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IN THE WEST VIRGINIA LEGISLATURE
HOUSE OF DELEGATES
JUDICIARY COMMITTEE

* * * * *

IN RE:

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

* * * * *

VOLUME VII

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

- - -

Transcribed By:
REALTIME REPORTERS, LLC
TERESA S. EVANS, RMR, CRR
713 Lee Street
Charleston, WV 25301
(304) 344-8463
realtimereporters.net

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APPEARANCES:

APPEARING FOR THE HOUSE JUDICIARY COMMITTEE:

- Marsha Kauffman, Esquire
- John Hardison, Esquire
- Brian Casto, Esquire
- Robert E. Akers, Esquire
- Charles Roskovenski, Esquire
- Joseph Altizer, Esquire

HOUSE JUDICIARY COMMITTEE MEMBERS:

- John Shott, Chair
- Roger Hanshaw, Vice Chair
- Barbara Evans Fleischauer, Minority Chair
- Shawn Fluharty, Minority Vice Chair
- Mark White, Clerk
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- Frank Deem
- Tom Fast
- Geoff Foster
- Jason Harshbarger
- Ray Hollen
- Phil Isner
- Kayla Kessinger
- Charlotte Lane
- Chad Lovejoy
- Rodney Miller
- Riley Moore
- John Overington
- Mike Pushkin
- Ben Queen
- Andrew Robinson
- Kelli Sobonya
- Amy Summers
- Mark Zatezalo

ALSO PRESENT:

- John A. Carr, Esquire (Counsel for Justice Loughry)
- Mary Lou Newberger, Esquire (Counsel for Racer-Troy)

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SUE RACER-TROY

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1 P R O C E E D I N G S

2 CHAIRMAN SHOTT: Those whose last name
3 begins with A through K will be in our first group and
4 I'll ask one of your managers, Delegate Hollen, to be
5 our overseer, for lack of a better word, the temporary
6 chairman of that group, and the remaining members will
7 go with me in our second wave.

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

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

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

23 We will give them about five minutes
24 and then we will go over. Please be at ease, the

1 second group, and then we will head over there in about
2 five minutes.

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

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

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

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

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

23 CHAIRMAN SHOTT: Can you crank that up
24 a bit, Mark?

1 Ms. Troy, if you could, if you'd stand
2 and raise your right hand. I'll have to give you the
3 oath.

4 (The witness was sworn.)

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

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

13 And Counsel, would you identify
14 yourself for our members?

15 MS. NEWBERGER: My name is Mary Lou
16 Newberger.

17 CHAIRMAN SHOTT: Thank you. Welcome.

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

20 I was hired as Director of Finance of
21 the Supreme Court of West Virginia on July 1, 2012. My
22 job title was changed to chief financial officer in the
23 fall of 2017, but my job responsibilities and place in
24 the administrative hierarchy remained the same. I

1 report directly to the Administrative Director, who
2 reports directly to the justices of the Supreme Court.

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

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

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

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

24 S U E R A C E R - T R O Y

1 Was called as a witness by the Committee on the
2 Judiciary, and having been first duly sworn, testified
3 as follows:

4 EXAMINATION

5 BY MR. HARDISON:

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

8 DELEGATES: We can't hear you.

9 CHAIRMAN SHOTT: Your microphone is not
10 picking you up.

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

13 Can everyone hear me now?

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

16 A. Troy is fine.

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

23 Could you tell us about your
24 educational background?

1 A. Uh-huh. I have a bachelor's degree from
2 Marshall University with a major in Finance; then I
3 went to West Virginia State University and completed a
4 post-graduate program for a accounting major; and then
5 I took the CPA exam after that. In 2009, I was
6 licensed.

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

9 A. Yes, I am.

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

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

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

20 A. Yes, that's correct.

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

24 A. I'm not sure I --

1 Q. Did you -- it's my understanding that there's
2 a separate Payroll Division that is separate from the
3 division in which you are the head of, or did I
4 misunderstand that?

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

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

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

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

15 A. Yes, that's correct.

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

18 A. That is correct, yes.

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

21 A. Day to day, answered a lot of questions,
22 because we're overseeing P-card, general accounting,
23 procurement now, financial statements, budgets. So a
24 lot of review of transactions, that sort of thing.

1 Q. Who poses those questions to you? Do they
2 come from the Administrative Director, or they come
3 from different agencies or bodies within the Court
4 itself?

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

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

11 A. Yes, I do.

12 Q. How many people, would you say?

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

15 Q. And when did that change? Recently?

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

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

20 A. Yes, that's correct.

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

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

24 Q. Eight?

1 A. Uh-huh.

2 Q. And who did you report to directly?

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

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

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

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

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

24 Q. And I want to go back briefly to the payroll

1 office being separate --

2 A. Uh-huh.

3 Q. -- from your financial division. Could you
4 tell us why -- if you know, why that was separated out
5 from your -- the control of your division?

6 A. It was separate when I was hired there. That
7 was the way it was structured, and I -- my
8 understanding, it had always been that way, but I don't
9 know when it began to -- when that started.

10 Q. Is that a normal structure for an
11 organization, to have payroll separated out from the
12 financial division, or was there typically one -- one
13 director that oversees all those functions?

14 A. I've actually seen it done both ways. And
15 I've looked at other -- some of the State agencies, and
16 some have it under finance, and some have payroll
17 separate, so it's not necessarily unusual.

18 I've seen it both ways.

19 Q. There are a few topics that we -- that I, at
20 least, plan on covering with you this morning. But
21 before we get into some of those in more detail, sort
22 of painting with a broad brush, I would like to talk
23 with you about Court practices regarding written
24 policies, specifically with regard to expenditures.

1 What is your understanding or
2 recollection with regard to -- to written policies, if
3 any, in the Court as it pertains to expenditures of
4 money?

5 A. There were no written policies pertaining to
6 expenditures.

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

9 A. That's correct, yes.

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

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

18 Q. And what came of that request?

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

23 Q. Did -- and who was the Administrative
24 Director at that time?

1 A. At that time, it was Steve Canterbury.

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

4 A. No, he did not.

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

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

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

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

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

20 A. Yes, that was one of the first things I
21 brought up when I was hired, was asking about where our
22 policies and procedures -- where is the internal
23 control documentation, and I was told none of those
24 things exist at the Court.

1 Q. Who told you that?

2 A. Mike Proops told me that. He was my
3 predecessor. We trained together for about a month
4 before he left.

5 Q. Did you ever have a conversation or
6 conversations with Mr. Canterbury regarding --
7 regarding written policies?

8 A. Yes, I did.

9 Q. How many did you have? Just one or --

10 A. I don't recall how many times we talked about
11 it, but I did express my concern with our lack of
12 written policies and procedures, because then you're
13 just relying on one person relaying information to the
14 next person, and that doesn't really work very well.

15 Q. Did Mr. Canterbury provide you with an
16 explanation as to why the -- it was the view of the
17 Court not to have written policies?

18 A. I don't know if it was the view of the Court,
19 but it was his view anyway, that once things are put in
20 writing, then you can be held accountable for those
21 things, and so he did not want written policies and
22 procedures.

23 Q. As part of your licensure or part of being a
24 CPA, is it generally recommended that written policies

1 be followed with regard to expenditures of money?

2 A. Absolutely.

3 Q. Did -- at every job or organization prior to
4 coming to the Court, did they have written policies
5 with regard to expenditures of money?

6 A. Yes. I've never worked anywhere that there
7 was not documented policies and procedures.

8 Q. When you became an employee of the Court,
9 were you provided with any type of written policies at
10 all? Not just with regard to expenditures of money,
11 but with regard to conduct or any other area?

12 A. Yes, I was provided an employee manual,
13 employee handbook, that addressed things like the
14 Court's leave policy, vacation policy, sick leave
15 accrual, those type of things. And there was also a
16 section in that book on the travel policy.

17 Q. What is your recollection of that travel --
18 that specific travel policy?

19 A. It was very outdated. It was -- I believe
20 the date on my manual was 1990, that it was updated.
21 The rate -- like the mileage rate in there was not the
22 current IRS rate. It was really, really outdated, and
23 I believe that's the same one that was on file in the
24 State Auditor's Office, and they often complained that

1 they couldn't audit to that because it was so outdated.

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

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

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

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

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

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

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

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

1 have been one of the policies I was asking about early
2 on.

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

6 A. Yes, that is correct.

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

9 A. Uh-huh.

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

11 A. Yes.

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

15 A. I believe the opening meeting was in May of
16 2017.

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

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

23 Q. And what was the initial scope of the audit
24 supposed to cover?

1 A. I wasn't in the opening meeting; I was on
2 vacation at that time. So I think in the opening
3 meeting, they just kind of laid out the areas where
4 they planned to start their audit, and then they were
5 gonna expand their scope beyond that.

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

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

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

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

19 A. Okay. I'm familiar with this.

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

23 A. Yes.

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

1 A. Yes.

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

6 A. Right, yes.

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

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

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

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

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

22 And so that was how that -- that came
23 to be. I didn't know what purpose he was using the car
24 for. I didn't know if it was being reported on his

1 W-2. But I knew that that could be a taxable fringe
2 benefit.

3 Q. Well --

4 A. Just because I'd seen that car there multiple
5 times.

6 Q. What was Mr. Canterbury's response to your
7 statement to him?

8 A. He told me it was none of my business and to
9 stay out of it. I'm paraphrasing, but I believe those
10 were his words, you know, just "Stay out of it."

11 Q. After that conversation that you had with
12 Mr. Canterbury, did you ever follow up on that issue?
13 Was that the only time you brought it to the Court's --

14 A. That was the one time. And I didn't speak to
15 Justice Ketchum about it. You know, I was -- it was
16 pretty clear I was not to intervene there or say
17 anything to anybody about it.

18 Q. Did anyone contact you after that
19 conversation about the personal -- the use of State
20 vehicles?

21 A. No.

22 Q. Do you recall if the IRS audit had a finding
23 about that, about the personal use of State vehicles by
24 justices?

1 A. To the best of my recollection, I don't
2 believe they had a finding there, no.

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

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

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

18 A. Any fixed asset acquisitions.

19 Q. Could you give --

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

24 Q. Is this a system that is germane just to the

1 Court, or is this something that the -- all of state
2 government uses?

3 A. All of State government.

4 Q. But the Court has a -- its own section for
5 the property that the Court has.

6 A. Yes, kind of keeping it off the -- off the
7 State's books. And I felt it should be in the State's
8 books, not separate.

9 Q. When you say that to your knowledge, the 2010
10 date has not been updated with regard to the property
11 that the Court has.

12 A. When I went in and looked at that, I saw
13 nothing after 2010.

14 Q. But is it fair to say that this is a system
15 that -- that is -- was in place and is still currently
16 in place that could be used to track all of the -- all
17 of the real property -- or not real property, sorry.

18 -- tangible property of the Court.

19 A. Yes, that's correct.

20 Q. Fixed assets.

21 A. Yes. It's now in OASIS. FIMS was
22 decommissioned and it went to OASIS, but it's the same
23 concept, yes.

24 Q. Would that include vehicles?

1 A. Yes, it would.

2 Q. Would it include desks?

3 A. Yes.

4 Q. Computers?

5 A. Yes.

6 Q. Couches?

7 A. Yes. And those are all in there now. The
8 Finance Division has been working for the past several
9 months to ensure that that is correct and complete now.

10 Q. Now, if you could look at the Legislative
11 Auditor's Report No. 2, which should be labeled there
12 in front of you -- up top, yeah. And look at Appendix
13 D. And if you could look on page 21 under "Issue 4
14 concerns the IRS Audit."

15 And I'll give you a moment to refresh
16 your memory on this particular section of the document.

17 A. Okay.

18 Q. Okay now, I believe it may also be helpful
19 for you to go ahead and look at Appendix E in that same
20 report, which should be a letter authored by yourself?

21 A. Oh. Yes.

22 Q. Those two issues are related; that is fair to
23 say --

24 A. Yes.

1 Q. -- Justice Workman's letter and your letter.
2 Could you explain to the Committee what Justice
3 Workman's response means and what your supplementary
4 letter means as well?

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

7 Q. Sure.

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

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

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

22 A. It was -- it was relayed to the IRS after the
23 legislative auditor had met with Justice Ketchum
24 personally, gone through his notes about his vehicle

1 use -- because only he had those records as far as how
2 often he used the car, the personal use of the car,
3 that sort of thing.

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

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

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

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

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

23 A. Sometimes I received them, but we have a
24 fairly big staff that processes those. We have a lot

1 of documents that come through our offices, so I don't
2 see all of them, no.

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

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

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

11 A. Yes, that's correct.

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

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

22 And a lot of those people, instead of
23 being hired as employees, were hired as independent
24 contractors. The IRS reviewed that and felt they did

1 not meet the definition of an independent contractor
2 and they should have been paid as an employee and
3 received earnings on a W-2 rather than a 1099.

4 Q. And did the Court take steps to rectify that
5 error --

6 A. Yes.

7 Q. -- in compliance?

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

13 Q. Do you know why the Court preferred to pay
14 and classify workers as independent contractors versus
15 being classified as an employee?

16 A. No, I have no idea.

17 Q. Did you ever hear any discussions about that
18 among either your supervisors or anybody else in your
19 office, as to why that practice was being followed?

20 A. Not regarding the IT independent contractors,
21 no. I don't know why they did that.

22 Q. Next I will turn your attention to Exhibit
23 No. 40, which should be in the notebook before you.

24 A. Okay.

1 Q. And this is a document that was prepared by
2 the State Auditor with regard to one of the independent
3 contractor employees named John Pritt. Do you recall
4 that name?

5 A. Yes, I do recall that name.

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

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

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

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

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

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

23 A. I don't know that I processed any of the
24 invoices. I know there are some of them in here. I

1 don't know that I personally did any of these. I see
2 they're signed by the former IT director, so I -- I
3 would -- if I saw this, I would have assumed that he
4 was doing work in IT.

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

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

10 THE WITNESS: Thank you.

11 Q. Do you recognize this memorandum?

12 A. Yes, I do.

13 Q. Could you tell the Committee -- just provide
14 a summary of the background of this memorandum, why it
15 was prepared and the issues surrounding it.

16 A. Okay. This was prepared in November of 2016
17 from Steve Canterbury to the justices, and he's
18 explaining the spend-down of the reappropriated funds,
19 and he's kind of hitting the highlights as far as the
20 big ticket items that happened during each of those
21 fiscal years that the spend-down was occurring.

22 Q. And we've been -- we've been using the phrase
23 "spend-down," and I guess it was -- well, coined in
24 this memo, but followed up in the Legislative Auditor's

1 Report and referred to in the media as that.

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

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

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

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

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

24 Q. Was there any indication at all that the

1 Court intended on spending down all of the
2 reappropriated money?

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

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

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

13 (Counsel conferred with the witness.)

14 A. Okay.

15 Q. Do you have that?

16 A. Yes.

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

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

1 remains in the budget.

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

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

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

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

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

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

23 A. Yes, that's correct.

24 Q. And we have -- is this for Fiscal Year '12 in

1 front of us?

2 A. Yes, this is Fiscal 2012.

3 Q. And you have these for each year that you've
4 been at the Court?

5 A. Yes, that's correct.

6 Q. Now, could you walk us through -- we'll start
7 with the top page, and we can go to the second and
8 third pages as well. But just walk the Committee
9 through each -- what information is in each column and
10 what it means, exactly?

11 A. Sure. Sure.

12 Q. Okay.

13 A. On the very first page, it says, "Supreme
14 Court of Appeals, General Revenue Expenditures, August
15 2012." So in this far left column, I have kind of the
16 titles of the different types of expenditures. The
17 next series of columns is that same time period for
18 Fiscal 2011.

19 The next column is the same time period
20 - that being July and August - of 2011. The next
21 column to the right -- and they're labeled "Fiscal year
22 2011," "2012" and "2013."

23 So so the 2013 column is the same
24 thing, July and August of Fiscal 2013. So this is a

1 comparison year to year by the type of expenditure so
2 they can see trends: Is a particular thing going up,
3 is a salary going up, is it going down. So that
4 they're kind of in the know as far as where the money
5 is being spent.

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

10 Just below that, it says, "Funding
11 Sources For Budget Amount, Current Year Appropriation,
12 \$122,320,952. Disbursements From Reappropriated
13 General Revenue, \$5,000,000."

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

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

19 A. Yes, that's correct.

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

22 A. Yes, the reappropriated balance rolls forward
23 from year to year. The year of the money never
24 changes, but it's -- it's never -- it doesn't revert

1 back kind of to the State coffers. It stays in the
2 judiciary. But it's available to spend until it's
3 gone.

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

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

12 And in that, I break down -- on the far
13 left side, it says, "General Revenue, Fiscal Year
14 2013." And then there's the heading for the different
15 types of spending and what the appropriation amount is,
16 what the net cash expenditures to date are and the
17 appropriation remaining balance.

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

23 And at that point in time, we had spent
24 \$3,669,243.82 of that money. So this is telling them,

1 of that reappropriated money, each month, how much is
2 being spent.

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

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

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

14 A. Yes.

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

23 A. Yes, that -- that's correct, those two
24 numbers added together.

1 Q. And for each year, his numbers would come
2 from each year --

3 A. Uh-huh.

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

6 A. Yes, that's correct.

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

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

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

20 And so on the -- the -- on that page
21 where they have the three years -- actually, we could
22 go to the next one where it has the reappropriated
23 money. It shows of the \$21,000,000 for -- in Fiscal
24 2012, we'd started the year with \$21,015,245.83 in

1 reappropriated funds, and that year, we spent
2 \$19,822,112.78. So we had 1.1 million dollars left of
3 that money.

4 Q. And if we go back to the -- to the first page
5 and we refer to the renovation costs and the costs of
6 design services --

7 A. Uh-huh.

8 Q. -- I believe that was provided by Silling and
9 the contractor, for the most part, was Neighborgall,
10 where would you find those expenditures in this -- on
11 the first page?

12 A. On the first page, that would likely be under
13 Item E, Building Repairs and Improvements.

14 Q. So each of the invoices that have been
15 provided to the Committee in the -- in the notebook
16 regarding the renovation costs, all of those invoices
17 would -- should total up to the number presented in
18 this balance sheet.

19 A. It should. It could -- there could be some
20 in another line, but when I look at this -- I think
21 they changed slightly over time. But right, they
22 should -- they should be in that Line E.

23 And Line E showed \$142,300. And that
24 was just for the month of -- months of July and August

1 of 2012.

2 Q. And that information would have been provided
3 each year -- each month of each year as long as you've
4 been employed by the Court?

5 A. Yes, that's correct.

6 Q. So the Court, every month, would know exactly
7 how much money was in their budget and how much money
8 was being spent for renovations, say, in total. Not,
9 you know, individual invoices, but at least the dollar
10 amount in total. The Court should be aware of that.

11 A. They should be aware of that. It would have
12 been -- it would have been encompassed in these
13 financial statements, yes.

14 Q. And we talked about the reappropriated
15 amounts of money. Can you explain to us the process by
16 which that money is reappropriated and then how it is
17 depleted over time, basically how that balance is
18 carried forward and then certain years are depleted and
19 you move on to the next year?

20 A. Yeah, I could try -- try to explain that. So
21 when an -- when a specific expenditure or specific --
22 specific invoice is being entered, it generally
23 defaults to the current fiscal year as far as when
24 you're entering it on the screen.

1 But if you have reappropriated money
2 you intend to use, there's a field there where you key
3 in that date to use prior years' money.

4 So it's something -- it's a manual
5 process to kind of go back and grab prior year money to
6 use it.

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

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

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

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

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

22 Q. So the only way to ascertain what is
23 reappropriated money versus what is budgeted money is
24 through these spreadsheets?

1 A. Yes, that's correct. You have to look at the
2 -- there's a -- the section that gives the fiscal
3 year's money, and so they're all in a fund together,
4 but they are segregated by year.

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

10 A. Okay.

11 Q. Do you recognize this document?

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

14 Q. And what is the document?

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

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

21 A. Actually, I need to -- I need to correct
22 something. I look at this now, and it says "Silling
23 Associates," but I flip to the last page, and this is
24 actually the contract between Neighborgall and the

1 Court. Yeah, there it is, and the contractor
2 Neighborgall. I think -- because I saw Silling at the
3 bottom, I --

4 Q. So this is the contract with Neighborgall,
5 not Silling --

6 A. Right, right, yes. Sorry about that. Yes.

7 Q. And I'll repeat my question. Is this the
8 only contract that you're aware of that was executed
9 during the renovation process, or were there amendments
10 to this?

