additional judgeships and
20 creating them when necessary.

21 With regard to collections, statistics
22 can also tell us something beyond caseloads.
23 How well, for example, are fines, fees and costs
24 being collected?

25 The answer: nearly 90 percent, at

1 least at the District Justice level, since
2 automation of those offices was completed in
3 December of 1992.

4 While we all recognize that the
5 Judiciary's primary role is not as a collection
6 agent but rather to equitably dispense justice,
7 with the right tools courts are increasingly able
8 to emphasize effective collections. They do so
9 not just because the money is owed, but also
10 because the obligation to pay fines, fees and
11 costs enforces the effectiveness of the criminal
12 justice system itself.

13 Our successes in establishing a strong
14 collection rate at the district justice level is
15 no accident. That achievement results from
16 successful implementation of the first phase of
17 our Judicial Computer Project. And that first
18 phase, as well as our plans for future statewide
19 court automation, represent the type of planning
20 for present and future challenges which
21 Pennsylvania's Judiciary has undertaken since
22 the mid-eighties.

23 We are very proud of our successes in
24 automating the district justice offices, with
25 good reason. For although I have said this

1 before, possibly to some of you, it nevertheless
2 bears repetition: in 1992, we completed a
3 statewide automation project costing \$24.5
4 million on budget and on time.

5 Today, we operate a system with 541
6 remote locations, 3,000 users, and we do it
7 primarily from our central site in
8 Mechanicsburg.

9 Frankly, there were those who said the
10 Supreme Court and the administrative office
11 weren't up to the task of automating the
12 district justice system since it was so large
13 and comprehensive. They said that we would fail
14 at an effort which by every national standard
15 was ambitious. On behalf of the men and women
16 who made the project work, some of whom I just
17 laid off last Thursday for lack of funding, I am
18 happy to say that our critics were wrong.

19 Our critics are also wrong about the
20 judiciary's fiscal accountability. They say,
21 succinctly, we aren't. Again, they are wrong.

22 The fiction is that we don't submit
23 budgets the way the rest of state government
24 does.

25 The fiction is that we are not audited

1 the way the rest of state government is audited.

2 The fiction is that no one knows what
3 we spend when we spend it, how we spend it, whom
4 we hire, when we hire them, and how much they
5 earn.

6 And the fiction is, that none of the
7 information is public and available.

8 The truth is contained right here. In
9 report after report, in hard copy, diskette,
10 magnetic tape, produced variously on an annual
11 basis or as frequently as on a monthly basis.

12 Where does it go?

13 It goes to the Appropriations
14 Committees, to the Legislative Data Processing
15 Center, to the State Treasurer, the Auditor
16 General, the Budget Secretary, the Deputy
17 Secretary of Administration for Employee
18 Relations, the Deputy Secretary for Comptroller
19 Operations. It also goes to the media when they
20 request it and it goes to the public when they
21 request it.

22 The fact is that one Appropriations
23 Committee staffer some years ago told our staff
24 that, if anything, we provided too much
25 information. Another legislative staffer

1 admitted at another time that some of what we
2 provide is never touched. Ever.

3 With the exception of the three year
4 period, our budgets have always been submitted
5 to the Governor's budget office as executive
6 branch agencies do, and of course they are also
7 submitted subsequently to the legislature for
8 scrutiny as well.

9 The fact is that judicial budgets are
10 subjected to at least as much scrutiny as those
11 of any other state government entity, and
12 certainly more so than some. For instance,
13 neither the executive nor legislative branches
14 of government has two branches examining their
15 budgets and having a chance at cutting.

16 As for audits, copies are sent each
17 year to the Appropriations Committees, to the
18 Budget Secretary and his Deputy. They are
19 performed annually by a Big Six accounting firm,
20 currently KPMG Peat Marwick, which is hired by
21 the Judicial Audit Agency. And that is the
22 meeting which I came from this morning. And,
23 incidentally, I bring to you, Mr. Chairman,
24 Judge Dauer's willingness and welcome, as you
25 will be using the courtroom next to his office

1 later today. Judge Dauer is a member of the
2 Judicial Audit Agency and was in Philadelphia
3 for that meeting.

4 CHAIRMAN DERMODY: Thank you very much,
5 and I will thank Judge Dauer when I see him.

6 MS. SOBOLEVITCH: And we all sat around
7 and said who said we don't cooperate between
8 branches of government?

9 The fact is that our audits are
10 routinely available, not just to other parts of
11 state government, but also to anyone else who
12 would like to see them. Periodically, someone
13 in the media does want to see them and we've
14 always complied.

15 Just to emphasize the point of
16 accountability one step further, some of you may
17 may have read recently about the Philadelphia
18 Daily News's lawsuit filed against the executive
19 branch. The gist of it, as I understand it, is
20 that the Daily News is seeking data on state
21 employees in an electronic format which the
22 administration has declined to provide.

