

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Judicial Reform

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HOUSE JUDICIARY COMMITTEE'S
SUBCOMMITTEE ON COURTS

Courtroom No. 646
Philadelphia City Hall
Philadelphia, Pennsylvania

Thursday, October 6, 1994 - 9:30 a.m.

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BEFORE:

Honorable Frank Dermody, Subcommittee Majority
Chairman
Honorable Thomas Caltagirone, Chairman, House
Judiciary Committee
Honorable Andrew Carn
Honorable Harold James
Honorable Babette Josephs
Honorable Kathy Manderino

ORIGINAL

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1 **ALSO PRESENT:**

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Bill Kent, Assistant Director
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John Fulton
 Research Analyst

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(Written testimony submitted and attached hereto on behalf of John Claypool, Executive Director, Greater Philadelphia First)	

1 CHAIRMAN DERMODY: Good morning. I
2 would like to call this hearing of the
3 Subcommittee on Courts of the House of
4 Representatives Judiciary Committee meeting to
5 order. Of course, first of all, I would like to
6 thank you all for coming this morning.

7 This is the second of several
8 hearings on the subject of judicial reform in
9 Pennsylvania that this subcommittee will be
10 conducting during the next few months.

11 During today's hearing, we will be
12 hearing from individuals from the various sectors
13 of our society. On behalf of the subcommittee, I
14 would like to thank all of the people for
15 agreeing to appear here today.

16 Among today's speakers is the
17 Honorable Phyllis W. Beck, who has spent a great
18 deal of time on this issue of court reform. Also
19 addressing this subcommittee will be Alex
20 Bonavitacola, Administrative Judge of the
21 Philadelphia Court of Common Pleas; Lawrence
22 Beaser, Chancellor of the Philadelphia Bar
23 Association; Professor Leo Levin of the
24 University of Pennsylvania Law School; and other
25 groups and individuals concerned about our

1 judiciary.

2 There is little doubt that judicial
3 reform is needed in this Commonwealth. We have
4 begun the process of reviewing previous studies
5 on this issue and accepting new ideas. We will
6 continue to work toward a system that is open to
7 public scrutiny and that will treat all equally.

8 I would like to introduce Chairman
9 Tom Caltagirone, Chairman of the House Judicial
10 Committee, who has joined us here today. We
11 expect to be joined by several members of the
12 committee throughout the day.

13 Our first witness today is Fred
14 Voight, who is the executive director of the
15 Committee of Seventy. Mr. Voight.

16 MR. VOIGHT: Mr. Chairman and
17 members of the subcommittee, I welcome this
18 opportunity on behalf of the Committee of Seventy
19 to appear before you and to express to you our
20 views relative to a whole panoply of legislation
21 which has been introduced, certainly in the
22 overhanging context of the actions of the state
23 Senate as of yesterday with regard to the
24 impeachment of Rolf Larsen, a very tragic day in
25 the history of the Commonwealth, one which we

1 have not, of course, seen since 1811.

2 Let me take you back, if I may,
3 rather than just reading my testimony to give you
4 a little historic taste of how we got to where we
5 are. And if I may, perhaps I'm telling you
6 things that you already know.

7 The Committee of Seventy, while
8 focused primarily on issues that relate to
9 Philadelphia County, could not but be concerned
10 about the state of the judiciary for the whole
11 Commonwealth since it affects Philadelphia
12 County. With that in mind, we went about doing a
13 study. It was done because there wasn't anything
14 like it.

15 We researched all of the archives
16 and tried to find something that would tell us
17 and tell the public in fairly demonstrative terms
18 how we got where we were. And that is when the
19 framers of the original Constitution created the
20 judiciary, what were they thinking and what did
21 they do and what were the steps along the way,
22 both legislative and constitutional that changed
23 that process? And it did change. And what
24 indeed were the political steps along the way
25 that altered that process that led us to where we

1 were?

2 In that endeavor, what we did was a
3 lot of research, poured through all of the
4 materials that we could lay our hands on both
5 here, in Harrisburg, and in libraries all across
6 the Commonwealth.

7 Then what we did, having completed
8 that task, is we took those materials and formed
9 the first four chapters of research. And we sent
10 them out, and we sent them out to every living
11 appellate court judge and justice. We sent them
12 out to leaders of political organizations. We
13 sent them out to leaders of labor organizations.
14 We sent them out to members of the House and the
15 Senate and the leadership.

16 What we then did was take that study
17 and go talk to those individuals, and we
18 interviewed well over 115 individuals. What we
19 did in that process was we said to them, We have
20 no preconception about whether the systems as
21 they exist are good, bad, or indifferent; but
22 what those systems say is that there are
23 problems.

24 We want you under a grant of
25 anonymity -- we will not identify you. You can

1 identify yourself; but we are not going to
2 identify you except but by category because what
3 we hope to do -- and I think we did -- was elicit
4 candid responses.

5 Now, this study was complete in
6 1983. It still remains the definitive document
7 on this subject. And when the first stirrings of
8 questions about impeachment arose, people looked
9 to the document to see, Well, gee, when did we do
10 it and how did we do it, because quite frankly
11 nobody knew. And nobody knew for a very good
12 reason.

13 Shortly after that last impeachment,
14 the Constitution of Pennsylvania as amended. And
15 the forfeiture of office provision was put in so
16 that upon conviction, the Constitution provides
17 final conviction. There is an automatic
18 forfeiture of office for any person found guilty
19 of crimes that rise to misbehavior in office.
20 Notwithstanding that fact, the proceedings
21 against Judge Larsen went forward in a different
22 vein.

23 However, let me get back to what
24 those people said to us. I must tell you I was
25 shocked. What shocked me was that there were

1 people who had publicly espoused some form of
2 appointed process; and if we could put those
3 people, I assume that they would say thus and so.

4 But let me tell you that there were
5 a lot of people, jurists, political leaders who
6 responded by saying, The system is broken. It is
7 broken, and it cannot be repaired with Band-Aids.
8 Some of them likened it to a cancer afflicting
9 the judicial body of Pennsylvania.

10 Many of them pointed to a pivotal
11 point in time. That pivotal point being
12 somewhere in '70s or '60s. They all had slightly
13 different dates; but they said, Up until that
14 point, an elective system which we adopted in the
15 1850's worked pretty well and we had some pretty
16 good judges. We had some outstanding jurists.

17 We got them for a reason because the
18 system was rational. There was a means and a way
19 and a discipline for choosing great people, not
20 based upon something they did in the magical
21 moments of the campaign but rather because
22 political leaders were capable of leading. And
23 many of those were people of great vision. They
24 would look out across this vast Commonwealth.

25 Now, I do not need to describe to

1 you this vast Commonwealth. You are painfully
2 familiar with how vast it really is, but most of
3 our citizens aren't. If you are from
4 Philadelphia County, you might think that
5 Pennsylvania ends City Line Avenue. If you are
6 from Allegheny County, you might be a little more
7 sweeping and say, Well, it extends to
8 Westmoreland County and Greene County. And if
9 you are from the center of the state, you are out
10 there in the middle of the largest state, by
11 population, largest rural state in the United
12 States.

13 Now, I use that phrase often because
14 we have no sense as citizens of this state about
15 the totality of the state. Some people think
16 that, in fact, you can carve it up into seven
17 states because there are different kinds of
18 traditions, different kinds of views. It's a
19 tremendously diverse state, and it's an enormous
20 state geographically.

21 But what those leaders did was they
22 looked all across the state, and they recognized
23 stars from Scranton. They saw people in little
24 communities, little counties in terms of
25 population and said, You know, these are

1 distinguished people with distinguished minds who
2 deserve to serve all of us. So that when you
3 think back to some of the names -- and I may be
4 dating myself and dating some of you; but you
5 think to the party leaderships who could help
6 make that choice.

7 Now, they didn't just dictate who
8 those people would be; but, you know, names like
9 Lawrence Greene, Sr., and others and their
10 predecessors would think about gee, maybe
11 somebody in Dauphin County stands out amongst the
12 crowd. And what they would do would be to
13 suggest to the members of their party that that's
14 who we want to bring up. We ought to in an
15 elective system rationalize that choice by
16 serving the people in a political way.

17 And by the way, there is no system
18 that is not political. I would like to get that
19 right up front.

20 But in a positive political way, the
21 way things were supposed to work. And that is
22 while you represent the people, you are directly
23 elected to represent the people, we have a
24 system -- we had a system -- where there were
25 political people who because we had partisan

1 primaries would go through a process and suggest
2 in their primaries that this is who we endorse,
3 who we choose -- the choice is made in the
4 primary -- but who we endorse. And it worked.

5 An overwhelming number of the people
6 who we talked to then, many of them who had been
7 elected told us that it was no longer working.
8 Now, what do we really have in its place? We
9 talked to these people then and what we have now.

10 We have people who say and genuinely
11 feel and believe, as the polls have indicated,
12 that I'm a voter and I have a fundamental
13 constitutionally protected right to choose. The
14 Pittsburgh Post Gazette did an exit poll when
15 people were coming out of their voting booths.
16 They said, Who did you vote for for Supreme
17 Court? And 65 percent didn't know.

18 The next question, Well, do you
19 think we ought to have an appointive or an
20 elective system? Answer, It's my constitutional
21 right. It turns out the Constitution they are
22 referring to is not the Pennsylvania
23 Constitution. It's the United States
24 Constitution, which, of course, as you well know,
25 does not provide for electing judges.

1 Now, I don't say that critically of
2 those people who didn't know. Most people don't
3 know, not just most average people. I'm
4 including lots of people who you would assume or
5 the public would assume to know, lawyers.

6 Now, I would not embarrass you; and
7 I don't mean this as an embarrassing question
8 because I don't know of more than a hundred
9 people in the whole Commonwealth who can answer
10 this question. Who are the judges of the
11 Commonwealth Court?

12 I attended a ceremony, an
13 investiture ceremony, for the president judge of
14 Commonwealth Court. Now, I know most of them who
15 have been elected; but there are by my count nine
16 who are sitting as senior designees who dispense
17 the justice of that court. And I can name a
18 couple of them, but I don't have a clue as to who
19 they all are.

20 Now, I don't think anybody in this
21 room -- and I would be shocked if they did --
22 knew who they were. That's not our fault. I
23 mean there is some alchemy in the system, I must
24 say. But the point being that I take it as a
25 very serious obligation as a citizen to know who

1 I am voting for in a representative capacity.

2 I want to know everything about you.
3 You want to be my state rep? Okay. I want to
4 hear from you. I just don't want to hear from
5 you before Election Day. I want to hear from you
6 a whole lot of times; and I want to know what you
7 think, what your views are on every subject
8 because you are representing me.

9 My governor -- we are in the midst
10 of a gubernatorial contest -- I want to know what
11 they think. I want to know everything that they
12 think, not just about issues. I want to know how
13 they think to the depths of their being because I
14 want to know how they are going to represent me.

15 My mayor -- we are going to have a
16 mayoral contest next year, all the members of
17 city council. They are in a representative
18 capacity. I want to know what they think. I
19 want to know what they are going to do on every
20 issue that's important to me.

21 As far as the governors are
22 concerned, I would like to know how they think
23 about merit selection because that's important to
24 me. But judges don't sit in a representative
25 capacity. They better not. Judges shouldn't

1 tell me how they are going to decide a case and
2 have me vote because I know how they are going to
3 decide a case. It's wrong. It's totally wrong.

4 What's absolutely right and
5 necessary in one instance for two branches of
6 government, absolutely and fundamentally
7 essential, is absolutely wrong for that one
8 branch where when I appear as a litigant, as a
9 lawyer, as a defendant, as a plaintiff, knowing
10 how that person is going to rule on my case in
11 advance of hearing the facts is abhorrent to this
12 system.

13 It doesn't help Joe Voter one iota
14 because in the great panoply of the elective
15 system, people are not ignorant. Voters aren't
16 stupid. When we refer to the fact that they are
17 uninformed or cannot form judgments, that's not a
18 criticism of democracy. That's a fact. It's a
19 reality, and it's cynical to the core to suggest
20 otherwise.

21 Now, you are state representatives.
22 There are lots of people in your districts who
23 may not, God forbid, know who you are. I venture
24 to say that there is no district where you have
25 everybody knowing who represents them. And a

1 state representative, as you well know, is closer
2 to the people. It's designed to be close to the
3 people. We have more of them in Pennsylvania for
4 that reason, close to the people, sensitive to
5 what is happening in the district, concerned.

6 But when you remove -- when you get
7 back further, you know, voters have a life. We
8 seem to sometimes forget that. They are worried
9 about their jobs. They are worried about their
10 children. They are worried about services, you
11 know, not big services but fundamental, basic
12 services. And those kinds of things consume
13 time. It's a lot of time.

4
14 So when people say, Well, gee, you
15 have an obligation as a voter to know everything,
16 I come back to my question. If we are supposed
17 to know who is serving on that court and we
18 don't, then how in God's name can we expect those
19 people, those average citizens who are worried
20 about life to worry about something which is
21 remote and removed in a political sense, not in a
22 life sense, from their lives? But yet we go
23 about saying, This system still works. And the
24 system I'm talking about isn't the elective
25 system.

1 Now, there are a million varieties
2 and permutations on a merit system, and I use
3 merit loosely defined. It's an appointive
4 system. That's really what it is. And does an
5 appointive system guarantee that you are going to
6 get great judges?

7 Well, I know great judges. I have
8 had the pleasure of knowing great judges. I
9 think they're great; but if you were to ask me to
10 define what's a great judge, I will tell you when
11 I see him or her. I will tell you when I have
12 read their opinions. I can tell you what I think
13 would make a great judge; but until the black
14 robe goes on, who knows?

15 Presidents of the United States
16 where we have an appointive system have chosen
17 justices of the Supreme Court, and they thought
18 they knew. They were choosing a great judge.
19 And some of them have turned out to be great
20 judges in my view but certainly not in the view
21 of the president who appointed them.

22 So I say that simply to put to rest
23 the idea that you can guarantee anything in this
24 life. We are all human beings with all of our
25 failings. But is that system better than what we

1 have? Nothing could be worse.

2 In my written testimony, I said and
3 I profoundly believe the popular election of
4 justices and judges is the single most
5 troublesome policy governing our judiciary. Any
6 course of action that does not abolish this
7 system and replace it with a system of merit
8 selection is neither a remedy nor a help -- and I
9 would add -- and should not and cannot be cast in
10 the guise of reform.

11 Now, many people have said that in
12 the quest for an appointive system, you're
13 unrealistic. It's not going to happen. So we
14 have got to do something in the meantime. We
15 have got to do something. And invariably what's
16 hold out are some of the most bizarre proposals
17 that I have ever seen.

18 I am using the phrase bizarre.
19 There are well-intentioned people who make these
20 proposals. They care. I am not suggesting for a
21 moment that the people who have fought long and
22 hard and have said, Gee, can't we try this --
23 they care. They recognize there's a lot of
24 problems here. And they are trying to solve --
25 at least ameliorate the problem. You can't do

1 it. It's a cancer. You can't do it with
2 Band-Aids.

3 Let me try this. Let's assume for
4 the moment that we could craft or that you could
5 craft a constitutionally valid -- and I use that
6 term very carefully because I don't think you
7 can -- a constitutionally valid means of
8 enforcing limits on contributions, putting in a
9 cap, and whatever bells and whistles you want to
10 put on it.

11 Now, we happen to have pending
12 before the Supreme Court of the United States
13 what I think will be a pivotal decision which may
14 or may not permit that. And that is the term
15 limit decision.

16 Now, we already have Buckley, and
17 Buckley has been vastly interpreted by a lot of
18 people. He certainly wasn't by John Heinz
19 because John Heinz was the initial chief
20 beneficiary of the fact that in reviewing the
21 legislation which limited federal contributions,
22 Buckley said, Well, you can do that, but you have
23 to do it in a certain way and very carefully.

24 And by the way, if an individual has
25 personal wealth, you can't limit that. You can

1 spend as much money from your own pocket in your
2 campaign because that's a matter of expression.
3 It's protected by the first amendment.

4 Now, whether or not you can
5 creatively fashion something is not really
6 relevant; and let me tell you why. For those who
7 have been around long enough, let me try to
8 remind you of some past campaigns.

9 Let's assume for the moment that I'm
10 a jurist in Allegheny County and I aspire to the
11 high court and I don't think I'm going to get
12 party support and I don't have a lot of money.
13 Well, gee, maybe if I, sitting as a Common Pleas
14 Court judge, decided that I was going to put
15 fathers who were delinquent in child support
16 payments in jail, that might get me a little
17 attention. It might buy me, in fact, more than
18 money could ever buy, and it did.

19 Let's assume for the moment that I'm
20 a judge sitting in a Common Pleas Court. And
21 let's assume further that the economy, the
22 steel-based economy of Allegheny County has
23 collapsed; a lot of people out of work; a lot of
24 mortgages being foreclosed upon.

25 Let's assume that while there is no

1 legal basis I could think of, my heart goes out
2 to these poor people, as it should, and I am
3 going to order that all mortgage foreclosures in
4 the county be suspended. Well, it's tale out of
5 Robin Hood, a judge with a heart, not just in
6 Allegheny County.

7 If you remember the headlines, there
8 wasn't a paper that you could pick up anyplace in
9 the Commonwealth from the smallest place in
10 Clarion County or Pike County. It was there, and
11 suddenly a person who was an obscure judge, very
12 obscure, became name recognition for having a
13 heart. My God, how could the party say no?

14 Let's assume for the moment that I'm
15 from Allegheny County, a nice place to be from by
16 the way, and my name isn't Voight; it's Flaherty.
17 Oh, well, Pete Flaherty? Well, no, but lots of
18 people know Flaherty. My, could that possibly
19 propel me to become on that basis? There is no
20 other basis. I mean you can't ascribe other
21 things. Well, yeah, maybe.

22 Well, what's happening? Is money
23 driving those campaigns? You are going to cure
24 money. You are going to limit contributions.
25 You are going to do all this wonderful stuff.

1 Money has nothing to do with it in those
2 instances.

3 Now, I can remember a judge who
4 aspired to a higher court, and I can remember ads
5 running. All I remember was the sound of doors
6 shutting, slamming. And if you have ever -- I
7 was an assistant DA once upon a time early before
8 I can remember. And I remember that sound from
9 then because it's the sound of jail doors
10 slamming.

11 Now, okay. I'll grant you that it
12 is something that indelibly rings in my head.
13 Well, it also resonates, let me tell you, in
14 voters' minds. Voters happen to have this thing,
15 and you all painfully know this. They want to
16 hear more of that. They want to hear it going
17 like a metronome.

18 Well, okay. Does that qualify you
19 to sit on a bench? Making slamming noises, does
20 that qualify you? Well, the judge in question is
21 eminently well qualified and has served very
22 well. But is that any way to make that decision?
23 I think not.

24 And I would postulate to you that
25 none of these things -- rotating ballots, think

1 about that for a minute. We are going to do that
2 on a county-by-county basis. I love this. I
3 mean it's like, Did you watch the lottery last
4 night, the big wheel spin? That's the imagery it
5 conjures up because that's the reality of it.
6 Let's spin the wheel.

7 There is no wheel of fortune. This
8 is picking judges who are going to make the most
9 fundamental kinds of decisions about whether what
10 our legislative bodies do is valid or invalid;
11 whether I, a potential defendant, am going to go
12 to jail and stay in jail; all of these vital
13 things and stuff that you never see in the
14 headlines, never, ever, ever, like decisions
15 about workmen's compensation, about things that
16 affect lots of people but subtly and not
17 dramatically.

18 The dramatic things we all know
19 about. The subtle things you know about. Having
20 served on a judiciary committee, you have had to
21 deal with all of this stuff. But put me back,
22 Joe Voter, I don't know about that. All I know
23 is something happened to me.

24 Now, when we went about doing this
25 study, there is a tremendous deficiency in this

1 study because we talked to the inmates in the
2 asylum or in a better way -- that's really a poor
3 choice of words.

4 The judiciary is like a hospital.
5 Nobody wants to go. Nobody wants to be in the
6 hospital. You are sitting up there on the bench.
7 You are a judge. You want to be there. I'm a
8 lawyer. I want to be here, not a lot of time. I
9 can't afford to do that a lot of time.

10 The jurors in the box, well, they're
11 not there willingly. I subpoenaed them to be
12 there, but they are going to do their duty. But
13 they don't want to be there. And the defendant
14 over there sure as hell doesn't want to be there.
15 And the defendant not only in a criminal case but
16 how about in a civil case? They don't want to be
17 there.

6
18 Now, for the rest of the world, they
19 are not there and they don't want to be, if they
20 have a right mind. And most people do. So what
21 you get is sort of an inside-the-hospital
22 dialogue. You're there in this debate because
23 you have to be, because any change in the system
24 has to be one that you initiated, not a
25 constitutional convention.

