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IN THE WEST VIRGINIA LEGISLATURE
HOUSE OF DELEGATES
JUDICIARY COMMITTEE

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

* * * * *

VOLUME VIII

Hearing held on August 7, 2018, before the House
Judiciary Committee of the West Virginia Legislature.

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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

HOUSE JUDICIARY COMMITTEE MEMBERS :

- John Shott, Chair
- Roger Hanshaw, Vice Chair
- Barbara Evans Fleischauer, Minority Chair
- Shawn Fluharty, Minority Vice Chair
- Mark White, Clerk
- Andrew Byrd
- Joe Canestraro
- Moore Capito
- 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)

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

2 CHAIRMAN SHOTT: I'll call this meeting
3 of the Committee on the Judiciary to order. I'll ask
4 the clerk to take the roll in order to ascertain the
5 presence of a quorum.

6 (The roll was taken.)

7 CHAIRMAN SHOTT: Delegate Pushkin has
8 arrived. Please count him as well.

9 Is there a quorum?

10 Quorum is present.

11 Before we get into the heart of our
12 agenda today, Delegate Fleischauer has asked to be
13 recognized for the purpose of making an announcement.

14 Delegate Fleischauer.

15 MINORITY CHAIR FLEISCHAUER: Thank you,
16 Mr. Chairman. I just wanted to announce to the members
17 and to the media, if they're interested, that for those
18 of you who receive this magazine that we get on a
19 monthly basis, state legislators - sometimes we don't
20 always read it - but on page 58, there is an
21 announcement about one of the members of this Committee
22 who is from the Parkersburg area, Wood County, who is
23 considered a newsmaker because he is one of five
24 in-state legislators that are nonagenarians, a new word

1 for me, so I would like to take this opportunity to
2 have a round of applause for a member of ours who was
3 highlighted in this national state legislator's
4 magazine.

5 CHAIRMAN SHOTT: Delegate --

6 MINORITY CHAIR FLEISCHAUER: So after
7 you say round of applause -- oh, do we want him to
8 speak?

9 DELEGATE FAST: Who?

10 CHAIRMAN SHOTT: No, no, just his name.

11 MINORITY CHAIR FLEISCHAUER: Oh, Frank
12 Deem.

13 CHAIRMAN SHOTT: Congratulations,
14 Delegate Deem.

15 You will see it has been distributed
16 today two additional exhibits, No. 73 and 74.
17 According to our rules, when we conclude our evidence,
18 the -- we're ripe for any type of motions and so forth,
19 so these two exhibits will conclude our -- our
20 evidence.

21 Let me just say that if you take a
22 moment to look at Exhibit 73, it's a good segue for
23 what I'm about to mention.

24 In this exhibit from the Supreme Court

1 of Appeals in the second paragraph, the Court declares
2 that it is not subject to the West Virginia Ethics Act.

3 You know, when the -- when our founders
4 adopted our Constitution, they placed an enormous
5 amount of trust in our judiciary by, first of all,
6 making them -- making their terms 12 yaysrs so that
7 they're not subject to accountability to the voters but
8 every 12 yaysrs, but also giving them complete control
9 over their budget, enormous amount of trust that was
10 placed in our judiciary.

11 And unfortunately, the evidence that's
12 come before our Committee indicates that that trust -
13 at least currently - is misplaced. There appears to
14 be, based on the evidence before us, an atmosphere that
15 has engulfed the Court of cavalier indifference to the
16 expenditure of taxpayer funds, to the protection of
17 taxpayer-paid assets, and an almost incomprehensible
18 arrogance that for some reason, they are not a co-equal
19 branch, but a superior branch of government.

20 So what we'll be taking up today is a
21 series of proposed Articles of Impeachment. Those
22 Articles include each and every justice that's
23 currently serving in our court.

24 This is indeed a sad day for the state,

1 and certainly not a cause for anybody's celebration,
2 but this is a serious undertaking that we have been
3 tasked with, and I think the Committee has taken that
4 task seriously and the result today is the proposed
5 Articles of Impeachment.

6 I'll ask our staff to pass those out.
7 The process that we will follow is, we'll have staff
8 counsel explain each of the Articles, and when those
9 Articles are -- when the explanations are completed,
10 we'll open the floor for questions.

11 And then, of course, we'll debate --
12 debate after the questions are -- are answered.

13 As I indicated, not -- not a cause for
14 anybody's celebration, but it is the view of our -- our
15 managers, that it -- these Articles of consideration,
16 these Articles are necessary for us to begin the
17 process of rebuilding trust and confidence in our
18 judiciary.

19 Once the Articles have been passed out,
20 I'll ask counsel to approach the podium and begin by
21 explaining Article I. So -- just so you understand,
22 some of these Articles address more than one justice,
23 and some of these Articles of -- are focused on one
24 justice.

1 Counsel, are you ready to begin?

2 DELEGATE DEEM: It's on now.

3 MR. CASTO: Is it on? I have no idea.

4 CHAIRMAN SHOTT: We need to start
5 testing that every hearing. This is getting
6 ridiculous.

7 MR. CASTO: That's it.

8 Thank you, John.

9 Thank you, Mr. Chairman, Members of the
10 Committee. Article I is something that --

11 DELEGATE MILLER: Mr. Chairman, point
12 of order.

13 CHAIRMAN SHOTT: Yes, what's your point
14 of order?

15 DELEGATE MILLER: By commencing
16 presentation of these Articles, is counsel declaring
17 that the evidence has been completed and therefore we
18 cannot accumulate any further evidence in the
19 development of these or for the presentation for
20 prosecution?

21 CHAIRMAN SHOTT: In response to your
22 question, our procedural rules will make it out of
23 order for any motion to be presented on -- and Articles
24 until the evidence before the Committee is completed.

1 However, I believe when we get through
2 the Articles, you'll see that there is a provision in
3 there that will allow the Committee to supplement or
4 amend, and I anticipate that - assuming any -- any one
5 or more of these Articles are adopted - we will
6 continue to attempt to fortify, strengthen our -- our
7 cases for those Articles that are passed, and if we
8 find additional evidence, we certainly will bring it to
9 the attention of the House at an appropriate time.

10 But so the answer to your question is
11 no, in terms of whether you and the other managers will
12 continue to work on -- on the case in preparation for
13 presentation to the House, and if the adoption -- if
14 the Articles are adopted in the House, we'll continue
15 working to fortify and reinforce the evidence before
16 the trial at the Senate.

17 DELEGATE MILLER: Thank you. Thank
18 you, Mr. Chairman.

19 CHAIRMAN SHOTT: Counsel, you may
20 proceed.

21 MR. CASTO: Thank you, Mr. Chairman.

22 This is something that should be
23 intimately familiar to most of the members of the
24 Committee who are present because it was something we

1 discussed, basically, as recently as 5:00 p.m.
2 yesterday.

3 This is a charge in this Article
4 relating to Chief Justice Workman and Justice Davis in
5 that they, in their capacity as Chief Justice at
6 various times, did severally sign and approve contracts
7 which were necessary at each relevant time to overpay
8 senior status judges in violation of the
9 statutorily-mandated maximum limit on the salary of
10 such judges, in violation of the provisions of West
11 Virginia Code 51-2-13 and 51-9-10, in violation of what
12 - at the time that they were Chief Justice - was a
13 standing order of the West Virginia Supreme Court of
14 Appeals, in potential violations of the provision of
15 West Virginia Code 61-3-22, the falsification of
16 accounts provision we discussed yesterday; potentially
17 in violation of the provisions of West Virginia Code
18 5-10-45, relating to the crime of fraud against the
19 West Virginia Public Employees Retirement System for
20 those judges who were in PERS and would have been
21 earning over the \$20,000 annual limitation for which
22 they were limited; in potential violation of 61-3-24,
23 which is false pretenses statute, and that the actions
24 undertaken by those justices in that capacity did

1 violate certain provisions of the West Virginia canons
2 of judicial conduct which are found within Canons 1 and
3 2, specifically including, but not limited to, Canon 1,
4 Rule 1, which they said a judge shall at all times obey
5 the law.

6 CHAIRMAN SHOTT: Article II.

7 MR. CASTO: Robert.

8 You don't have to read it; you can
9 explain it. You don't have to read the whole thing.

10 MR. AKERS: Good morning. Article II
11 covers just Chief Justice Margaret Workman, Justice
12 Allen Loughry, Justice Robin Davis and Justice
13 Elizabeth Walker, at all times, being relevant justices
14 of the Supreme Court of West Virginia.

15 We're saying that they have failed to
16 discharge their duties under the office due to an
17 absence of public policy to prevent and control
18 expenditure, waste of State funds with little or no
19 concern for the cost being borne by the taxpayers,
20 unnecessary and lavish spending for various purposes,
21 including -- including the remodeling of their State
22 offices; for large increases in unnecessary travel
23 budgets, including the personal use of State vehicles;
24 for unneeded computers for home use; for regular

1 lunches from restaurants; and for framing of personal
2 items and other wasteful expenditures not necessary for
3 the administration of justice; and for failure to
4 provide reasonable and proper supervision and oversight
5 of the operations of the Court and the subordinates
6 courts by carrying out one or more of the following:

7 Letter A is -- covers the travel
8 policies. They were ineffective and insufficient prior
9 to October of 2016 and thereafter. These policies
10 accepted the justices treating their subordinates
11 differently under the rules than the justices
12 themselves.

13 They failed to report taxable fringe
14 benefits such as car use and regular lunches on their
15 W-2s, despite full knowledge of the Internal Revenue
16 Service's regulations; and further subjected their
17 subordinates and employees to a greater burden than the
18 justices in this regard.

19 Upon notification of the violations,
20 they failed to speedily comply with the requests made
21 for such reporting, to provide proper -- they failed to
22 provide proper supervision and control and auditing of
23 the use of State purchasing cards, leading to multiple
24 violations of State statutes and State policy, with a

1 -- specifically without obtaining prior approval for
2 very large purchases.

3 They failed to prepare and adopt a
4 sufficient and effective home office use policy which
5 would have defined the various furniture and computer
6 equipment that would have been allowed and paid for by
7 the Court. This lack of oversight encouraged the
8 conversion of property.

9 Provide effective supervision and
10 control over the keeping with respect to the use of
11 State automobiles. The records were insufficient.

12 This led to executed Information on one
13 former justice and the Indictment of another sitting
14 justice.

15 They failed to provide effective
16 supervision and control over the inventories of State
17 property owned by the Court. This led directly to an
18 undetected absence of valuable State property,
19 including, but not limited to, a desk and a couch and a
20 computer.

21 Provide effective super -- they failed
22 to provide effective supervision and control over
23 purchasing procedures which led directly to inadequate
24 cost control methods, including the rebidding of

1 purchases of goods and services rather than using a
2 large series of change orders. This encouraged the
3 waste of State funds.

4 The failure by the justices,
5 individually and collectively, to carry out the
6 necessary proper administrative activities constitute a
7 violation of the provisions of Canon 1 and Canon 2 of
8 the West Virginia Judicial Code of Conduct.

9 Thank you, Mr. Chairman.

10 CHAIRMAN SHOTT: Thank you, Counsel.
11 Article III.

12 MR. HARDISON: Thank you, Mr. Chairman.
13 Article III relates specifically to Justice Allen
14 Loughry.

15 And contrary to the oaths taken by
16 Justice Loughry to support the Constitution of the
17 State of West Virginia, and while in the exercise of
18 the functions of the office of justice, Justice Loughry
19 did - on or about June 20th, 2013 - cause a certain
20 desk that is colloquially known as the -- as a Cass
21 Gilbert desk, to be transported from the State Capitol
22 to his home, and did maintain possession of such desk
23 in his home, where it remained throughout his term as
24 justice for approximately four and one half yaysr.

1 That is in violation of the provisions
2 of West Virginia Code Chapter 29-1-7(b), which
3 prohibits the removal of original furnishings of the
4 State Capitol from the premises.

5 And Justice Loughry did further cause
6 the expenditure of State funds to transport the desk to
7 his home and further refused to return the desk to the
8 State during that time period.

9 And constitutes the use of State
10 resources and property for personal gain in violation
11 of the West Virginia State Ethics Act which is found in
12 West Virginia Code Chapter 6B-2-5, and is also in
13 violation of Canon 1 of the West Virginia Code of
14 Judicial Conduct.

15 CHAIRMAN SHOTT: Thank you, Counsel.

16 Article IV.

17 MR. HARDISON: Article IV also relates
18 to Justice Loughry individually. And contrary to the
19 oaths taken by him to support the Constitution of the
20 State of West Virginia and while in the exercise of the
21 functions of his office of justice, Justice Loughry did
22 - beginning in or about December 2012 - intentionally
23 acquired and used State government computer equipment
24 and hardware for predominantly personal use, including

1 a computer not intended to be connected to the Court's
2 network.

3 Justice Loughry also utilized State
4 resources to install such computer access services at
5 his home that were for predominantly personal use.

6 Justice Loughry also utilized State
7 resources to provide maintenance and repair of computer
8 services for his residence, resulting from
9 predominantly personal use.

10 All -- all of which acts constitute the
11 use of State resources and property for personal gain
12 in violation of the West Virginia State Ethics Act
13 found in West Virginia Code 6B-2-5 and constitutes a
14 violation of the prodici -- provisions of Canon 1 of
15 the West Virginia Code of Judicial Conduct.

16 CHAIRMAN SHOTT: Thank you, Counsel.
17 Article V.

18 MR. HARDISON: Article V also pertains
19 to Justice Loughry individually, and contrary to the
20 oaths taken by Justice Loughry to support the
21 Constitution of West Virginia, to faithfully discharge
22 the duties of his office, and while in the exercise of
23 the functions of his office, Justice Loughry did -
24 beginning in or about December 2012 - intentionally

1 acquire and use State government vehicles for personal
2 use, including using a State vehicle and gasoline
3 purchased utilizing a State-issued fuel purchase card
4 to travel to the Greenbrier on one or more occasions
5 for book signings and sales.

6 Such acts enriched his family and
7 constitute the use of State resources and property for
8 personal gain in violation of the West Virginia State
9 Ethics Act, which is found in West Virginia Code
10 6B-2-5, and also constitutes a violation of the
11 provisions of Canon 1 of the West Virginia Code of
12 Judicial Conduct.

13 CHAIRMAN SHOTT: Thank you, Counsel.
14 Article VI.

15 MR. CASTO: Thank you, Mr. Chairman.
16 Article VI also relates to Justice Loughry
17 individually, and notes that on or about May 19, 2017,
18 he did - in his capacity of Chief Justice - draft an
19 Administrative Order of the Supreme Court of Appeals,
20 bearing his signature, authorizing the Supreme Court of
21 Appeals to overpay senior status judges in violation of
22 the statutorily limited mandated maximum salary for
23 such judges, which overpayment is a violation of two
24 provisions of the West Virginia Code, 51-2-13 and

1 51-9-10.

2 His authorization of such overpayments
3 was a violation of the statutory law of West Virginia
4 as set forth in those sections; was an act of potential
5 violations of the provisions of West Virginia Code
6 61-3-22, relating to the crime of falsification of
7 accounts, with intent to enable or assist any person to
8 obtain money to which he was not entitled; was in
9 potential violation of the provisions of West Virginia
10 Code 5-10-45, relating to the crime of fraud against
11 the West Virginia Public Employees Retirement System;
12 and in potential violation of the provisions of
13 61-3-24, the false pretenses statute; all of which were
14 violations of the provisions of Canon 1 and Canon 2 of
15 the West Virginia Code of Judicial Conduct.

16 CHAIRMAN SHOTT: Article VII.

17 MR. ROSKOVENSKI: Article VII. That
18 said Justice Allen Loughry, being a Justice of the
19 Supreme Court of Appeals of West Virginia, unmindful of
20 his duties of high office, and contrary to oaths taken
21 by him to support the Constitution of the State of West
22 Virginia and faithfully discharge the duties of his
23 office as such Justice, while in exercise of the
24 functions of the office of Justice, in violation of his

1 oath of office, then and there, with regard to the
2 discharge of the duties of his office, did waste State
3 funds with little or no concern for the costs to be
4 borne by the taxpayer for unnecessary and lavish
5 spending in the renovation and remodeling of his
6 personal office, to the sum of approximately \$363,000,
7 which sum included the purchase of a \$31,924 couch, a
8 \$33,750 floor and other such wasteful expenditure not
9 necessary for the administration of justice and the
10 execution of the duties of the Court, which represent a
11 waste of State funds.

12 The Committee heard testimony from
13 numerous witnesses and has received into evidence
14 documents which reflect the spending of Justice
15 Loughry. The evidence shows the expenditure of
16 approximately \$363,000 for renovation and remodeling of
17 his personal office, \$31,000 for the purchase of a
18 couch, \$33,700 for the purchase of flooring and the
19 medallion of the State of West Virginia.

20 This evidence is specifically reflected
21 in Exhibit 52.

22 Thank you, Mr. Chairman.

23 CHAIRMAN SHOTT: Thank you, Counsel.

24 Article VIII.

1 MS. KAUFFMAN: Thank you, Mr. Chairman.
2 Article VIII relates to Justice Elizabeth Walker. This
3 Article relates to spending for renovation and
4 furnishings for her personal office. The -- the
5 Article VIII notes that Justice Walker's office was
6 remodeled less than seven yays prior. The sum for her
7 renovations was approximately \$131,000.

8 The Article notes that this sum is --
9 includes, but is not limited to, the purchase of
10 approximately \$27,000 that are listed as office
11 furnishings and wallpaper.

12 CHAIRMAN SHOTT: Thank you, Counsel.
13 Article IX.

14 MS. KAUFFMAN: Thank you, Mr. Chairman.
15 Article IX also refers to Justice Elizabeth Walker.
16 This Article refers to the waste of State funds with
17 little or no concern for the cost to be borne by the
18 taxpayer for spending in which she hired outside
19 counsel to author a legal opinion of the Court in the
20 case of Quicken Loans versus Walters in 2017.

21 As the Article notes, for which
22 competent assistance in the form of personal clerks was
23 provided, to facilitate the execution, and I will note
24 that this -- the evidence regarding this is located in

1 Exhibit 72, which was distributed yesterday to the
2 Committee.

3 CHAIRMAN SHOTT: Thank you, Counsel.
4 Article X.

5 MS. KAUFFMAN: Thank you, Mr. Chairman.
6 Article X relates to Justice Robin Davis. This Article
7 relates to the spending for renovation and remodeling
8 of her personal office. The sum of that was
9 approximately a half a million dollars. That sum
10 included, but is not limited to, one oval rug that cost
11 approximately \$20,000, a desk chair that cost
12 approximately \$8,000, and over \$23,000 in design
13 services.

14 CHAIRMAN SHOTT: Article XI.
15 Thank you, Counsel. Article XI.

16 MR. CASTO: Thank you, Mr. Chairman.
17 This one relates to Justice Davis individually. That
18 during the year 2014, she did, in her capacity as Chief
19 Justice sign certain forms of West Virginia-48 to
20 retain and compensate certain senior status judges, the
21 execution of which forms allowed the Supreme Court of
22 Appeals to overpay those senior status judges in
23 violation of the statutorily limited maximum salary for
24 such justices -- or such judges, excuse me, which

1 overpayment is a violation of the provisions of two
2 provisions of West Virginia Code, 51-2-13 and 51-9-10.

3 Her authorization of those overpayments
4 was a violation of the clear statutory law of West
5 Virginia, as set forth in those Code Sections, was an
6 act in potential violation of the provisions of West
7 Virginia 61-3-22, relating to the crime of
8 falsification of accounts with intent to enable a
9 person to obtain money to which he was not entitled;
10 and potential violation of the provisions of West
11 Virginia Code 5-10-45, relating to the crime of fraud
12 against the West Virginia Public Employees Retirement
13 System; and a potential violation of the provisions of
14 West Virginia Code 61-3-24, relating to the crime of
15 obtaining money by false pretenses; all of the above of
16 which are violations of the provisions of Canon 1 and
17 Canon 2 of the West Virginia Code of Judicial Conduct.

18 CHAIRMAN SHOTT: Article XII.

19 MS. KAUFFMAN: Thank you, Mr. Chairman.
20 Article XII relates to Chief Justice Margaret Workman.
21 This Article relates to the unnecessary and lavish
22 spending in the renovation and remodeling of her
23 personal office to the sum of approximately \$111,000,
24 which sum includes but is not limited to the purchase

1 of wide plank cherry flooring that we heard -- the
2 Committee heard testimony from -- from Mr. Canterbury.

3 CHAIRMAN SHOTT: Thank you, Counsel.
4 Article XIII.

5 MR. ROSKOVENSKI: Thank you,
6 Mr. Chairman. Article XIII relates to Justice Workman
7 potentially wasting taxpayer moneys regarding the
8 employment of individuals. The Committee heard
9 testimony from Steve Canterbury and Mr. Scott Harvey
10 that just -- that Justice Workman asked that Mr. John
11 Pritt be hired as an independent contractor to provide
12 IT services to the Court at approximately \$167,000 as
13 provided in Exhibit 40.

14 The testimony also indicated
15 Mr. Pritt's employment was not necessary.

16 Thank you, Mr. Chairman.

17 CHAIRMAN SHOTT: Thank you, Counsel.
18 Exhibit 14.

19 MR. CASTO: Thank you, Mr. Chairman.
20 Article XIV relates also to Justice Workman as an
21 individual count. This count notes that when she was
22 Chief Justice of the Supreme Court of Appeals in the
23 year 2015, that she did, in her capacity as Chief
24 Justice, sign certain West Virginia Forms 48 to retain

1 and compensate senior status judges, the execution of
2 which forms allowed the Supreme Court to overpay those
3 judges in violation of the statutorily limited maximum
4 salary for such judges, in violation of the provisions
5 of West Virginia Code 51-2-13 and 51-9-10.

6 Her authorization was a violation of
7 the statutory laws embodied in those relevant code
8 sections, was an act in potential violation of the
9 provisions of West Virginia Code 61-3-22, relating to
10 the crime of falsification of accounts with intent to
11 enable or assist any person to obtain money to which he
12 was not entitled; and in potential violation of the
13 provisions of West Virginia Code 5-10-45, relating to
14 the crime of fraud against the Public Employees
15 Retirement System; and potential violation of the
16 provisions of 61-3-21 -- 61-3-24 relating to the crime
17 of obtaining money, property and services by false
18 pretenses. And all of the above are violations of
19 Canons 1 and Canon 2 of the judicial -- the Code of
20 Judicial Conduct.

21 CHAIRMAN SHOTT: Thank you, Counsel.

22 And to the members, that concludes the
23 proposed numbered Articles. I'll call your attention
24 to page 13, the last paragraph, where the adoption of

1 this -- these Articles would reserve to us the ability
2 to propose further Articles of Impeachment and also to,
3 of course, reply to any answers that any of the
4 justices shall make when these Articles - if passed by
5 the House - would be served upon them.

6 I'm going to recognize the vice chair
7 to move the Articles -- move adoption of the Articles,
8 then we'll begin with questioning.

9 Vice Chairman Hanshaw.

10 VICE CHAIR HANSHAW: Mr. Chairman, I
11 move the Articles as presented be reported to the full
12 house with the recommendation that they be adopted.

13 CHAIRMAN SHOTT: Questions of counsel
14 regarding the -- the Articles? Questions of counsel?

15 Delegate Fleischauer.

16 MINORITY CHAIR FLEISCHAUER: Thank you,
17 Mr. Chairman. Could you repeat the reference you made
18 to the -- I'm not sure which Article that was. About
19 the process of collecting additional evidence or if it
20 is in the "Whereas" or "Wherefore" provision?

21 CHAIRMAN SHOTT: On page 13, line --
22 beginning on line 13, it just reserves to the delegates
23 the ability to -- any time hereafter, any further
24 Articles of Impeachment against any of these justices -

1 and also the right to reply to any answers which they
2 may make to the Articles that are served upon them.

3 MINORITY CHAIR FLEISCHAUER: So -- so
4 Mr. Chairman, are we going to be receiving answers from
5 the justices?

6 CHAIRMAN SHOTT: My understanding of
7 the process is that the Articles that are adopted by
8 the House will be served upon the Senate, which then
9 will serve them upon each individual justice, and those
10 justices will be afforded an opportunity to respond in
11 writing. That's my understanding of the process that
12 -- that we will be utilizing, although as I indicated
13 last night, the rules of the Senate haven't been
14 finalized yet, but that's apparently the direction that
15 they're gonna go.

16 MINORITY CHAIR FLEISCHAUER: But we
17 won't be privy to any answer before we vote or any
18 position that any of these justices might take on this
19 before we vote.

20 If they have a response to any of these
21 Articles, we're not gonna know about it. Is that what
22 your understanding is?

23 CHAIRMAN SHOTT: We won't know about it
24 before we act on these Articles, and -- and likely,

1 with the House will not know what response will be made
2 when they are presented these Articles.

3 I just note that each of the justices
4 were - as our rules provide - given the opportunity to
5 come before the Committee and testify, and of course,
6 two of them had counsel here throughout the process.

7 MINORITY CHAIR FLEISCHAUER: So with
8 response to the gentleman from Boone's question about
9 whether counsel has made an assertion about the
10 completion of the presentation of evidence in that
11 rule, is the answer to that "yes," or is the rule
12 changed to say that additional evidence may be at any
13 time hereafter, if we were to adopt these Articles?

14 CHAIRMAN SHOTT: The procedural rule I
15 believe you're referring to dealt with this Committee's
16 process, and the rule basically precluded a motion to
17 consider Articles of Impeachment until we were
18 concluded with the evidence before this Committee on
19 that particular subject of the Articles.

20 We -- as you'll recall from last night,
21 we inquired whether there was any additional evidence
22 that anyone wanted developed, and there was none. No
23 one from your caucus or our caucus asked for additional
24 evidence. So we have concluded the evidence before

1 this Committee.

2 I think there's a different issue
3 addressed in the Articles, and that is the ability of
4 the House to consider additional Articles based on
5 other evidence that may be developed, or perhaps on the
6 evidence that's already before this Committee.

7 So I think we're looking at two
8 different issues. And I will just - to offer assurance
9 to the Committee - the managers and the staff of the
10 judiciary committee will continue to - as I indicated
11 to one of our managers in response to his inquiry -
12 will continue to look to fortify the evidence that
13 would be necessary to present to the Senate, especially
14 in view of whatever rules that they may adopt as to the
15 admissibility or competency of evidence that they're
16 gonna consider.

17 MINORITY CHAIR FLEISCHAUER: Well, I
18 assume we would also be open to fortifying any
19 legitimate defense --

20 CHAIRMAN SHOTT: Certainly.

21 MINORITY CHAIR FLEISCHAUER: -- to any
22 of these.

23 CHAIRMAN SHOTT: Certainly.

24 MINORITY CHAIR FLEISCHAUER: Mr.

1 Chairman, have you given some thought to how we're
2 going to proceed today? I was wondering in particular
3 whether the minority party would - since this is the
4 first time we've seen this, and I presume any other
5 member has seen these - would in -- have an opportunity
6 to have a recess so that we could discuss these?

7 CHAIRMAN SHOTT: Well, certainly that
8 motion would be considered. The -- every member of the
9 Committee has had the opportunity to hear the same
10 evidence, and basically what our staff has done is
11 looked at that evidence and see what evidence would
12 justify these Articles, so I don't think in terms of
13 surprise as to any evidence, that's -- that should not
14 be the case.

15 However, if -- if there needs to be
16 some kind of a brief recess, I do note that the press
17 release that was released last week demanded immediate
18 action on Articles of incorporation -- Articles of
19 Impeachment that certainly the minority party had not
20 seen up to that point.

21 So we're going to move along. If
22 there's a need for some brief recess, I think that's --
23 you can make that motion, we'll see how it -- how it
24 fares in the Committee.

1 MINORITY CHAIR FLEISCHAUER:

2 Mr. Chairman, I don't think the -- as I recall it, I
3 don't think that press release said "immediate."

4 However, I do think there are a lot of
5 words in this 14-page document that we really need to
6 consider the implications of them for each and every
7 justice in the third branch of government.

8 We are proposing something monumental,
9 which is removing all of the members of the third
10 branch of government, and that is something that we
11 were not aware of, that this proposal would be made of,
12 until today, so I think that -- our proposal was that
13 we felt that there was sufficient information about one
14 of the justices, which we still believe. I -- the
15 majority -- all of our members believe that, but this
16 is far beyond that, and I think that at the very least,
17 I think we have to discuss that among ourselves and
18 that should be part of our discussion today.

19 CHAIRMAN SHOTT: And we will -- we'll
20 take questions and we will discuss the Articles, debate
21 the Articles and then move on to a -- a deliberation on
22 the motion that the vice chair made.

23 MINORITY CHAIR FLEISCHAUER: Okay.

24 Mr. Chairman, I have some questions I could start with.

1 CHAIRMAN SHOTT: Certainly, go ahead.

2 MINORITY CHAIR FLEISCHAUER: Thank you.

3 And I guess it would be questions of counsel, and I'm
4 not sure whether any one counsel wants to respond to
5 these or -- they are sort of -- I don't have my
6 questions written down in terms of a particular
7 Article. So --

8 CHAIRMAN SHOTT: I think if you offer
9 the question, I'm sure the appropriate counsel who
10 addressed that Article will be --

11 MINORITY CHAIR FLEISCHAUER: Okay. One
12 of the questions I have is a small question. I notice
13 that Justice Workman and Justice Davis are both charged
14 with violations that re -- relate to the signing of
15 West Virginia-48, but that Justice Loughry has not
16 been.

17 Is that because he did not sign any of
18 those forms during the period he was Chief Justice, or
19 for some other reason?

20 MR. CASTO: For the former reason. As
21 the lady indicates, we have not received - nor do we at
22 present believe that we will receive - any form WV-48s
23 signed by Justice Loughry.

24 It is our understanding that the audit

1 which was being conducted of the Court by the Internal
2 Revenue Service may have precluded him from signing any
3 of those forms during the first months of his tenure as
4 Chief Justice and may have led him to execute the
5 Administrative Order which is referenced in Exhibit 71.

6 MINORITY CHAIR FLEISCHAUER: And that
7 understanding is gained from where?

8 MR. CASTO: I'm not sure I -- I'm not
9 sure I understand. I mean, it's just what we have --

10 MINORITY CHAIR FLEISCHAUER: -- heard.

11 MR. CASTO: -- what we have -- yes.

12 MINORITY CHAIR FLEISCHAUER: Okay. Let
13 me ask a sort of more global cle -- question. Are --
14 do each of these Articles refer to all the grounds for
15 impeachment, or to some of the grounds for impeachment?

16 MR. CASTO: These Articles, I think,
17 were drafted - my understanding - based upon the
18 precedent from the Articles in the last impeachment
19 before this body, which was, of course, the impeachment
20 of Treasurer A. James Manchin, and at that time, the
21 counts of impeachment were taken collectively.

22 Each of the Articles was a component
23 part. So it would be up to the Senate to determine
24 precisely how they weighed each of the Articles and to

1 which of the standards of impeachable grounds each of
2 the Articles applied.

3 It was our understanding in drafting
4 these that those impeachable grounds were the ones
5 which we, as staff, could see based upon the evidence
6 presented to the Committee, and that each of the
7 Articles would stand as a component for proving some or
8 all of those grounds.

9 MINORITY CHAIR FLEISCHAUER: So were
10 you -- was staff following the Articles of Impeachment
11 from 1989, or -- or -- and did those Articles not
12 specify what conduct -- because I thought he was
13 impeached for incompetency.

14 MR. CASTO: He was. But I think there
15 were other charges. I think neglect of duty. I think
16 -- I don't remember if corruption was involved, but I
17 think that it -- I think that it was.

18 And maladministration certainly was one
19 of the counts for which he was impeached.

20 MINORITY CHAIR FLEISCHAUER: Well, I
21 guess -- I guess I'm thinking about notice to -- and I
22 know these are confusing terms. But I'm thinking about
23 notice to people who are being accused of something
24 that could deprive them of a job and potentially

1 deprive all of us of all the remaining members of the
2 third branch of government -- government.

3 So do they know which ones of these
4 grounds are relevant in each of the Articles that they
5 are being charged with?

6 MR. CASTO: I will read to you from the
7 Articles of Impeachment against the Treasurer Manchin,
8 which are very similar, to my understanding, to the
9 Articles of Impeachment that were passed in 1875 which
10 was the last time it proceeded to a full hearing upon
11 the merits.

12 MINORITY CHAIR FLEISCHAUER: 1975?

13 MR. CASTO: 1875.

14 MINORITY CHAIR FLEISCHAUER: Okay.

15 Well, I guess that's my one question is with -- I
16 believe you if you say that these are based on those.

17 MR. CASTO: Yeah.

18 MINORITY CHAIR FLEISCHAUER: But that
19 impeachment in 1989 never went to trial.

20 MR. CASTO: It did not.

21 MINORITY CHAIR FLEISCHAUER: I think
22 there is a question about notice, do -- if we -- if
23 you're being charged with a crime, you know what
24 section of the Code you're being charged with, and do

1 these people have notice as to which of the words that
2 could be grounds for impeachment are relevant in their
3 particular case?

4 MR. CASTO: I think that that is, quite
5 frankly, a judgment that you all would have to make.

6 We have followed the historical
7 precedent to the best of our knowledge, and you know,
8 to the best of our information and belief, that was the
9 legal, proper and customary manner in which we would
10 proceed. We've looked at analogous federal precedent
11 with regard to the impeachment of President Clinton and
12 other impeachments that have been conducted at the
13 federal level and they proceed in essentially the same
14 manner, with a statement of counts, followed by the
15 various Articles for which the individual was to be
16 impeached.

17 So based upon precedent, that was what
18 we relied upon. If this Committee would wish to vary
19 that and make the Articles more specific, that would be
20 entirely your prerogative.

21 CHAIRMAN SHOTT: And counsel, let me
22 weigh in at this point, because I think we had this
23 discussion last night. When we met with the Senate
24 about the -- the procedural rules that they were

1 developing, it was clear to us that they were not -- if
2 we adopted any type of definition regarding what a --
3 for instance, maladministration or corruption meant,
4 that they would not be bound by that; that they would
5 leave it to their individual members as to what sort of
6 definition they wished to apply to these.

7 And not being a criminal proceeding and
8 really not being a civil proceeding, but kind of a
9 hybrid proceeding, that that's the way they were gonna
10 proceed. So part of our effort was not to box
11 ourselves in by using a term which they might not
12 accept.

13 MR. CASTO: And Mr. Chairman, I think
14 that is a correct statement. I think because of the
15 fact that this is essentially neither a criminal nor a
16 civil proceeding, but rather a political proceeding,
17 and in the highest, noblest sense of the term
18 "politics," in that it is a decision which has to be
19 left up to the individual judgment of the elected
20 representative who makes the determination either to
21 issue these Articles today or to vote to convict -- and
22 I use that word loosely.

23 -- to impeach an individual,
24 technically, it is an impeachment -- to impeach an

1 individual on the basis of the specified high crimes
2 and misdemeanors and other failings embodied in the
3 impeachable offenses given to us by the Constitution.

4 It truly is a matter of the individual
5 judgment of the elected law maker whether any or all of
6 those charges are met by any or all of the Articles.

7 What one man or woman may judge to be
8 neglect of duty, another man or woman may perhaps judge
9 to be incompetency or maladministration, or perhaps
10 even gross immorality, which we did not include in our
11 list of counts.

12 But it would be a -- a matter of that
13 individual's judgment.

14 MINORITY CHAIR FLEISCHAUER:

15 Mr. Chairman, I think the gentleman from Kanawha --

16 CHAIRMAN SHOTT: Are you finished with
17 your questions?

18 MINORITY CHAIR FLEISCHAUER: Not
19 completely, but I think he might have had a point of
20 order.

21 CHAIRMAN SHOTT: Is there a point of
22 order being raised?

23 DELEGATE PUSHKIN: I have a question.

24 CHAIRMAN SHOTT: A question of counsel

1 or --

2 DELEGATE PUSHKIN: (Nodded
3 affirmatively).

4 CHAIRMAN SHOTT: Because we're in the
5 midst of questions by Delegate Fleischauer. Let's
6 finish --

7 MINORITY CHAIR FLEISCHAUER: Well, I
8 can yield to him and continue later.

9 CHAIRMAN SHOTT: Delegate Pushkin,
10 question of counsel.

11 DELEGATE PUSHKIN: Thank you,
12 Mr. Chairman, and thank you for yielding.

13 Counsel, you stated that we were
14 following precedent on the last impeachment this state
15 went through in 1989 against Treasurer A. James
16 Manchin. At that time, were Articles deliberated
17 separately, were they voted on separately?

18 MR. CASTO: We are not sure how they
19 were actually handled at that time.

20 DELEGATE PUSHKIN: Can we find out?

21 MR. CASTO: I'm not sure that we could.
22 I'm not sure that that is -- is on the record of the
23 journals that we have available to us.

24 We've -- we've got a large amount of

1 the material that was compiled, but I don't think that
2 we necessarily know that.

3 DELEGATE PUSHKIN: Well, then, what --

4 CHAIRMAN SHOTT: To the gentlemen's
5 question, my recollection from our interview with one
6 of the former managers was that the Articles were
7 debated individually in the House, and that -- if I'm
8 not mistaken, perhaps one Article was not passed in the
9 House. That's my recollection, for what it's worth.

10 DELEGATE PUSHKIN: I have a couple more
11 questions. In 1875, I believe there was impeachment of
12 an auditor and a treasurer; is that correct?

13 MR. CASTO: Yes, sir.

14 DELEGATE PUSHKIN: So that would be
15 even closer to what we're -- because it was more than
16 one official in more than one impeachment.

17 MR. CASTO: Yes, sir.

18 DELEGATE PUSHKIN: Were the Articles
19 taken up separately?

20 MR. CASTO: They were, and as a matter
21 of fact, I can state that at that time at least one or
22 two, to my recollection, of the Articles with regard to
23 one or both of those gentlemen were not accepted by the
24 House. There's a gap in the sequence of numbering, so

1 the House did indeed - when it took up the Articles
2 individually - refuse to accept certain of those
3 Articles.

4 DELEGATE PUSHKIN: Okay. Well, then a
5 point of inquiry, sir.

6 CHAIRMAN SHOTT: Go ahead.

7 DELEGATE PUSHKIN: After hearing that,
8 that the precedent has been set to take up Articles
9 individually and to debate and deliberate on those
10 based on their individual merits, is it the intention
11 of the Committee to take up these Articles separately?

12 CHAIRMAN SHOTT: The -- the motion
13 before the Committee is to adopt the Articles in their
14 present form. The proper motion to change that would
15 be a motion to divide the question into the individual
16 subparts, and that is a proper motion, could be made at
17 any time.

18 So -- but the motion that's on the
19 floor at the moment is for the Articles to be adopted
20 as they're proposed, which would include all 14
21 Articles.

22 DELEGATE PUSHKIN: Then I would move to
23 divide.

24 DELEGATE SUMMERS: Point of order.

1 CHAIRMAN SHOTT: Gentlelady, what's
2 your inquiry?

3 DELEGATE SUMMERS: Were the -- were the
4 Articles divided in the Committee process, or just when
5 it came before the House?

6 MR. CASTO: And that's the question
7 that -- I thought, that was being asked by the Lady of
8 Monongalia, and I could not answer the lady from
9 Monongalia's question on that point. As I said, I
10 could answer the gentlemen from Kanawha's question
11 because his question was what was done in the -- in the
12 House of Delegates in its proceedings, but the Lady
13 From Monongalia's question, which I did understand to
14 be the division in the Committee, we don't have - to my
15 recollection - a complete and accurate record of the
16 Committee's deliberation upon that, but we do have a
17 record of -- of what the House did.

18 DELEGATE SUMMERS: Okay, thank you.

19 DELEGATE PUSHKIN: I move to divide the
20 question.

21 CHAIRMAN SHOTT: There is a motion to
22 divide the question. My understanding is it's not
23 debatable. Is that right, or no?

24 That is correct, according to our

1 resident parliamentarian.

2 Inquiry?

3 MINORITY CHAIR FLEISCHAUER: Yes.

4 Question of the gentlemen. Do you mean to divide by
5 Article?

6 DELEGATE PUSHKIN: Yes.

7 CHAIRMAN SHOTT: Motion is not
8 debatable. The motion is to divide the -- the
9 Articles, the 14 numbered Articles, into individual
10 Articles, and we'll take up each one individually,
11 subject to questions, debate and resolution.

12 All in favor of the gentleman's motion
13 will say "aye."

14 DELEGATES: Aye.

15 CHAIRMAN SHOTT: Opposed "no." The
16 "ayes" --

17 DELEGATE DEEM: Roll call. And a -- is
18 it proper to make another motion?

19 CHAIRMAN SHOTT: We've already gotten
20 past that point, Delegate Deem, and it appears to me
21 that the motion passed on voice vote, so we will
22 proceed with Article I.

23 Questions on Article I only at this
24 point.

1 DELEGATE DEEM: I didn't --

2 CHAIRMAN SHOTT: Delegate Miller.

3 DELEGATE MILLER: Mr. Chairman. Thank
4 you, Mr. Chairman.

5 Counsel, in regard to Article I, does
6 this involve the Public Employees Retirement System
7 only specifically, or does it also apply to the Judges'
8 Retirement System?

9 MR. CASTO: With regard to the crime of
10 fraud against the Public Employees Retirement System,
11 there is a specific statute on point which provides for
12 that.

13 There is, however, no statute within
14 the Judges' Retirement System that provides for any
15 crime or offense or any penalty for any crime or
16 offense for committing a fraud against the Judges'
17 Retirement System.

18 DELEGATE MILLER: Does it specify
19 Public Employees Retirement System or does it -- does
20 it call for any system under the control or operation
21 of the Consolidated Public Retirement Board?

22 MR. CASTO: It -- it specifies PERS, to
23 my recollection, sir.

24 DELEGATE MILLER: Okay. Are these the

1 only justices to sign those documents?

2 MR. CASTO: They are the only sitting
3 justices to have signed those documents. Justice
4 Ketchum, who, of course, has resigned from the bench,
5 signed those documents, and other persons who were
6 Chief Justices, we do know have signed those documents.
7 But they are the only current sitting justices.

8 DELEGATE MILLER: Is there any criminal
9 provision that affects this section of Code or these
10 particular acts outside of 61-3-22 that's referenced in
11 Article I.

12 MR. CASTO: Let me look. Well, I
13 think, obviously, that 5-10-45 actually is a criminal
14 statute, because it does relate to a crime of fraud
15 against PERS and creates a potential penalty.

16 And as noted, there is the question of
17 61-3-24, the false pretenses statute. Is this enabling
18 persons to obtain money for which they were not
19 entitled, is that obtaining under false pretenses?

20 DELEGATE MILLER: As a matter of
21 procedure, since we're referencing criminal code, and
22 we have to have a finding of fact, as I understand it,
23 in regard to any Article that we send, do we have to
24 have intent since we're referencing a criminal section

1 of Code?

2 MR. CASTO: I don't think you have to
3 have -- to define that further, I don't think you have
4 to have the intent as a Committee to state
5 authoritatively that a crime was committed. I think
6 you can state authoritatively that it appears possible
7 or likely or conceivable that a crime may or may not
8 have been committed, but you don't have to opine on the
9 record as to whether or not it was.

10 DELEGATE MILLER: If we -- if we are
11 making a finding of fact, do we not have to clearly
12 delineate that we believe something specifically
13 happened rather than hypothetically, possibly could
14 have happened?

