

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

In re: Conduct of Supreme Court Justice Rolf Larsen

Stenographic record of hearing held in
Room 140, Main Capitol, Harrisburg,
Pennsylvania

Thursday, April 21, 1994, 10:54 a.m.

SUBCOMMITTEE ON COURTS

Hon. Frank Dermody, Chairman, Subcommittee Chairman
Hon. Daniel Clark, Subcommittee Co-Chairman
Hon. Thomas Caltagirone, Chairman, Judiciary Committee
Hon. Jeffrey Piccola, Co-Chairman, Judiciary Committee
Hon. Gregory Fajt, Member
Hon. Michael Gruitza, Member
Hon. Babette Josephs, Member
Hon. Dennis O'Brien, Member
Hon. Chris Wogan, Member

Also Present:

Hon. Harold James
Hon. Kathleen Manderino
Hon. Robert Reber, Jr.

Counsel Present:

John P. Moses, Special Counsel
J. Clayton Undercofler, Special Counsel
David R. Moffett, Special Counsel
Enid R. Stebbins, Esquire
William Andring, Counsel to Judiciary Committee
Mary Woolley, Counsel to Judiciary Committee

Staff Present:

David Krantz, Executive Director
Margaret Tracarico, Secretary
Mary Beth Marschik, Research Analyst
Karon Haring, Secretary to Mr. Dermody
Richard Scott, Esquire
Karen Dalton, Esquire
Hugh Mallet
David Vandergrift
Thomas Andrews

Reported by:

Emily R. Clark, CM, RPR

I N D E X

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
1	4-page letter, 3/28/94, to William Costopoulos, Esquire, from John P. Moses, Esquire, and J. Clayton Undercofler, III, Esquire	6	11
2	1-page letter, 4/14/94, to John P. Moses, Esquire, and J. Clayton Undercofler, Esquire, from William C. Costopoulos, Esquire	10	11
3	1-page cover sheet, Buttermore v. Aliquippa Hospital	20	23
4	1-page cover sheet, Driscoll v. Carpenters District Council	20	23

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1 CHAIRMAN DERMODY: I would like to call the
2 hearing to order, please. We are here again today to continue
3 the hearings as part of the subcommittee's ongoing
4 investigation into the conduct of Supreme Court Justice Rolf
5 Larsen pursuant to House Resolution 205 and House Rule 51.

6 We had hoped to be hearing from Justice Larsen
7 today. As you know, he has declined an opportunity to appear
8 before us here today. But as you can see by the volume of
9 evidence that is presented here and the documents from the
10 Grand Jury and the Judicial Inquiry and Review Board, and what
11 you will hear today from our attorneys, we have accumulated an
12 incredible amount of evidence in this investigation, certainly
13 enough for the members of the subcommittee to make an informed
14 decision.

15 Before we begin hearing from the attorneys today,
16 the special counsel for the subcommittee, I would like the
17 members that are here today to please introduce themselves for
18 the record and state where they're from, starting on my left.

19 REPRESENTATIVE GRUITZA: Representative Mike
20 Gruitza from Mercer County.

21 REPRESENTATIVE JOSEPHS: Representative Babette
22 Josephs from Philadelphia County.

23 REPRESENTATIVE JAMES: Harold James, South
24 Philadelphia.

25 REPRESENTATIVE PICCOLA: Jeff Piccola, Dauphin

1 County.

2 REPRESENTATIVE CALTAGIRONE: Chairman Caltagirone,
3 Berks County.

4 REPRESENTATIVE REBER: Representative Bob Reber,
5 Montgomery County.

6 Mr. Chairman, Representative Dermody, could I ask
7 at this time that a counsel, before they proceed at all, place
8 on the record the manner in which notification was given to
9 the Justice, the type of denial, if there was such, so we have
10 that complete, if you would? So we make sure that all forms
11 of due process were afforded to him? And I understand that's
12 going to be done but I think it's important. I was unaware of
13 that until I made this particular inquiry. Thank you, Mr.
14 Chairman.

15 CHAIRMAN DERMODY: Representative Reber, we had
16 planned to take care of that, and we can do that before we
17 proceed.

18 CO-CHAIRMAN CLARK: Representative Dan Clark,
19 Juniata County.

20 REPRESENTATIVE O'BRIEN: Representative Dennis
21 O'Brien, Philadelphia County.

22 REPRESENTATIVE WOGAN: Representative Chris Wogan,
23 Philadelphia.

24 CHAIRMAN DERMODY: The first counsel we will hear
25 from today will be Special Counsel John Moses. However,

1 before we begin, I believe there are some documents Special
2 Counsel Moses would like to make part of the record, and we
3 would like him to please explain those documents and proceed.

4 MR. MOSES: Yes. Mr. Chairman, and members of the
5 Committee, before I proceed with giving my report, I would
6 like to place of record the invitation issued to Mr. Justice
7 Rolf Larsen through his counsel and his response thereto.

8 As Exhibit 1, I would present a letter dated March
9 28, 1994, issued to William Costopoulos, Esquire, of
10 Costopoulos, Foster and Fields, re, Justice Rolf Larsen.
11 (Reading): "Dear Mr. Costopoulos: This letter is being
12 written to you in your capacity as counsel for Justice Rolf
13 Larsen. The purpose of this letter is to confirm our
14 telephone conversations of March 7, 1994, during which we
15 advised you that the Subcommittee on Courts was inviting
16 Justice Rolf Larsen to appear before it in connection with the
17 subcommittee's investigation into Justice Larsen's conduct.
18 During these conversations, you were advised that Justice
19 Larsen's statement would be under oath and limited to those
20 areas raised in this letter. Justice Larsen will be given
21 three hours to address these issues before the Subcommittee on
22 Courts. Thereafter, Justice Larsen will respond to the
23 questions presented to him.

24 "This proceeding will be public. Questions will
25 be asked by Representative Frank Dermody, Chairman of the

1 Subcommittee on Courts, Majority, Representative Daniel Clark,
2 Minority Chairman, as well as special counsel to the
3 committee. Also, any subcommittee member or committee member
4 attending this proceeding will be allowed to question Justice
5 Larsen on the issues raised herein.

6 "Mr. Justice Larsen can be represented by counsel
7 at this proceeding. However, counsel's representation will be
8 limited to advising his client.

9 "As you know, we provided you with four
10 alternative dates from which Justice Larsen could select to
11 appear before the subcommittee. At that time, we advised you
12 that no other dates would be provided to Justice Larsen for
13 his appearance. You responded by selecting April 21, 1994, as
14 the date Justice Larsen would appear. Please be advised that
15 if Justice Larsen fails to appear on that date, there will be
16 no alternative date provided to him. Our position is based on
17 the fact that we would like to proceed as expeditiously as
18 possible in this matter.

19 "If, however, the trial scheduled to begin April
20 4, 1994, is continued, for any reason, we would expect you to
21 contact us immediately in order to arrange an earlier date for
22 the appearance of Justice Larsen before the subcommittee.

23 "As part of the investigation being conducted
24 pursuant to House Resolution 205, the Subcommittee on Courts
25 will allow Justice Larsen an opportunity to speak on the

1 following issues:

2 "1. The allegation that, from at least 1980 and
3 continuing into 1991, Justice Larsen systematically tracked
4 petitions for allowance of appeal involving attorneys who were
5 his friends and political contributors so that the petitions
6 could be specially handled by Justice Larsen and his staff.

7 "2. The conclusion of the Judicial Inquiry and
8 Review Board that Justice Larsen created an appearance of
9 impropriety which could undermine public confidence in the
10 judiciary when he provided information from an undisclosed
11 source regarding the Estate of Francis case pending before
12 Judge Eunice Ross in May of 1986.

13 "3. The Subcommittee's concern that Justice
14 Larsen misused his office and his stature as a Supreme Court
15 justice by inducing Dr. Earl Humphreys and members of Justice
16 Larsen's staff to participate in a scheme to conceal Justice
17 Larsen's prescription drug use from public view, a scheme
18 which exposed them to potential prosecution under Pennsylvania
19 criminal law.

20 "4. The subcommittee's concern that in his
21 testimony before the Ninth Investigating Grand Jury, Justice
22 Larsen, while under oath, made false statements which were
23 intended to mislead the grand jury. Specifically, the
24 subcommittee is concerned that Justice Larsen falsely
25 testified that he never discussed the pending allocatur

1 petitions in the Buttermore versus Aliquippa Hospital case,
2 and the Driscoll versus Carpenter's District Council case with
3 an attorney representing a party in each of the cases in early
4 1988.

5 "5. The subcommittee's concern that Justice
6 Larsen deliberately misused the legal process when he accused
7 Justice Zappala and Justice Cappy of criminal and judicial
8 misconduct in his recusal motions filed on November 24, 1992,
9 and December 15, 1992, and No. 155 JIRB Docket 1992.
10 Specifically, the subcommittee is concerned that Justice
11 Larsen in his testimony before the grand jury was unable to
12 identify a reasonable factual basis for the following
13 allegations he made against Justices Zappala and Cappy in his
14 recusal petitions.

15 "A. The allegation that Justice Zappala received
16 kickbacks for directing bond work to his brother's
17 underwriting firm and was being investigated for his
18 conduct.

19 "B. The allegation that Justice Zappala met ex
20 parte with litigants in the Port Authority and PLRB
21 cases and guided those matters through the Supreme Court
22 in a special manner.

23 "C. The allegation that Attorney Doherty
24 attempted to suborn perjury by Nikolai Zdrade, and was
25 rewarded by Justices Zappala and Cappy for doing so by

1 appointment to the position of chief disciplinary
2 counsel.

3 "D. The allegation that Justice Cappy
4 deliberately engineered the reconsideration of Zdrale's
5 out-of-time petition in the appeal of his conviction for
6 attempted murder to the Supreme Court.

7 "E. The allegation that Justice Zappala
8 commandeered a vehicle and attempted to run him down.

9 "F. The allegation that Justice Zappala and
10 Justice Cappy took turns in delaying the disposition of
11 the Yohn in order to avoid a comparison with conduct of
12 Chief Justice Nix.

13 "Please be advised that the protocol outlined
14 herein will be strictly followed by the subcommittee. The
15 exact time and location of Justice Larsen's appearance will be
16 provided to you substantially in advance of April 21, 1994.

17 "We must be advised by April 14, 1994, as to
18 whether or not you are definitely accepting this invitation."
19 And it's signed by John P. Moses, Special Counsel, Majority,
20 and J. Clayton Undercofler, Special Counsel for the Minority.
21 That is Exhibit No. 1, Mr. Chairman.

22 Exhibit No. 2 is a letter dated April 14, 1994, on
23 the letterhead of Costopoulos, Foster and Fields, addressed to
24 Mr. Moses and Mr. Undercofler, re, Justice Larsen.

25 (Reading): "Dear Mr. Moses and Mr. Undercofler:

1 The purpose of this letter is to advise you in writing that
2 Justice Rolf Larsen respectfully declines your invitation to
3 testify now that the preliminary report has been filed and
4 made public.

5 "The second purpose of this letter is to stress,
6 again, that Justice Larsen is innocent of these false
7 allegations." And that was signed by William C. Costopoulos.

8 They are Exhibits 1 and 2, and I would
9 respectfully move that they be placed into the record.

10 CHAIRMAN DERMODY: The exhibits will be made part
11 of the record.

12 The record should also reflect that Representative
13 Mandarino from Philadelphia is here.

14 The purpose of this report by special counsel is
15 to inform the subcommittee, the committee and the public as to
16 the scope and nature of the subcommittee's investigation of
17 the evidence brought forth as a result of the subcommittee's
18 investigation.

19 The first person to make a report will be Special
20 Counsel John Moses.

21 MR. MOSES: Thank you, Mr. Chairman, and members
22 of the subcommittee.

23 First of all, I would like to thank you and this
24 entire subcommittee for giving me this opportunity to work in
25 such a substantial way on the most important judicial issue

1 that not only affects this generation of lawyers, but this
2 generation of Pennsylvanians.

3 I would also like to thank you for giving me the
4 opportunity to work with such distinguished, talented and
5 compatible minority counsel, Jay Clayton Undercofler III and
6 David Moffitt, and they are here today with one of their
7 associates, Enid Stebbins.

8 I especially enjoyed the opportunity to work with
9 Chairman Dermody and Chairman Clark, who always insisted upon
10 our work to be the most professional, ethical, moral and fair
11 work that could be done by this committee. And Chairman
12 Caltagirone and Chairman Piccola, who insisted, along with the
13 chairmen of the subcommittee, that our work be done in an
14 independent, fair and thorough fashion. It was, indeed, a
15 pleasure and a privilege to be able to work with such
16 dedicated public servants.

17 And I don't just say that for the record. This
18 investigation went through some very delicate and serious
19 public issues, and all of us as special counsel I'm sure will
20 agree that when we conferred with you and when we wrote
21 confidential memoranda to you, and when we submitted
22 confidential reports to you, that you acted in the highest
23 possible fashion of a public servant. There has not been one
24 leak of any of the grand jury materials, any of the JIRB
25 materials or any of the confidential materials, and I think

1 that's a tribute to the quality and the character of this
2 subcommittee and committee.

3 Yesterday, at the conclusion of the testimony
4 which was offered by various witnesses, a number of the press
5 came to me and wanted to know when are we going to hear this
6 and when are we going to hear that. And I could understand
7 their concern, because you see, we see the whole picture. We
8 have completed an investigation, some aspects of which are
9 still ongoing, but we see the whole picture. Unfortunately,
10 we have to present it to you piece by piece, much like a
11 puzzle. And hopefully, at the conclusion of our report and at
12 the conclusion of your independent review of the record and
13 the exhibits, you will be able to put the pieces together, and
14 hopefully see the same picture that we see who worked so
15 closely day after day, hands-on in this file.

16 The pieces of the puzzle we intend to present
17 today are what our personal observations and analyses were of
18 the various witnesses and the various exhibits, as we viewed
19 them during the course of this investigation. You see, we had
20 as a starting point all of the grand jury materials and the
21 exhibits, the JIRB materials and exhibits. But we were
22 charged by the leadership of this committee not to accept as
23 fact those representations which were contained in those
24 documents. We were charged with the responsibility of taking
25 those facts and testing them and challenging them and putting

1 them through the rigors of an independent investigation to see
2 if they stood up to a factual analysis. We were also charged
3 with going where the evidence took us. This was a truly
4 bipartisan effort, and we went where the evidence took us.

5 We acted expeditiously. It is a matter of public
6 record that Resolution 205, which authorized this
7 investigation and our work, was passed by the House of
8 Representatives, and within three or four days, a petition to
9 get all of the grand jury documents was filed, a brief in
10 support of that petition was filed, and within a week, we had
11 all the grand jury materials and reports.

12 We didn't stop there, because we realized from the
13 grand jury materials and reports, that there were other
14 aspects of an investigation conducted for the benefit of that
15 grand jury which were not a part of the record. And so we met
16 sometimes for day-long sessions with the individual
17 investigators who testified before the grand jury and who
18 worked for the Ninth Statewide Investigating Grand Jury so
19 that we could explore with them the truth and the veracity of
20 the various information we uncovered from the grand jury
21 reports.

22 We interviewed either in an informal way or under
23 executive session pursuant to Rule 51 of the House Rules, or
24 at a public proceeding, well over 20 witnesses. Now, you
25 might ask, why did we give every individual an opportunity to

1 confer with us privately or in executive session before
2 subpoenaing them to the public process. And the answer to
3 that question is several-prong.