1 We don't have initiative or
2 referenda, though we may. I understand that
3 there is a bill that just passed that has nine
4 binding referenda for counties. But we don't
5 have that as a political, traditional part of our
6 Constitution. And that's an important point to
7 make. And in all of the debate that takes place
8 and the smoke and fire of the politics, a lot of
9 people again have misapprehensions about what our
10 Constitution says.

11 Our Constitution does not have
12 recall initiative or referendum, doesn't, hasn't.
13 And it hasn't because while other states around
14 us were washed over with the Populist wave of the
15 1900's -- and I am talking about 1910. Now, lots
16 of states have those provisions. We don't. So
17 you are the only vehicle by which constitutional
18 change can be brought about. And you are the
19 ones who I would beseech bring it about in a
20 thoughtful, hurried way.

21 Why hurry? The events that unfolded
22 relating to Justice Larsen, as tragic as they
23 were -- and they were tragic for the justice, for
24 the judicial system, for the Commonwealth, and
25 for both the House and the Senate. I know. I

1 have friends amongst your colleagues.

2 That wasn't an easy thing. It
3 wasn't a pleasant thing. It was, in fact, a
4 painful thing to do. But let me say this: The
5 problems did not begin with Justice Larsen. The
6 problems haven't ended with Justice Larsen, and
7 the problems will not be addressed short of
8 constitutional change.

9 Now, I'm referring to one aspect of
10 the judiciary, and that is the means by which we
11 select them. That's only one. And I do not come
12 here before you today with an ability or a
13 capacity or a desire to address all of the other
14 problems. The County of Allegheny is still out
15 there in the mist someplace. Nobody knows where
16 it is. At least I can't find somebody who knows.

17 Counties are grappling with the
18 enormous -- not just Philadelphia County. We
19 just happen to be the biggest and in some
20 people's eyes Sodom on the Delaware. We always
21 have been that. But the costs of administering
22 the judiciary for every county has become the
23 number one budget item.

24 And by the judiciary, I include in
25 that district attorneys, defenders, prisons. It

1 is out of control, out of control, not only out
2 of control. For a city like Philadelphia -- and
3 I speak to county commissioners all of the time
4 because I went to law school with them.

5 I went to Dickinson. It is really
6 an amazing thing. People from Philadelphia ought
7 to be compelled to go to school out there because
8 what you find is a source of great people who you
9 would never encounter in the ordinary course of
10 your life.

11 But in any event, I talked to them.
12 It's a constant refrain. How do we deal with
13 this? We don't have the resources. We have got
14 to have some kind of collective means, meaning
15 state, means of dealing with it. And that
16 doesn't necessarily mean the State subsuming the
17 costs. That is not really the answer. It is
18 part of an answer.

19 The other thing is, Well, who is
20 running this place? That is the question. Now,
21 I have a great deal respect for judges of the
22 court. I've appeared before them. I have known
23 them in a lot of different ways. I have known
24 some of them before they went on the bench, and
25 most of them are good people. They are caring

1 people. I may differ with them on issues, but
2 it's not like let's throw the bums out. I'm not
3 suggesting that at all.

4 What puzzles me, however, is, at
5 least insofar as the administration of the
6 judicial system in Pennsylvania, at the last
7 constitutional convention in 1968, there were a
8 number of proposals that were made. Those
9 proposals were to be interrelated. They didn't
10 exist independent of one another, but they
11 weren't on the ballot that way. And merit
12 selection was defeated.

13 I often like to tease some of my
14 friends in the labor movement by reminding them
15 that in 1968, they were the primary proponents of
16 merit selection. That's changed. But I like to
17 remind them that they were right one time. But
18 what we did when we passed those amendments is we
19 came up with a unified judiciary. Well, but who
20 runs it?

21 Now, if you look at the other models
22 in the other states and you look at the Supreme
23 Court, judges judge. That's their job. They
24 judge. They don't administrate.

25 Lawyers, as a class, think they can

1 do anything. They do. If you ask one, I'm one,
2 somehow you think you can do anything. That law
3 degree gave you a key to anything.

4 Lawyers are probably the rottenest
5 administrators second only to doctors that you
6 could ever find. And judges are lawyers, and
7 they are also judges. They ought to be in the
8 business of judging and not be in the business of
9 administrating. And we do have a professional
10 court administration office, albeit how much
11 power does it really exercise?

12 So that on this side of the
13 equation, I just alluded to some very serious and
14 substantial problems that are not directly before
15 your panel, although when I was invited, I was
16 told that anything goes with regard to the
17 judiciary. And that is why I have alluded to
18 that.

19 But the thrust of my testimony goes,
20 I think, to the heart of the matter. It is an
21 issue which transcends all others because until
22 you deal with it, the patient will continue to
23 debilitate. The cancer grows. It doesn't
24 diminish.

25 Next year we've got two Supreme

1 Court slots to fill. Now, think of it for a
2 moment. Let me take you back. I don't mean to
3 be redundant, but let's play the record again.

4 Now, out of the pack -- and there is
5 a pack of people who have announced or have
6 floated trial balloons as to their candidacies.
7 By a very conservative count, I count 12. Now,
8 that's real conservative and that's now. As we
9 watch this unfold, let's wait a month or two
10 months, and we are going to see, you know, it's
11 going to be like take a ticket, line up, because
12 we are not going to have few. We are going to
13 have many.

14 Now, let's take one more history
15 lesson except one that is fresh in everybody's
16 minds, the last Supreme Court race. Now, I know
17 both candidates in that race. I like them both.
18 I respect them both. I have known them. I
19 served in the District Attorney's office with
20 one. I have known him since law school, and the
21 other I have appeared in front of on any number
22 of occasions. And he is a fine, fine judge.

23 Now, one of them had an advantage
24 big time. Most of you know that if you turn on
25 this media market -- and if you are in Dauphin

1 County, you can get it. You can watch Channel 3,
2 6, or 10 in Dauphin County. You can watch it in
3 Lancaster County. You can watch it in Berks
4 County. You can watch it in Bucks County.

5 And if you are on the nightly news
6 every night or almost every night because of the
7 nature of your office and you haven't spent a
8 dime, you haven't spent a dime, and you do that
9 for a couple of years, guess what? People know
10 who you are. They know who you are. They may
11 not know a lot about you, but they know I
12 remember him. I know him. He's a good guy.

13 DA's are good guys for the most
14 part. They all appear to be good guys, and
15 certainly he is a good guy. So that's what stuck
16 in people's heads.

17 Now, here is a judge that didn't
18 make any of the radical decisions that other
19 judges have made. So how is he going to do? He
20 is going to have to buy it. This takes me back
21 to you can't take money out because he had not
22 such an advantage to gain what? To gain
23 identification in the voter's mind. He had to go
24 buy it.

25 This is the most expensive media

1 market in the state, but it's not the only one.
2 You can be well-known here and west of the
3 Alleghenies not a clue. Why should they?

4 But if you have a contest as we did,
5 that's an enormous advantage. And then you have
6 to go out and raise the money. Where do you get
7 the money from, and how much money can you raise,
8 1.4 million? That's obscene, but is it really
9 obscene in a context of how else can you be
10 competitive? How can you be competitive if you
11 have chosen to have foregone making some kind of
12 outlandish decision which gets you what the money
13 would buy?

14 Now, I only use that in the context
15 of what we are going to see next year. No matter
16 what you do, there is not going to be any
17 legislation with regard to subsidies. If you
18 look at the checkoffs, even those in other
19 states, you will find there is not enough money
20 that is yielded by a checkoff.

21 And what's to prevent me next
22 year -- because a number of those 12, in fact,
23 all of them are Common Pleas Court judges -- what
24 is going to stop me from being one of them, other
25 than the sense, maybe an acute sense, of moral

1 rectitude, from making some kind of decision
2 which will blow the rest of the pack away?

3 I come back and I say to you in
4 conclusion -- and I would be happy to answer any
5 question you may have -- this is a cancer. You
6 can't treat it with Band-Aids. It doesn't work.
7 All of that which passes for reform which goes
8 under the guise is really sheep's clothing.
9 There are wolves underneath there.

10 Lots of people have a vested
11 interest in maintaining the status quo. A lot of
12 them, however, are going to be more painfully
13 afflicted next year because it's going to cost
14 them. And maybe since those are the people who
15 so oppose merit selection, maybe it's better that
16 their pockets be picked clean, that they really
17 get the pain that is going to be inflicted by
18 filling those two slots next year.

19 Maybe then, maybe then and only then
20 notwithstanding all that's happened with Judge
21 Larsen, notwithstanding all of the charges and
22 countercharges of that court, notwithstanding all
23 of that, maybe what it fundamentally will have to
24 come down to is pick their pockets clean.

25 Thank you.

1 CHAIRMAN DERMODY: Thank you, Mr.
2 Voight. I would also like to note that
3 Representative Manderino from Philadelphia has
4 joined us.

5 Are there any questions?

6 (No response.)

7 CHAIRMAN DERMODY: Thank you, Mr.
8 Voight.

9 Our next witness is Robert Surrick,
10 the executive director for the Coalition for Real
11 Judicial Reform.

12 MR. SURRICK: It is interesting to
13 hear some of the comments of Mr. Voight. I
14 remember testifying before the House Judiciary
15 Committee when Chairman DeWeese was the chairman
16 and now Speaker DeWeese was the chairman. I
17 think it was 1985, '86, '87, sometime in that
18 period of time. And I used the words you can't
19 put a Band-Aid on an arterial hemorrhage. And I
20 was talking about comprehensive reform at the
21 time.

22 And for many of the people who I was
23 talking to, not the people in the legislature,
24 they thought that Bob Surrick was a little bit of
25 a wild man. He was suggesting too much. He was

1 trying to do too much. And it is interesting to
2 hear that we are now at the point where other
3 people are saying, You can't put a Band-Aid on an
4 arterial hemorrhage.

5 The other preliminary comment I
6 would like to make is to the chairman and the
7 members of this subcommittee. The people of
8 Pennsylvania owe you a debt of gratitude. You
9 have done a service. The removal of Justice
10 Larsen and your participation in that removal has
11 implications far beyond the actual removal of
12 Justice Larsen.

13 I, for one, am grateful for your
14 effort and for the time that you have put in and
15 for the service that you have done the
16 Commonwealth. Thank you.

17 CHAIRMAN DERMODY: Thank you.

18 MR. SURRICK: I have prepared
19 remarks. I don't usually do this. I prefer to
20 speak extemporaneously; but there are a lot of
21 things that I have to say, and I want to make
22 sure that I cover each of the points.

23 So I would encourage you if at any
24 time you don't understand what I am saying or you
25 want to ask a question about what I am saying or

1 you want to challenge what I am saying, I urge
2 you to do that.

3 The Senate of Pennsylvania, in a
4 historic vote, convicted Justice Larsen of
5 misbehavior and removed him from office. What do
6 we know about the Senate's votes on the Articles
7 of Impeachment?

8 First, we know Justice Larsen was
9 convicted of improperly meeting with the former
10 chairman of the disciplinary board of the Supreme
11 Court and agreeing to personally review two cases
12 Mr. Galardi had before the Supreme Court. We
13 also know that the Senate voted to acquit Justice
14 Larsen of the charge that he made false
15 allegations against Justices Zappala and Cappy
16 when he charged them with criminal and judicial
17 misconduct.

18 Let me give you a brief outline of
19 my credentials as background for my testimony
20 today. I am not part of the Establishment and
21 don't want to be. The Establishment is what got
22 us to where we are today with a mediocre, if not
23 corrupt, judicial system in which the citizens of
24 this Commonwealth have become disillusioned and,
25 in fact, disrespectful.

1 We have just convicted a Supreme
2 Court justice of an impeachable offense, not
3 necessarily because of the impeachable offense
4 but because he committed the unforgivable sin of
5 blowing the whistle on other justices.

6 While a member of the judicial
7 inquiry and review board, I voted to remove
8 Justice Larsen from office in 1983, 11 years ago;
9 but my vote failed because the judges on the
10 board voted in lock step to dismiss the charges.
11 I have spent countless hours attending seminars
12 and conferences all over the United States on
13 judicial accountability. I know something about
14 that subject.

15 I also spent six punishing years
16 under investigation and charges by the
17 disciplinary board of the Supreme Court on
18 complaint of Justice Larsen. I weathered a
19 second investigation which was dismissed after
20 Judge Newcomer in the United States District
21 Court asked aloud in open court whether or not
22 the disciplinary board had a secondary motive,
23 they are his words, a secondary motive, in
24 investigating Surrick.

25 And I am now at the present time the

1 subject of a third investigation, not because of
2 way I practice law, but because of my criticism
3 of the court system and Justice Larsen.

4 As a result of this harassment, I
5 also know something about the Pennsylvania
6 Disciplinary System which, as I have pointed out
7 for years, has become politicized. I have
8 practiced before judges such as Louie Bloom and
9 Leroy VanRoden who were so senile that they were
10 really unaware of what was going on around them.
11 I have practiced before common pleas judges who
12 were alcoholics and/or emotional basket cases,
13 but who remain in place and materially affect
14 people's lives every day.

15 I blew the whistle on the Supreme
16 Court's \$25,000 a year unvouchered expense
17 accounts and brought to public attention Justice
18 Papadakos' \$100,000 a year office space and his
19 son on the Supreme Court payroll at something in
20 excess of \$70,000 a year.

21 I have argued scores of cases in our
22 appellate courts, some of them landmark cases,
23 such as Ridleybrook and also have been a litigant
24 in landmark cases such as Surrick v. Upper
25 Providence Township. This is my fifth trip to

1 either the House or Senate Judiciary Committee to
2 discuss judicial reform.

3 In 1987, Common Cause/Pennsylvania
4 awarded me its Public Service Achievement Award
5 for my efforts on behalf of judicial reform in
6 Pennsylvania. I have served as team leader on
7 the Common Cause Judicial Reform Project Team and
8 recently persuaded United We Stand America to
9 make judicial reform its number one priority in
10 Pennsylvania.

11 In 1993, I was a candidate for the
12 Supreme Court after overcoming Pennsylvania's
13 draconian election laws for third parties and put
14 24,000 miles on my car in a five-month period
15 traveling to every county seat in Pennsylvania.
16 I made it a point to visit every president judge
17 that I could find in the one- or two-judge
18 counties to discuss with them their views on the
19 state of Pennsylvania's judiciary. To say they
20 are appalled by the Supreme Court is an
21 understatement.

22 During the campaign, I was endorsed
23 by nine daily newspapers, newspapers as powerful
24 as the Allentown Morning Call, more endorsements
25 than either Republican Castille or Democrat Nigro

1 received combined. Two other newspapers, the
2 Scranton Times and the Lancaster Intelligencer,
3 while not endorsing any candidate, said that the
4 comprehensive reform package that I had offered
5 was on the right track.

6 The nine newspapers that endorsed me
7 didn't endorse me because I am such a great guy.
8 It's because of what I am advocating. I have
9 practiced law in the Commonwealth of Pennsylvania
10 for 34 years and been an A-rated lawyer by
11 Martindale Hubbell for more than 20 years.

12 I have been either solicitor or
13 special counsel to over 20 municipalities in this
14 Commonwealth, mostly involving litigation in our
15 court system. Humbly, I suggest to you that I
16 know what I am talking about when it comes to the
17 Pennsylvania court system; and the following are
18 my thoughts for correcting many of the problems
19 which are obvious and correctable.

20 In 1983, while a member of the
21 judicial inquiry and review board, I voted to
22 remove Judge Larsen from office for numerous
23 violations of the Code of Judicial Conduct
24 including political activity and racism. Justice
25 Larsen retaliated by seeking to have me disbarred

1 at the hands of the disciplinary board of the
2 Supreme Court of Pennsylvania, a board appointed
3 and funded by the Supreme Court which maintains
4 oversight responsibility.

5 He also brought a libel action
6 against me, the Pittsburgh Post Gazette, and the
7 Philadelphia Inquirer. I might note that that
8 lawsuit was just dismissed after 11 and a half
9 years in the Pennsylvania court system. It was
10 dismissed on my Motion for Summary Judgment, a
11 preliminary motion, 11 and a half years later.

12 Recognizing that something was very
13 wrong, I went to friends in the legislature and
14 pointed out that something very bad was
15 happening; that is, not only was Larsen getting
16 away with egregious misconduct at the hands of a
17 failed judicial inquiry and review board, he was
18 pursuing with a vengeance someone who had voted
19 his conscience.

20 My friends in the legislature
21 pretended what was happening wasn't going on. I
22 turned to my friends in the judiciary with the
23 same result. Governor Thornburgh, who appointed
24 me and specifically asked me to do what I could
25 do to clean up the judiciary in Pennsylvania, was

1 no better than my friends in the legislature and
2 the judiciary.

3 Looking back, the actions of all of
4 these people remind me very much of the story of
5 Tony and Luigi, two Italian immigrant workers who
6 worked in Allegheny County. Mr. Voight kept
7 referring to it. I'll make the venue Allegheny
8 County. And these two worked side by side for a
9 number of years. And one day Luigi turned to
10 Tony -- and I am going to do this in dialect. I
11 hope I don't offend anybody. My defense is
12 probably the way I do dialect, not using dialect.

13 But Tony turned to Luigi one day and
14 he said, "Hey, Luigi, the boss is leaving early
15 every day." He said, "If he goes tomorrow, I'm
16 going to go tomorrow, too." And Tony says, "Hey,
17 don't do that." He said, "If you do that, you'll
18 get in trouble." Luigi said, "I'm going to go."

19 So the next day the boss left early.
20 Luigi left and went home. As he went home, he
21 opened the door and heard some noise upstairs,
22 looked in the bedroom. And there was the boss in
23 bed with his wife. He closed the door very
24 carefully, went back downstairs, went to the
25 local taproom, had a couple of beers, and came

1 home at the regular time.

2 The next day when the boss left
3 early, Luigi said to Tony, "Are you going to
4 leave? There goes the boss. Are you going to
5 leave today?" He said, "No. I almost got caught
6 yesterday."

7 And that is the mentality of the
8 legislature and has been the mentality of the
9 legislature and the judiciary and the executive
10 toward what has been going on in the Pennsylvania
11 court system for the last 10 or 12 years. The
12 bottom line, nobody in authority wants to
13 acknowledge the full extent of the real problems
14 with Pennsylvania's judiciary. The problems were
15 there are in 1983, and they are still here in
16 1994.

17 Let me put it this way. Anybody who
18 accepts at face value that the Rendell
19 administration hastily commandeered an airplane
20 to fly Vince Fumo from the Jersey shore on the
21 July 4th weekend to Justice Zappala in Ohio so
22 that Fumo could "make nice" with Justice Zappala
23 is no different than Tony.

24 Now, we can all play like Tony and
25 pretend it didn't happen, but all of us in this

1 room probably have the same opinion of what
2 happened. And it isn't pretty. There has been a
3 complete lack of ethical standards and indeed
4 rampant corruption on the Supreme Court of
5 Pennsylvania. What are we going to do?

6 The genesis of these all-too-obvious
7 problems in the Pennsylvania judicial system
8 spotlighted by the Larsen impeachment trial's
9 revelations of justices accusing justices of
10 fixing cases, chummy relationships between
11 politicians and justices, disciplinary board
12 sleaze, etc., is the Constitutional Convention of
13 1968 which created Article V, the Judiciary
14 Article.

15 That was another era when judges
16 were held to higher standards and we weren't
17 overrun by lawyers crawling all over each other
18 to earn a dollar. The Supreme Court was given
19 unlimited power over a unified court system.
20 Now, this, I suggest to you respectfully, is the
21 heart of what we are going to be talking about
22 today and what I am going to be talking about.

23 Power corrupts, and absolute power
24 corrupts absolutely. The Supreme Court has been
25 corrupted by absolute power, and Justice Larsen

1 has shown his brethren the way.

2 There are two separate problems
3 which require your immediate attention. The
4 first is how we select our appellate court
5 justices and judges. Statewide election of
6 judges just doesn't work. I have run statewide.
7 And I can tell you that because judicial
8 elections draw little attention, the public has
9 not the slightest idea who they are voting for.

10 Selection of the candidates is
11 controlled by political parties in small
12 nominating conventions dominated by the large
13 metropolitan areas. And that's why we have a
14 Supreme Court with five justices from Pittsburgh
15 and two from Philadelphia, all of whom have
16 bubbled up through what are essentially corrupt
17 big-time political machines and none of whom have
18 the rock-solid values that are found in the rural
19 areas.

20 I call statewide election of judges
21 cigar store Indian contests because each party
22 gets its cigar store Indian who doesn't say
23 anything and whoever raises the most wampum wins.
24 Of course, the last election makes a liar out of
25 me because even though Vince broke the bank for

1 Nigro, his horse was so lame that he still
2 couldn't get across the finish line.

3 You can change campaign financing,
4 and you can change the rules concerning what a
5 judicial candidate can say. But you won't change
6 reality. Most voters won't have the slightest
7 idea who they are voting for statewide in an
8 off-year election.