15 And I understand -- when I say that, I
16 understand that this is more of a political proceeding
17 than it is a criminal body, but if we're called for a
18 finding of fact rather than the possibility, I mean, we
19 could allege the possibility of anything under West
20 Virginia Code as far as that goes.

21 MR. CASTO: And I think that's
22 precisely correct. The problem is that you are not the
23 body who would have the ability to determine
24 authoritatively whether a crime had not or had been

1 committed. That would be the jury in a case which was
2 brought after a charge was filed.

3 You would, however, have the ability to
4 say that it appeared to you possible that a crime had
5 been committed.

6 DELEGATE MILLER: So we're not the body
7 that issues criminal penalty sanctions.

8 MR. CASTO: That is correct.

9 DELEGATE MILLER: But do we have to
10 have a finding of fact that even though we cannot
11 prosecute criminally, that we have to have a finding of
12 fact that this was committed?

13 MR. CASTO: No. I think you could
14 state that it is a fact in your judgment that it may
15 have been. I mean, I think one can -- I mean, I think
16 one can say -- I mean, what I think you're trying to
17 say is, you have to have a provable offense -- you have
18 to be able to prove it, and this is not the body where
19 such offense could be proven, so this body --

20 Let me give you a hypothetical. If I
21 shot you on the floor of the House today, this body
22 could say that it appeared that a crime had been
23 committed. But that would be up to a jury as to
24 whether or not I was guilty of a cognizable offense

1 under West Virginia Code for the crime of -- of
2 shooting you.

3 I mean, I don't know if that helps, but
4 I think that's the distinction that I'm trying to draw
5 here, is this body can say it appears that an offense
6 was committed based upon the facts which we saw.

7 DELEGATE MILLER: Should -- should we
8 not have a higher standard at least, rather than that
9 it appeared something happened, that we believe
10 something happened, we -- we have a finding of fact as
11 outlined, that we believe something has been committed,
12 we're willing to vote up or down that a -- a violation
13 of the Constitution or the Code has been committed and
14 we're willing to move forward rather than just, "Well,
15 it could have happened"?

16 MR. CASTO: And I will say to the
17 gentleman, that is entirely your call. That is a
18 political judgment; that is a -- a pure judgment call
19 for the members of this body. That's not my call to
20 make.

21 DELEGATE MILLER: So the --
22 conceivably, members of the Committee could be voting
23 on something that they don't necessarily believe?

24 MR. CASTO: Well, I would hope not. I

1 would hope the members would only vote after their own
2 conscience and would follow their -- their conscience
3 to vote in a manner which was consistent with their
4 beliefs.

5 DELEGATE MILLER: Thank you. Thank
6 you, Mr. Chairman.

7 VICE CHAIR HANSHAW: Delegate Fast,
8 followed by Delegate Lovejoy.

9 DELEGATE FAST: Thank you, Mr. Vice
10 Chairman.

11 Counsel, if there was not evidence to
12 support the allegations, then we would be failing in
13 our duties if we passed this; wouldn't that be correct?

14 MR. CASTO: That is correct, sir.

15 DELEGATE FAST: Okay. And have we
16 received and seen evidence that these two named
17 justices did in fact sign and approve contracts
18 necessary to facilitate the overpayment of senior
19 status judges?

20 MR. CASTO: I would characterize that
21 as an accurate statement, sir.

22 DELEGATE FAST: So we have that
23 evidence before us.

24 MR. CASTO: Yes, sir.

1 DELEGATE FAST: Specifically.

2 MR. CASTO: Yes, sir.

3 DELEGATE FAST: Not appearing or
4 perhaps, but we have that evidence.

5 MR. CASTO: Yes, sir, in Exhibit 71, I
6 believe you have all that relevant evidence.

7 DELEGATE FAST: Okay. So if we pass
8 this Article, we are then making the allegation
9 by passage of the Article, and then the Senate has to
10 try the allegation and determine if it is in fact
11 proven or not proven. Is that correct?

12 MR. CASTO: Yes, sir.

13 DELEGATE FAST: Thank you.

14 VICE CHAIR HANSHAW: Delegate Lovejoy?

15 DELEGATE LOVEJOY: Thank you, Mr. Vice
16 Chairman.

17 Counsel, we -- we discussed this issue,
18 I'll say, a little bit yesterday, and it's one that --
19 that is a little troubling to me in that is it -- is it
20 your understanding - first in terms of evidence - that
21 we received the documents upon which this -- this
22 Article is -- or is based -- is that yesterday we got
23 the documents?

24 MR. CASTO: Yes, sir.

1 DELEGATE LOVEJOY: Yesterday?

2 MR. CASTO: Yes, sir.

3 DELEGATE LOVEJOY: And then did they
4 come, I guess, with a letter from the Court in response
5 to a subpoena?

6 MR. CASTO: Yes, sir.

7 DELEGATE LOVEJOY: Did that letter say
8 that all information had been provided?

9 MR. CASTO: No, sir, it is -- it is we
10 believe that there are probably other examples out
11 there, but these certainly are examples of WV-48s
12 signed by those justices.

13 DELEGATE LOVEJOY: So we served a
14 subpoena on the Court for documents; they sent us some
15 documents, said, "We're still looking, we'll send you
16 the rest of the documents," but we're not going to wait
17 to receive those documents if we move today. Correct?

18 MR. CASTO: That would be your call,
19 sir. Yes, sir.

20 DELEGATE LOVEJOY: And is it your
21 understanding under the -- the Administrative Order -
22 to go back to that - I was trying to pull the
23 Constitutional provision, and so Article III, Section
24 17 of the West Virginia Constitution says that "the

1 courts of this state shall be open and every person,
2 for an injury done to him, in his person, property or
3 reputation shall have remedy by due course of law; and
4 justice shall be administered without sale, denial or
5 delay." Correct?

6 MR. CASTO: That is correct, sir.

7 DELEGATE LOVEJOY: Now, the body of
8 government who is charged with the responsibility of --
9 of dealing with a conflict - apparent, perceived or
10 real - between a statute that we enact and the
11 Constitution is whom?

12 MR. CASTO: That would be the Court,
13 sir.

14 DELEGATE LOVEJOY: And so the Court
15 speaks through its orders, correct?

16 MR. CASTO: Among other things, yes,
17 sir.

18 DELEGATE LOVEJOY: Orders and
19 decisions, memorandum opinion?

20 MR. CASTO: Yes.

21 DELEGATE LOVEJOY: And in this
22 situation, the Court issued an Administrative Order,
23 apparently codifying a prior practice of finding - in
24 exigent circumstances - the Constitutional imperative

1 of Article III, 7 -- Section 17, required it
2 Constitutionally to keep certain senior status judges.
3 Right?

4 MR. CASTO: No, sir. And let me -- let
5 me clarify my answer.

6 DELEGATE LOVEJOY: Please, yes, sir.

7 MR. CASTO: That only applies with
8 regard to actions undertaken after the execution of
9 that order on May the 19th, 2017. The actions
10 specified in Article I are for acts undertaken prior to
11 that date.

12 So that -- the Administrative Order
13 which was in effect at that time was an Administrative
14 Order first signed in 1991 by Justice Miller, later
15 revised and signed in 1994 by Justice Neely, and which
16 confirmed that one could not pay senior status judges
17 in excess of the salary of a sitting circuit judge.

18 That being notwithstanding, that
19 practice continued for some time. It was initiated at
20 some point and continued for some time during the times
21 relevant to Article I.

22 What you're referring to, I believe, is
23 the Administrative Order signed by Justice Loughry in
24 2017. That is referenced in a separate count.

1 This is referring to actions undertaken
2 by Justice Davis and Chief Justice Workman when they
3 were Chief Justice of the Court at times prior to the
4 execution of Justice Loughry's Administrative Order of
5 29 May 2017.

6 DELEGATE LOVEJOY: I guess what I'm
7 wrestling with, is it -- is it your proposition with
8 the Article that the Supreme Court does not have the --
9 the ability to determine that Constitutionally - in
10 order to comply with Article III, Section 17 - that in
11 exigent circumstances - regardless of the order, the
12 entry of the order - that it has no power to make that
13 determination, specifically with regard to -- to the
14 administration of courts of law?

15 MR. CASTO: And I think the gentleman
16 will have to decide - as will the members of the
17 Committee - whether the Court is empowered by its
18 Constitutional authority to violate the statutory law
19 of the State in order to fulfill alleged Constitutional
20 duties. That's your -- that's your decision today,
21 sir, and I can't make that one for you.

22 DELEGATE LOVEJOY: And I think we
23 mentioned -- you mentioned yesterday if the Court felt
24 that there was a variance between a statute and the

1 Constitution, it is the ultimate arbiter of that
2 question.

3 MR. CASTO: Yes, sir.

4 DELEGATE LOVEJOY: And you mentioned
5 something about maybe they could have filed a writ of
6 mandamus, but -- and if you boil that down, they would
7 be filing a writ against themselves that they
8 themselves would decide.

9 MR. CASTO: Yes, sir, but that at least
10 would be a procedure in place rather than what could be
11 characterized as being -- making the decision solely
12 without reference to established procedures.

13 I mean, that, again, is a -- is a
14 political question and not a question -- and not a
15 decision that I can make.

16 Whe -- the aptness or appropriateness
17 of the Court's actions are ultimately for this
18 Committee, for this house and for the Senate to decide.

19 DELEGATE LOVEJOY: But do you believe
20 we have the authority, as the legislature, to not only
21 direct the Court as to how to run the courts of law,
22 but to actually impeach them over what we decide to be
23 a variance between the Constitutional directive to the
24 -- to the -- run the courts and keep them open?

1 MR. CASTO: If you believe that the
2 actions of the Court constitute a violation of the law
3 or the Constitution of this state, I believe that it is
4 your right as a legislator to bring a writ of
5 impeachment and to bring an impeachment action and to
6 vote upon that action.

7 You know, the impeachment of a public
8 official is a heavy, heavy thing. It's been -- not
9 been undertaken very often in this state, and only for
10 reasons for which there were clear and convincing
11 rationales, and it would determine upon, you know, how
12 this weighed upon you as to whether or not this was a
13 violation of the law and a violation of the
14 Constitutional prerogatives of either body.

15 I mean, that's -- that -- that, to me,
16 is really the issue before you.

17 DELEGATE LOVEJOY: Well, does it follow
18 logically by -- by -- and I say "you," not you,
19 individually, but as counsel for the Committee
20 presenting these Articles, does it follow -- are you
21 suggesting these judges who stepped in in exigent
22 circumstances for the administration of judges --
23 justice in certain counties are criminals?

24 MR. CASTO: That would be for others

1 and myself to decide.

2 DELEGATE LOVEJOY: Okay. Thank you,
3 Counsel.

4 Thank you, Mr. Chairman.

5 CHAIRMAN SHOTT: Delegate Summers,
6 followed by Delegate Miller.

7 DELEGATE SUMMERS: Thank you, Counsel.
8 When I read Article I, I see that we have stated in
9 here that they did sign the contracts, but there is
10 only a potential violation of 61-3-22, so if you
11 support that, you're just saying there's a potential
12 violation, not an actual violation.

13 MR. CASTO: I think the lady is
14 correct. It's placed there to state that it appears
15 that that action may or may not violate the provisions
16 of that statute.

17 It would be up to others to determine
18 whether or not a criminal violation of that statute had
19 occurred. The Committee would simply be stating that
20 it appeared that it could have been violated.

21 DELEGATE SUMMERS: If there was a
22 severe need for -- to keep these courts open, could the
23 Supreme Court not have spoke to the Governor and asked
24 him to add this to the call or have a special session

1 to get that bill through that was lost at the end of
2 the session?

3 MR. CASTO: If you're referring to the
4 Senate bill that pass -- I think it was 632, that
5 passed out of the Senate and came to us last yayr,
6 certainly. That or an equivalent bill in a prior
7 session could have been requested by the Court. The
8 Court often brings legislation to the attention of this
9 body and the attention of the Senate that it feels is
10 necessary and proper legislation to aid in the
11 administration of the court system.

12 DELEGATE SUMMERS: Are we aware of any
13 said request?

14 MR. CASTO: We are not.

15 DELEGATE SUMMERS: Okay.

16 CHAIRMAN SHOTT: Delegate Miller.

17 DELEGATE MILLER: Thank you,
18 Mr. Chairman.

19 Counsel, following up on the gentleman
20 from Cabell's inquiry on the -- on -- if -- if the
21 actions that we are contemplating jeopardize the status
22 of those that have served as a senior status judge, is
23 there -- is it staff's opinion, or is there a
24 preparation to make a presentation for criminal

1 prosecution against those senior status judges to the
2 prosecuting attorney of Kanawha County?

3 MR. CASTO: I have no knowledge of any
4 such -- of any such preparation.

5 DELEGATE MILLER: Is that conceivable?

6 MR. CASTO: I don't know that this
7 Committee has the power to bring recommendations for
8 criminal action.

9 DELEGATE MILLER: Are we able to make a
10 presentation or a complaint for investigation to follow
11 up for criminal prosecution?

12 MR. CASTO: I think any citizen could
13 make a complaint to law enforcement that they believe
14 that a crime had been violated, but I'm not aware of
15 any special powers residing in this Committee to do so.

16 DELEGATE MILLER: If we have what we
17 believe before us a criminal violation, do we have an
18 obligation to report any such crime?

19 MR. CASTO: I'm not sure of what your
20 ethical duties or other duties based in your capacity,
21 particularly, as a law enforcement officer would --
22 would require. I just don't know, to be honest with
23 you.

24 DELEGATE MILLER: Thank you.

1 Thank you, Mr. Chairman.

2 CHAIRMAN SHOTT: Delegate Isner.

3 DELEGATE ISNER: Thank you,
4 Mr. Chairman. Counsel, I have a question. As it
5 relates to Article I, and I guess to all Articles to
6 some degree, a "No" vote -- well, just -- let me say it
7 this way. Assuming for the moment that I find that
8 everything in Article I is true, a "No" vote could
9 simply be based on a member's belief that even if these
10 acts did happen, that it would not be an impeachable
11 offense, in their mind.

12 MR. CASTO: That is absolutely correct,
13 sir. You are the ultimate arbiter of what is or is not
14 an impeachable offense.

15 DELEGATE ISNER: Okay. So a "No" vote
16 could simply be to say to leave this issue to the
17 voters at the next election.

18 MR. CASTO: Absolutely, sir. That
19 would be a conceivable interpretation.

20 DELEGATE ISNER: Okay. Now, as it
21 relates to Article I specifically, there have been some
22 different arguments presented here. A "No" vote could
23 represent a member's belief that -- Counsel Altizer's
24 argument that the Code Section 51-9-10 and 51-2-13

1 would not preclude hiring senior status judges as
2 independent contractors.

3 MR. CASTO: Sir, you could -- you could
4 -- you could certainly rest your opinion of this
5 Article upon any number of cognizable bases.

6 DELEGATE ISNER: Okay. Fair enough.
7 Or it could represent a member's belief that the
8 Constitutional requirement to keep the courts open kind
9 of trumps the statute in place. Would that be correct?

10 MR. CASTO: That would -- that would
11 also be an equally cognizable basis. I mean, I'm not
12 going to speculate as to why someone would vote the way
13 they would upon any of these particular Articles.
14 That's the -- that -- the ability to make decisions of
15 that sort is the province of the elected official, sir,
16 and it's not mine to question.

17 DELEGATE ISNER: I understand.
18 Thank you, Counsel.

19 CHAIRMAN SHOTT: Delegate Lane.

20 DELEGATE LANE: Coun -- Counsel,
21 relating to senior status judges and filling in when
22 there's a vacancy in the different circuits, did we
23 have any evidence that there was a shortage of these
24 senior status judges upon which the Court could call to

1 fill the vacancies?

2 MR. CASTO: We've had no testimony to
3 that effect, no -- no presented evidence in the form of
4 any written material.

5 DELEGATE LANE: Okay, thank you.

6 CHAIRMAN SHOTT: Delegate Fluharty.

7 MINORITY VICE CHAIR FLUHARTY: Thank
8 you, Mr. Chairman.

9 Question for the Chair: When were
10 these Articles drafted? Were they drafted last night?

11 CHAIRMAN SHOTT: Yes.

12 MINORITY VICE CHAIR FLUHARTY: Did you
13 at any time communicate with Democratic members that
14 the Articles of Impeachment would be presented today?

15 CHAIRMAN SHOTT: I thought it was
16 pretty clear from our conversation last night that the
17 evidence was complete and that we would be moving
18 forward. So two and two usually equals four.

19 But no, as far as -- I didn't leave
20 here until almost 11:00 o'clock last night. I did not
21 call anybody at that hour.

22 MINORITY VICE CHAIR FLUHARTY: Did you
23 meet with Republican members prior to leaving?

24 CHAIRMAN SHOTT: I did have a caucus

1 with our Republican members, yes.

2 MINORITY VICE CHAIR FLUHARTY: How long
3 did you guys caucus?

4 CHAIRMAN SHOTT: I can't tell you for
5 sure. Maybe an hour, an hour and 15 minutes, something
6 like that.

7 MINORITY VICE CHAIR FLUHARTY: And you
8 never communicated with Chair -- with Minority Chair
9 Fleischauer --

10 CHAIRMAN SHOTT: No.

11 MINORITY VICE CHAIR FLUHARTY: -- that
12 Articles of Impeachment would be presented?

13 CHAIRMAN SHOTT: No. Similar to the
14 fact that I never got any -- any advance notice of your
15 all's proposed Articles of Impeachment. But no, I did
16 not.

17 MINORITY VICE CHAIR FLUHARTY: You're
18 comparing a press release to Articles of Impeachment?

19 CHAIRMAN SHOTT: I'm just giving --
20 telling you a fact.

21 MINORITY VICE CHAIR FLUHARTY: I
22 believe in your response to our press release last
23 week, you said you were blindsided by a press release.

24 CHAIRMAN SHOTT: True.

1 MINORITY VICE CHAIR FLUHARTY: Do you
2 not believe that presenting Articles of Impeachment
3 without telling minority members that you were going to
4 do so is not blindsiding them?

5 CHAIRMAN SHOTT: There is nothing
6 that's in those Articles of Impeachment that you
7 haven't heard in this chamber.

8 MINORITY VICE CHAIR FLUHARTY: I notice
9 some members of your party are here and they haven't
10 been here. Did you communicate with them directly to
11 make sure they're here today?

12 CHAIRMAN SHOTT: I -- I asked everyone
13 to be here this week, without exception.

14 MINORITY VICE CHAIR FLUHARTY: So did
15 you reach out to them last night?

16 CHAIRMAN SHOTT: No. But I'm -- I'm
17 not gonna testify. Let's move on. Okay?

18 If you have questions of counsel,
19 please ask your questions.

20 MINORITY VICE CHAIR FLUHARTY: Sure, I
21 do.

22 Counsel -- well, I know we're
23 supposedly taking these one by one now, but in going
24 through them, it appears that they could be

1 duplicitous. For example, Article -- Articles combine
2 spending throughout. Is it necessary for us -- I think
3 about it in a criminal law sense, elements of each
4 being separate.

5 Do you see a problem with potential
6 duplicitous Articles that we have presented today?

7 MR. CASTO: And as you know, I didn't
8 present any of the Articles on spending, so I'll have
9 to answer this in kind of a general --

10 MINORITY VICE CHAIR FLUHARTY: Sure,
11 I'm asking in a general sense.

12 MR. CASTO: That would be the entire
13 will of the Committee as to whether or not the
14 Committee -- now that this has been divided for the
15 consideration of the Committee, if the Committee felt
16 that any one of these Articles or any -- or several of
17 these Articles were duplicative and unnecessary, the
18 Committee could -- could vote to not recommend those
19 Articles to the consideration of the House.

20 MINORITY VICE CHAIR FLUHARTY: Article I
21 itself talks about justices signing and approving
22 contracts.

23 MR. CASTO: Yes, sir.

24 MINORITY VICE CHAIR FLUHARTY: Did we

1 have evidence that they each personally signed
2 contracts?

3 MR. CASTO: We do, with regard to those
4 two justices in Exhibit 71.

5 MINORITY VICE CHAIR FLUHARTY: And --
6 and that those contracts stated explicitly that it
7 would -- that overpayment would occur?

8 MR. CASTO: No, those contracts did not
9 state explicitly that overpayment would occur, but
10 based upon Mr. Canterbury and Ms. Racer-Troy's
11 testimony, Mr. Canterbury testified that they had a
12 person in the payroll office who notified the Court
13 when the cap in each individual senior status judge's
14 case had been reached -- I shouldn't say "case," I
15 should say "in each senior status judge's employment
16 period" had been reached, and that at that time, they
17 were transitioned over to a WV-48.

18 You heard testimony from Ms. Racer-Troy
19 yesterday that upon receipt of that information, the
20 WV-48s were taken to the Chief Justice and to the
21 senior status judge who then executed the contract and
22 set up the payment using a 1099.

23 MINORITY VICE CHAIR FLUHARTY: These
24 Impeachment Articles that were drafted last night, did

1 you participate in the drafting of them?

2 MR. CASTO: I'm counsel for the
3 Committee, sir. You can reasonably infer that to be
4 the case.

5 MINORITY VICE CHAIR FLUHARTY: Was
6 there any communication with the Governor's office
7 about the drafting of these Articles of Impeachment?

8 MR. CASTO: I certainly had no
9 conversations with the Governor's office. I haven't
10 spoken with the govern -- anyone at the Governor's
11 office in a very long time.

12 MINORITY VICE CHAIR FLUHARTY: That's
13 all I have for now. Thank you.

14 CHAIRMAN SHOTT: Further questions?
15 Delegate Miller.

16 DELEGATE MILLER: Thank you,
17 Mr. Chairman.

18 Counsel, in regard to Article I as it
19 relates to Article X -- I'm sorry, Article XI on page
20 10 and 11 as well as Article XIV beginning on page 11,
21 are -- are those duplicates? Are we having multiple
22 charges out of the same offense -- are -- or are -- is
23 it -- is it basically stacking the charges in the
24 criminal world?

1 MR. CASTO: I -- I would define it as
2 the latter. I would say it's basically stacking the
3 charges. Because now that we have a motion to divide,
4 it is entirely conceivable that this body could find
5 that one of those judges made a violation by that
6 action and did not -- and that the other did not.

7 So it's -- it's proffered for the
8 consideration of the Committee. The Committee will
9 make whatever determination it makes.

10 DELEGATE MILLER: Okay. As a matter of
11 procedure, hypothetically, if this body were to vote in
12 the affirmative for Article I, would that negate
13 Article XI and Article XIV as a duplicate charge
14 because we have already moved for that incorporation of
15 -- of those charges?

16 MR. CASTO: You certainly could make
17 that motion at that time.

18 DELEGATE MILLER: And -- and
19 Mr. Chairman, I'll apologize, this may go into other
20 areas, but as far as this Article, as well as others,
21 if further information is received or discovered to be
22 in our possession, does this general movement exempt us
23 from considering further charges, especially once that
24 our Articles could be ultimately passed by the House

1 and in the hands of the Senate?

2 CHAIRMAN SHOTT: I'm not sure I
3 followed your question. Let me make sure I understand
4 what you're saying. Once the Senate receives our
5 Articles, are you saying we could -- could we or could
6 we not supplement those Articles?

7 DELEGATE MILLER: Yes. At -- there are
8 -- there are things that -- that counsel has told us
9 that either is not to our knowledge or not in our
10 possession, and having seen the volumes upon volumes of
11 doc -- of documents that we have upstairs, it's -- I'm
12 not sure that we've been able - at least as one of the
13 managers - had the opportunity to fully vet everything
14 that's up there as it relates to particular charges.

15 Do we -- do we know that -- that we
16 have everything in our possession to document the
17 backup --

18 CHAIRMAN SHOTT: We -- we have
19 subpoenaed everything that we're aware of that exists.
20 So yes, we have -- we've subpoenaed records and sought
21 records from the auditor; we've subpoenaed records from
22 the Court; the Legislative Auditor's Office has sought
23 records.

24 We have everything that we know that

1 exists. Now, whether there's something out there that
2 we don't know at this point exists, that's a
3 possibility. But we have everything that we've been
4 informed or led to believe exists.

5 DELEGATE MILLER: So if -- if we have
6 been misled as, whether intentionally or
7 unintentionally, as we had testimony yesterday in
8 regard to the binder of information that had been --
9 that had been information that had been withheld, do we
10 have the -- the ability to consider future information
11 that may have either intentionally or unintentionally
12 been kept from us?

13 CHAIRMAN SHOTT: The short answer is
14 yes. The logistical answer is: It would be difficult.
15 Obviously, we're in session, in extraordinary session,
16 until the House comes back in and goes sine die, and
17 then after that, as far as the House acting on any
18 recommendations or this Committee being able to act
19 further, other than the managers, I would think that
20 would be a problem unless we're called back into
21 session.

22 That's my opinion just without giving
23 it a lot of reflection, but I think it would be a
24 logistical problem, but not an impossibility.

1 DELEGATE MILLER: And I -- I assume,
2 based on information that we have -- we've been given --
3 whether it was an official or unofficial meeting with a
4 representative of the Senate, as we charact -- as was
5 characterized earlier, that we have to notify each
6 justice of the specific charges and provide the
7 documentation to back up each charge likely within a
8 certain period of time. Are we prepared -- are we in a
9 position that we can do that in -- in a timely fashion?

10 CHAIRMAN SHOTT: I think we are, if
11 that's the rule that they adopt. And we have,
12 certainly, the evidence has been distributed among all
13 our Committee members that we've been looking at. And
14 we also have other documentation that has not been
15 submitted, just because it didn't appear to be
16 relevant. But we can deliver volumes of information,
17 if necessary, in a fairly short period of time.

18 DELEGATE MILLER: Generally, at the --
19 at the end -- I think it's on, likely page -- yayh, I
20 believe it's on page 13, beginning on line 23, when we
21 start talking about the maladministration, corruption,
22 incompetency, neglect of duty and certain high crimes
23 and misdemeanors, it was my understanding that
24 Committee members were gonna get a memorandum or some

1 type of briefing in addition to what we discussed
2 yesterday with the general outlines of the -- of that
3 terminology and as it has been used in other areas.

4 Has -- has that changed and we will not
5 be receiving those at this point?

6 CHAIRMAN SHOTT: The -- the briefing
7 that counsel gave us last night during executive
8 session was intended to provide some information upon
9 which to make some decisions of yourself as to how to
10 apply those terms, but no, we don't plan to provide any
11 type of memorandum.

12 As we discussed last night, the Senate
13 is not going to be bound by any definitions we adopt,
14 and we decided the best thing to do was let each member
15 make the decision for himself or herself as to what
16 these terms -- what these terms mean.

17 In many cases, it may just be like a --
18 has been observed about obscenity, "you know it when
19 you see it" but you might not be able to put it into --
20 into terminology. So no, to answer your question,
21 there won't be any further briefing, but it certainly
22 doesn't prevent any member from doing their own
23 independent research on that.

24 We've -- we've asked counsel to do as

1 much research as possible to provide that information
2 for guidance purposes, but I don't anticipate we'll be
3 doing anything further.

4 DELEGATE MILLER: Thank you,
5 Mr. Chairman.

6 CHAIRMAN SHOTT: Delegate Foster.

7 DELEGATE FOSTER: Question of counsel.
8 The Article I, as just was discussed, is saying it may
9 be duplicative of Article XI and XIV, and I was
10 wondering if evidence were to come forward saying that
11 not both were included but just one were, would we
12 still be able to go forward with that exception on page
13 -- or option to change information on page 13?

14 Or would we have to have a separate
15 Article for each?

16 MR. CASTO: It's -- it's a -- that's a
17 legitimate question. It may be safer to have a
18 separate Article for each. And -- or to have one -- I
19 mean, that's entirely up to the decision of the
20 Committee. I mean, that's why that you have the
21 options that are included in the Articles that were
22 presented to you.

23 DELEGATE FOSTER: Thank you.

24 CHAIRMAN SHOTT: Further questions?

1 Counsel, the chair has a question on --
2 we focused on the possible violation of West Virginia
3 law. Did we not receive testimony yesterday that the
4 conversion of this payment from a W-2 to a 1099 also
5 triggered a -- a failure to pay federal taxes that were
6 due as well?

7 MR. CASTO: It certainly did,
8 Mr. Chairman. That was Ms. Racer-Troy's testimony.

9 CHAIRMAN SHOTT: Specifically, I
10 believe, if the Social Security wage base was exceeded
11 -- or not exceeded, then there would be Social Security
12 taxes, but there's also Medicare taxes that are
13 assessed regardless of the amount of wages. Is that
14 correct?

15 MR. CASTO: That's my understanding,
16 sir.

17 CHAIRMAN SHOTT: So are you aware of
18 any cases in which the West Virginia Constitution has
19 been held to be superior to federal law?

20 MR. CASTO: No, sir.

21 CHAIRMAN SHOTT: Further questions?

22 Delegate Lovejoy, followed by Delegate
23 Fleischauer.

24 DELEGATE LOVEJOY: Thank you,

1 Mr. Chairman.

2 Counsel, I was reading the Constitution
3 further. Article VIII, Section 8 -- I don't know if
4 you have a copy of it in front of you --

5 MR. CASTO: I don't have one with me,
6 but I'll take your word for it.

7 DELEGATE LOVEJOY: Okay. It's -- it's
8 -- the heading is "Censure, temporary suspension and
9 retirement of justices, judges and magistrates;
10 removal," but within the body, the part that I want to
11 ask you about, it says, "A retired justice or judge
12 may, with his permission and with the approval of the
13 supreme court of appeals, be recalled by the chief
14 justice of the supreme court of appeals for temporary
15 assignment as a justice of the supreme court of appeals
16 or judge of an intermediate appellate court, a circuit
17 court or a magistrate court."

18 Is that the Constitutional provision
19 which would arguably empower the Supreme Court of
20 Appeals to call - for lack of a better term - retired
21 justices or judges to sit in senior status?

22 MR. CASTO: I think that's what gives
23 them the general authority, and there is further
24 specific authority, to my understanding, given by the

1 senior status judge statute.

2 DELEGATE LOVEJOY: And -- and so if we
3 have a statute that says, for instance, "You can't call
4 certain justices or judges to sit in senior status
5 because they've already hit the cap," wouldn't we be
6 limiting the Constitutional power of the Court to -- to
7 enact not only the "open courts" clause, but the
8 Article VIII, Section 8 part of the Constitution?

9 MR. CASTO: The only thing that I can
10 say to that is to argue my analogy, and previously
11 there was a provision within West Virginia Code which
12 stated that a judge or justice who had lost their
13 election be -- and was retired involuntarily by the
14 voters, let's say, could not be called as a senior
15 status judge or justice.

16 To my knowledge, the Court never
17 violated that provision at any time, and indeed, later
18 came to this body - or to the Senate, one - and asked
19 for a revision of that statute to change that
20 provision, and it was changed to allow a judge or
21 justice who had been defeated in an election to be
22 appointed as a senior status judge or justice.

23 So if the Court felt that it had the
24 authority to do so under its own Constitutional power,

1 there would have been no rational reason for the Court
2 to come and seek an alteration in the statute.

3 DELEGATE LOVEJOY: But just because
4 they come and seek alteration of the statute, does that
5 mean they're conceding their Constitutional authority?

6 MR. CASTO: I think they're conceding
7 that their Constitutional authority - like all
8 Constitutional authority - has limits.

9 DELEGATE LOVEJOY: I mean, for
10 instance, in the last session, we had several instances
11 where the executive came -- the SNAP bill, and said,
12 "We -- we don't really need your authority, but we
13 would like you to go ahead and tell us it's okay." For
14 whatever reason, there are instances when one branch
15 comes, without conceding Constitutional authority, and
16 for whatever reason, seeks to have legislative blessing
17 over a particular action.

18 I guess I still struggle with: How can
19 we tell them they can't appoint certain judges when the
20 Constitution says it is their -- it says, "Under their
21 inherent rule-making power."

22 MR. CASTO: And that would be again,
23 that is -- that is what you are here to decide.
24 Impeachment, by its very nature, is a Constitutional

1 question.

2 DELEGATE LOVEJOY: Thank you, Counsel.
3 Thank you, Mr. Chairman.

4 CHAIRMAN SHOTT: Delegate Fleischauer,
5 go ahead.

6 MINORITY CHAIR FLEISCHAUER: Thank you,
7 Mr. Chairman. Counsel -- thank you. Thank you,
8 Mr. Chairman, and thank you, Counsel.

9 I was wondering about the reference to
10 Article -- in Article I to Chapter 10-45 of the West
11 Virginia Public Employees Retirement System that the
12 gentleman from Boone referenced, I believe.

13 Do we have any evidence that there are
14 any -- if there's any conduct which involves the Public
15 Employment Retirement System rather than the Judicial
16 Retirement System?

17 MR. CASTO: Yes. It's our
18 understanding and belief that some of the judges who
19 were participating in the senior status judge program
20 were covered by PERS rather than by JRS.

21 MINORITY CHAIR FLEISCHAUER: Well, was
22 that presented to the Committee? You're saying that
23 you -- somebody told you that they were?

24 MR. CASTO: I'm saying that that's our

1 understanding is that they were. I mean, if -- if
2 further testimony needs to be taken, then that's the
3 responsibility of the Committee.

4 MINORITY CHAIR FLEISCHAUER: Well --

5 MR. CASTO: And you will note -- and
6 you will note that the language states "in potential
7 violation," not "in violation." That is a fact that
8 could be developed at trial in the Senate should the
9 Committee choose to proceed with this Article.

10 MINORITY CHAIR FLEISCHAUER: Well, I
11 understand that there -- this is the first time we've
12 ever heard of that, when -- with your statement today,
13 and I don't know to whom -- which ju -- judges or
14 justices you might be referring, but it seems a little
15 out of place at this point.

16 MR. CASTO: That's your determination.
17 That's -- again, that's not my determination to make.
18 If you believe it's out of place, you certainly have
19 the ability to make an amendment to strike that
20 language.

21 I -- that's entirely up to you.

22 MINORITY CHAIR FLEISCHAUER: Counsel,
23 did you ever see any language in any of the other -- I
24 guess you -- you haven't looked at the -- have you

1 looked at the A. James Manchin Articles?

2 MR. CASTO: Yes.

3 MINORITY CHAIR FLEISCHAUER: Okay. Did
4 you see any language in there about potential
5 violations of the law?

6 MR. CASTO: I don't recall. I have a
7 copy of that if --

8 (Counsel was handed a copy.)

9 MR. CASTO: Thanks, Pal.

10 No, for this reason. There were no
11 violations of law, of actual statutory law, charged
12 against Treasurer Manchin.

13 Q. Okay. And you didn't look back at the only
14 other instance of impeachment to see if they alleged
15 potential violations.

16 MR. CASTO: I have looked at those, but
17 it has been some time since I looked at those, and I do
18 not recall that they -- I believe that they did allege
19 violations of the law. I don't know that they utilized
20 the word "potential," but I know that those allegations
21 against the treasurer and auditor undertaken in the
22 1870s did allege violations of statutory law,
23 specifically with regard to the manner in which they
24 had received funds in a manner contrary to state law.

1 There was alleged illegality, but I
2 cannot remember in the manner precisely whether it was
3 alleged violation or the potential violation.

4 MINORITY CHAIR FLEISCHAUER: So we
5 don't know whether this potential violation language
6 has been included before or whether it's ever worked in
7 an -- in an impeachment proceeding.

8 MR. CASTO: I would -- I would have to
9 answer that is correct. We -- I cannot state that with
10 definitiveness at this time.

11 MINORITY CHAIR FLEISCHAUER: Okay,
12 thank you, Counsel.

13 Thank you, Mr. Chairman.

14 CHAIRMAN SHOTT: Further questions of
15 counsel? Further questions of counsel?

16 Because of the similarity of the --
17 these -- this count with -- I think it's 6, 11 and 14,
18 we might as well take questions regarding those
19 Articles at this time as well.

20 And just for clarity, I believe the --
21 the question was asked as to whether the adoption of
22 Article I would eliminate the Articles that are
23 individually characterized, and I don't think that's
24 necessarily so, because keep in mind, the Senate may -

1 for one reason or another dot -- not accept Article I, but
2 may be willing to accept one of the other individual
3 Articles.

4 So we probably would continue to con --
5 consider those Articles as well, even if Article I is
6 adopted.

7 Let's just go ahead and exhaust any
8 questions we have on Articles V, IX and XIV.

9 Are those the correct Articles, counsel,
10 that deal with this issue?

11 MR. CASTO: If you'll just give me a
12 second, Mr. Chairman, I'll confirm that for you.

13 I believe it's actually Article VI --

14 CHAIRMAN SHOTT: VI, I'm sorry.

15 MR. CASTO: -- which would -- which is the
16 question that Delegate Lovejoy asked me about Justice
17 Loughry's execution of the Administrative Order, Article
18 XI and Article XIV.

19 CHAIRMAN SHOTT: Okay. Those Articles are
20 open for questioning as well since they all involve the
21 same basic activity.

22 DELEGATE MILLER: Could you repeat the
23 Articles, please?

24 MR. CASTO: VI, XI and XIV, sir.

1 CHAIRMAN SHOTT: Are there questions?
2 Delegate Fluharty.

3 MINORITY VICE CHAIR FLUHARTY: Thank
4 you, Mr. Chairman.

5 Counsel, I was going through these
6 Articles. Where are the findings of fact?

7 MR. CASTO: Well, there -- there are no
8 findings of fact there. The Committee --

9 MINORITY VICE CHAIR FLUHARTY: Where?

10 MR. CASTO: I said, sir, there are no
11 findings of fact.

12 MINORITY VICE CHAIR FLUHARTY: There
13 are no findings of fact?

14 All right. Have you read House
15 Resolution 201?

16 MR. CASTO: I have, sir, but I have not
17 read it today.

18 MINORITY VICE CHAIR FLUHARTY: Well, do
19 you know that we're required to have findings of fact?

20 MR. CASTO: I think, sir, that my
21 understanding is - based upon the Manchin Articles -
22 that the term "findings of fact" which was used at the
23 same time, that the profferment of these Articles is
24 indeed equivalent to a finding of fact. The -- but

1 that, again, is your interpretation, sir.

2 MINORITY VICE CHAIR FLUHARTY: So based
3 upon the clear wording of House Resolution 201, it says
4 we're "To make findings of fact based upon such
5 investigations and hearings;" and "To report to the
6 House of Delegates its findings of facts and any
7 recommendations consistent with those findings of facts
8 which the Committee may deem proper."

9 I mean, you're -- you're aware how this
10 works in the legal system. You draft separate findings
11 of fact. I'm just wondering why we haven't done that.

12 MR. CASTO: Because, sir, that is not
13 the manner in which impeachment is done.

14 MINORITY VICE CHAIR FLUHARTY: Well,
15 the findings of fact in House Resolution 201 are
16 referenced separate from proposed Articles of
17 Impeachment. Am I wrong in that observation?

18 MR. CASTO: I don't believe that you're
19 wrong in that.

20 MINORITY VICE CHAIR FLUHARTY: Okay.
21 So my question is: Why are there not separate findings
22 of fact? Could -- maybe the Chairman could enlighten
23 us.

24 CHAIRMAN SHOTT: Yeah, the finding of

1 fact is subsumed -- subsumed into the Articles. We
2 wouldn't be making -- we wouldn't be offering these
3 Articles if we didn't find the facts that are based on
4 -- that are set forth in each -- excuse me -- in each
5 article.

6 So they're fundamentally encompassed in
7 the same document.

8 MINORITY VICE CHAIR FLUHARTY: So we're
9 not gonna follow the clear wording of House Resolution
10 201 which the Chairman has referenced numerous times
11 through these proceedings which we overwhelmingly voted
12 - I believe it was 89 to zero - overwhelmingly voted
13 on. We're not going to follow the House Resolution
14 201.

15 CHAIRMAN SHOTT: It is the
16 interpretation of the Chair that the adoption of the
17 Articles of Impeachment are a statement of what we find
18 as facts to justify those -- those articles. Keep in
19 mind, this is not either a civil or criminal procedure.
20 It is a hybrid procedure.

21 It's following -- we are following very
22 little precedent, but we are following the same
23 precedent that was followed in 1989 in the A. James
24 Manchin case.

1 MINORITY VICE CHAIR FLUHARTY: Would
2 you agree with me we are to follow House Resolution
3 201?

4 CHAIRMAN SHOTT: I believe we are
5 following House Resolution 201.

6 MINORITY VICE CHAIR FLUHARTY: That's
7 all I have.

8 CHAIRMAN SHOTT: Further questions?
9 Pardon. Delegate Fleischauer.

10 MINORITY CHAIR FLEISCHAUER: Thank you,
11 Mr. -- thank you, Mr. Chairman. I think the gentleman
12 has raised a valid point. If we look at the Resolution
13 that empowers this Committee to act, it -- it says that
14 we are to make findings of fact based upon such
15 investigation and hearing and to report to the House of
16 Delegates its findings of fact and any recommendations
17 consistent with those findings, of which the Committee
18 may deem proper.

19 And normally -- I know a lot of people
20 say in here, "We're not lawyers," but many of us are,
21 and I think it's Rule 52 that requires Courts to make
22 findings of fact and also that their recommendations
23 for any Resolution has to be consistent with those
24 findings of fact.

1 And I'm just a little concerned that if
2 we don't have findings of fact that there could be some
3 flaw that could mean that the final Resolution by the
4 House would be deemed to be not valid.

5 And I don't think it would be that hard
6 to make findings of facts, but I think that would be
7 consistent with the -- with the Resolution, and I think
8 that's what authorizes us to act at all, is the
9 Resolution.

10 So I think we -- if there -- there
11 would be some wisdom in trying to track the language of
12 the Resolution, and it would be consistent with any
13 other proceeding that we have in West Virginia that
14 when there are requirements of findings of fact and --
15 in this case, it's not conclusions of law, but it's
16 recommendations -- that we should follow that.

17 CHAIRMAN SHOTT: And to the -- to the
18 gentlelady, I appreciate your expression of concern,
19 but I also note that the proposed Articles that were
20 circulated with the press release did not contain any
21 findings of fact, so it seems a little bit disingenuous
22 at this point that Articles that were proposed by the
23 minority party now apparently are considered
24 insufficient because it did not include findings of

1 fact.

2 But my ruling is that the -- the
3 Resolution and what we've done here, any findings of
4 fact are basically the facts set forth in the proposed
5 Articles, upon which we recommend impeachment of the
6 justices who are named in each Article.

7 MINORITY CHAIR FLEISCHAUER:

8 Mr. Chairman, I know that the press release was not
9 perceived as welcomed, but it was the Wednesday before
10 our Monday meeting. It wasn't like we were
11 blindsiding. And we did not feel like we had the
12 option of -- of moving the question.

13 So if we couldn't do that within the
14 Committee, that was the action that we took. However,
15 I think the gentleman's point -- and -- and I guess --
16 I think we risk having a flaw in these Resolution -- or
17 in these Articles if we don't correct that, if we don't
18 follow the procedure that -- that the House did.

19 And I understand that's your ruling,
20 but I -- I think if we want to accomplish anything, we
21 should follow the Resolution.

22 Thank you, Mr. Chairman.

23 CHAIRMAN SHOTT: Your point is noted.

24 Further questions regarding any of

1 these Articles. Gentlelady -- Delegate Summers.

2 DELEGATE SUMMERS: Point of inquiry:
3 Does the Resolution finding of fact definition -- it
4 means something totally different to you as a lawyer
5 perhaps than it does to me as a nurse. Does that
6 definition brought forth in that Resolution mean the
7 legal definition in a criminal trial?

