IN THE WEST VIRGINIA LEGISLATURE
HOUSE OF DELEGATES
JUDICIARY COMMITTEE

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IN RE:
House Judiciary Committee Proceeding
Regarding the Impeachment of West Virginia
Supreme Court Justices Pursuant to
House Resolution 201 Passed During the
Second Extended Session of 2018.

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VOLUME VII

Hearing held on August 6, 2018, before the House
Judiciary Committee of the West Virginia Legislature.

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ALSO PRESENT:

John A. Carr, Esquire (Counsel for Justice Loughry)
Mary Lou Newberger, Esquire (Counsel for Racer-Troy)
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CHAIRMAN SHOTT: Those whose last name begins with A through K will be in our first group and I'll ask one of your managers, Delegate Hollen, to be our overseer, for lack of a better word, the temporary chairman of that group, and the remaining members will go with me in our second wave.

Hopefully, the press has already identified their three representatives and you would go with the first group unless you prefer the second group, but I understand just for purposes of meeting your deadlines, you prefer the first group, and that appears fine with us.

So please return to the chamber because we do have evidence to take today as soon as your tour is completed and we will -- we'll get started as soon as we can once everybody gets back in the chamber.

The first group, if you would, our counsel, Marsha Kauffman, will lead you over there; and the second group will just be at ease for a moment and will go -- do you want both groups at the same time? Okay.

We will give them about five minutes and then we will go over. Please be at ease, the
second group, and then we will head over there in about
five minutes.

(The Committee went to tour the offices
of the Supreme Court and the
proceedings continued as follows:)

CHAIRMAN SHOTT: All right, we're back
in the chambers for a continuation of our session
today. First, before we begin, I just want to thank
the group that was with me for what I thought was a
pretty orderly and -- no one got shot at or anything of
any of that sort, so I appreciate your being respectful
and following the instructions of the staff up there.

And so since I didn't hear anything
from Delegate Hollen, I'll assume that that's true of
the first group, and we appreciate the Court's tour and
allowing us the opportunity to go through the areas
that have been renovated.

Counsel, are you ready to call the --
our next witness?

DELEGATE HARDISON: Mr. Chairman,
Committee on the Judiciary calls Sue Racer-Troy to the
stand.

CHAIRMAN SHOTT: Can you crank that up
a bit, Mark?
Ms. Troy, if you could, if you'd stand and raise your right hand. I'll have to give you the oath.

(The witness was sworn.)

CHAIRMAN SHOTT: Under our rules, the witness has the opportunity to read a brief statement, and I believe Ms. Troy has elected to take advantage of that opportunity, so we'll give her the ability to do that before we actually begin questioning.

Ms. Troy, please proceed. In case, there's any questions, Ms. Troy is accompanied by her counsel.

And Counsel, would you identify yourself for our members?

MS. NEWBERGER: My name is Mary Lou Newberger.

CHAIRMAN SHOTT: Thank you. Welcome.

WITNESS TROY: Okay. Whoo, there's feedback.

I was hired as Director of Finance of the Supreme Court of West Virginia on July 1, 2012. My job title was changed to chief financial officer in the fall of 2017, but my job responsibilities and place in the administrative hierarchy remained the same. I
report directly to the Administrative Director, who reports directly to the justices of the Supreme Court.

The Finance Division is responsible for monitoring the Judicial Branch budget and ensuring that financial transactions are recorded correctly, completely and with the proper documentation. My role is to verify that things are available in the budget and to ensure that -- that expenditures are properly recorded.

The payroll function of the Judicial Branch is a separate division, reporting to the director of human resources. My involvement with payroll is limited to reviewing the payroll interface in the financial records as it relates to the -- to the judicial budget and available funds.

The Judicial Branch has few written policies and procedures. In my role as Director of Finance -- and now chief financial officer -- I am not asked my opinion on legal issues. Rather, I rely on legal determinations of administrative counsel and the justices of the Supreme Court.

CHAIRMAN SHOTT: Counsel, if you're ready, please proceed.

S U E R A C E R - T R O Y
Was called as a witness by the Committee on the Judiciary, and having been first duly sworn, testified as follows:

EXAMINATION

BY MR. HARDISON:

Q. Ms. Racer-Troy, do you prefer to go by Racer-Troy or which name --

DELEGATES: We can't hear you.

CHAIRMAN SHOTT: Your microphone is not picking you up.

MR. HARDISON: Is it on? What about now?

Can everyone hear me now?

Q. Ms. Racer-Troy, do you prefer to go by Racer-Troy or Ms. Troy or --

A. Troy is fine.

Q. Troy, okay. Thank you for being here and for providing testimony for the Committee. I do want to ask you a few additional questions relating to your job responsibilities, but before we get to that, just as information for the Committee, can you tell us -- I'm asking a few things about yourself.

Could you tell us about your educational background?
A. Uh-huh. I have a bachelor's degree from Marshall University with a major in Finance; then I went to West Virginia State University and completed a post-graduate program for a accounting major; and then I took the CPA exam after that. In 2009, I was licensed.

Q. Are you still currently a licensed CPA in West Virginia?

A. Yes, I am.

Q. Where did you work prior to coming to the Supreme Court?

A. I've worked in various places, but prior to the Court, I was at the State Bar for a year before that, and then in the private sector in manufacturing prior to that.

Q. Okay. With regard to your job responsibilities at the Court, could you explain to us -- I understand you were hired as the Director of Finance on July 1st, 2012.

A. Yes, that's correct.

Q. Could you explain to us how that division was broken up or how the financial divisions are broken up within the Court?

A. I'm not sure I --
Q. Did you -- it's my understanding that there's a separate Payroll Division that is separate from the division in which you are the head of, or did I misunderstand that?

A. That is correct, payroll is separate, yes.

Q. Okay. Are there any other separate divisions or is it --

A. No, everything else would be under -- under -- well, there's other divisions, but as far as financial functions, there would be payroll and then everything else would be under finance. But there's other divisions.

Q. So you were in charge of everything else other than payroll.

A. Yes, that's correct.

Q. And there would have been somebody else equivalent to you in charge of payroll?

A. That is correct, yes.

Q. And as far as day-to-day operations, what exactly did you do on a day-to-day basis?

A. Day to day, answered a lot of questions, because we're overseeing P-card, general accounting, procurement now, financial statements, budgets. So a lot of review of transactions, that sort of thing.
Q. Who poses those questions to you? Do they come from the Administrative Director, or they come from different agencies or bodies within the Court itself?

A. Sometimes it can be questions from the State Auditor's Office, state treasurer's office, the justices, the Administrative Director. Just various -- various questions throughout the day.

Q. About -- do you have people underneath you that you supervise?

A. Yes, I do.

Q. How many people, would you say?

A. Right now, two; and each of them supervise three.

Q. And when did that change? Recently?

A. November of 2017, uh-huh. Prior to that, they all reported directly to me; it was more flat.

Q. Was that part of the reorganization of the Court?

A. Yes, that's correct.

Q. How many people did you supervise prior to November 2017?

A. All of those people, so seven -- eight.

Q. Eight?
A. Uh-huh.

Q. And who did you report to directly?

A. I report directly to the Administrative Director of the Court.

Q. And who was your understanding -- who did he report to?

A. Director -- I'm sorry, the Administrative Director reported directly to the justices.

Q. Could you tell the Committee briefly about the organizational structure within the Court? Is there a well-defined structure, or was it more -- you know, was there a free-flow of information, or was there just a well-defined structure as to how information was to flow within the Court?

A. Okay. There's a very defined structure. You have the five justices at the top of the hierarchy; Administrative Director is below that; and then all the division directors are below that. And the Administrative Director is kind of the conduit in relaying information from the justices to the directors below and vice versa, from them to us. Always the Administrative Director was -- was always our conduit for information.

Q. And I want to go back briefly to the payroll
office being separate --
   A. Uh-huh.
   Q. -- from your financial division. Could you
tell us why -- if you know, why that was separated out
from your -- the control of your division?
   A. It was separate when I was hired there. That
was the way it was structured, and I -- my
understanding, it had always been that way, but I don't
know when it began to -- when that started.
   Q. Is that a normal structure for an
organization, to have payroll separated out from the
financial division, or was there typically one -- one
director that oversees all those functions?
   A. I've actually seen it done both ways. And
I've looked at other -- some of the State agencies, and
some have it under finance, and some have payroll
separate, so it's not necessarily unusual.
      I've seen it both ways.
   Q. There are a few topics that we -- that I, at
least, plan on covering with you this morning. But
before we get into some of those in more detail, sort
of painting with a broad brush, I would like to talk
with you about Court practices regarding written
policies, specifically with regard to expenditures.
What is your understanding or recollection with regard to -- to written policies, if any, in the Court as it pertains to expenditures of money?

A. There were no written policies pertaining to expenditures.

Q. Is -- and -- there were no written policies when you came in as -- as head of the Finance Division?

A. That's correct, yes.

Q. And it was never recommended to you by your supervisor or his supervisors to implement written policies?

A. Justice Workman had requested to develop written policies for P-card usage, because that's a requirement of the -- of the State Auditor's Office, and so she had requested that of the Administrative Director, and that was in an administrative conference.

Q. And what came of that request?

A. The Administrative Director told me that that was her request, but I didn't need to worry about doing that, that he didn't want to develop those written policies.

Q. Did -- and who was the Administrative Director at that time?
A. At that time, it was Steve Canterbury.

Q. Did Mr. Canterbury ever follow up with you on that request from Justice Workman?

A. No, he did not.

Q. Did Justice Workman, to your knowledge, ever follow up upon her own request?

A. She has recently asked me about it and why did it not go any further, and I told her that Mr. Canterbury had said "Don't worry about it, we're not gonna do this."

Q. Are you currently in the stages of developing any sort of written policy? Has that been requested by the Court?

A. We have things in draft mode that I have proposed. These have not been approved. I've not been asked to do those things.

Q. Did you ever suggest to your supervisor, Mr. Canterbury at the time, that the Court needs to adopt written policies with regard to expenditures?

A. Yes, that was one of the first things I brought up when I was hired, was asking about where our policies and procedures -- where is the internal control documentation, and I was told none of those things exist at the Court.
Q. Who told you that?
A. Mike Proops told me that. He was my predecessor. We trained together for about a month before he left.
Q. Did you ever have a conversation or conversations with Mr. Canterbury regarding -- regarding written policies?
A. Yes, I did.
Q. How many did you have? Just one or --
A. I don't recall how many times we talked about it, but I did express my concern with our lack of written policies and procedures, because then you're just relying on one person relaying information to the next person, and that doesn't really work very well.
Q. Did Mr. Canterbury provide you with an explanation as to why the -- it was the view of the Court not to have written policies?
A. I don't know if it was the view of the Court, but it was his view anyway, that once things are put in writing, then you can be held accountable for those things, and so he did not want written policies and procedures.
Q. As part of your licensure or part of being a CPA, is it generally recommended that written policies
be followed with regard to expenditures of money?
   A. Absolutely.
   Q. Did -- at every job or organization prior to coming to the Court, did they have written policies with regard to expenditures of money?
   A. Yes. I've never worked anywhere that there was not documented policies and procedures.
   Q. When you became an employee of the Court, were you provided with any type of written policies at all? Not just with regard to expenditures of money, but with regard to conduct or any other area?
   A. Yes, I was provided an employee manual, employee handbook, that addressed things like the Court's leave policy, vacation policy, sick leave accrual, those type of things. And there was also a section in that book on the travel policy.
   Q. What is your recollection of that travel -- that specific travel policy?
   A. It was very outdated. It was -- I believe the date on my manual was 1990, that it was updated. The rate -- like the mileage rate in there was not the current IRS rate. It was really, really outdated, and I believe that's the same one that was on file in the State Auditor's Office, and they often complained that
they couldn't audit to that because it was so outdated.

Q. And the travel policy itself was updated in, you think, 1990, or the whole personnel manual was updated in 1990?

A. That's the date on the front of the manual, on the cover sheet of it.

Q. Can you recall any specific conversations you had with regard to expenditures of money for these -- for the working lunches that they've been called with the Court? Did you have any conversations with anyone about those or about adopting a policy for that expenditure?

A. No, no one ever spoke to me about the working lunches.

Q. What about personal use of -- of vehicles, Court vehicles?

A. No, no one ever spoke to me about that either.

Q. What about just procurement of goods or services in general?

A. That would have been one of the policies that I was asking about developing early on, was procurement, how do we acquire things, what guidance do we have, what rules do we have. So procurement would
have been one of the policies I was asking about early on.

Q. And you were basically told that it was the Court's practice not to have written policies on those procedures?

A. Yes, that is correct.

Q. Now I want to direct your attention to the time period in which the IRS audit occurred.

A. Uh-huh.

Q. Are you familiar with what I'm talking about?

A. Yes.

Q. Can you just tell the Committee -- tell the Committee the time period that we're talking about, that audit?

A. I believe the opening meeting was in May of 2017.

Q. And what was the -- when was the audit closed?

A. I think they were done with their field work in December, maybe November. But I think they released their final report maybe in January of '18, I think was the date of their final close date.

Q. And what was the initial scope of the audit supposed to cover?
A. I wasn't in the opening meeting; I was on vacation at that time. So I think in the opening meeting, they just kind of laid out the areas where they planned to start their audit, and then they were gonna expand their scope beyond that.

I think there were some independent contractor issues, and beyond that, I don't know since I wasn't in that meeting.

Q. And do you recall what the -- what the findings were of the audit?

A. There were -- there were multiple areas. They issued -- I can't recall what the -- the names of their findings were, but they issued separate findings by subject matter.

Q. At this time, I'll direct your attention to Exhibit No. 13, which should be in the notebook there in front of you. And I'll give you time to review that once we get to it, refresh your memory.

A. Okay. I'm familiar with this.

Q. Now, does that appear to be a true and accurate copy of the summary that was provided to you by the legislative auditor regarded --

A. Yes.

Q. -- the notes of your all's meeting?
A. Yes.

Q. And is it fair to say that it seems that the focus of this document, at least, is relating to the personal use of vehicles by the Court, use of State-owned vehicles?

A. Right, yes.

Q. Was that an area that was covered in the IRS audit?

A. That's my understanding that it was, yes.

Q. Now, the first bullet point under the use of State-owned vehicles heading, could you explain to us that event there?

A. Yes. When I was hired in July of 2017 -- I'm sorry, 2012, I had a parking space that was near the lot where the justices park, and as I walked by -- through their parking spaces, I noticed there was a State car frequently in Justice Ketchum's space.

And in one of my conversations with the Administrative Director, then Steve Canterbury, I mentioned to him that if Justice Ketchum was using that for commuting, that could be a taxable fringe benefit.

And so that was how that -- that came to be. I didn't know what purpose he was using the car for. I didn't know if it was being reported on his
W-2. But I knew that that could be a taxable fringe benefit.

Q. Well --
A. Just because I'd seen that car there multiple times.

Q. What was Mr. Canterbury's response to your statement to him?
A. He told me it was none of my business and to stay out of it. I'm paraphrasing, but I believe those were his words, you know, just "Stay out of it."

Q. After that conversation that you had with Mr. Canterbury, did you ever follow up on that issue? Was that the only time you brought it to the Court's --
A. That was the one time. And I didn't speak to Justice Ketchum about it. You know, I was -- it was pretty clear I was not to intervene there or say anything to anybody about it.

Q. Did anyone contact you after that conversation about the personal -- the use of State vehicles?
A. No.

Q. Do you recall if the IRS audit had a finding about that, about the personal use of State vehicles by justices?
A. To the best of my recollection, I don't believe they had a finding there, no.

Q. I do want to -- on the second page of this summary of your notes, towards the bottom, the fourth bullet point up, the sentence begins, "The Court used the Fixed Asset Inventory Management System. Could you explain to the Committee what that system is, if you recall?

A. Yes. They had asked me about our fixed asset -- the State -- I'm sorry, the Court's fixed assets and how that information was kept. It should have been in FIMS, which was the State's accounting software at that time, but when I looked into it, there was nothing added after 2010.

Q. And when you say "It should have been in the FIMS," what is -- what is "it?" What should have been in there?

A. Any fixed asset acquisitions.

Q. Could you give --

A. That would be State property: A router or a computer, that sort of thing. It should be recorded, not only the expenditure, but the acquisition of the asset should be recorded in the fixed asset system.

Q. Is this a system that is germane just to the
Court, or is this something that the -- all of state government uses?
   A. All of State government.
   Q. But the Court has a -- its own section for the property that the Court has.
   A. Yes, kind of keeping it off the -- off the State's books. And I felt it should be in the State's books, not separate.
   Q. When you say that to your knowledge, the 2010 date has not been updated with regard to the property that the Court has.
   A. When I went in and looked at that, I saw nothing after 2010.
   Q. But is it fair to say that this is a system that -- that is -- was in place and is still currently in place that could be used to track all of the -- all of the real property -- or not real property, sorry. -- tangible property of the Court.
   A. Yes, that's correct.
   Q. Fixed assets.
   A. Yes. It's now in OASIS. FIMS was decommissioned and it went to OASIS, but it's the same concept, yes.
   Q. Would that include vehicles?
A. Yes, it would.
Q. Would it include desks?
A. Yes.
Q. Computers?
A. Yes.
Q. Couches?
A. Yes. And those are all in there now. The Finance Division has been working for the past several months to ensure that that is correct and complete now.
Q. Now, if you could look at the Legislative Auditor's Report No. 2, which should be labeled there in front of you -- up top, yeah. And look at Appendix D. And if you could look on page 21 under "Issue 4 concerns the IRS Audit."

And I'll give you a moment to refresh your memory on this particular section of the document.
A. Okay.
Q. Okay now, I believe it may also be helpful for you to go ahead and look at Appendix E in that same report, which should be a letter authored by yourself?
A. Oh. Yes.
Q. Those two issues are related; that is fair to say --
A. Yes.
Q. -- Justice Workman's letter and your letter. Could you explain to the Committee what Justice Workman's response means and what your supplementary letter means as well?

A. Yeah. Well, I can kind of state what the intent was of my letter --

Q. Sure.

A. -- that I wrote in response to Justice Workman. I felt like the Post Audit Report implied that I had information at my disposal or that I had had knowledge of his vehicle use and how much he'd used the vehicle, and that's just not true.

I was not in the meetings with the IRS when vehicle use even came up. No one came to me and said, you know, "Do you know who used the car," and I just felt like I needed to address that and what my involvement was in the IRS audit.

Q. Was that information eventually provided to the IRS, the detailed information regarding the -- that the IRS had requested in their document requests with regard to the vehicles?

A. It was -- it was relayed to the IRS after the legislative auditor had met with Justice Ketchum personally, gone through his notes about his vehicle
use -- because only he had those records as far as how often he used the car, the personal use of the car, that sort of thing.

Lori Paletta-Davis contacted the IRS and met with them once that information was known, yes.

Q. Prior to this -- the issue of the personal use of the vehicles arising as a result of the initial media reports and the legislative auditor reports, did you have any independent knowledge of personal use of vehicles by Supreme Court employees?

A. Only what I had mentioned to Steve Canterbury, and that was that I had seen a State vehicle in Justice Ketchum's parking space, you know, on a fairly regular basis.

But then I had personally switched parking spaces to a different section, I was parking in a different area and no longer walking through that lot anymore, so I didn't have much knowledge of it beyond that.

Q. Did you ever -- would the expense reports or travel reimbursements have come across your desk, or would that have come across somebody else's desks?

A. Sometimes I received them, but we have a fairly big staff that processes those. We have a lot
of documents that come through our offices, so I don't see all of them, no.

Q. So you wouldn't have known the purpose of the travel reimbursements or that they were -- some of them were for alleged personal use of vehicles?

A. No, I would have no -- no knowledge of that.

Q. The next thing -- and I think this was -- you stated that this was covered in the IRS audit -- but the issue of certain workers for the Court being classified as independent contractors?

A. Yes, that's correct.

Q. Could you tell the Committee something about -- or what you know about the practice of the Court with regard to independent contractors?

A. The Court hired a lot of independent contractors, specifically in IT. That was where the majority of the independent contractors were. And that was mainly to work on the UJA project, which I think someone else had testified about before, this -- the tying in of the magistrate courts, this Unified Judicial Application.

And a lot of those people, instead of being hired as employees, were hired as independent contractors. The IRS reviewed that and felt they did
not meet the definition of an independent contractor and they should have been paid as an employee and received earnings on a W-2 rather than a 1099.

Q. And did the Court take steps to rectify that error --
A. Yes.

Q. -- in compliance?
A. Yes. We had to be in compliance -- the IRS gave a drop-dead date for compliance, and they'll be doing a compliance audit at some date in the future to make sure that that's still being handled correctly based on their determinations.

Q. Do you know why the Court preferred to pay and classify workers as independent contractors versus being classified as an employee?
A. No, I have no idea.

Q. Did you ever hear any discussions about that among either your supervisors or anybody else in your office, as to why that practice was being followed?
A. Not regarding the IT independent contractors, no. I don't know why they did that.

Q. Next I will turn your attention to Exhibit No. 40, which should be in the notebook before you.
A. Okay.
Q. And this is a document that was prepared by the State Auditor with regard to one of the independent contractor employees named John Pritt. Do you recall that name?

A. Yes, I do recall that name.

Q. Do you recall what he was hired to do?

A. He was our -- an independent contractor when I came to work for the Court. I understood him to be an IT independent contractor, but specifically what he was working on, I do not know.

Q. Did he perform any work for you in your role at the Court?

A. No, I was introduced to him by Scott Harvey, our former IT director, and I was told that in the event that I needed assistance with the OASIS project, he would be available to me. He would be kind of my go-to person if I needed assistance.

And I recall meeting him one time. Beyond that, I don't recall any interaction with him.

Q. Did anybody direct you as to how to pay Mr. Pritt? Or do you recall ever seeing invoices for his work coming across your desk?

A. I don't know that I processed any of the invoices. I know there are some of them in here. I
I don't know that I personally did any of these. I see they're signed by the former IT director, so I -- I would -- if I saw this, I would have assumed that he was doing work in IT.

But that's the person who was authorizing the payment.

Q. Okay. Next I want to have you take a look at legislative Report No. 3. It should be at the top of the desk there. Appendix C.

THE WITNESS: Thank you.

Q. Do you recognize this memorandum?
A. Yes, I do.

Q. Could you tell the Committee -- just provide a summary of the background of this memorandum, why it was prepared and the issues surrounding it.
A. Okay. This was prepared in November of 2016 from Steve Canterbury to the justices, and he's explaining the spend-down of the reappropriated funds, and he's kind of hitting the highlights as far as the big ticket items that happened during each of those fiscal years that the spend-down was occurring.

Q. And we've been -- we've been using the phrase "spend-down," and I guess it was -- well, coined in this memo, but followed up in the Legislative Auditor's
Report and referred to in the media as that.

But do you recall anybody in the Court using the phrase "spend-down" during the time period in which you've been employed there?

A. Steve Canterbury may have referred to it that way. Mike Proops and I would talk -- always talked about it as using the reappropriated funds that were available, that the Court had carryover reappropriated funds and that we were to use those as we needed, because the budget requests were not high enough to meet current spending needs, and we knew that before the fiscal year even started.

So it was -- it seemed reasonable to me that we would use reappropriated money for that use.

Q. Do you recall there -- do you recall ever having a conversation with Mr. Canterbury about a deliberate spend-down of the -- almost the entire balance of the reappropriated funds to fend off a potential Constitutional amendment regarding the Court's budgetary authority?

A. No, not -- he never said it to me that way, no. There was never any indication that that was the intent.

Q. Was there any indication at all that the
Court intended on spending down all of the reappropriated money?

A. To me, the only intent was the fact that the budget request wasn't enough to meet the spending needs, so it looked like it was intentional, but what the motive was, no, I don't know.

But it just mathematically made sense. If you don't ask for enough, you're gonna use some of that reappropriated money.

Q. The next exhibit I want you to take a look at would be Exhibit No. 69, and we're gonna skip ahead a few, but --

(Counsel conferred with the witness.)

A. Okay.

Q. Do you have that?

A. Yes.

Q. Could you explain to the Committee what this document is?

A. Yes. These are financial statements that I prepare each month and distribute to the Administrative Director as well as each of the five justices. And this documents kind of month to month what the Court's budget is as far as what the original appropriation was, how much has been spent year-to-date, how much
remains in the budget.

And then I have that broken down by fiscal year, whether it's the current year's fund or that prior year, what I have labeled as Reappropriated General Revenue. That would be what's sometimes referred to as the surplus money, but it says "Reappropriated general revenue."

So each month, I'm reporting to them how much of that spend-down is occurring.

Q. And do you have -- well, first let's start with this. Did anyone direct you to prepare this -- this type of spreadsheet?

A. Yes. These actually had been used by my predecessor, Mike Proops. These were the spreadsheets that he had developed and distributed to the members of the Court.

He said that this format was familiar to them, this was how they preferred to see the financial information, and so I took his spreadsheets and just continued using those.

Q. So this is a document that the justices would have expected to receive on at least a monthly basis?

A. Yes, that's correct.

Q. And we have -- is this for Fiscal Year '12 in
Q.  And you have these for each year that you've been at the Court?
A.  Yes, that's correct.
Q.  Now, could you walk us through -- we'll start with the top page, and we can go to the second and third pages as well.  But just walk the Committee through each -- what information is in each column and what it means, exactly?
A.  Sure.  Sure.
Q.  Okay.
A.  On the very first page, it says, "Supreme Court of Appeals, General Revenue Expenditures, August 2012."  So in this far left column, I have kind of the titles of the different types of expenditures.  The next series of columns is that same time period for Fiscal 2011.

<table>
<thead>
<tr>
<th>Column</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>Fiscal year 2011</td>
</tr>
<tr>
<td>2012</td>
<td>Fiscal year 2012</td>
</tr>
<tr>
<td>2013</td>
<td>Fiscal year 2013</td>
</tr>
</tbody>
</table>

The next column is the same time period - that being July and August - of 2011.  The next column to the right -- and they're labeled "Fiscal year 2011," "2012" and "2013."