11 A. This is the only contract that we were able
12 to receive from Neighborgall. I believe this is the
13 only contract that they had.

14 Q. Are you aware of how the additional costs
15 were incurred for the renovations that are not
16 contemplated by this contract?

17 A. Yes, they were all put on change orders by
18 Neighborgall. That's how Neighborgall billed them, was
19 through change orders.

20 Q. And if you can look on page 3, could you tell
21 us what that initial contract sum is supposed to be?

22 A. Yes, the --

23 Q. Or was.

24 A. -- initial contract sum amount is \$876,156.

1 Q. Next we'll turn to the expenditures in the --
2 in the renovation notebook that I believe you prepared,
3 and that is -- I'll turn your attention to Exhibit No.
4 41.

5 MS. NEWBERGER: It's this one.

6 THE WITNESS: Where is -- Exhibit 41?

7 Oh, here. Okay.

8 A. Okay.

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

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

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

17 A. Yes, that's correct.

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

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

1 everything.

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

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

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

8 A. Yes, absolutely. Kennie Bass made an inquiry
9 of the Court in -- I believe it was October 18th of
10 2017, and he was questioning specific expenditures in
11 Justice Loughry's office, and he also inquired about
12 the total cost of Justice Loughry's office, and was it
13 twice as much as any other justice.

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

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

24 And so I began pulling invoices. I

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

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

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

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

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

22 And so I knew that over time, there
23 would be things -- other things I would run across that
24 -- you know, it wasn't like I had some really, really

1 long period of time to do this. It was pretty rapid.

2 So I knew there would be things I would
3 find later that were responsive that should have been
4 included in the book. And so I started gathering a
5 file on those types of things.

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

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

10 (Counsel conferred with the witness.)

11 Q. And do you recognize this memorandum?

12 A. Yes, I do.

13 Q. Could you tell the Committee what it is?

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

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

23 I do want to back up and say that when
24 I put my binder together initially, it was for my own

1 personal records, is what I intended it to be. It
2 wasn't produced as if it was gonna be released to the
3 public and -- and for anyone to use, or it wasn't meant
4 to be an audited final findings of the office
5 renovation costs.

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

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

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

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

21 Q. And it's my understanding that there was --
22 may have been a -- a miscommunication or confusion
23 regarding requests that -- that have -- alleged to have
24 been made regarding the information that would have

1 been included in the notebook?

2 Are you aware of what I'm talking
3 about?

4 A. Yes, I do.

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

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

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

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

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

1 offices were treated the same.

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

6 THE WITNESS: Okay.

7 DELEGATE PUSHKIN: We can't hear John.

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

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

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

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

23 I did not -- at the time, I didn't
24 realize that that was the case for Justice Walker's

1 office. I did catch that for Justice Davis' office,
2 and I had mentioned that to Justice Loughry, that "I
3 want to kind of do this apples-to-apples comparison,"
4 and he said, "No, leave it in there, because it's
5 correct, her office costs are stated correctly," which
6 is true. But the others were actually understated
7 because of the lack of the -- the Silling allocation.

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

11 Q. Who was this notebook provided to?

12 A. I had the -- the master copy that I had made
13 for myself, and there was just that one, just an
14 original book. And then Judge Johnson was getting --
15 he was then the Administrative Director, and he was
16 getting requests from the justices, questions about one
17 thing or another.

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

22 And in a meeting with Kennie Bass, that
23 book was handed to him, Judge Johnson's copy. So I
24 believe Kennie Bass' book that he has has "Judge

1 Johnson" on the front of it.

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

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

7 A. Yes, all of them did.

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

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

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

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

24 A. Yes, that started to occur once I started to

1 work on assembling that information. During those
2 three weeks when I was working on putting the binder
3 together, I spoke with each of the justices about their
4 offices.

5 Q. And what time period are we talking about
6 again?

7 A. October 18th, I believe, of 2017. And the
8 book was completed - I think it was - November the 8th,
9 maybe, 2017, when it was given to Kennie Bass at that
10 date.

11 Q. Prior to that date, did any of the justices
12 inquire with you as to the costs of the renovations --

13 A. No --

14 Q. -- in their offices?

15 A. I'm sorry. No, never.

16 Q. Okay.

17 (Counsel conferred with the witness.)

18 A. There's -- there's one thing I'd like to
19 clear up as well, if I can.

20 Q. Sure.

21 A. In the front of the book that I had given to
22 Judge Johnson, I had copied not this entire Silling
23 book, but just the -- the summary page of the Silling
24 so that he -- he had that information as well, as far

1 as what he -- he knew what was not in that book.

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

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

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

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

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

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

22 Q. To your knowledge, is this the only contract
23 that was executed between the Court and Silling for
24 their services?

1 A. This is the only contract that I've ever
2 seen. This is the only one that Silling has been able
3 to provide to us. If there were others, I haven't seen
4 them yet.

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

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

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

11 A. Yes. I printed these from FIMS, and you can
12 see at the bottom, I printed these on October 27th,
13 2017, so this was during the time that I was doing my
14 research and putting together these construction costs.

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

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

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

22 One thing I do want to point out, Steve
23 -- Steve Canterbury signed this contract - it looks
24 like - 9-19-08, and if I go to the kind of detail page

1 of the Silling payments, two of these payments were
2 prior to that. There were two payments in 1998. And
3 that's, you know, quite a bit prior to when he signs
4 the document.

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

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

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

14 A. Yes, that's correct.

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

18 A. Yes, that's correct.

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

22 A. Okay.

23 Q. -- are, beginning with the -- the one that
24 has "Invoices on the 4th Floor, Chief Counsel's

1 Office."

2 A. Where I have the summary -- because they're
3 -- at first, there's kind of a consolidated and then I
4 start breaking them out.

5 Q. Yeah, when you start breaking them out of the
6 summary.

7 A. Okay, yeah. So using the descriptions on the
8 invoice, I put them in the Comments field and then
9 I sorted them and subtotaled them so I could see how
10 much Silling billed for for work in the chief counsel's
11 office, and they billed \$90,350.88.

12 But according to their documents,
13 that's where that work was done.

14 Q. Then the next page?

15 A. The next page, they billed it as "Justices
16 Offices Renovations" and they have that starting March
17 of 2009 and completing in March of 2013 at a cost of
18 \$374,139.81.

19 Q. And that includes all of the justices'
20 chambers together.

21 A. It should.

22 Q. Is that accurate?

23 A. But there was work done in Justice Loughry's
24 chambers after this date, and -- and they're not billed

1 that way, so I don't know how Silling's billing worked.

2 But during the time of his renovations,
3 there's only one invoice, and that's the one at the
4 very bottom for \$4,050, but there was more work done in
5 there than that. There -- the scope of the work should
6 have cost more than \$4,050, so I don't feel that this
7 is terribly accurate from their billing, not -- not
8 that this is put together incorrectly, but their
9 billing --

10 Q. From Silling's perspective --

11 A. Yes.

12 Q. -- as far as their billing.

13 A. Yeah, the time frame doesn't match up with
14 the invoices.

15 Q. And what is the -- what are the next two
16 pages?

17 A. The next one is some work in the law library.

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

20 Q. What's the next summary?

21 A. They did work in the first floor hallway.
22 That's kind of the public area over in the east wing.
23 \$20,133.81. They were -- they were doing some kind of
24 project with the lights.

1 Q. And what about the next invoice?

2 A. The next one says "West Virginia House and
3 Senate Elevator Upgrade" for \$9,572.

4 Q. So does that indicate that the Court paid for
5 an elevator upgrade in the House or the Senate?

6 A. Well, that's what it says. There's design
7 work, development work and construction documents. I
8 don't see any actual construction. It seems like some
9 kind of professional services maybe, but that's how
10 they billed it, and then it's approved for payment by
11 Steve Canterbury.

12 Q. What is the next invoice cover sheet?

13 A. The next two pages are those payments from
14 1998 that I don't have any detail on. There's no
15 scanned documents because the scanning wasn't available
16 at that period of time. So all I have are the two
17 payments, and other than the dollar amount and the
18 vendor, I don't really have anything other than that.

19 Q. And what are the last two pages?

20 A. The next to the last one is the invoice that
21 says "For Courtroom Restoration, \$215.63" and there's
22 that House and Senate Elevator Upgrade again at the
23 very end.

24 I think this was actually billed in one

1 of these. I think these are just some backup
2 documentation.

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

6 A. Yes, I do.

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

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

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

17 A. Yes.

18 Q. Do you see that in front of you?

19 A. Yes, I do.

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

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

24 Q. Correct.

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

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

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

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

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

23 Q. Do you have any knowledge as to whether this
24 memo from 2016 was delivered, actually delivered, to

1 Justice Davis?

2 A. I have no knowledge of that, no. It's -- the
3 memo isn't signed. I don't know if she received it or
4 not.

5 Q. And after you provided this memorandum, the
6 October 24th, 2017 memorandum, after you delivered that
7 to Justice Davis, did you have any discussions
8 regarding the information contained in the memo with
9 Justice Davis?

10 A. She and I went over that, actually, the day
11 before this, on October 23rd. She -- Justice Davis,
12 myself and Kim Ellis sat down in her chambers and went
13 through item by item that we could see what was
14 purchased with State funds, what was her personal
15 property.

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

20 Q. And is it your understanding that Justice
21 Davis made those reimbursements subsequent to receiving
22 that memorandum from you?

23 A. Yes, she did.

24 Q. Now, before we move into the -- the 1099 West

1 Virginia-48 form issue, there's one other thing that I
2 want to discuss with you that I think occurred during
3 this time period in which you were constructing this
4 notebook.

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

8 A. Yes, I do.

9 Q. -- and yourself?

10 A. Yes.

11 Q. Who else was present in that meeting?

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

14 Q. That's correct.

15 A. -- that was Judge Johnson, myself, Chris
16 Morris, Lori Paletta-Davis, Justice Loughry.

17 We were all meeting in Judge Johnson's
18 office to talk about how to respond to this FOIA from
19 Kennie Bass, who was gonna put what documents together
20 and how would this be responded to.

21 We talked about my work on what I was
22 gathering as far as financial documents, so -- that was
23 who was in the room, and that's what we were talking
24 about at that time.

1 Q. Do you recall Kim Ellis being requested to
2 come to the meeting?

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

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

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

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

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

20 A. I believe he repeated that and said, "Yes, we
21 did, we did talk about that." And she said, "No" -- I
22 mean, this is my recollection of the conversation,
23 because I was just kind of sitting back and looking at
24 my binder and thinking about what I was working on.

1 But that was how I recall the
2 interaction between the two of them, was that he
3 insisted that they had had a conversation, that she
4 said, no, they did not have that conversation.

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

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

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

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

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

24 Kim did not work for the Court during

1 that time; she worked for Silling. So she wouldn't
2 have had knowledge of that. So he was asking her
3 something she wouldn't have known.

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

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

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

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

17 A. Yes.

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

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

22 Q. And the substance of those meetings would
23 have been the -- the total amount of the renovations
24 for each office? Because I believe you testified

1 earlier that they were curious as to the amounts in
2 their offices?

3 A. Yes, they wanted to know --

4 Q. Is that what you said?

5 A. -- about their individual offices, yes.

6 Q. So now the last topic or next to last topic
7 that I want to cover with you is this so-called 1099
8 issue, the West Virginia-48 forms. Are you aware of
9 what I'm referring to when I -- when I say that?

10 A. Yes.

11 Q. Could you explain to the Committee the
12 circumstances surrounding the issuance of the -- of the
13 1099s for senior status judges?

14 A. Senior status judges -- it's been the
15 practice of the Court to keep senior status judges on
16 payroll up until they meet some certain threshold,
17 which I've been told is around \$20,000. I don't know
18 the exact dollar amount.

19 But payroll notifies -- I believe they
20 notify the recusal assistant of when they're
21 approaching that cap, as far as what they can --

22 Q. If I could stop you there, what is the cap
23 you're referring to?

24 A. My understanding is it's the amount that they

1 can earn on payroll without a reduction in their
2 retirement benefits.

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

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

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

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

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

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

21 A. I believe they're paid \$435.00 per day for
22 their services, and so once the \$435.00 per day reaches
23 around \$20,000, that's when they're -- they start
24 watching -- payroll starts watching that number, so

1 that they don't go over \$20,000.

2 Q. And what happens when a particular senior
3 status -- senior status judge begins to approach that
4 \$20,000 benchmark?

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

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

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

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

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

24 A. Yeah, a W-2 worker is an employee. They can

1 be a temporary employee; they could be a full-time/
2 permanent. It could be any employment status. But the
3 Court -- the employer will withhold payroll taxes and
4 submit those taxes and pay employer taxes as well on
5 behalf of that employee.

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

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

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

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

22 A. I -- I've --

23 (Counsel conferred with the witness.)

24 A. What I was told was the \$20,000 cap was a

1 retirement board cap, that that was gonna affect their
2 retirement. I think that you asked about statutory.
3 That has not been discussed with me.

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

7 A. Yes, that's correct.

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

12 A. Yes, that's correct.

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

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

23 I don't know how closely she
24 communicates with payroll. I don't know if she gets

1 the information from them, they provide it to her. I
2 can't really speak to that.

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

7 Q. Authorized what to happen?

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

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

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

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

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

20 Q. Let me clarify. I don't mean the detail
21 included on the actual form. I just mean, who takes
22 the form for the specific senior status judge and fills
23 in the information that then is passed on to the Chief
24 Justice to be authorized?

1 A. That's the part I'm not sure about. I think
2 it's that -- the recusal assistant, but I'm not
3 positive about that. I do know that finance doesn't do
4 those. I believe that the recusal assistant -- but
5 that's just what I believe happens.

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

8 A. Uh-huh.

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

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

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

20 A. From the files in my office - at least on one
21 occasion - I had a memo from the Deputy Administrative
22 Director. She had -- she was sending the memo to the
23 senior status judge indicating, "Here's your -- here's
24 your form for the WV-48," and she kind of outlined some

1 -- you know, letting that person know they're
2 responsible for paying their own taxes and that sort of
3 thing.

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

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

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

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

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

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

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

21 It's not a frequent occurrence to go
22 over that -- that \$20,000 cap. We have a lot of senior
23 status judges, but I think the majority stay below the
24 cap. But there are occasions when they go over their

1 cap.

2 Q. And you just -- you testified a moment ago
3 that when the WV-48 forms are being filled out, that
4 you -- you recall an e-mail, I think, being sent to one
5 of the senior status judges. Is there any type of
6 cover document or informational document provided to
7 the senior status judge about the WV-48 form or why
8 they're being treated as an independent contractor?

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

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

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

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

24 Q. Now, if I can, I will direct your attention

1 to Exhibit No. 65. Do you recognize what that document
2 is?

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

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

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

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

15 A. Is this the WV-48 form?

16 Q. Correct.

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

19 Q. Yes.

20 A. Okay. So this is the Agreement form between
21 Judge Keadle and the Court outlining the scope of his
22 work. It says he's to be appointed as a senior status
23 judge, and that this -- dates of service cover April
24 16th, 2013 to December 31, 2013. Gives the daily rate

1 of pay of \$435.00, and is signed by the Chief Justice
2 at that time, Justice Benjamin, and Judge Keadle has
3 signed -- and I see his Social Security number's on
4 there. He signed on the bottom right.

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

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

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

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

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

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

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

24 A. This is a senior status form for Judge Thomas

1 Steptoe, same thing, and it outlines the dates of
2 service from June 25th, 2012 to December 31, 2012. So
3 any work performed during those days would have been
4 paid according to this form.

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

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

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

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

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

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

24 It's signed by then Chief Justice

1 Workman and Judge Keadle.

2 Q. Who were these WV-48 forms submitted to?

3 A. These would come to finance, so that when we
4 had an invoice from the judge, we could attach this
5 contract to it. Or this Agreement form to the invoice
6 to submit to the State Auditor's Office.

7 Q. Did -- who was your predecessor in your
8 position right now?

9 A. My predecessor was Mike Proops.

10 Q. Did he communicate to you how this practice
11 was supposed to be followed when you -- when you first
12 came into your position?

13 A. Well, he told me about the senior status
14 judges and that there would be a period of time when
15 they may exceed their threshold for their retirement,
16 and if that happened, they would be -- they would
17 switch to independent contractor status and that I
18 would have these WV-48 forms.

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

22 Q. To your knowledge, was there -- or did any
23 senior status judge or otherwise appointed judge or
24 justice ever repay money that -- that they believed to

1 be exceeding the -- the limit?

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

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

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

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

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

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

24 Q. At any time did anyone communicate a reason

1 to you as to why this process was followed with regard
2 to filling out the WV-48 forms upon approaching the --
3 the limitation?

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

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

13 A. No. I'm sorry.

14 Q. Is that correct?

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

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

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

22 Q. Who at the Supreme Court is aware of this
23 procedure that is followed for senior status judges
24 that approach the limitation that you're aware of?

1 A. The people at the Court aware of it should be
2 the recusal assistant, the payroll staff, the justices
3 and the folks in Finance who receive these to pay as
4 independent contractors.

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

8 A. Yes, it has occurred each year.

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

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

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

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

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

24 A. I'd say the work environment changed

1 dramatically in 2017. We -- after Mr. Canterbury was
2 let go, we got a new Administrative Director. Justice
3 Loughry was then the Chief, and there started being a
4 lot of terminations and restructuring and -- and that,
5 I think, created a lot of feelings of uncertainty in
6 the administrative staff.

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

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

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

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

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

24 And Justice Ketchum would come through

1 occasionally and say hello and walk through the office.
2 But generally the others, you never saw them
3 downstairs.

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

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

11 A. Correct.

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

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

21 Generally, it would go through the
22 Administrative Director, those requests would. But
23 sometimes, it would come to me directly, and they would
24 even ask me not to disclose that to the Administrative

1 Director.

2 Q. Were there any circumstances or occasions
3 where the Adminis -- Administrative Director would have
4 gained knowledge that the justices had been
5 communicating with you directly?

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

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

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

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

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

24 There was a -- you've testified that

1 there was a personnel manual that you had -- were given
2 when you first became employed with the Court. Is that
3 correct?

4 A. Yes, that's correct.

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

8 A. Yes, that's correct.

9 Q. Was there any --

10 A. It didn't address that at all.

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

14 A. No, there was no organizational chart.
15 Justice Workman had asked that an organizational chart
16 be developed. I believe that was in 2015 when she was
17 chief. Because she wanted to see -- I mean, there was
18 -- everybody knew what the structure was, but it was
19 never defined on paper. You just knew how to operate.

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

22 Q. How did you learn that structure when you
23 first came on the Court? Is that something that you
24 learned as you -- as a part of on-the-job training, or

1 was that communicated to you by your supervisor that
2 "This is" -- you know, "This is how we do things and
3 this is how information is conveyed"?

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

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

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

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

23 Q. But within the -- within the Finance
24 Division, did you have regular communication with the

1 payroll office?

2 (Counsel conferred with the witness.)

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

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

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

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

21 Q. Did you have any impression as to why the
22 structure of the Court was set up as it was? And what
23 I mean by that, why the flow of information had to go
24 through Steve Canterbury to the justices and why, you

1 know, if an issue were raised, why you would not be
2 able to address the justice directly?

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

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

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

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

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

22 A. Based on the information I was given, I -- I
23 did not have an opinion. The Chief Justice -- if it's
24 a legal issue, the Chief Justice already looked at it

1 and issued their determination, and it was not up to me
2 to question whether or not the Chief Justice had made a
3 proper determination about whether this person could or
4 should be paid on a 1099.

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

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

11 A. Can you rephrase the question?

12 Q. I can rephrase.

13 A. I'm not sure I understood.

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

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

24 Q. Are you aware of any conversations that the

1 justices had among themselves regarding the treatment
2 of senior status judges as 1099 employees?

3 A. No, I'm not aware of anything like that, no.

4 Q. Also with regard to the work environment and
5 culture of the Court, were you -- were you - or are you
6 - aware of anyone that directly feared for their jobs
7 after Justice Loughry took over as Chief Justice?

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

13 There was just a lot of -- a lot of
14 change going on at that time.

15 Q. And how did that affect the morale within the
16 Court?

17 A. Among the employees, everybody became very
18 nervous and, you know, feared for their jobs on a daily
19 basis. And some people did get terminated. After the
20 initial series of terminations, there were more.

21 And then other people started looking
22 for other employment. Many people resigned before they
23 got -- because they felt like they may -- they may get
24 fired just any day, so some people left voluntarily.