8 CHAIRMAN SHOTT: This -- as we've
9 indicated, this is not a criminal proceeding; it's not
10 a civil proceeding. It is a hybrid proceeding based
11 upon very undefined -- undefined guidelines in the
12 Constitution, and we have been adhering to past
13 practice which is only, to our knowledge, recent
14 practice since 1989 with regard to A. James Manchin.

15 So that's -- that's what we're doing.
16 We're following that precedent.

17 DELEGATE SUMMERS: Thank you.

18 CHAIRMAN SHOTT: Delegate Miller.

19 DELEGATE MILLER: Thank you,
20 Mr. Chairman. And kind of being the guy that started
21 us down this path, my concern whether -- whether we
22 believe that there are crimes, if you will, or not -
23 regardless of that - if -- if -- is there any chance,
24 or what would be the -- no, let me ask it a different

1 way.

2 Do we understand or have any idea of
3 how the Senate may perceive Articles that we send over
4 that do not specify a finding of fact as outlined in
5 our enacting Resolution?

6 My concern is, I don't want this to
7 blow up in our face, because I think we have some --
8 some violations that -- that we all find offensive, and
9 likely on one or more, we -- there's a -- there's a
10 good degree of possibility that we're gonna vote for
11 Articles of Impeachment.

12 But if -- if we are not technically
13 sound with our own charging document, can that blow up
14 in our face when it gets to the Senate?

15 CHAIRMAN SHOTT: Well, let me note that
16 the -- yayh -- the Resolution does not require us to
17 make findings of fact. If you look at the language
18 that led into it on line 11 of page 2, it just says,
19 "The House Committee on the Judiciary be, and it is by
20 this Resolution, empowered," and then it sets out what
21 we have the power to do, but I think it leaves pretty
22 much our own process to us.

23 If we do -- if it was necessary -- if
24 we felt necessary to actually outline separate facts,

1 we could do so, and then if we did so, we could -- we
2 should report those separate findings to the full
3 House, but I don't believe that the way the language of
4 the Resolution is -- is -- is drafted, it requires us
5 to do that. It simply empowers us to do that.

6 But if we choose to do that, then we
7 should report those separate findings to the full
8 House. That's the way I read the Resolution.

9 I understand that, just like any
10 Resolution, it's subject to different interpretations,
11 but the word "empowered" to me does not require us to
12 do that; it just gives us the authority to do that.

13 DELEGATE MILLER: Having -- having been
14 somewhat enlightened on the potential thought process
15 of the Senate, would it be prudent for us to do that?

16 CHAIRMAN SHOTT: Prudent is -- prudent?
17 I don't think it's necessary. If the members of the
18 Committee feel like they want to do that, we could do
19 that. We could make a brief recess and -- and propose
20 findings.

21 But I think the findings -- the facts
22 that have been stated in the -- in the Resolution or
23 the Articles, certainly all you could -- you could
24 regurgitate those in another form, but that's basically

1 the findings that we're making when we adopt an
2 individual Article, are the facts that are in that
3 Article.

4 DELEGATE MILLER: Thank you,
5 Mr. Chairman.

6 CHAIRMAN SHOTT: Uh-huh. Yes, Delegate
7 Byrd.

8 DELEGATE BYRD: Thank you,
9 Mr. Chairman. I think you alluded to this. I think we
10 just need to remind the Committee, obviously, that the
11 rules of the House apply. It's my understanding - and
12 I don't know what the Chairman's proposed schedule is
13 today - but obviously we'll have time - and correct me
14 if I'm wrong - to amend in Committee and amend on the
15 floor.

16 CHAIRMAN SHOTT: Correct.

17 DELEGATE BYRD: So I would just ask --
18 I don't want to make a motion, unless you thinks it's
19 proper. But I would ask that we defer voting on these
20 Articles, take questions from counsel, maybe have an
21 hour, hour and a half working lunch, to where both
22 members of all parties can have a chance to draft
23 amendments in Committee, if needed, and then come back,
24 vote on those and -- per Article if that would be a

1 motion that the Chair would entertain or -- accept that
2 recommendation.

3 CHAIRMAN SHOTT: Well, we are lumping
4 these particular Articles together to see how much time
5 that takes.

6 Let's see what questions we have. We
7 -- we'll be breaking for lunch, if that coincides with
8 the time needed to -- to consider additional amendments
9 and so forth, but there will be a period of time to
10 amend once we finish the questions, discussion and
11 we'll take a -- have an amendment stage so it may
12 coincide with the lunch hour, in which case your --
13 your recommendation would be realized.

14 Delegate Fluharty.

15 MINORITY VICE CHAIR FLUHARTY: Thank
16 you, Mr. Chairman. I just want to draw attention to
17 House Resolution 201 again, and primarily Section 4
18 which says we are to report to the House of Delegates
19 its findings of fact and any recommendations consistent
20 with those findings of fact.

21 Now, my reading of that is that the
22 findings of fact and the recommendations are separate,
23 so I'm worried that we're gonna move forward and this
24 is gonna be flawed and we're gonna have Constitutional

1 issues following that.

2 Is it the Chair's recommendation and
3 reading of Section 4 that they are not separate and
4 that Articles of Impeachment - which I would argue
5 would be the recommendations based upon the findings of
6 fact - are just globally acceptable?

7 CHAIRMAN SHOTT: Once again, if you
8 look at the language that leads in to those numbered
9 paragraphs, beginning at Line 12, we have the power to
10 do certain things. If we do choose No. 3, to make
11 findings of fact based upon the investigation - which
12 we are empowered to do - then No. 4 would require us to
13 report those findings of fact to the full house.

14 Once again, I don't think it's
15 necessary that we make those findings. I think it's
16 easy to conclude that factual determinations are the
17 basis for the Articles that we're seeking to have
18 considered here today. But if we would make separate
19 findings of fact, then my reading of that -- in the
20 entirety of that section is, we should report those
21 separate findings of fact and any recommendation.

22 Because keep in mind, we also are
23 charged to make recommendations about changes in
24 legislation, so we might choose to make findings of

1 fact separately dealing with the need for additional
2 legislation, in which case, if we did that, we would
3 report those findings of fact.

4 But the word "empowered" -- in other
5 words, I would say if -- if -- if this Resolution
6 required the findings of fact, it would say in Line 12,
7 "The Judiciary Committee be and it shall -- by this
8 Resolution, shall" and then go on down to Line 3 to
9 make findings of fact and so forth.

10 So I think the word "empowered" gives
11 us the ability to do so but does not require us to do
12 so. And we have not.

13 MINORITY VICE CHAIR FLUHARTY: Well,
14 there are also other important words, like "pursuant."
15 Now, I think it's clear at the end, following
16 Subsection (5): "Further resolved, That in carrying
17 out its duties pursuant to this Resolution."

18 I mean, that seems to me that we must
19 adhere to the wording of the Resolution and not pick
20 and choose what words we want to use.

21 I'm cautious about the wording here.
22 It seems to me the Chair's representation to the
23 Committee is that we may just go ahead and neglect
24 certain words that appear in our Resolution.

1 CHAIRMAN SHOTT: And to the gentleman,
2 I'm not suggesting we overlook any words. I think
3 words have meanings. It says "authorized" at the end
4 of Line 25, it doesn't say "shall," it says, "is
5 authorized."

6 If it said "shall," then obviously
7 that's mandatory, but "is authorized" means that we
8 choose what we wish to do regarding that authority
9 that's given to us in Lines 12 through 23.

10 MINORITY VICE CHAIR FLUHARTY: When the
11 Articles of Impeachment were drafted in the dark of
12 night last night, did anybody bring up the issues about
13 the findings of fact?

14 CHAIRMAN SHOTT: I don't recall that
15 discussion.

16 MINORITY VICE CHAIR FLUHARTY: So this
17 issue was not brought up until today.

18 CHAIRMAN SHOTT: If it was -- if it's
19 been brought up before, I don't recall when. That's my
20 best answer. I don't recall it being brought up
21 before.

22 MINORITY VICE CHAIR FLUHARTY: All
23 right, thank you.

24 CHAIRMAN SHOTT: Further questions?

1 Are you -- yes. Delegate Moore.

2 DELEGATE MOORE: Thank you,
3 Mr. Chairman. I'd like to ask a question of counsel.

4 MR. CASTO: Yes, sir.

5 CHAIRMAN SHOTT: Yes, go ahead.

6 DELEGATE MOORE: So currently, though,
7 as you've stated - and others who have stood at that
8 podium - we're using the precedence that's been set
9 before us by the A. James Manchin impeachment
10 proceedings; is that correct?

11 MR. CASTO: Yes, sir.

12 DELEGATE MOORE: Was there findings of
13 fact within those Articles of Impeachment that were
14 adopted by the House?

15 MR. CASTO: No, sir.

16 DELEGATE MOORE: Thank you.

17 CHAIRMAN SHOTT: Further questions?
18 Delegate Fleischauer.

19 MINORITY CHAIR FLEISCHAUER: Thank you,
20 Mr. Chairman. Thank you, Mr. Chairman. I would like
21 to actually respond to a delegate -- a question from
22 the delegate from Taylor -- I think she -- I don't know
23 whether she was asking you or asking me. But if I
24 might just expand a little bit on what findings of fact

1 typically is. Usually it's a list, a numbered list,
2 that "On this date, this happened," and so on.

3 And then the Resolution also says, "To
4 report to the House" "its findings of fact and any
5 recommendations consistent with those findings."

6 So one of the reasons you do that is
7 you -- you make a list of findings, and then your
8 recommendations have to tie in to those findings.

9 Because if we didn't do -- the purpose
10 of an investigation is to find facts, and then to make
11 recommendations prior to the trial.

12 So I don't know if that is helpful, but
13 that's normally how findings of fact are, and they're
14 required in all judicial decisions, that they -- and
15 that goes from the up and down in the court, in the
16 magistrate levels, they have to make findings. Before
17 they conclude anyone's guilty of, for example, domestic
18 violence, they have to say, "This person struck that
19 person on this date," and then so on.

20 So that's what I -- how I think of as
21 findings of fact. And I didn't realize this was in
22 here, and thank the gentleman from -- for pointing that
23 out to us, because I do think it's a potential flaw.

24 I did have another question, if I might

1 ask of counsel.

2 CHAIRMAN SHOTT: Proceed.

3 MINORITY CHAIR FLEISCHAUER: So did we
4 have any testimony that the judges were paid?

5 MR. CASTO: You mean that the judges
6 were actually paid --

7 MINORITY CHAIR FLEISCHAUER: Yes, and
8 that they received in excess --

9 MR. CASTO: -- that the senior status
10 judges collected moneys in excess. Yes, I think --

11 MINORITY CHAIR FLEISCHAUER: Do we have
12 a document on that?

13 MR. CASTO: I think we do. I think the
14 Auditor's documents that are in the file that we talked
15 about yesterday in Exhibit 71 clearly showed that they
16 were paid.

17 MINORITY CHAIR FLEISCHAUER: Can we go
18 back and look at that? I think that's really important
19 for us to make sure we understand what the evidence
20 was.

21 MR. CASTO: That's it, John. That's it
22 right there, 71. You've got it right there. I just
23 need it, yayh.

24 Dude, that's it. That's 71. That's

1 the -- right there. More than that. I need
2 everything. Yeah.

3 If you'll look in the file, in Exhibit
4 71, you will see --

5 MINORITY CHAIR FLEISCHAUER: 71 or 72?

6 MR. CASTO: 71.

7 MINORITY CHAIR FLEISCHAUER: Okay.

8 MR. CASTO: -- you will see a document
9 -- well, I'm not seeing it now. That's great.

10 MINORITY CHAIR FLEISCHAUER: Yeah.

11 MR. CASTO: I'm not seeing it in this
12 -- in this exhibit that I have in front of me.

13 MINORITY CHAIR FLEISCHAUER: I think 71
14 is the Administrative Orders. That's where -- where I
15 have it.

16 MR. CASTO: 71 has some of the
17 Administrative Orders, but we had --

18 MINORITY CHAIR FLEISCHAUER: Maybe it's
19 in the back?

20 MR. CASTO: Mr. Chairman, can we take a
21 break, see if we can find this piece of evidence? 65
22 may be it.

23 CHAIRMAN SHOTT: Committee will be at
24 -- committee will be at ease for a couple of minutes.

1 DELEGATE ROBINSON: Thank you,
2 Mr. Chairman --

3 CHAIRMAN SHOTT: Could you use your
4 microphone? I can't hear you --

5 DELEGATE ROBINSON: I just had -- while
6 we're -- while we're giving him a second, I had a
7 follow-up question of a similar -- similar question.

8 CHAIRMAN SHOTT: Follow-up question to
9 whom?

10 DELEGATE ROBINSON: Just a follow-up to
11 the same question the minority chair asked.

12 CHAIRMAN SHOTT: Your question is to
13 counsel?

14 DELEGATE ROBINSON: Yes.

15 MR. CASTO: Fire away.

16 CHAIRMAN SHOTT: Go ahead.

17 DELEGATE ROBINSON: In the -- in the
18 same realm of the gentlelady's question, do we also
19 have documents from PERS or retirement that they didn't
20 reimburse PERS or something to that sort? I mean, if
21 we're calling this -- these are our facts, do we have
22 those facts?

23 MR. CASTO: Let me say this to you,
24 sir: A 1099 form, by its very definition, does not

1 contain a withdrawal for payments to the PERS system.

2 DELEGATE ROBINSON: So we have proof of
3 a 1099 that they were paid the moneys, but do we have
4 proof that they didn't reimburse their retirement or
5 something just as -- was it Justice McHugh or something
6 did that in the past?

7 MR. CASTO: Justice McHugh did make
8 individual reimbursements, but he reimbursed the State
9 Treasurer, in my understanding, for everything that he
10 paid --

11 DELEGATE ROBINSON: Well, I -- my
12 question is -- is maybe kind of vague, but since we're
13 calling this our findings of fact --

14 MR. CASTO: No, I don't think your
15 question is vague at all. I think you asked me if I
16 understand --

17 DELEGATE ROBINSON: Can I finish my
18 question?

19 MR. CASTO: -- correctly --

20 DELEGATE ROBINSON: Can I finish my
21 question first?

22 MR. CASTO: I was trying to answer your
23 question.

24 DELEGATE ROBINSON: If we're calling

1 this our findings of fact, do we have the fact that
2 they didn't reimburse the retirement or they didn't
3 equal out somewhere that -- I mean, we have --

4 We have a 1099 that says that they were
5 paid. Do we have proof that they didn't reimburse or
6 they didn't --

7 MR. CASTO: And if you'll listen -- if
8 you'll listen to my --

9 DELEGATE ROBINSON: -- equal out --

10 MR. CASTO: -- my comment once again, a
11 1099, by its definition, is a payment made to an
12 independent contractor. It is a lump sum payment. It
13 contains no withdrawals.

14 DELEGATE ROBINSON: So your answer is
15 no, we don't have that information.

16 MR. CASTO: No, sir, that is not my
17 answer. Because --

18 DELEGATE ROBINSON: So we have -- a
19 1099 proves that we have paid the --

20 DELEGATE SOBONYA: Point of order,
21 Mr. Chairman.

22 CHAIRMAN SHOTT: What is your point of
23 order?

24 DELEGATE SOBONYA: I'd appreciate it if

1 we could have an answer by counsel before badgering the
2 counsel.

3 CHAIRMAN SHOTT: Yes. Yes, I'll ask
4 both parties to wait until the other party finishes the
5 question, and then the other -- the person asking the
6 question, please wait until counsel answers the
7 question before you start your next question.

8 DELEGATE ROBINSON: Counsel, when does
9 a person receive their 1099? Why is -- what is the
10 reason for filling out a 1099?

11 MR. CASTO: You don't fill out a 1099;
12 a 1099 is filled out by the payor, in this case, the
13 Court.

14 DELEGATE ROBINSON: What is the purpose
15 for filling out that 1099?

16 MR. CASTO: To ensure that the person
17 is paid.

18 DELEGATE ROBINSON: Okay. so it is
19 used when a person is paid, correct?

20 MR. CASTO: That's just what I said,
21 sir.

22 DELEGATE ROBINSON: Okay. Does it have
23 anything to do with the previous judges or the senior
24 status judges' retirement or any of that -- thing of

1 that sort?

2 MR. CASTO: Yes, sir, it does.

3 DELEGATE ROBINSON: It does?

4 MR. CASTO: Yes, sir.

5 DELEGATE ROBINSON: And it justifies
6 that at the end of the yayr, they didn't reimburse or
7 anything, their retirement system to be sure that they
8 comply with the Code section we have cited in the
9 Articles?

10 MR. CASTO: No, sir. The
11 responsibility to pay to the retirement system is not
12 to re -- the responsibility of the senior status
13 judges, sir. It is the responsibility of the Supreme
14 Court of Appeals of West Virginia which tenders that
15 payment to them, sir.

16 DELEGATE ROBINSON: So we're clear that
17 they didn't -- that at the end of the yayr, they were
18 paid over the -- what the Code states is circuit court
19 level, that we know for a fact that they were paid over
20 that level.

21 MR. CASTO: We know that from
22 Ms. Racer-Troy's testimony, that the entire reason they
23 were paid by 1099s and we know that from
24 Mr. Canterbury's testimony, that the entire reason they

1 were paid by 1099s was because they had already
2 exceeded the level of payment that was due to a circuit
3 court judge.

4 DELEGATE ROBINSON: Okay, thank you.

5 CHAIRMAN SHOTT: Counsel, do you want
6 to go back to the question asked earlier about the
7 evidence of payment?

8 MR. CASTO: Yes, sir. This is a
9 payment sheet from the FIMS system furnished by the
10 office of the State Auditor showing payments made to a
11 circuit judge by assignment, senior status judge, the
12 Honorable Thomas Keadle, which shows the payment was
13 made in the form of a 1099 to justice Keadle -- to
14 Judge Keadle, excuse me.

15 And then this is the form which he
16 filled out as an invoice, and there's another form, I
17 believe, similarly situated, and then at the end, we
18 have the WV-48 which is his independent contractor form
19 which is signed by Judge Keadle and endorsed in this
20 case by Chief Justice Benjamin.

21 CHAIRMAN SHOTT: Delegate Fleischauer.

22 MINORITY CHAIR FLEISCHAUER: Thank you.
23 I guess, what -- do we know what each of these retired
24 judges are receiving for their retirement benefits?

1 MR. CASTO: We do not. We only know
2 from the testimony of Ms. Racer-Troy and Mr. Canterbury
3 that at the time when the judge's per diem and
4 retirement benefits met the statutory limitation, that
5 following that period, they were paid utilizing the
6 mechanism that is in place that is embodied by this
7 West Virginia-48.

8 We also know that to be the case from
9 the Administrative Order entered by Justice Loughry
10 regularizing that process.

11 MINORITY CHAIR FLEISCHAUER: Well, I
12 guess where I'm going with this is: This document,
13 which is the invoice, cover sheet and Exhibit 65, it
14 says that the total invoice amount is \$9,787.50.

15 Do we know how much that exceeded --
16 whether -- is this document, in itself, evidence that
17 the salary of a -- a circuit judge was exceeded?

18 MR. CASTO: I would say that in this
19 case, it is evidence that -- it is evidence that that
20 salary was exceeded to the tune of at least \$9,787.50,
21 based upon my reading of that particular exhibit.

22 Because we have the testimony of
23 Mr. Canterbury and Ms. Racer-Troy and the
24 Administrative Order entered by Justice Loughry that

1 states that this provision was being used in examples
2 where those judges had already exceeded the salary cap.

3 MINORITY CHAIR FLEISCHAUER: Well, how
4 do we know, as one of the -- our members pointed out
5 yesterday, I believe, that -- that this is "senior
6 status judge per diem." That's what the document says.
7 How do we know that this particular document is not
8 valid per diem, that does not exceed the salary of --

9 MR. CASTO: I think you can tell that
10 by --

11 MINORITY CHAIR FLEISCHAUER: -- a
12 judge.

13 MR. CASTO: I'll tell you how you can
14 tell that. This is a document endorsed by Judge Keadle
15 and judge -- Justice Benjamin on April the 11th, 2013.
16 This is the WV-48 --

17 MINORITY CHAIR FLEISCHAUER: Okay, I'm
18 looking at the first page of 65, what the --

19 MR. CASTO: Right, this is the fourth
20 page of forty -- of 65.

21 MINORITY CHAIR FLEISCHAUER: Okay,
22 well, I'm -- I was looking at that --

23 MR. CASTO: Yeah.

24 MINORITY CHAIR FLEISCHAUER: -- and

1 that was all on the screen.

2 MR. CASTO: Yeah, yayh, and so I'm
3 trying to walk you through this. So this is the first
4 document that's actually executed. They're actually in
5 reverse order. This is the document that's executed by
6 Judge Keadle and Justice Benjamin to entitle Judge
7 Keadle to payment.

8 Once he is then entitled to payment as
9 an -- as a co -- independent contractor, he then
10 executes these two invoices - which are then shown -
11 for dates for which he sat the bench in Moorefield by
12 special assignment in the months of April and May and
13 he turns those into the Court on July 1 of that yayr.

14 It's then endorsed by Ms. Racer-Troy,
15 on, I believe, August 1 of that yayr, and then we see
16 this invoice cover sheet which then confirms that
17 payment was made by the Auditor's Office to Judge
18 Keadle based upon his services rendered under that
19 contract. And you can see that the date prepared is
20 August 1, 2013.

21 So at that point, the payment then
22 flows to Judge Keadle from the Auditor and Treasurer
23 based upon his performance of his duties under that
24 independent contract.

1 MINORITY CHAIR FLEISCHAUER: But
2 there's no evidence in these documents about the amount
3 that Mr. -- that Judge Keadle is receiving for
4 retirement, correct? And --

5 MR. CASTO: Within Exhibit 65, that
6 would be correct.

7 MINORITY CHAIR FLEISCHAUER: And there
8 are different levels of retirement.

9 MR. CASTO: Absolutely.

10 MINORITY CHAIR FLEISCHAUER: And I
11 don't know whether we asked this question - although I
12 think that it was certainly implied by some of the
13 questioning - if the Auditor made this payment,
14 wouldn't the Auditor be guilty of the same things that
15 the justices are being accused of?

16 MR. CASTO: Well, whatever -- whatever
17 responsibility the Auditor would bear is beyond the
18 scope of this proceeding. I mean, he's not a subject
19 of impeachment by the House, and the Auditor at that
20 time is now no longer the Auditor.

21 So I mean, whatever responsibility he
22 would -- he would have accrued is beyond the scope of
23 this proceeding's cognizance.

24 MINORITY CHAIR FLEISCHAUER: Well, I

1 think that this is pretty new territory. Have we
2 looked into whether our current Auditor has paid any of
3 these charges?

4 MR. CASTO: I haven't had any
5 discussions with the Auditor's Office on that. Others
6 have, but I certainly haven't.

7 MINORITY CHAIR FLEISCHAUER: Thank you,
8 Mr. Chairman.

9 CHAIRMAN SHOTT: Delegate Robinson,
10 followed by Delegate Miller.

11 DELEGATE ROBINSON: Thank you,
12 Mr. Chairman. Counsel, what's the -- can you tell me,
13 how will we -- go through the math with me. On a --

14 MR. CASTO: Sure.

15 DELEGATE ROBINSON: On this, are we
16 talking about a daily rate for a circuit judge, or are
17 we talking about an annual rate for a circuit judge?
18 What's the -- what's the Code imply?

19 MR. CASTO: Well, there are two rates
20 that would come into con -- with a -- with a circuit
21 judge, a circuit judge, a regularly-sitting circuit
22 judge - let's say any of the judges here in Kanawha
23 County - are paid on an annual salary basis. They're
24 paid \$126,000 a yayr every two weeks -- you know, a

1 percentage of that on an every-two-week basis.

2 DELEGATE ROBINSON: So in the Code, are
3 we saying -- explain the Code to me. Are we saying
4 that a senior status judge cannot get more per day --

5 MR. CASTO: No, sir.

6 DELEGATE ROBINSON: -- or are we saying
7 total for the year?

8 MR. CASTO: The total for the year,
9 sir.

10 DELEGATE ROBINSON: So we're saying
11 that a senior status judge can't get paid more than
12 \$126,000 annually?

13 MR. CASTO: Yes, sir. Because the idea
14 is, as I understand it, that the senior status judge
15 cannot get more for doing the work of a judge than a
16 regular judge gets paid.

17 DELEGATE ROBINSON: Okay, that makes
18 sense.

19 MR. CASTO: Yeah.

20 DELEGATE ROBINSON: And I've got -- and
21 my notebook's kind of funky here, but I've got the --

22 MR. CASTO: That's all right, I'll bear
23 with you.

24 DELEGATE ROBINSON: -- that's the --

1 I've got the Administrative Order, amendment of per
2 diem rate paid to senior status judges.

3 Now, go through the math with me there.
4 We're paying -- we're moving it from \$300 per day to \$4
5 -- \$435.00; is that the case?

6 MR. CASTO: That's my understanding
7 that that's the current per diem pay rate, yayh.

8 DELEGATE ROBINSON: So we're paying
9 them \$435.00, and go through me -- where's -- where's
10 the receipt -- or you're just showing the minority
11 chair there a sheet of the -- how the process of
12 payment goes?

13 MR. CASTO: Yeah, let's go back through
14 that one more time. So it proceeds from the West
15 Virginia-48 agreement, which is where the judge agrees
16 to perform the duties of a senior status judge, in this
17 case, from the date of April the 16th, 2013 until the
18 end of the year, to be paid at the rate of \$435.00.

19 Now, this -- this, however, is not the
20 agreement he would have executed originally. He would
21 have been filling out a W-2. I don't know -- as I told
22 the lady from Monongalia, I don't know the precise
23 pension status of Judge Keadle, but he was a long-term
24 circuit judge.

1 So let's assume, just for the sake of
2 argument, that he retired under the Judicial Retirement
3 System and collected \$90,000 per year, which is the
4 retirement pay of a judge under the Judges' Retirement
5 System.

6 He would then be able to earn
7 approximately \$36,000 sitting as a senior status judge
8 before his pay would equal that of a regular circuit
9 judge.

10 So --

11 DELEGATE ROBINSON: So he could work 75
12 -- around 75 days or so before he exceeds that?

13 MR. CASTO: That sounds about right.
14 75 to -- somewhere between 75 and 90 days --

15 DELEGATE ROBINSON: Okay.

16 MR. CASTO: -- he would -- he would hit
17 that mark.

18 So since he's probably working a
19 five-day week, you would assume about sixteen weeks or
20 approximately four calendar months. That seems to be
21 what is indicated here, because you'll note that Judge
22 Keadle starts the West Virginia-48 - which would be a
23 1099 payment - on or about the 16th of April, so in
24 this case, it's only been about three and a half

1 calendar months, but that is entirely possible that at
2 that point, he may have hit that per diem rate.

3 DELEGATE ROBINSON: Okay, and just --
4 or Judge Keadle is one of the ones we're making
5 accusation this -- this was a scheme created to let him
6 get paid over the \$126,000?

7 MR. CASTO: Yes, sir.

8 DELEGATE ROBINSON: So do we have a --
9 I mean, do we have some kind of result of his total --
10 do we actually know what his retirement payment was?

11 MR. CASTO: We do not, sir.

12 DELEGATE ROBINSON: Do we know at the
13 end of the year if he -- if he reimbursed or sent
14 something back to the retirement fund? I mean --

15 MR. CASTO: We do have testimony that
16 the only judge that ever did so with regard to -- to
17 repayment was Justice McHugh.

18 DELEGATE ROBINSON: When -- do --
19 typically, does the Administrative Director of the
20 courts, is he aware of a person's retirement status or
21 what they're paying in or paying out? Or is that
22 typical?

23 MR. CASTO: Well, you know, based upon
24 the testimony from Mr. Canterbury, who was the

1 long-time Administrative Director at the Court --

2 DELEGATE ROBINSON: I'm sorry.

3 MR. CASTO: He said -- he said that he
4 kept a record and that someone in the payroll office
5 kept a record, and that they kept a record when these
6 senior status judges' total compensation equaled the
7 salary of a senior status circuit ju -- equaled that of
8 a regular circuit judge, and the senior status judges
9 were then placed upon these WV-48s and paid in the form
10 of a 1099.

11 Now, Canterbury, again, was
12 Administrative Director for nearly a decade, or over a
13 decade. And that's -- you know, that's -- we have only
14 his testimony to go on that that was a function that
15 he, as Administrative Director, did indeed apparently
16 do.

17 DELEGATE ROBINSON: So the
18 Administrative Director, his testimony comes from
19 speaking to someone who's in charge of retirements for
20 the Supreme Court --

21 MR. CASTO: I don't think in charge of
22 retirements, sir. I think actually in charge of
23 payroll.

24 DELEGATE ROBINSON: So we have a person

1 -- we have an Administrative Director that testified
2 who was told by someone who was in charge of payroll
3 who was told by somebody that was in charge of the
4 Supreme Court's -- over the judiciary retirement fund.

5 MR. CASTO: I don't think that's an
6 accurate representation. I think that if you're saying
7 with regard to how these WV-48s were initiated -- now,
8 if you're talking about repayments, I think we have to
9 depend upon the testimony that was offered to us that
10 -- from Ms. Racer-Troy and from -- from Mr. Canterbury
11 that that was the only knowledge that they had of
12 anyone who had repaid.

13 What their basis of knowledge was, I
14 don't specifically recall at this time. Others may
15 have a better recollection than me.

16 DELEGATE ROBINSON: I think that's my
17 concern, Counsel, is that's our only basis of knowledge
18 and we're calling it a finding of fact -- we're using
19 that as a finding of fact for four out of 14 Articles.
20 I think that's my issue.

21 MR. CASTO: Well, and, again, you know,
22 that -- that's for you to weigh, sir. I mean, you are
23 -- you are the elected official, and it's entirely your
24 decision.

1 DELEGATE ROBINSON: And -- and just as
2 the gentlelady said, the Auditor would have received
3 all the payroll requests from the Supreme Court and
4 signed off on the checks to send to these people for
5 the WV-48 and for any 1099 or anything of that sort as
6 well.

7 MR. CASTO: No, I think what the
8 Auditor actually signs off is a treasury warrant which
9 then causes the Treasurer to issue the check, but your
10 point is well-founded, sir.

11 DELEGATE ROBINSON: Okay, thank you.

12 CHAIRMAN SHOTT: Further questions.
13 Delegate Miller.

14 DELEGATE MILLER: Thank you,
15 Mr. Chairman. Counsel, I think we went over this
16 earlier, that Article I applies to Public Employees
17 Retirement System only?

18 MR. CASTO: No, it applies to
19 everything. It specifically mentions PERS within it,
20 but I don't think that it only applies to judges who
21 were under PERS.

22 DELEGATE MILLER: When I asked earlier
23 in regard to the provisions of --

24 MR. CASTO: In a little bit --

1 DELEGATE MILLER: -- 51-9-10 that falls
2 under the judges' -- or their retirement system, I was
3 under the impression that -- that you informed me that
4 this was -- the payments were applicable to the Public
5 Employees Retirement System only and not the Judges'
6 Retirement System.

7 MR. CASTO: Let me say once again: The
8 allegation that there was fraud upon PERS would stem
9 only from those who were under PERS. I don't mean that
10 this Article applies only to judges who were retired
11 under PERS; it applies equally to judges who were
12 retired under JRS and PERS. Payments were made to both
13 judges who retired under JRS and PERS.

14 DELEGATE MILLER: So it's both systems
15 which is --

16 MR. CASTO: Yes.

17 DELEGATE MILLER: -- under the umbrella
18 of the Consolidated Public Retirement Board.

19 MR. CASTO: Yes. But there is only a
20 fraud statute for payments which were failed to be made
21 to PERS. JRS has no fraud protection.

22 DELEGATE MILLER: So if -- if these
23 individuals -- and I'm not really trying to split
24 hairs, but I'm trying to wrap my -- my head around

1 this. If they are a participant under JRS and not
2 PERS, is that a fraud violation?

3 MR. CASTO: No, there's no fraud
4 violation against JRS.

5 DELEGATE MILLER: Okay. Do we know of
6 those that are alleged to have been overpaid by being a
7 contract employee or a leased employee, I think is the
8 way it's referred to in the retirement code. Do we
9 know which plan that those individuals are a
10 participant of?

11 MR. CASTO: I don't have that
12 information, sir.

13 DELEGATE MILLER: Would that make a
14 difference to us in this?

15 MR. CASTO: It potentially could. I
16 mean, that's again -- that's your judgment call, sir.
17 It's entirely a policy question. That's why it says "a
18 potential violation."

19 DELEGATE MILLER: It's my understanding
20 - and correct me if I'm wrong, but I just -- I'll run
21 down this rather than just ask questions - it's the
22 responsibility of the contracted judge to pay their
23 taxes, fees to the IRS, State Tax Department,
24 Consolidated Public Retirement Board, as they are a

1 contract employee.

2 MR. CASTO: Yes, sir.

3 DELEGATE MILLER: Is that correct? Do
4 we know if the Supreme Court makes a report to the
5 Consolidated Public Retirement Board of any plan
6 participant that is issued a 1099 after they have come
7 off the W-2 and this scheme, let's call it?

8 MR. CASTO: We have no knowledge that
9 any such report was made by the Court.

10 DELEGATE MILLER: Do we have any
11 information from the Consolidated Public Retirement
12 Board that any of these judges involved in the W-2/1099
13 scheme, if you will, have made -- have acknowledged an
14 overpayment of their salary cap and made that
15 restitution to the Consolidated Public Retirement
16 Board --

17 MR. CASTO: The only --

18 DELEGATE MILLER: -- to make that
19 whole, I guess you'd say.

20 MR. CASTO: -- the only individual whom
21 we have any knowledge of having made any repayment was
22 Justice McHugh.

23 DELEGATE MILLER: In your opinion,
24 should we have that information from the retirement

1 board?

2 MR. CASTO: That's not my opinion to
3 make, sir. You're the ones who have to decide upon the
4 evidence. You're -- you're the ones who decide on
5 policy questions, not me.

6 DELEGATE MILLER: This is another
7 opinion call. Do you believe that what we have before
8 us is accurate and complete enough for us to move
9 forward and make an accurate determination on guilt or
10 innocence, if you will, regarding those that are
11 presented in Article I, Article VI, Article XI and
12 Article XIV?

13 MR. CASTO: The gentleman knows that's
14 a policy question. That's an ultimate policy question.

15 DELEGATE MILLER: There was a
16 determination to be made that this was presented --
17 that the evidence was concluded and complete. That's
18 what brings us here. Am I -- am I right in that
19 assumption?

20 MR. CASTO: Yes, sir, but you asked if
21 the -- if -- you were asking me to make the evidentiary
22 call as to whether it was sufficient, in my opinion, to
23 make the ultimate question. Now, I believe that the
24 evidence is accurate and complete enough to make the

1 allegations contained in the Article. The decision on
2 the ultimate question is up to the gentleman, not me.

3 DELEGATE MILLER: But it is the belief
4 that it is complete enough that we could move forward.

5 MR. CASTO: Yes, sir, I would -- I
6 would not -- and I would say this: I would not want to
7 be in the position of ever presenting to any member of
8 this body inaccurate information.

9 DELEGATE MILLER: Thank you.

10 Thank you, Mr. Chairman.

11 CHAIRMAN SHOTT: Delegate Hollen.

12 DELEGATE HOLLEN: Thank you,
13 Mr. Chairman. Question of counsel. A contractual
14 employee -- employees, are they even eligible to be in
15 the CPRB?

16 MR. CASTO: I don't believe that an
17 ordinary person who is hired as a contract employee
18 would be eligible to be under CPRB, no, sir.

19 DELEGATE HOLLEN: And as we heard
20 questions from the gentleman back here - I'm not sure
21 which one it was - that are we sure that they didn't
22 repay their contribution as a contractual employee and
23 they're not even eligible as a contractual employee to
24 be within the system?

1 MR. CASTO: In that -- in that status,
2 I don't believe that they would be eligible, that's
3 correct.

4 DELEGATE HOLLEN: So there would no be
5 no repayment then.

6 MR. CASTO: There would be -- there
7 would be no repayment to be made because the deduction
8 -- there would have been no deduction -- or no
9 computation of what that deduction should have been.
10 They would have to figure that out on their own and try
11 to make some sort of payment on their own.

12 DELEGATE HOLLEN: And follow-up
13 question, Counsel, is: If they're -- if they're
14 already receiving payments as a retired cit -- a
15 retired senior status judge and the intent is not to go
16 over the \$126,000 cap, then there would be no need to
17 be a 1099 contract employee; is that correct?

18 MR. CASTO: That is my understanding,
19 sir.

20 DELEGATE HOLLEN: Thank you.

21 CHAIRMAN SHOTT: Further questions?
22 Delegate Miller.

23 DELEGATE MILLER: Thank you,
24 Mr. Chairman. I apologize for being "that guy" today,

1 but due to the importance of where we're going with
2 this, I -- lots of things come -- come to mind.

3 And following on the gentleman's
4 questions, it -- would -- are we making an assertion
5 with an affirmative vote on this Article that it's
6 illegal for the Supreme Court to have someone under
7 contract once the salary cap is met?

8 Is that ultimately what we're -- what
9 we're heading toward or what we're -- we are asserting
10 with an affirmative vote here?

11 MR. CASTO: No, I think you are
12 asserting that it is - as the plain language of the
13 Article states - possibly or potentially illegal, and
14 then it would be a call -- basically you were feeling
15 that it was an impeachable offense or a potentially
16 impeachable rationale.

17 I don't think that there's any final
18 judgment implied upon the legality or illegality, but
19 merely that the act in and of itself was a potential
20 count which was triggering of an impeachable offense.

21 DELEGATE MILLER: So we're deciding
22 whether it's potentially unethical --

23 MR. CASTO: Yes.

24 DELEGATE MILLER: -- if you will, for

1 this -- for this employment to be held after the salary
2 cap has been met.

3 MR. CASTO: I think that's indeed
4 accurate.

5 DELEGATE MILLER: And ultimately, we
6 could be setting a precedent for the Supreme Court here
7 on out with our judiciary in regard to senior status
8 judges.

9 MR. CASTO: The effects are
10 speculative, but that -- there's certainly a
11 possibility that could be the case.

12 DELEGATE MILLER: Thank you. Thank
13 you, Mr. Chairman.

14 CHAIRMAN SHOTT: Delegate Pushkin.

15 DELEGATE PUSHKIN: Thank you,
16 Mr. Chairman. Counsel, I just wanted to see if I heard
17 this correctly. If one of the senior status judges in
18 question, if they were receiving their retirement under
19 JRS --

20 MR. CASTO: Yes, sir.

21 DELEGATE PUSHKIN: -- you said that
22 would be no violation?

23 MR. CASTO: Well, it would be no
24 violation in terms of the potential criminal violation

1 that is specified under PERS. There would be no
2 criminal violation for defrauding the JRS system in
3 that they had failed to receive additional payments to
4 the JRS system as a part of their payment via a 1099
5 instead of payment via a W-2.

6 DELEGATE PUSHKIN: Okay. Repeat the
7 last part of that. You kind of trailed off there. You
8 weren't close to the microphone.

9 MR. CASTO: I'm sorry. I've been up
10 here a while. I'm trying to conceptualize this one
11 more time, and I'll go back through it because it's
12 easier.

13 If you're paid using a W-2 - for those
14 of you who participate in state retirement; I don't
15 know if the gentleman does or not - you'll notice you
16 have a withdrawal for PERS.

17 That withdrawal would be on the W-2 to
18 every senior status judge who was a member of PERS up
19 until such time as they would transition over to this
20 system, at which time that would cease. That
21 underpayment to PERS could conceivably count as a fraud
22 against the PERS system.

23 If they were a member of JRS, the
24 Judicial Retirement System, they would have a

1 withdrawal made for additional contributions to the JRS
2 system.

3 There is no penalty in State Code for a
4 fraud against the JRS system. One could -- one could
5 commit any kind of fraud against JRS and there is no
6 penalty for it other than the generally-applicable
7 fraud provisions that would be available in common law.
8 There's -- there's simply no specific provision out
9 there for a violation of fraud against the JRS system.

10 DELEGATE PUSHKIN: And now that I hear
11 correctly that we don't know if any of the senior
12 status judges in question, if they were under the
13 public employees system or under the judges system.

14 MR. CASTO: As to the specific ones,
15 no, sir, we don't, and so that's why it's a potential
16 violation of the PERS code.

17 DELEGATE PUSHKIN: And this is based
18 just on the -- on the evidence that we received just
19 yesterday, correct?

20 MR. CASTO: Yes, sir.

21 DELEGATE PUSHKIN: And -- okay. What
22 -- did -- I mean, did we ask for more information as to
23 what retirement system these -- any specific judges
24 were under?

1 MR. CASTO: No, sir, I don't -- not to
2 my knowledge. I do know that we had testimony from
3 Canterbury -- to my recollection, Mr. Canterbury said
4 the majority of the senior status judges actually had
5 elected to be under PERS because of the fact that PERS
6 allowed for survivor benefits in a greater degree than
7 JRS does, although JRS usually pays more in compensable
8 benefits, it doesn't have the panoply of survivor
9 benefits that were under PERS.

10 And that's solely from -- from
11 Mr. Canterbury's testimony, and I think somewhat into
12 Ms. Racer-Troy's as well.

13 DELEGATE PUSHKIN: So -- but, I mean,
14 is it possible -- I don't know if it's likely but would
15 it be possible since we don't know - we haven't brought
16 up which specific senior status judges we're talking
17 about - that in any given year, all of them could have
18 been under JRS?

19 MR. CASTO: That's conceivable. But if
20 I were asked to opine as to the likelihood, based on
21 Mr. Canterbury's testimony, I would say that it's not
22 likely, but it's certainly conceivable.

23 DELEGATE PUSHKIN: Well, it would be
24 good to know before we vote on the -- on this

1 particular Article. But that's an opinion. Thank you.

2 CHAIRMAN SHOTT: Counsel, a question
3 from the Chair, or a follow-up question, because I
4 think there's some confusion about all these statutory
5 cites.

6 We do know, do we not, that the Supreme
7 Court had a policy - one of the few that it apparently
8 had from '91 to '17 - that it violated repeatedly
9 through the use of these WV-48s, correct?

10 MR. CASTO: Yes, sir.

11 CHAIRMAN SHOTT: Repeatedly. We also
12 know that at least one justice, who was overpaid
13 pursuant to this scheme, Justice McHugh, gave the money
14 back, but clearly the fact he gave it back indicates he
15 knew that it violated the statute that we were
16 referring to. I can't remember whether that's 51-9-10
17 -- is that the one that's the -- the sitting judge
18 statute --

19 MR. CASTO: I think so, sir.

20 CHAIRMAN SHOTT: -- limitation. So the
21 question is whether it's a further violation of the
22 criminal penalties set forth in 61-3-22.

23 MR. CASTO: That's correct.

24 CHAIRMAN SHOTT: So we do know it

1 violated their own policy repeatedly, and we know of at
2 least one instance where the statutory provision was
3 violated, and we do know, do we not, that the only time
4 they trigger the use of this provision is if -- if the
5 sitting judge, the senior status judge, could possibly
6 have his retirement reduced because he's running afoul
7 of the statutory limit.

8 MR. CASTO: I think that's exactly so,
9 sir.

10 CHAIRMAN SHOTT: Thank you.

11 Further questions of counsel? Delegate
12 Hollen.

13 DELEGATE HOLLEN: Counsel, just to
14 clear some -- maybe some misconceptions or some foggy
15 areas. We're dealing with PERS and JRS and under PERS,
16 if a judge that retires decides to stay under PERS or
17 is not eligible to be under JRS because he doesn't have
18 the yaysrs in service, that under PERS, there's a limit
19 or a cap of \$20,000 that you can earn before you start
20 getting your retirement deducted beyond that? Is that
21 correct?

