

JUDICIAL REFORM HEARING
HOUSE SUBCOMMITTEE ON COURTS

MONDAY, NOVEMBER 28, 1994

COUNTY COMMISSIONER'S HEARING ROOM
LUZERNE COUNTY COURTHOUSE
WILKES-BARRE, PENNSYLVANIA

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1 MR. DERMODY: Good morning. My name
2 is Frank Dermody. I'm Chairman of the House
3 Judiciary Subcommittee on Courts, and I'm pleased
4 to convene this hearing this morning.

5 Before we begin, I would just like
6 to make a few introductions. On my left is
7 Chairman Tom Caltagirone, Chairman of the House
8 Judiciary Committee, and on my right is
9 Representative Phyllis Mundy. Phyllis is from
10 Kingston, and I'm sure you're all familiar with
11 Phyllis. Phyllis is doing a great job for you in
12 Harrisburg, and we're happy that she is attending
13 these hearings today.

14 This is the fourth hearing on the
15 subject of judicial reform in Pennsylvania that
16 the Subcommittee has conducted during the past
17 several months. During this hearing, we will be
18 hearing from a number of distinguished
19 participants in our judicial system who have
20 generously consented to share their considerable
21 expertise with this Subcommittee.

22 I also wish to thank John Moses for
23 his invaluable assistance in helping us set up
24 this hearing, and Representative Kevin Blaum, who
25 helped us, and I believe we're sitting in his

1 district.

2 There can be little doubt that the
3 need for judicial reform or improvement must be
4 thoroughly evaluated at this time. Over the past
5 decade, numerous proposals designed to bring about
6 improvements to the judicial system have been
7 offered by a variety of sources.

8 Some of these proposals may be
9 accomplished by legislative action, others may be
10 achieved only through actions taken by the Supreme
11 Court or through constitutional amendments and all
12 deserve consideration.

13 In preparation for the
14 Subcommittee's efforts this year, we have examined
15 several studies of the judicial system conducted
16 during the past decade, such as the Pomeroy
17 Committee Report and the Beck Commission Report.
18 As a result, we have a list of some thirty
19 recommendations which will be studied by the
20 members of the Subcommittee.

21 The list of improvements includes
22 the following major categories: Court
23 administration, the role of advisory bodies in
24 court administration, financial accountability,
25 Supreme Court practice and procedure, and judicial

1 selection and reform.

2 In other words, we are not
3 approaching this effort in a vacuum but are making
4 ourselves fully aware of all the valid and
5 significant proposals for court reform that have
6 been offered in recent years. Furthermore, we
7 welcome and invite new ideas and proposals that I
8 am certain will be offered by the speakers today
9 and at subsequent hearings.

10 Now, this morning we had scheduled
11 Michael Barrasse, who is the District Attorney for
12 Lackawanna County, and he was scheduled to appear
13 before us; however, unfortunately, he has had a
14 death in his family and is unable to appear.

15 However, Carolee Medico is here
16 today. I have had several conversations with her,
17 correspondence from her, and has requested that
18 she be allowed to make a statement to the
19 Subcommittee, and I said absolutely. There is no
20 problem with that.

21 As a matter of fact, I think two
22 weeks ago in Pittsburgh Marysue Johnston, who I
23 think you're familiar with -- I forget the name of
24 the group, however --

25 MS. MEDICO: Legal focus.

1 MR. DERMODY: She is part of that
2 group, and she testified before the Subcommittee,
3 so that's fine. We welcome the input, and,
4 Carolee, we would like to hear from you right now.

5 MS. MEDICO: First of all, thank you
6 for allowing me to speak. I really didn't expect
7 this. I just gave my words to the court
8 stenographer.

9 Understand, my tone right now is a
10 little harsh because I'm disgusted. May 16th of
11 this year I traveled down to Harrisburg to meet
12 with Tom Caltagirone to express my concerns for a
13 pseudo meeting. I had gotten a list of the
14 judiciary committee meetings and hearings that
15 were to be heard. My hearing was not on that
16 list.

17 It was obvious when I showed up that
18 day no one was prepared to take me seriously. I
19 was also advised that there would be a transcript
20 of that testimony. No transcript to this date has
21 been given to anyone. I don't appreciate being
22 jerked around. I traveled a long time and my time
23 is valuable, and this is why this statement is
24 being made today.

25 There is one word that could get us

1 out of this mess. You had mentioned
2 accountability, financial accountability, but what
3 about accountability when there is corruption,
4 when the rules of court are being violated, when
5 the laws are being violated. Where do you go?

6 My life has totally been absolutely
7 destroyed by all of this. I could walk away from
8 it, but you know what, I can't because we're
9 talking about morality, integrity, justice. I
10 refuse to go on with my life and allow the next
11 person to go through what I went through.

12 I have no gains out of this. As far
13 as the courts go, as far as my personal situation
14 is, I am finished, but I will never, ever, ever
15 give up and allow this to go on as long as I can
16 breathe.

17 The meetings scheduled by your
18 committee regarding the courts are nothing but a
19 cheap political trick where politicians would have
20 the public believe the fraud of truth and justice
21 in Pennsylvania. The real purpose of these
22 meetings is subterfuge and damage control in the
23 belief that the legislature can fool all of the
24 people all of the time.

25 With the recent revelations

1 concerning corruption high up in the Pennsylvania
2 Supreme Court, it is clear that politicians are
3 very concerned for themselves and their positions
4 rather than showing concern for public interest by
5 taking steps to reform the corrupt legal system in
6 Pennsylvania.

7 The various public meetings which
8 your committee has held around Pennsylvania and
9 now today in Luzerne County are merely public
10 circuses in an attempt to placate aroused voters.
11 Looking at some of you here today, is a classic
12 example of the inmates running the asylum.

13 Luzerne County has one of the worse
14 reputations for corruption in the entire state.
15 Unfortunately, President Judge Patrick Toole has
16 been unable to do anything about it because he too
17 is responsible for court misconduct equal to and
18 perhaps worse than Larsen, and I can prove it.

19 Instead of holding Patrick Toole
20 accountable for court wrongdoings, it is being
21 ignored and he has been rewarded with promote --
22 he may be rewarded with a promotion to the Federal
23 bench. This is an outrage and a disgrace.

24 It is inconceivable that lawmakers
25 do not recognize that increased numbers of voters

1 are aware that the Pennsylvania legislature has no
2 real interest in court reform. Recently I was
3 interviewed by the Judicial Conduct Board and was
4 advised that if the legislature wanted to cleanup
5 this mess they can do so in a day simply by
6 holding judges accountable when the rules of court
7 are violated. Please keep in mind that I'm not
8 just talking about people who are going through
9 domestic litigation. I'm talking about any type
10 of litigation where a judge's decision can be
11 influenced by things other than the facts and the
12 law.

13 For many years I have been at the
14 forefront in the fight for court reform in Luzerne
15 County and other counties. I continually stand up
16 for the rights of women and their children while
17 politicians turn a deaf ear to the abuses
18 inflicted by lawyers and judges.

19 All over this Commonwealth there are
20 powerful, prominent men who have reached their
21 tentacles into the court system by placing certain
22 judges into office. These men control the courts
23 regardless of whether judges are elected or
24 selected on personal merit.

25 Corrupt politicians will not agree

1 to make judges, lawyers and court officials
2 accountable for their conduct and dealings in and
3 out of the courtroom until we force it upon them,
4 and we will.

5 Without a public system of
6 accountability, personal corruption will continue
7 to fester and reek throughout the entire court
8 system. Wealthy, well-connected men will continue
9 to use the courts as a tool to deny and destroy
10 their victims. Of course, Common Pleas judges go
11 along with this because they are beholdng to
12 these powerful men.

13 In the coming months, as our master
14 development plan comes underway, we intend to
15 establish in every county in the Commonwealth
16 local branches of Legal Focus dedicated to
17 educating and making ourselves responsible for
18 carrying out court reform in Pennsylvania.

19 I respectfully request that you
20 would meet with me and work with Legal Focus
21 toward real court reform in our Commonwealth, as
22 you have already indicated, Mr. Dermody, and I
23 thank you for that, and I will be meeting with you
24 on December the 7th, I believe.

25 We have been suffering from abuse

1 too long. Judges are human and at times humans
2 can be weak. Judges are the untouchables. They
3 have a tremendous amount of power that is
4 accountable to no one. This power has become a
5 tool to commit legalized crime that has turned our
6 courts into pseudo courts making a mockery out of
7 justice. No one questions judges, and unless that
8 issue is resolved, the system will never, ever,
9 ever work.

10 I ask you to listen to the cries of
11 all the victims and their children who are begging
12 for your help. A monster has been created within
13 our judicial system. The time has come to destroy
14 it and make the system impossible for judges to
15 weaken to the pressure of the powerful. Only you
16 can do this. Regardless of how the judge is
17 seated, merit or elected, they will still be
18 controlled by special interest crooks.

19 I lived with a family. I know what
20 goes on behind closed doors. We must restore
21 honor, truth and justice to our legalized system.
22 Give us a justice system that we can be proud of.

23 We need accountability. Not just
24 financial accountability, but we need
25 accountability. We need real judicial reform and

1 we need it now. Thank you.

2 MR. DERMODY: Thank you. Just I
3 think a few comments for the record. You came to
4 Harrisburg, you mentioned that in your statement,
5 I believe Mr. Caltagirone and Representative Blaum
6 met with you, is that correct?

7 MS. MEDICO: Right.

8 MR. DERMODY: They spent a
9 significant amount of time with you talking about
10 your problems.

11 MS. MEDICO: Two and-a-half hours.

12 MR. DERMODY: So, you weren't
13 ignored at that point. As a matter of fact, the
14 hearing was scheduled and there was a meeting.

15 I would also like to point out in
16 your discussion about these hearings, I believe,
17 Carolee, this is the first hearing you have
18 attended, is that right?

19 MS. MEDICO: Yes.

20 MR. DERMODY: I would also like to
21 point out that I believe in was 1990, '91 Chairman
22 Caltagirone held a series of hearings across the
23 Commonwealth with some great risk to himself --
24 there was opposition to his holding these hearings
25 -- regarding the problem in the family division of

1 the family courts throughout the Commonwealth, and
2 a significant amount of time and effort was put in
3 on his part on several of the problems I know you
4 have been focused on and several of the problems
5 that members of your group have had problems with.

6 I'm not saying we have all the
7 perfect answers for you, but there has been a
8 significant attempt by this Chairman to go out and
9 find out what those problems are. I participated
10 in those hearings. I attended several of them.
11 One of them was held in my community in Oakmont, I
12 think several of you were there, so that that
13 information -- and I understand the frustration.

14 Just for the record, I'm trying to
15 set it straight here that the Committee, and
16 particularly its Chairman, has gone out of its way
17 to try and listen and receive the input that you
18 wanted to --

19 MS. MEDICO: Mr. Dermody, you have
20 been listening and listening and listening but we
21 need results. We need action. We need for you to
22 resolve it. For God sakes, we go to the moon. We
23 could resolve this. This is no big deal. It's
24 one word, accountability, let's do it.

25 I was at the Judicial Conduct Board.

1 I met with them. He looked at me and he said,
2 absolutely you have a case here. I mean, what
3 happened to you happened --

4 MR. DERMODY: It's understood, in
5 closing, that you're using the tools that are
6 available to you, if you have those problems, that
7 is the appellate process, the Court of Judicial
8 Discipline they are there.

9 MS. MEDICO: There is no one that
10 can answer this question: Who is responsible to
11 see that the rules of court are not being violated
12 when they are, who is responsible for it?

13 I mean, I have a letter into the
14 Judicial Conduct Board from over a year ago. They
15 can't even answer me. They won't even answer me
16 because I have the proof, and where are you going
17 to go with it? You're talking about my whole
18 hearing, my whole transcript was destroyed,
19 removed from the record. That's not legal, you
20 heard.

21 Tom, when I was in his office, he
22 sat there for three hours and kept going, this is
23 illegal, this is criminal, this is wrong. Yeah,
24 right, but where do I go? Nowhere. This is the
25 problem.

1 MR. DERMODY: We appreciate your
2 comments. As I said, I'll talk to you more about
3 meeting with you again. Thank you very much.

4 MS. MEDICO: Excuse me, one other
5 thing. After meeting with Tom Caltagirone for
6 three hours, what's the purpose of me traveling
7 down to Harrisburg for -- I was told I was going
8 to get 15 minutes to speak. I have a bus load of
9 people, what was the purpose of it?

10 MR. DERMODY: I don't know.

11 MS. MEDICO: I don't understand.
12 Like in other words, I went down -- this is what
13 I'm saying about when I said this is a cheap
14 political ploy because think about this. I went
15 down to Harrisburg. I spoke with Tom Caltagirone
16 for three hours. Why on earth would I ever want
17 to travel back there to give him 15 minutes of
18 what I just gave him three hours for if it wasn't
19 going to mean anything, if there was to be no one
20 present and no transcript? My time is valuable.
21 I didn't enjoy during that. Mr. Caltagirone --

22 MR. CALTAGIRONE: There is a
23 transcript and it's in the Chief Clerk's Office,
24 and if you care to pay for one, you'd be able to
25 access it, because I gave specific instructions to

1 let me know that that was transcribed, and as you
2 know, and I think the people that were there at
3 that hearing, we went above and beyond to sandwich
4 you in for a special hearing.

5 That was held on a Monday morning
6 when we were scheduled to be in session at 1:00
7 o'clock, but at the request of Kevin Blaum, I went
8 ahead and I scheduled that for your convenience to
9 come down to testify, and what we did then, we had
10 tape recorders because we were not able to get a
11 stenographer in that short of time because these
12 people were really booked up, as you may or may
13 not know, and we did give you your time.

14 You know, if you think we have all
15 the answers, you're wrong. If you think we can
16 waive a magic wand to correct all the ills of
17 society, you're wrong again. And let me tell you,
18 we have made tremendous strides in trying to
19 improve the judiciary in this state.

20 In my six years as Chairman of this
21 Committee, we have done more innovative things, we
22 have outstretched the receptiveness of trying to
23 get the judiciary involved with the legislative
24 process so that we can work together to resolve
25 problems. That's what it's all about. That's

1 what makes our government work. Nothing is
2 perfect though, Carol, nothing is perfect.

3 MS. MEDICO: Tom, first of all --

4 MR. DERMODY: One at a time. When
5 Carolee is finished, then we'll have to move on.

6 MS. MEDICO: This is important
7 because this shows what happened. I did not
8 schedule that meeting, you did. It was scheduled
9 a month in advance. I still have the letter, all
10 right. If there was really no purpose to it, why
11 --

12 MR. CALTAGIRONE: That's your
13 opinion now, that is your opinion.

14 MS. MEDICO: The meeting was a
15 pseudo meeting.

16 MR. CALTAGIRONE: That is your
17 opinion again.

18 MS. MEDICO: It went nowhere, that
19 was it.

20 MR. DERMODY: We're not going to
21 resolve that but thank you for opinion on it. One
22 last one person.

23 MS. RUMONCHEK: Mr. Dermody, the
24 only thing I want to ask Tom --

25 MR. DERMODY: Could I have your

1 name, please?

2 MS. ROMANCZUK: Emily Romanczuk.

3 MR. DERMODY: Where are you from,
4 Emily?

5 MS. ROMANCZUK: Duryea. Did you
6 bring the transcript with you, sir?

7 MR. CALTAGIRONE: Pardon me?

8 MS. ROMANCZUK: The transcript of
9 that meeting, the prior meeting, did you bring it
10 with you, sir?

11 MR. CALTAGIRONE: No.

12 MS. ROMANCZUK: Why not? You knew
13 you were coming down here.

14 MR. DERMODY: No, it's not
15 transcribed.

16 MR. CALTAGIRONE: No, she has to
17 request it.

18 MS. MEDICO: I requested it many
19 times.

20 MR. DERMODY: We'll look in to where
21 that is. I don't have the answer, but it wasn't
22 transcribed, okay?

23 MS. MUNDY: I had housing hearings
24 here in June and they're not transcribed either.
25 They're backed up.

1 MR. DERMODY: Thank you very much.
2 The next witness this morning is Patrick J. Toole,
3 President Judge of Luzerne County Court of Common
4 Pleas.