1 Q. Are you aware of how many people either left
2 voluntarily or were terminated from their position
3 after that changeover in 2017?

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

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

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

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

20 A. No.

21 Q. Okay.

22 MR. HARDISON: Ms. Troy, I believe
23 that's all the questions I have for you at this point.

24 Mr. Chairman?

1 CHAIRMAN SHOTT: Thank you, Ms. Troy.
2 And I'm sure if you followed what we've been doing in
3 this process, we generally allow our members to ask
4 follow-up questions.

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

10 We'll be in recess until 1:45.

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

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

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

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

24 So Delegate Fast, do you have any

1 questions for Ms. Troy?

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

4 Thank you, Ms. Troy, for being here.

5 EXAMINATION

6 BY DELEGATE FAST:

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

12 A. Yes, she --

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

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

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

19 A. Correct, yes.

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

24 (Counsel conferred with the witness.)

1 A. That I didn't need to worry about developing
2 those, because we weren't going to do that.

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

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

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

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

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

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

1 Canterbury to you?

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

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

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

11 A. That's correct.

12 Q. Huh.

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

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

20 A. Correct.

21 Q. And what was her response to your reply?

22 A. I think she was pretty aggravated that he had
23 not followed through on the request that she had given
24 to him.

1 Q. And so it was from 2015 until 2017 that she
2 followed up on that issue about a -- creating a written
3 policy on P-cards.

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

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

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

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

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

1 don't know when she made that official request.

2 Q. Was Steve Canterbury bucking her on this
3 issue?

4 A. In my opinion, yes.

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

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

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

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

18 A. Yes, he did.

19 Q. -- for -- okay.

20 A. Uh-huh.

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

24 A. That is correct, yes.

1 Q. So Justice Loughry and two others terminated
2 Steve Canterbury. They hired Gary Johnson as the
3 Administrative Director, and then policies started to
4 come about.

5 A. Yes, that's correct.

6 Q. Okay. What policies -- Well, I guess then my
7 ans -- the answer would be yes, that when -- when
8 Justice Loughry became Chief Justice, then policies
9 were implemented at that point.

10 A. Yeah, I'm --

11 Q. Through the Administrative Director.

12 A. Yes. I'm sorry, I could have misunderstood
13 your question. I think -- I took it to mean, did --
14 did he direct that to be done. And I -- I didn't take
15 that direction from him; I took it from Judge Johnson.
16 So it could have been -- yeah, I just maybe wasn't
17 understanding.

18 Q. And he gets his direction from the justices.

19 A. Yes, that's correct.

20 Q. Okay. And what policies were implemented
21 when Judge Johnson became Administrative Director?

22 A. I know there was an -- a major revision to
23 the travel policy.

24 Q. Okay.

1 A. We had in draft form a policy for P-card.

2 Q. Uh-huh.

3 A. We had in draft form a policy for
4 procurement.

5 Q. Okay.

6 A. Those had been submitted -- or were getting
7 ready to be submitted to the Court, and then other
8 fires kind of got in the way and those kind of got
9 pushed to the back burner.

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

12 Q. Okay. And if there were communications
13 between Judge Johnson, Administrative Director, and the
14 justices, they would -- those communications could be
15 in what kind of notes?

16 A. Likely the notes of the administrative
17 conferences. Typically, they meet monthly to discuss
18 administrative issues, the justices and the
19 Administrative Director do.

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

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

24 And if you would, please, turn to the

1 third page of that exhibit, the fourth bullet point
2 from the bottom. Counsel had asked you about that,
3 something about the Court's Fixed Asset Inventory
4 Management System had not been updated since 2010.

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

9 Is that a correct statement?

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

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

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

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

23 Q. Does that strike you --

24 (Counsel conferred with the witness.)

1 Q. -- as nontransparent to the public?

2 A. It strikes me that way, yes. And now finance
3 has taken on the role of making sure that all assets
4 are recorded properly.

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

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

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

16 All of that would have been couched in
17 this fixed asset column?

18 A. Yes, and it's all in there now, yes.

19 Q. Okay. And up until at least -- well, when
20 was the change made?

21 A. Fall of -- fall of 2017, so we went back and
22 started entering all of that old information.

23 Q. So after Justice Loughry became Chief
24 Justice, this practice of hiding the ball changed.

1 A. That is correct.

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

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

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

13 Is that correct?

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

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

20 A. The way I recall the conversation was: "I
21 keep seeing a State car frequently parked in Justice
22 Ketchum's parking space. If he is using the vehicle
23 for personal use, including commuting, that could be a
24 pers -- a taxable fringe benefit."

1 I mean, he could be using it only on
2 State business. I don't know; I didn't know. And it
3 could be that it was already on his W-2, but I thought
4 it was important to disclose that to him.

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

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

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

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

14 A. Yes.

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

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

23 Q. Are you aware that Steve Canterbury testified
24 under oath that the reason the IRS concluded that no

1 amended W-2 forms were necessary was because the IRS
2 just didn't have the information?

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

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

9 A. What -- what was his testimony again?

10 Q. That --

11 A. Just so I'm clear on that.

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

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

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

23 A. Yes, there were dramatic reductions.

24 Q. Okay. Can you give me an estimate about how

1 much, when you say "dramatic"? We talking hundreds?
2 Millions?

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

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

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

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

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

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

24 Q. Okay. Now, on these renovations/

1 restorations -- first of all, is it true that that
2 really started in 2008?

3 A. I believe that's correct, based on my search
4 of documents. I didn't come to work for the Court
5 until 2012, so I wasn't there to have kind of firsthand
6 knowledge of that. But when I looked back through the
7 documents, I believe that's when the work began, was in
8 2008.

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

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

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

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

23 A. I have no knowledge of that at all. No one's
24 ever spoken to me about that.

1 Q. Okay. Do you know if Steve Canterbury was a
2 member of the Capitol Building Commission, just by
3 virtue of his office or his position?

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

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

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

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

24 I mean, were they com -- do you believe

1 they were completely oblivious as to the costs? Having
2 couches reupholstered at thousands and thousands of
3 dollars?

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

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

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

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

22 A. No, not that I was aware of. I wasn't really
23 that involved in walking through the offices while
24 these renovations were going on. I know that Steve

1 Canterbury was very involved and -- and met with the
2 contractors and kind of oversaw the project, but I
3 personally didn't go upstairs much at all during that
4 time.

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

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

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

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

18 Q. Did you ever see him take a -- let's say, a
19 \$80,000 invoice and say, "Whoa, I need to -- I need to
20 check into" -- did he ever go get approval, discussion
21 on anything? Or did he just sign it and give it back
22 to you?

23 A. If he took it to the Court, I wouldn't have
24 known about that. What I can say is that I don't

1 recall seeing any invoices signed by a justice.

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

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

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

10 -- went through our administrative
11 office -- administrative services director first, and
12 then he would say, "This amount of work has been
13 completed." There would be a memo with that. He would
14 send that to Steve Canterbury for Steve's signature.

15 Then the invoice would come to Finance
16 for payment.

17 Q. So you got it after Steve signed it?

18 A. That is correct, yes.

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

23 A. Uh-huh.

24 Q. -- and so I think you said that she went

1 ahead and cut a check out of her personal funds to pay
2 for those things.

3 A. Yes, she did.

4 Q. Is that correct?

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

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

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

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

24 So I was kind of surprised that there

1 was a miscommunication there between the two.

2 Q. So you were surprised at Exhibit 64?

3 A. Yes.

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

12 Is that -- am I correct?

13 A. My understanding was they were converted when
14 it had something to do with the amount they can earn
15 before their retirement benefits were reduced. That's
16 what I was told, that this was an issue with the
17 retirement board.

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

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

23 Q. Okay. Did that practice ever change?

24 A. It changed after the IRS audit, because the

1 IRS agents looked specifically at the senior status
2 judges and found that that was not proper to pay them
3 on a 1099, regardless of what the issue might be, that
4 they needed to stay as W-2 employees.

5 Q. Okay.

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

8 Q. And when was the IRS audit again?

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

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

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

21 So administrative counsel initiated the
22 change.

23 Q. Okay. And that -- that whole idea of just,
24 on paper, converting someone from an employee to a

1 independent contractor, as a CPA, did that strike you
2 as illegal?

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

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

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

17 Q. So Workman, Davis, Benjamin and Ketchum.

18 A. Yes.

19 Q. Not Loughry?

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

24 So I don't want to testify that he did

1 not sign any. I just can testify that of the ones that
2 I reviewed before coming here today, I did not see any
3 with his signature. But it could be they're just not
4 in that file together.

5 Q. You're not sure.

6 A. I'm not sure exactly.

7 Q. Okay. Now, last question --

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

11 DELEGATE FAST: One more question?

12 CHAIRMAN SHOTT: I've heard that
13 before.

14 DELEGATE FAST: No, it is.

15 CHAIRMAN SHOTT: All right. One more
16 question.

17 BY DELEGATE FAST:

18 Q. You testified, Ms. Troy, that Justice Workman
19 came straight to you on some personal issues and did
20 not want Steve Canterbury to learn about it, and then
21 he learned about it and he got upset at you. What were
22 the personal issues?

23 A. It was personnel issues in the office. She
24 was asking about -- specifically about some employees

1 in Finance and who was kind of pulling their weight and
2 who was -- it was personnel issues.

3 And she wanted to know specifically
4 what my concerns were and were my concerns being
5 addressed.

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

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

12 CHAIRMAN SHOTT: Delegate Foster.

13 (Counsel conferred with the witness.)

14 EXAMINATION

15 BY DELEGATE FOSTER:

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

22 If there was a P.O. issued, it wouldn't
23 get paid -- basically it wouldn't get paid unless a
24 P.O. was issued, which was basically claiming it was

1 Court property, correct?

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

7 Q. Who would have issued that purchase order?

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

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

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

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

24 Q. Steve sent -- and that -- and if

1 Mr. Canterbury signed off on it it was intended for
2 purposes -- where is that -- for example, that sofa,
3 where is it now?

4 A. It's in Justice Davis' chambers.

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

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

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

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

23 A. Certainly all the documents look that way,
24 and that's why I was very surprised to see it on this

1 list of personal items. Because he made the list of
2 personal items and yet he authorized the purchase with
3 State money.

4 Q. Okay.

5 A. So those two things were inconsistent to me.

6 Q. All right.

7 DELEGATE FOSTER: Thank you.

8 (Counsel conferred with the witness.)

9 CHAIRMAN SHOTT: Delegate Overington.

10 DELEGATE OVERINGTON: Thank you,

11 Mr. Chairman.

12 Thank you for being here.

13 EXAMINATION

14 BY DELEGATE OVERINGTON:

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

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

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

23 Q. And there was or was not a list that
24 indicated that this was the justice's personal versus

1 State purchased?

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

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

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

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

23 A. In my position, I felt like I re -- and I
24 still feel this way: I report to the Administrative

1 Director, as well as the five justices. So if any of
2 them ask me for anything, I will always respond to
3 whatever their request is. I don't have a problem
4 answering them directly.

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

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

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

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

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

23 A. Yes, that's correct. Anything -- anything
24 related to that, yes.

1 Q. Did -- did you feel that there was a limit on
2 this, what Steve could approve or not approve?

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

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

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

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

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

20 A. No, not at all.

21 DELEGATE OVERINGTON: Thank you.

22 Thank you, Mr. Chairman.

23 CHAIRMAN SHOTT: Delegate -- Delegate
24 Zatezalo.

1 DELEGATE ZATEZALO: None.

2 CHAIRMAN SHOTT: Delegate Pushkin.

3 DELEGATE PUSHKIN: Thank you,

4 Mr. Chairman.

5 And thank you for being here.

6 EXAMINATION

7 BY DELEGATE PUSHKIN:

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

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

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

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

23 Q. Okay. Well, and when did Justice Loughry
24 become Chief Justice? Was that in '16?

1 A. No, January of '17.

2 Q. Okay. So early '17.

3 A. Yes. I think they --

4 Q. Before the session -- before the session of
5 2017.

6 A. Yes, I may have misspoken a little bit there.
7 I think at the end of -- like December of '16, they --
8 the Court decides who will be the chief for the next
9 year --

10 Q. Uh-huh.

11 A. -- and my understanding is it becomes
12 official January 1 of the next year.

13 Q. Okay. But those policies weren't created
14 until late 2017.

15 A. That is correct, yes.

16 Q. Now, it was also in late 2017 when the public
17 first started hearing about some of the overspending
18 going on in the Supreme Court. Is that true?

19 A. Yes. Kennie Bass made the -- really the
20 first inquiry, and that was in October, I believe, 18th
21 of 2017.

22 Q. So it was -- it was after the -- he made
23 those inquiries and the news stories ran that those
24 policies were -- were created in -- in response to

1 those stories.

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

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

10 A. That would be a correct statement.

11 Q. It was almost a year afterwards, correct?

12 A. That is correct.

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

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

20 Q. Uh-huh.

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

23 Q. The sex offender monitoring was not just cut;
24 it was -- I mean, it was -- they did away with it,

1 right? They moved it under probation.

2 A. Exactly. It was absorbed into probation, and
3 30 some people were laid off.

4 Q. Okay. And there were cuts to the guardian ad
5 litem's program?

6 A. That is correct as well, yes.

7 Q. Okay. And this was all going on while the
8 renovations were still going on over there in the east
9 wing, right? At least some of the renovations to
10 Justice Loughry's office.

11 A. No, Justice Loughry's office would have been
12 finished by that time.

13 Justice Walker's office, those
14 renovations, started sometime in 2017 when she took the
15 bench. So those cuts would have been going on at that
16 time.

17 Q. Okay. I was looking for it, but I didn't --
18 wasn't able to find it in this pile -- pile of papers I
19 have here on my desk. There was -- one of the exhibits
20 we've had was an Affidavit -- a sworn Affidavit from
21 Kimberly Ellis. Are you familiar with that?

22 A. Yes.

23 Q. Okay. Do you -- would you -- is there
24 anything that you saw on there that you would say was

1 less than factual?

2 A. No, everything looked factual to me.

3 Q. Okay. And you were actually at -- you stated
4 earlier, you were at the meeting where she was asked if
5 she recalled something a certain way and she said, "No,
6 that's -- that's not exactly how I recall it" when -- I
7 believe it was when Justice Loughry said that he told
8 her that his off -- that the spending on his office
9 should be the same as the other justices. Right?

10 A. Yes.

11 Q. So you were at that meeting.

12 A. Yes, I was.

13 Q. Okay. Well, okay, I'll stay with that
14 meeting there. When -- no, I believe it was a -- it
15 was a different one that you had with him where --
16 Okay, when -- in putting together the
17 -- I guess the FOIA response to Mr. Bass, I think you
18 stated earlier that you didn't believe it was -- if you
19 looked at like the expenses to Justice Davis' office or
20 Justice Walker's office, there wasn't really an
21 apples-to-apples comparison when you looked at -- at
22 spending on the renovations to Justice Loughry's office
23 because there -- it didn't -- it didn't reflect the
24 like structural repairs that were going on, say, in

1 Justice Davis' office. Correct?

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

4 Justice Davis' office is complete as it
5 is.

6 Justice Walker's office is also.

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

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

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

17 Q. Uh-huh.

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

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

24 Q. Okay. So you wanted to remove it. Now, I

1 and I wasn't -- I couldn't -- I was having a hard time
2 hearing earlier, and it wasn't really very clear to me.
3 Who told you not to?

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

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

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

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

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

18 A. Yes. That's correct.

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

24 A. No, I was talking about -- I was asked about

1 how things changed after he became Chief Justice, and I
2 said he was more frequently down in the administrative
3 office than other Chief Justices had been.

4 Q. Oh, okay, I misunderstood that part then.
5 All right, well, thank you.

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

8 THE WITNESS: Thank you.

9 DELEGATE PUSHKIN: Thank you again.

10 CHAIRMAN SHOTT: Delegate Lane?

11 DELEGATE LANE: Thank you very much.
12 And thank you for being here.

13 EXAMINATION

14 BY DELEGATE LANE:

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

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

24 Q. So if the State purchasing rules say that you

1 can't use the purchasing card for working lunches, the
2 Supreme Court felt that those rules did not apply to
3 it?

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

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

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

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

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

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

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

24 A. Either I saw it or someone on my staff would

1 have seen it, yes.

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

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

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

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

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

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

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

20 A. What I -- what has come to my mind right now
21 is: There was a case where all the justices recused
22 themselves and five new justices came in and she was, I
23 think, working as their law clerk. I really don't know
24 much detail to speak about that, but that's my general

1 understanding.

2 Q. Okay. I think you testified that you
3 provided - I'll call them - spreadsheets for the
4 justices on a monthly basis to show the expenditures
5 and where they were in relation to their overall
6 budget. Is that correct?

7 A. Yes, that is correct.

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

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

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

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

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

24 Q. Okay. Now, I think you said that you did see

1 the invoices for the senior status judges.

2 A. Yes, generally, yes.

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

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

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

18 A. Yes, I think that would be reasonable.

19 Q. Okay. Thank you.

20 Now, you said that Justice -- when
21 Justice Loughry became chief judge -- Chief Justice,
22 restructuring took place and a lot of people were fired
23 and a lot of restructuring done and probably \$8,000,000
24 was saved.

1 A. Yes, that's correct.

2 Q. So did the Court reduce its budget request by
3 \$8,000,000 for the next year?

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

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

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

10 Q. Okay. Thank you.

11 DELEGATE LANE: Okay, thank you.

12 CHAIRMAN SHOTT: Delegate Sobonya, do
13 you have questions?

14 DELEGATE SOBONYA: Thank you for being
15 here.

16 EXAMINATION

17 BY DELEGATE SOBONYA:

18 Q. One of my questions relates to the
19 expenditures for the meals, and they're itemized -- I'm
20 not sure what exhibit it is, but if you look at October
21 5th, there were three different charges. One was to
22 SoHos for \$237.18. That's in 2016, January through
23 December, 2016.

24 So there was SoHos \$237.00, South Hills

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

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

6 Q. Let me look at it. It's 43. 43, I'm sorry.

7 Would that be lunch and dinner if it
8 were on the same day?

9 MS. NEWBERGER: It's this one.

10 Q. October 5th, 2016.

11 A. Oh, okay, '16.

12 Q. It's down towards the bottom.

13 A. Oh, here.

14 (Counsel conferred with the witness.)

15 A. I can't tell by looking at this document.

16 But what we should have in OASIS - and I don't know if
17 it's in these exhibits anywhere - is the actual credit
18 card images, the credit card receipts, and those would
19 have a date -- a time stamp on them, so then we could
20 see if it was lunch or dinner.

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

24 Q. Okay. We were told that they were for

1 working lunches and we -- there's one on the same page,
2 November 9th, Tricky Fish for \$28.00. That would
3 indicate possibly one person. That wouldn't include
4 the -- the Supreme -- like all the justices, would it,
5 for a \$28.00 expenditure?

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

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

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

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

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

23 So that's why I was saying there's
24 additional documentation that would answer the

1 questions on these, but I don't see them here in the
2 exhibits.

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

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

15 Q. So any exception would be granted by whom?
16 The justices themselves?

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

24 And without written policies and

1 procedures, it's difficult to know when things started
2 to be the way they are.

3 Q. Okay.

4 DELEGATE SOBONYA: Thank you.

5 CHAIRMAN SHOTT: Delegate Lovejoy?

6 DELEGATE LOVEJOY: No.

7 CHAIRMAN SHOTT: Delegate Fluharty?

8 Delegate Byrd?

9 DELEGATE BYRD: No.

10 CHAIRMAN SHOTT: Delegate Harshbarger,
11 questions?

12 DELEGATE HARSHBARGER: Thank you,
13 Mr. Chairman.

14 Thanks for being here.

15 EXAMINATION

16 BY DELEGATE HARSHBARGER:

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

24 A. I'm sorry, which exhibit is that? Is it in

1 the large book?

2 Q. Yes, the big book.

3 A. Okay.

4 Q. Exhibit 51.

5 A. Okay, I have Exhibit 51.

6 Q. Yeah, it's toward the back. I think it's
7 page -- about 57.

8 A. Who's the vendor? Because I have these in
9 alphabetical order by the vendor.

10 Q. It's just a memo, it says -- it's dated June
11 30th, 2014. It's basically a quote to reupholster the
12 two Milo chairs that was sent to the Court.

13 A. Oh, okay, I think I see -- twenty -- \$2,790?

14 Q. Yes.

15 A. Okay, yes, I have it.

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

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

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

1 it is.

