

1 IN THE WEST VIRGINIA LEGISLATURE  
HOUSE OF REPRESENTATIVES  
2 JUDICIARY COMMITTEE  
3 \* \* \* \* \*  
4 In Re:  
5 House Judiciary Committee  
6 Proceeding Regarding the  
7 Impeachment of West Virginia  
8 Supreme Court Justices Pursuant  
9 to House Resolution 201 Passed  
10 During the Second Extended Session  
11 of 2018.  
12 \* \* \* \* \*  
13 VOLUME I  
14 Hearing held on July 12, 2018, before the House  
15 Judiciary Committee of the West Virginia Legislature.  
16 - - -  
17  
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1 CHAIRMAN SHOTT: Good morning. We'll  
2 call this meeting of the judiciary committee to order.  
3 I'll ask the clerk to take a roll to ascertain the  
4 presence of a quorum.  
5 (The roll was taken.)  
6 CHAIRMAN SHOTT: A quorum is present.  
7 This meeting is being conducted pursuant to the  
8 authorization of resol -- House Resolution 201 which  
9 passed on June 26, 2018. I'm sure the first question on  
10 everybody's mind is what will -- what is the effect on  
11 our proceeding of the retirement of Justice Ketchum.  
12 I'll be addressing that when I talk about the rules in a  
13 few minutes, but essentially, as all of you on the  
14 committee know, the only remedy that's available to the  
15 House as a result of this proceeding is to recommend  
16 articles of impeachment, and the only remedy available to  
17 the Senate is removal from office.  
18 And because the retirement of Justice  
19 Ketchum effectively will result in his removal from  
20 office, we will not be spending any time dealing with the  
21 findings of any of the reports that deal with Justice  
22 Ketchum. Obviously, that may alter our schedule somewhat  
23 and probably reduce the time that we had planned on today  
24 and maybe in the long run shorten our three-day session

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1 by some number of hours if not by a day. So as -- we'll  
2 see how the evidence unfolds that we plan to present, but  
3 there is that possibility that because a block of time  
4 would have been devoted to those findings that we will  
5 not need that time as a result of that retirement.  
6 Let me just take a moment to  
7 editorialize. I know you-all -- you members of the  
8 committee have heard me editorialize before, but I think  
9 it's appropriate at this time. I know I have spent a lot  
10 of sleepless nights thinking about what we're about to  
11 undertake. I started practicing law in the fall of  
12 nineteen eight -- 1975 and during that time I also spent  
13 18 years on the school board and was either blessed or  
14 cursed, depending on how you look at it, with being  
15 involved in a lot of significant activity: Murder  
16 trials, mergers of companies, closing schools, opening  
17 schools, the heartbreak of consolidation and closing  
18 local schools. None of that is anywhere near as  
19 significant as what we're about to undertake in this  
20 committee and perhaps in the house and the senate.  
21 So, you know, the ultimate result of what  
22 we're doing here today could be to overturn a duly  
23 elected official's election. Tens of thousands of West  
24 Virginians voted for our Supreme Court justices for

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1 12-year terms and invested in them substantial trust  
2 and -- on the other hand, though, when you think about  
3 it, the least accountable of our public officials is  
4 someone elected to the supreme court of appeals, and  
5 that's because of the length of the term. Each of us has  
6 to fo -- to face the voters every two years, and so we're  
7 more likely to be scrutinized during that two-year  
8 period. So we have an obligation to also hold  
9 accountable those public officials who the voters can't  
10 hold accountable for activities that occur during such a  
11 lengthy term.  
12 I had an opportunity to do a little bit  
13 of research leading up to this about the federal system,  
14 which, of course, our constitution is modeled after the  
15 federal constitution; and the impeachment of judiciary in  
16 the federal system. And as you all know, a federal judge  
17 has a lifetime appointment, so the process of impeachment  
18 plays a significant role in holding those people  
19 accountable. We've only had one US Supreme Court justice  
20 attempted to be impeached or be impeached, and that was  
21 Justice Samuel Chase back in 1804. 1804. He was  
22 nominated, by the way, by President George Washington.  
23 And the result of that proceeding was an acquittal. So  
24 there's never been an impeachment that resulted in

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1 removal of a US Supreme Court justice.  
2 There have been some federal judges  
3 impeached over the history of our system. According to  
4 the information I had, there have been 15 times when  
5 federal judges have been impeached. Of those, eight were  
6 convicted, four were acquitted, and three resigned before  
7 their impeachment proceeding concluded. So this is a  
8 rare -- fortunately, a rare process, a rare proceeding.  
9 Critically important, but also and I hope you will  
10 appreciate that we are, in a sense, by given -- been  
11 given the power of impeachment, encroaching to some  
12 extent upon a different branch of the government. And if  
13 you value and cherish the separation of powers doctrine  
14 and the balance that it brings to our government, I think  
15 you'll appreciate the importance of what we're about to  
16 do.  
17 I know that during the course of lead --  
18 the leading up this, there have been a lot of folks that  
19 have analogized what we're about to do to a Grand Jury  
20 proceeding. I would urge you to resist the temptation to  
21 do that. I think there are fundamental differences in  
22 the Grand Jury process and what we're about to do here  
23 today.  
24 For instance, unlike a regular trial, a

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1 defendant cannot have any counsel present in the Grand  
2 Jury proceeding and may not even know it's going on. A  
3 lot of those Grand Jury proceedings are held in secret.  
4 There's no gra -- there's no ti -- there's no way to  
5 screen Grand Jury members, members of that Grand Jury,  
6 for bias or any other -- any other thing that would  
7 affect their impartiality. There's no rules of evidence.  
8 No one there to cross-examine the witnesses that are  
9 brought forward. And, in fact, the state or the federal  
10 government, in whichever case it may be, can use  
11 illegally obtained evidence as part of the case they  
12 present to the Grand Jury.  
13 All of that in this -- I'm sure most of  
14 you have heard this famous quote from Judge Wachtner --  
15 Wachtler, the -- who was the chief judge of the Court of  
16 Appeals in New York when he said district attorneys now  
17 have so much influence on Grand Juries that by and large  
18 they can get them to indict a ham sandwich. And I think  
19 to illustrate that point, the Bureau of Justice  
20 statistics back in 2009 and 2010 analyzed over 161,000  
21 cases that were presented to a Grand Jury and of those  
22 hundred -- over 161,000 cases, only 11 -- only 11 were  
23 cases where the Grand Jury did not indict. So if you're  
24 a mathematician and you did the math, you would find out

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1 that 99.99 percent of the time a case is presented to a  
2 Grand Jury there's an indictment.  
3 And that's why I suggest to you let's  
4 resist the impulse to consider this like a Grand Jury.  
5 If you were looking for analogy, probably a preliminary  
6 hearing might be a better analogy because in our roles -  
7 and we'll go over this shortly - we're going to allow  
8 questioning of our witnesses by those who represent the  
9 subjects of our investigation; those who represent one of  
10 our justices. I think basically we ought to consider  
11 this not either a Grand Jury or preliminary hearing.  
12 It's really a hybrid type of proceeding because if you  
13 are familiar with the criminal system, or per -- have  
14 participated hopefully not on the defendant side in a  
15 criminal process, you will know that the Grand Jury  
16 process is in many cases intended to create leverage in  
17 favor of the State.  
18 I've had limited experience before a  
19 Grand Jury. Three years of my practice were as an  
20 assistant prosecutor and I was before three different  
21 Grand Juries and I never had one refuse to return a true  
22 bill or an indictment. It's a pretty intimidating  
23 process if you're in the Grand Jury room, and it's often  
24 the case that the prosecutor wants to get as many charges

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1 as he or she can in order to have some leverage in the  
2 plea negotiations with a defendant.  
3 Preliminary hearing, the same sort of  
4 situation. it's a very low standard of probable cause.  
5 Usually it results in a finding of probable cause. And  
6 so as -- the whole set-up is designed in many cases to  
7 avoid a trial because the prosecutor and the US attorney  
8 have in most cases a great deal of leverage to negotiate  
9 with the defendant over a plea to avoid the need for a  
10 trial. And that's -- I've heard people criticize that.  
11 It's actually very necessary because if we tried every  
12 case that was the result of an arrest, our courts would  
13 be backlogged and clogged for just an innumerable period  
14 of time.  
15 So in our case, we have one -- one --  
16 basically one remedy as I mentioned earlier, and that is  
17 if we recommend articles of impeachment that are adopted  
18 by the House, and we try them in the Senate, the only  
19 remedy is removal from office. There's no way to  
20 negotiate a plea, so that's a -- I think that's a  
21 fundamental difference in this case between what happens  
22 in a criminal proceeding and what happens here.  
23 One of the questions that we as a  
24 committee will decide is what sort of burden we want

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1 imposed on a presentation of our evidence in order to  
2 justify our recommendation of articles -- of the adoption  
3 of articles of impeachment. I want to suggest to you  
4 that we ought to adopt a pretty strict standard. We have  
5 preliminary indications that's not final from the Senate  
6 as they are working on procedural rules that they will  
7 likely impose a clear and convincing evidence standard,  
8 not preponderance of the evidence, but not beyond a  
9 reasonable doubt either, which is the highest standard.  
10 They will impose on us when we come to them with -- if we  
11 come with articles of impeachment that we prove it by  
12 clear and convincing evidence, and they are likely to  
13 apply the West Virginia rules of evidence.  
14 Now, we're free to do whatever we want as  
15 a committee. There's really no -- no guidance in our  
16 constitution as to what we need to satisfy ourself that  
17 one of the conditions set forth in the constitution has  
18 been satisfied or any of the con -- conditions to go  
19 forward. That's up to us. And so we will -- we will by  
20 our -- by the result of these proceedings decide what  
21 that standard is, but I suggest to you that we ought to  
22 assume that the Senate will, in fact, require those --  
23 the proof to -- by clear and convincing evidence and that  
24 we conform to the rules of evidence as we present our

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1 evidence to them.  
 2 I know that there is a great deal of  
 3 sentiment to apply a lesser standard. And I will readily  
 4 admit that it would be cathartic to come out of the House  
 5 with the articles of impeachment in certain situations  
 6 just because of some of the reactions that we've had to  
 7 some of the revelations about activities in that branch  
 8 of the judiciary. But I would strongly suggest that --  
 9 and especially for sake of those five managers who will  
 10 have to present our case to the Senate that we -- we  
 11 take -- we apply a strict standard to our analysis of the  
 12 evidence and what we are going to require in order to  
 13 make that -- that recommendation.  
 14 The end result will be whatever we can  
 15 convince 23 senators of -- because that's what's  
 16 required, two-thirds of those elected, that falls within  
 17 the conditions of the constitution will be what prevails,  
 18 but I would suggest it would be dangerous and probably  
 19 irresponsible of us to assume that they're going to be  
 20 lax in the way they view our evidence.  
 21 Now, I want to talk for a minute about  
 22 the rules that we're going to be following during today's  
 23 and the following days' process. All right, you should  
 24 have a copy of the procedural rules, giving due credit to

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1 now Judge, former judiciary chair, John Hatcher, whose  
 2 rules of procedure back for the proceeding back in 1969  
 3 involving Treasurer A. James Manchin we've used as a  
 4 guide, but there are some differences. Conditions  
 5 change. Obviously technology's changed in that period of  
 6 time.  
 7 I want to call your attention to the one  
 8 rule that is certainly different than anything in Judge  
 9 Hatcher's draft, and that is Rule Number 12, which was  
 10 created basically in response to the resignation of  
 11 Justice Ketchum. And I'm just going to read the rule to  
 12 you and then I'll -- I'll basically talk a minute about  
 13 it. Here's how the rule reads.  
 14 "Because the sole remedy available in an  
 15 impeachment proceeding is the removal from office of an  
 16 officer of the State, the resignation retirement or some  
 17 other act which effectively results in the removal of an  
 18 officer who is a subject of the proceeding from his or  
 19 her office eliminates the need for further evidence  
 20 specifically referring to that official.  
 21 In order for the committee's time to be  
 22 more effectively employed and to reduce the cost of the  
 23 State, no such evidence will be admitted following  
 24 receipt of notice of the resignation, retirement or

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1 action resulting in the removal of that official. And  
 2 counsel for the committee and the members of the  
 3 committee will be instructed accordingly by the chair.  
 4 However, evidence regarding a group of which that  
 5 official is a member if otherwise relevant for purposes  
 6 of considering the allegations involving other members of  
 7 that group or for the purpose of considering the need for  
 8 legislative action shall be permitted."  
 9 As you will recall from the resolution,  
 10 one of our tasks is to identify any re -- any legislation  
 11 that might be needed as a result of our inquiries. So we  
 12 will be addressing certain findings in -- shortly, in the  
 13 legislative reports, Legislative Auditor's reports that  
 14 involve the court as a group. That's relevant. It's  
 15 also relevant in terms of if -- how it effects those  
 16 individuals who are still on the bench or have not been  
 17 removed. So I will ask for your cooperation in that, but  
 18 if it's -- if I see a question coming that it -- that  
 19 violates the spirit of that rule, we will-- I'll  
 20 basically rule it out of order. So that should shorten  
 21 our proceeding somewhat. As I said earlier, we had some  
 22 findings that affected Justice Ketchum and we will not be  
 23 getting into those today.  
 24 Now, the way we'll proceed, we'll call --

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1 counsel for the committee will call a witness, we'll ask  
 2 quest -- direct questions of that witness. When that  
 3 testimony is concluded, we'll go around the room and I'll  
 4 probably start from my left and go down the row and ask  
 5 if members have questions. And rather than hit your  
 6 button, since I'm going to proceed in that method, I  
 7 would just ask that if you're the next person up,  
 8 indicate by raising a hand or a finger - not the middle  
 9 finger - but a finger to alert me that you want to ask a  
 10 question. And then I'll call on you. That way I don't  
 11 think anybody will feel like they need to answer -- to  
 12 ask a question if I call on you by name. If you want to  
 13 ask a question or questions, as I come down the row and  
 14 I'll begin with Delegate Fast after we're finished.  
 15 We'll go through the whole process, and  
 16 we'll come back to counsel. No, I'm sorry. We'll go to  
 17 counsel for the subjects of our investigation. We have  
 18 two counsel present today that may or may not want to ask  
 19 questions. In our rules we permit that. I think it's  
 20 important for the committee to know if there are issues  
 21 out there that the subjects of our investigation want  
 22 raised. We have provided in there for a method by which  
 23 they can request witnesses that we call, but also that  
 24 they can ask questions. When that process is finished,

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1 we'll do a -- go back to our house counsel to see if any  
2 follow-up questions are needed. We'll make a second  
3 rotation through the chamber of our members to see if you  
4 have follow-up questions that may be needed. Please  
5 don't feel like you have to ask questions, but if you do,  
6 please, feel free to ask questions. And when that  
7 process is concluded -- and that will include those of us  
8 up here at the podium, Delegate Fleischauer, Delegate  
9 Hanshaw and me will also be free to ask questions, but  
10 we'll be the last of our committee members to go.  
11 So that's basically how we'll proceed.  
12 The sequence of our presentation is outlined in e-mails  
13 that I sent out will be by subject matter. The subject  
14 of, for instance, vehicle use will be the first subject  
15 matter that we'll get into. It may or may not involve  
16 more than one justice, but if it does, we'll cover all of  
17 the involvement of each justice at the same time.  
18 Purpose of that for efficiency and also as convenience to  
19 our witnesses. That way we don't treat them like a yo-yo  
20 and have them back here every other day or every other  
21 hour to answer questions. We'll try to deal with that in  
22 a -- in a more efficient way and it also, I hope, will  
23 provide some context for you -- overall context within  
24 which to judge this witness.

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1 I should say that we're going with the  
2 Legislative Auditor's report first because that was the  
3 first information that was made available to us. We had  
4 to subpoena the information from the Judicial  
5 Investigation Commission based on their process and their  
6 confidentiality it's taken a while to get that evidence  
7 and it's basically come in this week in batches on thumb  
8 drives, and I think we've gotten two so far. Is that  
9 right? Just one yesterday. And we're not talking about  
10 five or six pages. We're talking about in some cases  
11 hundreds, if not thousands of pages. So it's taken our  
12 staff a good bit of time to go through that, get it  
13 organized and basically focus it on the information that  
14 we need to make a decision.  
15 You are being provided with some  
16 documents this morning. The packet of documents consists  
17 of 18 exhibits that counsel intends to discuss with our  
18 witnesses today. As I said, the Auditor's office as well  
19 as the JI -- what I'll refer to as JIC has provided us  
20 with numerous documents, and staff has been reviewing  
21 those documents. Some of those documents are as long as  
22 1,000 pages, believe it or not. Some of the documents,  
23 though, contain personal information that is either  
24 confidential or irrelevant to these proceedings. That's

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1 why they focused on these 18 exhibits. The documents  
2 that you are being provided are mentioned in some of the  
3 reports that will be discussed today.  
4 We have encountered one problem in  
5 preparing for this proceeding, and that is getting a  
6 court reporter. We've tried, counsel has tried for four  
7 firms. The problem is no one's willing to commit to the  
8 number of days that we need someone here. So we are  
9 recording this in two different ways. It's video  
10 streamed so there'll be a record -- a recording of that  
11 and there will also be a audio recording, and ultimately  
12 if we need we transcripts, we will provide the audio --  
13 audio recordings to stenographers to actually prepare the  
14 transcript.  
15 I will say that all of our sessions are  
16 going to be open and, therefore, they will be video and  
17 audio streamed. They will be open to the public. You  
18 can see we've packed the house today. So obviously we  
19 would expect you to act appropriately. The only  
20 exception that I can see that might happen - and this  
21 will be a committee decision, not a decision of the  
22 chair - is when we're finished with the evidence and we  
23 need to discuss how the evidence may or may not fit in  
24 with the conditions that the Constitution requires for us

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1 to -- the categories, maybe is a better way to put it, we  
2 may -- we may go into executive session so that we can  
3 have an open and uninhibited -- let's say uninhibited  
4 discussion about that. That's the only time I think  
5 there would -- any possibility of an executive session  
6 and that will be based on your decision as a committee.  
7 Those conditions for the benefit of  
8 our -- of our press and the audience that may or may not  
9 be listening is that the Supreme Court requires findings  
10 of either maladministration, corruption, neglect of duty  
11 and competency, gross immorality or high crimes and  
12 misdemeanors, and unfortunately none of those are defined  
13 in the Constitution. So essentially the definition will  
14 be what we conclude, and that may be -- may need some  
15 discussion. As you'll recall there's some cases cited by  
16 Judge Hatcher in his memorandum, but those -- none of  
17 those cases are West Virginia cases, so we are in many  
18 ways plowing new ground by what we do, and I would  
19 encourage us to keep in mind, not just this proceeding,  
20 but any proceedings that the State might unfortunately  
21 have to go through in the future as to what kind of  
22 standards -- what kind of bar we set for that type of --  
23 that type of inquiry.  
24 For logistical purposes, we'll take a

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1 lurch break today. It just depends on the flow of the  
 2 evidence, but I expect it will be somewhere between 12:00  
 3 and noon. We will resume and we will take a dinner  
 4 break. I had hoped to get some time in this evening,  
 5 which based on the retirement of Justice Ketchum may  
 6 result in us -- we work tonight, not having much a day,  
 7 if any, on Saturday. So we'll be bringing dinner in and  
 8 it will be served upstairs in our committee room. So  
 9 we'll take a break probably between 5:30 and 6:00 for  
 10 that purpose. And I think you'll find the meal  
 11 appropriate. I suggested to my wife that because I  
 12 wanted alert members after dinner, that she only make one  
 13 cake and you'll soon find who won that argument.  
 14 So my last request really to you is to  
 15 help us, your managers, by putting yourself in the place  
 16 of the senator who may hear this evidence. Be alert for  
 17 any gaps that you might hear in the evidence that we need  
 18 to follow up on, identifying any witnesses you think we  
 19 need to call. We -- certainly our staff is amenable to  
 20 your suggestions as to who we need to call, or documents  
 21 that we need to fill those gaps. I suggest you ought to  
 22 be willing to test the sufficiency of the evidence  
 23 through your questionings. Consider possible  
 24 explanations for the evidence that you hear. I think

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1 it's reasonable to consider the context within which it  
 2 occurred, the motive of the person involved, whether it's  
 3 for personal gain or whether there's some more worthy  
 4 motive, whether there's -- it's a technical or substan --  
 5 substantive violation, the frequency of it, whether it's  
 6 isolated or frequent; and the degree of it as well.  
 7 At the end of the day when we're  
 8 finished, there's several results that could --  
 9 recommendations we could make. Not to impeach, to  
 10 impeach, censure. I think if you read the call for the  
 11 meeting for the extraordinary session there was the word  
 12 "censure" in there, which we're going to try to develop  
 13 exactly what that means, but the way I interpret it is:  
 14 Basically we would recommend to the House a reprimand but  
 15 not an impeachment. We would go on record as  
 16 reprimanding certain conduct of certain individuals. We  
 17 may also decide that just the shedding of light, the  
 18 publicity of what we're hearing today is a sufficient  
 19 deterrent for that type of activity in the future or  
 20 perhaps even ammunition for the Constitutional amendment  
 21 that was overwhelmingly approved by this -- by the House.  
 22 I would also urge you to re -- resist the  
 23 sense of urgency that some have tried to instill in this  
 24 proceeding. Obviously, the Court does not meet again

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1 until September, and unlike the A. James Manchin  
 2 impeachment back in 1989, the credit of the State is not  
 3 on the line. If you'll recall the allegations were that  
 4 through mismanagement and otherwise, the State had  
 5 lost -- consolidated investment fund had lost between 250  
 6 million and 300 million, perhaps more, but more  
 7 importantly, at some point the entire portfolio of the  
 8 consolidated investment fund was at risk. And the credit  
 9 rating bureaus were waiting for action fairly quickly.  
 10 So we don't have the same urgency, but obviously the  
 11 importance to the State we need to keep that in mind.  
 12 As I mentioned earlier, the balance of  
 13 power between the separation of powers should impose upon  
 14 us the seriousness of this. And, of course, the  
 15 reputation of the State we need to keep in mind.  
 16 I -- finally, I just want to recognize  
 17 before we begin, the hard work of our staff, our legal  
 18 staff, plus we had some volunteers -- Marsha Kauffman,  
 19 Bryan Casto, and John Hardison of our staff, and their  
 20 efforts were supplemented by Charlie Roskovensky, Robert  
 21 Akers and Joe Altizer. And then our clerk, Mark White,  
 22 and our executive assistant, Adair Burgess also have been  
 23 working really hard to try to get this together for you.  
 24 Our managers have been -- participated as well, and

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1 that's -- include Delegates Hollen, Miller, Andrew Byrd  
 2 and Roger Hanshaw. So certainly a -- I know there's been  
 3 some perception nothing's been happening, but I can  
 4 assure you that's not the case.  
 5 So we're ready to proceed. Counsel,  
 6 would you call your first witness? Delegate Fleischauer.  
 7 MINORITY CHAIR FLEISCHAUER: Thank you,  
 8 Mr. Chairman.  
 9 Mr. Chairman, are we going to adopt the  
 10 rules prior to proceeding with the witnesses?  
 11 CHAIRMAN SHOTT: If you reviewed the  
 12 resolution, which I'm sure you did, the resolution  
 13 authorizes the chairman to establish the rules and that's  
 14 what's happened.  
 15 MINORITY CHAIR FLEISCHAUER: Okay. I  
 16 have a couple of questions I would like to ask about the  
 17 rules if I may.  
 18 CHAIRMAN SHOTT: If you have a point of  
 19 order, I'd be happy to address it, yes.  
 20 MINORITY CHAIR FLEISCHAUER: Well, I want  
 21 to -- I'm not sure if I would put it in terms of a point  
 22 of order. I want to explore what the thinking was for  
 23 departing from the rules of Judge Hatcher and  
 24 substituting some additional sentences. And if -- if I

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1 could inquire about that, I think -- I don't know that  
2 it's in the form of a point of order, but I would like to  
3 inquire about them.

4 CHAIRMAN SHOTT: Well, as I indicated,  
5 and this is about all I'm -- further explanation I'm  
6 going to give. I took Judge Hatcher's rules, I looked at  
7 them, I tried to fit them into the context we're working  
8 with, I made some adjustments. And, of course, Judge  
9 Hatcher's rules are not binding on us. They're simply a  
10 illustration of one set of rules that were -- that were  
11 adopted. The -- as I read the resolution, the chairman's  
12 responsibility is to establish the rules of procedures,  
13 and I did that so that we wouldn't spend a lot of time  
14 debating the rules. I know a lot of folks have imposed a  
15 real sense of urgency on this. I don't think we need to  
16 spend any time debating the rules or explaining the  
17 rules.

18 The rules are the rules, and if I'm -- if  
19 I remember right, 89 people were here on the day the  
20 resolution was passed. Everybody voted in favor of that  
21 resolution.

22 MINORITY CHAIR FLEISCHAUER: Well, I  
23 guess I can turn it into a point of order. I do think  
24 the rules are an improvement in many ways over Judge

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1 Hatcher's rule. I like the fact that there's more modern  
2 language. It made the -- it flows much better, so I want  
3 to congratulate you and your staff on that. My biggest  
4 concern is the last sentence that was added to rule  
5 number 8, and I believe that could potentially be a  
6 violation of the House rules. That says that "No motion  
7 to issue articles of impeachment shall be considered  
8 until counsel for the committee has informed the Chair of  
9 the presentation of all evidence regarding the subject  
10 against whom the proposed articles are addressed has been  
11 completed."

12 I don't think there's anything in the  
13 House rules that gives staff that authority over the  
14 body -- over the membership and maybe just as  
15 importantly, I think that the -- this is a rule that is  
16 not contained in the House rules and is inconsistent with  
17 the House rules that spell out the motions that members  
18 are allowed to make. So I think it is potentially a  
19 violation of the House rules, and I think that is a  
20 problem and I would urge that that -- that be stricken.

21 CHAIRMAN SHOTT: Well, it's going to  
22 remain in there. I'll take your suggestion under  
23 advisement and confer with the clerk as well as our par  
24 -- parliamentarian and we'll see where we go from there,

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1 but at the moment, that's -- that's the rule.

2 MINORITY CHAIR FLEISCHAUER: Okay. Let  
3 me just make it clear for the record. Our House rules  
4 say that all rules of the committee must be consistent  
5 with the House rules generally. And, secondly, the House  
6 rules allow members to make specific motions including  
7 the one that is referenced in number 8 and by taking that  
8 authority away from members we are departing from the  
9 rules of the House.

10 CHAIRMAN SHOTT: I understand your  
11 position and we will take it under advisement.

12 MINORITY CHAIR FLEISCHAUER: I had two --  
13 I guess that's -- I was wondering why you omitted number  
14 16, which is in the 1989 rules. I don't really feel  
15 strongly about it. You explained why you added number  
16 12, but also number 14, the new sentence in number 14.

17 CHAIRMAN SHOTT: Well, let's proceed this  
18 way. Rather than delay the whole committee, I'd be happy  
19 to talk to you during the break as to why I did certain  
20 things, but for the time being, those rules -- those are  
21 the rules that have been established pursuant to the  
22 authority of the resolution. Those are the rules we'll  
23 operate under until further notice.

24 MINORITY CHAIR FLEISCHAUER: Okay. Thank

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1 you, Mr. Chairman.

2 CHAIRMAN SHOTT: Delegate Robinson, point  
3 of order?

4 DELEGATE ROBINSON: Mr. Chairman, I move  
5 to amend the rules proposed by the chairman.

6 CHAIRMAN SHOTT: I'm going to rule that  
7 out of order. The resolution, which I believe you voted  
8 for, Delegate Robinson, authorizes the chair to  
9 promulgate or establish the rules. And that's what I did  
10 based on the confidence that that resolution reflected.

11 Your motion's out of order.

12 DELEGATE ROBINSON: Point of order,  
13 Mr. Chairman.

14 CHAIRMAN SHOTT: Yes.

15 DELEGATE ROBINSON: As we have proposed  
16 and brought in the rules from 30 years ago, in the case  
17 that 30 years from now they do the same, do you not think  
18 we should address the rules and try to amend them and  
19 make them the best possible as we have discussed that we  
20 took a three-week break to make this process correct as  
21 it's historical? Do you not think it's appropriate for  
22 us to discuss and go through the rules thoroughly?

23 CHAIRMAN SHOTT: I don't think we need to  
24 delay the process. If you're suggesting we spend a

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1 couple of weeks debating the rules, I suggest that that's  
2 not a good use of our time.

3 DELEGATE ROBINSON: Mr. Chairman, I  
4 have -- I have three, one-sentence amendments to your  
5 proposed rules that are just corrections and improvement  
6 to the rules that I would like to propose if --

7 CHAIRMAN SHOTT: And to the gentleman,  
8 consistent with my discussion with Delegate Fleischauer,  
9 I'll be happy to discuss those with you during a break,  
10 but for now we're going to -- we're going to protect the  
11 integrity of the time that we have available and move  
12 forward.

13 DELEGATE ROBINSON: Mr. Chairman, I have  
14 a point of inquiry prior to starting the witnesses.

15 CHAIRMAN SHOTT: Yeah, I'll listen to  
16 your point of inquiry.

17 DELEGATE ROBINSON: Mr. Chairman, it's  
18 come to our attention that you may have had a meeting  
19 with the private attorney of Justice Loughry yesterday.  
20 Just for transparency, could you give us a summary of who  
21 was in that meeting and what those meetings entailed?

22 CHAIRMAN SHOTT: I did not meet with the  
23 attorney for Justice Loughry nor did I meet with Justice  
24 Ketchum. I haven't met with any of the justices or any

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1 of their attorneys. My understanding is that the  
2 attorney for Justice Loughry visited with staff counsel  
3 to discuss the rules and the proceedings that we'll  
4 follow, but I was not a participant in any of those  
5 meetings.

6 DELEGATE ROBINSON: The same request,  
7 sir, for staff counsel. Give us a summary and just for  
8 transparency the -- explain to us what went on in that  
9 meeting and what was discussed.

10 CHAIRMAN SHOTT: I don't think that's in  
11 order. If staff counsel wants to address that at a later  
12 time, we'll go forward. To my knowledge, it basically  
13 was a discussion about the rules and the opportunity to  
14 question witnesses, and that's -- Counsel, am I basically  
15 correct on that? Yeah. Okay.

16 Any further inquiries? Counsel, will you  
17 call your first witness?

18 (Inaudible due to no microphone)

19 CHAIRMAN SHOTT: One of the reasons we've  
20 asked everybody to move forward was to -- to the front  
21 two rows was to bet -- try to improve the ability to  
22 hear, but I -- for the technology you mentioned, I'm not  
23 familiar with, but I'll ask the clerk's office. Is there  
24 -- we'll try to get that fixed for you. Okay?

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1 UNIDENTIFIED SPEAKER: Okay. Thank you.

2 CHAIRMAN SHOTT: Yes, sir. Counsel.

3 MS. KAUFFMAN: Thank you, Mr. Chairman. The  
4 House committee on the Judiciary calls as its first witness  
5 Justin Robinson.

6 CHAIRMAN SHOTT: Would you remain standing for  
7 a moment, please?

8 THE WITNESS: Yes, sir.

9 CHAIRMAN SHOTT: Would you identify yourself  
10 for the committee?

11 THE WITNESS: Yeah, my name's Justin Robinson,  
12 acting director of the Legislative Post Audit Division.

13 JUSTIN ROBINSON  
14 was called as a witness by the Committee of the Judiciary,  
15 pursuant to notice, and having been first duly sworn,  
16 testified as follows:

17 EXAMINATION

18 BY MS. KAUFFMAN:

19 Q. Thank you.

20 Mr. Robinson, I think you have just stated your  
21 full name for the record and indicated your current position.  
22 Can you please tell again the committee where you work and  
23 what your position is?

24 A. Yes, I work for the Legislative Post Audit Division

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1 and I am the acting director.

2 Q. As the acting director, how long have you held  
3 that position?

4 A. Very shortly.

5 Q. Okay. Was that a recent --

6 A. Yes, it was.

7 Q. -- a recent event? Prior to that, what  
8 position did you hold?

9 A. I was audit manager.

10 Q. Were you audit manager during this past --  
11 during this calendar year, 2018?

12 A. Yes.

13 Q. As audit manager, what were some of your  
14 duties?

15 A. To assist in the planning and supervising of  
16 the audits conducted by our staff including the Supreme  
17 Court audit.

18 Q. Could you please give the committee some  
19 indication or idea as to your educational background,  
20 please?

21 A. Yes, I hold a bachelor's degree in business  
22 administration with a focus in accounting and a master's  
23 in business administration.

24 Q. Thank you. Mr. Robinson, you just mentioned

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1 some post audit reports that were -- that were completed  
 2 with respect to the West Virginia Supreme Court of  
 3 Appeals, and I want to begin with that and ask just a few  
 4 general questions.  
 5 A. Okay.  
 6 Q. It is my understanding that three reports were  
 7 completed during this calendar year so far; is that  
 8 correct?  
 9 A. That is correct.  
 10 Q. For ease of reference, if it is okay with you,  
 11 I will during my questioning be referring to those  
 12 reports by number - again, if that is okay - report  
 13 number 1, report number 2 and report number 3. Is that  
 14 okay with you?  
 15 A. That will be fine, yes.  
 16 Q. Okay. With respect to those reports, do you  
 17 recall -- and I am not asking for a specific date, but do  
 18 you recall the months or the time period in which those  
 19 reports beginning with report number 1 were complete?  
 20 A. Yes, the first report was completed and  
 21 presented to our post audit subcommittee in April, the  
 22 second report in May and the third in June.  
 23 Q. Okay. And that was all of this year, 2018?  
 24 A. Yes, correct.

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1 Q. Okay. With respect to the three audits, did  
 2 your office and all of the individuals that worked on  
 3 these reports, did they follow or conform to any type of  
 4 specific standard when it comes to auditing?  
 5 A. Yes, our office follows the United States  
 6 Government Accountability Office's generally accepted  
 7 auditing standards.  
 8 Q. And were those followed with respect to all  
 9 three of these reports?  
 10 A. Yes.  
 11 Q. I would like to - if it's okay with you - go  
 12 ahead and just move to report number 1.  
 13 A. That would be fine.  
 14 Q. It is my understanding from this report that  
 15 the -- one of the -- at least one of the issues that this  
 16 report addresses is the use of State vehicles and rental  
 17 cars by members or justices of the West Virginia Supreme  
 18 Court of Appeals. Is that correct?  
 19 A. That is correct.  
 20 Q. Did your investigation look at all of the  
 21 current justices of the Supreme Court of Appeals?  
 22 A. The first report covered a couple justices and  
 23 the second -- the second, subsequent report covered the  
 24 remaining current justices as well as one former justice.

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1 Q. Which former justice was that?  
 2 A. Justice Brent Benjamin.  
 3 Q. Okay. With respect to -- and I'm going to try  
 4 to the best of my ability to remain on report number 1.  
 5 With respect to that report, I believe that it indicates  
 6 that -- on page 1 of that report that the initial focus -  
 7 and I'm just going to ask you about this initial focus -  
 8 concerned that use. Could you please just tell us what  
 9 precipitated that particular focus in this audit?  
 10 A. Are you asking how this audit was inception?  
 11 Q. Yes.  
 12 A. Essentially, concerns were expressed obviously  
 13 in the media concerning extravagant expenditures by the  
 14 Court regarding renovations, as well as the fact that in  
 15 previous reports conducted by the Performance Evaluation  
 16 and Research Division of the Legislative Auditor's Office  
 17 as well as the Post Audit Division was having a focus on  
 18 State vehicle fleets.  
 19 Q. Okay. Thank you. By way of background, I want  
 20 to just make sure when I begin asking these questions  
 21 that my assumption here is correct. It's my  
 22 understanding that the justices of the Supreme Court  
 23 have -- had or have exclusive use to three different  
 24 vehicles. Is that correct?

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1 A. That is correct.  
 2 Q. Okay. I'm going to ask you now with respect --  
 3 and it's my understanding that you are -- and do have in  
 4 front of you a copy of the report number 1; is that  
 5 correct?  
 6 A. I do, that's correct.  
 7 Q. Okay. I will ask you, if you could, please, to  
 8 skip over -- we will skip over the first few pages of  
 9 that report and move to page 7 of that report.  
 10 A. Okay.  
 11 Q. At the time that this particular report was  
 12 finalized, if you know, did the Supreme Court have formal  
 13 written policies regarding vehicle use?  
 14 A. Specifically to your question at the time the  
 15 report was finalized, I believe the Court was actually  
 16 formulating those policies, but at the time when we  
 17 inquired whether or not the Court had those policies  
 18 while we were conducting the field work of the audit,  
 19 they did not have those policies in place.  
 20 Q. With respect and -- and going down and still  
 21 remaining on page 7, there is a mention about the -- an  
 22 internal reservation system that is described essentially  
 23 as a calendar.  
 24 A. Uh-huh.

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1 **Q. Let -- if I can, I would just like for you to**  
 2 **try to the best of your ability to explain to the**  
 3 **committee what is meant by that, by the internal**  
 4 **reservation system.**  
 5 A. The only record the Court had to indicate when  
 6 vehicles were used by employees or justices was a  
 7 reservation log that was maintained internally  
 8 electronically to which if a employee or a justice needed  
 9 to use a Court vehicle, they would request its use  
 10 through this reservation log.  
 11 **Q. And I believe that the chairman mentioned this**  
 12 **before. With respect to the reservation log, is that in**  
 13 **and of itself a very large document?**  
 14 A. Yeah, it's in excess of 1,200 pages.  
 15 **Q. Okay. Just for that one document?**  
 16 A. Yes.  
 17 **Q. Okay. And was your office provided with a copy**  
 18 **of that reservation system?**  
 19 A. Yes, we were.  
 20 **Q. That's how you know it's over 1,200 pages?**  
 21 A. Absolutely.  
 22 **Q. During the time period that your office looked**  
 23 **at this particular court reservation system -- and I'm**  
 24 **going to ask you to confine and I'll try to my -- best of**

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1 **my ability to confine my questions to Justice Loughry**  
 2 **only. And I understand we're on page 7 and that's what**  
 3 **this deals with.**  
 4 **Could you please tell the committee how**  
 5 **many days Justice Loughry reserved a car during that time**  
 6 **period of your investigation?**  
 7 A. Based on the vehicle reservation log we noted  
 8 212 instances where Justice Loughry had reserved a  
 9 vehicle.  
 10 **Q. And with respect to those 212 days, can you**  
 11 **please tell the committee how many of those times he did**  
 12 **not list a destination?**  
 13 A. Justice Loughry did not list a destination for  
 14 148 out of the 212 days that he reserved the vehicle in  
 15 the vehicle log.  
 16 **Q. I believe that as part of your -- your**  
 17 **investigation that you put that into a percentage and**  
 18 **that was roughly 70 percent of the time; is that correct?**  
 19 A. That's correct.  
 20 **Q. Okay. On page 7, Table 1, could you please**  
 21 **just -- it seems pretty self-explanatory, but just out of**  
 22 **an abundance of caution, could you please let the**  
 23 **committee know what that -- what Table 1 represents?**  
 24 A. Yes, Table 1 is a summation of our review of

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1 that vehicle reservation log for the years 2013 through  
 2 2016, and for each year it notes the total days of  
 3 vehicle use noted in the reservation log, the number of  
 4 days for each of those years that did not provide a  
 5 business purpose substantiation, and the percentage of  
 6 usage without substantiation as it represents the two  
 7 figures.  
 8 **Q. Okay. I'll now ask you to move to page 7 of**  
 9 **that report. That is -- there's Figure 2 on that, and I**  
 10 **would like to ask you the same question. If you could,**  
 11 **please, just generally describe to the committee what**  
 12 **Figure 2 represents.**  
 13 A. Figure 2 was our attempt to represent this  
 14 information more visually through a calendar. We  
 15 essentially laid out a yearly calendar for the years that  
 16 we reviewed - specifically through 2015 - because  
 17 beginning in 2016 the notations of Loughry's use of the  
 18 Court vehicle was sparse. So this calendar essentially  
 19 represents the dates that we noted where he had reserved  
 20 a Court vehicle in that vehicle reservation log. There  
 21 are blue highlighted dates where he did provide a  
 22 destination. There are red highlighted dates where he  
 23 did not provide a reservation or a purpose, and the Court  
 24 was also in recess. And there is a -- it's more of an

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1 orange color highlight for indicating when dates did not  
 2 provide a destination.  
 3 **Q. And that orange highlighted color, is that when**  
 4 **the Court was in session?**  
 5 A. Yes.  
 6 **Q. Okay. I now -- just so that everyone can**  
 7 **remain on the same page, I'll now like to move to page 9**  
 8 **of that report. At the top part of that page, there is a**  
 9 **pattern that is noted as a result of your investigation.**  
 10 **Could you please inform the committee of the pattern that**  
 11 **is noted as you completed and went through your**  
 12 **investigation?**  
 13 A. Yes, as we reviewed these vehicle reservations  
 14 with particular regard to dates when the Court was in  
 15 recess, we noted three years consecutively where Justice  
 16 Loughry had reserved a Court vehicle over the Christmas  
 17 holiday and in certain instances, well into the New Year.  
 18 **Q. Okay. Remaining on page 9, there is mention**  
 19 **underneath Figure 3 of a memo that was written by the**  
 20 **deputy director -- the director and the deputy director**  
 21 **of the Supreme Court, and with that said, I would ask**  
 22 **that you please refer to Exhibit Number 1 -- the document**  
 23 **that has been pre-marked as Exhibit Number 1.**  
 24 A. Yes.

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**1 Q. If you could -- and I recognize that you did**  
**2 not author this document, but could you please just**  
**3 explain to the committee how you came into possession of**  
**4 this document and generally what it -- what it purports**  
**5 to be?**

6 A. Yes, during our process of gathering  
7 information and evidence, we requested any and all  
8 internal court memorandum that discussed the use of Court  
9 vehicles, and we were provided this memo. This  
10 particular memo, Exhibit 1, is in reference to a memo  
11 from the deputy director and director of court security  
12 to Justice Davis regarding some questions she had about  
13 the formal check-out procedures for Court vehicles.

**14 Q. And this, I believe, is noted in your report on**  
**15 page 9 and it is in the memo. Could you please read the**  
**16 last sentence of Exhibit Number 1?**

17 A. Yes, the last sentence reads, "The only person  
18 we can recall that failed to provide a destination when  
19 asked was Justice Loughry."

**20 Q. Okay. Remaining on page 9, there is also**  
**21 mention of other memos that were -- that went back and**  
**22 forth, and I believe you just indicated that you had**  
**23 requested those memos.**

24 A. Yes.

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**1 Q. I would ask for you to please now refer to**  
**2 Exhibit Number 2, and if you could, please, as we just --**  
**3 as you just did, try to explain to the committee how you**  
**4 came into possession of this and what this is.**

5 A. Again, this was in relation to our request for  
6 any internal memorandums of the Court discussing Court  
7 vehicle use specific with regard to justices using those  
8 vehicles. This particular memo is from Justice Davis to  
9 then administrative director of the court Steve  
10 Canterbury requesting that a few items be placed on their  
11 administrative conference agenda to discuss procedures  
12 concerning the use of Court vehicles and other questions  
13 that she had regarding this use by the justices.

**14 Q. And now I would ask for you to move to Exhibit**  
**15 Number 3. This also appears to be a memorandum.**

16 A. Yes.

**17 Q. Could you please tell the committee what this**  
**18 memorandum is about?**

19 A. This memo is from Justice Davis to the deputy  
20 director and director of supreme court security -- give  
21 me one second to review it. It's her -- Justice Davis is  
22 requesting from those -- the director and deputy director  
23 of court security who were actually in charge of  
24 overseeing that vehicle reservation log to provide her

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1 the answers to the three questions in this memo,  
2 essentially regarding the procedures for reserving those  
3 vehicles and their use.

**4 Q. Okay. And, now, if you could please refer to**  
**5 Exhibit Number 4. Is this another memorandum that you**  
**6 received during your investigation?**

7 A. Yes.

**8 Q. Is this memorandum also dealing with the use of**  
**9 State vehicles?**

10 A. It is.

**11 Q. At least in part it appears. And I would also**  
**12 ask now that you refer, please, to Exhibit Number 5. Is**  
**13 this also a memorandum?**

14 A. It is.

**15 Q. Is this another memorandum from Justice Davis?**

16 A. Yes.

**17 Q. And who did she send this one to?**

18 A. This was one to former administrative director  
19 of the court Steve Canterbury.

**20 Q. And was she still requesting additional**  
**21 information at that time?**

22 A. Yes, it appears in this memo she was actually  
23 requesting specific information regarding Justice  
24 Loughry's use of a Court vehicle to which she believed he

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1 did not provide business use.

**2 Q. Okay. I'm going to jump back to your report**  
**3 now and still remain on page 9. I believe the last --**  
**4 next to last par -- next to last sentence on that**  
**5 indicated that Justice Loughry had made some type of**  
**6 response to this -- to the memos that had been sent**  
**7 questioning the usage of State -- his usage rather of**  
**8 State vehicles; is that correct?**

9 A. That is correct.

**10 Q. I would now like for you to please refer to**  
**11 Exhibit Number 6. Is Exhibit Number 6 the memo that is**  
**12 referenced in which Justice Loughry responded to the**  
**13 memos from other Court members about usage of State**  
**14 vehicles?**

15 A. Yes, I believe so.

**16 Q. Okay. And I understand, again, you didn't**  
**17 author any of these. If you could either from your --**  
**18 just your recollection or review of the report, what was**  
**19 Justice Loughry's response?**

20 A. His position as stated in the report was that  
21 once he stated to court security or any other individual  
22 questioning his use of the vehicle that the purpose was  
23 for State business, that that should be the end of the  
24 inquiry.

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1 **Q. Okay. Mr. Robinson, I am now going to ask you**  
 2 **to remain on your report but to move to the next page.**  
 3 **Again, still dealing with Justice Loughry, and on page 10**  
 4 **of this there is -- it begins by noting that the**  
 5 **Legislative Auditor questions Justice Loughry's need and**  
 6 **use of State-paid rental vehicles during out-of-state**  
 7 **trips. So just so that the record and the committee**  
 8 **members are clear, does the report now move to -- the**  
 9 **focus now is on rental vehicles as opposed to the State**  
 10 **vehicles?**  
 11 A. Yes, this portion of the report focuses on  
 12 rental usage -- rental car usage by Justice Loughry.  
 13 **Q. Okay. Just by Justice Loughry in this --**  
 14 A. Just by Justice Loughry. Yes.  
 15 **Q. -- particular area. Okay. If you could,**  
 16 **please, just summarize for the committee the findings --**  
 17 **the Legislative Auditor's findings with respect to**  
 18 **Justice Loughry's use of rental vehicles.**  
 19 A. We noted on several occasions that Justice  
 20 Loughry had utilized a rental vehicle for out-of-state  
 21 trips relating to Court business for which he put  
 22 substantial amounts of miles on those rental vehicles  
 23 during those trips. Also, in many of those instances,  
 24 Justice Loughry took the fuel option of the rental

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1 meaning that when he returned the car without fuel, the  
 2 rental car company would refill it for a charge. There  
 3 was also other fees we noted including upgrade fees and  
 4 other indirect costs associated with his rental car use  
 5 such as hotel parking for the vehicle which in certain  
 6 instances was somewhat substantial. And essentially we  
 7 just note in this section of the report those particular  
 8 instances we noted that had substantial amounts of rental  
 9 car mileage use.  
 10 **Q. Okay. On Table 2 on page 10 of report number**  
 11 **1, there is a listing of, I believe, seven different**  
 12 **instances of rental car use by Justice Loughry; is that**  
 13 **correct?**  
 14 A. That is correct.  
 15 **Q. Are those the seven instances that you focused**  
 16 **on? Were there others or are these the ones that were**  
 17 **noted when there was additional mileage put on the cars,**  
 18 **if you recall?**  
 19 A. I can't recall if there were other instances  
 20 that we looked into, but these are the particular  
 21 instances we noted with excessive personal -- what  
 22 appeared to be personal use mileage.  
 23 **Q. And when you say noted -- that appeared to be**  
 24 **excessive personal use mileage, if you could, just**

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1 **explain for the committee how you came to that**  
 2 **understanding -- or that assumption given the mileage**  
 3 **that is listed on this table.**  
 4 A. The information that we used to derive the  
 5 calculation of the number of miles essentially was the  
 6 location of the trip, the airport to which he flew to,  
 7 the hotel to which he took from the airport to the hotel  
 8 that the conference was often held at or he was staying  
 9 at; and essentially we calculated the difference between  
 10 the mileage from the hotel to the airport and then we  
 11 compared that with the total number of miles actually  
 12 driven on the rental car receipts. So essentially we  
 13 used rental car receipts, hotel receipts, travel expense  
 14 settlements provided by Justice Loughry to the Court to  
 15 be reimbursed for expenses. Amongst other documentation.  
 16 **Q. With respect to these seven instances that are**  
 17 **identified in table number 2 -- and I don't want to**  
 18 **get -- get too far ahead of myself. The travel -- and I**  
 19 **won't read them all, but they are to California; Omaha,**  
 20 **Nebraska; to Monterey, California. Was it determined**  
 21 **that those trips -- the trip itself was a -- for a**  
 22 **business purpose?**  
 23 A. Yes, oftentimes it was for a conference related  
 24 to justices across the United States or some other

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1 Court-related business purpose, yes.  
 2 **Q. Okay. So it wasn't found that was it was**  
 3 **solely for a personal use. The reason for going was**  
 4 **oftentimes I think you said for a conference; is that**  
 5 **correct?**  
 6 A. Yes, for each of the instances noted the actual  
 7 purpose for the trip was Court-related business, yes.  
 8 **Q. Okay. But then what -- again, I think you have**  
 9 **noted and I want to make sure I understand is that in**  
 10 **addition to going to the conference, it is believed that**  
 11 **the rental car was used at times anywhere between several**  
 12 **hundred miles to go elsewhere. Would that be correct?**  
 13 A. That is correct. What we noted were  
 14 essentially that the round-trip distance from the  
 15 airports to the hotels were oftentimes -- and I think the  
 16 most -- the highest mileage between those was 27 miles,  
 17 listed in our report, but in those instances the  
 18 difference in miles actually used on the rental car were  
 19 in excess of 400 miles which indicated there was  
 20 significant travel outside of just to and from the  
 21 airport.  
 22 **Q. Okay. Now, I have a question with respect to**  
 23 **the calculations that are in that last column on Table 2,**  
 24 **the total cost. When we're talking -- and I know you**

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**1 said you looked at the fuel option that was oftentimes**  
**2 selected and parking and things such as that. Did any of**  
**3 that account for mileage? And the reason I ask that is**  
**4 with respect to rental cars, it's my understanding that a**  
**5 lot of times if not -- a lot of times there is an**  
**6 unlimited mileage option. Were there any charges**  
**7 associated with those actual miles that were driven or do**  
**8 the amounts in that last column deal with other --**  
**9 other -- other things?**

10 A. The amounts in the last column actually is a  
 11 summation of all the costs associated with the rental car  
 12 use. There was no partic -- particular additional charge  
 13 associated with the mileage put on the cars. Oftentimes  
 14 rental car vehicles do have unlimited mileage but for us,  
 15 the significant number of miles indicated the potential  
 16 that the purpose for renting the vehicle was personal in  
 17 nature and not simply for transportation to the event  
 18 that he was attending for Court business.

**19 Q. Okay. Mr. Robinson, I'm now going to ask that**  
**20 you move to page 11 of that report. And I believe you**  
**21 have just gone over this. The first full paragraph**  
**22 beginning with "In addition" on page 11, does that**  
**23 identify the other expenses that were -- that were used**  
**24 in part of the calculation as to the amount you came up**

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**1 with, the total of \$2,668.64?**

2 A. Yes, that paragraph does describe the  
 3 additional charges. I wouldn't say that it's a  
 4 comprehensive list, but it does summarize the key costs  
 5 associated with his rental car use.

**6 Q. And that is -- that amount -- and I know it's**  
**7 been rounded up on page 11. It's just right around**  
**8 \$2,669. Was that an amount that the Legislative Auditor**  
**9 requested be reimbursed by Justice Loughry?**

10 A. No, we did not directly request or indicate to  
 11 any justice concerning any of our reports of the fact  
 12 that they should reimburse. We did inquire of Justice  
 13 Loughry had he made any reimbursements concerning any  
 14 personal vehicle use or anything else related to our  
 15 reports, to which he did not respond.

**16 Q. Okay. Now, if we could -- and this is with**  
**17 respect to -- still on page 11. These are a little bit**  
**18 different issues, but I think still dealing with Justice**  
**19 Loughry.**

20 A. Uh-huh.

**21 Q. With respect to the travel regulations that**  
**22 were filed granting the justices different treatment, if**  
**23 you could, please, just generally explain to the**  
**24 committee this particular finding about these travel**

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**1 regulations.**

2 A. Yes, essentially we, you know, looked into the  
 3 travel regulations on file with the West Virginia State  
 4 Auditor's Office which is required for them to perform  
 5 travel reimbursements when requested and make a payment  
 6 to those requesting the reimbursement. When we reviewed  
 7 these regulations, we noted in particular that regarding  
 8 the use of rental cars by justices, it seemed that there  
 9 was special permissions granted to them regarding the  
 10 reimbursements they were eligible for regarding the  
 11 rental car use.

**12 Q. Did that regulation as the -- as your**  
**13 investigation tra -- went further, would that -- the use**  
**14 of that and asking the reimbursement for the entire**  
**15 thing, even if there had been personal use, would that**  
**16 have been a violation of the actual travel regulation**  
**17 filed with the Auditor's office or no?**

18 A. I'm not sure of that.

**19 Q. Okay. Now, if you could, please, move to page**  
**20 12. There is a finding or notation at the top of that**  
**21 page about taxable fringe benefits use of State vehicles.**  
**22 If you could -- if you could just now take a little step**  
**23 back and explain to the committee what we're talking**  
**24 about and what you mean when we're -- start down this**

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**1 path of the taxable fringe benefits.**

2 A. A taxable fringe benefit is anything provided  
 3 to an employee when you allow the employee to -- similar  
 4 to allowing an employee to commute to work in a vehicle,  
 5 it's any benefit provided to the employer that has a  
 6 value that they are not responsible for incurring a cost  
 7 of themselves.