23 Granted, there are a lot more employees
24 in the executive branch than we have in the
25 judiciary and I will concede that all units of

1 government have resource issues to contend with
2 if everyone in America is going to seek data in
3 just the precise electronic formats they
4 designate. But I was amused when the Daily News
5 reporter who contacted our office said that
6 someone in the executive branch had told him, to
7 the effect, "...oh, you'll never get this
8 information from the judiciary."

9 The Daily News had the information from
10 us in two weeks, in an acceptable format which
11 we worked with them to provide.

12 We are far from perfect in being able
13 to provide all the electronic data people want
14 from us and we are still working at a policy
15 which will help us provide a consistent level of
16 electronic public access to court information
17 from the district justice system. But we were
18 able to meet the Daily News's request because of
19 the experience we are gaining from our Judicial
20 Computer Project in the area of what our
21 computer people call "electronic data
22 interchange." We are committed to furthering
23 our EDI coordination, not only with the media,
24 but also with state agencies like PennDOT, the
25 Revenue Department, the Department of

1 Corrections, and others who will benefit.
2 Unfortunately, lack of resources in the Judicial
3 Computer Project is going to hinder each of
4 these links.

5 I should tell you just a footnote, for
6 example, at this point in time, all of the forms
7 that are needed by PennDOT for the suspension of
8 licenses, which are called D.L. 38s, are all
9 submitted electronically to PennDOT. They don't
10 have to rekey in that information which they
11 always used to do. All of the monies that are
12 sent from the Department of Revenue from the
13 district justices for the state's share of the
14 fines and costs are sent -- the monies come in,
15 obviously, through the banks, but the record of
16 them comes on tape. So that there are those
17 kinds of interchanges which I think have been
18 helpful and effective in creating accuracy as
19 well as timesaving and moneysaving.

20 Enclosed in your packets are recent
21 statements by the Supreme Court which relate to
22 -- literally -- a multitude of activities which
23 it has undertaken in more diverse areas than one
24 might realize. I will briefly summarize some of
25 what is said in some of those releases.

1 - I spoke earlier of the successes in
2 Philadelphia's civil courts at reducing case
3 backlogs. That effort is but a small part of
4 the vast improvements which have occurred in the
5 city's courts since the Supreme Court assigned
6 Justices Papadakos and Cappy to intensively work
7 on reforms there. Although the Justices no
8 longer devote day-to-day attention to these
9 reforms, the work continues -- even under the
10 strictures of a multi-year, no growth budget
11 agreement which the court entered into with the
12 City -- with strong local leadership.

13 We are in the fourth year, by the way,
14 of a no growth budget there and have managed
15 through the money that we, in working with the
16 court system, and establishing an AOPC
17 procurement unit, we have been able to save
18 enough money to afford -- considerable savings
19 to afford the cost of living increases that the
20 court employees were entitled to and to afford
21 computerization in the offices of the judges.

22 - In recent years, the Supreme Court
23 has mandated a continuing legal education
24 program for Pennsylvania's attorneys and seen
25 the CLE curriculum expand rapidly from courses

1 on ethics to a range of courses on substantive
2 legal issues.

3 And I know, Representative Cohen, you
4 are interested in that issue. I am not going to
5 be able to provide you with a great deal of
6 detail in that area, but we can get it for you.

7 - Even more recently, the court has
8 sought funding to extend the availability of
9 continuing education to all state trial judges,
10 a program which is currently well attended but
11 only optional, partly due to lack of available
12 funding.

13 - The court has also sought funding for
14 a commission to study issues of gender, race and
15 ethnic equity in Pennsylvania. These are topics
16 which have been given careful consideration by a
17 number of other states throughout the country
18 and which bear examination here as well.

19 - The court has undertaken in-depth
20 reviews of issues relating to the establishment
21 of internal operating procedures for itself and
22 whether appeal review processes should be
23 revised, all the while establishing a vouchered
24 expense account system for itself and the
25 intermediate appellate courts.

1 - The court has indicated its desire
2 that my office dramatically enhance our policy
3 planning capabilities by developing a staff with
4 that expertise. My suggestion in this regard is
5 that developing such a staff can and should be
6 accomplished in tandem with efforts to rebuild
7 the administrative office's court management
8 department, which no longer exists for lack of
9 funding.

10 - And, of course, the court has pursued
11 the Judicial Computer Project with considerable
12 success and, ironically given the level of its
13 support it has received in Pennsylvania, notable
14 national recognition from those who understand
15 the issues at stake for judicial systems which
16 are behind the technological times as the
17 twenty-first century approaches.

18 - Finally, the court has spoken clearly
19 of the need for broader unification of
20 Pennsylvania's judicial system. Aside from the
21 Constitutional points in this matter, it is
22 clear that the time of public sector fiefdoms,
23 be they judicial, legislative or executive, is
24 long past. And from the standpoint of
25 organizational theory, it is this Supreme Court

1 which has worked longest, hardest, and most
2 successfully in achieving the positive results
3 that unification can mean to an organization in
4 a state as large as ours.