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

4 Q. Yes, State P-card.

5 A. Uh-huh.

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

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

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

1 items versus what was State property.

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

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

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

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

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

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

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

24 Q. Yeah, I went back through Plycor and actually

1 went to the auction site. Those two chairs are listed
2 --

3 A. Oh.

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

6 DELEGATE HARSHBARGER: That's all I
7 have.

8 Thank you, Mr. Chairman.

9 CHAIRMAN SHOTT: Delegate Miller?

10 DELEGATE MILLER: Thank you,
11 Mr. Chairman.

12 Thank you for being here, Ms. Troy.

13 A question of counsel, please.

14 MR. HARDISON: Yes, sir.

15 DELEGATE MILLER: And I may have missed
16 this earlier. At least initially, it was a little bit
17 difficult to hear you. What code section were -- are
18 we looking at in regard to the senior status judges
19 being capped as far as their benefits and retirement
20 and such as that?

21 CHAIRMAN SHOTT: It's 51-2-13.

22 MR. HARDISON: The two that I have
23 cited in front of me are 51-2-13 and/or 51-9-10, but
24 generally it relates to a statutory limitation upon

1 senior status judges compensation when they're sitting
2 as a senior status judge.

3 DELEGATE MILLER: 51-2-13? Okay.

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

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

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

17 DELEGATE MILLER: Okay.

18 MR. HARDISON: -- specifically.

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

23 MR. HARDISON: I'm not aware. I'm
24 sorry.

1 MR. CASTO: I don't know either, to be
2 honest with you.

3 DELEGATE MILLER: Okay. All right,
4 thank you.

5 EXAMINATION

6 BY DELEGATE MILLER:

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

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

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

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

24 Q. Yeah, that's what I was talking about. Once

1 they got to that cap, then they're treated as a
2 non-full-time employee?

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

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

9 A. That, I don't know.

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

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

22 Q. I guess the trouble I'm having is: On the
23 WV-48, they have -- they certify that they are not
24 currently a full-time employee of the State of West

1 Virginia. Do we assume that they are considered a
2 full-time employee before they max out on their
3 retirement cap?

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

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

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

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

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

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

1 Retirement System?

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

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

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

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

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

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

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

22 A. Well, I mean, as I said earlier, I'm an "at
23 will" employee; I can be terminated at any time for any
24 reason, so -- all I can do is tell the truth.

1 Q. Has anyone made reference to you that you
2 need to be careful what you tell before this Committee?

3 A. No.

4 Q. Thank you.

5 DELEGATE MILLER: Thank you,
6 Mr. Chairman.

7 Delegate Robinson.

8 DELEGATE ROBINSON: Thank you,
9 Mr. Chairman.

10 EXAMINATION

11 BY DELEGATE ROBINSON:

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

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

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

24 And then today, your statement is that

1 Justice Loughry -- you requested to put it back in and
2 then Justice Loughry told you not to put it back in.

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

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

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

20 So I felt to do an apples-to-apples
21 comparison, I should remove those same items from
22 Justice Davis' section so that what we were comparing
23 was the same between -- between the chambers. And
24 Justice Walker's office also. Those two have fees that

1 the four other chambers don't have.

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

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

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

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

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

23 Q. The request was for a total package and a
24 description of a comparison of the offices. Four of

1 the offices did not have certain fees in there,
2 totaling \$30,000 on Justice Davis', and the others did
3 not.

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

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

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

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

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

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

23 A. I think it was when I am completing -- you
24 know, kind of wrapping things up, nearly had all the

1 totals by office and felt like we had enough
2 information that we could respond to the FOIA request
3 at that point.

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

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

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

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

22 And what was his response to that?

23 A. That those fees were for her office - we knew
24 that, because she'd used a different architectural firm

1 - and to leave -- leave them in there because they were
2 for her office.

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

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

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

15 Do you see the big difference that I
16 see there?

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

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

24 That -- that's two very different

1 stories to me, and I find a big difference there.

2 That's what I -- I'm trying to get
3 explanation of how that happened and how he
4 communicated that to you and what he said.

5 A. I'm not -- is it -- are you referring to a
6 letter from me?

7 Q. I believe this is from -- from Sue Racer-Troy
8 to Barbara Allen on July 30th, 2018: "After the binder
9 was given to Kennie Bass, additional invoices related
10 to these office renovations have been located."

11 A. Okay, I know what you're talking about.

12 Q. So -- do you understand -- I mean, I find it
13 different -- the comment you put in the letter is very
14 different than Justice Loughry telling you not to put
15 it in the comparison that you provided to Kennie Bass.

16 A. Yeah, I'm actually dealing with two separate
17 issues there. My letter to Barbara Allen was -- this
18 binder was put together and it was never meant to be an
19 audited final, you know, full accounting of the costs.
20 I knew that we would continue to find additional items
21 related to the offices.

22 And so rather than altering the binder
23 - knowing that it had gone out once and there were
24 subsequent FOIAs for it - I left it intact, and

1 additional items I found, I kept totally separate.

2 And so that's -- when I sent that memo
3 to Barbara Allen the other day, I'm telling her, "These
4 are the items I found subsequent to the production of
5 the book."

6 When the book was given to Kennie Bass,
7 I made a disclosure that the Silling architectural fees
8 were missing from Justice Benjamin, Justice Workman,
9 Justice Ketchum and Justice Loughry's office.

10 Q. So these are different -- these are different
11 fees that we're talking about in the letter.

12 A. Yes, that's correct.

13 Q. But you -- you made the same discovery of the
14 design fees and those kind of things and provided that
15 to Justice Loughry, and he told you to continue to
16 leave them out.

17 A. I spoke to him about that. He said, "Leave
18 them in there because they are for her office."

19 Q. And not to include the fees to his office and
20 other justices.

21 A. I couldn't include the fees because we didn't
22 have enough information for me to make a -- any type of
23 allocation of those fees.

24 Q. Okay.

1 DELEGATE ROBINSON: Thank you.

2 CHAIRMAN SHOTT: Delegate Fleischauer.

3 MINORITY CHAIR FLEISCHAUER: Thank you,
4 Mr. Chairman.

5 And thank you for being here today.

6 EXAMINATION

7 BY MINORITY CHAIR FLEISCHAUER:

8 Q. I wanted to -- did you ever come to any
9 conclusion about the differences in the cost between
10 the different offices for the architecture charges, or
11 is that something you're still trying to break down?

12 A. The -- the Court has requested the
13 information from Silling. To date, we don't have any
14 breakdown from Silling.

15 Q. Okay. What -- do you -- can you remember, or
16 to the best of your recollection, what was the amount
17 in Justice Davis' office that had to do with
18 architectural services?

19 A. I believe it was around \$30,000.

20 Q. Okay. So it wasn't a large portion of those
21 renovation costs.

22 A. Right. As a percentage of the total
23 renovation, it would have -- it would not have been a
24 large amount, no.

1 Q. Okay. And do you know -- you don't -- you
2 haven't -- you just don't have any idea what the
3 charges were for the other four or five offices that
4 were included in a different bill.

5 A. I can see the total, but --

6 Q. What was the total?

7 A. It was three hundred and -- they -- they
8 broke it down into -- it just says "Justices Chambers,"
9 but it doesn't say which chamber.

10 Q. Okay. It was over \$300,000?

11 A. Yes.

12 Q. And that was -- remind me again. You've said
13 it three times. But that was for Ketchum --

14 A. -- Benjamin, Workman --

15 Q. Workman.

16 A. -- and Loughry's offices.

17 Q. And Walker?

18 A. No.

19 Q. Okay, thank you. Did you -- you said that
20 you're an "at will" employee. Did you ever get the
21 impression that Loughry expected loyalty from you? Is
22 that something -- you said there was an atmosphere of
23 fear because people were losing their jobs around you.

24 Did you -- did you have an expectation

1 of loyalty, that he -- did you have an understanding
2 that he expected you to be loyal?

3 A. I think that each of the justices expect us
4 to do our job and be loyal to the Court and -- I --

5 Q. Well, did you feel any differently when he
6 became Chief Justice, that there was an expectation you
7 should be loyal to him over and above any of the other
8 justices?

9 A. I didn't feel that way, because I've always
10 felt that the five are equal.

11 Q. Okay.

12 A. Regardless of who the chief is, to me, all
13 five are equal.

14 Q. Okay. You said that -- I'm a little bit
15 confused. We know -- you talked about the fixed asset
16 inventory, that it was kept in the past under the FIMS
17 system?

18 A. Uh-huh.

19 Q. And I think you said it was kept until 2010.
20 Is that right?

21 A. That's what the FIMS records indicate. I
22 couldn't find anything being added after 2010.

23 Q. And that would have -- and I was a little
24 confused about whether you said that was Mr. Fletch

1 Adkins or whether that was Mr. Proops who was
2 responsible for doing that.

3 A. When I came to work for the Court, I was told
4 Administrative Services did that, Fletch Adkins took
5 care of that.

6 Q. Who told you that, if you can recall?

7 A. I think Fletch himself told me, or Mike
8 Proops may have told me. There was a division on kind
9 of who was doing what.

10 Q. Okay.

11 A. And I do know that I talked to Fletch about
12 the fixed assets, and so I knew that he did that.

13 Q. So was Mr. Proops on for a while while you --
14 did he stay for a while after you started?

15 A. We trained for one month together.

16 Q. For one month, okay.

17 A. Uh-huh.

18 Q. So do you recall any conversation with him
19 about the fixed -- keeping track of fixed assets, that
20 that was his responsibility?

21 A. Mike Proops did not do that. By the time
22 that I -- unless he did it at some point in the past,
23 and then it may have transferred to Fletch Adkins. But
24 when I was training with Mike Proops, Finance was not

1 responsible for adding the fixed assets into the
2 system.

3 Q. So he didn't say that was part of his job.

4 A. No, absolutely not.

5 Q. Okay. Did you ever -- when you -- with the
6 work that you were doing -- oh, let me -- let me go
7 back to Exhibit 69, one of the first ones we talked
8 about today, and let's just look at the first page of
9 that.

10 What I have written down here, you
11 talked about Item E under Operating Expenses, and
12 that's Building Repairs and Improvements?

13 A. Yes.

14 Q. Just on the first page. And you said that
15 was where the Silling invoices would be, right?

16 A. That's where they would be allocated. Now,
17 this only is for two months of the fiscal year, so this
18 would have only been items paid in July and August of
19 2012. This is just for that specific time frame.

20 Q. Okay. Would that have included anything else
21 for circuit courts or magistrate courts that were
22 repaired or improved?

23 A. Yes, that would include everything, for
24 all --

1 Q. Okay. So that's -- it's just a part of a
2 larger amount.

3 A. Yes.

4 Q. Possibly. We don't know what was done those
5 -- you know, this doesn't indicate exactly where that
6 -- those repairs were made.

7 A. That is correct, yes.

8 Q. Okay. Going back to that letter that Justice
9 Davis or Mr. Canterbury wrote in 2016, he wrote it to
10 Ms. Davis, but it doesn't -- or Justice Davis, but it
11 doesn't appear to be signed.

12 This was March 14th, 2016 that that was
13 done, and this was long before any investigations,
14 right?

15 A. Yes.

16 Q. And so was it -- like this 1970 coffee table,
17 was that something that was purchased in 1970 or bought
18 later?

19 Do you know? If you know.

20 A. I think the coffee table, I'm not sure about.
21 I know the chairs and the sofa were -- were purchased
22 later, I guess like as vintage items. But the coffee
23 table, I'm -- I'm not sure about that one.

24 Q. What about the lamps? Because there's a big

1 list of things here --

2 A. All of them. I -- I found no evidence that
3 those were purch -- that those were ever purchased with
4 State funds, so I don't have any records on them.

5 Q. So the only two things that you think might
6 have -- do you think there is a possibility there was
7 just confusion here about who paid for what?

8 A. I don't --

9 Q. That was what you --

10 A. I mean, I --

11 Q. -- you saw?

12 A. I guess I can't really say, but I can say --
13 I can't say what they thought, but I can relay that
14 Justice Davis seemed surprised when I talked to her
15 that State money had been spent for those items.

16 Q. And that's the only two things on this whole
17 list that -- where there was a discrepancy.

18 A. I think there was the sofa, the two chairs,
19 and I think some work on the coffee table. I think it
20 had been sent out for some kind of repair work and that
21 had been put on a State P-card, I believe.

22 Q. Okay.

23 A. So we identified the items that were in
24 question.

1 Q. And would that have been before or after
2 2016?

3 A. I'd have to look it up here in her section.
4 The sofa was purchased in 2013 with State money.

5 The -- it says, "Correct the finish on
6 the stainless steel coffee table base." It was sent
7 out for some kind of repair work. And that was in
8 2013.

9 The shipping charge on the chairs was
10 2013.

11 And the work to reupholster two lounge
12 chairs purchased at auction was in 2014. So this money
13 was --

14 Q. Which ones are the lounge chairs? Is that
15 the arms chairs or --

16 A. The Milo -- Milo Baughman, I think is the
17 name, arm chairs.

18 Q. Oh, okay. So those are the lounge chairs/
19 arm chairs.

20 A. Right, right. They --

21 Q. So that was the shipping for them.

22 A. Yeah.

23 Q. So there are these three invoices. Any -- is
24 there anything else on the -- on that list that you

1 have to indicate that is State property or not State
2 property?

3 A. No, just the -- just those items: The sofa,
4 the arm chairs and the repair work done to the coffee
5 table.

6 Q. Okay, those three.

7 A. I couldn't find --

8 Q. Okay.

9 A. Yeah. I couldn't find where the coffee table
10 was purchased with State funds, so I assume it wasn't,
11 because I couldn't find the evidence otherwise.

12 Q. Okay. And then would you do invoice -- I
13 think you talked about doing invoices for contractors.
14 Did you have anything to do -- or did it ever cross
15 your desk, invoices relating to Software Systems, Inc.
16 that was involved in the UJA work?

17 A. I've seen those invoices. I don't know that
18 I personally processed any of them, but I'm familiar
19 with the company.

20 Q. Would they have come across -- go through
21 your office, the Finance Division?

22 A. Yes, they would have come through Finance for
23 payment, yes.

24 Q. I have information that they have an

1 outstanding debt owed to them - that they believe is
2 owed to them - for over \$200,000 during this time when
3 there were a lot of other expenses that were paid for.

4 Do you know anything about that, why
5 they weren't paid?

6 A. No, I have no idea. I've heard of that, and
7 I've heard of some litigation, but I don't know any of
8 the details of it, no.

9 Q. Okay.

10 MINORITY CHAIR FLEISCHAUER: Thank you.
11 Thank you, Mr. Chairman.

12 EXAMINATION

13 BY CHAIRMAN SHOTT:

14 Q. Ms. Troy, I have a series of questions
15 regarding a couple of different topics. The first one
16 deals with this 1099 issue.

17 So typically when an employee becomes
18 an independent contractor - and I think you men -- you
19 confirmed this - the withholding of payroll taxes
20 ceases, which to me, means that the employer is not
21 only not holding any out, the employer is not paying
22 the employer's share of Social Security, for instance,
23 or unemployment taxes.

24 Is that -- based on your knowledge as a

1 CPA, is that correct?

2 A. Yes, that is correct.

3 Q. Okay. So when these justices -- I'm sorry,
4 when these senior status judges converted from a W-2 to
5 a 1099, then the responsibility for withholding their
6 own taxes for personal income taxes shifts to them.

7 Correct?

8 A. Yes, that is correct.

9 Q. My understanding is that there's a wage base,
10 and so if you are earning above the wage base, you may
11 not have any additional tax if you get income that
12 exceeds that Social Security wage base. That is
13 correct, is it not?

14 A. Yes, that's right. There's a cap on Social
15 Security and how much a person -- once they earn more
16 than a certain amount, right, that stops.

17 Q. So if, by chance, the threshold -- and at --
18 from 2011, I believe, until current, the sitting
19 circuit judges were earning \$126,000.

20 So for purposes of my example, if they
21 -- the total amount they drew from retirement and W-2s
22 and 1099s did not exceed that amount -- or did not
23 exceed the wage base, then they wouldn't have had to
24 pay any additional Social Security taxes. Correct?

1 Let me rephrase that, because I've even
2 confused myself with that one.

3 A. Okay.

4 Q. Let's suppose that the -- the amount that the
5 person received from W-2s and retirement was \$100,000,
6 and the wage base is \$110,000, and then they shift to a
7 1099. Anything that's under that \$10,000, they would
8 pay -- be responsible for Social Security tax, but over
9 and above that, they would not.

10 Is that fair?

11 A. I think that's correct. I'm just trying to
12 go through all that -- all that tax law in my head.

13 Q. Well, let me ask a different question.
14 There's no limit on the Medicaid -- or Medicare tax, is
15 there?

16 A. I think that's correct. I think it's just --

17 Q. So --

18 A. -- the other portion of it.

19 Q. -- if we shifted from a W-2 to a 1099, then
20 someone's supposed to pay -- the employer would not be
21 withholding that Medicare tax, right? On the 1099.

22 A. Yes, I think that's correct.

23 Q. Would not be withholding that.

24 A. That's right.

1 Q. Would not be withholding anything for the
2 unemployment tax. My question then gets to this point:
3 Do we know whether the State Supreme Court, out of
4 their budget, paid either of those taxes from -- to
5 make up the loss of that tax revenue when we switched
6 to a 1099?

7 A. I don't have any knowledge of that, but I
8 don't see any way that we would have, that the Supreme
9 Court would have paid that.

10 Q. When the IRS conducted its audit -- and I
11 understood that they paid -- they issued a check of our
12 taxpayer money to the IRS for \$227,541. Was any part
13 of that to make up for the loss to the Medicaid --
14 Medicare Trust Fund for unpaid Medicare taxes?

15 A. I didn't see that level of detail in the
16 audit findings, so I can't answer that.

17 Q. Do we know whether there was any part of that
18 that went to pay unemployment taxes that were not paid
19 due to the fact that we'd shifted from a W-2 to a 1099?

20 A. Again, I have no knowledge of that level of
21 detail of their audit findings.

22 Q. Where would we find - if we wanted to find
23 out - how that \$227,000 broke out, how that would have
24 been allocated? Who would have that information?

1 A. The Court's administrative counsel has the
2 audit findings and their detailed audit reports, and
3 those audit reports had their calculations.

4 Q. Okay. Now, with respect to that same issue,
5 you mentioned someone that was the recusal
6 administrator, clerk, whatever. Do you have a name for
7 that person during the period you've been employed by
8 the Court?

9 A. I think generally, Shannon -- Shannon Green
10 handles the recusals and works with the -- whoever the
11 sitting Chief Justice is at that time, to fill
12 vacancies.

13 Q. Does that position shift or that person that
14 fills that position shift from Chief Justice to Chief
15 Justice, or does that person remain the same?

16 A. During my time there, she's remained the
17 same. So I think only if she was on vacation or out
18 for some sort of leave would somebody else take that
19 responsibility. But generally, she's had that
20 responsibility since I've been there.

21 Q. Okay. Let me shift gears a little bit to
22 this Silling - I think that's how you say it - the
23 design invoice. And I've got that -- I think it's part
24 of Exhibit 63, I believe. \$374,139.81, which covered a

1 period from March 3rd of '09 through March 7 of '13.

2 So about -- basically four years. Let
3 me give you a minute to look at that, if you would,
4 please.

5 A. You say Exhibit 9?

6 Q. Exhibit 63.

7 A. Oh, 63. Sorry.

8 Q. Okay, so I see on there a four-year period
9 ending with either an invoice date or a service date -
10 I'm not sure which - of 3-7-2013. Correct? This is
11 the one that basically refers to Justices Office
12 Renovations.

13 A. Okay, Justices Office Renovations, yes,
14 \$374,139.81.

15 Q. All right. Now, what I'm trying to do is
16 narrow this down somewhat. As I understand it, Justice
17 Loughry was -- became a justice in '13. He was elected
18 in 2012 and became a justice in '13.

19 So if I'm looking at this correctly,
20 about the only one on this list that could have been
21 for his office would have been the last one, the \$3,000
22 -- or \$4,050.

23 Is that fair to say?

24 A. It is, based on their invoices. But I -- I

1 know - having been in that office when Justice McHugh
2 was there and then having been in it after the
3 renovations - that Silling would have done a lot of
4 work in there, and \$4,050 is -- is not a reasonable
5 amount just based upon what I personally saw as far as
6 the renovations and the work that went on in there.

7 Q. Have you come across any other invoices that
8 aren't listed on this sheet that would be after that
9 date from Silling?