**8 Q. Okay. And I believe the finding on page 11**  
**9 indicates that the Supreme Court did not report -- I'm**  
**10 sorry. Page 12. I indicated the wrong number. The**  
**11 Supreme Court did not report the taxable fringe benefit**  
**12 of Justice Loughry's use of State vehicles on his W-2s as**  
**13 ret -- as required by federal tax law. Is that the --**  
**14 was that the finding of the Legislative Auditor?**

15 A. That was the finding, yes.

**16 Q. Okay. And was -- was this one of the**  
**17 recommendations or how was -- was this just a finding in**  
**18 the report? Did anything come of this, if you know, with**  
**19 respect to Justice Loughry's W-2s?**

20 A. I am unaware that Justice Loughry had been  
 21 issued any amended W-2s. I believe the only justice that  
 22 was issued an amended W-2 concerning any use of State  
 23 vehicles identified by our reports was Justice Ketchum.

**24 Q. Okay. But you're unaware of any issued to**

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1 **Justice Loughry?**  
 2 A. That's correct.  
 3 **Q. Okay. The -- there is a notation about a March**  
 4 **28 letter -- March 28, 2018 letter, that was sent by the**  
 5 **Legislative Auditor to Justice Loughry. I think you just**  
 6 **previously noted that. Is that the one that you were**  
 7 **talking about earlier, a letter sent asking about the**  
 8 **reimbursements?**  
 9 A. Yes, it is. We essentially sent Justice  
 10 Loughry a request to inform of us -- inform us of any  
 11 reimbursements he had made to the State concerning any  
 12 personal use of State property.  
 13 **Q. Okay. And I believe it's also noted on page 12**  
 14 **and it is attached, I believe, as Appendix G to this**  
 15 **report -- maybe I. I apologize. On page 52, Justice**  
 16 **Loughry did send a response by letter; is that correct?**  
 17 A. He did not send a response directly to our  
 18 office. He sent his response to the now former director  
 19 of the Court administration Gary Johnson.  
 20 **Q. And I believe -- if you could, please, refer to**  
 21 **page 52 of report number 1, just so that we're all clear,**  
 22 **I want to make sure that is the letter to which you**  
 23 **referred.**  
 24 A. That is correct.

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1 **Q. Okay. And if you could, please, just read the**  
 2 **first -- the first paragraph of that letter to the**  
 3 **committee.**  
 4 A. The paragraph reads, "I have reviewed the  
 5 revised draft audit report dated April 10, 2018, from the  
 6 Legislative Auditor's Office. I have also reviewed the  
 7 proposed response of our Court which has been agreed to  
 8 by all five justices. The draft audit report refers to  
 9 me in at least two of the four designated issues. I  
 10 disagree with the factual and legal assumptions made, the  
 11 standards and definitions applied, and the conclusions  
 12 ultimately reached in the draft audit report."  
 13 **Q. Okay. Thank you. Mr. Robinson, I am now going**  
 14 **to ask as we remain and stay on the topic of the use of**  
 15 **State vehicles. I am now going to ask that you please**  
 16 **refer to report number 2, and specifically page 2 of**  
 17 **report number 2. It is my understanding from the issue**  
 18 **identified on page 2 that this addresses Justice Davis'**  
 19 **use of the State vehicle; is that correct?**  
 20 A. That is correct.  
 21 **Q. With respect to the investigation, did you look**  
 22 **at Justice Davis' use of the State vehicles as well?**  
 23 A. Yes, we did.  
 24 **Q. How many reservations did you find that Justice**

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1 **Davis had made during that time period that you did your**  
 2 **review?**  
 3 A. Our initial review of the reservation log  
 4 indicated 75 vehicle reservations.  
 5 **Q. Okay. And I believe that it's noted on page**  
 6 **2 - I want to just confirm - that you looked at those**  
 7 **reservations from 2011 through 2018; is that correct?**  
 8 A. That is correct.  
 9 **Q. Okay. Of those 75 instances, were there some**  
 10 **instances in which Justice Davis did provide destination**  
 11 **information?**  
 12 A. Yes, there were. I believe the report notes --  
 13 and let me clarify this. I believe 55 of the 75  
 14 reservations there was determined a business purpose and  
 15 destination.  
 16 **Q. Okay. And with respect -- so that leads me to**  
 17 **my next question. So it appears from that that there**  
 18 **might have been some instances in which there was not a**  
 19 **destination identified; is that correct?**  
 20 A. That is correct.  
 21 **Q. And did you reach out to Justice Davis to**  
 22 **request information -- any additional information that**  
 23 **the justice may have about those travel events?**  
 24 A. Yes -- yes, we did. It was indicated to us

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1 that as the reservation log was a reservation system,  
 2 just because the vehicle was reserved did not always  
 3 indicate that it was used. And we used other methods to  
 4 confirm whether or not that was the case.  
 5 **Q. Okay, And in that regard, if you could,**  
 6 **please, now with respect to the exhibits, please refer to**  
 7 **Exhibit Number 7. If you could, again, I continue to**  
 8 **state this just to be clear, you did not author this**  
 9 **exhibit, but if you could, please, just identify this for**  
 10 **the committee and tell them what this is generally?**  
 11 A. Yes, this is the response provided by Justice  
 12 Davis' attorney concerning a request for information  
 13 concerning those dates we identified that she had  
 14 reserved a Court vehicle but we could not substantiate a  
 15 business purpose or destination.  
 16 **Q. Okay. And I believe there is at least one**  
 17 **exhibit attached to this letter that goes through**  
 18 **those -- some of the instances, the dates that were in**  
 19 **question; is that correct?**  
 20 A. Yes.  
 21 **Q. Okay. There is a notation on page 2 of report**  
 22 **number 2 that Justice Davis indicated that she traveled**  
 23 **in Court vehicles only when she was accompanied by the**  
 24 **director of court security. Is that -- is that your**

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1 **understanding?**  
 2 A. That is correct.  
 3 **Q. And if you know, for what reason did court**  
 4 **security travel with Justice Davis in the State vehicle?**  
 5 A. I believe Justice Davis had some personal  
 6 security concerns --  
 7 **Q. Okay.**  
 8 A. -- to which she provided her -- Arthur Angus  
 9 provided her security on business-related trips  
 10 associated with the Court.  
 11 **Q. Okay. There is a notation -- and now I will**  
 12 **ask you to go to page 3 of report number 2. Underneath**  
 13 **Table 1, there is a paragraph about some vehicle use by**  
 14 **Justice Davis and that would be in the November 2011 time**  
 15 **frame. Could you please describe what you found with**  
 16 **respect to that travel in November of 2011?**  
 17 A. Yes, essentially from the dates of November 13  
 18 through 15th of 2011, Justice Davis reserved a Court  
 19 vehicle and traveled with Arthur Angus, the director of  
 20 court security, to some truancy events I believe in  
 21 Parkersburg and Wheeling. Coincidentally, after  
 22 attending the first event, she traveled to Parkersburg  
 23 and attended a political fundraiser that evening, did not  
 24 charge any lodging to the State, and then on the next day

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1 she attended the second anti-truancy meeting in  
 2 Parkersburg, so I believe her first trip was to Wheeling.  
 3 Then she traveled to Parkersburg the subsequent day and  
 4 then returned to Charleston.  
 5 **Q. Okay. Mr. Robinson, if you could, please, now,**  
 6 **I will move to page 4 of report number 2. I have just a**  
 7 **few questions. I believe you have indicated this. I**  
 8 **just want to make sure that the record is clear. Who is**  
 9 **Mr. Steve Canterbury?**  
 10 A. He is the former administrative director for  
 11 the Supreme Court of Appeals of West Virginia.  
 12 **Q. Okay. With respect to Mr. Canterbury, was his**  
 13 **car usage also reviewed?**  
 14 A. Yes, we actually reviewed the vehicle -- the --  
 15 UNIDENTIFIED SPEAKER: Is Mr. Canterbury  
 16 a subject of impeachment today?  
 17 CHAIRMAN SHOTT: Not by this committee.  
 18 We're providing context. I'll ask counsel to continue.  
 19 **Q. With respect to Mr. Canterbury, the**  
 20 **investigation into Mr. Canterbury -- I apologize, I can't**  
 21 **recall if I just asked this. Was both the vehicle use of**  
 22 **State vehicles and rental cars reviewed?**  
 23 A. Yes, they were. For all sitting justices at  
 24 the time these reports were issued including the former

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1 Justice Brent Benjamin, the current administrative  
 2 director at the time Gary Johnson, and former  
 3 Administrative Director Steve Canterbury, we consistently  
 4 reviewed this vehicle use in the same manner for each.  
 5 **Q. For Mr. Johnson and Mr. Canterbury?**  
 6 A. Yes.  
 7 **Q. Okay. And, again, just -- just a few questions**  
 8 **with respect to Mr. Canterbury. I believe this is noted**  
 9 **on page 4. With respect to the time period that you**  
 10 **looked at, how many times were you able to determine that**  
 11 **Mr. Canterbury used a State vehicle?**  
 12 A. Based on the reservation log, 78 times.  
 13 **Q. Okay. And with respect to the destination or**  
 14 **the purpose for the trips that Mr. Canterbury -- or the**  
 15 **reservations, rather, Mr. Canterbury made, did he provide**  
 16 **a purpose for each of those 78 trips?**  
 17 A. No, the report indicates that Mr. Canterbury  
 18 did not complete the purpose section of the reservation  
 19 log for 36 of the 78 uses.  
 20 **Q. Okay. It's -- I don't want to assume anything.**  
 21 **Did you have an opportunity as part of this investigation**  
 22 **to meet -- speak with Mr. Canterbury about -- about this?**  
 23 A. We did. We did.  
 24 **Q. And, if I could, I would just ask for you to**

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1 **please refer to Exhibit Number 8. Is this a list of the**  
 2 **78 times that Mr. Canterbury -- just in a format -- that**  
 3 **Mr. Canterbury used the State car?**  
 4 A. Yes.  
 5 **Q. Okay. I would now ask for to you please look**  
 6 **at Exhibit 9. I believe you just indicated that you did**  
 7 **at least meet with or have spoken with Mr. Canterbury.**  
 8 **Could you please just tell the committee what -- what**  
 9 **Exhibit 9 is?**  
 10 A. This is -- we inquired of Mr. Canterbury to  
 11 provide us further explanation for the dates that he did  
 12 not provide a business purpose or destination to which he  
 13 looked at his personal calendars to indicate if he had  
 14 record of travel for those dates. In instances where he  
 15 did have rec -- record of travel and the purpose, he  
 16 provided those to us in this Exhibit 9.  
 17 **Q. So in Exhibit 9, he was -- he took the time to**  
 18 **go back and look at his records and try to come up with**  
 19 **where these trips might have been to. Is that fair to**  
 20 **say?**  
 21 A. Yes, absolutely. I believe also we tried to  
 22 obtain the personal calendars from the Supreme Court of  
 23 Appeals that would have indicated possibly those dates,  
 24 but when we requested them, we were informed they were

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1 missing.

2 **Q. If you could, please, refer to Exhibit Number**

3 **10. You were one step ahead of me. Could you please**

4 **tell the committee what Exhibit Number 10 is?**

5 A. Yes, Exhibit 10 is a memo from the executive

6 assistant to the administrative director to the then

7 current administrative director Gary Johnson. And

8 essentially this memo indicates that she was asked to

9 provide the daily calendars maintained by the Court for

10 the current and former administrative directors, and as

11 she indicates in this memo they were missing.

12 **Q. Okay. They -- they were missing?**

13 A. Yes.

14 **Q. Okay. And, lastly, with respect to this, if**

15 **you could, please, just generally inform the committee of**

16 **the -- of Table 2 on page 5 of report number 2. Again,**

17 **if you could just generally indicate to the committee**

18 **what this -- what information is contained in this table.**

19 A. Table 10 is a summation of the rental car use

20 by the former Administrative Director Steve Canterbury.

21 **Q. And I note at the bottom there was -- there is**

22 **a finding or an amount, rather, let's say, of \$911.04.**

23 **What -- what was -- what's that?**

24 A. I think that in -- the total column for the

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1 total cost including -- which is the second to last

2 column indicates the amount of \$11,076. This was the

3 total cost of his rental car uses. The last column

4 indicates amounts improperly reimbursed to

5 Mr. Canterbury. He was -- actually, in many of these

6 instances he paid for these rental cars up front and

7 requested reimbursement, and it notes the amounts of

8 improper reimbursements for various reasons.

9 **Q. Okay. And if you could now, please, refer to**

10 **Exhibit Number 11, and if you could, just tell the**

11 **committee what this is and what Mr. Canterbury did after**

12 **meeting with you or speaking with you about this.**

13 A. Essentially, after meeting with Mr. Canterbury,

14 we discussed the amounts he was improperly reimbursed to

15 which he made a similar effort to Justice Ketchum to

16 reimburse the State for this amount. Particularly, the

17 first page of Exhibit 11 is a handwritten note to me

18 concerning this meeting and indicating that he has also

19 sent in a copy of the letter that is subsequent to this

20 page to the current director Gary Johnson along with a

21 copy of the check or -- well, I guess he actually

22 submitted the check to them, made out to the State of

23 West Virginia for that amount.

24 **Q. Okay. Thank you.**

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1 **Mr. Robinson, I'm now going to ask you to**

2 **please skip over to page 7 of report number 2. There is**

3 **a notation on that about the remaining justices and**

4 **administrative directors' vehicle use. I believe you**

5 **have already indicated that you -- in addition to**

6 **Mr. Canterbury, you also did look at the former**

7 **administrative director Gary Johnson. If you could,**

8 **please, just tell the Court the findings with respect to**

9 **former administrative director Johnson.**

10 A. In regard to former administrative director

11 Gary Johnson, we reviewed all reservations. There were

12 only four noted in the vehicle reservation log and we

13 found no issues with those. Each was for a business

14 purpose.

15 **Q. Okay. Now, I want to ask you about the --**

16 **about two current justices. That would be Justice Walker**

17 **and Justice Workman. Let's begin with Justice Walker.**

18 **If you could, please, let the committee know what your**

19 **investigation revealed with respect to the State vehicle**

20 **usage or rental car usage for Justice Walker.**

21 A. We reviewed both types of usage, and the only

22 thing noted was that there was only one Court vehicle

23 reservation by Justice Walker, and in regard to that,

24 there were no issues found.

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1 **Q. Now, I would like to ask the same question with**

2 **respect to Chief Justice Workman. What did your**

3 **investigation reveal with respect to Chief Justice**

4 **Workman's vehicle usage?**

5 A. We noted seven vehicle -- Court vehicle

6 reservations in the reservation log and to which we found

7 no issues with any of them.

8 **Q. Okay. The recommendation -- if you could,**

9 **please, just read your recommendation on this -- located**

10 **at the bottom of page 7 of report number 2, please?**

11 A. Okay. It relates to the recommendation made in

12 the initial report, but "The Legislative Auditor

13 recommends that the Supreme Court of Appeals of West

14 Virginia comply with his recommendations from the April

15 16th, 2018 report concerning its vehicle use and continue

16 with its current course of action to administer its

17 vehicle fleet under the Fleet Management Office of the

18 Department of Administration."

19 **Q. Okay. Thank you.**

20 MS. KAUFFMAN: Mr. Chairman, if I might

21 have just a moment to consult.

22 **Q. Mr. Robinson, I have just a few additional**

23 **questions. I'm almost finished here. I would like to go**

24 **back to report 1, page 16.**

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1 A. Okay.

2 **Q. And we're back to the taxable income and the**

3 **personal use of vehicles being taxable income. Should**

4 **have been reported as taxable income. If you could,**

5 **please, just -- and I believe the -- these are**

6 **contained -- some of these findings are contained on both**

7 **pages 16 and 17, with respect to the tax implications and**

8 **how the Court had treated other employees with respect to**

9 **commuting and having -- having vehicles and taxable**

10 **income.**

11 A. Based on this report, there was at least one

12 instance where an individual that worked for the Court's

13 IT department had been utilizing a Court vehicle and they

14 had, in fact, had been issued a W-2 reporting that

15 taxable fringe benefit.

16 **Q. Okay. So the Court had done it in that**

17 **instance?**

18 A. Yes.

19 **Q. Okay. There is also mention - and I believe it**

20 **is contained as an appendix to this report - about a memo**

21 **that had re -- previously been authored by a former**

22 **administrative counsel about the taxable -- the tax**

23 **implications; is that correct? Do you recall a memo**

24 **being prepared or that you saw?**

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1 A. Yes.

2 **Q. Okay. And if you recall, just generally, what**

3 **did that memo actually inform the former administrative**

4 **director about the use of these State vehicles?**

5 A. It essentially informed him of the tax

6 implications of using a employer-provided vehicle for

7 commuting purposes or for personal use.

8 **Q. Okay. And just so that our record is clear,**

9 **I've kind of jumped around, we are still on report number**

10 **1. At page 41 of that, if you could, please, just**

11 **confirm, is that the memo that the -- to which this**

12 **report is referring?**

13 A. That's correct, that is the memo.

14 **Q. Okay. Mr. Robinson, just generally speaking, I**

15 **know we've asked -- I've asked a lot of questions just**

16 **your general understanding in putting these reports**

17 **together. Let me ask just generally with respect to**

18 **the -- I understand there were probably many interviews**

19 **that were done throughout the course of your**

20 **investigation. Is that accurate?**

21 A. That's accurate.

22 **Q. Did you participate in some of those? If you**

23 **can give us -- give the committee any idea as to your**

24 **involvement as to the actual investigation.**

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1 A. I was involved in nearly every interview

2 conducted with Court personnel regarding these audits,

3 and my direct involvement with each report was the

4 supervision, planning and coordination of the efforts of

5 each one of these audits.

6 **Q. Okay. And also, I'd meant to ask you this**

7 **question before and I had neglected to do so. Throughout**

8 **some of these documents and perhaps mentioned elsewhere**

9 **is the name Mr. Denny Rhodes. Could you please tell the**

10 **committee about Mr. Rhodes' position at the time that**

11 **this investigation was ongoing and where Mr. Rhodes is**

12 **now?**

13 A. Yeah, Mr. Rhodes, Denny Rhodes, was the

14 former dir -- or is the former director of the

15 Legislative Post Audit Position. Currently he works for

16 a agency under the Department of Military Affairs and

17 Public Safety.

18 **Q. So was he also involved in the interviews?**

19 A. Yes, for the most part I believe so.

20 **Q. Okay. Did you ever to your knowledge, your**

21 **recollection -- I understand you said with respect to**

22 **Court personnel you sat in on some interviews. Did you**

23 **ever sit in on any interviews of any current Supreme**

24 **Court justice?**

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1 A. We met several times with Justice Ketchum

2 regarding his implications of this report.

3 **Q. Other than Justice Ketchum. We're not --**

4 A. Other than Justice Ketchum, we have met at

5 times with Chief Justice Workman, mostly regarding the

6 exit conference which we hold to distribute a draft copy

7 of this report and go over the findings contained within

8 with those agency or branch of government personnel.

9 Outside of those two justices mentioned, I did not meet

10 personally, nor did -- am I aware that our staff did with

11 any of the other justices of the Court.

12 MS. KAUFFMAN: Okay. Mr. Chairman, I

13 don't believe at this time I have any further questions

14 for Mr. Robinson.

15 CHAIRMAN SHOTT: Thank you, Counsel.

16 We're going to begin as I indicated to my left. If you

17 have a question -- Delegate Fast, do you have questions?

18 Please proceed.

19 DELEGATE FAST: Thank you, Mr. Chairman.

20 EXAMINATION

21 BY DELEGATE FAST:

22 **Q. Thank you, Mr. Robinson, for being here. I**

23 **want to refer to the Exhibit 10 the -- that was on the**

24 **screen. A memo to Gary Johnson from Joan Mullins dated**

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**1 February 16, 2018, talks about missing calendars. Did**  
**2 you follow up on that when you received this memo that**  
**3 calendars were missing?**  
 4 A. We had actually asked in person for those  
 5 calendars and went to the Court's facilities to try to  
 6 obtain them. We were actually invited to come there to  
 7 obtain them, and upon arrival we were informed, much to  
 8 our surprise, that they were missing. I believe this  
 9 memo indicates - because the date of that meeting was  
 10 subsequent to the date of this memo - they were aware  
 11 they were missing prior to our arrival. However, in  
 12 terms of following up to as why they were missing, we  
 13 were given no explanation when we arrived to obtain them.  
 14 And to my knowledge there is no explanation for why they  
 15 were missing.  
**16 Q. Did you as an Auditor inquire further to try to**  
**17 get to the bottom of how documents such as calendars**  
**18 would just vanish?**  
 19 A. We asked the individual in charge of the  
 20 calendars why she believed they may have been missing, to  
 21 which she did not understand. She said one day they were  
 22 there; the next they were not.  
**23 Q. And what were you hoping to see on these**  
**24 calendars? What information would you expect to be on**

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**1 these calendars?**  
 2 A. These calendars were specific to the  
 3 administrative directors of the court. They were  
 4 maintained by the Court to indicate particular items of  
 5 business that they attended throughout their years. What  
 6 we were trying to obtain from the calendars was to  
 7 substantiate business purposes for the use of Court  
 8 vehicles for Mr. Canterbury that were not available in  
 9 the reservation log.  
**10 Q. And would Mr. Canterbury have had anything or**  
**11 could he have had anything to do with the disappearance**  
**12 of these calendars?**  
 13 A. I couldn't speak to that.  
**14 Q. On your second report, page 3, if you could**  
**15 refer to that, please.**  
 16 A. Okay.  
**17 Q. The language underneath Table 1 there, it talks**  
**18 about Justice Davis. It appears that your information**  
**19 tells me that she attended a Court function, an anti-**  
**20 truancy event in Wheeling, and then while using a State**  
**21 vehicle proceeded to a fundraising event which would be**  
**22 not Court related, correct?**  
 23 A. That's correct.  
**24 Q. And my question, though, is at that time --**

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**1 that was in 2011, correct?**  
 2 A. Yes.  
**3 Q. Did that violate any policy?**  
 4 A. To my knowledge, no. Essentially the instance  
 5 of business purpose use coincided with that event. The  
 6 way she had planned this trip, she left for Charleston to  
 7 Wheeling, attended the event in Wheeling, subsequent to  
 8 the event in Wheeling, she traveled to Parkersburg where  
 9 she attended the fundraiser. I believe she stayed  
 10 overnight in Parkersburg as indicated in the report. Did  
 11 not charge lodging to the State. The only other  
 12 additional charges she charged outside of using the  
 13 vehicle during this trip instance was meal per diem. And  
 14 then on the subsequent date after attending the  
 15 fundraiser there was an event in Parkersburg that she  
 16 attended and then traveled back to Charleston. So there  
 17 was to our knowledge no additional cost incurred through  
 18 this fundraiser event.  
**19 Q. Well, from Wheeling to Parkersburg, that's a**  
**20 couple of hours at least of driving on a State vehicle,**  
**21 correct?**  
 22 A. Yes.  
**23 Q. And -- but, regardless, you're not aware of any**  
**24 policy that that -- she would have violated in attending**

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**1 that fundraising event at the expense of a State vehicle?**  
 2 A. No. And the reason we drew that conclusion was  
 3 that it was coincidental. She could have planned the  
 4 trip to go to Wheeling and then back to Charleston and  
 5 then back up to Parkersburg, but she did it in a way that  
 6 was more like a round trip rather than bouncing back and  
 7 forth between Charleston. But to my knowledge, no, there  
 8 is no policy she violated.  
**9 Q. Did you calculate any mileage that she would**  
**10 have used the State vehicle for the personal fundraising**  
**11 event?**  
 12 A. We did not.  
**13 Q. Okay. That would be several hundred miles,**  
**14 wouldn't it?**  
 15 A. I'm not specifically aware.  
**16 Q. If you're driving a couple of hours. Okay. So**  
**17 no policy violation there.**  
 18 Now, I'd like to go to the first report --  
**19 switch over to Justice Loughry. And counsel brought up**  
**20 an important point I think. Were these -- and I'm on**  
**21 page 10 right now, Justice Loughry.**  
 22 A. Okay.  
**23 Q. Your first report. Table 2. Were these rental**  
**24 agreements, unlimited mileage rental agreements or do you**

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**1 know?**

2 A. To the best of my knowledge they were unlimited  
3 mileage agreements, yes.

**4 Q. Is that pretty much standard operation for  
5 justice when they use a rental car or any State person to  
6 have an unlimited mileage rental agreement?**

7 A. I can't speak to that specifically, but  
8 generally I do believe most rental cars provide unlimited  
9 mileage rates.

**10 Q. Okay. And so you're calculating all of these  
11 miles -- I see there July 19 through 25, 445 miles  
12 difference, 390 miles difference, 580 miles difference,  
13 467 miles difference, 171 miles difference, 498 miles  
14 difference, and 323 miles difference. You calculated all  
15 those miles just based upon odometer readings and  
16 differentiated between the mileage from the airport to  
17 the hotel, correct?**

18 A. That's correct.

**19 Q. And how did you get the odometer readings? Did  
20 you contact the rental car company?**

21 A. On the travel expenses that were submitted and  
22 paid by the Court for Justice Loughry, the rental car  
23 receipts indicated the mileage put on the car during the  
24 time of the rental.

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**1 Q. Okay. But this mileage did not equate to any  
2 extra cost to the State because it was unlimited mileage;  
3 isn't that correct?**

4 A. That's correct.

**5 Q. And what would be the difference between  
6 Justice Davis, then, using a vehicle where you said that  
7 there was no policy violated but yet here it appears that  
8 you're concluding that Justice Loughry violated policy or  
9 violated something and you're actually putting a dollar  
10 figure of \$2,668.64 on it, so what's the difference?**

11 A. I think in terms of Justice Loughry the best  
12 way I can answer that question is that while the mileage  
13 did not attribute to an additional cost, we questioned  
14 the need for the rental car in light of the fact that  
15 there may have been a cheaper alternative for the means  
16 of travel from the airport to the hotel. The number of  
17 mileage put on these vehicles during the time he was  
18 using them indicates there was significant use  
19 potentially for something other than a business purpose.

20 To explain the difference between that and  
21 the instance noted for Justice Davis, I would say that if  
22 you were to put a dollar amount on the fuel cost  
23 associated with Justice Davis' use of that vehicle for  
24 those few days, it would be substantially less than the

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1 amount for the rental cars used by Justice Loughry as  
2 noted in our report.

**3 Q. Well, obviously we're looking at seven -- I  
4 think seven trips here out-of-state travel. When  
5 compared to Justice Davis it -- we're just looking at the  
6 one trip there. So I would think that would be a little  
7 apples and oranges comparison, wouldn't it?**

8 A. To some degree, yes, I would agree with that  
9 statement.

**10 Q. Okay. So this entire Table 2 did not equate to  
11 any additional costs to the State. You're just simply  
12 looking at mileage and comparing it to what it was  
13 between the hotel and the airport?**

14 A. If you're considering additional mileage or  
15 additional costs to be directly attributed to the  
16 mileage, no. However, we do take issue with the fact  
17 that there may have been a cheaper means for him to  
18 obtain transportation from the airport to the hotel. As  
19 you've noted in the report, the greatest distance between  
20 the round-trip air -- travel to the airport and hotel is  
21 about 27 miles for San Francisco and the Montreal, Quebec  
22 trips. We just feel that it's highly likely that some  
23 form of public transportation may have been used that  
24 could have been cheaper than the total amounts charged

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1 for the rental usage.

**2 Q. When a State official such -- such as a justice  
3 of the West Virginia Supreme Court travels out of state,  
4 are -- are they -- are you suggesting that they should be  
5 confined either at the hotel or the airport subject only  
6 to public transportation?**

7 A. No, but if their confinement -- if their lack  
8 of desire for confinement relates to potential need to  
9 travel for personal reasons during that trip, we  
10 potentially feel that that cost should be incurred by the  
11 individual seeking to use that type of vehicle for  
12 personal use.

**13 Q. Well, if they -- if they would normally use a  
14 rental car and it's normally an unlimited mileage, I  
15 guess, why does it matter?**

16 A. I think it's the role of our office to  
17 determine the most cost-effective method for spending tax  
18 dollars by State agencies and branches of government  
19 including the Supreme Court of Appeals.

**20 Q. Okay. And so -- speaking of rules, am I  
21 correct -- and I was looking on the very first -- page 7  
22 of your first report. The Supreme Court does not have  
23 formal written policies or procedures for the use of  
24 vehicles. So -- and then I see it looks like in October**

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**1 of 2016 there were some regulations regarding judicial  
2 travel that were implemented.**

3 A. That's correct.

**4 Q. So up until October of 2016, there were no  
5 written policies. Is that --**

6 A. That is our understanding.

**7 Q. Okay. So then October of 2016, that means that  
8 five of the seven issues raised on -- in Table 2 would  
9 not have violated any written policy, correct?**

10 A. That's correct.

**11 Q. And, in fact, none of the issues on Table 1 --  
12 if you would flip over to page 7, none of those would  
13 have applied to any written policy because there would  
14 not have been any written policy during all of those  
15 events on Table 1, correct?**

16 A. As it relates to an internal policy of the  
17 Supreme Court of Appeals, that's correct.

**18 Q. Okay. And all of the issues raised in Figures  
19 2 and 3, pages 8 and 9, none of those would have violated  
20 any written policy of the Supreme Court, correct?  
21 Because there were none?**

22 A. That's correct, there were no policies.

**23 Q. Okay. Now, you touched a little bit on the --  
24 in your report you talk significantly about W-2s. And I**

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**1 want to be sure I understand. The IRS conducted its own  
2 audit, correct?**

3 A. They did.

**4 Q. Of all of this? All of this?**

5 A. I do not believe the focus of the IRS audit  
6 encompassed everything that is encompassed in our report.

**7 Q. Okay. The IRS did, however, focus specifically  
8 on the use of commuting, as use of State vehicles for  
9 commuting, and whether or not there should be any amended  
10 W-2s.**

11 A. Only to which the information that the IRS was  
12 provided by the Court.

**13 Q. And, of course, the IRS, when they do an audit,  
14 they can get pretty deep just with their powers. They're  
15 not going to be -- if they want to get documents, they  
16 could get documents, can they not?**

17 A. They can request documents, but what they're  
18 provided by the Court is the only basis they have to go  
19 on when conducting their audit.

**20 Q. Can't the IRS even subpoena documents if they  
21 want to in context of an audit?**

22 A. I can't answer that question.

**23 Q. Okay. The bottom line, though, is the IRS  
24 itself concluded that no w -- no amended W-2s were**

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**1 necessary; is that correct?**

2 A. That is correct, but I would like to reiterate  
3 a fact that is contained in one of our reports. The IRS  
4 was not informed of the commuting in a State vehicle by  
5 Justice Ketchum by the Court and they were not aware of  
6 this use when conducting the audit.

**7 Q. And if I read Justice Workman's responsive  
8 letters to some of the inquiries, she pointed out the  
9 fact that even after reviewing Justice Ketchum's issues  
10 with commuting that they still concluded no amended W-2s  
11 were necessary. Am I reading Justice Workman's letter  
12 correctly?**

13 A. Yes, that's correct.

**14 Q. Okay. So do you have any grounds to dispute  
15 that, that the IRS was wrong in its conclusion that of  
16 all the justices, no amended W-2s were necessary based  
17 upon commuting?**

18 A. The IRS' initial ruling did not make any  
19 specific indication regarding the justices, and as I  
20 pointed out, the information regarding Justice Ketchum's  
21 use of a State vehicle was not provided by the IRS when  
22 that decision was made. I -- can you reiterate? There  
23 was another part of that question I think I wanted to  
24 answer.

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**1 Q. Well, I believe Justice Workman in her -- she  
2 had two responsive letters that I saw. In the first one  
3 she said that the IRS concluded no amended W-2s were  
4 necessary, and the second one she went to painstakingly  
5 detail citing portions of the IRS audit. Wasn't that  
6 second letter after the IRS would have then known about  
7 Justice Ketchum's issues?**

8 A. I'm not sure of that, but I am aware of the  
9 fact that in regards to providing the IRS information on  
10 any justice's vehicle use at the time of the initial  
11 audit that began in January of 2018, they did not provide  
12 any information concerning vehicle use to the IRS or  
13 vehicle use by the justices to the IRS.

**14 Q. Okay. And, of course, Justice Ketchum insisted  
15 on an amended W-2 himself and he paid some money back,  
16 correct?**

17 A. He did. And that's correct, and it was our  
18 stance in this report that it's not so much a retroactive  
19 necessity that W-2s should have been issued. Our point,  
20 in fact, was that at the time that this commuting was  
21 occurring, the Court did not treat this properly for tax  
22 purposes and such taxable fringe benefits should have  
23 been included on the current year's W-2s issued to each  
24 justice.

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**1 Q. Okay. So you conclude that the W-2s were wrong**  
**2 for some of the justices because of the commuting issue.**  
**3 The IRS concluded no amended W-2s were necessary, but**  
**4 your point is the IRS didn't have all of the information.**  
**5 Is that what you're --**  
 6 A. The point that I am trying to make is that at  
 7 the time of the initial IRS audit when their decisions  
 8 were made and finalized that they were not aware of  
 9 Justice Ketchum's use of a Court vehicle for commuting  
 10 purposes. Outside of that, any other use was  
 11 specifically related to commuting. And the other  
 12 instances of Court vehicle use by Justice Loughry does  
 13 not relate to commuting instances.  
**14 Q. Okay. Back to the rental car. We've**  
**15 established -- or you've established that there were no**  
**16 written policies until 2016 -- October of 2016. We've**  
**17 established that all but two of these issues would not**  
**18 have violated any policies because there were none on**  
**19 Table 2, page 10 of your first report. So -- and we've**  
**20 also established that -- the fact that Justice Loughry**  
**21 used a rental car, it was an unlimited mileage rental**  
**22 and, therefore, that would not equate to additional money**  
**23 to the State.**  
 24 Now, you couched one of your statements

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**1 that it did not violate any internal Supreme Court**  
**2 policy. So now, I would like to ask what other policy do**  
**3 you believe would have been violated that is not an**  
**4 internal Supreme Court policy?**  
 5 A. The initiation of the October 2016 travel  
 6 policies was due to the fact the State Auditor's Office  
 7 had indicated to the Court that they could not pay out  
 8 travel expense settlements due to the fact that these  
 9 regulations weren't filed with the State Auditor's  
 10 Office. Subsequent to the submission of these travel  
 11 policies to the State Auditor's Office, the Court had  
 12 been being reimbursed for travel expense settlements  
 13 without a proper filed travel policy with the State  
 14 Auditor's Office.  
**15 Q. Okay. I'm -- I'm sorry. Let's go back. What**  
**16 policy -- other than an internal written policy of the**  
**17 Supreme Court that didn't exist until October of 2016,**  
**18 what other policy would have applied to all of these**  
**19 infractions that I'll just -- I'm not saying they are**  
**20 infractions but alleged infractions of Justice Loughry**  
**21 other than anything with the Supreme Court?**  
 22 A. As mentioned, I mean, aside from the fact that  
 23 the Supreme Court was required to file travel policies  
 24 with the State Auditor's Office, and in order to be

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1 reimbursed and, again, that's nothing against  
 2 particularly the Court or the State Auditor's Office. It  
 3 may have just been an oversight. I can't speak to any  
 4 particular policy that was violated regarding this rental  
 5 car use. And, again, our point in highlighting these  
 6 issues in our audit report was to question whether or not  
 7 this was the most efficient means of travel concerning  
 8 these instances and the best use of tax dollars.  
**9 Q. And isn't that -- doesn't that then place that**  
**10 whole issue on subjective grounds? I mean, if you can't**  
**11 point to a policy, a law, a rule that was violated, then**  
**12 that merely places that whole issue on subjective**  
**13 interpretation, doesn't it?**  
 14 A. Possibly does. Or we relate it to best  
 15 business practices. Many other agencies in State  
 16 government have a policy that governs such instances of  
 17 travel. The fact that the Court did not have one may in  
 18 and of itself be an issue.  
**19 Q. And the fact that the Court didn't have one,**  
**20 that would have been a fact well before Justice Loughry**  
**21 ever entered the West Virginia Supreme Court of Appeals.**  
 22 A. I can't answer that question.  
**23 Q. Well, are you aware of any rule or policy that**  
**24 existed a year or so before he entered the Court?**

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1 A. I can't answer that. Not that -- not to my  
 2 knowledge.  
**3 Q. Okay. So --**  
 4 CHAIRMAN SHOTT: Delegate Fast. Excuse  
 5 me, Delegate Fast. I'm going to move on to give others a  
 6 chance to question. We will come around a second time,  
 7 but in the interest of time --  
 8 DELEGATE FAST: Thank you, Mr. Chairman.  
 9 CHAIRMAN SHOTT: -- other members may  
 10 wish to answer questions. Delegate Foster.  
 11 EXAMINATION  
 12 BY DELEGATE FOSTER:  
**13 Q. My question's regarding report 1, page 10, the**  
**14 Table 2 that was being discussed and also on page 5 on**  
**15 report -- audit report 2. And my concern is the**  
**16 difference in -- for one, on these conferences that**  
**17 were on, was this something that was -- meals were**  
**18 provided and it couldn't be that -- could the vehicle**  
**19 have been used for, basically, lunch or dinner? Was --**  
**20 were meals provided on this trip or do you know?**  
 21 A. I don't have that knowledge.  
**22 Q. Okay. And then on audit report 2 on page 5, I**  
**23 see Justice Loughry's mileage on page 2 and, one, that it**  
**24 went anywhere from 6 to 27 miles from round trip to**

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1 hotel.

2 A. Uh-huh.

3 **Q. And for Mr. Canterbury, it was 481 miles for**

4 **Palm Springs, California. What airport was he flying**

5 **into that there was 481 miles round trip?**

6 A. I don't have that information directly

7 available, but I could get that for you at some time.

8 **Q. I was just wondering what the difference was**

9 **like this 244, 481, and 212. It would seem that there**

10 **was a much more economical place to be flying into that**

11 **was closer to the hotel and I was --**

12 A. That's quite possible.

13 DELEGATE FOSTER: Okay. All right.

14 Thank you.

15 CHAIRMAN SHOTT: Delegate Sobonya.

16 EXAMINATION

17 BY DELEGATE SOBONYA:

18 **Q. Chairman, my question is on Exhibit 13, and**

19 **it's a part of the post audit meeting summary March 5th,**

20 **2018. In that meeting, Ms. Racer-Troy who happened to be**

21 **the director of Division of Financial Management with the**

22 **Supreme Court of Appeals was told evidently by Steve**

23 **Canterbury that of the taxable fringe benefit for Justice**

24 **Ketchum. And then you drop down to midway part of the**

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1 page and it says Ms. Racer-Troy was notified by

2 Mr. Canterbury's -- Mr. Canterbury of the existence of a

3 policy voted on by the justices that would allow them to

4 determine for themselves what constituted business trips

5 in State vehicles and how to report it some time in

6 August of 2016.

7 **Where is that policy? Is that a written**

8 **policy? It says it was voted on by the justices, but I**

9 **don't -- I don't recall seeing a record of that.**

10 A. And you may not have. It may not be in direct

11 relation to any of the issues in the report, and I

12 apologize, but if that was -- if that is something you

13 would like to see, I think we could provide that. As

14 mentioned earlier in this, we provided counsel thousands

15 of pages of documents and I'm sure that is one of them.

16 **Q. Okay, I would like to see a copy of that**

17 **policy.**

18 **And then you drop down to the next bullet**

19 **point it says, "Ms. Racer-Troy is uncertain if she made**

20 **Gary Johnson" - I guess who replaced Mr. Canterbury -**

21 **"aware of the taxable fringe benefits associated with the**

22 **justices' use of State-owned vehicles." And then you**

23 **drop down and it says, "The issue of the taxable fringe**

24 **benefit was not addressed at all with Gary Johnson until**

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1 the IRS audit." My question is: Who's responsible for

2 ascertaining the taxable fringe benefits for all the

3 justices?

4 A. That's an excellent question. It would be our

5 assumption that it would be the director of the Division

6 of Financial Management of the Court.

7 **Q. Okay. If you look at the first post audit**

8 **report of April, page 18, it talks about "In October**

9 **2016, the Supreme Court submitted its travel regulations**

10 **to the State auditor -- Auditor's office; which exempted**

11 **all justices' travel reimbursements." And it goes on to**

12 **say because the State Auditor's Office would not approve**

13 **court employee's request for travel reimbursements**

14 **without an updated set of travel regulations, and these**

15 **regulations were updated and presented to the Court with**

16 **the justices asked to respond with a vote yes or no by**

17 **Monday, September 19, 2016.**

18 **But then you drop down and it says,**

19 **"Subsequently, in the October 3, 2016 Administrative**

20 **Conference, these travel regulations were discussed**

21 **further." I guess no any action taken. So my question**

22 **is: Why if this was demanded back in 2016, you flash**

23 **forward to 2018, if the State Auditor's Office cannot**

24 **approve of these travel reimbursements, why was -- why**

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1 were they continued to be approved?

2 A. The regulations were actually submitted to the

3 State Auditor's Office in October of 2016. I don't have

4 a lot of familiarity with any regulations that were cited

5 by the State Auditor's Office that were outdated, to

6 which they needed to be updated for them to continue to

7 process those reimbursements to Court employees. But as

8 of October of 2016, the travel regulations that are

9 referenced in the appendix to this report were submitted

10 and filed with the State Auditor's Office. So subsequent

11 to that date, any travel expense settlements were made

12 through the -- reimbursed through the State Auditor's

13 Office in accordance with those applicable rules.

14 **Q. So that policy is in place now?**

15 A. Yes.

16 **Q. Can we receive a copy of that as well?**

17 A. The travel policy, I believe, is in the

18 appendix of the report, but let me check. Yes, Appendix

19 E of the report reflects those travel policies that were

20 effective October 3, 2016, as submitted by the Court to

21 the State Auditor's Office.

22 **Q. Okay. And in the post audit meeting summary**

23 **referenced earlier of March 5, 2018, it says that**

24 **Ms. Racer-Troy was aware that a secretary of the Court,**

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**1 Connie Toney, was commuting back and forth from work in a**  
**2 State vehicle and awarded special protection of the**  
**3 former court manager. Who would have approved that?**  
 4 A. Through our meetings with Ms. Racer-Troy she  
 5 indicated that that approval was granted from the former  
 6 Administrative Director Steve Canterbury.  
**7 Q. So is that the only Court employee that you**  
**8 found to have preferential treatment?**  
 9 A. The specific meeting summary is just regarding  
 10 the discussion we held that day with Ms. Racer-Troy and  
 11 those other attendees. The nature of the conversation  
 12 just may have not strayed into those areas, but to my  
 13 knowledge when asked about frequency of Court employees  
 14 commuting in a State vehicle, other than the justices,  
 15 this was mentioned along with the previously mentioned IT  
 16 individual who was properly issued W-2s to reflect the  
 17 commuting value.  
 18 DELEGATE FOSTER: Thank you. No further  
 19 questions at this time, Mr. Chairman.  
 20 CHAIRMAN SHOTT: Delegate Summers.  
 21 DELEGATE SUMMERS: Thank you,  
 22 Mr. Chairman.  
 23  
 24 EXAMINATION

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1 BY DELEGATE SUMMERS:  
**2 Q. Sir, can you help me understand Appendix F of**  
**3 the first post audit report? It's issued from**  
**4 Administrative Counsel Brandfass to Mr. Canterbury laying**  
**5 out the legislative rules for State owned vehicles.**  
 6 A. Uh-huh.  
**7 Q. Are you there yet?**  
 8 A. I am.  
**9 Q. Okay. And when I'm reading through that, it's**  
**10 a little bit confusing for me that it states later the**  
**11 "Applicability to the Judiciary of State Rules Governing"**  
**12 the "State vehicles", like, perhaps these rules don't**  
**13 always apply. And then it says the consequences of**  
**14 improper use of State vehicles are only ethical violation**  
**15 complaint with the JIC or determination for untaxed**  
**16 wages.**  
**17 Is that what -- is that the support of**  
**18 this? If you -- if you don't use the vehicles properly**  
**19 these are the two consequences that happen, and who --**  
**20 who determined that?**  
 21 A. This memo was written by a former  
 22 administrative counsel for the Supreme Court of Appeals,  
 23 Kirk Brandfass. Essentially, I believe at this time  
 24 there were some conversations regarding use of Court

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1 vehicles by the justices. Obvious, we had expressed  
 2 earlier that Justice Robin Davis had some concerns  
 3 regarding this and had sent several memos to Arthur  
 4 Angus, the director of court security, and other  
 5 individuals with the Court trying to ascertain some facts  
 6 regarding this use.  
 7 I think this memo was incepted out of  
 8 those concerns and this was essentially their  
 9 administrative counsel's take on what the proper  
 10 reporting should be; what the consequences of such use  
 11 may be.  
 12 DELEGATE SUMMERS: Okay. Thank you.  
 13 CHAIRMAN SHOTT: Process will follow to  
 14 go to the second row left to right and then we'll come  
 15 down to the first row on the right side. Delegate  
 16 Capito.  
 17 DELEGATE CAPITO: Hey, thank you.  
 18 EXAMINATION  
**19 Q. Quickly, who paid for the gas on the rental**  
**20 cars? We see all this mileage. That's got to be a lot**  
**21 of money in gas.**  
 22 A. I'm -- we are assuming and to our -- I mean,  
 23 none of them -- justices are issued a purchasing card to  
 24 which they could purchase fuel. I would assume that the

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1 gas for those trips were purchased by the justices  
 2 themselves, outside of the fuel option that was used,  
 3 so --  
**4 Q. Got it. And, I mean, I think it's probably**  
**5 safe to say that this would not have been the cheapest**  
**6 option given the mileage to and from the airport, but**  
**7 we -- did you research that or is that just kind of an**  
**8 assumption? I mean, I wouldn't suggest that it's not a**  
**9 safe one, but it -- is it, indeed, an assumption?**  
 10 A. I would not say to the full degree that it is  
 11 an assumption. I think that, you know, several of our  
 12 staff conducting this audit have common knowledge of the  
 13 other means of transportation that could be taken from  
 14 those locations of the airport to the hotels. And we did  
 15 do some preliminary looking into what it would cost to  
 16 maybe take an Uber, a super shuttle, et cetera, other  
 17 means of travel, and comparatively you're correct in  
 18 stating that it's probably not the cheapest method to  
 19 have rented the car.  
**20 Q. Okay. And, lastly, Mr. Chairman, is it a**  
**21 practice also of Supreme Court justices or frankly any**  
**22 government worker to submit for reimbursement mileage**  
**23 that is on a personal vehicle for business purposes?**  
 24 A. I couldn't speak to what other agencies --

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1 **Q. So none of that was looked into with regard to**  
2 **any -- and I'm not -- I'm not going really anywhere, but**  
3 **I'm just curious. So -- so we didn't -- we didn't look**  
4 **into whether there was any business mileage claimed on**  
5 **personal vehicles?**  
6 A. No, we did not.  
7 **Q. Okay. So is it -- is it -- and I don't know if**  
8 **you know the answer. Don't answer if you don't know, but**  
9 **is it the practice of the Court to take the Court's**  
10 **vehicle if it -- if a business trip is --**  
11 A. Yes.  
12 **Q. Okay.**  
13 A. Yes, and I do believe they are eligible for  
14 mileage reimbursement if they do take their personal  
15 vehicle on a business-related trip, so long as it is  
16 outside of what their -- what's considered their home or  
17 their headquarters which would be Charleston.  
18 **Q. So there's two options for business travel.**  
19 **The Court car or the personal car, but you just get**  
20 **reimbursement for the personal car?**  
21 A. That's correct.  
22 DELEGATE CAPITO: Okay. Thanks,  
23 Mr. Chairman.  
24 CHAIRMAN SHOTT: Delegate Harshbarger.

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1 DELEGATE HARSHBARGER: Thank you,  
2 Mr. Chairman.  
3 EXAMINATION  
4 BY DELEGATE HARSHBARGER:  
5 **Q. Thanks for being here today.**  
6 A. Uh-huh.  
7 **Q. One question to build on Delegate Capito's**  
8 **question here is did I hear you right that the justices**  
9 **do not have a State-issued P-card?**  
10 A. No, they do not.  
11 **Q. So they basically use a personal credit card,**  
12 **then submit their expenses back -- or how do they -- how**  
13 **do they pay --**  
14 A. In regard to?  
15 **Q. With the rental cars and their trips. How do**  
16 **they pay for those trips?**  
17 A. I believe that -- and I -- forgive me, I can't  
18 speak specifically, but in the instances we noted for the  
19 former administrative director Canterbury, there were  
20 times that the Court would pay for it up front. There  
21 were times -- or pay for it directly with their  
22 purchasing card or travel card. There were times he  
23 would pay for it with his personal credit card and ask  
24 for a reimbursement. In doing so, for the former

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1 administrative director Canterbury, he attempted to  
2 prorate business use versus personal use because he was  
3 aware that some of the use was personal use.  
4 In terms of Justice Loughry, it's my  
5 knowledge that all of the instances were paid for  
6 directly by the Court.  
7 **Q. Okay. So basically there was no set format for**  
8 **the justices to either use a personal card or**  
9 **Canterbury's card or a P-card, purchasing card? They**  
10 **just kind of -- what the flavor of the day was.**  
11 A. As noted before, there was really no  
12 policy governing some of these instances.  
13 **Q. Okay. And one of the things when -- on this**  
14 **Table 2 on page 10, you have it broke out to additional**  
15 **miles as you quoted over here for personal use.**  
16 A. Uh-huh.  
17 **Q. In that, when they submit their expenses or**  
18 **they're approved, was there any additional cost that was**  
19 **hit with the State that could possibly have been for**  
20 **personal use or personal travel, meals or tickets to an**  
21 **event or anything like that?**  
22 A. No, not that we noted.  
23 **Q. Okay. And then was there any additional**  
24 **questioning with the additional mileage or was it just**

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1 **taken off the receipts and documented? Was it ever**  
2 **questioned -- you know, any of the justices ever**  
3 **questioned why there's an additional amount of miles put**  
4 **on these rental cars?**  
5 A. No, there was no question raised by any  
6 justices concerning that.  
7 DELEGATE HARSHBARGER: Okay, that's all I  
8 have. Thanks, Mr. Chairman.  
9 CHAIRMAN SHOTT: Delegate Hollen.  
10 DELEGATE HOLLEN: Thank you,  
11 Mr. Chairman.  
12 EXAMINATION  
13 BY DELEGATE HOLLEN:  
14 **Q. Now, the intent of your audit is to -- for the**  
15 **vehicles, is to scrutinize or to dig down into personal**  
16 **use. Would that be a correct statement?**  
17 A. Yes.  
18 **Q. Then we go back on to your second post audit**  
19 **for Justice Davis' trip from Charleston to Wheeling to**  
20 **Parkersburg, back to Charleston. Do you find that in**  
21 **your -- in your audit, that she had charged 115 for meal**  
22 **expenses? And that was for the three days, correct?**  
23 A. Uh-huh.  
24 **Q. Do you know what -- in 2011 what the per diem**

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1 rate was then?  
 2 A. I do not off the top of my head. Sorry.  
 3 **Q. Okay. And you don't -- in here she had**  
 4 **traveled with the director of court security.**  
 5 A. That's correct.  
 6 **Q. And the reason being that she had needed the**  
 7 **director with her?**  
 8 A. Personal security concerns.  
 9 **Q. Personal security concerns. And what is his**  
 10 **salary?**  
 11 A. What is who?  
 12 **Q. What is his salary at the time; do you know?**  
 13 A. The director of court security, I would not  
 14 have that answer.  
 15 **Q. And there's other court security under him; is**  
 16 **that correct?**  
 17 A. I believe there is a deputy director of court  
 18 security to my knowledge, but beyond that -- those are  
 19 the only two security officers that I'm aware of, but  
 20 they also administer court security for other instances  
 21 outside of just for the justices.  
 22 **Q. Okay. And previously I believe I read that she**  
 23 **only traveled -- or in the use of the State vehicles only**  
 24 **when he was with her; is that correct?**

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1 A. That's correct.  
 2 **Q. And that was all because of security concerns?**  
 3 A. That's correct.  
 4 **Q. Over -- from 2011 to 2018, seven-year period?**  
 5 A. That's correct.  
 6 **Q. Did you happen to look at his expenses for that**  
 7 **Wheeling/Parkersburg trip?**  
 8 A. We did.  
 9 **Q. And -- but you did not report those. Is there**  
 10 **a reason?**  
 11 A. We found no issues with them. And, as a matter  
 12 of fact, the inclusion of this information regarding the  
 13 trip was just because we felt it best to be transparent  
 14 in noting the fact that she had attended a political  
 15 fundraiser that also coincided with Court business.  
 16 **Q. But in doing so, then, an additional salary was**  
 17 **paid while she was attending that political function, so**  
 18 **additional expenses were incurred by the State because**  
 19 **she had court security while she was doing a political --**  
 20 **attending a political function. So you found no reason**  
 21 **to put in there what extra it cost the State for her to**  
 22 **attend that.**  
 23 A. You indicated increased salary cost?  
 24 **Q. No, his salary.**

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1 A. Uh-huh.  
 2 **Q. If she's attending a political function that is**  
 3 **not Court business and she has an additional employee of**  
 4 **the Court with her, those expenses were not acc -- were**  
 5 **not accounted in your post audit. Did you find a reason**  
 6 **why not to include those if it cost the State -- your**  
 7 **main focus is to dig down and find reasons why State**  
 8 **money was either not accounted for or inappropriately**  
 9 **used, but you found that not --**  
 10 A. Well, I can't specifically speak to the travel  
 11 expenses incurred by the director of c  
 12 ourt security in this instance. I don't have that  
 13 information available. But as such, it related to two  
 14 other events related directly to Court business to which  
 15 he would have attended with her regardless of the event,  
 16 the political fundraiser.  
 17 **Q. Okay. And, you know, a follow-up on Delegate**  
 18 **Fast, his concerns, there's no dollar figure for what it**  
 19 **cost for her to attend that with a State vehicle?**  
 20 A. Dollar figure to -- for --  
 21 **Q. For her to attend that political function using**  
 22 **the State vehicle.**  
 23 A. No, as we mentioned, it coincided with two  
 24 other Court-related business events. And we did not see

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1 that there was any additional cost incurred for traveling  
 2 from the Wheeling to the Parkersburg location.  
 3 **Q. Okay. But to follow up on that -- and I will**  
 4 **end this with this, Mr. Chairman, but there was -- you**  
 5 **know, you find no issues with that, but for Justice**  
 6 **Loughry, you find issues that I read back -- and I can't**  
 7 **remember where it was, that the reason the mileage might**  
 8 **have been put on the rental vehicle because he was on**  
 9 **vacationing or he had another member of his family or**  
 10 **someone traveling with him that could have used the**  
 11 **vehicle. You dug deep enough to find that assumption,**  
 12 **but you won't dig deep enough to find another assumption**  
 13 **of a political event being used -- used or going to in a**  
 14 **State vehicle; is that correct?**  
 15 A. Well, I can't speak to assumptions regardless.  
 16 DELEGATE HOLLEN: Okay. Thank you,  
 17 Mr. Chairman.  
 18 CHAIRMAN SHOTT: Delegate Zatezalo.  
 19 DELEGATE ZATEZALO: Thank you,  
 20 Mr. Chairman.  
 21 EXAMINATION  
 22 BY DELEGATE ZATEZALO:  
 23 **Q. Just one quick question. I notice that these**  
 24 **cars are 2007, 2009, 2012 years. Were they purchased**

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1 new?  
2 A. I don't have that knowledge.  
3 **Q. And the reason I am asking the question I --**  
4 **not -- that's not particularly relevant, but the reason**  
5 **I'm asking the question is: Did you look at past**  
6 **practice of vehicle usage by the Court?**  
7 A. When you mean past practice -- what period of  
8 time --  
9 **Q. All the way back to 2007, say, or --**  
10 A. Oh. No, no, our audit periods were limited to  
11 the -- I think the farthest back we went in reviewing  
12 vehicle use was 2011.  
13 **Q. So you have no knowledge of historical use of**  
14 **vehicles by the Court?**  
15 A. That was outside the scope of our audit.  
16 DELEGATE ZATEZALO: Okay. Thank you.  
17 CHAIRMAN SHOTT: Delegate Pushkin, I note  
18 you have moved, so I'm expecting that you're not going to  
19 try to get two bites at the apple so to speak. You'll  
20 stay there for the rest of the day?  
21 DELEGATE PUSHKIN: I'll stay here for the  
22 rest of the weekend.  
23 CHAIRMAN SHOTT: All right. Go ahead.  
24 Your question.