9 Merit selection is dead. For ten
10 years, good government groups have mounted a
11 heroic assault on this legislature trying to
12 convince enough legislators that merit selection
13 is the answer. Barry Kauffman at Common Cause
14 told me after merit selection failed in June in
15 this legislature that it looked as if the
16 proponents of merit selection were 40 votes
17 short. I can tell you right now after talking
18 with a number of legislators, next year it will
19 be 60 votes.

20 Legislators are not going to vote to
21 take away their constituents' right to vote for
22 what many consider to be an elitist proposition.
23 Rural legislators and their constituents know
24 that they know how to select good judges, and
25 they will not understand the right to vote being

1 taken away from them. It's just not going to
2 happen. This is practical politics, ladies and
3 gentlemen. It's not going to happen. I don't
4 believe it's going to happen in the legislature.

5 What's the alternative? Last year
6 when I ran for the Supreme Court, the newspapers
7 that endorsed me did so because of the Surrick
8 Plan for Seven Judicial Districts and the other
9 reforms which I advocated in a coherent and
10 comprehensive package. Many legislators that I
11 have talked to have told me that regional
12 election of appellate court judges is a viable
13 and acceptable alternative to the present method
14 of electing judges statewide or merit selection.
15 It is an idea whose time has come.

16 Here are the essentials. The
17 keystone for judicial reform in Pennsylvania is
18 regional election of appellate court justices and
19 judges. Let me show you what I said when I went
20 around this Commonwealth, and I am going to tell
21 you it sold.

22 Here is what we now have. Here is
23 what we had before the election, before the 1993
24 Supreme Court election. We have five justices
25 from Pittsburgh, two from Philadelphia. And 65

1 of the 67 counties have been shut out of the
2 process. And while this is egregious, the
3 Superior Court and the Commonwealth Court have
4 the same essential problem. The big cities are
5 monopolizing what goes on in the appellate
6 courts.

11

7 I have proposed dividing the state
8 into seven judicial districts. A Supreme Court
9 justice comes from each district, two Superior
10 Court judges from each district. There are 15,
11 as you know, on the Superior Court; and the extra
12 would rotate among the districts. There are nine
13 Commonwealth Court judges. So there would be one
14 Commonwealth Court judge from each district, with
15 the other two rotating through the districts.

16 The idea is not to create
17 proportional representation. I went to a land
18 planner to get this made; and I said, All I am
19 telling you I want done is do not break up any
20 counties. Follow county lines and make them
21 approximately equal. They don't have to be equal
22 because we are not talking about proportional
23 representation.

24 This is what came out. There are
25 probably other things that you can do; but I

1 respectfully suggest there is not a whole lot you
2 can do because of the bookends at either end of
3 the state, Philadelphia and Pittsburgh, and the
4 vast open space in the middle of the state. It
5 is going to come out looking something like this
6 no matter what you do.

7 The idea here is not to create
8 proportional representation. It is to create
9 diversity on our courts. I can tell you that I
10 have tried cases all over this state. I can tell
11 you that I am going to start suit tomorrow in
12 Columbia County in a matter. I can tell you the
13 judges up in Columbia County -- there are two
14 judges, Naus and Keller -- they see the world
15 differently than the judges down here in
16 Philadelphia, who must feel like Fort Apache with
17 the cases just coming over the walls at them all
18 day long. It's a numbers game trying to take
19 care of the numbers of cases in Philadelphia.

20 There is a different values system
21 upstate than there is down here in Philadelphia
22 and in Pittsburgh. The values system in
23 Philadelphia and Pittsburgh is created by the
24 huge numbers of people. The values system in the
25 center of the state is created by the absence of

1 people. They are different, and that kind of
2 diversity should be on the Supreme Court of
3 Pennsylvania and through the appellate courts.

4 Simply stated, rural and less urban
5 areas have a right to participate in the
6 appellate court selection process. The districts
7 would be subject to realignment every ten years,
8 the same as reapportionment, by the legislature
9 upon recommendation of a courts commission, which
10 I will outline later.

11 Upon the passage of a constitutional
12 amendment creating regional districts, the
13 present malodorous Supreme Court should be
14 abolished upon election of successors. Let's end
15 the hemorrhaging brought about by willful men who
16 care more about themselves than about the system.
17 I believe the Superior and Commonwealth Courts
18 are best left intact to be replaced by election
19 upon retirement or vacancy according to a
20 schedule to the constitutional amendment.

21 Also, the following three issues
22 should be addressed: Retention election should
23 be abolished. It has proved to be a sham.
24 Research of the records indicates that it is
25 virtually impossible to defeat a sitting judge.

1 Recently a Supreme Court justice whose
2 qualifications and ability to serve should have
3 produced a resounding no vote was retained. This
4 same justice -- it was Papadakos -- was quoted as
5 saying, Retention election is routine.

6 I told the public when I went
7 around the state last year about Justice
8 Papadakos and some of the things that he had
9 done. I also pointed out that he only had one
10 year that he could serve under the mandatory
11 retirement provisions of the Constitution. He
12 had no business running. If ever it should have
13 produced a no vote for retention, it was there.
14 It just didn't happen. It doesn't happen.

15 The constitutional age limit of 70
16 should be abolished. There is no reason why a
17 qualified jurist should not serve past age 70 so
18 long as the jurist is able. Justice Juanita Kidd
19 Stout who was unceremoniously dumped from the
20 Supreme Court by her brethren because she didn't
21 do their bidding comes to mind.

22 Justice Stout coincidentally, the
23 rest of the justices on the Supreme Court played
24 the age card on her the date that she announced
25 her vote, which was a swing vote, to dismiss the

1 disciplinary board charges against me. The
2 creation of disability procedures, which will be
3 addressed hereafter, would take care of the
4 problems created by age.

5 Consideration should be given to the
6 creation of a regional chancery court to provide
7 a forum for corporate business matters which
8 require expertise and consideration not presently
9 available in the Courts of Common Pleas. It is
10 suggested that the creation of such a court would
11 enhance the business climate in the Commonwealth
12 of Pennsylvania.

13 I have one other point that dropped
14 out of the computer that I would like to make. I
15 think the Supreme Court should be headquartered
16 and hear cases in Harrisburg. The grand jury
17 suggested that the evidence of Supreme Court
18 justices traveling around the state, staying in
19 expensive hotels, consorting with politicians as
20 they travel around the state is just not good.
21 If I could suggest, the monastic life of a court
22 system in Harrisburg would make a lot of sense.

23 The second area which must be
24 immediately addressed is the absolute power of
25 the Supreme Court which has led to the present

1 low state of affairs.

2 The quality of justice in
3 Pennsylvania has lagged behind the rest of the
4 country because our Supreme Court justices become
5 enmeshed in activity such as trying to control
6 the Philadelphia court system, negotiating with
7 powerful politicians about pay raises, buying and
8 implementing computer systems, giving themselves
9 disguised pay raises in the form of unvouchered
10 expense accounts, leasing palatial office space,
11 paying law clerks twice what a law clerk for the
12 Supreme Court of the United States makes, and so
13 on, ad nauseum.

14 During the campaign, I found out --
15 I did some checking. I went to the library in
16 Harrisburg, and I found out that we have about
17 three or four law clerks for Supreme Court
18 justices who make over \$70,000 a year. Law
19 clerks for justices of the Supreme Court of the
20 United States of America make maximum pay of
21 \$42,000 a year.

22 CHAIRMAN DERMODY: What is the max,
23 \$42,000?

24 MR. SURRICK: \$42,000 for the
25 Supreme Court of the United States. What they

1 have are flunkies or butlers and people for all
2 seasons. They do everything for them, and they
3 pay them 70 -- Papadakos' kid makes 70-some
4 thousand dollars as a law clerk in the Supreme
5 Court.

6 When Papadakos was elected in 1983,
7 he put his son on the payroll at \$18,000 a year.
8 And the media went after him and asked him,
9 Doesn't this look like nepotism? Doesn't it look
10 wrong? He said, He's only getting \$18,000 a
11 year. He's a bargain. Well, his kid got a pay
12 raise every year in spite of a freeze on Supreme
13 Court employees' pays. For every other Supreme
14 Court law clerk, there was a freeze on.

15 For the judicial inquiry and review
16 board, Bob Keuch left because of the freeze.
17 Skip Arbuckle has had problems because of the
18 freeze. But Papadakos' kid got a raise every
19 year. That's the kind of stuff that has been
20 going on, and that's the kind of stuff that
21 brings this whole system into disrepute. It's
22 not Larsen. I mean Larsen was just one part of
23 it.

24 As I said, the Fumo trip to see
25 Zappala, the Zappala business with the Pittsburgh

2

1 Transit System case with Mr. Pass and all that.
2 It's rampant. It runs through the system.

3 REPRESENTATIVE MANDERINO: Question.
4 Sorry to interrupt.

5 MR. SURRICK: Yes.

6 REPRESENTATIVE MANDERINO: How does
7 regional election address and solve that?

8 MR. SURRICK: I'm glad you asked
9 because that's exactly what I'm going to talk
10 about next.

11 The Supreme Court justices should
12 not be doing the kind of things they are doing.
13 They should be writing scholarly opinions,
14 fostering and enhancing the majesty of the law,
15 defining public policy issues, and enhancing
16 public respect based upon probity, moral
17 rectitude, and intellectual accomplishment.

18 It's time to end the creation of
19 fiefdoms and the excesses of the raw exercise of
20 power. All this can happen by restructuring as
21 follows, and now I would like to answer your
22 question.

23 A courts commission should be
24 created under Article VI consisting of
25 representatives from each of the seven judicial

1 districts. This is the cornerstone of limiting
2 the Supreme Court's unlimited power which has
3 caused all of our problems. The courts
4 commission, which would have far reaching and
5 independent responsibilities, would consist of 25
6 members selected as follows:

7 Seven lawyer or judge members
8 appointed by the Supreme Court; seven members
9 appointed by the governor, no more than three
10 could be lawyers or judges; seven lay persons
11 appointed alternately by the Speaker of the House
12 or the President Pro Tem of the Senate,
13 alternately, so long as they are members of
14 opposite political parties. And if of the same
15 party, the ranking minority member of the House
16 or Senate shall select.

17 The 21 members of the courts
18 commission thereby selected shall pick 4 other
19 members, 2 of whom shall be deans of law schools
20 and 2 of whom shall be chairs of public service
21 groups such as the League of Women Voters, Common
22 Cause, Pennsylvanians for Modern Courts, etc.

23 CHAIRMAN DERMODY: Excuse me for
24 just one second, Mr. Surrick. That would be like
25 the judicial council that we know, similar -- it

1 was defunct actually --

2 MR. SURRECK: I'm sorry. I can't
3 hear you.

4 CHAIRMAN DERMODY: It is similar to
5 a judicial council, one the Commonwealth even had
6 in place at one point, correct, and while the
7 federal courts worked?

8 MR. SURRECK: That's correct. But
9 you will see as I go along, I am going to give
10 this body very specific and far-reaching power
11 and take it away from the Supreme Court of
12 Pennsylvania. And by doing that, I think we are
13 going to end some of the problems.

14 The courts commission shall oversee
15 the following departments: (1) a department of
16 court administration which shall staff and
17 oversee the administration of all the courts of
18 the Commonwealth; (2) a department of judicial
19 and attorney accountability, which through
20 full-time professional hearing examiners,
21 consider all charges brought by the Pennsylvania
22 Disciplinary Counsel, who I will refer to in a
23 minute, which proceedings shall be open to the
24 public.

25 A right of appeal shall exist from

1 the decision of the hearing examiner to the
2 courts commission whose decision shall be final.
3 That is important. It doesn't go to the Supreme
4 Court anymore. What I am saying is that the
5 courts commission has that decision.

6 The courts commission may remove a
7 judge or justice for violation of the Code of
8 Judicial Conduct or disbar a lawyer for violation
9 of the Rules of Professional Conduct or impose a
10 lesser sanction. A vote of two-thirds of the
11 courts commission shall be required for removal
12 of a justice or a judge or disbarment of a lawyer
13 with a simple majority of the courts commission
14 being sufficient for a lesser sanction.

15 Let me speak to this issue just for
16 a moment. I know a lot about judicial and
17 attorney accountability. There is no reason why
18 you have two separate systems with two separate
19 administrators, two separate staffs, two separate
20 buildings, two separate everything. One body can
21 take care of judges and lawyers at the same time.

22 I can tell you when I served for
23 four years on the judicial inquiry and review
24 board, the judges put their pants on the same way
25 the lawyers put their pants on every day. We

1 don't need to treat them any different. Part of
2 the problem in Pennsylvania comes from the
3 historic, I guess, Magna Charta idea of judges
4 being off by themselves and what have you.

5 REPRESENTATIVE CALTAGIRONE:

6 Royalty.

7 MR. SURRICK: Royalty, exactly. We
8 have reached the stage in our modern, urban
9 society when judges should decide cases, period,
10 and end all of that trappings of royalty. I once
11 said in a campaign speech that the Supreme Court
12 justices, in my opinion, should probably trim
13 their robes with ermine because that's how they
14 see themselves. And they do.

15 A department of judicial
16 compensation which shall recommend compensation
17 for judges throughout Pennsylvania, which
18 compensation shall be provided for by the
19 legislature, upon request of the courts
20 commission. I mean what is sleazier than a
21 Supreme Court justice sitting there negotiating
22 almost openly with a powerful member of the
23 Senate Appropriations Committee or the House
24 Appropriations Committee over a pay raise?

25 Now, I can tell you, because I was

1 part of what was going on at the time, back in
2 1991 and 1992, there was an open suggestion that
3 a judicial pay raise was part of a package of
4 weakening the judicial accountability
5 constitutional amendment. Remember, in 1991 it
6 was taken off the ballot and in 1993 it passed?

7 Between 1991 and 1993, it was
8 weakened. And it was also part, the rumor had
9 it, of a legislative pension situation that the
10 Supreme Court was going to take care of the
11 legislators' pension cases.

12 Now, whether that's true or not is
13 irrelevant. It doesn't really make any
14 difference. The point is it was talked about.
15 And it comes about because the Courts had to go
16 hat in hand to the legislature for the pay raise.
17 There has to be some buffer in there to take care
18 of those problems.

19 REPRESENTATIVE CALTAGIRONE: Can I
20 interrupt you? I had the pleasure of serving on
21 the appropriations committee for a number of
22 years. I now serve as chairman of the House
23 Judiciary Committee. The inherent problem that
24 anyone will have in any system is whoever
25 controls the purse strings, controls the dance.

1 Now, I understand what you are
2 saying. And you can come up with any new system
3 or scheme that you want, but it will require a
4 budget and taxpayers' monies.

5 I'm looking through this, and I
6 didn't mean to cut you off because you have more
7 to come to. I just want to probe a little bit
8 into your mind as to how do you justify -- and I
9 understand what you are saying. And it doesn't
10 sound bad, I might add.

11 MR. SURRECK: Well, you and I have
12 had a few conversations about it.

13 REPRESENTATIVE CALTAGIRONE: Yes.
14 You have put a lot of thought into this. And I
15 daresay that not only myself, but I think there
16 are fellow members that like these proposals.
17 That's not to say that we can convince others
18 that there is merit in what you are suggesting.

19 However, it all boils down to and
20 the bottom line -- all of this boils down to
21 money, a budget. And how do you take money that
22 we raise statewide, okay, through our legislative
23 powers to tax and control the budget -- because
24 make no mistake about it, in any legislative
25 session, the budget is the most important piece

1 of legislation that we deal with. And that
2 includes the court budget.

3 Now, how do you take that authority
4 and power away from the legislature and give it
5 to the Courts with a blank check because as you
6 were saying earlier -- and I agree with you --
7 the egregious behavior about a blank check being
8 given to spend in palatial estates is absolutely
9 outrageous. And I think everybody agrees with
10 that.

11 MR. SURRICK: Do you remember
12 Justice Zappala appearing before the Senate
13 Appropriations Committee and Senator Tilghman
14 asking him, We want to know how you spend the
15 \$25,000 a year unvouchered expense accounts. We
16 want to know where that taxpayer money is going.
17 And he said, I'm not going to tell you.

18 REPRESENTATIVE CALTAGIRONE: But,
19 you know, with the separation of powers that we
20 have --

21 CHAIRMAN DERMODY: Article V let's
22 them do that.

23 REPRESENTATIVE CALTAGIRONE: In his
24 defense, I must say, and in all honesty, he has
25 done an about-face on that. And there is now

1 more accountability.

2 MR. SURRICK: I understand that, but
3 I would like to answer your question.

4 REPRESENTATIVE CALTAGIRONE: The
5 separation of powers issue, we are going to
6 continue to face that no matter what. And if you
7 don't directly work out some kind of a system
8 where the judiciary -- and you just can't
9 continue to give people a blank check or they
10 will run us right into the red.

11 MR. SURRICK: I couldn't agree more.
12 But let me say I agree -- my wife always says --
13 she is from upstate Pennsylvania and has a farm
14 background. She says, Money is the root of all
15 evil. Just make no mistake about that.

16 REPRESENTATIVE CALTAGIRONE: That's
17 true.

18 MR. SURRICK: And I agree with that.
19 I mean you can have this kind of system. You can
20 have any system you design; but as long as you
21 have people who are willing to take advantage, as
22 long as you have people who are willing to cheat
23 and steal or do wrong things or fix cases or do
24 anything, you are going to have these kinds of
25 problems.

14

1 All you can do is try and buffer and
2 insulate it. And that's why I created this
3 courts commission to get the power away from the
4 Supreme Court. And I give the courts commission
5 the right to go to the legislature and say, We
6 need X-number of dollars to run the court system.

7 These people are not necessarily
8 political types. I mean hopefully -- it's like
9 merit selection. People that argue for merit
10 selection think that we are going to get
11 wonderful things just because we have merit
12 selection and the governor appoints and the
13 Senate approves.

14 Well, I can remember a judge that
15 sits in this courtroom. John Herron was
16 turned -- great guy. I mean really a good,
17 capable man. He was former number two man in the
18 disciplinary board for a number of years. He was
19 turned down five times because he didn't have
20 political support.

21 He was one of the Casey 10, if you
22 remember, and he didn't have political support.
23 And Senator Pumo said, He is never going to get
24 my vote because he doesn't know how to play the
25 game. So the point is as long as you have people

1 doing this, you are going to have these problems.
2 All you can do respectfully is to try and buffer
3 that as much as possible. Some things are
4 acceptable.

5 The legislators, you people are
6 elected and given a responsibility of taxing and
7 spending. That is an awesome responsibility, and
8 I can understand your unwillingness to give one
9 iota of that authority away. But maybe it can be
10 buffered in such a way -- I mean I am not saying
11 this plan is written in stone. There may be some
12 things that can be done to change some things
13 that give you a little bit of a problem, but the
14 basic principle has to remain the same, which is
15 get the power away from the Supreme Court.

16 REPRESENTATIVE CALTAGIRONE: I don't
17 disagree with some of the basic premises that you
18 have made. And your hypothesis, I think, is on
19 the right track.

20 However, keep in mind now I have met
21 and I have been doing this almost since I have
22 been chairman of this committee for the last six
23 years, once a year with president judges. We
24 have had an attendance rate of between 50 and 60
25 percent at every one of those meetings.

1 I point out to them that they not
2 only have to administer justice as the president
3 judges of their respective counties, but they
4 also are the administrators and are accountable
5 financially for running their courts financially.

6 MR. SURRECK: They don't like it
7 because, I'll tell you, when I get up in Fulton
8 County and other places and talk to the president
9 judges at war with the county commissioners over
10 the funding of the court system, there is a
11 problem.

12 REPRESENTATIVE CALTAGIRONE: And you
13 see, this is where we have a major problem that
14 really hasn't been dealt with. And it is not
15 particular to Philadelphia or Allegheny. It is
16 the whole state because the county commissioners,
17 as does the legislature, we have a responsibility
18 to the people that put us in office to contain
19 and control the spending.

20 Well, you know, the judges say,
21 Well, you know, there is no fixed dollar amount
22 for justice. We can't be bothered with that.
23 Well, wait a minute, people. We are living in
24 the real word. You just can't get a blank check
25 for justice. And therein lies a problem that has

1 to be dealt with and there has to be a mechanism
2 to deal with.

3 And when people get a little bit
4 outrageous and buying outlandish furniture and
5 having staff people that really aren't performing
6 the kind of services -- and that could be going
7 on in the smallest county as well as the largest
8 county, let alone the Supreme Court or any of the
9 other courts -- it is accountability.

10 The other thing, you know, with the
11 local judges and the local judiciary as well as
12 the local DA's, there has to be accountability in
13 the local counties as well as the State because
14 we pay a good portion of that. Now, most people
15 don't realize that for every dollar we take into
16 Harrisburg, 75 to 80 cents on the dollar of that
17 goes back home to the local counties.