So so the 2013 column is the same thing, July and August of Fiscal 2013.  So this is a
comparison year to year by the type of expenditure so they can see trends: Is a particular thing going up, is a salary going up, is it going down. So that they're kind of in the know as far as where the money is being spent.

And then at the very bottom of the column that says "Fiscal 2013," there's a budget amount of $127,000 -- I'm sorry, $127,320,952. So that was the projected budget for that fiscal year.

Just below that, it says, "Funding Sources For Budget Amount, Current Year Appropriation, $122,320,952. Disbursements From Reappropriated General Revenue, $5,000,000."

So what that means is, based on this budget amount, we're gonna need $5,000,000, out of that reappropriated money to meet this budget.

Q. Would that be $5,000,000 of the reappropriated money from the previous year?

A. Yes, that's correct.

Q. And does that balance just carry forward each year, the reappropriated balance?

A. Yes, the reappropriated balance rolls forward from year to year. The year of the money never changes, but it's -- it's never -- it doesn't revert
back kind of to the State coffers. It stays in the judiciary. But it's available to spend until it's gone.

Q. And on the next page - next two pages, I suppose - could you explain -- explain to us what these -- what these two pages mean?

A. Yes, absolutely. The next two pages are just for that year, whereas the previous page was comparing -- was more of a comparison of three fiscal years side by side. This one is just for a single fiscal year, the current year.

And in that, I break down -- on the far left side, it says, "General Revenue, Fiscal Year 2013." And then there's the heading for the different types of spending and what the appropriation amount is, what the net cash expenditures to date are and the appropriation remaining balance.

And you can see kind of midway down the page, it says, "Reappropriated General Revenue, Fiscal Year 2012, $21,015,245.83." So that's saying how much money at the beginning of the fiscal year was available.

And at that point in time, we had spent $3,669,243.82 of that money. So this is telling them,
of that reappropriated money, each month, how much is being spent.

And as you flip through the pages, you can see the spend-down occurring.

Yes, and then at the very bottom, Reappropriated General Revenue, Fiscal Year 2011, we were still carrying $1,722,268.17 in reappropriated money.

Q. Now, is it your understanding that the -- the memorandum prepared by Steve Canterbury in Appendix C of Report 3, that the numbers he cites in his memorandum would have come from your rundown of the -- the Court's budget or expenditures?

A. Yes.

Q. So for Fiscal Year '12 in his memorandum where he states that at the end of Fiscal Year '12, the Court rolled over some 22.7 million dollars into the next fiscal year, that figure would have been -- he would have arrived at that figure by just adding the reappropriated balance from 2012 of $21,015,245.83 plus the reappropriated balance of 1.7 million, approximately?

A. Yes, that -- that's correct, those two numbers added together.
Q. And for each year, his numbers would come from each year --

A. Uh-huh.

Q. -- of breakdown that you did in the balance sheet.

A. Yes, that's correct.

Q. And as we go forward in this -- in your balance sheet, could you just briefly tell us what else is included in this exhibit?

A. So in the rest of the exhibit is this same information that I would give to the justices. There's a sheet of special revenue funds. That really doesn't have anything to do with the $29,000,000.

But as you continue to flip through, you'll see I've got reports for September, and they go on through the fiscal year, and when you get to the very last series of documents in that exhibit, you come to June 30th, 2013, which is the end of that fiscal year.

And so on the -- the -- on that page where they have the three years -- actually, we could go to the next one where it has the reappropriated money. It shows of the $21,000,000 for -- in Fiscal 2012, we'd started the year with $21,015,245.83 in
reappropriated funds, and that year, we spent $19,822,112.78. So we had 1.1 million dollars left of that money.

Q. And if we go back to the -- to the first page and we refer to the renovation costs and the costs of design services --
A. Uh-huh.

Q. -- I believe that was provided by Silling and the contractor, for the most part, was Neighborgall, where would you find those expenditures in this -- on the first page?
A. On the first page, that would likely be under Item E, Building Repairs and Improvements.

Q. So each of the invoices that have been provided to the Committee in the -- in the notebook regarding the renovation costs, all of those invoices would -- should total up to the number presented in this balance sheet.
A. It should. It could -- there could be some in another line, but when I look at this -- I think they changed slightly over time. But right, they should -- they should be in that Line E.

And Line E showed $142,300. And that was just for the month of -- months of July and August
Q. And that information would have been provided each year -- each month of each year as long as you've been employed by the Court?
A. Yes, that's correct.
Q. So the Court, every month, would know exactly how much money was in their budget and how much money was being spent for renovations, say, in total. Not, you know, individual invoices, but at least the dollar amount in total. The Court should be aware of that.
A. They should be aware of that. It would have been -- it would have been encompassed in these financial statements, yes.
Q. And we talked about the reappropriated amounts of money. Can you explain to us the process by which that money is reappropriated and then how it is depleted over time, basically how that balance is carried forward and then certain years are depleted and you move on to the next year?
A. Yeah, I could try -- try to explain that. So when an -- when a specific expenditure or specific -- specific invoice is being entered, it generally defaults to the current fiscal year as far as when you're entering it on the screen.
But if you have reappropriated money you intend to use, there's a field there where you key in that date to use prior years' money. So it's something -- it's a manual process to kind of go back and grab prior year money to use it.

Q. But only -- only certain expenditures would be approved to come out of the reappropriated money versus the -- the fiscal year budget?

A. Yes, that's correct. It depends on the type of money. At the State, there's appropriations, and those being personal services, employee benefits, things like that. And so only if it's in that category can you use that money.

You can't use payroll -- reappropriated payroll money to use -- to pay for office supplies, that sort of thing.

Q. Is there a separate account in which the reappropriated money is held?

A. No, it's in the State's general revenue -- in the Court's general revenue fund.

Q. So the only way to ascertain what is reappropriated money versus what is budgeted money is through these spreadsheets?
A. Yes, that's correct. You have to look at the -- there's a -- the section that gives the fiscal year's money, and so they're all in a fund together, but they are segregated by year.

Q. Okay. Next I want to talk to you about the expenditures and renovations and the -- and the costs and invoices in that notebook. But before we get to the notebook, I want to call your attention to Exhibit No. 60.

A. Okay.

Q. Do you recognize this document?

A. Yes. We received this by e-mail, I believe, from Silling Associates.

Q. And what is the document?

A. It's the initial contract for Silling to do work at the Court.

Q. Were there any amendments to this contract or any additional contracts completed, to your knowledge, as the renovations took place at the Court? Or is this the only contract?

A. Actually, I need to -- I need to correct something. I look at this now, and it says "Silling Associates," but I flip to the last page, and this is actually the contract between Neighborgall and the
Court. Yeah, there it is, and the contractor Neighborgall. I think -- because I saw Silling at the bottom, I --

Q. So this is the contract with Neighborgall, not Silling --
A. Right, right, yes. Sorry about that. Yes.
Q. And I'll repeat my question. Is this the only contract that you're aware of that was executed during the renovation process, or were there amendments to this?
A. This is the only contract that we were able to receive from Neighborgall. I believe this is the only contract that they had.
Q. Are you aware of how the additional costs were incurred for the renovations that are not contemplated by this contract?
A. Yes, they were all put on change orders by Neighborgall. That's how Neighborgall billed them, was through change orders.
Q. And if you can look on page 3, could you tell us what that initial contract sum is supposed to be?
A. Yes, the --
Q. Or was.
A. -- initial contract sum amount is $876,156.
Q. Next we'll turn to the expenditures in the --
in the renovation notebook that I believe you prepared,
and that is -- I'll turn your attention to Exhibit No.
41.

MS. NEWBERGER: It's this one.

THE WITNESS: Where is -- Exhibit 41?

Oh, here. Okay.

A. Okay.

Q. And if you want, you can go ahead and flip
through that document a few pages and tell us if you
recognize the pages that are in that exhibit.

A. The only pages that are new to me are the
charts that are in here.

Q. Is it fair to say that those charts are just
the same figures that are provided in your summary,
just in a different format?

A. Yes, that's correct.

Q. Now, I don't -- I don't know if you have that
before you, but is there a figure in there as to the --
the total of the entire expenditures that are contained
within that notebook?

A. I -- not that I can find. I didn't total it
up. I'd segregated everything out because that's what
I was kind of tasked with doing, was segregating
everything.

Q. Are you generally aware of what the total is?

A. I believe it was around 3.6, 3.7 million, once you include Silling in that.

Q. Now could you tell the Committee how this notebook came to be, why it was constructed, who -- who directed you to complete it?

A. Yes, absolutely. Kennie Bass made an inquiry of the Court in -- I believe it was October 18th of 2017, and he was questioning specific expenditures in Justice Loughry's office, and he also inquired about the total cost of Justice Loughry's office, and was it twice as much as any other justice.

And so in order to answer that second -- I think the first part of his inquiry was pretty straightforward, but the second part, in order to answer that, we had to calculate the cost of each office, which had not been done up to that point.

So I was asked to start doing that, because I would have access to all those financial records, even the ones that -- the expenditures and renovations that happened before I started working for the Court. I could go back and dig those out.

And so I began pulling invoices. I
went and got some documents from Kim Ellis from her construction, kind of design file, so I could kind of find what was in each office I needed to go look for.

I walked through some of the chambers, looked around, see what I could find so I would know what I was looking for. And I began to assemble the information and had it in manila folders, and that quickly got unruly, so I started putting them in a binder together because it was just -- it was easier for me to follow that way.

And then I had started creating the spreadsheets, kind of tallying up each office with the idea of being able to answer that question about "Was Justice Loughry's office twice as much as any other."

Q. Was there any additional information that you had to add to that -- to that notebook since then?

A. Yes, once the notebook was complete. And that was -- it was done fairly rapidly -- it was about three weeks start to finish -- because we needed to get that information out, in response to what I -- at that time, I believed was a FOIA.

And so I knew that over time, there would be things -- other things I would run across that -- you know, it wasn't like I had some really, really
long period of time to do this. It was pretty rapid. So I knew there would be things I would find later that were responsive that should have been included in the book. And so I started gathering a file on those types of things.

And so there are supplemental documents now that we know that relate to each office.

Q. And I will go ahead and direct you to Exhibit No. 61.

(Counsel conferred with the witness.)

Q. And do you recognize this memorandum?

A. Yes, I do.

Q. Could you tell the Committee what it is?

A. Yes. This is a memo from me to Barbara Allen dated July 30th, and it's the supplemental items that were located after that -- after the initial binder was put together.

These are items that, as I said, I knew - just due to the time frame of producing this -- this document - there would be things I would run across later, and so these are the supplemental things that have been found since then.

I do want to back up and say that when I put my binder together initially, it was for my own
personal records, is what I intended it to be. It wasn't produced as if it was gonna be released to the public and -- and for anyone to use, or it wasn't meant to be an audited final findings of the office renovation costs.

It was, at that date, the information I had located as of that date, you know, just as completely and thoroughly as I could do it.

So had I known that, I would have put some kind of disclaimer in there that these types of things would likely occur, because I knew that was gonna happen.

Q. And so is it fair to say that this supplementary -- supplementary information added to the original notebook, is that a complete record of all the expenditures to your knowledge?

A. As of -- as of today, yes. But that's not to say tomorrow I won't run across something and look at the -- look at an old invoice and realize that was related as well.

Q. And it's my understanding that there was -- may have been a -- a miscommunication or confusion regarding requests that -- that have -- alleged to have been made regarding the information that would have
been included in the notebook?

Are you aware of what I'm talking about?

  A. Yes, I do.

Q. Do you want to clear that up for the Committee?

  A. Yeah. I think there was maybe a misunderstanding that Justice Loughry had asked me to remove certain information from the book, and -- and that was not the case at all.

  When I prepared the book, I realized that the Silling architectural firm, we did not have the costs in any kind of detail in that master book because they didn't break it down by office.

  So that had been omitted from Justice Benjamin, Justice Workman, Justice Ketchum and Justice Loughry's office. There were no architectural fees allocated to their offices, and yet Justice Davis' office and Justice Walker's office did have those fees because they had used a different architectural firm.

  So I believed that it did not provide a good kind of apples-to-apples comparison if you looked at the offices, so I wanted to remove those. I wanted to remove the architectural fees so that every -- all
offices were treated the same.

CHAIRMAN SHOTT: Excuse me, Ms. Troy. Would you mind moving that mic just a little closer? I think some of our members are having a little trouble hearing you.

THE WITNESS: Okay.

DELEGATE PUSHKIN: We can't hear John.

CHAIRMAN SHOTT: John, speak up a little bit, please.

Q. I lost my train of thought. Do you -- do you recall why some of the expenditures were not included in some of the justices' invoices and why there were expenditures in others? Is there a reason for that?

A. Yes. Silling, I was unable to -- they did not provide any breakdown of which office they were working in, so there was no way that I could allocate those fees correctly because I didn't have any basis for the allocation.

Whereas Justice Davis and Justice Walker had used a different architectural firm, there was a -- I knew exactly which office they were working in. And that was why I had asked to remove those.

I did not -- at the time, I didn't realize that that was the case for Justice Walker's
office. I did catch that for Justice Davis' office, and I had mentioned that to Justice Loughry, that "I want to kind of do this apples-to-apples comparison," and he said, "No, leave it in there, because it's correct, her office costs are stated correctly," which is true. But the others were actually understated because of the lack of the -- the Silling allocation.

But we continue to ask Silling for details to -- in order to get true costs by office, which we still don't know to date.

Q. Who was this notebook provided to?
A. I had the -- the master copy that I had made for myself, and there was just that one, just an original book. And then Judge Johnson was getting -- he was then the Administrative Director, and he was getting requests from the justices, questions about one thing or another.

And so he said to me, "Would you make me a copy of that book so that I'll have a copy and I can help answer questions." I said, "Sure, I'll make you a copy." So I made Judge Johnson a copy.

And in a meeting with Kennie Bass, that book was handed to him, Judge Johnson's copy. So I believe Kennie Bass' book that he has has "Judge
Johnson" on the front of it.

So there were -- to answer your question, there were two sets.

Q. Did any of the individual justices ever ask you to update them on the specific costs of the renovations in their offices?

A. Yes, all of them did.

Q. All right. When did those update requests occur?

A. Once I was -- as I was assembling the -- the book, you know, my -- kind of my notes, they were all very -- they wanted to inquire about what I was coming up with as far as their true office renovation costs. Because I got the impression that nobody really knew what their offices cost, and they were anxious to see that.

And so I had inquiries from each of the justices wanting me to send them the spreadsheets I'd created. They wanted to look at the documents; they wanted to look at the invoices themselves to see if they were correct.

Q. And that occurred after the initial FOIA request by the -- by Kennie Bass?

A. Yes, that started to occur once I started to
work on assembling that information. During those three weeks when I was working on putting the binder together, I spoke with each of the justices about their offices.

Q. And what time period are we talking about again?
A. October 18th, I believe, of 2017. And the book was completed — I think it was — November the 8th, maybe, 2017, when it was given to Kennie Bass at that date.

Q. Prior to that date, did any of the justices inquire with you as to the costs of the renovations —
A. No —
Q. — in their offices?
A. I'm sorry. No, never.
Q. Okay.

(Counsel conferred with the witness.)

A. There's — there's one thing I'd like to clear up as well, if I can.
Q. Sure.
A. In the front of the book that I had given to Judge Johnson, I had copied not this entire Silling book, but just the -- the summary page of the Silling so that he -- he had that information as well, as far
as what he -- he knew what was not in that book.

    And so the book that Kennie Bass received should have had Silling in the very front of it, so he would have known the architectural costs as well.

Q. When you add together the -- the total of the Silling costs, along with the renovation costs by Neighborgall, does that represent an accurate figure as to the total amount expended on renovations?

A. You have to add in the furniture as well, because furniture was purchased from different vendors. So there's actually -- those are -- that's the bulk of the expenditures, is Silling and Neighborgall.

    But then there's more beyond that, and that's the furniture. And that -- that is all in that book.

Q. Okay. If I could turn your attention to Exhibit No. 62. Do you recognize this document?

A. Yes, I do. That's -- we received this from Silling. That is their contract with the Court for the architectural and design services.

Q. To your knowledge, is this the only contract that was executed between the Court and Silling for their services?
A. This is the only contract that I've ever seen. This is the only one that Silling has been able to provide to us. If there were others, I haven't seen them yet.

Q. And on the second page, could you tell the Committee what the estimated project fee --

   A. Yes, the estimated project fee is $81,380.

   Q. And if you could go ahead and flip over to Exhibit No. 63. Do you recognize what the -- what the first two pages are in Exhibit 63?

   A. Yes. I printed these from FIMS, and you can see at the bottom, I printed these on October 27th, 2017, so this was during the time that I was doing my research and putting together these construction costs.

   So this is the total amount paid to Silling. And on the second page, I had circled "Supreme Court, $893,965.68." So that told me how much I needed to go find in invoices for them.

   Q. But on the initial contract with Silling, the estimated amount was only to be $81,000, approximately?

   A. Yes. The original amount is $81,380.

   One thing I do want to point out, Steve -- Steve Canterbury signed this contract - it looks like - 9-19-08, and if I go to the kind of detail page
of the Silling payments, two of these payments were prior to that. There were two payments in 1998. And that's, you know, quite a bit prior to when he signs the document.

So I think these two may have been unrelated. I don't know. I don't have any details on what they did at that time. And so I'd made the note in the Comments section that I don't know what those two payments were for.

And I don't have a contract for any of that either. I was not able to locate anything.

Q. Okay. And those are the -- the top two payments there on the third page of Exhibit 63?

A. Yes, that's correct.

Q. Now, the rest of the payments would have been issued under this contract for services rendered by Silling?

A. Yes, that's correct.

Q. The remaining pages -- and if we could just go -- go page by page -- if you could explain to the Committee what -- what each of those --

A. Okay.

Q. -- are, beginning with the -- the one that has "Invoices on the 4th Floor, Chief Counsel's
Office."
   A. Where I have the summary -- because they're
   -- at first, there's kind of a consolidated and then I
   start breaking them out.
   Q. Yeah, when you start breaking them out of the
   summary.
   A. Okay, yeah. So using the descriptions on the
   invoice, I put them in the Comments field and then
   I sorted them and subtotaled them so I could see how
   much Silling billed for for work in the chief counsel's
   office, and they billed $90,350.88.

   But according to their documents,
   that's where that work was done.
   Q. Then the next page?
   A. The next page, they billed it as "Justices
   Offices Renovations" and they have that starting March
   of 2009 and completing in March of 2013 at a cost of
   $374,139.81.
   Q. And that includes all of the justices'
   chambers together.
   A. It should.
   Q. Is that accurate?
   A. But there was work done in Justice Loughry's
   chambers after this date, and -- and they're not billed
that way, so I don't know how Silling's billing worked. But during the time of his renovations, there's only one invoice, and that's the one at the very bottom for $4,050, but there was more work done in there than that. There -- the scope of the work should have cost more than $4,050, so I don't feel that this is terribly accurate from their billing, not -- not that this is put together incorrectly, but their billing --

Q. From Silling's perspective --
A. Yes.

Q. -- as far as their billing.
A. Yeah, the time frame doesn't match up with the invoices.

Q. And what is the -- what are the next two pages?
A. The next one is some work in the law library.

Oh, here's the clerk's office. Their fees in the clerk's office, $283,224.73.

Q. What's the next summary?
A. They did work in the first floor hallway.

That's kind of the public area over in the east wing. $20,133.81. They were -- they were doing some kind of project with the lights.
Q. And what about the next invoice?
A. The next one says "West Virginia House and Senate Elevator Upgrade" for $9,572.
Q. So does that indicate that the Court paid for an elevator upgrade in the House or the Senate?
A. Well, that's what it says. There's design work, development work and construction documents. I don't see any actual construction. It seems like some kind of professional services maybe, but that's how they billed it, and then it's approved for payment by Steve Canterbury.
Q. What is the next invoice cover sheet?
A. The next two pages are those payments from 1998 that I don't have any detail on. There's no scanned documents because the scanning wasn't available at that period of time. So all I have are the two payments, and other than the dollar amount and the vendor, I don't really have anything other than that.
Q. And what are the last two pages?
A. The next to the last one is the invoice that says "For Courtroom Restoration, $215.63" and there's that House and Senate Elevator Upgrade again at the very end.

I think this was actually billed in one
of these. I think these are just some backup documentation.

Q. Now if I could direct your attention to Exhibit No. 64. Do you recognize what that document is?

A. Yes, I do.

Q. Could you explain to the Committee what it is?

A. Yes. I'm copying Judge Johnson, who then was the Administrative Director, on a memo that I'd sent to Justice Davis where she and I talked about some items in her office that she believed were her personal items, and according to my records, they had been purchased with State funds.

Q. Now, within that memorandum, under the first bullet point, you refer to a March 14th, 2016 memo?

A. Yes.

Q. Do you see that in front of you?

A. Yes, I do.

Q. Could you explain to the Committee what that memorandum is?

A. Is -- oh, there we go. That's Exhibit 64, right, the memorandum?

Q. Correct.
A. Okay. On Exhibit 64, the mem -- this is a -- I guess a memorandum from Steve Canterbury to Justice Davis, and he says he's memorializing the decorative items, including furniture, that are in her chambers that belong to her personally.

Judge Johnson's office located this during the time that I was putting together all this information on the -- on the offices, and so he thought that it was relevant, that this may be helpful to me while I'm searching through documents.

And I noticed once I started working on her office that some of the items on here, I was seeing payments out of State funds for. Specifically, the -- the sofa. And so I went up and spoke to her.

She requested that I come up and speak to her about that, and so we went through everything in her office, you know, as --

You'd asked me about earlier, did they inquire about their offices, and they did. So she had documents from me showing what was purchased with State funds, and it didn't match up with what she believed was her per -- you know, her personal items.

Q. Do you have any knowledge as to whether this memo from 2016 was delivered, actually delivered, to
Justice Davis?
A. I have no knowledge of that, no. It's -- the memo isn't signed. I don't know if she received it or not.

Q. And after you provided this memorandum, the October 24th, 2017 memorandum, after you delivered that to Justice Davis, did you have any discussions regarding the information contained in the memo with Justice Davis?
A. She and I went over that, actually, the day before this, on October 23rd. She -- Justice Davis, myself and Kim Ellis sat down in her chambers and went through item by item that we could see what was purchased with State funds, what was her personal property.

She asked me to document this for her this way so that she could repay the State for these items that she said she was not aware that State money had been spent on.

Q. And is it your understanding that Justice Davis made those reimbursements subsequent to receiving that memorandum from you?
A. Yes, she did.

Q. Now, before we move into the -- the 1099 West
Virginia-48 form issue, there's one other thing that I want to discuss with you that I think occurred during this time period in which you were constructing this notebook.

Do you recall a meeting that took place in -- I believe it was Justice Loughry's office, with Judge Johnson present --

A. Yes, I do.

Q. -- and yourself?

A. Yes.

Q. Who else was present in that meeting?

A. If that's the October, I think, 19th meeting in his office --

Q. That's correct.

A. -- that was Judge Johnson, myself, Chris Morris, Lori Paletta-Davis, Justice Loughry. We were all meeting in Judge Johnson's office to talk about how to respond to this FOIA from Kennie Bass, who was gonna put what documents together and how would this be responded to.

We talked about my work on what I was gathering as far as financial documents, so -- that was who was in the room, and that's what we were talking about at that time.
Q. Do you recall Kim Ellis being requested to come to the meeting?

A. Yes, Justice Loughry asked that she be called into the meeting.

Q. Can you tell us about that interaction when she got to the meeting?

A. Justice Loughry asked her about the cost of his office and why his renovation cost -- because from what we could see so far -- I mean, this was very early on to me gathering this information.

-- why his office was so much more expensive. He said that -- to the best of my recollection, he had said that he instructed her that his office should be no more than Justice Ketchum's office, and he asked her if she remembered that, and she said no, she did not have that conversation with him.

Q. And then what did he -- did he say anything after that?

A. I believe he repeated that and said, "Yes, we did, we did talk about that." And she said, "No" -- I mean, this is my recollection of the conversation, because I was just kind of sitting back and looking at my binder and thinking about what I was working on.
But that was how I recall the interaction between the two of them, was that he insisted that they had had a conversation, that she said, no, they did not have that conversation.

Q. What is your recollection of Justice Loughry's tone towards Kim Ellis?

A. I took it to be kind of a reprimand to her that -- how was his office allowed to get so expensive. And that was how I interpreted it. It was kind of a scolding of her as far as she allowed the costs to -- these costs to go over what he had instructed her to spend no more than a certain amount.

Q. Did you give any thought as to whether or not Kim Ellis would have knowledge as to the -- the costs of individual justices' offices?

A. Kim would have had no knowledge of that because no one had ever tallied the office costs, ever. I had never been asked to do that.

Justice Ketchum's office was remodeled prior to the time that I started working for the Court, so I didn't have that even institutional knowledge of what it would have been. I had to go back and pull, you know, kind of old notes and old financial records.

Kim did not work for the Court during
that time; she worked for Silling. So she wouldn't have had knowledge of that. So he was asking her something she wouldn't have known.

I mean, had -- had he said that to her, she wouldn't have known how much Justice Ketchum's office cost.

Q. Did Just -- is it your perception that Justice Loughry would have known or should have known that she would have no idea what the cost of renovations would be?