4 First, it gave us and the potential witnesses an
5 opportunity to speak freely and frankly without any
6 inhibitions whatsoever. And it gave them an opportunity to
7 tell us the things that they were sure of and the things that
8 they weren't sure of. It gave them an opportunity to ask
9 without being afraid is the question silly, well, what does
10 this say or what does this mean. And it was very helpful.

11 The second reason was that we understood the
12 delicate nature of this investigation, and we understood that
13 a man's reputation is important, so important that this state
14 is one of the few that includes it as a Constitutional right.
15 And in an effort to protect the rights of all individuals, we
16 proceeded in this fashion.

17 Some individuals, rightfully so, said that they
18 did not want to appear as though they were jumping off board
19 or volunteering information, and they wanted subpoenas. But
20 they also wanted an opportunity to talk freely and frankly and
21 be able to delve into matters without public exposure. And we
22 accommodated them when Mr. Dermody chaired special executive
23 sessions of this subcommittee in Pittsburgh, Pennsylvania.
24 And so those people that wanted to appear pursuant to a
25 subpoena but still not be subjected to the public atmosphere

1 were given that opportunity.

2 And then finally, one witness, at least, indicated
3 that she, in fact, wanted to enjoy the same opportunity that
4 we gave to Justice Larsen, and we afforded her that
5 opportunity yesterday. She was the only witness that asked
6 for immunity. And this committee had the fortitude and the
7 substance to deny it, and the witness testified.

8 So that was the manner in which we approached our
9 responsibility and the challenge with which we were
10 discharged. I indicated to you that many of those meetings
11 were private meetings to encourage the elicitation of as much
12 information as possible. Today is the day to make it public.

13 Some of the witnesses we interviewed and the more
14 substantial, and we interviewed well over 20, were: Janice
15 Uhler, secretary to Justice Larsen; Barbara Roberts, secretary
16 to Justice Larsen; Jamie Lenzi, law clerk to Justice Larsen;
17 Andrew Schiffino, law clerk to Justice Larsen; Michael Lydon,
18 who some would refer to as the chief law clerk to Justice
19 Larsen, he was with him for several years and was clearly the
20 most senior law clerk; Attorney S. Michael Streib; Leonard
21 Mendelson; Richard Gilardi and John Doherty of Pittsburgh.

22 As a matter of fact, in an effort not to
23 inconvenience anyone, there was a lengthy telephone
24 re-interview with Mr. Doherty while he was in Florida so that
25 we could get the information we needed to proceed with the

1 investigation.

2 Judge Eunice Ross of the Allegheny County Court,
3 who is now senior judge; Judge Emil Narick with the
4 Commonwealth Court of Pennsylvania; the investigators I
5 referred to before, Troopers Pavlosky and Keller, Special
6 Investigator for the Grand Jury Garridy; the Prothonotary of
7 the Supreme Court Charles Johns; counsel for various associate
8 justices of the Pennsylvania Supreme Court, and more.

9 This committee went to Washington on two
10 occasions. On the first occasion, we visited with Allen Baron
11 and Dan Freeman, who were charged with the responsibility of
12 prosecuting or pursuing an impeachment in the House of
13 Representatives, and that was a very informative set of
14 interviews. But later we went out and we talked with Attorney
15 Dave Stewart, who represented a judge who was, in fact,
16 impeached, so that we could get the benefit of the thinking of
17 both sides of this process in an effort to try to explore the
18 fairest possible way to pursue this matter.

19 We were in contact and communication with
20 Representative Titus of the State of Rhode Island, where
21 they've recently gone through the possibility of impeachment
22 of Supreme Court justices.

23 You have heard and we have made a part of the
24 record the fact that Justice Larsen was invited to appear.
25 Those letters, unfortunately, don't tell the whole story as to

1 the effort that this committee went through, and that is
2 this. The committee was aware of the fact that Justice Larsen
3 had a criminal trial scheduled for April 4th, with jury
4 selection scheduled on March 30. And the committee agonized
5 over the fact as to when we should invite Justice Larsen. And
6 in their wise judgment, we were instructed, Clayton and I were
7 instructed to offer to Mr. Justice Larsen several dates, some
8 of which were prior to his trial and some of which were
9 subsequent to his trial, and to tell him he could choose
10 either. When that was done, the Justice chose April 21st.

11 The next issue was that we had prepared a
12 preliminary report of our investigation, because the chairman
13 of this subcommittee felt very strongly that the public was
14 entitled to know that we were doing something and what we were
15 doing. And that preliminary report was prepared and
16 submitted, and when that got out to the press, we were
17 contacted by Mr. Costopoulos once again and asked would we
18 withhold or defer the publication of that report because it
19 might adversely affect the criminal trial of Justice Larsen,
20 which was scheduled for Allegheny County.

21 Once again, the committee agonized with that
22 classic Constitutional conflict between the First and the
23 Sixth Amendments, and once again, to their credit, this
24 committee said, let us be sure that we give Justice Larsen
25 every opportunity to have a fair and impartial trial. And by

1 doing that, we said to Mr. Costopoulos, we will withhold the
2 issuing of this preliminary report to the public until after
3 the conclusion of Judge Larsen's trial.

4 When we met with Mr. Costopoulos and advised him
5 of that in my offices here, and Clayton Undercofler was with
6 me, Mr. Costopoulos said, I want to congratulate the committee
7 for taking the high ground in this matter.

8 Having touched upon the nature of what we did, the
9 various resources we called upon in doing what we did, and
10 giving you an indication of the people that we interfaced with
11 in conducting this investigation, and so that we don't bore
12 you with all kinds of repetition, I have selected a couple of
13 areas of concern during the course of this investigation that
14 I will address, and Mr. Undercofler and Mr. Moffitt and his
15 associate, Ms. Stebbins, will address other issues.

16 I will be more than happy to answer any questions
17 anyone has when I complete my report, but I honestly feel that
18 many of the questions you might have will be answered within
19 the next sentence or two that I'm about to present. However,
20 if someone feels it's important, obviously, please feel free
21 to break in.

22 The first area that I would like to direct my
23 attention to is the matter which is contained in the
24 preliminary report as well as the letter to Mr. Costopoulos,
25 and that is the concern about whether or not Mr. Justice

1 Larsen misled the grand jury in responding to certain
2 questions.

3 Let me tell you that the relevant witnesses to
4 this issue are: Barbara Roberts, who was a secretary to
5 Justice Larsen at the time; Richard Gilardi, a very prominent
6 and well-respected Pittsburgh attorney; two pieces of physical
7 evidence, and the grand jury testimony of Justice Larsen.

8 Barbara Roberts testified to us that on a
9 particular day, Richard Gilardi appeared in the chambers of
10 Mr. Justice Rolf Larsen and a conversation took place between
11 the justice and Mr. Gilardi; that at some time immediately
12 after that conversation, she was given two pieces of paper,
13 one marked yes, and the other marked no. And you'll find them
14 in the package which Clayton has delivered to you. Those
15 pieces of paper are the cover sheets of the case of Driscoll
16 versus Carpenter's District Council and Buttermore against
17 Aliquippa Hospital.

18 In the corner of each page you will see written a
19 word. On Exhibit 3, you will see the word "no" written in the
20 corner. And on Exhibit 4, you will see the word "yes" written
21 in the corner. Mr. Gilardi, much to his credit, when
22 confronted with this issue and these documents, acknowledged
23 that he had an ex parte communication with Justice Larsen on
24 these matters.

25 Once again, in an effort to be fair and complete,

1 Mr. Gilardi told us that the purpose of the ex parte
2 communication was to make sure that Justice Larsen read the
3 papers in these cases, because he had heard that the justice's
4 office was rather loose in assigning allocatur work, and he
5 wanted to make sure that the justice read these papers.
6 Additionally, he acknowledges that it is his handwriting on
7 the front page of each of these sheets.

8 Barbara Roberts maintained these two sheets of
9 paper because she was told to take them home and destroy
10 them. But before she could, a personal emergency occurred at
11 home and she had to use the back of one of the sheets to write
12 the name, I forget now whether it was a doctor or hospital or
13 something, a phone number, and therefore, she retained the
14 documents. And when she was subpoenaed before the grand jury
15 and asked to bring all documents, she told us very honestly
16 she wished she didn't have them, but she had them.

17 Barbara Roberts tells us the meeting occurred.
18 Barbara Roberts tells us these documents were exchanged at the
19 meeting. Richard Gilardi tells us the meeting occurred.
20 Richard Gilardi tells us that this is his signature on these
21 petitions. And Mr. Gilardi is counsel to a party in each of
22 these petitions.

23 On the document marked "no", it would advance Mr.
24 Gilardi's petition if the allocatur were denied. In the
25 document marked "yes", it would advance Mr. Gilardi's petition

1 if the allocatur were granted. Despite those representations
2 made by Barbara Roberts, by Mr. Gilardi and by the existence
3 of this physical evidence, I will refer you to the testimony
4 of Mr. Justice Larsen before the Ninth Investigating Grand
5 Jury, and I'm referring to page 104, it's also included in
6 your packet, line 21. This is the grand jury asking questions
7 of Justice Rolf Larsen.

8 "Question: Did Mr. Gilardi alert you in any
9 fashion to the fact that these cases were being filed?

10 Answer: No."

11 Now, connect this with the testimony we heard
12 yesterday where you would get the names and the numbers of the
13 cases 15 to 18 days before they would reach the justice's
14 chambers.

15 Next question: "Did he alert you in any fashion to
16 the fact that these cases were being filed?"

17 "Answer: No.

18 "Question: : Did you have any discussions with
19 Mr. Gilardi relating to these cases and the
20 consideration of these cases by the Pennsylvania Supreme
21 Court?

22 "No.

23 "Do you recall meeting with Mr. Gilardi in your
24 chambers early in 1988 and Mr. Gilardi telling you that
25 he had two interesting matters that were before the

1 court awaiting a decision on allocatur?

2 "No, I don't."

3 Question to Mr. Justice Larsen: "If such a
4 conversation had occurred, would you remember it?"

5 "Yes."

6 I would respectfully submit that there are two
7 inconsistent statements, and that Mr. Justice Larsen's
8 statement was under oath, and that juxtaposed to his adamant
9 denial of any meeting occurring, Barbara Roberts' testimony is
10 corroborated not only by Richard Gilardi, but by two pieces of
11 physical evidence which I will now move into the record.

12 With your permission, Mr. Chairman, can those
13 exhibits be made a part of the record?

14 CHAIRMAN DERMODY: The documents will be made a
15 part of the record.

16 MR. MOSES: Now you have seen the physical
17 evidence and you've heard the testimony of Barbara Roberts and
18 Richard Gilardi and the contradictory testimony of Justice
19 Larsen, let me tell you that both of those cases were directed
20 by Justice Larsen to Barbara Roberts to be placed on a special
21 handling allocatur list, and that both of the cases that you
22 have physical evidence of appear on the list for special
23 handling which Mr. Moffitt will refer to and explain during
24 the course of his review with the committee.

25 The important parts are the contradiction in

1 testimony, Barbara Roberts' statement that she was told to put
2 these cases on the list, when she was given the sheets, and
3 the concurrence of the existence of the meeting, the existence
4 of the documents and the handwriting of Mr. Gilardi.

5 Now, as I said, I'll answer whatever questions the
6 committee might direct. We can go into as much detail,
7 obviously, as you would like us to.

8 The next area is also a rather direct area, and
9 that is the area of the ex parte communication between Judge
10 Eunice Ross of Allegheny County and Mr. Justice Larsen while
11 he was a member of the Supreme Court of Pennsylvania. Mr.
12 Justice Larsen was subjected to an inquiry by the Judicial
13 Inquiry and Review Board for this matter, and this is that
14 famous matter that led to the censure which was upheld by the
15 Supreme Court and apparently has caused this furor between the
16 justices.

17 We met with Judge Ross at length in Pittsburgh
18 after we had the opportunity of reviewing all of the JIRB
19 documents and all the grand jury documents. And after
20 spending hundreds of hours with investigators and exhibits, it
21 appeared to us, it appeared to me, and if there's a dissent,
22 I'm sure -- that Judge Ross was forthright, frank and
23 responsive to all of our questions. There was no question in
24 my mind that, in fact, Judge Ross was visited by Justice
25 Larsen. She told us that. She said that under oath.

1 That during that meeting, Justice Larsen directed
2 her attention to an estate case, the Estate of Francis, which
3 she was handling, which involved Attorneys Ashton and Lampl,
4 and where a petition was filed for an accounting because the
5 missing of \$500,000 had been questioned. And that Justice
6 Larsen told Judge Ross, Attorney Botula is the guy that has
7 that money, don't look at Lampl and Ashton, it's Botula, you
8 go after Botula.

9 It's interesting to note that they were the
10 lawyers that arranged for the sale of a 35- or 39-acre tract
11 of land for Justice Larsen for a consideration of \$5,000.
12 They were the same lawyers.

13 In any event, it is clear that a meeting
14 occurred. It is clear that the meeting occurred while this
15 case was pending before Judge Eunice Ross. It is clear that
16 the counsel of record were Lampl and Ashton. And it is clear
17 from Judge Ross's testimony that she was expected to divert
18 her attention to another source, to another lawyer, attorney
19 Botula.

20 In meeting your challenge to us to test all the
21 factual bases and to vigorously work, rigorously work with it
22 and see whether or not it bore out, this was a little bit
23 easier, because JIRB went through this process, also. And
24 independently of JIRB, we came to the same conclusion: Judge
25 Ross was telling the truth, period. And if Judge Ross is

1 telling the truth, then Justice Larsen had an illegal,
2 inappropriate and improper communication with her about a case
3 pending before her. It's that simple. In order to believe
4 anything else, you have to call Judge Ross a liar, and there's
5 absolutely no motive we could find for such a finding.

6 The next area is even more clear than the last,
7 and that is, that the jury has returned, a criminal jury in
8 the County of Allegheny, has returned two verdicts of guilty
9 on two felony cases that were tried in Allegheny County.
10 Obviously, that's not in the preliminary report because the
11 verdicts had not been returned. But that clearly is a matter
12 which counsel will submit to the committee for its
13 determination as to whether or not Articles of Impeachment
14 should be voted upon.

15 And finally, I would like to talk to you about the
16 Jesse Holmes estate. This is without a doubt one of the most
17 offensive situations which I was confronted with during this
18 investigation. And because of the delicate nature of the
19 information, I will tell you what the investigation has
20 revealed. I will indicate to you that we would certainly like
21 to have an opportunity to explore this further, but that this
22 committee, based solely on what I will report, as a reporter,
23 is enough for this committee to consider as serious
24 misbehavior in office.

25 Barbara Roberts told us in Pittsburgh and

1 confirmed the same in two subsequent telephone conversations
2 with me, essentially this, that while she was a secretary for
3 a justice of the Supreme Court, and while she was in the
4 chambers of the Justice of the Supreme Court, that her
5 employer, that justice, came to her in those chambers and
6 showed her what appeared to be a holographic will, or a
7 handwritten will. Barbara Roberts goes on to say that the
8 justice said to her that Jesse Holmes wants me to get 10
9 percent of her estate, however, she is too sick to write that
10 on this will. Take a look at it and tell me if you can
11 imitate the handwriting on the will and write in a paragraph
12 that I am to get 10 percent of Jesse Holmes' estate.