18 MR. SURRICK: I'm in the process --
19 there will be a bill that will be presented to
20 your committee shortly. And it will deal
21 specifically with the nuts and bolts. I am
22 trying to deal with a concept here, and we will
23 deal with the nuts and bolts. And it will spark
24 the same argument again. I know that.

25 I would also create a department of

1 audit and budget which shall, utilizing statewide
2 funding, prepare a budget for each court for
3 approval by the courts commission and audit all
4 expenses including justices' and judges' expense
5 accounts.

6 A department of judicial and
7 attorney disability which shall monitor the
8 physical and mental health of all lawyers,
9 justices, and judges to determine their
10 competence to practice or serve. The department
11 may recommend to the courts commission removal or
12 suspension based upon medical evidence of
13 physical incapacity or mental disability. A
14 two-thirds vote of the courts commission shall be
15 required for removal of a judge, justice, or
16 lawyer for permanent disability and a majority
17 vote for medical leave.

18 There shall be created under Article
19 VI -- and I think this is an important point --
20 of the Constitution the office of Pennsylvania
21 Disciplinary Counsel which shall maintain a
22 presence in each judicial district. Chief
23 disciplinary counsel shall be appointed by the
24 Attorney General of Pennsylvania. Chief
25 disciplinary counsel shall have the

1 responsibility for monitoring the conduct of
2 judges, justices, and lawyers and shall bring
3 charges, where appropriate, before the courts
4 commission.

5 The term of office for the
6 disciplinary counsel shall be five years.
7 Disciplinary counsel shall only be removed by the
8 appointing authority for cause and shall be
9 immune from state judicial process for all
10 official actions.

11 My conversations with legislators
12 have led me to conclude that legislators badly
13 want to do something to clean up the judicial
14 mess in Pennsylvania. They won't vote for merit
15 selection. Statewide election of appellate court
16 justices and judges doesn't work.

17 Regional election of appellate court
18 justices and judges plus the remedial steps which
19 I have recommended to curb the power of the
20 Supreme Court is gaining favor. Many good
21 government and special interest groups that I
22 have talked to have indicated that the program
23 that I am advocating is an acceptable alternative
24 to merit selection if merit selection is indeed a
25 dead issue.

1 I believe that the grassroots
2 support that you are seeking for the legislation
3 to correct the Pennsylvania judicial system is
4 there. I believe the media support is there.
5 Actually, I know it's there.

6 I went to 65 daily newspapers last
7 year. And I talked with the editors in every
8 newspaper that I could talk to or the political
9 editor or -- some of them were sort of small --
10 whoever takes care of that kind of thing. This
11 thing sold like hot cakes, I mean even the people
12 from Pittsburgh and Allegheny County where you
13 have five justices. I won't ask the question of
14 anybody here, but we will say five justices from
15 one county probably is a little bit much.

16 And the people in the center part of
17 the state -- let me give you another example of
18 how this could work. I am from Chester County.
19 Let's say I decided to run for the Supreme Court.
20 I would have to present myself to the media and
21 to the organizations in Chester, Lancaster,
22 Lebanon, Dauphin, York, and Adams.

23 You can't run a Humpty Dumpty and
24 get away with it in six counties. You can't do
25 it. But statewide you could put up a Howdy-Doody

1 and get away with it if you have enough money.
2 And so this will also tend to end the problem of
3 campaign financing.

4 REPRESENTATIVE CALTAGIRONE: If I
5 could interrupt you for a minute, and I am just
6 looking at this. I don't know what the real
7 make-up is politically of those counties but just
8 on a first observation. And this is what I think
9 the reality is going to be. You look at that,
10 and I can pretty well tell you that out of those
11 seven districts, you will probably have three
12 Democrats and four Republicans made to order.

13 MR. SURRICK: I don't see it that
14 way. I counted three and three and swing, to
15 tell you the truth. I didn't draw it that way
16 for that reason.

17 REPRESENTATIVE CALTAGIRONE: I know
18 that. What I would prefer to see, to be quite
19 honest, is a lot of the independents and not have
20 anybody from either party.

21 MR. SURRICK: I don't have any
22 problem with that.

23 REPRESENTATIVE CALTAGIRONE: And
24 that way it would eliminate the politics totally.

25 MR. SURRICK: This isn't some secret

1 thing. I didn't draw it this way, but seven
2 looks like a Democrat. Six looks like a
3 Republican. Four probably is a Democrat. Five
4 is a Republican. One is a Democrat. Three is
5 probably Republican. I can tell you there are a
6 lot of Democrats in the center part of this
7 state. Two is probably a swing area with Erie in
8 it. There are 200,000 voters in Erie, and it is
9 probably a swing area.

10 All it will take to get this done is
11 a bill to be introduced after the first of the
12 year to amend the Constitution. The bill is
13 being drafted and will shortly be presented to
14 this committee with my belief that it will find
15 favor with your colleagues and become part of the
16 Constitution. Thank you for listening.

17 And I want to say in conclusion I
18 have talked with a number of legislators. I am
19 62 years old. I have a lot of friends up there
20 that have been friends for a long time, a lot of
21 enemies, too. But talking to them, I am
22 beginning to see a real swing in opinion toward
23 this kind of thing and toward taking the power
24 away from the Supreme Court.

25 You know, in real estate there are

1 three things that sell a property, location,
2 location, and location. And in politics there
3 are three things to accomplish something, timing,
4 timing, and timing. It couldn't be any better
5 than right now. Thank you.

6 CHAIRMAN DERMODY: Our next witness
7 is Jerome Bogutz from the Commission for Justice
8 in the 21st Century.

9 Tom Caltagirone had another meeting
10 in the building. He'll be back.

11 MR. BOGUTZ: I appreciate the
12 invitation to appear before this subcommittee.
13 As you indicated, I am Jerome Bogutz. I am
14 chairman of the steering committee of the
15 Pennsylvania Futures Commission for Justice in
16 the 21st Century.

17 For the stenographer, I have bad
18 news for you. I do not have written materials to
19 turn in to you. I do have some materials to hand
20 to the subcommittee, however, which are somewhat
21 of a background and back-up. It even has some
22 requests in there of the House of
23 Representatives.

24 CHAIRMAN DERMODY: Do you have those
25 with you now?

1 MR. BOGUTZ: Yes, I do.

2 A nationwide focus was placed on the
3 justice system well into the 21st Century
4 starting with about five years ago. The State
5 Justice Institute and the American Judicature
6 Society put together a conference about close to
7 five years ago to bring together representatives
8 from every state to get them to look more distant
9 into the future and consider the prospects of
10 what society might be facing 25 or 30 years from
11 now and whether there will, in fact, be a justice
12 system equipped to deal with them in the next
13 century 25 or 30 years from now.

14 I together with our vice chair, who
15 is Judge Richard Klein and also Judge Gafni --
16 Judge Klein is here -- attended that first
17 conference and in different capacities. We were
18 not necessarily representing Pennsylvania.
19 Judges Klein and Gafni were making presentations.
20 At that time, I was chairman of the judicial
21 administration division of the American Bar
22 Association Lawyers Conference. It was in that
23 capacity.

24 What that conference did was attempt
25 to stretch the minds of the participants through

1 presentations of futurists well into the 21st
2 Century, to think about such things as the
3 changes in demographics that our society will be
4 facing, the changes in technology that are
5 present today but how they are going to change in
6 the future, the demands of judges and lawyers,
7 the bioethical concerns, etc., etc. Those things
8 are somewhat predictable, but some involve a
9 futuristic and visionary way of thinking to be
10 able to look that far into the future, even
11 though it doesn't seem that far.

12 They had several days of
13 presentations. Without going into the depth of
14 what they covered, which was quite extensive with
15 some tremendous stretching exercises that the
16 facilitators put the group through, the result
17 was that after that conference some states, about
18 one-third of the states, actually got into
19 long-range futuristic planning. And a lot of
20 good reports have come from a number of the
21 states.

22 About a year and a half ago, the
23 State Justice Institute and American Judicature
24 Society said, Why haven't the other states done
25 this? Something must be wrong. They are not

1 stretching themselves to the future. And they
2 convened another national conference.

3 They wrote to the chief justices of
4 the states that did not, in fact, have these
5 long-range type of planning apparatus in place or
6 have not issued reports and said, We are going to
7 convene another national conference a little
8 different. We are going to look at what other
9 states have done. We are going to go through
10 some more exercises with you; and if you will
11 designate several representatives from your
12 state, we will foot the bill to bring them here
13 so that they can go through these exercises and
14 return to your justice system with
15 recommendations as to what you should be doing.

16 And in fact, because we had
17 participated in this prior exercise, the chief
18 justice asked us to attend this conference on
19 behalf of the Commonwealth of Pennsylvania, which
20 we, in fact, did. We went through some very
21 important and enlightening exercises. We did
22 learn a lot from what other states have done.

23 And the consequence of everything
24 that we ended up doing was that our final
25 exercise was to prepare a recommendation to our

1 Supreme Court or to our state as to what we
2 thought our state should be doing.

3 And with the help of our
4 technological expert here, we not only prepared
5 it, but we were the first one to have a fully
6 typewritten presentation to present to the board
7 because computer intelligence got this done even
8 as we were speaking. And we were able to present
9 this, and it was well received by the group.
10 There were some comments. We made some
11 revisions. And the bottom line was we returned
12 to the chief justice and said, Here is what we
13 suggest should be done. And we think the Supreme
14 Court should endorse this concept to look into
15 the 21st Century.

16 Eventually the Supreme Court signed
17 off and gave us their seal of approval and said,
18 Go ahead. Do it. And follow the plan that you
19 have suggested, and we will designate to you a
20 representative from the court which will be your
21 liaison. Keep us informed as you go forward and
22 let us be involved with those important steps
23 which are going to eventually lead to the
24 recommendations that you are presenting.

25 This kind of long-range planning, by

1 the way, is not unique to the courts or the
2 justice system. Industry has been using it for a
3 long time now and very effectively. I think the
4 problem with long-range planning with the justice
5 and the overall legal system is that it tends to
6 be a rearview mirror planning. What are the
7 problems that we had yesterday, and how do we
8 cure them today and tomorrow? You are always
9 playing catch-up.

10 Now, that is part of the mentality
11 in the legal profession, that we deal with
12 precedent and we look to precedent as opposed to
13 being able to stretch ourselves into the future.

14 The mechanics of what we have
15 planned, just to give you some idea, have already
16 been put in place; and you will see as part of
17 the papers that I gave you is a list of the
18 steering committee. The first thing we did with
19 the support of and approval of the Supreme Court
20 was to appoint a steering committee.

21 That steering committee is a
22 mini-expression of what the commission must be
23 doing. And that is for any effort such as this
24 to work, all of the stakeholders in the justice
25 system must have an opportunity to input. And

1 that is the broad base of every citizen group,
2 every citizen, individual, legislature,
3 judiciary, executive branch, and all of the
4 special interest groups out there have something
5 to say about this.

6 Somehow they must have a means of
7 communicating that information. And it's the
8 stakeholders who will make the kind of decisions
9 that are necessary for us to come up with
10 recommendations.

11 That steering committee has met on
12 occasion. They have appointed an executive
13 committee to meet in the interim, and that
14 committee meets on a regular basis to prepare the
15 materials which will eventually later this month
16 be presented to the steering committee. And
17 eventually we will have a commission appointed,
18 which we are well into the process of. That
19 commission will meet at the conference and
20 present the end results of that conference with
21 the help of facilitators and futurists.

22 I have to tell you I'm a lawyer. I
23 am not a futurist. I hope I am somewhat of a
24 visionary, as I believe Judge Klein certainly is
25 a visionary. But there are futurists out there

1 who can help us take that giant step through the
2 exercises that I have seen happen. And at the
3 national conferences and in other states, it is
4 effective.

5 They did this, in fact, in a
6 miniform with our steering committee. It was
7 shocking to see how very conservative people
8 started to reach far beyond in their thinking to
9 try to envision what society is going to look
10 like 25 years from now.

11 What are the changes that will
12 confront us or the technological changes? What
13 are the demographics going to be like? What
14 bioethical concerns might a judge have to face
15 with the increased information such as DNA, etc.,
16 and gene splicing or gene alteration? What kinds
17 of pressures might a judge face?

18 Then you ask yourself the question,
19 What does a justice system have to look like at
20 that time to be able to achieve this? Is it the
21 justice system that we have today? Certainly
22 there is substantial reason to believe that much
23 of what we have is excellent and certainly should
24 not be altered, but there will be different kinds
25 of demands. There will be different kinds of

1 needs.

2 We know what we have seen in other
3 states, what the problem of the average consumer
4 is. It's too slow. It's too expensive. It's
5 too inconvenient.

6 Now, certainly these kinds of things
7 have to be factored into future thinking, and
8 that's part of it.

9 We believe that it's possible --
10 it's possible for us to look beyond what today's
11 problems are that are in the forefront of the
12 judicial inquiries that we have today or the
13 inquiries into our justice system.

14 We know that other states have been
15 able to do this. And as a consequence, we are
16 very convinced that by putting together a
17 commission with a broad-based stakeholder
18 representation -- and you can't have everyone
19 represented in that commission because it would
20 be too large and cumbersome -- in addition to
21 that, having public hearings such as you have
22 been through and obtained a great deal of
23 information from, to have focus group studies and
24 impact studies, and to also utilize information
25 that has been obtained from other states in their

1 efforts, we should be able to come up with much
2 of what we hope will result in the stretching of
3 the minds of the commissioners who will be
4 meeting so that they can come up with
5 recommendations as to a design of a preferred
6 system.

7 When they look at this in some of
8 these exercises, they first say, Well, what if
9 nothing happened? What would be the worst
10 scenario that we would look to 25 years from now
11 if all of these changes that we have looked at
12 come about? What could be the best scenario?
13 And as part of this process, they end up with
14 what they consider to be a preferred vision for
15 the future, a preferred future of what a justice
16 system could look like.

17 Do we need the same kind of
18 courthouses that we have today? Do people have
19 to go to court to a courthouse to have a
20 deposition taken or to have a hearing? With the
21 prospects of visual reality, can't people in
22 different locations have the exact same kind of
23 experience in their room or in a distant room as
24 they would have if they sat in a courthouse?

25 Should a courthouse be dealing with

18

1 only the judges and the judicial dispensation in
2 the cases? Or when a person walks into a
3 courthouse when it is needed, should there be a
4 multidoor facility there that permits them to go
5 from one door to another to have issues resolved
6 short of going before a judge?

7 Is our penal system the kind of
8 penal system that can work in the future if we
9 are having problems with it today? If not, how
10 can it be dealt with?

11 I can tell you that other states
12 have already started and are experimenting with
13 different kinds of methods of dealing with legal
14 issues. And they are somewhat successful to the
15 point of having a kiosk outside a courtroom where
16 litigants can go even with domestic relations
17 problems and get a complaint drawn up and answers
18 filed and perhaps even some suggestive support
19 orders that might get them the instant kind of
20 justice they can agree upon because there is not
21 necessarily a ruling or an agreement that they
22 can utilize.

23 There are techniques out there. I
24 am not going to put the bunny in the hat and
25 suggest to you that I know what our commission is

1 going to end up with in recommendations. I'm not
2 going to put the bunny in the hat and say those
3 recommendations will be the kind that the Supreme
4 Court or the legislature will agree with.

5 I am going to say to you that there
6 will be recommendations from there that certainly
7 will be able to start to be implemented in a
8 short time and will be implemented in a somewhat
9 longer term and will prepare us better for the
10 justice system of the Year 2020 with a better
11 vision of what it means if we do nothing.

12 Would you like to add something?

13 HONORABLE KLEIN: Just a couple
14 things.

15 One thing I want to reiterate that
16 Jerry said is that this is not something that is
17 Buck Rogersish. There are Buck Rogers elements
18 in the methodology to get people thinking a
19 little differently. This has been done in
20 corporations all over the country. It's a method
21 of planning, and it's a little different from
22 strategic long-range planning.

23 I think some of the Court's
24 long-range planning might be helpful, but you
25 usually think of long-range planning as being a

1 week from Tuesday. But this is not that. I
2 think probably it is what -- it is based on that
3 great western philosopher Yogi Berra who said, If
4 you don't know where you are going, you might not
5 get there.

6 You know there is going to be
7 change. You may not know what it is, but that
8 doesn't stop us from thinking about it. This is
9 not about whether we should have a chancery court
10 or merit selection. It is not about the problems
11 of today. There are plenty of people working on
12 that.

13 I think one of our steering
14 committee members Dean Steven Frankino of
15 Villanova Law School put it pretty well. He
16 said, We are not talking about how you select a
17 judge. What we are talking about is, What's a
18 judge's role going to be in the world 20 years
19 from now?

20 And one of the things it makes you
21 think about, which is very important, is, What is
22 it that is crucial about our system that we feel
23 very strongly about that we want to keep? And
24 where is the area where we can have efficiencies
25 and we can have changes so that when you are

1 looking at a bill of legislation, if you are
2 looking at a Supreme Court ruling, you say, How
3 does this fit in with what is going to be here
4 tomorrow so we have a legacy for our children to
5 do that?

6 I think there are two things that
7 come out of the steering committee and out of the
8 commission effort in this way, and it spreads.
9 One is that it's anticipatory. You know, you
10 don't assume that it's like shooting a duck. If
11 you shoot where the duck is now, you are going to
12 miss because it's going to be gone by the time
13 the bullet gets there. You have to anticipate
14 what kind of things we may face in the future.

15 The other part of it is that it is
16 collaborative. You will have at the same table
17 at a commission meeting a Supreme Court justice,
18 a legislator, a representative from the labor
19 community, a representative from the business
20 community, somebody from the League of Women
21 Voters, a professor. And when you start looking
22 ahead and get past the problems that everybody is
23 fighting with today, you see that there is much
24 more of a commonality of vision of various
25 people. And this is a method of making people do

1 that.

2 So I think that basically the kind
3 of things we will be doing, legislatively,
4 judicially, the rules will be designed to where
5 we want to go and what we want to have in the
6 future.

7 As we have said, it has been very
8 effective in other disciplines and in other
9 states. And I think it will be very effective
10 here in dealing with the situation that has not
11 always been pleasant in the judiciary and
12 judiciary and legislative relations, judiciary
13 and community relations. And I think there is
14 room for improvement.

15 MR. BOGUTZ: I think part of what
16 you do to achieve the interplay of all of the
17 people at these conferences from past experience
18 is that after the individuals with these diverse
19 backgrounds, you know who they are, the jackets
20 come off, the ties come off, the casual attire is
21 put on, and only a first-name badge is worn by
22 those individuals, it is a true cooperation in
23 most of these efforts where titles and
24 backgrounds and those things that might
25 intimidate one from responding to another are

1 somewhat removed. And we have seen from our
2 experience that it works, and it can work here.

3 I'm surprised you didn't tell the
4 Christopher Columbus story that you are so famous
5 for.

6 HONORABLE KLEIN: At the conference
7 as soon as it started, Mr. Talbert, who is a dean
8 from La Salle, stood up and said, Point of
9 personal privilege. I would like to say that
10 Christopher Columbus didn't know where he was
11 going when he left, didn't know where he was when
12 he got there, couldn't report back to where he
13 had been when he got home, and did it all on
14 government money.

15 MR. BOGUTZ: We hope to incorporate
16 the first two, but we do hope to let you know
17 where we have been and what we recommend when we
18 get home and when we get through this process.

19 I can tell that we appreciate the
20 opportunity for being here for more than one
21 reason. We are hopeful in looking for your
22 support and for the support of the legislature
23 and the support of the overall judiciary
24 committee for this effort.

25 We are looking for more involvement.

1 We have a group of nominees that we have received
2 who should have either input into the process
3 through hearings or meeting with us or be a part
4 of the commission. We look to your experience
5 and exposure to help us with that list also.

6 We look for other suggestions you
7 might have with your prospective of where you
8 have been and what you have heard as to what you
9 think an effort like this should involve or how
10 it should proceed. And we wouldn't mind a little
11 money either. Money is always an important part.

12 We have so far been looking to and
13 receiving private foundation support. We are
14 hoping that a substantial portion of the support
15 from this will come from private foundations.
16 But when you got into the overall day-to-day
17 operations and mechanics of this, it is really
18 something that our legislature should buy into.
19 And part of what you will read there is a
20 suggestion that the legislature should buy into
21 it, whether it buys into it through legislative
22 funding directly or whether it's just money being
23 pumped through the judiciary or whether it says
24 some other direct form of funding.

25 I think that in the long run -- and

1 we have to think in the long run -- we must do
2 this; and the legislature should be involved in
3 seeing that it's done. We hope that one or more
4 of you will look favorably upon this and say that
5 it is something you would like to take the
6 initiative on.

7 We certainly want to answer any
8 questions that you have. I can see one of my
9 favorite judges in the background. I do not want
10 to usurp any of her time because she has been a
11 long-term involvee in this area.