A. I don't know if he would have known or not known that. I -- I don't know, because he never asked me if I knew how much Justice Ketchum's office cost. So I don't know --

Q. Would he have been aware of when Kim Ellis became employed by the Court?

A. Yes.

Q. Did you have any other meetings with Justice Loughry regarding the renovations that you can recall?

A. Just the same meetings I had with the other justices, as far as their own personal offices, yes.

Q. And the substance of those meetings would have been the -- the total amount of the renovations for each office? Because I believe you testified
earlier that they were curious as to the amounts in
their offices?
   A. Yes, they wanted to know --
   Q. Is that what you said?
   A. -- about their individual offices, yes.
   Q. So now the last topic or next to last topic
that I want to cover with you is this so-called 1099
issue, the West Virginia-48 forms. Are you aware of
what I'm referring to when I -- when I say that?
   A. Yes.
   Q. Could you explain to the Committee the
circumstances surrounding the issuance of the -- of the
1099s for senior status judges?
   A. Senior status judges -- it's been the
practice of the Court to keep senior status judges on
payroll up until they meet some certain threshold,
which I've been told is around $20,000. I don't know
the exact dollar amount.
   But payroll notifies -- I believe they
notify the recusal assistant of when they're
approaching that cap, as far as what they can --
   Q. If I could stop you there, what is the cap
you're referring to?
   A. My understanding is it's the amount that they
can earn on payroll without a reduction in their retirement benefits.

Q. Are you aware of what that amount is or what it's equivalent to?

A. I don't know specifically, but I've heard it's around $20,000.

Q. Okay. And I'm sorry, go ahead and continue with what you're --

A. I'm just not that familiar with the retirement board rules and regulations. But once they earn some certain amount, their -- my understanding is their retirement benefits are reduced at that point.

And so at some point, the Court decided they would switch them over to independent contractor status and pay them on a 1099.

Q. And so the -- the $20,000 amount, that is an amount that the judges, the senior status judges, are paid as a per diem basis? Or they're -- the amount that they're being compensated for sitting as a senior status judge; is that correct?

A. I believe they're paid $435.00 per day for their services, and so once the $435.00 per day reaches around $20,000, that's when they're -- they start watching -- payroll starts watching that number, so
that they don't go over $20,000.

Q. And what happens when a particular senior status -- senior status judge begins to approach that $20,000 benchmark?

A. A WV-48 form is filled out for that senior status judge when they anticipate they may go over the threshold.

Q. Could you tell the Committee what a WV-48 form is?

A. It's a State purchasing form. It reads as an independent contractor form, because there's a section about "I am" or "am not" "a full-time employee of the State."

It outlines the scope of the work to be performed. At the bottom left, I believe it says "Agency Head," there's a signature line and a date line, and then to the bottom right, the person filling out the WV-48 -- or the person who's named on the WV-48, signs and dates it.

Q. And if we can back up just a little bit, what is the -- could you explain to the Committee members, those who may not know, what's the difference between treated as a W-2 worker as opposed to a 1099 worker is?

A. Yeah, a W-2 worker is an employee. They can
be a temporary employee; they could be a full-time/ permanent. It could be any employment status. But the Court -- the employer will withhold payroll taxes and submit those taxes and pay employer taxes as well on behalf of that employee.

A person paid on a 1099 is responsible for all of their own tax reporting; nothing's withheld from their payments.

Q. And so for each 1099 worker, a WV-48 form is filled out to identify what exactly does their -- they're being paid for?

A. I could only say that's true for the senior status judges. For other independent contractors - like the IT independent contractors - in our records, we don't always have WV-48s. But it seems to be the standard practice that that was done for the senior status judges.

Q. In other -- I know you testified that you were aware that there is a statutory limit on the amount of compensation that a senior status judge can earn. Is that correct?

A. I -- I've --

(Counsel conferred with the witness.)

A. What I was told was the $20,000 cap was a
retirement board cap, that that was gonna affect their retirement. I think that you asked about statutory. That has not been discussed with me.

Q. So the $20,000 cap was a limit that -- that you understand was communicated by the retirement board to the Court.

A. Yes, that's correct.

Q. And if they exceeded this limit -- and by "they," I mean the senior status judges. If they exceeded the $20,000 limit, then that would affect their retirement; is that correct?

A. Yes, that's correct.

Q. And the Court had a specific person that would basically check on how much money a senior status judge was earning to ascertain whether or not that senior status judge was approaching the $20,000 limit?

A. I can't speak to how that information was communicated from one to the other. We do have a person who handles recusals, when a judge recuses him or herself, and that person works with the Chief Justice to assign a judge in that -- you know, for that vacancy.

I don't know how closely she communicates with payroll. I don't know if she gets
the information from them, they provide it to her. I can't really speak to that.

But I know that in that process, that create -- somewhere in there, the WV-48 is prompted. We don't ask for those. Those come to us once the Chief Justice has authorized that to happen.

Q. Authorized what to happen?

A. The senior status judge to be paid as an independent contractor.

Q. That's something the Chief Justice would be aware of.

A. The WV-48 forms that I have in my office are always signed by the Chief Justice.

Q. Who initially creates the WV-48? Is that something that's created by you or the -- you said there was a recusal clerk or --

A. I don't know who creates the WV-48s. I know they are not created by our -- by our office. They're not created in Finance, so --

Q. Let me clarify. I don't mean the detail included on the actual form. I just mean, who takes the form for the specific senior status judge and fills in the information that then is passed on to the Chief Justice to be authorized?
A. That's the part I'm not sure about. I think it's that -- the recusal assistant, but I'm not positive about that. I do know that finance doesn't do those. I believe that the recusal assistant -- but that's just what I believe happens.

Q. Are you aware of how this -- I mean, I was just asking about a specific part of the process.

A. Uh-huh.

Q. But are you aware of how this process works overall, as far as -- you know, when it's triggered with the recusal clerk, as to approaching this $20,000 limit, what happens after that and then the -- you know, the next step after that until the senior status judge is paid as a 1099 employee?

A. No, I don't -- I don't know all those details, how it gets communicated back and forth, no.

Q. At what point do you become aware that a senior status judge is being treated as an independent contractor?

A. From the files in my office -- at least on one occasion -- I had a memo from the Deputy Administrative Director. She had -- she was sending the memo to the senior status judge indicating, "Here's your -- here's your form for the WV-48," and she kind of outlined some
-- you know, letting that person know they're responsible for paying their own taxes and that sort of thing.

And then that form came to me - I'm copied on the form - and the WV-48 came along with that.

Q. Do you recall if this was a practice that was being followed when you first came to the Court?

A. The Court was already following that practice when I was hired, yes.

Q. Do you recall or have any knowledge as to how long this practice has been followed?

A. No, I have no idea when it started.

Q. About how many senior status judges a year exceed this -- this limitation?

A. I don't know how many -- I don't know specifically how many exceed it. In a meeting the other day, I said maybe three to four, but I think it may be just -- I'm going to say between one and three per year probably.

It's not a frequent occurrence to go over that -- that $20,000 cap. We have a lot of senior status judges, but I think the majority stay below the cap. But there are occasions when they go over their
Q. And you just -- you testified a moment ago that when the WV-48 forms are being filled out, that you -- you recall an e-mail, I think, being sent to one of the senior status judges. Is there any type of cover document or informational document provided to the senior status judge about the WV-48 form or why they're being treated as an independent contractor?

A. That document I was referring to was actually a memo from the Deputy Administrative Director, and it was doing that specific thing. It outlined kind of the steps of an independent contractor and why that person was being changed over to the status of an independent contractor.

In my files, I just had the one, but it looked like a form letter, so I think there could be others that, for some reason or another, I just didn't, you know, stick in this file.

Q. But you're not aware of whether those -- that cover letter would be provided to every senior status judge that would exceed that limitation?

A. I cannot say that they did or did not, right. I don't know that.

Q. Now, if I can, I will direct your attention
to Exhibit No. 65. Do you recognize what that document is?

A. Yes, that's an invoice from Judge Keadle, filling in as a senior status judge, and it says "Senior Status Independent Contractor" at the top.

Q. And the second page of that exhibit, page 1 of the Supreme Court invoice. Can you tell the Committee what that document is?

A. Oh. I'm sorry, that's what I was referring to when I answered the first question. I'm sorry.

Q. Oh, I'm sorry, I thought you were looking at the cover page. Well, then we'll go ahead and skip to the fourth page of this exhibit. Could you explain to the Committee what that document is?

A. Is this the WV-48 form?

Q. Correct.

A. I want to make sure I'm on the right page. Yes.

Q. Yes.

A. Okay. So this is the Agreement form between Judge Keadle and the Court outlining the scope of his work. It says he's to be appointed as a senior status judge, and that this -- dates of service cover April 16th, 2013 to December 31, 2013. Gives the daily rate
of pay of $435.00, and is signed by the Chief Justice
at that time, Justice Benjamin, and Judge Keadle has
signed -- and I see his Social Security number's on
there. He signed on the bottom right.

Q. Yeah, we'll -- we'll redact that. And one of
these forms would have been filled out for each justice
that -- or not each justice.

-- for each senior status judge that
would exceed that limitation you were talking about?

A. I've not gone back and personally audited all
of these. But there should be one of these for each
one, so I would expect to find them. I know that in my
file, I had probably ten of these.

But I don't want to testify that
there's absolutely one for each one. There should be.

Q. But it would have been practice of the Court
to have one of these filled out for a senior status
judge that is exceeding that limitation?

A. That is correct, that would be the practice,
yes.

Q. And can you go to Exhibit No. 66? And if you
could flip to the last page on that, the WV-48 form.
For which judge was this document completed?

A. This is a senior status form for Judge Thomas
Steptoe, same thing, and it outlines the dates of
service from June 25th, 2012 to December 31, 2012. So
any work performed during those days would have been
paid according to this form.

And it's signed by Justice Ketchum and
signed by Judge Steptoe, and again, his Social Security
number is on this one as well.

Q. And if you could turn to Exhibit No. 67. And
explain the WV-48 form, the text of that exhibit,
please.

A. This one is for Judge Keadle covering the
dates of service of June 30th, 2014–December 31, 2014,
at $435.00 a day.

And again, this contemplates any work
after that day. And this one is signed by then Chief
Justice Davis and Judge Keadle.

Q. And if you could turn to Exhibit No. 68 and
explain that document for the Committee, please.

A. This is another form for Judge Keadle -- and
there's different WV-48s because the scope -- the time
frame changes on these documents. So this one covers
certain dates of service from September 1, 2015 to
December 31, 2015 at $435.00 a day.

It's signed by then Chief Justice
Q. Who were these WV-48 forms submitted to?
A. These would come to finance, so that when we had an invoice from the judge, we could attach this contract to it. Or this Agreement form to the invoice to submit to the State Auditor's Office.

Q. Did -- who was your predecessor in your position right now?
A. My predecessor was Mike Proops.

Q. Did he communicate to you how this practice was supposed to be followed when you -- when you first came into your position?
A. Well, he told me about the senior status judges and that there would be a period of time when they may exceed their threshold for their retirement, and if that happened, they would be -- they would switch to independent contractor status and that I would have these WV-48 forms.

So he just kind of let me know that that's how that had been done and to expect that that may happen from time to time.

Q. To your knowledge, was there -- or did any senior status judge or otherwise appointed judge or justice ever repay money that -- that they believed to
be exceeding the -- the limit?

A. Yes. Justice McHugh repaid money to the State when he was a justice, when he replaced Justice Albright.

Q. Could you explain to the Committee the circumstances surrounding his repayment to the State?

A. Yes. Mike Proops told me about that as well, that -- told me where that -- told me that Justice Albright had passed away on the bench, and Justice McHugh was appointed to -- for the rest of his term.

And I was told that Justice McHugh did not feel that that was right, for him to draw his retirement and get paid by the State at the same time, and so he chose to - Justice McHugh - chose to return his earnings to the State.

I was told they had set up a special fund for it and that I was to get the check from Justice McHugh - he would bring it to me - and I was to then take it down the hallway to the State Treasurer's Office and they would take care of it, as far as depositing the money.

And so that's how we did it for the next six months while Justice McHugh was on the bench.

Q. At any time did anyone communicate a reason
to you as to why this process was followed with regard
to filling out the WV-48 forms upon approaching the --
the limitation?

A. My understanding was just that -- just that
cap on their retirement earnings, that they couldn't earn, on payroll, more than some certain amount, and so they would fill these WV-48s out to pay them as an independent contractor.

Q. And just so we're clear, when you refer to that cap, that is a cap that was communicated - at least to your office - from the retirement board; is that --

A. No. I'm sorry.

Q. Is that correct?

A. No. Payroll told me what the cap was. I think payroll got it from the retirement board.

Q. Are you aware of a -- or were you aware during the time in which this process was followed of a statutory limitation on -- on judges' compensation when they sit as senior status judges?

A. No, that had not been discussed with me.

Q. Who at the Supreme Court is aware of this procedure that is followed for senior status judges that approach the limitation that you're aware of?
A. The people at the Court aware of it should be the recusal assistant, the payroll staff, the justices and the folks in Finance who receive these to pay as independent contractors.

Q. And would you say that this occurred during each year in which you've been with the Court? Or has the practice occurred --

A. Yes, it has occurred each year.

Q. So each Chief Justice for each year for which you've been with the Court has authorized these payments?

A. Based on what I've seen, yes, that's correct.

Q. I believe that's -- that's all the information I have on that issue.

And I just want to finish up with a couple questions about the work environment and the culture at the Court. It seems -- you know, in our -- in my examination of you, that -- that there were times in which the environment was less than friendly.

Would you -- could you provide a characterization of how the -- the work environment was at the Court when you came on and then how that may have changed during your time with the Court?

A. I'd say the work environment changed
dramatically in 2017. We -- after Mr. Canterbury was
let go, we got a new Administrative Director. Justice
Loughry was then the Chief, and there started being a
lot of terminations and restructuring and -- and that,
I think, created a lot of feelings of uncertainty in
the administrative staff.

You know, people didn't really know how
secure their jobs were anymore due to a lot -- a lot of
restructuring.

Q. What was the main difference you noticed in
the Court when -- when Justice Loughry was Chief
Justice as compared to the other justices?

A. Justice Loughry was more present in the
administrative office than I remember other Chief
Justices being.

Justice Ketchum would come downstairs
from time -- when I say "downstairs," I'm -- the
administrative offices are on the first floor and the
justices are on the third floor.

So on a day-to-day basis, we don't have
a lot of interaction with them unless they come
downstairs or we're called to go upstairs for some
reason.

And Justice Ketchum would come through
occasionally and say hello and walk through the office. But generally the others, you never saw them downstairs.

But Justice Loughry was very present—almost on a daily basis—in the administrative office.

Q. And I believe earlier we talked about how information would flow from the Supreme Court Justices down to the Administrative Director and then down to the -- to the division heads, I believe they were called.

A. Correct.

Q. Do you recall any times in which information did not follow that normal chain and you would have had direct communication with -- with one of the justices?

A. Yes. I can say that nearly every justice from time to time has communicated with me directly, asking me a question or asking me to -- to look into one issue or another, that they felt like maybe they weren't getting all the facts that they wanted, so they would come to me directly to get information.

Generally, it would go through the Administrative Director, those requests would. But sometimes, it would come to me directly, and they would even ask me not to disclose that to the Administrative
Q. Were there any circumstances or occasions where the Administrative Director would have gained knowledge that the justices had been communicating with you directly?

A. Yes. There was a time when Steve Canterbury became very upset with me about something that Justice Workman had asked me personally -- she was having -- she had initiated the conversation with me and was asking some -- on some personnel issues, and I just gave her a straight answer.

And she asked me not to say anything to him, and I didn't.

And then she felt compelled to say some -- somewhere in that conversation, something came up that she felt she needed to address with him. And so he then became aware of it and became pretty upset with me that I would speak to her directly and not tell him about it.

But she had specifically told me, "Don't tell Steve," so --

Q. What -- who would have communicated to you -- well, let me -- let me strike that.

There was a -- you've testified that
there was a personnel manual that you had -- were given when you first became employed with the Court. Is that correct?

A. Yes, that's correct.

Q. But the personnel manual was devoid of policies regarding expenditures of money; is that correct?

A. Yes, that's correct.

Q. Was there any --

A. It didn't address that at all.

Q. Was there an organizational chart in the personnel manual that provided a hierarchy of how information was supposed to flow within the Court?

A. No, there was no organizational chart.

Justice Workman had asked that an organizational chart be developed. I believe that was in 2015 when she was chief. Because she wanted to see -- I mean, there was -- everybody knew what the structure was, but it was never defined on paper. You just knew how to operate.

But Justice Workman had asked that that be formalized, an organizational chart.

Q. How did you learn that structure when you first came on the Court? Is that something that you learned as you -- as a part of on-the-job training, or
was that communicated to you by your supervisor that
"This is" -- you know, "This is how we do things and
this is how information is conveyed"?

A. That would have been directly from Steve
Canterbury to me letting -- because he was my direct
supervisor.

-- that I was to communicate issues
through him to the justices. And the same thing would
happen if they needed anything; they would go through
him to me, so that he knew everything that was going
on.

Q. What about the flow of information between
you or your division and other divisions underneath
within the Administrative Director's Office? How often
-- or how freely is that information exchanged or
shared?

A. We were free to communicate with other
directors and share information. We did not have to
run any of that through the Administrative Director.
It was only information from the justices, just -- just
the -- the up-and-down information. The side-to-side
information was fine.

Q. But within the -- within the Finance
Division, did you have regular communication with the
payroll office?

(Counsel conferred with the witness.)

A. Payroll is not in Finance; payroll is its own separate division.

Q. I'm sorry, the -- did you have regular communications with -- with payroll as a separate division?

A. With the payroll director, occasionally, if she had questions about something or I had questions about something. Yes, especially -- the reason I would initiate conversations with payroll would be if I saw something on the financials, somebody's salary posting in a wrong section on the -- on the Court's financial statements.

Let's say somebody was supposed to be in administration and they were being -- the allocation looked like they were a probation employee. Then I would say, "You need to go look at" such and such employee, "I'm getting an incorrect funding stream here."

Q. Did you have any impression as to why the structure of the Court was set up as it was? And what I mean by that, why the flow of information had to go through Steve Canterbury to the justices and why, you
know, if an issue were raised, why you would not be able to address the justice directly?

A. He always -- Mr. Canterbury always told me in his role, he needed to know everything that was going on, and he couldn't do his job effectively if he didn't know everything. So any conversations with any member of the Court were supposed to be reported to him immediately, if they contacted me.

I was to never contact them directly. But if they contacted me, he was to know immediately.

Q. Was he aware of the -- the 1099 practice with senior status judges?

A. To the best of my recollection, he was. It -- it would have been nearly impossible for him to not know since he knew everything that was going on back and forth. I recall he and I talking about that, so I don't know how he couldn't have known.

Q. Did you have a personal feeling as to whether this 1099 practice was proper, as a CPA, or did you not have an opinion at all based on the information that you were given?

A. Based on the information I was given, I -- I did not have an opinion. The Chief Justice -- if it's a legal issue, the Chief Justice already looked at it
and issued their determination, and it was not up to me
to question whether or not the Chief Justice had made a
proper determination about whether this person could or
should be paid on a 1099.

My job was to make sure that when we
recorded it, we recorded it correctly.

Q. And could you tell us again how the
communication from the Chief Justice regarding the
payment of the senior status judges would -- who that
would go to and how that would be communicated?

A. Can you rephrase the question?

Q. I can rephrase.

A. I'm not sure I understood.

Q. When the -- when the Chief Justice would
authorize the WV-48s - the treatment of a senior status
judge as a 1099 employee - where did the communication
of their approval go to next?

A. My understanding is that would go to the
recusal assistant. I think that she made a copy for
her file of the WV-48, and then generally, those
originals would make it down to finance so that we had
them in our files to attach to the invoices that would
go with them.

Q. Are you aware of any conversations that the
justices had among themselves regarding the treatment
of senior status judges as 1099 employees?

   A. No, I'm not aware of anything like that, no.
   Q. Also with regard to the work environment and
culture of the Court, were you -- were you - or are you
- aware of anyone that directly feared for their jobs
after Justice Loughry took over as Chief Justice?

   A. I would say most everyone did, because there
were a lot of terminations going on, a lot of
restructuring, and just the general feeling in the
administrative office was: Anybody can be let go any
day.

   There was just a lot of -- a lot of
change going on at that time.
   Q. And how did that affect the morale within the
Court?
   A. Among the employees, everybody became very
nervous and, you know, feared for their jobs on a daily
basis. And some people did get terminated. After the
initial series of terminations, there were more.

   And then other people started looking
for other employment. Many people resigned before they
got -- because they felt like they may -- they may get
fired just any day, so some people left voluntarily.
Q. Are you aware of how many people either left voluntarily or were terminated from their position after that changeover in 2017?

A. I'm gonna say in administration, probably 20 people. That's kind of a guess based on what I can recall. I'm gonna say about 20 positions were either eliminated or consolidated into other positions.

Q. Did anyone ever have a meeting with you regarding your employment with the Court to assure you that you're -- you know, you were fine in your position, or any conversations to that effect?

A. I think there may have been conversations like that, but, I mean, we were "at will" employees, so even if somebody says that, it doesn't really mean anything.

Q. At any time during your employment with the Court, were you ever threatened to do something or coerced or made to do something under duress that -- that you didn't feel comfortable doing?

A. No.

Q. Okay.

MR. HARDISON: Ms. Troy, I believe that's all the questions I have for you at this point. Mr. Chairman?
CHAIRMAN SHOTT: Thank you, Ms. Troy. And I'm sure if you followed what we've been doing in this process, we generally allow our members to ask follow-up questions.

But at the time it is, we're going to give you a break - as well as our members a break - for lunch, so we're going to be in recess until 1:45. Hopefully that will give you sufficient time to get something to eat.

We'll be in recess until 1:45.

(A recess was taken for lunch after which the proceedings continued as follows:)

CHAIRMAN SHOTT: We're back from our recess. We were in the process of our questioning of Ms. Troy.

Ms. Troy, you'll still be under the same oath as you were before the break.

The way we'll proceed at this point is: I'm going to start on my far left and sweep across the room to my far right and then come back to the left and -- and proceed in that fashion. I don't think we've done it that way.

So Delegate Fast, do you have any
questions for Ms. Troy?

DELEGATE FAST: Yes. Thank you, Mr. Chairman.

Thank you, Ms. Troy, for being here.

EXAMINATION

BY DELEGATE FAST:

Q. The idea that there were no written policies regarding spending – I think that's what you testified to – and Justice Workman recommended that a written policy be promulgated, among other things, including the P-cards. Is that correct?

A. Yes, she --

Q. Okay. When was this request made by her?

A. That would have been the summer or possibly fall of 2015. It was the year that she was the Chief Justice, the last time she was the Chief Justice.

Q. So it was just -- that's when she was the Chief Justice?

A. Correct, yes.

Q. Okay. And if -- just summarizing: I think you said that Steve Canterbury said "No" or it -- to that effect, that that wasn't necessary or -- or what was Mr. Canterbury's response?

(Counsel conferred conferred with the witness.)
A. That I didn't need to worry about developing those, because we weren't going to do that.

Q. So is this where Justice Workman came directly to you, or did she present that in a conference meeting among all the justices?

A. I can't say specifically. I know that she told me personally that she wanted policies and procedures developed related to P-card. I believe that they discussed that in administrative conference as well, although I'm not positive, because I typically don't participate in those.

But she had communicated to me directly that she was going to make that request of the Administrative Director. It would be his responsibility to make sure that that -- her request got completed.

Q. So if I can understand this correctly, she's the Chief Justice, and she wants a written policy on P-cards, and Steve Canterbury comes to you and says, "Not gonna do it."

A. He let me know that she had made that request of him and I needed -- did not need to worry about it, we were not going to do that.

Q. So did this communication come from Ms. Work -- Justice Workman to you, or did it come from Steve
Canterbury to you?

A. Justice Workman told me personally that she was going to make that request of the Administrative Director. It would be his -- his responsibility to make sure that that happened.

So she was following the hierarchy of -- of how things were done, you know, in the administrative offices.

Q. And then subsequently Steve Canterbury told you, "Wasn't necessary, it wasn't gonna happen."

A. That's correct.

Q. Huh.

A. And then Justice Workman, I believe, in 2017 asked me about that and wanted to know "Why were those policies never developed," and so I told her what had happened with Steve Canterbury, where he said, "Don't worry about that, we're not gonna do that."

Q. And at that point, when she followed up, she was no longer Chief Justice?

A. Correct.

Q. And what was her response to your reply?

A. I think she was pretty aggravated that he had not followed through on the request that she had given to him.
Q. And so it was from 2015 until 2017 that she followed up on that issue about a -- creating a written policy on P-cards.

A. She could have asked me in between, but I don't recall. I just know that specifically that issue came up again in 2017. She -- the microphone went off. She may have assumed that it was completed. I can't really say for sure.

But I do know that she specifically addressed it again in 2017. And it could have been when it came up later that those didn't exist, and that could have been what prompted her to ask me why they didn't exist.

Q. All right. So it's safe to say that during the remainder of her tenure as Chief Justice, she did not follow through to make sure that had been done with her administrative director. Because obviously, it wasn't done.

A. I can't say for sure if she asked him any more follow-up questions after that. She -- she may have. I really can't say.

And I -- I'm not sure when she would have made that request to him. I believe it would be in the administrative conference notes somewhere, but I
don't know when she made that official request.

Q. Was Steve Canterbury bucking her on this issue?

A. In my opinion, yes.

Q. Okay. Okay. Did Justice Loughry implement any written policies and procedures that you're aware of regarding P-cards or purchases or anything of those -- anything like that after he became Chief Justice?

A. No, he did not. We started drafting some policies and procedures, and that was under the direction of Judge Johnson, who became the Administrative Director in 2017.

He -- he fully supported that and believed that that was good policy and -- to have written policies, that was a good practice to do.

Q. So Judge Johnson did start implementing written policies and procedures --

A. Yes, he did.

Q. -- for -- okay.

A. Uh-huh.

Q. So Judge Johnson did not come on as Administrative Director until Justice Loughry became chief judge, right? Chief Justice.