5 JUDGE TOOLE: Good morning. I may
6 begin by expressing my appreciation to the
7 Committee for the opportunity of appearing to make
8 some remarks this morning on the subject of
9 judicial reform.

10 At the outset, I would like the
11 record to reflect and the Committee to know that
12 while I serve as President Judge of this judicial
13 district, I appear this morning as an individual
14 member of that Court, and any views that I might
15 express are not those necessarily shared by my
16 brethren.

17 We live in an age of discontent and
18 dissatisfaction, as is obvious. Ours is a
19 contentious society, a litigious society. We live
20 in a culture of confrontation. Read a newspaper,
21 listen to a radio or watch television, and unless
22 it's Mr. Rogers neighborhood, chances are you're
23 going to see or hear something usually negative,
24 someone complaining, threatening or blaming
25 someone else for something else.

1 We no longer seem to have
2 discussions or reasoned debates. Nowadays it's
3 all accusation and confrontation. We see a lot of
4 accusing, pointing fingers but very few offers of
5 a helping hand.

6 This morning this distinguished
7 Committee has convened to hear voices requesting,
8 supporting or opposing changes in our judicial
9 system. There are many advocates of change, some
10 made out of frustration, some for spite, some for
11 revenge, some out of jealousy, some for political
12 reasons and some in hopes of securing some selfish
13 advantage, recognition or promotion, and of course
14 there are others who appear and testify not from
15 any selfish motive but simply out of a sincere and
16 truthful desire to improve the quality of justice
17 in this Commonwealth. I'm sure this committee
18 will recognize and appreciate the difference.

19 Without question there are
20 complaints about the judiciary and the judicial
21 system and many of the complaints are obviously
22 valid. Exactly what the problems are, what reform
23 is needed or demanded depends upon who is
24 speaking.

25 If the complainant is a disgruntled

1 litigant -- and that is usually the person who
2 didn't prevail -- you will probably hear
3 accusations that the judge who presided was
4 corrupt, bias or prejudice. If the complainant is
5 a convicted defendant, you will probably hear
6 complaints that the judge was incompetent, the
7 jury was biased, the verdict contrary to the facts
8 or the sentence imposed was too severe.

9 If it's a D. A. who is complaining,
10 you will usually hear that the judge erred in his
11 evidenciary rulings or that the sentence imposed
12 was too lenient, and you may hear complaints from
13 victims who will tell you that the system and the
14 process is weighted in favor of defendants.

15 Ours is a system where the judge is
16 expected to protect and promote everyone's rights:
17 the parties, the lawyers, the witnesses, the
18 jurors, the public and the media, and when those
19 rights conflict or clash, as they very often do,
20 they can't all prevail. Something has to give,
21 and pity the poor judge who tries to balance those
22 rights.

23 He or she is damned if they do,
24 damned if they don't, and no matter what the judge
25 does, it's likely that someone will question his

1 honesty, his loyalty, his competency and at times
2 even his parentage. Unfortunately, nowadays most
3 litigants see their own cause as just and any
4 resolution that does not favor that cause is
5 unjust.

6 The judiciary is the branch that is
7 generally called upon to make unpopular checks and
8 balances, and as we know, what is popular is not
9 always right. What is legal is very often
10 unpopular. Judges are the ones who must often
11 thwart the ambitious programs and desires of
12 presidents, governors, legislatures, litigants and
13 attorneys. Judges must often stand in the way of
14 powerful special interest.

15 Judges, as legislatures, know that
16 today most of the issues that we are confronted by
17 are complex. They are in the gray area, and
18 things are no longer, as to many believe, black
19 and white.

20 There was a time when a judge ruled
21 that he pleased at least one side. Nowadays it's
22 difficult to please any side. Make no mistake,
23 the judge's rule is not to please or appease. The
24 judge is expected to decide issues and let the
25 chips fall where they may, and everyone who dons a

1 robe soon learns that making decisions and
2 rendering judgments is never easy and does not
3 usually endear the judge to litigants, lawyers,
4 the media or the public.

5 There are some individuals who
6 believe that everything wrong in the world can be
7 changed or corrected in the courts, that judges
8 have absolute authority, that they can do anything
9 at any time to anyone with or without reason.
10 They can answer to no one.

11 Some say judges are not accountable.
12 Those who know the law know better. As an eminent
13 Jurist and legal scholar Justice Cardozo once
14 observed, Even though the Judge is free to do
15 much, he is still not wholly free. He is not to
16 innovate or please. He is not a knight errant
17 roaming at will in pursuit of his own ideal of
18 beauty or of goodness. He is not to yield to
19 spasmodic sentiment today and unregulated
20 benevolence.

21 Make no mistake, judges are bound by
22 the constitution, statutes, rules and precedent.
23 Judicial critics don't seem to realize -- or if
24 they do, they don't seem to care -- that almost
25 every ruling, decision or judgment that a judge

1 makes can be appealed to and reviewed by many
2 judges in many courts. And when an appeal is
3 taken, the trial judge is required to justify
4 every ruling, decision or judgment that is
5 questioned and he must do so in writing.

6 Judges are also bound by written
7 rules or standards of judicial conduct and can be
8 disciplined for infractions or violations with
9 suspension or removal from the bench.

10 Disappointed litigants, critics, reporters,
11 columnists and talk show hosts have no such
12 written standards or rules and can say and do as
13 they please almost with impunity and too often
14 with immunity.

15 Make no mistake, I'm not here this
16 morning advocating that the judiciary is or should
17 be free from criticism. If deserved criticism, it
18 should be expected, welcomed and heeded, whether
19 it comes from litigants, lawyers, the public, the
20 media or the legislature.

21 I know and appreciate that at times
22 judges are too ridged, impatient, doctrinaire,
23 seemingly arrogant and even stupid. I know that
24 judges make mistakes, but as lofty as the position
25 is or might seem to be, judges are human. The

1 question then is not whether there should be
2 change but what those changes ought to be, who,
3 how and when they ought to be made.

4 I have no detailed program or
5 blueprint in mind to improve or modernize the
6 judiciary, but after 35 years at the Bar and
7 almost 25 years in public service, I believe I can
8 offer a few suggestions for possible consideration
9 by the legislature.

10 Before making those suggestions for
11 change, let me offer though a method for
12 evaluating complaints often made by individuals.
13 I believe before anyone embraces a complaint about
14 a judge or the judicial process, the listener, the
15 reader, the viewer should make some inquiries
16 about the complaint and the complainant.

17 First, determine whether the
18 complainant is or was a litigant. Second, if so,
19 what was the nature of the litigation. Some
20 proceedings are more emotional than others.
21 Three, determine if the litigation is still
22 pending and/or how long it was involved in
23 litigation.

24 Four, determine how many judicial
25 proceedings have been involved. Fifth, how many

1 of those proceedings were resolved in favor of or
2 against the complainant. How many adverse
3 decisions were appealed, and were those appeals
4 sustained over dismissed. How many attorneys
5 represented the complainant throughout the
6 procedures.

7 How many judges did the complainant
8 and counsel appear before. Did the complainant
9 make any complaints about counsel or the court?
10 Did they file any formal complaints with the
11 Disciplinary Board or the Judicial Conduct Board,
12 and if so, what was the outcome of those
13 complaints. Then determine whether the complaints
14 relate to the dispositive issues involved in the
15 case or whether they're just general accusations
16 against the judge or the system.

17 Making such inquiries and securing
18 timely and truthful answers will usually provide a
19 reasonable basis to conclude whether the complaint
20 is founded or whether the complaint lacks merit
21 and the complainant lacks credibility.

22 Now, let me offer, if I can, what I
23 believe were a few areas for consideration by the
24 legislature. First, I believe the Constitution of
25 the Commonwealth of Pennsylvania should be amended

1 to permit judges to serve past their 70th
2 birthday. Judges are the only persons I know --

3 MR. DERMODY: Excuse me, there will
4 be order.

5 JUDGE TOOLE: I'm used to that, so
6 it doesn't bother me.

7 Judges are the only people subject
8 to this discriminatory practice and that is of
9 course because it's a provision of Article V of
10 our Constitution. It is also clear that in
11 complying with that constitutional provision, we
12 truly act somewhat hypocritical, because while we
13 tell the judge he must retire on his 70th
14 birthday, he doesn't miss a beat if he decides to
15 continue as a senior judge and he goes on as if
16 nothing happened.

17 Next, I believe the Constitution
18 should be amended to authorize utilization of a
19 jury panel of less than 12 persons. There is no
20 magic in selecting 12 persons to decide any issue.
21 Selecting six would hasten the selection process,
22 provide better utilization of jury panels and save
23 considerable judicial time and taxpayer money.

24 Next, I believe the Constitution
25 should be amended to afford the Commonwealth the

1 same right of appeal that is given to a defendant.
2 At present, the Commonwealth has no appeal from
3 the verdict of not guilty even if that verdict is
4 clearly the result of an error. I think the
5 Commonwealth should have that same right.

6 Now, let me just add a few words
7 about judicial selection. Until recently I firmly
8 supported the public and popular election of
9 Common Pleas judges on a county level, the public
10 election of Commonwealth and Superior Court judges
11 on a regional basis and the election of Supreme
12 Court members by majority vote of the judges of
13 the Court of Common Pleas, Commonwealth and
14 Superior Court.

15 I also believe that judicial
16 elections should be separate and distinct from the
17 usual municipal elections. That all judicial
18 candidates should be listed by drawn ballot
19 position without identification of or regard to
20 the political affiliation or preference of the
21 candidate.

22 However, in view of recent trends
23 toward negative campaigns and judicial bashing,
24 I'm not sure that the best qualified individuals
25 will pursue a judicial career, particularly if it

1 means participating in partisan political
2 campaigns.

3 I still, of course, have
4 reservations concerning merit selections of
5 judges. We still have to decide who picks the
6 pickers, what's the committee to be made of, how
7 many individuals are on the committee to
8 recommend, what is the tenure of the committee,
9 what is the tenure of the judge.

10 When the committee selects
11 individuals, are there qualifications. Is
12 experience required or just a degree. There are
13 some additional questions: The list that is
14 submitted must it contain a certain number of
15 recommended candidates. Is the ultimate authority
16 to select the Governor or is that in conjunction
17 with a vote by the Senate.

18 If it's a vote by the Senate, is
19 that simple majority or a two-thirds majority, and
20 we also have to know if the committee recommends
21 certain persons is the appointing authority free
22 to reject the entire list. These are just some of
23 the issues.

24 I know that this issue has
25 proponents and opponents. Each has strong

1 feelings and persuasive arguments. I know that
2 emotion and rhetoric run high on both sides. I
3 know we have been debating this for 200 years. I
4 know there had been a number of studies, but
5 fortunately I believe in the end the
6 responsibility for determining how Pennsylvania
7 judges will be selected rests with the people, for
8 any change requires a Constitutional Amendment and
9 any such action is, of course, subject to popular
10 vote.

11 So when and if the reform is
12 proposed, all sides will have the opportunity to
13 present their arguments, and I'm sure the people
14 will then decide.

15 Speaking about judicial selection, I
16 would also note that I think the time has come to
17 devise some method of legal certification that
18 will hopefully offer efficient and effective
19 representation to clients. Merely because one has
20 secured a jurist doctorate degree does not mean
21 the person is able or likely to effectively and
22 efficiently represent a client in a legal
23 proceeding, just as an election or appointment to
24 the bench is no guarantee of judicial ability.

25 I believe the law has become so

1 complex that no one should be permitted to act as
2 a trial lawyer in civil or criminal procedures or
3 an appeal of such cases unless that ability has
4 been clearly established through tests and by
5 experience and certified by some professional
6 board or committee.

7 I also believe that no attorney
8 should be elected or appointed to a specific court
9 unless that person has been previously certified
10 as an attorney in that particular court. Along
11 the same line, I think the time has come to create
12 a chancery court to handle complex business issues
13 and make it a part of the unified judicial system.

14 And a word about our District
15 Justices. I don't believe it's fair that we bind
16 our D. J.'s to the judicial rules of conduct,
17 which prohibit political activity, and then deny
18 them the right to the retention process. I
19 believe D. J.'s, like judges, after being elected
20 in a popular election should have the right
21 thereafter to seek terms through retention rather
22 than popular election.

23 And I realize that many feel that
24 judicial terms, the ten years for the judge and
25 six for the district justice, may promote or cause

1 indifference, and perhaps the answer to such
2 criticism is to reduce the length of the term, but
3 we must always keep in mind that the length of the
4 term must be such as to promote and protect
5 judicial independence.

6 It is also clear we have a very
7 litigious society. Our courts are being burdened
8 by frivolous lawsuits, and it's time we did
9 something to eliminate those kind of actions. I
10 believe a step toward that end would be
11 legislation that would require, in the absence of
12 good cause shown, that the losing party or parties
13 -- and some might even add their attorneys, be
14 required to pay the reasonable costs incurred by
15 the prevailing party, including attorneys fees, as
16 well as an allocation of the cost of the
17 proceeding for such items as the jury, the court
18 reporters, the judge and the clerks.

19 I don't pretend to be an expert on
20 the judiciary or judicial system. I don't pretend
21 to know or have all the answers, in fact, I'm sure
22 I don't know all the problems, but I do know that
23 despite our problems or whatever our shortcomings
24 might be, we still have the best legal system in
25 the world, but even the best can be made better,

1 and so we must continue to look for ways to
2 improve the system.

3 I know there are some very
4 distinguished and articulate individuals that are
5 scheduled to appear, and like you, I'm anxious to
6 hear their presentations. I sincerely thank the
7 Committee and the members for the opportunity to
8 make remarks this morning, and I commend you and
9 the members of the Committee for your interest and
10 desire to improve the quality of the judiciary and
11 the judicial process in Pennsylvania.

12 I don't believe this is a
13 subterfuge. I don't believe this is a circus. I
14 think it is a public service, and again I
15 congratulate and commend each of you. I wish you
16 good luck and God's speed and wisdom in the
17 tremendous endeavors that lay ahead. Thank you
18 very much.

19 MR. DERMODY: Judge, thank you.

20 JUDGE TOOLE: If you have any
21 questions, I'd be happy to answer them.

22 MR. DERMODY: Representative Mundy.

23 MS. MUNDY: I have a question, Judge
24 Toole, about your observations. Now, you
25 mentioned that you would be in favor of chancery

1 court for business issues. Would you also be in
2 favor of a separate family court that might have
3 sort of, as we do now, we have masters, you know,
4 who serve on a lower level as a judge?

5 JUDGE TOOLE: I believe -- we have a
6 family court. I know it doesn't please a lot of
7 people. It doesn't please some people. I do
8 think it pleases most.

9 I favor, truly, dividing courts into
10 areas of specialization. I think you should have
11 in family court the judges who were practitioners
12 in family practice. I think in criminal court you
13 should have judges who were practitioners in
14 criminal practice and so on, and I think you
15 benefit from that expertise and that experience.

16 Too often the judge, the jury and
17 sometimes even the lawyers are not experts in the
18 very area that they're in that courtroom
19 litigating, and I think that affects the quality
20 of your representation.

21 So the answer is yes and no.

22 MS. MUNDY: I one have more
23 question. You and I have had discussions about
24 the rules of evidence, and as you're aware, there
25 was a proposal this last legislative session to

1 codify the rules of evidence, and I would like for
2 you, for the record, to express your opinion on
3 that.