10 A. The only other ones from Silling after that
11 date indicate work elsewhere, so --

12 Q. Okay.

13 A. -- to me, it looked like maybe the way their
14 billing was done didn't really match up. Because
15 everything after that, they refer to the clerk's office
16 and the elevator upgrade and -- there's just --

17 It seems that something's not quite
18 right with the way their -- their bills -- what their
19 bills reference, anyway.

20 Q. Well, let me ask a different question then
21 about that, because it occurred to me that somewhere
22 along the line, we've had testimony that the person
23 that was the Silling decorator went to work for the
24 Court sometime around the time that Justice Loughry's

1 office was being decorated.

2 Is that consistent with your memory at
3 all? Could --

4 A. That --

5 Q. Could that explain maybe that that person was
6 just a Court employee providing similar services at
7 that time without Silling getting paid for them?

8 A. She did come to work for the Court, and that
9 would be Kim Ellis. She had worked for Silling, and
10 she came to work for the Court. I think it was
11 sometime in late '13. It could have been in '14. I
12 can't remember specifically when she was hired.

13 So that could be a question that she
14 could answer. I really can't speak to that.

15 Q. Okay. Now, that leaves Justices Workman,
16 Benjamin and Ketchum that would be covered by this
17 period, and I'm looking at the -- the dates of the
18 invoices. It looks like Justice Workman's invoices
19 extend over a period from October 5th of '09 all the
20 way through November 7th of '13, which would pretty
21 well cover this entire time frame of these invoices.

22 Is that fair to say?

23 A. I think that's correct, yeah. And I think
24 that Justice Ketchum's office was being done right

1 around the same time as Justice Workman's. I wasn't
2 working there yet, but I think that's kind of what the
3 documents indicate.

4 Q. It appears from the invoices we were provided
5 that Justice Ketchum's period of renovations went from
6 February 1 of '10 to November 15 of '13. So presumably
7 anything before 2010 would not have involved in his --
8 his office. Is that reasonable to conclude?

9 A. I think that would be reasonable, with the
10 exception of any kind of -- I see on some of these, it
11 will say "predesign" or "consulting." I don't know how
12 far ahead of that that happens in the renovation work.
13 I don't know that.

14 Q. And finally, it looks like Justice Benjamin's
15 invoices extended over a period from July 23rd of 2009
16 to February 28th of 2011, which goes down about almost
17 two-thirds of the way down that list.

18 But anything after that probably was
19 not involved in Justice Benjamin's office. Would that
20 be a fair conclusion?

21 A. I think that would be a fair conclusion, yes.

22 Q. And I guess my final question in that area:
23 Was anyone auditing these invoices at that time for
24 accuracy? Because it appears that basically three

1 offices, \$374,000 worth of design services, seems awful
2 high for three offices.

3 A. I believe that each of the Silling
4 invoices -- and I have them here in the binder, but I
5 believe they're all signed off by Steve Canterbury.

6 Q. We had Justice Davis with like \$30,000 on her
7 office, so does it seem -- if we just assume these were
8 equally spread among the three office -- the three
9 justices, \$100,000, \$125,000 an office seems awful
10 high.

11 Does it seem high to you based on your
12 review of the various invoices in connection with the
13 -- with these renovations?

14 A. I can't really render an opinion. I didn't
15 see the offices prior to the time that they were
16 renovated to know how much work was done by the
17 architect, so -- and it predated my employment there,
18 so I really don't have an opinion one way or the other
19 about it other than that Steve Canterbury was working
20 there and did sign them, so that's kind of all I can
21 rely on.

22 Q. But the Court has requested more detail where
23 you are on these invoices; is that correct?

24 A. Yes, that's correct.

1 Q. And no response so far.

2 A. No, none so far.

3 Q. Am I correct that Justice Benjamin office --
4 Justice Benjamin's office was -- is now being occupied
5 by Justice Walker; is that correct?

6 A. Yes, that's correct.

7 Q. And in looking at the invoices for Justice
8 Benjamin's office, which basically went through 2011,
9 there was about \$30,000 of furnishings. Do you know if
10 any of those furnishings are still in the office, or if
11 not, where they are?

12 A. I can't speak to what is still in that
13 office. I know that some items, he purchased at the
14 end of his term and took with him.

15 Some items went into storage in our
16 Venable Avenue warehouse, and then some could have been
17 used elsewhere.

18 Q. And what -- where would the documentation be
19 of the purchase of any of these assets by Justice
20 Benjamin when he left?

21 A. There's a cash receipt document. I don't
22 know if I have it documented in here. Let me take a
23 look here.

24 No, I don't have it documented here,

1 but I can provide that. I have a list of all the items
2 that he purchased. There was an appraisal done, and
3 then the money was given back to the State for those
4 items.

5 Q. Is that the customary process, if some --
6 someone leaving the Court - well, let's say a justice
7 leaving the Court - would like to take something from
8 their office, that there is an appraisal done and then
9 the justice is given the option of paying that price
10 and taking the furnishings?

11 A. There's no written policy about that, but I
12 was told that that was standard practice. And that was
13 what was done when he left his term.

14 Q. All right.

15 CHAIRMAN SHOTT: Thank you.

16 Counsel, do you have any redirect?

17 Where's counsel?

18 No redirect.

19 All right, we'll start back a second
20 round and hopefully we can --

21 Let's try not to ask the same question
22 a third or fourth or fifth time, okay?

23 Delegate Fast.

24 DELEGATE FAST: Thank you, Ms. Troy.

1 RE-EXAMINATION

2 BY DELEGATE FAST:

3 Q. Regarding Kennie Bass' FOIA request, if you
4 have a document that could be read in various ways but
5 the FOIA request simply says, "Give me all the
6 documents pertaining to the renovations," now, you
7 thought that this document could be read wrong because
8 it included, for Justice Davis, approximately \$30,000
9 of Silling work that perhaps some of the other
10 documentation didn't include. Is that correct?

11 A. My understanding is that he didn't -- Kennie
12 Bass didn't request the documents. He requested, I
13 think, to look at certain documents, and then just a
14 question about if Justice Loughry's office cost twice
15 as much as any other.

16 Q. Was it a written FOIA request?

17 A. That, I don't know. I was -- my
18 understanding was that he was going to submit a written
19 FOIA. That would have gone to our administrative legal
20 counsel. So that wouldn't have come to me.

21 My job was starting to assemble the
22 information so that they could reply to it.

23 Q. Well, if -- if you were replying -- well,
24 were you or were you not replying to a FOIA request?

1 A. I was assembling information that I believed
2 was gonna -- was going to be on a FOIA request.

3 Q. Okay. And if -- if you were going to respond
4 to a FOIA request, then you would have been required by
5 law, would you not, to submit all of the documentation
6 the way it was?

7 A. But I think that his -- his question was:
8 "Did Justice Loughry's office cost twice as much as any
9 other." I don't think that he requested any level of
10 detail as far as the other offices go. And no one
11 discussed with me in advance "We're going to hand him
12 this book."

13 You know, I had my binder that I had
14 put together to the best of my ability and make it as
15 accurate as possible. I had Silling in the front of
16 it. And the same thing for the book that I'd made for
17 Judge Johnson.

18 But no one ever said to me, "This is
19 going to be publicly release -- publicly released."
20 You know, that was not the plan. The plan was for him
21 to be able to look at it, for me to talk about the
22 book, talk about the production of the book, and then
23 it was just handed to him.

24 Q. Who asked you to get this ready for

1 submission?

2 A. I was not -- it wasn't posed to me that way.
3 It was posed to me to calculate the total cost by
4 office, not to make a document that could be released.
5 Just "Do a -- do an accounting of each office" so that
6 they could answer his FOIA questions.

7 But never "Make a document that we can
8 hand out."

9 Q. But you're not sure if a FOIA request had
10 been submitted at that point.

11 A. I --

12 Q. If it had, you didn't know?

13 A. No, it would have gone to administrative
14 counsel, and I didn't ask, "Oh, do you have a FOIA?" I
15 just did what I was told to do.

16 Q. Okay. And so if a FOIA request had been
17 submitted by Kennie Bass, then the duty would have been
18 to present the documents as they were, not taking
19 anything out, not adding anything to it; present the
20 documents.

21 And if that's the case, isn't that what
22 Justice Loughry advised you to do: Leave the documents
23 as they were, period?

24 A. I would have to speculate, but that could

1 have been his reasoning behind it. But that's -- you
2 know. I can't really say why -- why he said to do it
3 that way.

4 As I said before, I didn't feel like it
5 was incorrect. It didn't -- her office was still
6 correct. It was just inconsistent.

7 Q. I understand that. If -- but if a FOIA
8 request had been presented, then the purpose is to
9 present documents, not present explanations. Is that
10 -- do you believe that's correct?

11 A. I believe that's correct. But the responses
12 were always sent by legal counsel. You know, I would
13 give the documents to legal counsel and then they would
14 answer the FOIA.

15 Q. Okay.

16 A. I never personally answered any of the FOIAs.

17 Q. Okay.

18 DELEGATE FAST: Thank you.

19 Thank you, Mr. Chairman.

20 CHAIRMAN SHOTT: Delegate Zatezalo.

21 DELEGATE ZATEZALO: Yeah, I -- just
22 very quickly.

23 And thank you for being here.

24 EXAMINATION

1 BY DELEGATE ZATEZALO:

2 Q. I want to clear something up for myself. If
3 I read your testimony through today, it is unclear to
4 me exactly who made calls as far as approving expenses.
5 It sounds like it was a mixture of the Court and the
6 administrator. Is that a fair statement?

7 A. Generally, it would be the administrator -- the
8 Administrative Director. When we spoke about the
9 WV-48s, those were always signed by the Chief Justice.
10 And that authorized that person to work as an
11 independent contractor, but then the justices
12 themselves didn't sign the invoices after that.

13 The justices may sign some invoices,
14 but not many.

15 Q. And did the same thing apply to expenses for
16 renovations and that type of thing? Or was it a
17 mixture of -- of people who had control over it?

18 A. In the renovation documents, I don't recall
19 seeing any signed by any justice. They're almost all
20 signed by the Administrative Director.

21 Q. Okay, very good.

22 DELEGATE ZATEZALO: Thank you.

23 CHAIRMAN SHOTT: Delegate Pushkin.

24 DELEGATE PUSHKIN: Thank you,

1 Mr. Chairman.

2 Thank you again, Ms. Troy.

3 RE-EXAMINATION

4 BY DELEGATE PUSHKIN:

5 Q. We heard in other testimony throughout this
6 from a lot of the folks that worked over there that
7 when Justice Loughry became Chief Justice, there were a
8 lot of firings; a lot of people lost their jobs and a
9 lot of people expressed that they were worried about
10 their jobs when they were asked to do things.

11 Now, you expressed earlier that you
12 were not worried about your job, so I'm gonna ask you,
13 conversely, did you receive a raise under Chief Justice
14 Loughry?

15 A. Yes, I did. I had been told over the years
16 that I would -- at one point that Justice Workman had
17 suggested that I would get a raise. And I didn't.

18 And then I did receive one under
19 Justice Loughry, and that was my -- right around my
20 five-year anniversary with the Court.

21 Q. It was how much?

22 A. \$12,000.

23 Q. Okay.

24 DELEGATE PUSHKIN: Thank you.

1 CHAIRMAN SHOTT: Back over on the left
2 side. Delegate Isner? No.

3 Delegate -- okay. All right.

4 Ms. Troy, we thank you for your time
5 today, your patience and your endurance. You are
6 dismissed. Thank you.

7 THE WITNESS: Thank you.

8 CHAIRMAN SHOTT: We're gonna take a
9 minute and ask our counsel to -- Brian Casto, to give
10 us some overview of this 1099 issue, because it's a
11 little bit obscure for most of us.

12 Brian, whenever you're ready.

13 MR. CASTO: All right. So you heard a
14 lot today, especially from Ms. Troy's testimony. You
15 heard a lot of testimony about the WV-48, 1099.

16 CHAIRMAN SHOTT: Is your mic on?

17 MR. CASTO: It says that it's on,
18 Mr. Chairman.

19 THE CLERK: Battery dead?

20 MR. CASTO: No, doesn't appear to be.

21 THE CLERK: Try holding it closer to
22 your mouth.

23 MR. CASTO: What'd you do, Johnny?

24 What'd you do?

1 That better? Because I could have just
2 raised my voice.

3 DELEGATE: You're not loud enough.

4 MR. CASTO: Don't bet on it. I heard
5 whoever said that that I was not loud enough. I said,
6 "Don't bet on it."

7 So you've heard a lot about the terms
8 48 and 1099 thrown around today, especially with
9 Ms. Racer-Troy's testimony here. So we're gonna give
10 you a little bit of a background on what the pay of
11 senior status judges is.

12 Now, we're gonna look at 51-2-13, which
13 is the first enabling statute. The relevant portion is
14 bolded and highlighted, so all you have to do is look
15 at it. A salary of a circuit court judge is \$126,000.

16 I need somebody to advance that.

17 Now, we're gonna look at 51-9-10. The
18 text of this section was first enacted in 1949 and
19 twice amended. It has not been altered since 1991, so
20 it has been the law of the State of West Virginia for
21 almost 30 years.

22 It is not to be confused with its
23 preceding section, 51-9-9. Many of you may remember
24 51-9-9 because several years ago, there were two

1 circuit judges in the State of West Virginia who took
2 their retirement and then ran for reelection.

3 51-9-9 was amended immediately upon
4 their reelection in 2006 to provide that no judge could
5 both sit the bench and collect his or her retirement
6 money. So 51-9-9 was amended in 2007.

7 51-9-10, however, has basically been
8 the same for about 30 years. So 51-9-10 provides for
9 the authorization of the use of these senior status
10 judges by the Supreme Court. It allows them to come in
11 and sit the bench when a vacancy is created by recusal,
12 by illness or other good cause on the Supreme Court or
13 on one of the subordinate circuit courts of the State.

14 And we can see the highlighted language
15 provided is very simple and straightforward. It says,
16 "Provided" "the per diem and retirement compensation of
17 a senior judge shall not exceed the salary of a sitting
18 judge."

19 So if you are a senior status judge and
20 you are placed upon the bench once again and called
21 forth to duty, you can only make \$126,000 a year in per
22 diem and retirement compensation. That's it. That's
23 all. That's the cap.

24 It's a hard limit that we believe was

1 put in place essentially for the legislative purpose
2 that if you are doing the work of a circuit judge, you
3 get paid what a circuit judge gets paid.

4 51-9-9, the preceding section, was
5 amended for the exact same reason. You can't retire
6 and collect your pension and then get paid a salary as
7 a circuit judge. You can't retire, come in as a senior
8 status judge and be paid more than a circuit judge for
9 doing a circuit judge's job.

10 The two statutes are entirely
11 consistent one with another.

12 Now, you'll look at the new exhibit
13 which has been placed in front of you, Exhibit 71. The
14 Supreme Court knew this to be the case. If you will
15 look, there is a rule on retired judges admitted to
16 senior status.

17 It is the first five or six pages that
18 you've been provided, and it was authored by then Chief
19 Justice Tom Miller in 1991. It notes: "The
20 compensation for a judge admitted to senior status will
21 be at the rate of \$200.00 per day."

22 And notes in Clause (C) of that:
23 "Provided, however, the per diem and retirement
24 compensation of a retired judge admitted to senior

1 status shall not exceed the salary of a sitting judge."

2 And if you will look through here, this
3 has been amended numerous times. We have another
4 example of the same rule, which is signed by Justice
5 Neely in his capacity as acting CJ, on 15 September
6 1994, which right above Justice Neely's signature in
7 Clause (C) notes the same proviso, which is right out
8 of statute.

9 We have updates to this rule
10 promulgated by Justice Miller and by Justice Neely.
11 These updates -- we have one from October 1, 2000
12 signed by Justice Maynard; one in 2006 signed by
13 Justice Davis; one in 2008 signed by Justice Maynard;
14 one in 2010 signed by Justice Davis and attested to by
15 the clerk; and one in 2011 signed by Justice Workman.

16 All of these note that the Supreme
17 Court has increased the per diem rate. Many of these
18 were done with salary increases of the circuit judges
19 so that the Supreme Court, each time that the circuit
20 judges got a pay raise, would go back in and
21 recalculate the per diem to allow for some increase for
22 these senior status judges to get a little bit more
23 money each time they were called back to the bench to
24 serve.

1 Now, we also have a slightly new
2 wrinkle for you. If you'll look in your packet,
3 there's a Bates stamp WVSC THJC00016. Looks like this.
4 It's an Administrative Order from 2017.

5 This is a document entered as an
6 Administrative Order of the Supreme Court on May 19th
7 of that year by then Chief Justice Allen Loughry. As
8 members of the Legislative Branch, you all may have an
9 opinion about what you're about to read.

10 Justice Loughry notes in this article
11 that he has general supervisory control as the Supreme
12 Court and the Chief Justice shall be the administrative
13 head of all the courts, and he recites the authority of
14 51-9-10 that reasonable pay be made to such judges who
15 sit as senior status judges on a per diem basis,
16 provided, however, that the per diem and retirement
17 compensation of a senior judge shall not exceed the
18 salary of a sitting judge.

19 And if you will look on this next page,
20 right above his signature: "Chief Justice Loughry
21 says, however, that in light of the administrative
22 authority vested in the Chief Justice, the Chief
23 Justice hereby orders that the Chief Justice has
24 authority to determine in certain exigent circumstances

1 that a senior judicial officer may continue in an
2 appointment beyond the limitations set forth in West
3 Virginia Code 51-9-10."

4 In other words, they will be paid in
5 excess of the moneys due a sitting circuit judge
6 because the Court believes that it is necessary for
7 them to do so.

8 And as Chief Justice of the Court,
9 Justice Loughry said, "We're going to do that."

10 Now, of course, that's a question which
11 would have had to have been litigated, should you have
12 chosen to contest that, before the Supreme Court.

13 We have also within that same packet a
14 series of WV-48s so that you can get a better look at
15 what these look like. These have the numbers redacted
16 which are personally identifying.

17 As you can see, each Chief Justice -
18 starting in about 2012 - signed off on these. We have
19 Justice Ketchum in 2012; one from Justice Workman in
20 2015; one from Justice Benjamin in 2013; we have one,
21 again, from Justice Workman in 2015; one from Justice
22 Davis in '14; another one from Benjamin in '13.

23 These all provide the authority of the
24 Chief Justice to execute the WV-48.

1 Now, why is that significant? Because,
2 as we now know, there is an absolute limit provided in
3 West Virginia Code that a senior status judge cannot
4 make more than a sitting circuit judge.

5 That is the plain language of code.
6 The Supreme Court determined upon - as you have heard
7 from Ms. Troy and Mr. Canterbury - the use of the WV-48
8 system and the issuance of 1099s as independent
9 contractors to pay these judges in excess of the salary
10 of a sitting judge.

11 You have heard that Justice McHugh -
12 during his time when he was recalled to duty - paid
13 that money back because he knew that to be wrong.

14 What does this mean? Mr. Canterbury
15 also noted that there were personnel who kept track of
16 when the per diem and retirement compensation equaled
17 that of a sitting circuit judge so that they could then
18 transition that judge over to the WV-48/1099 system and
19 cease using W-2s. This is the mechanism that we have
20 heard used.

21 What's the consequence? This was a
22 scheme by -- whereby they were paid in excess. It is a
23 violation of the requirement, and a senior status judge
24 sitting as a circuit judge would be paid more money

1 than their colleagues who were circuit judges because
2 they were collecting their retirement and collecting
3 the compensation paid through their regular W-2 and
4 then through the 1099.

5 The managers have discussed this and
6 wanted to bring this to your attention. One of the
7 managers noted that he believed that there was a
8 violation of this particular statute with regard to
9 these payments.

10 And let's look at it. The language
11 that is relevant is highlighted in bold. This is a
12 very torturously written piece of legislation. It's an
13 old piece of law, but it has been used in the courts of
14 this state for a long time.

15 It's the provision of 61-3-22 in the
16 West Virginia Code on the falsification of accounts.

17 "If any officer, clerk or agent of this
18 State" "make any entry in any book of account, or in
19 any account kept by such state," "with the intent to
20 enable or assist any person to obtain money to which he
21 was not entitled, such officer, clerk or agent shall be
22 guilty of a felony and shall, upon conviction, be
23 confined in the penitentiary not less than one nor more
24 than ten years."