22 MR. CASTO: With PERS?

23 DELEGATE HOLLEN: PERS.

24 MR. CASTO: \$20,000? Yes, that's my

1 understanding, sir.

2 DELEGATE HOLLEN: And with JRS that's
3 where the statute sits out that the sitting -- they
4 cannot make more than a sitting judge of \$126,000.

5 MR. CASTO: Well, in each instance,
6 they can't make more than a sitting judge. That's a
7 separate -- that's a separate statutory construct. The
8 difference is that under internal regulations of PERS
9 set forth in statute, they have a \$20,000 cap on
10 whatever they're -- additional on top of their PERS
11 earnings.

12 With regards to JRS, they would have
13 the opportunity to earn up to about \$36,000 before the
14 cap would be hit.

15 DELEGATE HOLLEN: Yes. And so to sum
16 it up, if one was under PERS, the cap of \$20,000 could
17 have been met and then they started being paid under
18 1099.

19 MR. CASTO: Yes, sir.

20 DELEGATE HOLLEN: And under JRS the
21 \$126,000 cap could have been met and then they would
22 have been paid underneath a 1099.

23 MR. CASTO: Yes, sir.

24 DELEGATE HOLLEN: Okay, thank you.

1 CHAIRMAN SHOTT: Further questions?
2 Further questions regarding any of these Articles?

3 All right. We're going to take an
4 early lunch break to give -- we'll -- the next -- next
5 part of our process will be to take amendments or any
6 possible amendments to this Article -- these Articles
7 that we've just been considered, so in order to give a
8 little time to perfect those amendments, we're gonna --
9 we're gonna be in recess until 1:00 o'clock. That
10 gives you a little over -- almost an hour and a half.

11 So please be back promptly at
12 1:00 o'clock. We're in recess until then.

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

16 CHAIRMAN SHOTT: We'll call the meeting
17 of the Judiciary -- Judiciary Committee back to order.

18 When we recessed, we were about to take
19 up amendments to Article I of the proposed Articles of
20 Impeachment.

21 Are there amendments to Article I? Are
22 there amendments?

23 There appear to be none. Then we'll
24 have -- take discussion regarding the consideration of

1 Article I. Discussion.

2 Delegate Lovejoy.

3 DELEGATE LOVEJOY: Thank you,
4 Mr. Chairman. I was trying to go through this one,
5 Mr. Chairman, and some of my concerns on -- on this
6 first Article. Let me just say as a factual predicate,
7 about 27 hours ago, I believe when we were over at the
8 Court, our committee was provided with responsive
9 documents to a subpoena that we issued last month and
10 that --

11 -- that -- the response from the Court
12 included a -- I don't know, a number of documents, some
13 of which are now incorporated and upon which are
14 predicated Article I, and the cover letter to that
15 response by the Court said that there were 2.3 million
16 files searched and that as a result of the search,
17 there were 12,700 documents that were responsive.

18 The Court was going through those, and
19 that it was not finished with going through those. It
20 had these initial documents, and that at a future date
21 - which I think they gave a date certain - they would
22 provide what they believed were the -- the remainder of
23 any responsive documents.

24 So I do have some concerns with -- with

1 perhaps the prematurity of what we're doing under that
2 situation.

3 But beyond that, substantively, I have
4 some concerns. You know -- and this applies, I guess,
5 to everything we do here. Impeachment, you know, by
6 definition, is a cancellation of an election. The
7 people -- the justices that we seek to impeach with
8 these Articles were elected by the citizens of West
9 Virginia to serve their terms.

10 Now, with that being said, we have
11 Constitutional duties and powers which certainly
12 include the power of impeachment. That's why it's in
13 the Constitution. It's a valid check and balance. But
14 I think that it needs to be a tool that is very, very
15 carefully and probably rarely and in -- utilized
16 because it, by definition, cancels elections.

17 We get in a situation where if we're
18 too quick in urging impeachment, then subsequent calls
19 for impeachment are taken less seriously. It's kind of
20 like as a child, the old crying wolf.

21 And so we can get to a situation
22 where -- where what some commentators call promiscuous
23 invocation of an impeachment often prevents it from
24 achieving its very purpose.

1 So when I go in and look at Article I,
2 in particular, there -- there are some issues that jump
3 out at me, and I appreciate counsel discussing them
4 with me. And this goes to the Constitution, and that's
5 what we're bound by and that's what is the basis of
6 some of my concerns.

7 I discussed with counsel that open
8 courts provision, that our Supreme Court has a
9 Constitutional mandate under Article III, Section 17,
10 to keep those courts open and exigent circumstances do
11 arise, whether it be from a judge being unable to serve
12 for a number of reasons, and at the end of the day, the
13 Constitution requires the justices to keep the courts
14 going.

15 And so I have some concerns that --
16 that our actions may implicate that Constitutional
17 mandate in Article I.

18 Secondly, Article VIII, Section 8 of
19 the Constitution has that inherent rule-making power
20 that discusses the Court's ability to -- to use retired
21 justices or judges for senior status service. So we
22 have a situation where we enact a statute that I think
23 for me, the testimony showed is -- it could be
24 susceptible to different meanings under -- under

1 principles of statutory construction, an ambiguous
2 statute is simply one that reasonable minds could
3 differ, and if that's the case, then we -- we may have
4 an issue with the statute in and of itself.

5 But regardless of how you feel about
6 the statute, you have a conflict - apparent, perceived
7 or real - of the statute and the -- the Constitutional
8 mandate of the Court. And I think -- I appreciate
9 counsel's candor that the body that is charged with the
10 duty of resolving that conflict is the Court, and I
11 think it's important that this specific conflict is
12 about the administration of courts, which to me, you
13 know, is even more -- more in that bailiwick.

14 So I tried, over the lunch break to --
15 to see if I could find any -- any other Constitutional
16 issues, because that's kind of a driving force, and I
17 came across the case of Bennett versus Warner.

18 I have copies that I'll be happy to
19 provide, but the cite is 372 S.E.2d 920, and that
20 actually has a third Constitutional provision that I
21 think is implicated by this Article.

22 That's under Article VIII, Section 3,
23 and sometimes it's called the -- the Judicial
24 Reorganization Amendment, but they cite in that case a

1 Syllabus Point going back to the '70s that says, "Under
2 Article VIII, Section 3 of the West Virginia
3 Constitution, the Court shall have the power to
4 promulgate rules for all of the courts of the State
5 related to process, practice and procedure which shall
6 have the force and effect of law."

7 And then the Court goes on to say, "As
8 previously noted, under Article VIII, Section 8 and
9 Section 3 of our Constitution, administrative rules
10 promulgated by the Supreme Court of Appeals of West
11 Virginia have the force and effect of statutory law and
12 operate to supersede any law that is in conflict with
13 them."

14 And that's -- that's a discussion that
15 goes from the Stern Brothers versus McClure decision in
16 1977 as well as State versus Davis in 1987.

17 So I guess I throw all that together -
18 and I understand it's a lot of legalese perhaps - but
19 to say that in an instance where there's -- there's
20 probably a good faith argument that there's -- there's
21 some conflict here between the Constitutional mandate,
22 perhaps four sections of the West Virginia Constitution
23 and a statute that -- that may be susceptible of
24 different meanings. That might not be the situation to

1 go in and try to -- to take out, I guess, what would be
2 currently half of the justices elected by the citizens
3 of West Virginia.

4 And so I just say for purposes of
5 discussion, that -- that for Constitutional purposes,
6 in this situation, I -- I have concerns that -- that we
7 may be acting beyond our scope.

8 Thank you, Mr. Chairman.

9 CHAIRMAN SHOTT: Further discussion?
10 Further discussion?

11 Delegate Fleischauer.

12 MINORITY CHAIR FLEISCHAUER: Thank you.
13 Thank you, Mr. Speaker -- I mean, Mr. Chairman.

14 I don't know whether to ask forgiveness
15 or to just assume it was a compliment. But I share the
16 gentleman's reservations about the conflict with the
17 Constitution. I also feel like we are lacking in
18 sufficient evidence to feel comfortable that we know
19 what each justice has done when and how -- what the
20 implications of that for the retired justices are.

21 I think we are missing a lot of
22 evidence that we could work on gathering, if need be,
23 but I don't think we -- it is clear-cut before us right
24 now that laws have been violated, that fraud has been

1 committed.

2 I think that these are mere
3 allegations, and when we are talking about - as the
4 gentleman said - taking out half of the current Court
5 and potentially the entire current Court, I think we
6 better have our ducks in a row.

7 And it seems to me that the paperwork
8 we have is not completely clear to me that this Code
9 Section has been violated.

10 There's arguments about how this --
11 this Code Section can be interpreted, and I think there
12 -- there is argument -- there are arguments that could
13 be made that the documents that we looked at don't
14 prove that there's any violation, and so for those
15 reasons also, I don't think -- I don't feel comfortable
16 proceeding on these Articles.

17 CHAIRMAN SHOTT: Further discussion?
18 Delegate Fast, followed by Delegate
19 Miller.

20 DELEGATE FAST: Thank you,
21 Mr. Chairman. Mr. Chairman, with all deference to my
22 colleagues, impeachment by definition is to bring an
23 accusation. That's what it is. It is not to prove an
24 accusation. The Constitution of the State of West

1 Virginia endows this body, the House of Delegates, with
2 the obligation to impeach. That is to bring the
3 accusations.

4 Necessarily, that means we bring
5 accusations based upon evidence. We just don't pull
6 accusations out of the air and plaster something on
7 paper. No, we have hearings; we subpoena witnesses; we
8 bring in thousands of pages of documents.

9 Thus based upon that, we then - if we
10 believe necessary - bring forth impeachment, i.e.,
11 accusations. That's what we have before us.

12 Mr. Chairman, in the context of just
13 this Article I, there's been some things said that I
14 would like to address. First of all, there's been
15 direct insinuation that this party - including the
16 Chairman - was working in the dark of night under cover
17 of darkness, insinuating that there was something wrong
18 going on there.

19 Well, Mr. -- Mr. Chairman, the reason
20 we were working in the dark of night is merely because
21 the sun went down. It was nothing else than that. And
22 I assure you, Mr. Chairman, as you know, that when we
23 were working, the lights were on. It was not dark in
24 there. So we were not in a smoke-filled room in the

1 back of the Capitol somewhere making some concocted
2 deal.

3 But that was the insinuation. And I
4 take offense at that, Mr. Chairman.

5 The -- last Wednesday, almost a week
6 from this day, there was published Articles of
7 Impeachment by the Democrat party --

8 DELEGATE CAPITO: Point of order,
9 Mr. Chairman.

10 DELEGATE ROBINSON: Are we talking
11 about Article I or are we talking about press releases
12 from last week?

13 DELEGATE FAST: I'm addressing what was
14 said during the dis --

15 CHAIRMAN SHOTT: I'm going to give him
16 some latitude just to see what -- where he's going with
17 this. I gave the gentleman, Delegate Lovejoy some
18 latitude on what he argued; I'm going to give this
19 gentleman some latitude.

20 DELEGATE FAST: These -- these Articles
21 that were published, without the Chairman even knowing
22 about it, published to the media, had Article I.
23 Article I was that Justice Allen Loughry -- and all of
24 these that were published by the opposing party, only

1 dealt with Justice Loughry.

2 -- "took possession of a valuable
3 antique Cass Gilbert desk and removed it from the State
4 Capitol to his home" --

5 CHAIRMAN SHOTT: To the gentleman,
6 let's not go through all of the Articles. If you --
7 there's a point that you think is relevant to what our
8 discussion of Article I, go ahead and make it. But
9 let's not go through each Article --

10 DELEGATE FAST: The -- the long
11 discussion was -- yes, Mr. Chairman. The long
12 discussion was that there were no findings of fact.
13 And I would merely point out that these Articles that I
14 happen to hold up that were published last Wednesday
15 had no more findings of fact than what we have before
16 us today that were brought out this morning. They
17 simply, again, make accusations.

18 Now, when these Articles were published
19 last week and the vice -- or the minority chairlady
20 just mentioned that she has concerns that maybe there's
21 more documents. Well, when these Articles were
22 published last week, statements were made that "We have
23 enough evidence to move forward with the impeachment of
24 Allen Loughry."

1 Another statement was made that "there
2 was hopes that the Chairman of Judiciary would take
3 this matter seriously and forward -- and move us
4 forward instead of dragging his feet as he has done so
5 far."

6 So now, Mr. Chairman, here we are -
7 after a very meaningful day of evidence that was
8 presented before this Committee yesterday, very
9 meaningful, multiple documents, very serious testimony
10 - now we have these Articles of Impeachment, and we are
11 on Article I, Mr. Chairman.

12 We have before us documentation that
13 Justice Margaret Workman and Justice Robin Davis, as
14 Chief Justices, signed and approved contracts
15 necessarily to facilitate -- necessary to facilitate
16 the overpayment of senior status judges, a violation of
17 the statutory limit.

18 If we want to make findings of fact, to
19 do that, you have to prove -- you have to have proof.
20 To do that, you have to have a trial. That is not the
21 job of the House of Delegates.

22 Again, we're not pulling this out of
23 the air; it's based upon thousands and thousands of
24 pages of documents and testimony of multiple witnesses.

1 So having seen all of that,
2 Mr. Chairman, I believe there is sufficient evidence to
3 conduct impeachment, again, the written accusation of
4 charges. Therefore, it would go to the Senate for a
5 trial where they have the statutory and Constitutional
6 duty to make findings of fact.

7 So having said that, Mr. Chairman, I
8 support Article I. I'm not saying that it is 100
9 percent proven, because that is not our duty. We are
10 bound by our duty, and our duty is to make these
11 allegations. I support Article I and urge its passage.

12 Thank you, Mr. Chairman.

13 CHAIRMAN SHOTT: Delegate Miller.

14 DELEGATE MILLER: Thank you,
15 Mr. Chairman. Following up on the gentleman from
16 Fayette's comments, I agree with him that bringing an
17 accusation against an elected official of the State of
18 West Virginia has to be based on evidence. That means
19 all of the evidence.

20 I have spent a career not as an
21 attorney, not -- and I'm certainly - as has been
22 pointed out to me before - not as esteemed or as
23 intelligent as some of the lawyers that are in this --
24 in this Committee or in this House.

1 But having took a person's life before
2 a judicial body, that has to be taken serious. My
3 goodness, that has to be taken serious. With an
4 impeachment proceeding, we are ruining, potentially,
5 four people's lives. Now, at the same time I'll take
6 -- I'll be the devil's advocate on the other side. I
7 have prosecuted people and not had any hesitation
8 whatsoever, and I do not here today have any hesitation
9 if we have the evidence to prosecute these individuals,
10 the remaining four justices of the Supreme Court, and
11 -- and do our Constitutional duty.

12 I do not hesitate in that in one -- one
13 small fact. As a matter of fact, Mr. Chairman, if
14 you'll remember, back when we had our first meeting, I
15 was asked, "Are you afraid of the Supreme Court" and I
16 answered, "Why would I be?"

17 "Good, I've got a -- I've got a job for
18 you." And I've taken that job very, very seriously. I
19 have been here on my own time trying to do my own
20 investigation when some have not.

21 I take this very, very serious. I have
22 tried to go out - even though I've been made fun of -
23 as far as some of -- some of what I've found out in
24 doing -- doing my work and getting statements and

1 affidavits from individuals to -- because this is so,
2 so serious.

3 And that's not indicative of any one
4 member of the Supreme Court or any other elected
5 official in the State of West Virginia. Because what
6 precedent -- it's clear what precedent we are setting
7 now - with common belief and discussion - could be
8 conceivably used down the road in the State of West
9 Virginia.

10 That's how serious. We are in
11 desperate times in -- here in the state. But we have
12 to have a provable case. I don't think we're there as
13 of yet.

14 Do I think that in Article I, that
15 there could be guilt? There very easily could be
16 guilt, very easily could be. I'm -- I'm not here to
17 say that. But we have to have a provable case. We
18 can't haphazardly, at a knee-jerk reaction, put
19 something together, take it down the hall, have it
20 implode and blow up in our face.

21 As a case manager, I take that
22 personally. Being one of five, if -- I take the
23 responsibility of representing the House of Delegates
24 very seriously when we go to the other side and try to

1 prosecute a case. I think that -- I think that's
2 desperately serious, because we are, again, dealing
3 with -- with human beings, not just a political
4 posturing that I've heard this proceeding take over --
5 especially over the last few days.

6 I hear -- I have heard the term "the
7 opposing parties." I have heard references made to a
8 factual basis that we are supposed to -- God, we are
9 supposed to be considering, but all we are doing is
10 referring to press releases and comments and -- and
11 snarks and things that have been made over the last few
12 days, over the last few weeks?

13 Is that really what we're all about? I
14 think this is -- this is a heavy -- I don't know if you
15 guys get it or not, but this is heavy. You are
16 creating history that you are going to have to live
17 with for the rest of your life and go from here on out.

18 This is not just a game.

19 Mr. Chairman, I heard you make a -- a
20 reference a couple of times in some of our discussions
21 that -- that you've been disappointed. I stand here
22 disappointed as well. I'm not sure that -- that due
23 diligence and a true bipartisan fashion has been used
24 to -- to craft this document or to get to the point

1 that we need to prosecute.

2 Again, I'll tell you, I've prosecuted
3 some very bad people in my time. That doesn't bother
4 me. But you have to do it in the right way.
5 Especially when dealing with overturning the will of
6 the people.

7 And I know we have a Constitutional
8 duty to -- to -- to do the right thing. But at the
9 same time, it is the will of the people, because if --
10 if the -- if the people put an incompetent person into
11 office - and I know we have the ability to -- to
12 overturn that in some cases - but if the people vote
13 for that, whose fault is it? And that may not be the
14 last time that we -- we hear that.

15 I believe that we are moving now at
16 light speed because a timeline gauntlet has been thrown
17 down by the Senate, whether that was officially or
18 unofficially. That's came to our knowledge. That
19 picked up the pace on this, regardless of what the
20 argument is along the way.

21 And for -- for us to be able to vote on
22 Articles of Impeachment to -- to send the State of West
23 Virginia into a Constitutional tailspin without having
24 the ability to 100 percent prove a case is simply a

1 discredit to our position and to the State of West
2 Virginia and the citizens that we represent.

3 I'm not here saying that there is
4 innocence or guilt in these charges in Article I, but
5 this gets us started down the path.

6 I think -- I think as -- as a case
7 manager, that after we have voted on them, we -- we
8 prove a case or disprove a case. I'm not sure that if
9 we don't give this Committee the full information, I'm
10 not sure how we can make an intelligent choice on
11 voting "yes" or "no" to this Article.

12 Right now -- and I know I was "that
13 guy," and I'll apologize to our counsel for being "that
14 guy" today with all the questions, but I had the
15 questions because I'm not sure that we have developed a
16 case that is certainly provable to the Senate regarding
17 Article I.

18 So what I believe is one thing; what I
19 can prove is something completely different. And right
20 now, I do not believe that we have fully vetted Article
21 I, so I will have to be a "no" vote on this, Mr.
22 Chairman. Thank you.

23 CHAIRMAN SHOTT: Delegate Isner.

24 DELEGATE ISNER: Thank you, Mr.

1 Chairman. That's a -- a tough act to follow. I'll say
2 that I share the concerns of Delegates Fleischauer and
3 Miller about whether or not there's enough evidence on
4 this particular point, and I certainly share Delegate
5 Lovejoy's concern about what the Court's obligation is
6 when we have a situation where there appears to be a
7 legitimate conflict between a series of statutes and a
8 series of provisions in the West Virginia Constitution.

9 I think that's put them in a very
10 difficult situation. So I'm gonna sit here and I'm
11 gonna assume that even if what was done with respect to
12 Article I was improper, what we have to do is decide
13 whether or not to impeach over these acts, whether or
14 not this rises to the level of an impeachable offense
15 where we overturn the will of the people.

16 If these justices believed that the
17 acts were necessary to keep the doors to the courts
18 open, to ensure due process for all litigants, to
19 ensure speedy trials and other Constitutional mandates,
20 then I give some level of deference to their judgments
21 about what is necessary to ensure access to the courts.

22 So in my view, this does not rise to
23 the level of impeachment, and I am not prepared to
24 overturn the will of the people on this point.

1 They can decide in the next election if
2 this issue rises to the level that these individuals
3 should be removed from office.

4 CHAIRMAN SHOTT: Further discussion?
5 Delegate Foster?

6 DELEGATE FOSTER: Thank you,
7 Mr. Chairman. In looking at this Article, what we have
8 here and what we've run into is a -- what seems to be
9 an atmosphere of the Court - and including all five
10 members - of a complete and utter disregard for the
11 value of the taxpayer dollar, and what's happened is,
12 as we've gone into this information more and more and
13 investigated more, issue after issue keeps coming up.

14 And out of these issues, this Article I
15 addresses probably the most severe issue that we have
16 in all of our investigation, plus also the most proven.
17 I mean, we have actual specific signatures of every
18 single justice saying that they want to -- or of these
19 two justices, actual signatures on a WV-48 form which
20 was specifically created with the intent of -- for the
21 reason of paying a judge above what a sitting --
22 sitting judge makes.

23 And I think this -- this being one of
24 the most damnable actions of members of the Court is

1 something that we should approve and should go forward
2 with. Thank you.

3 CHAIRMAN SHOTT: Before I recognize
4 Delegate Fleischauer who's already spoken once, is
5 there anyone who hasn't spoken which wishes to engage
6 in the discussion? Delegate Fleischauer.

7 DELEGATE SOBONYA: Over here.

8 CHAIRMAN SHOTT: Delegate Sobonya.

9 DELEGATE SOBONYA: Thank you,
10 Mr. Chairman. I support this Article No. I. The
11 highest court in West Virginia is the West Virginia
12 Supreme Court, and this Court should be an example to
13 the lower courts. They decide cases in controversies.
14 They're not to circumvent the laws that are created
15 here in this Legislative Branch.

16 Our Constitutional government
17 incorporates three separate but equal branches of
18 government, equal branches. The Supreme Court is not
19 an island unto themselves, and each branch was -- it
20 was designated and designed this way for our form of
21 government, that each branch checks the powers of the
22 others.

23 Our preamble of our State Constitution
24 says, it says, "through Divine Providence, we enjoy the

1 blessings of civil, political and religious liberty,
2 we, the people of West Virginia, in and through the
3 provision of this Constitution reaffirm our faith in
4 and constant reliance upon God and seek diligently to
5 promote, preserve and perpetuate good government for
6 the common welfare, freedom and security of ourselves
7 and our posterity."

8 And "good government" means following
9 the law, the law set forth in this branch of
10 government. We're one of three branches, and we set
11 the law. We create the law.

12 Article III, Section 3 also states in
13 the "Rights reserved to the people: Government is
14 instituted for the common benefit, protection and
15 security of the people, nation or community. Of all
16 its various forms, that is the best, which is capable
17 of producing the greatest degree of happiness and
18 safety, and is most effectually secured against the
19 danger of maladministration."

20 In this investigation that we have
21 participated in over the last few weeks, by this
22 Committee, it appears more evident than ever that the
23 Supreme Court did not act as an equal branch of
24 government, but as their own body of government.

1 They've acted as their own body. They
2 have operated without verbal or written policies that
3 pertain just exclusively to the Supreme Court, not even
4 to the lower Courts.

5 They've created a bifurcated system
6 where they pick and choose the laws that they wish to
7 follow.

8 We have set in Code 51-2-13, 51-9-10;
9 we have laws; we have the Ethics Act. And that is the
10 checks and balances.

11 Just because they Constitutionally have
12 the power to decide cases and controversies in the
13 highest court of our state does not mean that they are
14 above the law, that they can circumvent the law and
15 that they can pick and choose which laws they want to
16 follow.

17 Our system was designed and set up with
18 this checks and balances, and I was very much
19 disappointed, extremely disappointed, that I received a
20 letter - as all of you did on this Committee - dated
21 yesterday from the Supreme Court that was sent to our
22 Auditor, and we received copies of it.

23 And it says, "We are aware of the
24 advisory opinions issued by the West Virginia Ethics

1 Commission on the subject, which although instructive,
2 do not apply to the Judicial Branch of government."

3 The laws apply to the Executive Branch
4 of government; the laws apply to the Legislative Branch
5 of government; they apply to the Judicial Branch of
6 government if it's a lower court, but it doesn't apply
7 to the -- the West Virginia Supreme Court.

8 I believe that we have some evidence
9 here that we need to consider greatly. The people
10 depend on us to issue and maintain good government, and
11 I believe that this Article needs to be upheld. Thank
12 you.

13 CHAIRMAN SHOTT: Others desiring to
14 engage in the discussion before I rec -- recognize
15 Delegate Fleischauer?

16 Delegate Fleischauer.

17 MINORITY CHAIR FLEISCHAUER: Thank you,
18 Mr. Chairman. First, I would like to address the fact
19 that we just got the evidence about this yesterday.
20 There may have been evidence received by the Committee,
21 but the members of this Committee found out about the
22 actual documents which I presume this is based on -- we
23 got them yesterday.

24 And if you will look with me, Exhibit

1 -- I think it's sixty -- 66 and 67 -- 66 has a stamp of
2 Justice Brent Benjamin which is from 2013, and then it
3 has an invoice, and then sixty -- it also has an
4 Agreement which is signed by Menis Ketchum from 2012.

5 67 has a stamp of Justice Davis from
6 2014, and it also has what appears to be a signature by
7 Justice Workman from 2015, and I think that is the
8 total of our documentary evidence.

9 We don't have findings that these three
10 or four documents in each exhibit mean that there have
11 been violations of specific provisions of law or of
12 potential -- well, I guess they're all potential legal
13 violations.

14 I think that the delegate from Boone
15 who indicated that he might be convinced that there is
16 a violation if there were a clear line of evidence and
17 clear evidence, it could be those millions of doc --
18 documents that the delegate from Cabell was talking
19 about that we don't have would make this a clear
20 violation.

21 I don't know that. But based on what
22 we got yesterday, I don't think we have the evidence
23 here, and I don't think it's been laid out in a way
24 that I feel comfortable potentially eliminating half of

1 the Court.

2 Now, I agree this is a serious issue --
3 the gentleman from Putnam. I think this is a problem.
4 I think it's something that we really have to look
5 into, but I don't think this one is ripe. I'm a little
6 surprised that it's Article No. I and I would have to
7 say that this -- the Articles that we released last
8 Wednesday, five or six days before this Committee, were
9 proposed Articles of Impeachment. That's all they
10 were.

11 And I think that they -- you know,
12 ultimately we need findings of facts and conclusions of
13 law - this doesn't have it - in order to follow the
14 Resolution as the gentleman from Ohio noted. And so I
15 do not feel comfortable voting "Yes," so therefore I
16 will be voting "No" on this Article I.

17 CHAIRMAN SHOTT: Delegate Canestraro.

18 DELEGATE CANESTRARO: Thank you,
19 Mr. Chairman. I apologize, but I do have a question
20 for counsel if they're available.

21 CHAIRMAN SHOTT: We went through all
22 our questioning before we took the -- this Article up.

23 DELEGATE CANESTRARO: I understand
24 that.

1 MINORITY CHAIR FLEISCHAUER: He was
2 listening --

3 CHAIRMAN SHOTT: And were you listening
4 in on the -- the live feed?

5 DELEGATE CANESTRARO: And I move to be
6 allowed to ask a question of counsel.

7 CHAIRMAN SHOTT: We'll give you some
8 latitude, but let's not drag it out too far.

9 DELEGATE CANESTRARO: Well, true.
10 Counsel, in reviewing Article I, I do have one
11 question. It looks like this is a specific intent
12 Article in which the justices would have had to have
13 the intent to defraud the State of West Virginia. Is
14 that correct?

15 MR. CASTO: Not for the entirety of the
16 Article, sir. It simply states that the judges did do
17 so. I don't think there's any -- I think for some of
18 the components of the Article, there might be in order
19 to prove each of those components a specific intent to
20 defraud, but I don't think the Article by and of itself
21 rests upon an intent.

22 DELEGATE CANESTRARO: But the Code
23 provisions themselves, 61-3-22 and 61-3-24, both have
24 that you have to have the intent to defraud.

1 MR. CASTO: Yes, sir, I won't disagree
2 with that, but I -- those are components of the
3 Article. They're not the entirety of the Article.
4 The -- the article itself would rise or fall whether or
5 not each of those component parts were met.

6 DELEGATE CANESTRARO: And what evidence
7 was there that they intentionally acted?

8 MR. CASTO: The mere -- the act of
9 signing it in the first place signifies knowledge,
10 because they had knowledge of the policies of the Court
11 which were in place, according to the 1991 and 1994
12 documents signed by Justice Miller and Justice Neely
13 which placed within the Court's policies, within their
14 own Administrative Orders, that they were not to
15 overpay judges beyond the statutory limit.

16 They had the knowledge of the statute
17 which is imputed to them in their capacity as Chief
18 Justice.

19 They had the knowledge which was
20 imputed to them by the testimony which Mr. Canterbury
21 and Ms. Racer-Troy had yesterday, which was that the
22 judges knew and had known - according to Canterbury -
23 at all times relevant since 2005 that this was the
24 mechanism by which they would pay judges, despite the

1 fact that there was a statutory cap on their pay.

2 Mr. Canterbury, in his capacity as
3 Administrator, stated that it was well known to all of
4 the judges that every Chief Justice in his tenure as
5 Administrator had undertaken this practice, which seems
6 to be borne out by the signed documents or stamped
7 documents which we have received.

8 That's -- that's basically what we
9 have, is that they knew that there was a -- a cap and
10 acted to circumvent it, sir.

11 DELEGATE CANESTRARO: Thank you.

12 CHAIRMAN SHOTT: Question before the
13 Committee then is the adoption of Article I to the
14 Articles of Impeachment.

15 DELEGATE FOSTER: Roll call.

16 CHAIRMAN SHOTT: Roll call has demand
17 -- been demanded. Is the demand sustained?

18 Demand is sustained. Clerk will call
19 the roll. If you're in favor of the adoption of
20 Article I -- of the adoption -- of the Articles of
21 Impeachment, you'll say "aye" or "yes." If you're
22 opposed, "no" or "nay."

23 Clerk, will you please call the roll?

24 THE CLERK: Delegate Byrd.

1 DELEGATE BYRD: No.
2 THE CLERK: Delegate Canestraro.
3 DELEGATE CANESTRARO: Yes.
4 THE CLERK: Delegate Capito.
5 DELEGATE CAPITO: Yes.
6 THE CLERK: Delegate Deem.
7 DELEGATE DEEM: Yes.
8 THE CLERK: Delegate Fast.
9 DELEGATE FAST: YES.
10 THE CLERK: Delegate Fleischauer.
11 MINORITY CHAIR FLEISCHAUER: No.
12 THE CLERK: Delegate Fluharty.
13 MINORITY VICE CHAIR FLUHARTY: Yes.
14 THE CLERK: Delegate Foster.
15 DELEGATE FOSTER: Yes.
16 THE CLERK: Delegate Hanshaw.
17 DELEGATE HANSHAW: Yes.
18 THE CLERK: Delegate Harshbarger.
19 VICE CHAIR HARSHBARGER: Yes.
20 THE CLERK: Delegate Hollen.
21 DELEGATE HOLLEN: Yes.
22 THE CLERK: Delegate Isner.
23 DELEGATE ISNER: No.
24 THE CLERK: Delegate Kessinger.

1 Delegate Lane.

2 DELEGATE LANE: Yes.

3 THE CLERK: Delegate Lovejoy.

4 DELEGATE LOVEJOY: No.

5 THE CLERK: Delegate Miller.

6 DELEGATE MILLER: No.

7 THE CLERK: Delegate Moore.

8 DELEGATE MOORE: Yes.

9 THE CLERK: Delegate Overington.

10 DELEGATE OVERINGTON: Yes.

11 THE CLERK: Delegate Pushkin.

12 DELEGATE PUSHKIN: No.

13 THE CLERK: Delegate Queen.

14 DELEGATE QUEEN: Yes.

15 THE CLERK: Delegate Robinson.

16 DELEGATE ROBINSON: No.

17 THE CLERK: Delegate Sobonya.

18 DELEGATE SOBONYA: Yes.

19 THE CLERK: Delegate Summers.

20 DELEGATE SUMMERS: Yes.

21 THE CLERK: Delegate Zatezalo.

22 DELEGATE ZATEZALO: Yes.

23 THE CLERK: And Mr. Chairman.

24 CHAIRMAN SHOTT: Yes.

1 On the question of the adoption of
2 Article I, 17 ayes, 7 nays, 1 member absent and not
3 voting. The Article I is adopted.

4 We took up Article VI next in our
5 questioning. Are there -- are there amendments to
6 Article VI which deals with Justice Loughry's Executive
7 Order, I believe it was.

8 Yes. Are there amendments to be
9 offered to Article VI?

10 Are there amendments? If not,
11 discussion regarding Article VI? Discussion.

12 If not, the question before the
13 Committee is the adoption of Article VI --

14 DELEGATE FOSTER: Roll call.

15 CHAIRMAN SHOTT: Roll call has been
16 demanded. Is the demand sustained?

17 Demand is sustained.

18 The Clerk will call the roll. If
19 you're in favor of the adoption of Article VI, you will
20 state "yes" or "aye;" if you're opposed, "no" or "nay."
21 Mr. Clerk, please call the roll.

22 THE CLERK: Delegate Byrd.

23 DELEGATE BYRD: No.

24 THE CLERK: Delegate Canestraro.

1 DELEGATE CANESTRARO: Yes.
2 THE CLERK: Delegate Capito.
3 DELEGATE CAPITO: Yes.
4 THE CLERK: Delegate Deem.
5 DELEGATE DEEM: Yes.
6 THE CLERK: Delegate Fast.
7 DELEGATE FAST: Yes.
8 THE CLERK: Delegate Fleischauer.
9 MINORITY CHAIR FLEISCHAUER: No.
10 THE CLERK: Delegate Fluharty.
11 MINORITY VICE CHAIR FLUHARTY: Yes.
12 THE CLERK: Delegate Foster.
13 DELEGATE FOSTER: Yes.
14 THE CLERK: Delegate Hanshaw.
15 VICE CHAIR HANSHAW: Yes.
16 THE CLERK: Delegate Harshbarger.
17 DELEGATE HARSHBARGER: Yes.
18 THE CLERK: Delegate Hollen.
19 DELEGATE HOLLEN: Yes.
20 THE CLERK: Delegate Isner.
21 DELEGATE ISNER: No.
22 THE CLERK: Delegate Kessinger.
23 Delegate Lane.
24 DELEGATE LANE: Yes.

1 THE CLERK: Delegate Lovejoy.
2 DELEGATE LOVEJOY: No.
3 THE CLERK: Delegate Miller.
4 DELEGATE MILLER: Yes.
5 THE CLERK: Delegate Moore.
6 DELEGATE MOORE: Yes.
7 THE CLERK: Delegate Overington.
8 DELEGATE OVERINGTON: Yes.
9 THE CLERK: Delegate Pushkin.
10 DELEGATE PUSHKIN: No.
11 THE CLERK: Delegate Queen.
12 DELEGATE QUEEN: Yes.
13 THE CLERK: Delegate Robinson.
14 DELEGATE ROBINSON: No.
15 THE CLERK: Delegate Sobonya.
16 DELEGATE SOBONYA: Yes.
17 THE CLERK: Delegate Summers.
18 DELEGATE SUMMERS: Yes.
19 THE CLERK: Delegate Zatezalo.
20 DELEGATE ZATEZALO: Yes.
21 THE CLERK: And Mr. Chairman.
22 CHAIRMAN SHOTT: Yes.
23 From the question of the adoption of
24 Article VI, there were 18 ayes, 6 nays, 1 member absent

1 and not voting. Article VI is approved as submitted.

2 DELEGATE ROBINSON: Mr. Chairman, I've
3 got a procedural question.

4 CHAIRMAN SHOTT: Yes, what's your
5 question?

6 DELEGATE ROBINSON: Mr. Chairman, we
7 have -- in the last two votes, we have managers who are
8 tasked with going across the hall to prosecute these
9 Articles who weren't invited to the meeting to develop
10 them, have now spoken and voted against them.

11 Is that an issue you see moving
12 forward?

13 CHAIRMAN SHOTT: If the managers wish
14 to withdraw as being managers, they can communicate
15 that intention to me and we'll deal with it at the
16 time. Thus far, I have not heard any request to
17 withdraw as being a manager, and I would assume these
18 gentlemen are profess -- professional enough that they
19 will follow their duties as a manager and their
20 commitment to the Committee to serve in that fashion.
21 But if they wish not to, then we'll take that up.

22 DELEGATE ROBINSON: But I -- I would
23 just -- my concern was, their not being a part of
24 developing them, then not agreeing with the evidence

1 that we have in front of --

2 CHAIRMAN SHOTT: Let me just say this:
3 There was no manager meeting to develop these. What we
4 did was, we took the evidence -- after we had our
5 executive session last night, and we asked everyone
6 there if they needed to -- if they wanted to hear any
7 other testimony or develop any other evidence, and
8 there was no response.

9 We asked our counsel to take the
10 evidence that was before us - including the two
11 exhibits we were gonna put down -- include today - and
12 develop Articles of Impeachment to present to the
13 Committee, and that's what we've done.

14 There was no managers meeting to do so.
15 It was counsel that put it together, basically be -- as
16 a result of a request from me, as chairman, to get this
17 process moving. We knew we weren't gonna have any
18 further evidence, so let's -- let's take advantage of
19 the day we have before us.

20 DELEGATE ROBINSON: Was that the
21 meeting the delegate from Fayette said he attended in
22 the bright-lighted clean-aired room?

23 CHAIRMAN SHOTT: We had a caucus; we
24 did not have a managers meeting.

1 DELEGATE ROBINSON: So these were
2 developed in Republican caucus.

3 CHAIRMAN SHOTT: They were not
4 developed in the pu -- Republican caucus; we were -- we
5 discussed the possibility of going forward with
6 Articles of Impeachment.

7 However, counsel drafted and finalized
8 the Articles of Impeachment after the caucus was over.

9 DELEGATE ROBINSON: With Delegate Fast.

10 CHAIRMAN SHOTT: With delegate who?

11 DELEGATE ROBINSON: The delegate -- the
12 delegate from Fayette said he was in the meeting last
13 night developing these Articles.

14 CHAIRMAN SHOTT: We discussed whether
15 there would be a consensus to go forward on Articles
16 and the Articles were drafted and refined after the
17 meeting adjourned.

18 DELEGATE ROBINSON: I was just
19 wondering who -- if the managers -- the -- at least the
20 Democrat members/managers --

21 DELEGATE MOORE: Point of order.
22 Mr. Chairman, is there a procedural question here?

23 CHAIRMAN SHOTT: I'm trying to find one
24 and will give him a little latitude.

1 DELEGATE ROBINSON: I'm just trying to
2 figure out how we have -- there's partisan divide in
3 meetings, and how these were developed and the voting,
4 and I'm just trying to figure out how that goes
5 forward. That's my only question.

6 CHAIRMAN SHOTT: And I think I've
7 explained that to you.

8 DELEGATE ROBINSON: Thank you.

9 CHAIRMAN SHOTT: Let's move on.
10 We're now dealing with Article XI,
11 Article XI.

12 Are there amendments to Article XI?

13 DELEGATE MILLER: Mr. Chairman.

14 CHAIRMAN SHOTT: Are there amendments?
15 Delegate Miller.

16 DELEGATE MILLER: A procedural
17 question.

18 CHAIRMAN SHOTT: Yes.

19 DELEGATE MILLER: And I think we'd
20 talked about it earlier with the -- with the passage of
21 Article I, does it necessitate Article XI as well as
22 Article XIV? Because they, at least on their face,
23 appear to be duplicate.

24 CHAIRMAN SHOTT: There is an overlap,

1 I'll agree with you there. But if Article I does not
2 pass in the Senate as a result of the Senators failing
3 to be convinced that one or the other of these subjects
4 of the Articles is -- is -- has committed an act that
5 would justify impeachment, they may still find that the
6 other -- but they'd have to throw out the entirety of
7 Article I if -- unless both were found to have
8 committed an offense or being guilty of -- I don't want
9 to use the word "guilty" -- that -- if they determine
10 they're unfit based on the conditions in the -- in the
11 Constitution, then they would go to one of these
12 individual Articles.

13 But if they do pass Article I, that
14 probably would be sufficient that they wouldn't have to
15 entertain any evidence on these Articles. But I don't
16 think they're mutually exclusive.

17 DELEGATE MILLER: Do we have similar
18 duplicate Articles that overlap regarding other charges
19 or other justices other than Davis or Workman?

20 CHAIRMAN SHOTT: The -- I'm not sure
21 where -- which Articles you're referring to.

22 DELEGATE MILLER: What I originally
23 brought up, it appears as though Article XI and Article
24 XIV appear to be duplicate or a charge-stacking, if you

1 will. That's -- that's my term, not any other's. The
2 same as Article I. Do we have duplicate Articles
3 regarding other charges or other justices that are
4 similar stacking such as this?

5 CHAIRMAN SHOTT: I guess you could say
6 the comprehensive charge in Article II does duplicate,
7 to some extent, the excessive spending charges against
8 each of the justices that are covered in those counts.

9 But once again, I don't think those are
10 mutually exclusive, because the Senate could reject
11 Article II but still feel that excessive spending on
12 the three justices who are charged with that in
13 individual counts was sufficient grounds for
14 impeachment, so there's -- there are some overlaps.

15 Obviously, if the Senate gets to the
16 point where it finds sufficient evidence under any one
17 of these, then they probably will find the need -- no
18 need to go forward with any of the others. But we're
19 not -- we're not sure how they're gonna proceed over
20 there, so we've covered as many bases as we could by
21 these Articles.

22 DELEGATE MILLER: I understand that.
23 Thank you, Mr. Chairman.

24 CHAIRMAN SHOTT: Sure. All right.

1 I'll say this again. Article IX, are there -- I'm
2 sorry. Article XI, are there amendments?

3 If not, is there discussion? Is there
4 discussion?

5 Then the question before the Committee
6 is the adoption of Article -- Article XI. Is there a
7 request for a roll call?

8 DELEGATE FOSTER: (Nodded negatively.)

9 CHAIRMAN SHOTT: No request. Very
10 well. Those in favor of adoption of Article XI will
11 say "aye?"

12 DELEGATES: Aye.

13 CHAIRMAN SHOTT: Opposed, "no."

14 DELEGATES: No.

15 CHAIRMAN SHOTT: The ayes appear to
16 have it.

17 The ayes do have it.

18 Article XI is adopted.

19 The next Article for consideration is
20 Article XIV. That's the similar count against Justice
21 Workman individually. Are there amendments?

22 Are there amendments? If not,
23 discussion?

24 Discussion.

1 If not, the question before the
2 Committee is the adoption of Article XIV. All in favor
3 will say "aye".

4 DELEGATES: Aye.

5 CHAIRMAN SHOTT: Opposed "no."

6 DELEGATES: No.

7 CHAIRMAN SHOTT: The ayes appear to
8 have it.

9 The ayes do have it.

10 Article XIV is adopted.

11 Returning now to Article II, we'll take
12 questions of counsel, then amendments and then
13 discussion. Are there questions of counsel regarding
14 Article II?