13 Barbara Roberts said, I don't know if I can do
14 that. She quickly adds, so that the committee has everything
15 that Barbara Roberts told me, that she said that to the
16 justice because she didn't want to flat out say no. She
17 wanted at least to have the opportunity to argue to him at
18 some point in time that she couldn't physically imitate the
19 handwriting on the will. So she says, I don't know I could do
20 that. Not clearly stating whether it was as a moral matter or
21 as a physical matter.

22 A couple of days later, she is asked by Justice
23 Larsen if she can do that, and she says I cannot do that.
24 Now, this is what Barbara Roberts told us, and it is presented
25 to you exclusively on that basis.

1 Independent of that, we spoke to Michael Lydon,
2 who was the chief law clerk, the most senior law clerk. If
3 you listen to some of the witnesses, they refer to him as a
4 chief law clerk, and you talk to others, the most senior. But
5 it's clear from the testimony of the witnesses we've
6 interviewed and from Janice Uhler's testimony on the record
7 yesterday, you'll see now how some of these pieces fit
8 together. Because I asked Janice Uhler, if something were
9 troubling you about a directive from the Justice or an
10 employment matter, well, who would you go to? And she said,
11 well, we would go to Michael Lydon, and that was certainly the
12 course of the way we did things.

13 To get back to my point, Barbara Roberts goes to
14 Michael Lydon, and Michael Lydon has reported to us that
15 Barbara Roberts told him that this happened in essentially the
16 same manner as she told us that this happened.

17 We have no documentation, we have no trail of
18 paper, we cannot represent to you clearly and unequivocally
19 ultimately whether there was 10 percent that went to Justice
20 Larsen, but it is clear that we have received information that
21 you should have that Justice Larsen asked his secretary in his
22 chambers to alter this will.

23 Whether that request in and of itself is enough
24 for this committee to accept Articles of Impeachment is a
25 matter for this committee to decide. Personally, I find this

1 to be the most offensive possible behavior, to ask somebody to
2 play around with somebody else's will and estate. And I think
3 it warrants your serious consideration. And as I said before,
4 we would all like the opportunity to maybe to complete that
5 trail.

6 I have outlined for you what I believed our
7 responsibility was, the process that we utilized. I have
8 brought here today the volumes of materials that were reviewed
9 independently, and I have reported to you in summary fashion
10 on four areas that warrant your serious consideration.

11 As I indicated from the beginning, and I mean this
12 as sincerely as I can say it, I had the good fortune of
13 working with some outstanding lawyers, talented and honorable,
14 and you can't ever ask for anything more than that from
15 lawyers in Dave Moffitt and Clayton Undercofler. They will
16 report to you on the other three or four issues. You have
17 before you documents and diagrams and charts which they have
18 submitted to you.

19 I would like to say a couple of things about the
20 areas that they will be exploring when they're done, if it's
21 necessary, and I would like to reserve that opportunity, Mr.
22 Chairman. Other than that, I have tried to present to you in
23 as concise a fashion as I can and at the same time as
24 exhaustive a fashion I can, the process of our involvement and
25 a summary of the areas that I and counsel believe warrant your

1 serious consideration.

2 CHAIRMAN DERMODY: Mr. Moses, thank you. We'll
3 say more later obviously, but what you've done, the
4 investigation that you've conducted, the investigation with
5 Mr. Undercofler and Mr. Moffitt, an incredible job, incredible
6 amount of work, and it's clear from your presentation the
7 command you have of the facts of this case and your sincere
8 concern for the judiciary of the Commonwealth. We owe you a
9 debt of thanks, but the people of the Commonwealth owe you a
10 great debt of thanks.

11 I'm sure there are several questions. I have a
12 few questions.

13 MR. MOSES: Sure.

14 CHAIRMAN DERMODY: And they'll be brief. I would
15 like to talk about the Gilardi situation, briefly. We have
16 before us the two documents that you've made part of the
17 record.

18 MR. MOSES: Yes, sir.

19 CHAIRMAN DERMODY: And how are they physically
20 retained? That is, how do you know these are authentic and
21 that type thing?

22 MR. MOSES: Three ways. The first is that Barbara
23 Roberts physically retained them, and it's an important
24 question and I missed it in my analysis. The first is that
25 Barbara Roberts physically retained them because she was

1 directed to take them, get rid of them after they were put on
2 the list. There was to be no evidence of what stays on this
3 list. When she took them them home, an emergency occurred at
4 home with one of her kids or something and she had to write a
5 phone number on the back. So she kept the lists.

6 Now, how do we know these are the documents?
7 Because Richard Gilardi confirms, not only are they the
8 documents of the cover on the pleadings, but that that's his
9 signature. And third, they match the cover sheet of the
10 allocatur petitions.

11 I don't know if I indicated this or not, but the
12 yes or no he acknowledges was his handwriting, and it was
13 written on there at Judge Larsen's request.

14 CHAIRMAN DERMODY: Now, you mentioned the meeting,
15 and I may have missed part of it, you mentioned the meeting
16 between Mr. Gilardi and Justice Larsen. To what extent, if
17 you could review that with me again, to what extent does Mr.
18 Gilardi acknowledge that meeting?

19 MR. MOSES: Mr. Gilardi acknowledges having the
20 meeting with Justice Larsen, but says that he did not meet
21 with Justice Larsen to discuss the substance or the merits of
22 the case.

23 He claimed that he had heard that Justice Larsen
24 was not reviewing personally the allocatur petitions that were
25 presented to the court; that he believed these to be

1 significant issues, and that while he acknowledges that it was
2 an ex parte communication, he does not believe there was
3 anything inappropriate, because he says that he was not
4 talking about the substance or the merits of the case.
5 However, he acknowledges that the matter was pending before
6 the Supreme Court and that he was counsel to the parties in
7 these matters.

8 CHAIRMAN DERMODY: When he was discussing or
9 talking about the fact that he had heard that the Justice
10 wasn't reviewing the allocatur petitions, was he referring to
11 the process that we had described to us yesterday?

12 MR. MOSES: Yes.

13 CHAIRMAN DERMODY: The allocatur clerks at the
14 university?

15 MR. MOSES: Yes. And that concerned him that some
16 clerk would be looking at a petition that he believed was a
17 very significant issue. And he said to us, hey, you know, I
18 want to make sure that the Justice reads these things and not
19 some clerk.

20 CHAIRMAN DERMODY: I would like to talk about
21 Judge Ross just for a few questions, the matter that you
22 described with the ex parte communication regarding Attorney
23 Pitoli I believed you testified to.

24 MR. MOSES: Yes, sir.

25 CHAIRMAN DERMODY: That is the same matter that

1 was before the Judicial Inquiry and Review Board; is that
2 correct?

3 MR. MOSES: That's right. The ex parte
4 communication between Judge Ross and Justice Larsen during the
5 pendency of the Francis Estate, and you are correct, is the
6 same matter that was a subject of the JIRB.

7 CHAIRMAN DERMODY: After the communication took
8 place, what year was that, first of all? Do you have any idea
9 how long ago that was?

10 MR. MOSES: '86. May of 1986.

11 CHAIRMAN DERMODY: Did Judge Ross take any steps
12 after that took place?

13 MR. MOSES: Yes.

14 CHAIRMAN DERMODY: Could you explain to us what
15 she did after that communication took place?

16 MR. MOSES: Well, you will note in our report, and
17 as a matter of fact, Mr. Moffitt suggests a footnote that you
18 can take a look at on how the grand jury handled this and how
19 the JIRB handled this. And the difference is not so much with
20 whether or not you believe that an ex parte meeting occurred.
21 The question is, in my opinion, more as to what happened
22 afterward.

23 Judge Ross contends that she made what she
24 believed to be at least an official-enough report of the
25 matter when she was in a car going to a Judicial Inquiry and

1 Review Board meeting with Judge Rowley, who was then chairman
2 of the board. In addition, she contacted the former and the
3 then-present United States Attorney to tell them what
4 happened. The former United States Attorney was a personal
5 friend of hers and she thought she would call him to see what
6 to do. And subsequent to that she reported it to the federal
7 government.

8 So the answer to your question is yes, she
9 reported it to Judge Rowley, she reported it to the two
10 federal attorneys.

11 Now, the reason why JIRB and the grand jury didn't
12 get hung up on this, as if there wasn't enough to get hung up
13 on this case, but if you really want to try to get hung up is
14 not so much that was what she told Judge Rowley a formal
15 complaint to initiate a judicial complaint under the process.
16 That's more where that comes from.

17 CHAIRMAN DERMODY: All right. You mentioned
18 felony convictions. Just describe for the record the status
19 of those felony convictions for us, please.

20 MR. MOSES: Yes. I deliberately, as you've
21 accurately pointed out with this question, I deliberately did
22 not use the word conviction, because it's my understanding of
23 the state law in Pennsylvania that until there's a judgment of
24 sentence, which is appealable, there is no conviction. So at
25 this point there are two verdicts on two felonies which have

1 not yet been reduced to convictions but will be upon judgment
2 of sentence.

3 CHAIRMAN DERMODY: There's two verdicts of
4 guilty. All right. I have no further questions.

5 Representative Clark?

6 CO-CHAIRMAN CLARK: Mr. Moses, are you intending
7 at this time or later to discuss the disposition of these two
8 Gilardi cases and actions that Justice Larsen took in regard
9 to those?

10 MR. MOSES: Yes. Mr. Moffitt has those on the
11 exhibit which is attached in your package.

12 CO-CHAIRMAN CLARK: Thank you.

13 CHAIRMAN DERMODY: Representative Gruitza?

14 REPRESENTATIVE GRUITZA: Attorney Moses, I
15 gathered from your remarks with regard to this holographic
16 will that no further investigations occurred other than the
17 statements that were made by the two individuals?

18 MR. MOSES: Not by us. However, let me indicate
19 to you that it is our understanding that there is an ongoing
20 investigation into this matter, and that we have not been
21 able, because of the nature of that investigation, to get
22 those materials.

23 However, the direct response to your question is
24 we do not have any additional paperwork. But I cannot
25 represent to you that any other investigative agency doesn't.

1 I would suspect that there is a much more substantial
2 investigation of this matter ongoing, and that's why it has
3 been difficult for us to get the kinds of things we want.

4 Now, let me clearly say that this information was
5 obtained by us totally independent from any materials that
6 were delivered to us. This information was obtained by us
7 initially when Clayton and David and I questioned Barbara
8 Roberts in Pittsburgh, and subsequent to that, I had
9 communications with her during which I had her confirm the
10 statements she made. And I had conversations with Michael
11 Lydon to confirm that she, in fact, reported it to him, and to
12 confirm that it was essentially in the same way as she
13 reported it to us.

14 There is, I would suspect, a very substantial
15 ongoing investigation of this matter, but because of the
16 nature of it, we're not entitled to it. Remember Judge Gate's
17 order, which says you have everything that the grand jury has
18 except for ongoing matters.

19 REPRESENTATIVE GRUITZA: Just as a quick
20 follow-up, did we at least look into the county court records
21 of that estate?

22 MR. MOSES: We are in contact with special counsel
23 in this case. Clayton Undercofler is constantly calling every
24 day. As a matter of fact, I was preparing this and I
25 understand there was some communications today in an effort to

1 get that information.

2 REPRESENTATIVE GRUITZA: Would you be at liberty
3 to say who is involved in conducting the other investigation
4 here?

5 MR. MOSES: Pardon?

6 REPRESENTATIVE GRUITZA: Or would that be
7 inappropriate?

8 MR. MOSES: I don't think it's inappropriate to
9 tell you that the grand jury is conducting this investigation
10 in a very vigorous way under the supervision of Eric
11 Kraeutler, special counsel.

12 REPRESENTATIVE GRUITZA: In the state Attorney
13 General's Office?

14 MR. MOSES: No. Special counsel. That is not the
15 Attorney General's Office, it's special counsel.

16 REPRESENTATIVE GRUITZA: I understand. Thank
17 you.

18 Thank you, Mr. Chairman.

19 CHAIRMAN DERMODY: Representative James?

20 REPRESENTATIVE JAMES: Thank you, Mr. Chairman.

21 I think you might have answered the question as
22 asked by a previous questioner. I just want to be clear,
23 because you said this was very offensive to you, this matter
24 regarding Jesse Holmes, and you also said, I thought you said
25 that we need to explore something further, but now I

1 understand there is ongoing investigation?

2 MR. MOSES: You've hit the nail right on the
3 head. We would love to have the materials that are not
4 available to us now. However, Mr. James, let me just tell you
5 personally, and accept it as a personal representation,
6 please, with your permission, I believe it is a sufficient
7 question for this committee, without the additional
8 documentation, without the determination did Justice Larsen
9 ultimately get 10 percent one way or another. Without clear
10 and convincing proof of that -- I'm not saying it's not out
11 there, I'm saying we clearly don't have it -- I think it is
12 enough to consider as misbehavior in office, because that's
13 our only standard, that the request was made to alter somebody
14 else's will, and it's made in your chambers with a state
15 employee in the chambers of the Supreme Court of
16 Pennsylvania.

17 If that, I mean, if that's not at least offensive,
18 I don't know what it is. But you have to remember, this
19 happened in his chambers with his secretary, with him as a
20 sitting judge and her on the state payroll and he asks her to
21 alter somebody else's will.

22 Now, as a lawyer, would I like to have all that
23 other stuff? Absolutely. As a citizen, am I offended by it?
24 Do I believe that you should consider this a serious
25 misbehavior in office? Yes. But you hit the nail on the

1 head. The problem is we can't get it.

2 REPRESENTATIVE JAMES: I agree with you.

3 Can you give us any indication as to when this
4 occurred in terms of a time frame? If you remember.

5 MR. MOSES: I cannot give that to you now without
6 getting my file, but I will deliver it to you at a later date,
7 because I have that in my notes. It's in here somewhere.

8 REPRESENTATIVE JAMES: Is the lady, Ms. Holmes, is
9 she deceased or is she still alive?

10 MR. MOSES: This is a very, very interesting
11 scenario. She is deceased. It is my understanding, once
12 again, without documentation in front of me, that the heir
13 under her estate is deceased, and that somehow there was money
14 conveyed or delivered out of that heir's estate. But I have
15 no documentation, no verification of that whatsoever. But
16 Jesse Holmes has passed away, and the person that took under
17 her will, passed away.

18 REPRESENTATIVE JAMES: Thank you, Mr. Chairman.

19 Thank you, Mr. Moses. Excellent presentation.

20 CHAIRMAN DERMODY: Representative Wogan?

21 REPRESENTATIVE WOGAN: Thank you, Mr. Chairman.

22 Mr. Moses, Barbara Roberts' testimony was
23 incredibly damaging to Justice Larsen in two of the four areas
24 that you covered for us. Yesterday, we learned that Janice
25 Uhler had been dismissed by Justice Larsen back in 1991.

1 Where is Barbara Roberts working and what was her
2 working relationship with Justice Larsen?

3 MR. MOSES: Barbara Roberts had an outstanding
4 working relationship with Justice Larsen. She would drive him
5 to go and get his vegetables, in her red convertible. She
6 would drive him to go and get his cigars. She would accept
7 telephone calls from him late at night, because he didn't work
8 so much during the day. And everything ran along well until
9 Barbara Roberts had some difficulties with a work schedule
10 because of the pregnancy and coming in and out of Pittsburgh,
11 similar to what happened in the Uhler matter. And it's very
12 astute of you to pick that out, the sort of, the inner circle
13 sort of changed and became more distant.