4 JUDGE TOOLE: I have no hesitancy in
5 saying that the sooner we make uniform rules of
6 procedure and evidence the better we're going to
7 be, and if that means adopting rules analogous to
8 the Federal, I support that.

9 MS. MUNDY: Thank you, Judge.

10 MR. CALTAGIRONE: I just wanted to
11 comment on that we spent close to two years trying
12 to refine and work on that Code of Evidence, and I
13 don't think anybody from the legal community was
14 left out or any citizen that wanted --

15 JUDGE TOOLE: No, I think you sent
16 letters to everyone and solicited all the input
17 that could be solicited.

18 MR. CALTAGIRONE: We certainly made
19 a bold effort at trying to come up with a workable
20 code to take all sides into account, and I think
21 we pretty well came to that point -- we ran out of
22 time unfortunately at the end of the session. I
23 do believe though that that bill will be
24 resubmitted in the next session, and that we will
25 see some type of activity on that.

1 I know that there were concerns by
2 the Supreme Court about the implementation and the
3 date, and the last agreement that we had received
4 about trying to work out those differences as to
5 which areas belong to the courts, which areas
6 belong to the legislature, and we had finally
7 concluded that we are going to have a one-year
8 delay so that a commission could take a hard look
9 at those areas to work that out and make the
10 recommendations so that that code could become a
11 reality.

12 I just want to assure you that that
13 was not for naught. I think anybody in the
14 legislature -- and I know my good colleagues here
15 realize this -- it takes more than one or two or
16 three sessions sometimes to get things
17 accomplished. There is no easy solution to a lot
18 of these complex problems and they are in fact
19 complex, as many of us know.

20 JUDGE TOOLE: And if there's any
21 profession where change comes slowly and painfully
22 it's obviously in the judicial process, but,
23 again, I don't believe the admission of evidence
24 should be decided on what court you're appearing
25 before. It should be the same whether you're in

1 the Federal or District Court or the Common Pleas
2 Court.

3 MR. DERMODY: Judge, thank you. I
4 also speculate that Mr. Moses might have comments
5 also on the Commonwealth's right of appeal if they
6 lose their case, but we'll save that for another
7 day.

8 JUDGE TOOLE: I thought he might,
9 too. Thank you very much.

10 MR. DERMODY: Our next witnesses
11 this morning or Paul Stevens and Arthur Piccone,
12 Pennsylvania Bar Association.

13 MR. STEVENS: My name is Paul
14 Stevens, and I am President of the 28,000 member
15 Bar Association. With me is Art Piccone, our
16 president elect, who will succeed me in May of
17 1995. Art practices here in Wilkes-Barre and will
18 address you in a few minutes.

19 First of all, allow me to thank you
20 for the opportunity to testify this morning. The
21 Pennsylvania Bar Association was founded 100 years
22 ago -- we're in the middle of our hundredth
23 anniversary -- for the express purpose of
24 improving the Pennsylvania system of justice.
25 Therefore, we are pleased to offer our opinions on

1 court reform before this prestigious Committee.

2 The Pennsylvania Bar Association has
3 been and will be in the forefront of efforts
4 directed to improvement of the system. We were
5 very active in the successful efforts to revamp
6 the judicial discipline system and more recently
7 we supported efforts to enact merit selection of
8 appellate judges.

9 Unfortunately, merit selection
10 legislation was deferred when the legislature
11 failed to consider it before recessing, and I just
12 might digress for a minute to indicate support for
13 the idea that putting it before the people to
14 decide is something that we have advocated many,
15 many times.

16 We have supported merit selection
17 incidentally since 1947, so we are not newcomers
18 to that initiative. However, before I speak to
19 merit selection, I would first like to address
20 other judicial reforms which encompass a very
21 broad spectrum. I would like to begin by
22 commenting on the events of the past year as they
23 relate to the overall issue of judicial reform.

24 The Larsen proceedings were a sad
25 chapter in Pennsylvania's judicial history;

1 however, it is important that there not be a hasty
2 overreaction to that particular situation. Our
3 system has worked well for some 200 years prior to
4 the appearance of ex-Justice Larsen on our
5 judicial scene.

6 Certainly, however, the Larsen
7 situation suggested areas of possible reform.
8 However, in addressing those areas, we urge that
9 the legislature keep in mind the traditional
10 constitutional balance of power between the
11 branches. There is a fine line between fixing the
12 perceived ills of the judiciary and usurping its
13 Constitutional role.

14 Quick fixes hastily developed to
15 address the specifics surrounding the Larsen
16 situation are not recommended by the Pennsylvania
17 Bar Association. Rather we urge careful study of
18 the recommendations of the Pomeroy and Beck
19 reports, with which you have indicated this
20 morning you are familiar.

21 These recommendations were
22 objectively developed after careful study without
23 reference to a specific perception of need. I
24 might note parenthetically that they were
25 developed in two different decades with two

1 different commissions and they came to very
2 similar results, and I suggest that they deserve,
3 for that reason alone, your serious consideration.

4 We also urge that you give
5 consideration to our Supreme Court's response to
6 the recommendations that arose from the Larsen
7 legacy. Internal operating procedures have been
8 developed by two blue ribbon panels and
9 implemented and a voucher system is in place.

10 Other issues have been addressed. These measures
11 deserve the opportunity to be monitored, analyzed
12 and observed.

13 Let me again note parenthetically
14 that when you look at the Beck Commission Report,
15 the Pomeroy Report and the reports of the two blue
16 ribbon committees you will see one common thread,
17 and we advocate consideration of that common
18 thread. That common thread is centralization.
19 Centralization of the staff, centralization of
20 capability. I'm setting aside for the moment the
21 question of where the Supreme Court physically
22 sits but addressing the issue of where the staffs
23 are.

24 MR. DERMODY: Administration?

25 MR. STEVENS: Administration of all

1 at appellate courts. An adjunct to that also in
2 today's super highway info network is
3 consideration of how computers might work into
4 that, and all four of the reports that you have
5 all emphasize that. The Pennsylvania Bar
6 Association has gone on record for many years in
7 favor of that centralized effort.

8 Returning to our concern about
9 respect for constitutional balance, we have for
10 many years before the Larsen controversy arose
11 called for cooperation between the legislature and
12 the judiciary, and we see no reason why
13 cooperation should be any less a goal today.

14 As an example, we have opposed
15 unilateral -- and I underline that word --
16 enactment of a code of evidence by the
17 legislature. A code of evidence should be
18 produced by cooperation with the legislature and
19 the judiciary not by one or the other adopting it,
20 and for that reason we applaud the idea of a
21 commission.

22 At the same time we have also
23 supported the necessary funding to create a
24 unified, centralized judicial system. That
25 probably is the largest issue that you face

1 because every initiative that is suggested
2 requires tremendous sums of money in order to
3 implement.

4 We also, at the risk of sounding
5 like a broken record, over a span of 45 years,
6 support and recommend that the Pennsylvania
7 appellate judges be chosen under a merit selection
8 system. So long as appellate judges are elected
9 by a partisan, campaign-driven, political system,
10 our judiciary will remain subject to the charge in
11 the eyes of the public of political involvement.
12 Our judiciary should be above that.

13 The Commonwealth of Pennsylvania
14 should not have one more political campaign in
15 which appellate judges are chosen based on party
16 or geographic affiliation, name recognition, TV
17 sound bites, negative verbiage, ballot position or
18 the amount of money raised. We should not have
19 another election in which exit poles show that the
20 voters had no idea about the qualifications,
21 temperament, integrity, competence or experience
22 of the person they voted for.

23 A judge obviously is not like a
24 governor, a senator, president or legislature.
25 Those people represent people and partisan

1 viewpoints. They should campaign. They should
2 get out and meet voters. They should talk about
3 their feelings on crime, abortion, gun control,
4 but a judge should be objective. A judge's
5 constituent is the law, pure and simple. He or
6 she doesn't represent anyone. A judge represents
7 everyone.

8 So that's why we feel that merit
9 selection of our state-wide judges -- and we do
10 emphasize appellate judges -- does make sense.
11 Thirty some other states do it that way and we
12 wonder why we should be any different here in the
13 Commonwealth.

14 As the speaker before me said,
15 judges do make tough decisions and many times they
16 are unpopular decisions. A judge who is thought
17 to be beholding to people -- contributors,
18 ideologies or political party bosses -- may think
19 twice about making an unpopular decision even
20 though it may be the right decision.

21 The Pennsylvania Bar Association
22 remains committed to changing the way we select
23 our judges. Choosing judges on qualifications as
24 opposed to name recognition or political backing,
25 that is the only way to go if Pennsylvania is

1 truly committed to reforming its judiciary.

2 We still maintain that merit
3 selection of judges is the most important court
4 reform measure that the legislature could adopt by
5 allowing the people to decide how they will
6 hereafter select our judges.

7 Since merit selection would require
8 a constitutional amendment and must be voted on
9 twice by the general assembly before it goes on a
10 voters' referendum, we cannot possibly have merit
11 selection until 1997.

12 However, the PBA will continue to
13 lobby for legislature for merit selection but at
14 the same time we will do what we can to improve
15 the election process of our judges, which, we
16 repeat, is the primary obstacle to public
17 confidence in the system's impartiality.

18 Early next year the Pennsylvania Bar
19 Association will announce campaign advertising
20 guidelines, which judicial candidates that we rate
21 will be asked to sign pledging their support to
22 abide by Cannon 7 of the Code of Judicial Conduct
23 and to adhere to fair and ethical advertising.

24 We will also be launching a campaign
25 in early May to encourage voters to become

1 knowledgeable about PBA's judicial candidates'
2 ratings in order to help them make informed
3 choices for appellate judges. Obviously, these
4 measures will not change the system from a
5 partisan election system, as it is today, to one
6 that hopefully focuses primarily on
7 qualifications.

8 In the interim, we recognize that
9 some are advocating reform of the elective system
10 itself, in view of the fact that our three next
11 appellate judges will be selected through the
12 current system.

13 Accordingly, in October, the
14 Pennsylvania Bar Association's House of Delegates,
15 which is comprised of some 300 lawyers, -- by the
16 way, is one representative for each 100 lawyers --
17 comes together and meets twice a year representing
18 all regions of Pennsylvania, voted on what I call,
19 "interim judicial selection reforms." I emphasize
20 interim because we certainly continue to hope for
21 true merit selection by 1997.

22 I would like to ask Mr. Piccone to
23 speak to these measures.

24 MR. PICCONE: Thank you, Paul. I
25 also would like to thank the committee for the

1 opportunity to speak this morning.

2 One of the things you have to
3 understand that when Paul and I speak we do not
4 give our own personal points of view. We only
5 speak for the Pennsylvania Bar and the positions
6 taken by our House of Delegates.

7 And although many of us share in
8 entirety those points of view, we are restricted
9 in that regard, and it does create sometimes a
10 problem, and that's why the opportunity to come
11 before you this morning is so very important
12 because we get a sense of what people are saying
13 and what people are testifying to before you, and
14 we can take that sense and get back to our own
15 house and see if we can get them to take positions
16 on various things that have come before you.

17 Some of the things I would like to
18 talk about this morning with you are positions
19 that the House just recently took in October after
20 having heard about what the process was that was
21 going through the legislature in terms of certain
22 changes.

23 We have to make it clear, however,
24 that we still reaffirm our strong commitment for
25 the adoption of a merit selection system, and we

1 also, within that context, acknowledge the
2 political realities that even if merit selection
3 were to be approved by the next two sessions of
4 the general assembly, it could not get on the
5 ballot until 1997 as a referendum vote.

6 However, as Judge Toole said -- and
7 I think we can all echo that -- however this state
8 goes, it's important that the voters decide the
9 system, and again another wonderful reason why the
10 hearings of this Committee are so important, but
11 until that happens, we're confronted with the
12 situation that within the next two years we're
13 going to have at least six open seats in appellate
14 judiciary elections and they are going to be
15 filled by the partisan election system.

16 Because of this, we encouraged our
17 House of Delegates to take positions on interim
18 judicial election reforms. They did that, and I'm
19 going to discuss those with you, but let me first
20 stress to you that we're not satisfied with these.
21 We think they're really a Band-Aid and ultimately
22 the system is going to have to be addressed by the
23 process that you all are presenting today.

24 Here are the positions that the
25 house took in October. They were opposed to

1 lifting the gag rule of judicial candidates. As
2 you know, Cannon 7 of the Judicial Code prohibits
3 candidates from expressing their views on legal
4 and professional issues, and as Paul just said,
5 the last thing you need is a candidate expressing
6 his point of view indicating how he would come
7 down on an issue. He couldn't very well be a fair
8 and impartial judge if he already predecided how
9 he would rule on a matter, and that's why the
10 House thought it was so important that we not
11 change our position and allow candidates to speak
12 out on certain issues.

13 We support ballot rotation, if it
14 can be done in an equitable fashion. We also
15 support cross-filing by appellate judicial
16 candidates. Although these are not a perfect
17 solution, they will in some fashion minimize the
18 luck of the draw, and we think it's worthy of
19 consideration.

20 The House, however, defeated a
21 resolution to restrict campaign contributions and
22 expenditures as well as defeating a measure to
23 prohibit post-election contributions for judicial
24 campaigns. I think the sense was that unless
25 there is a system in place that raises the dollars

1 for people to run for election, we didn't want to
2 place an election in a position where those who
3 had more money would be able to run for office and
4 poorer people, who didn't have money on their own
5 and not being able to raise money, would almost be
6 precluded from running a state-wide campaign.

7 All three of you know what it's like
8 just to run campaigns in a limited area today and
9 that's just so terribly magnified when we go
10 state-wide, and for this reason the House voted in
11 opposition to those type of restrictions.

12 Again, we continue to support merit
13 selection, and we recognize that it will have a
14 hard road but it's a road that has to be walked,
15 and the people of Pennsylvania ultimately have to
16 decide.

17 We're satisfied that the impeachment
18 proceedings of Justice Larsen are now over, and
19 although we look forward to a new election, we
20 want to remind the voters of Pennsylvania that the
21 improvement of the judiciary should be a top
22 agenda item for them and for the new
23 administration. Improvements have been started
24 and must continue in order to regain the public's
25 confidence in our system.

1 We thank this committee for its
2 efforts in holding these hearings, which we know
3 will facilitate needed changes. Thank you very
4 much.

5 MR. STEVENS: Are there any
6 questions by the Panel?

7 MR. CALTAGIRONE: I just want to
8 mention that, you know, I initiated the court
9 computerization project in this Commonwealth with
10 my legislation that initially started it, and of
11 course, we ran out of gas this session to get the
12 next phase completed, which is Common Pleas, and I
13 think total integration of the system state-wide
14 is such an important facet of the judiciary. I
15 don't think people realize, just as an example,
16 the kind of useful information that was developed
17 there, and you need to be on a system.

18 As an example, the District Justices
19 last year were able to collect \$189 million
20 totally state-wide, which is shared not only with
21 the Commonwealth but many of the local counties
22 and other programs that get money out of that.
23 That was somewhere around a 92 percent collection
24 effort that was raised.

25 I mean, the amount of time that's

1 saved in those offices and the accessing of that
2 information by all people for whatever purpose is
3 just fundamental to the system working, and I can
4 envision in the near future, hopefully within the
5 next four or five to ten years, that we would be
6 able to do the same thing.

7 I went around the State this past
8 year trying to sell that notion to all of the row
9 offices integrating all of the information. I
10 know what I have seen in Montgomery and Bucks
11 County is on the cutting edge of what we should be
12 doing in the Commonwealth.

13 Whereas an attorney who's working on
14 a case late at night, a weekend, a holiday, has
15 access to that computer information because he's
16 locked in. They pay a service fee, by the way,
17 for that, so the county makes money out of that
18 which helps defray the cost of operating
19 government through the tax dollars that are raised
20 with property tax.