5 Ladies and gentlemen, I am not here to
6 paint a picture suggesting all is right with
7 every aspect of our judicial system, just as I
8 assume you would not try to tell me that the
9 legislative process works just as everyone
10 believes it should. I am here to answer your
11 questions and to remind you that Pennsylvania's
12 judiciary is working well from Erie to
13 Philadelphia, from Scranton to Beaver, from
14 Shinglehouse to Bedford, and in all parts in
15 between.

16 The Supreme Court has been examined
17 more closely over the past year than any other
18 part of state government has recently been
19 scrutinized and at a time when it was under
20 unfortunate and misguided attack from within.
21 Through this difficult period, the court and its
22 members have continued to function effectively
23 in both their judicial and administrative roles.

24 As work is completed by individual
25 members of the Supreme Court on their review of

1 internal operating procedures and allocatur
2 procedures, Pennsylvanians can expect to learn
3 of the court's findings, just as the court
4 recently publicly announced its expense account
5 policy.

6 We are, in summary, making great
7 strides in this judicial system, with
8 progressive plans for the future which emphasize
9 every judiciary's fundamental task:
10 adjudicating fairly and impartially in an
11 accountable manner. Today I invite your
12 questions, as I invite your support for our
13 efforts as this legislative session draws to a
14 close and in coming years.

15 Thank you for the opportunity to be
16 here and please consider inviting me back for a
17 follow-up conversation when you are nearing the
18 end of your tasks. I promise not to come with
19 such a lengthy introductory statement.

20 I would be happy to answer whatever
21 questions you may have.

22 CHAIRMAN DERMODY: Thank you. I am
23 sure there will be many questions, and we will
24 invite you back.

25 MS. SOBOLEVITCH: Thank you.

1 CHAIRMAN DERMODY: And, of course, we
2 all anxiously await the review of what your
3 court is doing itself on the internal operating
4 procedures.

5 MS. SOBOLEVITCH: Thank you.

6 CHAIRMAN DERMODY: And also the section
7 that you mentioned in the policy planning
8 capabilities of your office and your efforts
9 there, also, I think, would be very important to
10 all of us.

11 MS. SOBOLEVITCH: We would like to be
12 able to do future planning, essentially is what
13 we are talking about.

14 CHAIRMAN DERMODY: Right.

15 MS. SOBOLEVITCH: We have had in the
16 past department of court management, and that's
17 been the technological transfer kind of thing.
18 And when I say technological transfer, I don't
19 mean computers, I mean the administrative
20 techniques and so on that we could pass through
21 to the trial courts. But we cannot afford that
22 department of this year and that is going to
23 hurt.

24 CHAIRMAN DERMODY: Representative
25 Clark.

1 REP. CLARK: Good afternoon.

2 MS. SOBOLEVITCH: Good afternoon.

3 REP. CLARK: Mr. Tobin, before you, had
4 talked about the location of administrative
5 offices. Where is the location of your
6 administrative office, and do you have more than
7 one administrative office?

8 MR. TOBIN: Yes, indeed. Actually, we
9 have three locations and possibly four,
10 depending upon your interpretation.

11 Most of my time is spent in the
12 Philadelphia office which has traditionally been
13 there for many years, certainly dating well
14 before I became court administrator.

15 There are approximately 30 people, I
16 believe, staffed at the AOPC in that office.

17 We have other central computer site and
18 our administrative people -- when I say
19 administrative, I mean those who pay the judges,
20 handle the accounting for the judiciary, etc. --
21 now out in Mechanicsburg, just off Exit 17 of
22 the Turnpike. And there we have approximately
23 80 people in that general area. And I am
24 probably wrong because I probably haven't
25 deducted the people that we did, indeed, have to

1 layoff last week.

2 The district justices, as you may know,
3 are educated down in Chambersburg. And the
4 staff down there are also part of the
5 administrative office and come under the Miner
6 Judiciary Education Board. There are three
7 staff people down there: director, a secretary,
8 an assistant, that handle the continuing
9 education for all district justices, which is
10 required once a year, and the certification
11 program, which is required before they go on the
12 bench.

13 There is also an office of legal
14 systems which is dealing with the appellate
15 court automation project and there are four
16 people out in Pittsburgh dealing with that in
17 the City Accounting Building.

18 So we are a variety of places. We do a
19 lot with Fax machines.

20 REP. CLARK: Let me go down over a few
21 items in your testimony, and I am on page six.

22 The court has sought funding for a
23 commission to study issues of gender, race and
24 ethnic equity in Pennsylvania. Can you explain
25 to me what the court's concern is there? I

1 mean, why the commission was established and
2 what they hope to study or determine.