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1 DELEGATE PUSHKIN: Thank you,  
2 Mr. Chairman.  
3 EXAMINATION  
4 BY DELEGATE PUSHKIN:  
5 **Q. In -- I'm looking at report 1, issue 1,**  
6 **Mr. Robinson, and thank you for being here, too. And so**  
7 **let's go to Table 2 in regards to the rental cars that**  
8 **were supposed to be used during days where there were**  
9 **conferences of official business of the Court. So let's**  
10 **just look at Montreal, for example. I'm choosing that**  
11 **one because that was the biggest difference in the miles**  
12 **that were used other than just back and forth from the**  
13 **airport. Because it's been brought up that these were**  
14 **unlimited miles, but there are other issues that -- in**  
15 **regards to time. I know if one were to drive, say, 65**  
16 **miles per hour the entire time, it would still take eight**  
17 **to nine hours to put that many miles on the car, so what**  
18 **I am asking is: The dates July 10th through 16th, is**  
19 **that the entire time of the conference or is that the**  
20 **arrival and departure dates of Justice Loughry?**  
21 A. To the best of my knowledge it would be the  
22 arrival and departure dates which also coincided with the  
23 conference, but there is potential for some of the other  
24 instances that the length of time that he rented the

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1 vehicles extended beyond the length of time of the  
2 conferences.  
3 **Q. Do we know that, if the length of time that the**  
4 **vehicles were rented were extended beyond the length of**  
5 **the time of the conferences?**  
6 A. We would know that, but I would not have that  
7 information readily available right this second.  
8 **Q. Can we get that? I would like to see when the**  
9 **dates of the conferences were versus the arrival and**  
10 **departure times of Justice Loughry. Could we get that?**  
11 A. So it would be your -- your request that we  
12 provide what additional dates beyond the conference dates  
13 he remained in those locations?  
14 **Q. Okay. Because what I'm getting at, if you put**  
15 **that many miles on a car, either somebody else drove the**  
16 **car or you did not attend at least part of the conference**  
17 **if these dates match up to the conferences. So did we**  
18 **get a copy of the rental agreements?**  
19 A. Yes, our documentation would include the rental  
20 agreements, the rental receipts, the total amount paid,  
21 the dates the rental car was had, and obviously we have  
22 also cross referenced many of these dates with the actual  
23 conferences being held to determine the location of the  
24 conferences and the specific dates the conferences were

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1 held.  
2 **Q. Okay. On the rental agreements, were there any**  
3 **additional drivers listed?**  
4 A. Not to my knowledge.  
5 **Q. So he -- there were no additional drivers, so**  
6 **if anyone -- at least legally, if anybody drove that car,**  
7 **it would have to have been Justice Loughry, correct?**  
8 A. I can't speak definitively to the fact that  
9 there weren't additional drivers listed.  
10 **Q. But that -- we don't know if there were any**  
11 **additional drivers listed?**  
12 A. We do not know that.  
13 **Q. Okay. Is that something else we could find, if**  
14 **there were any additional drivers listed on the --**  
15 A. I don't know that we would be able to ascertain  
16 that information.  
17 **Q. Okay. What about the -- the travel from**  
18 **Charleston to, say, the airport in Montreal or to the**  
19 **airport in Monterey? Did the State pay for the flights**  
20 **and the hotel accommodations while attending these**  
21 **functions?**  
22 A. I can't speak to every instance, but I would  
23 imagine that if it was not being paid by the conference  
24 itself it was paid for by the State, yes.

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1 **Q. Okay. So what I'm getting at is we could have**  
 2 **paid for the travel to Montreal, and if these dates match**  
 3 **up -- well, it would be obvious that one could not have**  
 4 **attended the entire conference, maybe not attended any of**  
 5 **the conference while they were putting 580 miles on a**  
 6 **rental car.**  
 7 A. That's possible, but --  
 8 **Q. And they paid for the hotel room and the**  
 9 **flight, would that be a possibility?**  
 10 A. It's possible, but I can't be certain of that.  
 11 **Q. Okay. Let's see. I had a couple more. Well,**  
 12 **go to -- let's see. I have it marked here. Issue 2 from**  
 13 **report -- no. It would be issue 1 in report 2 or we were**  
 14 **talking about the Justice Davis travel to truancy con --**  
 15 **events in Wheeling and Parkersburg.**  
 16 A. Uh-huh.  
 17 **Q. Now, was -- the fundraiser in question, was**  
 18 **that earlier in the day than the event in Parkersburg?**  
 19 A. No, I believe it was actually the evening  
 20 before the event in Parkersburg.  
 21 **Q. Okay. So it was in between the event in**  
 22 **Wheeling and the --**  
 23 A. That's correct.  
 24 **Q. -- event in Parkersburg? And I would imagine**

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1 **one would take -- in most cases, drive on Interstate 77**  
 2 **to get from Charleston to Wheeling?**  
 3 A. That's a common route, yes.  
 4 **Q. And Parkersburg is also on Interstate 77?**  
 5 A. I believe so.  
 6 **Q. So I guess what -- what your finding was is if**  
 7 **you're on your way back from Wheeling, you're going**  
 8 **through Parkersburg anyway. Instead of driving all the**  
 9 **way back to Charleston for a night and then going to**  
 10 **Parkersburg, in order to save extra miles and gas, they**  
 11 **stayed in Parkersburg, attended another function, and**  
 12 **then went to the next fun -- the function in Parkersburg**  
 13 **the next day and then returned to Charleston?**  
 14 A. That's correct.  
 15 **Q. So it would only make sense if you're going --**  
 16 **you know, the interstate runs through Parkersburg anyway**  
 17 **that that's --**  
 18 A. Yes, that's why I was previously trying to  
 19 indicate we didn't really look into this issue further  
 20 because we believe, in fact, that there was no additional  
 21 cost incurred by the State regarding her choice to stay  
 22 in Parkersburg the evening following the Wheeling event.  
 23 DELEGATE PUSHKIN: Okay. Thank you.  
 24 Just a brief inquiry to the Chair. In report 1 there's

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1 also the matter of the Cass Gilbert desk. I assume we're  
 2 going to be discussing that later?  
 3 CHAIRMAN SHOTT: It will be the subject  
 4 of the next inquiry.  
 5 DELEGATE PUSHKIN: Okay. Well, thank you  
 6 very much. And thank you.  
 7 THE WITNESS: You're welcome.  
 8 CHAIRMAN SHOTT: Delegate Lane.  
 9 DELEGATE LANE: Thank you, Mr. Chairman.  
 10 EXAMINATION  
 11 BY DELEGATE LANE:  
 12 **Q. What authorization exists permitting justices**  
 13 **to have dedicated vehicles?**  
 14 A. I'm not aware of that. That would be something  
 15 the Court would know internally.  
 16 **Q. And does the Court own these vehicles?**  
 17 A. I can't be certain, but it is my assumption.  
 18 **Q. Okay. Thank you.**  
 19 **Are there procedures outlining what the**  
 20 **director of court security and the deputy are supposed to**  
 21 **do?**  
 22 A. Not to my knowledge.  
 23 **Q. I believe you said that the court security**  
 24 **consists of two people?**

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1 A. To my knowledge, yes. There's a director of  
 2 court security and a deputy director of court security.  
 3 **Q. And have any of the other justices asked for**  
 4 **court security to drive them to events?**  
 5 A. I believe so, but I can't be specific.  
 6 **Q. Who provides court security to the justices**  
 7 **when some of the court security's out on the road driving**  
 8 **other justices?**  
 9 A. That's an excellent question to which I don't  
 10 have an answer.  
 11 **Q. Okay. Thank you.**  
 12 **On page 7 of the second report, there was**  
 13 **an item that said that Justice Benjamin spent \$122,457.**  
 14 **Could you explain to me what that consisted of?**  
 15 A. Various instances of travel, attending various  
 16 functions related to circuit courts, family courts, and  
 17 drug courts throughout the state, but in specifics, I  
 18 can't speak to that.  
 19 **Q. Did -- did it consist of any overseas travel?**  
 20 A. Not to my knowledge.  
 21 **Q. Okay. Thank you.**  
 22 **Now, on page 3 of the second report, we**  
 23 **were talking about the expenses incurred by Justice**  
 24 **Davis.**

1 A. Uh-huh.  
2 **Q. And she went to Wheeling, came back to**  
3 **Parkersburg, spent the night because she had an event the**  
4 **next day.**  
5 A. Roughly that's correct. She had traveled to  
6 Wheeling to attend an anti-truancy event. After  
7 subsequently -- subsequently leaving Wheeling, she drove  
8 to Parkersburg where she attended a political fundraiser,  
9 but the next day she had an anti-truancy event scheduled  
10 in Parkersburg.  
11 **Q. Okay. Now, correct me if I am wrong, but don't**  
12 **the State travel procedures provide that one cannot**  
13 **charge per diem expenses unless one spends the night?**  
14 A. That is correct, but in this instance she did  
15 spend the night out and I guess -- I see where you're  
16 going with this, but I'll let you ask.  
17 **Q. So she spent the night at her own expense but**  
18 **charged per diem to the State?**  
19 A. Yes. She only charged a partial per diem on  
20 her first day of travel and then the full per diem  
21 coinciding with the full day of travel the next day.  
22 **Q. Okay. So on the day that she didn't charge the**  
23 **State to spend the night she did charge per diem?**  
24 A. That's correct. Well, meal per diem.

1 **Q. Okay. In your audit, did you determine what**  
2 **the procedure was within the Court to okay expenses and**  
3 **okay the expenditures of money? I mean, who all was**  
4 **involved in how these expenditures took place?**  
5 A. As mentioned, the Court didn't have any formal  
6 policies or procedures regarding how these expenditures  
7 were placed regarding travel.  
8 **Q. No, how -- I'm talking about expenditures**  
9 **generally. I mean, if someone wanted to spend, let's**  
10 **say, \$100,000, what procedures at the Court would one**  
11 **have to go through to get that okayed?**  
12 A. I want to try to answer this, but I can't be  
13 definitive, but I do believe that expenditures of the  
14 Court are ultimately approved by the administrative  
15 director of the court and potentially reviewed by the  
16 director of financial management of the Court, but in  
17 terms of specifics regarding expenditures, that's a  
18 pretty broad category and I really can't speak to  
19 specifics regarding certain expenditure types.  
20 **Q. Do the justices exercise any supervision over**  
21 **the director of fin -- financial office or whatever you**  
22 **called him, or the court administrator?**  
23 A. Could you describe "supervision"?  
24 **Q. Well, make sure that the money that is being**

1 **spent is for a proper purpose according to the budget.**  
2 A. I do not believe that the Supreme Court  
3 justices play an active role in the day-to-day operations  
4 of the Court, the expenditure of the Court's budgeted  
5 funds.  
6 DELEGATE LANE: Okay. Thank you.  
7 CHAIRMAN SHOTT: Delegate Deem, do you  
8 have a question? Or questions.  
9 DELEGATE DEEM: Thank you, Mr. Chairman,  
10 for the hearing aid. I can now hear what they're saying.  
11 CHAIRMAN SHOTT: Okay, good. Delegate  
12 Overington.  
13 DELEGATE OVERINGTON: Thank you,  
14 Mr. Chairman.  
15 EXAMINATION  
16 BY DELEGATE OVERINGTON:  
17 **Q. I want to follow up on the questions about the**  
18 **fundraising event in Parkersburg. There obviously was a**  
19 **good bit of cost, especially with security there. Was**  
20 **there any effort to extrapolate the cost dealing with the**  
21 **fundraising effort out of the rest of the expenses that**  
22 **were charged to the State?**  
23 A. When you mean cost associated with the  
24 fundraising effort, what particular do you mean?

1 **Q. That extra time that was spent there, the**  
2 **security that was required, obviously some additional**  
3 **costs that would have been incurred.**  
4 A. It's too -- the director of court security  
5 traveled with her and this event -- it's my knowledge  
6 that he is a salaried employee, so he's paid the same  
7 rate biweekly that he would paid regardless if he had  
8 traveled to that event or not. And the fundraiser was  
9 not paid for in any way, shape, or form by the State or  
10 the Court.  
11 **Q. The other -- the other question I have deals**  
12 **with the policies that were in place where the -- for the**  
13 **Supreme Court just -- for the justices, there was sort of**  
14 **vagueness in their expenses. Did other employees working**  
15 **for the Supreme Court have the same vagueness or was**  
16 **there -- were there specific policies that they operated**  
17 **under for their travel expenses?**  
18 A. We didn't review any travel expenses related to  
19 employees of the Court outside of those listed in our  
20 report, which included the Supreme Court justices, one  
21 former justice, and the director and former directors of  
22 the administrative office of the Court. In speaking  
23 generally regarding their policies, it did appear within  
24 their travel policies submitted to the State Auditor's

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1 Office that justices were granted somewhat special  
 2 treatment regarding their reimbursement for expenses  
 3 related to rental cars. And if you allow me to, I'll  
 4 locate the section of this report that speaks a little  
 5 more to the justices' travel in general.  
 6 The initial language that was submitted or  
 7 discussed by the Supreme Court justices regarding  
 8 expenses for justices' travel stated that an expense  
 9 account submitted by a justice of the West Virginia  
 10 Supreme Court of Appeal shall be honored irrespective of  
 11 any of the language in these travel regulations. Prior  
 12 to that being approved, it was amended at the request of,  
 13 I believe, Chief Justice -- Chief Justice Workman to  
 14 include that an expense account submitted by a justice of  
 15 the Supreme Court of Appeals pursuant to judicial branch  
 16 policies shall be honored irrespective of any language in  
 17 its travel regulations submitted to the State Auditor's  
 18 Office.  
 19 This particular policy is different than  
 20 the policy that governs the travel for typical Court  
 21 employees.  
**22 Q. Are those -- are the Court's policies different**  
**23 from other branches of government's travel expense**  
**24 policies?**

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1 A. I can't answer that. We did no direct  
 2 comparison between their policies in comparison to other  
 3 agencies.  
**4 Q. So after 2016, was there still a difference**  
**5 between the policies of Court employees versus Supreme**  
**6 Court justices?**  
 7 A. I do believe that in the 2016 -- October 2016  
 8 follow-up policy it did make the statement regarding  
 9 rental car expenses being different for justices. And  
 10 obviously Section 10.4 of these travel regulations  
 11 specifically addressed justices' travel which would  
 12 indicate some differentiation between the policy that  
 13 applied to the Court employees. So I believe my answer  
 14 to you would be yes.  
**15 Q. For the policing of those policies, was there a**  
**16 different standard for the justices versus the Court**  
**17 employees?**  
 18 A. In terms of the policing of those policies  
 19 which would have done -- been done internally by the  
 20 Court, I can't speak to that.  
 21 DELEGATE OVERINGTON: Thank you,  
 22 Mr. Chairman.  
 23 CHAIRMAN SHOTT: Delegate Lovejoy.  
 24 DELEGATE LOVEJOY: Mr. Chairman, thank

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1 you.  
 2 CHAIRMAN SHOTT: There you go.  
 3 EXAMINATION  
 4 BY DELEGATE LOVEJOY:  
**5 Q. Just a few questions for you. Thank you for**  
**6 coming in today.**  
 7 A. Uh-huh.  
**8 Q. I want to ask you with regard to the**  
**9 correspondence that we've talked about today in the**  
**10 initial exhibits. Did you find any justice prior to**  
**11 Justice Davis that was writing for the need of a policy?**  
**12 I think she did in 2016?**  
 13 A. I mean, concerns were expressed by various  
 14 justices regarding various matters in administrative  
 15 conference minutes. In particular regard to travel  
 16 vehicle use, I think primarily concerns were expressed  
 17 initially by Justice Davis, but that's -- I can't speak  
 18 to the involvement of the other justices and their  
 19 concerns.  
**20 Q. But as I -- as I see, there's no written call**  
**21 to action by anyone prior to Justice Davis in the**  
**22 exhibits we've been provided, correct?**  
 23 A. I don't have all -- as noted, there were  
 24 thousands of documents that we were made available that

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1 aren't all directly related to the findings in our  
 2 reports. I can't speak to whether or not that's the  
 3 case.  
**4 Q. Okay. I think we've established that at least**  
**5 with regard to 2011, we had no written policy of the**  
**6 Court with regard to the use of the Court vehicles,**  
**7 right? And we -- I'm specifically trying to focus in on**  
**8 this -- this trip in 2011. As I understood with Justice**  
**9 Davis -- and I understand you to say there was no cost to**  
**10 the State additional; is that correct?**  
 11 A. It's our stance that the way the trip was  
 12 planned and coordinated that there was no additional cost  
 13 to the State, no. Court security is a salaried employee.  
 14 There was no specific additional cost. I can't speak to  
 15 the specifics of whether or not he received any expense  
 16 reimbursement such as per diem for that instance. It's  
 17 likely, but I can't speak to that definitively, but in  
 18 terms of the fact that she was attending both events, he  
 19 would have attended with her either way and it's likely  
 20 that a per diem would have been paid. However, given the  
 21 fact that there was an overnight trip, the per diem rate  
 22 may have been higher because that allows you to claim the  
 23 full per diem rate because it's not a travel day.  
**24 Q. And am I correct that as -- in the course of**

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1 **your investigation - yours being the Auditor's office -**  
 2 **you came to learn that there had, in fact, been threats**  
 3 **against the body and, indeed, the life of Justice Davis?**  
 4 A. That's correct.  
 5 **Q. And you were also provided with some**  
 6 **information that included a report called Murdered**  
 7 **Justice which discussed a history of attacks on our**  
 8 **judiciary across the country?**  
 9 A. That's correct.  
 10 **Q. And that report that was provided showed that**  
 11 **since 2008 there's been an unprecedented number of**  
 12 **attacks on the bodies and lives of our judicial officers?**  
 13 A. I don't recall the specifics of that report,  
 14 but if that's what was mentioned, I'll take your word for  
 15 it.  
 16 DELEGATE LOVEJOY: Okay. I have no other  
 17 questions. Thank you.  
 18 CHAIRMAN SHOTT: Delegate Fluharty.  
 19 DELEGATE FLUHARTY: Thank you,  
 20 Mr. Chairman.  
 21 EXAMINATION  
 22 BY DELEGATE FLUHARTY:  
 23 **Q. Briefly, thank you for being here, sir.**  
 24 A. Uh-huh.

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1 **Q. Now, this infamous trip by Justice Davis that**  
 2 **we've been talking about ad nauseum, there were two**  
 3 **nights of over -- stays, right, overnight? It was a**  
 4 **three-day trip but two nights were overnight stays?**  
 5 **Correct me if I'm wrong.**  
 6 A. Just give me one moment to confirm that. I  
 7 believe you may be correct. I can read the summary of  
 8 the report, how we have written it, if that would explain  
 9 it --  
 10 **Q. Sure, but I just want to clarify here that I**  
 11 **believe there were two nights that she stayed overnight**  
 12 **and in the Auditor's report, it says that she charged no**  
 13 **lodging for those two nights, correct?**  
 14 A. Yeah, that's correct and you are correct in  
 15 assuming that there were two nights. Yes, she did travel  
 16 to Wheeling at the subsequent and close of business here  
 17 at the capitol, stayed in Wheeling, attended a truancy  
 18 event that morning in Wheeling, traveled to Parkersburg,  
 19 stayed in Parkersburg, then traveled back to Charleston,  
 20 but yes, there was no lodging charged to the State.  
 21 **Q. Three days, two nights no lodging charges. It**  
 22 **would have been perfectly permissible for her to charge**  
 23 **lodging for those two nights, right?**  
 24 A. I would question whether or not it would be

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1 permissible if the reason for her needing to stay was to  
 2 attend the political fundraiser, but outside of that, I  
 3 would agree with you.  
 4 **Q. Well, there were two events during that**  
 5 **three-day course that were --**  
 6 A. Yes.  
 7 **Q. -- directly related to the anti-truancy events,**  
 8 **right?**  
 9 A. Yes.  
 10 **Q. So obviously at least one of those nights --**  
 11 A. Yes, absolutely.  
 12 **Q. -- would have been permissible.**  
 13 A. And I would -- I would -- it is possible that  
 14 it would be permissible on the second night if the pure  
 15 intent was to make it more convenient to travel from  
 16 Wheeling to Parkersburg rather than back to Charleston,  
 17 then back to Parkersburg the subsequent day.  
 18 **Q. So at a minimum, she could have charged at**  
 19 **least one night of lodging --**  
 20 A. That's correct.  
 21 **Q. -- to the State, which she did not do. right?**  
 22 A. That's correct.  
 23 **Q. So by not doing that, she saved the State some**  
 24 **money in that area?**

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1 A. You could say so, yes.  
 2 **Q. Very briefly on the Loughry conferences, I just**  
 3 **had a document in front of me that had the names. I**  
 4 **think it's gone now, but did you check any of the agendas**  
 5 **from those conferences to see if he actually attended?**  
 6 A. No, we did not.  
 7 **Q. Do you know if he was on any panels that may**  
 8 **have happened dur -- at those conferences?**  
 9 A. I can't speak to that, no. We had some -- we  
 10 did have some difficulty determining specific locations  
 11 of these conferences in reaching out to the organizations  
 12 that held them. We were able to ascertain the specific  
 13 locations to confirm whether or not that the hotel he  
 14 resided in during these trips was the same location of  
 15 the conference or not, but beyond that in terms of the  
 16 agenda or specifics of what occurred during the  
 17 conferences, I do not have that knowledge.  
 18 **Q. And did he ever provide justification for the**  
 19 **increased travel after arriving at a conference and then**  
 20 **taking off for hundreds of miles?**  
 21 A. Not to us.  
 22 **Q. And one last question: The reservation chart,**  
 23 **we talked about destination being omitted from many of**  
 24 **these requests.**

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1 A. Uh-huh.

2 **Q. There's no written policy, right?**

3 A. That's correct.

4 **Q. So there's no written policy to require his**

5 **destination be part of it?**

6 A. No, but in terms of the IRS regulations, if an

7 employee, including a justice of the Court as an elected

8 official, is provided an employer-provided vehicle, it's

9 the employer's duty to track business versus personal use

10 miles so that those miles can properly be applied for

11 personal use instances to the employee's W-2s if it is

12 considered a taxable fringe benefit.

13 **Q. Sure. And that's the individual and the tax**

14 **implications involved therein --**

15 A. Yes.

16 **Q. -- but I'm asking about the specific policy by**

17 **the Supreme Court. There's no policy apparently exists.**

18 A. No.

19 **Q. Now, as to that, the forms -- are these forms**

20 **when you go to fill it out, this reservation chart?**

21 A. The reservation log? It's my understanding

22 from what we received that it's more of an on-line

23 system. Oftentimes I believe the procedure was that if a

24 justice was seeking to utilize a Court vehicle they would

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1 notify the Court security who administered the system and

2 also administered those vehicles and would notify them of

3 the dates that they would need the vehicles and if they

4 wished to provide a business purpose they would.

5 **Q. Okay. So who actually fills it out? Does --**

6 A. I don't have that information. I would assume

7 it's most likely the director of court security upon

8 receiving the request but there is likelihood that the

9 justices or the administrative director of the court may

10 have access to that system in order to do so.

11 **Q. So there -- and related to that, and now we**

12 **don't even know who actually fills it out, but the form**

13 **itself - if it's on-line, paper format, however - does it**

14 **have a section for destination to be filled out?**

15 A. Yes.

16 **Q. It does? So when you reviewed these forms,**

17 **although we don't know who actually filled them out --**

18 **when you reviewed them, you were able to see that there**

19 **were areas were left blank with the form destination?**

20 A. Yes.

21 DELEGATE FLUHARTY: That's all I have.

22 Thank you.

23 CHAIRMAN SHOTT: Delegate Byrd.

24 DELEGATE BYRD: Thank you, Mr. Chairman.

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1 EXAMINATION

2 BY DELEGATE BYRD:

3 **Q. Thank you again for being here and the work**

4 **you've put in on this.**

5 **To follow up on Delegate Fluharty's**

6 **question about the conferences, was there any check by**

7 **the Legislative Auditor into whether Justice Loughry**

8 **turned in CLE credits for any of these conferences?**

9 A. No.

10 **Q. Okay. I'd like to -- can we pull up on the**

11 **screen Exhibit 1?**

12 CHAIRMAN SHOTT: Certainly.

13 **Q. And following up on Delegate Fluharty's**

14 **question, it appears to me that it looks like line 3,**

15 **that a copy of this form that Delegate Fluharty and**

16 **you-all were discussing about should have been attached**

17 **to this memo. We don't have that. Have you seen it?**

18 A. It's possible. Again, we reviewed thousands of

19 documents. I can't speak to that.

20 **Q. Fair enough, and I would just ask,**

21 **Mr. Chairman, with leave of the Committee and you, if we**

22 **do discover that if we could maybe attach that as 1A,**

23 **Exhibit 1A.**

24 CHAIRMAN SHOTT: Certainly.

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1 **Q. Thank you. Talking about the Internet, was**

2 **there a time frame provided to you of how long that was**

3 **available? Was it, like, between 2012 and 2017?**

4 A. We may have that information, but I can't speak

5 to it at this moment.

6 **Q. And just provide that if you can.**

7 A. Okay.

8 **Q. I would like to turn your reference now over to**

9 **page 9 of the first report.**

10 A. I'm there.

11 **Q. Okay. Talking a -- it's right -- the**

12 **Legislative Auditor was provided a memo written by both**

13 **the director and deputy director of the Supreme Court**

14 **security. Were there any other individuals that were**

15 **involved or may have been involved in filling out these**

16 **forms if the justices didn't, during the time period of**

17 **2012 to 2016?**

18 A. Not to my knowledge.

19 **Q. Okay. And last question is on page 12 of the**

20 **same report, I see here where we have included a response**

21 **from Justice Loughry and it talks about his response to a**

22 **draft audit report and what we have is the final,**

23 **correct?**

24 A. Uh-huh.

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1 **Q. Is there any way that we could look at or would**  
 2 **there be any changes to -- between the draft and the**  
 3 **final?**  
 4 A. There should not be. The draft of our audit  
 5 reports are simply noted as draft until they're formally  
 6 released to the post audit subcommittee.  
 7 **Q. Okay. Did you receive a response from Justice**  
 8 **Loughry when the final one was completed?**  
 9 A. No, the response that we had requested and the  
 10 draft that had been provided was con -- content-wise the  
 11 exact same as the final product. The only changes that  
 12 would have occurred would have been minor punctuational  
 13 formatting or grammatical errors that we caught prior to  
 14 sending this to print, but the content of the draft  
 15 report provided to Justice Loughry to which he responded  
 16 to contained everything that the final draft that you're  
 17 reading from today does have.  
 18 **Q. All right. And one final question is we've had**  
 19 **-- we've heard a lot of questions about meal expenses,**  
 20 **hotel expenses. If those expenses are incurred by a**  
 21 **justice and turned in to be paid as an expenditure for**  
 22 **any of these trips, who are those receipts turned into?**  
 23 A. I'm not sure. I belie -- I would speculate  
 24 that it would be the director of court financial

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1 management, but I'm uncertain.  
 2 **Q. And do they -- who do they turn those over to,**  
 3 **do you know, to be paid?**  
 4 A. To be paid, the State Auditor is essentially  
 5 the person that approves these reimbursements for  
 6 repayment to any individual submitting a request for  
 7 reimbursement.  
 8 **Q. So would you recommend us talking to the State**  
 9 **Auditor about where these receipts possibly could be**  
 10 **stored or -- and/or the Supreme Court?**  
 11 A. Are you referencing receipts regarding these  
 12 travel instances?  
 13 **Q. If any -- if any receipts were turned in of any**  
 14 **of these travel instances.**  
 15 A. If anything was paid for by the State, it's  
 16 highly likely that the Supreme -- or excuse me, that the  
 17 State Auditor's Office would have record of that.  
 18 DELEGATE BYRD: All right. Thank you,  
 19 that's all I have.  
 20 CHAIRMAN SHOTT: Let me just inquire due  
 21 to the time. I'm assuming most of you in the back row  
 22 there will have questions. Am I correct on that? All  
 23 right. Why don't we break for lunch. I would hope we'd  
 24 get -- I'd hoped we get through this first series, but

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1 it's obvious we're going to go beyond 1:00, so let's  
 2 break for lunch. It's now -- let's break for 45 minutes.  
 3 We'll be back here at 1:30 and we'll begin with Delegate  
 4 Miller's questions. We're in recess until 1:30. Yes?  
 5 DELEGATE ROBINSON: -- that the house  
 6 committee of the judiciary during its inquiry may  
 7 entertain such procedural and dispositive motions as may  
 8 be made in the case of any other bill or resolution  
 9 referred to that committee or in making its  
 10 recommendations if any pursuant to this resolution may  
 11 include. The provision makes it clear that the Committee  
 12 controls the disposition of procedural matters relating  
 13 to this resolution and the Chair's rule that's  
 14 established by this Committee are subject to  
 15 consideration and amendment as all actions of the  
 16 Committee chair and all committees of the legislature.  
 17 Any action of any chairman is subject to appeal to the  
 18 full Committee. In no circumstance does the Chair have  
 19 the Committee's sole discretion to function without  
 20 challenge of the Chairman's ruling on any matter.  
 21 Further, this provision also allows any  
 22 member to make dispositive motion regarding the  
 23 resolution as a privileged motion available at any time  
 24 to any member and the extent that Rule 8 tries to prevent

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1 this is a violation of House Rule 201 and House rules.  
 2 Therefore I move the following and have attached written  
 3 amendments to the rules provided by the Chairman.  
 4 CHAIRMAN SHOTT: And we'll take up your  
 5 motion immediately upon reconvening at 1:30.  
 6 (Recess taken.)  
 7 CHAIRMAN SHOTT: -- I think it's worthy  
 8 to note that in an e-mail to the mover of that motion  
 9 dated Friday, June 29th, which was copied to all members  
 10 of the Committee, I attempted to provide an update  
 11 regarding where we were with regard to preparation for  
 12 this meeting, and in the body of that about four  
 13 paragraphs down, I said, I would be conta -- contacting  
 14 Judge Hatcher tomorrow to ask for any advice that he can  
 15 provide. In that regard, I will be working on some rules  
 16 for our proceedings similar to what Judge Hatcher  
 17 produced for the Manchin impeachment proceedings.  
 18 One thing that you -- referring to the  
 19 man -- person who is the mover of this motion. One thing  
 20 that you and others can do to help is to review those  
 21 rules at pages 21 through 31 of his handout and provide  
 22 me with your suggestions and concerns regarding those  
 23 rules if utilized in our proceedings. I see several that  
 24 I will probably change or eliminate, but will welcome

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1 suggestions from members of our Committee. Please  
 2 provide those suggestions by next Thursday morning so  
 3 that I can finalize the rules and distribute them prior  
 4 to our next meeting.  
 5         It's also worthy to note that I have  
 6 received at least two e-mails since that date from the  
 7 mover of this motion in which he mentions no suggestions  
 8 or comments regarding the rules. So in order to avoid  
 9 further delay in this process, the rules were prepared  
 10 and finalized yesterday and distributed to you.  
 11         Now, today, as we start these  
 12 proceedings, which a number of members have urged that we  
 13 need to move quickly, I receive this motion to make three  
 14 amendments to the rules. I refuse the motion based on  
 15 the authority given to me in the resolution that was  
 16 passed unanimously on June 26th. It reads, "Further  
 17 Resolved, That in carrying out his duties pursuant to  
 18 this resolution, the Chairman of the House Committee on  
 19 the Judiciary is authorized to establish or define rules  
 20 of procedure for the conduct of any meeting," "meeting(s)  
 21 or hearing(s) held pursuant to this resolution."  
 22         I appreciate the confidence that the 89  
 23 members who are here all voted in favor of that  
 24 resolution. I have prepared these rules. I am not going

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1 to consider any further amendments to the rules.  
 2 However, as I offered by invitation, if you have  
 3 suggestions that will not consume the Committee time. I  
 4 will be happy when we're in breaks to consider those, and  
 5 if there is a need to revise any rules, based on that, I  
 6 certainly will entertain those.  
 7         But at this point I think we need to move  
 8 forward, so your motion is denied. If you want to  
 9 challenge the Chair, that's -- that is permissible.  
 10 You're certainly -- you're -- all you have to do is refer  
 11 to House Rule Number 6, which read -- which reads, "The  
 12 speaker shall decide all questions of order subject to an  
 13 appeal to the House when demanded by any ten members.  
 14 And of course that rule by virtue of Rule 89 is pertinent  
 15 to this committee. So if there are ten members here that  
 16 would --  
 17         (inaudible)  
 18         CHAIRMAN SHOTT: Ten. Ten. Doesn't say  
 19 percent. It says ten. That's what the rule says. So do  
 20 you have ten members who wish to join you in challenging  
 21 the ruling of the Chair? Or is it your desire -- let me  
 22 ask the first question. Is it your desire to challenge  
 23 the ruling of the Chair?  
 24         DELEGATE ROBINSON: Yes, Mr. Chairman.

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1         CHAIRMAN SHOTT: All right.  
 2         (inaudible.)  
 3         MINORITY CHAIR FLEISCHAUER: Point of  
 4 order.  
 5         CHAIRMAN SHOTT: Point of order, yes.  
 6         MINORITY CHAIR FLEISCHAUER:  
 7 Mr. Chairman, normally when we're in Committee --  
 8 normally -- (inaudible) my recollection of that rule is  
 9 normally when we are Committee we use the proportional  
 10 analysis, so when there are three members that wish to  
 11 challenge the rule or ruling of the Chair that's  
 12 proportionate to ten members in the House. Am I wrong  
 13 about that?  
 14         CHAIRMAN SHOTT: You're wrong about your  
 15 interpretation of the rule. I'm reading the rule  
 16 verbatim. The words are ten members.  
 17         MINORITY CHAIR FLEISCHAUER: Of the  
 18 House. We are not meeting as the House. We're meeting  
 19 as a Committee.  
 20         CHAIRMAN SHOTT: Well, if you can show me  
 21 a rule that says ten percent or three members, I will  
 22 abide by that rule, but right now I read this as under  
 23 Rule 6 we would -- you would need ten members.  
 24         MINORITY CHAIR FLEISCHAUER: I think

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1 that's the way that it has been interpreted by you and in  
 2 all the years I've been on the judiciary committee. And  
 3 your memory is not the same.  
 4         CHAIRMAN SHOTT: It's not the same.  
 5         MINORITY CHAIR FLEISCHAUER: Thank you.  
 6         CHAIRMAN SHOTT: But we can debate that  
 7 issue for the rest of the day if you wish and --  
 8         MINORITY CHAIR FLEISCHAUER: I was just  
 9 asking -- I made a point of inquiry and you responded. I  
 10 don't need to debate any -- I'm not debating.  
 11         CHAIRMAN SHOTT: All right. Let's move  
 12 on. The next person who has questions for our witness  
 13 today is Delegate Miller.  
 14         MINORITY CHAIR FLEISCHAUER:  
 15 Mr. Chairman.  
 16         CHAIRMAN SHOTT: Yes.  
 17         MINORITY CHAIR FLEISCHAUER: I -- well,  
 18 I-- did you answer about whether you wanted to -- the  
 19 gentleman wanted to challenge the ruling of the Chair?  
 20         CHAIRMAN SHOTT: Did you want to  
 21 challenge the ruling of the Chair?  
 22         DELEGATE ROBINSON: Yes.  
 23         CHAIRMAN SHOTT: All right. We need to --  
 24 I need to see ten hands in order for us to go forward.

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1 I'll ask the clerk to count hands. There were not ten  
2 hands. We're pro -- we're proceeding with our agenda.  
3           MINORITY CHAIR FLEISCHAUER:  
4 Mr. Chairman, I do want to just offer this amendment to  
5 remove the sentence of -- the last sentence in Rule 8 for  
6 the record, for the reasons I explained before. I would  
7 also like to add that I -- that if you look at the words,  
8 the resolution it says that the House Committee may  
9 entertain such procedural and dispositive motions as may  
10 be made in the case of any other bill or resolution. And  
11 so I'm asking to offer an amendment to those procedural  
12 rules like I would be able to in any other -- with any  
13 other bill.  
14           CHAIRMAN SHOTT: And it's my opinion and  
15 the ruling of the Chair that the authority given to the  
16 Chairman in the resolution trumps the other rules insofar  
17 as it pertains to procedurally setting the -- the rules  
18 for the Committee's action. And those rules are -- have  
19 been adopted. Again, if you want to suggest a change to  
20 those, I'm happy to meet with you at any time we're not  
21 in Committee meeting and we'll discuss those, but  
22 currently those rules are set. Once again, I offered  
23 that to anybody and everybody back on June the -- June the  
24 29th and I got no responses from anybody, so we'll be

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1 moving on. Your motion is denied.  
2           MINORITY CHAIR FLEISCHAUER: Mr. Chairman,  
3 I would like to submit this. I'm permitted to do that --  
4           CHAIRMAN SHOTT: Yes, you are.  
5           MINORITY CHAIR FLEISCHAUER: -- for the  
6 record. And the gentleman is permitted to submit his  
7 motion also.  
8           CHAIRMAN SHOTT: Certainly.  
9           MINORITY CHAIR FLEISCHAUER: Is it your  
10 position that the rules -- that you have the power as --  
11 from this resolution to not abide by the rules of the  
12 House?  
13           CHAIRMAN SHOTT: I think I answered that.  
14 Insofar as these rules were -- I was authorized to adopt  
15 and established the rules of procedure. Insofar as the  
16 rules of procedure are different than the rules of the  
17 House, then these rules will pertain. As you know, the  
18 rules of the House are adopted by resolution of this  
19 body. The most recent resolution of this body was House  
20 rule 2001 (sic) which empowered the Chairman to establish  
21 the procedural rules for this Committee. These rules  
22 don't cover everything in the House rules, but to the  
23 extent that they cover an issue and it's inconsistent  
24 with a House rule, then it's my ruling that these rules

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1 pertain -- or are trumped.  
2           MINORITY CHAIR FLEISCHAUER: Okay. And  
3 just one last thing. There's nothing in this resolution  
4 that gives the Chair authority to override longstanding  
5 rules of the House. There's nothing specific about that.  
6 That's your interpretation.  
7           CHAIRMAN SHOTT: My interpretation is the  
8 most recent action of the House by resolution was the  
9 resolution of House rule -- House Resolution 201 (sic.)  
10 And that's what I'm abiding by.  
11           MINORITY CHAIR FLEISCHAUER: Thank you.  
12           CHAIRMAN SHOTT: To the extent that these  
13 rules are in conflict -- conflict, then I think these  
14 rules will govern. Do you wish to challenge that rule --  
15 that ruling?  
16           MINORITY CHAIR FLEISCHAUER: No. Yes,  
17 yes, I wish to challenge that ruling. I changed my mind.  
18           CHAIRMAN SHOTT: All right. The same --  
19 the same situation. We'll need ten members to --  
20           MINORITY CHAIR FLEISCHAUER: And this  
21 is -- this is regard to us losing our right to -- from  
22 motions of privilege to --  
23           CHAIRMAN SHOTT: The on -- I'm sorry. Go  
24 ahead. Finish your statement.

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1           MINORITY CHAIR FLEISCHAUER: That's what  
2 it -- that's what it's in regard to.  
3           CHAIRMAN SHOTT: As I read the rules, the  
4 only --  
5           MINORITY CHAIR FLEISCHAUER: To proceed  
6 more quickly by offering a motion to -- what's it called?  
7 I'm blanking on the name of it. A motion to -- to what?  
8 Take up a matter immediately.  
9           CHAIRMAN SHOTT: The only motion that is  
10 affected by the rules that have been submitted is a  
11 motion to issue our impeachment. All others motions  
12 would be -- would not be affected by the rules. If  
13 that's the question you're asking. The gentlelady asked  
14 if there are ten members here, or nine other members to  
15 join her in challenging the ruling of the Chair. Are  
16 there members who wish to challenge the ruling of the  
17 chair? All right. Apparently there's not enough to  
18 challenge the ruling of the Chair, so we'll move forward.  
19 The next person -- what is your point of inquiry?  
20           DELEGATE MILLER: Thank you,  
21 Mr. Chairman. Thanks for entertaining a few questions  
22 that -- you stated that what was the date that you asked  
23 for input on the rules?  
24           CHAIRMAN SHOTT: June 29th was the -- was

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1 the date of the e-mail that went out right after  
2 midnight.

3 DELEGATE MILLER: And those were the  
4 rules that were originally used back in '89 from then  
5 Chairman Hatcher; is that correct?

6 CHAIRMAN SHOTT: It -- it was -- if I  
7 have to read that again. I said, "I see several that I  
8 probably will change or eliminate, but will welcome  
9 suggestions from members of our Committee." So that was  
10 a -- basically inviting suggestions to -- regarding the  
11 rules.

12 DELEGATE MILLER: Well, were there not  
13 changes made to the rules that were used by Hatcher in  
14 1989 that we saw yesterday?

15 CHAIRMAN SHOTT: Yes, I said I was going  
16 to do that.

17 DELEGATE MILLER: And we saw that  
18 yesterday, right?

19 CHAIRMAN SHOTT: Right.

20 DELEGATE MILLER: Okay. And so were  
21 there some significant changes that we did not know about  
22 until yesterday; is that correct?

23 CHAIRMAN SHOTT: There are changes to the  
24 rules that were -- that were sent out yesterday waiting

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1 to see if there were any comments or concerns.

2 DELEGATE MILLER: Yeah.

3 CHAIRMAN SHOTT: Yes.

4 DELEGATE MILLER: One of those big -- one  
5 of the big changes that I would see would be that one  
6 that prohibits us from making certain motions; is that  
7 correct?

8 CHAIRMAN SHOTT: Making a motion, yes.

9 DELEGATE MILLER: Yeah, okay. That  
10 wasn't part of Hatcher's rules?

11 CHAIRMAN SHOTT: It was not.

12 DELEGATE MILLER: But we learned about  
13 this yesterday, so that -- one other thing -- you did --  
14 we heard -- we learned earlier this morning that there  
15 was a meeting with the counsel for Justice Loughry where  
16 they discussed the rules of procedure. Was -- was  
17 counsel for just -- Justice Davis present at that  
18 meeting?

19 CHAIRMAN SHOTT: I don't know. I wasn't  
20 there. I don't know.

21 DELEGATE MILLER: Could I ask that  
22 question of counsel?

23 CHAIRMAN SHOTT: No, I don't think so.  
24 Not at this moment. I'll be happy during a break to let

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1 you ask --

2 DELEGATE MILLER: I can't ask him that  
3 question of counsel if the -- whether the --

4 CHAIRMAN SHOTT: It's out of order now.  
5 It's out of order now.

6 DELEGATE MILLER: Well, I think it's  
7 also -- I'm just going to say I'm troubled that the  
8 justice for Allen Loughry -- the counsel for Allen  
9 Loughry was afforded more privileges in going over rules  
10 of procedure than members of this Committee, sir.

11 CHAIRMAN SHOTT: The rules of procedure  
12 were not given to him at that time. And let me note that  
13 two members of your caucus were present all day yesterday  
14 as we worked through this process. They had -- they had  
15 copies of these rules before any counsel for any of the  
16 re -- the parties who are the subject of our inquiry.

17 Delegate Robinson.

18 DELEGATE ROBINSON: Mr. Chairman, I would  
19 just like to describe and submit my amendments for your  
20 review at a later time.

21 CHAIRMAN SHOTT: Thank you.

22 DELEGATE ROBINSON: May I describe them  
23 briefly?

24 CHAIRMAN SHOTT: I believe I've already

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1 been told what they were by your minority counsel and I  
2 think we've already worked out at least one of them.

3 DELEGATE ROBINSON: Has the -- has the  
4 rest of the Committee been summarized or described them?

5 CHAIRMAN SHOTT: You have the right to  
6 file them with the clerk. No problem with that. We're  
7 not going to get into a debate or a discussion about the  
8 amendments.

9 DELEGATE ROBINSON: I don't expect to,  
10 Mr. Chairman. I'd just like to describe them and submit  
11 them to you and we move on.

12 CHAIRMAN SHOTT: We're going to move on.  
13 Delegate Miller, your questions of the witness.

14 DELEGATE MILLER: Thank you,  
15 Mr. Chairman.

16 EXAMINATION

17 BY DELEGATE MILLER:

18 **Q. Thank you, Mr. Robinson. To briefly, I guess**  
19 **go under general accounting or auditing standards, I've**  
20 **heard a lot today and you've answered lots of questions**  
21 **in regard to one particular trip involving Justice Davis'**  
22 **trip from Parkersburg -- or Wheeling, Parkersburg, then**  
23 **returning to Charleston. Whether it's that trip or any**  
24 **other trip, if a person in a State vehicle may make a**

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1 stop while in route to or from, at its worst under  
 2 accounting principles would -- could that be considered  
 3 de minimis?  
 4 A. That is quite possible, yes.  
 5 Q. At its worst?  
 6 A. Yes.  
 7 Q. Okay. In regard to -- and sticking with the  
 8 vehicles, particularly with Justice Loughry's use, did it  
 9 appear during the auditing process that he had exclusive  
 10 use of one of the Court's vehicles more so than any other  
 11 justice?  
 12 A. I can't answer that at this time definitively.  
 13 Q. Was it clear during your audit or your  
 14 investigation that he was utilizing the Court's vehicle  
 15 or the State's vehicle for commuting to and from his  
 16 residence to work here at the capitol?  
 17 A. In particular regard to Justice Loughry?  
 18 Q. Yes.  
 19 A. We did not note specific instances of  
 20 consistent commuting use of the State vehicle, no.  
 21 Q. During his unauthorized use, there's been some  
 22 discussion on whether it should -- should or should not  
 23 have been reported on his W-2 for IRS purposes. If it  
 24 was not -- if it was not reported, is that a violation of

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1 IRS rule? Regardless of what the IRS auditors said that  
 2 needed to be backed up and checked, regardless of all  
 3 that, was it a violation?  
 4 A. Yes, anything that was considered a taxable  
 5 fringe benefit per IRS guidelines should be reported on  
 6 the employee's W-2.  
 7 Q. Do we know who made the decision, based on your  
 8 audit or your investigation, as to why that was not  
 9 reported?  
 10 A. No.  
 11 Q. In looking at the -- at some of the -- in  
 12 looking at the vehicles in particular - and I may jump  
 13 around with no specific reference to pages - but in  
 14 response to the vehicles themselves that are in control  
 15 by the Supreme Court -- and I'm going to an end, it may  
 16 sound trivial, but I'm going to an end. Was it clear  
 17 during your audit whether these vehicles had  
 18 front-identifying license plates identifying them as a --  
 19 as a State car?  
 20 A. Yeah, that was a finding we had in the first  
 21 report that these vehicles did not include the front  
 22 vehicle plate denoting the fact that they were a State  
 23 vehicle.  
 24 Q. Is that required under State law?

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1 A. Yes.  
 2 Q. Do we know why those plates were not on the  
 3 front of the car?  
 4 A. We do not.  
 5 Q. Who has the ultimate responsibility for  
 6 overseeing the maintenance of those vehicles?  
 7 A. I don't have that answer.  
 8 Q. Who pays for the maintenance of those vehicles?  
 9 A. The Supreme Court.  
 10 Q. Is it fair to assume that they have control  
 11 over that?  
 12 A. The Court in general, yes.  
 13 Q. Is it also fair to assume that they make the  
 14 decision or an individual responsible to the Supreme  
 15 Court makes that decision?  
 16 A. Yes.  
 17 Q. And if that plate is not on there, it's not  
 18 identified as a State car?  
 19 A. Not from the front view of the vehicle, but it  
 20 does have a back State plate.  
 21 Q. It does have a green State plate on the back  
 22 now?  
 23 A. Yes.  
 24 Q. Has it always?

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1 A. It has always had to my knowledge a green State  
 2 plate on -- plate on the back of the vehicle. Just not  
 3 on the front.  
 4 Q. Are you aware of any time that it would have  
 5 had a regular Class A registration plate on the back  
 6 which did not indicate that it's a State car, thereby --  
 7 A. No.  
 8 Q. -- not being in public view?  
 9 A. No, I do not have any indication that there was  
 10 not a back plate.  
 11 Q. Okay. Thank you.  
 12 During what's been characterized as a  
 13 virtual exclusive use of one of the Supreme Court  
 14 vehicles from January of '13 through September of 2016,  
 15 as referenced in the reports, are you aware of why  
 16 abruptly after September or as of September 2016 that  
 17 there was no longer a frequent use of the vehicle by  
 18 Justice Loughry?  
 19 A. I am not aware of the reasoning behind that,  
 20 no.  
 21 Q. Are you aware of at any -- during any aspect of  
 22 your audit or investigation where Justice Loughry would  
 23 have traveled in the State vehicle with members of his  
 24 family?

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1 A. No, we were not.  
 2 **Q. That wasn't addressed?**  
 3 A. No, it was not. We were not made aware of whom  
 4 he traveled with. Essentially, without providing a  
 5 business purpose or a purpose for his travels, we were  
 6 unaware of why he did so.  
 7 **Q. For discussion sake, if that had have taken**  
 8 **place, is that a liability to the State of West Virginia**  
 9 **with their insurance coverage if a non-government**  
 10 **employee is a occupant or a passenger in a motor vehicle**  
 11 **owned by the State?**  
 12 A. To the best of my recollection we asked that of  
 13 BRIM that administers the state's insurance policies  
 14 concerning State vehicles and they indicated to us that  
 15 it would not be an increased liability.  
 16 **Q. Would that same -- same rule - I assume we call**  
 17 **it a rule - apply if a State employee were to rent a**  
 18 **motor vehicle on a conference out of state, that it**  
 19 **doesn't matter if there's a family member that is a**  
 20 **passenger or an occupant in that vehicle as well?**  
 21 A. I don't -- I don't recall the specific opinion  
 22 granted to us by the BRIM concerning that instance.  
 23 **Q. Did you address a -- any concerns regarding if**  
 24 **someone that is a family member, not a State employee,**

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1 **were to be the driver of either of those types of**  
 2 **vehicles?**  
 3 A. We did.  
 4 **Q. But they did -- obviously, a non-State employee**  
 5 **should not and is not allowed to be driving a State**  
 6 **vehicle.**  
 7 A. In terms of the rental cars, I think to the  
 8 best of my recollection, the opinion from BRIM was it  
 9 depended on whether or not the individual renting the  
 10 vehicle utilized their own insurance. I think that in  
 11 most cases when you rent a rental car you can purchase an  
 12 insurance option through the rental company itself or you  
 13 can have your own personal insurance be applied to the  
 14 liability of using that vehicle.  
 15 **Q. If they were rented by the State of West**  
 16 **Virginia, would the State of West Virginia have to be**  
 17 **responsible for that, or can an individual use their own**  
 18 **insurance on a State-rented vehicle?**  
 19 A. That's a rental car company policy that I'm not  
 20 familiar with answering at this time.  
 21 **Q. During some of the -- the discussion through**  
 22 **today, I think there was a question maybe from the**  
 23 **gentleman of Fayette in regard to specific violations of**  
 24 **rules or something substantial to that aspect. Are you**

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1 **familiar with a Code of State regulation Title 148 Series**  
 2 **3 where it reiterates that a State vehicle cannot be used**  
 3 **for personal purposes?**  
 4 A. I am familiar with it, yes.  
 5 **Q. Based on your audit, would some of the actions**  
 6 **that are indicated in your report by Justice Loughry,**  
 7 **would that be a violation of 148 Series 3?**  
 8 A. If it were proven that the instances where he  
 9 did not provide a destination were for personal use, yes.  
 10 **Q. Do you believe that to be true?**  
 11 A. I can't speak to opinion on that.  
 12 **Q. It's in your report.**  
 13 A. Well, essentially, we believe it to be personal  
 14 use in light of the fact that there was no business  
 15 purpose provided and per IRS regulations in light of  
 16 being able to differentiate business purpose from  
 17 personal use of a vehicle, all miles are considered  
 18 personal use.  
 19 **Q. If --if there was, for argument's sake,**  
 20 **personal use of State-owned resources, particularly these**  
 21 **vehicles, would it also constitute a violation of State**  
 22 **Code 6B-2-5(b) that prohibits personal use of State-owned**  
 23 **resources?**  
 24 A. It would.