12 CHAIRMAN DERMODY: I am sure there
13 will be a few questions. I want to thank you
14 both for coming. I would also like to announce
15 that Represent James from Philadelphia is here.

16 I am going to read through this. I
17 think it is a great idea. I would like a little
18 more background about how long you have been in
19 existence and what the relationship is now with
20 the Supreme Court and if they are funding and
21 what the status is.

22 MR. BOGUTZ: We made our
23 presentation to the Supreme Court May a year ago.
24 It was several months before the Supreme Court
25 said, Go ahead. So some few months after that

1 we --

2 CHAIRMAN DERMODY: What did they say
3 go ahead to?

4 MR. BOGUTZ: Do what you want to do
5 in this area. We know it is important, and we
6 are with you. You are going to be doing this
7 pretty much independently as we have suggested.

8 We are in process of forming a
9 501(C)(3) nonprofit corporation to make sure that
10 everyone is involved. In the interim, the funds
11 that we have been receiving -- we had our initial
12 seed money from the Pennsylvania Bar Foundation.
13 The Pennsylvania Bar Foundation set up a separate
14 fund earmarked specifically for this and
15 earmarked to receive contributions for funding
16 for this program until such time as the nonprofit
17 corporation is in existence.

18 HONORABLE KLEIN: Initially Justice
19 Zappala has been designated as a liaison to the
20 committee and knows what is going on. We then
21 informally reported frequently -- you know, I
22 report to Justice Castille and Justice Cappy when
23 I see them. They are plugged into what we are
24 doing. And we anticipate that at the commission
25 meeting, there will be Supreme Court justices

1 there, as we anticipate that there will be
2 legislators there working with us on this.

3 CHAIRMAN DERMODY: Has a commission
4 been appointed?

5 MR. BOGUTZ: The commission is in
6 the process of being appointed. We have received
7 hundreds of nominations from different sources as
8 to who should be on the commission. The steering
9 committee will be a core group within the
10 commission. We have about ten additional ones
11 that we have put on top priority to seek their
12 appointment now.

13 At the steering committee meeting,
14 we hope to fine line go through the list of
15 recommendations and hopefully as a result of that
16 have some 75 to 80 percent of final commission
17 members ready for appointment.

18 HONORABLE KLEIN: The meeting of the
19 entire commission, which is a two-and-a-half-day
20 conference, is scheduled for March 1995.

21 CHAIRMAN DERMODY: We talked earlier
22 that there is an October meeting of the steering
23 committee?

24 MR. BOGUTZ: The steering committee
25 is meeting at the Hershey Hotel on Thursday and

1 Friday, October 27 and 28.

2 CHAIRMAN DERMODY: Is the
3 legislature participating at this point in any
4 way?

5 MR. BOGUTZ: Part of our steering
6 committee does involve Senator Jubelirer. Nancy
7 Sobolevitch is a member of the steering
8 committee.

9 HONORABLE KLEIN: Who has past
10 experience working in the legislature.

11 CHAIRMAN DERMODY: Sure. Anybody
12 from the House?

13 MR. BOGUTZ: We have a number of
14 house members that are on our recommended list
15 that we are trying to determine as best we can
16 who the best representatives will be, first, on
17 the steering committee and then, second, to give
18 additional input to us. No, we do not have a
19 member of the House yet.

20 HONORABLE KLEIN: No. Hopefully the
21 answer will be yes within a couple of weeks
22 because there certainly will be requests made for
23 representatives to be on the commission. We are
24 homing that down.

25 At the meeting in October, we want

1 input from the full steering committee as to the
2 particular people that are going to be on the
3 commission; and we are waiting for that.

4 MR. BOGUTZ: We know we have to have
5 it. We started with a steering committee to give
6 us a cross section. We have concerns obviously
7 that all of the different stakeholders have some
8 input into this. In addition, we have to be
9 concerned with the geography and all of the other
10 diverse aspects of our society to make sure that
11 there is a full representation.

12 HONORABLE KLEIN: The efforts of the
13 commission don't stop at the meeting, and there
14 will be a lot more people involved. The
15 commission itself will determine somewhat where
16 we go from there. One of the alternatives that
17 is often used is public hearings around the
18 state. One of the habits we may break out are
19 the task forces on various topics such as
20 criminal justice administration, corrections,
21 things like, what other states have done, and
22 then add to the group for that.

23 The experts tell us that to be
24 effective, the commission itself should be
25 relatively limited to under a hundred because

1 otherwise the commission meeting gets unwieldy.
2 And there is a certain dynamic of the commission
3 hearing that has been evolved over the years, and
4 it works.

5 CHAIRMAN DERMODY: Eventually I also
6 assume you are going to need some money. Right?
7 And that will be part of it.

8 Have you talked to the Supreme Court
9 about how the commission will be funded, your
10 efforts will be funded?

11 MR. BOGUTZ: Somewhat we have, but
12 our timing was not explicit in that regard. And
13 as a consequence, we have been seeking some
14 private support. We would hope that perhaps the
15 initiative may come from the legislature.

16 CHAIRMAN DERMODY: I was wondering
17 whether you were going to be funded through the
18 Supreme Court's budget or the legislature. I
19 mean this is something that I personally feel we
20 need to --

21 HONORABLE KLEIN: Hopefully it will
22 be exclusive.

23 CHAIRMAN DERMODY: We need to be
24 very supportive of it.

25 MR. BOGUTZ: We need it now because

1 it is an expensive venture. We are seeking as
2 much private support as we can.

3 It is possible that we could do this
4 all with private foundation money. We would
5 prefer not to, and we have sort of made minor
6 requests when we have made them to the foundation
7 as opposed to going into the big bucks.

8 California was able to raise -- was
9 offered -- let's put it that way -- a single
10 foundation to fund it. And they rejected it.

11 HONORABLE KLEIN: I think it was a
12 corporation.

13 MR. BOGUTZ: Yes.

14 HONORABLE KLEIN: It was a
15 seven-figure offer.

16 CHAIRMAN DERMODY: How are they
17 funding theirs now? They have a similar program?

18 MR. BOGUTZ: California already has
19 its report. Massachusetts already has a report.

20 CHAIRMAN DERMODY: How were they
21 funded?

22 MR. BOGUTZ: California was a
23 mixture of private and public. I think
24 Massachusetts was mostly public. I'm trying to
25 recall it.

1 HONORABLE KLEIN: Virginia got a
2 good deal of money through the state justice
3 system. We think we will get some; but because
4 it was one of the first, they funded that.

5 MR. BOGUTZ: I think Arizona was all
6 public money.

7 HONORABLE KLEIN: But again, since
8 we are not reinventing the wheel, our expenses
9 will be less than theirs. Delaware did something
10 very recently. I don't think it was as expansive
11 as I would have liked, but it went very quickly.
12 I have spoken to people down there.

13 CHAIRMAN DERMODY: Are there any
14 other questions?

15 REPRESENTATIVE MANDERINO: Yes.

16 CHAIRMAN DERMODY: Representative
17 Manderino.

18 REPRESENTATIVE MANDERINO: Mr.
19 Chairman, I just have one quick question. Before
20 I ask my question, I just want to thank Jerry and
21 Judge Klein and apologize to Judge Beck because I
22 am expected out in her back yard at Lankenau
23 Hospital at 12:30 or the bus is leaving without
24 me for a suburban/urban legislative tour of the
25 City Line corridor.

1 I am being a little bit dense, and I
2 just want to make sure that I understand the
3 whole prospect. The whole notion behind the
4 commission is, Here is what our world and our
5 society is going to look like in the Year 2020 or
6 2030 and what kind of justice system is going to
7 be needed to respond to that? I mean is that as
8 broad as the parameters are?

9 MR. BOGUTZ: Yes.

10 REPRESENTATIVE MANDERINO: So then
11 it could go whether we are talking how the
12 justice system is structured or the mechanisms
13 that are in place or on the front end with regard
14 to judges or on the back end with regard to the
15 criminal justice system and sentencing and
16 penalties. It could be the whole nine yards.

17 HONORABLE KLEIN: The only thing is
18 it's called, as I have been corrected a couple
19 times by the experts, it's called futures, with
20 an S, study rather than future study because you
21 don't know what it's going to be like in 2020.
22 The only thing you know is it's not going to be
23 like it is today.

24 And you figure two things. One, you
25 have to figure alternate kinds of futures and

1 what again responses you will need from the
2 system. The second thing is it isn't a one-shot
3 deal that you have to revise your anticipation of
4 the future and revise your planning process as
5 time goes on.

6 MR. BOGUTZ: I have to tell you that
7 when we were naming the commission, we put in and
8 took out the word futures about four different
9 times. On the one hand, we didn't want to be
10 looked at as Trekkies. On the other hand, we
11 didn't want this to appear as though it is
12 planning for today and next week and next month
13 and next year but rather looking at futures and
14 futures expectations.

15 CHAIRMAN DERMODY: Thank you. I
16 look forward to hearing more about it.

17 Representative James.

18 REPRESENTATIVE JAMES: I thank you,
19 Mr. Chairman. I think what I was going to ask
20 about was what other states were already involved
21 in the process as well as what states do you see
22 as far along as you would like to be or should
23 be.

24 MR. BOGUTZ: There are 20-some
25 states involved. It is getting close to 30

1 states.

2 The kinds of reports they have have
3 varied from rule change opportunities that are
4 needed within the next year or two years and
5 changing from a non to a unified court system and
6 very good mechanical things that will change the
7 focus to look to some more far reaching and truly
8 looking a little bit more into the 21st Century.

9 I don't think any of them reach
10 quite as far or as long into the future as the
11 national program had anticipated or that we would
12 hope for. Probably one of the closest and more
13 similar to our state is Massachusetts. We glean
14 a great deal from the Massachusetts report that
15 we have been looking at, and there are some
16 others that have some very interesting approaches
17 that we think we'll certainly be able to input
18 into our final product.

19 HONORABLE KLEIN: And again, we are
20 now at the point where we don't have to spend
21 thousands of dollars on surveys. They have done
22 enough in other states, and they are similar in
23 number. We may have to do a little update for
24 localization, but the issues have been pretty
25 well crystallized by Michigan and by California

1 and by Massachusetts.

2 MR. BOGUTZ: California has one of
3 the prettier reports.

4 REPRESENTATIVE JAMES: The other
5 thing I heard you mention about that you did not
6 have any representation from the House of
7 Representatives. And I would just think that you
8 would look considerably upon our chairman. Being
9 he is the chairman of the subcommittee on courts,
10 I would think that he should be considered.

11 MR. BOGUTZ: We would welcome it.
12 We hope that he does have the interest. I have
13 looked to your committee to help us in that
14 regard, and I suggest that to you and the
15 chairman that we could benefit a great deal from
16 what you have already gone through.

17 CHAIRMAN DERMODY: Thank you. We
18 are all very interested and would help you in any
19 way that we can and share the benefits of these
20 hearings with you and any other information that
21 we have that you think would be helpful.

22 MR. BOGUTZ: Thank you.

23 HONORABLE KLEIN: Thank you

24 MR. BOGUTZ: I would like to note
25 the presence of Rosalyn Robinson our staff

1 director. She is our project coordinator and has
2 been a member of CP Bench.

3 CHAIRMAN DERMODY: Our next witness
4 is Judge Phyllis Beck of the Superior Court of
5 Pennsylvania.

6 HONORABLE BECK: Good morning,
7 Representatives Dermody and James.

8 I am an elected appellate court
9 judge who serves on the Superior Court. I
10 chaired Governor Casey's Judicial Reform
11 Commission. Selection of judges was one of the
12 four topics that the commission addressed.

13 The cornerstone of the report was
14 the commission's recommendation that Pennsylvania
15 adopt merit selection for statewide appellate
16 judges. The reason being that nothing mattered
17 more to the system than the quality of the
18 judiciary: judges who are learned, independent,
19 conscientious, and honest. The commission
20 reasoned that the likelihood of a quality bench
21 would increase substantially through merit
22 selection.

23 Although the commission was
24 unanimous in recognizing that Pennsylvania's
25 judicial system was in trouble and needed to be

1 reformed, a minority of the commissioners thought
2 the route was to continue electing appellate
3 judges and to adopt certain electoral reforms.

4 As you are aware, a constitutional
5 amendment enacting merit selection has been
6 introduced into the General Assembly, but it has
7 not passed both houses.

8 Lately, however, legislation has
9 been introduced that would skirt the merit
10 selection issue altogether and engraft onto the
11 elective system certain reforms. I am against
12 such proposals. Although labeled as reform, they
13 provide marginal rather than meaningful change
14 and, most importantly, sidetrack efforts to
15 achieve merit selection.

16 Among the citizens who favor
17 electoral reforms are people who sincerely think
18 it is undemocratic to appoint judges because it
19 means taking the vote away from the people. Far
20 more numerous and powerful are the supporters
21 representing special interests who seem to
22 believe that they can control the elective system
23 more tightly than they could an appointive
24 system.

25 Let me address some of the current

1 proposals to improve the elective system and tell
2 you why I think they would not improve the
3 judicial system and indeed in some cases would
4 even damage it.

5 First, there appears to be sentiment
6 to junk the gag rule. Under Canon 7 of the Code
7 of Judicial Conduct, a judicial candidate is
8 prohibited from speaking out on legal or
9 political issues that may come before the Court.
10 While lifting the gag rule might make the
11 electorate marginally more familiar with the
12 candidates, the opportunity for mischief is
13 boundless.

14 Let me give you an example of a
15 judicial candidate who violated the gag rule. If
16 the gag rule is lifted, the following scenario
17 will be replayed in many different forms. In a
18 Supreme Court race, one candidate, a Common Pleas
19 Court judge, was in a primary fight with a judge
20 from the Superior Court, my colleague.

21 The Common Pleas Court judge
22 researched her opponent's prior written decisions
23 and found one in which he decided that a father
24 was not obligated to support his child. The
25 candidate then ran a series of TV ads citing the

1 case and blasting my colleague on the Superior
2 Court because he did not believe in child
3 support. What utter nonsense.

4 I know my colleague well. He is a
5 firm believer in child support. It may be that
6 my colleague decided the case the way he did
7 because the child had reached his majority, had
8 become emancipated, or any number of reasons.
9 All the TV viewer learned was that a Superior
10 Court judge who sought higher office didn't
11 believe fathers should support their children.
12 What a travesty.

13 Without the gag rule, candidates
14 will fill the airwaves with inappropriate
15 information about themselves, about their
16 position on such hot-button items as crime,
17 abortion, and tort reform.

18 Knowing the candidates' views on
19 these and other issues is not really important.
20 What is important is that the individual seeking
21 a judicial position have character and integrity
22 and that she be learned in the law, impartial,
23 independent, and sensible.

24 Under merit selection, an applicant
25 usually is required to complete a comprehensive

1 questionnaire about her legal experience, legal
2 competence, community participation, and her
3 physical and mental health. Furthermore, the
4 nominating commission usually investigates each
5 applicant thoroughly. Qualities of character,
6 reputation in the community, and competence are
7 fair subject for the nominating commission's
8 scrutiny. An elective system cannot and will not
9 reveal this kind of information.

10 Another reform is rotating the
11 candidates' ballot positions. As you all know
12 prior to the election, each candidate draws a
13 ballot position and her name appears in the same
14 position in the 67 counties. Research shows that
15 being on the top of the ballot is worth a
16 substantial number of votes.

17 A current proposal is for rotation
18 based on county; for example, Candidate Smith
19 would be number one in, let's say, ten counties
20 and number five in ten other counties. That
21 doesn't make sense. To achieve equity, the
22 number of counties is not significant. The
23 number of electors is significant. So Candidate
24 Smith has to be number one before as many
25 electors as each of her opponents.

1 Given the fact that the structure
2 the our electoral system is based on the county,
3 I am led to believe that there is no equitable
4 way to rotate ballot positions while maintaining
5 the integrity of the county electoral system.

6 Under the proposed reform, if I were
7 a candidate for judicial office, give me the
8 first position in Philadelphia and Allegheny
9 County and I don't care where I am on the ballot
10 in the other 65 counties.

11 Another popular electoral reform is
12 placing caps on the amount of money the judicial
13 candidates can raise and spend. One bill
14 authorizes caps only for lawyers and law firms.
15 This proposal singling out lawyers is clearly
16 unconstitutional and is not worthy of a lengthy
17 discussion.

18 A variant of caps is public finance.
19 This proposal supposedly responds to the true
20 evil of the elective system; that is, judicial
21 candidates raising most of their money from
22 lawyers who appear before them.

23 A lot of money is being spent on
24 judicial campaigns. Justice Ralph Cappy reports
25 his winning a Supreme Court seat cost \$1.4

1 million. Judge Russell Nigro reports his losing
2 a Supreme Court seat cost \$1.5 million.

3 The proposal for public financing
4 would require each candidate to raise a threshold
5 amount. The State would then provide candidates
6 public money for their campaign. The State's
7 money would come from taxpayer checkoffs. The
8 proposal contemplates caps on the total amount a
9 candidate can spend and caps on individual and
10 PAC contributions. A candidate, however, could
11 opt out of public financing.

12 I must admit to you the proposal for
13 public financing has facial appeal. However, I
14 worry. Constitutionally a candidate who spends
15 her own money can spend as much as she likes,
16 because there is a U.S. Supreme Court case which
17 says that, and such candidate can't be subject to
18 caps under state law. Such a candidate would opt
19 out of public financing.

20 Do we want candidates who are rich
21 to sweep into the office on the basis of personal
22 fortunes? I think it not.

23 On the other hand, a candidate who
24 is supported by special interests may confine
25 herself to the spending limit under public

1 financing. However, she may have an indirect,
2 independent campaign waged on her behalf by a
3 special interest. There is nothing in public
4 financing preventing a special interest group
5 from running TV ads with a message of direct or
6 indirect support for the candidate.

7 The laudable object of public
8 financing will be defeated. And we may have an
9 appellate judiciary who is overly indebted to
10 special interests. What happens to the public
11 perception of the independence and the fairness
12 of the judiciary?

13 In closing, let me say that last
14 weekend I attended a meeting of the National
15 Association of Women Judges. One session was
16 devoted to high profile sensitive cases in
17 California: Rodney King, Reginald Denny, the
18 Menendez Brothers, and now OJ Simpson.

19 I was reminded that if our judicial
20 system, indeed our democracy, is to survive, the
21 perception of an independent judiciary is
22 essential. I am a passionate believer in an
23 independent judiciary. None of the remedial
24 measures proposed will produce the product. So
25 let's get on with it and enact merit selection.

1 CHAIRMAN DERMODY: Thank you, Judge.
2 Are there any questions?

3 (No response.)

4 CHAIRMAN DERMODY: We will recess
5 until 1:30.

6 (At or about 12:00 p.m., a recess
7 occurred for lunch.)

8

9

* * * *

10

11 (At or about 1:45 p.m., the hearing
12 reconvened.)

13

14 CHAIRMAN DERMODY: We will reconvene
15 the hearing of the subcommittee on courts, and
16 the record should note that Representative
17 Babette Josephs is here today. We are right in
18 her district, and we would like to thank
19 Representative Josephs for her hospitality.

20 Our next witness is Lawrence J.
21 Beaser, Chancellor of the Philadelphia Bar
22 Association.

23 MR. BEASER: Mr. Chairman,
24 Representative Josephs, my name is Larry Beaser.
25 I'm a partner with the Philadelphia law firm of

1 Blank, Rome, Comsiky & McCauley and chancellor of
2 the Philadelphia Bar Association.

3 As chancellor of the bar, I am very
4 pleased to be here today on behalf of our 12,500
5 members. Many of our members practice in various
6 state courts within Philadelphia and around the
7 state. And as chancellor, I am frequently the
8 recipient of comments about the operations of our
9 courts. Our members are not shy and retiring.

10 During the past year, these comments
11 have increasingly had a sharper focus. And at
12 least among Philadelphia lawyers, there seems to
13 be a consensus that our courts and the judiciary
14 have lost much public respect. I fear that the
15 image of justice in Pennsylvania has lost much of
16 its luster.

17 The Philadelphia Bar Association
18 welcomes the opportunity to address you today,
19 and I personally appreciate your inviting me to
20 be here.

21 When Governor Casey convened the
22 Pennsylvania Judicial Reform Commission in July
23 1987, it was in response to a growing and
24 disturbing sentiment at the time that
25 Pennsylvania's courts did not enjoy a sufficient

1 reputation for excellence and integrity.

2 Many court observers hoped that this
3 blue-ribbon commission, headed by Superior Court
4 Judge Phyllis W. Beck, would begin the difficult
5 work of bringing true reform to our courts. We
6 hoped for reform as comprehensive and fundamental
7 as Arthur Vanderbilt's work in New Jersey, which
8 helped end the days when "Jersey Justice" was a
9 joke and began an era in which the New Jersey
10 state courts became among the best respected in
11 our nation.