15 Yes. Delegate Capito.

16 DELEGATE CAPITO: Thank -- thank you,
17 Mr. Chairman.

18 Counsel, on Article II, I'm going
19 through the -- the bullets below after the colon, and
20 I'm just -- so are we -- is the -- is the take from the
21 language in Article II that we're -- that the
22 accusation for each and every one of the Bullets A
23 through G applies to each and every one of the justices
24 listed on Lines 6 and 7?

1 MR. AKERS: Yes.

2 DELEGATE CAPITO: And that every
3 justice was in contravention of every single one of the
4 bullets?

5 MR. AKERS: Every justice was
6 responsible for the policies that they did or did not
7 put forward. So yes.

8 DELEGATE CAPITO: Okay. Thank you,
9 Mr. Chairman.

10 CHAIRMAN SHOTT: Delegate Robinson,
11 followed by Delegate Miller.

12 DELEGATE ROBINSON: Thank you,
13 Mr. Chairman.

14 Counsel, this is -- ar -- this Article
15 here basically, we are -- this Article is to move
16 impeachment forward due to not having policies of the
17 bullet pointed A through whatever it is.

18 MR. AKERS: Yes, that's the core of it.

19 DELEGATE ROBINSON: Okay. And then A,
20 sufficient and effective travel policies. Who was it
21 that -- I mean, Justice Loughry is the one that has,
22 you know, effectively - we have evidence - moved
23 forward with travel policies and travel -- he's gone
24 through with things that don't seem correct in his --

1 his manner and way he took mileage and receive -- those
2 things, correct?

3 MR. AKERS: Yeah, the lack of a policy
4 allowed for the justices to maybe stray and do whatever
5 they felt like they individually --

6 DELEGATE ROBINSON: Okay.

7 MR. AKERS: -- would want to do.

8 DELEGATE ROBINSON: Okay. And then B,
9 taxable fringe benefits, that was also Justice Loughry,
10 correct, that took part in that and did not correctly
11 report his taxable fringe benefits?

12 MR. AKERS: It would have been Loughry
13 and --

14 DELEGATE ROBINSON: And the former
15 justice, correct?

16 MR. AKERS: -- the one that previously
17 resigned. But there's also the lunches and there were
18 some of the lunches that had questions as to what the
19 business purpose was. And those would cover any
20 justice that might have consumed the -- those specific
21 lunches that were not business or work-related.

22 DELEGATE ROBINSON: Okay. And then the
23 home office policy that wasn't there and seemed to be
24 taken advantage of, that was taken advantage of by

1 Justice Loughry, correct?

2 He had multiple computers, and a desk
3 and a couch and those kind of things?

4 MR. AKERS: That's correct.

5 DELEGATE ROBINSON: Okay. And then
6 recordkeeping and State automobiles, Justice Loughry is
7 the only one that refused to give his location, and he
8 had 200 and some days where he didn't account for where
9 he took the car. We have transponder information that
10 directs that he was taking it to book signings for
11 personal gain?

12 MR. AKERS: According to testimony,
13 he's the only one that refused. He's not the only one
14 - according to testimony - that failed to put down
15 destinations and purposes.

16 DELEGATE ROBINSON: I think my question
17 was directly, we have transponder information and that
18 information that he took a car -- a State car to a book
19 signing for his personal book and personal gain there?

20 MR. AKERS: That's correct, we have --
21 we have -- lots of evidence of that.

22 DELEGATE ROBINSON: And then in -- and
23 so basically, this Article -- we're gonna impeach all
24 four remaining justices because they failed to develop

1 policies to protect the State from Justice Loughry
2 doing corrupt things.

3 I mean, that -- that's basically what
4 this Article is, because you didn't tell on or make a
5 rule against Justice Loughry, we're gonna throw you out
6 too, is basically what we're doing here.

7 MR. AKERS: They didn't make a rule to
8 govern most of the employees. A lot of these policies
9 just did not exist for any of the employees.

10 DELEGATE ROBINSON: But -- but the
11 reason -- the reason we're here --

12 MR. AKERS: Especially the P-card --
13 the P-card was used by subordinates way far removed,
14 but they didn't have any policies to audit and check
15 and make sure the use was -- was following State law
16 and State policy.

17 DELEGATE ROBINSON: But --

18 MR. AKERS: Respondeat superior, the
19 manager is responsible for the acts of their
20 subordinates.

21 DELEGATE ROBINSON: But directly listed
22 in here, unaccountable personal use of State vehicles,
23 unneeded computers for home use, lunches, framing for
24 personal items, wasteful expenditures. And the whole

1 reason these came down is because these occurrences
2 were --

3 I mean, these actions were taken by
4 Justice Loughry, correct? That's the reason this whole
5 mess started, right?

6 MR. AKERS: Not solely. The remaining
7 justices also spent on their offices without proper
8 purchasing and bidding procedures to keep costs down.

9 DELEGATE ROBINSON: Did any of the
10 other justices -- do we have any evidence of other
11 justices having things framed and taking them home for
12 personal use as it states right here? Personal, right?

13 MR. AKERS: I can't recall all the
14 testimony, but with the framing issue, I believe the
15 framing issue was Loughry.

16 DELEGATE ROBINSON: Okay. My question
17 is, we are -- we have a section here, a whole Article,
18 because these occurrences came and we basically caught
19 Justice Loughry doing these things and because they
20 didn't make a rule to block this, we're gonna move
21 forward with impeachment on all four justices?

22 MR. AKERS: It's not just one rule;
23 they didn't make a whole host of employment policies --

24 DELEGATE ROBINSON: I -- we just read

1 through them. Okay. Thank you.

2 CHAIRMAN SHOTT: Further questions?

3 Delegate Miller.

4 DELEGATE MILLER: Thank you,

5 Mr. Chairman.

6 Counsel, I -- and I'm not sure exactly
7 where I read this - maybe in the Constitution - but as
8 a normal course of business, am -- am I correct in my
9 recollection that the general supervisory duties of the
10 Supreme Court and its administration fall upon the
11 Chief Justice of the Supreme Court?

12 MR. AKERS: The Chief Justices have the
13 main management role, and it rotates. It used to
14 rotate, till they changed it.

15 DELEGATE MILLER: And is it fair to say
16 that they would have general supervisory authority over
17 either the absence of policy or at least the
18 presentation of policy governing this -- this list of
19 -- of potential violations that -- that we have in --

20 MR. AKERS: While all of the justices
21 do have management responsibility for the department
22 below them, the chief ex -- the Chief Justice has the
23 primary responsibility to make sure that the Supreme
24 Court is running properly, yes.

1 DELEGATE MILLER: At some point during
2 the time frame that -- that we're -- we've been looking
3 at this, Justice Workman has been Chief Justice?

4 MR. AKERS: Yes.

5 DELEGATE MILLER: Has Justice Loughry?

6 MR. AKERS: Yes.

7 DELEGATE MILLER: Has Justice Davis?

8 MR. AKERS: Yes.

9 DELEGATE MILLER: Has Justice Walker?

10 MR. AKERS: I do not believe so, no.

11 DELEGATE MILLER: So she hasn't had
12 general supervisory authority over the Supreme Court
13 during her tenure?

14 MR. AKERS: To my knowledge, right now,
15 she has not fulfilled that role to date. Somebody --

16 Is that correct? Yeah.

17 DELEGATE MILLER: So with -- with what
18 is being presented in Article II, absent having general
19 supervisory authority, just by virtue of her being a
20 member of the West Virginia Supreme Court, she's guilty
21 by association?

22 MR. AKERS: She's an executive level
23 employee. It was her duty to make sure the -- the
24 Court ran smoothly as well. She's also an employment

1 lawyer with a deep history of policies with employment.

2 DELEGATE MILLER: Do we have any
3 evidence that any of these justices listed in Article
4 II had presented any type of policy proposals that may
5 have been not acted upon or voted down, failure to act
6 upon? Do we have anything like that?

7 MR. AKERS: We do know that there was a
8 travel policy and car use policy put into -- you know,
9 debated and discussed in 2016, and they've -- we had
10 testimony yesterday from Sue Racer-Troy that they're
11 beginning to draft some of these policies and that she
12 had brought it up in the beginning of her employment,
13 that some of these policies needed to be drafted,
14 but --

15 DELEGATE MILLER: With the 2016 travel
16 policy, was Justice Walker a member of the Court at
17 that time?

18 MR. AKERS: I believe she might have
19 been just elected.

20 Isn't that correct? She's been there
21 -- let me look at the beginning. I can tell you.

22 Walker was -- Justice Walker was
23 elected in November of 2016, elected -- yayh, December
24 5th, 2016. So she would not have been part of that

1 discussion.

2 DELEGATE MILLER: But we're saying with
3 Article II, by virtue of her having served in excess of
4 a yayr, she should have --

5 MR. AKERS: No, upon swearing in, she
6 should have begun management function and maybe brought
7 this to the attention of the remainder.

8 DELEGATE MILLER: Okay, thank you.
9 Thank you, Mr. Chairman.

10 CHAIRMAN SHOTT: Further discussion --
11 or further questions? Delegate Pushkin.

12 DELEGATE PUSHKIN: Thank you,
13 Mr. Chairman. I -- I'm reading over this -- this
14 Article, and in -- just to -- in layman's terms, it's
15 for failure to create a policy that would have
16 prevented a lot of these things from happening, that's
17 the -- that's the charge here that we're bringing
18 against the --

19 MR. AKERS: Yeah, had they done their
20 management duties properly and created policies to
21 effectively govern these areas of management --

22 DELEGATE PUSHKIN: Okay.

23 MR. AKERS: -- it would have at least
24 curtailed some of the -- the shenanigans that went on.

1 DELEGATE PUSHKIN: Okay, Well, I hope
2 the Chair will grant me a little bit of leeway, because
3 I'm going to make a few comparisons here by way of
4 question --

5 In the Legislative Branch, are you
6 aware of a -- that we are allowed to, say, get items on
7 loan from the State Archives to put in our offices?
8 Are you aware of that? I don't know if it's a written
9 policy, but we're allowed to do that.

10 Are you aware of that?

11 MR. AKERS: No, I've never heard of
12 that policy.

13 DELEGATE PUSHKIN: Well, we are. So
14 would you say that there was a written policy in place
15 that says we're not allowed to take any of these items
16 home?

17 MR. AKERS: I'm not familiar with the
18 policies that would govern that. I --

19 DELEGATE PUSHKIN: So would you say
20 we're -- we're just supposed to know better and not
21 take things home that don't belong to us, correct?

22 MR. AKERS: Well, there might be a
23 policy. You might ask. If you have a historical item
24 in your office, you should probably ask before you took

1 it home, you know. That would be prudent.

2 DELEGATE PUSHKIN: Well, I wouldn't
3 take it home, because I -- I think I know better, but I
4 don't believe there is a policy -- I don't even know if
5 there's a written policy that says we are allowed to
6 take things from the archives.

7 But we -- we are -- we can borrow
8 things from the archives, and we're expected not to
9 take them home. I don't believe there's a written
10 policy. Okay.

11 MR. AKERS: You would know better than
12 I.

13 DELEGATE PUSHKIN: Well, here on this
14 Point G, to provide -- well, let's go back to -- to
15 they failed to provide proper supervision, control and
16 auditing and use of State purchasing card -- well,
17 that's -- well, I was looking for the one about the --
18 the cars.

19 Okay, yayh, E, "To provide effective
20 supervision and control over recordkeeping with respect
21 to the" State -- "use of State automobiles."

22 Have you heard anything lately about
23 problems with the State fleet and the Executive Branch?

24 MR. AKERS: I have not. That has not

1 been my responsibility.

2 DELEGATE PUSHKIN: Well, I mean, it's
3 the -- been the subject of our -- you know, a lot of
4 debate in our Committee on Government Organization and
5 they've looked into that, but I think there's been some
6 failure to -- to have proper policy on -- regarding our
7 State fleet.

8 So would this set a precedent that we
9 could also be looking to -- well, by this, by
10 impeaching folks over in the Executive Branch, because
11 we weren't -- didn't have a proper policy with regards
12 to our State fleet?

13 MR. AKERS: With your oversight into
14 the Constitution, if you feel that that's warranted,
15 the House of Delegates can probably fulfill that need
16 if nec -- if you feel necessary.

17 DELEGATE PUSHKIN: All right. What
18 about this Point G, that they failed to provide
19 effective supervision and control over purchasing
20 procedures which directly led to inadequate cost
21 containment methods? Including the rebuilding --
22 rebidding of purchases.

23 Could that also -- do you think that
24 could be stretched to look at, say, being off by like

1 \$100,000,000 on a cost estimate -- estimate on a road
2 job in regards to the Executive Branch?

3 MR. AKERS: That would be significant.
4 I mean, that's a large sizable sum of money. If you
5 would like to, again, justify oversight over that with
6 the legislative authority that you have, there's
7 nothing preventing you from looking into it.

8 DELEGATE PUSHKIN: Okay. So what I'm
9 getting at is the precedent we'd be setting by passing
10 this, Article II. There's a lot of things that were
11 done wrong, but the precedent that we could be setting
12 could be spread to the other two branches of
13 government.

14 MR. AKERS: Well, did -- I'm somewhat
15 familiar with the Department of Highways, and they do
16 have a lot of procedures in effect for competitive
17 bidding with contractors.

18 DELEGATE PUSHKIN: Uh-huh.

19 MR. AKERS: But in this case, we had 17
20 change orders without any competitive bidding at all.
21 There was probably competitive bidding at the
22 beginning, but they just kept changing and adding and
23 adding and adding and adding and adding, and at no
24 point did they bring in alternate contractors to make

1 sure what was going on was in the taxpayers' best
2 interest. That's the testimony that we received.

3 DELEGATE PUSHKIN: Okay, well, that
4 looks -- it looks a little more broad than that by what
5 we're -- what we're voting on here, to say -- "to
6 provide effective supervision and control over
7 purchasing procedures which directly led to inadequate
8 cost containment methods."

9 I see a lot of that going on,
10 unfortunately. But well, that's -- that's it for my
11 questions. Thank you.

12 CHAIRMAN SHOTT: Further questions of
13 counsel?

14 Delegate Fleischauer.

15 MINORITY CHAIR FLEISCHAUER: Thank you,
16 Mr. Chairman.

17 Counsel, if a justice attempted to
18 adopt travel policies under any of these -- or policies
19 under any of these A through G, would they still be
20 considered impeached -- eli -- eligible for
21 impeachment?

22 MR. AKERS: Well, in the -- I'm sure in
23 the Senate, when they have an opportunity to respond,
24 if they can produce minutes that we were unable to find

1 where they voted against or in favor or championed some
2 of these policies and they were voted down, they could
3 definitely bring that to the Senate's attention as an
4 affirmative defense.

5 But in our investigation and the
6 witnesses that we questioned that you all heard - and
7 you all also questioned - we didn't hear any evidence
8 that any one of these justices tried to push a policy
9 that was unpopular and never got passed because -- it
10 was voted down.

11 MINORITY CHAIR FLEISCHAUER: Well, what
12 about Exhibit No. 2, which is a memo from Justice Davis
13 to the Administrator: "I am requesting three items be
14 placed on the August 31st administrative conferences.
15 They include Court cars, Court gas cards and
16 educational conferences for the justices." And that
17 was in August 2016.

18 Justice Davis did attempt to get this
19 policy taken up by the Court; is that -- isn't that
20 right?

21 MR. AKERS: Yeah, that's correct, and
22 -- but prior to that, there was nothing. And then
23 after they did pass the travel policy, they excepted
24 the justices out, thereby creating a disparaging

1 between them and the remaining employees and
2 subordinates.

3 MINORITY CHAIR FLEISCHAUER: Was that a
4 -- we don't know what the vote on -- was on that, do
5 we?

6 MR. AKERS: I personally do not, but
7 those records might be available.

8 MINORITY CHAIR FLEISCHAUER: Well, I
9 think -- well, but there has been attempt to implement
10 policies, correct?

11 MR. AKERS: Yeah, after the Legislative
12 Auditor and everybody began looking -- the fleet bill
13 and everybody began looking at car use, they -- they
14 began pushing this reform.

15 MINORITY CHAIR FLEISCHAUER: Well, this
16 was in 2016. That was far -- way before all of those
17 things, right?

18 MR. AKERS: I'm not sure when they
19 started investigating the fleet bill. The fleet bill
20 was what prompted a lot of this.

21 MINORITY CHAIR FLEISCHAUER: Okay,
22 thank you.

23 Thank you, Mr. Chairman.

24 CHAIRMAN SHOTT: Delegate Fluharty.

1 MINORITY VICE CHAIR FLUHARTY: Thank
2 you, Mr. Chairman.

3 Counsel, along those lines, if any
4 justice wanted to implement such a policy, would they
5 have the ability to do so on their own?

6 MR. AKERS: No. They'd have to bring
7 it to a vote, is my understanding of their procedures.

8 MINORITY VICE CHAIR FLUHARTY: And
9 there's an Administrative Director employed by the
10 Supreme Court, right?

11 MR. AKERS: Yes. The former one
12 testified here.

13 MINORITY VICE CHAIR FLUHARTY: Article
14 II references the oaths of office taken by the Supreme
15 Court Justices. Just so we're clear here, Article II
16 is dealing with the administrative function, in other
17 words, the lack of having a policy. Am I correct in
18 that analysis?

19 MR. AKERS: Yes, their adminis -- their
20 management role in the overall court.

21 MINORITY VICE CHAIR FLUHARTY: We're
22 not talking about their actions; we're talking about a
23 lack of a policy.

24 MR. AKERS: We're talking about a lack

1 of action, I guess you might say, yes. In most of
2 these cases.

3 MINORITY VICE CHAIR FLUHARTY: What
4 part of their oath cites the requirement to implement
5 administrative policies?

6 MR. AKERS: To fulfill their duties.

7 MINORITY VICE CHAIR FLUHARTY: What
8 part of being a Supreme Court Justice -- and when we
9 talk about the functions of their office -- you know, I
10 think a Supreme Court Justice obviously interprets the
11 law. What part of their duties, explicitly, references
12 admis -- administering administrative policies?

13 MR. AKERS: Well, Canon 1 of the Code
14 of Judicial Conduct says they must maintain confidence
15 in the judiciary, and overspending erodes that
16 confidence.

17 MINORITY VICE CHAIR FLUHARTY: That's
18 not part of the --

19 MR. AKERS: Canon 2 also goes on to
20 discuss many other -- many other management type roles:
21 Administrative appointments, supervisory duties.

22 MINORITY VICE CHAIR FLUHARTY: Not in
23 their oath.

24 MR. AKERS: Decorum, demeanor. Well,

1 as judges, they must abide by these Canons, and the
2 Canons are what we cite in the -- in the allegation
3 here as part of Article II.

4 MINORITY VICE CHAIR FLUHARTY: And
5 doesn't the judiciary -- the JIC make sure that the
6 Canons are followed?

7 MR. AKERS: That is one of -- that's
8 their primary role in --

9 MINORITY VICE CHAIR FLUHARTY: That's
10 their primary goal, right?

11 MR. AKERS: Uh-huh.

12 MINORITY VICE CHAIR FLUHARTY: That's
13 not necessarily the goal of the legislature.

14 MR. AKERS: Well, we have oversight
15 over the JIC and we have oversight over a lot of -- the
16 rest of the government.

17 MINORITY VICE CHAIR FLUHARTY: Okay.
18 That's all I have, thanks.

19 CHAIRMAN SHOTT: Other questions of
20 counsel?

21 Are there amendments? Are there
22 amendments?

23 Discussion regarding this Article,
24 Article II. Is there discussion?

1 Delegate Isner.

2 DELEGATE ISNER: Thank you,
3 Mr. Chairman. As I go through this, it's -- it's
4 difficult for me to find the evidence that each and
5 every one of these enumerated acts apply to every
6 justice, but I'm probably most concerned with the fact
7 that Justice Walker has never had the opportunity to
8 serve as the Chief Justice who would have the primary
9 administrative responsibilities, you know, of the
10 justices.

11 So I have grave concerns about this for
12 a justice that was only -- took the bench in January of
13 2017, had about 18 months there, and never had that
14 opportunity to serve as Chief Justice.

15 CHAIRMAN SHOTT: And to the gentleman,
16 when we come to the amendment stage, if you wish to
17 offer an amendment to remove Justice Walker, that
18 certainly would be appropriate. Further dis -- further
19 discussion? Or further questions?

20 Delegate Pushkin.

21 DELEGATE PUSHKIN: In looking at this
22 Article, it said that we're -- you know, the gist of it
23 is because they didn't create a policy to prevent
24 certain things from happening, that they're all liable.

1 However, I feel that -- you know, I know personally, I
2 don't need a written policy to know that I shouldn't
3 take things that don't belong to me.

4 I feel that that should be more the
5 focus of this Committee and not the fact that someone
6 didn't craft a policy specifically from preventing
7 these things from happening when - you know what - if
8 you're elected to the Supreme Court of Appeals, you
9 should just know better.

10 CHAIRMAN SHOTT: Further discussion?

11 Delegate Fleischauer.

12 MINORITY CHAIR FLEISCHAUER: Thank you.

13 Thank you, Mr. Chairman.

14 I agree that all of these things should
15 have been done. I also agree with the gentleman from
16 Kanawha who pointed out that most of these problems
17 were based on the behavior of the Chief Justice, but I
18 think that adopting a Resolution that would eliminate
19 the entire sitting Supreme Court of the State of West
20 Virginia because they didn't have policies that
21 prevented some behavior which we all find very, very
22 troubling, is reckless.

23 And for that reason, I'm voting "no."

24 CHAIRMAN SHOTT: Further discussion?

1 Further discussion?

2 Question of -- before the Committee
3 then is the adoption of Article II to the Articles of
4 Impeachment.

5 All in favor will say "aye."

6 DELEGATES: Aye.

7 CHAIRMAN SHOTT: Opposed, "no."

8 DELEGATES: No.

9 CHAIRMAN SHOTT: The ayes appear to
10 have it.

11 The ayes do have it.

12 The Article's adopted.

13 Article III is the next Article for
14 consideration. This is the one regarding Justice
15 Loughry and the removal of the Cass Gilbert desk.

16 Are there questions of counsel
17 regarding this particular Article? Are there
18 questions?

19 Delegate Miller.

20 DELEGATE MILLER: Thank you,
21 Mr. Chairman.

22 Counsel, I know in other Articles, we
23 have looked at the inclusion of criminal statutes as
24 possible violations as well. In regard to Article III,

1 it appears to deal specifically with what's been called
2 the Cass Gilbert desk.

3 Was any consideration given to the
4 larceny or the embezzlement?

5 MR. HARDISON: I think consideration
6 was given to that. I think the thought was that the --
7 that the evidence most strongly fit the code section
8 regarding historical furniture and artifacts within the
9 Capitol, and that specifically regarding the Cass
10 Gilbert furniture, that the evidence and testimony that
11 we heard would most strongly fit that particular code
12 section.

13 DELEGATE MILLER: If this Article is
14 successful and presentation is made to the Senate, is
15 there anything that prohibits us from the inclusion of
16 those type of elements or those types of suggestions as
17 far as the embezzlement or grand larceny to be included
18 in the presentment in --

19 MR. HARDISON: I don't --

20 CHAIRMAN SHOTT: -- before the Senate?

21 MR. HARDISON: I'm not aware of
22 anything that would -- that would preclude that. I
23 mean, I think that would be relevant evidence to be
24 presented to the Senate.

1 DELEGATE MILLER: Okay, thank you.

2 Thank you, Mr. Chairman.

3 CHAIRMAN SHOTT: Further questions of
4 counsel? Further questions of counsel?

5 Are there amendments?

6 CHAIRMAN SHOTT: Are there amendments?
7 Are there amendments?

8 If not, discussion regarding the
9 adoption of Article III.

10 Discussion.

11 If not, then the question before the
12 Committee is the adoption of Article III. All in favor
13 will say "aye".

14 DELEGATES: Aye.

15 CHAIRMAN SHOTT: Opposed, "no."

16 The ayes appear to have it.

17 The ayes do have it.

18 Article III is adopted.

19 Article IV is next for our

20 consideration. It involves the computer services and
21 abuse of a computer for personal use of Justice Loughry
22 and some other elements in there. Are there questions
23 of counsel regarding Article IV? Questions of counsel?

24 Are there amendments? Are there

1 amendments?

2 If not, the question before the
3 Committee is the adoption of Article IV to the proposed
4 Articles of Impeachment. All in favor will say "aye".

5 DELEGATES: Aye.

6 DELEGATE SHOTT: Opposed, "no."

7 The ayes appear to have it.

8 The ayes do have it.

9 Article IV is adopted.

10 Article V is next for consideration.

11 This is also an Article, the subject of which is
12 Justice Loughry. It's basically based on the abuse of
13 government vehicles for personal use, including fuel
14 purchase cards, some travel to the Greenbrier and so
15 forth.

16 Are there questions regarding Article
17 V? Are there questions?

18 Delegate Miller.

19 DELEGATE MILLER: Thank you,
20 Mr. Chairman.

21 Counsel, in regard to Article V, I know
22 it's cited that vehicle use to the Greenbrier. Is it
23 limited to just those acts, or is -- is other travel
24 that we may have been able to delineate as personal use

1 included in this Article?

2 MR. HARDISON: I think the way this
3 Article is drafted is it's limited to the personal use
4 of the vehicle during that -- that time period. So on
5 or about December of 2012.

6 And specifically, the evidence that we
7 have that we can feel confident that we can prove, that
8 he used a State vehicle to travel to the Greenbrier for
9 -- for book signings.

10 DELEGATE MILLER: Is it limited to
11 2012, or limited to just the Greenbrier? Does it
12 exclude '13, '14, '15, '16, '17 as well as other parts
13 of the state?

14 MR. HARDISON: Right. No, I don't
15 think it's limited. The way it's drafted, it says
16 "Beginning in or about December of 2012," which would
17 mean going forward. So we -- you know, you could
18 present evidence that would show that he used a vehicle
19 for personal use, including for book signings at the
20 Greenbrier.

21 DELEGATE MILLER: Okay, thank you.

22 Thank you, Mr. Chairman.

23 CHAIRMAN SHOTT: Are there other
24 questions for counsel?

1 Delegate Fleischauer.

2 MINORITY CHAIR FLEISCHAUER: Thank you,
3 Mr. Chairman.

4 I want to look at that language a
5 little bit more carefully. "Beginning in or about
6 December 2012." Did you say -- is there any language
7 -- I mean, one of the things that bothered me the most
8 was keeping a State car for the holidays in, I think,
9 '14, '15 and '16 for 21 days, 27 days and 15 days.

10 This says, "on more than one occasion
11 for book signings and sales." Does it include those --
12 those Christmas keeping of the State car and also the
13 travel -- I mean --

14 MR. HARDISON: I think it can include
15 that evidence, yes.

16 MINORITY CHAIR FLEISCHAUER: Why do you
17 think that?

18 MR. HARDISON: Well, the -- the
19 language -- the beginning of the -- I guess the factual
20 assertion that "Beginning in or about December 2012,
21 did intentionally acquire and use State government
22 vehicles for personal use," which would include the
23 following -- and that -- the next clause includes the
24 use of the vehicle to go to the Greenbrier for book

1 signings.

2 MINORITY CHAIR FLEISCHAUER: Would we
3 want to say "included but not limited to?" And would
4 we want to say "continuing until" -- or use the word
5 "continuing"?

6 MR. HARDISON: I mean, I would leave
7 that up to the Committee. I don't -- I don't think
8 that would -- that would hurt --

9 MINORITY CHAIR FLEISCHAUER: Okay.

10 MR. HARDISON: -- the Article.

11 MINORITY CHAIR FLEISCHAUER: Mr.
12 Chairman, I would like to amend this to make it
13 broader.

14 CHAIRMAN SHOTT: Certainly.

15 MINORITY CHAIR FLEISCHAUER: Do you
16 want me to put that in writing?

17 CHAIRMAN SHOTT: Yes, we have --

18 MINORITY CHAIR FLEISCHAUER: I assume
19 you do.

20 CHAIRMAN SHOTT: Yes, we have --

21 MINORITY CHAIR FLEISCHAUER: Let me see
22 if I can get some assistance from our counsel who --

23 CHAIRMAN SHOTT: In the meantime, while
24 you're doing that, let's see if there's other questions

1 for counsel. Because we haven't gotten to the
2 amendment stage, but it's a good idea to go ahead and
3 get started on that.

4 Are there other questions for counsel
5 regarding this Article? All right.

6 Then I'll ask the Committee to be at
7 ease for a moment while the gentlelady is perfecting
8 her amendment.

9 (A short pause was had in the
10 proceedings.)

11 CHAIRMAN SHOTT: Will the Committee
12 could please come back to order? We have an amendment
13 at the podium from Delegate Fleischauer, and Delegate
14 Fleischauer would request unanimous consent to explain
15 her amendment in lieu of having it read.

16 Is there objection?

17 Chair hears none.

18 Delegate Fleischauer.

19 MINORITY CHAIR FLEISCHAUER: Thank you,
20 Mr. Chairman. I want to add two things into this
21 language. It's not very big changes. On Line 15,
22 "Beginning in or about December 2012 and continuing
23 thereafter for a period of yayrs." That would be the
24 added language, "and continuing thereafter for a period

1 of yayrs."

2 And then also on Line 16, after the
3 word "including" -- and this is talking about
4 "intentionally acquire and use State vehicles for
5 personal use, including" by adding a comma and "the
6 following but not limited to."

7 One of the things that particularly
8 offended me was taking a State car home for 27 days
9 during the holidays, and that clearly was personal use,
10 and that's part of what I wanted to make sure was
11 covered.

12 And this language I think would be
13 broad enough to include many different things.

14 CHAIRMAN SHOTT: Are there questions
15 regarding the effect of the amendment? Are there
16 questions?

17 Delegate Zatezalo.

18 DELEGATE ZATEZALO: Thank you,
19 Mr. Chairman. My only question about it: In the
20 absence of a policy -- I understand the Greenbrier
21 trips are, to my way of thinking, an ethics violation.

22 But the other portions, taking cars
23 home and that type of thing, if there is no policy on
24 car use, I mean, what -- what was breached in that

1 regard?

2 I mean, somebody can explain that to
3 me.

4 CHAIRMAN SHOTT: Counsel, you want to
5 make a stab at that?

6 MR. HARDISON: I'll take a crack at it.

7 I believe the -- the main policy that's
8 been cited is the State Ethics Act, that it's use of
9 public office for private gain, and that it was a State
10 vehicle that was owned by the Court and they were --
11 and Justice Loughry was using that State vehicle for
12 his own personal gain to travel about the state.

13 And in some cases, on the rental cars
14 that were paid for by the State, he was using that to
15 travel out of state as well.

16 But -- but the main violation would be
17 the State Ethics Act.

18 CHAIRMAN SHOTT: Are there other
19 questions regarding the effect of the amendment?

20 Discussion regarding the gentlelady's
21 amendment?

22 Is there discussion? If not, the
23 question --

24 Delegate Fast.

1 DELEGATE FAST: Thank you,
2 Mr. Chairman. I would urge rejection of the
3 gentlelady's amendment. The thing that bothered me
4 about the trips to the Greenbrier -- and I asked the
5 delegate from the 23rd specifically, did he ask the
6 Greenbrier if there were other speaking engagements
7 there while he was there on the book signing, and the
8 delegate did ask that question and held up a stack of
9 e-mails that, through all the correspondence, there
10 were no other Court events or Court speaking
11 engagements or just speaking engagements as a justice
12 of the West Virginia Supreme Court.

13 There were none -- there was none of
14 that.

15 On Christmas usage, we don't know if
16 maybe he had some speaking engagements. We don't know
17 if the car sat at the house most of that time and then
18 he occasionally went to a speak -- or a couple of times
19 during this check-out period, to some speaking
20 engagement or some event that was related as a justice
21 to the Supreme Court.

22 So for those reasons, I -- I would urge
23 that we keep the Article as it is - it's specific to
24 what we do know - and not broaden it to items that we

1 don't know. Thank you.

2 CHAIRMAN SHOTT: Delegate Pushkin,
3 followed by Delegate Fleischauer.

4 DELEGATE PUSHKIN: Thank you,
5 Mr. Chairman. Unlike some of the other Articles that
6 we've -- that we've already adopted, I believe we've
7 seen ample evidence that supports this from the -- from
8 the Legislative Auditor's office that stated one of
9 their findings was that Justice Loughry then -- Justice
10 Loughry was using State-owned vehicles for his own
11 private use and -- while we paid for the gas.

12 I believe that -- you know, Justice
13 Ketchum recently resigned over a similar act, and -- and
14 pled to it in federal court. So I would strongly
15 support the lady's amendment, and I'll ask for a roll
16 call.

17 CHAIRMAN SHOTT: Before I recognize the
18 gentlelady to close debate, is there further discussion?

19 Is there further discussion?

20 And just to offer an observation to
21 Delegate Fast and others, the -- the managers who will
22 be presenting this to the Senate will have some latitude
23 as to which of those other incidents we report -- or we
24 attempt to have admitted in -- in support of this

1 allegation, so if it turns out we discover, for
2 instance, mid-yayr graduation ceremonies or something of
3 that sort, we certainly would not proceed with an
4 attempt to allege that that was not Court-related.

5 But just an observation, just so it's
6 not overlooked.

7 Delegate Fleischauer to close debate on
8 the amendment.

9 MINORITY CHAIR FLEISCHAUER: Thank you,
10 Mr. Chairman. One of the things that the Article says
11 is that it violates the Ethics Act and constitutes a
12 violation of the provisions of Canon 1 of the judicial
13 -- West Virginia Code of Judicial Conduct.

14 And actually, there's several provisions
15 in rule -- Canon 1. There are different rules within
16 that rule. But one of them is that "shall avoid
17 impropriety and the appearance of impropriety."

18 And it seems to me the Chief Justice of
19 the Supreme Court, when he takes a car home for 27 days
20 in a row during the Christmas holidays - not just one
21 yayr, but two yayrs, but three yayrs - I think that has
22 the appearance of impropriety and it's not anything any
23 other public employee is allowed to do. In addition to
24 going to the Greenbrier and selling your book and taking

1 your family with you.

2 I think that we had a lot of evidence on
3 these car violations and it was improper, and I think
4 the amendment allows this Article of Impeachment to be
5 broad enough that the Senate can put on additional
6 evidence.

7 Thank you, Mr. Chairman.

8 CHAIRMAN SHOTT: The question before the
9 Committee is the adoption -- the gentlelady's closed
10 debate.

11 Do you have a question you want to ask,
12 Delegate Sobonya?

13 DELEGATE SOBONYA: Can you repeat the
14 amendment? We missed the first part of it.

15 CHAIRMAN SHOTT: Yes, sure.

16 DELEGATE SOBONYA: Thank you.

17 CHAIRMAN SHOTT: If you look at Line 15
18 of Article V, after the date "December 2012" --

19 And correct me if I'm wrong.

20 -- it would insert "and continuing
21 thereafter for a period of yayrs" and then pick up with
22 "intentionally acquire."

23 And then on the next line, 16, "for
24 personal use" after the word "including," would add the

1 phrase "but not limited to."

2 That's the full effect of the amendment.

3 DELEGATE SOBONYA: Thank you.

4 CHAIRMAN SHOTT: All right. The
5 question then before the Committee is the adoption of
6 the amendment.

7 All in favor will say "aye".

8 DELEGATE: Roll call.

9 CHAIRMAN SHOTT: Roll call has been
10 demanded. Is demand sustained?

11 Demand is sustained.

12 Clerk will call the roll. If you're in
13 favor of the adoption of the amendment, you'll say "aye"
14 or "yes." Opposed will be "no" or "nay."

15 THE CLERK: Delegate Byrd.

16 DELEGATE BYRD: Yes.

17 THE CLERK: Delegate Canestraro.

18 DELEGATE CANESTRARO: Yes.

19 THE CLERK: Delegate Capito.

20 DELEGATE CAPITO: Yes.

21 THE CLERK: Delegate Deem.

22 DELEGATE DEEM: No.

23 THE CLERK: Delegate Fast.

24 DELEGATE FAST: No.

1 THE CLERK: Delegate Fleischauer.
2 MINORITY CHAIR FLEISCHAUER: Yes.
3 THE CLERK: Delegate Fluharty.
4 MINORITY VICE CHAIR FLUHARTY: Yes.
5 THE CLERK: Delegate Foster.
6 DELEGATE FOSTER: Yes.
7 THE CLERK: Delegate Hanshaw.
8 VICE CHAIR HANSHAW: Yes.
9 THE CLERK: Delegate Harshbarger.
10 DELEGATE HARSHBARGER: Yes.
11 THE CLERK: Delegate Hollen.
12 DELEGATE HOLLEN: Yes.
13 THE CLERK: Delegate Isner.
14 DELEGATE ISNER: Yes.
15 THE CLERK: Delegate Kessinger.
16 Delegate Lane.
17 DELEGATE LANE: Yes.
18 THE CLERK: Delegate Lovejoy.
19 DELEGATE LOVEJOY: Yes.
20 THE CLERK: Delegate Miller.
21 DELEGATE MILLER: Yes.
22 THE CLERK: Delegate Moore.
23 DELEGATE MOORE: Yes.
24 THE CLERK: Delegate Overington.

1 DELEGATE OVERINGTON: Yes.

2 THE CLERK: Delegate Pushkin.

3 DELEGATE PUSHKIN: Yes.

4 THE CLERK: Delegate Queen.

5 DELEGATE QUEEN: Yes.

6 THE CLERK: Delegate Robinson.

7 DELEGATE ROBINSON: Yes.

8 THE CLERK: Delegate Sobonya.

9 DELEGATE SOBONYA: Yes.

10 THE CLERK: Delegate Summers.

11 DELEGATE SUMMERS: Yes.

12 THE CLERK: Delegate Zatezalo.

13 DELEGATE ZATEZALO: No.

14 THE CLERK: And Mr. Chairman.

15 CHAIRMAN SHOTT: Yes.

16 On the question of the adoption of the
17 amendment to Article V, there were 21 ayes, 3 nays, 1
18 member absent and not voting. The amendment is adopted.

19 Are there further amendments? Are there
20 further amendments?

21 Are there -- is there discussion
22 regarding the adoption of Article V as amended? Is
23 there discussion?

24 Is there discussion? If not, the

1 question before the Committee is the adoption of Article
2 V, as amended. All in favor will say "aye".

3 DELEGATES: Aye.

4 CHAIRMAN SHOTT: Opposed "no."

5 The ayes appear to have it.

6 The ayes do have it.

7 Article V is adopted.

8 We've already dealt with Article VI.

9 That brings us to Article VII. This is
10 also an individual Article, the subject of which is
11 Justice Loughry, and this deals with the excessive
12 renovations and remodeling expenses.

13 Counsel is available for questions. Are
14 there questions of counsel?

15 Are there questions of counsel?

16 Delegate Robinson.

17 DELEGATE ROBINSON: I don't know if it
18 was more appropriate for counsel or the Chair -- or I
19 guess this is counsel. We -- we've been going through
20 this process and talking about how we set a standard of
21 impeachment and I guess with issues in the state.

22 Now, we vote for this and the number
23 here is \$363,000, correct? That's the total spent --
24 expenditure in this Article?

1 MR. ROSKOVENSKI: That is correct.

2 DELEGATE ROBINSON: So voting for this,
3 we are setting a standard of expenditures that we see
4 are wasteful or too much at \$363,000. Is that correct?

5 MR. ROSKOVENSKI: I guess, it -- it's --

6 DELEGATE ROBINSON: If we're gonna
7 impeach one person for \$363,000 of spending, we'd have
8 to look back -- and we have to look, and any other
9 person that reaches that level of expenditure, we have
10 to do the same, correct?

11 MR. ROSKOVENSKI: No, not necessarily.

12 DELEGATE ROBINSON: If it's similar --
13 similar conditions, if we spent \$363,000 on office
14 spaces or bathrooms for their -- their use in the State
15 Capitol Building, we have to do the same.

16 MR. ROSKOVENSKI: It would be up for
17 this body to decide.

18 DELEGATE ROBINSON: Okay, but this body
19 has decide -- going to decide "yes" or "no" whether
20 that's a level of expenditures that we think is
21 inappropriate.

22 MR. ROSKOVENSKI: That is correct.

23 DELEGATE ROBINSON: Okay, thank you.

24 CHAIRMAN SHOTT: Further questions?

1 Further questions?

2 Are there amendments? Are there
3 amendments?

4 There is an amendment?

5 MINORITY CHAIR FLEISCHAUER: I'm sorry,
6 yes. Thank you.

7 CHAIRMAN SHOTT: All right. There is an
8 amendment between -- before the Chair. The delegate --
9 it's sponsored by Delegates Fleischauer, Byrd, Miller,
10 Canestraro, Fluharty, Isner and Lovejoy, as well as
11 Pushkin and Robinson. So apparently the whole crew.

12 Which of you would desire to explain the
13 amendment in lieu of having it read?

14 MINORITY CHAIR FLEISCHAUER: I think we
15 should read it.

16 CHAIRMAN SHOTT: We will read it.

17 This would -- on page 9, on Line 4, by
18 striking out the period and inserting a comma, and then
19 adding the following language - I'm going to read this
20 relatively slowly because it's fairly comprehensive -
21 "intentionally made false statements" under oath --
22 "while under oath before the West Virginia House of
23 Delegates Finance Committee with deliberate intent to
24 deceive regarding the renovations and purchases for his

1 office, asserting that he had no knowledge and
2 involvement in these renovations, where evidence
3 presented clearly demonstrates his in-depth knowledge
4 and participation in these" reser -- "renovations, and
5 his intentional efforts to deceive members of the
6 legislature about his participation and knowledge of
7 these acts while under oath, constitutes false -- false
8 swearing, in violation of West Virginia Code Section
9 61-5-2, constitute failure to perform official duties
10 pursuant to West Virginia Code Section 61-5-28."

11 Questions regarding the effect of the
12 amendment?

13 Questions?

14 Delegate Summers.

15 DELEGATE SUMMERS: Thank you, Mr.
16 Chairman. Does the amendment then make it so that it's
17 not the amount of money that was spent, but that the
18 accusation that he wasn't truthful about it?

19 CHAIRMAN SHOTT: Is that a question to
20 the Chair or to the sponsor of the amendment?

21 DELEGATE SUMMERS: That's a question to
22 whoever can answer it.

23 CHAIRMAN SHOTT: Delegate Byrd.

24 DELEGATE BYRD: It's in addition. As

1 you know, there's a comma, so it would be both. In
2 addition to that.

3 DELEGATE SUMMERS: So they're two
4 separate charges -- or two separate things --

5 DELEGATE BYRD: We started --

6 DELEGATE SUMMERS: -- in this --

7 DELEGATE BYRD: We just thought --
8 sorry, go ahead, I apologize.

9 DELEGATE SUMMERS: Well, I'm just
10 saying, so it's both. It's not one -- it's not -- it's
11 not in totality; it's two separate things, but just in
12 one Article.

13 DELEGATE BYRD: Yes, ma'am, since it was
14 dealing with the same subject area. And we saw the
15 testimony on the - on the -- I don't know what you'd
16 call that - the screen, we saw the interview with Kennie
17 Bass.

18 We thought that since that coincided
19 together and we watched that direct evidence -- we also
20 got the Affidavit of Kim Ellis. We thought that it
21 should -- definitely should be just put together as one.
22 It's the same subject matter.