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1 **Q. Could it also be implied under the same thing**  
 2 **that it is a violation of criminal Code dealing with**  
 3 **embezzlement converting State resources to one's own use?**  
 4 A. That would be a legal matter that I -- would  
 5 probably be better answered by our legislative services.  
 6 **Q. In regard to documented travel that showed a**  
 7 **known destination. Were any of those destinations**  
 8 **followed up on to show the validity of that -- of that**  
 9 **description? There's been some questions in regard to**  
 10 **trips to the Greenbrier, whether that constituted a**  
 11 **personal trip or if it was a business trip, both of which**  
 12 **was placed on the State's dime.**  
 13 A. To the extent that additional information was  
 14 available to confirm whether or not the destination and  
 15 purpose that was listed pertained to specific Court  
 16 business, we did do some looking into that, but only  
 17 where such information was available.  
 18 **Q. Was there anything to indicate during the**  
 19 **travel on the out-of-state conferences -- well, in state**  
 20 **or out of state whether Justice Loughry traveled alone or**  
 21 **was accompanied by any indi --other individuals?**  
 22 A. Not that I recall at the moment.  
 23 **Q. Ultimately, whose call was it -- if you know,**  
 24 **whose call was it that no information -- the additional**

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1 information was put on the W-2 forms for 2014, '15, '16,  
 2 '17 all the way through March of 2018? Do you know if  
 3 there was an individual that made that decision that  
 4 fringe benefits were not included? Was that a Court  
 5 decision that was voted on or how -- how did we get to  
 6 that point?  
 7 A. There is no indication that it was a voted-on  
 8 decision by the justices of the Court. However, any  
 9 indication of one individual or any group of individuals  
 10 being responsible for that decision was not made to us.  
 11 We don't have that information.  
 12 **Q. Do we know ultimately who would be responsible**  
 13 **for that?**  
 14 A. Essentially the Supreme Court's personnel that  
 15 handles payroll and processes the W-2 forms would  
 16 ultimately be responsible for reporting that information,  
 17 if they were aware of it.  
 18 **Q. There was a indication in one of the reports**  
 19 **where that was put in a memo to -- to the Court that**  
 20 **there was a violation, that it needed to be, but that was**  
 21 **still not done.**  
 22 A. Are you referring to the Brandfass memo?  
 23 **Q. Yes, sir.**  
 24 A. In the first report. It's my knowledge that

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1 that memo was issued explaining the potential  
 2 ramifications of such personal use. And I do believe  
 3 that memo also indicated the need to report such personal  
 4 use as a taxable fringe benefit. In light of that, if  
 5 the question is: Were there ever taxable fringe benefits  
 6 reported on a W-2 subsequent to that memo date, the  
 7 answer is no.  
 8 **Q. Do we know who -- who the ultimate authority is**  
 9 **to see that that's followed through with for compliance**  
 10 **with the law?**  
 11 A. I do not know specifically at the Court the  
 12 individual responsible, but it should be handled through  
 13 their payroll officers.  
 14 **Q. Could the payroll office do that absent a**  
 15 **directive from the Court itself or the chief justice**  
 16 **whoever that was at the time?**  
 17 A. Could they include such information on a W-2?  
 18 **Q. Yes.**  
 19 A. Yes, they could.  
 20 **Q. Could they be prevented by it by a directive**  
 21 **from the Supreme Court itself or by the chief justice?**  
 22 A. I can't speak to that. That would be a  
 23 question -- particular instance to an employee whether or  
 24 not they were going to follow orders from their

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1 superiors.  
 2 **Q. Did you ever receive any information that that**  
 3 **financial officer was directed not to include that**  
 4 **information on a W-2?**  
 5 A. No, we don't -- the slightest indication that  
 6 we were made aware of was that at some point during a  
 7 meeting with Ms. Sue Racer-Troy, who was the director of  
 8 financial management for the court, she had mentioned to  
 9 us that she had mentioned the potential for the commuting  
 10 by Justice Ketchum in a Court vehicle as being a taxable  
 11 event to which she informed the then Director of Court  
 12 Administration Steve Canterbury. And in her response to  
 13 us essentially the -- she was told that it was none of  
 14 her business.  
 15 **Q. Thank you.**  
 16 DELEGATE MILLER: Thank you,  
 17 Mr. Chairman.  
 18 CHAIRMAN SHOTT: Delegate Canestraro.  
 19 DELEGATE CANESTRARO: Thank you,  
 20 Mr. Chairman.  
 21 EXAMINATION  
 22 BY DELEGATE CANESTRARO:  
 23 **Q. Thank you for being here, Mr. Robinson.**  
 24 **For the times that you saw use of a**

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1 **vehicle by Justice Loughry that you believe were for --**  
 2 **maybe for personal use, did your audit recover any**  
 3 **records of State funds being used for gasoline or other**  
 4 **purposes?**  
 5 A. Yes. Particularly with the instances noted on  
 6 the calendar on page 8 of the first report which  
 7 highlights in red several dates to which he had access to  
 8 a vehicle while the Court was in recess which indicated  
 9 most likely this instance was for personal use. He also  
 10 used the Court gas card paid for by the State to fuel the  
 11 vehicle.  
 12 **Q. In your audit did you find that any other**  
 13 **justice had use of a vehicle to that extreme when the**  
 14 **Court was in recess?**  
 15 A. No, sir.  
 16 **Q. And did you -- did you-all find any legitimate**  
 17 **purpose for having such use of a vehicle by a justice**  
 18 **when the Court is in recess?**  
 19 A. In the instances we reviewed in particular to  
 20 Justice Loughry we did not.  
 21 **Q. And so it's your testimony that we do have**  
 22 **records then showing where State funds were expended**  
 23 **during those times, that could be used possibly as**  
 24 **exhibits?**

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1 A. That's correct.

2 **Q. Did you find any instances where a vehicle was**

3 **used by Justice Loughry to travel from Charleston to out**

4 **of state that there was no destination listed?**

5 A. Without the destination provided through our

6 review, we were basically left with reviewing gas fuel

7 card records. We did the best we could to determine

8 possibly where those -- the instances of vehicle use

9 occurred. We do have notation of where the fuelings took

10 place based on the gas card billings, but to be specific

11 in any instances noting where he may have gone or the

12 purpose of that, we do not have that information.

13 **Q. Were you able to calculate the sum total of**

14 **funds expended by the State during those times?**

15 A. I wouldn't say with any real conclusiveness.

16 Again, you know, for a lack of a lot of good

17 recordkeeping at the Court, it made our efforts in trying

18 to determine the specific expenditures related to this

19 vehicle use difficult. We were able to ascertain several

20 fuelings that occurred with the fuel card that was

21 assigned to the vehicles in question during the periods

22 of use. But as for it to be, you know, complete and

23 accurate, we just did our best job to account for any

24 uses of the State fuel card.

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1 **Q. And you do have records of those uses as well,**

2 **the State fuel card?**

3 A. Yes.

4 **Q. So that could be an exhibit if we possibly**

5 **needed it?**

6 A. Absolutely. I believe that information was

7 supplied to counsel.

8 **Q. If you could look at page 2 of report number 1,**

9 **this is just one question I have about the taxable fringe**

10 **benefits.**

11 A. Uh-huh.

12 **Q. In the report it states at the bottom that**

13 **Justice Ketchum and Justice Loughry's use of the vehicle**

14 **should have been but was not included in the respective**

15 **IRS W-2s as a taxable fringe benefit. And then in bold**

16 **it says, "Although there is evidence to suggest that the**

17 **justices and their staff knew that the personal use**

18 **should have been included." The question I have is what**

19 **evidence do you have that they knew?**

20 A. Well, the Brandfass memo that's in appendix --

21 apologies -- Appendix F of this first report indicates

22 the knowledge of that. Also, the indication from the

23 director of financial management that indicated to us she

24 attempted to notify then Administrative Director

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1 Canterbury of the need -- or potential need to report

2 this as a taxable fringe benefit gave cause for that

3 statement.

4 DELEGATE CANESTRARO: Okay. Okay,

5 thanks.

6 CHAIRMAN SHOTT: Delegate Robinson.

7 DELEGATE ROBINSON: Thank you,

8 Mr. Chairman.

9 EXAMINATION

10 BY DELEGATE ROBINSON:

11 **Q. Mr. Robinson, the -- there was another report**

12 **from the JIC that was brought out. Have you kept up to**

13 **date with other reports that have been brought forward?**

14 A. I have reviewed them, but I'm not extremely

15 knowledgeable of them at the moment.

16 **Q. In that report, they go through kind of the**

17 **same accusations of personal car use, but they're able to**

18 **match it with a -- with a private calendar. Were you**

19 **able to do that in any way?**

20 A. No, we did not have access to the private

21 calendar.

22 **Q. Is that the private calendar that we talked**

23 **about from Ms. Mullins?**

24 A. No, the private calendar I believe in reference

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1 in the JIC is Justice Loughry's private calendar. The --

2 **Q. So they were able to obtain that, and you all**

3 **were not?**

4 A. The cal -- no, the calendars that we were not

5 able to obtain were for the administrative director of

6 the court, Steve Canterbury.

7 **Q. Okay. And then that was -- the ones they've**

8 **reviewed and compared to his usage of the car are**

9 **something private, something separate from those**

10 **calendars.**

11 A. Yes.

12 **Q. Okay. Now, with Ms. Mullins' calendars, do you**

13 **know how those were kept? I mean, how -- how did she**

14 **store those? Were they in a cabinet? Were they in a --**

15 **do you have any idea?**

16 A. Yeah, it's my understanding when we went to

17 meet and obtain those calendars to which, like we'd spoke

18 before, we were informed that, yes, we could come collect

19 the calendars, but upon arrival we were informed that

20 they were missing to which they also knew that prior to

21 us arriving. We were told that the current year's

22 calendar for activities involving whatever calendar year

23 they were in for whomever was the administrative director

24 was always kept in the desk of her office. Any dated

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1 calendars that were more historical in nature, she simply  
 2 kept in an unlocked drawer in her office.  
 3 **Q. Okay. So they were not locked in a -- they**  
 4 **were just in a desk drawer not locked and -- by key or**  
 5 **anything like that? No security?**  
 6 A. No. And interestingly enough, I believe that  
 7 calendars preceding the dates and -- were available.  
 8 Essentially there was only a select set of calendars that  
 9 were missing. There were others that were there.  
 10 **Q. Starting in -- what were those dates that were**  
 11 **not available? 2013?**  
 12 A. I don't recall exactly. And I would have to go  
 13 back and check to see which ones we were specifically  
 14 looking for. As we mentioned, the purpose of obtaining  
 15 those calendars was trying to confirm and substantiate  
 16 business purpose use of a vehicle by Steve Canterbury.  
 17 **Q. My recollection of it was that it starts in**  
 18 **2013 to 2016 are missing; is that correct, you believe?**  
 19 A. That would be -- I believe so, yes.  
 20 **Q. And Justice Loughry began on the Court in what**  
 21 **year?**  
 22 A. I'm not certain of that. Are we referring to  
 23 his term as a justice or --  
 24 **Q. As a justice. I believe 2013 --**

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1 A. That could be correct.  
 2 **Q. Okay. And what date did you call and they said**  
 3 **that the calendars were available? Do you have that**  
 4 **catalogued?**  
 5 A. I would have that catalogued somewhere, the  
 6 date particularly, but I do know it's subsequent to the  
 7 date of the memo. I want to say that it had occurred  
 8 some time in possibly April of this year.  
 9 **Q. In April -- it looks like what I have written**  
 10 **here is that you found the calendars were missing on**  
 11 **February 16th, 2018.**  
 12 A. Is that the -- that's quoting the memo,  
 13 correct?  
 14 **Q. Yes, sir.**  
 15 A. Yeah, she found the memo -- the calendars  
 16 missing. We had not requested them until possibly April.  
 17 **Q. Okay. So in two thous -- in February of 2018**  
 18 **they knew they were missing, but the former administrator**  
 19 **Mr. Canterbury had left in January of 2017, so those**  
 20 **calendars were present prior -- or after Mr. Canterbury**  
 21 **ended his employment, correct?**  
 22 A. Yes, and --  
 23 **Q. And he wouldn't have any access to the building**  
 24 **post-employment.**

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1 A. No, no, no they were -- it's my understanding  
 2 that those calendars were there subsequent to him  
 3 leaving.  
 4 **Q. Okay. So it -- I was trying to go down the**  
 5 **line as a previous question was asked if it was possible**  
 6 **that he took those with him when he left or something of**  
 7 **that sort, so that clears up my concern there.**  
 8 **There were a couple requests you made of**  
 9 **Mr. Canterbury, all the justices to catalog the use of**  
 10 **the car whenever they traveled, rental car as well. It**  
 11 **looks like Mr. Canterbury and Justice Davis and the**  
 12 **others went through with that and gave pretty detailed**  
 13 **information; is that correct? I mean, it looks like it's**  
 14 **catalogued in your report --**  
 15 A. Are you referencing a request that we made to  
 16 individuals?  
 17 **Q. Either a request made or some kind of**  
 18 **investigation that you took to obtain information of**  
 19 **where they were taking the cars on those days. And looks**  
 20 **like Justice Davis provided a letter and to her best**  
 21 **memory she gave some information. Mr. Canterbury gave**  
 22 **you a pretty detailed catalog and grid.**  
 23 A. Yes.  
 24 **Q. And then how did Justice Loughry respond to**

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1 **that request?**  
 2 A. We did not make a similar request to Justice  
 3 Loughry.  
 4 **Q. Okay. Did he ever make any response or**  
 5 **anything at any point of why he wasn't cataloging that or**  
 6 **why that wasn't available like it was for the other**  
 7 **justices or Mr. Canterbury as well?**  
 8 A. No, the only communication -- to be actual  
 9 factually, we had no direct communication from Justice  
 10 Loughry to our office. The response --  
 11 **Q. As in he refused to respond in any way?**  
 12 A. I wouldn't -- he did not respond.  
 13 **Q. He declined to respond is probably a better**  
 14 **term.**  
 15 A. That's probably a better term, yes.  
 16 **Q. Okay. But the others were cooperative and went**  
 17 **along and helped you obtain information you needed to**  
 18 **finish your report.**  
 19 A. Yes. And early on in the audit process all  
 20 requests, regardless of to whom the request was directed  
 21 at the Court, was copied to all five justices of the  
 22 Court. So they were aware of all information requests we  
 23 were making to the Court.  
 24 **Q. So four out of five responded and complied**

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**1 along with the Court ad -- former court administrator and**  
**2 there was only one person involved that did not choose to**  
**3 respond.**  
 4 A. Well, more accurately stated, two of the five,  
 5 because the -- we only had questions concerning vehicle  
 6 use for Justice Davis because there were the several  
 7 instances - I believe, 13 - that we couldn't confirm  
 8 through the information that we had available. And also  
 9 for former Administrative Director Canterbury we made the  
 10 same inquiry for the reason of not being able to confirm  
 11 through the information we had. We did not take any  
 12 issue with any of the other instances noted in the  
 13 reservation log for the other justices; therefore, we did  
 14 not need to make such inquiry.  
**15 Q. So you all -- who are the ones you -- Loughry,**  
**16 Davis, Canterbury and Ketchum are the ones you requested**  
**17 information from?**  
 18 A. In terms of explanation for what we did not  
 19 know concerning their vehicle use --  
**20 Q. Missing information.**  
 21 A. -- Davis and -- Justice Davis and former  
 22 Administrative Director Canterbury. Everything relating  
 23 to Justice Ketchum re -- revolved around his commuting in  
 24 a State vehicle, so it was somewhat unrelated and we

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1 didn't need to determine the purpose of that use. It was  
 2 obvious he admitted it was commuting.  
**3 Q. So -- so we as a legislature and Legislative**  
**4 Auditor's Office made a request of three people. Two**  
**5 complied and one did not.**  
 6 A. And you're referring to one not, as in Loughry.  
**7 Q. Yes, sir.**  
 8 A. We've never made an actual request directly to  
 9 Loughry to confirm any of the dates or any of the lack of  
 10 destination in those calendars.  
**11 Q. Okay. There was a -- also a prior question**  
**12 about it could have been -- Mr. Canterbury could have**  
**13 used -- or someone could have used Mr. Canterbury's**  
**14 P-card. Does -- did Mr. Canterbury have a P-card?**  
 15 A. Possibly. I can't speak definitively to that  
 16 right now.  
**17 Q. Okay. Can we note that for a question for**  
**18 counsel to -- because I believe the answer is he did not.**  
 19 **There was -- there was a question about**  
**20 Justice Davis and her having security. There's some non-**  
**21 public records I would assume that are death threats and**  
**22 those kind of things. Were you privy to looking into**  
**23 those to see if she was -- had further death threats or**  
**24 threats on her person that the other justices did not**

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**1 and that would require her --**  
 2 A. We were made aware of particular threats  
 3 concerning Justice Davis and her husband.  
**4 Q. Okay. So there were -- there were extensive**  
**5 reasons she had security with her at those times that**  
**6 weren't public knowledge?**  
 7 A. Yes.  
**8 Q. Okay. Airfare, did you in your report look**  
**9 into airfare in any -- any form or fashion?**  
 10 A. No. Usually airfare is direct billed in  
 11 relation to a business purpose for the Court, but we did  
 12 not explore that.  
 13 DELEGATE ROBINSON: Okay. Mr. Chairman,  
 14 that's it. Can I -- am I allowed to address counsel to  
 15 ask that question at a later time? Okay.  
 16 CHAIRMAN SHOTT: She's making notes of  
 17 these questions.  
**18 Q. Okay. Thank you. I just have two more.**  
**19 You were questioned earlier about if**  
**20 there's a policy regarding anybody having personal gain**  
**21 or using a State vehicle or using a rental car, and your**  
**22 answer was there is no policy, correct?**  
 23 A. There's no Court policy, but I believe the es  
 24 -- Ethics Commission has some policies concerning using

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1 one's office for private gain to which that's part of the  
 2 reason we called into question the use of the rental car  
 3 vehicles.  
**4 Q. And the Supreme Court is underneath the Ethics**  
**5 Act, correct?**  
 6 A. That's correct.  
**7 Q. And it -- so I'm not going to you ask the exact**  
**8 wording of the Ethics Act, but anything personal gained**  
**9 -- if I -- if a person, elected official would gain**  
**10 anything or save any dollar amount, that would be in**  
**11 conflict of the Ethics Act, correct?**  
 12 A. That would be the opinion of the Ethics  
 13 Commission --  
**14 Q. Okay.**  
 15 A. -- to make, but yes.  
**16 Q. All right. Thank you, Mr. Robinson.**  
 17 DELEGATE ROBINSON: Thank you,  
 18 Mr. Chairman.  
 19 CHAIRMAN SHOTT: Vice Chairman Hanshaw.  
 20 VICE-CHAIR HANSHAW: All right. Thank  
 21 you, Mr. Chairman.  
 22  
 23  
 24 EXAMINATION

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1 BY VICE-CHAIR HANSHAW:  
2 **Q. (Inaudible) Mr. Robinson, I'm -- I want to --**  
3 **most my questions have been answered. I just want to**  
4 **turn very briefly to another part of this committee's**  
5 **charge which is to report recommendations, if any, to the**  
6 **full House for things that come out of these proceedings.**  
7 **I want to make sure that we understand what the -- both**  
8 **the State's policy and the Court's policy is on matters**  
9 **of personal security because threats against one's person**  
10 **are serious and it's -- they need to be taken seriously**  
11 **and it's good that they're taken seriously.**  
12 **Have -- has your office reviewed the**  
13 **policy of the State with respect to threats against**  
14 **public officials?**  
15 A. We have not.  
16 **Q. What about the Court's policy?**  
17 A. We have not.  
18 **Q. Do you have any information about how -- how an**  
19 **elected official goes about requesting security from the**  
20 **State in the event threats like that are received?**  
21 A. I do not have particular knowledge of that.  
22 VICE-CHAIRMAN HANSHAW: Okay. Thank you.  
23 CHAIRMAN SHOTT: Delegate Fleischauer.  
24 MINORITY CHAIR FLEISCHAUER: Thank you,

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1 Mr. Chairman. Just a couple.  
2 EXAMINATION  
3 BY MINORITY CHAIR FLEISCHAUER:  
4 **Q. If we look at the first legislative audit on**  
5 **page 6 where we talk about the three older Buicks that**  
6 **the Court had access to and some of them used quite a**  
7 **bit, to your knowledge do other branches of State**  
8 **government have public officials that have use of a car?**  
9 A. It's possible, but I don't have direct  
10 knowledge.  
11 **Q. Okay. How long have you been employed in the**  
12 **Auditor's office?**  
13 A. Four and a half years.  
14 **Q. Okay. So have you heard anything about other**  
15 **members of the Board of Public Works having cars at their**  
16 **disposal?**  
17 A. That's possible. Again --  
18 **Q. You're not familiar with it because you haven't**  
19 **been -- you've never looked into it?**  
20 A. I've -- me particularly in preparation for  
21 this, that falls outside the scope for the questions that  
22 I was prepared to answer today concerning other agencies.  
23 **Q. Okay.**  
24 A. But we have explored fleet reports and explored

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1 through our office what offices have access to vehicles  
2 and individuals that have access to State vehicles. It  
3 is likely that other State officials may have access to  
4 vehicles that are owned by the State for their use in  
5 business.  
6 **Q. If you've been involved in any of those**  
7 **investigations, have you ever encountered any other**  
8 **official who during the Christmas and New Year's holidays**  
9 **took a State car for 19 days with no specific destination**  
10 **or business purpose listed?**  
11 A. Not to my knowledge.  
12 **Q. And not every year Justice lock -- Loughry**  
13 **claimed or used a car that many days, but you also**  
14 **haven't encountered anyone that did that three years in a**  
15 **row, I'm guessing?**  
16 A. Not to my knowledge.  
17 **Q. Okay. If you go to page 8 -- or I mean,**  
18 **page -- sorry, page 10. That is -- has to do with the**  
19 **rental cars, and I added up the total on the -- the total**  
20 **miles that exceeded the distance between the airport and**  
21 **the hotel that -- what you'd marked as the difference. I**  
22 **added that column and I came up with 2,874 miles.**  
23 **There's been a lot of banter back and forth about --**  
24 **about that issue, but wouldn't -- isn't it likely that**

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1 **there would have been extra days of cars rented because**  
2 **so many miles were driven? So if the conference was five**  
3 **days and someone drove 607 miles and they stayed at the**  
4 **conference and then took a side tour or whatever**  
5 **happened, isn't it likely that maybe the State paid for**  
6 **an extra day for each one of these trips because there**  
7 **were several hundred miles? Every single one of these is**  
8 **over -- well over 100 miles and some of them, like I**  
9 **said, were 580 miles over.**  
10 A. It is possible there were extra days involved,  
11 but I cannot speak to the activities of the justice  
12 utilizing the vehicle while he had it.  
13 **Q. Well, if it was business use to be at a**  
14 **conference, you did make a conclusion that it was likely**  
15 **that some -- that this was personal use. Correct?**  
16 A. Yes.  
17 **Q. So it's also likely -- do you think it's likely**  
18 **that there were extra days rented that needn't have been**  
19 **rented?**  
20 A. Possi --  
21 **Q. Given --**  
22 A. Possibly.  
23 **Q. Given that there were 2,870 miles.**  
24 A. We would actually most likely have the

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1 documentation from the rental car receipts that would  
 2 indicate. We did have some difficulty in determining the  
 3 actual start and end dates for some of the conferences  
 4 because the organizations that held the conferences just  
 5 simply do not keep good record of that.  
 6 To your question is it likely that there  
 7 were extra days likely, I don't know. Possible, yes, but  
 8 it could also be possible that an individual that was  
 9 supposed to be attending a conference may not have  
 10 attended it and traveled those miles during the dates of  
 11 the conference. But those are possibilities and  
 12 speculation. I can't confirm that.  
 13 **Q. But that would have been itself personal use?**  
 14 A. Yes. I mean, with no question we are  
 15 indicating in our report that the likelihood of these  
 16 additional miles were for personal reasons.  
 17 MINORITY CHAIR FLEISCHAUER:  
 18 Okay. That's all the questions I have. Thank you. And  
 19 thank you very much for appearing today. Thank you,  
 20 Mr. Chairman.  
 21 CHAIRMAN SHOTT: Thank you, Mr. Robinson,  
 22 and I appreciate your endurance. I have a few questions,  
 23 and then we'll start round 2.  
 24 EXAMINATION

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1 BY CHAIRMAN SHOTT:  
 2 **Q. Trying to put into context this vehicle use.**  
 3 **As I understand it, the so-called -- what I'll call the**  
 4 **trigger to the filing of this policy by the Supreme Court**  
 5 **was the refusal of the Auditor's office to approve**  
 6 **reimbursements. Is that fair to say?**  
 7 A. That's correct.  
 8 **Q. And that occurred in some time during 2016?**  
 9 A. That's correct.  
 10 **Q. So apparently before that time whoever was the**  
 11 **auditor did not require that type of policy to be filed**  
 12 **with -- with the Auditor's office; is that fair to say?**  
 13 A. I think the -- the requirement for it to be  
 14 filed still existed. Whomever was processing the  
 15 transactions simply did not note that the policy that was  
 16 on file was out of date or did not meet the requirement  
 17 of the State Auditor's Office rule concerning the travel  
 18 policy being submitted.  
 19 **Q. So there was a policy on file before 2016?**  
 20 A. To my knowledge I believe there was a policy of  
 21 some sort on file with the State Auditor's Office prior  
 22 to this. What it entailed and what it encompassed and  
 23 the language within it, I don't have knowledge of that.  
 24 **Q. Okay. Well, Counsel, I think we need to find**

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1 **out what that was.**  
 2 **Do you -- have you -- in the course of**  
 3 **your investigation did you determine if that policy was**  
 4 **preserved in any way or was it discarded when the new**  
 5 **policy was filed?**  
 6 A. It's possible it could have been preserved in  
 7 some way. And, again, I don't want to speak out of turn.  
 8 I can't confirm definitively whether or not such policy  
 9 existed. I just know that there was an indication from  
 10 the State Auditor's Office that they needed to file an  
 11 updated policy --  
 12 **Q. So that --**  
 13 A. -- which led us to believe that there was at  
 14 some point in time a prior travel policy established with  
 15 the Court.  
 16 **Q. That could certainly indicate that or it could**  
 17 **indicate they just want the policy that's filed to**  
 18 **conform with some current authority.**  
 19 A. That's correct.  
 20 **Q. Do you know what the authority of the State**  
 21 **Auditor -- I don't want to confuse with our Legislative**  
 22 **Auditor. The State Auditor's authority is to require a**  
 23 **written policy for reimbursement of travel expenses?**  
 24 A. When you say authority, would you --

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1 **Q. Is there a statute that requires the Auditor to**  
 2 **deny requests for reimbursement if it's not**  
 3 **inconsistent -- it's not consistent with a filed policy?**  
 4 A. I can't speak to whether or not it's a statute,  
 5 but it would indicate that the State Auditor has some  
 6 rule that allows them to refuse reimbursement or payment  
 7 of travel expenses without a proper filing of travel  
 8 regulations from an agency or branch of government.  
 9 **Q. And you made that assumption that there's a**  
 10 **internal regulation in the Auditor's office that would**  
 11 **basically serve as a stop if there's not a policy on**  
 12 **file; is that fair to say, or do you -- have you -- are**  
 13 **you aware of their internal regulation?**  
 14 A. There is definitely a regulation in the State  
 15 Auditor's Office that requires a updated travel policy be  
 16 filed with them for an agency to be reimbursed.  
 17 **Q. All right.**  
 18 A. The specifics of that policy internal or  
 19 whether it's a statute I just don't have knowledge of at  
 20 this moment.  
 21 **Q. For how long did -- do -- are you aware that**  
 22 **that policy has existed?**  
 23 A. I don't have that information.  
 24 **Q. I would ask counsel to follow up on that issue.**

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1           **With respect to the new policy or the**  
2 **updated policy, whatever was filed effective October 3rd**  
3 **of '16, have you gone through that policy to determine if**  
4 **had it been in place at the beginning of your audit it**  
5 **would have made any difference? Or maybe let me ask it**  
6 **this way. If it would have been violated by anything you**  
7 **uncovered?**  
8       A. We have not sought to make that determination,  
9 no.  
10   **Q. Okay. Have you reviewed the updated policy?**  
11    A. Yes.  
12   **Q. Okay. And to your recollection, is there**  
13 **anything in that policy that would have prevented any of**  
14 **the concerns that you've addressed in your report?**  
15    A. I would say that the travel regulations are  
16 specific to -- travel-related to Court business. It  
17 wouldn't fall in the category of vehicle use for personal  
18 use, Court vehicle use in any way shape or form.  
19 Essentially this is the policies for when an employee or  
20 a justice goes out of state or in state to travel for  
21 Court business.  
22   **Q. So it would be your opinion that had that**  
23 **policy been in effect it would have prevented -- not**  
24 **prevented. It would have forbidden personal use of a**

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1 **State vehicle by the justices or their employees?**  
2    A. Again, the travel policy would only relate to  
3 use of vehicles for travel and business events. In terms  
4 of checking out a -- or reserving a Court vehicle for  
5 personal use, that would not be covered by this travel  
6 policy.  
7   **Q. I see.**  
8    A. What would be covered would be rental car use  
9 and as noted in the report, the travel policies gave some  
10 exemption to the justices regarding their ability to be  
11 reimbursed for rental car expenses that was different  
12 than what was applied to the normal Court employees.  
13   **Q. Yeah, I noticed in your report at page 11 you**  
14 **note the difference between Court employees and the**  
15 **justices. Is there any -- other than the normal**  
16 **offensiveness of that policy, is there anything in**  
17 **statute or regulation that would prevent the justices**  
18 **from basically having preferential treatment with regard**  
19 **to those vehicles?**  
20    A. I think one could potentially make a legal  
21 argument that this establishes grounds for disparate  
22 treatment amongst employees of the same organization.  
23   **Q. Okay. Let me ask you about the -- something**  
24 **that came up in the JIC information, and I know you all**

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1 **are not responsible for that, but it really links into**  
2 **your chart. On page -- find it -- page 8, there's a note**  
3 **in the report from the JIC about a trip that Justice**  
4 **Loughry made on January 28th, 2014, a Tuesday, through**  
5 **Wednesday, the 29th, which appears on your chart with the**  
6 **Code "no destination provided, Court in recess". And the**  
7 **JIC report notes that the -- I think it was the calendar**  
8 **indicated that Justice Loughry attended a hearing in**  
9 **which his father was a defendant. Did you all -- did you**  
10 **all -- did your organization or agency do any type of**  
11 **investigation as to whether there was any influence**  
12 **exerted during that visit into the magistrate court that**  
13 **is noted in the JIC report?**  
14    A. To be quite honest when we did our audit work  
15 and released this report for those specific dates we did  
16 not know that is exactly what had happened. We didn't  
17 know that he had attended that event.  
18   **Q. Have you since gained any knowledge as to**  
19 **whether or not the -- there was any influence exerted in**  
20 **the magistrate court one way or the other or perhaps**  
21 **the -- there was a settlement reached. Do you have any**  
22 **knowledge at all regarding that?**  
23    A. No, sir.  
24   **Q. Okay. I think this may have been covered, but**

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1 **I just want to be sure I understand. Is Justice Davis**  
2 **the only member of the Court who has required Court**  
3 **security to accompany her on trips?**  
4    A. No, there are various other justices that  
5 utilize court security on attending conferences, et  
6 cetera.  
7   **Q. Why were the 13 instances of Justice Davis then**  
8 **included in your report? Was there anything unusual**  
9 **about that?**  
10    A. No. And if you could refresh me on the page of  
11 that. Hold one second.  
12   **Q. Sure.**  
13    A. Second report, correct?  
14   **Q. Second report.**  
15    A. Initially, as the report states, when we  
16 reviewed the Court's vehicle reservation log, we noted 75  
17 reservations for Justice Davis. Through our review we  
18 were able to determine a destination for 55. 13  
19 instances were found where although she had reserved a  
20 vehicle we determined she had not. Essentially, in light  
21 of the 20 instances that we could not ascertain a  
22 business purpose, we looked into those. The 13 were just  
23 noted as instances where there was a reservation in the  
24 reservation log, but simply because there reser -- there

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1 was a reservation it did not necessarily mean that the  
2 vehicle was actually used.

3 To determine whether or not the vehicle  
4 was actually used, that's when we reached out to Justice  
5 Davis to inquire of her, and I believe that given every  
6 instance of Court vehicle use she was accompanied by  
7 Arthur Angus, they had exhausted their search through her  
8 personal calendars as well as his to determine potential  
9 instances where there was a business purpose or if, in  
10 fact, the vehicle was used. And for those 13, neither of  
11 them had any record of any use of the vehicle, and  
12 through subsequent research on our end, we could not find  
13 any fuel purchases or any other documentation that  
14 indicated those vehicles were actually used for those 13  
15 instances.

16 **Q. You indicated either in your report or in your  
17 testimony that every time Justice Davis took a State car  
18 she was accompanied by security; is that correct?**

19 A. That's the assertion that the Court has made to  
20 us, yes.

21 **Q. Am I to interpret that, that that was -- that  
22 was the 55 situations where there were reservations of  
23 the car?**

24 A. Yes. For each of those 55, she was accompanied

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1 by court security, yes.

2 **Q. And then we have an additional 13, is that  
3 right, that she was also accompanied by court security  
4 where we didn't have a reservation with a business  
5 purpose?**

6 A. No, there was 75 total reservations. 55 we  
7 could determine. That left 20 remaining. Of those 20,  
8 13 were identified of instances of a reservation where  
9 the vehicle was not used. Of the remaining 7, those were  
10 the ones that we noted where she could not confirm or  
11 deny if she used the vehicle, nor could the director of  
12 court security. Therefore, those were the 7 instances we  
13 noted that we could not determine a business purpose or  
14 destination for.

15 **Q. So just so I'm clear, we had 55 that we knew  
16 where she -- the Justice was going or --**

17 A. Uh-huh.

18 **Q. -- the business purpose. And now we've  
19 narrowed it down to 7 where we did not, but those would  
20 also be included in the total number of trips she was  
21 accompanied by armed security, right, or is that in the  
22 55?**

23 A. I think you would have to add the 7 to the 55.

24 **Q. Okay.**

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1 A. So it would be 62 total. And then the  
2 remaining 13 instances were the ones where while she did  
3 reserve the vehicle there was no indication through our  
4 research or through the calendars maintained personally  
5 by Arthur Angus or Justice Davis that she had actually  
6 used the vehicle. It was simply reserved.

7 **Q. And that was over a period from 2011 to 2018,  
8 those 62 times where she was accompanied by court  
9 security?**

10 A. That's correct.

11 **Q. Do you know whether there was any type of law  
12 enforcement report filed with regard to the need for  
13 security regarding the threats or whatever caused the  
14 need for security?**

15 A. I'm not aware of that.

16 **Q. But there were other times when other justices  
17 traveled with armed security; is that correct?**

18 A. That's correct. And a point of clarification  
19 to some earlier statements. We've looked into the fact  
20 of whether or not Arthur Angus is a salaried employee.  
21 Currently he is a salaried employee not eligible for  
22 overtime.

23 **Q. Okay. Did you also do an analysis of the  
24 number of times that any of other justices traveled with**

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1 **court security?**

2 A. As noted in the report for the other justices  
3 there was only a handful of instances amongst them they  
4 had actually used a Court vehicle, so no.

5 **Q. So a minimal number of times that other  
6 court --**

7 A. Yeah.

8 **Q. -- other justices would have needed court  
9 security to travel with them?**

10 A. Yes. I believe -- I would love to be  
11 definitive in this, but we reviewed the Court vehicle use  
12 by the remaining justices, and as noted, their uses was  
13 far more minimal than Justice Loughry or Justice Davis.  
14 I would be safe in saying that Justice Davis and Justice  
15 Loughry had far more frequent use of the Court vehicle  
16 than the other justices.

17 **Q. On page 7 of the second report, you all -- your  
18 group makes a recommendation and my question is similar  
19 to Delegate Hanshaw's. Part of our -- part of our task  
20 is to identify any need for any legislation. Either with  
21 regard to that recommendation or any other  
22 recommendations of this section of the report, do you  
23 have any recommendations to the legislature as to changes  
24 in existing laws or new laws that we need to try to avoid**

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1 **some of this -- this usage?**

2 A. Not at this time. The majority of our

3 recommendations were aimed at having the Court esta --

4 establish proper policies and procedures internally to

5 mitigate the personal use that we've noted in this

6 report.

7 **Q. Just a mechanical issue. The documents that**

8 **you've provided to us, obviously copies of something**

9 **else, did -- were you provided with original documents**

10 **from the Court in each case, or were you -- so that you**

11 **could make your own copies, or were you basically**

12 **provided copies upon your request?**

13 A. We were definitely provided copies upon

14 request. Our information requests were oftentime very

15 rigorous -- rigorously reviewed by the administrative

16 counsel of the court and the other justices before being

17 provided to us. I do not believe we were ever provided

18 an original document to which we were allowed to copy.

19 Copies were simply provided.

20 **Q. So your testimony, if you were asked, would be**

21 **you did not see the originals from which these copies**

22 **were made, but they -- they were represented to be copies**

23 **of the originals. Is that fair to say?**

24 A. For the most part, yes. I would say that in

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1 some instances we may have reviewed original -- or may

2 have viewed original documents prior to them being

3 copied, but as they were supplied to us they were

4 presented to us as copies of the originals.

5 **Q. Were you personally involved in any face-to-**

6 **face meetings with any of the justices?**

7 A. As mentioned, we had some face-to-face meetings

8 with Justice Ketchum regarding the instances we noted in

9 the report, and his attempts to try to reimburse the

10 State for those instances.

11 **Q. Any justices other than Justice Ketchum?**

12 A. Justice -- Chief Justice Workman during the

13 exit conferences to which we discussed the draft copies

14 of the report prior to them being issued to the Post

15 Audit Subcommittee, but outside of that we did --

16 have not met privately with any of the other justices nor

17 have we met with them as a group.

18 **Q. And, personally, have you had telephone**

19 **conversations with any of the justices regarding any of**

20 **the issues here, and other than Justice Ketchum?**

21 A. Personally, no, I have not had any personal

22 phone conversations with any justices outside of Justice

23 Ketchum.

24 **Q. Okay.**

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1 A. And Chief Justice Workman.

2 **Q. So is it fair to say the bulk of the**

3 **documentation that you have gathered is copies that were**

4 **represented to be from originals. That the work product**

5 **that you did yourself basically was the assembly of the**

6 **data you drew from those copies and displayed or produced**

7 **in certain charts that are -- that is actually your**

8 **firsthand work; is that correct?**

9 A. Yeah, that's correct.

10 CHAIRMAN SHOTT: All right. Thank you.

11 So the members of the Committee, our

12 rules invite the justices to have counsel here if they

13 wish to have questions asked of our witnesses. We have

14 two counsel here today. Representing Justice Davis is

15 Bob Allen and representing Justice Loughry is Jonathan

16 Carr (sic), so Mr. Allen you're on the end of the row.

17 Do you have any questions for this witness?

18 MR. ALLEN: (Inaudible.)

19 CHAIRMAN SHOTT: Thank you. Mr. Carr, do

20 you have any questions for this witness.

21 MR. CARR: No, sir.

22 CHAIRMAN SHOTT: Thank you. All right.

23 We'll start round 2. Do we have any follow-up questions

24 from our Committee counsel? Pardon me?

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1 (Inaudible.)

2 EXAMINATION

3 BY MS. KAUFFMAN:

4 **Q. Mr. Robinson, I have just -- just a couple.**

5 **And this is a follow-up in response to some questions**

6 **that were posed by one of the Committee members about**

7 **rental use in the conferences.**

8 A. Uh-huh.

9 **Q. During the break, we located some -- with the**

10 **assistance of your office, some documents that we think**

11 **may shed a little bit of light on those, and I just**

12 **wanted to bring that back to your attention. I will note**

13 **that these are now the newest exhibits, they are Exhibit**

14 **Numbers 19 and 20.**

15 (Discussion off mic.)

16 Mr. Robinson, I believe that these go

17 back and refer -- we're going to be back on report number

18 1 at page 10, again, talking about the rental car for

19 out-of-state travel for Justice Loughry. Let me begin

20 with Exhibit 19, just so that I -- we can make sure the

21 Committee understands what this is. If you could -- I

22 will tell you it appears to just be a listing of the

23 hotels and the dates of the travel; is that correct?

24 A. Yes. Essentially, as we mentioned, we had some

1 difficulty in trying to determine the specific dates,  
2 locations and events that occurred during those  
3 conferences. We attempted to reach out to the  
4 organizations that held these conferences to get that  
5 information. This is an internal document created in my  
6 office to try to reflect the hotel locations of these  
7 conferences to determine whether or not the hotel that  
8 Justice Loughry had stayed in coincided with the hotel  
9 where the conference was being held.

10 **Q. Okay. Thank you.**

11 **And with respect to Exhibit Number 20,**  
12 **if -- does that show in addition to the event, the**  
13 **destination city, it also states "start date and end**  
14 **date". Are those the start dates and end dates of the**  
15 **conferences themselves?**

16 A. Yeah, on the left under Destination Event  
17 column, essentially this is the event that we were trying  
18 to determine the start and end dates for, and obviously  
19 the far right -- two far right columns are the start and  
20 end dates we were able to determine, either through, you  
21 know, determining the information from the organization's  
22 website or conversations with the actual members of the  
23 organization that held the events.

24 **Q. Okay. And with respect to the information that**

1 **you were able to -- to glean from this, if we could just**  
2 **start with the very first one in San Francisco in July of**  
3 **2013.**

4 A. Uh-huh.

5 **Q. Looking at Exhibit Number 20, if we go three**  
6 **rows up from the bottom, it indicates that there was a**  
7 **destination city of San Francisco but no start or end**  
8 **date. Was that one of the conferences for which you were**  
9 **unable to determine what the start and end dates were?**

10 A. It does appear we were unable to determine the  
11 start and end dates, that's correct.

12 **Q. Thank you.**

13 **I will now move to the second item on**  
14 **Table 2 on page 10. That was a travel for -- to San**  
15 **Antonio, Texas, and if we go to Exhibit 20, three lines**  
16 **down from the top there is some information in there. If**  
17 **you could please explain that to the Committee.**

18 A. Yes. This is some information pertaining to an  
19 event, but it does not coincide with the dates listed in  
20 the Table 2 of the audit report concerning Justice  
21 Loughry's rental car vehicle from January 23rd to 29th of  
22 2015.

23 **Q. And let me ask: Is that -- is that the actual**  
24 **date -- was that a typo? It looks like the -- and I'm**

1 **not meaning to imply that it was, but it looks like the**  
2 **conference actually occurred the year before between Jan**  
3 **-- or January 2014, let's say -- on January 24th and ran**  
4 **through January 28th, which are close in dates to the**  
5 **2015. Were you able to determine if that was a**  
6 **typographical error or if there was no conference in**  
7 **2015?**

8 A. I don't believe it was a typo in our report.  
9 However, I believe the information we gathered concerning  
10 this trip, it may coincide. I'm not sure. Obviously  
11 there could be an error, but the dates do seem closely to  
12 match, but at the same time it could be a different  
13 instance.

14 **Q. Understood. Thank you.**

15 **The next is the Montreal trip. Six lines**  
16 **down from the top on Exhibit 20 indicates, I believe,**  
17 **that the conference occurred -- began on July 11 and**  
18 **ended on July 15; is that correct?**

19 A. That's correct.

20 **Q. And the travel was actually July 10 through 16,**  
21 **so one day before the conference and one day after the**  
22 **conference; is that correct?**

23 A. That's correct.

24 **Q. Okay. We'll move on to the next one, Omaha,**

1 **which is right underneath the Montreal on Exhibit 20.**  
2 **Were you able to determine the dates of that conference?**

3 A. Yes.

4 **Q. And what were those dates?**

5 A. July 25th through July 29th, 2015.

6 **Q. And comparing that to Table 2, it appears that**  
7 **the start date of the -- that Justice Loughry may have**  
8 **arrived one day before the conference and left on the**  
9 **last day of the conference. Would that be accurate?**

10 A. That would be accurate.

11 **Q. We'll move down to Monterey, California, and**  
12 **that is not quite halfway down. It appears to me there**  
13 **is no information on start or end dates in Exhibit 20, so**  
14 **was that one in which you could not find information on**  
15 **the --**

16 A. That would be correct. We could not find that  
17 information.

18 **Q. Okay. The next one is Scottsdale, Arizona.**  
19 **That is a little over halfway down, and I note on Exhibit**  
20 **20 there are no dates for that one. So is that also one**  
21 **in which you were unable to find dates for that**  
22 **conference?**

23 A. That's correct, we were unable to find the  
24 dates for that conference.

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1 **Q. Last, we have Boston, which is about seven up**  
 2 **from the bottom on Exhibit 20, and I do believe there are**  
 3 **dates on that. Could you please tell those to the**  
 4 **Committee?**  
 5 A. Yes, the dates for the conference were July  
 6 22nd, 2017 to July 25th of 2017.  
 7 **Q. Okay. And what were the dates of Justice**  
 8 **Loughry's travel to that event?**  
 9 A. July 21st of 2017, through July 26th of 2017.  
 10 **Q. So would it be fair to say he arrived one day**  
 11 **before the conference and then departed on the day after**  
 12 **the conference?**  
 13 A. That would be accurate.  
 14 MS. KAUFFMAN: Okay. Mr. Robinson,  
 15 that's all I have for you. I just wanted to bring this  
 16 up and provide this documentation in response to a  
 17 question by a Committee member.  
 18 THE WITNESS: Thanks.  
 19 CHAIRMAN SHOTT: Thank you, Counsel.  
 20 Delegate Fast.  
 21 DELEGATE FAST: Thank you again,  
 22 Mr. Chairman.  
 23  
 24 EXAMINATION

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1 BY DELEGATE FAST:  
 2 **Q. Picking up on counsel's recent questions,**  
 3 **Mr. Robinson, were you able to determine, for instance --**  
 4 **what time on the days that Justice Loughry appeared to**  
 5 **have arrived a day early, were you able to determine what**  
 6 **time of day he arrived into the city? For instance, was**  
 7 **it 10:00 at night, 11:00 at night but still would be --**  
 8 A. I don't have that information available. It  
 9 would be available on the flight itinerary.  
 10 **Q. And do you have that?**  
 11 A. I believe we would have that documentation. If  
 12 we wouldn't, the Court would have record of it.  
 13 **Q. Okay. Mr. Chairman, I would certainly like to**  
 14 **see that.**  
 15 **And the same with the departure, for**  
 16 **instance, do we know if the conference ended like in the**  
 17 **evening time or maybe there was a grand finale gathering**  
 18 **of chief justices at a certain location for dinner after**  
 19 **the conference. Perhaps maybe he stayed overnight and**  
 20 **left early in the morning. So you would have that on the**  
 21 **flight itinerary as well?**  
 22 A. Yeah, the flight itinerary would indicate  
 23 exactly when he flew out and flew in.  
 24 **Q. Okay. And do you have -- were you able to**

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1 **gather any itineraries of these events?**  
 2 A. As we stated, the list that we just went over  
 3 as Exhibit 19 and nine -- and 20 were our efforts to try  
 4 to determine specific locations where the events were  
 5 held as well as the dates. Many of the organa --  
 6 organizations we reached out to had some difficulty in  
 7 providing us the actual dates let alone the events that  
 8 occurred during those dates.  
 9 **Q. Have you been able to recover any brochures or**  
 10 **announcements of these events, schedules of these events?**  
 11 A. Not to my knowledge. We -- the information  
 12 that you see in Exhibit 19 and 20 was somewhat our best  
 13 effort in trying to ascertain exactly where the events  
 14 were held and the specific dates.  
 15 **Q. Okay. So we just don't know?**  
 16 A. That's a good, fair statement.  
 17 **Q. Okay. Now, you mentioned when the Chairman was**  
 18 **asking you questions about disparate treatment, that the**  
 19 **regulations and your opinion -- and I don't want to put**  
 20 **words in your mouth, but it appears that you're drawing**  
 21 **the conclusion that the 2016 Supreme Court travel**  
 22 **regulations give preferential treatment to justices over**  
 23 **other Supreme Court employees. Is that a fair**  
 24 **assessment?**

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1 A. It is certainly not my place to determine  
 2 whether or not disparate treatment is occurring. I am  
 3 simply indicating that there is a difference in treatment  
 4 regarding how expense settlements regarding rental car  
 5 vehicles for Supreme Court justices are reimbursed versus  
 6 those reimbursements to typical court employees.  
 7 **Q. Okay. Disparate treatment is often used in**  
 8 **discrimination-type cases. When you use the term**  
 9 **"disparate treatment," are you using that term in the**  
 10 **context of some statute, rule, federal or State, that**  
 11 **would proscribe such policy or such activity?**  
 12 A. No, I'm simply trying to indicate that there is  
 13 a potential for that given that there's a different  
 14 treatment being applied to -- un-uniformly to different  
 15 employees at the Court.  
 16 **Q. Okay. What? Potential violation of what?**  
 17 A. As the policy states except for vehicles rented  
 18 by Supreme Court justices, reimbursements will be allowed  
 19 for rental car only if the administrative director or his  
 20 designee has granted approval in advance. My point is  
 21 simply to make that this policy exempts those Supreme  
 22 Court justices from the same requirements that is  
 23 required for typical court employees.  
 24 **Q. Okay. So my question then, it's the same**

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1 **question. What would that be a violation of?**  
 2 A. I don't understand your question.  
 3 **Q. Well, you're saying that that is possibly**  
 4 **disparate treatment which is a legal buzzword, but what**  
 5 **is that a violation of? Let's assume blatantly that the**  
 6 **Supreme Court justices have preferential use of a vehicle**  
 7 **that other Supreme Court employees do not have. Let's**  
 8 **assume that. My question is -- and I don't mean to be**  
 9 **flippant here, but so what? What is that a violation of?**  
 10 A. That's not my place to answer. That's a legal  
 11 question.  
 12 **Q. Okay. So you're not -- are you aware of any**  
 13 **law or rule or regulation that would be violated by that**  
 14 **pol -- the implementation of that policy?**  
 15 A. Again, that's a legal question.  
 16 **Q. Okay. The trips to -- on Table 2, page 10 of**  
 17 **your first audit report -- first of all, were you able to**  
 18 **determine conclusively that on the face -- on their face**  
 19 **these were, in fact, true, legitimate Supreme Court**  
 20 **trips?**  
 21 A. Yes, for each trip it indicated a conference.  
 22 We confirmed that a conference was held in relation to  
 23 the dates. Again, we had some difficulty confirming the  
 24 actual dates, but not the event listed on the forms for

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1 which Justice Loughry submitted travel expenses.  
 2 **Q. Okay. And you have appeared to have concluded**  
 3 **- and I think it's absolutely stated in your report -**  
 4 **that these -- this extra mileage was for personal use.**  
 5 **Am I correct in that?**  
 6 A. Yes, that's what we're indicating in the  
 7 report.  
 8 **Q. Okay. Now, I want to -- I want to just --**  
 9 **assuming Justice Loughry arrived on July 19 and stayed**  
 10 **and departed on July 25, San Francisco - that's Table 2,**  
 11 **page 10 - that's seven days; and if you take your extra**  
 12 **miles of 445 miles, that's -- that breaks down to 63**  
 13 **miles per day. Now, if Justice Loughry wished to go eat**  
 14 **breakfast somewhere across San Francisco, which is a very**  
 15 **large city, that would break -- and if he decided to eat**  
 16 **three meals a day other than at the hotel, that would be**  
 17 **three trips and that would break down to 21 miles per**  
 18 **meal. So if he drove 14 miles one way and back for**  
 19 **lunch, that would take care of 21 miles. If you did the**  
 20 **same thing for breakfast, same thing for dinner, that**  
 21 **would eat up 63 miles.**  
 22 A. That's possible, but our point in pointing this  
 23 out is that if Justice Loughry chose to do so that would  
 24 be personal in nature yet the cost associated with the

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1 rental car use was paid for by the State.  
 2 **Q. And -- now, nothing prohibited him from leaving**  
 3 **the hotel to walk across the street and have lunch,**  
 4 **correct?**  
 5 A. That's correct.  
 6 **Q. And is it your point that if he wanted to go**  
 7 **somewhere for lunch other than the hotel he was staying**  
 8 **in he should have taken a taxi or something like that?**  
 9 A. If it was something he wanted to do related to  
 10 personal desires and not related to a business purpose.  
 11 **Q. Lunch.**  
 12 A. Well, I mean, if he wanted to go to lunch, I  
 13 think it's our opinion that the cost of the rental cars  
 14 associated with the dates listed, it may have been  
 15 cheaper to take public transportation to do so.  
 16 **Q. Well, you mentioned on page 11 of your report,**  
 17 **in addition to the cost of the rental cars there were**  
 18 **other unnecessary costs related to renting a car such as**  
 19 **hotel parking and fuel that increased the expenses**  
 20 **incurred by Justice Loughry that were paid by the State**  
 21 **as opposed to him taking a taxi, shuttle or public**  
 22 **transportation. Well, first of all, I think you said**  
 23 **earlier the fuel would have been paid by the justice**  
 24 **himself; is that --**

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1 A. But what we're referring to there is that if  
 2 the fuel was paid for by the justice, when he returned  
 3 the rental car he should have fueled up before returning  
 4 the car rather than taking the more expensive fuel option  
 5 which you can get when renting the vehicle that precludes  
 6 you from having to fill it up with a tank of gas or  
 7 whatever level it was at when you rented it when  
 8 returning it.  
 9 **Q. So you're talking there about the fuel option?**  
 10 A. Yes.  
 11 **Q. But as far as just putting fuel in the car,**  
 12 **that would have been paid by him if he needed to fill it**  
 13 **up?**  
 14 A. That's correct.  
 15 **Q. Okay. And so that would not have been an**  
 16 **increase, him putting fuel in the car, if he had to pull**  
 17 **over and put fuel in the car?**  
 18 A. No, if he paid for it personally, no, it would  
 19 not have increased the cost to the State.  
 20 **Q. Okay. And as far as taking a taxi, let's say,**  
 21 **he did drive 14 miles one way to have lunch and then 14**  
 22 **miles back, do you know what a taxi fare would cost in**  
 23 **San Francisco to drive 21 miles?**  
 24 A. I am not sure of that, but typically in our

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1 audits when we see travel expenses being requested to be  
2 reimbursed, had Justice Loughry taken that taxi to attend  
3 lunch and had he worked for another State agency, it's  
4 likely that that agency wouldn't have approved a  
5 reimbursement for that as his choice to go to lunch was  
6 his personal choice.