14 There were confrontations that we cannot document
15 or substantiate to the point where we should present to you in
16 a public forum. There were actual confrontations in chambers
17 about allegations made by Barbara Roberts against the Justice
18 and the Justice calling her in and saying, this didn't happen
19 and that did happen, in front of other people. There was an
20 estrangement of that relationship, no doubt about it.

21 And as any good lawyer would do, you have to check
22 and see, does this prejudice color the veracity of the
23 statement. And in these instances, you have the physical
24 documents and the Buttermore and Driscoll cases. You have the
25 testimony of Richard Gilardi. We talked to a lot of people in

1 Pittsburgh, and Richard Gilardi is a well-regarded lawyer, a
2 member of the Supreme Court Disciplinary Board and considered
3 by all lawyers who work with him as a man of integrity, and
4 you had his acknowledgment of his handwriting on it.

5 On the Jesse Holmes matter, you have Mickey Lydon,
6 who had no axe to grind, who he himself, he removed himself
7 from the Larsen atmosphere because things were getting too
8 hot. He confirms Barbara Roberts' statement, at least to the
9 extent that she went and told it to him, the same way she told
10 it to us, without knowing it was going to be explored by us.

11 REPRESENTATIVE WOGAN: In other words, that
12 gentleman had no knowledge of the holographic will situation
13 other than what Ms. Roberts told him?

14 MR. MOSES: And it's my understanding that he not
15 only was questioned by me, nobody else asked him about the
16 holographic will situation.

17 REPRESENTATIVE WOGAN: Thank you, Mr. Moses.

18 CHAIRMAN DERMODY: Representative Mandarino?

19 REPRESENTATIVE MANDERINO: Mr. Moses, going back
20 to the first instance that you shared with the committee
21 regarding Attorney Gilardi and Judge Larsen on the two
22 allocatur petitions, my question is, as you presented the
23 evidence, Mr. Gilardi had no intent to discuss the substance
24 of those petitions with Justice Larsen, but just to bring
25 their existence to his attention, correct?

1 MR. MOSES: He wanted to make sure that the
2 Justice was reading the petitions. That's what he says, yes.

3 REPRESENTATIVE MANDERINO: My question is, then:
4 What more do you know that will explain how, if there was no
5 discussion of the substance, or at least no intent to discuss
6 the substance, that by the time he left the chambers there was
7 a yes or a no on the particular petition? What more do you
8 know about how that came about?

9 MR. MOSES: We know that he was directed to write
10 yes and no. We know that the documents were delivered to
11 Barbara Roberts, who was there at the time the meeting
12 occurred.

13 I am not suggesting to you that we have evidence
14 that says they discussed the substance of the case. However,
15 I am suggesting to you in the strongest possible terms that
16 there was an ex parte communication of whatever nature about a
17 matter pending before the Supreme Court.

18 In addition to that, I can represent to you,
19 without question, that the signature, that the handwriting of
20 Mr. Gilardi, as acknowledged by him, appears on each document,
21 and that the word is consistent with the position he's
22 advocating.

23 REPRESENTATIVE MANDERINO: Do we have his
24 testimony on transcript?

25 MR. MOSES: We have his testimony before the grand

1 jury and we have notes of his testimony, our independent
2 interview of him. And he was represented by counsel on both
3 occasions. He was immunized, by the way, Representative.

4 REPRESENTATIVE MANDERINO: So I guess, let me see
5 if I can -- I'm still not getting, did Mr. Gilardi testify
6 that while I went there with no intent to talk about the
7 substance, we did talk about the substance because that's how
8 the yes and no got in? Or, even though we didn't talk about
9 the substance, the Justice still asked me which position
10 favored my client?

11 MR. MOSES: He indicated to us that he never
12 discussed the substance; that that's his handwriting, he
13 doesn't recall how it got there, who directed him to put it
14 there. Barbara Roberts does that.

15 REPRESENTATIVE MANDERINO: On the second matter
16 with regard to Judge Ross and the JIRB, it's my understanding
17 that this is the ongoing matter that involved Justice Larsen
18 but was before the JIRB that we've heard references through
19 yesterday and today's testimony, and that JIRB had made a
20 recommendation for reprimand, which then went back to the
21 justices.

22 Do that I have scenario correct?

23 MR. MOSES: That's right.

24 REPRESENTATIVE MANDERINO: Okay. Absent any other
25 incidences, you know, and just assuming we were only looking

1 at the instance involving JIRB and Judge Ross and Justice
2 Larsen, in adding this on your list, is it your suggestion to
3 us as a committee that a recommendation for reprimand from the
4 JIRB is enough to consider misconduct in office to the extent
5 that impeachment is a possible option at this time? Or is it
6 the underlying facts of the recommendation for reprimand that
7 trouble you?

8 MR. MOSES: It's the underlying facts coupled with
9 now we now have a history of ex parte communications, because
10 we have Justice Larsen meeting with Judge Ross, and we have
11 Dick Gilardi meeting with Justice Larsen. So you have here,
12 and this is where the puzzle thing, it's not only just a jury
13 story, it is precisely the way it works, the way it overlaps.
14 When you take the Gilardi scenario, it does a number of
15 things. First, it shows this propensity to have ex parte
16 communications. Second, it links the issue of the special
17 handling list to physical evidence. And third, it shows an
18 easiness or a lack of formality on how allocaturs are
19 handled.

20 REPRESENTATIVE MANDERINO: I understand --

21 MR. MOSES: Excuse me. I want to check the record
22 in response to one of your earlier questions as to whether or
23 not Mr. Gilardi recalled Justice Larsen telling him to write
24 that or not telling that, and if we get it by the time I'm
25 done, I will give it to you. If not, I'll give it to you

1 later.

2 REPRESENTATIVE MANDERINO: I do recall you saying
3 that the two matters regarding Attorney Gilardi could be
4 connected to the listing that was being kept by staff. What I
5 don't recall you saying is whether the matter that Justice
6 Larsen allegedly spoke with Judge Ross about was on the list,
7 too.

8 MR. MOSES: No.

9 REPRESENTATIVE MANDERINO: So there's not a
10 connection there?

11 MR. MOSES: No, that's not a connection there at
12 all. That matter was in the state -- I'm sorry that I was not
13 clear. That matter was a state matter in state court.

14 Excuse me. May I have one minute to try to
15 respond to your question? In response to your question, Mr.
16 Gilardi's testimony indicates that he believes the Justice
17 asked him to write yes or no on each petition.

18 REPRESENTATIVE MANDERINO: Thank you.

19 Thank you, Mr. Chairman.

20 CHAIRMAN DERMODY: Representative Reber.

21 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

22 Counsel Moses, Attorney Gilardi testified under a
23 grant of immunity; is that correct?

24 MR. MOSES: Yes, sir.

25 REPRESENTATIVE REBER: During the course of his

1 testimony, approximately, if you know, how many cases did he
2 have before the Supreme Court during the time frame in
3 question?

4 MR. MOSES: Not too many.

5 REPRESENTATIVE REBER: Other than the two in
6 question.

7 MR. MOSES: Not too many. We questioned that.
8 There was a worker's comp case which was a little bit earlier,
9 and that is something I should have said in the substance of
10 my report. He was not what you would call a frequent
11 practitioner before the Supreme Court.

12 REPRESENTATIVE REBER: On the face sheets of the
13 petitions for allowance, as you included as exhibits and
14 entered into the record, I want to be abundantly clear that I
15 understand the chain of possession, if you will, of these
16 particular documents, and what documents you or a member of
17 your staff or our staff or anybody related to this committee,
18 carried out in redoing these documents.

19 MR. MOSES: Are you talking about 3 and 4?

20 REPRESENTATIVE REBER: The two allocatur face
21 sheets, the Buttermore and the Driscoll.

22 MR. MOSES: Sure, okay. Those I am prepared to
23 respond to.

24 REPRESENTATIVE REBER: I understand the fact that
25 Ms. Roberts had possession of these, how she came into

1 possession, why she, in fact, retained these and that they
2 were not destroyed, et cetera, et cetera.

3 My question to you is: Did you or someone from
4 our staffs personally see the original documents that she had
5 in her possession?

6 MR. MOSES: We saw the documents that she
7 delivered to the grand jury.

8 REPRESENTATIVE REBER: So you saw reproduced
9 copies of the documents?

10 MR. MOSES: What you have are photocopies of
11 exhibits that were presented to the grand jury.

12 REPRESENTATIVE REBER: So you personally did not
13 see the originals?

14 MR. MOSES: That's right.

15 REPRESENTATIVE REBER: You saw copies of the
16 originals that were entered into the record.

17 MR. MOSES: That's right.

18 REPRESENTATIVE REBER: And sworn to by the, I
19 assume the reporter, et cetera, in the normal course --

20 MR. MOSES: That's correct. The originals are
21 with the original grand jury record.

22 REPRESENTATIVE REBER: Okay. There were
23 acknowledgements by Gilardi of the yes and no notations as
24 being in his handwriting; is that correct?

25 MR. MOSES: Yes, sir.

1 REPRESENTATIVE REBER: There was then, therefore,
2 no need for expert handwriting analysis to determine that?

3 MR. MOSES: He also, incidentally, confirmed that
4 in our interview of him.

5 REPRESENTATIVE REBER: Switching gears to the
6 felony trial matter, I just want to make sure that I
7 understand that.

8 All of the individuals that the physician issued
9 prescriptions in their names, all of those individuals were on
10 the payroll of the Pennsylvania Supreme Court; is that true?

11 MR. MOSES: That is true.

12 REPRESENTATIVE REBER: Was there ever any
13 testimony that anyone other than individuals on the payroll of
14 the Supreme Court of Pennsylvania were asked to become
15 involved in this so-called conspiracy scheme?

16 MR. MOSES: Let me tell you that to the best of my
17 knowledge, they were all state employees. However, let me
18 quickly add to that, that we were given all grand jury
19 materials except materials that related to ongoing
20 investigations, and there may be an ongoing investigation into
21 various matters as to whether or not nonqualified recipients
22 under the state medical plan received benefits from Judge
23 Larsen's coverage.

24 Is that clear enough? I don't want to say -- let
25 me simply say this to you. During the course of our

1 investigation, what we uncovered was that the recipients of
2 drugs to give back to Justice Larsen were all state
3 employees. I did not want to mislead you and indicate that
4 there might not be others, nor do I want to indicate to you
5 that the Justice did not use his state plan for his 32- or
6 35-year-old daughter, which is another matter.

7 We have presented to this committee what we
8 believe are the serious issues that require your attention and
9 action. We have not included a number of issues which we
10 explored and grappled with and wrestled with and said, is this
11 something that warrants consideration, is this something that
12 warrants further investigation, just so you understand that.

13 REPRESENTATIVE REBER: Obviously, the reason for
14 my concern is whether, and it's obvious that these people
15 because of their position, if you will, in the chain of
16 hierarchy, were under the rule, control and influence and fear
17 for their job, and I'm just wondering whether they were the
18 sole individuals involved or not, and that's the reason for my
19 questioning.

20 MR. MOSES: Yes.

21 REPRESENTATIVE REBER: And you responded so that I
22 understand. Okay. Thank you.

23 One last question. I assume we're going to get
24 into the chart in relationship to the litany of lists from the
25 other two counsel?

1 MR. MOSES: That's right. We don't want to --

2 REPRESENTATIVE REBER: Okay, I understand. I just
3 wanted to make sure.

4 Thank you, Mr. Chairman.

5 CHAIRMAN DERMODY: Chairman Piccola?

6 REPRESENTATIVE PICCOLA: Thank you, Mr. Chairman.
7 I don't have any questions of counsel, but I would like to put
8 a comment on the record, and that is I would like to pay my
9 compliments and my thanks to, and I'm not going to call them
10 the majority-minority counsel, I'm going to call them our team
11 of lawyers, because they have during this entire event worked
12 as a team of lawyers, dovetailing their talents and abilities
13 quite well, and I think they had served this subcommittee
14 quite well, they've served the Judiciary Committee quite well,
15 they've served the House of Representatives quite well, and I
16 believe in the long run they have have served the people of
17 Pennsylvania very well.

18 This legislature has a reputation for
19 partisanship. I don't know if it's deserved or not deserved,
20 and we sometimes have a bad reputation in the way we conduct
21 our affairs and the affairs of the people of Pennsylvania.
22 But I hope the news media of this Commonwealth is paying close
23 attention to the manner in which this investigation is being
24 conducted, because in my 15 years, 4 months and 21 days as a
25 member of this committee, the House Judiciary Committee,

1 longer than I believe anyone presently on the committee, I
2 have to say that I have never been as proud, and I've been
3 proud of many of the things this committee has done, but I've
4 never been as proud of the conduct of the members of the
5 committee and the special counsel that we have hired in this
6 matter. It has been done with the utmost professionalism,
7 ethics and attention to detail and facts. And that goes not
8 only to our team of lawyers, but also to the members of the
9 committee. And I hope that this will continue as we move
10 forward, and I hope that the cynics who sometimes surround us
11 in this activity, can see that, because it is truly the case.

12 Thank you, Mr. Moses, Mr. Undercofler, Mr.
13 Moffitt, and your associates.

14 MR. MOSES: Thank you.

15 CHAIRMAN DERMODY: Counsel Moses?

16 MR. MOSES: Mr. Chairman, I leave this center
17 chair and turn it over to Mr. Undercofler. I wanted to thank
18 Mary Woolley and Bill Andring, counsel for the committee, and
19 the staff of the Judiciary Committee, Dave and Margaret and
20 everybody down there, for all of the help. It's not only
21 getting the typing done and the reproduction done and doing
22 things, they've been especially accommodating. So I thank
23 them.

24 And once again, I want to thank this committee for
25 the opportunity to serving with, working for the finest public

1 officials I've ever met. Thank you.

2 CHAIRMAN DERMODY: Senator Wogan?

3 REPRESENTATIVE WOGAN: Sorry, I would like to
4 return to Barbara Roberts for a minute.

5 MR. MOSES: That's okay.

6 REPRESENTATIVE WOGAN: Her explanation for keeping
7 the top copies of these allocatur petitions was that she had
8 written a personal phone message?

9 MR. MOSES: My recollection is that it was the
10 name and phone number of a physician or a hospital on the back
11 of one of them and that's why they were kept. Is that right?
12 David?

13 REPRESENTATIVE WOGAN: Well, that gets to the
14 crux of my question. If she had written a personal phone
15 message to herself on the back of one of the petitions, I
16 would be curious to find out as to why did she keep two copies
17 of two different petitions when she only had a message on
18 one?

19 And then number two, after she had ostensibly
20 taken care of whatever personal business was on the back of
21 one of the allocatur petitions, why did she save them?

22 MR. MOSES: I think that when you take a look at
23 her testimony as a whole, it is clear that she felt that there
24 was something very uncomfortable about this whole scenario,
25 and didn't know whether or not she would be doing the wrong

1 thing by destroying them.

2 But her ostensible reason is that -- let me say
3 this to you, because I think it's important. None of these
4 witnesses wanted to come in and talk to anybody. I mean, it's
5 very difficult to get them to come in and say things about
6 their employer and their relationship. They were very, very
7 reluctant.