3 MS. SOBOLEVITCH: Well, unfortunately,
4 the commission hasn't been established yet.
5 What the court seeks to do is what many other
6 states have done, which are called either gender
7 bias, race bias, or equity commissions on race
8 or on gender.

9 Many other states have gone out and
10 done a public hearing type process to gain
11 information about the experience of the public
12 with the court system, about the experience of
13 individuals who are part of the officers of the
14 court, bar and personnel, and so on and so
15 forth.

16 They have found that it was the process
17 that was as helpful as the end result: getting
18 people talking about it, getting people's
19 consciousness raised, finding out some of the
20 various things that do, indeed, happen perhaps
21 unconsciously in the court systems or in any
22 organization. But that helps in trying to turn
23 those things around.

24 So it is not that we can take, I think
25 very successfully, one of the studies that has

1 been done in California or New York or Michigan
2 and just import it to Pennsylvania and say,
3 well, this is true of Pennsylvania. That isn't
4 necessarily the case.

5 The process is, then, as important.

6 And what the other states have done is
7 basically appoint a number of individuals --
8 judges, as well as public sector types -- and
9 done a hearing process and a development process
10 for recommendations.

11 REP. CLARK: I mean, is that a
12 perception that people have, that the decisions
13 the court makes does not provide an equity? Or,
14 is it the makeup of the entire judicial system
15 that does not provide an equity? Or ...

16 MS. SOBOLEVITCH: It is a perception
17 nationwide, from what we have heard about other
18 states that there may be a tendency not to be as
19 equitable at all levels of the court system or
20 as sensitive as one should be.

21 And to the level that that is true in
22 Pennsylvania, only such a hearing process,
23 perhaps, would let us fully understand it.

24 REP. CLARK: In your administrative
25 functions, again, when I think back on Mr.

1 Tobin's testimony, you seem to be primarily
2 focused on administering monies, staff,
3 efficiencies, things like that, but you do know
4 -- do you know if you have no policy?

5 MS. SOBOLEVITCH: No, I don't think
6 that's exactly true. Obviously, the Supreme
7 Court ultimately has that authority and, indeed,
8 I make recommendations to the court.

9 Our office does a variety of things,
10 and maybe if I did a 25 cent version of that, it
11 would be a little clearer. People are usually
12 amazed that there are all of these little nooks
13 and crannies to take care of down at the court
14 system.

15 - Yes, we handle the state budget which
16 is a hundred-and-twenty-five, a
17 hundred-and-thirty million, approximately 26
18 different line item appropriations, which all
19 have to remain separate and spent appropriately.

20 - We handle the payroll for the entire
21 judiciary, for the intermediate appellate court
22 staffs, the AOPC, the computer project.

23 - We handle, there are about a thousand
24 judges, all tolled, including senior judges and
25 district justices, and appellate court judges.

1 We handle their benefits. We provide them with
2 counseling to some degree on retirement, but
3 that's been an issue both for the legislature
4 and the judiciary, in terms of what the
5 Retirement Board insists upon doing.

6 - We also provide the budgeting help
7 and prepare the budget that goes to the
8 legislature and the Governor.

9 - We have, just as the Attorney General
10 represents the executive branch when
11 individual(s) for the executive branch is named
12 in a suit, we have the attorneys who represent
13 the judicial branch. And we represent judges
14 who are sued, not in their capacities as judges,
15 but in their capacities as employers, rule
16 makers, or whatever.

17 - We do the secretariate work for the
18 judicial conferences and meetings that occur
19 throughout the year, and provide assistance for
20 program development and making sure that the
21 right documents are available for education for
22 the judges.

23 - We assign judges, senior judges,
24 throughout the state. We might make a
25 recommendation to the Supreme Court, to assign

1 judges throughout the state, with their
2 approval, both senior and active judges, if the
3 need occurs to have an active judge go
4 elsewhere.

5 - We do all of the research on numbers
6 and statistics for the court system. And,
7 further, we collect information when a criminal
8 case comes into the system and when a criminal
9 case goes out of the system on something called
10 and OTN form, an official transcript number
11 form, and then forward that information to the
12 state police for the rap sheets.

13 - We obviously handle, to the best of
14 our ability, sometimes with more difficulty than
15 others, we handle legislative and public
16 information inquiries and that can be quite
17 extensive.

18 - We handle, or we try to handle advice
19 to the trial courts and to the district
20 justices. And there are a variety of other
21 smaller items within that whole structure.

22 REP. CLARK: But you provide nothing
23 for the Supreme Court, as far as internal
24 operating procedure?

25 MS. SOBOLEVITCH: No, I handle nothing

1 with regard to their cases or their judicial
2 role.