**7 Q. And that reimbursement, most likely, wouldn't  
8 it have cost a whole lot more than the numbers on these  
9 miles you're putting in this book?**

10 A. Yes, but what my point was, I don't think any  
11 State agency would reimburse an employee for choosing to  
12 take a taxi for a personal reason. If it was related to  
13 business, it would be reimbursed, but attending -- I mean  
14 he also received per diem for meals while he was out  
15 there, so his meals were being paid for by the State but  
16 what you're asking me is if -- is there some benefit to  
17 the State for paying for his taxi to go to lunch. I  
18 can't answer that question.

**19 Q. Okay. Did Justice Davis -- we've talked about  
20 her security and I don't downplay that whatsoever, but I  
21 want to know: Do you know -- did you ask any questions,  
22 did you find any data if Justice Davis required security  
23 while she was, let's say, completely off duty, at the  
24 grocery store, shopping for clothes, things like that?**

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**1 I've heard all the information about the courthouse  
2 security traveling with her in the vehicle. But did she  
3 require security otherwise as well?**

4 A. I think the justices' personal lives are beyond  
5 the scope of our audit.

**6 Q. Okay. So you have no information if she  
7 required security otherwise than in the State vehicle?**

8 A. No, sir.

**9 Q. Okay. The question was raised about 148 CSR 3.  
10 You're familiar with that, are you? Are you not?**

11 A. Could you give me the layman name for that?

**12 Q. Yes, that's the legislative rule State-owned  
13 vehicles.**

14 A. Yes.

**15 Q. One of the delegates previously asked you if  
16 that could be a policy that was violated and I think you  
17 indicated you thought maybe it would -- would -- could  
18 have been.**

19 A. If it's a State policy that is also applicable  
20 to the Supreme Court of Appeals of West Virginia, yes.

**21 Q. Okay. Now, before I get into that, did -- are  
22 there any accusations in your audit report that Justice  
23 Loughry violated or ran afoul of something because of  
24 commuting or is --**

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1 A. As I previously indicated, the instances of use  
2 for Justice Loughry of utilizing a State vehicle did not  
3 appear to be for the purpose of commuting.

**4 Q. Okay. And that is -- I think you probably have  
5 it -- Appendix F to your first report. There's a  
6 memorandum from Steve Canterbury -- I'm sorry. From Kirk  
7 Brandfast -- fass -- to Steve Canterbury and it has -- it  
8 cites that CSR. Do you see that?**

9 A. Yes.

**10 Q. And that rule specifically and exclusively  
11 applies to commuting, does it not?**

12 A. In which portion of this are you indicating  
13 that it specifically applies?

**14 Q. Pages -- pages 41 and 42.**

15 A. I believe on page 41 it begins listing some  
16 definitions. If you could point me to the section you're  
17 referring to that's actually making it explicit, the  
18 commuting.

**19 Q. Well, let's go to the definitions. Second one  
20 from the bottom, 2.3 and it has a definition of  
21 commuting.**

22 A. Uh-huh.

**23 Q. Which is to and from their home and office,  
24 correct?**

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1 A. Yes.

**2 Q. Okay. And then on the next page, State-owned  
3 vehicle, which we're talking about in the context of this  
4 rule, State-owned vehicle means a vehicle owned by the  
5 State of West Virginia. So a rental vehicle would not  
6 even come into play under this rule, correct?**

7 A. I'm not sure we gave any indication that it  
8 did, but, no, you're correct.

**9 Q. Well, it says State-owned vehicle means a  
10 vehicle owned by the State of West Virginia. So a rental  
11 car would not be a vehicle owned by the State of West  
12 Virginia, correct?**

13 A. I'm confused where this question's leading and  
14 how it relates to your previous questions.

**15 Q. Well, I think your testimony earlier was that  
16 you thought in answering another delegate's question that  
17 this CSR 148 Series 3 could have been a vi -- could have  
18 been violated by Justice Loughry's use of the rental  
19 vehicles.**

20 A. I didn't mean to imply rental vehicles. I  
21 think the question was asked more generally in terms of  
22 Justice Loughry's use of State vehicles.

**23 Q. Okay. But this rule would not apply to rental  
24 vehicles, would it not, because --**

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1 A. No, it would not.

2 **Q. I mean, it wouldn't apply at all because rental**

3 **vehicle's not owned by the State of West Virginia?**

4 A. That's correct.

5 **Q. Okay. And we've established that Justice**

6 **Loughry does not have issues with commuting in any of**

7 **your audit's report -- audit reports; is that --**

8 A. No, but it -- he did have issues with

9 unsubstantiated business use of State-owned vehicles.

10 **Q. Okay. Please tell me.**

11 A. As this report indicates in the calendars on

12 page 8, there was --

13 **Q. I'm sorry. What page?**

14 A. On page 8 of our first report, every instance

15 that's highlighted in red or orange is an instance where

16 Justice Loughry reserved and used a State-owned vehicle

17 and did not provide a destination. The ones highlighted

18 in red are instances where he used a State vehicle and

19 did not provide a destination and the Court was in

20 recess.

21 **Q. Okay. And all of -- none of these on Figure**

22 **2 -- that's what you're referring to, correct?**

23 A. Yes, Figure 2 on page 8 of the first report.

24 **Q. None of these involved commuting?**

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1 A. No, but they do involve the use of a

2 State-owned vehicle.

3 **Q. Okay. But 148 dash 3 CSR would not apply**

4 **because that involves commuting.**

5 A. Well, on page 42 it also states 148-3-9.3.2

6 provides that a State owned vehicle "cannot be used for

7 personal purposes except for de minimis personal use as

8 allowed by the Internal Revenue Service" "Publication

9 15-B, Employer's Tax Guide to Fringe Benefits."

10 CHAIRMAN SHOTT: Delegate Fast, do you

11 have many more questions? I may pass and come back to

12 you.

13 DELEGATE FAST: Not now. Thank you,

14 Mr. Chairman. Thank you.

15 CHAIRMAN SHOTT: Delegate Sobonya, do you

16 have questions? All right. Then we'll move over to the

17 front row here. Delegate Pushkin, do you have questions

18 -- follow-up questions? No? Delegate Lane.

19 DELEGATE LANE: Thank -- thank you,

20 Mr. Robinson.

21 EXAMINATION

22 BY DELEGATE LANE:

23 **Q. I think you've answered this, but I'm not quite**

24 **sure. Going to the first audit report on page 10 and**

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1 **talking about the out-of-state use of rental cars, and**

2 **you stated that to the extent that gasoline was used, the**

3 **justice paid for that himself?**

4 A. Yes.

5 **Q. And so -- and how were these cars paid for?**

6 A. In the instances noted in Table 2 on page 10 of

7 the report, the vehicles were paid for -- the rental car

8 vehicles were paid for by the Court.

9 **Q. And how -- how does -- how does that work? If**

10 **you're out in San Francisco renting a car, how does the**

11 **Court pay for that?**

12 A. I'm not exactly certain in these instances. I

13 do know that the Court -- at times it utilizes a travel

14 card that it's allowed to put travel expenditures on.

15 The rental arrangement could have been made prior to the

16 individual taking the trip. The rental car could have

17 been paid for prior to.

18 **Q. And so does the Court have a gasoline purchase**

19 **card?**

20 A. It does, but they're assigned to the

21 Court-owned vehicles. It's not for general use to

22 purchase gasoline.

23 **Q. And so that wasn't used on these particular con**

24 **-- at these particular conferences?**

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1 A. Not to my knowledge.

2 **Q. And is there a rule or a policy either with the**

3 **Court or the State saying that when you're out of town**

4 **and have to travel you need to make a decision as to**

5 **whether it's going to be more cost effective to rent a**

6 **car or take a cab?**

7 A. Yes. And in my personal experience in my own

8 travels on the State's dime, that is the case. We make a

9 determination what's the most efficient and least costly

10 form of transportation to attend the event that we're

11 attending. And I do believe that is the same case across

12 the board for most State agencies.

13 **Q. So there is a policy?**

14 A. I don't -- if you're referring to a blanket

15 policy for the entirety of the State, I'm unaware of

16 that. I do know that specific agencies have internal

17 policies.

18 **Q. So is there a Supreme Court policy, written**

19 **policy?**

20 A. As we noted in the report, there was a Supreme

21 Court travel policy that was established in October of

22 2016. However, that granted the justices, as this notes

23 - and I'll read it once more - "except for vehicles

24 rented by Supreme Court justices, reimbursements will be

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1 allowed for car rental only if the administrative  
 2 director or his designee has granted approval in  
 3 advance."  
 4 **Q. Okay. I'm sorry. Did that apply to the**  
 5 **Supreme Court justices?**  
 6 A. It did not.  
 7 **Q. Okay. So looking at these parking -- or these**  
 8 **car costs for out-of-state conferences, I assume you**  
 9 **looked at the contract and the cars were rented for a**  
 10 **specific period of time?**  
 11 A. Yes, we have rental car receipts that would  
 12 indicate the dates that the car was rented for and when  
 13 it was picked up and when it was returned.  
 14 **Q. And I assume that if the justice had rented the**  
 15 **car on the first day, it would have been a higher cost**  
 16 **per day than if he had rented it for four days at a time?**  
 17 A. I'm confused by that question. Are you  
 18 referring to a daily rate versus a weekly rate?  
 19 **Q. Yes, a daily rate as opposed to an actual**  
 20 **weekly rate.**  
 21 A. I can't speak to that. I'm not familiar with  
 22 rental car policies.  
 23 **Q. Okay. Does Justice Loughry own a car?**  
 24 A. I -- I would assume, yes, but I can't speak to

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1 that definitively.  
 2 DELEGATE LANE: Okay. Thank you.  
 3 CHAIRMAN SHOTT: Starting down the second  
 4 row, justice -- Delegate Overington. Do you -- I have  
 5 already promoted him. Do you have any questions?  
 6 DELEGATE OVERINGTON: It's been a long  
 7 day.  
 8 CHAIRMAN SHOTT: It's not yet, but it  
 9 will be. Go ahead.  
 10 EXAMINATION  
 11 BY DELEGATE OVERINGTON:  
 12 **Q. The -- when looking at the conferences that the**  
 13 **different justices attended, did you notice cases where**  
 14 **there are expenses incurred that were outside of the**  
 15 **region where the conference occurred?**  
 16 A. So you're asking if we noted any expenses that  
 17 occurred in a different city than the location or than  
 18 where the conference was being held?  
 19 **Q. Or outside of the immediate region with the**  
 20 **conference.**  
 21 A. Only if that expense incurred would have  
 22 included a receipt denoting that location. But that  
 23 wasn't something we were specifically looking for, so my  
 24 answer to that was: I can't tell you whether or not

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1 we -- that had happened.  
 2 **Q. I mean, this would be outside of the normal**  
 3 **travel to the conference and back, but while the**  
 4 **conference was occurring, if it was going on for a week,**  
 5 **whether you checked the attendance of the activities or**  
 6 **noted any expenses outside of the region -- the immediate**  
 7 **region of the conference?**  
 8 A. Yeah, we didn't check the attendance of the  
 9 conferences. Oftentimes those organizations either don't  
 10 maintain a list unless there were -- I guess, in the  
 11 terms of the justices it would be CLEs, continuing legal  
 12 education. We didn't confirm whether or not that was  
 13 received in the instance of Justice Loughry to confirm  
 14 whether or not he had actually attended the conferences.  
 15 Nor did we determine whether or not any State  
 16 expenditures had occurred outside of the region where the  
 17 conference is held. It's possible that Justice Loughry  
 18 could have charged expenses that would have been incurred  
 19 outside of the location of where the conference was held  
 20 to his own personal accounts or paid cash that we  
 21 wouldn't be able to see.  
 22 **Q. So they would not have been charged to the**  
 23 **State?**  
 24 A. We have not noted any charges to the State that

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1 would indicate any travel outside of the region where the  
 2 conference was held.  
 3 **Q. And my other question is dealing with the**  
 4 **records that the Supreme Court keeps. Are they readily**  
 5 **available to share among each other or to have access so**  
 6 **that one justice would know what another justice was**  
 7 **spending and possibly using that as an example for**  
 8 **themselves?**  
 9 A. Are you talking about is there any internal  
 10 transparency that notes whether or not the justices are  
 11 made aware of each other's expenses?  
 12 **Q. Yes.**  
 13 A. I'm not aware of any system within the Court,  
 14 but I do believe the justices are free to ask what each  
 15 other justice had attended a conference for and if it  
 16 involves State monies, you could actually ask that  
 17 information from potentially the State Auditor's Office  
 18 if you were so inclined.  
 19 **Q. So when you were compiling this information**  
 20 **yourself you found that it was readily accessible?**  
 21 A. Oh, yes. I mean, if there's an involvement or  
 22 an expenditure involving State funds, finding the  
 23 information concerning that expenditure is readily  
 24 available within the wvOASIS system, the FIM System prior

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1 to.

2 DELEGATE OVERINGTON: Thank you. Thank

3 you, Mr. Chairman.

4 CHAIRMAN SHOTT: Delegate Lovejoy.

5 DELEGATE LOVEJOY: Thank you,

6 Mr. Chairman.

7 I'm not sure if this is perhaps better a

8 note to make, but since the witness is here and has been

9 questioned about it, Exhibit 7 that was provided to us

10 this morning internally references two exhibits, so it

11 would be like Exhibit 7-1 and 7-2 and my materials have

12 7-1 but not a 7-2 so I just wanted to ask at some point

13 if we could be provided 7-2 which would be -- the exhibit

14 references that our West Virginia court security officers

15 maintain security research, explaining the need for

16 security and that exhibit is listed. I don't know that I

17 want to question this witness, but I would just make a

18 note for counsel if we could get that to make the exhibit

19 whole. Thank you.

20 CHAIRMAN SHOTT: Certainly. Third row,

21 Delegate Miller.

22 DELEGATE MILLER: Thank you,

23 Mr. Chairman.

24 EXAMINATION

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1 BY DELEGATE MILLER:

2 **Q. Just briefly.**

3 **Mr. Robinson, if you know, would it be**

4 **proper or would it -- what would be the liability -- the**

5 **extension of the liability of the State of West Virginia**

6 **if a court security officer accompanied a justice in the**

7 **justice's personal vehicle during travel?**

8 A. You mean increased insurance liability to the

9 State? I'm just confused on your question.

10 **Q. -- the State or the justice with their personal**

11 **insurance, with their vehicle, the security officer**

12 **driving the vehicle --**

13 A. That is --

14 **Q. -- that is not licensed to him?**

15 A. That's a unique question I haven't considered

16 and I don't have the answer for that. I'm sorry.

17 **Q. Would it generally be perceived that that --**

18 **that would not be covered under a private individual's**

19 **insurance if someone else operated the vehicle not**

20 **insured by them?**

21 A. That would -- I wouldn't know the details of

22 the person's individual policy.

23 **Q. Okay. In regard to reports number 2 and number**

24 **1, and I don't know if you've made this correlation or if**

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1 **the records that you have explain this or not, but on**

2 **page 11 of audit report 1, in the top paragraph there's**

3 **information about a instance not included in the table**

4 **regarding a reimbursement for the rental car of Justice**

5 **Loughry for a Jackson Hole, Wyoming trip from July 22nd**

6 **through the 28th of 2016, and there were two instances of**

7 **two different submissions for reimbursement, one of 494**

8 **miles and another showing 1,749 miles driven. Was that**

9 **ever clarified?**

10 A. Actually to clarify your question, these

11 weren't two requests for reimbursement. These were two

12 different rental car receipts to which we couldn't really

13 confirm which one was accurate. And also it is our

14 understanding that this rental car cost to the State -- I

15 believe this is this instance -- Justice Loughry was

16 unhappy with the quality of the rental and therefore,

17 complained to the rental car company and the full amount

18 of the cost of the rental car was reimbursed to the

19 State. So there was no cost incurred to the State for

20 this particular instance.

21 What we were having trouble difficulty --

22 or having trouble determining was the amount of miles

23 actually driven in that rental car. One rental car

24 receipt indicated the 494 miles; the other indicated 1749

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1 miles. There's a very large discrepancy there, so given

2 the difficulty in determining the accuracy of which one

3 was correct, we left it out of the table and just noted

4 it and also noted the fact that it didn't incur any costs

5 to the State because the full amount was refunded.

6 **Q. The full amount for both receipts?**

7 A. Well, it's --

8 **Q. -- for both rentals?**

9 A. -- it was the same receipt, the same cost but

10 for some reason one receipt indicated X amount of miles,

11 the 494, and then through the process of them -- because

12 there was some confusion -- I believe his complaint was

13 he had rented a car and whatever car he received the car

14 he had rented someone else had and I think there was

15 confusion over the vehicle when it was returned and

16 associated with the account established through the

17 rental car company under his name. So there was only one

18 receipt, one charge to the State and that charge was

19 reimbursed.

20 **Q. Okay. Thank you. If -- did you find any of**

21 **your research where multiple justices or a justice and**

22 **court staff attended the same conference during the same**

23 **time frame?**

24 A. I'm not sure. It's a possibility. But I will

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1 state this, that of everything we reviewed the only  
2 issues concerning the rental cars paid for by the State  
3 fell on Justice Loughry. We had no issues with rental  
4 car use or State vehicle use from the other remaining  
5 justice aside from that noted by Justice Ketchum.  
6 **Q. Were there any instances where multiple**  
7 **employees including justices traveled to the same**  
8 **location to the same conference and multiple vehicles**  
9 **were rented?**  
10 A. I can speak to the first part of your question.  
11 There were instances of conferences where multiple court  
12 employees would attend the same conference. As to  
13 whether or not multiple vehicles were rented or if  
14 vehicles were rented in particular regard to those  
15 instances, I don't have that information.  
16 **Q. Okay. And I will direct you to page 5 of**  
17 **report number 2. The graph, which is Table 2 shown on**  
18 **that page, second from the bottom, July 20th through the**  
19 **26th of 2016, Jackson Hole, Wyoming. If we refer back to**  
20 **audit report 1 referenced on page 11, that appears to be**  
21 **Justice Loughry as well as Mr. Canterbury attending the**  
22 **same location on the same general dates, but they have to**  
23 **have separate vehicles.**  
24 A. Let me confirm this. I do not have the same

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1 matching dates. I have the years are different. I have  
2 in Table 2 of report one concerning Justice Loughry's use  
3 July 21st to 26th of 2017 -- oh, pardon me. Let me  
4 correct myself. We are talking in the body of that text  
5 on page 11 of the first report, correct?  
6 **Q. Yes. It gives the appearance --**  
7 A. No -- yes.  
8 **Q. -- that they're within a day or so of each**  
9 **other.**  
10 A. You -- you are correct. That instance is  
11 accurate. Your recollection is accurate. It does appear  
12 that both attended likely the same conference at the same  
13 time. Whether or not -- and it will also indicate that  
14 it appears Justice Loughry rented a vehicle that was  
15 unrelated to the rental made by jus -- or former  
16 Administrative Director Canterbury.  
17 **Q. Even though they would have been at the same**  
18 **location?**  
19 A. That's correct.  
20 **Q. I'm sure that we don't have any information as**  
21 **of why that would have happened?**  
22 A. No. And I will have to give you credit because  
23 we did not make that correlation that you did, but you  
24 are correct in pointing out the fact that it appears two

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1 separate rental car vehicles were rented by two separate  
2 employees of the Court for the same conference during the  
3 same dates.  
4 DELEGATE MILLER: Thank you. Thank you,  
5 Mr. Chairman.  
6 CHAIRMAN SHOTT: It appears the back row  
7 has no further questions. Vice-chairman Hanshaw, no  
8 questions? I'll pass to minority counsel -- or Minority  
9 Chair Fleischauer. I have a couple follow-ups.  
10 EXAMINATION  
11 BY CHAIRMAN SHOTT:  
12 **Q. Primarily dealing with the effect of the filing**  
13 **of the travel policy which is ex -- Appendix E, did you**  
14 **happen to review the minutes of the justices' meeting in**  
15 **which that policy was approved?**  
16 A. We have reviewed several minutes when the  
17 policy was discussed prior to its approval and when it  
18 was approved, yes.  
19 **Q. And do we have -- do you know if we've -- in**  
20 **our materials we have those minutes for that**  
21 **particular instance?**  
22 A. You would. We have provided counsel the  
23 administrative conference minutes from, I believe, 2008  
24 moving to the current year -- most current administrative

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1 conference.  
2 **Q. Was there anything in your recollection that**  
3 **anybody -- any member of the Court objected to this**  
4 **policy?**  
5 A. As noted in the first report, there was an  
6 objection made by jus -- Chief Justice Workman, then  
7 Justice Workman, concerning the language of - and pardon  
8 me, let me get to it - Section 10.4 of the travel  
9 policies for justices' travel. The original language  
10 read, "An expense account submitted by a justice of the  
11 West Virginia Supreme Court of Appeals shall be honored  
12 irrespective of any" language -- "of any of the language  
13 in these travel regulations." She opted to amend that to  
14 include "pursuant to judicial branch policies, it shall  
15 be honored irrespective of any language contained in  
16 these travel regulations."  
17 So there was some discussion over the  
18 specific language to be included in these travel  
19 regulations. I also think there was con -- confusion  
20 expressed in those minutes as to whether or not in the  
21 proceeding month of when the policy was discussed whether  
22 or not it had actually been adopted and made effective  
23 and submitted, which eventually resulted in -- then this  
24 revision and its submission to the State Auditor's Office

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1 in October of 2016.

**2 Q. When I look at in your first report, Figure 2**  
**3 on page 8 regarding Justice Loughry's reservations of**  
**4 State vehicles, is -- am I -- am I correct in that his**  
**5 reservation of State vehicles ceased before this policy**  
**6 was adopted?**

7 A. We had noted one vehicle reservation of  
8 September of 2016, but beyond that there was - and I  
9 don't have the records in front of me - little to maybe  
10 no indication of vehicle use through the reservation  
11 system by Justice Loughry subsequent to the submission of  
12 this travel policy.

**13 Q. So if this became effective October 3rd, then**  
**14 he -- there was no usage after that date?**

15 A. It's my understanding that on or about  
16 September of 2016, his name did not appear in the vehicle  
17 reservation log, or if it did, it was very infrequent.

**18 Q. Well, let me follow up on that. When you say**  
**19 "if it did it was very infrequent" --**

20 A. I may need to qualify my answer in the terms  
21 that I don't have the information available to speak to  
22 whether or not the number of times exceeds the one that I  
23 mentioned in September of 2016, but the frequency as  
24 noted in the prior years was not repeated after October

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1 of 2016.

**2 Q. But you can't say one way or the other whether**  
**3 there was no use after October of 2016?**

4 A. Again, no. And ultimately that's one of the  
5 hindrances of the information we had available. The only  
6 indication we had initially to determine whether or not a  
7 justice of the court actually utilized a Court vehicle  
8 was the reservation log. Outside of that, looking at the  
9 fuel cards, those were assigned to the vehicles and it's  
10 impossible for us to determine exactly who used a vehicle  
11 simply based on the fuel card records. So this was our  
12 primary source of information to determine if someone --  
13 a justice of the Court actually did utilize one of those  
14 vehicles. So without any indication in the reservation  
15 log, if someone were using the vehicle, we wouldn't know.

**16 Q. So any of the justices after that date,**  
**17 September of 2016, could have been using these vehicles**  
**18 and there's no record at all of it?**

19 A. Based on the Court's recordkeeping policies  
20 regarding how these vehicle uses were documented and  
21 recorded, and it basically being limited to this  
22 reservation log itself, it's possible that at any point  
23 in time a justice of the Court could have used a Court  
24 vehicle and not noted it in the reservation log and we

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1 would have not been aware of it.

**2 Q. So what you've noted then are situations where**  
**3 they've made the reservation but not given a business**  
**4 purpose basically, but if they've not even made a**  
**5 reservation, you haven't been -- you have no way of**  
**6 knowing whether they used the vehicle or not?**

7 A. That's correct.

**8 Q. Okay. Now, looking at the regulations, it**  
**9 appears to me -- well, let me back up. With regard to**  
**10 the use of rental cars, there was two instances after the**  
**11 adoption of these regulations that you've noted for**  
**12 Justice Loughry. Is that fair to say?**

13 A. Yes.

**14 Q. I'm on page 10.**

15 A. Yes.

**16 Q. The Scottsdale, Arizona; Boston, Massachusetts;**  
**17 they were two -- two after the regulations. Let me call**  
**18 your attention to the regulations themselves on page**  
**19 35 --**

20 A. Okay.

**21 Q. -- with regard to the rental vehicle and it**  
**22 says, "Except for vehicles rented by Supreme Court**  
**23 justices reimbursement will be allowed for Court car**  
**24 rental only if the administrative director or his**

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**1 designee has granted approval in advance and rental cars**  
**2 must be driven within the travel requirements for**  
**3 personal vehicles."**

**4 Did I read that correctly?**

5 A. You did.

**6 Q. Okay. Great. I mean, that basically says to**  
**7 me that even after these regulations went into effect**  
**8 there was no internal control over the usage of a rental**  
**9 vehicle mileage-wise or otherwise. Is that fair to say?**

10 A. Yes, and that's where I think we took a little  
11 bit of issue with this policy as it wasn't equitably  
12 applied across all members of the court. It seemed to  
13 grant special circumstances for the justices to be  
14 reimbursed for vehicle rentals whereas a typical court  
15 employee had to have it pre-approved and even still it  
16 must be driven within the travel requirements of their  
17 personal vehicles, but ultimately it seemed that this  
18 policy exempted the Supreme Court justices specifically  
19 from those requirements.

**20 Q. And isn't the same true for 10.3, out-of-state**  
**21 travel? Basically everybody else except a Supreme Court**  
**22 justice had to get approval from the administrative**  
**23 director or director of judicial education?**

24 A. Yes, that's true. I believe -- let me find

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1 that section. Out-of-state travel in terms of renting  
2 cars and travel, most of these regulations fall in line  
3 with the same for in-state travel so, yes.

**4 Q. So regardless of how those of us on the outside  
5 looking in would feel about this policy, isn't it fair to  
6 say that the Court as a group basically invited its own  
7 members to do whatever they wanted with regard to rental  
8 cars and out-of-state travel?**

9 A. I would be careful in my answer in stating how  
10 broad of authority they had in determining what they  
11 could do with a rental car, but I will say at a  
12 minimum --

**13 Q. Independent of IRS regulations and so forth, as  
14 far as the Court itself goes, they put no controls at all  
15 on their own members, have they?**

16 A. The specific policies we've just discussed do  
17 seem to indicate that the Court had made a decision to  
18 allow the justices more latitude in being reimbursed for  
19 expenses related to rental cars.

**20 Q. Are there any controls at all within those two  
21 provisions on the justices' use of rental cars or out-of-  
22 state travel?**

23 A. At first read it is my opinion that, no, the  
24 policies essentially exempt them from the rental car

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1 requirements that are applicable to the court employees.

**2 Q. So regardless of whether we talk about before  
3 these policies are adopted or after, in terms of a  
4 violation of their own policies, none of these -- none of  
5 these rental car issues would be a violation of the  
6 Court's own policy. Isn't that fair to say?**

7 A. That's fair to say and it might also be fair to  
8 say that in light of not having policies, it's difficult  
9 to violate such policy when it doesn't exist. And  
10 ultimately until these regulations were filed many of the  
11 Court's operations weren't governed by former policies  
12 and procedures.

**13 Q. Okay.**

14 CHAIRMAN SHOTT: Delegate Fleischauer, I  
15 passed over you. Do you have any follow-up questions?

16 MINORITY CHAIR FLEISCHAUER: Yes.

17 EXAMINATION

18 BY MINORITY CHAIR FLEISCHAUER:

**19 Q. To -- to yours actually. On page 38 of the  
20 audit report, it says, "All out-of-state travel except  
21 that made by a Supreme Court justice must be approved in  
22 advance." The way I read that rule is there are --  
23 that's -- the only thing that -- that is -- that this  
24 applies to is advance approval.**

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1 A. Well, that particular section of the travel  
2 policy is under the approval section, so I would assume  
3 that for that specific instance, yes.

**4 Q. Well, that's the exception right there, is  
5 that --**

6 A. Yes.

**7 Q. -- the Supreme Court justices don't have to  
8 have advanced approval. And when I look at -- on page  
9 35, that's also about advanced approval primarily.**

10 A. Excuse me. Which section were you looking at.  
11 10 point --

**12 Q. The transportation with a rental vehicle  
13 that the --**

14 A. 10.2?

**15 Q. 10.2B.**

16 A. 10.2B.

**17 Q. That's where that exception is that you were  
18 mentioning.**

19 A. Yes. Yes, but in 10.3 section C,  
20 transportation, "Allowances for transportation will be  
21 the same as previously described for in-state travel  
22 except for when out-of-state travel is by personal auto",  
23 on page 38.

**24 Q. Uh-huh.**

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1 A. The approval exemption that you're noting in  
2 10.3A does seem explicit to the requirement that it be  
3 pre-approved. However, for the transportation portion of  
4 out-of-state travel, it falls in line with the same  
5 guidelines proscribed in 10.2B, which when reading 10.2B  
6 subsection 1, "Except for vehicles rented by the Supreme  
7 Court justices", I believe that line makes it indicate  
8 that that is specific to vehicles and not the approval.

**9 Q. And not what?**

10 A. Not the approval.

**11 Q. You think where it says reimbursement will be  
12 allowed -- "except for vehicles rented by Supreme Court  
13 justices, reimbursement will be allowed for" rental --  
14 "car rental only if the administrative director or his  
15 designee has granted approval in advance." The way I  
16 read that is that -- that justices don't have to get  
17 advanced approval from the administrative director for  
18 vehicle rental.**

19 A. Yes, but in your section 10.3 out-of-state  
20 travel, A, approval, that is referring in general to all  
21 out-of-state travel. The section we're reading in 10.2  
22 is specific to the vehicles. Our interpretation of that  
23 is except for vehicles rented by the Supreme Court  
24 justices, reimbursements will be allowed for car rental

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1 only if the administrative director has granted approval  
 2 in advance. We don't -- I do not interpret that, our  
 3 office does not interpret that section on page 35,  
 4 subsection B.1 to mean that "except for vehicles rented  
 5 by the Supreme Court" is indicative of only the approval.  
 6 We believe it to encompass the actual vehicle rented by  
 7 the Supreme Court justice and those related expenses to  
 8 be reimbursed.  
 9 **Q. So I'm not sure I really understand. To me**  
 10 **when I read that sentence is they don't have to ask**  
 11 **permission from the administrative director in order to**  
 12 **rent a car, and you interpret that to mean that they also**  
 13 **are automatically going to get reimbursement?**  
 14 A. Well, I take it to mean that if they don't need  
 15 to seek prior approval to rent the car, that the  
 16 reimbursement would be allowed.  
 17 **Q. Okay. And who dec -- who makes -- so would the**  
 18 **administrative director make the decision about the --**  
 19 **the reimbursement, normally. About the amount?**  
 20 A. According to these policies, yes.  
 21 **Q. I mean --**  
 22 A. In policy, yes. In practice, I can't speak to  
 23 that.  
 24 **Q. But there -- there is -- I mean, there's**

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1 **nothing -- this isn't to say that there's no policy.**  
 2 **It's just that they don't have to ask permission in**  
 3 **advance.**  
 4 A. That's -- that's your interpretation of it  
 5 and I don't want to --  
 6 **Q. Okay.**  
 7 A. -- argue against your interpretation. However,  
 8 our interpretation is that 10.2 of their in-state travel  
 9 policy in terms of the rental car vehicle -- the rental  
 10 vehicle section seems to indicate that except for the  
 11 vehicles rented by the Supreme Court justices -- and I do  
 12 not interpret that to mean except for Supreme Court  
 13 justices, all of their employees need prior approval. I  
 14 take it to mean that except for vehicles rented by the  
 15 Supreme Court justices that reimbursements will  
 16 be grounded -- it also says in the section 2, allow --  
 17 allowable reimbursements will be for rental charges and  
 18 gasoline, both of which must be documented by original  
 19 receipts, toll charges and parking. It gives no  
 20 indication that the approval is the trigger point to  
 21 which a reimbursement can be made.  
 22 **Q. Do you think section 2 applies to Supreme Court**  
 23 **justices?**  
 24 A. I think section 2 applies to transportation and

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1 rental vehicles.  
 2 **Q. It does?**  
 3 A. Yes.  
 4 **Q. Okay. So that exception in 1 doesn't go any**  
 5 **farther than 1?**  
 6 A. Well, I just take it to mean that to some  
 7 degree the exception in 1 exempts the Supreme Court  
 8 justices from the remaining requirements listed in the  
 9 remainder of those travel policies.  
 10 **Q. Okay. Thank you.**  
 11 CHAIRMAN SHOTT: Let me just follow up on  
 12 that.  
 13 EXAMINATION  
 14 BY CHAIRMAN SHOTT:  
 15 **Q. I want to refer to 10.4. And it talks about --**  
 16 **sort of gives the justice the freedom to turn in a policy**  
 17 **that is -- or an expense account that's not consistent**  
 18 **with the travel regulations, but it refers to judicial**  
 19 **branch policies. Do you know what that is?**  
 20 A. No, sir, I do not.  
 21 **Q. Did you find any kind of document that dealt --**  
 22 **that was referred to as judicial branch policies?**  
 23 A. No, and I'm not exactly sure what the referral  
 24 to the judicial branch policies is. Obviously, I'd

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1 mentioned previously that there was some debate about the  
 2 initial language of this section that had excluded those  
 3 -- that specific phrase "judicial branch policies" or  
 4 "pursuant to judicial branch policies". The original  
 5 language was going to read, "An expense account submitted  
 6 by a justice of the West Virginia Supreme Court of  
 7 Appeals shall be honored irrespective of any of the  
 8 language in these travel regulations." The only addition  
 9 was, "pursuant to judicial branch policies", but I'm  
 10 unfamiliar with exactly what those policies are referring  
 11 to or the specifics of how they would be applied in this  
 12 instance. But it does appear to give the Supreme Court  
 13 justices the right to have their expense accounts honored  
 14 irrespective of the remaining language within their own  
 15 travel policy.  
 16 CHAIRMAN SHOTT: Thank you.  
 17 All right. Moving to our counsel that  
 18 are representing individuals that are involved in this.  
 19 Mr. Allen, any questions?  
 20 MR. ALLEN: No, your Honor.  
 21 CHAIRMAN SHOTT: Mr. Carr?  
 22 MR. CARR: No, sir.  
 23 CHAIRMAN SHOTT: Counsel, I assume  
 24 there's no follow-up, so may this witness be excused? Is

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1 there any objection to us excusing this witness? Apparently  
 2 not. Mr. Robinson, thanks again for your appearance and your  
 3 endurance.  
 4 THE WITNESS: Thank you, Mr. Chairman.  
 5 CHAIRMAN SHOTT: You're excused.  
 6 Counsel, will you call your next witness.  
 7 MR. CASTO: Thank you, Mr. Chairman. The  
 8 House Committee on the Judiciary now calls Aaron Allred to the  
 9 stand.  
 10 Well, we'll get there.  
 11 A A R O N A L L R E D  
 12 was called as a witness by the Committee of the Judiciary,  
 13 pursuant to notice, and having been first duly sworn,  
 14 testified as follows:  
 15 CHAIRMAN SHOTT: Good afternoon, Mr. Allred.  
 16 Thank you for your appearance.  
 17 EXAMINATION  
 18 BY MR. CASTO:  
 19 **Q. Mr. Allred, for the benefit of the Committee, I**  
 20 **think you're well-known to us, but for the benefit of the**  
 21 **Committee's record, could you state your name and your**  
 22 **position with the legislature for the record?**  
 23 A. My name is Aaron Allred. I'm the Legislative  
 24 manager for the West Virginia legislature. In addition, I'm

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1 also the Legislative Auditor for the West Virginia  
 2 legislature.  
 3 **Q. How long have you served in each of those**  
 4 **capacities?**  
 5 A. Approximately 25 years.  
 6 **Q. And could you tell us a little bit about your**  
 7 **work experience generally?**  
 8 A. After college I started out with the South  
 9 Carolina Legislative Audit Council for approximately  
 10 three years. I worked for a little while for the US  
 11 Department of Education, and then spent approximately two  
 12 years working for the Executive Office of the President  
 13 of the United States. I went back to the South Carolina  
 14 General Assembly and worked for approximately four years  
 15 for the General Assembly's Reorganization Commission, and  
 16 since October of 1993 I've been the Legislative manager  
 17 in the Legislative Auditor for West Virginia.  
 18 **Q. Can you tell us a little bit about your**  
 19 **educational experience before you embarked upon that**  
 20 **career?**  
 21 A. I graduated from Purdue with a degree in  
 22 economics and a master's degree in political science with  
 23 minors in economics and methodology.  
 24 **Q. Thank you, sir. What are your current**

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**1 responsibilities as Legislative manager and Legislative**  
**2 Auditor?**  
 3 A. The simplest way to describe it is if you work  
 4 for both the House and the Senate, the Joint Committee,  
 5 you're under my purview with the exception of the  
 6 investigative endeavors of the Commission on Special  
 7 Investigations. We do handle their budget though.  
 8 **Q. How did you become involved in this**  
**9 investigation?**  
 10 A. Through multiple media reports, through  
 11 concerns expressed by members of the legislature, I made  
 12 a decision that we needed to more specifically audit the  
 13 Supreme Court with regards to their vehicles. I informed  
 14 the president and speaker. They agreed with that  
 15 decision. We had previously looked at fleet management  
 16 from a statewide perspective and had, in fact, received  
 17 some information back from the Supreme Court with regards  
 18 to those inquiries and went to more than just the Supreme  
 19 Court.  
 20 **Q. I'm going to ask you an unusual question, but**  
 21 **this -- in light of the context that we've just had, but**  
 22 **this, I think, will set the stage for where we're about**  
 23 **to proceed. What to your understanding is a Cass Gilbert**  
 24 **desk?**

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1 A. It's my understanding that when it came to  
 2 buildings designed by Cass Gilbert, oftentimes the  
 3 furniture that was installed in those buildings were  
 4 furniture that was recommended by Cass Gilbert or the  
 5 Cass Gilbert architectural firm. Those pieces of  
 6 furniture are referred to as Cass Gilbert desk, a Cass  
 7 Gilbert chair, a Cass Gilbert mirror. It doesn't mean  
 8 that Cass Gilbert had any part of the design. It simply  
 9 means that this was a choice by the architect to have  
 10 bought by the occupant of the building that he designed.  
 11 **Q. And at some point, I assume based upon the**  
 12 **report -- in report 1 on page 22 of that report, that you**  
 13 **became aware that a desk was somehow involved as a**  
 14 **portion of this investigation.**  
 15 A. Obviously there were multiple media reports.  
 16 We had also discussed issues with Steve Canterbury, so we  
 17 obviously knew that there were accusations that one of  
 18 the five original Cass Gilbert desks had been moved to  
 19 Justice Loughry's house.  
 20 **Q. And when you say one of the five, I assume that**  
 21 **there were five original desks assigned to each justice**  
 22 **of the court then?**  
 23 A. That is my understanding with one having been  
 24 missing for about 35 to 40 years.

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1 **Q. So currently to the best of your knowledge the**  
 2 **Court has in its possession and knowledge four desks of**  
 3 **the original five?**  
 4 A. That is my understanding.  
 5 **Q. And the desk that was mentioned in the report**  
 6 **number 1, as we've termed it here today, was one of those**  
 7 **four that have been in the Court's possession.**  
 8 A. That is my understanding.  
 9 **Q. So do you know how this particular desk came to**  
 10 **be in Justice Loughry's possession?**  
 11 A. It is my understanding that Justice Loughry had  
 12 this desk when he was a law clerk, prior to being elected  
 13 to the Supreme Court of Appeals, and that at some point  
 14 in time he requested, I think the man's name is Fletcher  
 15 Adkins, who was the director of facilities for the Court,  
 16 to have the desk moved to his house.  
 17 **Q. Do you know based upon the data that you have**  
 18 **uncovered in this investigation when that desk was moved**  
 19 **to Justice Loughry's residence?**  
 20 A. With permission of the Committee if I can pull  
 21 up the documentation.  
 22 **Q. Yes, sir.**  
 23 A. What we were provided is a payment by the State  
 24 of West Virginia to Young's Moving Company which showed

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1 on Thursday, June 20th, "We moved furniture from the  
 2 capitol to the Venable warehouse" -- no, that's the wrong  
 3 one. Here we go. Then on Thursday, June 20th, 2013,  
 4 "The furniture in Justice Loughry's office will be moved  
 5 to make way for office renovations." Furthermore,  
 6 there's a bill from Young's Moving Service on that day.  
 7 However, this is merely the documentation we have. It  
 8 does not refer to the Cass Gilbert desk, so I could not  
 9 swear that this bill for moving furniture to Justice  
 10 Loughry's house included the desk.  
 11 **Q. Now, I have not seen that information that you**  
 12 **have in front of you nor to my knowledge has that been**  
 13 **made available to the Committee previously. Could you**  
 14 **tell us, is there a breakdown on the number or kind of**  
 15 **items that are transported to Justice Loughry's house as**  
 16 **opposed to any other location on that date contained**  
 17 **within that bill?**  
 18 A. No, sir. What it shows is that there was a  
 19 charge for that day of 9 hours of labor at \$85 per hour  
 20 and 84 miles at 85 cents per mile by Young's Moving  
 21 Service.  
 22 **Q. So that would imply, I think, with 84 miles --**  
 23 **I believe Young's is located in Dunbar if I'm correct?**  
 24 A. I'm uncertain.

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1 **Q. But if -- is it safe that they -- where they**  
 2 **took the items to -- I believe you mentioned that it --**  
 3 **there was a mention -- you just mentioned the Venable**  
 4 **Avenue warehouse in Kanawha City as well as Justice**  
 5 **Loughry's home.**  
 6 A. All we have is the receipt. It says moving  
 7 services performed on Thursday, to wit, loaded items from  
 8 state capitol, delivered an item to Dudley Drive - which  
 9 it's my understanding is the address of Justice Loughry -  
 10 returned to state capitol, finished loading and delivered  
 11 remaining items to Venable Drive warehouse in Kanawha  
 12 City. As to Young's Moving Service being in Dunbar,  
 13 their statement shows that they are at 5311 Keith Drive,  
 14 Cross Lanes.  
 15 **Q. Cross Lanes. So there was at least one trip**  
 16 **made to Justice Loughry's home and one trip made to the**  
 17 **Venable Avenue warehouse, based upon the bill.**  
 18 A. According to -- according to the bill the State  
 19 of West Virginia paid, yes.  
 20 **Q. And it is assumed based upon that information**  
 21 **that the desk was on that day transported to Justice**  
 22 **Loughry's home?**  
 23 A. I cannot speak with that with any certainty  
 24 because it doesn't say what was moved.

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1 **Q. Yes, sir. Was the desk's absence noted at the**  
 2 **Court subsequent to that date?**  
 3 A. I'm not sure I quite understand what you mean  
 4 by was it noted.  
 5 **Q. Well, was someone aware that the desk was**  
 6 **missing at any time?**  
 7 A. I would assume, but it's an assumption since it  
 8 says Fletcher Adkins approved this, that Mr. Adkins  
 9 would. My understanding from discussions with  
 10 Mr. Canterbury was Mr. Canterbury had no knowledge that  
 11 this desk had been moved to Mr. Loughry's home.  
 12 **Q. But apparently someone was aware that the desk**  
 13 **had been moved to Justice Loughry's home because you were**  
 14 **at some point made aware that there was the potential**  
 15 **that a desk was at Justice Loughry's home?**  
 16 A. We obviously saw the media reports of people  
 17 hauling things away. We also then went over to the  
 18 warehouse and when we requested and took pictures of the  
 19 desk and we had no disagreements from the Court that, in  
 20 fact, the desk was previously at Justice Loughry's house  
 21 and had been moved by Court employees to the Court  
 22 warehouse.  
 23 **Q. Do you have a date for when that desk was moved**  
 24 **from Justice Loughry's residence to the Venable Avenue**

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1 **warehouse?**

2 A. Yes, we do, but I do not have it readily

3 available.

4 **Q. Okay. Have you interviewed anyone who**

5 **participated in the removal of the desk from Justice**

6 **Loughry's house?**

7 A. We talked to Officer Gundy. I was not involved

8 with that interview. I can't swear to you whether they

9 talked to Officer Gundy about the removal of the desk.

10 **Q. On your information and belief, you believe**

11 **that he may have been present at the time the desk was**

12 **removed from Justice Loughry's home?**

13 A. I believe both Mr. Gundy and Mr. Mendez were

14 two of the people that were there that moved the desk to

15 the Court's warehouse.

16 **Q. By Mendez, you mean Paul Mendez?**

17 A. That is my understanding, sir.

18 **Q. Did you or any of your employees visit the**

19 **Venable Avenue warehouse subsequent to the discovery that**

20 **the desk was at that location?**

21 A. Yes, sir, you'll find that on page 22 and page

22 23 of the first report.

23 **Q. And you have a picture of the desk that is**

24 **illustrated there for the Committee's inspection?**

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1 A. Yes, sir.

2 **Q. Did you personally see the desk in the**

3 **warehouse or did you --**

4 A. My staff did, sir, and brought back pictures.

5 **Q. Okay. And, again, you did confirm subsequent**

6 **to that with the Court that this was, indeed, apparently**

7 **a Cass Gilbert desk which was in the possession of the**

8 **Court prior?**

9 A. Yes sir.

10 **Q. Did you subsequent to the desk being deposited**

11 **back at the Venable Avenue warehouse commission an**

12 **appraisal of the value of that desk?**

13 A. Yes, sir, the Joint Committee on Government and

14 Finance hired the Purple Moon to make an appraisal of

15 that desk. They appraised the value of the desk at

16 \$42,500.

17 **Q. How was the value of the desk determined by**

18 **them in their report?**

19 A. I'm uncertain if the members have a copy of the

20 appraisal or not.

21 **Q. We do not, sir.**

22 A. I can read from the report. "Considering the

23 current market demand for fine furnishings such as this,

24 quote, Cass Gilbert desk, its historical significance,

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1 and impeccable provenance, the desk would have a fair

2 market value of \$42,500 in current condition. Full

3 restoration could increase this value.

4 The definition of fair market value is set

5 forth in treasury regulation 1.170A-1C2 which states, The

6 fair market value is, quote, the price at which the

7 property would change hands between a willing buyer and a

8 willing seller neither being under any compulsion to buy

9 or to sell and both having reasonable knowledge of the

10 relevant facts. The State tax regulations 20.2031-1B

11 expands the definition by stating, quote, Nor is the fair

12 market value of an item of property to be determined by

13 the sales price of the item and a market other than that

14 in which such item is most commonly sold to the public

15 taking into account the location of the item whenever

16 appropriate, end quote.

17 The sales comparison approach to value was

18 employed to determine the fair market value. In the

19 sales comparison approach the most appropriate market is

20 researched to locate comparable items which have sold in

21 the past on which an opinion of value can be based.

22 Adjustments in values are made to reflect differences, if

23 any, in value relevant to characteristics between the

24 comparable property and the subject properties.

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1 This appraisal is based only on the

2 readily apparent identity of the items appraised. In my

3 opinion, no further opinion or guarantee of authenticity,

4 genuineness, attribution of authorship is necessary."

5 **Q. That seems pretty conclusive and pretty**

6 **authoritative in terms of the expertise of the gentleman**

7 **who prepared it. We know generally his reputation --**

8 A. Yes.

9 **Q. -- in the community. He is an expert, he's a**

10 **dealer, I understand, in mid-century American furniture?**

11 A. Yes, sir. It's signed by Charles T. Hamsher,

12 president of Purple Moon Incorporated.

13 **Q. And as a consequence of his evaluation of the**

14 **valuation of the desk, I hesitate to say that you made a**

15 **determination in your report, but you certainly made an**

16 **evaluation based upon opinions issued by the ethics**

17 **commission that this may constitute, in your words, a**

18 **violation of the ethics act?**

19 A. That is correct.

20 **Q. And you quoted from an advisory opinion number**

21 **2012-52. Are you familiar generally with the findings of**

22 **that opinion?**

23 A. Yes, sir.

24 **Q. And what does that opinion state?**

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1 A. The relevant portion states, "If an individual  
2 derives a benefit from the use of public equipment. That  
3 constitutes a private gain. Even if an individual's use  
4 does not result in a cost to the government; still the  
5 individual benefited from the use of the public  
6 equipment. Absent access to the use of public equipment,  
7 the individual would have incurred the expense of renting  
8 or purchasing the equipment."  
9 **Q. And to the best of your knowledge, based upon**  
10 **the information that you have concerning the removal of**  
11 **the desk from Justice Loughry's home, it was for some**  
12 **period present in his home?**  
13 A. It is our understanding it was there for -- for  
14 multiple years.  
15 **Q. And was not in public use while it was in his**  
16 **home?**  
17 A. That would be correct.  
18 **Q. Because it was in a private residence and not**  
19 **within the confines of this building?**  
20 A. Yes, sir.  
21 **Q. Which is his assigned duty station as an**  
22 **officer of the Court?**  
23 A. Yes, sir.  
24 **Q. Are you familiar with West Virginia Code**

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1 **29-1-7-B relating to the powers and duties of the**  
2 **commissioner of -- and you'll forgive me. His title has**  
3 **changed so many times here in the past year and a half.**  
4 **With regard to the commissioner of archives and history**  
5 **generally?**  
6 A. Not that specific Code, I mean, but in -- the  
7 general rules of the statute with regards to the  
8 authority of the chairman of culture and history --  
9 archives and history, excuse me.  
10 **Q. Does that statute to the best of your knowledge**  
11 **contain a stricture concerning the removal of original**  
12 **furnishings from the Capitol building?**  
13 A. Yes, sir, that I am familiar with.  
14 **Q. And if I represented to you that it stated that**  
15 **no furnishings from the capitol may be sold or disposed**  
16 **of except pursuant to the provisions of Article 3 Chapter**  
17 **5A of this Code, that would seem to be true and correct**  
18 **to you?**  
19 A. Yes, I've read that statute before and that is  
20 my recollection of how it reads.  
21 **Q. And that statute in that section goes on to**  
22 **reference West Virginia Code Section 5A-3 generally. And**  
23 **I believe you're familiar in your capacity as Legislative**  
24 **Auditor that that article of the Code generally deals**

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1 **with the disposition of surplus property?**  
2 A. Yes, sir. We've audited surplus property way  
3 too many times.  
4 **Q. And the disposition of surplus property as**  
5 **provided for in that relevant article requires either**  
6 **warehousing of surplus property or a subsequent sale of**  
7 **surplus property as the only accepted mechanisms for**  
8 **State property to be disposed of.**  
9 A. That is my understanding, but I also believe  
10 the legislature is except from that statute.  
11 **Q. But the Supreme Court is not exempt from that**  
12 **statute to the best of your knowledge?**  
13 A. Not to my knowledge.  
14 **Q. And there is also, I believe, a penalty for**  
15 **violation of the provisions of that article if one**  
16 **disposes of a piece of property not in accordance with**  
17 **the provisions of that article of Code?**  
18 A. To the best of my knowledge that is correct.  
19 **Q. And I believe that's in Section 5A-3-29**  
20 **entitled, rather shockingly, Penalty for violation of**  
21 **article, and it states that a person who violates that**  
22 **article is if -- upon conviction, guilty of a**  
23 **misdemeanor.**  
24 A. That sounds correct.

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1 **Q. And you noted as well that the same provisions**  
2 **of the Ethics Act in that section that were discussed**  
3 **there on page 22, based upon that advisory opinion that**  
4 **we've previously discussed, essentially would perhaps**  
5 **touch upon the use of automobiles as well as the use of**  
6 **the desk.**  
7 A. That is correct.  
8 **Q. And so it is, again, I hesitate to say your**  
9 **conclusion because in the report itself it's more or less**  
10 **in a statement of probability rather than certainty, you**  
11 **note that because of the strictures of the act being**  
12 **construed by the Ethics Commission in the manner in which**  
13 **they have set forth in that opinion, that you believe**  
14 **that these instances could -- could constitute ethical**  
15 **violations in that they were uses of private -- or of**  
16 **public property for private gain.**  
17 A. That is correct.  
18 MR. CASTO: I have no further questions  
19 of the witness at this time, Mr. Chairman.  
20 CHAIRMAN SHOTT: Thank you, Counsel. I'm  
21 going to begin -- begin on this side of the room first  
22 and I'll start with Delegate Hollen, if you have  
23 questions.  
24 DELEGATE HOLLEN: Pass at this time.