8 I think that if you take a look at her testimony
9 as a whole, there was something in her mind that said, you
10 know, there's something really wrong with this whole list
11 idea, there's something really wrong with these petition
12 things. Yet, at the same time she does say she was sorry she
13 retained them, because they became the subject of the grand
14 jury.

15 REPRESENTATIVE WOGAN: The period of time when
16 these copies of the top of the petitions were generated, was
17 that the same period of time when she was having
18 confrontations with Justice Larsen?

19 MR. MOSES: No. This was when things were better.

20 REPRESENTATIVE WOGAN: This was before?

21 MR. MOSES: Yes. You know, Mr. Undercofler
22 reminds me that she may have said on one occasion that it just
23 stayed in her drawer for some reason and didn't get out.

24 REPRESENTATIVE WOGAN: Okay.

25 MR. MOSES: But when you take a look at her

1 credibility, I want you to know that we really did check it
2 against Gilardi's statements and the documents.

3 REPRESENTATIVE WOGAN: Thank you, Mr. Moses.

4 CHAIRMAN DERMODY: Thank you, Mr. Moses. I think
5 we'll recess, take about a 10-minute break.

6 (Recess taken from 12:05 until 12:31 p.m.)

7 CHAIRMAN DERMODY: I would like to call the
8 hearing to order. We'll now hear from Special Counsel Clayton
9 Undercofler.

10 Mr. Undercofler?

11 MR. UNDERCOFLER: Thank you, Mr. Chairman. What I
12 would propose to do, Mr. Chairman, is to take the time before
13 we break for lunch to provide an overview of the remaining
14 issues which have not been addressed as yet, and to also
15 review the package of exhibits which has been provided to each
16 member of the committee and which summarizes various
17 allegations, as well as provides spread sheet summaries of
18 evidence collected by the subcommittee in the course of its
19 investigation.

20 Before I begin that, and not to make this sound
21 like a mutual admiration society, but I would like to state
22 that it has been a particular honor for myself and my
23 associates to be involved in this process. There's a great
24 sense of Constitutional history, as you know, that permeates
25 every decision we make, and for an attorney to be given the

1 opportunity to deal with issues of this significance in one's
2 legal career is a special privilege.

3 I've enjoyed greatly getting to know John Moses
4 and finding out he's a classmate from law school, a little
5 younger, although you would never know it. But we've had a
6 great working relationship and we truly have enjoyed the
7 process of getting to know each other and exchanging ideas.

8 I would also, at the risk of undue flattery, like
9 to tell you how much it has been a pleasure to work with you
10 and Chairman Clark as co-counsel, not just as client and
11 attorney, but as true members of a trial team and
12 investigative team. It's been a real joy to exchange ideas
13 with you and with Dan in this process.

14 And may I also thank Chairman Caltagirone for his
15 guidance, and Chairman Piccola, who has, of course, I'm the
16 minority, I have an opportunity to deal with him more
17 regularly and get some good legal advice from him and Dan
18 together. It's been a great privilege for us to work in this,
19 and I join in all the wonderful remarks by my co-counsel when
20 he addressed you. Thank you very much for this opportunity.

21 CHAIRMAN DERMODY: Thank you.

22 MR. UNDERCOFLER: Mr. Chairman, I think a review
23 of all the evidence would lead everyone, but it certainly
24 leads special counsel to the conclusion that the evidence of
25 misbehavior in office by Mr. Justice Rolf Larsen is

1 substantial, and completely, in our opinion, overwhelmingly
2 supports Articles of Impeachment. It even becomes more
3 powerful when we recognize that conduct of his behavior in
4 office is appropriately viewed in the aggregate, and when
5 placed together in one specific Article and all of this
6 behavior is considered, it is our judgment that there is
7 little question that Articles should be returned.

8 What we have found is that Mr. Justice Larsen, in
9 the daily conduct of his office, took what we judged to be the
10 highest duties of his office, of his office in particular, how
11 cases are being handled before the court and him in
12 particular, the supervision and direction of court employees
13 who are responsible to him for their employment and their
14 wellbeing, his relations with a judge of the lower judiciary,
15 his conduct as an attorney representing himself pro se before
16 the Judicial Inquiry and Review Board in the filing of
17 pleadings, sworn pleadings, and his conduct under oath before
18 the grand jury, all of this conduct, all of these various
19 areas which we will discuss and have discussed, relate to the
20 essence of the legal process. And this committee as a
21 Subcommittee on Courts and this committee as a Judiciary
22 Committee, have the appropriate jurisdiction, in our judgment,
23 to look at this in this very specific area, the specific
24 judgments drawn on conduct of a high judicial officer of the
25 highest court in the Commonwealth, in matters directly

1 affecting the delivery of judgments by the Supreme Court and
2 the conduct of the Supreme Court's business.

3 What I plan to do today, and I recognize we'll
4 break for lunch before we get to a lot of specifics, is to,
5 with my colleague, David Moffitt, who has worked with us
6 throughout, as you know, and who was like my right hand,
7 although he's on my left, in just about everything I do in the
8 practice of law, is to address very specific matters of
9 evidence, especially focused with regard to petitions for
10 allowance of appeal filed in the Supreme Court, also known as
11 allocators, and which was the focus of most of the testimony
12 yesterday.

13 In addition, we will also address matters
14 concerning allegations made pursuant to sworn oath by Justice
15 Larsen in the course of his petitions for recusal filed in
16 court following the reprimand in October of 1992 of him by the
17 Supreme Court as a result of the Judicial Inquiry and Review
18 Board proceedings concerning Judge Eunice Ross.

19 And we will talk briefly to his conduct with
20 regard to his employees, court employees, concerning the
21 filling of drug prescriptions from the point of view as we set
22 out in our interim report, not so much with regard to a
23 violation of the narcotics laws of the Commonwealth, although
24 indeed, in our judgment, that is a matter appropriate for
25 consideration by this committee, especially in light of the

1 court's action, and we anticipate will be a conviction at the
2 time this matter would proceed, if it does proceed, but also
3 from the focus that we placed on it in our report to you,
4 which was his conduct as a Supreme Court justice with
5 employees whom he hired, whom he supervised, and whose lives
6 he controlled.

7 Now, before you is a package of exhibits which
8 have been prepared, and this is a combination of summaries,
9 some exhibits, some original exhibits, and spread sheets,
10 courtesy of the computer capacity, which I assume you've
11 observed this morning we are fortunate to have here in terms
12 of our ability to cross reference and go back into testimony
13 and the like.

14 If I could, as a matter of summary, just review
15 what we have before us, without going into all of them, just
16 sort of touching on them, the first Exhibit No. 1 is
17 essentially a chronology of the background of the
18 investigation into Justice Larsen, beginning in May 24 of 1988
19 with the JIRB accusation concerning Judge Ross and other
20 issues. Carrying it through to tomorrow, it hits the high
21 points of what we have seen in this investigation and will be
22 a matter of reference, I think, during some of the specific
23 discussion.

24 No. 2 is a reference to Article VI, Section 6 of
25 our Constitution, which is the provision for impeachment.

1 That section has been discussed in the report filed by us and
2 Mr. Moses concerning the preliminary findings. And there is a
3 thorough legal discussion in there, which we do not intend to
4 enhance at this point, concerning grounds for impeachment.

5 Item 3 is a description of what, in our judgment,
6 constitutes impeachable misconduct by a judicial officer,
7 namely, misbehavior in office. I think this is worthy of
8 review at this point, because it sets forth the four key
9 points which we must all consider in this process. It
10 includes misconduct which brings the courts into disrepute,
11 undermines public confidence in the integrity or impartiality
12 of the court system, or brings into serious question a
13 justice's fitness to remain in office.

14 Secondly, it includes conduct which is serious and
15 substantial in nature and reasonably related to the judge or
16 justice. And that is why our focus is always upon how the
17 conduct under investigation relates specifically to the office
18 of Supreme Court justice and the conduct of the business of
19 that office.

20 The third point is that it's not, in our judgment,
21 misconduct in office, misbehavior in office, is not limited to
22 criminal offenses.

23 And lastly, the point I made in my opening, which
24 is that misconduct may be considered in the aggregate in
25 determining liability to impeachment. We have seen that in

1 the federal impeachments that have been studied that an
2 aggregate article is appropriate, and indeed, may be the most
3 significant article, in the sense that it captures the
4 totality of conduct as a judge or justice when considered by
5 the House of Representatives and maybe the Senate.

6 The fourth exhibit is an overview of impeachable
7 misconduct by Justice Larsen, and we've heard some of that
8 this morning from Mr. Moses. In particular, we set forth,
9 along with the five points, the issue of special handling of
10 selected petitions for allowance of appeals, the making of
11 reckless and unsupported allegations of judicial and criminal
12 misconduct by Justice Zappala and Justice Cappy in petitions
13 for recusal against Justice Zappala and Justice Cappy. I'm
14 sure we all recall it was Justice Zappala and Justice Cappy
15 who voted to reprimand Justice Larsen.

16 The third point, making false statements under
17 oath which were intended to mislead the grand jury, regarding
18 Attorney Gilardi, which Mr. Moses fully explored this
19 morning.

20 The fourth point was the Judge Eunice Ross event,
21 in the sense that Justice Larsen provided false information to
22 her with regard to a case under her consideration.

23 And finally, the use of his office staff and
24 personal physician in arrangements to obtain prescription
25 drugs by fraudulent means.

1 The fifth chart is just a reminder in chart form
2 of the body of evidentiary materials which are arrayed here
3 today and which have been considered.

4 This investigation has been a combination of a
5 careful analysis of extensive investigative material, much of
6 it testimony under oath, as well as an opportunity to spend
7 almost limitless time with the special investigators who
8 assisted the grand jury in obtaining their materials as well
9 as their insights and findings, and most significantly, the
10 work Mr. Moses described this morning of original
11 investigation by the subcommittee, including careful analysis
12 of documents. I think as we go through some of these spread
13 sheets with regard to the special list, you will see the
14 benefit of that type of research.

15 Number 6, and I'm not going to really get into
16 this because the detail, we start a series with 6, 7, 8, 9,
17 10, through 12, at least, relating to the special handling
18 list, and rather than try to do it now, I think it's important
19 to take that from beginning to end, Mr. Chairman, so that we
20 can all put it together, because what we're talking about when
21 we review that list. It just begins with the testimony of
22 Janice Uhler when she identifies cases on the list.

23 We then have taken the time, obtained the
24 documents to track each case, determine the attorney, the
25 attorneys involved in each case, to determine the action taken

1 on the allocatur petition. As we heard yesterday from the
2 prothonotary of the Supreme Court, allocatur proceedings are
3 generally not public, but we have been able to have access to
4 Supreme Court records so that we have been able to track the
5 results on allocatur.

6 We've also tracked the results, the final results
7 in the cases where allocatur was granted so that there is an
8 opportunity to determine the position that Justice Larsen has
9 taken with regard to allocatur versus decision on the merits.

10 And we have also in that process, because of the
11 prominence of Leonard Mendelson as an attorney in cases on the
12 special list, we have also done an analysis of cases in the
13 Supreme Court handled by Mr. Mendelson so that we have a
14 comparison point.

15 I might point out that all those cases are not on
16 the special list, and you will see in here that we have
17 Exhibit 13 is the Leonard Mendelson cases, whereas the special
18 list cases are found in Exhibit 10. So that we have tracked
19 each individual case and then given you the Leonard Mendelson
20 cases for points of comparison.

21 I should point out, Mr. Chairman, that it was
22 clear to us in our investigation, in our interviews of Janice
23 Uhler and in the testimony, that the special list that she
24 described and the cases on it which she identified were those
25 which were clearly in her memory, that the list was broader

1 than that and that that was not an exclusive description by
2 her of each case. But I'm not certain and we would not
3 suggest that there is a definite conclusion that the Leonard
4 Mendelson cases necessarily were on the special list, although
5 inferences could be drawn based upon the pattern of results
6 that you get between the Mendelson cases on the special list
7 and the Mendelson cases in general.

8 I'll now just jump ahead to Exhibit 17, which has
9 already been covered this morning, but I think to the extent
10 that additional questions remain, and John already pointed to
11 this, which deals with the ex parte contact with Mr. Gilardi.
12 And what we will address after lunch will be the actual
13 detailed handling of those few cases as they were on the
14 special list. You'll have an opportunity to see what happened
15 with regard to Judge Larsen's position and what happened on
16 the final result.

17 Not to hold you in suspense, Mr. Gilardi lost both
18 cases, but did get an opportunity to be heard in the Supreme
19 Court.

20 Of course, following that are the two exhibits
21 that Mr. Moses described extensively, the cover sheets from
22 Mr. Gilardi.

23 And then on page 18 is a summary of the false
24 statements of Justice Larsen in connection with his grand jury
25 interrogation, as well as copies of the transcript of Judge

1 Larsen's for your reference.

2 Exhibit 19 is a document which reviews the Judge
3 Eunice Ross issue in a summary fashion.

4 Number 20 is a reference to some, and I underline
5 some, but not all, of the reckless, unsupported allegations of
6 judicial and criminal misconduct of Justice Zappala and
7 Justice Cappy in his petitions for recusal. We have not set
8 out every one, although they are all included in the grand
9 jury report, as you all know, in almost excruciating detail,
10 comprising almost 190 pages of report. We have focused on
11 these specific allegations, recognizing that in the event that
12 Articles are voted, all allegations in those petitions would
13 be subject to proof in the event the matter went to trial
14 before the Senate, whether in a corroborative fashion or as a
15 direct accusatory fashion.

16 Exhibit 21 is just an overview of what we have
17 concluded is inadequate support for the allegations in Judge
18 Larsen's petitions.

19 And then 22 are the allegations in bad faith.

20 And lastly, 23 relates to the misuse of his
21 employees in the prescription drug scheme.

22 If I might just now sort of conclude these remarks
23 before we eat with just a sort of a brief overview here.
24 First of all, look at Exhibit 21, the allegations that Justice
25 Larsen made in his petitions for recusal. To set the stage,

1 if you recall, on the 14th of October of '92, Justice Larsen
2 was reprimanded by a vote of 2-to-1 in the Supreme Court of
3 Pennsylvania, with Justices Zappala and Cappy voting to
4 reprimand him publicly. He thereafter sought to have the
5 matter reconsidered with a petition for reconsideration and he
6 sought to recuse both Justices Cappy and Zappala.

7 If he had recused them both, there would have been
8 only one remaining justice left to consider his petition,
9 Justice Papadakos, who had dissented. The effect of
10 disqualifying Justice Cappy and Justice Zappala would have
11 been to vitiate his reprimand, since the two votes for it
12 would have been eliminated. Justice Larsen acted in that pro
13 se, and put himself in the position of a practicing attorney
14 filing pleadings before his court.

15 Those of us that are attorneys and who file
16 pleadings in court in which we initiate civil actions, defend
17 civil actions, recognize that the scrutiny required before a
18 factual allegation can be made is a grave and heavy
19 responsibility. Indeed, the proper functioning of our courts
20 requires that documents filed by attorneys in courts be
21 supported by facts that are adequate to the tasks undertaken
22 by the document filed in order that the courts not be flooded
23 with needless litigation, that the cost of litigation not be
24 run up, that the processes of justice move smoothly, that the
25 courts not be used to harass or extort, but rather, are used

1 for the purpose for which the courts were intended, to provide
2 justice in determining the outcome of disputes.