1 It can be argued, our managers believe,
2 that causing these accounts to be made in such manner
3 as to pay the judges in excess of a sum to which they
4 were legally entitled may place the judges of the Court
5 and the officers of the Court who caused those entries
6 to be made in violation of this statute.

7 That's what I have, Mr. Chairman.

8 CHAIRMAN SHOTT: Questions of counsel?
9 Delegate Lane, followed by Delegate
10 Lovejoy.

11 DELEGATE LANE: Counsel, in looking at
12 this Administrative Order dated May 19th, 2017, where
13 would a normal person find this order?

14 MR. CASTO: I don't know that they
15 would have.

16 DELEGATE LANE: I mean, where -- where
17 does it reside?

18 MR. CASTO: It's an Administrative
19 Order of the courts, and I'm not sure -- to be honest
20 with you, it's something I've never had any reason or
21 rationale to look for previously.

22 DELEGATE LANE: I mean, is it on their
23 website? Because they have all their decisions and all
24 of that --

1 MR. CASTO: But I'm not sure that it
2 is. I've not had an opportunity -- because literally,
3 we received this today.

4 DELEGATE LANE: How did you find this?

5 MR. CASTO: How did we find this? We
6 asked for all orders and rules by which the Court had
7 governed the issuance of the WV-48s and 1099s to the
8 senior status judges, and this was provided to us as a
9 response in discovery.

10 DELEGATE LANE: Okay, one more
11 question.

12 What is the statute that talks about
13 retirement making no more than \$20,000?

14 MR. CASTO: I'm sorry, I can't hear
15 you.

16 DELEGATE LANE: What is the statute
17 that limits -- if you're on -- if you're getting State
18 retirement, you cannot make more than \$20,000 a year
19 without it affecting your retirement?

20 MR. CASTO: Well, that's a limitation
21 in the PERS -- in the PERS limiting statute which I
22 believe is 51-9 but I'm not sure -- not 51-9, excuse
23 me. 51-9 is JRS. PERS is a different statute. I
24 think that's 51-2-13 maybe. I'm not sure.

1 DELEGATE LANE: Okay, thank you.

2 MR. CASTO: I'll have to -- I have
3 that, but I'll have to look at that.

4 CHAIRMAN SHOTT: Delegate Lovejoy.
5 Lovejoy.

6 DELEGATE LOVEJOY: It's on. Thank you,
7 Mr. Chairman.

8 Counsel, I want to ask a couple
9 questions about the substance of the order. Is it true
10 that our Constitution under Article VIII, Section 8,
11 does provide administrative authority to the Chief
12 Justice to assign judges for temporary service?

13 MR. CASTO: Yes, sir.

14 DELEGATE LOVEJOY: And is it true that
15 under Article III, Section 17 of the Constitution,
16 there is a requirement that the courts of this state
17 shall stay open and justice shall be administered
18 without sale, denial or delay?

19 MR. CASTO: Yes, sir.

20 DELEGATE LOVEJOY: Now, I guess the
21 issue here is the interpretation of this Administrative
22 Order purports to be that that Con -- those two
23 Constitutional provisions would allow the Chief Justice
24 to fill a judicial vacancy in what, I guess, the Court

1 - or the Chief Justice here - determines an exigent
2 circumstance?

3 MR. CASTO: Yes, sir.

4 DELEGATE LOVEJOY: And those exigent
5 circumstances - at least noted by the Chief Justice in
6 this Administrative Order - I think, specifically
7 protracted illness or lengthy suspensions due to
8 ethical violations --

9 MR. CASTO: I think that is correct,
10 sir.

11 DELEGATE LOVEJOY: When you look at the
12 senior status judges who were allegedly paid in excess
13 of the cap, do they fit in situations where there's
14 alleged to be protracted illness or lengthy suspensions
15 due to ethical violations?

16 MR. CASTO: We have an issue at this
17 time, sir, in that we do not have a full list of all
18 the judges who have been paid in excess of the cap.

19 DELEGATE LOVEJOY: Okay. And I
20 remember, you know, in my county, there's the issue
21 sometimes where the -- about funding of
22 Constitutionally-required offices such as the
23 prosecutor's office, that -- that there are times when
24 acts of the legislature can be challenged, so to speak,

1 by the judiciary under Constitutional grounds.

2 And is that what we're seeing here?

3 MR. CASTO: I don't think so. I would
4 say that to the contrary, we have -- if you will
5 recall, this Committee, during the last session, took
6 up a bill which was proposed by the judiciary.

7 It was sponsored, I believe, by the
8 vice chairman of this Committee in the House and was
9 passed to us from the Senate where it was sponsored by
10 Chairman Trump over there which was to allow for
11 payments over the cap.

12 So the Court, last session, did attempt
13 to do what - if this were an issue - it probably should
14 have done some sessions ago, which was to bring this
15 issue of these exigent circumstances which were causing
16 some level of discomfort in the judicial process to the
17 legislature's attention, to say to the legislature,
18 "This statute is a problem, it needs fixing."

19 But instead, as we have seen for at
20 least -- according to Ms. Troy's testimony and that of
21 Mr. Canterbury, for the last decade or so, the Court
22 has simply crafted its own work-around without coming
23 back to this body and asking permission to do anything.

24 DELEGATE LOVEJOY: And I don't

1 remember, but in the process of whether it was debate
2 or discussion of the bill you just referenced, did
3 anyone from the Court come and mention or discuss in
4 any way the practice of this Administrative Order?

5 MR. CASTO: No, sir. There was no
6 testimony from the Court at that time to my
7 recollection on the issue of how the Court was
8 currently -- currently satisfying the requirements.

9 The Court said, "It's a problem, we've
10 got people sitting who need paid," but I don't believe,
11 to my recollection, that there was any testimony -- I
12 know Mr. Morris, who was at the time the Counsel to the
13 Administrative Director, was present in our committee
14 room upstairs at the time that bill was moved through
15 our committee, but it's not clear to my recollection -
16 because it wasn't a bill that I handled - whether or
17 not he actually spoke to that bill or not within our
18 committee.

19 DELEGATE LOVEJOY: I guess I'm trying
20 to wrestle with, kind of the ultimate end of it is, is
21 if we have a statute that the Court believes interferes
22 with its Constitutional duty to keep the courts of the
23 State open, are they permitted to determine that they
24 can fulfill a Constitutional requirement outside of the

1 statute?

2 MR. CASTO: I don't believe that they
3 are. I think that they have Constitutional mechanisms
4 in place which would allow for a fix to be made, and
5 that Constitutional mechanism is to come down here and
6 ask this body to fix it.

7 Now, as to the specific instance, let's
8 be clear: It is not an instance where the judges were
9 not being paid. The judges who were assigned as senior
10 status judges, if they retired through JRS, the
11 Judicial Retirement System, receive a retirement
12 compensation of three-quarters of the salary of a
13 regular sitting judge.

14 They're paid \$90,000 a year from their
15 retirement. They would then have the opportunity to
16 earn up to \$36,000 by sitting in the capacity of a
17 senior status judge on assignment.

18 No one is suggesting that the judges
19 are somehow doing this work for free or that they are
20 not being compensated. The question is - to be frank,
21 I think, in my own mind - is: Are they being paid what
22 they want to be paid.

23 DELEGATE LOVEJOY: I understand what
24 you're saying. I guess my question is: In a situation

1 -- the judiciary - and fortunately not too frequently,
2 but often - throws out statutes as they believe to be
3 unconstitutional.

4 Do they have to do so in a written
5 decision, and if so, does an Administrative Order equal
6 or -- is that the same as a -- as a decision?

7 MR. CASTO: I don't think that an
8 administrative decision -- an Administrative Order,
9 which can be undertaken sua sponte upon the action of
10 the Chief Justice in his or her capacity as
11 Administrative Order, which could be rescinded from
12 year to year by the actions of a -- of another Chief
13 Justice --

14 DELEGATE LOVEJOY: But in the unique
15 circumstance of -- of the issue of providing a judge to
16 -- to decide -- at a circuit court level, for instance,
17 to keep the courts of the State open, what would be a
18 case in controversy that somehow would get up to the
19 Supreme Court instead of the Chief Justice implementing
20 that Constitutional directive?

21 MR. CASTO: I think the Supreme Court
22 could have, for example, perhaps -- and I'm just
23 speculating. I mean, now you're asking me to put my
24 lawyering hat on and think about how to approach this

1 from a practical matter.

2 If I'm representing the Supreme Court -
3 let's say I'm counsel or assistant counsel or assistant
4 to the administrative director or counsel to the AD -
5 what I'm gonna do is, I'm gonna go in and file a
6 petition for my own court for a writ of mandamus to
7 compel -- to compel the appointment of a -- of a judge
8 to that position.

9 I'm going to -- to mandamus the Court
10 to act, I think. I mean, I think that's one mechanism
11 that could at least get a case before the Court, to
12 which parties such as the legislature could then come
13 forward and say, "But there's a statute in place, and
14 perhaps we need to" --

15 Yeah, I mean, I can speculate as to
16 three or four mechanisms like that as to who perhaps
17 would have standing to do so. I think perhaps --
18 perhaps even the circuit clerk might have standing.
19 The circuit clerk could say, "Cases aren't being
20 heard." Perhaps the circuit clerk could come to the
21 Court with a petition for a writ of mandamus.

22 I can think of three or four different
23 mechanisms by which that case could be brought before
24 the Court and an appeal heard and a decision rendered.

1 DELEGATE LOVEJOY: Okay, thank you.

2 CHAIRMAN SHOTT: Delegate Miller,
3 followed by Delegate Overington and then Delegate
4 Summers.

5 DELEGATE MILLER: Thank you,
6 Mr. Chairman.

7 Counsel, as a -- as a normal rule, does
8 anyone that has general supervisory authority over an
9 entity that's given by the Constitution -- so most
10 elected officials, per se, at basically any level of
11 government, do they have the ability to violate the
12 Constitution or West Virginia Code?

13 MR. CASTO: No, sir, not -- not
14 generally speaking, they would not.

15 DELEGATE MILLER: Would that not also
16 apply to the Supreme Court of Appeals?

17 MR. CASTO: I think that it would, sir.

18 DELEGATE MILLER: Is there any
19 provision in code or in the Constitution that provides
20 for exigent circumstances?

21 MR. CASTO: No, sir, not to my
22 knowledge.

23 DELEGATE MILLER: Thank you
24 Mr. Chairman.

1 CHAIRMAN SHOTT: Delegate Overington,
2 followed by Delegate Summers, and then Delegate Fast.

3 DELEGATE OVERINGTON: Thank you. Are
4 we aware of any cases where the Court was not able to
5 do its duty because of a shortage of judge -- qualified
6 judges in senior status?

7 MR. CASTO: We have not been made aware
8 of any.

9 DELEGATE OVERINGTON: If the
10 legislature is not in session and something like that
11 happens, what would the normal response be for the
12 Court?

13 MR. CASTO: Well, we know that the
14 Court has acted to fill vacancies created by emergency,
15 by the appointment of senior status judges. In some
16 cases, they have detailed judges who were regular
17 sitting judges in other circuits to hear cases.

18 In some cases, you know, they have
19 detailed other justices from within the same circuit to
20 hear cases.

21 So there's a varied array of mechanisms
22 by which they can address that issue.

23 DELEGATE OVERINGTON: Thank you.

24 Thank you, Mr. Chairman.

1 CHAIRMAN SHOTT: Delegate Summers.

2 DELEGATE SUMMERS: Thank you, Counsel.

3 I have two questions. In order to be
4 in violation of 61-3-22, do you have to actually have
5 had a signature on a WV-48, or would you just have to
6 have knowledge of the process?

7 MR. CASTO: The -- I don't know. I
8 don't know that it would necessarily require a
9 signature because the language of the actual full
10 statute - which you can see up there - notes the
11 making, altering or omission, so I mean, a person who
12 omitted an entry, it wouldn't necessarily require a
13 signature, I don't think, but it would require, I think
14 - because of the fact that it's alteration or omission
15 - some action.

16 I don't think mere knowledge would
17 necessarily do so. But I think it would require an act
18 or omission.

19 DELEGATE SUMMERS: Would it be regarded
20 an omission if you knew this was occurring and then you
21 did nothing about it?

22 MR. CASTO: I don't think so, because
23 the omission is actually the omission of the entry, is
24 what is called for.

1 DELEGATE SUMMERS: Okay. And my second
2 question is: In this order that you gave us by Justice
3 Loughry, is this because these retired justices are --
4 have the retirement of, you said, maybe \$90,000, and
5 then they can make up to \$126,000 per the law, but
6 they're -- they're refusing to continue if it's -- like
7 if they're in the middle of a case, they're refusing to
8 continue unless they make more money?

9 MR. CASTO: We are not informed that
10 any of them actually refused to do so.

11 And in the case of Justice McHugh, we
12 have an absolute counter example of one retired judge
13 in the state who said, "I know that this is a problem,
14 and I am not going to continue to receive this money."

15 And we are informed by Ms. Troy's
16 testimony today -- turned around, and upon his own
17 action, took the affirmative act to write his check
18 back to the treasury of West Virginia to indemnify this
19 state for whatever it was paying him in excess.

20 DELEGATE SUMMERS: Okay, thank you.

21 CHAIRMAN SHOTT: Delegate Fast.

22 DELEGATE FAST: Thank you.

23 Counsel, what options are there to fill
24 a temporary vacancy in a circuit circuit court

1 position?

2 MR. CASTO: Well, as I stated earlier,
3 it depends. The Court has in the past -- of course,
4 the senior status judge route is the one we're most all
5 familiar with. The Court has - if there are multiple
6 judges within the same circuit - sometimes allowed
7 another judge within that same circuit to step into
8 that position and hear those cases and simply divvy up
9 the work load.

10 The Court has, on occasion, taken a
11 judge from a neighboring circuit or a close-by circuit
12 and asked that judge to come down one or two days a
13 week and hear cases from that docket.

14 So the Court does have, in its capacity
15 as the administrative overseer of the courts, a varied
16 number of actions that it can undertake.

17 DELEGATE FAST: What about a vacancy -
18 it's a temporary vacancy - but for two years, and
19 there's only one sitting judge in the circuit?

20 MR. CASTO: Again, they could have - in
21 that instance - filled it by a series of rotate -- of
22 rotations. They could have placed multiple judges
23 within it to hear certain cases.

24 They could have -- they could have

1 assigned - as they did in that case - one judge, from
2 the senior status, to hear those cases.

3 DELEGATE FAST: And we're talking
4 Nicholas County.

5 MR. CASTO: Yes, sir, I know the
6 example you're talking about.

7 DELEGATE FAST: If they did assign --
8 which they did assign a senior status judge. That
9 would inevitably put that senior status judge over the
10 sitting judge rate for that length of time.

11 MR. CASTO: If they were to pay that
12 senior status judge the per diem every day, yes, it
13 would.

14 DELEGATE FAST: And of course, in any
15 given circuit, you're going to have prolonged and
16 ongoing cases, abuse and neglect cases, criminal trials
17 that a judge makes rulings on on pretrial motions and
18 then having the jury trial. Civil trials, the same
19 thing.

20 So if you have judges just coming and
21 going on different days of the week and not the same
22 judge, then you could get a hodge-podge of -- of
23 justice without having the same judge presiding long-
24 term.

1 MR. CASTO: I think that's been
2 represented, but I also think that it could be that you
3 could simply assign a judge to hear certain cases.

4 You could say, "Judge X, you're getting
5 cases -- you know, Civil Cases 001 through 008. You
6 know, Judge Y, you're getting Criminal Cases 001
7 through 009. Judge A, you're getting Criminal Cases
8 0010 through 0015," and let those judges set that up
9 for hearing on various dates.

10 I think there are mechanisms by which
11 multiple senior status judges could have been assigned
12 to fill that gap. That's a mechanism that could have
13 been used.

14 Alternatively, they could have simply
15 -- the senior status judge in that case could say, "I
16 understand that I'm essentially being recalled to
17 active duty" as it were and written those payments
18 back, as Judge McHugh did when he sat over here on the
19 third floor for two years filling that vacancy on the
20 Supreme Court.

21 So there -- there are a couple of
22 different ways it could have been done.

23 But they chose to go with what, I think
24 in their minds, was the easiest route: To appoint the

1 judge and to use the mechanism which they had been
2 using for some time to continue paying the per diem --

3 DELEGATE FAST: Do -- do --

4 MR. CASTO: -- in excess of the
5 statutory limit.

6 DELEGATE FAST: Do you believe that
7 this Administrative Order we're looking at is a result
8 of the Nicholas County situation since it was a rare
9 two-year temporary vacancy?

10 MR. CASTO: To be frank, I'm not sure.
11 Yes, that's certainly an argument. It could be an
12 argument that Justice Loughry knew of the issues that
13 were accruing with regard to this potential violation
14 of statutory law and attempted to fashion a credible
15 rationale by which an underpinning could have been
16 provided to allow it to continue.

17 I mean, I can't speculate as to what
18 his intentions were, because I've never had a
19 conversation with him about what his intentions were.

20 DELEGATE FAST: Thank you.

21 CHAIRMAN SHOTT: Delegate Hollen,
22 followed by Delegate Foster.

23 DELEGATE HOLLEN: Thank you,
24 Mr. Chairman.

1 Counsel, a few different questions. In
2 the testimony that we were hearing today, it was being
3 referred to as the \$20,000 limit. Now we have two
4 different scenarios that judges can fit under, the PERS
5 and JRS; is that correct?

6 MR. CASTO: Yes, sir.

7 DELEGATE HOLLEN: And the PERS
8 limitation is the \$20,000.

9 MR. CASTO: Yes, sir.

10 DELEGATE HOLLEN: And those are the
11 ones that don't qualify under the JRS retirement.

12 MR. CASTO: That's correct. Or have
13 elected to participate in PERS instead of JRS.

14 DELEGATE HOLLEN: Okay. And it seems
15 in this past legislative session that they tried to fix
16 the wrong by getting some legislation passed under --
17 for 51-9-10; is that correct?

18 MR. CASTO: I think that's a fair
19 statement, yes, sir.

20 DELEGATE HOLLEN: If it was such an
21 emergency and they deemed it such an emergency that the
22 Administrative Order was written by Justice Loughry,
23 wouldn't another remedy to that is they could have
24 approached the Governor to call a special session and

1 -- and bring this 5-9-10 up to fix, if it was that big
2 of an emergency, and do it correctly?

3 MR. CASTO: Yes, sir, they certainly
4 could have.

5 DELEGATE HOLLEN: And there was no
6 attempt to do that that we know of.

7 MR. CASTO: Not to my knowledge, sir.

8 DELEGATE HOLLEN: Okay. And the last
9 question, on the 61-3-22, the delegate raised a
10 question about if there was no hands-on, just
11 knowledge, that they could not be held under 61-3-22.

12 But could they not be held under
13 61-10-31, conspiracy to defraud?

14 MR. CASTO: Well, that is certainly a
15 possibility, I suppose. I mean, the gentleman has
16 probably brought more charges against people for that
17 crime than I ever have and probably knows that statute
18 a little better than I do.

19 DELEGATE HOLLEN: Okay. No further
20 questions. Thank you.

21 CHAIRMAN SHOTT: Delegate Foster.

22 DELEGATE FOSTER: My -- my question is
23 on the -- because most of their pay -- if I got the
24 numbers correct, they're being paid \$90,000. They can

1 be paid up to -- what was it, \$126,000?

2 MR. CASTO: Yes, sir. That would be
3 for those under the Judicial Retirement System.

4 DELEGATE FOSTER: Okay.

5 MR. CASTO: Those under PERS would have
6 whatever their retirement was, which we don't know what
7 that would be.

8 DELEGATE FOSTER: And my question is,
9 in filling these vacancies, to me it seems like the
10 easiest route would be well, basically, you can receive
11 \$36,000 to equal the salary of a sitting judge, so
12 you're doing the job of a sitting judge at that point.
13 Why wasn't that just the cap and --

14 MR. CASTO: You have now articulated
15 what I think was the legislature's intent when it
16 passed that bill in 1991. And I think why it is
17 essentially consistent with the act right next to it,
18 51-9-9.

19 Both of those state essentially that a
20 retired judge is going to collect the money of a
21 retired judge, or if they are sitting on the bench, the
22 money of a sitting circuit judge, and those are your
23 two options.

24 I think that's exactly -- you've

1 articulated what I think the legislature's intent in
2 1991 probably was.

3 DELEGATE FOSTER: But -- and we have no
4 information to say that any judge said, "Well, if
5 that's all I'm getting, I'm not gonna sit."