12 The Philadelphia Bar Association
13 endorsed the recommendations of the Beck
14 Commission after their release in 1988. Those
15 recommendations for improving our courts
16 encompass a wide variety of reforms. They are,
17 in fact, the blueprint for effecting the
18 transformation of our judicial system.

19 One significant recommendation of
20 the Beck Commission, wholesale revision of our
21 judicial discipline system, came to fruition when
22 an overwhelming percentage of voters, over 1
23 million voters, endorsed a judicial discipline
24 constitutional amendment in May 1993.

25 As you noted, Chairman Dermody, in

1 your closing remarks on the Senate floor last
2 week, The Larsen impeachment proceedings have
3 illustrated some of the serious flaws in the
4 previous disciplinary system.

5 We should be proud of our new
6 system, but its adoption is not enough.
7 Significant but as yet unfulfilled
8 recommendations of the Beck Commission remain to
9 be implemented.

10 Today I want to discuss two
11 particular recommendations and a few smaller
12 ones, though no less important. The first is
13 that we eliminate our elective system of choosing
14 appellate judges in favor of a system based on
15 merit. The other is statewide funding and
16 unified budgeting for a unified statewide justice
17 system. I will focus primarily on these two
18 recommendations.

19 By way of background, I have been
20 involved with judicial reform efforts in
21 Pennsylvania for over 20 years. As counsel to
22 the governor in the 1970's, I met with
23 representatives of organized labor -- you heard
24 me correctly, organized labor -- led by the
25 AFL-CIO, who were the primer movers in that, and

1 the Pennsylvania and Philadelphia Bar
2 Associations when they strongly urged
3 then-Governor Shapp to adopt a voluntary merit
4 selection system for gubernatorial appointments
5 and to support a merit selection constitutional
6 amendment.

7 I was one of the drafters of the
8 executive order creating Governor Shapp's trial
9 and appellate court nominating commissions. This
10 became the first advisory merit selection system
11 established in Pennsylvania for both the trial
12 and appellate courts.

13 I administered this system as
14 counsel to the governor, assisted the governor in
15 making judicial appointments, and drafted
16 judicial reform constitutional amendment
17 proposals for the governor.

18 Since the issuance of the Beck
19 report in 1988, I have acted on behalf of the
20 Philadelphia Bar Association and Pennsylvanians
21 for Modern Courts as a drafter of judicial reform
22 constitutional amendments proposed to implement
23 the Beck Commission report.

24 As chancellor of the Philadelphia
25 Bar Association this year, I have had a unique

1 opportunity to represent our association during a
2 time when scrutiny of the courts and our judges
3 by both the legal profession and the public is
4 perhaps higher than ever before.

5 Last week the Senate of Pennsylvania
6 was admonished with the words inspired by William
7 Penn: "Now is the hour for the men and women of
8 the Pennsylvania Senate to give motion to
9 government, to give life to the Constitution, to
10 give hope to the people, and to restore integrity
11 of the courts."

12 These are your words, Chairman
13 Dermody. You were urging the Senate to do what
14 it has now done, to find Rolf Larsen guilty of an
15 article of impeachment and remove him from
16 office. These words very aptly describe what
17 should now be our collective goal.

18 I submit to you, however, that to
19 accomplish that goal, convicting Rolf Larsen --
20 removing Rolf Larsen from office is not enough.
21 Though an important step, it is not enough to
22 have adopted the judicial discipline
23 constitutional amendment. It is not enough to
24 adopt so-called reforms, election reforms, which
25 amount to nothing more than Band-Aids for a

1 cancer-riddled system which cries out for more
2 serious help.

3 With great respect, it is not enough
4 to conduct still more hearings on judicial
5 reform. Not that hearings are not appropriate
6 and not that you shouldn't be doing it, but that
7 itself is not enough.

8 We must instead demonstrate to the
9 public by our actions that we will do whatever it
10 takes to enact real judicial reform. We have to
11 find a way to put the best and the brightest on
12 the bench regardless of hometown, regardless of
13 race, regardless of gender, and regardless of
14 political affiliation.

15 The people of Pennsylvania deserve
16 nothing less. Merit selection of judges,
17 selecting judges on the basis of their merit is
18 the best way to accomplish these goals.

19 I would like to turn now and discuss
20 for a few minutes judicial selection reform. The
21 Philadelphia Bar Association's support for this
22 far predates the Beck Commission report.

23 It predates another embarrassing
24 situation, which you may recall, the Roofer's
25 scandal which broke in 1986 and dominated

1 headlines in Philadelphia and across the state
2 for a number of years.

3 Our association's support for
4 judicial reform goes back much farther. A
5 chronicle of the association's 150th anniversary
6 in 1952 proudly describes the association's
7 active campaign of information and education in
8 support of the Pennsylvania Plan for improving
9 the caliber of the judiciary through adoption of
10 a constitutional amendment providing for a better
11 method of judicial selection.

12 The better method of selecting
13 judges was an early precursor to the merit
14 selection plans embodied in House Bill 2,
15 introduced by Representative Evans and many
16 cosponsors this legislative session.

17 You know, I think of 1952, and I say
18 this is really not for the short-winded. I have
19 only been at it for 20 years. However, when you
20 look at this, you say, Who is pushing it? Why
21 are we in favor of it? We are pushing it because
22 our membership believes in it.

23 A strong desire for merit-based
24 judicial selection comes from our members. We
25 surveyed our members in 1984 and 1990, and each

1 time over 90 percent of the members surveyed
2 identified passage of a merit selection
3 constitutional amendment as an issue of primary
4 importance to them.

5
6 A change to merit selection will
7 give the people of Pennsylvania, in my view, a
8 more distinguished, more independent, and more
9 representative appellate bench. We deserve the
10 best the legal profession has to offer. This can
11 be accomplished only if we give up the political
12 election of judges in favor of a system based on
13 merit.

14 Most arguments in favor of changing
15 from contested political election of judges to a
16 merit selection system focus on the problems
17 inherent with the elective process itself. To
18 win election to the bench, a successful judicial
19 candidate need not prove to voters that he or she
20 will be a good judge. Instead the most important
21 assets a judicial candidate in Pennsylvania can
22 have today are name recognition, personal wealth,
23 or the ability to raise massive amounts of
24 campaign contributions.

25 The Beck Commission said that in
1983, the successful candidate for Pennsylvania

1 State Supreme Court raised campaign funds
2 totaling \$193,000. Six years later in 1989 the
3 amount raised by the successful candidate had
4 risen to more than \$1.4 million, more than half
5 of which was contributed by the members of legal
6 profession.

7 While the winning Supreme Court
8 candidate in 1993 raised \$300,000, the amount
9 raised by the losing candidate, over \$1.5
10 million, shows the price of a Pennsylvania
11 judicial campaign has not dropped.

12 Fund-raising by judicial candidates
13 gives rise to troubling issues which are
14 qualitatively different from those faced by
15 candidates for other elective offices. Judges
16 are not members of the General Assembly. Judges
17 are not governors. Candidates for nonjudicial
18 office are able to garner financial support from
19 those who believe in their stated positions and
20 ideology.

21 Judicial candidates, on the whole,
22 raise campaign funds from their natural
23 constituency, and normally that is the members of
24 the bar.

25 In the wake of the Larsen

1 impeachment, how can we defend the practice of
2 judges raising money from people who may soon
3 appear before them seeking favorable decisions
4 for one side in a dispute? How can we expect the
5 public to have confidence in our system of
6 justice when the system we use to select judges
7 gives the appearance that the quality of justice
8 can be affected by campaign contributions or
9 personal friendships?

10 I have to tell you, in my view, that
11 is totally inherent in the system of election of
12 judges. You can't get away from it.

13 If you are giving money to somebody, the
14 appearance, even if it's not the reality, even
15 with the most honest person, there is the
16 appearance that when that person does something
17 on behalf of your cause, that there is some
18 connection to the campaign contribution. It may
19 not be there, but there is the appearance. And
20 the appearance of evil can be very damaging to
21 our system of justice.

22 There are those who point to the
23 fact that in our democratic system, each of you
24 as members of the House of Representatives stands
25 for election. The governor is elected. Members

1 of the Senate are elected. They argue that
2 judges should similarly face the people in
3 contested, partisan elections.

4 I strongly believe that such
5 arguments miss the point, and the genius, of our
6 system of separation of powers and checks and
7 balances.

8 Each of you as members of the House
9 represent your district and collectively you
10 represent all of the people of Pennsylvania.
11 Your job is to represent your constituents in the
12 legislative process and to look out for their
13 interests.

14 The governor and the members of the
15 Senate also serve in a representative capacity.
16 Judges, however, are different. When I go into
17 court, I do not want the judge representing any
18 of the parties, nor do I believe would you. We
19 want that judge to decide the case based on the
20 law and the facts presented in the court.

21 The constituency of a judge must be
22 the Constitution and the laws of the
23 Commonwealth. The mission of a judge is justice.
24 Both in appearance and in fact, the present
25 system of electing appellate judges through

1 partisan, political election widely misses the
2 mark.

3 Many of our judges, and I would say
4 most of our judges, are honest, hardworking; and
5 indeed bring honor and dignity to the courts of
6 the Commonwealth. Unfortunately, those good
7 judges are often tainted with the broad brush of
8 condemnation that scandal brings.

9 Moreover, under our present system
10 of choosing judges, those good, honest,
11 hardworking judges would seem to have reached the
12 bench despite the system, not because of it. We
13 can only guess how many men and women who are
14 highly qualified for the bench have chosen not to
15 undergo the elective process. I say that our
16 system of justice can ill-afford to the lose
17 them.

18 I am not taking issue with the right
19 of the people to decide under our retention
20 system whether a judge, at the end of his or her
21 term, should be removed from office. However,
22 that decision can be based on a judge's record in
23 office, not on the judge's fund-raising ability,
24 ballot position, or county of residence.

25 Now, I am not here today to tell you

6

1 that merit selection is a perfect system. I do
2 not believe that any system human beings develop
3 can be perfect. Nor can I tell you that change
4 to a system of choosing appellate judges based on
5 merit will remove politics from the process.
6 However, if our objective is to provide the
7 people of Pennsylvania with the very best and
8 most representative appellate bench possible,
9 merit selection is a vast improvement over the
10 elective system.

11 Since 1950, every state that has
12 changed the way it selects judges for statewide
13 positions has moved away from highly politicized
14 election systems. All but one has changed to a
15 merit selection system. Georgia, the exception,
16 changed from a system of partisan elections to
17 nonpartisan elections.

18 Opponents of merit selection
19 frequently point to the federal system of
20 judicial selection as an example of a merit
21 selection system and argue that we do not need
22 that kind of system.

23 Let me just say it bluntly. The
24 federal system is not a merit selection system.
25 It's a political system appointed by the

1 president where the people are confirmed by and
2 with the advice and consent of the Senate. It
3 has nothing do with a merit selection system
4 despite the trappings of voluntary so-called
5 merit selection panels.

6 The choice is the President's. The
7 screening is the President's and the Senate's.
8 And it has nothing to do with what I talk about
9 when I talk about selecting judges on the basis
10 of merit. The proposals that we support provide
11 for true merit selection rather than this sort of
12 political appointment.

13 Unlike the federal system, House
14 Bill 2 provides that the candidates for judicial
15 appointment be screened carefully by a judicial
16 nominating commission. I am not going to go
17 through -- it is in my written testimony -- all
18 of the permutations of House Bill 2. I know that
19 people have gone over it with you before, but
20 it's important that it's a system of checks and
21 balances. And it's something that obviously in
22 the legislative process will be looked at and
23 will be changed.

24 The critical issue is we have to get
25 rid of the money. We have to get rid of lawyers

1 and other people, business people, whose cases
2 will appear before the Court contributing to that
3 Court. We have seen that that leads to problems.
4 You have seen what it led to in the Justice
5 Larsen issue.

6 You, Chairman Dermody, have seen it
7 better than most people this year. You have
8 spent more time than anybody doing what is right
9 and carrying out the cause of justice. But it's
10 something that we have to do, and I believe
11 strongly that a change in the system from a
12 system based on election to a system based on
13 merit would make a difference in the way
14 Pennsylvania courts are regarded, the quality of
15 justice, and the appearance of justice, and the
16 reality of justice.

17 I would urge that the legislature
18 give the people of Pennsylvania the chance to
19 make the choice. That is what we are asking for.
20 Get the people of Pennsylvania to decide whether
21 they want the present system, which I believe by
22 virtue of the contributions is a system that has
23 the appearance of corruption. Give the people a
24 chance to choose how they want to choose their
25 appellate judges.

1 I would like to move now from the
2 system of choosing judges to another major issue
3 in the Beck Commission report, and that is
4 funding of the Court.

5 In my view and the view of the
6 Philadelphia Bar Association, we must also begin
7 to finance the judicial branch like a co-equal
8 branch of government rather than a poor relation
9 which must beg, hat in hand, for operating funds
10 each year.

11 According to the justice
12 department's bureau of justice statistics, in
13 1990, the total justice spending by federal,
14 state, and local governments was at \$74 billion,
15 a mere 3 percent of total government spending.
16 The amount spent on courts? One-third of 1
17 percent.

18 In Philadelphia, that serious lack
19 of funding is compounded by the fact that funding
20 for court operations and personnel is a municipal
21 function, and the Commonwealth pays only the
22 salaries of judges. That scheme presents its own
23 unique problems.

24 As reported by the Philadelphia
25 Court of Common Pleas Judicial Study Committee in

1 1990, "When the state legislature acts to provide
2 more judges, it contributes nothing to the cost
3 necessary for facilities and support staff. It
4 is unrealistic to expect Philadelphia, which is
5 currently unwillingly or unable to fund our
6 present needs adequately, to contribute
7 additional monies for new courtrooms and staff."

8 The obvious solution, recommended by
9 the Beck Commission, is for the State to assume
10 responsibility for the full funding of local
11 courts. In the County of Allegheny case, the
12 Pennsylvania Supreme Court mandated the statewide
13 funding but did not address the issue of how or
14 when it should occur. Although the Court has
15 ordered, the legislature has not disposed and it
16 has been ignored.

17 Now, lest you think that I believe
18 in the Tooth Fairy, I am really not here so much
19 proposing, though I would like to see a
20 significant increase in the funding of the
21 courts, particularly if you are going to mandate
22 mandatory sentences and increase workloads of the
23 courts. I believe that the legislature has to
24 follow through with funding the courts and
25 funding District Attorneys and funding defenders.

7

1 But what I am really talking about
2 is the fact that just the mere dollar-for-dollar
3 change to fund the courts statewide, take the
4 money other places, from the counties -- I am not
5 talking about that because I understand that may
6 be the political reality. But even a
7 dollar-for-dollar exchange where the State takes
8 over, will have, in my view, economy-of-scale
9 benefits and will have a tremendous benefit in
10 terms of setting up and really implementing what
11 was thought of in the 1968 Constitution, the
12 ability to have a unified judicial system.

13 We don't have a unified judicial
14 system today. We don't have uniform payroll
15 classifications. We don't have anything that
16 you, the legislature, demand the executive branch
17 of government do because we haven't put it all
18 together.

19 Now, what I am saying is even if you
20 can't find it in the budget to fund more, you
21 certainly can find it in the budget to fund
22 dollar for dollar from other County sources. You
23 take away from one hand and you give them the
24 other hand. But if you centralize it, you have a
25 chance of creating a modern system; and then you

1 make the decision based on known costs and known
2 responsiveness and known efficiencies as to what,
3 in fact, the system costs and what it should
4 cost.

5 We have great difficulty today
6 finding out what, in fact, the system costs,
7 whether it's useful and whether it's, in fact,
8 efficient. And so what I would urge you to do is
9 to seriously consider really unifying the
10 judicial system, funding it by the State. It's
11 clear to me that it needs a lot more money. But
12 even in a time of tight budget, at least bring it
13 all together under a unified judicial system,
14 fund it as one. And then you can look at it as a
15 legislature and make a rational decision.

16 Today you get a budget from the
17 Supreme Court, the Administrative Office of
18 Pennsylvania Court. It's only for part of the
19 system. There is no unified judicial system, and
20 I strongly urge that you consider that step in
21 the next session of the legislature.

22 There are a couple of other issues
23 that I would like to bring to your attention that
24 I think are important, first of all, mandatory
25 continuing legal education for judges. As you

1 know, Pennsylvania lawyers are now required by
2 the Supreme Court annually to complete a number
3 of hours of mandatory legal education including
4 ethics and professionalism training.

5 The Supreme Court has been
6 criticized for imposing that requirement on
7 lawyers while at the same time not imposing any
8 such requirement on themselves or any other
9 member of the judiciary.

10 Surely the Larsen case has amply
11 demonstrated that judges need continuing legal
12 education in ethics and professionalism as much
13 as lawyers do. And if not from the reality, at
14 least from the perception. Again, in our court
15 system, perception of justice, perception of
16 competence can be incredibly important in whether
17 people feel they are actually getting justice.

18 I urge the General Assembly to
19 provide the judicial branch of our state
20 government with sufficient funds to pay for such
21 training. I believe that such educational
22 programs would be helpful in improving the image
23 of our system of justice.

24 I would also like to speak for a
25 moment about gender and racial bias in the

1 courts. The need to address the issues of gender
2 and racial basis in our courts is equally
3 important. The Pennsylvania Constitution
4 guarantees equal justice under the law regardless
5 of race or sex. But many lawyers and litigants
6 believe that women and people of color are, in
7 fact, treated differently in our courts, perhaps
8 not in every case, but often enough that the
9 problem is systemic and not occasional.

10 In November 1993, the Philadelphia
11 Bar Association petitioned the Pennsylvania
12 Supreme Court to create a commission to
13 investigate racial and ethnic bias in the state
14 courts. Because I cannot improve on the framing
15 of the issue, I would like to quote from the
16 brief.

17 "There is no such thing as partial
18 justice. If justice is denied to anyone,
19 especially on the basis of bigotry or systemic
20 bias, it is denied to everyone. The halls of
21 justice, where our citizens come to seek redress
22 of wrongs, should not also wrong its
23 participants."

24 The funding of a program to
25 determine whether, in fact, our courts are

1 tainted by systemic systems of bias against women
2 and people of color should not be viewed as an
3 option. We must determine whether Pennsylvania
4 justice is indeed blind. If it is not, we must
5 effect the changes to ensure that it is.

6 To continue to ignore the needs of
7 our justice system, to expect that they will
8 somehow be met without the appropriation of funds
9 is dangerous. If an airplane is not routinely
10 maintained, no one is surprised if that plane
11 subsequently crashes. If we continue to ignore
12 the needs of our court system, it too will crash
13 and the consequences will shake the very
14 foundation of our society.

15 Again, Chairman Dermody, thank you
16 very much for inviting me to appear today. I
17 want to tell you that I think that your remarks
18 last week are worth repeating again. "Now is the
19 time to give motion to government, to give life
20 to the Constitution, to give hope to the people,
21 and to restore integrity of the courts."

22 I hope you will consider that the
23 mission of this committee. The Philadelphia Bar
24 Association stands ready to assist you in any way
25 we can.

1 Again, thank you. I will be happy
2 to answer any questions that you have.

3 CHAIRMAN DERMODY: Thank you very
4 much. Are there any questions?

5 (No response.)

6 CHAIRMAN DERMODY: Thank you. It
7 was very compelling testimony. I like the words
8 myself.

9 Our next witness is Carol Tracy, the
10 director of the Women's Law Project.

11 MS. TRACY: Thank you for inviting
12 me to speak today on proposals to improve the
13 state's judicial system. As you know, I am Carol
14 Tracy, and I am the executive director of the
15 Women's Law Project.

16 The Women's Law Project is a public
17 interest law center devoted to improving the
18 legal, social, and economic status of women and
19 children. Our work includes high-impact
20 litigation aimed at law reform, systems advocacy,
21 and public education.

22 We also have a telephone counseling
23 service that provides information and referral to
24 5,000 to 8,000 callers each year on a wide range
25 of issue including employment discrimination,

1 sexual harassment, marriage, divorce, child
2 support, and child custody. Many of our callers
3 have been in courtrooms seeking vindication of
4 rights newly won for women in the past 20 years,
5 only to be confronted by preconceived or
6 stereotyped notions about the nature, role, and
7 capacity of women and men.

8 I would like too speak today about
9 the issue of merit selection and about the need
10 for a gender bias study in the state court
11 system.

12 You have heard testimony from many
13 others on the need for major reform in the manner
14 in which our appellate judges are selected. I
15 would like to address my remarks about merit
16 selection to its impact on gender and racial
17 diversity.

18 In the most simple and
19 straightforward terms, it seems obvious that
20 those who sit in judgment of others should have
21 some resemblance to those they are judging.
22 United States Supreme Court Justice Ruth Bader
23 Ginsberg expressed this ideal more eloquently
24 when she said, "A system of justice will be the
25 richer for diversity of background and

1 experience. It will be the poorer in terms of
2 appreciating what is at stake and the impact of
3 its judgments, if all of its members are cast
4 from the same mold."