A. That is correct, yes.
Q. Okay.

A. Okay, the travel policy.

Q. I know there was a major revision to administrative director?

A. Yes, that's correct.

Q. And what policies were implemented.

A. And he gets his direction from the justices.

Q. And he gets his direction from the justices.

A. Yes, that's correct.

Q. Okay.

A. Yes, that's correct.

Q. Understood.

Q. So it could have been -- yeah, I just maybe wasn't that direction from him, I took it from Judge Johnson.

A. Yeah, I'm --

Q. Did he direct that to be done. And I -- I didn't take that direction from him, I took it to mean, didn't take your question. I think -- I took it to mean, didn't take --

A. Yeah, I'm sorry, I could have misunderstood.

Q. Through the Administrative Director.

A. Yeah, I'm --

Q. Were implemented at that point.

Justice Loughry became Chief Justice, then policies

A. Okay, what policies -- well, I guess then my

Q. Okay, that's correct.

A. Yes, that's correct.

Q. Come about.

Administrative Director, and then policies started to

Justice Loughry became Chief Justice, then policies

And the answer would be yes, that when -- when

Q. Okay.

A. Yes, that's correct.

Q. So Justice Loughry and two others terminated to

Steve Canterbury. They hired Gary Johnson as the
A. We had in draft form a policy for P-card.
Q. Uh-huh.
A. We had in draft form a policy for procurement.
Q. Okay.
A. Those had been submitted -- or were getting ready to be submitted to the Court, and then other fires kind of got in the way and those kind of got pushed to the back burner.

So they never got fully implemented, but he was in the process of doing that.

Q. Okay. And if there were communications between Judge Johnson, Administrative Director, and the justices, they would -- those communications could be in what kind of notes?
A. Likely the notes of the administrative conferences. Typically, they meet monthly to discuss administrative issues, the justices and the Administrative Director do.

Q. Okay. As to Exhibit 13, would you be able to turn there, please?

And I don't know if we have a computer operator. Let me see if I can find it myself.

And if you would, please, turn to the
third page of that exhibit, the fourth bullet point from the bottom. Counsel had asked you about that, something about the Court's Fixed Asset Inventory Management System had not been updated since 2010.

It says here, "Mr. Canterbury had informed her," referring to you, "this was intentional because he did not want others knowing what the Court had" -- had since -- "had," period.

Is that a correct statement?

A. That is correct, to the best of my recollection, yes.

Q. Can you elaborate on that? What do you mean, he didn't want the Court -- he didn't want others knowing what the Court had?

A. I mean, detail -- what I mean by that is details of the fixed assets: Putting items in specifically, how much did we pay for a specific chair or a particular desk or a particular sofa. That level of detail.

I felt that he did not want that level of specificity in the State's fixed assets -- fixed asset logs.

Q. Does that strike you --

(Counsel conferred with the witness.)
Q. -- as nontransparent to the public?
A. It strikes me that way, yes. And now finance has taken on the role of making sure that all assets are recorded properly.

At that time, IT entered their own assets, and the Administrative Services Division entered furniture and that -- that type of things.

But we took that under in Finance last fall to make sure that everything is accurately entered in the State's accounting records, because there should be nothing hidden. It should all be transparent.

Q. So that would have included all of the -- the desk work, the chairs, the -- in the justices' offices, the tables, the glass, the thick glass in Justice Davis' office, the floor in Justice Loughry's office.

All of that would have been couched in this fixed asset column?
A. Yes, and it's all in there now, yes.
Q. Okay. And up until at least -- well, when was the change made?
A. Fall of -- fall of 2017, so we went back and started entering all of that old information.
Q. So after Justice Loughry became Chief Justice, this practice of hiding the ball changed.
A. That is correct.

Q. On the Post Audit Report, second -- second Post Audit Report, Appendix E -- it's near the very end of that report, that's -- that's where, I think, you had already testified --

And I don't want to put words in your mouth, so if I say something that's not correct, tell me.

-- but you had told Steve Canterbury that the commuting by Justice Ketchum, in your opinion, would have been a taxable fringe benefit, and Steve Canterbury told you it was none of your business.

Is that correct?

A. That is my recollection of my conversation with Steve Canterbury, yes.

Q. Okay. You -- did you specifically tell Steve Canterbury that, in your opinion as a CPA, that that issue of Justice Ketchum commuting was a taxable fringe benefit?

A. The way I recall the conversation was: "I keep seeing a State car frequently parked in Justice Ketchum's parking space. If he is using the vehicle for personal use, including commuting, that could be a pers -- a taxable fringe benefit."
I mean, he could be using it only on State business. I don't know; I didn't know. And it could be that it was already on his W-2, but I thought it was important to disclose that to him.

Q. Okay. And was this during the time that the IRS was performing his audit?

A. No, this would have been immediately after I was hired, within the first few months. And the way that I recall that is because of where my parking space was at the time.

So this would have been in the fall, early fall, of 2012, that we had that conversation.

Q. Okay. Well well before the IRS audit then.

A. Yes.

Q. And so Steve Canterbury knew then, when the IRS audit did come about, that -- unless he just totally forgot, he knew what you had told him, that you believed that would have been a taxable fringe benefit.

A. Steve had already been terminated by that time. He was let go in January of 2017, and we got the first audit notice in May of '17. So he was not there at that time.

Q. Are you aware that Steve Canterbury testified under oath that the reason the IRS concluded that no
amended W-2 forms were necessary was because the IRS just didn't have the information?

A. I did not hear all of Steve testi -- Steve's testimony. I did not hear that section of his testimony, no.

Q. If that's what he testified, would that have been a truthful statement, that the IRS didn't have the -- the information?

A. What -- what was his testimony again?

Q. That --

A. Just so I'm clear on that.

Q. That the IRS, the reason they concluded that no amended W-2s were necessary involving the commuting issue was because they didn't have the correct information.

A. I really can't speak to that, because I wasn't involved when they had the discussion about the vehicle, so I don't want to speculate on that.

Q. Okay. Let me ask you this: Did -- after Justice Loughry became Chief Justice of the Supreme Court, were there a reduction in the overall expenditures of the Court?

A. Yes, there were dramatic reductions.

Q. Okay. Can you give me an estimate about how
much, when you say "dramatic"? We talking hundreds? Millions?

   A. Off the top of my head, I'm gonna say at least $8,000,000 savings.

   Q. And was that at the direction of Justice Loughry or the leadership of Justice Loughry, or someone else?

   A. I can't say under the direction, but under the leadership. He would have been Chief Justice during that time, yes.

   Q. And as far as the spend -- we talked about -- we're generically calling it a spend-down, and I understand there were a lot of expenses and renovation and construction on the -- in the east wing of the Supreme Court.

   Is there a -- any breakdown anywhere between what was a renovation versus what was a restoration? Because I've seen in the documents, it's sort of -- these -- these terms seem to be fluctuating back and forth.

   A. I've never seen it broken down separately, right, what was a restoration versus a renovation, no. I've never seen it that way.

   Q. Okay. Now, on these renovations/
restorations -- first of all, is it true that that really started in 2008?

    A. I believe that's correct, based on my search of documents. I didn't come to work for the Court until 2012, so I wasn't there to have kind of firsthand knowledge of that. But when I looked back through the documents, I believe that's when the work began, was in 2008.

    Q. Okay. So if someone made that statement, it would not be a lie then.

    A. That's correct. I think the Silling invoices start -- I think the Silling contract even was signed in 2008. I think that's correct.

    Q. And do you know how much -- if at all -- the Capitol Building Commission was involved in the renovations/restorations of the justices -- well, the whole Supreme Court. I mean, we just took a tour. Lot of nice stuff. Some would call it extravagant; some may not.

How much -- if at all -- was the Capitol Building Commission involved in those decisions to -- to do what was done over there?

    A. I have no knowledge of that at all. No one's ever spoken to me about that.
Q. Okay. Do you know if Steve Canterbury was a member of the Capitol Building Commission, just by virtue of his office or his position?

A. I don't know that it was by virtue of his position, because -- only because I don't know that Judge Johnson held the same role. I don't know -- I do know that Steve was a member of -- of that, but I don't know how he became a member of it.

Q. Okay. Now, you had mentioned that -- earlier, you said you got the impression that justices did not know what their office renovations cost -- cost. Am I correct in -- and again, I don't want to put words in your mouth.

A. I believe that to be correct, because no one had ever asked me to tally up how much their offices cost. So if they knew, I don't know how they would have known. Because they didn't see the invoices.

Q. Can you expound on that? I mean, if -- if you're -- did they -- were they completely in the dark on the cost of these things? I mean, putting a inlaid floor of the State of West Virginia or glass shelves that are four inches thick, is there any -- can you expound?

I mean, were they com -- do you believe
they were completely oblivious as to the costs? Having couches reupholstered at thousands and thousands of dollars?

A. I really don't know, because they never spoke to me about -- when their offices were being renovated or restored or whatever we want to call it, no one ever came to me to say, "How much is -- how much is this costing? What's the estimate on this"?

I was never asked for that. Nor did I ever speak to them while these restoration/renovation projects were going on. It was just not something I got involved in.

Q. Okay. Now, you saw a lot of invoices come through -- across your desk, with all these renovations, expenses, etc., a lot of contractors, architects, things like that.

Did you realize -- and this is probably an opinion question, but maybe not. Did you realize that there were any particular contractors, architects, subcontractors that were involved in any of this work that were just milking the system?

A. No, not that I was aware of. I wasn't really that involved in walking through the offices while these renovations were going on. I know that Steve
Canterbury was very involved and -- and met with the contractors and kind of oversaw the project, but I personally didn't go upstairs much at all during that time.

Q. And who approved -- who was the primary person to approve payment of invoices that would come in?

A. Most all of them have Steve Canterbury's approval on them, have his signature on them.

Q. And do you know if he -- if he got an invoice for, let's say, $30,000, did he have to go get someone else's approval, or could he just sign it and -- and it was done, paid for?

A. What he relayed to me was that he had full authority to sign invoices that were related to the remodeling of the offices, that he did not need additional authority for that.

Q. Did you ever see him take a -- let's say, a $80,000 invoice and say, "Whoa, I need to -- I need to check into" -- did he ever go get approval, discussion on anything? Or did he just sign it and give it back to you?

A. If he took it to the Court, I wouldn't have known about that. What I can say is that I don't
recall seeing any invoices signed by a justice.

So if he took it to them to discuss it, he didn't get a signature on it.

Q. And how -- how fast of a turnaround -- if you gave him an invoice -- or did you physically present an invoice, "Here's another one that needs paid"?

A. The contractor invoices from Neighborgall always went through -- or I say "always." I think -- I think that's a correct statement.

-- went through our administrative office -- administrative services director first, and then he would say, "This amount of work has been completed." There would be a memo with that. He would send that to Steve Canterbury for Steve's signature. Then the invoice would come to Finance for payment.

Q. So you got it after Steve signed it?

A. That is correct, yes.

Q. Okay. And as far as Exhibit 64, that's the exhibit talking about the memo of Justice Davis about some things that had been paid by the State that she was supposed to pay for --

A. Uh-huh.

Q. -- and so I think you said that she went
ahead and cut a check out of her personal funds to pay for those things.

A. Yes, she did.

Q. Is that correct?

How did that happen? I mean, how did things like that happen, where the State paid for something that wasn't supposed to be paid for by the State?

A. Well, I can't really say it wasn't supposed to be paid by the State. Only in that -- I don't know if it's in this or not. I think in -- if you have the large book that has all of the breakdown by offices, there's -- there's even a purchase order, like for the sofa, the $6,000 sofa. There was a purchase order done for that.

So someone knew in advance that they were gonna use State funds for that. Quite frankly, I was surprised to see this memo saying these were -- the memo from Steve Canterbury to Justice Davis saying these were her personal items. 

Because when I looked at the documentation, the documentation indicated State money was to be used to purchase those items.

So I was kind of surprised that there
was a miscommunication there between the two.

Q. So you were surprised at Exhibit 64?
A. Yes.

Q. Okay. Just a couple more questions. The senior status judge issue. And -- and I heard your testimony that, you know, if a -- if a senior status judge who's drawing retirement and then gets assigned to a special assignment as a circuit judge, but then their compensation exceeded that of a sitting judge, then -- then the practice was to convert them to an independent contractor?

Is that -- am I correct?
A. My understanding was they were converted when it had something to do with the amount they can earn before their retirement benefits were reduced. That's what I was told, that this was an issue with the retirement board.

They could only earn up to a certain amount; and otherwise, their retirement benefits were reduced.

And so that was the point when they were switched to independent contractor status.

Q. Okay. Did that practice ever change?
A. It changed after the IRS audit, because the
IRS agents looked specifically at the senior status judges and found that that was not proper to pay them on a 1099, regardless of what the issue might be, that they needed to stay as W-2 employees.

Q. Okay.

A. And so after the IRS audit, that practice ended.

Q. And when was the IRS audit again?

A. It was completed -- I want to say it wrapped -- field work wrapped up in December of '17, but I believe their final sign-off date was sometime in January of '18.

Q. Okay. And who implemented those changes? Was -- was that justices, the Chief Justice? Or do you know who implemented that change?

A. Our administrative counsel had the IRS rulings and went one by one with those rulings. Anything that the IRS found that they didn't agree with current practices, changes were made at that point based on the IRS rulings.

So administrative counsel initiated the change.

Q. Okay. And that -- that whole idea of just, on paper, converting someone from an employee to a
independent contractor, as a CPA, did that strike you as illegal?

   A. It did not strike me as illegal. The Chief Justice had signed the WV-48 form. I didn't feel it was my place to question the legal opinion of a Chief Justice. If they thought it was proper to do it that way, they -- they make legal determinations, and I follow those.

   Q. And how many Chief Justices signed this form that you know of?

   A. Based on the documents in my office, I saw a WV-48 signed by Justice Workman, Justice Davis, Justice Benjamin and Justice Ketchum. I did not see any signed by Justice McHugh, but I was not there at any point when he would have -- would have been Chief Justice, so I didn't -- wouldn't expect to find any from him.

   Q. So Workman, Davis, Benjamin and Ketchum.

   A. Yes.

   Q. Not Loughry?

   A. I believe there may be one by Justice Loughry. It wasn't in the -- I just have a file in my desk, so I pulled out the ones that I had there and reviewed them.

   So I don't want to testify that he did
not sign any. I just can testify that of the ones that I reviewed before coming here today, I did not see any with his signature. But it could be they're just not in that file together.

Q. You're not sure.
A. I'm not sure exactly.

Q. Okay. Now, last question --

CHAIRMAN SHOTT: Excuse me, Delegate Fast. I'm going to move on, if you'll hold your last question --

DELEGATE FAST: One more question?
CHAIRMAN SHOTT: I've heard that before.

DELEGATE FAST: No, it is.
CHAIRMAN SHOTT: All right. One more question.

BY DELEGATE FAST:

Q. You testified, Ms. Troy, that Justice Workman came straight to you on some personal issues and did not want Steve Canterbury to learn about it, and then he learned about it and he got upset at you. What were the personal issues?
A. It was personnel issues in the office. She was asking about -- specifically about some employees
in Finance and who was kind of pulling their weight and who was -- it was personnel issues. And she wanted to know specifically what my concerns were and were my concerns being addressed.

And she got upset about something and felt that Steve Canterbury wasn't doing what he should have been doing, and that's when she felt that she should address it with him.

DELEGATE FAST: Thank you very much. Thank you, Mr. Chairman.

CHAIRMAN SHOTT: Delegate Foster.

(Counsel conferred with the witness.)

EXAMINATION

BY DELEGATE FOSTER:

Q. My question's also about this Exhibit 64. And it involves the -- the things that were redone. And you said you were surprise -- you said you were surprised by it? And I'm trying to follow exactly what happened, because were there P.O.'s issued that said, "Hey, this is State property" --

If there was a P.O. issued, it wouldn't get paid -- basically it wouldn't get paid unless a P.O. was issued, which was basically claiming it was
Court property, correct?

A. Yes, exactly. When I saw the purchase order, that -- that let me know these weren't accidentally somehow paid with State money. There -- it was intended that State money would be spent for these items.

Q. Who would have issued that purchase order?

A. It's in the -- the big book here. Let me see if I can locate it.

Okay, it's in Exhibit 51. It's about seven, eight pages in. It's -- it's a purchase order, and it's issued to Capitol Business Interiors, and it's for a -- the total amount is $6100 for a sofa, and Fletch Adkins, who was the Director of Administrative Services, has signed that.

So to me, this is intending to use State money to purchase this. I believe there's a memo in here from him also to Steve Canterbury.

Yes, two pages after that. Here's a memo to Steve Canterbury from Fletcher Adkins saying "A proposal has been submitted by Capitol Business Interiors to provide a sofa requested for chambers," and Steve signed off on it and signed it.

Q. Steve sent -- and that -- and if
Mr. Canterbury signed off on it it was intended for purposes -- where is that -- for example, that sofa, where is it now?

    A. It's in Justice Davis' chambers.

    Q. And if it's considered personal property, is she intending to take it home after she would no longer be employed at the Court? Or why -- why this -- if it was for use in the Court, reupholstered or redone, and then designated to be paid for by Davis, I'm not understanding where that comes from, if it was to be used in the courtroom -- or used in her office, and it was paid for by the State and then repaid.

    I guess -- I'm trying to follow where -- where -- is it because it's intended to be taken with her afterwards or -- or what's the intent? Or do you know what the intent is?

    A. I really have no idea. I mean, all I can do is, like you, kind of speculate as to why -- why these were to be her personal items.

    Q. But it was definitely something that was intended to be paid for by the State, which was signed off on by Steve Canterbury.

    A. Certainly all the documents look that way, and that's why I was very surprised to see it on this
list of personal items. Because he made the list of personal items and yet he authorized the purchase with State money.

Q. Okay.

A. So those two things were inconsistent to me.

Q. All right.

DELEGATE FOSTER: Thank you.

(Counsel conferred with the witness.)

CHAIRMAN SHOTT: Delegate Overington.

DELEGATE OVERINGTON: Thank you, Mr. Chairman.

Thank you for being here.

EXAMINATION

BY DELEGATE OVERINGTON:

Q. The -- was there an inventory list of who owned what versus what justices owned equipment or office furniture? Or was it just by memory that "I purchased this so it was mine"?

But was there any official record or listing of -- or anything marked on the furniture itself?

A. Not that I've ever seen, no.

Q. And there was or was not a list that indicated that this was the justice's personal versus
State purchased?

    A. No, I've never seen anything like that. In each justice's office or chambers, there could be a blend of personal items and State property, but I've never seen a list distinguishing one from the other, no.

Q. You had mentioned the disagreement with Justice Workman. Did you have any interaction with other justices as well where they were sort of bypassing the chain of command of you dealing with Steve Canterbury, not the justices themselves?

    A. Yes. Some with Justice Loughry as well. Because -- I think it's pretty well established that he and Steve Canterbury had -- had issues, and so -- I mean, normally, he would follow the chain of command and go through Steve, but sometimes he would come to me directly if he wanted -- wanted something and felt like maybe he wasn't gonna get the complete story that he wanted.

Q. Was that -- so you felt that was out of the chain of command, or was that appropriate, or did you feel comfortable interacting directly?

    A. In my position, I felt like I re -- and I still feel this way: I report to the Administrative
Director, as well as the five justices. So if any of them ask me for anything, I will always respond to whatever their request is. I don't have a problem answering them directly.

Q. So you didn't feel that it had to necessarily be filtered through Steve Canterbury.

A. No. I mean, if a justice wants to know something, then they certainly, I think, have the right to come and ask whatever it is they want to do or whatever -- whatever it is they want, they should have the right to do that.

Q. You and Delegate Fast mentioned that there were no limits on spending authority, that things didn't -- that Steve Canterbury would be able to, himself, approve spending requests for furniture and other office equipment?

A. That was my understanding from Steve, was that he was given kind of open authority to make these renovations happen. That was my understanding from Steve.

Q. And not only renovations, but office equipment, furniture, that type of thing as well.

A. Yes, that's correct. Anything -- anything related to that, yes.
Q. Did -- did you feel that there was a limit on this, what Steve could approve or not approve?

A. I never spoke to any of the justices about that. They never questioned me, and I never questioned them. So I went with what Steve had said, and that was that he had, you know, open authority related to the renovations with whatever they needed.

Q. Did you feel that he had to go back to them to get any approval or that he would be able to make all of those approvals on his own?

A. We never really had that conversation. If he -- if there would be a need or a time that he would need to go back, so --

I don't -- but I can't really say I have an opinion or a feeling on that one way or the other.

Q. Did you ever -- did -- did they ever make requests that you felt were unethical or that you felt uncomfortable approving?

A. No, not at all.

DELEGATE OVERINGTON: Thank you.

Thank you, Mr. Chairman.

CHAIRMAN SHOTT: Delegate -- Delegate Zatezalo.
DELEGATE ZATEZALO: None.

CHAIRMAN SHOTT: Delegate Pushkin.

DELEGATE PUSHKIN: Thank you, Mr. Chairman.

And thank you for being here.

EXAMINATION

BY DELEGATE PUSHKIN:

Q. A couple follow-up questions to the questions that were being asked by the gentlemen from the 32nd earlier. That was the first delegate that was asking you questions.

He asked about when certain policies in regards to use of State vehicles were -- were, I guess, put into writing or when those policies were developed, because before that, there wasn't an exact policy on that, as well as some other things, and you stated that was in 2017.

Was that in the fall of 2017, or was it in early '18?

A. I know they were being drafted in the fall of '17. I don't know when the Court officially adopted or approved the policy.

Q. Okay. Well, and when did Justice Loughry become Chief Justice? Was that in '16?
A. No, January of '17.
Q. Okay. So early '17.
A. Yes. I think they --
Q. Before the session -- before the session of 2017.
A. Yes, I may have misspoken a little bit there.
I think at the end of -- like December of '16, they --
the Court decides who will be the chief for the next year --
Q. Uh-huh.
A. -- and my understanding is it becomes official January 1 of the next year.
Q. Okay. But those policies weren't created until late 2017.
A. That is correct, yes.
Q. Now, it was also in late 2017 when the public first started hearing about some of the overspending going on in the Supreme Court. Is that true?
A. Yes. Kennie Bass made the -- really the first inquiry, and that was in October, I believe, 18th of 2017.
Q. So it was -- it was after the -- he made those inquiries and the news stories ran that those policies were -- were created in -- in response to
those stories.

A. I can't say if it was in response to that. I know that the IRS audit kind of prompted the start of looking at things. So to say it was prompted by -- by one thing or the other, I can't really say, because they were kind of going on at the same time.

Q. But it would be safe to say that these policies weren't started as soon as Justice Loughry took over as -- as Chief Justice, right? It was --

A. That would be a correct statement.

Q. It was almost a year afterwards, correct?

A. That is correct.

Q. Okay. He had also asked about reductions in spending on -- when Justice Loughry became Chief Justice, and you said, yeah, the -- you answered him that there was a reduction in spending. Now, during that time, were there not cuts made to the drug court?

A. There were dramatic cuts made to the drug courts --

Q. Uh-huh.

A. -- as well as the sex offender intense supervision program.

Q. The sex offender monitoring was not just cut; it was -- I mean, it was -- they did away with it,
right? They moved it under probation.
   A. Exactly. It was absorbed into probation, and
   30 some people were laid off.
   Q. Okay. And there were cuts to the guardian ad
   litem's program?
   A. That is correct as well, yes.
   Q. Okay. And this was all going on while the
   renovations were still going on over there in the east
   wing, right? At least some of the renovations to
   Justice Loughry's office.
   A. No, Justice Loughry's office would have been
   finished by that time.
   Justice Walker's office, those
   renovations, started sometime in 2017 when she took the
   bench. So those cuts would have been going on at that
   time.
   Q. Okay. I was looking for it, but I didn't --
   wasn't able to find it in this pile -- pile of papers I
   have here on my desk. There was -- one of the exhibits
   we've had was an Affidavit -- a sworn Affidavit from
   Kimberly Ellis. Are you familiar with that?
   A. Yes.
   Q. Okay. Do you -- would you -- is there
   anything that you saw on there that you would say was
less than factual?
   A. No, everything looked factual to me.
   Q. Okay. And you were actually at -- you stated earlier, you were at the meeting where she was asked if she recalled something a certain way and she said, "No, that's -- that's not exactly how I recall it" when -- I believe it was when Justice Loughry said that he told her that his off -- that the spending on his office should be the same as the other justices. Right?
   A. Yes.
   Q. So you were at that meeting.
   A. Yes, I was.
   Q. Okay. Well, okay, I'll stay with that meeting there. When -- no, I believe it was a -- it was a different one that you had with him where --
      Okay, when -- in putting together the -- I guess the FOIA response to Mr. Bass, I think you stated earlier that you didn't believe it was -- if you looked at like the expenses to Justice Davis' office or Justice Walker's office, there wasn't really an apples-to-apples comparison when you looked at -- at spending on the renovations to Justice Loughry's office because there -- it didn't -- it didn't reflect the like structural repairs that were going on, say, in
Justice Davis' office. Correct?

A. It didn't -- the book does not reflect the structural repairs in Justice Loughry's office.

Justice Davis' office is complete as it is.

Justice Walker's office is also.

So the missing information would be in Benjamin, Loughry, Workman and Ketchum's office.

Q. Okay. Now, did you say that you wanted to, I guess, subtract the spending that was made just for like structural repairs from the -- from that report, just to make it more of a -- like as was stated, like an apples-to-apples comparison?

A. Yes. I felt if I removed that from Justice Davis' office -- and -- and after the fact, I realized Justice Walker's office had the same issue.

Q. Uh-huh.

A. There's more fees in their office because those have those structural repairs in them.

So I thought, if I remove those, then I have something that's a true comparison as far as, you know, the renovation and the furnishings and that sort of thing.

Q. Okay. So you wanted to remove it. Now, I
and I wasn't -- I couldn't -- I was having a hard time
hearing earlier, and it wasn't really very clear to me.

Who told you not to?

A. Justice Loughry told me not to remove those
from the binder I'd put together because it was for
work in Justice Davis' office and that --

That is true; it is for work in her
office. But it just creates kind of a -- some
inconsistency in the book. It doesn't make hers
incorrect, but it's inconsistent if you compare it to
the other offices.