3 Those of us that are practicing attorneys and have
4 drafted pleadings, recognizing that we or someone we represent
5 would have to sign an affidavit, I'm sure have all been
6 through the process of analysis, is there factual support for
7 this allegation, can this be proved. If I were to stand
8 before a tribunal and be asked to prove it, could I prove it?
9 If someone, particularly my opponent, sought to have me
10 sanctioned or my client sanctioned for a false accusation,
11 could I defend it?

12 And looking to Exhibit 21, which is an overview of
13 the voluminous testimony taken before the grand jury with
14 regard to the various recusal accusations brought by Mr.
15 Justice Larsen, we find that these allegations which, if you
16 recall, prompted the grand jury investigation, not necessarily
17 into Justice Larsen but to investigate his allegations because
18 of the level of severity that they were, we find them based
19 upon anonymous sources and alleged private conversations with
20 Justice Zappala the day before the reprimand, October 13,
21 1992, the product of a private investigator by the name of
22 Joseph Carduff. And Mr. Carduff is not even supportive of his
23 alleged support of these allegations and rumors.

24 And may I suggest respectfully, that if any of us
25 were to appear before a judge and were asked with regard to,

1 let's say, an allegation concerning responsibility for an auto
2 accident, we would be chagrined to have to say it's based on
3 an anonymous source. But I think we must keep in context that
4 the allegations which these four points supported were
5 allegations against members of the Supreme Court, fellow
6 justices of Justice Larsen, which were so significant in their
7 allegations of misconduct that they brought the entire court
8 into disrepute, focused the criminal process of a grand jury
9 upon the entire set of pleadings by Mr. Justice Larsen, and
10 therefore, should have been subject to the highest level of
11 verification.

12 I think that is an important factor to consider,
13 because Justice Larsen, who sits on the Supreme Court, and we
14 all recall the Supreme Court supervises and, indeed, controls
15 the promulgation of the Rules of Civil Procedure, would have
16 the most keen of understandings of the requirements of an
17 assertion of an allegation before a court, especially his own
18 court. So that I think that's an important factor to consider
19 when we look at the specific allegations.

20 Just as equally, and I'll conclude on this point,
21 when we go through the various details involving allocatur,
22 and I will turn that and ask Mr. Moffitt to take the lead on
23 that decision, because he has literally become "Mr. Allocatur"
24 and lived in these files. In fact, he seldom speaks to me; I
25 pass his office in the morning and the paper is piled upon

1 him. As we go into it, you must recognize that what we're
2 talking about is a procedure in which certain cases which were
3 identified to the keepers of the list, either by numbers
4 before the allocators were circulated -- if you recall the
5 testimony yesterday, justices wouldn't find out for 14 to 17
6 days after the filing. The only person that would know or
7 could know would be the lawyer who filed it, who obviously got
8 the number when it was filed, opposing counsel and the court
9 below. These were provided either in numbers or with a name,
10 and that when these matters came through, they were to be
11 brought to his attention.

12 Now, Justice Larsen, and this was not placed in
13 the record yesterday, attempted to deal with this in the grand
14 jury, and in our judgment, Justice Larsen was surprised to
15 find the existence of those two cover sheets with the yes and
16 no written on it. Because if you read his testimony
17 carefully, as we all have, you will note that his handling of
18 the questions up until that point seemed somewhat confident,
19 but he certainly in our judgment was surprised to find the
20 existence of those documents.

21 When we look to that process and are then able to
22 identify case names on that process, and then trace those
23 cases back, in our judgment, and I, all special counsel, we
24 think the conclusion is inescapable, that that list was not
25 just being maintained for interesting intellectual interest,

1 but was being maintained for the worst of reasons. And to
2 those of us in this Commonwealth who seek access to justice
3 and need confidence in our courts, to think that matters are
4 being handled in a manner other than only on the merits, there
5 can be no greater misuse of judicial office.

6 With that, I think we'll break for lunch, if we
7 may.

8 CHAIRMAN DERMODY: It's a very powerful point on
9 which to break. We'll take 45 minutes and we'll be back here
10 at quarter of 2:00.

11 Thank you very much, Mr. Undercofler.

12 (Recess taken from 1:00 until 2:18 p.m.)

13 CHAIRMAN DERMODY: I would like to call the
14 hearing back to order.

15 Representative Caltagirone? Mr. Chairman?

16 CHAIRMAN CALTAGIRONE: Thank you, Chairman
17 Dermody.

18 I just wanted to get this on the record. This is
19 my 18th year of service to the Commonwealth as a state
20 representative, this is my 6th year as chairman of the House
21 Judiciary Committee, and the 10th year of service on this
22 particular committee. I've served on various investigating
23 committees over the years, but the service in this particular
24 area and potential impeachment has with it the highest
25 responsibility of trust in dealing with the issue that we've

1 been dealing with, and it goes to the very heart of our
2 judicial system.

3 I also want to add my thanks, very special thanks
4 to Counsel John P. Moses, J. Clayton Undercofler, David R.
5 Moffitt, and also to our counsel that worked for the
6 committee, Mary Woolley, Bill Andring, Richard Scott, and to
7 Chairmen Dermody and Clark for the very, very fine job. And
8 of course, they've utilized my office for the storage of the
9 materials and I've seen John and Clayton and Moffitt over
10 there any number of times, when most of the members are going
11 home and these gentleman had been there nights, weekends and
12 many other days that most of the people in this room don't
13 realize the amount of time that they really put in on this,
14 and they're really to be complimented for a very, very fine
15 job.

16 Thank you, Mr. Chairman.

17 MR. UNDERCOFLER: Thank you, Mr. Chairman.

18 CHAIRMAN DERMODY: Special Counsel Undercofler?

19 MR. UNDERCOFLER: Thank you, Mr. Chairman.

20 Before we begin, as a matter of housekeeping, may
21 I request, Mr. Chairman, that the exhibits that begin SERS-1
22 and in the lower left, through SERS-23, be admitted and made
23 part of the record of this proceeding?

24 CHAIRMAN DERMODY: The exhibits will be made part
25 of the record.

1 MR. UNDERCOFLER: When we left off before the
2 luncheon break, Mr. Chairman, we were beginning to talk about
3 or getting ready to talk about the special list. I'll refer
4 the subcommittee to No. 6 in the documents, the document
5 entitled Afforded Special Handling to Selected Petitions for
6 Allowance of Appeal Based on Attorney Involved.

7 This first document is a summary overview of the
8 allegation which reflects that over a 10-year period, Justice
9 Larsen requested his office staff to track certain petitions
10 for allowance of appeal for special handling, based not on the
11 issues presented, but on the attorney involved; the fact that
12 the cases were placed on the special list; the fact that the
13 attorneys involved were friends of or political contributors
14 of Justice Larsen, and the fact that Justice Larsen afforded
15 special handling to the special list cases.

16 In the box below is the conclusory portion that
17 this constituted an abuse of judicial discretion, acted on
18 account of private interest instead of the interest of justice
19 in the court, and a failure to act in a fair and impartial
20 manner with respect to appeals before the Supreme Court.

21 Now, the following exhibit entitled Special
22 Allocatur List, is a summary of the evidence with regard to
23 Judge Larsen's conduct concerning the special list. And at
24 this point I would like Mr. Moffitt to summarize this for you
25 and expand on it as necessary.

1 CHAIRMAN DERMODY: Special Counsel Moffitt?

2 MR. MOFFITT: Thank you, Mr. Chairman.

3 I would like to make a couple of points
4 initially. First of all, I would like to make the point of
5 what this proposed and recommended Article of Impeachment is
6 not. And what it is not is, it is not an indictment of Judge
7 Larsen's actions on the merits on any case before the Supreme
8 Court. It is, rather, scrutiny of his actions in the
9 allocatur process, which is the process solely whereby cases
10 are granted a hearing in the court of last resort in
11 Pennsylvania, the Pennsylvania Supreme Court.

12 As Mr. Undercofler pointed out yesterday, that
13 does not make this recommended Article of Impeachment any less
14 significant or serious. The allocatur process is a process
15 which is a core judicial function, and it is a process of
16 complete and unreviewable judicial discretion. It is an
17 outcome-determinative process, for if you are denied allowance
18 of appeal to the Supreme Court, you have lost the case.

19 Special counsel have concluded because of the
20 nature of the allocatur process, including the fact that it is
21 not carried on in public view, that every justice of the
22 Supreme Court has the utmost duty of impartiality and of
23 avoiding any appearance of impropriety in connection with
24 their actions in that process.

25 I would like to turn your attention to the exhibit

1 marked as No. 7. In conversation with one of the
2 representatives yesterday, the complexity of this issue was
3 brought to my attention, and this exhibit is an effort to
4 indicate the level of proof that we have been able to obtain
5 through interviews and through review of sworn testimony in
6 grand jury regarding the existence of a special list.

7 You've heard from Janice Uhler. Barbara Roberts
8 was her counterpart in the chambers of Justice Larsen, and her
9 testimony regarding the existence of a special list and Judge
10 Larsen's practice of providing case names and providing docket
11 numbers is as detailed and unequivocal as the testimony of Ms.
12 Uhler.

13 Mickey Lydon, who was a law clerk to Justice
14 Larsen, Dale Walker, also a law clerk, Vera Freshwater, a
15 secretary, Debbie Shatten, a law clerk, as well as Janice
16 Uhler and Barbara Roberts, have all corroborated the testimony
17 that there was a special list kept in chambers.

18 Justice Larsen for his part in the grand jury,
19 unequivocally denied the existence of any such special list,
20 or he denied his knowledge of the existence of such a list.
21 However, he did admit to the grand jury that he would instruct
22 secretaries to track activity on certain cases for what he
23 claimed to be innocent purposes.

24 The details regarding Judge Larsen's testimony are
25 set forth in Exhibit 7, and we'll return to them shortly.

1 Beyond the issue of the existence of a special
2 list, the real question that the subcommittee and special
3 counsel have grappled with was the motivation for keeping the
4 list. We believe that the evidence is overwhelming that
5 Justice Larsen was motivated for the wrong reasons, to keep
6 the special list or to instruct his staff to do so. Exhibit 8
7 outlines our reasoning.

8 You've heard John Moses describe the ex parte
9 contact with Attorney Gilardi regarding two pending allocatur
10 petitions, Buttermore and Driscoll. You've been told of
11 Barbara Roberts' testimony that each of those cases was placed
12 on the special list at the direction of Justice Larsen.

13 It is the conclusion of special counsel that the
14 only reason that those cases were placed on the special list
15 was because Attorney Gilardi intervened in the process, had
16 the contact with Justice Larsen, and wanted Justice Larsen to
17 afford those petitions and the responses thereto special
18 treatment in the form of a review, a personal review of those
19 papers, which was not his ordinary practice in the case of
20 allocatur petitions brought to the Supreme Court.

21 Janice Uhler testified with respect to a number of
22 the cases which were on the special list. The special counsel
23 have determined the attorneys associated with those cases, and
24 as the following exhibit, actually as Exhibit 10 sets forth,
25 and as we will further explain each of those, each of the

1 attorneys involved in each of the cases on the special list,
2 which we have been able to identify, had a relationship with
3 Justice Larsen as friend and political supporter.

4 MR. UNDERCOFLER: I just want to suggest, Mr.
5 Chairman, that perhaps the best way to go is to look at the
6 Buttermore and Driscoll first and then jump back to the
7 beginning of the list.

8 MR. MOFFITT: In the Buttermore and Driscoll
9 cases, which have been described by John Moses, Gilardi was
10 the petitioner for the grant of allowance of appeal in one
11 case and the respondent, or appellee in the other. These are
12 in the second page of Exhibit 10 if you're looking for them.
13 Therefore, as the appellee in the Buttermore case, Attorney
14 Gilardi, in the interest of Attorney Gilardi's client, wants
15 the allocatur denied. Justice Larsen, in his recommendation
16 to his brethren on the court, recommended a denial in an
17 allocatur report, which was circulated. Contrary to his
18 recommendation, other members of the court granted the
19 petition.

20 In the Driscoll case, Mr. Gilardi was the
21 appellant or petitioner. Justice Larsen in the allocatur
22 process voted to grant the petition on the recommendation of
23 justice McDermott.

24 I would like to jump back to another point. Each
25 of the attorneys on the special list chart that is marked as

1 10, had a friendship and relationship as political contributor
2 to Justice Larsen. The extent of that relationship, in the
3 case of Leonard Mendelson and S. Michael Streib, is set forth
4 in Exhibit 9.

5 In the case of Attorney Gilardi and Attorney
6 Robert Daniels, I would refer the committee to the grand jury
7 report where the nature of the relationship is set forth in
8 detail. I don't think it's a good use of time to reiterate
9 that here now.

10 As the exhibit at No. 10 indicates, in each of the
11 cases identified by Ms. Uhler and other witnesses as being on
12 the special list, Justice Larsen took affirmative steps to
13 advance the position advocated by the attorneys who were his
14 friends or political contributors, with the exception of the
15 case which was identified by Ms. Uhler as Levin versus
16 Barrish. In that case, Justice Larsen recused from the
17 allocatur process. In that case, I would note a distinction.
18 Robert Daniels, who is also the attorney on three other cases
19 that were identified on the special list, was not the attorney
20 of record in the Supreme Court. He was actually a party in
21 that case, and his name was prominent on the allocatur, on the
22 caption of the allocatur petition.

23 In two cases, we have a continuing investigation
24 to determine exactly what Judge Larsen's actions were in the
25 allocatur process. Those were the Miller case and the Spencer

1 versus SEPTA case. That investigation is continuing.

2 On 11 of the 14 cases, of the remaining 11 cases
3 on that list, Justice Larsen either voted for a grant of
4 allocatur, or actually authored the report or counter report
5 recommending that the case be brought into the Supreme Court.

6 You will note that in all of the cases except
7 Buttermore, the advocate of a grant of allocatur was the
8 attorney who was the friend and political contributor of
9 Justice Larsen.

10 I would be happy to take any questions at any
11 point regarding any one of these cases and the evidence
12 underlying the conclusions that are set forth in the chart.

13 Additional evidence we think corroborates the
14 conclusion that Justice Larsen acted for improper purposes are
15 the testimony of Barbara Roberts, Mickey Lydon, Dale Walker
16 and Vera Freshwater. In one way or another, each of these
17 witnesses indicated their perception that it was Judge
18 Larsen's intent to advance the position of the appellant or
19 petitioner so the case would be brought into the Supreme Court
20 and allocatur would be granted. And we can detail that
21 testimony, if you like.

22 You heard Janice Uhler testify as to requests by
23 Justice Larsen to keep the special list hidden or out of
24 sight, and ultimately, she was requested to destroy the list
25 that she had been maintaining in about 1989. From our

1 interviews with Barbara Roberts and her grand jury testimony,
2 the same concern about confidentiality of the list was
3 expressed.

4 Finally, the subcommittee has carefully studied
5 Judge Larsen's asserted reasons for tracking selected
6 allocatur cases and has drawn the conclusion that those
7 asserted reasons are not credible.

8 If I could turn your attention to the exhibit
9 marked as No. 11, it sets forth the reasons asserted by
10 Justice Larsen in the grand jury for tracking selected
11 allocatur petitions. Justice Larsen testified that he tracked
12 certain allocatur petitions because he wanted to make sure
13 that he would be aware of a relationship with an attorney so
14 he could recuse himself as necessary.