6 MR. CASTO: We do not at this time,
7 sir.

8 DELEGATE FOSTER: All right, thank you.

9 CHAIRMAN SHOTT: Delegate Pushkin,
10 followed by Delegate Isner.

11 DELEGATE PUSHKIN: Thank you,
12 Mr. Chairman.

13 You stated that there was a bill that
14 passed through the -- passed through the house last --
15 it was last session?

16 MR. CASTO: Yes, sir, it passed through
17 the Senate and passed through our committee. It did
18 not pass through the House.

19 DELEGATE PUSHKIN: It passed through
20 our committee?

21 MR. CASTO: Yes, sir.

22 DELEGATE PUSHKIN: But did -- was it
23 passed by the -- by the House?

24 MR. CASTO: It did not pass the House.

1 DELEGATE PUSHKIN: Okay.

2 MR. CASTO: It was one of those that
3 died in the last week of session, as many bills do. I
4 don't know what the -- what happened to it.

5 DELEGATE PUSHKIN: It never got moved
6 to the House calendar?

7 MR. CASTO: I think that's -- I think
8 that's the case, but I'm not sure what the issue was.

9 DELEGATE PUSHKIN: Okay. Well, I'm
10 asking -- now, in the past, there was like a
11 legislative liaison between the Court and the -- and
12 the legislature.

13 MR. CASTO: Yes.

14 DELEGATE PUSHKIN: Is there -- was
15 there one last session?

16 MR. CASTO: I don't think they had. I
17 think they had terminated their then legislative
18 liaison, and I think most of the contacts that our
19 committee had were through Mr. Morris.

20 DELEGATE PUSHKIN: Was through where?

21 MR. CASTO: Were through Mr. Morris,
22 Mr. Chris Morris --

23 DELEGATE PUSHKIN: Okay.

24 MR. CASTO: -- the assistant to Judge

1 Johnson, the Administrative Director.

2 DELEGATE PUSHKIN: And Chief Justice
3 Loughry at the time fired the legislative liaison.

4 MR. CASTO: I believe he had, sir. I
5 believe that's --

6 DELEGATE PUSHKIN: And the bill didn't
7 pass.

8 All right, thank you.

9 CHAIRMAN SHOTT: Delegate Isner,
10 followed by Delegate Lane.

11 DELEGATE ISNER: Thank you,
12 Mr. Chairman.

13 Counsel, I just want to follow up on a
14 couple of things. There's been some discussion of
15 Nicholas County creating a situation, but -- but that's
16 not it, right? You have Upshur County where there was
17 a long delay by the Executive Branch in making an
18 appointment to fill a -- a seat. Is that correct?

19 MR. CASTO: I assume that the gentleman
20 is correct. The gentleman knows that circuit far
21 better than I do.

22 DELEGATE ISNER: Okay. And I'm just
23 looking at some of the judges that are referenced in --
24 in the material we have. I think it was Judge Henning

1 that filled that for a very long time.

2 Are you aware of a very similar
3 situation that I think occurred up in Hardy County
4 where there was a long delay by the Executive in making
5 an appointment?

6 MR. CASTO: I actually am aware of that
7 because I had a case in front of Judge Cookman many
8 years ago around the time that -- that I think that he
9 left the bench and that that occurred.

10 DELEGATE ISNER: Judge Keadle spent an
11 awful lot of time there filling that one.

12 MR. CASTO: I think that's the case,
13 yes.

14 DELEGATE ISNER: And then Judge Keadle
15 and Judge Steptoe back in my home county of Randolph
16 spent a really long length of time there filling in for
17 a judge that was suspended, you know, during some
18 ethical investigations; is that correct?

19 MR. CASTO: Yes, sir, I believe that is
20 the case.

21 DELEGATE ISNER: So this goes well
22 beyond, you know, what went on in Nicholas County as
23 far as some of these judges go.

24 MR. CASTO: Oh, yes, sir. And I mean,

1 we've had -- we've had a case here in Kanawha County
2 with Judge Stucky's illness in which there was a rather
3 long appointment there.

4 I mean, there have been, you know, long
5 appointments in many of the circuits due to illness or,
6 as you put it, misconduct or other reasons why a
7 particular seat had been vacated.

8 DELEGATE ISNER: So following up a
9 little bit on Delegate Lovejoy asking about how this
10 issue might be addressed, you indicated perhaps the
11 circuit clerk, you know, could fill a writ or -- we
12 were talking about who might have standing to get a
13 judicial vacancy filled. Correct?

14 MR. CASTO: Yes, sir.

15 DELEGATE ISNER: So isn't the reverse
16 also true? Would the auditor or some other branch have
17 -- or some other state official have standing to
18 challenge Chief Justice Loughry's 2017 Administrative
19 Order and say that it violates statute?

20 MR. CASTO: I think your construction
21 is eminently logical, that it is possible that the
22 auditor and the treasurer in their capacity, as the
23 overseers of disbursements of funds, may have had the
24 standing to do so, absolutely.

1 DELEGATE ISNER: So the statute that
2 we've been dealing with - I think it was 61-3-22 - was
3 last amended in 1991?

4 MR. CASTO: Well, 61-3-22 has not been
5 amended for some time. I do not know the last date on
6 that. The one you're talking about with regard to the
7 limitations, 51-9-10, was last amended in 1991.

8 DELEGATE ISNER: So that's last amended
9 in 1991, then Chief Justice Loughry issues an
10 Administrative Order in 2017 which effectively
11 conflicts with the statute to some degree. Correct?

12 MR. CASTO: Yes, sir.

13 DELEGATE ISNER: So until somebody
14 challenges Chief Justice Loughry's Administrative
15 Order, wouldn't that be the prevailing law?

16 MR. CASTO: Well, actually, I think the
17 prevailing law would be what the statute would be. I
18 think there's the question as to whether -- and I think
19 this is the question that the gentleman from Cabell
20 asked.

21 What is the prevailing law? Is the
22 prevailing law the Administrative Order undertaken by
23 the Court or is it the statute? And until we have
24 resolution of that in some -- in some form or fashion,

1 we have -- basically the Court has legitimized the
2 process that it was undertaking for the past -
3 according to the testimony that we've had - for at
4 least the past six years.

5 But it has only legitimized it on a
6 post-hoc basis from 2017 forward. There is no
7 administrative authority prior to that for the practice
8 of the issuance of payment to these judges in excess of
9 the cap via the WV-48/1099 mechanism that we've heard
10 described.

11 DELEGATE ISNER: Well then -- I mean,
12 isn't the Supreme Court the ultimate arbiter of, you
13 know, what happens when a statute is in conflict with
14 the Constitution?

15 MR. CASTO: Well, I would say that the
16 process that you are involved in right now probably has
17 restored a little bit of that momentum in your
18 direction, sir.

19 DELEGATE ISNER: Well, that was my next
20 question: Is that our role to decide the conflict
21 between the statute and the potential Constitutional
22 obligation of the government to keep the courts open?

23 MR. CASTO: Well, you all passed the
24 statute, and you all are going to have to make that

1 determination. That's all above my pay grade.

2 DELEGATE ISNER: Thank you, Counsel.

3 Just asking for your interpretation.

4 No other questions.

5 CHAIRMAN SHOTT: Delegate Lane.

6 DELEGATE LANE: Counsel, if -- if
7 there's a -- a vacancy or a need for a replacement in
8 one of the circuits, could -- could one of the Supreme
9 Court Justices sit in on circuit court proceeding?

10 MR. CASTO: My understanding is that
11 they can.

12 DELEGATE LANE: They can? Okay. And
13 this Administrative Order, do we have any knowledge as
14 to whether or not the other justices knew about this
15 order?

16 MR. CASTO: We have no information
17 based up -- at this time to say that they did or did
18 not.

19 DELEGATE LANE: Okay, thank you.

20 CHAIRMAN SHOTT: Counsel -- Counsel,
21 just a question from the Chair. We have a November
22 15th, '91 rule -- I guess that's their policy set by
23 the Supreme Court, signed by Justice Miller at that
24 time, that recognized the statute and made no

1 exceptions.

2 Is that fair to say?

3 MR. CASTO: That's true, sir, and we
4 also have the one from Justice Neely from 1994 --

5 CHAIRMAN SHOTT: I'm --

6 MR. CASTO: -- that does the same.

7 CHAIRMAN SHOTT: I'm getting to that.

8 MR. CASTO: Okay.

9 CHAIRMAN SHOTT: And Justice Miller was
10 generally thought to be a very intelligent justice
11 during the time he served; would you agree with that?

12 MR. CASTO: Yes, sir.

13 CHAIRMAN SHOTT: And then we have
14 Justice Neely basically in '94, reenacted the same
15 policy and again basically provided that the per diem
16 and retirement compensation of a retired judge admitted
17 to senior status shall not exceed the salary of a
18 sitting judge, same language basically, and no
19 exceptions.

20 MR. CASTO: Absolutely, sir.

21 CHAIRMAN SHOTT: And Justice Neely was
22 also recognized during the time he served as a scholar
23 of the law and the Constitution; is that fair to say?

24 MR. CASTO: I think that is very fair

1 to say, sir.

2 CHAIRMAN SHOTT: And that's been the
3 policy, although the per diem rate has remained -- or
4 has been adjusted upward since 1994. But until Justice
5 Loughry's attempt to override the statute, that policy
6 has remained in effect, unchanged. Is that fair to
7 say?

8 MR. CASTO: Yes, sir, through many
9 iterations.

10 CHAIRMAN SHOTT: With regard to the
11 limit of the sitting judge's salary setting the limit,
12 of the amount that the person -- the retired -- or the
13 senior status judge can receive. Fair enough?

14 MR. CASTO: Yes, sir.

15 CHAIRMAN SHOTT: So even if it's not a
16 violation of the pol -- or of the statute, the Court
17 has consistently violated its own policy, has it not?

18 MR. CASTO: I --

19 CHAIRMAN SHOTT: -- until -- until
20 Justice Loughry attempted to change that.

21 MR. CASTO: I would have to agree, they
22 have violated their own written directive.

23 CHAIRMAN SHOTT: Thank you.

24 Other questions for counsel? Other

1 questions for counsel?

2 Delegate Fleischauer.

3 MINORITY CHAIR FLEISCHAUER: Thank you,
4 Mr. Chairman. Thank you, Mr. -- thank you.

5 Actually, I have a request to make. I
6 believe there might be alternative interpretations of
7 the statute, and I was wondering if I could ask our
8 minority counsel if he would share possible other
9 interpretations of these two statutes.

10 CHAIRMAN SHOTT: Certainly. Counsel,
11 would you yield the podium to minority counsel, please?

12 MR. ALTIZER: Thank you, Mr. Chairman.

13 MINORITY CHAIR FLEISCHAUER: Thank you,
14 Mr. Chairman. So let's start with 51-9-10. Do you
15 think there could be an alternate interpretation other
16 than that explained by --

17 MR. ALTIZER: Well --

18 MINORITY CHAIR FLEISCHAUER: -- our
19 judiciary counsel?

20 MR. ALTIZER: My reading of the
21 statute, if I could just kind of go through it --

22 MINORITY CHAIR FLEISCHAUER: Yes.

23 MR. ALTIZER: I think that's a --
24 reflects a few provisos --

1 MINORITY CHAIR FLEISCHAUER: And I
2 would request that you speak into the microphone,
3 because we can't hear you.

4 MR. ALTIZER: Okay, thank you.

5 MINORITY CHAIR FLEISCHAUER: -- or
6 adjust the mic perhaps.

7 MR. ALTIZER: All right. There are two
8 provisos in this section of the code. And as generally
9 -- as a general statutory construction rules, provisos
10 are exceptions or limitations to the prior statements.
11 I guess the prior statement, the singular statement.

12 So the first sentence, "The Court is
13 authorized and empowered to create a panel of senior
14 judges to utilize the talent and" expertise "of former
15 circuit judges and supreme court justices of this
16 state."

17 Then the second sentence, "The Supreme
18 Court of Appeals shall promulgate rules for said judges
19 and justices to be assigned duties as needed and as
20 feasible toward the objective of reducing caseloads and
21 providing speedier trials to litigants throughout the
22 state," so the two provisos are exceptions to -- or
23 limitations upon the rules promulgated by -- by the
24 Court.

1 So the first proviso says, "That
2 reasonable payment shall be made to said judges and
3 justices on a per diem basis." That would be a
4 requirement of the rule.

5 And the second proviso, "That the per
6 diem and retirement compensation of a senior judge
7 shall not exceed the salary of a sitting judge."

8 And it's my practice in writing
9 legislation over the years, and -- if you're going to
10 prohibit an activity, you need to expressly set it out.
11 You can't prohibit it by inference.

12 The fact that the second proviso only
13 prohibits that the per diem and retirement compensation
14 shall not exceed a salary of a sitting judge, it does
15 not expressly - and I mean expressly - prohibit any
16 other compensation to that judge.

17 I know you think I might be parsing out
18 -- picking details on this, but I would tell you that
19 whenever there's a criminal law that's going to be
20 applied like there's attempting to be here, 61-3-22, I
21 think you have the responsibility to have an express
22 prohibition in the law.

23 And I don't think that is an express
24 prohibition. I think that my thinking is the Court,

1 when they're looking at this, read this, is this is the
2 max we can do. If you're gonna pay per diem, you
3 cannot pay them per diem beyond the combination of the
4 salary of the -- I mean, the pension of the judge and
5 the per diem rate to meet a salary of an existing
6 judge. That's your prohibition.

7 Now, if you want to go out -- and I
8 think what the Court has done, is they've - through
9 their general authority to regulate the practice of the
10 Court - they've created an exception outside of these
11 rules to allow payment on a contract basis for people
12 they have designated through their authority - in the
13 first sentence - to designate as senior judges.

14 So if they've written a letter
15 designating somebody as a senior judge, they are
16 authorized to act as a judge, regardless of whether
17 they're paid or not. That's the authority to act.

18 The second part is -- is this. I'm
19 only saying that to the extent you're trying to apply
20 61-3-22 to this provision as a violation, I don't think
21 it fits. And that's my analysis of this section.

22 CHAIRMAN SHOTT: Do you want to follow
23 up on that, Coun -- on that, Delegate Fleischauer,
24 questions?

1 MINORITY CHAIR FLEISCHAUER: Yes, so I
2 -- let me just rephrase it. So what you're saying is -
3 I think - is that this does not exclude -- this does
4 not prohibit payment on a contract basis.

5 MR. ALTIZER: It doesn't authorize it.
6 It says the only -- the only prohibition in that
7 sentence is that the per diem and retirement
8 compensation of a senior judge shall not exceed the
9 salary of a sitting judge. That's the prohibition.

10 MINORITY CHAIR FLEISCHAUER: Okay.
11 What are you saying, it doesn't -- it doesn't authorize
12 what?

13 MR. ALTIZER: It doesn't authorize them
14 to pay by contract work. It doesn't say you can; but
15 it doesn't say you can't.

16 MINORITY CHAIR FLEISCHAUER: Okay.

17 MR. ALTIZER: My point is if you're
18 gonna place a criminal penalty on somebody for a
19 criminal act, it needs to be expressed in the code what
20 the criminal act is. It can't be done by implication
21 or by some kind of conclusion that the public policy
22 was that no retired senior status judge can make more
23 than a sitting judge.

24 I mean, that might have been the

1 prevailing idea here, but it's not expressly said
2 anywhere in that article that I could find that that's
3 prohibited.

4 It's just -- through this implication,
5 that it's not allowed.

6 MINORITY CHAIR FLEISCHAUER: Okay. So
7 you -- so you're saying that there is a possible way to
8 interpret this to -- it's not -- it's -- it's not
9 disallowed by this statute.

10 MR. ALTIZER: I'm just saying I don't
11 think it's real clear and I think it's clearly a
12 prohibition that you cannot make more with your per
13 diem and your retirement compensation than a sitting
14 judge, but there's no prohibition for making more than
15 that in some other fashion.

16 MINORITY CHAIR FLEISCHAUER: So you
17 don't think it would be fair or consistent with our
18 application of the criminal laws to say that it's a
19 felony.

20 MR. ALTIZER: Well, yes, that's what I
21 think.

22 MINORITY CHAIR FLEISCHAUER: Is that --

23 MR. ALTIZER: I think that there's --
24 that statute does not rise to the level of being able

1 to assert a felony against a justice for violating that
2 provision and using 61-3-22 as your penalty.

3 MINORITY CHAIR FLEISCHAUER: Thank you.

4 CHAIRMAN SHOTT: Are there questions of
5 counsel regarding his interpretation of the statute?

6 Gentleman Delegate Foster, followed by
7 Delegate Summers.

8 DELEGATE FOSTER: My question's on when
9 you're talking about the per diem and the salary not
10 excluding, and you said that just because it's a --
11 contractual services, that it wouldn't exceed because
12 it's outside of per diem and salary?

13 MR. ALTIZER: It would -- the sentence
14 says the per diem and retirement compensation of a
15 senior judge shall not exceed -- in combination, shall
16 not exceed that of a sitting judge.

17 DELEGATE FOSTER: And that's the thing,
18 but -- these contractual services are paid per diem,
19 correct?

20 MR. ALTIZER: Well, my understanding of
21 how it works is they've been paying people per diem up
22 to the -- to the salary level and then they've quit
23 paying their per diem because of this prohibition and
24 then began paying contract, which is a different

1 contractual relationship than it is on a per diem
2 basis.

3 DELEGATE FOSTER: But in the documents
4 we saw, it's still \$435.00 a day, which was per diem.

5 MR. ALTIZER: I know. It's legal
6 sophistry. I'm not disputing that. I'm just saying
7 for purposes of applying a criminal code to these
8 folks, that I would like a little more clear expression
9 that there's actually a violation in existence here
10 other than that proviso.

11 DELEGATE FOSTER: And that's my
12 question. How would you clarify that? Do you want to
13 say "per diem rate" --

14 MR. ALTIZER: Well, if I would write
15 the statute, I'd say that the per diem retirement --
16 and -- well, I just -- let me see. The first --
17 "reasonable payment shall be made to said judges and
18 justices only on a per diem basis." That would do it.

19 DELEGATE FOSTER: Because otherwise, I
20 mean, if -- for it to clarify, it would have had to say
21 "per diem" or "contractual" or "bonuses" or --

22 MR. ALTIZER: Well, and I -- I would --
23 my take on it is they understood they were dancing
24 around this language and they had a serious problem

1 they were trying to address. They said there wasn't
2 express prohibition for doing this, so they did it.

3 Is it right or wrong? That's your
4 all's judgment. You all are the legislators here. I'm
5 just doing what I do, which is reading the statutes and
6 making an assessment on what I think the implication of
7 it is.

8 DELEGATE FOSTER: But either way, the
9 payment was made per diem.

10 MR. ALTIZER: Well, it wasn't a per
11 diem. They entered into a different relationship. It
12 was -- the per diem was capped and they started paying
13 them on what we call contract basis, which was like
14 independent contractor, so to speak.

15 DELEGATE FOSTER: All right, thank you.

16 CHAIRMAN SHOTT: Delegate Summers.

17 DELEGATE SUMMERS: Thank you, Counsel.
18 I had one question. Why, on this interpretation, do
19 you think the IRS said you can't do that?

20 MR. ALTIZER: I think because of the
21 implications on their pension plans. Whenever you
22 exceed -- you earn too much money doing the job you did
23 prior to your retirement, there are limitations. Like
24 we as legislative employees, I'm a part-time person --

1 I could work so many days a year and still draw a
2 pension.

3 And I think they were trying to protect
4 their -- the efficacy of their pension plan, because if
5 you exceed those rates, you can be required to
6 reimburse some of your pension to the State, and so if
7 I exceeded the amount of work I'm allowed to make by
8 law, I wouldn't go to jail; I'd be required to pay back
9 some of my pension.

10 DELEGATE SUMMERS: So should we
11 disregard the IRS's recommendation based on that one
12 statute?

13 MR. ALTIZER: I'm -- I haven't seen
14 their recommendation and what their objection was.

15 Now, I'm not speaking towards federal
16 law. This could be something totally different. This
17 is only an analysis of that particular statute and the
18 relationship that I -- to the criminal provisions we
19 were talking about.