5 In Pennsylvania, only 5 of the 31
6 current appellate jurists are women. Three are
7 African American. A study done by the American
8 Judicature Society in January 1993 found that 72
9 percent of the women jurists serving on state
10 appellate courts were initially chosen by
11 appointment. This compares with 29 percent who
12 first reached the bench through election. The
13 statistics on African Americans were almost
14 identical, 73 percent chosen by appointment
15 compared with 26 percent through elections.

16 The National Judicial Education
17 Program to Promote Equality for Women and Men in
18 courts recently reported, "Gender bias is a
19 problem with several aspects. Although we think
20 of it most readily as stereotyped thinking about
21 the nature and roles of women and men, gender
22 bias also means society's perception of the
23 relative worth of women and men and what is
24 perceived as women's and men's work, and myths
25 and misconceptions about the economic and social

1 realities of women and and men's lives.

2 "Courtroom manifestations of these
3 three aspects of gender bias include custody
4 decisions which assume that women who work
5 outside the home are not good mothers or that
6 fathers are not meant to be primary caretakers,
7 devaluation of homemaker work in personal injury
8 and equitable distribution cases, and the
9 assumption that when a battered woman divorces,
10 the violence stops, so that requests for
11 supervised visitation can be ignored."

12 One need look no further than
13 today's Legal Intelligencer to see gender bias in
14 the courts in operation. After finding a
15 defendant innocent by reason of insanity of a
16 rape charge, a Nashville, Tennessee, judge
17 recommended that his public defender arrange a
18 dating service and get the defendant a
19 girlfriend. This same judge gave female court
20 employees presents of red lace panties on
21 Valentine's Day.

22 Over the past ten years,
23 approximately 38 states have set up task forces
24 to study gender bias in the courts. According to
25 a report, the 24 states that completed their

1 studies found that bias against women permeates
2 every aspect of the state and local court system.
3 These studies not only document instances of
4 gender bias, they make clear and specific
5 recommendations for reform, which are too
6 extensive for me to detail today.

7 So I am enclosing a copy -- I would
8 like to present it for the record -- of several
9 of these studies compiled by the Gender Bias Task
10 Force of the Women's Right's Committee of the
11 Philadelphia Bar Association.

12 Where bias exists, it pollutes the
13 system in which it lives. While the gender
14 equity studies have found that most judges are
15 fair and unbiased, the instances in which bias
16 occurs profoundly affects the administration of
17 justice and detrimentally impacts on other
18 judges, lawyers, court employees as well as the
19 parties to the litigation.

20 Unfortunately, Pennsylvania is
21 conspicuously absent from the list of states that
22 have performed such self-studies. Recently,
23 Chief Judge Delores Sloviter of the United States
24 Third Circuit Court of Appeals announced that a
25 gender and racial bias study would be conducted

1 of the federal system.

2 The Pennsylvania Supreme Court has
3 agreed to perform a gender and racial bias study
4 of our courts but did not receive the
5 appropriation it requested last year.

6 I would like to urge the committee
7 to work to eradicate bias in the state court
8 system by adopting a system of merit selection
9 and by supporting the Supreme Court's request for
10 funding for a gender and racial bias study of the
11 state court system. Thank you.

12 CHAIRMAN DERMODY: The studies here
13 were compiled by Philadelphia Bar Association?

14 MS. TRACY: Yes.

15 CHAIRMAN DERMODY: Nancy Sobolevitch
16 testified at a hearing the subcommittee had on
17 judicial reform in Harrisburg and also argued
18 strongly for the money for the study for
19 Pennsylvania. I forget. How much money was
20 requested?

21 MS. TRACY: I think it was \$350,000.

22 CHAIRMAN DERMODY: \$350,000?

23 MS. TRACY: I believe so.

24 CHAIRMAN DERMODY: I'll check.

25 MS. TRACY: It's a study. The way

1 the other studies have been done, they have done
2 massive surveys. And actually, what I think is
3 very important about this study is that it will
4 deal with race and gender at the same time. Most
5 of the other studies have dealt simply with
6 gender.

7 So the survey and the nature of the
8 survey will be somewhat different than it has
9 been in other cases, which is probably going to
10 make it more expensive because it is an extensive
11 survey and then there is a considerable amount of
12 statistical analysis that goes into it.

13 CHAIRMAN DERMODY: I would think it
14 would be a difficult study.

15 MS. TRACY: It's a difficult study,
16 but it's an important and worthwhile study. It
17 absolutely needs to be done; and then from that
18 we can get the kind of direction that we need in
19 making the courts friendlier, more usable.

20 In some cases, some of the
21 recommendations refer to the treatment of pro se
22 litigants. In many cases, in child support
23 cases, for example, people are unrepresented,
24 they are allowed to be unrepresented, and they
25 are treated very poorly. The same is true in

1 custody. An awful lot of the bias that we see or
2 the unfriendliness of the courts that we hear
3 about on our telephone counseling service comes
4 in the family law area.

5 CHAIRMAN DERMODY: I think a lot the
6 problems we have particularly with the family
7 division is too many cases, too few judges.

8 MS. TRACY: It's an overwhelmed
9 system for sure.

10 CHAIRMAN DERMODY: I can see why
11 most people feel they have been wronged by that
12 system.

13 MS. TRACY: It is also a system that
14 protects, of course, the confidentiality of the
15 parties, which is important. But it's also a
16 system in which there is very little public
17 scrutiny so that the decisions tend to be a bit
18 more arbitrary. And it seems from the reports we
19 have read and the calls we have that judges feel
20 freer to make remarks that if the public were
21 aware of there would be enormous protest around.

22 So I think that we really have to
23 get a move on in the area just to start
24 documenting what we know to be true and have a
25 good unbiased, comprehensive study.

1 And I also do want to say, though,
2 that I think it is also important that we really
3 pay attention to what merit selection means
4 because we need both. I think merit selection
5 alone without a gender bias study and
6 recommendations and a plan of action from it
7 won't work.

8 But with a gender bias study alone,
9 we would have a few more people on the court that
10 resemble the people they are judging. We need
11 both.

12 CHAIRMAN DERMODY: Are there any
13 questions?

14 (No response.)

15 CHAIRMAN DERMODY: Thank you very
16 much. I will assume that you are going to try to
17 secure the \$350,000, whatever money you need for
18 study?

19 MS. TRACY: Yes. I think that the
20 lobbying effort was not what it should have been
21 last year. And I think that many forces are
22 organizing now.

23 CHAIRMAN DERMODY: Representative
24 Josephs.

25 REPRESENTATIVE JOSEPHS: I think

1 probably you know that I am member of the
2 appropriations committee as well as on the
3 judiciary committee. There is one other house
4 member who holds those dual seats, and I think
5 both of us should probably make this a priority.
6 I will make it a priority.

7 MS. TRACY: Thank you.

8 REPRESENTATIVE JOSEPHS: Maybe if we
9 return in the majority, we can actually make that
10 happen.

11 CHAIRMAN DERMODY: We hope to have
12 the appropriations chair.

13 MS. TRACY: Thank you.

14 CHAIRMAN DERMODY: Thank you.

15 Our next witness is Professor Leo
16 Levin from the Law School of the University of
17 Pennsylvania.

18 MR. LEVIN: Thank you very much. I
19 count it a privilege to appear before you today.
20 And I would like to start by saying that I think
21 the citizens of this state owe a debt of
22 gratitude to the subcommittee and to its chairman
23 for holding these hearings. They serve to
24 highlight very serious problems that the
25 judiciary of this Commonwealth faces right now

1 and to offer for consideration and analysis and
2 discussion proposals for improvement, all of
3 which clearly merit serious consideration.

4 Whatever differences emerge with
5 respect to the details of alternatives,
6 underscoring the seriousness of the problems we
7 face must be counted a major contribution.

8 At first, I plan to address a number
9 proposals for judicial reform that are currently
10 before this body. But I would be remiss if I did
11 not state my view that they are likely to have
12 relatively minimal impact and indeed in some
13 cases may be counterproductive unless the
14 legislature and the people of the Commonwealth
15 also address the problem of the caliber of our
16 Supreme Court and the need for merit selection.

17 I would like to give the reasons for
18 this view. First is the obvious one that the
19 Commonwealth deserves a higher quality of
20 appellate judiciary, particularly at the highest
21 level. Second -- and this is of direct
22 significance -- precisely what can be
23 accomplished by legislation depends, in the last
24 analysis, on what legislation the Supreme Court
25 will uphold, will consider valid, and what

1 legislation it will declare unconstitutional as
2 an encroachment upon its legitimate powers.

3 And it's just well to remember that
4 under our system, if the Supreme Court vetoes, it
5 is vetoed. And people may have thought that a
6 lot was accomplished, but we are back to Square
7 1. And this is not made on the basis of just
8 hypotheticals in the air, it's not an unfamiliar
9 scenario.

10 Let us consider the present
11 situation, and let me begin with some objective
12 facts: the time from argument of a case to the
13 handing down of a decision.

14 It's well known that the Supreme
15 Court of the United States, which has before it
16 cases equally difficult to say the least as those
17 before the Supreme Court of Pennsylvania, they
18 adhere to a firm policy under which all cases
19 argued in a given term are decided that very
20 term.

21 This means that cases argued in
22 March or even April are handed down no later than
23 early July of that year, usually in June at the
24 latest; but it's possible for it to carry over to
25 the first week of July, except in the very, very,

1 very rare case in which reargument is ordered for
2 the following term.

3 A few random examples from
4 Pennsylvania, and I should like to underscore,
5 although I am sad to report, that I am told by
6 knowledgeable people that the problems that I am
7 going to refer to are very widespread and these
8 examples are not at all unusual.

9 A case argued on April 6, 1993,
10 decided in June 19, 1994, 14 months later; a case
11 argued December 7, 1990, decided almost two years
12 later November 25, 1992; finally, a case argued
13 in December 1990, decided in 1993. Attention has
14 focused recently on delays by the justices in
15 deciding whether to hear a case, to grant
16 allocatur. And I think it's fair to say that
17 such delays are not that unusual.

18 Of course, those delays come before
19 oral argument. So to the extent that both types
20 of delay occur in the same case, the effect is
21 cumulative. The one must be added to the other.

22 It will not do -- and I would like
23 to underscore this in view of some of the things
24 that have been said in the press. It will not do
25 to argue that the delay may have been occasioned

1 by a single justice. The point is that the Court
2 as a whole has allowed practices to remain in
3 place which must leave any intelligent observer
4 concerned about how that institution is
5 operating.

6 Predicting what the Court will do is
7 difficult. The Court's reputation for closely
8 reasoned, high quality, principled decisions
9 cannot be characterized as an enviable one. In
10 the margin, I have quoted one distinguished
11 observer's reference to the Court's indulging,
12 not so long ago, in "judicial fiat." One need
13 not go that far in order to wonder what
14 legislation governing the Court and its
15 procedures will be held unconstitutional.

16 Let me give you a case that deserves
17 mention in this context, County of Allegheny v.
18 the Commonwealth. And I will say parenthetically
19 that although for present purposes I will not
20 deal with the merits of the decision, I will
21 state that I have never understood the logic of
22 the prevailing opinion, not that I disagree with
23 it. I have never understood the logic of the
24 prevailing opinion.

25 But all right. The Court handed it

1 down. That's fine. And it held, as you are well
2 aware, that the legislature, rather than the
3 individual counties, had the obligation to fund
4 the Courts of Common Pleas. When, after five
5 years, the Supreme Court was asked to enforce its
6 judgment, the Court refused apparently, if you
7 take the opinion at face value, because of a
8 technicality: The movant, the one moving it,
9 mischaracterized the request of relief.

10 It took four opinions for the seven
11 justices to explain their respective opinions.
12 And I do not think that these developments have
13 either enhanced the reputation of the Court, nor
14 helped me in predicting what the Court will do
15 with respect to any statutes that come down
16 dealing with judicial-legislative relations.

17 Now, I don't suggest -- and I want
18 to underscore this because I would like to give
19 credit to the legislature. I don't suggest that
20 the legislature is without power. Certainly if
21 press accounts are to be credited, it is the
22 legislature by threatening to exercise the power
23 of the purse that has introduced a measure of
24 fiscal responsibility with respect to expense
25 accounts of the justices.

1 And although I have not put this in
2 my written state, I think there is some history
3 with respect to financial disclosure laws and the
4 Courts deciding that the legislature had no
5 competence to tell the judges in this area --
6 quite contrary to the federal precedent. It is
7 quite contrary to the federal precedent. And I
8 see no reason at all why people who sit on the
9 bench and accept that position of public trust
10 should not be held as accountable in as much
11 detail as other members of the government of the
12 Commonwealth of Pennsylvania.

13 Now, all this leads me not to
14 attempt to dissuade you from any reforms or even
15 to dissuade you from legislative reforms, but
16 rather to urge you to give primacy to merit
17 selection of appellate judges. And I will say
18 just a very few words in my statement about merit
19 selection because I have heard that other
20 witnesses have expressed themselves on this
21 point.

22 I favor and strongly favor merit
23 selection for just two reasons -- well, for two
24 reasons that I will mention. First, the system
25 of partisan election as it currently operates in

1 this state is bad, very bad, exceedingly so. The
2 worst thing about it is that candidates are
3 obliged to raise huge sums of money and they do
4 so with lawyers, law firms, and potential clients
5 expected to be among the major contributors.

6 Now, I know one of things that you
7 are talking about are some adjustments in the
8 rules. I won't mind to say that if they can be
9 improved, why shouldn't they? But I think it's
10 important to realize that they probably do not
11 hold much promise. First, because the real evil,
12 if you get an association of lawyers who are
13 identified with a particular kind of client
14 giving heavy money in six figures to the campaign
15 of a justice and they do that before the
16 election, that is just as bad or worse as
17 somebody making a \$100 contribution after the
18 election.

19 Second, they don't know how hard it
20 would be to serve the bench within constitutional
21 grounds. If there has been a loan by a committee
22 or by an organization or they have advanced it
23 and they come to lawyers and say, Look this man
24 is on the bench, but we put this all out in
25 advance and don't you want to be among those who

1 help solve the problem that has been left and the
2 justice has nothing to do with this.

3 As we know from the press, the
4 justice may be aware of a fund raiser after the
5 election but wouldn't show up to see who is there
6 or certainly not to inquire who was helpful, who
7 was organizing it, or who did it, nor to
8 persuade -- even if the judge is totally and
9 completely insulated by a Chinese wall, to
10 convince the citizenry that that judge had no
11 interest, no knowledge, no information -- these
12 are some of the problems that we have with
13 fund-raising.

14 And I just don't want to let this go
15 by without saying any incremental improvement is
16 great, but don't think too much of it in terms of
17 really accomplishing what some of the goals are.

18 The second and maybe the most
19 important point I can make this afternoon is a
20 change in the method of selection would signal
21 that our aspiration level has changed. There
22 were times when elections gave us great judges
23 and great justices, and part of it was because
24 there was a recognition that whether it be
25 through political party or otherwise we had to

1 assure top quality people on the bench.

2 There was an aspiration level there,
3 and we have to do something to change the
4 aspiration level. And I think the easiest way to
5 do it, the only way I know that has some promise
6 is to change the mechanism, to change a clear-cut
7 signal that we want merit; we deserve merit; and
8 we're insistent that that be what is searched for
9 and looked for because the present situation, let
10 me just say, is not a happy one.

11 Let me turn to specific reforms,
12 election of the chief justice. This is one I
13 haven't put strongly in my statement, but I feel
14 this may be counterproductive if it's not
15 accompanied by some other reforms.

16 If you are going to select people by
17 the political process and you are going to have
18 what is believed that they engage in what is
19 politely called judicial politics, then I don't
20 think there is any doubt about it. Then by
21 having an election, you are inviting more or
22 worse of the same. And I don't think that's the
23 way to go about it.

24 As an alternative, I suggest two
25 other things are possible. The limited term can

1 be helpful. The federal model is there. That
2 was a big reform. And the other is there may be
3 appointment by a governor, who at least has to
4 stand behind the quality of the appointment.

5 CHAIRMAN DERMODY: As chief justice?

6 MR. LEVIN: Selection of the chief
7 justice as opposed to election by the Court.

8 Two, the Supreme Court should
9 formulate and publish its own internal operating
10 procedures. I think these should require making
11 known which judges have recused themselves from
12 the allocatur process.

13 There is no reason it should not be
14 a matter of public record. That's something you
15 could hide behind later or something of this
16 sort. And there is no reason why the Supreme
17 Court, just like the Superior Court, Commonwealth
18 Court -- and a number of federal courts publish
19 their internal operating procedures.

20 Litigants are interested in it.
21 Lawyers are interested in it, and it helps bring
22 matters aboveboard. And I think this is within
23 the province of the legislature following the
24 federal model to mandate. I think this is
25 entirely appropriate.

1 The next point, limits on the
2 practice of individual justices placing holds on
3 allocatur petitions. They are entirely
4 appropriate and, in my judgment in the present
5 climate, necessary, absolutely necessary. The
6 outer limits should be generous, but they should
7 be there. The litigants are entitled to no less.

8 It's a little trickier question to
9 ask whether the legislature may under our
10 doctrines of separation of powers tell the Court
11 that they may not think about a particular legal
12 question more than a certain amount of time.
13 This is very tricky. It goes back to some
14 litigated cases of many years ago elsewhere, not
15 just Pennsylvania. So I'm not speaking to that
16 but the fact that there ought to be some kind of
17 published limits as opposed to the present
18 system. In view of some of the things we have
19 indicated before, I don't think there's any doubt
20 about it.

21 Documenting the reasons for
22 recusals. I do not favor this recommendation.
23 Our problem has not been an excess of recusals.
24 Our problem has not been that too many people are
25 copping out, too many judges or justices are

1 copping out. And I fear that requiring public
2 documentation of why you recuse yourself, if it
3 is to be anything more than an appearance of
4 impropriety, may actually chill the willingness
5 of a justice to recuse himself or herself in a
6 borderline case.

7 I think it is clear that the fact of
8 recusal is legitimately one that ought to be made
9 public of record. But the precise nature of the
10 relationship with counsel, with a litigant, with
11 a particular kind of client, it may be something
12 that bothers the judge, but he doesn't want to
13 put of record that he once had a bar association
14 fight of great intensity that spilled over into
15 the newspapers with X or Y.

16 And I think if a justice wants to
17 recuse himself and put that on the record, that's
18 enough. If the justice wants to write either
19 explaining why he or she has not recused himself
20 or explaining why they have, that has always been
21 within the discretion of the judge or justice.
22 And I would continue that way because I am a
23 little afraid of the negative result from this
24 recommendation.

25 Procedures for assuring that at

1 least four justices or acting justices should be
2 in place to hear every matter is a provision that
3 I endorse.

4 Now, there are a lot of mechanisms
5 that one can use. One of the most interesting
6 provisions of the recently enacted constitutional
7 amendment concerning judicial discipline provides
8 one model for reaching out beyond the Supreme
9 Court for a judge to hear a particular case; but
10 there are other models that may be more
11 appropriate to this particular problem that can
12 be found in other judicial systems.

13 There are a lot of different
14 techniques that can be used, and I think they are
15 far better than allowing less than four to decide
16 a case, which is going to carry the imprimatur of
17 the Supreme Court of the Commonwealth.

18 Creation of an appellate court
19 center. At first blush, this seems like a very
20 obvious kind of improvement and it makes a lot of
21 sense. It's appealing to think of a center
22 conducive to efficiency, to face-to-face
23 encounters with the justices instead of faxes and
24 memos and having concurrences and dissents and an
25 opinion in which this justice joins, although he

1 has his own opinion -- you're familiar with this
2 kind of stuff. You can have many pages and a
3 number of opinions that crisscross. And why
4 don't you esteemed gentlemen get together and
5 decide what you are going to do? Can't you agree
6 on something better that can be helpful to the
7 bar?

8 However, it needs to be thought
9 through very carefully. One, it will be
10 expensive. There is no way that you can create a
11 center and do it for peanuts or what passes for
12 peanuts. And then there are the complicated
13 issues that ought to be faced in advance.

14 Is it contemplated by creating a
15 seat of the court that the justices are obliged
16 to live there? Now, nobody forces the justices
17 where to live, but if you do not allow the living
18 expenses for traveling there and staying at a
19 hotel there, that has kind of a -- it's apt to
20 influence their conduct. Do you want to do that?
21 That has to be thought through in advance.

22 There are advantages both ways; and
23 if we look at all at experience elsewhere, I've
24 said on some things that it has been going on in
25 the federal circuits and practices very, very

1 much. The Court may have a center, a seat of the
2 court, but the justices don't have to live there.

3 I'm not talking about a place like
4 the District of Columbia. And the Courts have
5 frequently gone around to sit in different places
6 for the convenience of the litigants and the
7 convenience of the attorneys.