15 The second reason given to the grand jury in Judge
16 Larsen's testimony was his concern that another justice of the
17 Supreme Court, Justice Flaherty, and his perception that
18 Justice Flaherty was biased against two particular attorneys,
19 Leonard Mendelson and William Meehan. Special counsel have
20 analyzed Judge Larsen's asserted reasons for tracking the
21 allocatur petitions.

22 If you would turn, please, to Exhibit 12. I would
23 also draw your attention to the following Exhibit, 13.
24 Leonard Mendelson is an attorney in Pittsburgh who has had an
25 extensive Supreme Court practice. The special counsel to the

1 subcommittee have made every effort to identify every case by
2 Mr. Mendelson that was appealed to the Supreme Court after
3 1976. Justice Larsen began to sit on the Supreme Court bench
4 in January 1978. The purpose of this exercise was to
5 determine whether or not Justice Larsen had, in fact, recused
6 himself in cases brought by Mr. Mendelson because of an aspect
7 of his personal relationship with Mr. Mendelson. Not to
8 reiterate, but the nature of that relationship is set forth in
9 some detail in Exhibit 9.

10 Briefly, Mr. Mendelson frequently served as
11 counsel to Justice Larsen on personal matters. Mr. Mendelson
12 was Justice Larsen's campaign treasurer and made contributions
13 to his campaign for the Supreme Court in 1977. Witnesses in
14 the grand jury have described the relationship between Mr.
15 Mendelson and Mr. Justice Larsen as very close. Mr. Mendelson
16 has been described as a father figure to Justice Larsen.

17 Special counsel have identified 23 cases brought
18 in which Mr. Mendelson or another member of his firm
19 represented a party either seeking allowance of appeal in the
20 Supreme Court, or opposing allowance of appeal. With respect
21 to the 23 cases, Justice Larsen, based on the information made
22 available to us from the internal court records of the Supreme
23 Court, participated in 22 cases and recused in one case.

24 He recused in the one case, the last on the list
25 identified as Allegheny West Civic Council. The petition for

1 allowance of appeal in that case is pending at the present
2 time. The petition for allowance of appeal was filed after
3 Justice Larsen gave grand jury testimony or was questioned in
4 the grand jury regarding the practice of keeping a special
5 list.

6 In six cases as set forth in Exhibit 12, Justice
7 Larsen participated in the allocatur process, yet recused on
8 consideration of the merits of the case after an appeal was
9 granted in the matter. Four of those cases he made the
10 recommendation that brought that case into the court and was
11 accepted by the vote of two other justices.

12 In one case, Justice Larsen recommended a grant on
13 a petition for allocatur in which Mr. Mendelson was counsel
14 for the appellant. This is the Ralph Myers case, the second
15 one on the chart. That petition for allocatur was pending at
16 a time when Mr. Mendelson was an arbitrator in Judge Larsen's
17 lawsuit against stock brokers. The arbitration award in that
18 case, which was made by Mr. Mendelson, a second attorney, with
19 a third attorney dissenting, was in favor of Justice Larsen in
20 an amount over \$50,000. That is set forth in the chart marked
21 as Exhibit 9. In fact, there is a copy of the arbitration
22 award following Exhibit 12.

23 In two cases, Pittsburgh North and Franklin
24 Interiors -- both of those cases, by the way, were identified
25 as cases that were on the special list -- Justice Larsen

1 recommended grants of allowance of appeal at a time when Mr.
2 Mendelson was Judge Larsen's unpaid attorney of record in the
3 Highpointe zoning matter that was the subject of the JIRB
4 proceeding in the late 1980s. And in another case, a separate
5 matter, involving a tax assessment appeal for Judge Larsen's
6 condominium.

7 The subcommittee's special counsel have concluded
8 that Judge Larsen's recommended grants in those cases were not
9 inadvertent.

10 In several additional cases identified in exhibit
11 12, Jo Vi Jo, Beil, Duquesne Club, Gall, Estate of Charles
12 Hall, Reno, BAC, Justice Larsen participated. Each of those
13 cases were filed or pending at a time when Mr. Mendelson was
14 representing Justice Larsen in his personal legal matters.

15 The testimony of Attorney Mendelson contradicts
16 Judge Larsen's reasons for tracking his cases. Mendelson
17 testified that Justice Larsen recommended that he ultimately
18 transfer the Highpointe case and the tax assessment cases to
19 another attorney for the very purpose that Justice Larsen
20 could participate in Mendelson cases in the Supreme Court.

21 Finally, in each of the 22 cases where a result on
22 the allocatur petition has occurred, that were brought by
23 members of Mr. Mendelson's firm or by Mr. Mendelson himself,
24 or in which Mr. Mendelson or an attorney in his firm opposed
25 the allocatur petition, in each of those cases, allocatur was

1 granted or denied in accordance with the position advocated by
2 the Mendelson firm.

3 I would like to turn your attention back to the
4 special list and point out one case in particular. This is
5 Exhibit 10. The second page, the name of the case was
6 Commonwealth versus Lowy, L-o-w-y. You heard Janice Uhler's
7 testimony that the Lowy case was on the special list. The
8 attorney on that matter was Mr. Streib. Justice Larsen
9 recommended a counter report of a grant of allocatur after
10 Justice Flaherty had recommended that allocatur be denied.

11 In testimony taken from Mr. Streib in Pittsburgh
12 as a part of this investigation, Mr. Streib indicated that the
13 Lowy files would not be found in his custody and control, but
14 that they were in the custody and control of the Mendelson
15 firm. The reason, he said, was that the defendant, Lowy, the
16 criminal defendant, Lowy's father was a physician in
17 Pittsburgh who had a relationship with Leonard Mendelson.

18 That concludes the summary of evidence regarding
19 the special allocatur list. We would be happy to take any
20 questions that the committee may have at this time.

21 CHAIRMAN DERMODY: Representative Reber.

22 REPRESENTATIVE REBER: Yes, just one housekeeping
23 or clarification for me. On page 3 of the special list, the
24 last case, Spencer versus SEPTA, I note the recommendation of
25 assigned justice, it says "investigation continuing," Larsen's

1 action on petition, "investigation continuing." Is that a
2 typo?

3 MR. MOFFITT: That investigation is continuing?

4 REPRESENTATIVE REBER: In the Recommendation of
5 Assigned Justice column, it has investigation continuing.

6 MR. MOFFITT: Yes, it's not a typo. The reason
7 that this case has been difficult to find records on is
8 because it was brought to the Supreme Court on an
9 extraordinary petition for exercise of the Court's
10 extraordinary plenary jurisdiction. Somewhat unlike an
11 allocatur petition, grounds for granting access to the court
12 in these unique circumstances are usually some extraordinary
13 circumstance of immediate public concern.

14 In this case, we were unable to find in the normal
15 filing process, the allocatur petition, because these
16 petitions that you'll note a miscellaneous docket number, they
17 are brought into the court on a separate docket and the
18 recordkeeping practices are different, and we, frankly, have
19 been unable to determine exactly how this case got into the
20 court or who voted on it or who voted for it to be granted
21 access.

22 REPRESENTATIVE REBER: I see. Thank you.

23 Thank you, Mr. Chairman.

24 CHAIRMAN DERMODY: Representative Gruitza?

25 REPRESENTATIVE GRUITZA: Thank you, Mr. Chairman.

1 Also, this may be a little bit beyond the scope of
2 our investigation as far as what I want to talk about here,
3 but based on the fact that we're looking at one firm's case,
4 22 out of 22, cases where they got what they sought, or the
5 percent where the percentages are normally what, 10, 12
6 percent of all cases? Is that what the testimony was before
7 as far as --

8 MR. MOFFITT: You have to understand where you are
9 petitioning to get into the Supreme Court, your chances are 1
10 in 10, based on Mr. Johns' testimony. Where you are the
11 appellee, of course, the odds are stacked in your favor,
12 they're 1 to 10 that you're going to prevail, because the
13 petition would not be granted.

14 REPRESENTATIVE GRUITZA: A question that comes to
15 my mind, because I think the bottom line with all of this is
16 really justice in Pennsylvania, and the Supreme Court is the
17 last step in that process for people who are seeking justice
18 and feel that the lower court has erred or there's a problem
19 with their case, with these developments and these facts now
20 coming out, what would be the -- it may be just something for
21 discussion, but I suppose if I represented a client who had an
22 appeal denied or however this turned out and I felt that now
23 evidence has been brought forth through this process that
24 there may have been improprieties involved, is there a legal
25 remedy available? Or is that something that we may have to

1 draft special legislation?

2 I think this really goes to the real heart of the
3 justice system, as to what's happening, if somebody out there
4 may feel, you know, I have really been denied my due process,
5 do they have a federal cause of action here because of all
6 this? I don't know.

7 MR. MOFFITT: Frankly, Mr. Representative, we have
8 not analyzed whether or not particular litigants who were
9 denied allowance of appeal would have a cause of action for
10 lack of equal protection or whatever, federal or state
11 Constitutional remedy.

12 The fact of the matter is, our conclusion is that
13 the victims of this type of special treatment are all the
14 litigants involved, at least the appellants, in all of the
15 cases where because of the simple statistical nature of the
16 process and limits on the case load of the Supreme Court, they
17 haven't gotten a fair shake simply because attorneys
18 representing other parties may have.

19 You have a large class of aggrieved litigants,
20 certainly not limited to the litigants who were on the other
21 side of the cases that we've identified as part of this
22 investigation.

23 I think that we've concluded that rather than
24 focusing on what remedy, if any, past litigants might have,
25 that it would make sense to put into place safeguards to

1 prevent future litigants, or at least deter the possibility,
2 deter the opportunity that because of the nonpublic nature of
3 the allocatur process, there's potential for abuse.

4 REPRESENTATIVE GRUITZA: The other point, I guess,
5 in looking at Mr. Mendelson's involvement as a member of a
6 board of arbitration in this case, what exhibit was that?

7 MR. MOFFITT: That follows No. 13, I believe.

8 REPRESENTATIVE GRUITZA: The arbitor's award? I
9 want to be clear on this. When this board of arbitration met
10 in which Mr. Mendelson involved himself as a member of that
11 board, was there a relationship between the Justice and Mr.
12 Mendelson at that time? This looks like a glaring conflict of
13 interest to me.

14 MR. MOFFITT: I don't want to mislead the panel
15 regarding whether or not the relationship between Mr. Justice
16 Larsen and Mr. Mendelson in the context of this arbitration
17 proceeding is improper or not. That in itself in our opinion
18 is not improper.

19 In arbitrations of this nature, each party has the
20 opportunity to select an arbitrator, and there are conflict of
21 interest rules which govern that selection process, and we
22 have no evidence that those rules were breached.

23 However, we believe that because this arbitration
24 process was proceeding, perhaps Justice Larsen should have
25 recused himself in the case then pending before the Supreme

1 Court in which Mr. Mendelson represented a party.

2 REPRESENTATIVE GRUITZA: The other side of this, I
3 have to try again and put myself in the position of the
4 defendant in that particular lawsuit. I may not have selected
5 Mr. Mendelson to sit on that board of arbitration, had I known
6 that he was a contributor and a close associate or close
7 friend with Justice Larsen. I would be feeling, again, that
8 you know --

9 MR. MOFFITT: I'll tell you, frankly, I think the
10 other side was able to choose one arbitrator in that process
11 as well, and I would be surprised if there wasn't some
12 relationship on the other side. Of course, I don't know that
13 for a fact. But if you have the ability to select one
14 arbitrator and your opponent has the ability to select the
15 other and the third has to be agreed upon mutually, there's
16 obviously going to be some, you're going to be concerned that
17 the people, the person you select is going to give you the
18 best consideration possible.

19 REPRESENTATIVE GRUITZA: I think it all raises a
20 lot of interesting questions as far as this process goes.

21 MR. MOFFITT: Pardon me?

22 REPRESENTATIVE GRUITZA: I think a lot of
23 interesting questions are raised, maybe even beyond the scope
24 of this subcommittee's mission here, by the vast amount here
25 in terms of where certain litigants may want to go from here.

1 MR. MOFFITT: I would agree.

2 REPRESENTATIVE GRUITZA: Thank you, Mr. Chairman.

3 CHAIRMAN DERMODY: Representative Wogan?

4 REPRESENTATIVE WOGAN: Representative Gruitza had
5 a question on the same manner I want to ask about. I
6 apparently don't have that handout that has the order there,
7 so maybe that's why I'm in the dark, but was this arbitration
8 case something out of Common Pleas Court in Allegheny County?
9 Or was it a triple A arbitration?

10 MR. MOFFITT: It bears the caption of the Court of
11 Common Pleas of Allegheny County.

12 REPRESENTATIVE WOGAN: So then I see in the
13 caption, all right, it did come from Allegheny County. Thank
14 you.

15 MR. MOFFITT: For the record, Judge Larsen's
16 attorney in that arbitration was Mr. Streib, who as we pointed
17 out was I believe at the time still Judge Larsen's law clerk.
18 Later, as the special list exhibit indicates, he was the
19 attorney for the defendant Lowy in the case we discussed.

20 CHAIRMAN DERMODY: Could you describe that
21 arbitration case and give us who the lawyers were and the
22 parties were, please?

23 MR. MOFFITT: Justice Larsen was the party. The
24 defendant was a stock brokerage firm. I'm not sure who
25 represented the defendant. Justice Larsen was represented by

1 his law clerk at the time, Mr. Streib. If he wasn't his law
2 clerk at the time, it was in that general time period. The
3 arbitrator selected by Justice Larsen with his choice was Mr.
4 Mendelson.

5 CHAIRMAN DERMODY: Are there any other questions?
6 (No audible response).

7 CHAIRMAN DERMODY: Is that it? Special Counsel
8 Undercofler?

9 MR. UNDERCOFLER: Thank you. Yes, sir. Before
10 yielding back to you, Mr. Chairman, let me just for purposes
11 of completeness, recognize that before we broke for lunch, I
12 referred in a conclusory fashion to the questions with regard
13 to the petitions for recusal filed by Justice Larsen following
14 the decision to reprimand by the Supreme Court on October the
15 14th of 1992. Chart 22 refers to the basic allegations that
16 were made by Justice Larsen which had been investigated by the
17 grand jury in depth and which are also addressed in a
18 preliminary report which was previously filed with the
19 committee. I think all of us are available for questions on
20 that point.

21 Before we broke, we had a brief discussion of the
22 sources for these. I would suggest to you that Justice Larsen
23 in his testimony, and as detailed in great detail in the grand
24 jury report, indeed, it's most of the grand jury report,
25 relied often on anonymous sources, sources he could not

1 identify, persons who called his chambers with information.

2 Perhaps the most prolific anonymous source that
3 Justice Larsen pointed to was a person who allegedly would
4 contact him either by note or by phone call. This person
5 established a pattern of conduct where Justice Larsen
6 allegedly selected two telephone numbers for two pay phones in
7 the Pittsburgh area, and this source would notify him of
8 information by giving him the number, and Justice Larsen would
9 go to the pay phone and receive the call from a male, not
10 further identified. It was someone who seemed to have an
11 incredible amount of information, according to Justice
12 Larsen.