Q. So it would -- I mean, obviously, it would
make it a bigger number if you didn't subtract it,
right?

A. Yes. About $30,000, I think.

Q. Okay. And just to be clear, that was -- it
was Justice Loughry that asked you not to do that.

A. Yes. That's correct.

Q. Okay. All right. And you stated earlier
that during these renovations, that Justice Loughry was
very much involved with the work that was being done in
his own office? You said he was in your office a lot
during this time?

A. No, I was talking about -- I was asked about
how things changed after he became Chief Justice, and I said he was more frequently down in the administrative office than other Chief Justices had been.

Q. Oh, okay, I misunderstood that part then.

All right, well, thank you.

DELEGATE PUSHKIN: That's all the questions I have right now.

THE WITNESS: Thank you.

DELEGATE PUSHKIN: Thank you again.

CHAIRMAN SHOTT: Delegate Lane?

DELEGATE LANE: Thank you very much.

And thank you for being here.

EXAMINATION

BY DELEGATE LANE:

Q. I have several questions. The State rules relating to the purchase card, do those rules apply to the Supreme Court?

A. I think that's not for me to decide. I think some people feel that they don't apply entirely. I think there's language in there that says they apply to State agencies and institutions of higher learning, so I think the feeling was that generally we follow those practices. But there are some that we deviate from.

Q. So if the State purchasing rules say that you
can't use the purchasing card for working lunches, the Supreme Court felt that those rules did not apply to it?

A. I don't really want to speak for the -- for the Court as a whole. I think they viewed it as -- there's an allowance in there for hospitality, and I think they viewed that as hospitality, which would be a -- a lunch for a meeting, that sort of thing. So I think that's --

Again, I'm kind of relaying what I know about it.

Q. Well, what about purchasing lunches for themselves while they were deciding cases? Did they feel that the purchasing rules didn't apply to them?

A. We never -- I never had that conversation with any of them directly.

Q. Okay. Did the Court Administrator work for all of the justices, or just the Chief Justice?

A. The Court Administrator works for all of the justices.

Q. Okay. Would you have seen the invoices or billing for any outside counsel that any of the justices would have hired?

A. Either I saw it or someone on my staff would
have seen it, yes.

Q. Were there invoices for outside counsel that the justices hired?

A. I believe that on two or three occasions, yes.

Q. And could you relate those to me, please?

A. As I recall, there were two payments to -- or at least two instances of payments to Barbara Allen for work that she was doing in relation to work for the Court directly.

The other, I think, was someone named -- I think her last name was Rash, maybe Peggy Rash. I can't remember her first name. But that was somebody that had done some work, I think, as a law clerk for Justice Ketchum.

Those are the ones that I can recall off the top of my head.

Q. And what kind of work was Ms. Allen doing for the Court?

A. What I -- what has come to my mind right now is: There was a case where all the justices recused themselves and five new justices came in and she was, I think, working as their law clerk. I really don't know much detail to speak about that, but that's my general
Q. Okay. I think you testified that you provided - I'll call them - spreadsheets for the justices on a monthly basis to show the expenditures and where they were in relation to their overall budget. Is that correct?

A. Yes, that is correct.

Q. And so those spreadsheets would have included the expenditures for renovations of -- of the justices' offices.

A. They would have been encompassed in those financial statements. The level of specificity probably wasn't on there in great details, because that would be many, many pages, and they were used to seeing things at kind of a higher level.

But it would have been included in the total of the expenditures, yes.

Q. So the justices had access to what was being spent on the renovations.

A. The financial statements would have shown overall expenses. And if there was a question that something looked out of line, then certainly they would have made -- they could have made inquiries.

Q. Okay. Now, I think you said that you did see
the invoices for the senior status judges.

A. Yes, generally, yes.

Q. Okay. So if a judge signed the WV-48 was applicable to a particular judge, does that mean that that person's retirement was not reduced?

A. I don't know, because we don't -- in my position, I would never know what they were drawing for retirement and whether or not they had stopped their retirement benefits. That's not something I would have access to.

Q. Well, if you thought that a senior status judge could only make $20,000 before his or her retirement were reduced and that person, that senior status judge, signed a WV-48 to get paid, wouldn't -- would it be a logical assumption then that his or her retirement was not being reduced?

A. Yes, I think that would be reasonable.

Q. Okay. Thank you.

Now, you said that Justice -- when Justice Loughry became chief judge -- Chief Justice, restructuring took place and a lot of people were fired and a lot of restructuring done and probably $8,000,000 was saved.
A. Yes, that's correct.

Q. So did the Court reduce its budget request by $8,000,000 for the next year?

A. No, the budget request remained the same as the prior year.

Q. Okay. Why did -- why did Judge Johnson resign as Court Administrator?

A. I can't speculate. That would be a question for him.

Q. Okay. Thank you.

DELEGATE LANE: Okay, thank you.

CHAIRMAN SHOTT: Delegate Sobonya, do you have questions?

DELEGATE SOBONYA: Thank you for being here.

EXAMINATION

BY DELEGATE SOBONYA:

Q. One of my questions relates to the expenditures for the meals, and they're itemized -- I'm not sure what exhibit it is, but if you look at October 5th, there were three different charges. One was to SoHos for $237.18. That's in 2016, January through December, 2016.

So there was SoHos $237.00, South Hills
Market, $120.00 and South Hills Market again, $26.00. So there's three different expenditures on that same day. Do you know what that would entail?

A. Do you know which exhibit it is so I can refer to it real quick?

Q. Let me look at it. It's 43. 43, I'm sorry. Would that be lunch and dinner if it were on the same day?

MS. NEWBERGER: It's this one.

Q. October 5th, 2016.

A. Oh, okay, '16.

Q. It's down towards the bottom.

A. Oh, here.

(Counsel conferred with the witness.)

A. I can't tell by looking at this document. But what we should have in OASIS - and I don't know if it's in these exhibits anywhere - is the actual credit card images, the credit card receipts, and those would have a date -- a time stamp on them, so then we could see if it was lunch or dinner.

This report doesn't indicate that, so I would need those credit card receipts to see the -- the time stamps on them.

Q. Okay. We were told that they were for
working lunches and we -- there's one on the same page, November 9th, Tricky Fish for $28.00. That would indicate possibly one person. That wouldn't include the -- the Supreme -- like all the justices, would it, for a $28.00 expenditure?

A. I don't know. For that dollar amount, I wouldn't think so, but I really don't know.

Q. And P-card policy on the Auditor's website states very clearly that "Hospitality events must be supported by itemized receipts and invoices and list by first and last names all attendees."

Do you have any knowledge that all of the attendees for each of these working lunches or dinners would have listed who had attended and whose lunches or dinners would be -- who we were paying for?

Do you have any knowledge of a list of attendees for each working lunch as required by the P-card policy?

A. Yes, my office uploads those -- all of those -- all of the required documentation, and we require the credit card receipt as well as the hospitality form that does list all the names of the attendees.

So that's why I was saying there's additional documentation that would answer the
questions on these, but I don't see them here in the exhibits.

Q. Okay. So they did list the attendees, so that would -- that would actually mean that they -- that the Court did adhere to P-card policies then. If that's required by P-card policy as stated on the Auditor's website, then that kind of indicates that they fall under the P-card policies and they're not exempt from that. Would you agree?

A. Generally, we follow all of the P-card policies. I'm -- there's just slight exceptions here and there. But generally -- I mean, it's good practice to follow those, and so we have always uploaded the hospitality forms with those, yes.

Q. So any exception would be granted by whom?

A. And no one's ever said specifically to me about that. It was just kind of the way that things have always been, that -- and again, you know, the lack of written policies or procedures has kind of exacerbated the problem, that these things have always just gone on, it's just kind of standard practice to do it this way.

And without written policies and
procedures, it's difficult to know when things started to be the way they are.

Q. Okay.

DELEGATE SOBONYA: Thank you.

CHAIRMAN SHOTT: Delegate Lovejoy?

DELEGATE LOVEJOY: No.

CHAIRMAN SHOTT: Delegate Fluharty?

Delegate Byrd?

DELEGATE BYRD: No.

CHAIRMAN SHOTT: Delegate Harshbarger, questions?

DELEGATE HARBHARGER: Thank you, Mr. Chairman.

Thanks for being here.

EXAMINATION

BY DELEGATE HARBHARGER:

Q. One of the things my colleagues asked was the purchase order for the sofa for Justice Davis' office. You said it looked like it was surely intended to be paid for by State funds. Also in that same exhibit, Exhibit 51 on page 57, there's also a quote, which I believe is the quote to reupholster the two arm chairs?

A. I'm sorry, which exhibit is that? Is it in
the large book?

Q. Yes, the big book.
A. Okay.

Q. Exhibit 51.
A. Okay, I have Exhibit 51.

Q. Yeah, it's toward the back. I think it's page -- about 57.
A. Who's the vendor? Because I have these in alphabetical order by the vendor.

Q. It's just a memo, it says -- it's dated June 30th, 2014. It's basically a quote to reupholster the two Milo chairs that was sent to the Court.

A. Oh, okay, I think I see -- twenty -- $2,790?
Q. Yes.

A. Okay, yes, I have it.

Q. So here's another instance where it looked like State funds would be used to reupholster two chairs when it was actually for a personal item?

A. It certainly looks that way to me. I mean, Steve Canterbury has signed it.

Q. Yes, Steve Canterbury approved it. And then also earlier -- in the same exhibit, before -- just a couple of pages before there, there's the shipping for those same two chairs from Plycor (Phonetic), I believe
it is.

A. Uh-huh. Yes, I think that was put on a State P-card.

Q. Yes, State P-card.

A. Uh-huh.

Q. In the memo -- referring to the memo -- I think it's in Exhibit 51, but it's also in another exhibit, this where you talk about recapping your meeting with Justice Davis. What spurred or initiated that meeting three years after these costs were assumed by the State?

A. When I began putting that information together for each office in response to Kennie Bass' FOIA, as I kind of got costs together by office, I would send them to that specific justice so they could look at what I had done so far so they could help me as far as "No, this is missing, that's missing," that sort of thing.

And so Justice Davis had a list of the items that I had identified in her office that had been purchased with State funds, and then she asked for me to come up and meet with her personally, myself and Kim Ellis, so that we could go over that and discuss the items that were in her office and what was her personal
items versus what was State property.

Q. So did she have any recollection that the State actually paid for these items three years prior to this meeting?

A. She seemed very surprised by it. I don't think that she knew that that was the case.

Q. So if -- if they're her personal items, she had no recollection of how they were paid for?

A. She -- I really -- my impression was that she was surprised that she had not purchased these items herself. She seemed very surprised that State money had been spent on those items.

Because even the sofa, we talked about at length, and I had the picture of the sofa and the description of the sofa, and we had looked at the sofa together and determined that in fact was the very sofa that was in the documents.

Q. Yeah, and I think it's mentioned also in your memo that those two chairs were purchased by Steve Canterbury at an auction?

A. Yes. But I couldn't find any evidence of State money being spent, so I don't know how he paid for them at the auction.

Q. Yeah, I went back through Plycor and actually
went to the auction site. Those two chairs are listed
--

A. Oh.

Q. -- June 9th, 2013 on their auction site, so
somehow they were purchased.

DELEGATE HARSHBARGER: That's all I

have.

Thank you, Mr. Chairman.

CHAIRMAN SHOTT: Delegate Miller?

DELEGATE MILLER: Thank you,

Mr. Chairman.

Thank you for being here, Ms. Troy.

A question of counsel, please.

MR. HARDISON: Yes, sir.

DELEGATE MILLER: And I may have missed

this earlier. At least initially, it was a little bit
difficult to hear you. What code section were -- are
we looking at in regard to the senior status judges
being capped as far as their benefits and retirement

and such as that?


MR. HARDISON: The two that I have
cited in front of me are 51-2-13 and/or 51-9-10, but
generally it relates to a statutory limitation upon
senior status judges compensation when they're sitting as a senior status judge.


And in regard to the 51 -- 51-9 sections, is that a retirement section in and of itself? Is -- I guess what I'm trying to find out, are we getting ready to get into civil law violation, criminal code violation, etc.? Or are we gonna talk about that later?

MR. CASTO: We'll talk about that later.

MR. HARDISON: I think co-counsel's indicated he's going to cover that following the conclusion of the -- the testimony here with Ms. Troy, but I don't -- I don't have any of those sections directly in front of me --

DELEGATE MILLER: Okay.

MR. HARDISON: -- specifically.

DELEGATE MILLER: Okay. Do these senior status judges fall under the classification of a "leased employee" in the retirement section of the code on 51-9-4?

MR. HARDISON: I'm not aware. I'm sorry.
MR. CASTO: I don't know either, to be honest with you.

DELEGATE MILLER: Okay. All right, thank you.

EXAMINATION

BY DELEGATE MILLER:

Q. Ms. Troy, if a senior status judge is serving, are they treated as a full-time employee?

A. I don't know the answer, because I don't have that level of payroll involvement. My access with payroll, my interaction with payroll, is only when it comes to financial transactions, so I can't say that I have any firsthand knowledge of that.

Q. And once they've maxed out -- I think we had some testimony earlier, once they maxed out to the salary of a sitting judge, then they are required to complete a WV-48 form?

A. My understanding is the WV-48 form was initiated when they were reaching a cap amount that affected their retirement benefits. No one ever spoke to me about anything related to a sitting judge. It was related specifically to their retirement amount, and that's where that cap came into place.

Q. Yeah, that's what I was talking about. Once
they got to that cap, then they're treated as a non-full-time employee?

A. When they reached the cap that would have reduced their retirement benefits, they became an independent contractor and went -- actually went off of payroll.

Q. When they're on the payroll, are they considered a full-time or a part-time employee?

A. That, I don't know.

Q. So you're not aware of whether either of those positions as a senior status applies -- or would require a WV-48 form where they have to certify that they are not currently a full-time employee of the State of West Virginia?

A. A WV-48 would not be required when they were paid on payroll. The WV-48 was generally completed -- and there could have been a few that were not, but I think from the ones that I've seen, WV-48s were completed for senior status judges who are becoming independent contractors, going off of payroll and going onto 1099 status.

Q. I guess the trouble I'm having is: On the WV-48, they have -- they certify that they are not currently a full-time employee of the State of West
Virginia. Do we assume that they are considered a full-time employee before they max out on their retirement cap?

A. I really can't answer that. I don't know.

Q. Okay. The WV-48, if you know, it's titled "State of West Virginia Purchasing Division." Do these -- do these WV-48s go to a different entity? Do they go to the Purchasing Division for oversight or administration, or is the Supreme Court just utilizing these and keeping them in-house?

A. They do not go to Purchasing. The Supreme Court is utilizing the forms and keeping them in-house.

Q. So there is no oversight from an outside agency to find out whether Purchasing requirements are being followed in regard to this contract employee.

A. Right. I believe that the Supreme Court, there's a specific exemption from the Court not being under Purchasing, State Purchasing. But we did, in that case, use that form.

Q. Even with the use of a 1099, if you're aware, could that cause a problem because they are being paid as a contract employee by the State of West Virginia, still cause problems with the Consolidated Public Retirement Board as it applies to the Judicial
Retirement System?

A. I have no idea. I've not ever gotten involved with the Judicial Retirement System. I don't know the -- the ins out and outs of that.

Q. Are you aware if the information contained on a 1099 form is reported -- even as a contract employee -- to the Consolidated Public Retirement Board?

A. I don't have any knowledge of that, no.

Q. We've heard some testimony over the last few days from some other individuals that -- that led us to believe that there's been a variation of treatment of employees and individuals in the Supreme Court system.

Have you ever been threatened by anyone regarding your employment, knowledge of issues or communicating with other members of the Court or Supreme Court employees?

A. Only by Mr. Canterbury. Never by any of the justices.

Q. Do you have any concern or fear for your job as a result of working with investigators or providing testimony here before the Committee?

A. Well, I mean, as I said earlier, I'm an "at will" employee; I can be terminated at any time for any reason, so -- all I can do is tell the truth.
Q. Has anyone made reference to you that you need to be careful what you tell before this Committee?
   A. No.
   Q. Thank you.

DELEGATE MILLER: Thank you,
Mr. Chairman.

Delegate Robinson.

DELEGATE ROBINSON: Thank you,
Mr. Chairman.

EXAMINATION

BY DELEGATE ROBINSON:

Q. Ms. Troy, I'm trying to figure out the couple diff -- we've got a couple different versions of how we're missing information or how the Legislative Auditor's information was missing a section or something of that sort.

I believe Ms. Allen stated to legislative auditors, as Mr. Robinson testified, that Justice Loughry requested information be removed from the binder.

Then we have a letter from you on last Monday, July 30th, that says you accidentally left it out.

And then today, your statement is that
Justice Loughry -- you requested to put it back in and then Justice Loughry told you not to put it back in.

So can you -- can you describe the conversation you had with Justice Loughry about information not being disclosed to the auditor like -- and detail that conversation?

A. In the -- in the initial binder when I was putting that together, what I knew was that the Silling contractor invoices for their -- the structural design kind of work and engineering services, that that was not in the binder for Justice Benjamin's office, Justice Loughry's office, Justice Workman's office or Justice Ketchum's office, because we did not have a breakdown from the Silling architects for those four offices.

So I knew that that information was missing, meaning their offices were understated. And there was no way to get that information from them. I couldn't make up what didn't exist.

So I felt to do an apples-to-apples comparison, I should remove those same items from Justice Davis' section so that what we were comparing was the same between -- between the chambers. And Justice Walker's office also. Those two have fees that
the four other chambers don't have.

As far as the -- the communication from Barbara Allen, I think that could have been just a misunderstanding about what was omitted, what was included, that sort of thing.

Q. But you did have a conversation with Justice Loughry about this information being in the report or not being in the report. Can you tell me about that discussion?

A. In the binder itself, right. I wanted to remove the architectural fees from Justice Davis' office because it was -- her office was about $30,000 higher because of that. And meanwhile, the other four had no architectural fees.

So if you wanted to do a comparison that was fair and equal, you would remove those. And he said, "No, they're -- they're allocated correctly. They were for her office, leave them in there."

And so I did, because it didn't -- one, I'm not going to argue with the Chief Justice, and it's not -- it didn't make her office incorrect. It just made it inconsistent with the others.

Q. The request was for a total package and a description of a comparison of the offices. Four of
the offices did not have certain fees in there, totaling $30,000 on Justice Davis', and the others did not.

And the Chief Justice of the -- of the Court requested you not disclose that to the legislative auditor, not disclose that or clear that up in the report?

Do you not find that as a misleading report you provided?

A. This wasn't in relation to the legislative auditor. It was in the FOIA request to Kennie Bass, where Kenny Bass wanted the cost by office.

Q. So this was information that you provided to a news source that would be disbursed to the public and there were a report that your -- the information you were providing, you felt was misleading, and Justice Loughry told you to leave it that way?

A. He advised me to leave Justice Davis' architectural fees in her office costs.

Q. How did you -- how did you approach Justice Loughry? How did -- what was your conversation, your statement to him to initiate this conversation?

A. I think it was when I am completing -- you know, kind of wrapping things up, nearly had all the
totals by office and felt like we had enough
information that we could respond to the FOIA request
at that point.

But at the same time, I felt like
Justice Davis' office was -- you know, had -- had costs
that the others didn't, which didn't seem --

Q. So I think -- I think my question is: What
did you say to Justice Loughry to indicate to him that
you thought you had enough information to provide, but
it was not an accurate report at that time? How did
you disburse that or communicate that to him?

A. I was talking to him about it and told him
just that, that Justice Davis' office had architectural
fees that the others did not. And the others didn't
because I didn't have enough information to do that.

Q. So your statement to him was, "We have all
the information except for I'm missing some fees from
your office and four other justices and I have those
for Justice Davis', so the -- the information I'm
providing isn't exactly accurate and could be
misleading."

And what was his response to that?

A. That those fees were for her office - we knew
that, because she'd used a different architectural firm
and to leave -- leave them in there because they were for her office.

Q. Did you disclose it to him that -- in that way, that you find this to be misleading?

A. I don't know that I said it was "misleading," but I said that I should re -- I wanted to remove those so that each office was treated consistently.

Q. Can you -- can you give me kind of a detailed explanation of what -- how he did that? Because I think there's a big difference between what you state in this letter that "I accidentally provided something that didn't have that" and the Chief Justice of the Supreme Court of West Virginia telling you to take information -- or leave information out.

Do you see the big difference that I see there?

A. I'm not -- I'm having a little bit of trouble hearing.

Q. I'm sorry. I see a big difference between the way you stated it in the letter here as saying "I accidentally provided it without that information" and the statement that we've heard you say today that Justice Loughry told you not to put it in there.

That -- that's two very different
stories to me, and I find a big difference there.

That's what I -- I'm trying to get explanation of how that happened and how he communicated that to you and what he said.

A. I'm not -- is it -- are you referring to a letter from me?

Q. I believe this is from -- from Sue Racer-Troy to Barbara Allen on July 30th, 2018: "After the binder was given to Kennie Bass, additional invoices related to these office renovations have been located."

A. Okay, I know what you're talking about.

Q. So -- do you understand -- I mean, I find it different -- the comment you put in the letter is very different than Justice Loughry telling you not to put it in the comparison that you provided to Kennie Bass.

A. Yeah, I'm actually dealing with two separate issues there. My letter to Barbara Allen was -- this binder was put together and it was never meant to be an audited final, you know, full accounting of the costs. I knew that we would continue to find additional items related to the offices.

And so rather than altering the binder - knowing that it had gone out once and there were subsequent FOIAs for it - I left it intact, and
additional items I found, I kept totally separate.

And so that's -- when I sent that memo to Barbara Allen the other day, I'm telling her, "These are the items I found subsequent to the production of the book."

When the book was given to Kennie Bass, I made a disclosure that the Silling architectural fees were missing from Justice Benjamin, Justice Workman, Justice Ketchum and Justice Loughry's office.

Q. So these are different -- these are different fees that we're talking about in the letter.

A. Yes, that's correct.

Q. But you -- you made the same discovery of the design fees and those kind of things and provided that to Justice Loughry, and he told you to continue to leave them out.

A. I spoke to him about that. He said, "Leave them in there because they are for her office."

Q. And not to include the fees to his office and other justices.

A. I couldn't include the fees because we didn't have enough information for me to make a -- any type of allocation of those fees.

Q. Okay.
DELEGATE ROBINSON: Thank you.

CHAIRMAN SHOTT: Delegate Fleischauer.

MINORITY CHAIR FLEISCHAUER: Thank you, Mr. Chairman.

And thank you for being here today.

EXAMINATION

BY MINORITY CHAIR FLEISCHAUER:

Q. I wanted to -- did you ever come to any conclusion about the differences in the cost between the different offices for the architecture charges, or is that something you're still trying to break down?

A. The -- the Court has requested the information from Silling. To date, we don't have any breakdown from Silling.

Q. Okay. What -- do you -- can you remember, or to the best of your recollection, what was the amount in Justice Davis' office that had to do with architectural services?

A. I believe it was around $30,000.

Q. Okay. So it wasn't a large portion of those renovation costs.

A. Right. As a percentage of the total renovation, it would have -- it would not have been a large amount, no.
Q. Okay. And do you know -- you don't -- you haven't -- you just don't have any idea what the charges were for the other four or five offices that were included in a different bill.

A. I can see the total, but --

Q. What was the total?

A. It was three hundred and -- they -- they broke it down into -- it just says "Justices Chambers," but it doesn't say which chamber.

Q. Okay. It was over $300,000?

A. Yes.

Q. And that was -- remind me again. You've said it three times. But that was for Ketchum --

A. -- Benjamin, Workman --

Q. Workman.

A. -- and Loughry's offices.

Q. And Walker?

A. No.

Q. Okay, thank you. Did you -- you said that you're an "at will" employee. Did you ever get the impression that Loughry expected loyalty from you? Is that something -- you said there was an atmosphere of fear because people were losing their jobs around you.

Did you -- did you have an expectation
of loyalty, that he -- did you have an understanding that he expected you to be loyal?

A. I think that each of the justices expect us to do our job and be loyal to the Court and -- I --

Q. Well, did you feel any differently when he became Chief Justice, that there was an expectation you should be loyal to him over and above any of the other justices?

A. I didn't feel that way, because I've always felt that the five are equal.

Q. Okay.

A. Regardless of who the chief is, to me, all five are equal.

Q. Okay. You said that -- I'm a little bit confused. We know -- you talked about the fixed asset inventory, that it was kept in the past under the FIMS system?

A. Uh-huh.

Q. And I think you said it was kept until 2010. Is that right?

A. That's what the FIMS records indicate. I couldn't find anything being added after 2010.

Q. And that would have -- and I was a little confused about whether you said that was Mr. Fletch
Adkins or whether that was Mr. Proops who was responsible for doing that.

A. When I came to work for the Court, I was told Administrative Services did that, Fletch Adkins took care of that.

Q. Who told you that, if you can recall?

A. I think Fletch himself told me, or Mike Proops may have told me. There was a division on kind of who was doing what.

Q. Okay.

A. And I do know that I talked to Fletch about the fixed assets, and so I knew that he did that.

Q. So was Mr. Proops on for a while while you did he stay for a while after you started?

A. We trained for one month together.

Q. For one month, okay.

A. Uh-huh.

Q. So do you recall any conversation with him about the fixed -- keeping track of fixed assets, that that was his responsibility?

A. Mike Proops did not do that. By the time that I -- unless he did it at some point in the past, and then it may have transferred to Fletch Adkins. But when I was training with Mike Proops, Finance was not
responsible for adding the fixed assets into the system.

Q. So he didn't say that was part of his job.
A. No, absolutely not.

Q. Okay. Did you ever -- when you -- with the work that you were doing -- oh, let me -- let me go back to Exhibit 69, one of the first ones we talked about today, and let's just look at the first page of that.

What I have written down here, you talked about Item E under Operating Expenses, and that's Building Repairs and Improvements?

A. Yes.

Q. Just on the first page. And you said that was where the Silling invoices would be, right?
A. That's where they would be allocated. Now, this only is for two months of the fiscal year, so this would have only been items paid in July and August of 2012. This is just for that specific time frame.