21 So, they had taken in hundreds of
22 thousands of dollars, real estate people and
23 others that need that kind of information that the
24 courts have and is accessible. There are steps
25 that they have taken to make sure that the

1 information is secured, that it just doesn't leak
2 out, and it works and it works well, and the
3 information highway that we keep talking about,
4 the ease of the access of that information is
5 already here today.

6 If we were able to convince the
7 legislature to take the next step -- and of
8 course, the insecurity of the funding and that is
9 a problem that AOPC and I have gone round and
10 round about with the fees, and, you know,
11 depending on the use of the service, the fees can
12 increase and they can decrease, and the
13 availability of the money to go to that next level
14 is always something that is going to be hanging
15 there in a balance because you have to continue to
16 fine tune these operations.

17 We did in fact integrate the entire
18 Commonwealth at the District Justice level for all
19 of the computers in their offices. The next
20 phase, of course, is going to be the Common Pleas
21 Courts in the criminal division, as I understand
22 it, and they're going to do the civil then, but I
23 think that is important, so extremely important,
24 and then at this courthouse and all the other
25 courthouses, 67 courthouses in this Commonwealth I

1 would like to eventually see them totally
2 integrated too so that information is available at
3 all of the offices and state-wide, and I believe
4 that we will eventually reach that point, that's
5 the goal.

6 If you have any comments on that, I
7 would be curious.

8 MR. STEVENS: We very strongly
9 support everything that you've just stated for all
10 of those reasons. The judicial computer project,
11 before anyone thinks about building a Supreme
12 Court center in Harrisburg, bricks and mortars,
13 the judicial computer project is probably one of
14 the best means for ensuring that the system is
15 more accessible and, by the way, more economical
16 for the consuming public because it can be
17 supported by user fees, which in our judgment
18 would be far less than the current cost of having
19 a lawyer physically go to the courthouse to find
20 that deed where we just tap it in.

21 So, Representative Caltagirone, we
22 couldn't be more in favor of that than probably
23 anything else. That is an aspect of
24 centralization, it's a necessary one, and
25 it's needed as soon as possible.

1 MR. DERMODY: Representative Mundy.

2 MS. MUNDY: Do you support or does
3 the Bar Association support allowing judges to
4 serve past their 70th birthday?

5 MR. PICCONE: I don't think we have
6 a position. We haven't taken a position on that,
7 but I have to tell you, it's an interesting
8 concept.

9 Again, as I had mentioned before,
10 and I was saying, in getting input from what you
11 all are discussing, that gives us an open door to
12 go back to our own House of Delegates and ask them
13 to take positions on these things, because I
14 imagine the next few years we're going to be
15 rather busy trying to develop whatever that new
16 plan will be for the court system, and I think the
17 Bar should speak on that type of issue.

18 I have my own opinions, of course,
19 but I'm not going to respond and say what they
20 are.

21 MR. STEVENS: It is very
22 interesting. It's certainly something that we
23 will probably consider in the future. We do have
24 to go through the process, the same representative
25 process that the legislature goes through to get

1 to a position.

2 As a practical matter, what
3 President Judge Toole suggested is fairly true.
4 That practically speaking, judges who turn 70
5 become senior judges and continue to serve. So,
6 it's something we will certainly get involved in
7 by May probably.

8 MR. PICCONE: I would like to, just
9 in terms of computerization, just the utilization
10 of manpower force, counties where judges get tied
11 up certain times of the year and not others, you
12 could utilize by knowing what their court calendar
13 was, to take those men and women and transfer them
14 into a busy district if there is a surge of drug
15 cases or certain types of criminal cases to bring
16 that manpower to bear to clear up the situation,
17 and with computerization, that becomes a very easy
18 tool for the distribution of your work force.

19 I just think it's one of the answers
20 to reducing the cost of the operation of the court
21 system, there is no doubt about it.

22 MS. MUNDY: How about chancery
23 courts for business issues, how does the Bar
24 Association support that?

25 MR. STEVENS: We have been on record

1 as supporting a business court, a so-called
2 chancery court. I don't believe that issue has
3 been finally determined by our House of Delegates.
4 Our various sections and committees, however, did
5 take a favorable position with regard to it.

6 MS. MUNDY: And my last question is,
7 you talked about the campaign finance reform
8 efforts by the legislature, but I'm sorry, I was a
9 little confused as you went through the different
10 aspects of it.

11 Do you support public financing for
12 state-wide judicial campaigns, public financing
13 attach check-off?

14 MR. PICCONE: I don't think we have
15 decided that. The thing that we came down on was
16 the restriction of campaign financing. We felt
17 that unless there was a system in place that
18 allowed for and paid for a candidate's campaign,
19 unless that was in place -- so I guess that's what
20 you're saying. Although we didn't quite address
21 it in that fashion, we said we're opposed to
22 restricting people's right to pay for a
23 candidate's campaign because of the fear that all
24 of a sudden we have allowed the very, very wealthy
25 to have an in-road in seeking judicial office as

1 opposed to someone who didn't have money. So,
2 we're opposed to that type of restriction.

3 MR. STEVENS: And we haven't taken a
4 specific restriction on public financing of
5 campaigns, but I will tell you that one of our
6 biggest reasons for being in favor of merit
7 selection is our concern that campaigns are
8 financed primarily by lawyers.

9 MS. MUNDY: Thank you.

10 MR. DERMODY: Gentlemen, I just have
11 a few comments and we'll all be done. Our
12 Constitution, Article V, as you know, relegates an
13 expressed amount of administrative responsibility
14 to the Supreme Court over the whole system, and
15 that has been of some controversy.

16 We had a lot of testimony and
17 several hearings regarding some possible changes
18 in that regard, and I don't know if you have
19 looked at them or discussed them, but it was two
20 weeks ago in Pittsburgh, Judge David Craig, former
21 President Judge of the Commonwealth Court, and
22 Judge Joseph Weis of the Third Circuit Court of
23 Appeals, who also was Chairman with Judge
24 Rehquist's position on changing and doing --
25 changing the judicial conference rules, testified

1 before the committee on judicial administration.

2 There maybe some ideas and changes
3 that might be helpful with regard to our own
4 system in our own Supreme Court. I thought we
5 might be able to get copies of their testimony and
6 take a look at that and see if it's something --

7 MR. PICCONE: Absolutely.

8 MR. STEVENS: We will be very glad
9 to. I will tell you that we have gone on record,
10 our House of Delegates, in favor of the provisions
11 of both Pomeroy and Beck with regard to judicial
12 -- the Supreme Court administration, the judicial
13 conference, the administrative responsibility of
14 the Chief Justice and the various things that were
15 recommended by those commissions were supported by
16 our House in '75, '78 and '88 in separate votes.

17 MR. DERMODY: I didn't know that.
18 Good, because that's been very interesting, and
19 one of the -- some problems, the cause of some
20 problems and concern, so we'll get those.

21 MR. STEVENS: And with your
22 permission, we'll certainly get them to you, we
23 have a document that compares our policies with
24 the court reform proposals which we can put forth,
25 if you're interested.

1 MR. DERMODY: We would like to have
2 that, yes. I also think it's a great idea to do
3 the best you can to have the public become aware
4 of your ratings of the appellate court judges. At
5 least we're going to continue to elect them for a
6 little while longer. I think that's important.

7 I don't know that enough people even
8 pay attention to that and are aware that you do
9 it. So if we can help you at all, let us know.

10 MR. PICCONE: We'll certainly take
11 you up on that, because there is always a sense or
12 very often, you know, with candidates, and it's
13 happened over and over again, whenever you get the
14 support of the Bar, then they say it's an ol' boys
15 club and you're only supporting one of your own as
16 opposed to someone who has the equal opportunity,
17 but let me tell you that process is a grinder, and
18 anyone who comes before it their qualifications
19 are clearly laid on the table, and if we could
20 ever take our input and turn it over to
21 legislature and somehow work together, let me tell
22 you -- at least for the next year and-a-half while
23 Paul and I are still in the seats, you have our
24 support for total cooperation, absolutely.

25 MR. DERMODY: Thank you. We'll

1 recess for five minutes.

2 (At this time there was a brief recess
3 taken.)

4 MR. DERMODY: We are going to call
5 this hearing to order. Our next witness is Robert
6 F. Reilly, Luzerne County Clerk of Courts. Mr.
7 Reilly.

8 MR. REILLY: Thank you, Mr.
9 Chairman, and members. First of all, I want to
10 welcome you to Luzerne County as an elected
11 official. I'm sure I'm the first one to do that.
12 Thank you for coming to our fine county, and our
13 State Representative Phyllis Mundy is here also,
14 and we appreciate it very much.

15 I want to thank you all for the
16 opportunity to speak to you. There are two basic
17 issues that I would like to go over with you. One
18 is just more of a personal nature that I feel that
19 someone from our side of the coin, so to speak,
20 should have said to someone, and I feel this is
21 the right and proper place to say that.

22 We must put ourselves in a position
23 to try and put into focus the entire picture, and
24 I know you are looking at judicial reform. It's
25 my concern that in doing those kinds of looking

1 and changing that the functions of the
2 Prothonotary's offices and the Clerk of Courts
3 offices have not been tied into, as much as is
4 needed, into the whole picture.

5 Several things which come to mind
6 recently are changes which were made in post-
7 verdict motions. We now have the responsibility,
8 if you recall that particular motion, that in 120
9 days if the judge does not answer that post-
10 verdict motion the Clerk of Courts office now must
11 deny that motion.

12 So, as we're slowly moving to
13 judicial reform, the responsibilities of the Clerk
14 of Courts offices and the Prothonotary's offices
15 have increased, and I don't say that is a wrong
16 move. What I'm saying is that in making your
17 determinations and in making your considerations
18 that those functions and how that impacts on the
19 way the system totally works, as far as the Clerk
20 of Courts go, should be entirely looked at and
21 made sure that it's tied into how we function.

22 For instance, I don't know how the
23 rest of the Clerk of Courts operate it, but it
24 took me -- I have to put in an addition into the
25 programing that I have in my computer system now

1 to handle that particular function, which nobody
2 at any time said to me, hey, how is this going to
3 impact you.

4 As we make that move also into
5 giving the Clerk of Courts office more
6 responsibility, which again I reiterate in saying
7 it is a good thing, I'm not against that, we
8 should also be inclusive in more of the judicial
9 conduct towards the Clerk of Courts office. We
10 have always been sort of the arm that is over here
11 that takes care of all the things that have to be
12 taken care of when in fact we are more than that,
13 we are more part of the judicial system than as in
14 the past.

15 That was something that I simply had
16 to say and I thought it should be part of the
17 record here as far as that.

18 MR. DERMODY: It's a good point. I
19 think that probably sometimes we forget you,
20 leaving the Prothonotary and Clerk of Courts
21 behind when we're talking about all these changes;
22 however, you're the front line. You're dealing
23 often times with the public, and we relegate many
24 of the changes to you and you have to suffer the
25 consequences without money and without any input,

1 so that was a good point.

2 MR. REILLY: I have been here eight
3 years, I'm going on my eighth year, and the
4 changes that have been made during that period of
5 time has made my job not more difficult but more
6 precise than it was when I first took over eight
7 years ago. We have to worry about a lot more
8 detail as far as number of days for cases and
9 those kinds of things than we ever did before, and
10 I think it's in the right place. I don't think
11 you can put it anyplace else, but I think we have
12 to be more inclusive in it.

13 Now, the real reason I came here
14 today was to discuss with you a problem that has
15 been haunting me since I became the Clerk of
16 Courts of Luzerne County.

17 Presently the system, as it exists,
18 is a defendant stands before the judge and says --
19 the judge says to him you are fined \$200. You
20 must pay your court costs, and can you do that
21 within the next 90 days. And of course the
22 defendant who is standing before the judge says,
23 of course I can. There is no reason why I
24 shouldn't be able to do that.

25 After they leave the courtroom, then

1 it is my responsibility to ensure that they do
2 that. Unfortunately, the system does not allow me
3 any enforcement powers to make sure that that
4 happens. The system now is antiquated and it is
5 burdensome to everyone who is involved.

6 Now, what we have to do is I have to
7 petition the District Attorney's Office to ask for
8 a contempt of court hearing. After he does all
9 the research and find out in some cases where
10 these gentlemen are or ladies, we then have to now
11 go and file a petition with the Court asking for a
12 contempt of court hearing.

13 Now, after we tie the court all up
14 -- and I'm talking, and you'll see in a minute
15 what kind of volume I'm talking about, what kind
16 of dollars we're talking about, but after we do
17 that, then the court sets a date for hearings.

18 The gentlemen or ladies come in. At
19 that point in time the court says, Can you pay
20 this again, and of course the answer is, yes, I
21 can. They leave. Another 90 days or 120 days
22 goes by and they don't make any payments again. I
23 now have to go through that whole system again.
24 Now the judge isn't going to be so kind the second
25 time they appear.

1 What I'm saying to you is, with the
2 fact that the court system is so burdened down, we
3 are doing double the work for one case. I have no
4 authority at the present time to say to a
5 constable -- and since the constable system is now
6 being revamped and they have insurance and
7 training and all that, which also has to be filed
8 in our office and I have to be careful of, we
9 cannot say to a constable, look it, I have a
10 gentleman who owes us \$2,000. He was on a drug
11 charge. Please go pick him up and incarcerate him
12 until he finds it in the kindness of his heart to
13 pay us, and it's a flaw in the system.

14 What is happening to us now -- these
15 people are getting real smart. When they have
16 summary appeals, or whatever, they file an appeal
17 for \$25 because by law that is the highest amount
18 I could make it -- it should be 50 or a hundred
19 because if they have a \$187 speeding find, they
20 file a \$25 appeal. By the time the court case
21 comes up, whether they win or lose it's irrelevant
22 because after that I have no authority to collect
23 the \$187 anyway. So for \$25.00 they save
24 themselves 150. It's a real flaw.

25 Those cases that we have, just to

1 give you a kind of idea which we're trying to --
2 remind you, this is state money, this is county
3 money, it's city money, everybody shares in this
4 pot of money that has to be collected. I just had
5 my people in my office Friday run a list from
6 1992, so it's '92 to present.

7 There is 3,870 cases in Luzerne
8 County that are not paid. The sum comes to
9 \$1,353,887, 1.3, almost \$1.4 million of
10 uncollected fines and court costs in Luzerne
11 County alone. It's a real issue. It's a real
12 problem.

13 I don't have the answer. I don't
14 know what the answer is. I would assume that
15 enforcement power on our side where I can say
16 simply, you don't pay how you're supposed to pay,
17 you're going to be incarcerated. I feel that that
18 probably would be the answer. I come to you and
19 ask you in your considerations that this
20 particular area please be addressed.

21 MR. DERMODY: Chairman Caltagirone.

22 MR. CALTAGIRONE: You struck a cord
23 with me because for the last six years I have met
24 with the president judges of all the counties
25 inviting them to Harrisburg, and one of the topics

1 that I have always brought up has been this very
2 topic, and at the time of sentencing I have said
3 to the president judges -- and we have had between
4 50 and 60 and 65 percent participation each time,
5 which is a pretty good turn out -- that part of
6 their official responsibilities is not just the
7 administration of justice but administering their
8 budgets and that means collections of these fines
9 and costs.

10 That they have got to take more of a
11 direct role as the administrative part of the
12 courts, which they are, they make the budgets and
13 they prepare it and run it by the county
14 commissioners, in trying to work out a plan to
15 collect this kind of money.

16 Believe me, in some of the counties,
17 Philadelphia County it's hundreds of millions of
18 dollars, if not, you know, closer to a billion
19 dollars. I mean, it's phenomenal when you start
20 adding it up, and you only went back two years,
21 and what we were trying to do if we get the court
22 computerization project, this is where it is
23 really going to get hairy, because you can't just
24 load up all the old cases on the -- you have to
25 have a cut-off period.