3 REP. CLARK: Or management of those
4 cases?

5 MS. SOBOLEVITCH: No.

6 REP. CLARK: Or when they go into the
7 system, when they come out of the system,
8 anything like that?

9 MS. SOBOLEVITCH: No, no, no.

10 REP. CLARK: And another part of your
11 testimony on page six, it says that the court
12 has undertaken in-depth review of issues in the
13 establishment of internal operating procedures.

14 MS. SOBOLEVITCH: That's right.

15 REP. CLARK: Do you know anything about
16 what steps they have taken: have they hired
17 individuals, are they reviewing it themselves,
18 are they going to hand in reports, are they
19 going to submit it to the legislature; is there
20 any way that we know how that is proceeding?

21 MS. SOBOLEVITCH: What I can say is
22 this -- I can't answer all of your questions,
23 but I can answer some of them -- Senior Justice
24 Montemuro has been delegated the task of working
25 on internal operating procedures, which his

1 presence is particularly fortunate since he
2 worked on Superior Court rules when he was in
3 Superior Court. I know he has been in touch
4 with other states, and Supreme Courts of other
5 states, with regard to that.

6 Justice Cappy has been assigned the
7 allocatur petition, review, and how that might
8 be handled. And he has been in touch with other
9 state courts as well as the U.S. Supreme Court.

10 I understand their work is nearing
11 completion. I have no knowledge of date or time
12 or how such information will be made available,
13 but I know it is ongoing.

14 REP. CLARK: But if we are interested
15 in that progress, our two contacts would be
16 Justice Cappy and Justice Montemuro?

17 MS. SOBOLEVITCH: Or we will be happy
18 to facilitate what we can, in terms of making
19 inquiries of them and putting the two of you in
20 touch.

21 REP. CLARK: The next paragraph in your
22 testimony about the court has indicated its
23 desires that you enhance your policy planning
24 capabilities, could you tell me what that
25 entails in developing a staff with that

1 expertise, etc.?

2 MS. SOBOLEVITCH: Well, again, this is
3 something that has been happening in other
4 states and I think is a useful endeavor.

5 They have been doing a lot of future
6 planning in other states and, indeed, the
7 members of the bar here and members of the bench
8 have tried to get a futures commissions started.
9 They have had one or two meetings. Whether they
10 will continue or not, I don't know. Again, that
11 has been sort of a public input process in other
12 states and is a useful thing so that you can
13 determine: for example, some of the issues that
14 get covered, are we going to have ten times more
15 cases in the court system in 20 years or are
16 there going to be other alternative ways of
17 resolving some of those cases, they won't have
18 to go into the court system?

19 REP. CLARK: Okay. This is still
20 management and efficiency and staff type of
21 procedures?

22 MS. SOBOLEVITCH: Right. It could also
23 be a rule thing. It would depend on what type
24 of issue you are dealing with.

25 REP. CLARK: You mean in terms of rules

1 type things?

2 MS. SOBOLEVITCH: Yeah, rules of court.

3 REP. CLARK: Rules of court.

4 And I think my last question thing that
5 I am going to ask you, unless I get another
6 question, is the last point that you make on
7 page six: the court is interested in broader
8 unification. Aside from the Constitutional
9 points in this matter, it is clear that the time
10 of public sector fiefdoms ... etc. Can you
11 expound on that and sort of let me know where
12 you feel that the judicial system is breaking
13 down in Pennsylvania because it isn't unified to
14 the extent that the courts would like it to be?

15 MS. SOBOLEVITCH: Well, I think that
16 there are probably just as many who would wish
17 that the County of Allegheny Opinion were
18 implemented, as there are those who would wish
19 it would not implement it.

20 REP. CLARK: I understand that.

21 MS. SOBOLEVITCH: I am sure you do.

22 There are regular problems. And it may
23 be a seasonal thing, as well. There are regular
24 problems that the counties have with their
25 funding for their court systems and the

1 commissioners are being squeezed at this point,
2 as all governments are being squeezed.

3 And there is a problem in whether, for
4 instance, individuals can get a raise this year,
5 whether they can hire an additional probation
6 officer to cover increased caseload, etc. So
7 there are those issues at a local level, in
8 terms of funding, that conceivably could be
9 resolved at the state level, if there was an
10 ability at the state level to redistribute
11 resources. And that would be something that
12 would take many years to undertake.

13 We have, for example, been able, in the
14 Philadelphia system, to do a rather unique
15 thing. And I don't know that our savings would
16 be as great. But in addition to all the other
17 case management techniques, between the First
18 Judicial District and the AOPC, we have taken
19 over this procurement project and saved a
20 substantial amount of money.

21 The other aspect of that, which is
22 quite unique to government, is, that money is
23 given to us by the City of Philadelphia, it is
24 kept in a bank, the City gets the interest from
25 the money that is given. It is for the

1 procurement of goods and services. The no
2 growth budget, the amount has stayed the same.

3 We have been able to procure all of
4 those goods and services and buy additional
5 things or provide cost of living increments to
6 the employees that were due, by the fact that we
7 have been able to carry that money over from
8 year to year. Therefore, we recognize the
9 benefit of savings.