Q. Okay. Would that have included anything else for circuit courts or magistrate courts that were repaired or improved?
A. Yes, that would include everything, for all --
Q. Okay. So that's -- it's just a part of a larger amount.
   A. Yes.

Q. Possibly. We don't know what was done those -- you know, this doesn't indicate exactly where that -- those repairs were made.
   A. That is correct, yes.

Q. Okay. Going back to that letter that Justice Davis or Mr. Canterbury wrote in 2016, he wrote it to Ms. Davis, but it doesn't -- or Justice Davis, but it doesn't appear to be signed.

   This was March 14th, 2016 that that was done, and this was long before any investigations, right?
   A. Yes.

Q. And so was it -- like this 1970 coffee table, was that something that was purchased in 1970 or bought later?

   Do you know? If you know.
   A. I think the coffee table, I'm not sure about. I know the chairs and the sofa were -- were purchased later, I guess like as vintage items. But the coffee table, I'm -- I'm not sure about that one.

Q. What about the lamps? Because there's a big
list of things here --

A. All of them. I -- I found no evidence that those were purch -- that those were ever purchased with State funds, so I don't have any records on them.

Q. So the only two things that you think might have -- do you think there is a possibility there was just confusion here about who paid for what?

A. I don't --

Q. That was what you --

A. I mean, I --

Q. -- you saw?

A. I guess I can't really say, but I can say -- I can't say what they thought, but I can relay that Justice Davis seemed surprised when I talked to her that State money had been spent for those items.

Q. And that's the only two things on this whole list that -- where there was a discrepancy.

A. I think there was the sofa, the two chairs, and I think some work on the coffee table. I think it had been sent out for some kind of repair work and that had been put on a State P-card, I believe.

Q. Okay.

A. So we identified the items that were in question.
Q. And would that have been before or after 2016?
A. I'd have to look it up here in her section. The sofa was purchased in 2013 with State money.

The -- it says, "Correct the finish on the stainless steel coffee table base." It was sent out for some kind of repair work. And that was in 2013.

The shipping charge on the chairs was 2013.

And the work to reupholster two lounge chairs purchased at auction was in 2014. So this money was --

Q. Which ones are the lounge chairs? Is that the arms chairs or --
A. The Milo -- Milo Baughman, I think is the name, arm chairs.

Q. Oh, okay. So those are the lounge chairs/arm chairs.
A. Right, right. They --
Q. So that was the shipping for them.
A. Yeah.
Q. So there are these three invoices. Any -- is there anything else on the -- on that list that you
have to indicate that is State property or not State property?

A. No, just the -- just those items: The sofa, the arm chairs and the repair work done to the coffee table.

Q. Okay, those three.

A. I couldn't find --

Q. Okay.

A. Yeah. I couldn't find where the coffee table was purchased with State funds, so I assume it wasn't, because I couldn't find the evidence otherwise.

Q. Okay. And then would you do invoice -- I think you talked about doing invoices for contractors. Did you have anything to do -- or did it ever cross your desk, invoices relating to Software Systems, Inc. that was involved in the UJA work?

A. I've seen those invoices. I don't know that I personally processed any of them, but I'm familiar with the company.

Q. Would they have come across -- go through your office, the Finance Division?

A. Yes, they would have come through Finance for payment, yes.

Q. I have information that they have an
outstanding debt owed to them - that they believe is owed to them - for over $200,000 during this time when there were a lot of other expenses that were paid for.

Do you know anything about that, why they weren't paid?

A. No, I have no idea. I've heard of that, and I've heard of some litigation, but I don't know any of the details of it, no.

Q. Okay.

MINORITY CHAIR FLEISCHAUER: Thank you.

Thank you, Mr. Chairman.

EXAMINATION

BY CHAIRMAN SHOTT:

Q. Ms. Troy, I have a series of questions regarding a couple of different topics. The first one deals with this 1099 issue.

So typically when an employee becomes an independent contractor - and I think you men -- you confirmed this - the withholding of payroll taxes ceases, which to me, means that the employer is not only not holding any out, the employer is not paying the employer's share of Social Security, for instance, or unemployment taxes.

Is that -- based on your knowledge as a
CPA, is that correct?

A. Yes, that is correct.

Q. Okay. So when these justices -- I'm sorry, when these senior status judges converted from a W-2 to a 1099, then the responsibility for withholding their own taxes for personal income taxes shifts to them. Correct?

A. Yes, that is correct.

Q. My understanding is that there's a wage base, and so if you are earning above the wage base, you may not have any additional tax if you get income that exceeds that Social Security wage base. That is correct, is it not?

A. Yes, that's right. There's a cap on Social Security and how much a person -- once they earn more than a certain amount, right, that stops.

Q. So if, by chance, the threshold -- and at -- from 2011, I believe, until current, the sitting circuit judges were earning $126,000.

So for purposes of my example, if they -- the total amount they drew from retirement and W-2s and 1099s did not exceed that amount -- or did not exceed the wage base, then they wouldn't have had to pay any additional Social Security taxes. Correct?
Let me rephrase that, because I've even confused myself with that one.

A. Okay.

Q. Let's suppose that the -- the amount that the person received from W-2s and retirement was $100,000, and the wage base is $110,000, and then they shift to a 1099. Anything that's under that $10,000, they would pay -- be responsible for Social Security tax, but over and above that, they would not.

Is that fair?

A. I think that's correct. I'm just trying to go through all that -- all that tax law in my head.

Q. Well, let me ask a different question. There's no limit on the Medicaid -- or Medicare tax, is there?

A. I think that's correct. I think it's just --

Q. So --

A. -- the other portion of it.

Q. -- if we shifted from a W-2 to a 1099, then someone's supposed to pay -- the employer would not be withholding that Medicare tax, right? On the 1099.

A. Yes, I think that's correct.

Q. Would not be withholding that.

A. That's right.
Q. Would not be withholding anything for the unemployment tax. My question then gets to this point: Do we know whether the State Supreme Court, out of their budget, paid either of those taxes from -- to make up the loss of that tax revenue when we switched to a 1099?

A. I don't have any knowledge of that, but I don't see any way that we would have, that the Supreme Court would have paid that.

Q. When the IRS conducted its audit -- and I understood that they paid -- they issued a check of our taxpayer money to the IRS for $227,541. Was any part of that to make up for the loss to the Medicaid -- Medicare Trust Fund for unpaid Medicare taxes?

A. I didn't see that level of detail in the audit findings, so I can't answer that.

Q. Do we know whether there was any part of that that went to pay unemployment taxes that were not paid due to the fact that we'd shifted from a W-2 to a 1099?

A. Again, I have no knowledge of that level of detail of their audit findings.

Q. Where would we find – if we wanted to find out – how that $227,000 broke out, how that would have been allocated? Who would have that information?
A. The Court's administrative counsel has the audit findings and their detailed audit reports, and those audit reports had their calculations.

Q. Okay. Now, with respect to that same issue, you mentioned someone that was the recusal administrator, clerk, whatever. Do you have a name for that person during the period you've been employed by the Court?

A. I think generally, Shannon -- Shannon Green handles the recusals and works with the -- whoever the sitting Chief Justice is at that time, to fill vacancies.

Q. Does that position shift or that person that fills that position shift from Chief Justice to Chief Justice, or does that person remain the same?

A. During my time there, she's remained the same. So I think only if she was on vacation or out for some sort of leave would somebody else take that responsibility. But generally, she's had that responsibility since I've been there.

Q. Okay. Let me shift gears a little bit to this Silling -- I think that's how you say it -- the design invoice. And I've got that -- I think it's part of Exhibit 63, I believe. $374,139.81, which covered a
period from March 3rd of '09 through March 7 of '13.

So about -- basically four years. Let me give you a minute to look at that, if you would, please.

A. You say Exhibit 9?
Q. Exhibit 63.
A. Oh, 63. Sorry.
Q. Okay, so I see on there a four-year period ending with either an invoice date or a service date -- I'm not sure which -- of 3-7-2013. Correct? This is the one that basically refers to Justices Office Renovations.

A. Okay, Justices Office Renovations, yes, $374,139.81.
Q. All right. Now, what I'm trying to do is narrow this down somewhat. As I understand it, Justice Loughry was -- became a justice in '13. He was elected in 2012 and became a justice in '13.

So if I'm looking at this correctly, about the only one on this list that could have been for his office would have been the last one, the $3,000 -- or $4,050.

Is that fair to say?
A. It is, based on their invoices. But I -- I
know - having been in that office when Justice McHugh was there and then having been in it after the renovations - that Silling would have done a lot of work in there, and $4,050 is -- is not a reasonable amount just based upon what I personally saw as far as the renovations and the work that went on in there.

Q. Have you come across any other invoices that aren't listed on this sheet that would be after that date from Silling?

A. The only other ones from Silling after that date indicate work elsewhere, so --

Q. Okay.

A. -- to me, it looked like maybe the way their billing was done didn't really match up. Because everything after that, they refer to the clerk's office and the elevator upgrade and -- there's just --

It seems that something's not quite right with the way their -- their bills -- what their bills reference, anyway.

Q. Well, let me ask a different question then about that, because it occurred to me that somewhere along the line, we've had testimony that the person that was the Silling decorator went to work for the Court sometime around the time that Justice Loughry's
office was being decorated.

Is that consistent with your memory at all? Could --

A. That --

Q. Could that explain maybe that that person was just a Court employee providing similar services at that time without Silling getting paid for them?

A. She did come to work for the Court, and that would be Kim Ellis. She had worked for Silling, and she came to work for the Court. I think it was sometime in late '13. It could have been in '14. I can't remember specifically when she was hired.

So that could be a question that she could answer. I really can't speak to that.

Q. Okay. Now, that leaves Justices Workman, Benjamin and Ketchum that would be covered by this period, and I'm looking at the -- the dates of the invoices. It looks like Justice Workman's invoices extend over a period from October 5th of '09 all the way through November 7th of '13, which would pretty well cover this entire time frame of these invoices.

Is that fair to say?

A. I think that's correct, yeah. And I think that Justice Ketchum's office was being done right
around the same time as Justice Workman's. I wasn't working there yet, but I think that's kind of what the documents indicate.

Q. It appears from the invoices we were provided that Justice Ketchum's period of renovations went from February 1 of '10 to November 15 of '13. So presumably anything before 2010 would not have involved in his -- his office. Is that reasonable to conclude?

A. I think that would be reasonable, with the exception of any kind of -- I see on some of these, it will say "predesign" or "consulting." I don't know how far ahead of that that happens in the renovation work. I don't know that.

Q. And finally, it looks like Justice Benjamin's invoices extended over a period from July 23rd of 2009 to February 28th of 2011, which goes down about almost two-thirds of the way down that list.

But anything after that probably was not involved in Justice Benjamin's office. Would that be a fair conclusion?

A. I think that would be a fair conclusion, yes.

Q. And I guess my final question in that area: Was anyone auditing these invoices at that time for accuracy? Because it appears that basically three
offices, $374,000 worth of design services, seems awful high for three offices.

A. I believe that each of the Silling invoices -- and I have them here in the binder, but I believe they're all signed off by Steve Canterbury.

Q. We had Justice Davis with like $30,000 on her office, so does it seem -- if we just assume these were equally spread among the three office -- the three justices, $100,000, $125,000 an office seems awful high.

Does it seem high to you based on your review of the various invoices in connection with the -- with these renovations?

A. I can't really render an opinion. I didn't see the offices prior to the time that they were renovated to know how much work was done by the architect, so -- and it predated my employment there, so I really don't have an opinion one way or the other about it other than that Steve Canterbury was working there and did sign them, so that's kind of all I can rely on.

Q. But the Court has requested more detail where you are on these invoices; is that correct?

A. Yes, that's correct.
Q. And no response so far.

A. No, none so far.

Q. Am I correct that Justice Benjamin office -- Justice Benjamin's office was -- is now being occupied by Justice Walker; is that correct?

A. Yes, that's correct.

Q. And in looking at the invoices for Justice Benjamin's office, which basically went through 2011, there was about $30,000 of furnishings. Do you know if any of those furnishings are still in the office, or if not, where they are?

A. I can't speak to what is still in that office. I know that some items, he purchased at the end of his term and took with him.

Some items went into storage in our Venable Avenue warehouse, and then some could have been used elsewhere.

Q. And what -- where would the documentation be of the purchase of any of these assets by Justice Benjamin when he left?

A. There's a cash receipt document. I don't know if I have it documented in here. Let me take a look here.

No, I don't have it documented here,
but I can provide that. I have a list of all the items that he purchased. There was an appraisal done, and then the money was given back to the State for those items.

Q. Is that the customary process, if some -- someone leaving the Court - well, let's say a justice leaving the Court - would like to take something from their office, that there is an appraisal done and then the justice is given the option of paying that price and taking the furnishings?

A. There's no written policy about that, but I was told that that was standard practice. And that was what was done when he left his term.

Q. All right.

CHAIRMAN SHOTT: Thank you.

Counsel, do you have any redirect?

Where's counsel?

No redirect.

All right, we'll start back a second round and hopefully we can --

Let's try not to ask the same question a third or fourth or fifth time, okay?

Delegate Fast.

DELEGATE FAST: Thank you, Ms. Troy.
RE-EXAMINATION

BY DELEGATE FAST:

Q. Regarding Kennie Bass' FOIA request, if you have a document that could be read in various ways but the FOIA request simply says, "Give me all the documents pertaining to the renovations," now, you thought that this document could be read wrong because it included, for Justice Davis, approximately $30,000 of Silling work that perhaps some of the other documentation didn't include. Is that correct?

A. My understanding is that he didn't -- Kennie Bass didn't request the documents. He requested, I think, to look at certain documents, and then just a question about if Justice Loughry's office cost twice as much as any other.

Q. Was it a written FOIA request?

A. That, I don't know. I was -- my understanding was that he was going to submit a written FOIA. That would have gone to our administrative legal counsel. So that wouldn't have come to me.

My job was starting to assemble the information so that they could reply to it.

Q. Well, if -- if you were replying -- well, were you or were you not replying to a FOIA request?
A. I was assembling information that I believed was gonna -- was going to be on a FOIA request.

Q. Okay. And if -- if you were going to respond to a FOIA request, then you would have been required by law, would you not, to submit all of the documentation the way it was?

A. But I think that his -- his question was: "Did Justice Loughry's office cost twice as much as any other." I don't think that he requested any level of detail as far as the other offices go. And no one discussed with me in advance "We're going to hand him this book."

You know, I had my binder that I had put together to the best of my ability and make it as accurate as possible. I had Silling in the front of it. And the same thing for the book that I'd made for Judge Johnson.

But no one ever said to me, "This is going to be publicly release -- publicly released." You know, that was not the plan. The plan was for him to be able to look at it, for me to talk about the book, talk about the production of the book, and then it was just handed to him.

Q. Who asked you to get this ready for
submission?

A. I was not -- it wasn't posed to me that way. It was posed to me to calculate the total cost by office, not to make a document that could be released. Just "Do a -- do an accounting of each office" so that they could answer his FOIA questions.

But never "Make a document that we can hand out."

Q. But you're not sure if a FOIA request had been submitted at that point.

A. I --

Q. If it had, you didn't know?

A. No, it would have gone to administrative counsel, and I didn't ask, "Oh, do you have a FOIA?" I just did what I was told to do.

Q. Okay. And so if a FOIA request had been submitted by Kennie Bass, then the duty would have been to present the documents as they were, not taking anything out, not adding anything to it; present the documents.

And if that's the case, isn't that what Justice Loughry advised you to do: Leave the documents as they were, period?

A. I would have to speculate, but that could
have been his reasoning behind it. But that's -- you know. I can't really say why -- why he said to do it that way.

As I said before, I didn't feel like it was incorrect. It didn't -- her office was still correct. It was just inconsistent.

Q. I understand that. If -- but if a FOIA request had been presented, then the purpose is to present documents, not present explanations. Is that -- do you believe that's correct?

A. I believe that's correct. But the responses were always sent by legal counsel. You know, I would give the documents to legal counsel and then they would answer the FOIA.

Q. Okay.

A. I never personally answered any of the FOIAs.

Q. Okay.

DELEGATE FAST: Thank you.

Thank you, Mr. Chairman.

CHAIRMAN SHOTT: Delegate Zatezalo.

DELEGATE ZATEZALO: Yeah, I -- just very quickly.

And thank you for being here.

EXAMINATION
BY DELEGATE ZATEZALO:

Q. I want to clear something up for myself. If I read your testimony through today, it is unclear to me exactly who made calls as far as approving expenses. It sounds like it was a mixture of the Court and the administrator. Is that a fair statement?

A. Generally, it would be the administer -- the Administrative Director. When we spoke about the WV-48s, those were always signed by the Chief Justice. And that authorized that person to work as an independent contractor, but then the justices themselves didn't sign the invoices after that.

The justices may sign some invoices, but not many.

Q. And did the same thing apply to expenses for renovations and that type of thing? Or was it a mixture of -- of people who had control over it?

A. In the renovation documents, I don't recall seeing any signed by any justice. They're almost all signed by the Administrative Director.

Q. Okay, very good.

DELEGATE ZATEZALO: Thank you.

CHAIRMAN SHOTT: Delegate Pushkin.

DELEGATE PUSHKIN: Thank you,
Mr. Chairman.

Thank you again, Ms. Troy.

RE-EXAMINATION

BY DELEGATE PUSHKIN:

Q. We heard in other testimony throughout this from a lot of the folks that worked over there that when Justice Loughry became Chief Justice, there were a lot of firings; a lot of people lost their jobs and a lot of people expressed that they were worried about their jobs when they were asked to do things.

Now, you expressed earlier that you were not worried about your job, so I'm gonna ask you, conversely, did you receive a raise under Chief Justice Loughry?

A. Yes, I did. I had been told over the years that I would -- at one point that Justice Workman had suggested that I would get a raise. And I didn't. And then I did receive one under Justice Loughry, and that was my -- right around my five-year anniversary with the Court.

Q. It was how much?

A. $12,000.

Q. Okay.

DELEGATE PUSHKIN: Thank you.
CHAIRMAN SHOTT: Back over on the left side. Delegate Isner? No.
Delegate -- okay. All right.
Ms. Troy, we thank you for your time today, your patience and your endurance. You are dismissed. Thank you.

THE WITNESS: Thank you.

CHAIRMAN SHOTT: We're gonna take a minute and ask our counsel to -- Brian Casto, to give us some overview of this 1099 issue, because it's a little bit obscure for most of us.

Brian, whenever you're ready.

MR. CASTO: All right. So you heard a lot today, especially from Ms. Troy's testimony. You heard a lot of testimony about the WV-48, 1099.

CHAIRMAN SHOTT: Is your mic on?

MR. CASTO: It says that it's on, Mr. Chairman.

THE CLERK: Battery dead?

MR. CASTO: No, doesn't appear to be.

THE CLERK: Try holding it closer to your mouth.

MR. CASTO: What'd you do, Johnny?

What'd you do?
That better? Because I could have just raised my voice.

DELEGATE: You're not loud enough.

MR. CASTO: Don't bet on it. I heard whoever said that that I was not loud enough. I said, "Don't bet on it."

So you've heard a lot about the terms 48 and 1099 thrown around today, especially with Ms. Racer-Troy's testimony here. So we're gonna give you a little bit of a background on what the pay of senior status judges is.

Now, we're gonna look at 51-2-13, which is the first enabling statute. The relevant portion is bolded and highlighted, so all you have to do is look at it. A salary of a circuit court judge is $126,000.

I need somebody to advance that.

Now, we're gonna look at 51-9-10. The text of this section was first enacted in 1949 and twice amended. It has not been altered since 1991, so it has been the law of the State of West Virginia for almost 30 years.

It is not to be confused with its preceding section, 51-9-9. Many of you may remember 51-9-9 because several years ago, there were two
circuit judges in the State of West Virginia who took
their retirement and then ran for reelection.

51-9-9 was amended immediately upon
their reelection in 2006 to provide that no judge could
both sit the bench and collect his or her retirement
money. So 51-9-9 was amended in 2007.

51-9-10, however, has basically been
the same for about 30 years. So 51-9-10 provides for
the authorization of the use of these senior status
judges by the Supreme Court. It allows them to come in
and sit the bench when a vacancy is created by recusal,
by illness or other good cause on the Supreme Court or
on one of the subordinate circuit courts of the State.

And we can see the highlighted language
provided is very simple and straightforward. It says,
"Provided" "the per diem and retirement compensation of
a senior judge shall not exceed the salary of a sitting
judge."

So if you are a senior status judge and
you are placed upon the bench once again and called
forth to duty, you can only make $126,000 a year in per
diem and retirement compensation. That's it. That's
all. That's the cap.

It's a hard limit that we believe was
put in place essentially for the legislative purpose that if you are doing the work of a circuit judge, you get paid what a circuit judge gets paid.

51-9-9, the preceding section, was amended for the exact same reason. You can't retire and collect your pension and then get paid a salary as a circuit judge. You can't retire, come in as a senior status judge and be paid more than a circuit judge for doing a circuit judge's job.

The two statutes are entirely consistent one with another.

Now, you'll look at the new exhibit which has been placed in front of you, Exhibit 71. The Supreme Court knew this to be the case. If you will look, there is a rule on retired judges admitted to senior status.

It is the first five or six pages that you've been provided, and it was authored by then Chief Justice Tom Miller in 1991. It notes: "The compensation for a judge admitted to senior status will be at the rate of $200.00 per day."

And notes in Clause (C) of that: "Provided, however, the per diem and retirement compensation of a retired judge admitted to senior
status shall not exceed the salary of a sitting judge."

And if you will look through here, this has been amended numerous times. We have another example of the same rule, which is signed by Justice Neely in his capacity as acting CJ, on 15 September 1994, which right above Justice Neely's signature in Clause (C) notes the same proviso, which is right out of statute.

We have updates to this rule promulgated by Justice Miller and by Justice Neely. These updates -- we have one from October 1, 2000 signed by Justice Maynard; one in 2006 signed by Justice Davis; one in 2008 signed by Justice Maynard; one in 2010 signed by Justice Davis and attested to by the clerk; and one in 2011 signed by Justice Workman.

All of these note that the Supreme Court has increased the per diem rate. Many of these were done with salary increases of the circuit judges so that the Supreme Court, each time that the circuit judges got a pay raise, would go back in and recalculate the per diem to allow for some increase for these senior status judges to get a little bit more money each time they were called back to the bench to serve.
Now, we also have a slightly new wrinkle for you. If you'll look in your packet, there's a Bates stamp WVSCTHJC00016. Looks like this. It's an Administrative Order from 2017.

This is a document entered as an Administrative Order of the Supreme Court on May 19th of that year by then Chief Justice Allen Loughry. As members of the Legislative Branch, you all may have an opinion about what you're about to read.

Justice Loughry notes in this article that he has general supervisory control as the Supreme Court and the Chief Justice shall be the administrative head of all the courts, and he recites the authority of 51-9-10 that reasonable pay be made to such judges who sit as senior status judges on a per diem basis, provided, however, that the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge.

And if you will look on this next page, right above his signature: "Chief Justice Loughry says, however, that in light of the administrative authority vested in the Chief Justice, the Chief Justice hereby orders that the Chief Justice has authority to determine in certain exigent circumstances
that a senior judicial officer may continue in an
appointment beyond the limitations set forth in West
Virginia Code 51-9-10."

In other words, they will be paid in
excess of the moneys due a sitting circuit judge
because the Court believes that it is necessary for
them to do so.

And as Chief Justice of the Court,
Justice Loughry said, "We're going to do that."

Now, of course, that's a question which
would have had to have been litigated, should you have
chosen to contest that, before the Supreme Court.

We have also within that same packet a
series of WV-48s so that you can get a better look at
what these look like. These have the numbers redacted
which are personally identifying.

As you can see, each Chief Justice –
starting in about 2012 – signed off on these. We have
Justice Ketchum in 2012; one from Justice Workman in
2015; one from Justice Benjamin in 2013; we have one,
again, from Justice Workman in 2015; one from Justice
Davis in '14; another one from Benjamin in '13.

These all provide the authority of the
Chief Justice to execute the WV-48.
Now, why is that significant? Because, as we now know, there is an absolute limit provided in West Virginia Code that a senior status judge cannot make more than a sitting circuit judge.

That is the plain language of code.

The Supreme Court determined upon — as you have heard from Ms. Troy and Mr. Canterbury — the use of the WV-48 system and the issuance of 1099s as independent contractors to pay these judges in excess of the salary of a sitting judge.

You have heard that Justice McHugh — during his time when he was recalled to duty — paid that money back because he knew that to be wrong.

What does this mean? Mr. Canterbury also noted that there were personnel who kept track of when the per diem and retirement compensation equaled that of a sitting circuit judge so that they could then transition that judge over to the WV-48/1099 system and cease using W-2s. This is the mechanism that we have heard used.

What's the consequence? This was a scheme by -- whereby they were paid in excess. It is a violation of the requirement, and a senior status judge sitting as a circuit judge would be paid more money
than their colleagues who were circuit judges because they were collecting their retirement and collecting the compensation paid through their regular W-2 and then through the 1099.

The managers have discussed this and wanted to bring this to your attention. One of the managers noted that he believed that there was a violation of this particular statute with regard to these payments.

And let's look at it. The language that is relevant is highlighted in bold. This is a very torturously written piece of legislation. It's an old piece of law, but it has been used in the courts of this state for a long time.

It's the provision of 61-3-22 in the West Virginia Code on the falsification of accounts.

"If any officer, clerk or agent of this State" "make any entry in any book of account, or in any account kept by such state," "with the intent to enable or assist any person to obtain money to which he was not entitled, such officer, clerk or agent shall be guilty of a felony and shall, upon conviction, be confined in the penitentiary not less than one nor more than ten years."
It can be argued, our managers believe, that causing these accounts to be made in such manner as to pay the judges in excess of a sum to which they were legally entitled may place the judges of the Court and the officers of the Court who caused those entries to be made in violation of this statute.

That's what I have, Mr. Chairman.

CHAIRMAN SHOTT: Questions of counsel? Delegate Lane, followed by Delegate Lovejoy.