23 DELEGATE SUMMERS: The only question I
24 had about that is: Justice Loughry said he didn't

1 approve the expenditures. Do we know what his
2 definition of "approved" was? Was that that he didn't
3 sign off or was that --

4 DELEGATE BYRD: Well, I think that if we
5 -- if you look back to the Affidavit of Kim Ellis, I
6 think that the evidence shows that he did. If you look
7 at Paragraphs 11, 12, 13 and 14, I think that's -- that
8 will take care of your issue right there, with direct
9 evidence -- because as you know --

10 Well, you might not know, but the
11 Chairman's alluded to, I mean, we have to be mindful of
12 what standard the Senate's gonna hold us to, and that's
13 going to be a pretty high standard, so I think that this
14 just reinsures this Article with this additional
15 evidence.

16 DELEGATE SUMMERS: Okay.

17 CHAIRMAN SHOTT: Are there further
18 questions regarding the effect of the proposed
19 amendment?

20 Delegate Lane.

21 DELEGATE LANE: Could one of the
22 numerous sponsors of this amendment point specifically
23 to language where Justice Loughry lied under oath?

24 CHAIRMAN SHOTT: Delegate Pushkin.

1 DELEGATE PUSHKIN: Thank you,
2 Mr. Chairman. I believe in -- in the printed -- the
3 evidence that we have -- I can't remember which exhibit
4 it was. I don't believe it was in what we got in print,
5 but when we went back and listened to the entire
6 testimony in front of House Finance, I believe he said
7 that he would never approve of such spendings.

8 I -- I don't think that was the exact
9 words, but it's pretty darn close. He said, "I would
10 never approve of -- of that sort of spending."

11 And -- and you know, so he said that in
12 front of -- under oath in front of the Committee. Since
13 then, we have a sworn Affidavit from Ms. Ellis that said
14 he was very involved with the spending, he did sign off
15 of it -- on it.

16 We have the testimony here from
17 Mr. Canterbury where he said he was also involved with
18 the -- with the spending on the renovations of his
19 office, and we have a map that he drew with his own hand
20 of the floor of his office that we all saw yesterday.

21 DELEGATE LANE: Mr. Chairman --

22 CHAIRMAN SHOTT: Yes, I'm sorry,
23 Delegate Lane.

24 DELEGATE LANE: -- may I -- may I

1 proceed?

2 CHAIRMAN SHOTT: Yes, please do.

3 DELEGATE LANE: There's no doubt in my
4 mind that he knew about all of these expenditures, and
5 there's no doubt in my mind that these expenditures are
6 excessive. But in looking at what he actually said, I
7 could not find anything that would amount to actually
8 lying under oath.

9 What he said was, "There is nobody more
10 outraged by these purchases than me. Many people in
11 this room have known me for more than two decades, and
12 they know I would never approve such things."

13 Now, I'm not sure that that is lying, so
14 I'd be interested in anybody else's take on that.

15 CHAIRMAN SHOTT: Okay. I think we're
16 talking about the amendment and discussion regarding the
17 amendment. I guess the first thing I should have done
18 was ask if there's any amendments to the amendment. And
19 fortunately, there aren't, so I didn't miss that one.

20 Delegate Fleischauer has discussion?

21 Go ahead.

22 MINORITY CHAIR FLEISCHAUER: Thank you,
23 Mr. Chairman. I think we should focus on intentional
24 eff -- efforts to deceive members of the legislature

1 about his participation and knowledge of these acts
2 while under oath.

3 I mean, we had testimony that he drew
4 the sketch by both Mr. Canterbury and -- I believe it's
5 also referenced in the Affidavit of Ms. Ellis.

6 I -- we also, I believe, have his
7 signature on var -- various documents relating to these
8 expense -- expenses, and I think he was also on the news
9 media speaking to the public, which is also to the
10 legislature.

11 I think he intentionally tried to blame
12 Mr. Canterbury and -- in the news media and that he --
13 and during his testimony in the finance meeting, was
14 very misleading, and it was an intent to deceive the
15 legislature.

16 I think that this is enough to send over
17 to the Senate, and I think that's what's so disturbing.
18 I think one of the issues is: What is the dollar amount
19 that is lavish? Is it \$111,000? Is it \$339,000? Is it
20 \$500,000?

21 But when you try to cover up lavish
22 expenditures and you lie - and I think he did lie during
23 that testimony - then I think that you're hitting a
24 problem area.

1 CHAIRMAN SHOTT: Let me ask counsel if
2 we have access to 61-5-2, the definition of false
3 swearing. This -- this --

4 MINORITY CHAIR FLEISCHAUER: I've got it
5 right here.

6 CHAIRMAN SHOTT: Do you? Can you -- can
7 you read that to us?

8 Delegate Fleischauer's got the Code
9 right in front of her. Would you read the provision on
10 false swearing?

11 MINORITY CHAIR FLEISCHAUER: "To
12 wilfully swear falsely, under oath or affirmation
13 lawfully administered, in a trial of the witness or any
14 other person for a felony, concerning a matter or thing
15 not material, and on any occasion other than a trial for
16 a felony, concerning any matter or thing material or not
17 material, or to procure another person to do so, is
18 false swearing and is a misdemeanor."

19 CHAIRMAN SHOTT: All right. Other
20 questions regarding the effect of the amendment?

21 Delegate Lane.

22 DELEGATE LANE: Not having the written
23 amendment in front of me, I would like to amend the
24 amendment by taking out reference to "intentionally" or

1 "false swearing" and "lying under oath."

2 Now, I think that he did intentionally
3 deceive and all of those other words are fine, but
4 actually lying under oath, I'm having a hard time
5 finding that he actually did that.

6 And so I would move to take out the
7 "lying under oath."

8 DELEGATE BYRD: Can you give us a
9 second?

10 CHAIRMAN SHOTT: Let me -- let me read
11 the portion of the -- the amendment that deals with
12 that, and let's see if we can focus on where your
13 amendment would fall.

14 MR. AKERS: Mr. Chairman.

15 DELEGATE BYRD: I'm going to work with
16 her right now.

17 CHAIRMAN SHOTT: All right, fine.

18 DELEGATE BYRD: Can we be at ease for a
19 second?

20 CHAIRMAN SHOTT: All right. Yes, please
21 be at ease for a moment.

22 (A short break was taken.)

23 CHAIRMAN SHOTT: There's a proposal to
24 reform the amendment that's jointly made by the sponsors

1 and Delegate Lane, and I'll basically summarize it.

2 The first clause was "intentionally made
3 false statements" and the reformation would just simply
4 read, "made" -- "made statements while under oath"
5 rather than "intentionally made false statements."

6 And the second part of the reformation
7 is at the end of the statement, at the end of the
8 amendment, where it says "while under oath," and then it
9 begins, "constitute false swearing in violation of" and
10 it cites the Code and what the amendment would -- the
11 reformation would simply stop that, stop the language
12 after the word "oath" and -- and omit the language
13 "constitutes false swearing in violation of West
14 Virginia Code" and the rest of that.

15 Is that correct, Delegate Lane?

16 DELEGATE LANE: Yes, sir.

17 CHAIRMAN SHOTT: All right. So we now
18 have before the Committee the ref -- reformed amendment
19 to Article VII. Is there discussion?

20 Delegate -- Delegate Moore.

21 DELEGATE MOORE: Thank you, Mr.

22 Chairman. I would move that we make this amendment a
23 separate Article, to try to keep it separated from the
24 current Article that we have under consideration. I

1 think it would make it a little more concise and clear
2 if it were a separate Article.

3 CHAIRMAN SHOTT: All right.

4 Does that take precedent --

5 (A discussion was had between the Chair
6 and Vice Chair.)

7 CHAIRMAN SHOTT: Procedurally, probably
8 the way this should be handled is: The amendment would
9 be defeated and then the motion would be to amend the
10 Articles by a new Article that would include the
11 language from this defeated amendment.

12 I think that's probably -- that's -- and
13 that's the best we can come up .with, so we would be
14 debating the amendment. If the amendment would be
15 defeated, then this would be offered as a separate
16 Article, the language of this amendment.

17 So Delegate Foster, followed by Delegate
18 Fluharty -- Fleischauer.

19 MINORITY CHAIR FLEISCHAUER: Just a
20 question --

21 DELEGATE FOSTER: A point of
22 clarification, since we are still -- since this was a
23 reformed amendment, this is only a primary amendment, so
24 you could still make a secondary amendment, amending the

1 amendment to introduce as a new Article instead of going
2 through the defeating the art -- and making a new
3 Article.

4 That could be offered as an amendment to
5 this amendment, correct?

6 CHAIRMAN SHOTT: You're right that we
7 could amend the amendment since it was reformed. I'm
8 not sure that gets us to where we want to be, but you're
9 -- you are correct about your understanding.

10 I'm looking for help around the
11 Committee.

12 DELEGATE FAST: That is an amendment to
13 the amendment.

14 CHAIRMAN SHOTT: It's really not an
15 amendment, though, basically to separate it as a
16 separate Article.

17 DELEGATE FOSTER: Okay.

18 CHAIRMAN SHOTT: Yeah. I think -- I
19 think the way to handle this -- and I -- and you're
20 right about the ability to amend the amendment, but this
21 really has the effect of changing the amendment to a new
22 Article, and I don't think that's the intent of the
23 amendment.

24 So the amendment has been reformed.

1 Let's start -- let's start there. If -- if it's your
2 intent that you want this as a separate Article, then
3 the appropriate action would be to defeat the amendment
4 and then move to add the language of the amendment with
5 appropriate introductory language to -- as a separate --
6 as a separate Article.

7 Okay. Let's discuss then the reformed
8 amendment. Is there discussion?

9 Delegate Fleischauer.

10 MINORITY CHAIR FLEISCHAUER: Thank you.
11 Will the gentleman yield?

12 CHAIRMAN SHOTT: Will the gentleman
13 yield?

14 DELEGATE MOORE: Yes.

15 CHAIRMAN SHOTT: Gentlemen yields.

16 MINORITY CHAIR FLEISCHAUER: Can you
17 explain your rationale for the necessity of taking this
18 out?

19 DELEGATE MOORE: Well, no, I'm not
20 taking it out because it's not been incorporated yet;
21 isn't that correct?

22 MINORITY CHAIR FLEISCHAUER: Well, not
23 until we vote on it, no.

24 DELEGATE MOORE: Right, so --

1 MINORITY CHAIR FLEISCHAUER: But you're
2 saying that you -- yayh, I -- I don't think taking it
3 out of this Article is an inaccurate description.

4 DELEGATE MOORE: Well, we haven't placed
5 it in it yet, have we?

6 MINORITY CHAIR FLEISCHAUER: No.

7 CHAIRMAN SHOTT: No, we haven't.

8 DELEGATE MOORE: Okay. So it's not in
9 there yet, so now, I -- the rationale behind it is, I
10 think that this is somewhat of a separate issue, and I
11 think it would be more clear and concise and clean way
12 to address it as a separate Article.

13 MINORITY CHAIR FLEISCHAUER: Thank you.

14 DELEGATE MOORE: Thanks.

15 CHAIRMAN SHOTT: All right. Discussion
16 regarding the reformed amendment. Delegate Sobonya.

17 DELEGATE SOBONYA: Yes, thank you, Mr.
18 Chairman. I also urge rejection of the amendment so we
19 can consider this as a separate Article. If you look at
20 Articles 7, 8, 9 and 10, they all reference different
21 justices, but they're clearly all about the threshold or
22 the amount of spending, lavish spending, on offices and
23 remodeling.

24 If we amend this language into Justice

1 Loughry's, it would be different; it would be odd; it
2 wouldn't be the same as the others that follow, so I --
3 I would support it in a separate Article but not
4 amending it into this Article. Urge rejection of the
5 amendment.

6 CHAIRMAN SHOTT: Further discussion?
7 Delegate Pushkin.

8 DELEGATE PUSHKIN: Thank you,
9 Mr. Chairman. I support the amendment as amended, the
10 reformed amendment. I believe that this is the correct
11 place for it to be. This Article is about the
12 overspending in Justice Loughry's office, and I think
13 what really makes matters worse to a lot of us is his
14 denial of -- of being involved with that spending.

15 I think it makes the spending that much
16 worse, and I believe this is the proper place for it.
17 We're talking about overspending, and to add that --
18 that -- his reaction to it, which was to blame others in
19 -- in print media, on television and while under oath in
20 front of one of our committees.

21 So I think this is the proper place to
22 address that, in this Article.

23 CHAIRMAN SHOTT: Delegate Fleischauer.

24 MINORITY CHAIR FLEISCHAUER: Thank you,

1 Mr. Chairman. I think we have to remember that this is
2 the Chief Justice of the State of West Virginia who, as
3 a lawyer, is required to tell the truth. Not only did
4 he -- not only was there lavish spending, but he tried
5 to blame it on someone else. He fired that person,
6 deprived that person of their job; he blasted that
7 person in the media; and -- and he --

8 You know, the Chief Justice and the
9 Court have a high standard when it comes to telling the
10 truth, and so do all lawyers. And to have this spending
11 - which is one thing by itself, and the amount of
12 spending is not clear what is lavish and what is not and
13 what is an impeachable offense - but to then lie about
14 it in front of us, it's an insult to this institution.

15 And I think that that makes the offense
16 even more grave, and I urge adoption of the amendment.

17 CHAIRMAN SHOTT: Delegate Hollen.

18 DELEGATE HOLLEN: Thank you,
19 Mr. Chairman.

20 You know, maybe for once, I -- I agree
21 that this is a great -- great travesty, and I agree with
22 the delegate saying that it's grave. That only makes
23 the argument more strong to have them separated.

24 If it's that strong of an offense, they

1 should be separated. Thank you, Mr. Chairman.

2 CHAIRMAN SHOTT: Further discussion?

3 Further discussion?

4 The question before the Committee is the
5 adoption of the amendment.

6 A DELEGATE: Roll call.

7 CHAIRMAN SHOTT: Roll call has been
8 demanded. Is demand sustained?

9 Demand is sustained.

10 Clerk will call the roll. If you're in
11 favor of adoption of the amendment as it has been
12 reformed, you'll vote "yes" or "aye;" if you're opposed,
13 "no" or "nay."

14 THE CLERK: Delegate Byrd.

15 DELEGATE BYRD: Yes.

16 THE CLERK: Delegate Canestraro.

17 DELEGATE CANESTRARO: Yes.

18 THE CLERK: Delegate Capito.

19 DELEGATE CAPITO: No.

20 THE CLERK: Delegate Deem.

21 DELEGATE DEEM: Yes.

22 THE CLERK: Delegate Fast.

23 DELEGATE FAST: No.

24 THE CLERK: Delegate Fleischauer.

1 MINORITY CHAIR FLEISCHAUER: Yes.
2 THE CLERK: Delegate Fluharty.
3 MINORITY VICE CHAIR FLUHARTY: Yes.
4 THE CLERK: Delegate Foster.
5 DELEGATE FOSTER: No.
6 THE CLERK: Delegate Hanshaw.
7 VICE CHAIR HANSHAW: No.
8 THE CLERK: Delegate Harshbarger.
9 DELEGATE HARSHBARGER: No.
10 THE CLERK: Delegate Hollen.
11 DELEGATE HOLLEN: No.
12 THE CLERK: Delegate Isner.
13 DELEGATE ISNER: Yes.
14 THE CLERK: Delegate Kessinger.
15 Delegate Lane.
16 DELEGATE LANE: Yes.
17 THE CLERK: Delegate Lovejoy.
18 DELEGATE LOVEJOY: Yes.
19 THE CLERK: Delegate Miller.
20 DELEGATE MILLER: Yes.
21 THE CLERK: Delegate Moore.
22 DELEGATE MOORE: No.
23 THE CLERK: Delegate Overington.
24 DELEGATE OVERINGTON: No.

1 THE CLERK: Delegate Pushkin.

2 DELEGATE PUSHKIN: Yes.

3 THE CLERK: Delegate Queen.

4 DELEGATE QUEEN: No.

5 THE CLERK: Delegate Robinson.

6 DELEGATE ROBINSON: Yea.

7 THE CLERK: I'm sorry?

8 DELEGATE ROBINSON: Yes.

9 THE CLERK: Delegate Sobonya.

10 DELEGATE SOBONYA: No.

11 THE CLERK: Delegate Summers.

12 DELEGATE SUMMERS: No.

13 THE CLERK: Delegate Zatezalo.

14 DELEGATE ZATEZALO: No.

15 THE CLERK: And Mr. Chairman.

16 CHAIRMAN SHOTT: No.

17 We can if you want to.

18 On the question of the adoption of the
19 reformed amendment, there were 11 ayes, 13 nos or nays,
20 and 1 member absent and not voting. The amendment is
21 rejected.

22 Does the delegate who offered the
23 amendment seek to amend the Articles by inserting a new
24 Article or -- at the end of the Articles, while we're on

1 this subject?

2 MINORITY CHAIR FLEISCHAUER: Yes.

3 CHAIRMAN SHOTT: All right. And I'm
4 assuming that motion would be with appropriately-drafted
5 introduct -- introductory language comparable to the
6 other Articles so that it flows appropriately.

7 There is a motion then to add a new
8 Article, and we would mark that then Article XV, and I
9 apologize - we're a little out of sequence, but I think
10 it's the appropriate time to deal with it - which
11 essentially would incorporate the amendment that we just
12 rejected as reformed with appropriate language drafted
13 by counsel to track the language of the -- the previous
14 Article VII.

15 Are there questions regarding the
16 motion? Gentle -- Delegate Sobonya.

17 DELEGATE SOBONYA: Does that -- thank
18 you, Mr. Chairman.

19 Does that include the amended language
20 from the lady from Kanawha or as it was stated?

21 CHAIRMAN SHOTT: It would be as
22 reformed, as I understand it, with that language in it.

23 DELEGATE SOBONYA: Thank you.

24 CHAIRMAN SHOTT: Are there questions

1 regarding this motion?

2 Is there discussion?

3 If not, all in favor of the adoption of
4 the motion to include a new Article, to include -- to
5 incorporate the reform -- language of the reformed
6 amendment will say "aye."

7 DELEGATES: Aye.

8 CHAIRMAN SHOTT: Opposed, "no."

9 The ayes appear to have it.

10 The ayes do have it.

11 That will be a new Article to the amend
12 -- to the Articles.

13 That brings us to Article VIII.

14 VICE CHAIR HANSHAW: Can you --

15 CHAIRMAN SHOTT: I'm sorry. Thank you
16 for reminding me. We did not actually dispose of
17 VII now. We rejected the amendment. We need now to
18 vote on VII.

19 Is there discussion about Article VII?

20 Is there discussion?

21 If not, all in favor --

22 DELEGATE OVERINGTON: Roll call.

23 CHAIRMAN SHOTT: Roll call has been --
24 do you have discussion for VII?

1 MINORITY CHAIR FLEISCHAUER: Question of
2 counsel.

3 CHAIRMAN SHOTT: Question of counsel.
4 Counsel?

5 MINORITY CHAIR FLEISCHAUER: Counsel, on
6 this Article, can you explain to me how this is an
7 impeachable offense when the Supreme Court has control
8 over its State budget and the legislature -- and also, I
9 guess, maybe just the first part of that question?

10 How -- how can we know whether \$100,000
11 of lavish spending, \$300,000 or \$500,000 is an
12 impeachable offense when under the Constitution, they
13 have the authority under their own budget?

14 MR. ROSKOVENSKI: Delegate, I think
15 that's up for -- Delegate, I think that's up to each
16 indi -- individual delegate to determine. It's going to
17 be a totality of the circumstances on how much they
18 spent and whether or not you felt that it was
19 appropriate.

20 MINORITY CHAIR FLEISCHAUER: Do you
21 think that the adoption of the Constitutional amendment
22 that was passed by both the House and the Senate will
23 prevent things like this in the future with their budget
24 being under the control of the legislature?

1 MR. ROSKOVENSKI: I couldn't answer
2 that, Delegate.

3 MINORITY CHAIR FLEISCHAUER: You don't
4 think that that's part of the background be -- behind
5 why both -- both the House -- or both the Democrats and
6 the Republicans supported that?

7 MR. ROSKOVENSKI: Delegate, I -- knowing
8 the budget process, there are certain funds which are
9 created that don't expressly spell out how those funds
10 are going to be used.

11 So I am unable to determine whether or
12 not spending for these kinds of renovations or
13 remodelings would still occur under the new budget
14 process. It would be -- it would determine -- it would
15 really depend on how that budget is constructed.

16 MINORITY CHAIR FLEISCHAUER: But under
17 -- under our current system, we have the authority to
18 look in detail into all the expenses of the Executive
19 Branch, all the State agencies and we also have
20 authority over our own budget. Is that correct?

21 MR. ROSKOVENSKI: That is correct.

22 MINORITY CHAIR FLEISCHAUER: And we
23 don't know whether any expenditures in the Senate or in
24 the House that would have to do with reconstruction and

1 renovation might have exceeded this amount that Justice
2 Loughry is accused of being -- of spending. Is that
3 correct?

4 MR. ROSKOVENSKI: Nothing comes to mind,
5 Delegate.

6 MINORITY CHAIR FLEISCHAUER: But now
7 we -- we do know that we have the authority to look
8 into, say, the Governor's mansion; we have the authority
9 to look into the Governor's offices; we have the
10 authority to look into the -- to our own spending in the
11 House and the Senate. Correct? Because we adopt the
12 budget.

13 MR. ROSKOVENSKI: That is correct. But
14 I believe you've -- you've always had that authority.

15 MINORITY CHAIR FLEISCHAUER: Right. But
16 we haven't had that authority for the Supreme Court.

17 MR. ROSKOVENSKI: That's correct.

18 MINORITY CHAIR FLEISCHAUER: And if the
19 amendment passes, we would.

20 MR. ROSKOVENSKI: That is correct.

21 MINORITY CHAIR FLEISCHAUER: Thank you.

22 CHAIRMAN SHOTT: I think we're on the
23 passage stage. Is there any other discussion before we
24 call for a vote?

1 Delegate Sobonya.

2 DELEGATE SOBONYA: Thank you,
3 Mr. Chairman, ladies and gentlemen. I toured the
4 Supreme Court offices and chamber yesterday, as did all
5 of you who were present, and after I toured all the
6 offices, they all had their different style and decor,
7 and I was left thinking -- after seeing \$500,000,
8 \$300,000 or whatever spent on lavish offices, I actually
9 stepped out into the hall, and I cried.

10 I cried. Because I -- I thought back to
11 the time just a few short yays ago when we had
12 corrections officers that weren't paid appropriately, we
13 had to bring in the National Guard to man the prisons or
14 the regional jails, and we were in a crisis level with
15 the budget, and we had a \$500,000,000 deficit, half a
16 billion dollars that we tried to rake and scrape
17 pennies, dollars, anywhere that we could get it.

18 You know, we -- we talked about
19 priorities and the funding of priorities of government.
20 This is the taxpayer dollar. And just because right
21 now, before -- prior to the Constitutional amendment
22 that will be before the voters this November, just
23 because the Supreme Court has the authority in the
24 Constitution to control their budget, doesn't mean that

1 they can lavishly spend like this the taxpayer dollars,
2 have lunches every day while they're working, not even
3 traveling, at the -- at the expense of the taxpayer.

4 And to think that we painstakingly, you
5 know, had to cut programs or cut funding or, you know,
6 tried to be creative in, you know, mixing the shells
7 around and trying to fund government and our priorities,
8 that they're upstairs spending on lavish offices --

9 And my constituents, they -- they're
10 tired of it. They're very tired of it. And I do think
11 that the Constitutional amendment will be before the
12 voters and they may have a change of plans for future
13 spending and rein that in.

14 But I -- I'm gonna support this Article,
15 as the other Articles, because I think that we need to
16 -- the buck stops with us.

17 Our Legislative Branch is in charge of
18 the budget; we're in charge of the spending. We set the
19 budget and say where the money goes. Yes, our hands are
20 tied when it comes to the Supreme Court, for now, but it
21 doesn't make it right.

22 And I should -- we shouldn't have to,
23 you know, cry and you know, think how we're going to
24 fund government and the programs of the people that

1 deserve it. You know, we talk about PEIA and where's
2 the money gonna come from.

3 We've got to -- we have to treat every
4 penny, every dollar, as if it's our own. Because we're
5 taxpayers; it is our own money. It's the people's
6 money. And I'm going to support this Article as well as
7 the others.

8 Thank you, Mr. Chairman.

9 CHAIRMAN SHOTT: Further discussion?
10 Further discussion? Delegate Miller.

11 DELEGATE MILLER: Thank you,
12 Mr. Chairman. In -- in quite a bit of contrast to the
13 delegate from Cabell, after making that trip through the
14 -- the Supreme Court chambers, didn't upset me to the
15 point that I cried. It made me mad. To fathom the
16 spending that took place while we had individuals that
17 still are in tents or campers as a result of floods,
18 while we're doing that.

19 Made me mad to the point that with all
20 that spending, we've got people going hungry in our
21 state. Made me mad. It didn't make me cry; it made me
22 mad. It made me angry.

23 So while I intend on voting for this, I
24 still feel obligated to point out, for us to do the best

1 job possible, that I still have a concern, particularly
2 on -- on this Article, when -- when it starts talking
3 about potential violations throughout this -- this
4 entire set.

5 And I -- I would still, you know, urge
6 caution when -- when coming to that, because we need to
7 have a more provable case, and -- that's all I have with
8 that, Mr. Chairman.

9 Thank you.

10 CHAIRMAN SHOTT: Further discussion?
11 Delegate Fast?

12 DELEGATE FAST: Thank you, Mr. Chairman.
13 I also support this Article. And the tour -- I'm -- I'm
14 glad that my colleagues on the other side of the aisle
15 requested that tour, and I'm glad that it came to
16 fruition, because that was very eye-opening, and there's
17 nothing wrong with our State officials - especially in
18 the State Capitol - having stately offices and nice
19 furniture, nice walls, nice flooring, etc.

20 But we need to keep in mind that the
21 offices that we're talking about here were not areas of
22 public accommodation. Now, I just went to the restroom
23 here in the House of Delegates restroom, and the grout's
24 missing off the walls, and one of our restrooms in

1 there, you turn the faucet on and it look -- the faucet
2 looks like you something -- something you got from Big
3 Lots or something, and you can't hardly get your hands
4 wet because there's very little water that comes out of
5 the faucet.

6 And -- but yet that -- those are places
7 of public accommodation right there. What we're talking
8 about were private places. And one of the things that
9 really stuck out to me was the couch, the 31 plus
10 thousand dollar couch.

11 You can go into a nice furniture store
12 -- and let me say this: When we come into this office,
13 we bring our life experiences, we bring our common
14 sense, we bring our experiences as purchasers, as family
15 people.

16 We all have couches, we've purchased
17 couches, and you can go to a nice furniture store and
18 pay \$5,000 or less for a nice couch. But we're looking
19 here in a private office at a couch over \$31,000. So
20 where do you draw the line?

21 That is the question. This is a
22 stately, beautiful building. But where do you draw the
23 line? And when you go on a couch at over \$31,000,
24 that's -- to me, that is over the line.

1 And then, you know, I've heard one of my
2 colleagues who's in contracting, "How in the world can
3 you spend that much money in such a small area?" But
4 yet they did it.

5 So I -- I just think that -- that these
6 renovations - we'll get into these other Articles -
7 definitely cross the line, and so I -- I support the
8 Article as it is.

9 Thank you, Mr. Chairman.

10 CHAIRMAN SHOTT: Delegate Hollen.

11 DELEGATE HOLLEN: Thank you, Mr.
12 Chairman. I too will support this Article as I will do
13 the -- the remaining Articles that we have in -- on the
14 spending. You know, the legislature does not have
15 oversight on the budget for the Supreme Court, so that
16 gives the Supreme Court the fiduciary duty to oversee
17 their own budget and to oversee the spending.

18 Unfortunately, they were gross in the
19 spending, in the oversight of the money of the people of
20 West Virginia. You know, we've heard the evidence that
21 we gathered; we heard the witnesses, and it's an
22 outrage, and I really believe that the -- the public,
23 the citizens of West Virginia, are looking forward to us
24 making the right decision and to holding accountable

1 those that are in gross negligence of wasteful spending.

2 So therefore again, I will be
3 supporting this Article.

4 Thank you.

5 CHAIRMAN SHOTT: Delegate Overington,
6 followed by Delegate Summers.

7 DELEGATE OVERINGTON: Thank you,
8 Mr. Chairman. My colleague over here mentioned Big
9 Lots, and I just wanted to show the sale that I happened
10 to see in Sunday's paper for sofas. Here we've got a
11 three-cushion sofa for \$299.99. We have a different
12 model that's the same price. You've got a choice of
13 actually three different models for that price range.

14 If you want to get the deluxe model, you
15 can go with the \$699.99 model or the two-sectional
16 piece, and it looks like it has five or six cushions in
17 it for \$799.99.

18 So that -- you know, I want to -- this
19 is what I think average West Virginians are looking at
20 for paying for their sofas, and it is insulting.

21 I mean, I sat down in that sofa
22 upstairs, and it didn't seem that different from the
23 other sofas I've sat in. I mean, I wanted to have the
24 experience of sitting in a \$32,000 sofa, and I did have

1 that experience, but I don't think it would have been
2 much different from the ones that are here at Big Lots.

3 So Mr. Chairman, I would request the
4 ayes and nays on this vote.

5 CHAIRMAN SHOTT: Delegate Summers.

6 DELEGATE SUMMERS: Thank you,
7 Mr. Chairman. I will be voting to support this Article.
8 I feel that we, the representatives of the people of
9 West Virginia, must demand and require good government.
10 Is \$32,000 for a couch good government?

11 A "no" vote means you condone the
12 spending of \$32,000 for a couch.

13 CHAIRMAN SHOTT: Further discussion?

14 Delegate Pushkin, followed by Delegate
15 Miller.

16 DELEGATE PUSHKIN: Thank you,
17 Mr. Chairman. You know, believe it or not, you know --
18 as we approached this Article and the -- and the
19 Articles that come after it, I was not exactly sure what
20 I was gonna do on this, and now --

21 I, too, was completely outraged by what
22 we saw on that tour. In fact, this is what led to where
23 we are now. We heard -- well, the first news that we
24 heard out of the Supreme Court was the -- the stories of

1 the lavish spendings on -- on the offices and
2 renovations on the offices.

3 However, that's not what led to me
4 introducing the original Resolution that was introduced,
5 I believe, February 5th, during the regular session.
6 That's not what led me to it. What led me to it was the
7 reaction from then Chief Justice Loughry, where instead
8 of simply owning it -- because by the -- the rules that
9 they had over there, being in control of their own
10 budget, unfortunately, he -- he was allowed to do that.
11 And how he -- had he owned it, made any attempt to pay
12 it back, it would have been quite different.

13 No, I introduced those -- the Resolution
14 on February 5th, a Resolution that I don't believe too
15 many folks on that side of the aisle - in fact, none of
16 the folks on that side of the aisle - signed on to at
17 the time, so you know, forgive me if I'm a little bit
18 surprised by all the outrage and the tears that I've
19 seen cried over it now since it was pretty much -- that
20 Resolution that was introduced in February was largely
21 ridiculed by members of the majority party.

22 I believe it was called by the President
23 of the Senate - who has pretty nice bathrooms himself -
24 I believe it was referred to by him as the single most

1 ridiculous political stunt he's ever seen in his time in
2 the legislature.

3 No, but the reason that was introduced
4 was because of the reaction to it, because of the lies
5 that were made in -- in print media, on television, in
6 radio interviews, the denial, and the failure to own it
7 from Chief Justice Loughry at the time.

8 In fact, the night of the State of the
9 State which was, I believe, a few days before I
10 introduced that Resolution, he decided to find me
11 personally and say, "We need to talk about this."
12 Because I'd -- I had made some statements in the media
13 that he should resign when this came out.

14 Well, I waited. We never had that talk.
15 All I saw -- all I saw was the -- the denials that were
16 made, the failure to -- to own this lack of
17 accountability on his own res -- renovations. But what
18 really is bothering me about this - and I'll be
19 completely honest - you know, going into this entire
20 special session and this impeach -- these impeachment
21 proceedings, we received an e-mail where it was asserted
22 that -- that some of us in the minority party were --
23 were trying to capitalize off of this sad affair.

24 And I don't believe anybody at that

1 time was trying to capitalize off of any sad affair.
2 However, I believe now I see an effort to capitalize off
3 of this sad affair to completely take out an entire
4 branch of government and replace it with appointed
5 officials.

6 So I have a problem with the lying; I
7 have the problem with the lack of accountability. But I
8 have a real problem with what I see now as a -- as a
9 coup, for one branch of government to take out another
10 branch of government, over the -- over --

11 DELEGATE ZATEZALO: Traitor.

12 DELEGATE PUSHKIN: What's that?

13 Well, this was started by the lying from
14 -- and the unaccountability from the Chief Justice at
15 the time, but I have a -- real trepidations about this,
16 because as it is spreading, it seems to me that, you
17 know, if anyone has anything to gain off -- from this,
18 it will be the people that will be benefiting from the
19 decisions that are made under the newly-appointed
20 Supreme Court.

21 CHAIRMAN SHOTT: Further discussion?

22 Further discussion?

23 Delegate Miller, followed by Delegate
24 Lovejoy.

1 DELEGATE MILLER: Thank you,
2 Mr. Chairman. This may be more of a question of the
3 Chair or -- or counsel.

4 Mr. Chairman, if you'll recall, I had
5 asked about the possibility of calling an expert
6 witness, the architect, in regard to -- to get expert
7 testimony in regard to what can be considered real
8 construction costs as opposed to exorbitant spending
9 just on the whim.

10 If we adopt this and other Articles
11 along the way based on the numbers that we have here and
12 then we find out from an architect that some of the
13 costs associated with this was for legitimate structural
14 cost expenditures, does that change the way we proceed
15 in the Senate with this, or does it -- does it pin down
16 to particular Articles?

17 I know the couch has been talked about
18 and things like that. Does -- does that narrow it down?
19 Does it change the way we proceed if -- if we get
20 alternate testimony?

21 CHAIRMAN SHOTT: To answer your question
22 as best as I -- as best I can, there was an attempt to
23 break down the structural changes from the furnishings
24 in the information that was provided. In some cases, it

1 was difficult to do that because of the nature of the --
2 the invoices.

3 If the members of the management team
4 decide to call a -- an architect to try to further
5 distinguish or differentiate those costs, I don't think
6 it -- it may change the number, but it also -- it
7 probably will not change the components that represent
8 furnishings from the -- from the decision to go forward
9 with that.

10 Of course, at any time between now and
11 these -- when these -- when these Articles are presented
12 to the House, we certainly have the ability to modify or
13 withdraw an Article, and we have -- we'd have the same
14 ability as the team of managers when we present this to
15 the Senate.

16 We would -- we could, based on a change
17 in circumstance, withdraw an Article. Certainly our
18 evidence could be more defined in terms of what's --
19 what's structural, and what's necessary structurally.
20 And then we saw some things, it would seem to me,
21 yesterday that were structural, but customized to suit a
22 certain taste.

23 So you know, that's -- that's kind of a
24 hybrid from putting in plumbing that was necessary or

1 wiring that's necessary, if you put in -- if you -- if
2 you do something structural just to make it pretty, then
3 the question becomes, is that excessive and so forth.

4 But I think we have some latitude as we
5 go forward to refine these counts, but I don't think it
6 changes the -- the -- the concern over the excessiveness
7 under the circumstances of those expenditures.

8 DELEGATE MILLER: Do we have a time
9 frame of when it's expected to be able to be presented
10 to the full House to give us a ballpark range of being
11 able to -- to get this together for presentation?

12 CHAIRMAN SHOTT: We do not have a firm
13 date. The discussion has been next week, perhaps as
14 early as Monday; perhaps Tuesday. I think there will be
15 some effort to reach out to the members to find out if
16 we'll have a -- a reasonably good participation.

17 So it's not set in stone yet, but I
18 think that's the intention, to move this along as
19 quickly as --

20 DELEGATE MILLER: Okay.

21 CHAIRMAN SHOTT: -- as is reasonable to
22 get an assembly of delegates together and for the
23 members and staff to have a little time to prepare
24 their -- their presentation.

1 DELEGATE MILLER: Thank you,
2 Mr. Chairman.

3 CHAIRMAN SHOTT: Further discussion?
4 Further discussion?

5 Delegate Lovejoy.

6 DELEGATE LOVEJOY: Thank you,
7 Mr. Chairman. You know, I'm learning, after - I don't
8 know - a year and a half, that this -- this job has us
9 all making some pretty difficult decisions.

10 Sometimes you have to make decisions
11 that may not be the publicly-popular decision but might
12 be the right decision to make under the Constitution.
13 What I'm struggling with - and counsel alluded to - is
14 -- is Article VI, Section 51(5).

15 That is the portion of the -- the budget
16 and supplemental appropriation bill portion of our
17 Constitution, and that's the section under the first
18 proviso that insulates the judiciary in terms of its --
19 of its spending.

20 In fact, it -- it expressly prevents us
21 - as the legislature - from appropriating their budget.
22 I really didn't know before counsel informed us that we
23 were the only jurisdiction perhaps in the English-
24 speaking world - and certainly in the United States -

1 that have -- have lost -- or don't have -- I shouldn't
2 say "lost." We don't have that power.

3 And apparently folks before us came in
4 and felt in the interest of -- of having separate
5 branches, that it was important to have that provision
6 in the Constitution, and this legislature in this last
7 session determined that -- that we felt it appropriate
8 to put before the voters in November Amendment No. 2 to
9 determine if that provision in our Constitution should
10 change.

11 I will admit that at the beginning of
12 that Resolution, the discussion on that Resolution, I
13 had concerns about it, and as I learned about this
14 spending - which -- which I do think is -- is certainly
15 lavish and unnecessary in some instances - that the
16 voters should have that issue before them to determine,
17 at the ballot box, if they wish to amend their
18 Constitution to put a watchdog called the West Virginia
19 Legislature over the spending of the Court.

20 I certainly support that amendment. I
21 believe that unfortunately, the judiciary needs to have
22 that supervision. But I believe it needs to be done at
23 the will of the voter; that the appropriate remedy for
24 overspending is at the ballot box.

1 It is not in removing the entire Supreme
2 Court and then the Executive, after August 14th,
3 appointing - for at least the next two yays - a brand
4 new Court that is not answerable to the people.

5 So I believe that the best way to
6 protect the people - and we share that goal - is to let
7 them make decisions on how they wish their judiciary to
8 operate. That is the remedy for any extravagant
9 spending.

10 The issue with extravagant spending is,
11 is it's a moving target as well. You know, I had no
12 idea that the bathrooms down the hall were reported to
13 me to cost \$860,000. I don't understand why you'd have
14 to have \$860,000 bathrooms, and if that's the case, then
15 perhaps that should be looked into.

16 And if people think that's extravagant,
17 and if this is the standard, that -- that a group
18 believes that another person in some form of government
19 has done that and they should be impeached, then you
20 have to be careful with the standard that you set.

21 And so I think because it's a moving
22 target, number one; and number two, because it's before
23 the voters in about 90 days to fix this, that we should
24 leave it in their hands and not remove their Court.

1 Thank you.

2 CHAIRMAN SHOTT: Delegate Zatezalo?

3 DELEGATE ZATEZALO: I'll sit down.

4 Well, here's where we are: We have no control over the
5 budget of the Supreme Court. Unless this -- unless this
6 Resolution passes in the -- and the change to the
7 Constitution is made, we will still not have any
8 spending control.

9 What does that mean as far as the
10 Supreme Court goes? What that means simply is that the
11 Supreme Court is responsible for its spending. That
12 means they are the purveyors and they are the guarantors
13 that the people's money is gonna be spent wisely.

14 Now, I don't think we have an argument
15 in here that we have to answer when we spend money for
16 the State of West Virginia. We have a duty and we -- we
17 watch each other pretty well, as a matter of fact, and I
18 think that's a good thing.

19 There is nothing in the Supreme Court --
20 and the Supreme Court, historically, has not even
21 thought of -- from what we can see now, of -- of
22 controlling its own spending. That is a problem that
23 goes to the trust of the Court.

24 That's partial -- part and parcel to

1 trusting the judgment of the Supreme Court. Same thing
2 with policies for -- for travel and that type of thing.
3 When you don't have those things - and even when you
4 come up with a policy, the justices are exempt from the
5 policy that they make - it hurts the trust of the Court.

6 I've gotten a lot of e-mails about the
7 Court and how people are starting to not particularly
8 trust the Court. Part of it is because of spending.
9 We're not responsible for their spending right now.
10 They are. They are impeding their own -- the trust that
11 the people need to have in them.

12 And when -- let me tell you, when the
13 Court -- when the trust in the Court goes down, the
14 republic is in trouble. Not just West Virginia, but
15 everybody. In particular at this point in time, it just
16 happens to be our turn in the -- in the thing.

17 So I look at it as a systematic thing
18 that -- that must be fixed. The people are looking to
19 us to remedy this situation. The systematic misuse of
20 money has to stop somehow, and this is the message that
21 gets it there.

22 I am in 100 percent in favor of this
23 Article, and I think we need to do this to restore the
24 trust of the public. And it's critical at this point.

1 So --

2 Thank you.

3 CHAIRMAN SHOTT: Further discussion?

4 Delegate Fleischauer.

5 MINORITY CHAIR FLEISCHAUER: Thank you,
6 Mr. Chairman. I think this is -- I would have to agree
7 with Delegate -- Delegate -- the delegate from Cabell
8 who just spoke, that being in the legislature imposes
9 some very difficult decision-making on us. But I think
10 he explained it, and the gentleman from Kanawha
11 explained it pretty well.

12 And I -- I think we have to think about
13 what is the proper remedy? And I think it's always
14 important to go back to the Constitution, that we, as a
15 people - our state, the House and the Senate and then
16 the people by majority vote - adopted the modern budget
17 amendment, and it said that "provided that no item
18 relating to the judiciary shall be decreased."

19 We have that in there. It's pretty hard
20 to get around that. And I was not initially convinced
21 that the proper way to fix that was to amend the
22 Constitution, and I gradually came around to it when I
23 saw what kind of spending was going on. And I would
24 have to say there were some things yesterday that - even

1 though I had read about them - shocked me.

2 I've been reading about them for months
3 and months. However, I think we have to go "What is the
4 proper remedy?" And I think we have a Constitutional
5 problem.

6 Secondly, the proposal here on this
7 Article and the Articles related to the other three
8 remaining justices would have -- if they are adopted.
9 And I think it's a little difficult to differentiate
10 between them.

11 -- would have the effect of taking out,
12 removing, having a coup, over the third branch of
13 government that is supposed to be separate and equal to
14 this branch.

15 I don't think the -- our Court, as much
16 as maybe they have overstepped themselves, has ever
17 talked about taking out the entire House and Senate
18 every single 134 members, but we are talking about doing
19 that with our Supreme Court.

20 And in addition to that, what the
21 implication of this is, that we will change the process
22 from elected to appointed by the Governor with no
23 oversight by the legislature.

24 I am very, very troubled by this

1 spending, but I am not willing to go that far. And as
2 much as I am troubled by the blue marble, the blue pearl
3 marble in the bathroom, I think that the -- the proper
4 way to fix this is to let the people vote on it in 90
5 days.

6 We do not have to adopt this Article
7 today, because it can be fixed by the people, and that
8 is the proper way to fix it. I urge rejection of this
9 Article.

10 CHAIRMAN SHOTT: Further discussion?

11 Further discussion?

12 Roll call's been demanded. Is demand
13 sustained?

14 Demand is sustained.

15 Clerk will call the -- call the roll.
16 If you're in favor of this Article, you'll vote "aye" or
17 "yay." If you're opposed, "no" or "nay." Please call
18 the roll.