10 If we can save money on paper this
11 year, then we have got enough to be able to
12 automate next year. That kind of thing. And
13 much the kind of thing that is recommended in
14 reinventing government. And it has been an
15 interesting process and has worked very nicely.

16 REP. CLARK: Okay. Thank you.

17 CHAIRMAN DERMODY: I would just like to
18 follow up on a couple of various facts with one
19 question that Representative Clark asked you.
20 But you indicated about the policy planning
21 capabilities and expanding the staff, you
22 already tried to set a commission, or you had a
23 commission that was meeting?

24 MS. SOBOLEVITCH: Yes.

25 CHAIRMAN DERMODY: Mr. Tobin was here

1 and testified about states using judicial
2 councils. I believe our Supreme Court rules
3 provide for a judicial council. And it would
4 seem to me that that might be one way to do
5 this. I don't mean we use the judicial council
6 very much. But I am not familiar with that.
7 Would that be helpful or ...

8 MS. SOBOLEVITCH: It might be, it might
9 not be.

10 The way the judicial council, as I see,
11 is set up in the rules, it certainly could be
12 the listeners, if you will. The public input is
13 part of what I think can be a very advantageous
14 thing for government. Just as you go and have
15 public hearings, I think it could be very
16 advantageous for whatever body, whether it be
17 judges, administrators, or the members of the
18 judicial council, to get public input and to
19 make people understand that we really care
20 what's going on and how they are being handled
21 and treated.

22 CHAIRMAN DERMODY: Are you saying a
23 commission having hearings or ...

24 MS. SOBOLEVITCH: Well, see, that's
25 what is happening in other states, whether it is

1 in a judicial council or a commission, for the
2 racial, gender, ethnic bias issues and futures
3 issues, they have had public hearings.

4 CHAIRMAN DERMODY: I think the futures
5 issue is one that probably our court needs to
6 look, and seriously. And I think the judicial
7 council would probably be helpful. I don't know
8 if we are using it right now.

9 MS. SOBOLEVITCH: No, we are not.

10 CHAIRMAN DERMODY: I don't hear it very
11 often. I don't think we are.

12 MS. SOBOLEVITCH: No, we are not, to my
13 knowledge.

14 CHAIRMAN DERMODY: And do you think it
15 would be appropriate for us to take a look at
16 that rule and maybe we would be able to see
17 about how other states are using, maybe changing
18 the rules, to make it more acceptable or one
19 that would work in the Commonwealth, and at
20 least the relation for the makeup of that
21 council includes people from all walks of life
22 in the Commonwealth.

23 MS. SOBOLEVITCH: That's true.

24 CHAIRMAN DERMODY: And it might be very
25 helpful for the courts to influence those

1 people, without reinventing the wheel.

2 MS. SOBOLEVITCH: Yes.

3 CHAIRMAN DERMODY: If you are creating
4 commissions, we have one provided for, already,
5 in the rules. I think that we ought to look at
6 it first.

7 MS. SOBOLEVITCH: We have not created
8 any at this point. What we have asked for is
9 funds available to study these issues, through a
10 commission process. And we don't have -- when
11 you bring people in to meet at a certain couple
12 of days for whatever, you have to pay for their
13 hotel and their food and that kind of thing, so
14 ...

15 CHAIRMAN DERMODY: Okay. Thank you.
16 Representative Cohen.

17 REP. COHEN: How much money are you
18 asking for?

19 MS. SOBOLEVITCH: Oh, now you have to
20 get to the tough questions. I think \$351,000.

21 REP. COHEN: And your concept of the
22 commission, does it include judges?

23 MS. SOBOLEVITCH: We have never
24 actually gotten that far. I feel quite certain
25 it would, but we have not gotten so far as to

1 say it would have X, Y, and Z on it.

2 REP. COHEN: Did you make your request
3 to the Appropriations Committee?

4 MS. SOBOLEVITCH: Yes, we did.

5 REP. COHEN: Both the House and Senate?

6 MS. SOBOLEVITCH: Yes, sir.

7 REP. COHEN: Were you in the House
8 budget? Obviously, you were not in the budget
9 then.

10 MS. SOBOLEVITCH: We were not budgeted
11 in anybody's budget for that particular item.

12 REP. COHEN: Why were AOPC people layed
13 off recently? Obviously, you made reference to
14 it.

15 MS. SOBOLEVITCH: Yes. The Judicial
16 Computer Project was moving from the district
17 justice system to go on to automate the Court of
18 Common Pleas. We had been working for about a
19 year-and-a-half on that project and were at the
20 point of starting to write the software.