DELEGATE LANE: Counsel, in looking at this Administrative Order dated May 19th, 2017, where would a normal person find this order?

MR. CASTO: I don't know that they would have.

DELEGATE LANE: I mean, where -- where does it reside?

MR. CASTO: It's an Administrative Order of the courts, and I'm not sure -- to be honest with you, it's something I've never had any reason or rationale to look for previously.

DELEGATE LANE: I mean, is it on their website? Because they have all their decisions and all of that --
MR. CASTO: But I'm not sure that it is. I've not had an opportunity -- because literally, we received this today.

DELEGATE LANE: How did you find this?

MR. CASTO: How did we find this? We asked for all orders and rules by which the Court had governed the issuance of the WV-48s and 1099s to the senior status judges, and this was provided to us as a response in discovery.

DELEGATE LANE: Okay, one more question.

What is the statute that talks about retirement making no more than $20,000?

MR. CASTO: I'm sorry, I can't hear you.

DELEGATE LANE: What is the statute that limits -- if you're on -- if you're getting State retirement, you cannot make more than $20,000 a year without it affecting your retirement?

MR. CASTO: Well, that's a limitation in the PERS -- in the PERS limiting statute which I believe is 51-9 but I'm not sure -- not 51-9, excuse me. 51-9 is JRS. PERS is a different statute. I think that's 51-2-13 maybe. I'm not sure.
DELEGATE LANE: Okay, thank you.

MR. CASTO: I'll have to -- I have that, but I'll have to look at that.

CHAIRMAN SHOTT: Delegate Lovejoy.

Lovejoy.

DELEGATE LOVEJOY: It's on. Thank you, Mr. Chairman.

Counsel, I want to ask a couple questions about the substance of the order. Is it true that our Constitution under Article VIII, Section 8, does provide administrative authority to the Chief Justice to assign judges for temporary service?

MR. CASTO: Yes, sir.

DELEGATE LOVEJOY: And is it true that under Article III, Section 17 of the Constitution, there is a requirement that the courts of this state shall stay open and justice shall be administered without sale, denial or delay?

MR. CASTO: Yes, sir.

DELEGATE LOVEJOY: Now, I guess the issue here is the interpretation of this Administrative Order purports to be that that Con -- those two Constitutional provisions would allow the Chief Justice to fill a judicial vacancy in what, I guess, the Court
- or the Chief Justice here - determines an exigent circumstance?

MR. CASTO: Yes, sir.

DELEGATE LOVEJOY: And those exigent circumstances - at least noted by the Chief Justice in this Administrative Order - I think, specifically protracted illness or lengthy suspensions due to ethical violations --

MR. CASTO: I think that is correct, sir.

DELEGATE LOVEJOY: When you look at the senior status judges who were allegedly paid in excess of the cap, do they fit in situations where there's alleged to be protracted illness or lengthy suspensions due to ethical violations?

MR. CASTO: We have an issue at this time, sir, in that we do not have a full list of all the judges who have been paid in excess of the cap.

DELEGATE LOVEJOY: Okay. And I remember, you know, in my county, there's the issue sometimes where the -- about funding of Constitutionally-required offices such as the prosecutor's office, that -- that there are times when acts of the legislature can be challenged, so to speak,
by the judiciary under Constitutional grounds.

And is that what we're seeing here?

MR. CASTO: I don't think so. I would say that to the contrary, we have -- if you will recall, this Committee, during the last session, took up a bill which was proposed by the judiciary.

It was sponsored, I believe, by the vice chairman of this Committee in the House and was passed to us from the Senate where it was sponsored by Chairman Trump over there which was to allow for payments over the cap.

So the Court, last session, did attempt to do what -- if this were an issue -- it probably should have done some sessions ago, which was to bring this issue of these exigent circumstances which were causing some level of discomfort in the judicial process to the legislature's attention, to say to the legislature, "This statute is a problem, it needs fixing."

But instead, as we have seen for at least -- according to Ms. Troy's testimony and that of Mr. Canterbury, for the last decade or so, the Court has simply crafted its own work-around without coming back to this body and asking permission to do anything.

DELEGATE LOVEJOY: And I don't
remember, but in the process of whether it was debate or discussion of the bill you just referenced, did anyone from the Court come and mention or discuss in any way the practice of this Administrative Order?

MR. CASTO: No, sir. There was no testimony from the Court at that time to my recollection on the issue of how the Court was currently -- currently satisfying the requirements.

The Court said, "It's a problem, we've got people sitting who need paid," but I don't believe, to my recollection, that there was any testimony -- I know Mr. Morris, who was at the time the Counsel to the Administrative Director, was present in our committee room upstairs at the time that bill was moved through our committee, but it's not clear to my recollection -- because it wasn't a bill that I handled -- whether or not he actually spoke to that bill or not within our committee.

DELEGATE LOVEJOY: I guess I'm trying to wrestle with, kind of the ultimate end of it is, is if we have a statute that the Court believes interferes with its Constitutional duty to keep the courts of the State open, are they permitted to determine that they can fulfill a Constitutional requirement outside of the
MR. CASTO: I don't believe that they are. I think that they have Constitutional mechanisms in place which would allow for a fix to be made, and that Constitutional mechanism is to come down here and ask this body to fix it.

Now, as to the specific instance, let's be clear: It is not an instance where the judges were not being paid. The judges who were assigned as senior status judges, if they retired through JRS, the Judicial Retirement System, receive a retirement compensation of three-quarters of the salary of a regular sitting judge.

They're paid $90,000 a year from their retirement. They would then have the opportunity to earn up to $36,000 by sitting in the capacity of a senior status judge on assignment.

No one is suggesting that the judges are somehow doing this work for free or that they are not being compensated. The question is - to be frank, I think, in my own mind - is: Are they being paid what they want to be paid.

DELEGATE LOVEJOY: I understand what you're saying. I guess my question is: In a situation
-- the judiciary - and fortunately not too frequently, but often - throws out statutes as they believe to be unconstitutional.

Do they have to do so in a written decision, and if so, does an Administrative Order equal or -- is that the same as a -- as a decision?

MR. CASTO: I don't think that an administrative decision -- an Administrative Order, which can be undertaken sua sponte upon the action of the Chief Justice in his or her capacity as Administrative Order, which could be rescinded from year to year by the actions of a -- of another Chief Justice --

DELEGATE LOVEJOY: But in the unique circumstance of -- of the issue of providing a judge to -- to decide -- at a circuit court level, for instance, to keep the courts of the State open, what would be a case in controversy that somehow would get up to the Supreme Court instead of the Chief Justice implementing that Constitutional directive?

MR. CASTO: I think the Supreme Court could have, for example, perhaps -- and I'm just speculating. I mean, now you're asking me to put my lawyering hat on and think about how to approach this
from a practical matter.

If I'm representing the Supreme Court - let's say I'm counsel or assistant counsel or assistant to the administrative director or counsel to the AD - what I'm gonna do is, I'm gonna go in and file a petition for my own court for a writ of mandamus to compel -- to compel the appointment of a -- of a judge to that position.

I'm going to -- to mandamus the Court to act, I think. I mean, I think that's one mechanism that could at least get a case before the Court, to which parties such as the legislature could then come forward and say, "But there's a statute in place, and perhaps we need to" --

Yeah, I mean, I can speculate as to three or four mechanisms like that as to who perhaps would have standing to do so. I think perhaps -- perhaps even the circuit clerk might have standing. The circuit clerk could say, "Cases aren't being heard." Perhaps the circuit clerk could come to the Court with a petition for a writ of mandamus.

I can think of three or four different mechanisms by which that case could be brought before the Court and an appeal heard and a decision rendered.
DELEGATE LOVEJOY: Okay, thank you.

CHAIRMAN SHOTT: Delegate Miller, followed by Delegate Overington and then Delegate Summers.

DELEGATE MILLER: Thank you, Mr. Chairman.

Counsel, as a -- as a normal rule, does anyone that has general supervisory authority over an entity that's given by the Constitution -- so most elected officials, per se, at basically any level of government, do they have the ability to violate the Constitution or West Virginia Code?

MR. CASTO: No, sir, not -- not generally speaking, they would not.

DELEGATE MILLER: Would that not also apply to the Supreme Court of Appeals?

MR. CASTO: I think that it would, sir.

DELEGATE MILLER: Is there any provision in code or in the Constitution that provides for exigent circumstances?

MR. CASTO: No, sir, not to my knowledge.

DELEGATE MILLER: Thank you Mr. Chairman.
CHAIRMAN SHOTT: Delegate Overington, followed by Delegate Summers, and then Delegate Fast.

DELEGATE OVERINGTON: Thank you. Are we aware of any cases where the Court was not able to do its duty because of a shortage of judge -- qualified judges in senior status?

MR. CASTO: We have not been made aware of any.

DELEGATE OVERINGTON: If the legislature is not in session and something like that happens, what would the normal response be for the Court?

MR. CASTO: Well, we know that the Court has acted to fill vacancies created by emergency, by the appointment of senior status judges. In some cases, they have detailed judges who were regular sitting judges in other circuits to hear cases.

In some cases, you know, they have detailed other justices from within the same circuit to hear cases.

So there's a varied array of mechanisms by which they can address that issue.

DELEGATE OVERINGTON: Thank you.

Thank you, Mr. Chairman.
CHAIRMAN SHOTT: Delegate Summers.

DELEGATE SUMMERS: Thank you, Counsel.

I have two questions. In order to be in violation of 61-3-22, do you have to actually have had a signature on a WV-48, or would you just have to have knowledge of the process?

MR. CASTO: The -- I don't know. I don't know that it would necessarily require a signature because the language of the actual full statute - which you can see up there - notes the making, altering or omission, so I mean, a person who omitted an entry, it wouldn't necessarily require a signature, I don't think, but it would require, I think -- because of the fact that it's alteration or omission -- some action.

I don't think mere knowledge would necessarily do so. But I think it would require an act or omission.

DELEGATE SUMMERS: Would it be regarded an omission if you knew this was occurring and then you did nothing about it?

MR. CASTO: I don't think so, because the omission is actually the omission of the entry, is what is called for.
DELEGATE SUMMERS: Okay. And my second question is: In this order that you gave us by Justice Loughry, is this because these retired justices are -- have the retirement of, you said, maybe $90,000, and then they can make up to $126,000 per the law, but they're -- they're refusing to continue if it's -- like if they're in the middle of a case, they're refusing to continue unless they make more money?

MR. CASTO: We are not informed that any of them actually refused to do so.

And in the case of Justice McHugh, we have an absolute counter example of one retired judge in the state who said, "I know that this is a problem, and I am not going to continue to receive this money."

And we are informed by Ms. Troy's testimony today -- turned around, and upon his own action, took the affirmative act to write his check back to the treasury of West Virginia to indemnify this state for whatever it was paying him in excess.

DELEGATE SUMMERS: Okay, thank you.

CHAIRMAN SHOTT: Delegate Fast.

DELEGATE FAST: Thank you.

Counsel, what options are there to fill a temporary vacancy in a circuit circuit court
position?

    MR. CASTO: Well, as I stated earlier, it depends. The Court has in the past -- of course, the senior status judge route is the one we're most all familiar with. The Court has - if there are multiple judges within the same circuit - sometimes allowed another judge within that same circuit to step into that position and hear those cases and simply divvy up the work load.

    The Court has, on occasion, taken a judge from a neighboring circuit or a close-by circuit and asked that judge to come down one or two days a week and hear cases from that docket.

    So the Court does have, in its capacity as the administrative overseer of the courts, a varied number of actions that it can undertake.

    DELEGATE FAST: What about a vacancy - it's a temporary vacancy - but for two years, and there's only one sitting judge in the circuit?

    MR. CASTO: Again, they could have -- in that instance - filled it by a series of rotate -- of rotations. They could have placed multiple judges within it to hear certain cases.

    They could have -- they could have
assigned - as they did in that case - one judge, from
the senior status, to hear those cases.

DELEGATE FAST: And we're talking
Nicholas County.

MR. CASTO: Yes, sir, I know the
element you're talking about.

DELEGATE FAST: If they did assign --
which they did assign a senior status judge. That
would inevitably put that senior status judge over the
sitting judge rate for that length of time.

MR. CASTO: If they were to pay that
senior status judge the per diem every day, yes, it
would.

DELEGATE FAST: And of course, in any
given circuit, you're going to have prolonged and
ongoing cases, abuse and neglect cases, criminal trials
that a judge makes rulings on on pretrial motions and
then having the jury trial. Civil trials, the same
thing.

So if you have judges just coming and
going on different days of the week and not the same
judge, then you could get a hodge-podge of -- of
justice without having the same judge presiding long-
term.
MR. CASTO: I think that's been represented, but I also think that it could be that you could simply assign a judge to hear certain cases. You could say, "Judge X, you're getting cases -- you know, Civil Cases 001 through 008. You know, Judge Y, you're getting Criminal Cases 001 through 009. Judge A, you're getting Criminal Cases 0010 through 0015," and let those judges set that up for hearing on various dates.

I think there are mechanisms by which multiple senior status judges could have been assigned to fill that gap. That's a mechanism that could have been used.

Alternatively, they could have simply -- the senior status judge in that case could say, "I understand that I'm essentially being recalled to active duty" as it were and written those payments back, as Judge McHugh did when he sat over here on the third floor for two years filling that vacancy on the Supreme Court.

So there -- there are a couple of different ways it could have been done.

But they chose to go with what, I think in their minds, was the easiest route: To appoint the
judge and to use the mechanism which they had been using for some time to continue paying the per diem --

DELEGATE FAST: Do -- do --

MR. CASTO: -- in excess of the statutory limit.

DELEGATE FAST: Do you believe that this Administrative Order we're looking at is a result of the Nicholas County situation since it was a rare two-year temporary vacancy?

MR. CASTO: To be frank, I'm not sure. Yes, that's certainly an argument. It could be an argument that Justice Loughry knew of the issues that were accruing with regard to this potential violation of statutory law and attempted to fashion a credible rationale by which an underpinning could have been provided to allow it to continue.

I mean, I can't speculate as to what his intentions were, because I've never had a conversation with him about what his intentions were.

DELEGATE FAST: Thank you.

CHAIRMAN SHOTT: Delegate Hollen, followed by Delegate Foster.

DELEGATE HOLLEN: Thank you, Mr. Chairman.
Counsel, a few different questions. In the testimony that we were hearing today, it was being referred to as the $20,000 limit. Now we have two different scenarios that judges can fit under, the PERS and JRS; is that correct?

MR. CASTO: Yes, sir.

DELEGATE HOLLEN: And the PERS limitation is the $20,000.

MR. CASTO: Yes, sir.

DELEGATE HOLLEN: And those are the ones that don't qualify under the JRS retirement.

MR. CASTO: That's correct. Or have elected to participate in PERS instead of JRS.

DELEGATE HOLLEN: Okay. And it seems in this past legislative session that they tried to fix the wrong by getting some legislation passed under -- for 51-9-10; is that correct?

MR. CASTO: I think that's a fair statement, yes, sir.

DELEGATE HOLLEN: If it was such an emergency and they deemed it such an emergency that the Administrative Order was written by Justice Loughry, wouldn't another remedy to that is they could have approached the Governor to call a special session and
-- and bring this 5-9-10 up to fix, if it was that big
of an emergency, and do it correctly?

MR. CASTO: Yes, sir, they certainly
could have.

DELEGATE HOLLEN: And there was no
attempt to do that that we know of.

MR. CASTO: Not to my knowledge, sir.

DELEGATE HOLLEN: Okay. And the last
question, on the 61-3-22, the delegate raised a
question about if there was no hands-on, just
knowledge, that they could not be held under 61-3-22.

But could they not be held under
61-10-31, conspiracy to defraud?

MR. CASTO: Well, that is certainly a
possibility, I suppose. I mean, the gentleman has
probably brought more charges against people for that
crime than I ever have and probably knows that statute
a little better than I do.

DELEGATE HOLLEN: Okay. No further
questions. Thank you.

CHAIRMAN SHOTT: Delegate Foster.

DELEGATE FOSTER: My -- my question is
on the -- because most of their pay -- if I got the
numbers correct, they're being paid $90,000. They can
be paid up to -- what was it, $126,000?

    MR. CASTO: Yes, sir. That would be
for those under the Judicial Retirement System.

    DELEGATE FOSTER: Okay.

    MR. CASTO: Those under PERS would have
whatever their retirement was, which we don't know what
that would be.

    DELEGATE FOSTER: And my question is,
in filling these vacancies, to me it seems like the
easiest route would be well, basically, you can receive
$36,000 to equal the salary of a sitting judge, so
you're doing the job of a sitting judge at that point.
Why wasn't that just the cap and --

    MR. CASTO: You have now articulated
what I think was the legislature's intent when it
passed that bill in 1991. And I think why it is
essentially consistent with the act right next to it, 51-9-9.

    Both of those state essentially that a
retired judge is going to collect the money of a
retired judge, or if they are sitting on the bench, the
money of a sitting circuit judge, and those are your
two options.

    I think that's exactly -- you've
articulated what I think the legislature's intent in 1991 probably was.

DELEGATE FOSTER: But -- and we have no information to say that any judge said, "Well, if that's all I'm getting, I'm not gonna sit."

MR. CASTO: We do not at this time, sir.

DELEGATE FOSTER: All right, thank you.

CHAIRMAN SHOTT: Delegate Pushkin, followed by Delegate Isner.

DELEGATE PUSHKIN: Thank you, Mr. Chairman.

You stated that there was a bill that passed through the -- passed through the house last -- it was last session?

MR. CASTO: Yes, sir, it passed through the Senate and passed through our committee. It did not pass through the House.

DELEGATE PUSHKIN: It passed through our committee?

MR. CASTO: Yes, sir.

DELEGATE PUSHKIN: But did -- was it passed by the -- by the House?

MR. CASTO: It did not pass the House.
DELEGATE PUSHKIN: Okay.

MR. CASTO: It was one of those that
died in the last week of session, as many bills do. I
don't know what the -- what happened to it.

DELEGATE PUSHKIN: It never got moved
to the House calendar?

MR. CASTO: I think that's -- I think
that's the case, but I'm not sure what the issue was.

DELEGATE PUSHKIN: Okay. Well, I'm
asking -- now, in the past, there was like a
legislative liaison between the Court and the -- and
the legislature.

MR. CASTO: Yes.

DELEGATE PUSHKIN: Is there -- was
there one last session?

MR. CASTO: I don't think they had. I
think they had terminated their then legislative
liaison, and I think most of the contacts that our
committee had were through Mr. Morris.

DELEGATE PUSHKIN: Was through where?

MR. CASTO: Were through Mr. Morris,
Mr. Chris Morris --

DELEGATE PUSHKIN: Okay.

MR. CASTO: -- the assistant to Judge
Johnson, the Administrative Director.

DELEGATE PUSHKIN: And Chief Justice Loughry at the time fired the legislative liaison.

MR. CASTO: I believe he had, sir. I believe that's --

DELEGATE PUSHKIN: And the bill didn't pass.

All right, thank you.

CHAIRMAN SHOTT: Delegate Isner, followed by Delegate Lane.

DELEGATE ISNER: Thank you, Mr. Chairman.

Counsel, I just want to follow up on a couple of things. There's been some discussion of Nicholas County creating a situation, but -- but that's not it, right? You have Upshur County where there was a long delay by the Executive Branch in making an appointment to fill a -- a seat. Is that correct?

MR. CASTO: I assume that the gentleman is correct. The gentleman knows that circuit far better than I do.

DELEGATE ISNER: Okay. And I'm just looking at some of the judges that are referenced in -- in the material we have. I think it was Judge Henning
that filled that for a very long time.

Are you aware of a very similar situation that I think occurred up in Hardy County where there was a long delay by the Executive in making an appointment?

MR. CASTO: I actually am aware of that because I had a case in front of Judge Cookman many years ago around the time that -- that I think that he left the bench and that that occurred.

DELEGATE ISNER: Judge Keadle spent an awful lot of time there filling that one.

MR. CASTO: I think that's the case, yes.

DELEGATE ISNER: And then Judge Keadle and Judge Steptoe back in my home county of Randolph spent a really long length of time there filling in for a judge that was suspended, you know, during some ethical investigations; is that correct?

MR. CASTO: Yes, sir, I believe that is the case.

DELEGATE ISNER: So this goes well beyond, you know, what went on in Nicholas County as far as some of these judges go.

MR. CASTO: Oh, yes, sir. And I mean,
we've had -- we've had a case here in Kanawha County with Judge Stucky's illness in which there was a rather long appointment there.

I mean, there have been, you know, long appointments in many of the circuits due to illness or, as you put it, misconduct or other reasons why a particular seat had been vacated.

DELEGATE ISNER: So following up a little bit on Delegate Lovejoy asking about how this issue might be addressed, you indicated perhaps the circuit clerk, you know, could fill a writ or -- we were talking about who might have standing to get a judicial vacancy filled. Correct?

MR. CASTO: Yes, sir.

DELEGATE ISNER: So isn't the reverse also true? Would the auditor or some other branch have -- or some other state official have standing to challenge Chief Justice Loughry's 2017 Administrative Order and say that it violates statute?

MR. CASTO: I think your construction is eminently logical, that it is possible that the auditor and the treasurer in their capacity, as the overseers of disbursements of funds, may have had the standing to do so, absolutely.
DELEGATE ISNER: So the statute that we've been dealing with - I think it was 61-3-22 - was last amended in 1991?

MR. CASTO: Well, 61-3-22 has not been amended for some time. I do not know the last date on that. The one you're talking about with regard to the limitations, 51-9-10, was last amended in 1991.

DELEGATE ISNER: So that's last amended in 1991, then Chief Justice Loughry issues an Administrative Order in 2017 which effectively conflicts with the statute to some degree. Correct?

MR. CASTO: Yes, sir.

DELEGATE ISNER: So until somebody challenges Chief Justice Loughry's Administrative Order, wouldn't that be the prevailing law?

MR. CASTO: Well, actually, I think the prevailing law would be what the statute would be. I think there's the question as to whether -- and I think this is the question that the gentleman from Cabell asked.

What is the prevailing law? Is the prevailing law the Administrative Order undertaken by the Court or is it the statute? And until we have resolution of that in some -- in some form or fashion,
we have -- basically the Court has legitimized the
process that it was undertaking for the past --
according to the testimony that we've had -- for at
least the past six years.

But it has only legitimized it on a
post-hoc basis from 2017 forward. There is no
administrative authority prior to that for the practice
of the issuance of payment to these judges in excess of
the cap via the WV-48/1099 mechanism that we've heard
described.

DELEGATE ISNER: Well then -- I mean, isn't the Supreme Court the ultimate arbiter of, you know, what happens when a statute is in conflict with the Constitution?

MR. CASTO: Well, I would say that the process that you are involved in right now probably has restored a little bit of that momentum in your direction, sir.

DELEGATE ISNER: Well, that was my next question: Is that our role to decide the conflict between the statute and the potential Constitutional obligation of the government to keep the courts open?

MR. CASTO: Well, you all passed the statute, and you all are going to have to make that
determination. That's all above my pay grade.

DELEGATE ISNER: Thank you, Counsel.

Just asking for your interpretation.

No other questions.

CHAIRMAN SHOTT: Delegate Lane.

DELEGATE LANE: Counsel, if -- if there's a -- a vacancy or a need for a replacement in one of the circuits, could -- could one of the Supreme Court Justices sit in on circuit court proceeding?

MR. CASTO: My understanding is that they can.

DELEGATE LANE: They can? Okay. And this Administrative Order, do we have any knowledge as to whether or not the other justices knew about this order?

MR. CASTO: We have no information based up -- at this time to say that they did or did not.

DELEGATE LANE: Okay, thank you.

CHAIRMAN SHOTT: Counsel -- Counsel, just a question from the Chair. We have a November 15th, '91 rule -- I guess that's their policy set by the Supreme Court, signed by Justice Miller at that time, that recognized the statute and made no
exceptions.

Is that fair to say?

MR. CASTO: That's true, sir, and we also have the one from Justice Neely from 1994 --

CHAIRMAN SHOTT: I'm --

MR. CASTO: -- that does the same.

CHAIRMAN SHOTT: I'm getting to that.

MR. CASTO: Okay.

CHAIRMAN SHOTT: And Justice Miller was generally thought to be a very intelligent justice during the time he served; would you agree with that?

MR. CASTO: Yes, sir.

CHAIRMAN SHOTT: And then we have Justice Neely basically in '94, reenacted the same policy and again basically provided that the per diem and retirement compensation of a retired judge admitted to senior status shall not exceed the salary of a sitting judge, same language basically, and no exceptions.

MR. CASTO: Absolutely, sir.

CHAIRMAN SHOTT: And Justice Neely was also recognized during the time he served as a scholar of the law and the Constitution; is that fair to say?

MR. CASTO: I think that is very fair
to say, sir.

CHAIRMAN SHOTT: And that's been the policy, although the per diem rate has remained -- or has been adjusted upward since 1994. But until Justice Loughry's attempt to override the statute, that policy has remained in effect, unchanged. Is that fair to say?

MR. CASTO: Yes, sir, through many iterations.

CHAIRMAN SHOTT: With regard to the limit of the sitting judge's salary setting the limit, of the amount that the person -- the retired -- or the senior status judge can receive. Fair enough?

MR. CASTO: Yes, sir.

CHAIRMAN SHOTT: So even if it's not a violation of the pol -- or of the statute, the Court has consistently violated its own policy, has it not?

MR. CASTO: I --

CHAIRMAN SHOTT: -- until -- until Justice Loughry attempted to change that.

MR. CASTO: I would have to agree, they have violated their own written directive.

CHAIRMAN SHOTT: Thank you.

Other questions for counsel? Other
questions for counsel?

Delegate Fleischauer.

MINORITY CHAIR FLEISCHAUER: Thank you, Mr. Chairman. Thank you, Mr. -- thank you. Actually, I have a request to make. I believe there might be alternative interpretations of the statute, and I was wondering if I could ask our minority counsel if he would share possible other interpretations of these two statutes.