8 And just think for a moment, if
9 lawyers have to travel, it's not the airplane
10 ticket that costs the money to the client. It
11 does, but that's not it. It's the time, which
12 depending on the arrangements, gets billed and
13 gets billed typically at rates that are not known
14 as bordering on the minimum wage. And so these
15 are things that need some consideration before
16 one jumps into making assumptions about where the
17 hearing should be made, etc., etc.

18 Now, because of this, I must confess
19 that I am very ambivalent at this point and think
20 that needs a lot of study.

21 I want to conclude, as I began, by
22 really saying that I think we owe an immense
23 debt, the citizens of this Commonwealth, to this
24 committee, the subcommittee, and the chair for
25 helping to air these problems, for pointing them

1 out, for seeking solutions. And I've covered a
2 lot of points in short order.

3 It would be my pleasure if there are
4 any questions and they are such that I might be
5 able to answer, it would be my pleasure to try to
6 answer them.

7 CHAIRMAN DERMODY: Professor, thank
8 you very much. I don't have any questions right
9 now. I would like to tell you that we would like
10 to be able to come back to you and talk to you
11 again about these things and consult with you as
12 we develop the hearings and reports and try to
13 develop legislation if you would be willing to
14 help us with that, we would appreciate it.

15 MR. LEVIN: It would be my pleasure.

16 CHAIRMAN DERMODY: Thank you very
17 much.

18 MR. LEVIN: Thank you.

19 CHAIRMAN DERMODY: We will take five
20 minutes.

21 (Brief recess from the record.)

22 CHAIRMAN DERMODY: We will reconvene
23 our hearing on judicial reform. Our next witness
24 is Judge Alex BonavitaCola, Administrative Judge
25 for the Philadelphia Court of Common Pleas.

1 HONORABLE BONAVIDACOLA: Mr.
2 Chairman, as you have already indicated, my name
3 is Alex Bonavitacola. I am a judge in the first
4 judicial district, and my assignment is the
5 administrative judge of the trial division, which
6 is probably the largest single unit of judges in
7 the Commonwealth of Pennsylvania.

8 I have been in this position for two
9 and a half years, and I am pleased to appear
10 before your committee to set before you some of
11 the concerns not only voiced by me but by my
12 colleagues, who from time to time have laid
13 things upon my desk for consideration.

14 I think I should start off -- and I
15 will be addressing these matters in a rather
16 succinct method because I'm sure you have had
17 your fill of most of it. And if you need any
18 expansion on it, I will be glad to expound as
19 best I can.

20 The first -- and I'm sure it's on
21 everybody's mind -- is the issue of merit
22 selection of judges. Having run once myself
23 statewide for an appellate court seat, I am in
24 complete sympathy with merit selection for
25 appellate judges, first, because our state is so

1 large that it becomes both time-consuming and
2 expensive to reach all of the corners of our
3 Commonwealth to campaign.

14
4 Secondly, there is no way that a
5 judicial candidate, unless he or she are able to
6 raise enormous sums of money, can contact enough
7 of the voters of Pennsylvania to (1) gain name
8 recognition and (2) to lay their message before
9 the public. So therefore, essentially it becomes
10 a political issue as to whether a judge will
11 receive votes in any given part of our
12 Commonwealth. And therefore, I believe, that
13 merit selection for appellate courts is properly
14 on target.

15 The second item I would like to
16 address to this committee and to you, Mr.
17 Chairman, is the fact that we have now in
18 Philadelphia emerged from the last century by
19 virtue of our attempts to computerize our
20 efforts. I can't begin to describe to you the
21 tremendous impact it has had on our ability to
22 move cases along in an ordinarily, prompt method.

23 The computer has replaced the
24 longhand inscriptions in docket books. It has
25 reduced the amount of shuffling of papers. It

1 has enabled judges to look at a given case at any
2 point in time and determine what the status of
3 that case is and in effect give you a preview on
4 a computer screen of the entire history of that
5 case. So whatever this committee does in its
6 considerations, I think whether it be statewide
7 computerization or enhancement of existing
8 computer systems, it is an effort well spent.

9 The next thing, I think, that I saw
10 as a bit of a problem is an appellate court
11 center, and I believe that we are on the
12 threshold of what we call electrical filing of
13 papers. As a matter of fact, there are
14 prototypes out there right now that we have been
15 investigating. And with a central office for the
16 filing of appellate court papers, the necessity
17 for three distinct and separate offices seems to
18 disappear because between faxes, computer modems,
19 overnight mail, and Federal Express, the
20 distances have shrunk enormously.

21 I don't address the issue of where
22 the appellate court judges should sit and listen
23 to arguments; but I am merely talking about an
24 administrative organization that need no longer
25 be split into three segments.

1 CHAIRMAN DERMODY: There is a lot of
2 talk about a judicial center, and some of the
3 talk is set around whether the judges or the
4 justices should be at the center. And they
5 suggest Harrisburg. But also the idea of one
6 central administrative office, that makes sense
7 to me also.

8 I don't know if we should -- I like
9 the idea of riding a circuit. It's a big state.
10 I don't know that we can expect the judges and
11 the litigants and attorneys to have to come to
12 Harrisburg to try their cases.

13 HONORABLE BONAVIDACOLA: I quite
14 agree with you, Mr. Chairman, because the two
15 large population centers are at either end of the
16 state. Harrisburg is not a large population
17 center. I think you and I are on board the same
18 boat when we talk about a central organizational
19 office despite wherever it is the judges or
20 justices sit. I think you are right. It is
21 salutary to have them ride the circuit.

22 CHAIRMAN DERMODY: Because there is
23 some talk and suggestions about the
24 administrative office consolidating. That would
25 be a big expense also. I think that is one we

1 ought to seriously look at.

2 HONORABLE BONAVIDACOLA: I also
3 forward to you for your consideration, although
4 there are up sides and down sides to this, a kind
5 of a novel situation that persists in several
6 states in our great country. And that is a
7 regular method for appellate judges to sit at the
8 trial level and a regular method for trial judges
9 to occasionally sit at the appellate level so
10 that each one begins to appreciate the
11 difficulties that the other has in their chosen
12 or elected areas of jurisdiction.

13 I believe it's appellate judges in
14 the south of our country, southeast of our
15 country, are required periodically to sit as
16 trial judges.

17 CHAIRMAN DERMODY: Do you know what
18 states off the top of your head?

19 HONORABLE BONAVIDACOLA: My
20 recollection -- and I'm not certain. I think
21 it's South Carolina. I think it's Tennessee. I
22 believe it's Alabama, and I believe it stretches
23 far west as New Mexico.

24 It's a novel concept, but I think it
25 may have a very salutary effect in letting each

1 one appreciate the job of the other.

2 The other thing that I would like to
3 forward for your consideration is the
4 institutionalization of a regional judicial
5 council, and that is a regional council for each
6 region of our state. I don't really care how it
7 is staffed or what the composition of the
8 membership is of judges and/or administrators so
9 that -- I don't like the term disputes -- but
10 differences between, for example, Philadelphia,
11 Bucks County, Montgomery County, Delaware County
12 and Chester County could be resolved by means of
13 a policy established by that regional judicial
14 council.

15 We have a great deal of trouble --
16 as you know, we are a large litigation center in
17 Philadelphia -- scheduling cases for trial and
18 having one or more of the attorneys saying, I am
19 sorry. I have an attachment for trial in
20 Delaware County. And then it becomes a question
21 of who can grab the attorney in the case first as
22 to who gets their matters resolved.

23 We don't really have a method of
24 resolving or setting forth a policy, and I think
25 it needs to be done under the aegis of a regional

1 judicial council. And that way each region can
2 solve -- sure, Allegheny County has its own
3 problems with lawyers in Westmoreland County,
4 Washington County, Greene County, and that tug
5 and pull of one county to another for the case,
6 the lawyers, the witnesses, whatever. So that is
7 something I would like to lay on the table for
8 your consideration.

9 CHAIRMAN DERMODY: Would this
10 council be able to set a policy not deciding who
11 goes, but it may be based on the date the case
12 was filed, for instance, that type of thing,
13 where you would go first if there was a conflict
14 between counties where attorneys would have to be
15 present, that type of thing?

16 HONORABLE BONAVITACOLA: Yes. What
17 I am thinking of more specifically since I
18 started with the computerization is a computer
19 link between those counties so that if Attorney X
20 is attached for trial in Philadelphia, it can
21 immediately put on the computer bulletin board.
22 And when Lawyer X appears in Bucks County or
23 Delaware County, his name can be punched right up
24 and say, Oh, that date is already taken up by a
25 case in Philadelphia. We will have to put it off

1 until the next week or the week after that.

2 The most frustrating thing in the
3 world for the Court is to have a lawyer walk in
4 on the day of trial and say, I'm supposed to be
5 in Chester County, and I have an attachment order
6 signed by that judge. Which one do I honor,
7 yours or his? So those kinds of things, I think,
8 can be worked out if we have an institutionalized
9 regional judicial council.

10 Two other things, and I'm sure
11 members of legislature won't like to hear this
12 one. And that is it's my strong belief that the
13 Commonwealth should bear the cost of maintaining
14 the appellate judges insofar as their facilities
15 are concerned, their court space, their support
16 staff, and the like, rather than to impose upon
17 the county of residence those requirements. I
18 just think that's where it should be properly, a
19 Commonwealth expense, because these are statewide
20 courts and not county courts.

21 We have that problem now. We from
22 time to time lend our courtrooms here to some of
23 our appellate courts to sit in when they come to
24 Philadelphia. But there are other times when I
25 almost am embarrassed to say to them, You are

1 going to have to find another facility.
2 Everything here is in use, and I would have to
3 bump one of my cases out of here and put it on
4 hold until you are done with your appellate court
5 session.

6 It is getting to be a bit of a
7 problem. I mean we are willing to do things on
8 an ad hoc basis, if we can accommodate them; but
9 to be in a regular fashion, it's getting to be a
10 problem. And the same goes with respect to their
11 offices.

12 CHAIRMAN DERMODY: Are you
13 responsible for the law clerks still for --

14 HONORABLE BONAVIDACOLA: No. The
15 Commonwealth does take care of the appellate
16 judges' support staff.

17 Rules of Judicial Administration
18 needs updating and needs revision on an ongoing
19 basis. Instead of just being visited whenever
20 somebody says, Well, I think it's time for us to
21 look at it, I think it should be looked at on an
22 ongoing basis. And perhaps there should be a
23 standing committee or some kind of a statewide
24 judicial council to constantly review Rules of
25 Judicial Administration because they change every

1 year and a lot of it is not appropriately
2 categorized.

3 It's done by directives, which are
4 annexed to a rule of judicial administration.
5 And they are not widely published as they should
6 be, although you can find them. I just think
7 that there needs to be some ongoing attention to
8 the Rules of Judicial Administration.

9 The only other item that I really
10 had on my shopping list -- oh, by the way, let me
11 go back just a half a second to that regional
12 judicial council when I told you about the
13 conflict of where lawyers go to try cases.

14 CHAIRMAN DERMODY: All right.

15 HONORABLE BONAVIDACOLA: We do have
16 local rules of court in which there are at times
17 conflicts between us and our neighboring counties
18 or between our neighboring counties and us. For
19 example, certain counties when it comes to
20 approving settlements of causes of actions for
21 minors or incompetent people -- I shouldn't say
22 incompetence -- incapacitated, have their own
23 presumptive rules of a 25 percent fee for the
24 attorney or a 20 percent fee or whatever.

25 In Philadelphia, we have a

1 presumptive understanding of one-third of the net
2 fee payable to the injured person. And that
3 causes a bit of a problem because sometimes there
4 are minors who are really wards of the State of
5 another county where the fee situation is much
6 more restrictive but the accident occurs in
7 Philadelphia County or the defendant is from
8 Philadelphia County and the action is filed here.

9 Now, the issue is, Do we apply the
10 Philadelphia rule or do we apply the rule of the
11 domicile of the minor? And I think a regional
12 council could iron this out. Right now it's just
13 sitting there, and it's a problem.

14 Finally, Mr. Dermody, the one thing
15 that is on my plate that I want to speak about --
16 and I don't like to use the word because it
17 conjures up a whole lot of different things --
18 and that is a judicial sabbatical.

19 We now have sabbaticals in certain
20 of the circuits of the United States district
21 courts. There are two or three or four of our
22 states who have now institutionalized sabbatical
23 leave for judges. Now, they come in all kinds of
24 shapes and forms. You can have a half year off
25 at full salary, a full year off at half salary,

1 or something less than that.

2 The federal court that I picked up
3 on -- I think it was the Northern District of
4 Illinois -- they give a sabbatical every five
5 years of three months. In other words, the judge
6 is taken out of rotation; and he is told that you
7 now have these three months to clean up
8 everything you've got in your file drawers that
9 you were never able to get to, you couldn't quite
10 finish, opinions you have to write, orders you
11 have to draft, decisions you have to make. You
12 have three months to do it in, and you must do it
13 in those three months.

14 If you have time left over, go to
15 school and take a course in literature and the
16 law, you could travel to another state or another
17 country to watch the operation of their court,
18 all within that three-month period. We will pay
19 you; but we expect that when you come back, your
20 docket is clear. It's like the first day you
21 started as a judge, and you get all new stuff to
22 come in.

23 That's something that has been
24 lacking because judges do get bogged down.
25 Judges do put off for tomorrow things they should

1 be doing today because today they have other new
2 cases to move along. And cases do form inertia,
3 and they don't move by themselves until somebody
4 pushes them to a conclusion.

5 Those are the kinds of things that I
6 wanted to lay before your committee.

7 CHAIRMAN DERMODY: Do you have any
8 thoughts about how long between sabbaticals? In
9 the northern district, it was five years, right?

10 HONORABLE BONAVIDACOLA: I would say
11 that if we are talking of a three-month
12 sabbatical, it should be midway in the term of
13 the judge. If a judge's term is ten years, after
14 the fifth anniversary, three months. I am not
15 asking for -- I don't think it's advisable at
16 this point to talk about a six-month or a
17 one-year sabbatical. That might not be
18 realistic.

19 CHAIRMAN DERMODY: There was
20 testimony earlier today about the situation
21 involving continuing legal education, the fact
22 that attorneys are now required to engage in
23 continuing education but that the judiciary was
24 not. That would be maybe a good idea for the
25 committee to look at continuing education for

1 judges. This might be a way to institute that.
2 Or do you think that's necessary?

3 The idea is interesting, and I think
4 there has to be a burnout factor for judges also
5 after a period of time.

6 HONORABLE BONAVIDACOLA: Let me say
7 this, Mr. Chairman. I served one elected term as
8 the president of the Pennsylvania Conference of
9 State Trial Judges. In fact, I served three
10 terms simply because my predecessor and successor
11 both got ill, and I had to take over as being
12 vice president and being president emeritus. I
13 had to take over the other term. My colleagues
14 got ill.

15 After that, I became the education
16 chairman for three years of the state conference.
17 We present every year, twice a year quality
18 education programs; and I have no fear that if
19 CLE requirements are imposed upon the judges that
20 our educational programs could pass muster.

21 CHAIRMAN DERMODY: So you are
22 already even taking those steps. I wasn't aware
23 of that, nor were the people who testified
24 previously. And other districts and other states
25 also have the sabbaticals in place?

1 HONORABLE BONAVIDACOLA: There are
2 three or four or five. I have really lost track
3 of it.

4 CHAIRMAN DERMODY: It's an
5 interesting idea and probably a good one.

6 HONORABLE BONAVIDACOLA: Probably
7 legislators need it, too.

8 CHAIRMAN DERMODY: Every two years.
9 We get it every two years. If we don't, we get a
10 permanent sabbatical.

11 Let's talk about the computerization
12 briefly. You instituted that yourself or the
13 Philadelphia courts did. How was it financed?

14 JUDGE BONAVIDACOLA: Locally.

15 CHAIRMAN DERMODY: How far have you
16 come along on the project, and how much do you
17 think it's going to cost?

18 HONORABLE BONAVIDACOLA: Well, we
19 presently have out on the street a new RFP for a
20 whole new software package and part of a new
21 mainframe; and I think the bid prices are over
22 \$2.5 million. And that is to give us the latest
23 programs to enable us to process our cases along
24 in a good fashion.

25 We are presently working with

1 antiquated software and some antiquated
2 mainframe, but we have the RFP out in the street
3 now. And I think that within a year's time, we
4 will be in place with it.

5 As a matter of fact, we must be
6 because of the new criminal justice center. I
7 don't want to go in there with anything that is
8 inadequate. I want it to be state of the art so
9 that we have nothing to blame but you ourselves
10 for anything that is shortcoming.

11 CHAIRMAN DERMODY: I think it is
12 important. You should be commended for putting
13 this whole program in place.

14 HONORABLE BONAVIDACOLA: Let me
15 bring another thing to your attention. Just part
16 of the frustrations -- I am going to talk now on
17 more than just a local basis. I am going to talk
18 statewide.

19 We have frankly a devil of a time in
20 locating the whereabouts of a person in state
21 custody. The last thing we knew, that person was
22 in Graterford. That is the SCI, state
23 corrections institute. We issue a writ to bring
24 that person down for trial, and we find out that
25 he is no longer in Graterford. He has been

1 transferred. Then we have to go back to
2 Graterford and manually search to find out we
3 sent him to Rockview or we sent him to Western
4 Penitentiary.

5 CHAIRMAN DERMODY: You are finding
6 this out on the day of trial or shortly before
7 trial?

8 HONORABLE BONAVIDACOLA: Yes. If
9 there was some computerized statewide method to
10 punch in a name or a number or whatever to find
11 out exactly where on a particular day that person
12 was, we could then transmit electronically a
13 writ, because a lot of times the writ arrives
14 after the person has left. And we issue another
15 writ and go chase him at another place. Those
16 are the kinds of frustrations, I think, that
17 could hopefully be ironed out by a
18 state-of-the-art computer system.

19 We are trying to do that now with
20 our jurors where we will have bar-coded responses
21 from the jurors, which is a tear-off and a
22 stick-on so that when they walk into the jury
23 assembly room, they will flash by a scanner. We
24 will know exactly who came in, what time they
25 came in, and a little bit of their history, their

1 age, residence, and things like that.

2 CHAIRMAN DERMODY: Is it Berks
3 County that has the clerk of courts is
4 computerized already and the attorneys -- I'm not
5 sure if it's Berks or not. They are able to log
6 on at their offices and get papers and filings
7 and everything else at their offices. I
8 believe -- is it Berks?

9 HONORABLE BONAVIDACOLA: We
10 presently are affording to attorneys a tie-in
11 with our computer. And if they buy the proper
12 modem in their own office, they can tie in and
13 read our computer stuff. However, we don't have
14 anything about them logging in because our
15 capacity is shrinking day by day. That's why we
16 are holding out for this new mainframe and
17 software.

18 I can't translate -- I come from the
19 last generation. And when they talk megabytes
20 and RAM's, I don't really know what they are
21 talking about. But I do know that our capacity
22 is shrinking down to almost a crisis, and
23 hopefully we will be on board with this new stuff
24 and perhaps afford that luxury.

25 CHAIRMAN DERMODY: There was a

1 provision, an old Supreme Court rule that I
2 believe has been repealed about a statewide --
3 that provided for a statewide judicial council.
4 And we have had some testimony about that at this
5 hearing and at our previous hearing in Harrisburg
6 about that it might be a good idea to institute a
7 new one and to reconstitute it or somehow either
8 legislatively or through a Supreme Court rule
9 develop a new statewide judicial council.

10 What do you think?

11 HONORABLE BONAVIDACOLA: I think
12 when you get people to sit around the same table,
13 it can't hurt. It's got to help. And I think
14 that probably the Supreme Court could do it by
15 rule in the absence of legislation, but
16 legislation is always a viable option. What I
17 was thinking along the lines of was one step
18 refined from that to a regional judicial council
19 that could then report to a statewide council on
20 matters they have been able to resolve.

21 CHAIRMAN DERMODY: I think it's an
22 idea really worth looking at seriously for the
23 statewide. And this is the first we have
24 discussed a regional council, and that is
25 something we ought to look at all also. I agree

1 with you.

2 Judge, I appreciate your coming by
3 today. I would also like to note that
4 Representative Carn from Philadelphia is here
5 present today. And thank you very much, Judge.

6 HONORABLE BONAVIDACOLA: Well, it's
7 a distinct pleasure to have you and your
8 committee here in Philadelphia, and we will
9 afford to you at any future time the facilities
10 of our courthouse for your use. All you need to
11 do is have Mr. Kent call us.

12 CHAIRMAN DERMODY: Thank you, Judge.

13 (At or about 3:30 p.m., the hearing
14 adjourned.)

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CERTIFICATE

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me during the hearing of the foregoing cause and that this is a correct transcript of the same.

Denise McClintock
Denise L. McClintock, Reporter

Notary Public in and for the
Commonwealth of Pennsylvania

My commission expires
April 20, 1998