1 You've got to say you're either
2 going to write them off, number one, or you're
3 going to make an effort to collect them and find
4 out that either some of these people are deceased,
5 moved or whatever happened to them. Just trying
6 to track them down is going to be a monumental
7 problem. We will face that, as a matter of fact,
8 with computerization.

9 When it gets to the Common Pleas
10 level -- because your area is one of the areas
11 along with the Prothonotary's that absolutely has
12 to be integrated into the computerization project,
13 and I have maintained that for a long time that it
14 is incumbent upon all of us to make sure that that
15 money is collected.

16 Even if it -- like the District
17 Justices they do it on a payment plan, they have
18 credit cards. They make it as convenient as
19 possible, but that is money due and owed to the
20 Commonwealth, which is all the taxpayers, and
21 there has got to be a system devised that could
22 make your job a little bit easier, and at least an
23 attempt, an effort at collecting that kind of
24 money, because it helps to keep our costs
25 contained in operating government, number one, and

1 the property taxes, which then go to support your
2 operation as well as the other county operations
3 in each county.

4 I wanted to share that with you
5 because this has been near and dear to my heart
6 for a number of years, and we have worked on it.

7 MR. REILLY: Since I became the
8 Clerk of Courts, it's one of the things I've tried
9 very hard to do because I feel very strongly, as
10 you do, that this is the taxpayers' money and it's
11 laying out there and somebody has got to do
12 something to get it in there. I can send
13 threatening letters, and I could have contempt of
14 court hearings, but it's got to have something
15 else. It's got to have a little --

16 MR. CALTAGIRONE: At the time of
17 sentencing there's got to be more teeth in what
18 the judge says, that there's an obligation after
19 they finish their time in jail or probation or
20 whatever that that's a responsibility that they've
21 got to meet, period, and I have informed the
22 judges that I think that they really have got to
23 be stronger with that at the time of sentencing
24 when they render those decisions.

25 MR. REILLY: At the District Justice

1 level, they can in fact, if someone doesn't pay,
2 they simply send a constable out, but we don't
3 have that ability.

4 MR. CALTAGIRONE: We have asked the
5 president judges particularly to try to address
6 that, and a lot of them don't feel that they want
7 to be bill collectors.

8 MR. REILLY: Then they have to
9 relinquish the responsibility to somebody that
10 will, and I don't have a problem with that.

11 MR. CALTAGIRONE: There is a lot of
12 money out there that could be collected and is not
13 being collected.

14 MR. DERMODY: When you're sentenced
15 -- that would be in a district justice case or
16 summary case, but in a court case there is some
17 type of probation or -- jail time or probation or
18 parole, correct? Now, some counties have as a
19 condition of probation or their parole they are --
20 the defendant is to pay all fines and costs and
21 that defendant is not released to probation until
22 that takes place. Does that happen?

23 MR. REILLY: Yes, in some cases it
24 has.

25 MR. DERMODY: Does that help your

1 problem with collections?

2 MR. REILLY: Yes, it does. It helps
3 our problem with collections, but there are people
4 who fall through the cracks. For instance,
5 transferred to other probation departments or
6 sentenced to a state facility. There are
7 numerous, numerous ways --

8 MR. DERMODY: You have no idea when
9 somebody gets out even on parole.

10 MR. REILLY: There's a lot of ways
11 they fall through the cracks, and I'm a smaller
12 county, but we do over 4,000 criminal cases a
13 year.

14 MR. DERMODY: Do you work with the
15 county --

16 MR. REILLY: Probation department,
17 yes, we do, but there is still a lot that has to
18 be done to correct some of the problems.

19 MR. DERMODY: We had testimony at
20 one hearing that you conducted, Mr. Chairman, from
21 a Mr. Davis, who was the chief probation officer
22 or parole of Dauphin County, who has had a backlog
23 that was millions and is now -- I don't agree with
24 Mr. Davis all the time and his techniques;
25 however, they have been deemed to be legal and

1 they have been successful. Maybe we ought to talk
2 to him. Remember him?

3 MR. CALTAGIRONE: Yes, that is true.

4 MR. REILLY: I sent some, with the
5 help of my solicitor --

6 MR. MOSES: I'm the solicitor for
7 that office, and I'll address that.

8 MR. REILLY: We have sent some very
9 nasty letters. The problem is that they mean
10 nothing.

11 MR. DERMODY: That's the Clerk of
12 Courts, but I'm saying the probation officer has
13 got some teeth, but I don't know how that works
14 out in the county. It changes from county to
15 county, also, as to how they deal with them.

16 But you're right, it's a tremendous
17 amount of money, and you're right, it's the
18 taxpayers' money.

19 MR. REILLY: We ask that you
20 consider that in your deliberations. Thank you
21 for having us.

22 MR. DERMODY: We will. Thank you
23 very much. It's a pleasure to be here.

24 We are honored today to have with us
25 a distinguished trial lawyer from Lackawanna

1 County, Tom Foley. We appreciate your coming here
2 today, Tom.

3 MR. FOLEY: Thank you very much, Mr.
4 Chairman. Mr. Chairman and other distinguished
5 members of the House Judiciary Committee, my name
6 is Thomas J. Foley, Jr. of Scranton, and I'm the
7 past president of the Pennsylvania Trial Lawyers
8 Association.

9 I would like to begin by thanking
10 this august body for the opportunity to appear
11 before you and present my views and those of the
12 Pennsylvania Trial Lawyers Association on the
13 selection of appellate court judges of
14 Pennsylvania that will hopefully be useful in your
15 deliberations.

16 Although I have not seen the text of
17 their testimony, I know that others have
18 previously testified on the subject of proposed
19 constitutional amendments in Pennsylvania that
20 would eliminate the right of the citizens of
21 Pennsylvania to vote for appellate judges and
22 allow as in its substitution the appointment of
23 appellate judges.

24 By way of background, I have been an
25 active civil trial lawyer in the Commonwealth of

1 Pennsylvania for the last 32 years. During part
2 of that time, I also engaged in the criminal
3 defense practice. When I began my career upon
4 graduation from law school, I had the privilege of
5 serving for two years as a law clerk to the late
6 Chief Justice Michael J. Eagen and became
7 intimately acquainted with the operation of the
8 Pennsylvania Supreme Court and the hard work and
9 dedication of the Justices who served on that
10 court up until Chief Justice Eagen's retirement in
11 1980.

12 My occupation as a trial lawyer and
13 personal experience in the election process have
14 provided me with a great deal of insight into the
15 elective process, as well as the quality of our
16 judiciary, both in the Court of Common Pleas and
17 in each of the three appellate courts in
18 Pennsylvania. I have found our judiciary, both on
19 the local and appellate levels, to have the
20 greatest of integrity, knowledge of the law and
21 judicial temperament.

22 As a member of the Board of
23 Governors of the American Trial Lawyers
24 Association, I have had an opportunity to discuss
25 state appellate courts with prominent trial

1 lawyers from all over the country. As a result of
2 I have had an opportunity to measure Pennsylvania
3 judges against the judges from the other 49
4 states, and I can honestly say, ladies and
5 gentlemen, that the Pennsylvania appellate courts
6 are good.

7 Granted we have had a very traumatic
8 experience in the case of former Justice Ralph
9 Larsen, but basically it is my perception that our
10 justices and the judges are hard working, highly
11 motivated judicial scholars.

12 On January 23rd, 1993, the Board of
13 Governors of the Pennsylvania Trial Lawyers
14 Association met and overwhelming voted to reaffirm
15 its 1983 resolution to support the right to elect
16 all judicial candidates in Pennsylvania. However,
17 the Board included in this reaffirmation to
18 support: One, the Judicial Discipline Bill in
19 order to more effectively deal with judicial
20 indiscretion and improprieties; two, election
21 reform as it relates to judicial candidates; and,
22 three, reform in the administration of the Supreme
23 Court, but only to the extent necessary, and still
24 allow the judiciary to continue as an independent
25 branch of government.

1 I ask you, why is there a cry from
2 some quarters for changing the selection of our
3 judges from an elective process to an appointed
4 process? There is nothing wrong with the way we
5 are selecting our judges in this Commonwealth.

6 The voters in the Commonwealth of
7 Pennsylvania are doing just fine in selecting
8 their judges. In fact, the voters are doing
9 equally as well in selecting their local judges
10 and appellate judges as they are in electing their
11 governor, senators, legislatures, attorney general
12 and other state-wide offices. The voters are not
13 demanding to give up their right to vote for
14 appellate judges in order to allow the Governor
15 the advice and consent with the Senate to select
16 them.

17 It is important for us to make an
18 evaluation about the caliber of our sitting
19 appellate court judges as we go forward with the
20 inquiry about whether to change the system,
21 because all of the Bills which I have had access
22 to deal exclusively with appellate judiciary and
23 leave in place the elective process for our other
24 courts of record.

25 Initially I would pose the question

1 of whether our appellate courts in Pennsylvania
2 would be any better had a merit selection method
3 been utilized rather than the present system now
4 in place. There is no guarantee, no matter how
5 zealous the effort, that a better quality of judge
6 will result merely because he or she is appointed
7 rather than elected.

8 I would reaffirm my belief, at this
9 stage of my presentation, that the appellate
10 courts of Pennsylvania are not in disarray. There
11 is no denying, however, that the Pennsylvania
12 appellate judiciary does have some problems, and I
13 applaud the legislature for interesting itself not
14 only in the problems but also in proposing
15 solutions.

16 The impeachment of former Justice
17 Ralph Larsen through the hard work and dedication
18 of you, Mr. Chairman, and members of your
19 committee, I believe, showed the members of the
20 public that the system does work. And further,
21 the passage of the Judicial Discipline
22 Constitutional Amendment will strengthen the
23 judiciary.

24 The electors of Pennsylvania in the
25 primary election of 1969 rejected the option of

1 having an appointed judiciary, which was presented
2 to them by Section 13 (d) of Article V of the
3 Pennsylvania Constitution. Rather, the citizens
4 of the Commonwealth chose to select their
5 judiciary by election and not by appointment.

6 In 1980, the citizens of the
7 Commonwealth of Pennsylvania elected for the first
8 time their attorney general. Again, the voters
9 opted to elect a state-wide official rather than
10 having him or her appointed by the governor.

11 Throughout the world, people are
12 fighting for democracy, striving to have the same
13 rights, freedom, and the right to vote for their
14 government officials who will govern them just as
15 we do here in Pennsylvania. Why should any
16 consideration be given to reverse this form of
17 democracy. There appears to be no reason to
18 present to the voters of this Commonwealth the
19 option of giving up their right to vote.

20 What is it about the concept of
21 appointing judges as opposed to electing them that
22 is so appealing? Would better qualified judges be
23 guaranteed to serve on the appellate courts? Will
24 politics be eliminated in the appointive process
25 of appellate judges? It's respectfully submitted

1 that there is no less and probably will be no more
2 politics in the appointive systems. If there is
3 no overwhelming improvement or advantage to
4 appointing judges, then the issue should be
5 resolved in favor of maintaining the right to
6 vote.

7 The right to vote is a precious
8 right that guarantees individual participation in
9 the democratic process. Our forefathers came to
10 this country to escape the tyranny of monarchs.
11 They came to this country to participate in the
12 selection of those who will govern them, and they
13 fought for the right to vote.

14 The right to vote is such a precious
15 right. Unless there is a clear, distinct and
16 overwhelming advantage that can be demonstrated
17 through the appointment of members to the
18 appellate branch, which is a very important part
19 of our government, I do not believe that it is
20 appropriate to even submit such a proposal to the
21 voters.

22 The phrase "merit selection" is a
23 "sound bite" that has a negative connotation about
24 the election process. There is no denying the
25 phrase has a certain ring to it, and one feels the

1 same pressure to support it that the words
2 motherhood, patriotism and the American flag
3 engender.

4 However, since 1850 we have had
5 merit election of our judges, both local and
6 appellate. This popular sound bite "merit
7 selection" is utilized to cleverly lead one to
8 believe that you can select better qualified
9 judges through the appointive process than through
10 the elective process. With few exceptions, the
11 quality of judges elected in this Commonwealth
12 suggest that such a conclusion about "merit
13 selection" bears no relationship to reality.

14 Unfortunately, the process of
15 appointed judges, while no less political, is
16 certainly less public. The nominating committee
17 will submit to the Governor a proposed list of
18 candidates from which the Governor will appoint
19 with the advice and consent of the Senate. There
20 will be no public hearings, no public scrutiny, no
21 public participation.

22 Phrases like the "litmus test" crop
23 up in the media whenever a judicial appointment is
24 on the table, and it is the appointer who
25 administers the test. There will simply be the

1 selection of the Governor's person from amongst
2 the list approved by this committee. History
3 bears out that the Governor's appointments are
4 usually from a person within his own political
5 party. On a national basis, more than 90 percent
6 of all gubernatorial judicial appointees come from
7 the same party as the Governor.

8 It is sometimes suggested that the
9 financial aspect of the political campaign is what
10 taints the elective process when used for judges.
11 But if true, this overlooks the fact that when the
12 Governor is the appointer he or she will have to
13 run the gamut of a political campaign to become
14 Governor, will have accepted monies from many
15 sources to conduct the gubernatorial campaign and
16 will have thereby created a political debt,
17 payment of which is sometimes made by judicial
18 appointments.

19 To suggest that despite the fact
20 that a Governor takes money from contributors to
21 get elected doesn't taint him when he makes a
22 judicial appointment, but that a judicial
23 candidate does get tainted when he or she takes a
24 contribution towards a judicial campaign flies in
25 the face of logic.

1 The Federal system, which is often
2 referred to as the model for appointment of
3 judicial candidates, is probably the most
4 political method of selecting a member of the
5 judiciary, especially in today's climate. Witness
6 the hearings of Judge Bork and Justice Clarence
7 Thomas over the last several years.

8 Over 95 percent of all federal trial
9 judges appointed by the President of the United
10 States since the Civil War have been members of
11 the President's political party. With the
12 exception of nine Supreme Court Justices, all the
13 Justices appointed to the United States Supreme
14 Court were from the same party as the President of
15 the United States. Under the appointive process,
16 politics is a major role in the selection of a
17 judge. However, it is the politics of a few
18 individuals rather than the politics of the entire
19 electorate.

20 This proposed merit selection system
21 allows for the appointment of judges for a ten-
22 year term, who will thereafter run for retention
23 election. No one is permitted to run against he
24 or she. If 50 percent or more of the voters agree
25 the judge should be retained, he or she will

1 continue in office for another ten years or until
2 age 70, whichever occurs first. The concept of
3 appointment and retention is called The Missouri
4 Plan, where it was invented.

5 Gary Spence, one of the most
6 prominent trial lawyers in America, stated:

7 "I know of no state, including Missouri, in
8 which those who have experienced the plan's
9 operation believe it has materially raised
10 the quality of the State's Judiciary."

11 The phrase "merit selection", which
12 I have previously criticized, is an elusive
13 concept. How would each of us define the word
14 "merit"? Would you take into consideration the
15 school of the candidate, his experience in private
16 practice, activity in the Bar Association, or is
17 public service more important? There are judges
18 whose ability has been doubted upon their election
19 who have turned out to be among the most or best
20 qualified jurists we have seen. On paper, they
21 were not perhaps as qualified as others. However,
22 what was not being measured was their common
23 sense, their heart and their judicial temperament.

24 Several things are clear. There is
25 no way to identify that lawyer who possesses a

1 true judicial heart. Judging, like painting, is
2 an art. Like an artist you cannot judge his work
3 merely because he takes up his brush. Rather, you
4 must view his canvas.

5 Would the appointive process have
6 produced as many black or female appellate judges
7 as we presently have in our appellate courts in
8 Pennsylvania? Chief Justice Nix is the only black
9 Chief Justice in the United States -- a result of
10 the elective process.