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1 CHAIRMAN SHOTT: Delegate Zatezalo.  
 2 EXAMINATION  
 3 BY DELEGATE ZATEZALO:  
 4 **Q. Quick question is: Were you able to discern**  
 5 **any past precedent for any furniture ever being taken**  
 6 **from a warehouse for use like this?**  
 7 A. From the documentation we saw from the Court,  
 8 which was in response to a media FOIA request, it is our  
 9 understanding that the Court stated in writing that where  
 10 they had previously allowed justices to have quote, an  
 11 office at home, that they had merely provided computers  
 12 and fax machines only.  
 13 **Q. But there was something --**  
 14 A. Yes, sir.  
 15 **Q. Okay. The second thing is: Cass Gilbert desk,**  
 16 **does it have a plate or markings or anything that**  
 17 **identifies it as a Cass Gilbert desk?**  
 18 A. No, sir.  
 19 **Q. Okay. Just curious. Thank you.**  
 20 CHAIRMAN SHOTT: Delegate Pushkin.  
 21 DELEGATE PUSHKIN: Thank you,  
 22 Mr. Chairman.  
 23  
 24 EXAMINATION

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1 BY DELEGATE PUSHKIN:  
 2 **Q. Thank you, Mr. Allred, for being here.**  
 3 **Were you present in the warehouse when**  
 4 **they went -- they went to look at the desk, take this**  
 5 **picture, go for the appraisal? Were you there?**  
 6 A. No, sir. I sent my staff.  
 7 **Q. Well, I'm looking the picture here and you**  
 8 **can't really see the entire -- the entire desk. Do you**  
 9 **know if there were any alterations made to the desk?**  
 10 A. It is my understanding that there was some  
 11 scratches, et cetera, on the desk. I'm not sure if there  
 12 was anything more than that. I'm uncertain.  
 13 **Q. So no holes made for computer wires or anything**  
 14 **like that?**  
 15 A. I am uncertain.  
 16 **Q. Okay. And the desk was -- I imagine it was in**  
 17 **this building -- it was in the east wing of the building**  
 18 **before it was taken to the home of Justice Loughry?**  
 19 A. It is our understanding from discussions that  
 20 the desk was in Clerk Loughry's office prior to him being  
 21 elected a justice of the Supreme Court of Appeals.  
 22 **Q. Okay. So when he was clerking at the Supreme**  
 23 **Court prior to that he had the desk in his office and**  
 24 **that's when it -- and then -- and when was it -- when was**

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1 **it taken from this building into his house?**  
 2 A. I can't tell you with certainty. I can only  
 3 tell you what bills we found.  
 4 **Q. Okay. Well, I couldn't hear very well when you**  
 5 **were going over that part. So what -- what were the --**  
 6 **the bills you found, was it, first, a moving company and**  
 7 **then it was court employees that moved it the second**  
 8 **time?**  
 9 A. That is my understanding, yes.  
 10 **Q. What's that?**  
 11 A. That is my understanding what you just  
 12 described, yes.  
 13 **Q. So the moving company you said was located in**  
 14 **Cross Lanes or Dunbar -- I couldn't hear very well. They**  
 15 **moved it the first time. I'm not going to get into**  
 16 **mileage again. We spoke enough about mileage earlier in**  
 17 **the day. But the second time you said that was court**  
 18 **employees were -- were -- was it, like, during the**  
 19 **working hours were moving the -- this desk out of the --**  
 20 **Justice Loughry's house into a warehouse in Kanawha City?**  
 21 A. It is our understanding, yes, that they were on  
 22 the clock.  
 23 **Q. Okay. Well, are you familiar at all with Rule**  
 24 **212 subsection C of the Code of judicial conduct that**

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1 **states - I'll go ahead and read for you - "A judge shall**  
 2 **not direct any Court personnel to engage in any activity**  
 3 **or perform any work not reasonably related to the**  
 4 **official position or functions of the personnel."?**  
 5 A. Yes, sir.  
 6 **Q. You're familiar with that?**  
 7 A. Yes, sir.  
 8 **Q. Would you say that this could be seen as a**  
 9 **violation of that Code in the Code of Judicial Conduct?**  
 10 A. I would certainly say that's an argument you  
 11 could make. That would be up to the JIC to make that  
 12 decision.  
 13 **Q. Yeah. Okay. Well, this is more of, I guess a**  
 14 **legal question, I suppose, and let's see who could answer**  
 15 **it, but if someone takes something of a great value that**  
 16 **does not belong to them and then give it back once it's**  
 17 **known, does -- is that still considered grand larceny?**  
 18 A. That's a question, sir, I do not feel  
 19 comfortable asking -- or answering. I'm sorry.  
 20 DELEGATE PUSHKIN: Can I ask a question  
 21 of counsel and it'll be my last question? Is that all  
 22 right, Mr. Chairman?  
 23 CHAIRMAN SHOTT: Yeah, go ahead.  
 24 MR. CASTO: Yeah, I'm aware that the desk

1 was given back after -- and, thank you, I'm done with  
 2 questions for you, Aaron. Thank you very much.  
 3 I guess I'm looking at the definition of  
 4 a grand larceny and I can tell you from law school days  
 5 with Roger Griffith, larceny is the taking and carrying  
 6 away of the personal property of other with permanent  
 7 intent to deprive the prior possessor thereof. Now, the  
 8 question there we're talking about common law larceny as  
 9 opposed to statutory larceny which we have in our Code.  
 10 I don't believe -- and there's certainly people here  
 11 better able to speak to this than I. I don't believe  
 12 that our Code speaks to the permanent intent argument  
 13 that was at common law. I think that it merely states  
 14 that the taking and carrying away with some intent to  
 15 deprive the possessor. I don't think it represents an  
 16 intent to permanently deprive.  
 17 So, theoretically, you know, borrowing or  
 18 taking somebody's property for some period of time even  
 19 if you intend to return it in a later date would indeed  
 20 still constitute larceny, I believe, based upon our  
 21 statutory definition.  
 22 DELEGATE PUSHKIN: Thank you very much.  
 23 Thanks.  
 24 CHAIRMAN SHOTT: Delegate Lane.

1 DELEGATE LANE: Thank you, Mr. Chairman.  
 2 EXAMINATION  
 3 BY DELEGATE LANE:  
 4 **Q. Mr. Allred, I am sort of confused. So do you**  
 5 **have in your report anybody that actually knows that the**  
 6 **Cass -- the so-called Cass Gilbert desk was taken from**  
 7 **this Capitol to Justice Loughry's house?**  
 8 A. Are you -- are you saying in the report?  
 9 **Q. Or documentation.**  
 10 A. We do not have anything of documentation that  
 11 shows specifically a Cass Gilbert desk was taken on  
 12 such-and-such a date to Justice Loughry's house. The  
 13 records we found do not say what was moved. Now, are --  
 14 we do know from interviews that court employees did go to  
 15 the house, did retrieve the desk, and take the desk to  
 16 the Supreme Court warehouse, which I believe is on  
 17 Venable Avenue.  
 18 **Q. Okay. So court employees, and that is in the**  
 19 **report, removed it from his house and took it to the**  
 20 **warehouse?**  
 21 A. I believe that's not in the report, but, yes,  
 22 we do know that.  
 23 **Q. Okay. Now, tell me, under what authority the**  
 24 **Supreme Court is renting warehouses other than what the**

1 **State does for surplus property?**  
 2 A. There are multiple State agencies that have  
 3 warehouses for different reasons. For example, the  
 4 Supreme Court is in charge of all 55 county courts, so  
 5 you have computers, you've got things circuit judges  
 6 would have to have, family court judges would have to  
 7 have, magistrates. I do not find it unusual that the  
 8 Supreme Court would have warehouse facility. Now, the  
 9 size might surprise me, but it is not abnormal for an  
 10 agency to rent ware -- warehouse space.  
 11 **Q. Okay. Now, at some point you said that the**  
 12 **desk, and I'm not sure whether it was from the appraisal**  
 13 **report or this is what you said -- that the desk was of**  
 14 **impeccable provenance, so that means to me that it is**  
 15 **absolutely proven that it is a Cass Gilbert desk. Do we**  
 16 **know -- is that an accurate statement?**  
 17 A. I think it is an accurate statement to state  
 18 that the appraisal refers to it as an Cass Gilbert desk  
 19 by Mr. Hamsher, yes.  
 20 **Q. And he was certain that it is actually a Cass**  
 21 **Gilbert desk?**  
 22 A. My under -- my understanding is yes, but that  
 23 may be a question more appropriately addressed to him.  
 24 We paid for the appraisal. It's his opinion.

1 DELEGATE LANE: Okay. Thank you.  
 2 CHAIRMAN SHOTT: Second row, Delegate  
 3 Overington.  
 4 DELEGATE OVERINGTON: Thank you,  
 5 Mr. Chairman.  
 6 EXAMINATION  
 7 BY DELEGATE OVERINGTON:  
 8 **Q. The -- I know in the house of delegates when we**  
 9 **change offices we sort of take the chair we don't like,**  
 10 **we put it out in the hall, we go up again, we find some**  
 11 **other chair that we like better that we replace ours with**  
 12 **or the same thing applies to sofas and desks. What is**  
 13 **the policy for the Supreme Court when a new justice is**  
 14 **elected in terms of them taking over an office and**  
 15 **being -- the existing furniture in that office?**  
 16 A. I'm uncertain if there is a specific policy.  
 17 **Q. Do you know if it's -- if a justice wants to**  
 18 **make a change whether it's -- the furniture is moved to a**  
 19 **storage area or is there any policy you're aware of?**  
 20 A. I'm un -- I know of no policy of the Court that  
 21 specifies what a new justice can do with the furniture  
 22 that's in the office or with the office itself.  
 23 DELEGATE OVERINGTON: I see. Thank you,  
 24 Mr. Chairman.

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1 CHAIRMAN SHOTT: Delegate Fluharty.  
 2 DELEGATE FLUHARTY: Thank you,  
 3 Mr. Chairman. My first question is probably more  
 4 appropriate for counsel if he's available.  
 5 CHAIRMAN SHOTT: Counsel.  
 6 MR. CASTO: I'm sorry. I didn't hear  
 7 you.  
 8 DELEGATE FLUHARTY: My first questions  
 9 probably pertains to you more so than the witness. Sorry  
 10 about that. I'll be brief. Is public equipment defined?  
 11 MR. CASTO: I believe that public  
 12 equipment -- are you looking for a particular definition?  
 13 I mean, are you pulling -- are you -- is there a term of  
 14 art that you see in front of you that I don't?  
 15 DELEGATE FLUHARTY: Well, I was reading  
 16 the Auditor's report here and it refers to the desk as  
 17 public equipment, and I wondered if there was a  
 18 definition of what constitutes public equipment.  
 19 MR. CASTO: I don't believe that there's  
 20 a definition of public equipment as a term of art in the  
 21 manner in which it is used in the report. I think that  
 22 the Ethics Commission and the opinion that they have may  
 23 have a more defined use of it, but I'm not certain on  
 24 that point.

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1 DELEGATE FLUHARTY: So my -- can a  
 2 further inquiry be in defining public equipment, is it an  
 3 access issue or an ownership issue?  
 4 MR. CASTO: I believe that in the context  
 5 of the opinion as it was issued by the Ethics Commission  
 6 that it is an ownership issue, that it is not  
 7 equipment -- for example, like a playground where there's  
 8 public access and it's owned by the public, but merely  
 9 the public ownership of the property or equipment is  
 10 sufficient to render it public equipment. Certainly the  
 11 general public doesn't have access to a grader used by  
 12 the State road, but it would nevertheless I think under  
 13 the terms of the ethics commission's opinion be public  
 14 equipment.  
 15 DELEGATE FLUHARTY: Okay. That's all I  
 16 have. Thanks.  
 17 CHAIRMAN SHOTT: Delegate Byrd.  
 18 DELEGATE BYRD: Thank you, Mr. Chairman.  
 19 EXAMINATION  
 20 BY DELEGATE BYRD:  
 21 **Q. Thank you for being here. It was a little hard**  
 22 **to hear, but did you say that -- the day that the desk**  
 23 **was moved? What was the date?**  
 24 A. The record --

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1 **Q. By Young's, I guess you said?**  
 2 A. Yeah. The records we found referred to  
 3 Thursday, June 20th, 2013, but the records do not show  
 4 what was moved, so I cannot say with any certainty that  
 5 is the date it was moved. Merely that they moved  
 6 something to Dudley Avenue.  
 7 **Q. And that's a State holiday when no one was --**  
 8 **would have been around?**  
 9 A. That would be correct.  
 10 **Q. And on -- do we have any confirmation or**  
 11 **evidence that shows who contacted Young's initially?**  
 12 A. From the documentation it would appear that it  
 13 was Fletcher Adkins of this -- the Court -- his title --  
 14 let me see if I can find his title. He was director of  
 15 court facilities if I remember correctly.  
 16 **Q. Okay. And then for the removal of the desk**  
 17 **from Justice Loughry's house, who contacted who to get**  
 18 **that in action? Do you have any proof or documentation**  
 19 **of that?**  
 20 A. We do not have any documentation of that.  
 21 **Q. Was there any indication of who made the**  
 22 **initial contact to get that ball rolling in any**  
 23 **interviews?**  
 24 A. It is our understanding that Justice Loughry

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1 contacted Director Johnson, who took over from Steve  
 2 Canterbury as the administrative director, and worked  
 3 through Director Johnson to have court employees come to  
 4 his house.  
 5 DELEGATE BYRD: All right. Thank you.  
 6 That's all I have.  
 7 CHAIRMAN SHOTT: Third row, Delegate  
 8 Miller.  
 9 DELEGATE MILLER: Thank you,  
 10 Mr. Chairman.  
 11 EXAMINATION  
 12 BY DELEGATE MILLER:  
 13 **Q. Thank you, Mr. Allred, for being here.**  
 14 **Does the Supreme Court have any type of**  
 15 **inventory control system where they can track their**  
 16 **property, whether it's computers, furniture, anything**  
 17 **else?**  
 18 A. To our understanding, statements by the present  
 19 chief justice and the former administrative director --  
 20 Director Johnson, the only inventory the Supreme Court  
 21 had at all was of computer equipment. We had started  
 22 auditing the Supreme Court's lack of inventory, because  
 23 it bothers us when you've got court facilities in all 55  
 24 counties, you've got -- I believe the Court's budget is

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1 well over \$100 million a year, that you would have a  
 2 business of over \$100 million a year without an  
 3 inventory. According to the Court and according to the  
 4 records we saw, they have a partial inventory for  
 5 computer equipment and that's it.

**6 Q. On your search for records - and I'm not sure  
 7 how in-depth you got with the moving company in making  
 8 your inquiries - but are you aware of any other records  
 9 by the moving company where they had made any other trips  
 10 that they were contracted between the Capitol and the  
 11 Loughry home between Jan -- or June 20th of 2013 until  
 12 present?**

13 A. Not to my knowledge.

**14 Q. Thank you.**

15 DELEGATE MILLER: Thank you Mr. Chairman.  
 16 CHAIRMAN SHOTT: Delegate Robinson.  
 17 DELEGATE ROBINSON: Thank you,  
 18 Mr. Chairman. I think I have one for counsel to start  
 19 out if that's okay.

20 Counsel, I just want to follow the -- if  
 21 we can stick in the 21st century, I'd appreciate it, but  
 22 I want to request follow-up on Delegate Pushkin's  
 23 question there. You said something about larceny and  
 24 intent. Can you explain that to me again?

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1 MR. CASTO: Yes, sir. Larceny has  
 2 historically been an intent crime. I'm not sure -- and  
 3 as I said, there are gentlemen here in -- on this  
 4 Committee who work daily in prosecuting criminals and  
 5 some of them defending criminals, who know the larceny  
 6 statute far better than I do. One of them is seated to  
 7 your immediate right. But I will tell you that larceny  
 8 has historically involved some intent to remove the  
 9 personal property or the -- or in this case public  
 10 property and it's always a property crime. It's removing  
 11 property from its accustomed place and intended use or  
 12 possession of --

13 DELEGATE ROBINSON: Do you have some  
 14 understanding of Justice Loughry's intent that I don't  
 15 have? Because I don't believe it was returned until it  
 16 was public.

17 MR. CASTO: And intent in the case of  
 18 larceny is usually inferred from the behavior of the  
 19 individual taking it. And --

20 DELEGATE ROBINSON: So, say - I am trying  
 21 to go down the line and figure this out in my head, so if  
 22 you'll play along - if a person took something when no  
 23 one was around, took it to his home and did not return  
 24 it, what would -- what would your -- I mean, how would

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1 you follow intent there? I mean --

2 MR. CASTO: Again, a reasonable person  
 3 could -- could infer intent from that pattern of  
 4 behavior. You know, as we are not the trier of fact and  
 5 ultimate disposition in this body, I am trying my best  
 6 not to state what my opinion might be as to that  
 7 behavior.

8 DELEGATE ROBINSON: So we -- so we aren't  
 9 aware of any intent except for that the property was not  
 10 returned until it was made public?

11 MR. CASTO: That would be one method by  
 12 which you could infer intent, sir. Yes, sir.

13 DELEGATE ROBINSON: Thank you, Mr. Casto.  
 14 I'll go to Mr. Allred for a second, if I may.

15 EXAMINATION

16 BY DELEGATE ROBINSON:

**17 Q. Mr. Allred, were you able to interview  
 18 Mr. Adkins who was in the home and actually picked up a  
 19 desk and couch and removed it?**

20 A. Mr. Adkins no longer works with the Supreme  
 21 Court. He retired a couple years ago. My recollection  
 22 is my staff reached out to him. I cannot tell you off  
 23 the top of my head whether he actually provided us with  
 24 any information. I know he did not provide us with any

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1 detailed information.

**2 Q. Were you able to interview whoever -- I was  
 3 under the impression Mr. Adkins removed it most recently.  
 4 Were you able to interview whoever moved the couch most  
 5 re -- or the couch and desk most recently?**

6 A. The audit staff did not.

**7 Q. They did not interview them?**

8 A. Not to my recollection.

**9 Q. Okay. Are you aware of any other property that  
 10 might have been or has -- that was at Justice Loughry's  
 11 home?**

12 A. I'm aware -- I am aware of what is in the JIC  
 13 report and also what is in the federal indictment, yes,  
 14 sir.

**15 Q. Okay. Did -- have you been able to review any  
 16 of the expenditures made by Justice Loughry on his  
 17 offices and any property that may have been not  
 18 considered real property or attached to the improvements?  
 19 Such as --**

20 A. If you're referring to the computers that are  
 21 referenced in the JIC report, no, sir.

**22 Q. What about picture frames or personally --  
 23 personal material that may have been framed and removed  
 24 from his office?**

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1 A. Yes, sir, we have looked at some invoices and  
2 payments to framing companies here in town. At this  
3 point in time I know what I've been told about pictures,  
4 but that's not the same thing as having documented  
5 evidence to show which pictures were framed and whether  
6 those pictures that were framed were then taken by  
7 Mr. Loughry back to his residence.

8 **Q. Do you recall what the total of the invoices of  
9 the framing for Justice Loughry's office might have been  
10 in those invoices, if that's information you have or --**

11 A. First off, all we have are invoices and we  
12 could total them for you and would be happy to provide  
13 the Committee with the total of those invoices. I am not  
14 sure that those invoices necessarily separate out by  
15 justice.

16 **Q. Okay.**

17 A. It may not say that this was for Justice  
18 Loughry.

19 **Q. Are we talking in the hundreds of dollars, in  
20 the thousands, of the tens of thousands? Do you recall?**

21 A. My recollection is when it comes to framing for  
22 the Supreme Court you're talking thousands.

23 **Q. Thousands of dollars?**

24 A. Yes, sir.

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1 **Q. And they may or may not remain in the justices'  
2 office here at the Capitol?**

3 A. I've heard accusations, but I do not know.

4 **Q. Do you know -- do you have any information as  
5 to what was framed? I think you answered that, but --**

6 A. Mr. Canterbury informed us of his recollection  
7 of some things that the Court paid for framing, yes, but  
8 that is merely what Mr. Canterbury told me.

9 **Q. So you don't want to pass that on? That is not  
10 documented yet?**

11 A. I believe that would be more appropriate to ask  
12 Mr. Canterbury as opposed to me.

13 **Q. Okay. I think Delegate Miller was going down  
14 this line and I believe it's either in your report or the  
15 JIC report of if there's a policy of a home office  
16 ability for the justices. Is that a policy that you're  
17 aware of that they have to allow that?**

18 A. To my recollection according to first, Justice  
19 Davis, who issued her own FOIA response, and then fil --  
20 then the Court, there was nothing in writing that said  
21 you could take a desk home, and that all they'd ever  
22 furnished justices was computers and faxes.

23 **Q. Do any of the current justices or recently  
24 resigned justices -- did they -- they have any furniture**

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1 **or any items other than a computer at their home?**

2 A. To our knowledge only computers and fax  
3 machines.

4 **Q. Okay. So Justice Loughry would be the only  
5 person that had furniture or anything of value other than  
6 a computer that belonged to the State at his home?**

7 A. To my knowledge, yes.

8 DELEGATE ROBINSON: Okay. That's all I  
9 have. Thank you.

10 CHAIRMAN SHOTT: Delegate Fast.

11 DELEGATE FAST: Thank you again,  
12 Mr. Chairman.

13 EXAMINATION

14 BY DELEGATE FAST:

15 **Q. Thank you, Mr. Allred.  
16 Is there a policy that describes what a  
17 justice may have in their home as related to Supreme  
18 Court business?**

19 A. Not to my knowledge.

20 **Q. Okay. So there wouldn't be any violation if he  
21 had a couch and a computer or just a computer?**

22 A. A violation of what specifically, sir?

23 **Q. Anything.**

24 A. Our position as reported in the audit is we

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1 were concerned that the use of the desk was a possible  
2 violation of the Ethics Act and, therefore, we stated in  
3 the audit that we were referring the matter to the Ethics  
4 Commission.

5 **Q. Okay. So a justice is allowed to have a  
6 computer?**

7 A. Yes, sir.

8 **Q. And what authorizes that use or what authorizes  
9 that act, to have a computer?**

10 A. To my knowledge that was just the decision of  
11 the five justices.

12 **Q. Okay. And that -- wouldn't that also violate  
13 the Ethics Act then?**

14 A. It would depend on how the computer was used.  
15 The Judicial Investigative Commission charges included  
16 the fact that Justice Loughry had multiple computers at  
17 his house and that extra computers were used by his child  
18 and by his wife and that Supreme Court IT techs took care  
19 of those computers. If the charges by the Judicial  
20 Investigative Commission about the extra computers are  
21 true and those computers were not used for work but were  
22 used merely for personal endeavors, I would state that it  
23 would be my opinion that those computers that were not  
24 used for work but supplied by the Supreme Court would be

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1 a violation of the Ethics Act.

2 **Q. I understand that. Just having a computer,**

3 **though, a Supreme Court computer, at your house, that**

4 **would be Supreme Court, i.e., government property at**

5 **one's house.**

6 A. That would be correct.

7 **Q. Okay. Wouldn't that in and of itself be a**

8 **violation of the Ethics Act the same as a couch?**

9 A. I do not believe so, sir.

10 **Q. How can you differentiate between a**

11 **government-owned computer and a government-owned couch?**

12 A. I believe if you look at advisory opinion

13 number 2012-52, the key distinction the Ethics Commission

14 makes is whether the individual divi -- derives a benefit

15 from the use of the public equipment that constitutes a

16 private gain. If a justice had a Supreme Court owned

17 computer at their house and they used that Supreme

18 Court-owned computer for Supreme Court business, there

19 would not be a private gain from the use of that

20 computer. It would be a State-owned computer used for

21 State-owned business.

22 **Q. Okay. I think I see where you're saying there.**

23 **So if you had a State-owned computer -- I'm just trying**

24 **to draw the -- clear out the gray lines. If you have a**

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1 **State-owned computer at a justice's house and they send**

2 **and receive some personal e-mails, is that -- that a**

3 **violation?**

4 A. The Ethics Act from my understanding has been

5 consistent that the de minimis use is allowed.

6 **Q. Okay. So if they generate some additional**

7 **letters, personal letters, things like that, then we're**

8 **getting into this no man's land or gray area?**

9 A. I think the Ethics Commission's been consistent

10 it's the amount of use, if it's more than de minimis for

11 private use then it's not allowed.

12 **Q. Okay. All right. Thank you.**

13 **I wanted to ask you about the desk and I**

14 **just wanted to clarify, when you first started**

15 **testifying, did you say that when the desk was moved that**

16 **Loughry, Justice Loughry asked someone about moving the**

17 **desk, that there was some discussion or request or**

18 **permission given or anything?**

19 A. I don't remember testifying to that.

20 **Q. Okay.**

21 A. To my knowledge that -- the only person to my

22 knowledge he would have asked was simply Fletcher Adkins

23 to schedule the movement of whatever stuff was moved to

24 his house on Dudley Avenue.

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1 **Q. Okay, and who is Fletcher Adkins?**

2 A. He is the retired director of the Supreme Court

3 facilities.

4 **Q. Okay. Does he have any authority to grant**

5 **someone permission to take anything out of the Supreme**

6 **Court premises?**

7 A. We saw no documentation that he did.

8 **Q. Who would have the authority to allow that to**

9 **happen --**

10 A. That would be --

11 **Q. -- lawfully?**

12 A. -- the five justices and the director of

13 administration if they have provided him with authority

14 to do that. However, as counsel pointed out, there is an

15 issue with regards to something of historical

16 significance to the Capitol, whether you could even move

17 it out of the Capitol.

18 **Q. Okay. And you say you have a -- an invoice or**

19 **a bill from the moving company that something was moved,**

20 **I think -- was it November 20 of that year?**

21 A. June 20th.

22 **Q. June 20. But you have no way -- you have no**

23 **idea what was moved that day, correct?**

24 A. What the statement reads from Young's Moving

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1 Service is for, quote, moving services performed on

2 Thursday, June 20, 2013, to wit, load items from the

3 State Capitol, delivered an item to Dudley Drive,

4 returned to the State Capitol, finished loading and

5 delivering items to Venable Drive warehouse in Kanawha

6 City. That is all the receipt says -- or the bill says.

7 **Q. Okay. So we don't know what that is?**

8 A. I cannot tell you with specificity what item

9 was delivered to Dudley Drive.

10 **Q. Okay. In the statement of charges -- formal**

11 **statement of charges, it's the end of your second audit**

12 **report, page 13, it -- it states -- it seems to state**

13 **conclusively that this happened. Is that verifiable?**

14 A. You said the second report. You mean the first

15 report, sir?

16 **Q. Well, this -- the end of the second report it**

17 **has the formal statement or charges, with a file date of**

18 **June 6th, 2018.**

19 A. We don't issue charges, sir, so I'm not sure

20 what you're referring to.

21 **Q. Okay. Well, I know you didn't write it, but it**

22 **says, "In December 2012, respondent without the**

23 **permission of the Court and without the knowledge of the**

24 **justices had the Cass Gilbert desk -- executive desk**

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**1 moved from him law clerk office at the Capitol to his**  
**2 home in Charleston." Is that -- is there any way to**  
**3 verify that?**  
 4 A. I don't have the information that the JIC has.  
 5 I can't tell you the item that was moved on June 20th  
 6 could have been the couch. All I know is that there is  
 7 bill to the State for moving something to Dudley Avenue,  
 8 which the assumption would be since that is where Justice  
 9 Loughry lives that the item was delivered to Justice  
 10 Loughry's house.  
**11 Q. Okay. And then it says that the Cass Gilbert**  
**12 desk remained in Respondent's home office from December**  
**13 2012 until November 30, 2017. During normal work hours**  
**14 on November 30, 2017, Respondent had three court**  
**15 employees surreptitiously move the desk from the house to**  
**16 the Court warehouse.**  
**17 Do you know who these three employees are?**  
 18 A. My recollection is Mr. Mendez.  
**19 Q. Mendez?**  
 20 A. Mendez, Mr. Gundy, who was one of the security  
 21 officers; and I've heard the name of the third but I'm  
 22 not sure who he is. And that's my recollection. I am  
 23 certain that one of them was Mr. Gundy, but I wouldn't  
 24 swear to the names with certainty, because there's no

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1 documented evidence that we have.  
**2 Q. So you didn't talk to these three individuals**  
**3 or did you or someone in your office?**  
 4 A. Someone did. We talked to Mr. Gundy on a  
 5 couple of occasions with regards to this, and with  
 6 regards to the transportation of justices. He's the  
 7 assistant director of security for the court to my  
 8 recollection.  
**9 Q. And did he state specifically that this Cass**  
**10 Gilbert desk was moved by himself on November 30, 2017?**  
 11 A. I'm not sure. Be happy to pull whatever notes  
 12 we have for meeting with Mr. Gundy and supply them to the  
 13 Committee.  
**14 Q. Do you have any knowledge right here today that**  
**15 any of these three gentlemen specifically stated that**  
**16 they moved this Cass Gilbert desk from Justice Loughry's**  
**17 home to a warehouse on November 30, 2017, specifically**  
**18 that desk?**  
 19 A. For those three individuals, no. Do I know the  
 20 desk was moved on that date? Yes, I do.  
**21 Q. And how do you know that?**  
 22 A. From both media reports and from our discussion  
 23 with Supreme Court staff. We actually -- once it was  
 24 moved over to the warehouse, Arthur Angus, the director

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1 of security, we contacted, and it took a little bit of  
 2 effort, but he agreed to let us go over to the warehouse  
 3 and to take pictures of the desk that had been moved to  
 4 the Supreme Court warehouse.  
**5 Q. Did he tell you how long the desk had been**  
**6 there?**  
 7 A. I was not there, so I can't tell you with  
 8 certainty.  
**9 Q. Okay. So you don't have any particular**  
**10 information from these three gentlemen that they moved**  
**11 that desk on that day from Justice Loughry's home to the**  
**12 warehouse?**  
 13 A. I would be happy to have my staff go back and  
 14 pull the notes from the meetings we had with any of these  
 15 individuals that we talked to with regards to moving the  
 16 desk.  
**17 Q. Okay. Mendez, Gundy and who was the third?**  
 18 A. I'm not sure -- I don't remember the name of  
 19 the third one, sir.  
**20 Q. Okay. How long would it take to get that**  
**21 information regarding these three individuals?**  
 22 A. For us to review our notes and get back to you,  
 23 certainly by the morning.  
**24 Q. Okay. And the person that you say authorized**

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**1 you to go to the warehouse and take photographs, who was**  
**2 that?**  
 3 A. Arthur Angus, the Supreme Court director of  
 4 security.  
**5 Q. And when -- when did this take place?**  
 6 A. Shortly thereafter. I'm not certain of the  
 7 date off the top of my head.  
**8 Q. Was it still within the year of 2017?**  
 9 A. I can get you that date easily, but I'm not  
 10 sure of the date off the top of my head, but it was  
 11 shortly after the desk was moved over there.  
**12 Q. And what triggered this trip to the warehouse**  
**13 to take photographs?**  
 14 A. The media reports, including the accusation by  
 15 the media that items had been removed from Justice  
 16 Loughry's house by court employees and taken over to the  
 17 warehouse, which we were able to confirm.  
**18 Q. Okay. Now, these statements of charges, which**  
**19 I understand you didn't write, also says, "The plan**  
**20 called for respondent's wife to call him at work after**  
**21 neighbors across the street left their houses and no one**  
**22 would see the desk moved out of his house."**  
**23 Do you know anything about that?**  
 24 A. That's not part of our audit, sir.

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**1 Q. Did you come across any such information during**  
**2 your audit?**

3 A. Kenny Bass called me and told me that they were  
 4 trying to take pictures of him moving the desk that day  
 5 and that -- something to the indication of that it  
 6 appears that people were on the lockout.

**7 Q. Kenny who?**

8 A. Kenny Bass of WCHS.  
 9 DELEGATE FAST: Okay. Thank you,  
 10 Mr. Chairman.

11 EXAMINATION  
 12 BY DELEGATE FLUHARTY:

**13 Q. Yes, my question was first on the delivery --**  
**14 the original delivery of the desk to the house. It was**  
**15 by Young's Moving Service?**

16 A. We have a receipt that shows on June 20th  
 17 something was moved to Justice Loughry's house.

**18 Q. Or something was moved, and --**

19 A. It says "an item."

**20 Q. And with looking that something being moved to**  
**21 the house, I believe there would have been, according to**  
**22 DOT regulations, a delivery ticket or shipping**  
**23 information that would be -- go along with that vehicle**  
**24 to deliver it to the location. It wouldn't list the**

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**1 items or what was on it, but I was wondering if they --**  
**2 you reached out to try to acquire -- inquire who had**  
**3 signed that delivery ticket or get a copy of it?**

4 A. Post Audit Division did not.

**5 Q. They did not. Okay.**

6 DELEGATE FLUHARTY: And then also I had a  
 7 question for counsel if available.

8 CHAIRMAN SHOTT: Counsel.

9 MR. CASTO: Yes, sir.

10 MR. FLUHARTY: Earlier in your discussion  
 11 explaining the removal of original furniture or something  
 12 from the -- it's not allowed to be removed, but did you  
 13 say that the legislature is exempt?

14 MR. CASTO: No, that we were talking  
 15 about that with regard to the surplus property  
 16 provisions. No one to my understanding is exempt from  
 17 the general application of that provision in 29.1.7 paren  
 18 b.

**19 Q. Okay. So that is just surplus property?**

20 A. Right. That would be the general provisions of  
 21 53 that that falls under, but the general provisions of  
 22 29.1.7(b) relating to the requirement that original  
 23 property of the building stay in the building, no one is  
 24 exempt from that to my knowledge.

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1 DELEGATE FLUHARTY: All right. Thank  
 2 you.

3 CHAIRMAN SHOTT: Delegate Sobonya.

4 DELEGATE SOBONYA: Thank you,  
 5 Mr. Chairman.

6 EXAMINATION  
 7 BY DELEGATE SOBONYA:

**8 Q. On the -- I guess there was a cover sheet. It**  
**9 was -- it's a faxed cover sheet from the Supreme Court of**  
**10 Appeals and it's from Fletcher Adkins. It's on -- it's**  
**11 in front of the page where you have the invoice from**  
**12 Young's Moving Service for Thursday, June 21st -- or June**  
**13 20th, and it says that the furniture in Justice Loughry's**  
**14 office will be moved to make way for office renovations.**  
**15 So there, in fact, was a reason for that furniture being**  
**16 moved. Is that not correct?**

17 A. I can't answer you whether there was a reason  
 18 for moving that furniture or not, ma'am.

**19 Q. Well, it's in the documentation that you just**  
**20 provided. It's from the Court and it says "On Thursday,**  
**21 June 20th, the furniture in Justice Loughry's office will**  
**22 be moved to make way for office renovations. I would**  
**23 like for" your -- "you to provide assistance to move the**  
**24 furniture in the Capitol building." And this is sent**

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**1 from the Court to Young's Moving Service. My follow-up**  
**2 question is: On page 27 of the JIC report on Count 20 it**  
**3 says, Mr. Canter -- or Mr. Loughry was asked about, you**  
**4 know, who gave authorization to initiate the movement of**  
**5 the desk to his house and it's -- he - meaning Justice**  
**6 Loughry - says "Mr. Canterbury did and there are receipts**  
**7 from that. It was -- it's my recollection that it went**  
**8 to my home on December 21, 2012." So that would be**  
**9 before he was sworn in as Supreme Court justice, would it**  
**10 not?**

11 A. If the JIC charges are correct, but I can't  
 12 tell you whether the JIC charges are correct.

**13 Q. And he goes on to say in the JIC questioning, I**  
**14 had no individual authority to direct anybody to do**  
**15 anything like that. So the invoice -- so there are**  
**16 invoices reflecting this, so the Court paid for and sent**  
**17 a desk to my home. And he said that it kept been**  
**18 referred to as the Cass Gilbert desk, but he said that**  
**19 he -- this was a desk he was using for approximately ten**  
**20 years as a law clerk. Has that ever been proven not to**  
**21 be the case, that that was not his desk when he was a law**  
**22 clerk? Is it your understanding --**

23 A. It is my understanding that that desk he used  
 24 when he was a law clerk for the Supreme Court, yes,

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1 ma'am.

2 **Q. Okay. Has there been any evidence submitted to**

3 **you as the State Auditor that he had authorization to**

4 **move it on December 21st, or was the desk moved after he**

5 **was sworn in as a Supreme Court justice? Do you have**

6 **any -- any evidence that --**

7 A. We have no evidence -- the Post Audit Division

8 has no evidence as to whether this was moved in December

9 or whether this was moved on June 20th, 2013.

10 **Q. And who would have signed off or issued the**

11 **check to pay for Young's Moving Service? Would it have**

12 **been Justice Loughry or would it have been someone --**

13 **would it have been the Court administrator who would sign**

14 **off on and authorize those payments?**

15 A. The contact on the June 20th, 2013, is Sue Troy

16 and it's electronically authorized by Sandra K. Johnson.

17 I'm uncertain what Ms. Johnson's job title is or whether

18 she works for the court.

19 **Q. And do you have any recommendations to the**

20 **legislature this coming session based upon some questions**

21 **that have arisen in this investigation? More**

22 **importantly, I'm looking at the West Virginia Code 29-1-7**

23 **and it was adopted in 1991 and has not been updated since**

24 **then, and it talks about missing historical furnishings**

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1 **or objects, if they're missing or if they've been sold or**

2 **disposed of. Did Mr. Loughry sell the desk in question?**

3 **Did he sell the desk?**

4 A. Did he sell the desk?

5 **Q. Yes.**

6 A. No, ma'am. The desk is to my knowledge still

7 over at the warehouse of the Supreme Court once it was

8 moved out of his house.

9 **Q. Did he dispose of the desk?**

10 A. He moved -- he had court employees move the

11 desk to the Supreme Court warehouse, yes, ma'am.

12 DELEGATE SOBONYA: I might ask counsel at

13 the appropriate time the definition of "disposal". If

14 I'm permitted to, Mr. Chairman?

15 CHAIRMAN SHOTT: Sure. Counsel. You're

16 in great demand today. If you'd return to your podium,

17 please.

18 MR. CASTO: You know, Mr. Chairman, there

19 are some days it doesn't pay to be popular.

20 CHAIRMAN SHOTT: Delegate Sobonya, a

21 question for counsel.

22 DELEGATE SOBONYA: In 29-1-7 of State

23 Code, it talks about the historical furnishings and

24 objects, whether they're missing from the Capitol or if

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1 they've been sold or disposed of. Do you know what the

2 definition of "dispose" would be? Does that mean to move

3 or does that mean to eliminate, get rid of? What is the

4 definition of "disposal"?

5 MR. CASTO: What I would say is that it

6 basically would default to the dictionary definition,

7 which is with regard to what I think we are dealing with

8 here. The phrase "dispose of" has two definitions. This

9 is from Merriam-Webster, so it's as authoritative as I

10 can get you in terms of definition.

11 Number one, to place, distribute or

12 arrange especially in an orderly way, but I don't think

13 that the statute prohibits arrangement. What I believe

14 the statute prohibits is (a) is the second prong of this,

15 which is to transfer to the control of another or to get

16 rid of. So I think disposal here would mean transferring

17 from the control of the State to the control of some

18 other person.

19 DELEGATE SOBONYA: And on West Virginia

20 Code 5A-3-43 -- 5A-3-43 that deals with State agency

21 surplus property.

22 MR. CASTO: Yes.

23 DELEGATE SOBONYA: In the JIC report it

24 says under num -- item number 7, page 13, "Importantly,

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1 the statute makes absolutely no provision for an employee

2 to take home a commodity such as a desk or a couch that

3 is no longer being used by the State agency simply on a

4 whim." Is there a prohibition in State Code, and if not,

5 do you think that that could be cleaned up in the

6 future -- in a future legislative session?

7 MR. CASTO: My understanding is as

8 Mr. Allred has testified that the State Code does operate

9 to prohibit that. That the operation of State Code

10 requires the surplus property procedures to be gone

11 through with in the event that property is - to use a

12 phrase which is kind of neutral here - de-accessed from

13 State control. If the State gives up control of an item,

14 it is usually sold through the surplus property process,

15 be that anything from the cars that a state trooper uses

16 when they become obsolete or old, to -- you know, to

17 desks, to chairs. We've had any number of things that

18 are sold through the surplus property program. And there

19 are others who know that program a lot more intimately

20 than I do, but I know that that is something the State

21 routinely does. Whether or not those changes would be

22 useful or desirable is, as always, a matter of law for

23 this body.

24 DELEGATE SOBONYA: Thank you.

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1 BY DELEGATE SOBONYA:  
 2 **Q. And to Mr. Allred. Do you know of any**  
 3 **recommendations that you want to make to the legislature**  
 4 **in light of all of the accusations and findings and**  
 5 **investigations? Do you -- are you presenting to the**  
 6 **legislature any recommendations for legislative changes?**  
 7 A. I'll have to go back and look. If the State  
 8 does not directly require all State agencies by statute  
 9 to maintain an inventory, it would be our recommendation  
 10 that the legislature put in statute, because I find it  
 11 unreasonable that the Supreme Court did not even have an  
 12 inventory of what they own on behalf of the citizens of  
 13 West Virginia.  
 14 **Q. And they may not be the only branch of**  
 15 **government that operates in that manner. Would you**  
 16 **agree --**  
 17 A. I'm not sure I've ever found -- we -- in my 25  
 18 years here, I'm not sure I've ever found an agency of  
 19 this size that simply had a complete lack of inventory  
 20 control.  
 21 DELEGATE SOBONYA: Thank you. No further  
 22 questions.  
 23 CHAIRMAN SHOTT: We will move to the back  
 24 row. Delegate Kesner, any questions? Delegate Capito.

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1 DELEGATE CAPITO: Thank you,  
 2 Mr. Chairman.  
 3 EXAMINATION  
 4 BY DELEGATE CAPITO:  
 5 **Q. Thank you, Mr. Allred.**  
 6 **The circumstances around your testimony**  
 7 **are obviously very troubling, but I'm grappling with a**  
 8 **few things over here and I think I'll be -- I'll be**  
 9 **brief. Going back to the notion of a -- it being common**  
 10 **practice for a Supreme Court justice to have a home**  
 11 **office, if you will. I'm not using your words. I'm**  
 12 **just --**  
 13 A. Right.  
 14 **Q. -- this is what I'm paraphrasing. And it being**  
 15 **typical to have a computer and/or fax machine. Where --**  
 16 **where is that from?**  
 17 A. If I understand your question right, I think  
 18 what you're asking is: Is there a specific Supreme Court  
 19 of Appeals policy --  
 20 **Q. No. Not the quest -- okay. So because I know**  
 21 **that the answer to that no, correct? There is no**  
 22 **specific policy, right?**  
 23 A. Not to my knowledge.  
 24 **Q. Okay. Right. But the -- the notion that it's**

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1 **an understood activity comes from what document? It**  
 2 **might be before me and I apologize if it is. But was**  
 3 **it -- it was an answer? Was it an answer in response?**  
 4 A. No, I think perhaps what you're talking about  
 5 is the questions from Delegate Fast with regards to what  
 6 would be the allowable private use of State equipment if  
 7 you took it home. If you're asking is there anything  
 8 specifically that says a State employee can take a  
 9 computer home for State business, is --  
 10 **Q. No, no, I'm not -- I'm not disputing that you**  
 11 **can do that. I guess my question -- even before Delegate**  
 12 **Fast was asking, I feel like I heard something of just**  
 13 **the use of a fax machine and a computer. And so you**  
 14 **don't even need to answer. I'll cut to it. Is it your**  
 15 **understanding of the State of West Virginia paying for**  
 16 **telephone lines for fax machines for Supreme Court**  
 17 **justices in their personal homes?**  
 18 A. I have no knowledge of that.  
 19 **Q. Okay. But do we have knowledge of telefax**  
 20 **machines inside the homes of any Supreme Court justices?**  
 21 A. I believe Justice Ketchum to my knowledge had a  
 22 fax machine. I also know that with regards to paying,  
 23 Supreme Court did pay at least a portion for some cell  
 24 phones.

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1 **Q. Okay. And then last question, we talked -- you**  
 2 **mentioned the word "de minimis", and so I'm just trying**  
 3 **to figure out is de minimis -- does that relate to the**  
 4 **activity, or the act, or does that relate to the value**  
 5 **derived from the act? So we were talking -- Delegate**  
 6 **Fast was talking about computers. You know, if you're**  
 7 **sitting there gaming or something like that on -- I mean,**  
 8 **clearly that is not the purpose of the machine, right,**  
 9 **but if you're -- you know, if you've got a pen and you**  
 10 **came home, and you were writing an opinion with a pen and**  
 11 **your kid grabs it and it ends up in his backpack, I**  
 12 **mean --**  
 13 A. Right.  
 14 **Q. -- is that de minimis. So is it the value or**  
 15 **is it the act, I guess? Does that make sense?**  
 16 A. Yeah, I think from my readings over the years  
 17 of the Ethics Commission opinions, it's -- it's both.  
 18 The classic example is in the use of a State car. If  
 19 you've got a State car that you are commuting back and  
 20 forth from work, it has been considered de minimis if on  
 21 your way to work you would stop at Tudor's and get a  
 22 biscuit and then drive into work.  
 23 DELEGATE CAPITO: Thank you,  
 24 Mr. Chairman.

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1 CHAIRMAN SHOTT: Delegate Hanshaw, any  
2 questions? Delegate Fleischauer.  
3 MINORITY CHAIR FLEISCHAUER: Thank you,  
4 Mr. Chairman. I guess my first question is for counsel.  
5 I wanted to ask some more questions about  
6 this Code section about culture and history.  
7 MR. CASTO: Yes, ma'am.  
8 MINORITY CHAIR FLEISCHAUER: So I didn't  
9 catch when you were questioning earlier. This specific  
10 re -- specifically refers to the Cass Gilbert  
11 furniture --  
12 MR. CASTO: Yes, ma'am. Indeed it does.  
13 MINORITY CHAIR FLEISCHAUER: -- and it has  
14 a requirement that it -- that the culture and -- or  
15 archives and history are first supposed to determine the  
16 whereabouts and require the return of those furnishings.  
17 That's -- that's part of the Code. And then -- and then  
18 it goes on to if something has been moved or disposed of,  
19 there are certain procedures that have to follow.  
20 MR. CASTO: That's correct.  
21 MINORITY CHAIR FLEISCHAUER: And you were  
22 talking about the penalty in 5A-3?  
23 MR. CASTO: Yes.  
24 MINORITY CHAIR FLEISCHAUER: Can you go

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1 into that penalty again?  
2 MR. CASTO: Yes, if you'll give me one  
3 second. It is the same penalty that applies to every  
4 violation of that article, and of course, that article in  
5 5A-3 deals generally with the disposition of surplus  
6 property. And it states that - with regard to violations  
7 of any clause of that article - that a person who  
8 violates a provision of that article, except where  
9 another specific penalty is proscribed - and there are  
10 some of those provisions of that article which carry  
11 heavier violations - shall be found guilty of a  
12 misdemeanor, and upon conviction thereof, confined in  
13 jail not less than ten days nor more than one year or  
14 fined at not less than \$10 nor more than \$500 or both at  
15 the Court's discretion.  
16 MINORITY CHAIR FLEISCHAUER: So what  
17 we're saying -- one argument is that by -- instead of --  
18 that this was taken out of the State Capitol in violation  
19 of 29-1-7B?  
20 MR. CASTO: Yes.  
21 MINORITY CHAIR FLEISCHAUER: And it was  
22 missing?  
23 MR. CASTO: Yes.  
24 MINORITY CHAIR FLEISCHAUER: And that

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1 under the -- what should have been -- well, it should  
2 have been returned first and foremost to the Capitol --  
3 MR. CASTO: Yes.  
4 MINORITY CHAIR FLEISCHAUER: -- right?  
5 And so the -- after the passage of several years it was  
6 taken to the warehouse pursuant to 5A-3, and what are  
7 you -- I'm a little confused about the violation of 5A-3?  
8 MR. CASTO: Well, the violation is for  
9 violations of article 3 of Chapter 5A generally, so since  
10 the furnishings are to be sold or disposed of pursuant to  
11 the provisions of article 3 chapter 5A, we may be able to  
12 infer that if they are not so sold or disposed of in  
13 accordance with the provisions of that cited article,  
14 that -- then one is in violation of the provisions of  
15 that article and thus could be found guilty of a  
16 misdemeanor.  
17 MINORITY CHAIR FLEISCHAUER: Okay. Thank  
18 you very much. That's all questions I have. Thank you,  
19 Mr. Chairman. Thank you, Counsel.  
20 EXAMINATION  
21 BY CHAIRMAN SHOTT:  
22 **Q. Mr. Allred, we now have to access the Capitol**  
23 **with these magnetic cards.**  
24 A. Yes, sir.

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1 **Q. Do you know whether in June of 2013 that**  
2 **practice was in place?**  
3 A. I'm not certain when that was rolled out.  
4 That's about the right time period, though.  
5 **Q. I mean, wouldn't not normally when you access**  
6 **the building with one of those cards it registers so that**  
7 **the security folks downstairs know who's in the building?**  
8 A. Yes, sir.  
9 **Q. Was there any effort made to determine, for**  
10 **instance, on this particular date, June 20, who was**  
11 **accessing the -- the -- was it the East Wing, I guess?**  
12 A. Not by the Post Audit Division, sir.  
13 **Q. Okay. thank you.**  
14 **You mentioned earlier that the desk did**  
15 **not have any type of plaque or "This is a Cass Gilbert**  
16 **desk" on it and I'm looking at it and it -- it's a**  
17 **nice-looking piece of furniture but it looks similar to**  
18 **most everything I've seen of that age and I'm just**  
19 **wondering, for the average person, would -- would the**  
20 **average person know that this is a Cass Gilbert desk by**  
21 **just looking at it?**  
22 A. My personal opinion, no.  
23 **Q. Okay. Well, I'm just wondering -- it's not**  
24 **that relevant at this point.**

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1 A. Right.

2 **Q. If we have anyone that has come to you and said**

3 **that Justice Loughry has -- at some point whether when he**

4 **was a clerk or when he had this in his office for that**

5 **brief period of time -- and that's his justice office, so**

6 **-- said anything that would indicate he was aware of the**

7 **value of this desk because it is a Cass Gilbert desk.**

8 A. The only thing on that I would know is what I

9 read in the federal indictment.

10 **Q. Okay. Fair enough.**

11 CHAIRMAN SHOTT: And one of the reasons I

12 said that, I've got a desk that looks something like this

13 sitting on end in my garage I haven't been able to give

14 away, so if we got the missing desk, I may need to hire

15 Mr. Allen or Mr. Carr before this over. Okay. Thank

16 you.

17 Mr. Allen, do you have any questions for

18 Mr. Allred? And Mr. Carr?

19 MR. CARR: No, sir.

20 CHAIRMAN SHOTT: Thank you. Counsel, any

21 redirect?

22 MR. CASTO: Yes, sir, I have -- I have

23 one follow-up question.

24 EXAMINATION

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1 BY MR. CASTO:

2 **Q. Mr. Allred, who interviewed Mr. Gundy and**

3 **Mr. Mendez from your office?**

4 A. My recollection is it was Denny Rhodes who now

5 works for Military Affairs and Public Safety, but I'm not

6 absolutely certain. We'll have to go back and find the

7 documents.

8 MR. CASTO: Thank you very much, sir.

9 That's all I have.

10 CHAIRMAN SHOTT: All right. Round 2

11 beginning with Delegate Lane. Any further questions?

12 EXAMINATION

13 BY DELEGATE LANE:

14 **Q. Mr. Allred, where are the other Cass Gilbert**

15 **desks?**

16 A. It is my understanding the other three are

17 upstairs on the third or fourth floor of the Supreme

18 Court. As to the fifth missing desk, there are all sorts

19 of rumors, one of which is it's in a courthouse up in

20 north central West Virginia.

21 DELEGATE LANE: Or, perhaps, in the

22 Chairman's garage. Thank you.

23 CHAIRMAN SHOTT: Delegate Pushkin.

24 DELEGATE PUSHKIN: Thank you,

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1 Mr. Chairman.

2 EXAMINATION

3 BY DELEGATE PUSHKIN:

4 **Q. So I'm just going to -- a couple things that I**

5 **thought I'd heard. Justice Loughry, of course, before**

6 **being elected in 2012 served as a clerk in the West**

7 **Virginia Supreme Court for ten years?**

8 A. That sounds correct.

9 **Q. Okay. And during that time, it's believed that**

10 **that was the desk that he used while working in this**

11 **building as a clerk, right?**

12 A. It is my understanding that desk was what he

13 used as a clerk, yes, sir.

14 **Q. I would imagine during that time and someone**

15 **who is familiar with the Supreme Court would know that**

16 **there were at one point five Cass Gilbert desks, now**

17 **four, and that he was sitting at one for ten years**

18 **before -- before he was elected to the Supreme Court,**

19 **right? He was sitting there. I would imagine that he**

20 **knew what the desk -- you know, which desk he was sitting**

21 **at.**

22 **But I was looking at the date, June 20th,**

23 **and I see that the moving services performed on Thursday,**

24 **June 20, 2013, that would have been the year that Mr. --**

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1 **Justice Loughry was sworn in and I imagine that was right**

2 **after their -- June is the end of their -- is when they**

3 **adjourn sine die, correct?**

4 A. I believe so.

5 **Q. So that would have been a good time to renovate**

6 **the office. So there was trips by Young's Moving Service**

7 **from the Capitol to Dudley Drive, Justice Loughry's home;**

8 **they came back to the State Capitol, took some other**

9 **stuff to the warehouse. I imagine he's making room to**

10 **renovate his office, right, is what it would -- what one**

11 **would --**

12 A. That is what the documentation states.

13 **Q. Okay. And June 20th is a State holiday, right?**

14 A. Yes, sir.

15 **Q. So would be a lot less people in the building**

16 **to see what was -- what was coming -- what was -- what**

17 **was being taken out of the building, correct?**

18 A. In usual circumstances, yes. That would not be

19 true on the 150th anniversary of the formation of the

20 state, though. This place was packed with people.

21 **Q. Oh, that was -- that was the 150th anniversary?**

22 A. I'm trying to think. It would have been 63 --

23 **Q. Yeah.**

24 A. -- plus 50.

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1 **Q. Yeah. Hmm. That's an odd day to move stuff.**  
 2 **Okay, well, when it was -- I guess I'm trying to go over**  
 3 **the timeline in my head of how this came about. I think**  
 4 **there was an article in the paper first about the desk**  
 5 **possibly being in his house. There were people, I think,**  
 6 **that -- watching for the desk to come out. And then**  
 7 **there was I believe -- was there a response from justice**  
 8 **-- Chief Justice Loughry at the time referring to a**  
 9 **policy the Supreme Court had for home offices?**  
 10 A. I believe there was, yes, sir.  
 11 **Q. So -- and he mentioned that in an op ed in the**  
 12 **Charleston Gazette?**  
 13 A. Yes, sir.  
 14 **Q. He referred to a policy that he would -- that**  
 15 **allowed him to have home furnish -- a home office?**  
 16 A. Yes, sir.  
 17 **Q. Right? And there is no --**  
 18 A. That is my recollection.  
 19 **Q. -- policy?**  
 20 A. To my knowledge, from discussion with the other  
 21 justices, no, sir, there was not a policy.  
 22 DELEGATE PUSHKIN: Okay. Quick question  
 23 for -- thank you very much. Quick question for counsel,  
 24 please.