20 DELEGATE SUMMERS: Okay, thank you.

21 CHAIRMAN SHOTT: Further questions of
22 counsel?

23 Delegate Miller.

24 DELEGATE MILLER: Thank you,

1 Mr. Chairman.

2 This might be geared more toward

3 Mr. Casto.

4 CHAIRMAN SHOTT: Well, let's finish --
5 let's finish with --

6 DELEGATE MILLER: Okay.

7 CHAIRMAN SHOTT: -- our current victim
8 and we'll move to another victim in a minute, okay?

9 Are there any other questions? I have
10 a question. I want to be sure I understand the
11 distinction that you're making. You're not saying that
12 this activity doesn't violate their own policy; you're
13 just saying it shouldn't be - based on the statute -
14 the basis for a criminal charge.

15 Am I fair -- is that fair?

16 MR. ALTIZER: I think that's very fair.
17 I haven't done any research on that and I would be
18 wading in this deep water if I offered an opinion on
19 that.

20 CHAIRMAN SHOTT: So you haven't had a
21 chance to look at the various exhibits from the --

22 MR. ALTIZER: I have.

23 CHAIRMAN SHOTT: -- Court's policy --

24 MR. ALTIZER: And I would say, my first

1 observation is this -- all of these policies related to
2 their per diem reimbursements as authorized under the
3 statute and directed by the statute.

4 Now, whether the Court had authority
5 outside of these per diem payments through their own
6 rights as -- through the judiciary to administer the
7 courts, and if they were lawful in that capacity, I
8 don't have an opinion on that.

9 CHAIRMAN SHOTT: But you would agree
10 that the rate that they are paying under this contract
11 is exactly the rate they authorize as per diem under
12 their policy.

13 MR. ALTIZER: Well, it's certainly
14 probably more than a coincidence.

15 CHAIRMAN SHOTT: It's -- the last
16 policy update was \$435.00 a day, which is what they are
17 paying under this WV-48.

18 MR. ALTIZER: Yes, but -- I think this
19 was done in an effort to comply with the statute and
20 still keep their -- their judges in the -- in
21 courtroom. So --

22 CHAIRMAN SHOTT: So there's good
23 intentions for disregarding the statute.

24 MR. ALTIZER: Well, I'm just not

1 convinced the statute has been disregarded,
2 Mr. Chairman.

3 CHAIRMAN SHOTT: I understand. I
4 understand your interpretation.

5 MR. ALTIZER: Thank you.

6 CHAIRMAN SHOTT: Any other questions
7 for our friend over here who's taken our grilling with
8 a good nature?

9 Okay, Counsel -- Delegate Miller,
10 further questions of counsel?

11 DELEGATE MILLER: Thank you. Thank
12 you, Mr. Chairman.

13 CHAIRMAN SHOTT: -- staff counsel. Go
14 ahead.

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

17 And I'm trying to wrap my head around
18 61-3-22 --

19 MR. CASTO: Yes, sir.

20 DELEGATE MILLER: -- as it applies to
21 what we're discussing if we're, in effect, trying to
22 prepare a criminal case.

23 MR. CASTO: Yes, sir.

24 DELEGATE MILLER: Is there any question

1 that anyone at the Court is falsifying accounts? At
2 least on its appearance, everything is clear that there
3 has been a -- a contract signed, there's no excessive
4 payments, it's per whatever their schedule is.

5 You see where I'm going with that? Is
6 there any fraudulent activity in regard to the numbers,
7 I guess you'd say?

8 MR. CASTO: There's no fraudulent
9 activity with regard to the numbers. But the statute -
10 even though it's captioned as falsification of accounts
11 - provides that it's simply if you are doing anything
12 which enables someone to obtain moneys to which they
13 are not entitled.

14 And so I would argue that there is a
15 possibility of construction based upon our -- our
16 managers' representations that these persons are thus -
17 because of the hard cap - not entitled to those moneys,
18 and if you make any entry which enables persons to
19 obtain money to which they are not entitled, you have
20 violated the provisions of the statute, even though
21 there is no falsification.

22 The caption of the statute just is what
23 it is.

24 DELEGATE MILLER: Understand. And it

1 -- my normal thought process is to play devil's
2 advocate by the time you get to the --

3 MR. CASTO: Oh, I'm aware.

4 DELEGATE MILLER: -- the end of a case,
5 so my ultimate question would be: Is there -- as
6 what's normally present in a criminal case, do we find
7 criminal intent involved in this?

8 MR. CASTO: Well, there is -- there is
9 a question of intent, and I don't know that it's
10 criminal intent, but the -- it doesn't say that the
11 intent had to be criminal. It simply says the intent
12 is to enable the person to obtain money to which they
13 were not entitled.

14 So the question of whether or not the
15 Court's actions constituted an attempt by the Court to
16 allow a person to obtain money to which they were not
17 entitled would ultimately be a question for the trier
18 of fact.

19 DELEGATE MILLER: Thank you.

20 Thank you, Mr. Chairman.

21 MR. CASTO: Mr. Chairman, if -- if I
22 may.

23 CHAIRMAN SHOTT: Counsel, if you want
24 to proceed, go ahead.

1 MR. CASTO: I have a clarifying comment
2 upon my co-counsel's point. I think he would be
3 correct if the Court had not understood that what they
4 were doing was continuing to pay per diem.

5 I'd like to call your attention to
6 Exhibit 65. You've all been handed this out
7 previously. This is a contractual payment made to
8 Judge Keadle when he was sitting by special assignment
9 in the year 2013.

10 You will look -- the fourth page of
11 that exhibit is the signed WV-48 which was executed by
12 Judge Keadle and Justice Benjamin in 2013.

13 We have two of the inner pages which
14 appear to be for dates when Judge Keadle was sitting in
15 Moorefield in May and June of that year. And on the
16 front, on this page of Exhibit 65, I want to point this
17 out to the Committee.

18 (Counsel pointed on the screen.)

19 MR. CASTO: It says on the Comments
20 line about three quarters down the page, where I
21 indicated, it says, "This is a senior status judge per
22 diem."

23 The Court did not change the captioning
24 on what it was paying these individuals when they were

1 being paid under a West Virginia-48 or whether they
2 were being paid under a W-2.

3 The Court viewed it as a per diem
4 payment to a senior status judge, and the Court knew -
5 as we have heard - from their own policies that per
6 diem payments, when combined with retirement, were to
7 be capped at the compensation of a sitting circuit
8 judge.

9 That's what we have, Mr. Chairman.

10 CHAIRMAN SHOTT: Other questions?

11 Other questions of counsel.

12 Yes, Delegate Fluharty.

13 Counsel?

14 MINORITY VICE CHAIR FLUHARTY: The
15 criminal code provision you cited earlier, that's a
16 specific intent crime, isn't it?

17 MR. CASTO: It is an intent crime, and
18 the intent is to enable a person to obtain money to
19 which they were not entitled.

20 MINORITY VICE CHAIR FLUHARTY: So a
21 simple entry would not constitute the -- a crime.

22 MR. CASTO: No, sir. It would have to
23 be the persons who would have had knowledge that the
24 persons were not entitled to that money.

1 MINORITY VICE CHAIR FLUHARTY: So to
2 prove that up, you're gonna have to prove that justices
3 had knowledge and intended for more money to be made
4 available to sitting judges.

5 MR. CASTO: Well, I think that would be
6 -- if -- if someone were to try to prove that, I think
7 that would be what they would have to prove.

8 If the Kanawha County prosecutor, for
9 example, were to look at this and believe that that
10 were actionable, they would have to prove that the
11 judges knew or should have known that these persons
12 were not entitled to that money and that they undertook
13 actions specifically to get them that money despite
14 their knowledge of the law. And that would be the bar.

15 MINORITY VICE CHAIR FLUHARTY: Thank
16 you.

17 CHAIRMAN SHOTT: Other questions?
18 Delegate Fleischauer.

19 MINORITY CHAIR FLEISCHAUER: Thank you,
20 Mr. Chairman.

21 I guess just to follow-up on that, this
22 Exhibit 66, this is something that someone entered into
23 a computer. This isn't something that one of the
24 justices entered into a computer.

1 MR. CASTO: No, it's -- it's within the
2 FIMS system originating from the Supreme Court. To say in
3 what manner this was transmitted or what it was intended
4 to be --

5 But you'll note that the electronic
6 authorization is from Ms. Troy, the Director of Financial
7 Management at the Court at the time.

8 So this is -- whatever -- I cannot
9 speculate as to who the original preparer of this was,
10 whether that was her or some other person at the Court.
11 But it appears to be something that the auditor's office
12 would have received from the Court.

13 MINORITY CHAIR FLEISCHAUER: Well, I guess
14 what I'm saying is: If they change the status to contract
15 status, it -- this document does not prove that they --
16 that they were doing it under the statute.

17 This -- this document - because it's just
18 a computer entry.

19 MR. CASTO: Well, I think all that we have
20 in proof of this is that it's still being captioned in per
21 diem. That for whatever reason, that was what -- we have
22 to take it for what it is, and it says that it is a
23 payment of a senior status judge per diem for periods
24 within August 2013. And that's all I can go on, is what I

1 see before me.

2 MINORITY CHAIR FLEISCHAUER: Right. But I
3 don't think that is like proof that the justices knew that
4 they were -- I just don't see it that way.

5 Okay. Thank you.

6 CHAIRMAN SHOTT: Delegate Summers,
7 followed by Delegate Isner.

8 DELEGATE SUMMERS: Thank you, Counsel.

9 Can you help me understand -- I'm not
10 following this. Why are you filling out a WV-48 if you
11 haven't already met your amount? So why would they sign
12 that?

13 MR. CASTO: They would not --

14 DELEGATE SUMMERS: I'm missing something,

15 MR. CASTO: -- fill out a WV-48 unless
16 they'd already hit that point. That's exactly correct.

17 DELEGATE SUMMERS: Okay, that's what I
18 thought.

19 MR. CASTO: We heard testimony from
20 Mr. Canterbury that they had a person assigned to
21 facilitate the transmission and completion of a WV-48 on
22 the period when -- after that cap had been hit.

23 DELEGATE SUMMERS: Yeah, that's what I
24 thought, thanks.

1 CHAIRMAN SHOTT: Delegate Isner.

2 DELEGATE ISNER: Thank you, sir. Thank
3 you, Mr. Chairman.

4 Counsel, could you turn your attention
5 back to Exhibit 65?

6 MR. CASTO: Sure.

7 DELEGATE ISNER: This document, where do
8 we obtain this from? Was this from the Supreme Court?

9 MR. CASTO: This was obtained from the
10 Supreme Court.

11 DELEGATE ISNER: Okay. Because the --
12 about the third line down at the top says it's from the
13 Financial Information Management System from the Office of
14 the State Auditor; is that correct?

15 MR. CASTO: Yes, sir, that's what it says.

16 DELEGATE ISNER: So was this generated by
17 the Supreme Court or generated by somebody at the State
18 Auditor's Office?

19 MR. CASTO: The person who would have had
20 better knowledge of that was here earlier today, sir.

21 DELEGATE ISNER: Okay, fair enough. Do
22 you know if there was ever a copy of this that was
23 ultimately signed by the State Auditor or somebody that --
24 their designee?

1 MR. CASTO: We do not have any knowledge
2 of that at this time.

3 DELEGATE ISNER: There --

4 MR. CASTO: We received this document
5 today.

6 DELEGATE ISNER: There is a line at the
7 bottom that appears to be a signature line from somebody
8 at the State Auditor's Office though; is that correct?

9 MR. CASTO: Yes, sir.

10 DELEGATE ISNER: So if somebody from the
11 State Auditor's Office was somebody who prepared this
12 and/or ultimately signed it, is it your position that they
13 would have violated 61-3-22?

14 MR. CASTO: I'm not the one to -- to say
15 whether or not that law was violated. That's a jury
16 question, and that will be -- that would have to have a
17 prosecution initiated to determine whether or not there
18 was even chargeable evidence on that.

19 I'm not -- I'm not speculating as to
20 whether that law has been violated in any way, shape or
21 form. I know that one of our managers raised that it was
22 a potential violation and believed that there was a
23 potential that that law had been violated, and so I'm
24 merely bringing it to the Committee's attention.

1 DELEGATE ISNER: Okay.

2 Thank you, Counsel.

3 CHAIRMAN SHOTT: Delegate Miller.

4 DELEGATE MILLER: Thank you, Mr. Chairman.

5 Counsel, are we aware if any other
6 judicial appointments are made this way for senior status
7 or a fill-in position such as magistrates or family courts
8 in the State of West Virginia?

9 MR. CASTO: I'll be entirely honest with
10 you, I have -- I have, in the course of my career, never
11 had occasion to question how magistrate vacancies or
12 family court vacancies have -- have been filled.

13 I've never been in a -- in a trial before
14 a magistrate or before a family court judge who was
15 sitting -- who had a successor sitting -- or substitute
16 sitting by designation, so I have no idea how those
17 vacancies are filled.

18 DELEGATE MILLER: If there was a need for
19 a substitute family court judge or a magistrate, on its
20 face, would -- would this Administrative Order signed by
21 Justice Loughry apply to that -- those positions as well?

22 MR. CASTO: I don't believe so, because I
23 think he speaks specifically to the judicial statute in
24 51-9-10, and I think what he is speaking solely to - the

1 way that I read that order - is the position of judge, not
2 the subordinate court positions such as family court judge
3 or magistrate.

4 DELEGATE MILLER: Okay, thank you.

5 Thank you, Mr. Chairman.

6 CHAIRMAN SHOTT: Further questions of
7 counsel?

8 Thank you, Counsel.

9 MR. CASTO: Thank you, sir.

10 CHAIRMAN SHOTT: We have some additional
11 exhibits that we want to share with you that have just
12 come in recently, and I'm going to ask our chief of staff
13 to explain what they are, and then we'll pass them out.

14 Ready, Counsel, go ahead.

15 MS. KAUFFMAN: Thank you, Mr. Chairman.
16 The exhibits that have been just passed out to the
17 Committee are Exhibits No. 70 and Exhibit No. 72. We do
18 not have any witnesses to testify as to either one of
19 these documents. They are being provided to the Committee
20 for informational purposes.

21 If follow-up is needed later, we can
22 certainly do so later with witnesses. Again, these are
23 being provided for informational purposes, as some of
24 these issues have been brought before the Committee during

1 the recent hearings.

2 Exhibit 70 is a letter dated July 26, 2018
3 from the State Auditor to the West Virginia Supreme Court
4 of Appeals. This letter references purchases of meals by
5 the Supreme Court. It is a three-page letter.

6 I will note - and you have not been
7 provided copies of these - this letter does reference four
8 -- I believe it is four advisory opinions from the Ethics
9 Commission. If anyone would like copies of those, we will
10 be happy to make copies of those advisory opinions.

11 They also address meal purchases in
12 different manners or in different instances. So those can
13 be provided.

14 Again, this is Exhibit 70, the -- again,
15 just the letter from the State Auditor.

16 On page 2 -- and certainly the Committee
17 will have the opportunity to read the entire letter. I
18 will just note on page 2, above the Supreme Court policy
19 defining allowable expenses above that, the position of
20 the auditor is noted that public employees and public
21 officials, including specifically members and employees of
22 the Supreme Court may not use public funds to purchase
23 personal meals during a nontravel work day.

24 And further states that an expenditure of

1 public funds for a personal meal will neither be processed
2 nor approved by the State Auditor's Office.

3 Again, this was received via FOIA request,
4 so this is being provided to the Committee for
5 informational purposes.

6 Exhibit No. 72 that has also been provided
7 to the Committee is information regarding a payment that
8 was made to Ms. Allen in 2017 for writing - or drafting,
9 rather - an opinion in the Quicken Loans cases.

10 This has been mentioned, I believe, at
11 some point throughout the course of the proceedings, so
12 this information is being provided, again, for that -- for
13 the Committee to consider.

14 The exhibit should contain two pages which
15 are the -- the bill that Ms. Allen submitted. It notes on
16 page 2 of this that there was an agreed-upon cap, that she
17 was entitled to \$10,000 for her work. Her total charges
18 were actually \$14,950, but the cap kept that at \$10,000.

19 The last page of this is an e-mail from
20 what appears to be an administrative assistant for Justice
21 Walker to the former Administrative Director, Judge
22 Johnson, discussing this invoice and having the invoice
23 paid.

24 I will note that -- I believe there was

1 some testimony -- and just to clear up any confusion, it
2 is our understanding that Ms. Allen was actually paid to
3 write two separate opinions. This deals with an opinion
4 that was written in 2017.

5 It is our understanding there was a prior
6 opinion drafted by Ms. Allen in 2016. That was in the
7 case in which all of the justices - as I recall, I believe
8 all of the justices - had recused themselves, so that
9 information is not provided in this. This one was -- is
10 different in that regard. I don't know if there were any
11 recusals.

12 But the prior one in 2016, I believe all
13 justices had recused themselves, and it's my understanding
14 that that was also a \$10,000 payment.

15 Mr. Chairman?

16 CHAIRMAN SHOTT: Thank you, Counsel. And
17 understanding that neither of these exhibits were prepared
18 by the Committee staff, are there questions that might be
19 answerable? But basically we're just disseminating
20 information that we received pursuant to either a FOIA
21 request or unsolicited information, I think it's fair to
22 say.

23 Are there questions?

24 Yes, Delegate Sobonya.

1 DELEGATE SOBONYA: The e-mail that was
2 sent from Gary Johnson to Whitney Humphrey about the
3 payment to Ms. Allen, it says in the e-mail that Justice
4 Walker wasn't sure if she was still an approved vendor or
5 if a formal contract is necessary.

6 And in this e-mail, they're stating that
7 they received the invoice from Ms. Allen. Is it common
8 practice to contract out for \$10,000 of work without
9 knowing if someone's an approved vendor and without a
10 formal contract? Doesn't that seem a little backwards?

11 MS. KAUFFMAN: I can't speak to that. I'm
12 not sure what the -- the Court's process was in that
13 regard. I believe - and this is -- this would be
14 speculation on my part - when it references in that
15 e-mail, "wasn't sure if she was still an approved vendor
16 or if a formal contract is necessary," I am not sure if
17 that references her earlier work in 2016, because she also
18 did work for the Court in 2016.

19 So that -- again, pure guess on my part.
20 But it may reference the earlier work done.

21 DELEGATE SOBONYA: And when did Ms. Allen
22 start her employment with -- with the Court?

23 MS. KAUFFMAN: Her current employment with
24 the Court? I am not sure. It would have been after Judge

1 Johnson, the former Administrative Director, left this
2 past summer -- or this summer.

3 I believe he left in June, if I -- if I
4 recall correctly.

5 DELEGATE SOBONYA: Thank you.

6 CHAIRMAN SHOTT: Other questions of
7 counsel? Other questions?

8 If not, as -- as was announced previously,
9 we're gonna seek to adjourn into executive session. This
10 whole process was subject to an exception under the Open
11 Meetings Act, but we've elected to try to keep as much of
12 it in open session as possible.

13 However, there are a couple of issues that
14 I think are appropriate to discuss in executive session.
15 The intention will be to go into executive session. We do
16 have dinner for -- for all of you. When we're finished
17 with the executive session and reconvene in regular
18 session in the Committee room, the only purpose of that
19 will be to -- to adjourn until tomorrow morning.

20 So there won't be any action taken, won't
21 be any votes after we come out of executive session. So
22 that's for the benefit of the press. If you want to stick
23 around, fine. But we don't anticipate any action taking
24 place, and we will resume tomorrow morning.

1 Recognize --

2 (Some discussion was had off the record.)

3 VICE CHAIR HANSHAW: Mr. Chairman, under
4 the authority of West Virginia Code 6-9A-4(b)(2)(A), I
5 move that the Committee reconvene upstairs in executive
6 session at 5:20 p.m.

7 CHAIRMAN SHOTT: You've heard our vice
8 chairman's motion. Is there any discussion? If not, all
9 in favor will say "Aye."

10 DELEGATES: Aye.

11 CHAIRMAN SHOTT: Opposed will say "No."

12 The ayes appear to have it.

13 The ayes do have it.

14 We'll be in executive session upstairs at
15 5:20.

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1 STATE OF WEST VIRGINIA,
2 COUNTY OF KANAWHA, to wit:

3 I, Teresa Evans, Registered Merit Reporter
4 and a Notary Public within and for the County and
5 State aforesaid, duly commissioned and qualified, do
6 hereby certify that the foregoing proceedings were
7 duly taken by me and before me at the time and place
8 and for the purpose specified in the caption hereof.

9 I do further certify that the said
10 proceedings were correctly taken by me in shorthand
11 notes, and that the same were accurately written out
12 in full and reduced to typewriting by means of
13 computer-aided transcription.

14 Given under my hand this 8th day of August,
15 2018.

16 *Teresa Evans*
17

18 TERESA EVANS, RMR, CRR
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