11 The Federal system of appointment,
12 which is very political, has yielded some
13 interesting results. This committee should
14 consider the potential for the following
15 statistics. President Regan appointed over one
16 half of the nation's 744 Federal judges, including
17 the Chief Justice of the Supreme Court, shortly
18 into his second term of office. Over 90 percent
19 were white males and 89.5 percent were Republican.
20 Approximately 50 percent of those judges were
21 former prosecutors; 60 percent were from Ivy
22 League or private law schools; 64 percent were
23 Protestants.

24 As lawyers, many of the judges were
25 wealthy and had represented corporate clients.

1 Most importantly, these candidates had to answer
2 extensive questionnaires and undergo personal
3 interviews. Their attitudes towards school
4 prayer, abortion, criminal procedure, et cetera,
5 were scrutinized. Only three were black and four
6 were Hispanic. Interestingly, one of these merit
7 selection judges was the subject of impeachment
8 charges. These statistics are an example of the
9 potential to reshape the Pennsylvania judiciary
10 into an extension of the Executive Branch of
11 government through merit selection.

12 There is hypocrisy in the position
13 taken by the proponents of merit selection and the
14 reasons upon which they rely in seeking to
15 eliminate the role of the people in judicial
16 selection. They say we must take the court out of
17 politics and yet advocate a retention election as
18 part of the merit process.

19 A judge running for retention must
20 attend political functions, meet political
21 leaders, form a committee to raise contributions,
22 and in all ways participate in the political
23 process. The difference between a retention
24 election and a general election is that in the
25 latter people have a role in the selective process

1 while on the former they do not. If politics is
2 necessarily a soiling and corruptive process, then
3 there should be no election involving judges at
4 all.

5 Merit proponents charge "people
6 don't know enough or care enough to properly
7 exercise the right to vote." The same people,
8 however, advocate staunch adherence to that
9 provision in the Judicial Code of Ethics which
10 prohibits a candidate for Judicial Office from
11 speaking out on the issues. This gag rule is
12 particularly distressing because it apparently
13 applies primarily to the public's right to know
14 rather than to the candidate's ability to speak.

15 There are bar associations in this
16 Commonwealth that have judicial selection
17 committees to interview and evaluate judicial
18 candidates. I know these evaluators are permitted
19 to ask direct questions of candidates and expect
20 direct answers. Apparently the rule which
21 interferes with a candidate's ability to speak to
22 the public is relaxed in the lawyer atmosphere of
23 merit evaluation.

24 Lastly, in all those states
25 utilizing the appointive process to select

1 appellate judges, they also appoint their local
2 judges with the exception of only a few states.
3 Except for political expediency, there is no
4 reason to make a distinction between local and
5 state-wide judicial candidates in the appointive
6 process.

7 If the appointive process truly
8 allows the people of the Commonwealth to obtain
9 better qualified and more independent judges who
10 are not soiled by corruptive politics, then there
11 should be no election involving either state-wide
12 or county judge.

13 Proponents of the appointment of
14 appellate judges that believe this process will
15 take politics out of the selection process
16 presuppose a naivete of those individuals who
17 agree with their reasoning. The "inside
18 politics" through the appointment process will
19 make the election process look like child's play.
20 With gubernatorial appointments, a Republican or a
21 Democratic administration that has a continuum of
22 8 to 12 years (like the Regan and Bush years) can
23 have a significant impact in shaping the
24 philosophy of the Supreme Court of Pennsylvania in
25 its own philosophical image.

1 One need only make a quick survey of
2 recent Presidential appointments. Since 1969,
3 when the Pennsylvania voters rejected the
4 appointment process to select our judges, 11
5 Supreme Court appointments in a row, from Warren
6 Burger in 1969 though Clarence Thomas in 1991,
7 have been made by Republican Presidents applying
8 increasingly ideological criteria with a
9 Democratic Senate dutifully confirming all of the
10 nominees, except Judge Bork.

11 Our country has seen a change.
12 Leadership and government tends to be more
13 single-minded with a search of ideological purity.
14 Clearly, Presidents Regan and Bush blatantly paced
15 our Federal Court System and clearly demonstrated
16 their lack of respect for the Court as an
17 independent third branch, and they were relatively
18 successful in their efforts with a Democratic
19 Senate. Like gubernatorial appointments
20 throughout the country of appellate judges,
21 Presidential appointments of appellate judges are
22 usually individuals of the same party as the
23 Governor or President regardless of the make-up of
24 the Senate.

25 The Executive Branch of the United

1 States Government has remade the Judicial Branch
2 uniformly in the image of the Executive Branch.
3 Instead of deference being given to the
4 Constitution and the concept of an independent
5 judiciary, deference has been given by the Senate
6 in the appointment process to the Governor or
7 President in his or her appointment to the
8 Appellate Courts.

9 A great deal of power will be placed
10 in the hands of few if the proponents of merit
11 selection convince the voters in this Commonwealth
12 that it is in their best interest to give up their
13 rights to vote so that a select few and the
14 Governor can pick their appellate judges.

15 Will we ever see a right to life
16 candidate for appellate court? For example, would
17 an otherwise qualified candidate who is pro-choice
18 be appointed by a pro-life governor, and on the
19 other hand, would a Governor who espouses a pro-
20 choice philosophy ever appoint an otherwise right
21 to life candidate? Political philosophies will
22 become an integral part of the selection process.
23 Judicial temperament and the ability to judge may
24 become secondary to these other considerations.

25 It is a great experience to run for

1 an elective position in government. There is
2 great benefit to previous political experiences in
3 shaping judicial temperament that will be
4 responsive to the needs of a complex, diverse and
5 ever-evolving society. A successful state-wide
6 political campaign must be broadly based so as to
7 expose the candidate to the wants and needs of
8 every element of our culture, an invaluable
9 educational reservoir from which a judge may later
10 draw in weighing competing equities to arrive at a
11 fair and just decision.

12 A state-wide judicial candidate who
13 has traveled around the state to meet the voters,
14 will have a better understanding as to the
15 diversity of his state or its needs. On the other
16 hand, an appellate judge who is selected by the
17 governor need only obtain a favorable vote from a
18 select few who will never have had to address the
19 many constituents that he must serve.

20 Appointment denies access to the
21 process by those who are not privy to the partners
22 of large firms, high government officeholders,
23 people of prosperity, state leaders and the like.
24 It denies the ambitious an opportunity to
25 participate because the contender can't get on the

1 playing field unless he or she has connections
2 with the power structure already in place.

3 The small town lawyer will be hard
4 pressed to make known his credentials as a
5 prospective appellate court judge when his only
6 access is by a written application. Similarly,
7 minority groups, except by tokenism, will have
8 little or no success.

9 Do you really want to see far-
10 reaching decisions on civil rights, abortion,
11 criminal procedure, equal rights for women, et
12 cetera, made by individuals with no experience in
13 running for elective office? Can such issues be
14 fairly decided in a supposedly democratic republic
15 when more than 99.9 percent of the governed will
16 have been denied the right to vote/participate in
17 the selective process? Will appointive appellate
18 judges command the respect of the voters? Can we
19 afford to find out?

20 The Pennsylvania Trial Lawyers
21 Association, as previously stated, supports
22 election reform of the appellate courts. Some
23 suggestions for improvement of the current elected
24 process for state-wide candidates are as follows:

25 (1) Rotating the position of state-

1 wide judicial candidates as they appear in
2 each legislative district to take away the
3 "luck of the draw";

4 (2) Give judicial candidates a
5 greater degree of freedom to discuss topics
6 of public importance without permitting
7 them to prejudice specific cases, enabling
8 voters to make better informed choices;

9 (3) Encourage merit ratings before
10 and/or as a condition to political party
11 endorsements, enabling the parties to make
12 better informed decisions;

13 (4) Elimination of County
14 designation on the ballot;

15 (5) Public financing of state-wide
16 judicial elections through a voluntary one
17 dollar contribution by a Commonwealth
18 taxpayer;

19 (6) A reasonable cap on personal
20 and PAC contributions so as to avoid the
21 appearance of impropriety caused by large
22 contributions to the judicial candidates.

23 In closing, as my worthy colleagues
24 and past Presidents of this Association, Jim
25 Mundy and Carmen Belefonte, state to the Senate

1 Committee in 1983 and in 1993, respectively:

2 "Merit selection" is probably best
3 addressed by a poem by James Garrett
4 Wallace, with which I will close:

5 'Oh, the Old Missouri Plan,
6 Oh, the Old Missouri Plan,
7 When Wall Street lawyers all
8 judicial candidates will scan,
9 If you are not from Fair Old Harvard
10 They will toss you in the can...
11 Oh, the Old Missouri Plan,
12 Oh, the Old Missouri Plan,
13 It won't be served with sauerkraut
14 nor Sauce Italian.
15 There will be no corned beef and
16 cabbage,
17 The spaghetti they will ban;
18 There will be no such dish
19 As gefilte fish
20 On the Old Missouri Plan.' "

21 Thank you for allowing me to testify
22 on behalf of the Pennsylvania Trial Lawyers
23 Association on this issue of vital interest to all
24 the citizens of Pennsylvania.

25 Thank you very much. I'm sorry I

1 took so long. I didn't have a chance to proof it
2 after I put it together, and I didn't time it, so
3 it took a little longer than I anticipated.

4 MR. DERMODY: We appreciate you
5 coming over on short notice. I want to see if
6 there are any questions.

7 MS. MUNDY: I just have one comment,
8 which I would hope you would react to, and that is
9 that during the course of your testimony you hit
10 on what for me is the most problematic aspect of
11 popular selection of appellate court judges, and
12 that is that you indicated that as a candidate
13 goes across the state he becomes more familiar
14 with the wants and needs of the electorate, and
15 for me that's a problem. Not that he becomes more
16 aware of it but that that's not my idea of what a
17 judge's function is, is to enact the wants and
18 needs of the electorate. That is my job as a
19 legislature to make law.

20 To me that's problematic because I
21 want a judge to be holding to the law and the
22 facts of the case and obviously to the U.S. and
23 Pennsylvania Constitutions not to interest groups
24 throughout the state, not through particular
25 constituencies that they might favor one or way or

1 the other.

2 The issue of abortion I think is --
3 you know the law says that abortion is legal up to
4 the sixth month. I don't want a judge
5 interpreting that I'm for or against abortion so
6 I'm going to render a decision that would change
7 that.

8 I don't see that as a judge's
9 function, and I'd appreciate your response to
10 that.

11 MR. FOLEY: I think what I was
12 trying to get across is that if you're going to
13 select lawyers from the appointive process, you're
14 going to have a tendency to, I believe, appoint --
15 the Governor will appoint lawyers from the large
16 firms in Philadelphia and Pittsburgh who deal in
17 corporate work and other esoteric areas of the law
18 and don't get out to meet the people.

19 I think when a candidate has to
20 campaign for office and they get out to the fire
21 departments, the volunteer fire departments, they
22 get to church groups or they get to other various
23 groups, they have a chance to meet the people and
24 they hear their concerns, whether it's from labor
25 or the chamber of commerce or other groups, and

1 they -- remember the judges do deal with
2 constitutional issues on each level, the Supreme
3 Court, the Superior Court and the Commonwealth
4 Court, but they are a small minute number of cases
5 that they deal with.

6 They are dealing with -- in
7 Commonwealth Court the majority of the cases deal
8 with workmen's compensation. The Superior Court
9 it's basically tort and criminal law, and if
10 you're in the ivory tower you're not going to have
11 them exposed to the people and their feelings on
12 certain issues, and I think that is the point is
13 that myself and the trial lawyers are trying to
14 get across is that it broadens the base of the
15 judicial candidate when he gets out and meets the
16 people.

17 If he is going before the appointive
18 process, he has to make his deals or make his case
19 between the five or six or seven or eight people
20 that are going to be on this committee and with
21 the Governor, and they are not going to have a
22 broad based approach to what the law is.

23 As I say, the constitutional
24 questions are very few and far between, but the
25 questions that affect the lives of people everyday

1 are the civil tort questions, the workmen's
2 compensation issues, the criminal law decisions,
3 and I think that's where the exposure is needed.

4 I don't think you're going to get a
5 broad base approach to the law if you go into the
6 appointive system. Let's face it, in other states
7 it's shown that the appointees are most likely to
8 come from the firms that give the largest
9 contributions to the Governor or help them the
10 most politically, that is the way the system works
11 in those areas, and we see it in the Federal
12 level, also.

13 MR. DERMODY: Tom, thank you very
14 much.

15 MR. FOLEY: I have copies of my
16 testimony here for everyone.

17 MR. DERMODY: Our next witness is a
18 distinguished professor of Wilkes University and a
19 columnist for the Wilkes-Barre Times Leader, Tom
20 Bigler.

21 MR. BIGLER: I don't know that I'm
22 so distinguished, but if anything distinguishes
23 me, it is that I am a layman, and I am grateful to
24 you for inviting at least one layman to speak for
25 something from which no layman can possibly make

1 any personal gain from anything that I might
2 recommend, but except other than what I think is a
3 joint goal or a goal that we share and that is to
4 improve justice.

5 With good reason, the Pennsylvania
6 legislature --

7 MR. DERMODY: Can you pull the
8 microphone --

9 MR. BIGLER: You'd think I'd know
10 how to use them by this time. With good reason,
11 the Pennsylvania legislature has been discussing
12 the ticklish problem of getting a co-equal branch
13 of government to be more accountable about its
14 operations: the money it spends, those it serves,
15 the records it generates, and the money in
16 particularly because the money is especially
17 troublesome for legislatures because the judiciary
18 is the only branch that doesn't have the burden of
19 raising what it spends.

20 Some claim that those who spend
21 taxpayer dollars should be directly accountable to
22 those taxpayers, but that is an argument that
23 falls apart when the spender is something like the
24 Turnpike Commission, for one example, but all
25 those other concerns are equally troublesome,

1 especially since it was only 26 years ago that
2 Pennsylvania's 5th Constitution authorized a
3 unified court system state-wide, and an impressive
4 range of councils, committees, boards and agencies
5 were created to do what many of the current
6 reformed proposals seek to compel the system to
7 do. It's obvious that the answer has more to do
8 with those who were elected to do that job.

9 It may be instructive that the court
10 administration has been either shaken awake or
11 released from its confinement in the last few
12 months. There has been a rash of reports of
13 progress in activating its administrative duties,
14 especially those that are the subject of pending
15 legislation, and it just may be that the
16 impeachment of Justice Larsen has persuaded the
17 remaining members of the Supreme Court that if
18 they don't act the legislature will. Of course,
19 it remains to be seen if that's enough.

20 The area of reform, in which I have
21 been interested in even before the 1967
22 constitutional convention, is an adoption of the
23 merit selection system of judges. A confounding
24 perversity is that we have adopted merit retention
25 before we've had selection. We're claiming to

1 keep merit in the courts before we put it there.
2 We've got the carriage ahead of the horse.

3 Moreover, it's discouraging that a
4 concept which flies at the heart of judicial
5 reform and which has had a prominent place at the
6 state and house calendars for all these years
7 appears to be about to be abandoned, and some
8 destructive, corruptive imitation offered in its
9 place.

10 The major argument offered against
11 merit selection is that it would deny the voters
12 the right to elect the office holder. It claims
13 that merit selection would not only deny a
14 fundamental right but would eliminate all
15 accountability of the judges and consequently of
16 the judicial process.

17 You suspect that those who advance
18 such a claim think that the Pennsylvania
19 legislature is afraid to act. However, it was
20 this populous sentiment run rampant that led the
21 1874 convention to inaugurate the election of
22 judges. Until then they had been appointed.