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1 MR. CASTO: Yes, sir.  
 2 DELEGATE PUSHKIN: Okay. This is just  
 3 as -- you know, from a non-attorney of just how things  
 4 work, I imagine if someone feels they've been wrongly  
 5 convicted of grand larceny and they appeal that, and it  
 6 gets to the highest court in West Virginia, that case  
 7 could be in front of the Supreme Court?  
 8 MR. CASTO: Absolutely, sir.  
 9 DELEGATE PUSHKIN: So someone -- the --  
 10 Justice Loughry could be seeing a case about grand  
 11 larceny?  
 12 MR. CASTO: He certainly could, sir.  
 13 DELEGATE PUSHKIN: Could be hearing a  
 14 case, I should say.  
 15 MR. CASTO: Absolutely.  
 16 DELEGATE PUSHKIN: What about employment  
 17 disputes where somebody is -- feels they were wrongly  
 18 fired. Maybe they're accused of taking home a stapler  
 19 and they lose their employment benefits. That case --  
 20 cases like that often go before -- before the Supreme  
 21 Court; is that true?  
 22 MR. CASTO: Employment cases for all  
 23 reasons certainly do, sir, that's correct.  
 24 DELEGATE PUSHKIN: And I would imagine

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1 that's why we -- you always hear we need to hold our  
 2 judges and especially our justices to a higher standard.  
 3 MR. CASTO: I believe that's the  
 4 rationale, sir, absolutely.  
 5 DELEGATE PUSHKIN: Thank you. Thanks.  
 6 CHAIRMAN SHOTT: Delegate Zatezalo.  
 7 DELEGATE ZATEZALO: Yeah, thank you.  
 8 EXAMINATION  
 9 BY DELEGATE ZATEZALO:  
 10 **Q. Mr. Allred, I've got a question for you and**  
 11 **this is probably not directly related to a lot of this,**  
 12 **but does it bother you that we may have hundreds of**  
 13 **thousands of dollars in warehouses around here that we**  
 14 **have no idea what the worth is?**  
 15 A. Yes.  
 16 DELEGATE ZATEZALO: And, Mr. Chairman,  
 17 for the future for the legislature we may want to see if  
 18 we can -- need to something about that because it scares  
 19 me that a law clerk was using a \$42,000 desk. Thank you.  
 20 CHAIRMAN SHOTT: Delegate Hollen.  
 21 DELEGATE HOLLEN: Thank you,  
 22 Mr. Chairman.  
 23  
 24 EXAMINATION

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1 BY DELEGATE HOLLEN:  
 2 **Q. Mr. Allred, just a couple follow-up questions.**  
 3 **Was it just your assumption that -- or maybe was it your**  
 4 **assumption that the desk come up missing in 2013, just by**  
 5 **the moving bill of ladings?**  
 6 A. I think if you look in the audit, I don't think  
 7 we used specific dates. When we do an audit, we comply  
 8 with generally accepted government auditing standards and  
 9 if we can't document exactly, we're not going to put it  
 10 in the audit. We can't tell from the documentation  
 11 exactly when the desk was moved. The JIC says it was in  
 12 December of 2012. We have a bill that shows something  
 13 was moved to Justice Loughry's house on June 20th, 2013,  
 14 so I don't think we are specific in the audit as to a  
 15 date that this was moved.  
 16 **Q. All right. Thank you.**  
 17 **Now, you -- you spoke briefly about**  
 18 **Supreme Court justices believed that they can set up a**  
 19 **home office; is that correct?**  
 20 A. It is my understanding from discussions with  
 21 the other justices that they believe the only thing the  
 22 Court has ever provided is a computer and formerly a fax  
 23 machine.  
 24 **Q. But there's no written policy on what they can**

1 use in their home office; nor is there one what they  
2 can't use in their home office; is that correct?  
3 A. To my knowledge at this time there was not.  
4 Q. So if one believes that excess property and no  
5 one's using it and what harm would it be if I set my home  
6 office up with that, that could be a fair assumption for  
7 one of them to make that --  
8 A. I would have questions about that assumption  
9 with regards to a historical desk that's worth \$42,500.  
10 Q. Well, I'm glad you brought that up. We didn't  
11 know what the value of that desk was until 2018; is that  
12 correct? That's when the --  
13 A. That's the appraisal date.  
14 Q. The Purple Moon did an evaluation of it?  
15 A. That's the appraisal date.  
16 Q. I'm sorry?  
17 A. That is the appraisal date, yes, sir.  
18 Q. So if the desk come up missing in 2013 or 2012,  
19 then it would be assumption he wouldn't know if that desk  
20 was worth \$100 or \$42,000?  
21 A. Specifically on that, all I know is what I've  
22 read in the federal indictment.  
23 DELEGATE HOLLEN: Okay, no further.  
24 Thank you.

1 CHAIRMAN SHOTT: Going back to the second  
2 row. Delegate Overington, do you have questions?  
3 DELEGATE OVERINGTON: Yes, thank you.  
4 EXAMINATION  
5 BY DELEGATE OVERINGTON:  
6 Q. The value of the desk is because it is a Cass  
7 Gilbert desk, not because it's one that you might pick up  
8 at an auction somewhere or a bargain basement sale or  
9 that you might have in your garage.  
10 A. My understanding is that it's a combination of  
11 the two. That the desk itself from the circa 1930 era,  
12 would, in fact, have value to an antique collector. The  
13 fact that it is an original desk for one of the five  
14 Supreme Court justices of West Virginia in what is  
15 considered one of the crowning glories of Cass Gilbert's  
16 architectural career would add additional value to that  
17 desk. But there is an underlying value to the desk  
18 whether it was a, quote, Cass Gilbert desk or not, just  
19 from being a piece of 1930 furniture for an antique  
20 collector.  
21 Q. So most of its value would be based on the fact  
22 that it is a gas -- Cass Gilbert desk - or a major  
23 portion of it - and being able to document that this is  
24 where you re -- this is where you got it, this was -- you

1 know, tracking its history to, say, the Capitol of West  
2 Virginia?  
3 A. I'm not sure that Mr. Hamsher would agree with  
4 you on that given what he wrote in his appraisal. I  
5 can't tell you with regards to the \$42,500 value he  
6 placed on the desk how he split the value of the desk  
7 just from being a circa 1930 antique and how much  
8 additional value he placed upon the desk because of its  
9 historical significance. That I'm uncertain.  
10 Q. But a portion of it would be that it was this  
11 historic desk, and part of the value is going to be based  
12 on that and being able to document its history to show --  
13 to validate that part of its history and therefore, that  
14 part of it's value?  
15 A. Yes, sir that's my understanding from the  
16 appraisal.  
17 Q. Back to the home office. I would assume that  
18 just as we sort of have home offices on a -- since we're  
19 sort of available 24/7 and that the same thing with the  
20 court officials whether -- whatever level whether it's  
21 magistrate, circuit or Supreme Court, that part of their  
22 duties and part of their work would be done at home. You  
23 know, it may be they get ideas about writing something or  
24 documenting something or cases so that a lot of that

1 would be done outside of the Capitol itself.  
2 A. I would agree with that. Last night I was  
3 sitting at my personal desk in my house re-reading these  
4 reports getting preparation for today, so, yes, sir.  
5 Q. Exactly. So the other -- so that our court  
6 officials would be in the same category where whether the  
7 State provides it or not, it's sort of expected that they  
8 may have a home room dedicated to their obligations --  
9 not just a cell phone or a computer, but they would have  
10 desks and other pieces of equipment to help in their  
11 function as a court official?  
12 A. I would say for any State employee or any  
13 employee of a business that would have to do work at home  
14 that there's -- obviously they might have a desk at the  
15 house. Some people might; some people might not.  
16 Q. But it would -- it would -- for most it would  
17 be normal to be having some place that you're doing your  
18 work. Could be a kitchen table, you're right, or it  
19 could be a desk.  
20 A. Yes.  
21 Q. And it could be other types of office  
22 equipment --  
23 A. Yes, sir.  
24 Q. -- file cabinets and other types of things that

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**1 would be part of your -- the duty that, you know, I guess**  
**2 we all take homework home with us and that would be part**  
**3 of the function of that office.**  
 4 A. Yes, sir.  
 5 DELEGATE OVERINGTON: Thank you. Thank  
 6 you, Mr. Chairman.  
 7 CHAIRMAN SHOTT: Delegate Byrd.  
 8 DELEGATE BYRD: Thank you, Mr. Chairman.  
 9 EXAMINATION  
 10 BY DELEGATE BYRD:  
**11 Q. One question, sir, if you know. Is the**  
**12 security footage at the Capitol archived?**  
 13 A. I believe they keep it for a short amount of  
 14 time.  
**15 Q. Who would we talk to about that, just to find**  
**16 the precise answer?**  
 17 A. You would want to talk to Kevin Foreman, the  
 18 director of the Capitol police.  
 19 DELEGATE BYRD: Thank you.  
 20 CHAIRMAN SHOTT: Back to the third row,  
 21 Delegate Miller. Counsel, question to counsel.  
 22 DELEGATE MILLER: Thank you,  
 23 Mr. Chairman. Question of counsel.  
 24 MR. CASTO: Yes, sir.

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1 DELEGATE BYRD: In the -- in the courts  
 2 or the criminal justice world is there anywhere that it's  
 3 commonly recognized or it's a commonly recognized  
 4 standard that a violator of state law, whether it's a  
 5 theft, a burglary, armed robbery, whatever, that if they  
 6 return the property stolen or conceivably in this case  
 7 knowingly converted it into their own use, that that  
 8 absolves them of any kind of penalty for criminal or  
 9 corrupt activity?  
 10 MR. CASTO: Absolutely not. It may be  
 11 considered as a mitigating factor in their sentence, but  
 12 it won't absolve them of the guilt.  
 13 DELEGATE BYRD: Thank you. Thank you,  
 14 Mr. Chairman.  
 15 CHAIRMAN SHOTT: Delegate Robinson.  
 16 DELEGATE ROBINSON: Thank you,  
 17 Mr. Chairman.  
 18 EXAMINATION  
 19 BY DELEGATE ROBINSON:  
**20 Q. Mr. Allred, I'm reading issue number 3 on page**  
**21 22, down towards the bottom where you've -- where we've**  
**22 notated in the advisory opinion. It goes on to say, "If**  
**23 an individual derives a benefit from the use of public**  
**24 equipment, that constitutes a private gain, even if an**

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**1 individual's use does not result in a cost to the**  
**2 government, still the individual benefited from the use**  
**3 of the public equipment. Absent access to the use of**  
**4 public equipment, the individual would have incurred the**  
**5 expense of renting or purchasing the equipment." We've**  
**6 talked a lot about the value of the desk. Would your**  
**7 opinion in issue 3 concerning the desk be any different**  
**8 if the desk had been valued for \$100?**  
 9 A. No, sir.  
**10 Q. One dollar?**  
 11 A. One dollar might be de minimis.  
**12 Q. I mean -- but, I mean, in my scenario we're**  
**13 still talking about public -- or private gain from a**  
**14 public -- from public equipment, correct?**  
 15 A. I think the best way I could explain it is if  
 16 you take an old laptop computer from your office, that  
 17 your office might not be using very much and take it  
 18 home, what this opinion states is that's still a  
 19 violation of the Ethics Act because you avoided having to  
 20 buy a computer for yourself at home.  
**21 Q. So to summarize it in my mind, the justice**  
**22 wanted a desk in his home. Without taking the State's**  
**23 desk, he would have had to pay for one. No matter the**  
**24 value of the desk he took, it's still that you would have**

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**1 the same opinion within here because of the Ethics Act**  
**2 and that advisory opinion?**  
 3 A. Yes, sir.  
**4 Q. Okay. I'm going to try to follow up on the**  
**5 gentle lady from Cabell's questioning. She made the**  
**6 suggestion that there was a renovation at the time the**  
**7 desk was removed so that desk had to be moved no matter**  
**8 what. Is that your recollection -- recollection of that**  
**9 question?**  
 10 A. That was my understanding of her question, yes,  
 11 sir.  
**12 Q. And the most recent example of construction or**  
**13 having to move things out because we have something to do**  
**14 would be in your office downstairs because of plumbing or**  
**15 some issue there.**  
 16 A. We've been flooded four times in the last three  
 17 weeks, yes.  
**18 Q. Can you tell me how many desks you took home?**  
 19 A. None.  
 20 DELEGATE ROBINSON: Okay. Thank you.  
 21 CHAIRMAN SHOTT: All right. On the  
 22 second round, back over to this side of the chamber.  
 23 I'll get to you. Delegate Fast.  
 24 EXAMINATION

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1 BY DELEGATE FAST:  
 2 **Q. Mr. Allred, is -- are these documents, Exhibit**  
 3 **21, are these the only documents that you have that show**  
 4 **that items were moved on 20 June 2013?**  
 5 A. To my knowledge, yes.  
 6 **Q. Okay. And the fax -- or you're familiar with**  
 7 **these, correct?**  
 8 A. Yes, sir.  
 9 **Q. Okay. The fax dated June 1, 2013, it shows**  
 10 **that P. Fletcher Adkins, Director Administrative**  
 11 **Services, made the arrangements to have furniture in**  
 12 **Justice Loughry's office moved for office renovation, and**  
 13 **it asks Young's Moving Service, "I would like you to**  
 14 **provide assistance to move the furniture in the Capitol**  
 15 **building and some moving to the Venable warehouse." So**  
 16 **that was arranged not by Justice Loughry, but by the**  
 17 **director of administrative services, correct?**  
 18 A. From the documentation, yes.  
 19 **Q. Okay. And then the other fax dated June 18,**  
 20 **still in the same exhibit, also was an arrangement made**  
 21 **exclusively by P. Fletcher Adkins, Director of**  
 22 **Administrative Services, also to Young's Moving Services**  
 23 **stating that they needed help moving furniture from the**  
 24 **Capitol to the Venable Avenue warehouse, correct?**

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1 A. I'm not -- I'm sorry. I'm pulling this one  
 2 together. I've got both the December 2012 documentation  
 3 as well as the June 20th, 2013, so I did not hear your  
 4 question. I'm sorry, sir.  
 5 **Q. The other fax in exhibit -- or fax page,**  
 6 **Exhibit 21, was an arrangement made exclusively by P.**  
 7 **Fletcher Adkins, Director of Administrative Services, to**  
 8 **Young's Moving Service to move furniture from the Capitol**  
 9 **to the Venable Avenue warehouse?**  
 10 A. I would have no knowledge if it was solely by  
 11 Mr. Adkins. Someone else could have called them. The  
 12 fax is from Mr. Adkins. All I know is what the document  
 13 shows.  
 14 **Q. Well, we know that P. Fletcher Adkins was the**  
 15 **director of administrative services at that time,**  
 16 **correct?**  
 17 A. Yes, sir.  
 18 **Q. Okay. And is -- you have to forgive me. Is**  
 19 **that a he or a she?**  
 20 A. To my knowledge it's a he. I've never met him.  
 21 **Q. Okay. Mr. Adkins. He was officially involved**  
 22 **in this furniture moving arrangement.**  
 23 A. Yes, sir.  
 24 **Q. Because of the fax?**

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1 A. Yes, sir.  
 2 **Q. Okay. And, in fact, that is the same for both**  
 3 **faxes, correct?**  
 4 A. Yes, sir.  
 5 **Q. So this holiday, June 20, 2013, was -- is that**  
 6 **the holiday we're talking about?**  
 7 A. Yes, sir.  
 8 **Q. Okay. That was obviously a pre-arranged date**  
 9 **to move furniture from the Capitol somewhere?**  
 10 A. Yes, sir.  
 11 **Q. Okay. And one of those arrangements was to, in**  
 12 **essence, remove furniture from Justice Loughry's office**  
 13 **to make way for renovations?**  
 14 A. That's what the fax says, yes, sir.  
 15 **Q. Okay. Now, is it true at that time that**  
 16 **renovations were afoot and items need to be -- needed to**  
 17 **be removed simply to make room for the contractors to**  
 18 **come in and induce renovations?**  
 19 A. To my understanding that's true, but I wouldn't  
 20 swear to it.  
 21 **Q. Okay. If it were not true, then Mr. Adkins**  
 22 **would be in the hot seat as well for making these**  
 23 **arrangements for something that were not true, correct?**  
 24 A. Yes.

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1 **Q. Okay. And he's not. He's not being called on**  
 2 **the carpet?**  
 3 A. Not to my knowledge.  
 4 **Q. Okay. And so you have -- then you have this**  
 5 **statement from Young's Moving Service that they delivered**  
 6 **an item to Dudley Drive. Is that where you're coming up**  
 7 **with the desk?**  
 8 A. No, I think I've made it clear. We've got a  
 9 couple different bills from Young. We do not put in the  
 10 audit when the desk was moved because we cannot determine  
 11 from the documentation whether it was June 20th, 2013.  
 12 It merely says "an item." I can't tell you whether that  
 13 item was the desk, a couch, or something else.  
 14 **Q. Okay. So the federal indictment that says this**  
 15 **was the day the couch was moved and the JIC statement of**  
 16 **charges that says this was the date the couch was**  
 17 **moved --**  
 18 A. I think the JIC says December of 2012.  
 19 **Q. Actually, you're correct on that. So the**  
 20 **federal indictment then, are they taking a leap of faith**  
 21 **here that they think they got it nailed down?**  
 22 A. I don't know whether the U.S. prosecutor thinks  
 23 he's taking leap of faith or not, sir.  
 24 **Q. So you -- you in your audit -- your testimony**

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**1 is you don't know when that couch or the desk was moved**  
**2 notwithstanding this information?**  
 3 A. We don't know for certain when the desk was  
 4 moved to his house, no, sir.  
 5 DELEGATE FAST: Okay. Thank you.  
 6 CHAIRMAN SHOTT: Delegate Sobonya.  
 7 DELEGATE SOBONYA: Thank you,  
 8 Mr. Chairman.  
 9 EXAMINATION  
 10 BY DELEGATE SOBONYA:  
**11 Q. Mr. Allred, you said you've read the federal**  
**12 indictment.**  
 13 A. Yes, ma'am.  
**14 Q. Count 21, it discusses how Justice Workman was**  
**15 looking for the Cass Gilbert desk and Justice Loughry was**  
**16 questioned by the FBI agent and he was asking, "Are you**  
**17 aware of a search being undertaken within the court to**  
**18 find the original Cass -- one of the original Cass**  
**19 Gilbert desks?" And the reason why I ask this question,**  
**20 in this article in the newspaper was referenced that the**  
**21 Cass Gilbert desks were a set of five desks that were**  
**22 original to the Supreme Court and each justice in 1932**  
**23 were issued one of the Cass Gilbert desks. And my**  
**24 question is: Justice Workman was elected in 1988, so 30**

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**1 years prior she had served on the Court. My question is:**  
**2 What prompted her to all of a sudden look for a -- one of**  
**3 the two missing Cass Gilbert desks?**  
 4 A. I do not know.  
**5 Q. Did you question her or any -- did you look**  
**6 in -- when you were looking into the desk --**  
 7 A. The Post Audit Division did not ask her any  
 8 questions concerning the desk with regards to that, no,  
 9 ma'am.  
**10 Q. Are you aware of anyone asking Justice Workman**  
**11 who had served 30 years in the -- 30 years in the Supreme**  
**12 Court why her, all of a sudden, interest in one of the**  
**13 two missing desks, what prompted that?**  
 14 A. I could make some assumptions, but to my direct  
 15 knowledge, no.  
 16 DELEGATE SOBONYA: Thank you.  
 17 CHAIRMAN SHOTT: Second row now.  
 18 Apparently no questions in the second row. Delegate  
 19 Hanshaw, any follow-up? Delegate Fleischauer, follow-up  
 20 questions.  
 21 MINORITY CHAIR FLEISCHAUER: Thank you,  
 22 Mr. Chairman.  
 23  
 24 EXAMINATION

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1 BY MINORITY CHAIR FLEISCHAUER:  
 2 Q. Thank you for coming today, Aaron.  
 3 The part of the bill that the delegate  
 4 from Fayette mentioned which is Exhibit 21, he brought  
 5 out that there was -- the way this moving thing went,  
 6 they -- there was at least one change to the date of the  
 7 delivery from the 21st to the 20th and items were loaded  
 8 from the State Capitol and that they delivered an item to  
 9 Dudley Drive, returned to the State Capitol, finished  
 10 loading and then delivered the remaining items to the --  
 11 to the warehouse.  
 12 Did anyone ever ask -- were there any ever  
 13 questions asked of court employees or of the moving  
 14 company if they knew what that "an item" was?  
 15 A. To my recollection, one, we did not talk to the  
 16 moving company.  
 17 Q. Uh-huh.  
 18 A. Two, I am uncertain whether my staff asked any  
 19 specific questions with regards to this receipt of court  
 20 employees. I'm just not certain.  
 21 Q. Okay. And just going back to that Code  
 22 section, we've kind of talked a little bit about whether  
 23 this is just an ordinary desk or what, but apparently  
 24 this legislature made a policy decision in 1991 that Cass

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1 Gilbert desks were pretty important.  
 2 A. Yes, ma'am.  
 3 Q. And that they should not be removed from the  
 4 Capitol. It's interesting because I just went on a tour  
 5 of a Frank Lloyd Wright home in Chicago and I can't  
 6 imagine anyone thinking of removing that furniture, but I  
 7 doubt if there's a state law like there is here. Do you  
 8 know if the Division of Culture and History -- have --  
 9 did you ask them for their inventory to see what they had  
 10 discovered anything about the whereabouts of the Cass  
 11 Gilbert items? Because it says anything. It says that  
 12 nothing should be removed from the Capitol including but  
 13 not limited -- nothing historical should be removed  
 14 including but not limited to the Cass Gilbert. Has  
 15 anybody checked with them about this? This Code section?  
 16 A. I'm not certain whether we checked with Culture  
 17 and History.  
 18 MINORITY CHAIR FLEISCHAUER: Okay. All  
 19 right. Thank you. Thank you, Mr. Chairman.  
 20 EXAMINATION  
 21 BY CHAIRMAN SHOTT:  
**22 Q. Mr. Allred, you mentioned that the desks were**  
**23 on the third and fourth floor of the Capitol now; is that**  
**24 correct?**

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1 A. That's my understanding, yes, sir.

2 **Q. All four of them?**

3 A. I am uncertain as to whether the desk that was

4 at Justice Loughry's house is still in the warehouse or

5 whether they have moved it back into this building. I'm

6 not sure.

7 **Q. So if it is in the warehouse, it's been removed**

8 **from the Capitol?**

9 A. Yes, sir.

10 **Q. Technically a violation of that statute, right?**

11 A. Yes, sir.

12 **Q. Do you -- do you know if at any time -- I mean,**

13 **these apparently perhaps could be tourists' attractions,**

14 **things of that sort. Do you know if the -- in your**

15 **memory has the judiciary ever staged any type of display**

16 **of these desks so the public could get some enjoyment out**

17 **of viewing them?**

18 A. Not to my knowledge -- knowledge, sir.

19 **Q. So they've basically just been used as desks?**

20 A. Yes, sir.

21 CHAIRMAN SHOTT: Okay. Thank you.

22 Let me ask. Mr. Allen, questions?

23 MR. ALLEN: No.

24 CHAIRMAN SHOTT: And Mr. Carr.

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1 MR. CARR: No.

2 CHAIRMAN SHOTT: Follow-up question by

3 counsel?

4 MR. CASTO: Yes, sir. One final

5 question, Mr. Allred.

6 EXAMINATION

7 BY MR. CASTO:

8 **Q. On June 20th, 2013, I believe as Legislative**

9 **Auditor you might have the wherewithal to answer this**

10 **question. Was the legislature not in Wheeling for**

11 **legislative interims?**

12 A. To my recollection, yes.

13 **Q. And Governor Tomblin and most of the members of**

14 **the executive branch were up there as well for the 150th,**

15 **I believe during the day at least?**

16 A. That is -- that is correct.

17 MR. CASTO: That is all I have, sir.

18 Thank you.

19 CHAIRMAN SHOTT: Anything further for

20 Mr. Allred before we excuse him? Anything further? If

21 not, Mr. Allred, we thank you for your appearance.

22 THE WITNESS: Thank you very much.

23 CHAIRMAN SHOTT: You're excused. To

24 members of the Committee, we want to try to finish the

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1 Legislative Auditor's reports this evening, but we're going to

2 take a break for dinner. And we have dinner in the committee

3 room upstairs and I think spread out on the conference table

4 in the chairman's office. So we're going to take about a

5 45-minute break but no more than that. We'll try to finish up

6 with the Legislative Auditor's reports tonight and then we

7 have some other witnesses tomorrow that will be filling in

8 some of the holes that have been identified today. So we'll

9 be in recess until, let's just say, 6:15 for the Committee

10 members. We also invite our staff to share and if we have

11 anything left over, we'll notify the rest of you and you can

12 come and get it. All right. We're in recess.

13 (Recess taken.)

14 JUSTIN ROBINSON

15 was called as a witness by the Committee of the Judiciary,

16 pursuant to notice, and having been previously duly sworn,

17 testified as follows:

18 EXAMINATION

19 BY MR. CASTO:

20 **Q. -- in the example to buy 50 \$20.00 gift cards?**

21 A. Yes.

22 **Q. But there's no record generated of that purchase**

23 **that appears within the P-card system?**

24 A. Some adult probation offices are -- probation office

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1 for the adult drug courts did attempt to maintain

2 receipts for items that were purchased with the large

3 denomination gift cards. We attempted to reconcile a

4 batch of receipts concerning use from one gift card by

5 the Kanawha County adult probation office and essentially

6 we could not reconcile it back to the full amount of the

7 gift card value.

8 **Q. When you say you couldn't reconcile it to the**

9 **full amount, could you estimate for us what percentage of**

10 **those funds you were unable to account for?**

11 A. In reality we really couldn't provide any

12 assurance to any accounting of any of the funds because

13 the disparity of the receipts didn't list out proper

14 detail to differentiate which gift card had been used

15 because oftentimes there was a large gift card purchased

16 that was running out and then they had another large gift

17 card behind it to which they purchased other stuff. So

18 it was almost impossible to reconcile it back to one

19 individual gift card.

20 **Q. Wow. And so these cards, these high-dollar**

21 **cards were basically used to buy items or other cards and**

22 **usually other cards for the drug courts was the intention**

23 **that's been communicated to you?**

24 A. I wouldn't necessarily say it was usually for

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1 other cards. It was to purchase incentives for the drug  
 2 court participants out of that. It was done so out of a  
 3 matter of convenience because, as it was told to us by  
 4 the Court, there is only one purchasing card issued for  
 5 each adult probation office, and therefore, only one  
 6 individual at those offices authorized to use that card  
 7 to purchase items using the card.

8 **Q. And, as you noted, there is no way to monitor**  
 9 **what these purchases were that were made using these**  
 10 **high-dollar gift cards?**

11 A. Not under the methods that were being employed  
 12 by the Court at the time.

13 **Q. And so they could have been used to purchase**  
 14 **any number or type of goods and services, but you have no**  
 15 **ability to present that information to us as to what that**  
 16 **might have been?**

17 A. That's correct.

18 **Q. And while these purchases were ostensibly made**  
 19 **to be used to purchase items and gift cards for use**  
 20 **within the confines of the drug court program, thus we**  
 21 **actually have no mechanism by which we can prove that**  
 22 **they were so used?**

23 A. That's correct.

24 **Q. Are there penalties for the unauthorized use of**

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1 **the P-card?**

2 A. Yes, it's my understanding that unauthorized  
 3 use of the P-card can be subject to revocation of P-card  
 4 privileges for that P-card holder.

5 **Q. Is there a criminal offense for persons using a**  
 6 **P-card unauthorized?**

7 A. I'm not sure of that.

8 **Q. Okay. When did you as the Legislative Auditor**  
 9 **become aware of the issues that were surrounding the use**  
 10 **of the P-cards?**

11 A. Ultimately it was through the media reports  
 12 from WCHS and Kenny Bass that identified the issue to us.

13 **Q. Approximately what time was that?**

14 A. I want to say the article ran earlier in 2018  
 15 between the months of January and March. I can't be  
 16 specific, though.

17 **Q. And you conducted an investigation and I**  
 18 **believe the date of the second report -- that that was**  
 19 **issued somewhat subsequent to March of 2018?**

20 A. Yes, I think the second report from our office  
 21 was issued in May.

22 **Q. And you sent a letter that is marked as Exhibit**  
 23 **17 -- 17. There it is. And this was sent to Judge**  
 24 **Johnson, who at that time was administrative director of**

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1 **the courts, and I believe that this letter notified the**  
 2 **judge of the problems that were accruing with the use of**  
 3 **this P-card system that was in the place at the time?**

4 A. That's correct.

5 **Q. And it recommended to him that the use of the**  
 6 **P-card as it was currently being used at that time be**  
 7 **discontinued.**

8 A. That's correct.

9 **Q. And that as a result of the investigation that**  
 10 **you developed and is chronicled in report --and**  
 11 **summarized in report number 2 herein?**

12 A. That is also correct.

13 **Q. And just to -- just to make clear, if we could**  
 14 **go back to Exhibit 16, and if we could go into number 4**  
 15 **on Exhibit 16, I believe that is the third page of**  
 16 **exhibit 16 is where that starts.**

17 A. Uh-huh.

18 **Q. And then we'll go to the fourth page on --**  
 19 **which actually has the language we're looking for, in Sub**  
 20 **F it appears that all purchases made for the adult drug**  
 21 **court program must be made with the State P-card and that**  
 22 **the P-card log and receipts were to be due on the 10th**  
 23 **day of the month and that there were supposed to be logs**  
 24 **and receipts that were submitted to the Court to confirm**

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1 **all of the purchases that were made utilizing the system.**  
 2 **Now, was that system followed?**

3 A. Yes, in terms of the purchases made using the  
 4 State P-card, those receipts were submitted to the Court,  
 5 reviewed, and approved and that would be because the only  
 6 item that showed up on the purchasing card receipts was  
 7 the purchase of the large denomination gift cards that  
 8 that was the case. Anything used or purchased  
 9 subsequently with that gift card was not accounted for  
 10 through that P-card log.

11 **Q. So the Court was reviewing and approving these**  
 12 **large value gift card purchases even though there was no**  
 13 **mechanism in place by which they could account for what**  
 14 **was subsequently done with those large-value gift cards?**

15 A. That's a fair statement.

16 MR. CASTO: I have nothing further at  
 17 this time, Mr. Chairman.

18 CHAIRMAN SHOTT: Thank you, Counsel.  
 19 We'll start back on the left side. Delegate Fast,  
 20 questions of Mr. Robinson?

21 DELEGATE FAST: Thank you, Mr. Robinson.  
 22 Thank you, Mr. Chairman.

23  
 24 EXAMINATION

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1 BY DELEGATE ROBINSON:  
 2 **Q. Just looking at this page 8 of the second**  
 3 **report. What is the authority for the purchase and**  
 4 **payment of incentives, supplies, graduation ceremony**  
 5 **matters, participant meals and snacks? Is that a**  
 6 **statute?**  
 7 A. I'm unaware if it is a statute.  
 8 **Q. Okay. I'm just trying to find out what the**  
 9 **authority here is. Another says, "Currently incentive**  
 10 **purchases are limited to \$1,000 per month for each**  
 11 **probation office." Where did that come from?**  
 12 A. I believe that policy was established  
 13 internally of the Court.  
 14 **Q. Okay. So that's -- again, that's not a statute**  
 15 **or anything?**  
 16 A. Not that I'm aware of.  
 17 **Q. Okay. Each probation office is issued one**  
 18 **purchasing card to make purchases with including to**  
 19 **purchase incentives needed for drug court participants.**  
 20 **Same thing, that is just a policy?**  
 21 A. I believe so.  
 22 **Q. So is this -- it looks like this is perhaps a**  
 23 **colossal failure, to recognize what the State Auditor is**  
 24 **saying, that you just can't do this without the Auditor**

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1 **approving these purchases. If -- if that is the case, is**  
 2 **there any particular Supreme Court justice that is**  
 3 **implicated for these alleged violations of P-card**  
 4 **purchases of these incentive amounts?**  
 5 A. I wouldn't say there is any particular justice.  
 6 There is no particular justice, no.  
 7 **Q. Okay. Just the Court as a whole?**  
 8 A. The court as a whole, yes.  
 9 **Q. Okay. And is that -- so that's the whole issue**  
 10 **here. It's not a particular justice?**  
 11 A. That's correct.  
 12 DELEGATE FAST: Thank you. Thank you,  
 13 Mr. Chairman.  
 14 CHAIRMAN SHOTT: Delegate Foster.  
 15 EXAMINATION  
 16 BY DELEGATE FOSTER:  
 17 **Q. My question on these -- these cards -- and I**  
 18 **don't know if you all delved into this at all, but is**  
 19 **there an area where the majority of this was done? Or is**  
 20 **this something that was done at -- because it was done by**  
 21 **the -- each individual office, is there somebody that was**  
 22 **a prime offender in this -- in these purchases, because**  
 23 **there's -- was it 529 of them I believe?**  
 24 A. No, we did not note that any particular county

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1 or probation office was a prime offender in utilizing  
 2 this methodology of purchasing large denomination gift  
 3 cards.  
 4 **Q. So it was pretty much throughout the state?**  
 5 A. Yeah. As I mentioned, it was -- it kind of  
 6 became a common practice as a matter of convenience for  
 7 them to get around the stipulation that the P-card holder  
 8 and that there was only one for each probation office was  
 9 authorized to make the purchases, which made it difficult  
 10 for them to stop their daily duties -- and this is the  
 11 Court's take on this. But if they were tied down with  
 12 other duties they couldn't leave to make purchases that  
 13 were needed, so in order to get around that, they  
 14 purchased the large denomination gift cards to which  
 15 anyone could utilize that to make purchases.  
 16 **Q. And what was it? Was it actual gift cards for**  
 17 **specific vendors, specific stores? Or was it like a Visa**  
 18 **gift card that they just used wherever?**  
 19 A. Both.  
 20 **Q. Both. And did this all start like -- because**  
 21 **there's multiple agencies throughout the state. It's**  
 22 **just surprising that it would start all at once equally**  
 23 **throughout the state if didn't come from somewhere upper**  
 24 **in the Supreme Court system.**

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1 A. You know, it may have been a decision made  
 2 by -- this would be speculation, and I hate to do so -  
 3 but it could be a decision that was made at one probation  
 4 office and then was followed suit throughout the rest.  
 5 **Q. So you're not sure if it was something --**  
 6 A. No, not at all.  
 7 DELEGATE FOSTER: Okay. All right, thank  
 8 you.  
 9 CHAIRMAN SHOTT: Delegate Sobonya.  
 10 DELEGATE SOBONYA: Thank you,  
 11 Mr. Chairman.  
 12 EXAMINATION  
 13 BY DELEGATE SOBONYA:  
 14 **Q. On page 8, under issue 3, it says, in 2016 and**  
 15 **'17 you all found that the drug courts under the Supreme**  
 16 **Court of Appeals purchased the gift cards. Was that just**  
 17 **the time that you audited or how long had that been in**  
 18 **practice, buying gift cards?**  
 19 A. I can't say how long it's been practice.  
 20 Essentially this was identified by the State Auditor's  
 21 Office per FOIA requests from WCHS News concerning this  
 22 purchase. And essentially re-requested that FOIA  
 23 documentation as well, that was provided, which was only  
 24 covering the calendar years 2016 and 2017.

1 **Q. So this could have been going on for even**  
2 **longer than that?**  
3 A. Possibly so, yes.  
4 **Q. Okay. And you said that the Supreme Court**  
5 **authorized those P-card purchases. Was it the justices**  
6 **that signed off on it? Was it the Supreme Court**  
7 **manager -- the administrative manager? Was it the**  
8 **financial officer? Who actually did the authorization of**  
9 **that?**  
10 A. I'm not certain. I do know that any P-card  
11 transactions that are made by a specific holder, there is  
12 a coordinator that oversees that holder's transactions.  
13 That coordinator then signs off on those transactions at  
14 the end of the month. Then that ultimately is passed up  
15 to probably someone in the Supreme Court's financial  
16 management office to which it would be approved there.  
17 The individual doing so, I can't speak to.  
18 **Q. Okay. And then just a follow-up on the**  
19 **gentleman to my right, his question about are there**  
20 **certain county probation offices that stood out more so**  
21 **than the others. In the Table 3 it indicates that there**  
22 **were four, \$1,000 cards purchased. You can't tell what**  
23 **county probation offices that came from?**  
24 A. I possibly could. I just don't have that

1 information available right now.  
2 **Q. So that's something that you could get to the**  
3 **Committee members?**  
4 A. Absolutely.  
5 DELEGATE SOBONYA: Thank you.  
6 CHAIRMAN SHOTT: Back to the second row.  
7 All right. We'll move to the right-hand side beginning  
8 with Delegate Zatezalo. No? Delegate Pushkin.  
9 DELEGATE PUSHKIN: Thank you,  
10 Mr. Chairman.  
11 EXAMINATION  
12 BY DELEGATE PUSHKIN:  
13 **Q. I'm looking at -- let me put on my glasses, I**  
14 **can see what I'm looking at -- page 8, I believe. I'm**  
15 **trying to see where I -- I saw it just a second ago. The**  
16 **money that we're talking about, it doesn't come from**  
17 **taxes paid by our constituents, right? It would come**  
18 **from the participants in the drug court?**  
19 A. Yes, the participants of the drug court  
20 programs actually pay into a fee and that is where these  
21 funds are derived. Not State tax dollars.  
22 **Q. Okay. So I guess the issue is they didn't ask**  
23 **permission from the Auditor to do this, but it's not that**  
24 **we're dealing with tax dollars. We're dealing with fees**

1 **who are willing participants in the program, correct?**  
2 A. That's correct.  
3 **Q. Okay. And do you have any idea how much it**  
4 **costs to house one of these participants in one of our**  
5 **regional jails or prisons for a day?**  
6 A. Off the top of my head, no, but I want to say  
7 daily it may cost somewhere around between \$40 and \$50 if  
8 I'm correct.  
9 **Q. And that would be tax dollars, correct?**  
10 A. That would be, yes.  
11 **Q. Okay. I just wanted to get across that these**  
12 **programs save -- not only do they save lives but they**  
13 **save money and I've been to one of the -- have you ever**  
14 **been to a drug court graduation ceremony?**  
15 A. I have not, sir.  
16 **Q. You have not?**  
17 A. I have not.  
18 **Q. Okay. I've been to -- I go to -- I try to go**  
19 **to all of them. And I'd recommend that other members of**  
20 **the Committee attend and it's a good program.**  
21 DELEGATE PUSHKIN: Thank you.  
22 CHAIRMAN SHOTT: Delegate Lane.  
23 DELEGATE LANE: Thank -- thank you.  
24 EXAMINATION

1 BY DELEGATE LANE:  
2 **Q. So none of this money for the purchases of**  
3 **these gift cards comes out of State dollars?**  
4 A. The only instance where State dollars are used  
5 to pay for incentives in any type of drug court program  
6 is the juvenile drug court program.  
7 **Q. Okay. But did I not read over on page 9 that**  
8 **although the drug court participants are supposed to be**  
9 **paying that some of the counties haven't participated --**  
10 **haven't paid everything that they're supposed to pay?**  
11 A. Could you point me more directly to the  
12 comment?  
13 **Q. Page 9.**  
14 A. Last paragraph possibly?  
15 **Q. Yeah.**  
16 A. Well, interestingly enough, what happens as a  
17 result of the adult drug court policies regarding the use  
18 of funds to be spent on incentives, each drug court  
19 office is limited to spending \$1,000 per month. In some  
20 instances, either drug courts collected more than that  
21 per month on a consistent basis and had accumulated a  
22 balance or they weren't spending as much as other drug  
23 courts and had a remaining balance that was somewhat  
24 substantial. I think as we noted in here, Hampshire

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1 County had over \$60,000 in collected drug court  
2 participant fees that had not been used.  
3 **Q. So they collected it but it hasn't been used?**  
4 A. That's correct.  
5 DELEGATE LANE: Okay. Thank you. Now --  
6 okay, that's all I have.  
7 CHAIRMAN SHOTT: Delegate Fluharty.  
8 Nothing. Delegate Byrd?  
9 DELEGATE BYRD: Thank you, Mr. Chairman.  
10 EXAMINATION  
11 BY DELEGATE BYRD:  
12 **Q. Thank you for being here still. Just one**  
13 **question is: Do the P-cards have an individual's name on**  
14 **each one per county or is it -- just says Hampshire**  
15 **County P-card? I'm not sure --**  
16 A. Oh, no, it's issued to an individual.  
17 **Q. Each county?**  
18 A. Well, each P-card is issued to an individual,  
19 so at each county there would be an individual at the  
20 probation office that the P-card was specifically issued  
21 to.  
22 DELEGATE BYRD: All right, thank you.  
23 CHAIRMAN SHOTT: Back to the third row.  
24 Delegate Robinson.

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1 DELEGATE ROBINSON: Thank you,  
2 Mr. Chairman.  
3 EXAMINATION  
4 BY DELEGATE ROBINSON:  
5 **Q. Mr. Robinson, did this come at any -- did this**  
6 **program come at any direction of any of the justices**  
7 **under impeachment proceedings today?**  
8 A. No, I believe that the mandate that each county  
9 operate a drug court -- and I'm -- I can't speak to the  
10 incentive program specifically, but I do believe the  
11 mandate to operate drug courts came from the legislature  
12 itself.  
13 **Q. So this program that has been cited in your**  
14 **report here has nothing to do with Supreme Court justices**  
15 **other than the fact that they are over drug court and all**  
16 **other courts in the state?**  
17 A. Yes, that's a fair statement.  
18 **Q. And had nothing to do with the five justices**  
19 **we've been tasked to investigate today?**  
20 A. I can't speak to the relationship anyone else  
21 could draw to the program and the justices.  
22 **Q. Okay. Did the Court -- did the drug courts**  
23 **quit this practice as soon as the Auditor pointed it out?**  
24 A. The drug courts stopped the practice of

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1 purchasing large-denomination gift cards once we had  
2 issued the letter to Gary Johnson identifying the issue  
3 and that it needed to cease until such approval was  
4 granted.  
5 **Q. So as soon as it got identified it was shut**  
6 **down?**  
7 A. Yes. And our concerns with the program was  
8 simply lack of accountability and the lack of approval  
9 for these transactions from the Auditor's office.  
10 **Q. And would the Court typically -- would the**  
11 **Court typically rely on the Auditor's office for**  
12 **expertise in spending and those kind of things?**  
13 A. How so?  
14 **Q. As in a program like this if it's not a**  
15 **appropriate, would they rely on the auditor to point it**  
16 **"Out of that purchasing, your P-card purchase is not**  
17 **appropriate"?**  
18 A. I think the Auditor's office can identify  
19 particular transactions that may not be appropriate, but  
20 as in terms of whether the program and the purchases made  
21 for the program and the program itself, I don't think  
22 that's the State Auditor's Office's call. I think that  
23 was something done by the Court.  
24 DELEGATE ROBINSON: Okay. Thank you.

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1 CHAIRMAN SHOTT: Delegate Hanshaw.  
2 VICE-CHAIR HANSHAW: Yes, Mr. Chairman.  
3 EXAMINATION  
4 BY VICE-CHAIR HANSHAW:  
5 **Q. Mr. Robinson, I know that some members of our**  
6 **Supreme Court of Appeals have taken varying levels of**  
7 **interest in being personally involved in the**  
8 **administration of the drug court over the years. Could**  
9 **you help me understand how the spending is monitored? Is**  
10 **it monitored in the first instance by the circuit court**  
11 **judges? As I understand the program, it's administered**  
12 **at the local level first by the circuit court judges.**  
13 A. Yes, I imagine that the particular  
14 transactional level data -- level data is scrutinized more  
15 closely at the local level and then more at a higher  
16 level as the overall program by the Supreme Court offices  
17 here in Charleston.  
18 **Q. But in terms of actual approval of programmatic**  
19 **design and use of funds and carrying out of expenditures**  
20 **and actually giving direction to those who are working on**  
21 **the ground, that -- that -- and I don't know. Does that**  
22 **come from the East Wing or does that come from the**  
23 **circuit court judge?**  
24 A. I don't have that answer either.

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1 VICE-CHAIR HANSHAW: Okay. Thank you,  
2 Mr. Chairman.  
3 CHAIRMAN SHOTT: Delegate Fleischauer.  
4 MINORITY CHAIR FLEISCHAUER: Thank you,  
5 Mr. Chairman.  
6 EXAMINATION  
7 BY MINORITY CHAIR FLEISCHAUER:  
8 **Q. The -- I think in the answer to the first**  
9 **question you said that no particular Supreme Court**  
10 **justice has been identified as being a problem with**  
11 **respect to this program.**  
12 A. No, I don't think any one particular justice  
13 was integrally involved in any activities regarding that  
14 program, no.  
15 **Q. Okay. So there was -- and also there's nothing**  
16 **to indicate any of the justices committed any crimes in**  
17 **conjunction with this -- this P-card program or these**  
18 **incentives?**  
19 A. Not that I'm aware of.  
20 **Q. Or that they lied about anything?**  
21 A. Concerning? This particular issue?  
22 **Q. Yes.**  
23 A. No.  
24 **Q. Or that they did anything immoral in relation**

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1 **to this?**  
2 A. No.  
3 MINORITY CHAIR FLEISCHAUER: Okay. Thank  
4 you. Thank you, Mr. Chairman.  
5 EXAMINATION  
6 BY CHAIRMAN SHOTT:  
7 **Q. Mr. Robinson, I want to just conceptually**  
8 **visualize this. You said that each county got a P-card?**  
9 A. Yes.  
10 **Q. So that one person in that county had some**  
11 **authority up to \$1,000 a month to spend on that P-card?**  
12 A. At least in relation to each county's probation  
13 office, that's correct.  
14 **Q. Okay. And the Supreme Court -- but I thought**  
15 **you said earlier the Supreme Court was not issued any**  
16 **P-cards?**  
17 A. You asked if the justices specifically were  
18 issued P-cards.  
19 **Q. Okay.**  
20 A. No, they are not.  
21 **Q. So the Supreme Court had how many -- the Court**  
22 **itself as a body had how many P-cards?**  
23 A. I can't answer that question outside of the  
24 fact that for each county probation office there would be

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1 at least one P-card, so it's likely to readily assume  
2 there's at least 55 for the probation offices.  
3 **Q. So how do they get those P-cards? Does the**  
4 **Supreme Court request P-cards from some other entity and**  
5 **then they are distributed to the counties based on that**  
6 **request?**  
7 A. The request would be made to the State  
8 Auditor's Office, but the authority to request them  
9 probably would come from the Supreme Court, but I can't  
10 be certain of that.  
11 **Q. But I thought part of the problem was they**  
12 **didn't ask permission?**  
13 A. They didn't ask permission specifically to  
14 purchase gift cards using the purchasing card. Any  
15 purchase of a gift card using the State purchasing card  
16 requires prior approval of that transaction for each  
17 instance of a purchase. Not as a whole, so --  
18 **Q. I follow you. So they didn't need permission**  
19 **to issue the card; they needed permission for the card to**  
20 **be used to purchase gift cards?**  
21 A. Yes.  
22 **Q. Is that correct?**  
23 A. Yes. And the purpose for that is  
24 accountability and transparency. Essentially once the

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1 gift card's purchased, the only thing that can be tracked  
2 through the purchasing card program is the purchase of  
3 the gift card, not what is subsequently purchased with  
4 the gift cards.  
5 **Q. You indicated that the drug courts were**  
6 **essentially required of the Supreme Court by the**  
7 **legislature, correct?**  
8 A. That's our understanding from the Supreme  
9 Court.  
10 **Q. Did the legislature require the Supreme Court**  
11 **to have P-cards issued to each drug court?**  
12 A. No. And the P-cards aren't particularly issued  
13 to the drug courts. They're actually issued to the adult  
14 probation offices.  
15 **Q. Did the legislation that the legislature passed**  
16 **require that, or was that a discretionary decision by the**  
17 **Supreme Court?**  
18 A. No, the purchasing cards are already being held  
19 by the adult probation offices for day-to-day purchases  
20 using the P -- purchasing card outside of the drug courts  
21 or the incentive program.  
22 **Q. So then the problem was someone gave authority**  
23 **to the drug courts to use a P-card they already had to**  
24 **purchase gift cards; is that right?**

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1 A. I'm not sure that anyone gave them authority  
2 to, but it's possible.

3 **Q. Well, how did this program then start where**  
4 **they could -- where they weren't purchasing gift cards**  
5 **before and suddenly they started purchasing? How did**  
6 **that --**

7 A. I'm unsure of the inception of this -- this  
8 methodology for purchasing large gift cards.

9 **Q. Well, did the Supreme -- was the Supreme Court**  
10 **aware that that was going on?**

11 A. To my understanding, yes.

12 **Q. They were? Okay. And so they were aware of a**  
13 **process by which these P-cards were being used by their**  
14 **probation officers in a manner that was not -- did not**  
15 **create any transparency or accountability. Is that fair?**

16 A. That's a fair statement.

17 CHAIRMAN SHOTT: Okay. Thank you.  
18 And I see that neither Mr. Allen or our  
19 other counsel are here, so we'll ask counsel if you have  
20 any redirect.

21 MR. CASTO: I do have just a few,  
22 Mr. Chairman.  
23  
24 EXAMINATION

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1 BY MR. CASTO:  
2 **Q. You testified earlier that you were unaware of**  
3 **what the penalties were for unauthorized use of a**  
4 **purchasing card to make a transactional purchase of this**  
5 **nature. Is that correct?**

6 A. Yes. And specific to purchasing gift cards  
7 without prop --proper approval.

8 **Q. But with -- unauthorized use of a purchasing**  
9 **card generally is a criminal offense, isn't it?**

10 A. I think it would depend on the nature of the  
11 unauthorized transaction.

12 **Q. My recollection is that failure to obtain**  
13 **approval of the auditor for a purchasing card purchase is**  
14 **a felony in each instance.**

15 A. Is that correct? Your understanding would  
16 probably be better than mine.

17 **Q. My understanding of the Constitutional duties**  
18 **of the Supreme Court that they have the entirety of**  
19 **oversight of the courts. They're -- while they are a**  
20 **judicial body they do have an administrative role.**

21 A. That's correct.

22 **Q. And they maintain an administrative office of**  
23 **the courts?**

24 A. That's correct.

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1 **Q. And the five justices superintended by the**  
2 **chief justice in his or her capacity oversee the**  
3 **operation of all of the subordinate courts.**

4 A. That's correct.

5 **Q. And have ultimate responsibility for the**  
6 **activities of those courts.**

7 A. That is also correct.

8 **Q. And they meet -- in their administrative**  
9 **meetings they often deal with fairly arcane and what we**  
10 **would consider perhaps even trivial matters of those**  
11 **courts, sometimes down to the salaries of the subordinate**  
12 **officials of those courts?**

13 A. It's quite possible.

14 **Q. And I believe that they are responsible out of**  
15 **this -- because we had testimony earlier from Mr. Allred**  
16 **with their central warehousing office that they equip the**  
17 **subordinate offices and courts with all of the equipment**  
18 **and material that they need to do their job.**

19 A. To some degree, yes, but not fully outfit the  
20 lower courts.

21 **Q. But they are responsible for seeing that those**  
22 **lower courts are, indeed, outfitted and able to proceed**  
23 **to business.**

24 A. Yes, that's correct.

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1 **Q. And so ultimately when there is a purchasing**  
2 **card issued to an entity such as the adult probation**  
3 **office which is overseen by the Court, the use and**  
4 **authority of that card -- the ultimate authority and use**  
5 **of that card rest upon the rules and oversight provided**  
6 **by the Supreme Court.**

7 A. That's correct.

8 **Q. And Exhibit Number 16 was a series of**  
9 **guidelines which were promulgated by the Supreme Court of**  
10 **Appeals of the State of West Virginia for the use of**  
11 **those subordinate bodies.**

12 A. I believe so, yes.

13 **Q. And those subordinate bodies while they may**  
14 **have explicitly followed the provisions that are set**  
15 **forth here did not follow the larger procedures which**  
16 **were set forth in the Auditor's guidelines to obtain**  
17 **prior approval prior to the purchase of these so-called**  
18 **high-dollar gift cards?**

19 A. That's correct.

20 MR. CASTO: I have nothing further,  
21 Mr. Chairman.

22 CHAIRMAN SHOTT: Starting back on the  
23 left side, Delegate Foster.  
24 EXAMINATION

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1 BY DELEGATE FOSTER:

2 **Q. I was looking here in the report on page 8**

3 **where it's talking about in 2016 and 2017, and what I'm**

4 **wondering is -- so this went on for at least two years**

5 **without anybody noticing there was an issue, and what I'm**

6 **wondering there is, is there not -- if it has to be**

7 **approved and as counsel laid out that possibility of a**

8 **felony if it was not approved before the purchase was**

9 **made, how do we go two years without catching it?**

10 A. That's a good question. I don't have the

11 answer.

12 **Q. And -- and along those lines, is there not a**

13 **standard for, "Hey, there's purchases here of gift cards**

14 **for this amount and it was not" -- and whenever you see**

15 **there's a large purchase of gift -- purchase on a P-card**

16 **to say, "Hey, was this approved or was it not", is there**

17 **no flagging system to say, "Hey, here's a purchase that**

18 **wasn't approved" or -- and also who is responsible for**

19 **that?**

20 A. Internally at the Court I do not know if there

21 is a procedure to flag such large transactions. From the

22 meetings we held with the Kanawha County adult probation

23 representatives they told us that it was simply a

24 misunderstanding, they weren't aware that they required

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1 such prior approval from the State Auditor's Office to

2 make those purchases. Now to the question, if it's: Why

3 did the State Auditor's Office not flag those

4 transactions, I don't have that answer either.