21 We had always indicated to legislative
22 leaders in the Appropriation Committee that we
23 would need additional revenues beyond that which
24 is already provided. All the computer system
25 has been essentially a fee-driven user, paid-for

1 system. We needed at least an additional
2 \$14 million per year. Such legislation was
3 introduced by Senator Greenleaf and co-sponsored
4 by Senator Lewis. There were 17 sponsors in the
5 Senate. We had hoped it would move with the
6 budget and, indeed, it is still languishes in
7 the Senate Appropriations Committee.

8 REP. COHEN: Why were the people given
9 such short notice, or given an hour's notice,
10 that you would be firing them?

11 MS. SOBOLEVITCH: They were, indeed,
12 told that they would be dismissed and that they
13 could leave at that point in time. They have
14 two weeks salary coming to them. And, indeed,
15 they were told that.

16 When you deal with dismissals in a
17 computer operation, part of the recommendations
18 for security are that, if anyone is leaving
19 involuntarily, that they leave at that point in
20 time when they are told rather than risking
21 someone being upset, or concerned in doing
22 something that they shouldn't to the computer
23 system.

24 REP. COHEN: I would think the federal
25 law would require they get at least 60 days'

1 notice. In the absence of that, at least
2 60 days' pay.

3 MS. SOBOLEVITCH: I don't know of any
4 requirements for 60 days' notice and I don't
5 believe the executive branch gives 60 days'
6 notice when they furlough people.

7 In addition, we have been told by our
8 auditors -- to go back to the other issue -- our
9 auditors recommend that, when you are dismissing
10 people in a computer facility, that that is the
11 way it takes place and it takes place
12 immediately. And all of our people were aware
13 that at any time in the past, I think, that that
14 had happened, people were asked to leave.

15 REP. COHEN: You had done that
16 previously?

17 MS. SOBOLEVITCH: I have unfortunately
18 had to dismiss probably about four people in the
19 past that were computer people, in one form or
20 another, and they have always left immediately.

21 In addition to which what I told the
22 individuals who were furloughed, first of all,
23 they were furloughed through no fault of their
24 own, they had done a marvelous job, but we
25 simply could not afford to keep them. Revenues

1 were down, citation issuance was down, court
2 files were down, and we did not get the fees
3 billed. But I told them, and I meant it, that
4 their responsibilities at that point then were
5 to themselves and to their families and we
6 wanted to provide them with as much time as they
7 could to start looking for new positions.

8 REP. COHEN: I just heard about this,
9 first from the husband of one of the people who
10 was layed off and then I got a letter, I guess
11 the same day, from the court. And I really
12 think that two weeks' severance pay is not at
13 all adequate to deal with the situation when
14 somebody gets fired within an hour's notice.

15 If it is federal legislation requiring
16 60 days' notice, the vast majority of the
17 workforce may not comply with the Supreme Court,
18 we may be on solid legal ground, but whether you
19 are or not, I think is a strong policy argument
20 against that kind of firing. And I think it
21 really hurts the image of the Supreme Court.

22 CHAIRMAN DERMODY: Representative
23 Wogan.

24 REP. WOGAN: Thank you, Mr. Chairman.
25 Miss Sobolevitch, getting back to the

1 CLE, the continuing legal education
2 requirements. I am curious. Would you have at
3 your fingertips, figures on how many attorneys
4 are not doing their CLE? This is, what, the
5 second year it has been in effect?

6 MS. SOBOLEVITCH: Yes.

7 No, I don't have it at my fingertips,
8 but I will be happy to request that information
9 and give it to the Committee and give it to you
10 in writing so that you will have the
11 information.

12 REP. WOGAN: Do you know, what happens
13 when an attorney hasn't complied with the
14 requirement and responded to the letter that I
15 assume he gets from the Supreme Court?

16 MS. SOBOLEVITCH: I am afraid I am not
17 going to know precisely, but what I expect
18 happens is, indeed, they do get a letter saying
19 you haven't responded and we have no record of
20 your taking your continuing legal education.
21 Then I presume, upon certain notice, they are
22 notified that they haven't fulfilled those
23 requirements and, therefore, they would not be a
24 member in good standing of the bar.

25 REP. WOGAN: Have there been attorneys

1 that have been involuntarily retired -- or
2 whatever the proper verb would be -- for that?
3 Have there been any at all?

4 MS. SOBOLEVITCH: I can't tell you. I
5 am sorry.

6 REP. WOGAN: Okay.

7 MS. SOBOLEVITCH: Would you like us to
8 get that information for you?

9 REP. WOGAN: If you don't mind?

10 MS. SOBOLEVITCH: I would be happy to.

11 REP. WOGAN: And I know there is a
12 committee which has been set up which decides
13 which organizations, bar associations, what have
14 you, are qualified to give continuing legal
15 education courses.