23 It was the same constitution that
24 saw the creation of a whole range of county row
25 offices as elective offices and with no more

1 justification or success in improving the quality
2 of the government. It was a slough of public
3 passions that really has only increased the cost
4 of government and often diminished the quality of
5 the end service.

6 Some offices should not be elected.
7 For one, judicial offices should not be elected
8 because of several factors that make them unique.
9 For one, while they are amply guided by law, by
10 precedent and sometimes by counsel with other
11 judges as impaneled or even with their law clerk,
12 their ultimate work is singular. They alone make
13 decisions that affect the property, the freedom
14 and sometimes even the life of individuals and to
15 a lesser degree of institutions. While those
16 decisions are subject to appeal, more often than
17 not they are final and binding.

18 For another, the range of subjects
19 and people whose most intimate concerns are spread
20 before them has no limits, yet the very heart of
21 their profession is to recognize both the
22 uniqueness of each case and yet the general
23 application it has to existing law, the legal
24 heritage of the nation and both to today's society
25 and as best as can be determined tomorrow's as

1 well.

2 It is an awesome, lonely,
3 constitutionally independent and absolutely
4 essential service that ideally requires
5 individuals of exceptional intelligence,
6 integrity, objectivity and temperament. With all
7 respect to every elected official, such qualities
8 are not always evident in the brief, narrow
9 generally irrelevant kind of exposures of a
10 political campaign. This is especially true of
11 the kind of negative, emotional and essentially
12 partisan campaigns of today.

13 Indeed, the general tenor of today's
14 political campaigns is the very antithesis of
15 anything judicial. I regret to say, but it is
16 honest, that the voters are not always right.
17 Most voters don't bother with the issues, analyses
18 of candidates or consequences. They are too busy
19 with their lives. The tragedy is that they don't
20 have time for self-government of a democracy. It
21 is one of the reasons we have a representative of
22 a democracy.

23 As a consequence, they do not always
24 chose the right person, and more often than not
25 when they do it is for some of them for the wrong

1 reasons, which may be why political campaigning
2 has become a welter of flashy symbols and simple
3 slogans, but that's another story.

4 For me the confirming moment in my
5 belief that voters are not competent to chose
6 judges, especially in the state-wide courts, came
7 in 1983. Then as you'll remember we were still
8 enjoying that brief fling of cross filing by
9 judicial candidates -- still another effort to
10 remove partisan political labels from judges, as
11 well to further distance overly ambitious party
12 leaders from the courts.

13 Well, it seemed for awhile,
14 especially in the primary, that everyone with a
15 law degree wanted to be a candidate. Some who
16 talked about filing were not notably successful in
17 practice and seemed to look at public office as
18 escape. The key for them, and as it developed for
19 most others, was drawing for position, position on
20 the ballot.

21 Position was everything many agreed,
22 even before the ballot was printed. The best
23 spot, which means that the lever most likely to be
24 chosen by the voter, was said to be at the top of
25 the first column or at the top of any column or at

1 the bottom. In between was oblivion.

2 Lacking position, the next best
3 thing was to have a nice name. What that might be
4 dependent on was who was voting, of course, but
5 these studies of voter habits had determined that
6 too many allow those players that, I believe, that
7 most didn't have the vaguest idea of the record,
8 the ability or the character of the person for
9 whom they voted for judge, and this often applies
10 to the local courts as well. Instead, they chose
11 by position or name or heaven knows what.

12 It was evident even then that what
13 was shaping up was not an election but a lottery
14 of judgeships, a place on the bench, almost any
15 bench. It was about as cynical an election as
16 we've seen.

17 Well, take one example: You know
18 the State Bar Association for years has ranked
19 candidates for most state-wide judicial offices
20 being qualified or very qualified. In 1983 also
21 was the year the Bar designated one as not being
22 qualified. Yet in their infinite wisdom,
23 Pennsylvania voters chose that one to serve on the
24 Pennsylvania Supreme Court. That election was a
25 debacle.

1 Indeed, there was so much hooting
2 about making the elections of judges a lottery
3 that there was reason for hope for reform at last.
4 Instead, the ability to cross file was rescinded.

5 Justice, which is the hoped for end
6 product of a democracy, is not served by chance.
7 We are far more lucky than we deserve to be, to
8 have done as well as this nation on the average
9 has. It has been my observation over the last 30
10 years in this judicial district since Governor
11 Bill Scranton began using an appointed judicial
12 nominating commission rather than relying solely
13 on the local political leaders that the caliber of
14 those nominated and appointed to fill vacancies in
15 the bench until the next election has uniformly,
16 virtually invariably been superior to the
17 replacement chosen by the voters.

18 Why? Well, the most obvious answer
19 appears to be was because the appointed was not
20 the choice of the local political leaders or maybe
21 they didn't have the charisma. Well, who made the
22 party chairman or the power behind those thrones
23 experts on judicial qualifications? Their
24 expertise is in the elective process not in the
25 selective. They are more interested in winning

1 elections than they are on the quality of service
2 that results.

3 Furthermore, does anyone seriously
4 propose that the basis or caliber of justice
5 should evolve from the candidate of one party is
6 or even should be superior to that of another?
7 Come on, did anyone demonstrate in any manner that
8 there is a republican interpretation of law that
9 differs from that of the democrats? God forbid.

10 For far longer than the 1874
11 constitution, responsible citizens have been
12 trying to isolate justice from political
13 partisanship, from distortion or corruption.
14 Making the judicial office elected defeats that
15 effort and invites all of those abuses and more.

16 Of course, judges are only human
17 too, and since saints are rare, need to be
18 accountable if their performance is to approach
19 the ideal, and there are at least two means under
20 the various merit selection systems that have been
21 proposed that conforms snugly with the existing
22 system or accountability.

23 For one, once appointed a judge
24 could serve or should serve a full ten-year term
25 before standing for merit retention. The

1 incumbent would at least have acquired a record
2 over those years that would make a fair basis for
3 public assessment. That alone would be an
4 improvement over the present system.

5 For the second, the judicial
6 nominating commission -- for this is the vehicle
7 that is generally used to replace choice by local
8 political leaders -- should include political
9 representatives of both parties, those learned in
10 the law and some laymen.

11 One version would have the majority
12 and minority leaders of the Senate or the
13 representatives on the commission to give a
14 political voice to the chosen, because the Senate
15 must confirm those appointments.

16 In assuring a professional and
17 public as well as a political voice in choosing
18 the candidates to be recommended to the Governor
19 for appointment, the current system would be
20 greatly improved.

21 Granted this is a very superficial
22 skim over a very complex proposal about which
23 volumes of testimony, discussion and
24 recommendations by much more knowledgeable people
25 have long existed and much of which has already

1 been received and reviewed here this morning, so
2 before provoking you with a final thought and a
3 thank you for hearing me, but now the real
4 unanswered and perhaps unanswerable question is
5 not about the wisdom for the need of merit
6 selection of the state-wide judiciary but rather
7 is why. Why has it never even been offered to the
8 people of Pennsylvania.

9 MR. DERMODY: Representative Mundy.

10 MS. MUNDY: Well, you know -- maybe
11 you don't know that I agree with you on the issue
12 of merit selection, but I think it has been
13 offered to the people of Pennsylvania through
14 their representatives, and the fact that their
15 representatives have not chosen to pass merit
16 selection yet is perhaps an indication that we
17 haven't reached a consensus on many of the issues
18 involved in the process, and I'd like you to --

19 You kind of at the end were going
20 pretty quick, and I missed the part, I think that
21 selection of the merit selection panel is key to
22 the whole process, and that is my -- while I have
23 problems with popular election of judges, that's
24 my problem with merit selection, is how do you
25 select an impartial non-partisan panel that is

1 going to select judges not on the basis of
2 politics but on the basis of qualifications and
3 judicial temperament, and for me -- I mean, how do
4 you see that? Would you run by that again? I
5 know you touched on that in your testimony.

6 MR. BIGLER: Among the proposals for
7 selection of a judicial nominating commission,
8 it's been proposed that perhaps one state-wide
9 would be ample, that would include the
10 representatives of the Bar, representatives of the
11 laymen and representatives of political parties.

12 How would it be chosen? I would
13 imagine that this would be possibly something that
14 could be appointed as the Turnpike Commission is
15 appointed, by the Governor subject to approval by
16 the Senate, no reason why that wouldn't be a
17 workable position. The terms of the members
18 should be staggered so that they are not
19 consecutive with those of the executive but rather
20 stretch across into other administrations.

21 It should be bipartisan, that should
22 be clearly spelled out so that there is not
23 domination by one party, and even by the Governor,
24 and the recommendations that are made by the
25 panel, the same thing as the Bar Association when

1 it surveys the appointments as it is now, to make
2 some kind of recommendation regarding the
3 candidates, is also generally a nonpartisan
4 representative group. There is no reason why
5 government can't do that as a reasonable
6 operation.

7 The State of New Jersey, for
8 example, in which the appointment commission --
9 the appointments suggested by the commission and
10 sent to the Governor do not go to the Senate for
11 confirmation but stand on the basis of the
12 Governor's appointment, and if you look at the
13 reforms that occurred in the State of New Jersey,
14 they are remarkable.

15 Going back to the nominating
16 commission itself, the kind of operation, the
17 commission would not make any appointments. The
18 commission would give the Governor a list of three
19 potential appointees from which the Governor could
20 chose one. If not, they would give him another
21 one, and I think they could make proposals as many
22 as three times. Beyond that point, if the
23 Governor hasn't chosen, then the commission would
24 chose to make the appointment subject to approval
25 by the Senate.

1 But the effort is -- you're right,
2 the representatives should have done this long
3 ago.

4 MS. MUNDY: We've been trying.

5 MR. BIGLER: But it's not a burning,
6 burning issue. It's not one of the issues that's
7 got voters up in the air.

8 MR. DERMODY: Well, more and more
9 however -- and not everybody feels it should have
10 been done a long time ago. There are different
11 viewpoints, as you know. Mr. Chairman, any
12 questions?

13 MR. CALTAGIRONE: We did in fact
14 vote on merit selection. Even though there were
15 many of us that leave it with the trial lawyers,
16 we did feel that the issue should come to the
17 forefront, and Dwight Evans, Chairman of the House
18 Appropriations, his bill in fact didn't make it
19 out of the house judiciary committee as such and
20 was in appropriations and had been on the
21 calendar. What came of that, I really don't know,
22 but that was the first time in 18 years that I
23 know of that it's come that close.

24 MR. BIGLER: We live in hope.

25 MR. DERMODY: Thank you very much.

1 Our next witness is the
2 distinguished trial lawyer from Luzerne County
3 John Moses and my good friend.

4 MR. MOSES: Mr. Chairman, thank you
5 very much. As I sat and listened to the various
6 witnesses testifying -- as you know, I wasn't
7 scheduled to say anything, and I don't have
8 anything prepared, but I think there were some
9 compelling points which require some comment.

10 First of all, I would like to thank
11 you, Mr. Dermody, and the Chairman of the
12 Judiciary Committee, Mr. Caltagirone, and
13 Representative Mundy for coming to Wilkes-Barre
14 and holding these public hearings, and I want you
15 to know that the people of this community truly
16 appreciate the contributions that you have made as
17 Chairman of the Subcommittee on Courts and Mr.
18 Caltagirone as the Chairman on the Judiciary
19 Committee to this point in time, and we look to
20 you for continued effort in the area of judicial
21 reform.

22 I also think it's important to note
23 and to commend Speaker Bill DeWeese for the effort
24 he has made so far with the resources he has given
25 to the Judiciary Committee and the Subcommittee on

1 Courts to venture into the area of judicial
2 reform.

3 I am both a member of the
4 Pennsylvania Trial Lawyers Association and
5 Pennsylvania Bar Association, and I find myself in
6 a position where I agree with neither. Too often
7 we have talked about judicial retention or
8 judicial election and we have wiped the whole
9 spectrum of the judiciary with one brush, and I
10 don't think that that's fair. I don't think that
11 that's fair to the judiciary, and I don't think
12 that it's fair to the people.

13 It's difficult to follow the
14 eloquence of someone like Tom Bigler and the
15 soundness of his reasoning, but the thing that
16 concerns me about merit selection is that we
17 exclude the possibility of that lawyer from Pike
18 County or Sullivan County from seeking a position
19 on the highest court in the Commonwealth of
20 Pennsylvania.

21 And if we truly believe that the
22 political process is an inclusive process, that
23 the least of us can seek to serve the public, then
24 we have got to be sure that we don't close the
25 door on those lawyers who don't come from

1 Philadelphia or who don't come from Pittsburgh,
2 with all due respect, Mr. Dermody, but who
3 practice in small communities representing
4 families and small businesses.

5 They are able, they are honest, they
6 are talented and they have a great contribution
7 they can make to the judicial process and to the
8 history of judicature in Pennsylvania, and we have
9 got to be sure that we don't exclude them.

10 I sit on the Trial Court Nominating
11 Commission in Luzerne County, I have sat there for
12 the last seven years, and I understand the dilemma
13 of selecting people on, quote, merit. You cannot
14 put on a form or an application judicial
15 temperament. You cannot put on a form or an
16 application your level of integrity, your level of
17 character. You cannot quantify the most important
18 qualities of a judgeship, and that's what concerns
19 me about applications and commissions.

20 I am concerned that the big law
21 firms and the big cities will dominate the
22 selection of judges, and that's why I said when I
23 opened, we can't just paint this whole system with
24 one brush. I believe it is absolutely essential
25 on the local level that we allow people -- people

1 who sit here today feel disenfranchised to go into
2 the ballot box and say I vote for A, B and C.
3 They won't always pick the legal scholar, and we
4 know that mistakes are made, but we can't throw
5 the baby out with the bath water.

6 We can't develop a system that
7 excludes people from participating. That's what I
8 believe on the local level -- and let me quickly
9 add that I know as well as most who have
10 testified, Arthur Piccone, who we in Luzerne
11 County are especially proud of as the President
12 Elect of the Pennsylvania Bar Association, spoke
13 on what the Bar Association, the PBA, felt on this
14 issue. I happen to disagree but I do it
15 agreeably, because while I think that is important
16 that we keep the opportunity to serve on the local
17 levels important, I think there is a compromise
18 that can be reached on the state-wide level.

19 Mr. Chairman, you know better than
20 most that we have spent 18 months studying the
21 Pennsylvania Supreme Court and you know better
22 than most that there are certain problems there,
23 but we have got to learn to whom we attribute the
24 problems.

25 Do we attribute some to the process

1 or do we attribute them to the personalities, and
2 I think we have seen that the individuals by
3 enlarge -- we haven't had an impeachment in
4 Pennsylvania in 187 years. The Federal Courts
5 appoint their judges, they have had three since
6 1970.

7 We can't say that appointment is
8 going to purify everything and election is going
9 to contaminate everything. I suggest a
10 regionalization approach to the election of
11 appellate judges. If there truly is and it is
12 documented that voters go in and vote for state-
13 wide judicial candidates because they don't know
14 the individual or his character or his ability,
15 then let's regionalize the Supreme Court.

16 We now have four judges from
17 Pittsburgh that sit on a seven-man court, the
18 highest court. I think the regionalization and
19 the election of those justices by region makes
20 sense for this committee to explore.

21 I would also like to point out that
22 Mr. Justice Cappy had agreed to appear today and
23 testify but for illness would have been here
24 today, but I think it's important to note and for
25 this Committee to study his report on internal

1 operating procedures and the allocatur system.

2 Justice Montemuro has submitted a report and

3 Justice Cappy has submitted a report.

4 I did want to comment on Judge
5 Toole's position about District Justices because I
6 think that is the most unfair situation for
7 anybody to confront. Let's sit back for a minute
8 and not talk like lawyers or legislatures but like
9 sixth graders and look at our judicial system.