19 THE CLERK: Delegate Byrd.

20 DELEGATE BYRD: Yes.

21 THE CLERK: Delegate Canestraro.

22 DELEGATE CANESTRARO: Yes.

23 THE CLERK: Delegate Capito.

24 DELEGATE CAPITO: Yes.

1 THE CLERK: Delegate Deem.
2 DELEGATE DEEM: Yes.
3 THE CLERK: Delegate Fast.
4 DELEGATE FAST: Yes.
5 THE CLERK: Delegate Fleischauer.
6 MINORITY CHAIR FLEISCHAUER: No.
7 THE CLERK: Delegate Fluharty.
8 MINORITY VICE CHAIR FLUHARTY: Yes.
9 THE CLERK: Delegate Foster.
10 DELEGATE FOSTER: Yes.
11 THE CLERK: Delegate Hanshaw.
12 VICE CHAIR HANSHAW: Yes.
13 THE CLERK: Delegate Harshbarger.
14 DELEGATE HARSHBARGER: Yes.
15 THE CLERK: Delegate Hollen.
16 DELEGATE HOLLEN: Yes.
17 THE CLERK: Delegate Isner.
18 DELEGATE ISNER: Yes.
19 THE CLERK: Delegate Kessinger.
20 Delegate Lane.
21 DELEGATE LANE: Yes.
22 THE CLERK: Delegate Lovejoy.
23 DELEGATE LOVEJOY: No.
24 THE CLERK: Delegate Miller.

1 DELEGATE MILLER: Yes.
2 THE CLERK: Delegate Moore.
3 DELEGATE MOORE: Yes.
4 THE CLERK: Delegate Overington.
5 DELEGATE OVERINGTON: Yes.
6 THE CLERK: Delegate Pushkin.
7 DELEGATE PUSHKIN: No.
8 THE CLERK: Delegate Queen.
9 DELEGATE QUEEN: Yes.
10 THE CLERK: Delegate Robinson.
11 DELEGATE ROBINSON: Yes.
12 THE CLERK: Delegate Sobonya.
13 DELEGATE SOBONYA: Yes.
14 THE CLERK: Delegate Summers.
15 DELEGATE SUMMERS: Yes.
16 THE CLERK: Delegate Zatezalo.
17 DELEGATE ZATEZALO: Yes.
18 THE CLERK: And Mr. Chairman.
19 CHAIRMAN SHOTT: Yes.
20 On the question of the adoption of
21 Article VII, there were 21 ayes, 3 nays, 1 member absent
22 and not -- not voting.
23 The adoption of Article VII is approved.
24 Excuse me.

1 Article VIII addresses Justice Walker
2 and the spending in her office. Counsel is available to
3 answer any questions, specific questions, to Article
4 VIII. Are there questions?

5 Are there questions? Are there
6 amendments to Article VIII?

7 Are there amendments -- is there a
8 question?

9 Yes. Delegate Capito.

10 DELEGATE CAPITO: Thank you,
11 Mr. Chairman.

12 Quickly, just to rehash, but what
13 evidence -- did we have evidence that -- I know on the
14 previous count, we had evidence or testimony before us
15 that -- or testimony that verified that the justice in
16 question had personal knowledge of -- and very intimate
17 working with the remodeling that had occurred. Was --
18 is that the case with the current Article as well? Did
19 we get that testimony?

20 MS. KAUFFMAN: We don't have that
21 specific testimony as with Justice Loughry that we had.

22 What we have with respect to the
23 remaining Articles and the spending for the -- their
24 offices would be the documents that were provided by the

1 Supreme Court, any interviews that might have been given
2 by any of the justices and such.

3 And for example, with respect to this
4 particular Article, Article VIII, that would be
5 referenced -- I believe the exhibit number is 54 in the
6 documents that were provided by the Supreme Court in the
7 -- what I think some have referred to - or at least I
8 have referred to - as the renovation notebook.

9 It does have sign-offs. It is our
10 understanding that those were not typically - I don't
11 know if ever - signed off by the justice, him or
12 herself.

13 There were design charges that perhaps
14 the justices worked with the -- the designers. But not
15 like we had with Justice Loughry.

16 DELEGATE CAPITO: Okay. So we don't
17 have any testimony that this justice had any knowledge
18 of the cost involved in the renovations?

19 MS. KAUFFMAN: No, we have -- we have
20 the test -- we don't have testimony. We have the
21 evidence, which are the records that have been provided
22 as to the costs for the renovations, and in this
23 instance, with respect to Justice Walker, it -- it --
24 although it's called renovations a lot, is that -- of

1 that is for furnishings.

2 DELEGATE CAPITO: And we have evidence
3 that she was involved in the remodel?

4 MS. KAUFFMAN: To the extent that it was
5 her office, and I -- it's my understanding from the
6 Affidavit from Kim Ellis - I don't know if she mentions
7 -- I don't think she mentions any other justices in
8 particular - but it was her duty -- her job to work with
9 the justices to discuss what they would like to have.

10 DELEGATE CAPITO: I -- I don't have it
11 before me, but what was it -- just briefly, just an
12 overview of what Exhibit 54 contained? Sorry.

13 MS. KAUFFMAN: Yeah, Exhibit -- oh, no
14 problem.

15 Exhibit 54 was, again, contained in the
16 renovation notebook. It was -- dealt with Justice
17 Walker. There were separate exhibits that dealt with
18 each justice's office individually. Exhibit 54 dealt
19 with Justice Walker's office individually.

20 It does have a summary. The summary for
21 Justice Walker's office was that the total was
22 approximately \$130,000 for the renovations in the
23 furnishings to her office.

24 DELEGATE CAPITO: So we -- we have

1 invoices that show the total, but we don't have any sort
2 of connection to knowledge.

3 MS. KAUFFMAN: No, there --

4 DELEGATE CAPITO: There's an assumption,
5 obviously.

6 MS. KAUFFMAN: The assumption is it's
7 for her office. And there are specific things that were
8 requested, for example, and -- "requested" -- I want to
9 go back.

10 There were specific things that were put
11 in this office -- for example, there were specific maple
12 oyster cabinets that were placed in that office for --
13 that cost approximately \$7400.

14 DELEGATE CAPITO: And the -- and the
15 presumption is that that would have been specified by
16 the justice.

17 MS. KAUFFMAN: It's our understanding.
18 We don't have any reason to believe that Ms. Ellis or
19 that any of the other architects or designers that --
20 that worked with the Court did this without consulting
21 with the particular justice they were working with.

22 DELEGATE CAPITO: Okay, thanks,
23 Mr. Chairman.

24 CHAIRMAN SHOTT: Delegate Fleischauer,

1 question for counsel.

2 MINORITY CHAIR FLEISCHAUER: Thank you,
3 Mr. Counsel, and thank you, Counsel.

4 I believe we had testimony from two
5 witnesses that an interior decorator was hired for the
6 purpose of doing this, and also that we had an interior
7 decorator on staff at the Supreme Court. And the cost
8 of that was \$5,000?

9 MS. KAUFFMAN: There were -- there is a
10 \$5,000 charge, I believe, yes, for design services with
11 respect to the summary for Justice Walker's office.
12 There is a \$5,000 charge for design services.

13 But with respect to the interior
14 decorators, there were interior decorators that were
15 employed by the Court. I believe that testimony -- I --
16 I believe it was from Ms. Troy yesterday with respect to
17 Silling & Associates, that they also helped and there
18 were some invoices there that I don't know that have
19 even been applied to the particular office, but in this
20 one, it's \$5,000.

21 MINORITY CHAIR FLEISCHAUER: Well, I
22 believe -- correct me if I'm wrong, if Mr. Canterbury
23 didn't testify that Ms. Ellis was an interior decorator.

24 MS. KAUFFMAN: I believe that she is.

1 That --

2 MINORITY CHAIR FLEISCHAUER: And she
3 would have been on staff at the time that these charges
4 were made for the outside interior decorator.

5 MS. KAUFFMAN: She would have, because
6 these were in 2017, yes.

7 MINORITY CHAIR FLEISCHAUER: Thank you.

8 CHAIRMAN SHOTT: Delegate Robinson
9 followed by Delegate Pushkin.

10 DELEGATE ROBINSON: Thank you,
11 Mr. Chairman. Counsel, when did -- when was the first
12 expense -- when was the first invoice we have for
13 Justice Walker's office?

14 MS. KAUFFMAN: If you'll give me just a
15 minute. I want to make sure that I'm going to tell you
16 correctly.

17 DELEGATE ROBINSON: Sure.

18 MS. KAUFFMAN: There appears to be one
19 charge in January of 2017, one charge in February of
20 2017, and then it goes through March, more in the summer
21 months: May, June, July and August of 2017.

22 DELEGATE ROBINSON: So the last expense
23 was in August?

24 MS. KAUFFMAN: No, there were some up

1 through -- no, through September. It looks like the end
2 of September.

3 DELEGATE ROBINSON: Okay. And we have a
4 total of \$131,000?

5 MS. KAUFFMAN: It's one hundred -- the
6 precise number that was provided on the summary was
7 \$130,654.55.

8 DELEGATE ROBINSON: So in nine months,
9 Justice Walker spent over \$130,000 on her office?

10 MS. KAUFFMAN: According to this summary
11 and according to the documents we have received, yes.

12 DELEGATE ROBINSON: And what was the
13 date that the -- the news story or the FOIA -- what was
14 the date the FOIAs started coming into the Supreme Court
15 for information? Approximately October?

16 MS. KAUFFMAN: I believe it was in
17 October, and then the story began to run, I believe, in
18 November.

19 DELEGATE ROBINSON: So basically when --
20 we went from Justice Walker's inauguration all the way
21 up until FOIAs started coming in to expenses and her
22 expenses stopped.

23 MS. KAUFFMAN: Give me one moment and
24 let me make sure I'm not -- yes.

1 There are no expenses - at least that we
2 have been provided up to this time - past September of
3 2017. None in October or November.

4 DELEGATE ROBINSON: So she went from the
5 date she was inaugurated all the way up to the dates
6 FOIA come in and then she -- there were no more
7 expenditures after that date.

8 MS. KAUFFMAN: I don't know that it was
9 exactly the date --

10 DELEGATE ROBINSON: Approximately.

11 MS. KAUFFMAN: -- but it was close to
12 the time, it was the end of September.

13 DELEGATE ROBINSON: Okay, thank you.

14 CHAIRMAN SHOTT: Delegate Pushkin,
15 followed by Delegate Fleischauer.

16 DELEGATE PUSHKIN: Thank you,
17 Mr. Chairman.

18 Thank you, Counsel.

19 Now, did we not hear during -- and I
20 can't -- I can't recall which testimony it was.

21 -- that -- well, that the office that
22 Justice Walker currently occupies used to be occupied by
23 Justice Benjamin, correct?

24 MS. KAUFFMAN: That is my understanding,

1 correct.

2 DELEGATE PUSHKIN: And it was renovated
3 during the term of Justice Benjamin. Do you remember
4 what year it was last renovated?

5 MS. KAUFFMAN: I do not recall what year
6 it was last renovated. But that is my understanding -- my
7 recollection of the testimony as well that there was a
8 full renovation when Justice Benjamin was in that
9 office.

10 DELEGATE PUSHKIN: Okay. And do you --
11 do you remember if it was towards the beginning of his
12 term or -- or towards the end of his term?

13 MS. KAUFFMAN: I do not recall. If
14 you'll give me one moment --

15 DELEGATE PUSHKIN: Okay.

16 MS. KAUFFMAN: I apologize for that.
17 I'm looking at the summary now, it appears that the
18 renovations -- looks like at least some of the charges
19 began in 2009 and they went through 2011.

20 DELEGATE PUSHKIN: Okay. And once
21 again, I can't recall which testimony it was, but when
22 asked about like how much of -- once it was -- I don't
23 even know if "renovated" is the proper word, when --
24 when the structural repairs had already been done that

1 soon, but when more work had been done after the
2 election and inauguration of Justice Walker, that -- do
3 you remember -- recall the testimony that 100 percent of
4 the money spent was spent on aesthetics, furniture,
5 carpet, and none of it was structural?

6 MS. KAUFFMAN: I do recall testimony to
7 that effect. I have attempted to go back through and
8 look at that. The summary for Justice Walker, again,
9 does total the \$100 -- approximately \$130,000.

10 There are groups where it has -- it's
11 noted "Contractor for renovation," and then there was a
12 change order, so the two of those items total about
13 \$60,000 -- \$60,000 of the \$130,000.

14 DELEGATE PUSHKIN: Uh-huh.

15 MS. KAUFFMAN: But some of those are
16 also just listed as office furnishings as well. In the
17 review I did, the -- the -- the ones for the blinds and
18 shutters, which are called "Office Furnishings and
19 Wallpaper," which were, I think, to put up wallpaper as
20 well, those totaled about \$27,000.

21 The others appear to be for furnishings:
22 Countertops, several tables, several chairs. There were
23 some light fixtures replaced, but other -- some were
24 smaller amounts, miscellaneous items, but they do appear

1 - at least from this - to be furnishings.

2 DELEGATE PUSHKIN: So that would affirm
3 the testimony that we heard, that it was 100 percent
4 aesthetic, the expenditures on that office?

5 MS. KAUFFMAN: There may be some within
6 the -- those bigger groups of the \$40,000 that says
7 "Contractor for Renovation," but again, the majority
8 appears to be for furnishings.

9 DELEGATE PUSHKIN: Okay, thank you.

10 CHAIRMAN SHOTT: Other questions of
11 counsel?

12 Delegate Fleischauer.

13 MINORITY CHAIR FLEISCHAUER: Thank you.
14 Thank you, Mr. Chairman.

15 Counsel, I can't recall what document it
16 was that indicated the total cost for the re -- redecora
17 -- or the remodel -- well, the changes that were made
18 when Justice Benjamin was there. I was -- think it was
19 somewhere over \$300,000.

20 MS. KAUFFMAN: Justice Benjamin's total,
21 according to the documentation we have received, was
22 \$264,301.

23 MINORITY CHAIR FLEISCHAUER: Thank you.

24 MS. KAUFFMAN: Uh-huh.

1 CHAIRMAN SHOTT: Further questions?

2 Further questions?

3 Are there amendments? Are there
4 amendments?

5 Discussion regarding the -- Article
6 VIII? Discussion.

7 If not, the question before --

8 A DELEGATE: Roll call.

9 CHAIRMAN SHOTT: Roll call has been
10 demanded. Is the demand sustained?

11 Demand is sustained.

12 The clerk will call the roll. If you're
13 in favor of the adoption of Article VIII, you'll say
14 "aye" or "yay." If you're opposed, "no" or "nay." The
15 clerk will please call the roll.

16 THE CLERK: Delegate Byrd.

17 DELEGATE BYRD: No.

18 THE CLERK: Delegate Canestraro.

19 DELEGATE CANESTRARO: Yes.

20 THE CLERK: Delegate Capito.

21 DELEGATE CAPITO: No.

22 THE CLERK: Delegate Deem.

23 DELEGATE DEEM: Yes.

24 THE CLERK: Delegate Fast.

1 DELEGATE FAST: No.
2 THE CLERK: I'm sorry? Delegate Fast?
3 DELEGATE FAST: No.
4 THE CLERK: No? Delegate Fleischauer.
5 MINORITY CHAIR FLEISCHAUER: No.
6 THE CLERK: Delegate Fluharty.
7 MINORITY VICE CHAIR FLUHARTY: Yes.
8 THE CLERK: Delegate Foster.
9 DELEGATE FOSTER: Yes.
10 THE CLERK: Delegate Hanshaw.
11 VICE CHAIR HANSHAW: Yes.
12 THE CLERK: Delegate Harshbarger.
13 DELEGATE HARSHBARGER: Yes.
14 THE CLERK: Delegate Hollen.
15 DELEGATE HOLLEN: Yes.
16 THE CLERK: Delegate Isner.
17 DELEGATE ISNER: Yes.
18 THE CLERK: Delegate Kessinger.
19 Delegate Lane.
20 DELEGATE LANE: No.
21 THE CLERK: Delegate Lovejoy.
22 DELEGATE LOVEJOY: No.
23 THE CLERK: Delegate Miller.
24 DELEGATE MILLER: Yes.

1 THE CLERK: Delegate Moore.

2 DELEGATE MOORE: No.

3 THE CLERK: Delegate Overington.

4 DELEGATE OVERINGTON: Yes.

5 THE CLERK: Delegate Pushkin.

6 DELEGATE PUSHKIN: No.

7 THE CLERK: Delegate Queen.

8 DELEGATE QUEEN: Yes.

9 THE CLERK: Delegate Robinson.

10 DELEGATE ROBINSON: Yes.

11 THE CLERK: Delegate Sobonya.

12 DELEGATE SOBONYA: Yes.

13 THE CLERK: Delegate Summers.

14 DELEGATE SUMMERS: Yes.

15 THE CLERK: Delegate Zatezalo.

16 DELEGATE ZATEZALO: Yes.

17 THE CLERK: And Mr. Chairman.

18 CHAIRMAN SHOTT: Yes.

19 On the question of the adoption of
20 Article VIII, there were 16 ayes, 8 nays, 1 member
21 absent and not voting.

22 The Article VIII has been adopted.

23 To the members, there's been a request
24 for a brief recess. I'm sure our court reporter could

1 use one as well. Let's -- let's be back here at 4:15.
2 4:15. That gives you about 20 minutes.

3 (A recess was taken after which the
4 proceedings continued as follows:)

5 CHAIRMAN SHOTT: Committee please come
6 back to order. We were -- we finished up with Article
7 VIII. We're going to move to Article IX now. This is
8 Article involving Justice Walker and the contracting out
9 of the writing of an opinion in 2017. Counsel's
10 available for questions.

11 Are there questions of counsel? Are
12 there questions of counsel?

13 Yes. Delegate Capito.

14 DELEGATE CAPITO: Thank you,
15 Mr. Chairman. Counsel, do we have any knowledge whether
16 a -- an opinion has been farmed out ever in the history
17 of the Supreme Court of Appeals?

18 MS. KAUFFMAN: The only knowledge that I
19 do have was one other opinion was farmed out, and that
20 would have been the year prior, 2016, and that one was
21 also contracted with Ms. Allen. That was a separate --
22 a different type of case, though. That was a case in
23 which all of the -- the five justices, if I recall, I
24 believe, all five had recused themselves, so Ms. Allen

1 was -- was contracted in 2016 to write an opinion.

2 Also, it is -- I believe that she was
3 paid the same amount of money, \$10,000, for that
4 opinion.

5 But other than that opinion and the
6 opinion that is contained in Exhibit 72, those are the
7 only ones I am personally aware of.

8 DELEGATE CAPITO: That you know of.

9 MS. KAUFFMAN: Yes. Yes, sir.

10 DELEGATE CAPITO: That's not to say it
11 hadn't happened before possibly.

12 MS. KAUFFMAN: No, I would not say that
13 at all. I just don't have that information.

14 DELEGATE CAPITO: And is there a policy
15 in place that the -- policy -- is there a policy in
16 place that the Supreme Court of Appeals has that allows
17 them for out -- to retain outside counsel?

18 MS. KAUFFMAN: I am not aware of one.

19 DELEGATE CAPITO: Maybe somebody looks
20 pretty -- wants --

21 DELEGATE BYRD: No.

22 DELEGATE CAPITO: Oh, okay.

23 Okay. And so there is precedent -
24 although the circumstances was -- were different, there

1 is precedent - for outside counsel providing legal
2 assistance to a justice of the Supreme Court of Appeals.

3 MS. KAUFFMAN: Yes, in the -- in the
4 prior case in 2016. They were actually -- they were, I
5 think, perhaps consolidated, two cases, in 2016.

6 DELEGATE CAPITO: Very well. Thank you,
7 Mr. Chairman.

8 CHAIRMAN SHOTT: Further questions?
9 Delegate Byrd?

10 DELEGATE BYRD: Thank you, Mr. Chairman.
11 Counsel, one of the questions I had is: Would you
12 explain, very briefly, why the invoice we saw was
13 reduced to \$10,000?

14 MS. KAUFFMAN: It is our understanding
15 that there was a cap -- I -- we do not have a contract
16 -- we have not been provided information as to whether
17 or not there was actually a contract issued, but the
18 understanding - at least from some of the -- the
19 documentation - was that this appears to be a cap, a
20 pre-agreed-to sum, that the cost would not exceed
21 \$10,000 for the writing of that -- that particular
22 opinion.

23 DELEGATE BYRD: Thank you.

24 CHAIRMAN SHOTT: Delegate Fluharty.

1 MINORITY VICE CHAIR FLUHARTY: Thank
2 you, Mr. Chairman.

3 Counsel, I believe is it -- Ms. Allen
4 was retained for this opinion in question, right?

5 MS. KAUFFMAN: That is correct.

6 MINORITY VICE CHAIR FLUHARTY: And since
7 that time, she has been hired by the Supreme Court?

8 MS. KAUFFMAN: That is correct. She is
9 now the interim -- I believe it's -- the title is
10 interim Administrative Director at the Court.

11 MINORITY VICE CHAIR FLUHARTY: And her
12 opinion that was retained, any evidence that it was
13 inadequate?

14 MS. KAUFFMAN: No. I -- I don't have
15 any opinion in that regard at all. It is a -- I believe
16 it was a -- dealt with a mortgage type lending case.

17 MINORITY VICE CHAIR FLUHARTY: The -- I
18 believe this makes reference that there were other
19 personnel available for this particular opinion.

20 MS. KAUFFMAN: Yes.

21 MINORITY VICE CHAIR FLUHARTY: But I
22 believe you also stated that this opinion was kind of
23 outside the normal realm of judiciary opinions that had
24 gone down the pike.

1 MS. KAUFFMAN: Oh, I'm sorry if I did.
2 I did not mean to do that. I don't know that. I don't
3 know if we have testimony in that regard at all. I
4 don't recall that.

5 The information that we have is just
6 that the -- that Ms. Allen was retained to write that
7 particular opinion in the -- in the May 2017 time frame,
8 and then it was authored and filed in June of 2017.

9 MINORITY VICE CHAIR FLUHARTY: Do we
10 know if there are other opinions on similar subject
11 matter that were handed down by the Court during that
12 time frame?

13 MS. KAUFFMAN: I am not aware. I'm sure
14 there were opinions; I'm just not sure the nature of
15 those opinions.

16 MINORITY VICE CHAIR FLUHARTY: So it's
17 possible that this could have been a rather unique case
18 that required outside attention.

19 MS. KAUFFMAN: It is possible.

20 MINORITY VICE CHAIR FLUHARTY: Is it
21 uncommon for any branch of government to hire what I
22 would call outside help? For instance, I believe the
23 RISE program that's controversial right now at the State
24 from the Governor's office, they're no longer using the

1 commerce department, they're using the National Guard.
2 Right?

3 MS. KAUFFMAN: That is my understanding.

4 MINORITY VICE CHAIR FLUHARTY: Do you
5 know if that's costing taxpayer money?

6 MS. KAUFFMAN: I can't speak to it, but
7 I do know that other agencies hired outside help from
8 time to time.

9 MINORITY VICE CHAIR FLUHARTY: Do you
10 have any examples of that?

11 MS. KAUFFMAN: Other than the one you
12 just gave, not right off the top of my head, but I don't
13 think that it's -- it's not wholly uncommon.

14 MINORITY VICE CHAIR FLUHARTY: Well, for
15 instance, we had legislation passed this past session
16 dealing with sports betting.

17 MS. KAUFFMAN: That's correct.

18 MINORITY VICE CHAIR FLUHARTY: And West
19 Virginia lottery, who is fully capable of doing their
20 own research, I believe they hired an outside agency to
21 do the benefits on sports betting and the revenue that
22 can be derived. That's not uncommon, right?

23 MS. KAUFFMAN: I wasn't aware of it, but
24 I'll take your word for it, I just didn't know that.

1 MINORITY VICE CHAIR FLUHARTY: Well, we
2 do studies in the legislature frequently for bills, do
3 we not?

4 MS. KAUFFMAN: Yes.

5 MINORITY VICE CHAIR FLUHARTY: And when
6 we do studies, is it required that the legislature
7 itself do the study?

8 MS. KAUFFMAN: I -- I don't -- I don't
9 know that I can answer that, but I do believe outside
10 entities are sometimes involved in those.

11 MINORITY VICE CHAIR FLUHARTY: So when
12 we have bills, it's perfectly acceptable for the
13 legislature to render help by hiring an outside agency,
14 and in doing so, they paid them money, right?

15 MS. KAUFFMAN: They do.

16 MINORITY VICE CHAIR FLUHARTY: Thank
17 you.

18 CHAIRMAN SHOTT: Delegate Pushkin.

19 DELEGATE PUSHKIN: Thank you,
20 Mr. Chairman. Thank you, Counsel.

21 This Article is entirely based on
22 evidence that was entered in yesterday?

23 MS. KAUFFMAN: Yes, sir.

24 DELEGATE PUSHKIN: And that was just the

1 invoice from Ms. Allen. Was -- did we seek any other
2 testimony or evidence on this issue?

3 MS. KAUFFMAN: I'm trying to think back
4 if --

5 DELEGATE PUSHKIN: Did we subpoena
6 Ms. Allen?

7 MS. KAUFFMAN: We did not, no, sir. I
8 was trying to think back as to whether or not
9 Mr. Canterbury testified to this, and I can't state with
10 certainty that he did. This may -- the documentation in
11 exhibit --

12 DELEGATE PUSHKIN: No, I believe when he
13 was -- I'm sorry to interrupt. Go ahead.

14 MS. KAUFFMAN: I believe that the
15 documents in Exhibit 72 would be the only --

16 DELEGATE PUSHKIN: Yea, because he --
17 Mr. Canterbury was no longer with the Court when this
18 was --

19 MS. KAUFFMAN: Oh, that is correct. No,
20 he --

21 DELEGATE PUSHKIN: So he couldn't have
22 been a part of this. I think we asked him about it, but
23 he said that he was not there. But that he had never
24 heard of this sort of practice before. That was the

1 part, if I remember correctly, from his testimony. So
2 this was based entirely on an invoice, but we didn't
3 issue any subpoenas over this, and so this entire
4 Article is based on -- on one invoice.

5 All right. Well, thank you.

6 CHAIRMAN SHOTT: Further questions?

7 Delegate Isner.

8 DELEGATE ISNER: Thank you, Mr. --

9 CHAIRMAN SHOTT: Isner.

10 DELEGATE ISNER: Thank you,
11 Mr. Chairman. Counsel, I just wanted to make sure that
12 I'm clear. We don't know that there was any special
13 knowledge or expertise required to write this opinion.

14 MS. KAUFFMAN: No.

15 DELEGATE ISNER: The only thing we know
16 is that the Supreme Court paid an invoice for \$10,000
17 for an outside person to write an opinion?

18 MS. KAUFFMAN: That is correct. What
19 the invoice and the attendant e-mail references is that
20 Ms. Allen was paid \$10,000 to -- to author this opinion
21 in the Quicken Loans case that I believe was filed in
22 June of 2017.

23 DELEGATE ISNER: Now, I think
24 Mr. Canterbury answered this, but Justice Walker would

1 have four law clerks, similar to the other justices; is
2 that correct?

3 MS. KAUFFMAN: That is my understanding,
4 that all -- all justices have four law clerks.

5 DELEGATE ISNER: Okay. I don't want to
6 beat a dead horse; I just wanted to make sure I
7 understood.

8 Thank you.

9 CHAIRMAN SHOTT: Further questions?
10 Further questions?

11 Delegate Sobonya.

12 DELEGATE SOBONYA: Thank you,
13 Mr. Chairman.

14 Counsel, did it require the other
15 justices to approve this invoice or it just was retained
16 by -- by the said justice?

17 MS. KAUFFMAN: The -- the documentation
18 we have does not -- does not show that, but it was
19 approved and paid by the at the time the then
20 Administrative Director, Judge -- former Judge Johnson.

21 DELEGATE SOBONYA: Okay, thank you.

22 CHAIRMAN SHOTT: Further questions?
23 Further questions?

24 Are there amendments? Are there

1 amendments?

2 Discussion. Is there discussion?

3 Delegate Fluharty.

4 MINORITY VICE CHAIR FLUHARTY: Thank
5 you, Mr. Chairman. I'm going to speak against this
6 Article. As evidenced by the questioning, first off, we
7 don't know whether this case was rather unique in its
8 nature and may have required outside attention.

9 There's no evidence that the hiring of
10 this individual was improper or that the job provided
11 was not adequate. In fact, she must have done well
12 enough to be retained later as an actual hiree of the
13 Supreme Court, so I don't believe that this rises to the
14 level of an impeachable offense.

15 And we have, certainly, clear evidence
16 that the Governor's office, for example, and the
17 legislature itself hires outside agencies for many
18 issues that cost money, and the argument here is that
19 there were capable people to do the job, but yet we
20 don't specifically cite that, or individuals, within the
21 Article itself.

22 We certainly have people capable within
23 the legislature of doing various tasks for us, but we
24 still hire outside help, and the same thing goes for the

1 Governor's office. So I think is rather unjust and
2 unfair, and will not be supporting it. Thank you.

3 CHAIRMAN SHOTT: Further discussion?
4 Further discussion?

5 Delegate Fleischauer.

6 MINORITY CHAIR FLEISCHAUER: Just a
7 request that we have a roll call vote.

8 CHAIRMAN SHOTT: Let's finish our
9 discussion, then we'll take that up. Is there further
10 discussion?

11 Is there further discussion? If not,
12 roll call has been demanded.

13 Delegate Pushkin?

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

16 While I -- I believe what this one piece
17 of evidence shows, it could possibly show, is that --
18 could be construed as possibly incompetency, which is --
19 has been an impeachable offense. I still think there --
20 I would like for my votes to reflect some sort of
21 consistency, that we set a rather high bar for
22 overturning the will of the voters, and I'm not sure
23 that this meets that level for impeachable, so I'm going
24 to try to keep in line with my other votes and I'll not

1 be voting for this Article.

2 CHAIRMAN SHOTT: Further discussion?
3 Further discussion?

4 If not, roll call's been demanded. Is
5 demand sustained? Demand is sustained. The clerk will
6 call the roll. If you're in favor of Article -- of
7 adopting Article IX, you'll vote "yes," "yay" or "nay"
8 -- "yay" or "yes;" if you're opposed, "no" or "nay."

9 Clerk, please call the roll.

10 THE CLERK: Delegate Byrd.

11 DELEGATE BYRD: No.

12 THE CLERK: Delegate Canestraro.

13 DELEGATE CANESTRARO: No.

14 THE CLERK: Delegate Capito.

15 DELEGATE CAPITO: No.

16 THE CLERK: Delegate Deem. Delegate
17 Fast.

18 DELEGATE FAST: No.

19 THE CLERK: Delegate Fleischauer.

20 MINORITY CHAIR FLEISCHAUER: No.

21 THE CLERK: Delegate Fluharty.

22 MINORITY VICE CHAIR FLUHARTY: No.

23 THE CLERK: Delegate Foster.

24 DELEGATE FOSTER: Yes.

1 THE CLERK: Delegate Hanshaw.
2 VICE CHAIR HANSHAW: Yes.
3 THE CLERK: Delegate Harshbarger.
4 DELEGATE HARSHBARGER: Yes.
5 THE CLERK: Delegate Hollen.
6 DELEGATE HOLLEN: Yes.
7 THE CLERK: Delegate Isner.
8 DELEGATE ISNER: No.
9 THE CLERK: Delegate Kessinger.
10 Delegate Lane.
11 DELEGATE LANE: No.
12 THE CLERK: Delegate Lovejoy.
13 DELEGATE LOVEJOY: No.
14 THE CLERK: Delegate Miller.
15 DELEGATE MILLER: No.
16 THE CLERK: Delegate Moore.
17 DELEGATE MOORE: Yes.
18 THE CLERK: Delegate Overington.
19 DELEGATE OVERINGTON: Yes.
20 THE CLERK: Delegate Pushkin.
21 DELEGATE PUSHKIN: No.
22 THE CLERK: Delegate Queen.
23 DELEGATE QUEEN: No.
24 THE CLERK: Delegate Robinson.

1 DELEGATE ROBINSON: No.

2 THE CLERK: Delegate Sobonya.

3 DELEGATE SOBONYA: Yes.

4 THE CLERK: Delegate Summers.

5 DELEGATE SUMMERS: Yes.

6 THE CLERK: Delegate Zatezalo.

7 DELEGATE ZATEZALO: No.

8 THE CLERK: And Mr. Chairman.

9 CHAIRMAN SHOTT: Yes.

10 On the question of the adoption of
11 Article IX, there were 9 ayes, 14 nays, 2 members absent
12 and not voting. The adoption of Article IX is rejected.

13 Article X is the next Article for your
14 consideration. The counsel's available for questions.
15 This is the Article regarding the spending by Justice
16 Davis on her office.

17 Are there questions? Are there
18 questions of counsel?

19 Are there amendments? Are there
20 amendments?

21 Discussion. Is there discussion?

22 Delegate Pushkin.

23 DELEGATE PUSHKIN: I'm sorry,

24 Mr. Chairman, could I ask a question of counsel?

1 CHAIRMAN SHOTT: Certainly. Go ahead.

2 DELEGATE PUSHKIN: I was reading over
3 the Article when you asked if there were questions. And
4 I asked you a similar question in regards to the office
5 of -- of Justice Walker about what we heard in testimony
6 about what percent was spent on structural and what
7 percent was spent for aesthetics. Do you remember that
8 testimony?

9 MS. KAUFFMAN: I do.

10 DELEGATE PUSHKIN: And do you remember
11 what the answer to that was?

12 MS. KAUFFMAN: The -- I believe that the
13 majority in Justice Walker's case was not for the
14 construction costs and more for what would typically be
15 considered furnishings.

16 DELEGATE PUSHKIN: Okay. Do you
17 remember what the number like -- out of that almost
18 \$500,000, how much of that was spent on structural
19 repair?

20 MS. KAUFFMAN: With respect to Justice
21 Davis?

22 DELEGATE PUSHKIN: Uh-huh.

23 MS. KAUFFMAN: According to the summary
24 that was provided by the Supreme Court, they have listed

1 out as construction costs, \$433,105 as the construction
2 costs for Justice -- Justice Davis' office.

3 DELEGATE PUSHKIN: Okay, thank you.

4 CHAIRMAN SHOTT: Further discussion?
5 Delegate Miller.

6 DELEGATE MILLER: Question of counsel,
7 Mr. Chairman.

8 CHAIRMAN SHOTT: Certainly.

9 DELEGATE MILLER: Counsel, on Line 11 on
10 Article X, at the end of the sentence, it says, "by the
11 taxpayer for unnecessary" and then goes on to Line 12,
12 "and lavish spending." Does this Article indicate that
13 all the funds expended were unnecessary?

14 MS. KAUFFMAN: I -- I don't -- I don't
15 believe so. I mean, I believe that the -- the testimony
16 has been -- and certainly this is why this information
17 was provided to the Committee, the renovation notebook,
18 for lack of a better term, that was provided.

19 There are costs, certainly, for the
20 Committee's consideration, for the Committee members to
21 decide whether or not they believe certain costs that
22 are contained in that renovation notebook may have been
23 required.

24 For example, again, I'll throw out - and

1 not specific to Justice Davis, I'm not looking at it
2 currently - electrical, plumbing, those types of costs.

3 DELEGATE MILLER: Okay, thank you.

4 Thank you, Mr. Chairman.

5 CHAIRMAN SHOTT: All right. Is there
6 further discussion -- further questions before we move
7 to discussion?

8 All right. Delegate Sobonya.

9 DELEGATE SOBONYA: Thank you, Mr.
10 Chairman.

11 Counsel, the construction costs you said
12 were \$433,000. Does that include the construction of
13 the desks that were in the outer office that included 3-
14 to 4-inch unique glass tops and built-in furnishings?
15 Did that -- was that part of the construction costs?

16 Or was that just for HVAC and structural
17 construction projects or repairs?

18 MS. KAUFFMAN: It is my understanding
19 from a review of the documents that have been provided,
20 with respect to Justice Davis, we are looking at what
21 has previously been provided as Exhibit No. 51.

22 Of that \$433,000 approximate cost
23 estimate, that does include, it appears, from a document
24 -- from a contractor document, to include things such as

1 cabinets and glass countertops. The glass countertops
2 costing five -- \$56,500, and a glass door, \$9,750.

3 So of that \$433,000 construction cost
4 estimate or number that has been provided, that number
5 is further identified and divided down in the -- in the
6 exhibit to include -- it does include some construction.
7 It does include demolition, marble work.

8 It also does involve labor. So there
9 are different -- different types of things included in
10 that estimate.

11 DELEGATE SOBONYA: So about
12 approximately, of the \$433,000 in construction costs,
13 what would be considered construction in -- in that?
14 I'm referring to labor costs. I'm trying to ascertain
15 -- because to me, Justice Davis' office was very
16 elaborate and very unique, and I don't believe it would
17 be the style that most justices coming in later would
18 want to approve of, and you know, the runway strip
19 lighting on the floor, the unique 4-inch lime green
20 glass tops on the desks and also in the -- in the
21 assistant's office or whatever you want to call that
22 area.

23 I'm just trying to think of how much
24 would be still decor even though it's considered

1 construction costs.

2 MS. KAUFFMAN: With respect to -- to
3 your questions, I -- I am not a contractor, I will try,
4 though, to the best of my ability from the exhibits that
5 --that we have before us, to try to break that down.

6 As I indicated, with respect to that --
7 that amount, \$433,000, not quite \$70,000 was charged for
8 what is entitled supervision and general requirements.

9 I am not -- again, as I am not involved
10 in that industry, I am not sure what is meant by general
11 requirements. Demolition cost twenty -- approximately
12 \$24,000. Marble work was \$24,500.

13 There was labor in the amount of
14 \$22,000, and then stainless steel cabinets and shelves,
15 not quite \$40,000. The material for the cabinets was
16 \$45,600. And then it does involve labor, as I indicated
17 earlier, there is approximately \$65,000 in glass for
18 glass countertops and a glass door, and it also notes
19 "Floor."

20 Then there are what I believe would be
21 lay people be considered construction costs of patching
22 drywall, wood flooring. Those are about \$38,000. And
23 around \$9,000 in painting. And then rounding out in --
24 end -- ending with lights, it's my understanding that

1 the actual lights themselves, that was around \$30,000.
2 And the labor for those lights was \$41,000.

3 Again, all of those, I've tried to
4 round. That should, I believe, come up to that \$433,000
5 number.

6 DELEGATE SOBONYA: Okay. Would you say
7 that that office does not really conform to the
8 historical integrity of the -- of the Capitol building,
9 in comparison to the other offices?

10 MS. KAUFFMAN: I did not take the tour.
11 I did not go in Justice Davis' office.

12 DELEGATE SOBONYA: Okay.

13 Thank you.

14 CHAIRMAN SHOTT: Delegate Fleischauer.

15 MINORITY CHAIR FLEISCHAUER: Thank you,
16 Mr. Chairman. I think we heard testimony - but I'm not
17 sure - that Justice Davis' office had never been -- she
18 was in office like 20 yayrs or something like that.

19 And that unlike any of the other
20 justices' rooms, that that office had never been
21 rehabilitated in any way. Am I right about that?

22 MS. KAUFFMAN: That is my recollection
23 as well. And I believe that came from Mr. Canterbury's
24 testimony.

1 MINORITY CHAIR FLEISCHAUER: Okay,
2 that's what I was thinking. And that there was -- and
3 that this process of restoring the offices, like Justice
4 Ketchum's and Justice Benjamin's, had involved major
5 electrical work because the Capitol is a very old
6 building.

7 So that each office, as they did it,
8 required major restoration and bringing it up to current
9 standards.

10 MS. KAUFFMAN: I believe that is what
11 Mr. Canterbury testified to with respect to some of
12 those offices.

13 MINORITY CHAIR FLEISCHAUER: And so it's
14 unclear exactly what of this work was bringing it up to
15 code or, in addition to some of the things that the lady
16 from Cabell was talking about, it is a very different
17 office. But there were many things that had to be done
18 in order to make this a safe place to work up to
19 building standards of today.

20 MS. KAUFFMAN: That was Mr. Canterbury's
21 testimony, yes.

22 MINORITY CHAIR FLEISCHAUER: Thank you.

23 CHAIRMAN SHOTT: Further questions of
24 counsel?

1 Delegate Summers.

2 DELEGATE SUMMERS: Thank you, Mr.
3 Chairman. I was just trying to make some quick notes,
4 and I want to make sure I got that accurately from you,
5 Counsel.

6 I think I heard you say \$30,000 for
7 lighting, \$65,000 for the countertops, \$39,000 for
8 cabinetry, but then you also said \$45,000. On top of
9 that, or did you mean \$45,000 instead of \$39,000 for
10 cabinetry?

11 MS. KAUFFMAN: With respect to the
12 cabinets, there are two entries for cabinets in -- in
13 that particular summary, and the cabinets that are
14 identified for \$45,600 are located under an entry for
15 Carpentry, so that is under -- and then there's also a
16 notation right under that for cabinets for labor under
17 Carpentry, so there are cabinets under the title
18 "Carpentry," and then there are cabinets underneath the
19 title or the entry for Metals.

20 And those are the ones, the ones under
21 Metals, where the cabinets that were \$28,900 -- they are
22 stainless steel cabinets, and then there is an entry for
23 stainless steel shelves for \$11,000.

24 So there are two en -- separate entries

1 for cabinets, one under Metals and one under ca --
2 Carpentry.

3 DELEGATE SUMMERS: Okay. And so when
4 you add those things together -- and then I see \$65,000
5 for other furnishings, then we're getting a more
6 realistic picture of what the office cost from a
7 standpoint other than construction, which is over
8 \$200,000.

9 MS. KAUFFMAN: I'm sorry, the \$65,000 --

10 DELEGATE SUMMERS: -- is the furnishings
11 listed out in Exhibit 51, the -- the sofa, the table,
12 the chairs, the \$20,000 rug. Those type things add up
13 to \$65,000.

14 MS. KAUFFMAN: There were additional --
15 there were furnishings, that is correct. I haven't gone
16 back to add those up on my own for the \$65,000, but
17 there were additional furnishings.

18 DELEGATE SUMMERS: Okay, thank you.

19 CHAIRMAN SHOTT: Further questions of
20 counsel?

21 Further questions of counsel?

22 Are there amendments? Are there
23 amendments?

24 Discussion? Discussion.

1 If not, the question before the --

2 DELEGATE OVERINGTON: Roll call.

3 CHAIRMAN SHOTT: Roll call has been
4 demanded. Is the demand sustained?

5 Demand is sustained.

6 If you're in favor of the adoption of
7 Article X, you'll say "aye" or "yay." If you're
8 opposed, "no" or "nay." Will the clerk please call the
9 roll?