5 **Q. Okay. And so -- but it would be the State**

6 **Auditor's Office that should have caught that something**

7 **was not approved before purchased?**

8 A. That's a fair statement, yes.

9 DELEGATE FOSTER: Okay. All right, thank

10 you.

11 CHAIRMAN SHOTT: Delegate Sobonya,

12 questions? Delegate Pushkin.

13 DELEGATE PUSHKIN: Thank you,

14 Mr. Chairman.

15 EXAMINATION

16 BY DELEGATE PUSHKIN:

17 **Q. You stated earlier the only cases where this**

18 **wouldn't be paid for by the fees of the participants**

19 **would be in a juvenile drug court. Are there any**

20 **instances of participants in juvenile drug court getting**

21 **gift cards?**

22 A. I believe there was one noted when we looked

23 into all gift cards being purchased by the drug court

24 incentive programs, where there was at least one issued

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1 to a juvenile, yes.

2 **Q. One card to one juvenile?**

3 A. That I'm aware of. We did not cross-reference

4 these particular cards to the particular courts that they

5 were issued to.

6 **Q. Okay. I see that the Legislative Auditor's**

7 **Office made recommendations to deal with this issue. I**

8 **think they're perfectly fine.**

9 DELEGATE PUSHKIN: Thank you.

10 CHAIRMAN SHOTT: Back to the third row,

11 any questions back there? Okay. Delegate Hanshaw.

12 Delegate Fleischauer. You're looking like you want to

13 get out of here, right?

14 THE WITNESS: I think I may be subjected

15 to a few more questions coming up, so I'm okay. I'm

16 hanging in here.

17 CHAIRMAN SHOTT: All right.

18 EXAMINATION

19 BY CHAIRMAN SHOTT:

20 **Q. I just want to be sure. We had \$105,000 of**

21 **somebody else's money, whether it's the taxpayers or the**

22 **taxpayers who are drug court participants, and we can't**

23 **say where any of it went?**

24 A. No, that's the difficulty with this is the lack

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1 of accountability and transparency to ensure that all the

2 money that was collected from the participants was

3 actually spent out in accordance with the regulations

4 governing the incentive program.

5 **Q. So we suspect that some of it may have been**

6 **spent for the purposes it was intended, but we can't be**

7 **sure?**

8 A. I wouldn't say "suspect", but the likelihood

9 exists.

10 **Q. And that's based on what?**

11 A. The lack of proper procedures to provide the

12 accountability necessary to account for the dollars spent

13 off the large-denomination cards.

14 **Q. Maybe I didn't state my question clearly. We**

15 **don't know for sure that this money was spent for the**

16 **purposes it was intended? I mean, for instance --**

17 A. Not all of it --

18 **Q. -- somebody that bought a large P-card could**

19 **have spent it for themselves.**

20 A. Yes, due to the system in place, if someone

21 purchased \$1,000 gift card and there isn't itemized

22 receipts to account for every dollar that was spent on

23 it, there is a possibility that someone purchased an item

24 for personal use.

1 **Q. Or a lot of items with \$1,000, right?**  
2 A. It's possible, yes.  
3 CHAIRMAN SHOTT: Thank you. Anything  
4 further for Mr. Robinson? He's had a long day. Thank  
5 you, Mr. Robinson. We'll start on the third -- is he --  
6 are you -- third report, is that you too?  
7 THE WITNESS: The third report's me, yes.  
8 I'll be all right.  
9 CHAIRMAN SHOTT: Let's see how far we get  
10 on this one. It doesn't sound like it's going to take  
11 too long.  
12 THE WITNESS: As long as it takes, I'm  
13 perfectly fine, generally.  
14 CHAIRMAN SHOTT: All right. Counsel.  
15 MS. KAUFFMAN: Thank you, Mr. Chairman.  
16 CHAIRMAN SHOTT: Just -- you don't need  
17 this reminder, but just in case you do, you're still  
18 under the same oath.  
19 THE WITNESS: Thank you, sir.  
20 CHAIRMAN SHOTT: All right.  
21 EXAMINATION  
22 BY MS. KAUFFMAN:  
23 **Q. Mr. Robinson, we are now going to move to the**  
24 **third report. I believe we briefly discussed that**

1 **earlier this morning that there have been three reports**  
2 **completed with respect to the Supreme Court during this**  
3 **calendar year; is that correct?**  
4 A. That is correct.  
5 **Q. The third report that I have is entitled at**  
6 **least in part "Reappropriated Fund Balance Analysis"; is**  
7 **that correct?**  
8 A. That is correct.  
9 **Q. Turning to page 2 of that report, could you**  
10 **please tell the committee how the Legislative Auditor**  
11 **first became of concerns with respect to the spend-down**  
12 **that -- that's been referenced in this report?**  
13 A. Yes, there -- we noted issues in discussions in  
14 the administrative conference minutes of the Court  
15 concerning questions of the spend-down and where the  
16 money had went.  
17 **Q. And I believe in the first paragraph of that**  
18 **there is also an indication that in reviewing a memo that**  
19 **was written by Justice Loughry in which he was responding**  
20 **to some questions regarding his usage of Court vehicles**  
21 **that he had mentioned this as well; is that correct?**  
22 A. That's correct.  
23 **Q. And for -- just for ease or reference, not that**  
24 **I won't go to it, it's my understanding from the exhibits**

1 **we had looked at earlier today that memo is Exhibit**  
2 **Number 6 that Justice Loughry -- if you could please just**  
3 **confirm that.**  
4 A. That is correct.  
5 **Q. Okay. With respect to this, it is my**  
6 **understanding - and this would be on page -- beginning on**  
7 **page 13 of this report - that a memorandum was prepared**  
8 **by Mr. Canterbury back in November of 2016, regarding at**  
9 **least some -- some of the issues contained in this**  
10 **report; is that correct?**  
11 A. That is correct.  
12 **Q. If you could -- actually, let me back up there.**  
13 **It is my understanding that from -- and we're back on**  
14 **page 2. That there was a meeting that was held with the**  
15 **at the time current administrative director and the**  
16 **director of financial management to discuss those -- the**  
17 **reappropriated funds. If you recall, were you part of**  
18 **that meeting?**  
19 A. I was, yes.  
20 **Q. And who at the time was the administrative**  
21 **director?**  
22 A. Gary Johnson.  
23 **Q. Okay. And what about the director of financial**  
24 **management?**

1 A. Sue Racer-Troy.  
2 **Q. Okay. And I believe -- if you could just**  
3 **explain to the committee the concerns that -- that you**  
4 **had and what you were able to determine. And by that I'm**  
5 **specifically still staying on page 2 and trying to figure**  
6 **out how you were able to determine how the funds were**  
7 **accumulated.**  
8 A. Well, we actually couldn't exactly determine  
9 how the Court or why the Court had accumulated that  
10 amount of money in the time frame that it had. I think  
11 beginning in 20007, end of that fiscal year, the Court  
12 reappropriated approximately \$1.4 million to which that  
13 balance grew to \$29 million in 2012.  
14 **Q. And I see you're referring to a graph. I will**  
15 **now ask that you please refer to that graph -- I believe**  
16 **it is located on page 3 of this report. Does that**  
17 **provide the trend of the yearly reappropriated funds for**  
18 **the Supreme Court?**  
19 A. Yes, it does, for the years of 1997 through  
20 fiscal year 2018.  
21 **Q. And I believe you just indicated that in 2012**  
22 **that was at a little over \$29 million; is that correct?**  
23 A. Yes, that's correct. And on page 2 we  
24 identified these specific categories where such funds

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1 were reappropriated from the prior year.

2 **Q. And by 2016, what was that balance?**

3 A. \$333,000 -- or \$333,514.

4 **Q. Okay.**

5 A. So just a little over 333,000.

6 **Q. The report beginning after that graph,**

7 **beginning on page 4 does go through the fiscal years and**

8 **does some analysis and provides information about the**

9 **reappropriated balances in those years, but if I could -**

10 **before we get to that - move forward to Mr. Canterbury's**

11 **memo that begins on page 13 of this report. Could you**

12 **please tell the Committee, how -- how did this memo come**

13 **about? Why did Mr. Canterbury -- your understanding of**

14 **why Mr. Canterbury prepared this memo?**

15 A. This memo was prepared by Mr. Canterbury in

16 response to a request from Justice Workman who asked that

17 he prepare it to explain how some of that \$29 million was

18 spent down to the balance it was currently at that date.

19 **Q. I believe in the first -- the last line of the**

20 **first paragraph he notes, "In brief she" - I believe**

21 **referring to Justice Workman - "wants to know where the**

22 **money went." Is that correct?**

23 A. That is correct.

24 **Q. Going through -- and I understand this is a**

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1 **several-page memo. Not to go through each and every**

2 **paragraph, it is -- if you could please just summarize**

3 **your recollection of, generally speaking, what this memo**

4 **says with respect to what happened and how the decision**

5 **was made with respect to spending?**

6 A. In Mr. Canterbury's words in this memo, there

7 are several reasons cited for the spend-down. Some of

8 them include raises that were given to justices, judges

9 and magistrates. Renovation projects that were needed in

10 their City Center East location here at the Capitol.

11 Amongst various reasons, but they also did cite some

12 reasons concerning the concern over a potential

13 sponsorship by the legislature of a constitutional

14 amendment that may take away their budgetary authority.

15 **Q. And I believe on page 13 in the second full**

16 **paragraph, beginning with the third sentence, it notes,**

17 **"And there was a decision by the Court to ask for lower**

18 **appropriations during the most recent fiscal years due to**

19 **growing concerns that key Senate leaders were angered by**

20 **the excessive amount of the Court's 'surplus funds' as**

21 **they styled it." Is that correct?**

22 A. That is correct.

23 **Q. In the next paragraph, I would ask you to look**

24 **beginning the -- on the second line, starts with "but it**

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1 **notes that the Court approved" -- Mr. Canterbury notes in**

2 **his memo that the Court approved each and every one of**

3 **those appropriation requests with the understanding of**

4 **the major issues that the Court was facing when the Court**

5 **approved those requests; is that correct?**

6 A. That is correct.

7 **Q. Does he cite one of those major issues that the**

8 **Court was facing as the threat of a successful**

9 **constitutional amendment to take away the Court's**

10 **budgetary independence if the Court had continued to have**

11 **those large funds at the end of each fiscal year?**

12 A. Could you redirect me to where you're

13 referencing? You said page 13.

14 **Q. On page 13, third full paragraph, the second**

15 **line down, in the middle of that it starts with "but the**

16 **Court approved."**

17 A. Yeah. And your question again was? Apologies.

18 **Q. No, no problem. That the Court re -- the Court**

19 **decided to make those expenditures knowing what issues**

20 **the Court was facing at the time and that was -- one of**

21 **those issues he identified was the potential**

22 **constitutional amendment to take away the independence of**

23 **the Court's budget.**

24 A. Yes, in Mr. Canterbury's words in this memo,

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1 that's correct.

2 **Q. And, again, I will not belabor all of these,**

3 **but similar to what your report did, then Mr. Canterbury**

4 **went through year by year to do some -- to provide some**

5 **explanation for the reappropriated funds; is that**

6 **correct?**

7 A. Yes. Yes, this memo actually had a brief cover

8 letter that described that the request from Justice

9 Workman was to try to describe the spend-down in bullet

10 point format as briefly as possible. So the fiscal year

11 summary as provided by Mr. Canterbury in his memo does

12 not go into great detail, but it does try to capture the

13 reasoning behind some of the spend-down.

14 **Q. Okay. And he did note -- he did note that he**

15 **was asked to keep it brief, so he put it in bullet form**

16 **-- format for that reason.**

17 A. Yes.

18 **Q. Okay. And with respect to those years, again,**

19 **there is notation as to how some of the money was -- was**

20 **spent; and I believe -- and I'm going to now refer you**

21 **back to -- still staying on Mr. Canterbury's memo on page**

22 **13 -- let's see. The third paragraph, the first sentence**

23 **that I had not previously read, I believe he notes that**

24 **he thought it was necessary to point out that not only is**

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**1 every dime accounted for in Director Sue Racer-Troy's**  
**2 electronic files, that he believed that every dime was**  
**3 accounted for; is that correct?**  
 4 A. That is correct.  
**5 Q. And now I'll -- I'm just going to ask you some**  
**6 general questions with respect to that. Have -- has your**  
**7 office -- is this investigation still ongoing?**  
 8 A. Absolutely. There is a tremendous amount of  
 9 transactional data that we will have to review to  
 10 ascertain the specifics of this spend-down.  
**11 Q. Okay. And when we continue to talk about the**  
**12 spend-down, we're still talking about the spend-down**  
**13 where the -- what happened between 29 million in 2012 and**  
**14 approximately 333,000 in 2016?**  
 15 A. That's correct.  
**16 Q. And, again, and I might have just asked you**  
**17 this and if I did, I apologize. That investigation is**  
**18 still ongoing?**  
 19 A. Yes, that investigation is still ongoing.  
**20 Q. Okay. If you could, just to the best of your**  
**21 ability -- and, again, I understand Mr. Canterbury was**  
**22 asked to be brief, and I'll ask you to be brief as well.**  
**23 If you could just generally, again, to the best of your**  
**24 ability try to summarize for the Committee what you**

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**1 understand happened between 2012 and 2016 just up to this**  
**2 point.**  
 3 A. Would you like me to cover specific categories  
 4 in general?  
**5 Q. If you can.**  
 6 A. Okay. In going through our analysis,  
 7 ultimately our report somewhat mirrors Canterbury's  
 8 attempted analysis. And I don't mean to say "attempted"  
 9 as to be derogatory towards his analysis. We just tried  
 10 to be more specific. But given the amount of data we had  
 11 to review, essentially we were able to go through fiscal  
 12 year to fiscal year from fiscal year 2012 to '16 and  
 13 identified specific categories of expenditures that saw a  
 14 significant increase in spending over the prior year's  
 15 expenditures.  
 16 Fiscal year 2012, those categories,  
 17 ultimately almost every year of this review from our  
 18 office, included an increase in payroll. I think the  
 19 total increase in payroll in 2012 was 12.4 million. But  
 20 we identified various categories. Would you still like  
 21 me to go through the various categories? I'd be happy  
 22 to.  
**23 Q. If you can.**  
 24 A. Okay. So for 2012, we saw a total increase in

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1 payroll expenditures of \$12.4 million over the past year.  
 2 Then we noted travel, saw an increase of \$587,000 over  
 3 the prior year. Telecommunications 582,000 over the  
 4 prior year. Leasehold improvements 873,000. That's an  
 5 approximation. And computer equipment 361,000 over the  
 6 prior year.  
 7 For fiscal year 2013, again, we saw  
 8 payroll-related expenses increase this time 900,000 over  
 9 the prior year. But that also takes into account the \$12  
 10 million that had increased the year prior to that. Other  
 11 areas we saw increases in expenditures included  
 12 contractual services, which increased 1.58 million over  
 13 the prior year. Computer services, \$922,000 over the  
 14 prior year. Routine building maintenance, 505,000 over  
 15 the prior year. Office equipment 330,000 over the prior  
 16 year, and consulting for capital asset projects increased  
 17 725,000 over the prior year. Again, all of these are  
 18 approximations.  
 19 Then moving into fiscal year 2014, payroll  
 20 expenses, again, increased 2.4 million over the prior  
 21 year, which is a trend of three years in a row of  
 22 increases. Other categories, rental expenses for real  
 23 property increased \$376,000. Contractual services  
 24 increased \$486,000. Travel increased \$909,000. Computer

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1 services increased \$359,000. Attorney legal service  
 2 payments increased \$1 million. Miscellaneous equipment  
 3 purchases increased by \$272,000, and contractor payments  
 4 for capital asset projects increased by 1.25 million, and  
 5 computer equipment, again, increased 409,000 in fiscal  
 6 year 2014.  
 7 Moving into fiscal year 2015. Total  
 8 expenditures actually decreased in this year by 1.6  
 9 million but due to the increases in the prior years the  
 10 reappropriated balance was still depleted. Payroll  
 11 expenses increased 1.45 million, and the only other area  
 12 we noted that saw a significant increase over the prior  
 13 year was contractual services, which was increased 2.7  
 14 million over the prior year for a total expenditure  
 15 amount of \$4.99 million.  
 16 And that's what carried over the 330,514  
 17 into fiscal year 2016. And then by the end of fiscal  
 18 year 2016, while we did see some categories have increase  
 19 -- increases in expenditures, overall based on the  
 20 appropriated amount that the Court had received, their  
 21 appropriated balance didn't reduce. It actually grew at  
 22 the end of fiscal year 2016 to 1.24 million. And that  
 23 should summarize -- summarize what you were asking.  
**24 Q. Okay. With respect -- and, again, I know you**

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**1 have indicated that your investigation into this is**  
**2 ongoing. Are you investigating all of these different**  
**3 categories with respect to the increase in salaries,**  
**4 contractual services, the categories that are listed in**  
**5 the report now; or how is that investigation going? What**  
**6 are you looking at?**  
 7 A. Our initial focus will be to try to identify  
 8 specific expenditures within the categories we have  
 9 identified of having a significant increase over the  
 10 prior year. But also it is our intent to try to identify  
 11 expenditures related to the renovation projects and to  
 12 possibly weed out those infrastructure-related  
 13 renovations versus those more office furniture,  
 14 decorations, et cetera, and try to identify expenditures  
 15 related to that. So, categorically, I can't say that we  
 16 will focus specifically only on these categories  
 17 identified in this report, but for us it was a good start  
 18 and it was a good way to get some information out to  
 19 alleviate some concerns over what areas potentially saw  
 20 an increase.  
**21 Q. And that's generally what this report number 3**  
**22 does, shows the general areas that saw increase over**  
**23 those years?**  
 24 A. Yes, essentially our analysis was just a

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1 categorically an -- categorically comparative analysis of  
 2 specific expenditures over the prior year. And some  
 3 categories saw a decrease, so it's not to say that -- as  
 4 you'll see in this report, if you added up all the  
 5 increases over the prior year, it may exceed the amount  
 6 that the excess fund balance was reduced, but that's  
 7 because it's a -- when you net it with the other accounts  
 8 or the other expenditures that actually saw a decrease,  
 9 we get to the amount that we got to.  
 10 MS. KAUFFMAN: Okay. Mr. Robinson, I  
 11 don't believe I have any further questions for you.  
 12 THE WITNESS: Thank you.  
 13 CHAIRMAN SHOTT: Thank you, Counsel.  
 14 I'll start on the right side at this point and be -- end  
 15 with the front row. The right side, Delegate Hollen, do  
 16 you have any questions? Delegate Lane.  
 17 EXAMINATION  
 18 BY DELEGATE LANE:  
**19 Q. Thank you, Mr. Robinson.**  
**20 I'm looking at the Post Audit Analysis of**  
**21 expenditures by the Supreme Court, Table 1.**  
 22 A. Okay.  
**23 Q. Now, looking at 2012, the appropriation was 120**  
**24 million dollars 483,000?**

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1 A. Correct.  
**2 Q. And the total available was almost \$150**  
**3 million?**  
 4 A. That's correct.  
**5 Q. And the total expenditure was 126 million.**  
 6 A. Uh-huh.  
**7 Q. Now, I thought that you could only spend what**  
**8 had actually been appropriated and that would be \$6**  
**9 million more than the actual appropriation.**  
 10 A. The \$29 million are carry over reappropriated  
 11 general revenue funds from prior years so that would also  
 12 be allowed to be spent. And their total available is  
 13 what they can spend from.  
**14 Q. So -- so when you say "appropriation", it's**  
**15 really the same as the total available?**  
 16 A. No, the -- for fiscal year 2012 the Court was  
 17 reappropriated \$120.483 million worth of new  
 18 appropriations from general revenue funds that year. It  
 19 had a balance of \$29 million, a surplus balance, if you  
 20 will, that was carried over from prior years.  
**21 Q. And I thought that surpluses had to then be**  
**22 included in the appropriation to allow the body to spend**  
**23 that amount of money in that fiscal year?**  
 24 A. That may be the case for typical State

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1 agencies, but the Supreme Court's its own branch of  
 2 government and it's my understanding that what they  
 3 request is what they get. And they're allowed to spend  
 4 from their reappropriated balance.  
**5 Q. And we don't have a requirement that we**  
**6 appropriate that amount of money?**  
 7 A. Not to my knowledge. My knowledge is that the  
 8 Supreme Court has its own budgetary authority to request  
 9 what it needs.  
 10 DELEGATE LANE: Okay. Thank you. That's  
 11 all I have.  
 12 THE WITNESS: You're welcome.  
 13 CHAIRMAN SHOTT: Second row. Third row.  
 14 I'm sorry. Delegate Byrd.  
 15 DELEGATE BYRD: Thank you, Mr. Chairman.  
 16 EXAMINATION  
 17 BY DELEGATE BYRD:  
**18 Q. Mr. Robinson, you said there -- there's still**  
**19 more data that you are compiling regarding this?**  
 20 A. That's correct.  
**21 Q. Has your office set a timeline on when to**  
**22 release that data?**  
 23 A. Not at this time, but it is priority for our  
 24 office.

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1 DELEGATE BYRD: Thank you.  
 2 CHAIRMAN SHOTT: Delegate Miller.  
 3 DELEGATE MILLER: Thank you,  
 4 Mr. Chairman.  
 5 EXAMINATION  
 6 BY DELEGATE MILLER:  
 7 **Q. In regard to the 2016 memo issued by**  
 8 **Mr. Canterbury, were you able to uncover at any point**  
 9 **after that memo was issued that that memo was put in**  
 10 **question by any member of the Court, any justice or**  
 11 **anyone else or any personnel once that investigation was**  
 12 **brought forth or those allegations are levied?**  
 13 A. Chief Justice Workman adamantly denies the  
 14 accuracy and statements made in Mr. Canterbury's memo  
 15 with particular regard that the focus of the spend-down  
 16 was to avoid a constitutional amendment taking away their  
 17 budgetary authority. We spoke with Mr. Canterbury  
 18 regarding this memo subsequent to discussing it after our  
 19 June report -- pardon me -- May report to which he  
 20 attested to the accuracy of the memo and the fact that  
 21 those conversations did occur as he described.  
 22 **Q. Was that by -- by conversation where she**  
 23 **protested or was -- did she issue a document and, if so,**  
 24 **when?**

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1 A. She verbally disagreed with the statements made  
 2 in his memo subsequent to our May reporting, the Post  
 3 Audit Subcommittee. She may have made the statement as  
 4 well in writing in response to our report. I would have  
 5 to look back into the appendixes. But she has at a very  
 6 minimal made a verbal disagreement to the memo.  
 7 **Q. And that was answering to your inquiry?**  
 8 A. No, we made mention at the end of the second  
 9 audit report to the Post Audit Subcommittee of what the  
 10 upcoming report subject matter would cover, and I made  
 11 mention of this memo by Mr. Canterbury and the statement  
 12 made. The question was then posed to her, I believe, by  
 13 the Senate president regarding the memo and the spend-  
 14 down to which she adamantly denied that the Court - her  
 15 or any other justice - discussed the need to spend the  
 16 funds down to avoid a constitutional amendment.  
 17 **Q. And that was in 2018 that she made those**  
 18 **comments?**  
 19 A. Yes, it would be available in the video  
 20 archives of our Post Audit Subcommittee meeting following  
 21 that May report.  
 22 **Q. Is there any kind of documentation or evidence**  
 23 **to show that there was any kind of disputing of his**  
 24 **memorandum between 2016 and the inquiry by the Senate**

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1 **president in 2018?**  
 2 A. Sir, are you asking is there any document --  
 3 documentary evidence that would support whether or not  
 4 there was this dispute had before she made the statement  
 5 after our Post Audit Subcommittee meeting?  
 6 **Q. Correct.**  
 7 A. No, we have not found any documentation to show  
 8 that this was disputed prior to her statement made at the  
 9 May 2018 Post Audit Subcommittee meeting.  
 10 **Q. So that's nearly a two-year period of no -- no**  
 11 **mention of his allegations until it was brought to light**  
 12 **in public.**  
 13 A. That's an accurate statement.  
 14 **Q. Okay. He makes reference to unanticipated**  
 15 **construction and furniture purchases along with other**  
 16 **purchases totaling \$12 million. Are you able or are you**  
 17 **in the process of trying to delineate specifics on that**  
 18 **allegation?**  
 19 A. Yes, we are in the process of doing that, yes.  
 20 **Q. If -- and this might be a general question, but**  
 21 **if the legislature is not appropriating more than what is**  
 22 **said to be needed to operate the courts in a year, it**  
 23 **seems like according to the graphs and the information**  
 24 **that's been provided they continually make money for the**

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1 **lack of a better description. How do they generate and**  
 2 **come up and with a surplus each and every year if they're**  
 3 **operating according to their own numbers as to what they**  
 4 **need, if you can answer that?**  
 5 A. I can't answer the why the Court continues to  
 6 accumulate excess fund at the end of the fiscal year, but  
 7 it was mentioned during the June Post Audit Subcommittee  
 8 meeting that the Court would be happy to build itself a  
 9 surplus, a somewhat rainy day fund.  
 10 **Q. Do you have any knowledge if the Supreme Court**  
 11 **has a stand-alone or any stand-alone bank accounts that**  
 12 **are outside the purview of the State treasurer?**  
 13 A. Not that I'm aware of.  
 14 **Q. Would that be proper accounting procedures for**  
 15 **the State of West Virginia if the Supreme Court did have**  
 16 **its own mechanism to receive funding absent the State**  
 17 **treasurer's office?**  
 18 A. Yeah, I believe there would be some issue with  
 19 that. At a minimum, I think any outside bank account  
 20 operated -- operated by any State agency or branch of  
 21 government should be reported to the treasurer's office.  
 22 **Q. Who -- who ultimately has the authority to**  
 23 **authorize or direct to expend -- increase in expenditures**  
 24 **of the excess fund? Who's -- who's the ultimate**

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**1 responsible person for that or persons?**  
 2 A. I believe that responsibility would fall on the  
 3 administrative office of the Court and the justices.  
**4 Q. And the justices or the justices?**  
 5 A. The justice -- and the justices.  
**6 Q. Is that where the authority has always been or**  
**7 has it changed over the years, even since 2010, let's**  
**8 say?**  
 9 A. I can't speak to the change over the years.  
**10 Q. In regard to their normal expenditure of**  
**11 funding, do they have a particular procedure, purchase**  
**12 orders, bidding, as we would be familiar with in State**  
**13 government?**  
 14 A. The Supreme Court of Appeals of West Virginia  
 15 is exempt from the purchasing division, so they do not  
 16 have to follow the same guidelines typical State agencies  
 17 do with regard to the purchases they make.  
**18 Q. Do you know if they do even remotely follow any**  
**19 type of generally accepted purchasing procedures?**  
 20 A. I am aware in many instances that they do  
 21 attempt to try to follow those procedures to ensure that  
 22 they're getting the best bang for the State dollar, but  
 23 there are also instances we've noted where they have not.  
**24 Q. If you know, are excess funds spent under any**

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**1 kind of different rules, internal rules at the Supreme**  
**2 Court than regular budgeted items?**  
 3 A. I'm not sure. I know the Court does allow --  
 4 it is allowed to maintain a discretionary fund, but the  
 5 direct nature of that fund I'm not aware of.  
**6 Q. Is there an ultimate authority who actually**  
**7 physically signs off on spending?**  
 8 A. To my knowledge the administrative director of  
 9 the Court ultimately signs off on the spending.  
**10 Q. That's based on a vote of the Court, an**  
**11 authorization by the Court itself?**  
 12 A. I believe there's some thresholds of dollar  
 13 amounts that can't be exceeded or decided upon by any one  
 14 individual at the Court without it having to be brought  
 15 before the justices and the administrative conferences.  
**16 Q. So once that threshold is met, the justices**  
**17 have the responsibility to direct or authorize spending?**  
 18 A. I believe so. I would have to look into that  
 19 further.  
**20 Q. Are you aware of any other reference letter**  
**21 other than Mr. Canterbury's that had been issued as to**  
**22 why the allocated fundings had been spent down?**  
 23 A. Not to my knowledge.  
 24 DELEGATE MILLER: I think that's all I

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1 have. Thank you, Mr. Chairman.  
 2 CHAIRMAN SHOTT: Delegate Robinson.  
 3 DELEGATE ROBINSON: Thank you,  
 4 Mr. Chairman.  
 5 EXAMINATION  
 6 BY DELEGATE ROBINSON:  
**7 Q. Mr. Robinson, how long did the -- when -- how**  
**8 long's the spend-down -- how long did the entire spend-**  
**9 down occur?**  
 10 A. You mean from the \$29 million to the 333,514?  
**11 Q. Yes, sir.**  
 12 A. It happened between fiscal year 2012 and fiscal  
 13 year 2016.  
**14 Q. Okay. Looked like -- looks like the big drop**  
**15 was, like, actually probably '14 to '16. Looks like they**  
**16 dropped a little less than \$15 million over -- from '16**  
**17 -- or '14 to '16.**  
 18 A. Between fiscal year 2012 and '13 it looks like  
 19 it dropped approximately 7 million. Between '13 and '14,  
 20 approximately 7 million. The greatest reduction in this  
 21 appropriation rollover was between fiscal years '14 and  
 22 '15 which saw approximately \$13-plus million in increased  
 23 expenditures.  
**24 Q. I asked you this question earlier. I don't**

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**1 think you knew, but what year was Justice Loughry**  
**2 elected?**  
 3 A. I'm uncertain. I believe 2012.  
**4 Q. Do you know who the chief justice was from the**  
**5 time period of '14 to '16?**  
 6 A. I do not.  
**7 Q. Okay. Would the chief justice have approved**  
**8 the budget on an annual basis and the whole Court**  
**9 approved the budget following the lead of the chief**  
**10 justice at that time?**  
 11 A. I'm unaware of that.  
**12 Q. Do they -- does the Court approve the budgetary**  
**13 item in an annual basis? Do they --**  
 14 A. I'm unfamiliar with the Court's in general  
 15 process for formulating its budget.  
 16 DELEGATE ROBINSON: Would counsel be able  
 17 to answer that question, Mr. Chairman?  
 18 CHAIRMAN SHOTT: I don't think counsel  
 19 can answer that question. That is something we're trying  
 20 to find out.  
 21 DELEGATE ROBINSON: Of who approves their  
 22 budget? Is that the -- we're unaware of how they approve  
 23 their budget. Okay. Thank you. Wow.  
 24 CHAIRMAN SHOTT: Now to the left side.

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1 Delegate Fast, any questions?  
2 EXAMINATION  
3 BY DELEGATE FAST:  
4 **Q. Just following up on my col -- what my**  
5 **colleague just said. So when the Supreme Court makes its**  
6 **appropriation request, we're not sure how that comes down**  
7 **the pike?**  
8 A. No, I'm not directly familiar for each instance  
9 of each appropriation request how they formulated the  
10 amount in that request.  
11 **Q. Okay. And I see on page 10 of your report,**  
12 **it's projected that the reappropriation balance for 2018**  
13 **is going to be all the way back up to \$19.2 million.**  
14 **Since this report was finalized not too long ago, do we**  
15 **have any definites on that yet?**  
16 A. It has kind of reached the close of the fiscal  
17 year, so it is possible we could ascertain that  
18 information now, but at the time of the report that was  
19 the estimate that was actually noted in a memo between, I  
20 believe, the administrative director and the director of  
21 financial management office for the Court that the  
22 balance would grow to 19.5 by the end of this year.  
23 **Q. Okay. Are there -- I know a lot of fines and**  
24 **court costs and things like that go into the coffers of**

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1 **the court system, and I'm assuming a great deal of the**  
2 **that ends up under the jurisdiction of the Supreme Court.**  
3 **Do you know if there are any identifiable fees that just**  
4 **keep feeding the Supreme Court to make it grow so**  
5 **exponentially financially?**  
6 A. I don't believe our analysis includes any  
7 special revenue funds.  
8 **Q. Okay.**  
9 A. So I don't know that collected fees are part of  
10 this. The amounts we are noting in our analysis includes  
11 appropriated funds from the general revenue fund on top  
12 of any funds that remain in the Court's balance at the  
13 end of the fiscal year.  
14 **Q. Okay. Well, it seems like the appropriations**  
15 **are not necessary. In fact, they decreased in recent**  
16 **years a few -- last two or three years at least, but yet**  
17 **we're looking now at another surplus of \$19 million. So**  
18 **seems like there's some infusion of funds from some other**  
19 **source besides appropriations when appropriations have**  
20 **been decreased. And if you can't answer that, I**  
21 **understand. I'm just --**  
22 A. No, I would draw your attention to Table 1 on  
23 page 6 that kind of breaks those analysis down. The  
24 amount appropriated from the legislature and from the

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1 general revenue fund to the Court has increased consist  
2 -- consistently each year from 2012 up until 2017. The  
3 current fiscal year appropriation request matches that of  
4 2017, but if you'll note in the next to the last right  
5 column, Total Expenditure Amounts, you'll see the total  
6 expenditures increased every year up until 2013 -- or '15  
7 excuse me, when it decreased slightly over the prior year  
8 or under the prior year. 2016 expenditures were 138.6  
9 million but then in 2017 those dropped another four  
10 million.  
11 **Q. Okay.**  
12 A. The anticipation of the growth in the year-end  
13 balance for 2018 would not be attributable to any outside  
14 funds coming in. It's a reduction in expenditures.  
15 **Q. Okay. So mostly legislative appropriations**  
16 **then?**  
17 A. Yes.  
18 **Q. Okay. Very helpful. Thank you.**  
19 **And is the audit report alleging**  
20 **malfeasance on the part of the Supreme Court as a whole**  
21 **or any particular justice?**  
22 A. Our audit reports do not -- and I forget how  
23 you just phrased it, sorry.  
24 **Q. Malfeasance.**

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1 A. No, no, the -- are we suggesting that, no. It  
2 is not our place to suggest it. It's our place to just  
3 provide the facts objectively and draw conclusion from  
4 those.  
5 **Q. So this -- this section of this report is**  
6 **basically, legislature, take note. Maybe you're giving**  
7 **the Supreme Court too much money or --**  
8 A. Yes, essentially this information -- this  
9 report's mostly informational. It provides some  
10 background over the concern of the spend-down to what we  
11 could provide up until the May interim.  
12 **Q. Okay.**  
13 A. Or June interim, excuse me.  
14 **Q. Just before I pass the mike, we've heard about**  
15 **some of the justices' offices being renovated at a pricey**  
16 **amount. Does that in your report implicate a justice for**  
17 **maladministration or malfeasance, something along those**  
18 **lines?**  
19 A. I wouldn't like to make that speculation. I  
20 think that's a decision for this body.  
21 CHAIRMAN SHOTT: Thanks.  
22 Justice -- justice -- Delegate Foster.  
23 DELEGATE FOSTER: Thank you,  
24 Mr. Chairman.

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1 EXAMINATION

2 BY DELEGATE FOSTER:

3 **Q. My questions are going to kind of revolve**

4 **around page 7 to page 9 of this report and the changes**

5 **year to year.**

6 A. Uh-huh.

7 **Q. Now, these -- did I understand you correctly**

8 **earlier, are these expenditures from the appropriated and**

9 **the reappropriated, or is this just from what was spent**

10 **down of reappropriated, on these pages here 7 through 9?**

11 A. On these pages essentially we've identified --

12 and that's the difficulty in the task that we're trying

13 to accomplish. Essentially all expenditures are spent

14 out of the same pot. We're looking at the general

15 revenue fund appropriations for the Court specifically.

16 We're not looking at special revenue funds. So this

17 would be the appropriations received in any given year

18 plus whatever remained from the preceding year.

19 So all of these expenditures are coming

20 out of the same pot. For us to put a finger on one

21 particular expenditure and say this is attributable to

22 the spend-down is nearly impossible.

23 **Q. So you're just looking at what increased --**

24 A. Yes.

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1 **Q. -- for those years? And that's what I wanted**

2 **to ask you about. First of all, what -- what is**

3 **contractual services defined as? Like, what -- what does**

4 **that entail?**

5 A. And I -- forgive me. I don't -- essentially

6 this is the OASIS and the FIN systems would break down

7 categories of transactions by object codes and there is a

8 definition to -- assigned to that. Contractual services

9 essentially is any work performed by an entity or

10 individual for which there was a contract dictating those

11 services.

12 **Q. So -- so would that be, like -- because I see**

13 **it's also broken out into attorney legal services and**

14 **payments. Is that part of the contractual services or is**

15 **that something separate, like, for attorney and legal**

16 **work?**

17 A. I wouldn't be comfortable answering that now.

18 That's kind of the purpose of our continuation of this

19 work is while these categories are very broad and subject

20 to human error and how they're applied in terms of the

21 object code of the specific transaction, we need to

22 review them individually to determine what exactly the

23 transactions were for to really be able to speak

24 definitively of whether or not they do meet the criteria

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1 for that category in and of itself. So I wouldn't want

2 to answer that without our continuation of this work.

3 **Q. Okay. And then the other one I wanted to look**

4 **at was travel. Because as it says in the -- in 2012, it**

5 **went from -- it went up to 1 mil -- 1.5 million, which**

6 **was an increase of basically 5 million.**

7 A. Increase of 587,000 was the increase.

8 **Q. I'm sorry, of 500,000. So -- and in 2011 it**

9 **was 1 million, and then you -- if you go forward to 2016,**

10 **it went from 1 million to 3 million in just five years.**

11 A. Yeah, we also noted the increase in fiscal year

12 2014, it was somewhat significant, it increased 909,000

13 to 2.3 million in fiscal year 2014. It may have not been

14 noted in fiscal year 2013, because the amount of

15 expenditure increase over the prior year wasn't as great

16 as others that we identified, but you are correct in

17 stating that from 2012 those expenditures increased it

18 from roughly 1.5 million to 3 million in fiscal year

19 2016.

20 **Q. Well, from 2011 it would have been from 1**

21 **million to 3 million.**

22 A. Yes. No, that's correct.

23 **Q. It tripled over a five-year period --**

24 A. That's correct.

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1 **Q. -- the same time we have these issues with the**

2 **vehicles.**

3 A. That's correct.

4 **Q. All right. Thank you.**

5 A. Uh-huh.

6 CHAIRMAN SHOTT: Delegate Sobonya.

7 DELEGATE SOBONYA: Thank you,

8 Mr. Chairman.

9 EXAMINATION

10 BY DELEGATE SOBONYA:

11 **Q. On page 8 under fiscal year 2014, it indicates**

12 **that for the real estate rental expenses for real**

13 **property, it increased 375,000 or more, almost 376,000,**

14 **from the previous year and they say that it was because**

15 **of the renovations to the Court City Center East and the**

16 **Capitol. Have you all looked to see exactly how that**

17 **money was accounted for? If it was dollar for dollar?**

18 **And also is the Supreme Court real property under the**

19 **jurisdiction of the real estate division for**

20 **accountability and --**

21 A. The second question I can't answer at this

22 time. And the specifics of these expenditures and how

23 they relate is a product of our continuing work, so I

24 can't answer the first question either.

1 **Q. Okay. And I'm looking at the fiscal year 2011.**  
 2 **It says at the end of 2011 the Court carried over**  
 3 **approximately \$29 million into FY 2012. So that surplus**  
 4 **was in existence in 2011?**

5 A. In 2011, I believe -- at the beginning of  
 6 fiscal year 2011, the excess balance was somewhat below  
 7 29 million. I don't have the information directly in  
 8 front of me, but by the end of fiscal year 2011 going  
 9 into fiscal year 2012, it was 29 million that the Court  
 10 had accumulated in unused funds.

11 DELEGATE SOBONYA: Thank you.  
 12 CHAIRMAN SHOTT: Going to the second row.  
 13 Delegate Harshbarger.

14 EXAMINATION  
 15 BY DELEGATE HARSHBARGER:

16 **Q. Thanks again for being here. Thank you,**  
 17 **Mr. Chairman.**  
 18 **On page 8, we -- there's a comment in**  
 19 **there at the top that says, "The Legislative Auditor**  
 20 **questions the Court's spending on renovations to the**  
 21 **leased space at City Center East." And it goes on to**  
 22 **further say, it benefits the lessor. Is it typical**  
 23 **practice for the State to renovate a building they're**  
 24 **leasing or would that be up to the landlord?**

1 A. I can't speak to whether or not it's a typical  
 2 practice of the State, but the purpose was -- calling  
 3 that to question was we've noted several memos that  
 4 indicated there was significant spending on renovations  
 5 at that location and I do believe it was Chief Justice  
 6 Workman in at least one of those memos that expressed  
 7 concerns over the fact that those improvements paid for  
 8 by the Court would at the end of the day benefit the  
 9 building owner and not the Court.

10 DELEGATE HARSHBARGER: Yeah, because that  
 11 looks like it was in 2013 and 2014 those renovations took  
 12 place. Okay, that's all I have. Thank you.

13 CHAIRMAN SHOTT: Delegate Hanshaw.  
 14 VICE-CHAIR HANSHAW: Yes, thank you,  
 15 Mr. Chairman.

16 EXAMINATION  
 17 BY VICE-CHAIR HANSHAW:

18 **Q. Mr. Robinson, did your office have an**  
 19 **opportunity to review any kind of documents that I'm**  
 20 **going to characterize as what would be minutes of**  
 21 **administrative meetings of the Court?**

22 A. Yes, to which all of the minutes that we were  
 23 provided from the administrative conferences of the Court  
 24 were provided to counsel.

1 **Q. Okay. I'm interested in whether the decision**  
 2 **that's characterized in Mr. Canterbury's memo as a**  
 3 **decision to, quote, spend-down the money was a conscious**  
 4 **decision of "All those in favor of spending down the**  
 5 **money say aye", or was it more a series of conversations**  
 6 **over time that "Well, we've got all this money. Let's**  
 7 **spend some on this, let's spend some on this, let's spend**  
 8 **some on this." Can you characterize that between those**  
 9 **two extremes?**

10 A. Yeah, that's an excellent question. We  
 11 actually reviewed all those administrative conference  
 12 minutes to determine whether or not the conversation as  
 13 noted by Mr. Canterbury's memo had occurred as he had  
 14 stated it did, to which we were unable to find any  
 15 evidence within the administrative conference minutes of  
 16 the justices of the Court that that matter was discussed  
 17 the way Mr. Canterbury had described it in his 2016 memo.  
 18 There were vague discussions over  
 19 budgetary issues and the needs for raises, renovations,  
 20 et cetera, but nothing in specific relation to the need  
 21 to do so in regard to any threat of a constitutional  
 22 amendment.

23 **Q. Okay. Thank you.**

24 A. You're welcome.

1 VICE-CHAIR HANSHAW: That's all,  
 2 Mr. Chairman.

3 CHAIRMAN SHOTT: Delegate Fleischauer.

4 MINORITY CHAIR FLEISCHAUER: Thank you,  
 5 Mr. Chairman.

6 EXAMINATION  
 7 BY MINORITY CHAIR FLEISCHAUER:

8 **Q. And thank you again for continuing to be here**  
 9 **at this late hour.**

10 **The -- one of the solutions to any**  
 11 **problems that have been raised here is the passage of the**  
 12 **constitutional amendment. Would you agree?**

13 A. I cannot agree that that's a solution. That's  
 14 the policy decision that my office would not want to  
 15 make.

16 **Q. Pardon me?**

17 A. That's -- I'm confused by your question about  
 18 you're asking if the constitutional amendment would be a  
 19 solution.

20 **Q. Yes. Right now the Court has authority over**  
 21 **its own budget.**

22 A. Uh-huh.

23 **Q. And if there are concerns raised about the way**  
 24 **they're spending their money, those concerns could be**

1 **alleviated by giving a great amount of oversight to the**  
 2 **legislature like the legislature has over the executive**  
 3 **branch.**  
 4 A. If I answered that question, I feel like I  
 5 would be speculating on a policy decision that's not my  
 6 authority to make.  
 7 **Q. Well, I guess, you make -- there are**  
 8 **recommendations in here.**  
 9 A. Uh-huh.  
 10 **Q. And we've passed it, the legislature has made**  
 11 **it, so I'm not asking whether you agree or disagree. You**  
 12 **are out -- outlining solutions. Wouldn't you agree that**  
 13 **one of the potential -- possible solutions that could**  
 14 **prevent this from happening in the future is the passage**  
 15 **of that amendment?**  
 16 A. It's a possibility, but I don't want to say  
 17 that definitively. It still seems to me that my answer  
 18 would be a matter of opinion.  
 19 **Q. But you can make recommendations about**  
 20 **everything else in your three reports.**  
 21 A. We make suggestive ren -- recommendations to  
 22 the legislature concerning the passage of laws or  
 23 revisions to legislation or statute, but we do not direct  
 24 the legislation -- or legislature in those decisions

1 themselves. And it seems to me what you're asking me is  
 2 if I would feel that the constitutional amendment would  
 3 be a solution to this problem identified in this report,  
 4 and I simply can't speak to that, whether or not it would  
 5 be a solution or not. There could be other measures that  
 6 could alleviate the concerns as well.  
 7 **Q. Do you want to speak to them?**  
 8 A. I -- we have not completed our work in this  
 9 area yet either, so there is a lot of research we still  
 10 have concerning these expenditures, the cause of the  
 11 spend-down, et cetera.  
 12 **Q. Okay. One of the things I believe you talked**  
 13 **about and maybe it was Mr. Canterbury, we talked about as**  
 14 **mentioning changes in payroll. And in these categories**  
 15 **that are increases -- increasing, payroll is not**  
 16 **mentioned.**  
 17 A. It's just not noted in the categorical tables.  
 18 It's actually noted in the body of each of the preceding  
 19 paragraphs.  
 20 **Q. That's what I thought, that --**  
 21 A. Yes.  
 22 **Q. Okay. So one of the things that justice -- I**  
 23 **mean that Administrative Canterbury talked about was the**  
 24 **pay raises that were passed by the legislature and I**

1 **wondered -- another thing that I recall happening in this**  
 2 **time period was the passage of the judicial -- or the**  
 3 **juvenile justice reinvestment act. I think that was in**  
 4 **nine -- 2013, and part of the rationale behind that is**  
 5 **that we need to keep juveniles out of facilities and**  
 6 **prevent them from being -- you know, looping into the**  
 7 **criminal justice system, and -- so that they're -- the**  
 8 **idea was if we invest early in these young people that**  
 9 **there will be a long-term payoff.**  
 10 **Have -- will you -- when you're doing your**  
 11 **audit will you be looking at that? There's the Pew**  
 12 **report that we based our -- the passage of that**  
 13 **legislation on said that that's why states are doing that**  
 14 **all over the country so that there will be less -- less**  
 15 **-- more spending within the courts and less into the**  
 16 **criminal justice. Is that something you will be looking**  
 17 **at -- looking at when you do your legislative analysis?**  
 18 A. We don't have any specific plans to look at  
 19 that, but if it does come up as a component of the  
 20 expenditures that we not will note as causing or being  
 21 attributable to some of the spend-down or an area that  
 22 saw an increase in expenditure over the prior year, there  
 23 is a likelihood that we will, but I can't say  
 24 definitively that we will.

1 **Q. I think that would be valuable to look at that.**  
 2 **And also -- I bel -- I'm not sure I**  
 3 **remember this correctly, but the drug courts were on a**  
 4 **pilot project basis and then they became statewide. Do**  
 5 **you know if that is part of the increase in payroll or**  
 6 **con -- contractual services since a lot of those are non-**  
 7 **profits?**  
 8 A. And I'd reference you to Mr. Canterbury's memo.  
 9 We can't definitively state whether or not that is the  
 10 cause because we haven't looked into it further, but  
 11 Mr. Canterbury does note in his memo that the mandate  
 12 that all of the counties of West Virginia operate a drug  
 13 courts was a significant increase in expenditure that  
 14 attributed to some of the spend-down, yes.  
 15 **Q. Okay. Thanks.**  
 16 A. You're welcome.  
 17 **MINORITY CHAIR FLEISCHAUER: Thank you,**  
 18 **Mr. Chairman.**  
 19  
 20 **EXAMINATION**  
 21 **BY CHAIRMAN SHOTT:**  
 22 **Q. Mr. Robinson, just two areas that I want to go**  
 23 **over. The Canterbury -- excuse me -- November 7th memo,**  
 24 **how did that come into your all's possession?**

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1 A. I think when we had ran across the issue of the  
2 spend-down, and reviewing memos regarding Justice  
3 Loughry's -- Justice Loughry's use of the court vehicle,  
4 we became aware of the concerns within the Court. I  
5 can't be specific, but either we requested this  
6 information from the Court in general in relation to any  
7 memos that discussed the spend-down of the surplus, or it  
8 could have been indicated to us by Mr. Canterbury himself  
9 in a prior conversation in relation to this concern.

10 **Q. I guess the point of my question is: In the**  
11 **way that you received this memorandum, was it received**  
12 **with a quantity of other information in a chronological**  
13 **order that would help you determine whether or not this**  
14 **memo was actually disseminated on November 7th, 2016, and**  
15 **to the justices; or whether it perhaps was created at**  
16 **some later time?**

17 A. The memo itself was provided to us as an  
18 informational request to the Supreme Court. It was not  
19 provided by Mr. Canterbury, if that's helpful to you at  
20 all. I do believe that in the specific regard -- and  
21 excuse me, I'm somewhat -- I'm not really sure exactly  
22 how it came to be in our possession, through what  
23 particular request, but as I described, it was either  
24 part of a larger request or it came specifically from a

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1 request to the Court regarding the memo itself.

2 **Q. So basically your requests were -- and opposed**  
3 **to you going through files, say, in the Court, you were**  
4 **basically asking for information. They dis -- they**  
5 **extracted that information and provided you the**  
6 **information?**

7 A. Yes, the Court provided this memo and, again, I  
8 can't speak to the request that resulted in us getting  
9 this memo. I can try to find that and provide it and  
10 it's most likely in the files we provided counsel, but I  
11 can't speci -- speak definitively to why exactly we  
12 received this memo.

13 **Q. And the point is, I would assume that if it did**  
14 **it -- did, in fact -- if it was, in fact, delivered to**  
15 **all the justices, it would probably be in their**  
16 **individual files and it would verify that, in fact, this**  
17 **is what he prepared at that time. It might not verify**  
18 **what he says, but it certainly would verify the time --**  
19 **the chronology of this. Would you agree with that?**

20 A. That would be correct. And I would also like  
21 to note that when we were asked to be provided this memo,  
22 when it was provided to us, there was no other  
23 information provided regarding the memo's validity or  
24 whether or not it had actually not been distributed to

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1 the justices or had it.

2 **Q. So at the time you received the memo, was**  
3 **Mr. Canterbury still employed with the Court?**

4 A. No, he was not.

5 **Q. So the Court -- it was extracted from documents**  
6 **in the -- in the possession of the Court as opposed to**  
7 **from Mr. Canterbury?**

8 A. That's correct.

9 **Q. Okay. Thank you.**  
10 **I just want that go back to this**  
11 **contracted services category, because this really jumps**  
12 **out at me. 2013, it indicates it was about 1.59 million**  
13 **over the prior year, which tells me that the prior year,**  
14 **our base year in 2012, was only about \$187,000.**

15 A. That's correct.

16 **Q. So it grows that year to 1.7; then 2014, it**  
17 **grows to 2.255; and then in 2015, to 4.99, and then in**  
18 **2016, to 6.5 basically. So if my math is correct, that**  
19 **category grew over 35 per -- times from the base year.**

20 A. That's correct.

21 **Q. So is there any explanation -- reasonable**  
22 **explanation for that kind of growth?**

23 A. The Court has explained it as there was some  
24 e-filing that they were doing that attributed some of the

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1 increase in that category, but beyond that, to speak in  
2 any specificity I don't have that information. That's  
3 the purpose of our continuation of this work.

4 **Q. Yes, I'd certainly emphasize the need to really**  
5 **dig down in that because that jumps out probably more**  
6 **than any other category.**

7 A. Correct, sir.

8 **Q. All right.**  
9 CHAIRMAN SHOTT: Any -- let's see.  
10 Counsel, any redirect? Rather than go down the rows,  
11 raise your hand if anybody has a follow-up question. I  
12 don't see any. I think you really are off the hook this  
13 time. Thank you, Mr. Robinson.

14 THE WITNESS: Thank you, Mr. Chairman.

15 CHAIRMAN SHOTT: All right. To the  
16 members of the Committee, a combination of the retirement  
17 of Justice Ketchum and the fact that we worked late  
18 tonight probably has shortened our agenda by a day, I  
19 would say, and it's pretty safe to assume we'll wrap up  
20 tomorrow eve -- late afternoon. We will disseminate this  
21 evening -- we're going to meet with staff after we  
22 adjourn tonight and try to get a sequence of our  
23 witnesses tomorrow. We'll disseminate an e-mail so  
24 you'll know who we know are coming tomorrow and what to

1 expect. In the meantime, hope you're able to get some  
2 rest tonight. We will -- I'll entertain a motion we  
3 adjourn until 9:00 a.m. tomorrow morning.  
4 UNIDENTIFIED SPEAKER: Maybe Committee  
5 recessed?  
6 CHAIRMAN SHOTT: Recess. I'm sorry.  
7 Recess until 9:00 a.m. tomorrow. All in favor will say  
8 aye. Opposed, no. Motion carries. See you all in the  
9 morning at 9:00 a.m.  
10 (Session recessed.)

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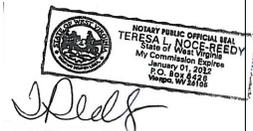
1 STATE OF WEST VIRGINIA,  
2 COUNTY OF WOOD, to wit:  
3 I, Teresa Reedy, Registered Professional  
4 Reporter and a Notary Public within and for the  
5 County and State aforesaid, duly commissioned and  
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14 means of computer-aided transcription.

15 Given under my hand this 7th day of  
16 August, 2018.

17   
18 \_\_\_\_\_

TERESA REEDY, RPR



<hr/> <b>\$</b> <hr/>	<b>\$486,000</b> 355:24	<b>1.25</b> 356:4	351:13,14 352:22 367:18,19	<b>1997</b> 348:19
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