16 MS. SOBOLEVITCH: That's right.

17 REP. WOGAN: Would you know if there
18 were any organizations which have been turned
19 down or any bar associations?

20 MS. SOBOLEVITCH: I have received
21 notification in letter format, as I recall, that
22 the rules provide for not for profit
23 organizations to provide this education, and I
24 had received notification that there was a
25 company outside of Pennsylvania who was

1 interested in providing that education here and
2 was a for profit corporation.

3 It is my belief, although I am almost
4 sure but I won't absolutely swear to it, is my
5 belief that the CLE committee had already though
6 of that issue and, indeed, had an internal legal
7 opinion that had been provided, saying that they
8 had the right to only use not for profit
9 organizations, if they so choose or so chose.

10 I do not believe they have changed that
11 policy.

12 REP. WOGAN: And was the same fee
13 that's paid for the Supreme Court set for all
14 organizations? Is that something that is
15 negotiable? Or, does that free organization pay
16 the same fee?

17 MS. SOBOLEVITCH: The ones who do the
18 teaching, you mean?

19 REP. WOGAN: Yes.

20 Well, my understanding is the Supreme
21 Court is paid per individual taking the course
22 by the provider, by, we will call it, an
23 educational institution, bar association.

24 MS. SOBOLEVITCH: I don't know. Yes,
25 right. The individual pays the organization who

1 is giving the course and then the organization
2 passes their --

3 REP. WOGAN: And the organization
4 remits part of this fee to the Supreme Court?

5 MS. SOBOLEVITCH: Yes. I don't know
6 whether it is. Again, I will be happy -- I
7 don't have any interaction, really, with the
8 Continuing Legal Education Board.

9 REP. WOGAN: I see. So you don't know
10 off the the top of your head how much revenue
11 that has brought into the Supreme Court?

12 MS. SOBOLEVITCH: Well, it hasn't
13 brought any revenue into the Supreme Court, but
14 to the Continuing Legal Education Board is where
15 that money has been deposited, to that.

16 REP. WOGAN: That money goes to the
17 Continuing Legal Education Board?

18 MS. SOBOLEVITCH: For its operation,
19 yes.

20 REP. WOGAN: I am very curious. I know
21 you don't have the facts and figures handy, but
22 I am going to estimate, there are, what, about
23 40,000 lawyers in the state?

24 MS. SOBOLEVITCH: Forty-five, fifty
25 thousand.

1 REP. WOGAN: Forty-five, fifty
2 thousand. And my understanding was that each
3 one of them, when they pay a fee to one of these
4 bar associations or providers, that's in the
5 area of about \$40, which would be remitted to
6 whatever entity set up by the Supreme Court, and
7 you say it is the Board, the CLE Board, but that
8 would seem like, to me, a tremendous amount of
9 money.

10 MS. SOBOLEVITCH: Well, I wouldn't
11 imagine all of the \$40 would go to the CLE
12 Board. I would think that provider of the
13 education would need to set aside some of that
14 for their own expenses in providing the
15 education.

16 REP. WOGAN: I am sorry, I guess I am
17 not being clear.

18 The average price, I think that is
19 being, is about a hundred and fifty dollars.

20 MS. SOBOLEVITCH: Okay.

21 REP. WOGAN: And I understand that \$40
22 or \$50 of that is going back to whatever entity
23 the Supreme Court has set up. I don't mean to
24 put you on the spot.

25 MS. SOBOLEVITCH: I am sorry, I just

1 simply don't know because I don't supervise that
2 area. However, we will be happy to get answers
3 to these questions to you.

4 REP. WOGAN: Thank you.

5 REP. COHEN: Mr. Chairman, may I follow
6 up?

7 CHAIRMAN DERMODY: Representative
8 Cohen.

9 REP. COHEN: I would also like to get
10 information about the arrangements with other
11 states in that area about what states accept
12 Pennsylvania credits and what states don't.

13 MS. SOBOLEVITCH: The reciprocal
14 states?

15 REP. COHEN: Yes.

16 MS. SOBOLEVITCH: No, that would come
17 under the Board of Law Examiners and -- you
18 don't mean moving from one state to another or
19 being accepted as a form of education?

20 REP. COHEN: No, a good number of
21 lawyers who are members of bars and being in two
22 or more states, to what degree do these credits
23 count to the other state.

24 MS. SOBOLEVITCH: Okay. We'll ...

25 CHAIRMAN DERMODY: Are there any other

1 questions?

2 (No response.)

3 CHAIRMAN DERMODY: Thank you very much,
4 Miss Sobolevitch. We appreciate it.

5 MS. SOBOLEVITCH: Thank you very much.

6 CHAIRMAN DERMODY: And we appreciate
7 you coming by.

8 And thank all the Members for being
9 present here today. And, today's hearing is
10 adjourned.

11 (Whereupon, the public hearing on
12 Judicial Reform was adjourned at 2:50 p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me, to the best of my ability, on the within public hearing proceedings, and that this copy is a correct transcript of the same.

Roxy Cressler

Roxy Cressler, Reporter
Notary Public