10 There are two people that we call
11 justices in the system. The lowest on the rung,
12 District Justices, and the Justices of the Supreme
13 Court. We are have taken all of those that serve
14 in this what is supposed to be a unified judiciary
15 since the '68 convention, yet we have taken the
16 District Justice, the one that is supposed to
17 dispense justice in the neighbors and in the
18 communities, and we have said to him that while
19 you are bound by the Code of Judicial Conduct and
20 while you're not allowed to participate in party
21 politics and you're not allowed to go to the
22 party's fund raisers and affairs, at the end of
23 six years you've got to get that party's
24 endorsement, and now that is just not fair.

25 There's only two ways to change it.

1 You don't have to be a rocket scientist to know
2 it. The first is to give them the right to
3 retention or the second is to exclude them from
4 the Judicial Code.

5 Mr. Reilly spoke about the Clerk of
6 Courts and the problems he has. That can be
7 resolved easily by statute. Unfortunately -- I
8 serve as Mr. Reilly's solicitor, and unfortunately
9 the statute says that the attorney for the
10 Commonwealth is the only individual empowered with
11 bringing a contempt proceeding, and I know Mr.
12 Caltagirone is familiar with that.

13 That means that neither he, the
14 elected official, nor his solicitor, I, who is not
15 an attorney for the Commonwealth, can proceed with
16 the collection of the fines. Now we talked about
17 \$1.2 million here. We haven't looked at Allegheny
18 and Philadelphia.

19 You know what Senator Dirkson said,
20 a million here and a million there adds up to real
21 money, and you're talking about real money that we
22 cannot recover, and I suggest that the drafting of
23 a simple one sentence statute would solve that, at
24 least give us the right to go and recover what we
25 could.

1 Finally, since I have helped in
2 large measure to arrange the witnesses that
3 appeared here today, I want to thank each of them
4 publicly. They are all very busy individuals, and
5 for them to take the time out and appear before
6 you and talk about these issues in such a
7 substantive way is a contribution that this
8 community and this Commonwealth should truly
9 appreciate.

10 I can't sit down and stop without
11 talking at least one minute about mandatory
12 sentences because it does deal with judicial
13 reform, and it does go through your committee, Mr.
14 Chairman.

15 Aristotle once wrote that there is
16 nothing more unjust than to treat unequal things
17 equally. Yet that is precisely what the
18 legislature has done time and again in response to
19 public outcry for mandatory sentences.

20 For example, if an individual is
21 convicted of driving while under the influence of
22 -- criminal homicide while driving under the
23 influence of alcohol, there is a mandatory minimum
24 sentence of three years.

25 Well, if the legislature is going to

1 continue that course, let me suggest that we don't
2 elect judges at all and that we don't appoint
3 judges at all, that we buy a big computer and we
4 put it on the third floor of the courthouse and we
5 punch in the computer the nature of the offense,
6 the grade level of the offense, as determined by
7 the Sentencing Commission, which Mr. Dermody and I
8 sit on, and we push another button and it will
9 come out and say this is what the sentence is.

10 Judges are supposed to judge, and
11 judicial reform has got to direct its attention to
12 what judges are supposed to do and not respond to
13 the outcry of the public by passing mandatory
14 sentences.

15 Let's be sure that we elect good
16 judges but then let's make sure that they do what
17 they're elected to do and that's judge, and I hope
18 that I haven't spoken too strongly on the issue,
19 but I just think it is blatantly unfair to treat
20 people that are different in the same way because
21 that is the basic heart beat of democracy and
22 that's the basic thrust of justice, and I think
23 it's important that the legislature and the
24 committee on the judiciary consider mandatory
25 sentences in a light that says, hey, let's let the

1 judges do their jobs because if not we might as
2 well buy computers.

3 Let me thank you for once again
4 coming to Wilkes-Barre at our invitation to
5 Luzerne County, Mr. Chairman. Once again, let me
6 thank you not only for appearing here today but
7 the opportunity you gave me to serve as majority
8 counsel during the impeachment of Justice Ralph
9 Larsen. It was a pleasure working with all of
10 you. Thank you very much.

11 MR. DERMODY: John, thank you. I
12 agree with you on mandatory sentences. You know
13 we're trying to give the judges the wherewithal to
14 sentence the longer sentences if need be, however,
15 give them the discretion to do the right thing.
16 However, that is a difficult process right now,
17 but thank you very much.

18 I also would like to thank all the
19 witnesses who participated today. This is one of
20 the best hearings we have had. We appreciate the
21 hospitality of Luzerne County, of the
22 Commissioners in allowing us to use their room
23 there today.

24 I see people with their hands
25 raised. We are concluded taking testimony. If

1 you want to make a comment, I'll take five minutes
2 before I conclude the hearing.

3 MS. ROMANCZUK: Mr. Dermody, this
4 woman asked to address some important issues, and
5 you said there would be no time to hear her.

6 MR. DERMODY: She submitted
7 testimony for the record. I'll be more than happy
8 to have -- Miss Bogart, isn't it?

9 MS. BOGART: Yes.

10 MR. DERMODY: I know you. You can
11 testify at another hearing that we will have
12 elsewhere. I have got some other things that I
13 have to do this afternoon. I'll be more than
14 happy to have you testify. Those remarks will be
15 made a part of the record.

16 This will be transcribed, and if
17 nobody else will give you one, I will give you
18 one, but these materials will be presented to the
19 members of the committee and will be considered.
20 I've got a file this big with you, Charlotte, as
21 you know.

22 If there are some comments or some
23 questions you have of me, I'll be more than happy
24 --

25 MR. BURLY: I'm Mr. Burly, and I'm

1 associated with the Tax Payers Coalition from the
2 State of Pennsylvania. We the people feel like
3 we're being left out of all of this type of
4 rhetoric, and we feel that we're being frustrated.

5 As you know, the people have spoke
6 up in the last election. You saw what happened
7 with the contract with the people, and this is
8 what's going to happen and this is the future. We
9 have found that because of the contract with the
10 people and because of what is happening, people's
11 frustration, not only in the county but through
12 the whole country, and I think the political
13 system better listen and it better listen now
14 because there's a lot of mad people out there
15 and it's getting worse.

16 I'm surprised at what people want to
17 do, and I hope they don't do that, because what's
18 happening here is that you're not addressing a lot
19 of things to the voice of the people and to the
20 taxpayer. We're taxpayers and we're voters --

21 MR. DERMODY: We're all voters and
22 we're all taxpayers.

23 MR. BURLY: Now, what we want is
24 reform. I'm not pretending to be the elite, I'm
25 not a lawyer, but we're not stupid, and a lot of

1 people that go up there say we the voters are
2 stupid, we're dumb. We're not. We are
3 misinformed, that's our problem. We're not
4 informed as to what is going on because this is a
5 good example of giving us information. Now, I
6 learned a lot in here.

7 MR. DERMODY: That's why we have
8 public hearings.

9 MR. BURLY: And I appreciate that,
10 and I appreciate you people being here. Now, what
11 is coming out is what people want and what the
12 contract says we want. I don't know about the
13 merit system, maybe it's good. I don't know what
14 it is. That's your job. We elected you people to
15 do the job -- statesmanship, that's what we need.
16 We have got to get rid of a political system that
17 is corrupt and you know it's corrupt.

18 We want you to do a job with
19 statesmanship, what's good for the country, and
20 what is going on now is not good for the country.
21 So, what we want is campaign reform, we want maybe
22 term limits. These are the things to give the
23 government back to the people.

24 We talk about democracy, we're
25 fighting all over the world for it. I fought for

1 it in World War II, and this is what we want. So
2 I want to know what you people are going to do for
3 us, the taxpayers or the voters so we can be
4 informed to know if the merit system is good, this
5 is good, that is good, I don't know, but there's a
6 contract with the American people. We want a
7 contract in Pennsylvania for Pennsylvania people,
8 and we are 20 years behind the times in this area

9 MR. DERMODY: Let me tell you if you
10 need some information on bills that are pending
11 regarding merit selection, you contact my office
12 and I'll be more than happy to supply those to
13 you. You can read them, you can look at them, you
14 can learn from them.

15 If there are any other hearings that
16 are pending in this matter -- and if you want
17 additional hearings, you think they're important,
18 you contact John Perzel, you contact Jeff Piccola,
19 who will be the Chairman of this Judiciary
20 Committee, you tell them -- and it's P-E-R-Z-E-L,
21 he's the majority leader, you tell him that it is
22 important that these matters continue and you have
23 additional hearings so you can speak up.

24 If you need information, I will be
25 more than happy to deliver it to you so you can

1 become informed.

2 MR. BURLY: Thank you.

3 MR. DERMODY: Yes, sir.

4 MR. HARZOWSKI: My name is Gerald
5 Harzowski, and I've been listening and I'm kind of
6 disillusioned, that since our laws being written
7 by our forefathers, I would like to know how many
8 definitions of laws are there and how many
9 millions or trillions of dollars were spent on
10 converting laws and laws and laws, and then Judge
11 Toole comes in and he said some judges make a
12 decision, let the leaf falls where it may. That
13 kind of attitude -- we don't need that kind of a
14 people there.

15 We are constantly rewriting a law
16 and paying legislatures and then one individual
17 comes in and says let the leaves fall where it
18 may. As a judge, that's not the way to proceed
19 with law. There have to be a definition and
20 precise decision of individual integrity and
21 response to the public and everything. Not the
22 political affiliation which should be independent
23 party and voted for the individual, not for the
24 party that you want to just pull one lever of a
25 machine.

1 MR. DERMODY: You don't have to pull
2 one level. You can vote independent, and I
3 appreciate that.

4 MR. HARZOWSKI: Somebody alluded to
5 say there are some people not informed and they
6 just pull one lever and everything comes out.
7 Maybe that's why Stish (sic) figure, oh, I'm going
8 to beat the machine that way --

9 MR. DERMODY: You could become
10 informed by coming to hearings and paying
11 attention, reading the paper or whatever
12 --

13 MR. HARZOWSKI: That's what I'm
14 doing.

15 MR. DERMODY: You could make an
16 informed decision when you vote. There is a lot
17 of people that pull the one ticket that believe
18 they are making an informed decision, too.

19 MR. HARZOWSKI: We spend so many
20 trillions of dollars on legislatures and law
21 makers and judges and everything and we are still
22 back into the corner of misconduct of judges and
23 lawyers and so on because one lawyer can't take a
24 case because it's only \$5,000. He can't defend
25 you because he wants to make \$50,000, so he just

1 throws it into the dogs, and I think the same way
2 with judges.

3 MR. DERMODY: I appreciate it, and
4 I'm sure --

5 MR. HARZOWSKI: That kind of
6 attitude where the leaf might fall and let it lay
7 is no good.

8 MR. DERMODY: I understand.

9 MR. HARZOWSKI: On the computers, if
10 you're going to put in computers, don't let happen
11 what happened when DeWild (sic) had to blow his
12 brains out because of the computers.

13 MR. DERMODY: Okay. I'll make sure
14 of that one.

15 MS. KUBRICK: Mr. Dermody and Mr.
16 Caltagirone and Representative Mundy, are we going
17 to have a meeting in the future where little
18 people, ordinary people like myself that has
19 experience, has become victims of the injustice --
20 I'm not a politician, I'm not a lawyer.

21 I have listened to a lot of very
22 legal minds here today and the only education I
23 have is from experience, and are we going to have
24 a meeting where we can express -- I think give our
25 input what is wrong with this system?

1 MR. DERMODY: Let me say to you that
2 there is a certain specific purpose for these
3 hearings, and we were looking at certain aspects
4 of the way the judiciary was administered, the
5 administration of the courts, how judges are
6 selected, and the ways we can improve those areas
7 of the system in general.

8 I can't nor can this committee
9 address itself to individual cases, because I have
10 no authority over that. I mean, there is a
11 judicial system that is in place, we have a case,
12 it's decided and then there is an appellate
13 process that is worked through.

14 Previously there have been a
15 significant number of hearings regarding the
16 family division and problems in that area that
17 Chairman Caltagirone held that several people came
18 in and testified and are able to speak.

19 I have no problem with you speaking.
20 I can't solve all your problems here today, and I
21 certainly would be more than willing to talk to
22 you, but I can't today.

23 MS. KUBRICK: It will take God to
24 solve all our problems. I have listened to a lot
25 of advice from these legal minds and what to do

1 and that, but you know what? I think we have
2 forgotten -- every time that I have gone into a
3 courthouse and we have to swear on the Bible, we
4 put our hand on the Bible, but do you know what I
5 think? I think we have forgotten what's inside
6 that Bible. I think we need to open its pages,
7 and the greatest counsel that we can have is what
8 was given to us many, many years ago, and if we
9 follow this and we can all see this, that it truly
10 is helpful.

11 I could give you many examples of
12 it. One would be do onto others as you would have
13 it done to them, and this isn't happening. I know
14 that, yes, I heard so many comments saints are
15 indeed rare, and I would like to say that
16 politicians are there to really serve us, they
17 have empathy and sympathy and do what is right.

18 What I have learned in my life it is
19 not anymore to me what is legal or illegal. It is
20 to me, what I go by, to my conscious what God
21 gives me, what is right and what is wrong, and my
22 own life reflects that there is a great deal wrong
23 within our system.

24 MR. DERMODY: I know that it's not
25 perfect, however, I would be more than happy

1 --

2 MS. KUBRICK: Perfect? If I were to
3 tell you my story very quickly --

4 MR. DERMODY: I can't. I've got to
5 go. Where are you from?

6 MS. KUBRICK: I am from Scranton.
7 Will you be having any meetings up in the Scranton
8 area?

9 MR. DERMODY: Not until after the
10 first of the year. Leadership is going to change
11 with regard to this committee, so I think it would
12 be important to contact Representative Perzel and
13 Piccola to make sure these hearings will continue.
14 We will no longer have the power after November
15 30th to continue these hearings.

16 UNIDENTIFIED PERSON: Are these
17 hearings going to be held in any of the rural
18 counties?

19 MR. DERMODY: Like I said, we had
20 intended that they should, but because of the
21 impeachment that took place I was unable to. You
22 have got to contact John Perzel.

23 UNIDENTIFIED PERSON: I want to
24 address something that wasn't addressed by your
25 committee. You have the Judicial Conduct Board in

1 effect, you have the Disciplinary Board in effect
2 but they're ineffective because there are people
3 who they have to take their judgments that are
4 actually -- you have judges sitting on the panels
5 and --

6 MR. DERMODY: Let me say this to
7 you: Give the Judicial Conduct Board a chance.
8 It has lay representation.

9 UNIDENTIFIED PERSON: Some of the
10 members are from the previous --

11 MR. DERMODY: As it should be, but
12 you got a new make-up on that Board, it's just
13 started, let them do their job, and if you have a
14 problem after a year or so it's been in operation,
15 come and see us.

16 UNIDENTIFIED PERSON: The court
17 administrator's issue came up. There is a lot of
18 latitude given the court administrator where some
19 shady things go on where the court administrator
20 actually is in, for lack of a better word,
21 collusion with a District Attorney where the
22 District Attorney knows where the judge is,
23 selecting magistrates that were beneficial for the
24 prosecutor. Where are the defendant's rights?

25 MR. DERMODY: I don't know how they

1 do it here, but they probably pick the judge --

2 MR. MOSES: We're going to end the
3 record.

4

5 (At this time the hearing in the
6 above-captioned case was concluded.)

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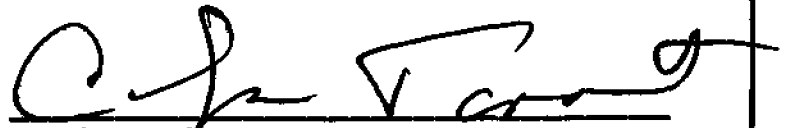
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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately, to the best of my ability, in the stenographic notes taken by me on the hearing of the above cause, and that this copy is a correct transcript of the same.



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