13 That was the anonymous source type information I
14 referred to you before, where as a lawyer, recognizing you do
15 not know the person, do not know the basis for their
16 assertion, assuming the person exists, and I don't mean to
17 suggest that we conclude that the person exists, and indeed,
18 the grand jury concluded the person did not exist, but even if
19 one assumed that it did, the person did exist, there would be
20 no basis under the laws as we have them established, to
21 support an allegation filed pursuant to sworn affidavit in a
22 pleading.

23 The second issue which I think bears general
24 discussion is the statement by Justice Larsen in his grand
25 jury testimony on a number of occasions that the source for

1 the allegations against Justice Zappala was Justice Zappala
2 himself, and that when the letter of reprimand was voted on by
3 the Supreme Court the day before it was published, October the
4 13th of 1992, late in the afternoon, around five o'clock, that
5 Justice Zappala came to Judge Larsen's chambers to serve him
6 with the reprimand, and sat with him for perhaps 30 minutes,
7 at which time Justice Larsen stated that Justice Zappala
8 admitted to or confessed to essentially most of the essential
9 allegations against Justice Zappala.

10 Justice Zappala testified at length in the grand
11 jury, and special counsel has had that available, as we all
12 have, and reviewed that carefully. Justice Zappala denied
13 these allegations. The grand jury found Justice Zappala
14 credible, and we find every reason to concur with the grand
15 jury in that process.

16 The remainder of the rumors are Private
17 Investigator Joseph Carduff, who himself cast doubt on his own
18 ability to influence these pleadings, we think does not rise
19 to the level of support.

20 But recognizing the needs for question and
21 discussion, I think it's unnecessary for us to parcel these as
22 we have done before in committee discussions. So I would
23 yield the floor back to you, Mr. Chairman. Thank you.

24 CHAIRMAN DERMODY: As you said, there have been
25 extensive discussions in committee with regards to these

1 particular allegations and the problems that were contained in
2 that recusal petition. But if there are any questions from
3 members of the committee right now?

4 (No audible response.)

5 CHAIRMAN DERMODY: There aren't any questions.
6 You did a good job before.

7 Special Counsel Moses?

8 MR. MOSES: Mr. Chairman, it is obvious the amount
9 of time and effort and skill that went into the work done by
10 my co-counsel on the matter of the allocatur and the false
11 swearing. However, I thought it would be appropriate at this
12 point for me to sort of sum up, because this committee has
13 spent hours developing these issues in our own meetings and
14 conferences, and the purpose of today was to summarize it to
15 give all subcommittee members a chance to ask questions.

16 I think it is fair to say that all special counsel
17 agree that the information developed on pages 7 and 8 of the
18 preliminary report are areas of conduct which we believe to be
19 misbehavior in office, and which we recommend to the committee
20 to serve as the basis of Articles of Impeachment in the
21 resolution which will ultimately be recommended to the
22 Judiciary Committee.

23 The issue discussed this morning, the new
24 development in the issue on the Jesse Holmes matter, we would
25 suggest that if we have an opportunity to develop additional

1 information in that area, that we be allowed to do that.

2 I think it should be made abundantly clear,
3 however, that each of us has arrived at the same conclusion.
4 Each of us, utilizing the same process and the same
5 information, believe that Articles of Impeachment are
6 supported by our independent, thorough and very cautious
7 examination of the documents and of the witnesses.

8 CHAIRMAN DERMODY: Thank you, Special Counsel
9 Moses.

10 We've heard a lot of thank-yous today, a lot of
11 accolades, but I really on a very personal note would like to
12 say a few things about this investigation and the people that
13 I've had the privilege to work with.

14 I would like to thank the members of the
15 subcommittee for their help, their support and their work in
16 this very important matter. But I also would like to thank
17 Chairman Caltagirone and Chairman Piccola for their help and
18 their support throughout this matter.

19 I would like to thank Mary Woolley, Bill Andring
20 and the staff of the Judiciary Committee for the time and the
21 effort and the help they've put in on this matter.

22 And I think I would have to join with Chairman
23 Caltagirone and Chairman Piccola who said that we have team of
24 counsel here. This has been done in a completely bipartisan
25 manner, and it has been an honor and a privilege to work with

1 John Moses and Clayton Undercofler and David Moffitt.

2 For many of us, no matter how long we are in this
3 legislature, there will never be another issue as important as
4 this one. For most of us here, this will be the most
5 important thing we'll ever have the chance to work on. It has
6 been an honor and a privilege for me personally to work with
7 you on this matter, and I want to tell you that I think that
8 the members of the subcommittee, the members of the Judiciary
9 Committee and the members of this House of Representatives,
10 but more importantly the people of the Commonwealth, owe, and
11 all of you, owe you, our team of counsel, a debt of gratitude,
12 and I want to thank you.

13 MR. UNDERCOFLER: Thank you, Mr. Chairman.

14 CHAIRMAN DERMODY: Are there any other questions?
15 Any other business before the committee?

16 (No audible response.)

17 CHAIRMAN DERMODY: That being the case, this
18 hearing is adjourned. We will meet tomorrow morning at
19 10:00.

20 (Whereupon, the proceeding was adjourned at
21 3:13 p.m.)

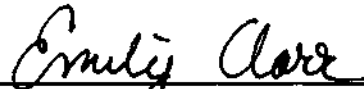
22 * * * * *

23

24

25

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.



Emily Clark, CP, CM
Registered Professional Reporter

NOTARIAL SEAL
EMILY R. CLARK, Notary Public
Harrisburg, Dauphin County
My Commission Expires July 7, 1997

The foregoing certification does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.

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Majority Sub-Committee Chairman, Courts

Special Counsel - Majority
John P. Moses, Esq.
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Daniel F. Clark, Member
Minority Sub-Committee Chairman, Courts

Special Counsel - Minority
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(215) 972-7799
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March 28, 1994

William Costopoulos, Esquire
COSTOPOULOS, FOSTER & FIELDS
831 Market Street
Lemoyne, PA 17043

RE: JUSTICE ROLF LARSEN

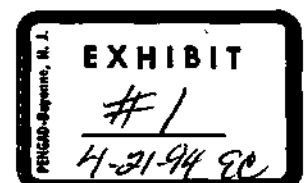
Dear Mr. Costopoulos:

This letter is being written to you in your capacity as counsel for Justice Rolf Larsen.

The purpose of this letter is to confirm our telephone conversations of March 7, 1994 during which we advised you that the Sub-Committee on Courts was inviting Justice Rolf Larsen to appear before it in connect with the Sub-Committee's investigation into Justice Larsen's conduct. During those conversations you were advised that Justice Larsen's statement would be under oath and limited to the areas raised in this letter. Justice Larsen will be given three hours to address these issues before the Sub-Committee on Courts. Thereafter Justice Larsen will respond to the questions presented to him.

This proceeding will be public. Questions will be asked by Representative Frank Dermody, Chairman of the Sub-Committee on Courts (Majority) and Representative Daniel Clark (Minority Chairman) as well as Special Counsel to the Committee. Also, any Sub-Committee Member of Committee Member attending this proceeding will be allowed to question Justice Larsen on the issues raised herein.

Mr. Justice Larsen can be represented by counsel at this proceeding. However, counsel's representation will be limited to advising his client.



Page 2
William Costopoulos, Esquire
March 28, 1994

As you know, we provided you with four alternative dates from which Justice Larsen could select to appear before the Sub-Committee. At that time we advised you that no other dates would be provided to Justice Larsen for his appearance. You responded by selecting April 21, 1994 as the date Justice Larsen would appear. Please be advised that if Justice Larsen fails to appear on that date there will be no alternative date provided to him. Our position is based on the fact that we would like to proceed as expeditiously as possible in this matter.

If, however, the trial scheduled to begin April 4, 1994 is continued, for any reason, we would expect you to contact us immediately in order to arrange an earlier date for the appearance of Justice Larsen before the Sub-Committee.

As part of the investigation being conducted pursuant to House Resolution 205 the Sub-Committee on Courts will allow Justice Larsen an opportunity to speak on the following issues:

1. The allegation that, from at least 1980 and continuing into 1991, Justice Larsen systematically tracked petitions for allowance of appeal involving attorneys who were his friends and political contributors, so that the petitions could be specially handled by Justice Larsen and his staff.

2. The conclusion of the Judiciary Inquiry and Review Board that Justice Larsen created an appearance of impropriety which could undermine public confidence in the judiciary when he provided information from an undisclosed source regarding the Estate of Francis case pending before Judge Eunice Ross in May 1986.

3. The Sub-Committee's concern that Justice Larsen misused his office and his stature as a Supreme Court Justice by inducing Dr. Earl Humpreys and members of Justice Larsen's staff to participate in a scheme to conceal Justice Larsen's prescription drug use from public view--a scheme which exposed them to potential prosecution under Pennsylvania's criminal laws.

4. The Sub-Committee's concern that, in his testimony before the Ninth Statewide Investigating Grand Jury, Justice Larsen, while under oath, made false statements which were intended to mislead the grand jury. Specifically, the Sub-Committee is concerned that Justice Larsen falsely testified that he never discussed the pending allocatur petitions in the Buttermore v. Aliquippa Hospital case, and the Driscoll v. Carpenter's District Council case with an attorney representing a party in each of the cases in early 1988.

5. The Sub-Committee's concern that Justice Larsen deliberately misused the legal process when he accused Justice Zappala and Justice Cappy of criminal and judicial misconduct in his recusal motions filed on November 24, 1992 and December 15, 1992 in No. 155 JIRB Docket 1992. Specifically, the Sub-Committee is concerned that Justice Larsen, in his testimony before the grand jury, was unable to identify a reasonable factual basis for the following allegations he made against Justices Zappala and Cappy in his recusal petitions:

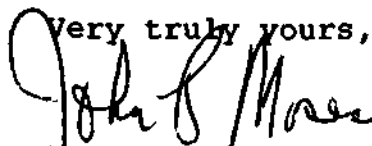
- (a) The allegation that Justice Zappala received kickbacks for directing bond work to his brother's underwriting firm, and was being investigated for his conduct.
- (b) The allegation that Justice Zappala met ex parte with litigants in the Port Authority and PLRB cases and guided those matters through the Supreme Court in a special manner.
- (c) The allegation that Attorney Doherty attempted to suborn perjury by Nikolai Zdrale, and was rewarded by Justices Zappala and Cappy for doing so by appointment to the position of Chief Disciplinary Counsel.
- (d) The allegation that Justice Cappy deliberately engineered the reconsideration of Zdrale's "out-of-time" petition in the appeal of his conviction for attempted murder to the Supreme Court.
- (e) The allegation that Justice Zappala commandeered a vehicle and attempted to run him down.
- (f) The allegation that Justice Zappala and Justice Cappy "took turns" in delaying the disposition of the Yohn appeal in order to avoid a comparison with conduct by Chief Justice Nix.

Please be advised that the protocol outlined herein will be strictly followed by the Sub-Committee. The exact time and location for Justice Larsen's appearance will be provided to you substantially in advance of April 21, 1994.

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William Costopoulos, Esquire
March 28, 1994

We must be advised by April 14, 1994 as to whether or not you are definitely accepting this invitation.

Very truly yours,



JOHN P. MOSES
Special Counsel (Majority)



J. CLAYTON UNDERCOFLER, III
Special Counsel (Minority)

JPM:hp/mpt

cc: Representative Frank Dermody
Representative Daniel Clark

COSTOPOULOS, FOSTER & FIELDS

ATTORNEYS AND COUNSELLORS AT LAW

831 MARKET STREET

P.O. BOX 222

LEMOYNE, PENNSYLVANIA 17043

WILLIAM C. COSTOPOULOS
DAVID J. FOSTER
LESLIE M. FIELDS
CHARLES RECTOR
ALLEN C. WELCH
JEFFREY L. STONER

TELEPHONE 761-2121
AREA CODE 717
FAX 761-4031

April 14, 1994

John P. Moses, Esquire, Special Counsel (Majority)
J. Clayton Undercofler, Esquire, Special Counsel
(Minority)
HOUSE OF REPRESENTATIVES
Commonwealth of Pennsylvania
Harrisburg, PA 17120

Re: Justice Rolf Larsen

Dear Mr. Moses and Mr. Undercofler:

The purpose of this letter is to advise you in writing that Justice Rolf Larsen respectfully declines your invitation to testify now that the Preliminary Report has been filed and made public.

The second purpose of this letter is to stress, again, that Justice Larsen is innocent of these false allegations.

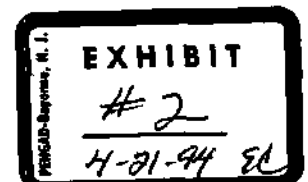
Respectfully yours,

COSTOPOULOS, FOSTER & FIELDS


William C. Costopoulos

WCC/tsw

Hand Delivered



IN THE
SUPREME COURT OF PENNSYLVANIA
Western District

No

No. 579 W.D. Allocatur Docket 1987

JAMES J. BUTTERMORE and
ANN BUTTERMORE, his wife,

vs.

ALIQUIPPA HOSPITAL; MICHAEL ZERNICH, M.D.;
BEAVER COUNTY SPORTS MEDICINE, INC.;
DONALD KERR, R.P.T.; MICHAEL ZERNICH, M.D.
and DONALD KERR, R.P.T., t/d/b/a PHYSIOTHERAPY
and SPORTS MEDICINE CLINIC; RODNEY ALTMAN, M.D.
and WILLIAM DUMEYER, M.D.,

vs.

FRANCES E. MOSER,

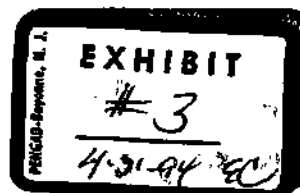
Petition of Michael Zernich, M.D., Donald Kerr, R.P.T.
and William Dumeyer, M.D.

PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal from the Order of
November 10, 1987, of the Superior Court of Pennsylvania
Affirming the Order of March 27, 1986 of the Court of
Common Pleas of Beaver County, Pennsylvania, Civil
Division, at No. 1597 of 1983, in Trespass

John W. Jordan IV, Esquire
Pa. I.D. #17308
Grigsby, Gaca & Davies, P.C.
Attorneys for Petitioners
Michael Zernich, M.D.,
Donald Kerr, R.P.T. and
William Dumeyer, M.D.

One Gateway Center
Tenth Floor
Pittsburgh, PA 15222
(412) 281-0737



JH
5/12/83

NO. 79

W.D. ALLOCATUR DOCKET '88

yes

PREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CECELIA DRISCOLL and)
WILLIAM DAILEY,)
RESPONDENTS)
vs.)
CARPENTERS DISTRICT COUNCIL)
OF WESTERN PENNSYLVANIA and)
UNITED BROTHERHOOD OF)
CARPENTERS)
PETITIONERS)

NO.
ALLOCATUR DOCKET 1988

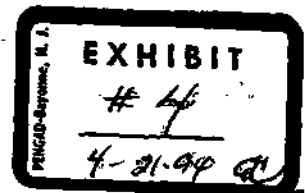
PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal From the Judgment and Order of the Superior Court of Pennsylvania, No. 1673 Pittsburgh, 1986, dated January 11, 1988, which Reversed the Judgment and Order of the Court of Common Pleas of Allegheny County, Pennsylvania, at No. GD 85-10911, dated October 28, 1986.

Richard D. Gilardi, Esq.
Ronald L. Gilardi, Esq.

GILARDI & COOPER

808 Grant Building
Pittsburgh, PA 15219
(412) 391-9779
Attorneys for Petitioners



Handwritten initials and date: 5/12/93