CHAIRMAN SHOTT: Certainly. Counsel, would you yield the podium to minority counsel, please?

MR. ALTIZER: Thank you, Mr. Chairman.

MINORITY CHAIR FLEISCHAUER: Thank you, Mr. Chairman. So let's start with 51-9-10. Do you think there could be an alternate interpretation other than that explained by --

MR. ALTIZER: Well --

MINORITY CHAIR FLEISCHAUER: -- our judiciary counsel?

MR. ALTIZER: My reading of the statute, if I could just kind of go through it --

MINORITY CHAIR FLEISCHAUER: Yes.

MR. ALTIZER: I think that's a -- reflects a few provisos --
MINORITY CHAIR FLEISCHAUER: And I would request that you speak into the microphone, because we can't hear you.

MR. ALTIZER: Okay, thank you.

MINORITY CHAIR FLEISCHAUER: -- or adjust the mic perhaps.

MR. ALTIZER: All right. There are two provisos in this section of the code. And as generally -- as a general statutory construction rules, provisos are exceptions or limitations to the prior statements. I guess the prior statement, the singular statement.

So the first sentence, "The Court is authorized and empowered to create a panel of senior judges to utilize the talent and" expertise "of former circuit judges and supreme court justices of this state."

Then the second sentence, "The Supreme Court of Appeals shall promulgate rules for said judges and justices to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing speedier trials to litigants throughout the state," so the two provisos are exceptions to -- or limitations upon the rules promulgated by -- by the Court.
So the first proviso says, "That reasonable payment shall be made to said judges and justices on a per diem basis." That would be a requirement of the rule.

And the second proviso, "That the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge."

And it's my practice in writing legislation over the years, and -- if you're going to prohibit an activity, you need to expressly set it out. You can't prohibit it by inference.

The fact that the second proviso only prohibits that the per diem and retirement compensation shall not exceed a salary of a sitting judge, it does not expressly – and I mean expressly – prohibit any other compensation to that judge.

I know you think I might be parsing out -- picking details on this, but I would tell you that whenever there's a criminal law that's going to be applied like there's attempting to be here, 61-3-22, I think you have the responsibility to have an express prohibition in the law.

And I don't think that is an express prohibition. I think that my thinking is the Court,
when they're looking at this, read this, is this is the max we can do. If you're gonna pay per diem, you cannot pay them per diem beyond the combination of the salary of the -- I mean, the pension of the judge and the per diem rate to meet a salary of an existing judge. That's your prohibition.

Now, if you want to go out -- and I think what the Court has done, is they've - through their general authority to regulate the practice of the Court - they've created an exception outside of these rules to allow payment on a contract basis for people they have designated through their authority - in the first sentence - to designate as senior judges.

So if they've written a letter designating somebody as a senior judge, they are authorized to act as a judge, regardless of whether they're paid or not. That's the authority to act.

The second part is -- is this. I'm only saying that to the extent you're trying to apply 61-3-22 to this provision as a violation, I don't think it fits. And that's my analysis of this section.

CHAIRMAN SHOTT: Do you want to follow up on that, Coun -- on that, Delegate Fleischauer, questions?
MINORITY CHAIR FLEISCHAUER: Yes, so I -- let me just rephrase it. So what you're saying is -- I think -- is that this does not exclude -- this does not prohibit payment on a contract basis.

MR. ALTIZER: It doesn't authorize it. It says the only -- the only prohibition in that sentence is that the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge. That's the prohibition.

MINORITY CHAIR FLEISCHAUER: Okay.

What are you saying, it doesn't -- it doesn't authorize what?

MR. ALTIZER: It doesn't authorize them to pay by contract work. It doesn't say you can; but it doesn't say you can't.

MINORITY CHAIR FLEISCHAUER: Okay.

MR. ALTIZER: My point is if you're gonna place a criminal penalty on somebody for a criminal act, it needs to expressed in the code what the criminal act is. It can't be done by implication or by some kind of conclusion that the public policy was that no retired senior status judge can make more than a sitting judge.

I mean, that might have been the
prevailing idea here, but it's not expressly said anywhere in that article that I could find that that's prohibited.

It's just -- through this implication, that it's not allowed.

MINORITY CHAIR FLEISCHAUER: Okay. So you -- so you're saying that there is a possible way to interpret this to -- it's not -- it's -- it's not disallowed by this statute.

MR. ALTIZER: I'm just saying I don't think it's real clear and I think it's clearly a prohibition that you cannot make more with your per diem and your retirement compensation than a sitting judge, but there's no prohibition for making more than that in some other fashion.

MINORITY CHAIR FLEISCHAUER: So you don't think it would be fair or consistent with our application of the criminal laws to say that it's a felony.

MR. ALTIZER: Well, yes, that's what I think.

MINORITY CHAIR FLEISCHAUER: Is that --

MR. ALTIZER: I think that there's -- that statute does not rise to the level of being able
to assert a felony against a justice for violating that
provision and using 61-3-22 as your penalty.

MINORITY CHAIR FLEISCHAUER: Thank you.

CHAIRMAN SHOTT: Are there questions of
counsel regarding his interpretation of the statute?

Gentleman Delegate Foster, followed by
Delegate Summers.

DELEGATE FOSTER: My question's on when
you're talking about the per diem and the salary not
excluding, and you said that just because it's a --
contractual services, that it wouldn't exceed because
it's outside of per diem and salary?

MR. ALTIZER: It would -- the sentence
says the per diem and retirement compensation of a
senior judge shall not exceed -- in combination, shall
not exceed that of a sitting judge.

DELEGATE FOSTER: And that's the thing,
but -- these contractual services are paid per diem,
correct?

MR. ALTIZER: Well, my understanding of
how it works is they've been paying people per diem up
to the -- to the salary level and then they've quit
paying their per diem because of this prohibition and
then began paying contract, which is a different
contractual relationship than it is on a per diem basis.

DELEGATE FOSTER: But in the documents we saw, it's still $435.00 a day, which was per diem.

MR. ALTIZER: I know. It's legal sophistry. I'm not disputing that. I'm just saying for purposes of applying a criminal code to these folks, that I would like a little more clear expression that there's actually a violation in existence here other than that proviso.

DELEGATE FOSTER: And that's my question. How would you clarify that? Do you want to say "per diem rate" --

MR. ALTIZER: Well, if I would write the statute, I'd say that the per diem retirement -- and -- well, I just -- let me see. The first -- "reasonable payment shall be made to said judges and justices only on a per diem basis." That would do it.

DELEGATE FOSTER: Because otherwise, I mean, if -- for it to clarify, it would have had to say "per diem" or "contractual" or "bonuses" or --

MR. ALTIZER: Well, and I -- I would -- my take on it is they understood they were dancing around this language and they had a serious problem
they were trying to address. They said there wasn't express prohibition for doing this, so they did it. Is it right or wrong? That's your all's judgment. You all are the legislators here. I'm just doing what I do, which is reading the statutes and making an assessment on what I think the implication of it is.

DELEGATE FOSTER: But either way, the payment was made per diem.

MR. ALTIZER: Well, it wasn't a per diem. They entered into a different relationship. It was -- the per diem was capped and they started paying them on what we call contract basis, which was like independent contractor, so to speak.

DELEGATE FOSTER: All right, thank you.

CHAIRMAN SHOTT: Delegate Summers.

DELEGATE SUMMERS: Thank you, Counsel.

I had one question. Why, on this interpretation, do you think the IRS said you can't do that?

MR. ALTIZER: I think because of the implications on their pension plans. Whenever you exceed -- you earn too much money doing the job you did prior to your retirement, there are limitations. Like we as legislative employees, I'm a part-time person --
I could work so many days a year and still draw a pension.

And I think they were trying to protect their -- the efficacy of their pension plan, because if you exceed those rates, you can be required to reimburse some of your pension to the State, and so if I exceeded the amount of work I'm allowed to make by law, I wouldn't go to jail; I'd be required to pay back some of my pension.

DELEGATE SUMMERS: So should we disregard the IRS's recommendation based on that one statute?

MR. ALTIZER: I'm -- I haven't seen their recommendation and what their objection was.

Now, I'm not speaking towards federal law. This could be something totally different. This is only an analysis of that particular statute and the relationship that I -- to the criminal provisions we were talking about.

DELEGATE SUMMERS: Okay, thank you.

CHAIRMAN SHOTT: Further questions of counsel?

Delegate Miller.

DELEGATE MILLER: Thank you,
Mr. Chairman.

This might be geared more toward Mr. Casto.

CHAIRMAN SHOTT: Well, let's finish -- let's finish with --

DELEGATE MILLER: Okay.

CHAIRMAN SHOTT: -- our current victim and we'll move to another victim in a minute, okay?

Are there any other questions? I have a question. I want to be sure I understand the distinction that you're making. You're not saying that this activity doesn't violate their own policy; you're just saying it shouldn't be - based on the statute - the basis for a criminal charge.

Am I fair -- is that fair?

MR. ALTIZER: I think that's very fair. I haven't done any research on that and I would be wading in this deep water if I offered an opinion on that.

CHAIRMAN SHOTT: So you haven't had a chance to look at the various exhibits from the --

MR. ALTIZER: I have.

CHAIRMAN SHOTT: -- Court's policy --

MR. ALTIZER: And I would say, my first
observation is this -- all of these policies related to
their per diem reimbursements as authorized under the
statute and directed by the statute.

Now, whether the Court had authority
outside of these per diem payments through their own
rights as -- through the judiciary to administer the
courts, and if they were lawful in that capacity, I
don't have an opinion on that.

CHAIRMAN SHOTT: But you would agree
that the rate that they are paying under this contract
is exactly the rate they authorize as per diem under
their policy.

MR. ALTIZER: Well, it's certainly
probably more than a coincidence.

CHAIRMAN SHOTT: It's -- the last
policy update was $435.00 a day, which is what they are
paying under this WV-48.

MR. ALTIZER: Yes, but -- I think this
was done in an effort to comply with the statute and
still keep their -- their judges in the -- in
courtroom. So --

CHAIRMAN SHOTT: So there's good
intentions for disregarding the statute.

MR. ALTIZER: Well, I'm just not
convinced the statute has been disregarded,
Mr. Chairman.

CHAIRMAN SHOTT: I understand. I understand your interpretation.

MR. ALTIZER: Thank you.

CHAIRMAN SHOTT: Any other questions for our friend over here who's taken our grilling with a good nature?

Okay, Counsel -- Delegate Miller, further questions of counsel?

DELEGATE MILLER: Thank you. Thank you, Mr. Chairman.

CHAIRMAN SHOTT: -- staff counsel. Go ahead.

DELEGATE MILLER: Thank you, Mr. Chairman.

And I'm trying to wrap my head around 61-3-22 --

MR. CASTO: Yes, sir.

DELEGATE MILLER: -- as it applies to what we're discussing if we're, in effect, trying to prepare a criminal case.

MR. CASTO: Yes, sir.

DELEGATE MILLER: Is there any question
that anyone at the Court is falsifying accounts? At least on its appearance, everything is clear that there has been a -- a contract signed, there's no excessive payments, it's per whatever their schedule is.

You see where I'm going with that? Is there any fraudulent activity in regard to the numbers, I guess you'd say?

MR. CASTO: There's no fraudulent activity with regard to the numbers. But the statute - even though it's captioned as falsification of accounts - provides that it's simply if you are doing anything which enables someone to obtain moneys to which they are not entitled.

And so I would argue that there is a possibility of construction based upon our -- our managers' representations that these persons are thus -- because of the hard cap -- not entitled to those moneys, and if you make any entry which enables persons to obtain money to which they are not entitled, you have violated the provisions of the statute, even though there is no falsification.

The caption of the statute just is what it is.

DELEGATE MILLER: Understand. And it
-- my normal thought process is to play devil's advocate by the time you get to the --

       MR. CASTO: Oh, I'm aware.

       DELEGATE MILLER: -- the end of a case, so my ultimate question would be: Is there -- as what's normally present in a criminal case, do we find criminal intent involved in this?

       MR. CASTO: Well, there is -- there is a question of intent, and I don't know that it's criminal intent, but the -- it doesn't say that the intent had to be criminal. It simply says the intent is to enable the person to obtain money to which they were not entitled.

       So the question of whether or not the Court's actions constituted an attempt by the Court to allow a person to obtain money to which they were not entitled would ultimately be a question for the trier of fact.

       DELEGATE MILLER: Thank you.

       Thank you, Mr. Chairman.

       MR. CASTO: Mr. Chairman, if -- if I may.

       CHAIRMAN SHOTT: Counsel, if you want to proceed, go ahead.
MR. CASTO: I have a clarifying comment upon my co-counsel's point. I think he would be correct if the Court had not understood that what they were doing was continuing to pay per diem.

I'd like to call your attention to Exhibit 65. You've all been handed this out previously. This is a contractual payment made to Judge Keadle when he was sitting by special assignment in the year 2013.

You will look -- the fourth page of that exhibit is the signed WV-48 which was executed by Judge Keadle and Justice Benjamin in 2013.

We have two of the inner pages which appear to be for dates when Judge Keadle was sitting in Moorefield in May and June of that year. And on the front, on this page of Exhibit 65, I want to point this out to the Committee.

(Counsel pointed on the screen.)

MR. CASTO: It says on the Comments line about three quarters down the page, where I indicated, it says, "This is a senior status judge per diem."

The Court did not change the captioning on what it was paying these individuals when they were
being paid under a West Virginia-48 or whether they were being paid under a W-2.

The Court viewed it as a per diem payment to a senior status judge, and the Court knew - as we have heard - from their own policies that per diem payments, when combined with retirement, were to be capped at the compensation of a sitting circuit judge.

That's what we have, Mr. Chairman.

CHAIRMAN SHOTT: Other questions?

Other questions of counsel.

Yes, Delegate Fluharty.

Counsel?

MINORITY VICE CHAIR FLUHARTY: The criminal code provision you cited earlier, that's a specific intent crime, isn't it?

MR. CASTO: It is an intent crime, and the intent is to enable a person to obtain money to which they were not entitled.

MINORITY VICE CHAIR FLUHARTY: So a simple entry would not constitute the -- a crime.

MR. CASTO: No, sir. It would have to be the persons who would have had knowledge that the persons were not entitled to that money.
MINORITY VICE CHAIR FLUHARTY: So to prove that up, you're gonna have to prove that justices had knowledge and intended for more money to be made available to sitting judges.

MR. CASTO: Well, I think that would be -- if -- if someone were to try to prove that, I think that would be what they would have to prove.

If the Kanawha County prosecutor, for example, were to look at this and believe that that were actionable, they would have to prove that the judges knew or should have known that these persons were not entitled to that money and that they undertook actions specifically to get them that money despite their knowledge of the law. And that would be the bar.

MINORITY VICE CHAIR FLUHARTY: Thank you.

CHAIRMAN SHOTT: Other questions? Delegate Fleischauer.

MINORITY CHAIR FLEISCHAUER: Thank you, Mr. Chairman.

I guess just to follow-up on that, this Exhibit 66, this is something that someone entered into a computer. This isn't something that one of the justices entered into a computer.
MR. CASTO: No, it's -- it's within the FIMS system originating from the Supreme Court. To say in what manner this was transmitted or what it was intended to be --

But you'll note that the electronic authorization is from Ms. Troy, the Director of Financial Management at the Court at the time.

So this is -- whatever -- I cannot speculate as to who the original preparer of this was, whether that was her or some other person at the Court. But it appears to be something that the auditor's office would have received from the Court.

MINORITY CHAIR FLEISCHAUER: Well, I guess what I'm saying is: If they change the status to contract status, it -- this document does not prove that they -- that they were doing it under the statute.

This -- this document -- because it's just a computer entry.

MR. CASTO: Well, I think all that we have in proof of this is that it's still being captioned in per diem. That for whatever reason, that was what -- we have to take it for what it is, and it says that it is a payment of a senior status judge per diem for periods within August 2013. And that's all I can go on, is what I
see before me.

MINORITY CHAIR FLEISCHAUER: Right. But I don't think that is like proof that the justices knew that they were -- I just don't see it that way.

Okay. Thank you.

CHAIRMAN SHOTT: Delegate Summers, followed by Delegate Isner.

DELEGATE SUMMERS: Thank you, Counsel. Can you help me understand -- I'm not following this. Why are you filling out a WV-48 if you haven't already met your amount? So why would they sign that?

MR. CASTO: They would not --

DELEGATE SUMMERS: I'm missing something,

MR. CASTO: -- fill out a WV-48 unless they'd already hit that point. That's exactly correct.

DELEGATE SUMMERS: Okay, that's what I thought.

MR. CASTO: We heard testimony from Mr. Canterbury that they had a person assigned to facilitate the transmission and completion of a WV-48 on the period when -- after that cap had been hit.

DELEGATE SUMMERS: Yeah, that's what I thought, thanks.
CHAIRMAN SHOTT: Delegate Isner.

DELEGATE ISNER: Thank you, sir. Thank you, Mr. Chairman.

Counsel, could you turn your attention back to Exhibit 65?

MR. CASTO: Sure.

DELEGATE ISNER: This document, where do we obtain this from? Was this from the Supreme Court?

MR. CASTO: This was obtained from the Supreme Court.

DELEGATE ISNER: Okay. Because the -- about the third line down at the top says it's from the Financial Information Management System from the Office of the State Auditor; is that correct?

MR. CASTO: Yes, sir, that's what it says.

DELEGATE ISNER: So was this generated by the Supreme Court or generated by somebody at the State Auditor's Office?

MR. CASTO: The person who would have had better knowledge of that was here earlier today, sir.

DELEGATE ISNER: Okay, fair enough. Do you know if there was ever a copy of this that was ultimately signed by the State Auditor or somebody that -- their designee?
MR. CASTO: We do not have any knowledge of that at this time.

DELEGATE ISNER: There --

MR. CASTO: We received this document today.

DELEGATE ISNER: There is a line at the bottom that appears to be a signature line from somebody at the State Auditor's Office though; is that correct?

MR. CASTO: Yes, sir.

DELEGATE ISNER: So if somebody from the State Auditor's Office was somebody who prepared this and/or ultimately signed it, is it your position that they would have violated 61-3-22?

MR. CASTO: I'm not the one to -- to say whether or not that law was violated. That's a jury question, and that will be -- that would have to have a prosecution initiated to determine whether or not there was even chargeable evidence on that.

I'm not -- I'm not speculating as to whether that law has been violated in any way, shape or form. I know that one of our managers raised that it was a potential violation and believed that there was a potential that that law had been violated, and so I'm merely bringing it to the Committee's attention.
DELEGATE ISNER: Okay.

Thank you, Counsel.

CHAIRMAN SHOTT: Delegate Miller.

DELEGATE MILLER: Thank you, Mr. Chairman.

Counsel, are we aware if any other judicial appointments are made this way for senior status or a fill-in position such as magistrates or family courts in the State of West Virginia?

MR. CASTO: I'll be entirely honest with you, I have -- I have, in the course of my career, never had occasion to question how magistrate vacancies or family court vacancies have -- have been filled.

I've never been in a -- in a trial before a magistrate or before a family court judge who was sitting -- who had a successor sitting -- or substitute sitting by designation, so I have no idea how those vacancies are filled.

DELEGATE MILLER: If there was a need for a substitute family court judge or a magistrate, on its face, would -- would this Administrative Order signed by Justice Loughry apply to that -- those positions as well?

MR. CASTO: I don't believe so, because I think he speaks specifically to the judicial statute in 51-9-10, and I think what he is speaking solely to -- the
way that I read that order - is the position of judge, not the subordinate court positions such as family court judge or magistrate.

DELEGATE MILLER: Okay, thank you.
Thank you, Mr. Chairman.

CHAIRMAN SHOTT: Further questions of counsel?

Thank you, Counsel.

MR. CASTO: Thank you, sir.

CHAIRMAN SHOTT: We have some additional exhibits that we want to share with you that have just come in recently, and I'm going to ask our chief of staff to explain what they are, and then we'll pass them out.

Ready, Counsel, go ahead.

MS. KAUFFMAN: Thank you, Mr. Chairman.

The exhibits that have been just passed out to the Committee are Exhibits No. 70 and Exhibit No. 72. We do not have any witnesses to testify as to either one of these documents. They are being provided to the Committee for informational purposes.

If follow-up is needed later, we can certainly do so later with witnesses. Again, these are being provided for informational purposes, as some of these issues have been brought before the Committee during
the recent hearings.

Exhibit 70 is a letter dated July 26, 2018 from the State Auditor to the West Virginia Supreme Court of Appeals. This letter references purchases of meals by the Supreme Court. It is a three-page letter.

I will note — and you have not been provided copies of these — this letter does reference four -- I believe it is four advisory opinions from the Ethics Commission. If anyone would like copies of those, we will be happy to make copies of those advisory opinions.

They also address meal purchases in different manners or in different instances. So those can be provided.

Again, this is Exhibit 70, the -- again, just the letter from the State Auditor.

On page 2 -- and certainly the Committee will have the opportunity to read the entire letter. I will just note on page 2, above the Supreme Court policy defining allowable expenses above that, the position of the auditor is noted that public employees and public officials, including specifically members and employees of the Supreme Court may not use public funds to purchase personal meals during a nontravel work day.

And further states that an expenditure of
public funds for a personal meal will neither be processed
nor approved by the State Auditor's Office.

Again, this was received via FOIA request, so this is being provided to the Committee for
informational purposes.

Exhibit No. 72 that has also been provided
to the Committee is information regarding a payment that
was made to Ms. Allen in 2017 for writing – or drafting, rather – an opinion in the Quicken Loans cases.

This has been mentioned, I believe, at
some point throughout the course of the proceedings, so
this information is being provided, again, for that -- for
the Committee to consider.

The exhibit should contain two pages which
are the -- the bill that Ms. Allen submitted. It notes on
page 2 of this that there was an agreed-upon cap, that she
was entitled to $10,000 for her work. Her total charges
were actually $14,950, but the cap kept that at $10,000.

The last page of this is an e-mail from
what appears to be an administrative assistant for Justice
Walker to the former Administrative Director, Judge
Johnson, discussing this invoice and having the invoice
paid.

I will note that -- I believe there was
some testimony -- and just to clear up any confusion, it
is our understanding that Ms. Allen was actually paid to
write two separate opinions. This deals with an opinion
that was written in 2017.

It is our understanding there was a prior
opinion drafted by Ms. Allen in 2016. That was in the
case in which all of the justices -- as I recall, I believe
all of the justices -- had recused themselves, so that
information is not provided in this. This one was -- is
different in that regard. I don't know if there were any
recusals.

But the prior one in 2016, I believe all
justices had recused themselves, and it's my understanding
that that was also a $10,000 payment.

Mr. Chairman?

CHAIRMAN SHOTT: Thank you, Counsel. And
understanding that neither of these exhibits were prepared
by the Committee staff, are there questions that might be
answerable? But basically we're just disseminating
information that we received pursuant to either a FOIA
request or unsolicited information, I think it's fair to
say.

Are there questions?

Yes, Delegate Sobonya.
DELEGATE SOBONYA: The e-mail that was sent from Gary Johnson to Whitney Humphrey about the payment to Ms. Allen, it says in the e-mail that Justice Walker wasn't sure if she was still an approved vendor or if a formal contract is necessary.

And in this e-mail, they're stating that they received the invoice from Ms. Allen. Is it common practice to contract out for $10,000 of work without knowing if someone's an approved vendor and without a formal contract? Doesn't that seem a little backwards?

MS. KAUFFMAN: I can't speak to that. I'm not sure what the -- the Court's process was in that regard. I believe -- and this is -- this would be speculation on my part -- when it references in that e-mail, "wasn't sure if she was still an approved vendor or if a formal contract is necessary," I am not sure if that references her earlier work in 2016, because she also did work for the Court in 2016.

So that -- again, pure guess on my part. But it may reference the earlier work done.

DELEGATE SOBONYA: And when did Ms. Allen start her employment with -- with the Court?

MS. KAUFFMAN: Her current employment with the Court? I am not sure. It would have been after Judge
Johnson, the former Administrative Director, left this past summer -- or this summer.

I believe he left in June, if I -- if I recall correctly.

DELEGATE SOBONYA: Thank you.

CHAIRMAN SHOTT: Other questions of counsel? Other questions?

If not, as -- as was announced previously, we're gonna seek to adjourn into executive session. This whole process was subject to an exception under the Open Meetings Act, but we've elected to try to keep as much of it in open session as possible.

However, there are a couple of issues that I think are appropriate to discuss in executive session. The intention will be to go into executive session. We do have dinner for -- for all of you. When we're finished with the executive session and reconvene in regular session in the Committee room, the only purpose of that will be to -- to adjourn until tomorrow morning.

So there won't be any action taken, won't be any votes after we come out of executive session. So that's for the benefit of the press. If you want to stick around, fine. But we don't anticipate any action taking place, and we will resume tomorrow morning.
Recognize --

(Some discussion was had off the record.)

VICE CHAIR HANSHAW: Mr. Chairman, under 
the authority of West Virginia Code 6-9A-4(b)(2)(A), I
move that the Committee reconvene upstairs in executive 
session at 5:20 p.m.

CHAIRMAN SHOTT: You've heard our vice 
chairman's motion. Is there any discussion? If not, all 
in favor will say "Aye."

DELEGATES: Aye.

CHAIRMAN SHOTT: Opposed will say "No."
The ayes appear to have it.
The ayes do have it.
We'll be in executive session upstairs at 
5:20.

---oOo---
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Teresa Evans, Registered Merit Reporter
and a Notary Public within and for the County and
State aforesaid, duly commissioned and qualified, do
hereby certify that the foregoing proceedings were
duly taken by me and before me at the time and place
and for the purpose specified in the caption hereof.

I do further certify that the said
proceedings were correctly taken by me in shorthand
notes, and that the same were accurately written out
in full and reduced to typewriting by means of
computer-aided transcription.

Given under my hand this 8th day of August,
2018.

Teresa Evans
TERESA EVANS, RMR, CRR
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