10 THE CLERK: Delegate Byrd.

11 DELEGATE BYRD: No.

12 THE CLERK: Delegate Canestraro.

13 DELEGATE CANESTRARO: Yes.

14 THE CLERK: Delegate Capito.

15 DELEGATE CAPITO: Yes.

16 THE CLERK: Delegate Deem. Delegate
17 Fast.

18 DELEGATE FAST: Yes.

19 THE CLERK: Delegate Fleischauer.

20 MINORITY CHAIR FLEISCHAUER: No.

21 THE CLERK: Delegate Fluharty.

22 MINORITY VICE CHAIR FLUHARTY: Yes.

23 THE CLERK: Delegate Foster.

24 DELEGATE FOSTER: Yes.

1 THE CLERK: Delegate Hanshaw.
2 VICE CHAIR HANSHAW: Yes.
3 THE CLERK: Delegate Harshbarger.
4 DELEGATE HARSHBARGER: Yes.
5 THE CLERK: Delegate Hollen.
6 DELEGATE HOLLEN: Yes.
7 THE CLERK: Delegate Isner.
8 DELEGATE ISNER: Yes.
9 THE CLERK: Delegate Kessinger.
10 Delegate Lane.
11 DELEGATE LANE: Yes.
12 THE CLERK: Delegate Lovejoy.
13 DELEGATE LOVEJOY: No.
14 THE CLERK: Delegate Miller.
15 DELEGATE MILLER: Yes.
16 THE CLERK: Delegate Moore.
17 DELEGATE MOORE: Yes.
18 THE CLERK: Delegate Overington.
19 DELEGATE OVERINGTON: Yes.
20 THE CLERK: Delegate Pushkin.
21 DELEGATE PUSHKIN: No.
22 THE CLERK: Delegate Queen.
23 DELEGATE QUEEN: Yes.
24 THE CLERK: Delegate Robinson.

1 DELEGATE ROBINSON: Yes.

2 THE CLERK: Delegate Sobonya.

3 DELEGATE SOBONYA: Yes.

4 THE CLERK: Delegate Summers.

5 DELEGATE SUMMERS: Yes.

6 THE CLERK: Delegate Zatezalo.

7 DELEGATE ZATEZALO: Yes.

8 THE CLERK: And Mr. Chairman.

9 CHAIRMAN SHOTT: Yes.

10 On the question of the adoption of
11 Article X, there were 19 ayes, 4 nays, 2 members absent
12 and not voting. The Article X is adopted.

13 We've already dealt with Article XI, so
14 we'll move then to Article XII which deals with Chief
15 Justice Margaret Workman and the expenditures in her
16 office.

17 Counsel, are you available for
18 questions?

19 Counsel is available. Are there
20 questions? Are there questions? Excuse me.

21 Delegate Robinson.

22 DELEGATE ROBINSON: Thank you,
23 Mr. Chairman. Counsel, earlier I asked one of our other
24 counsel there that as a Committee, we're setting a

1 precedent of impeachment at a level of 300 and some
2 thousand dollars. In this Article, it's the lowest of
3 the other Articles, of \$111,000.

4 So to -- just to be clear, that this is
5 now setting a lower level of impeachment at \$111,000.

6 MS. KAUFFMAN: I believe that that would
7 be a decision for the body to make. I don't know that
8 it's necessarily a --

9 DELEGATE ROBINSON: Okay, let me
10 rephrase that.

11 MS. KAUFFMAN: -- threshold.

12 DELEGATE ROBINSON: If we were to pass
13 this Article, we'd be setting our level at \$111,000.

14 MS. KAUFFMAN: I don't know that you're
15 necessarily setting it at \$111,000. I believe that
16 argument could perhaps be made, but I don't know that it
17 necessarily is setting it at \$111,000.

18 DELEGATE ROBINSON: Okay, thank you.

19 CHAIRMAN SHOTT: Delegate Capito.

20 DELEGATE CAPITO: Thank you,
21 Mr. Chairman. On Exhibit 54, I believe it is, which is
22 the breakdown or the mani -- spending manifest, it
23 states at the bottom that I believe the -- and it's
24 cited in Article XII here, the flooring, that it was a

1 repair. And I'm trying to mine through the testimony
2 that we heard. Was it a repair?

3 MS. KAUFFMAN: It is my understanding --
4 what we heard from -- if I recall the testimony, my
5 recollection of the testimony was from Mr. Canterbury,
6 and Mr. Canterbury had referred to the flooring in
7 Justice Workman's office -- and I -- the test -- his
8 testimony will be what it is. I don't want to state
9 it -- I don't want to state it incorrectly.

10 But that he had made note of it or
11 perhaps had a concern about it. I don't recall his
12 specific testimony. But he had mentioned that he
13 believed that it was a large amount for that floor. It
14 was a wide 8-inch, if I recall correctly, plank, Vermont
15 cherry type floor. So I --

16 I believe his testimony was -- was for
17 the actual floor. It is my understanding in going
18 through these documents that there was also at some
19 point some -- some problem with Justice Workman's floor,
20 and that her floor then had to be repaired at a later
21 time.

22 So I believe that they may be two
23 separate -- two separate issues or two separate items.

24 DELEGATE CAPITO: Okay. And then I --

1 and refresh my memory, but did we hear direct testimony
2 from any of the witnesses about Justice -- the justice
3 in this Article's knowledge of the -- of the costs
4 associated -- I know that Mr. Canterbury did testify to
5 other justices, but I'm not sure he testified --

6 I can't remember.

7 MS. KAUFFMAN: I -- I would -- I'm going
8 to have to --

9 DELEGATE CAPITO: You don't want -- you
10 don't want to speculate.

11 MS. KAUFFMAN: I don't want to
12 speculate. I would have to defer -- he spoke to at
13 least two justices, as I recall, and I -- one was
14 Justice Loughry. I -- the other may have been Justice
15 Workman, but I -- that would be speculation at this
16 point. I don't have the transcript in front of me.

17 DELEGATE CAPITO: Thank you, Counsel.
18 Thank you, Mr. Chairman.

19 CHAIRMAN SHOTT: Delegate Fleischauer.

20 MINORITY CHAIR FLEISCHAUER: Thank you,
21 Mr. Chairman. I neglected to ask this with respect to
22 the last Article that we voted on, but in both the case
23 of Justice Davis and Justice Workman, we have documents
24 and we have testimony that indicates that they purchased

1 many of the items that are in their offices and that --
2 and some of them include fixtures which are attached to
3 the walls.

4 MS. KAUFFMAN: We --

5 MINORITY CHAIR FLEISCHAUER: -- Justice
6 Workman's cabinets, for example.

7 MS. KAUFFMAN: We -- I don't recall
8 Justice -- I do recall Justice Davis'. I do recall
9 that, and I do believe that was mentioned perhaps by
10 Mr. Canterbury as well. I don't --

11 MINORITY CHAIR FLEISCHAUER: And there
12 were documents about that.

13 MS. KAUFFMAN: There were. And I do not
14 recall with respect to Justice Workman's. There was
15 testimony about a couch, that she may or may not have
16 already owned a couch. I don't recall anything other
17 than that.

18 I will note just that with respect to
19 Justice Davis' summary that was provided by the Supreme
20 Court, they did go through and make notations of the --
21 the payments that she made.

22 I don't note any of those in Justice
23 Workman's summary. But I -- again, I -- so I just can't
24 speak to that.

1 MINORITY CHAIR FLEISCHAUER: Okay.
2 Well, I think that should be something that the managers
3 should look into, the amount of improvements that
4 Justice Workman paid for herself.

5 Thank you. Thank you, Mr. Chairman.

6 CHAIRMAN SHOTT: Further questions of
7 counsel?

8 Delegate Pushkin, followed by Delegate
9 Lane.

10 DELEGATE PUSHKIN: Thank you,
11 Mr. Chairman.

12 I know it was just a few Articles ago,
13 but the cost of this office, the sum total of what was
14 spent on it, is less than what was spent on Justice
15 Walker's office; is that correct?

16 MS. KAUFFMAN: That is correct.

17 DELEGATE PUSHKIN: Thank you.

18 CHAIRMAN SHOTT: Delegate Lane.

19 DELEGATE LANE: Do you have the cost of
20 the flooring in Justice Workman's office?

21 MS. KAUFFMAN: With respect to Justice
22 Workman's, in the -- the exhibit, there are references
23 to flooring. As has already been mentioned in another
24 question, there was a reference to flooring. That was a

1 repair for \$13,000.

2 The -- there are different references to
3 flooring in Justice Workman's documentation. They are
4 -- they range, though, from \$5,000 to -- if you'll give
5 me just a moment.

6 There are -- there are different entries
7 in her cost estimate for flooring. One is for \$5,000.
8 There is a separate entry, it appears, for \$2300 for
9 flooring, so there are just separate entries, not --

10 I was -- in this, there was not one that
11 I was able to find that was one specific for just
12 flooring in that regard.

13 DELEGATE LANE: Did -- did I remember
14 correctly or incorrectly that we had testimony that her
15 flooring was like \$65,000?

16 MS. KAUFFMAN: I want to -- I -- I don't
17 want to go back -- I would be speculating again. There
18 was testimony, and it was from Mr. Canterbury. I don't
19 believe that it was that high of a number, though. I
20 recalled that being lower, I -- but I don't want to
21 speak and say the wrong thing, but I don't recall it
22 being that high.

23 DELEGATE LANE: Okay, thank you.

24 CHAIRMAN SHOTT: Further questions?

1 Further questions? Further questions?

2 Yes, Delegate Moore.

3 DELEGATE MOORE: All right, there we go.

4 Thank you, Mr. Chairman. Counsel, I
5 think the delegate from the 35th asked this, but just to
6 reiterate, did Workman -- or do we have evidence that
7 Workman directed this renovation or - pardon me - repair
8 to her office?

9 MS. KAUFFMAN: I believe the testimony
10 would be -- not in the exhibit that you would refer to
11 in 55 as we have discussed previously, it does not
12 appear to be the norm or the practice for the justices
13 to sign off on any types of invoices or such.

14 But if I do recall the testimony of
15 Mr. Canterbury, I believe that with respect to the
16 flooring - and I couldn't speak to anything other than
17 that - I do believe that he mentioned the flooring being
18 something that had been at the request of the -- of
19 Justice Workman.

20 DELEGATE MOORE: Thank you.

21 CHAIRMAN SHOTT: Further questions?

22 Further questions?

23 Counsel, the Chair has a question or
24 two. The testimony we received, I believe it was

1 yesterday, regarding the invoices from Silling -- I
2 think it's Silling.

3 -- there were unallocated design
4 services from -- and this is in Exhibit 63 from March of
5 2009 to March of 2013 that totaled \$374,139.81, which
6 apparently have not been allocated to any of the
7 justices. Is that your recollection of the testimony?

8 MS. KAUFFMAN: Yes. Yes, sir.

9 CHAIRMAN SHOTT: And my notes indicate
10 that the range of services on Justice Workman's office
11 started in October of '09 and extended all the way
12 through November of '13.

13 So my question is: Would it be fair to
14 assume that some of those services for design or
15 architectural services would have been in this --
16 reflected in this list?

17 MS. KAUFFMAN: Yes, I believe that would
18 be fair.

19 CHAIRMAN SHOTT: But just to be
20 complete, there was also some work done in Justice
21 Benjamin's office from September of '09 to February of
22 '11, and Justice Ketchum's office from February of '10
23 through November of '13.

24 So between the three of them - and

1 excluding the last service which would have been after
2 Justice Loughry's swearing in and taking -- taking the
3 Chair - the rest of those are probably allocable to
4 those three offices. Is that fair to say?

5 MS. KAUFFMAN: That -- that would be
6 fair. I would also note that in some of the summaries,
7 they -- the -- the Court, I believe, had been able to
8 allocate some, but there is that large amount that they
9 had not been able to allocate yet.

10 CHAIRMAN SHOTT: Quite a large amount,
11 yayh.

12 Other questions of counsel?

13 Yes, Delegate Capito.

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

16 How many yayrs has Justice Workman been
17 on the bench? I'm not setting you up. I really don't
18 know.

19 MS. KAUFFMAN: I don't know.

20 DELEGATE CAPITO: I mean, is it --
21 she's, maybe, 15 plus, is that safe, or 12 plus or -- I
22 mean, does anybody -- I'd be willing to yield if anybody
23 knows.

24 Anyone?

1 DELEGATE PUSHKIN: You mean in
2 consecutive terms because she's served -- she --

3 DELEGATE CAPITO: How long has she been
4 on the bench?

5 DELEGATE PUSHKIN: This time?

6 DELEGATE CAPITO: No, total.

7 DELEGATE PUSHKIN: Oh.

8 DELEGATE CAPITO: Okay, so it looks like
9 a long time, I'll just go with that. Do we know of
10 other --

11 MR. CASTO: She served a 12-year term
12 from 1988 till 2000 and was reelected to the Court in
13 2008.

14 DELEGATE CAPITO: Okay, thank you very
15 much. Sorry, sorry, Mr. Chairman.

16 Do we know of other instances in her
17 tenure where she had spending on any of her other
18 offices or was this a one-time spe -- expenditure over a
19 service of ten -- 21 years?

20 MS. KAUFFMAN: I believe that the
21 information we have been provided would only be for the
22 most recent tenure. They -- because they began in 2009.

23 We have no -- at least I personally --
24 and we have not put before the Committee, as I recall,

1 any information about any prior renovations that Justice
2 Workman would have been involved in in her first term.

3 DELEGATE CAPITO: Okay, thank you,
4 Mr. Chairman.

5 CHAIRMAN SHOTT: Further questions of
6 counsel?

7 Delegate Fluharty.

8 MINORITY VICE CHAIR FLUHARTY: Counsel,
9 sorry, just real quick. Going through this latest
10 Article, it looks like we just have a round-about number
11 of \$111,000. That's correct, right?

12 MS. KAUFFMAN: That is correct.

13 MINORITY VICE CHAIR FLUHARTY: And it
14 appears that it's not standing out like some of the
15 others. For instance, we know that couches cost a
16 certain amount; rugs cost a certain amount. As to
17 Justice Workman, in Article XII, are we just saying that
18 it's the flooring?

19 MS. KAUFFMAN: I believe that it says
20 that it includes or included but was not limited to the
21 wide plank cherry flooring. I -- so it does just
22 reference the cherry flooring in this.

23 MINORITY VICE CHAIR FLUHARTY: It only
24 references flooring.

1 MS. KAUFFMAN: The flooring, that is
2 correct.

3 MINORITY VICE CHAIR FLUHARTY: And when
4 this is presented to the Senate, don't -- aren't they
5 confined to the construction of the Article as far as
6 the wording goes?

7 MS. KAUFFMAN: I believe that with the
8 inclusion of the included -- it talks about the spending
9 and the renovation and remodeling of her personal office
10 with respect to the entire sum of \$111,000. We did not
11 in -- although we did in some, include additional
12 information --

13 MINORITY VICE CHAIR FLUHARTY: Sure.

14 MS. KAUFFMAN: -- we did not go through
15 and include each and every in -- each and every line
16 item.

17 MINORITY VICE CHAIR FLUHARTY: Okay, so
18 if we're getting to "but not limited to," what other
19 examples do you have of extravagant spending for this
20 office?

21 MS. KAUFFMAN: The -- with Justice
22 Workman?

23 MINORITY VICE CHAIR FLUHARTY: Correct.

24 MS. KAUFFMAN: The -- some of the other

1 furnishings that were noted in the summary. There were
2 two rugs. There was one rug that cost approximately
3 \$2,000, a rug that was \$1500, a sofa that was between
4 \$3,000 to \$4,000.

5 There was fabric that was used to
6 reupholster some item. That fabric, that one order of
7 fabric, was around \$4,000. There were some chairs, I
8 believe -- I believe two chairs that were reupholstered
9 at not quite \$3,000.

10 MINORITY VICE CHAIR FLUHARTY: Okay.
11 Thank you.

12 MS. KAUFFMAN: Uh-huh.

13 CHAIRMAN SHOTT: Further questions of
14 counsel?

15 Further questions of counsel?

16 Are there amendments? Are there
17 amendments?

18 Is there discussion? Is there --
19 Yes, Delegate Isner.

20 DELEGATE ISNER: Thank you, Mr.
21 Chairman.

22 You know, I don't want to throw the baby
23 out with the bath water and do guilt by association
24 here. I've gone the other way on all three of the

1 previous justices and the construction costs of their
2 office, but I know that this is a third the cost of
3 Justice Loughry's and not quite a fifth the cost of
4 Justice Davis' office.

5 I went through the tour with everybody
6 else the other day, and I just didn't walk into Justice
7 Workman's office and feel offended, you know. I didn't
8 walk in there and feel that it looked substantially out
9 of the norm. I found it unique that she was there and
10 available to answer questions, though I didn't ask any.

11 That there was information readily
12 available regarding purchases that she had made
13 personally for her office. My friend from the 32nd said
14 earlier that, you know, we should allow our public
15 officials to have stately offices, and I found this
16 office to appear to me to be stately and not rise to the
17 level of other -- the other offices and the allegations
18 of overspending relative to those.

19 So I'm going to be a "no" vote on this.

20 CHAIRMAN SHOTT: Further discussion?
21 Delegate Robinson.

22 DELEGATE ROBINSON: Thank you, Mr.
23 Chairman.

24 Over the last couple months, like the

1 rest of you, I've had the same discussion that we're
2 having in the Committee with people out in the world,
3 and the -- in most cases, the common person, the average
4 West Virginian that you speak to, thinks a lot off these
5 things are out of line, the numbers are too high, I
6 mean, it seems exorbitant.

7 What we found in kind of deliberating
8 through this, and finding that some people have a
9 different level of what's exorbitant, what's too much,
10 what's lavish, what's -- what's wild. Somebody's
11 \$10,000 couch may be just a normal couch for their
12 living room when my \$400.00 couch seems like a lot to
13 me.

14 But what I've found as we go through
15 today, is that after today, after we pass all these --
16 these Articles, those numbers aren't arbitrary anymore.
17 We're setting a level that's impeachable due to the 80
18 whatever Legislature judiciary -- House Judiciary
19 Committee.

20 So we pass this - this is the lowest
21 level that we've seen today - and we're gonna pass the
22 level that \$111,000 is exorbitant to spend on a office.

23 So I'll -- I'll use a term that I've
24 learned down here in -- it's "situational morals." I

1 would suggest that others in the government and other
2 places that we go through, we don't use situational
3 morals. If we're gonna set the bar this -- at this
4 point at \$111,000, we should set the bar there and not
5 use situational morals for others.

6 We should look around the Capitol and
7 anyone else that's spent over \$111,001 should be subject
8 to the same -- same scrutiny. And I would look forward
9 to this Committee going through the Capitol building and
10 looking at receipts and see who spent \$112,000, maybe
11 \$850,000 on eight bathrooms, and I look forward to that
12 over the next couple of months.

13 Thank you.

14 CHAIRMAN SHOTT: Further discussion?

15 Delegate Fleischauer.

16 MINORITY CHAIR FLEISCHAUER: Thank you,
17 Mr. Chairman. I think that the amount is relevant, and
18 I think we need to remember here that this person is a
19 democratically-elected justice -- a democratically-
20 elected official in our -- in our state, and I think if
21 we do the examination that the gentleman from Kanawha
22 suggested, we're gonna find a whole lot of offices not
23 just here, but in nonprofits that we fund and in city
24 government and in county government, and you know, the

1 numbers that we were talking about - \$1500.00 for a sofa
2 - is the amount that a lot of people have in their home.

3 I just really think that we're taking
4 this principle too far. We are talking about
5 recommending the impeachment of the entire Supreme
6 Court, the entire head of the third branch of
7 government, and this is too far for me to go with
8 respect to this justice and this amount of money, and I
9 urge rejection.

10 CHAIRMAN SHOTT: Further discussion?
11 Further discussion?

12 If not, the question before the
13 Committee -- roll call's been demanded. Is the demand
14 sustained? It is sustained.

15 With regard to the adoption of Article
16 XII, if you're in favor, you'll say "aye" or "yay." If
17 you're opposed, "no" or "nay." Clerk will please call
18 the roll.

19 THE CLERK: Delegate Byrd.

20 DELEGATE BYRD: No.

21 THE CLERK: Delegate Canestraro.

22 DELEGATE CANESTRARO: No.

23 THE CLERK: Delegate Capito.

24 DELEGATE CAPITO: No.

1 THE CLERK: Delegate Deem. Delegate
2 Fast.
3 DELEGATE FAST: Yes.
4 THE CLERK: Delegate Fleischauer.
5 MINORITY CHAIR FLEISCHAUER: No.
6 THE CLERK: Delegate Fluharty.
7 MINORITY VICE CHAIR FLUHARTY: No.
8 THE CLERK: Delegate Foster.
9 DELEGATE FOSTER: Yes.
10 THE CLERK: Delegate Hanshaw.
11 VICE CHAIR HANSHAW: Yes.
12 THE CLERK: Delegate Harshbarger.
13 DELEGATE HARSHBARGER: Yes.
14 THE CLERK: Delegate Hollen.
15 DELEGATE HOLLEN: Yes.
16 THE CLERK: Delegate Isner.
17 DELEGATE ISNER: No.
18 THE CLERK: Delegate Kessinger.
19 Delegate Lane.
20 DELEGATE LANE: No.
21 THE CLERK: Delegate Lovejoy.
22 DELEGATE LOVEJOY: No.
23 THE CLERK: Delegate Miller.
24 DELEGATE MILLER: No.

1 THE CLERK: Delegate Moore.

2 DELEGATE MOORE: Yes.

3 THE CLERK: Delegate Overington.

4 DELEGATE OVERINGTON: Yes.

5 THE CLERK: Delegate Pushkin.

6 DELEGATE PUSHKIN: No.

7 THE CLERK: Delegate Queen.

8 DELEGATE QUEEN: Yes.

9 THE CLERK: Delegate Robinson.

10 DELEGATE ROBINSON: Yes.

11 THE CLERK: Delegate Sobonya.

12 DELEGATE SOBONYA: Yes.

13 THE CLERK: Delegate Summers.

14 DELEGATE SUMMERS: Yes.

15 THE CLERK: Delegate Zatezalo.

16 DELEGATE ZATEZALO: Yes.

17 THE CLERK: And Mr. Chairman.

18 CHAIRMAN SHOTT: Yes.

19 On the question of the adoption of
20 Article XII, there were 13 ayes, 10 nays, 2 members
21 absent and not a vote -- not voting. Article XII is
22 adopted.

23 Article XIII is the next Article for our
24 consideration. Counsel is available for question. This

1 -- questioning. This deals with Chief Justice Margaret
2 Workman and basically the hiring and retention and
3 contracting of services.

4 Counsel's available for questioning.

5 Delegate Robinson.

6 DELEGATE ROBINSON: Thank you,
7 Mr. Chairman. Counsel, we had -- we had some testimony
8 from, I believe, Mr. Harvey of this accusation, and then
9 we had counter testimony from, I believe, Mr. Canterbury
10 that he suggested that the accu -- the person hired in
11 this accusation did a great job and Mr. Harvey accused
12 that it was a political hire.

13 Is that a good recollect -- recollection,
14 or am I confused?

15 MR. ROSKOVENSKI: I think there were two
16 different individuals who Mr. Canterbury and Mr. Harvey
17 were talking about. I believe one was in -- Mr. Harvey
18 was referencing an IT person - and I don't recall the
19 specific testimony of Mr. Canterbury on that IT person -
20 while he also testified that there was another
21 individual who he thought did an adequate job. Those --
22 that's my recollection.

23 DELEGATE ROBINSON: Okay, so I'm -- I'm
24 confused on who are -- who the two testimonies were

1 about.

2 MR. ROSKOVENSKI: It's my recollection
3 they were two different people.

4 DELEGATE ROBINSON: Okay, thank you.

5 CHAIRMAN SHOTT: Questions of counsel?
6 Delegate Miller.

7 DELEGATE MILLER: Thank you,
8 Mr. Chairman.

9 Counselor, is there, if you know, any
10 reason why we did not call Mr. Pritt to the stand?

11 CHAIRMAN SHOTT: No one asked.

12 MR. ROSKOVENSKI: I don't believe he was
13 ever subpoenaed.

14 CHAIRMAN SHOTT: Somebody talked to him.

15 DELEGATE MILLER: No, he wasn't. Yeah,
16 I understand he was not.

17 MR. ROSKOVENSKI: Yeah.

18 DELEGATE MILLER: But do we have an idea
19 of why he wasn't subpoenaed? Because he had -- he had
20 -- and I had relayed this information as I -- after I
21 had received it.

22 The Friday that, I believe, Mr. Harvey
23 had testified, I'd received a telephone call from
24 Mr. Pritt who indicated that he would be available to

1 tell his side of the -- the story.

2 MR. ROSKOVENSKI: I'm not sure, sir.

3 DELEGATE MILLER: Okay, thank you.

4 Thank you, Mr. Chairman.

5 CHAIRMAN SHOTT: Delegate Lovejoy.

6 DELEGATE LOVEJOY: Thank you,

7 Mr. Chairman.

8 Counsel, so am I correct that under
9 Article XIII, there's -- there's the use of the plural
10 "campaign work form" or "campaign workers" in Line 8 and
11 9. Correct?

12 MR. ROSKOVENSKI: That is correct.

13 DELEGATE LOVEJOY: And is it the
14 intention of the Article as drafted to refer to the two
15 different people that -- I think you referenced a
16 distinction, an IT person and who was the second?

17 MR. ROSKOVENSKI: I believe it was a
18 secretary.

19 DELEGATE LOVEJOY: And does the Article
20 require evidence of intent that the use of the services
21 of the IT person or whomever was specifically to repay
22 political favors?

23 MR. ROSKOVENSKI: I -- I would agree
24 with you.

1 DELEGATE LOVEJOY: And is there -- is it
2 -- does it require proof that the two individuals were
3 former campaign workers?

4 MR. ROSKOVENSKI: To the best of my
5 recollection, there was testimony that there was one
6 individual who was a former campaign worker, but the
7 other individual was not.

8 DELEGATE LOVEJOY: Was there evidence --
9 or what is the evidence that -- that the hiring
10 decisions were made with the intention to repay
11 political favors?

12 MR. ROSKOVENSKI: The only thing, to my
13 recollection, was the testimony of Mr. Harvey, who felt
14 that it was to repay a political favor.

15 DELEGATE LOVEJOY: What was the basis of
16 his opinion that the intention of the hiring of this
17 other person was to repay a political favor?

18 MR. ROSKOVENSKI: That the individual
19 hired was a contractee and that the individual's
20 services at that time were not necessarily required.

21 DELEGATE LOVEJOY: Now, if we pass this,
22 are we setting precedent that if an elected official
23 uses the services of a former campaign worker, that that
24 can be grounds for impeachment of that elected official?

1 MR. ROSKOVENSKI: I think that's a
2 possibility, yes.

3 DELEGATE LOVEJOY: And that would apply
4 to all departments -- all elected officials.

5 MR. ROSKOVENSKI: Yes.

6 DELEGATE LOVEJOY: All right, thank you.

7 CHAIRMAN SHOTT: Delegate Fluharty,
8 followed by Delegate Pushkin, then Delegate Fleischauer.

9 MINORITY VICE CHAIR FLUHARTY: Thank
10 you, Mr. Chairman.

11 Counsel, I'm trying to make sure I
12 recall the testimony correctly. All of these
13 individuals were qualified for the positions they were
14 hired on, right?

15 MR. ROSKOVENSKI: To my recollection,
16 yes.

17 MINORITY VICE CHAIR FLUHARTY: Were any
18 of these individuals paid an exorbitant amount above the
19 market rate?

20 MR. ROSKOVENSKI: There was testimony
21 that Mr. Pritt was paid \$180,000 -- a little less than
22 \$170,000 for a year and a half worth of work.

23 MINORITY VICE CHAIR FLUHARTY: He was a
24 contract -- he was the contracted worker, correct?

1 MR. ROSKOVENSKI: That is correct.

2 MINORITY VICE CHAIR FLUHARTY: And was
3 that beyond any other contracted workers during that
4 time for that similar position?

5 MR. ROSKOVENSKI: I don't recall. I
6 don't recall any testimony to that fact.

7 MINORITY VICE CHAIR FLUHARTY: Now, it's
8 my recollection that in order for these individuals to
9 be hired, Justice Workman didn't have the ability to do
10 it on her own, correct?

11 MR. ROSKOVENSKI: That is correct.

12 MINORITY VICE CHAIR FLUHARTY: She had
13 to actually -- I believe there's no evidence that she
14 went to them directly. But there had to be an
15 agreement, a majority vote by all justices, prior to
16 these individuals being hired.

17 MR. ROSKOVENSKI: That's correct.

18 MINORITY VICE CHAIR FLUHARTY: And the
19 justices had the ability to do any type of background
20 check they wanted to do on these individuals, right?

21 MR. ROSKOVENSKI: That's correct.

22 MINORITY VICE CHAIR FLUHARTY: Now, it
23 also -- this whole apparent repayment of political
24 favors - and Delegate Lovejoy got into that - but we're

1 dealing with an allegation that Justice Workman used her
2 power to get a political -- but don't we have political
3 appointments all the time, throughout?

4 Didn't we -- didn't the Governor just
5 appoint a circuit judge in Kanawha County who is a
6 Republican who worked on the staff of the -- for the
7 House of Delegates, Mr. Greear, as a staff attorney?
8 Didn't that just happen within the past month?

9 MR. ROSKOVENSKI: Yes, sir.

10 MINORITY VICE CHAIR FLUHARTY: Do you
11 think that's an impeachable offense?

12 MR. ROSKOVENSKI: I can't answer that,
13 Delegate.

14 MINORITY VICE CHAIR FLUHARTY: That's
15 all I have right now. Thank you.

16 CHAIRMAN SHOTT: Further questions?
17 Delegate Pushkin, followed by Delegate Fleischauer.

18 DELEGATE PUSHKIN: Thank you,
19 Mr. Chairman.

20 So once again, we're talking about
21 employees, Court employees plural, and you stated that
22 one was Mr. Pritt, who was a contract worker who'd
23 worked in IT, and the other was who?

24 MR. ROSKOVENSKI: I believe it was a

1 secretary.

2 DELEGATE PUSHKIN: Do you remember the
3 name of that secretary?

4 MR. ROSKOVENSKI: I do not.

5 DELEGATE PUSHKIN: Okay. So we're --
6 does -- can -- I would ask anyone to yield if they
7 remember the name of the secretary in question. Since
8 we're referencing two employees, can we name both of
9 them?

10 MR. ROSKOVENSKI: Dee Hill is what I'm
11 being told.

12 DELEGATE PUSHKIN: Who is that?

13 MR. ROSKOVENSKI: Dee Hill.

14 DELEGATE PUSHKIN: Now, is that the same
15 person that in -- during the testimony of
16 Mr. Canterbury, said he was already in the process of
17 hiring that person?

18 MR. ROSKOVENSKI: No.

19 DELEGATE PUSHKIN: Okay. And Dee Hill
20 worked as --

21 MR. ROSKOVENSKI: -- Justice Workman's
22 receptionist.

23 MR. CASTO: Or a receptionist.

24 DELEGATE PUSHKIN: Okay.

1 MR. ROSKOVENSKI: I can't recall.

2 DELEGATE PUSHKIN: So before she was
3 reelected and inaugurated, obviously she wouldn't have
4 had a receptionist. This was a new position that
5 someone -- generally people when they come in, they hire
6 a receptionist to work with them, right?

7 MR. ROSKOVENSKI: I don't know if she is
8 a receptionist specifically for Justice Workman or
9 whether she worked in the administrative office.

10 DELEGATE PUSHKIN: Okay. And typically
11 around here, when somebody brings in their -- a
12 receptionist, a lot of times it's somebody they know or
13 might have worked with in the past. Is that an uncommon
14 practice here in the Capitol?

15 MR. ROSKOVENSKI: I would say that is
16 not uncommon.

17 DELEGATE PUSHKIN: All right, thanks.

18 CHAIRMAN SHOTT: Further questions?

19 Delegate Fleischauer.

20 MINORITY CHAIR FLEISCHAUER: Thank you,
21 Mr. Chairman.

22 I was thinking back to the testimony of
23 Mr. -- the IT guy. I'm blanking --

24 MR. ROSKOVENSKI: Harvey.

1 MINORITY CHAIR FLEISCHAUER: -- Harvey.
2 I do not recall him stating anything using the word
3 "repayment of political favors." Is that your
4 recollection, that he used those words?

5 MR. ROSKOVENSKI: Not to my knowledge.

6 MINORITY CHAIR FLEISCHAUER: Okay.
7 Because I think what he said was that he had heard from
8 someone else that this gentlemen was -- had been a
9 campaign worker.

10 MR. ROSKOVENSKI: I would agree with
11 you. I think that's -- I think that's accurate.

12 MINORITY CHAIR FLEISCHAUER: So with
13 regard to the question of our evidence, we don't have
14 any evidence other than third-hand, that this gentleman
15 was a campaign worker.

16 MR. ROSKOVENSKI: I would agree with
17 you.

18 MINORITY CHAIR FLEISCHAUER: We have
19 zero evidence that he -- about any repayment of
20 political favors.

21 MR. ROSKOVENSKI: To the best of my
22 recollection, I -- I don't recall.

23 MINORITY CHAIR FLEISCHAUER: That's my
24 recollection too.

1 And we were -- there have been some
2 questions about political hirings. I believe that -
3 correct me if I'm wrong about this - but that the
4 Secretary of State who was recently elected -- elected,
5 there's a lawsuit. He fired most of the employees who
6 were working there and rehired others.

7 Is that your recollection?

8 MR. ROSKOVENSKI: I do recall that.

9 MINORITY CHAIR FLEISCHAUER: Okay. And
10 you probably also remember that there have been several
11 employees in the House of Delegates who were fired.

12 MR. ROSKOVENSKI: I recall, yes.

13 MINORITY CHAIR FLEISCHAUER: And they --
14 and they -- presumably for political reasons, because it
15 wasn't their performance.

16 MR. ROSKOVENSKI: That, I could not
17 answer.

18 MINORITY CHAIR FLEISCHAUER: Okay. Do
19 you think there were people -- and it's -- and that the
20 -- there is litigation involving the Secretary of
21 State's office that that was because of their political
22 views, I believe.

23 MR. ROSKOVENSKI: I thought -- I don't
24 recall if it was for their political views. That -- I'm

1 not sure I --

2 MINORITY CHAIR FLEISCHAUER: Or their
3 political affiliation.

4 MR. ROSKOVENSKI: I don't recall the
5 exact basis of the case.

6 MINORITY CHAIR FLEISCHAUER: Okay.

7 MR. ROSKOVENSKI: I just recall that
8 there is a current -- there was a lawsuit.

9 MINORITY CHAIR FLEISCHAUER: And you're
10 probably familiar that there is -- well --

11 So we're gonna proceed on this. We have
12 no evidence that it was political favor. The only
13 evidence we have is third-hand testimony that this was
14 an employee. Right?

15 MR. ROSKOVENSKI: That is correct.

16 MINORITY CHAIR FLEISCHAUER: Okay.
17 Thank you, mis -- thank you, Counsel.

18 Thank you, Mr. Chairman.

19 CHAIRMAN SHOTT: Further questions?
20 Counsel, the Chair has a question, and I notice we have
21 the word "retention" in this Article. Was there not
22 testimony from Mr. Canterbury that he had wanted to
23 discharge an employee and that Justice Workman
24 essentially threatened him if he did so?

1 Was there not that testimony?

2 MR. ROSKOVENSKI: I do recall that
3 testimony, but I'm not sure in relation to which
4 employee.

5 CHAIRMAN SHOTT: I understand. There
6 was -- but there was an employee, and that
7 Mr. Canterbury indicated he felt his job was in jeopardy
8 based on Justice Workman's resistance to that effort.

9 MR. ROSKOVENSKI: I would agree, yes.

10 CHAIRMAN SHOTT: Yes, okay. Other
11 questions of counsel?

12 Other questions of counsel? Are there
13 amendment -- oh, Delegate Sobonya.

14 DELEGATE SOBONYA: Thank you. Do you
15 recall testimony -- I'm thinking I did, but I would just
16 like to have it confirmed that there was someone who
17 testified that -- was it Mr. Pritt, who had a consulting
18 firm. I believe he was paid over \$8,000 a month, that
19 worked on Justice Workman's campaign, that he did not
20 fulfill his obligation to the State for which he was
21 contracted?

22 MR. ROSKOVENSKI: Mr. Pritt is the
23 contract employee. I don't know whether there has been
24 testimony to confirm that he was a campaign contributor

1 to Justice Workman or that he left any unfulfilled
2 obligations.

3 DELEGATE SOBONYA: I believe it was the
4 testimony of Mr. Canterbury, if I recall, that said that
5 he was in -- he was a consultant and --

6 MR. ROSKOVENSKI: I believe he was a
7 consultant who was then moved over to -- to a different
8 project. He was moved over to OASIS, and at that point,
9 Mr. Pritt decided to no longer be a contract employee.

10 DELEGATE SOBONYA: Thank you.

11 CHAIRMAN SHOTT: Further questions?

12 Further questions?

13 Are there amendments? There is an
14 amendment at the Chair offered by Delegate Hanshaw to
15 amend the bill on page -- to amend the Articles on page
16 12, Article XIII, on Line 9, after the word "favors" by
17 striking the words -- it's -- "to" -- "to former
18 campaign workers."

19 So the sentence would read, "constituted
20 the apparent repayment of political favors which acts
21 caused wasteful expenditure not necessary for the
22 administration of justice," etc.

23 So there are four words that this
24 amendment seeks to strike, beginning on Line 8: "to

1 former campaign workers" would be those four words. Any
2 further explanation needed?

3 VICE CHAIR HANSHAW: It's a staff-
4 suggested amendment, Mr. Chairman.

5 CHAIRMAN SHOTT: This is the staff-
6 suggested amendment. Are there questions of counsel
7 regarding the staff-suggested amendment?

8 Delegate Miller.

9 DELEGATE MILLER: Thank you,
10 Mr. Chairman. So the eff -- I'm assuming that the
11 effect of this amendment takes out -- it's still a
12 political favor, but not two former campaign workers.
13 Is that in its simplest form?

14 MR. ROSKOVENSKI: Yes, sir.

15 DELEGATE MILLER: Is -- is there a
16 reason? What's the clarification we're making here?

17 MR. ROSKOVENSKI: The evidence before
18 the Committee doesn't necessarily show that any of the
19 individuals were officially campaign workers for the
20 justice. That was the reason for the staff-suggested
21 change.

22 DELEGATE MILLER: So what's our evidence
23 that this is a politic -- repayment of a political favor
24 if not for a campaign worker?

1 MR. ROSKOVENSKI: That, I don't know,
2 Delegate. I can't speak to that. I'm sorry.

3 DELEGATE MILLER: Thank you,
4 Mr. Chairman.

5 CHAIRMAN SHOTT: Further questions
6 regarding the amendment?

7 Further questions regarding the
8 amendment?

9 Are there amendments to the amendment?

10 Discussion regarding the amendment? If
11 not, all in favor of the adoption of the amendment will
12 say "aye".

13 DELEGATES: Aye.

14 CHAIRMAN SHOTT: Opposed "no".

15 The ayes appear to have it.

16 The ayes do have it.

17 The amendment is adopted.

18 Now we go to discussion regarding the --
19 are there other amendments first? Are there other
20 amendments? Discussion re --

21 Discussion, Delegate Pushkin.

22 DELEGATE PUSHKIN: Thank you,
23 Mr. Chairman. While I -- I mean, you know, generally
24 people like to hire people they've worked with in the

1 past, I understand that, and like -- they like to hire
2 people they know can do the job they're hired for.

3 I personally find, you know, the
4 practice of -- that goes on in this building of hiring
5 former campaign workers, while it's distasteful and it
6 looks really bad, it's also very, very common, so I
7 suspect if --

8 I'm not gonna vote for this, but I
9 suspect if it does pass, I hope this Committee stays
10 very busy in the next couple of months going through the
11 campaign reports of every elected official and finding a
12 -- anyone who worked for them that happens to be working
13 in their office right now so we can get to impeaching
14 them next.

15 CHAIRMAN SHOTT: Further discussion?

16 Delegate Fleischauer?

17 MINORITY CHAIR FLEISCHAUER: Thank you,
18 Mr. Chairman. I think taking out "to former campaign
19 workers" makes it worse. Right now, we have no evidence
20 of repayment of political favors. There was no
21 testimony about that whatsoever, zero.

22 And so if there's just a rumor that --
23 that you maybe repaid a political favor, then you can be
24 called up for charges of impeachment.

1 We have no evidence on this at all.
2 There was some testimony that this gentlemen was a
3 campaign worker, even though it was third-hand.

4 And I just think the evidence on this is
5 really flimsy. I don't think it's proper to not go
6 through the procedures of hiring -- the normal civil
7 service procedures of hiring people. But one thing
8 about someone you've worked with in a campaign, you
9 learn who you can trust and who's reliable.

10 So there are some situations where it
11 makes sense to hire somebody that you can trust, who you
12 think is reliable. But I mean, I don't think we have an
13 evidence -- the evidence in this instance to say that
14 this -- that what we heard - and it's all hearsay - was
15 an impeachable offense.

16 And if it is, we are going to be very,
17 very busy for the next foreseeable -- for the
18 foreseeable future for all of the potentially rumors of
19 political payback in the entire state, because it's not
20 just within this building.

21 Thank you, Mr. Chairman. I -- I'm
22 voting "no."

23 CHAIRMAN SHOTT: Delegate Fluharty.

24 MINORITY VICE CHAIR FLUHARTY: Thank

1 you, Mr. Chairman.

2 I join in the "no" vote. I believe this
3 is poorly drafted, for one, and we're not even pointing
4 out particular employees that were hired. There's no
5 evidence they were not qualified. Testimony, in fact,
6 was to the opposite of that. We have numerous instances
7 where somebody either gets appointed -- which could be
8 construed as a political favor, which I pointed out
9 earlier.

10 When our Secretary of State took over,
11 he quickly cleaned house. He fired 15 of 60 -- he fired
12 16 individuals, 15 of whom were Democrats; hired 22 new
13 people, 19 of whom were Republicans.

14 So are we now gonna construe and draft
15 Articles of Impeachment for our Secretary of State? I
16 highly doubt it.

17 But I think if we set the precedent
18 right now, then you better start drafting them up. I
19 mean, this is borderline ridiculous. So I'm going to be
20 voting "no" on this as it lacks any evidence that there
21 were political favors given.

22 And there's plenty of evidence that if
23 we're gonna construe this to be a political favor, then
24 they're all around this Capitol. Close your eyes and

1 point, you'll probably land on a political favor. Thank
2 you.

3 CHAIRMAN SHOTT: Delegate Foster.

4 DELEGATE FOSTER: Question for counsel.
5 Did you say it was Dee Hill that was --

6 MR. ROSKOVENSKI: That was the
7 information that I -- was relayed to me, yes.

8 DELEGATE FOSTER: Because I have the
9 campaign finance report for 2008, and I have "\$50.00 -
10 Gas for Campaign Worker, Dee Hill," and \$779 -- or
11 "\$777.97 - Campaign Worker Salary, Dee Hill," and I
12 haven't gotten to review through all of them yet, but
13 apparently they --

14 -- that Dee Hill was an employee on the
15 campaign for Margaret Workman, which is the employee
16 that also was testified to by Mr. Canterbury; is that
17 correct?

18 MR. ROSKOVENSKI: I believe that was the
19 employee he was referencing.

20 DELEGATE FOSTER: And is this the one
21 that he was threatened to -- I believe the words were
22 "We -- we often get new Administrative Directors here
23 with new -- new" --

24 MR. ROSKOVENSKI: I do recall that

1 statement.

2 DELEGATE FOSTER: All right, thank you.

3 CHAIRMAN SHOTT: Delegate Lane.

4 DELEGATE LANE: I'm going to vote --
5 vote for this. As I recall the testimony, that the
6 Court had an IT department and then it was suggested
7 that Mr. Pritt be hired, and it was evident to the IT
8 guy that they didn't really need him, but they hired him
9 anyway, and then they put him to work, and eventually
10 that didn't work out.

11 And so I think the evidence is that
12 Mr. Pritt was hired even though there was no need for
13 him, and that's why it belongs in this Articles of
14 Impeachment.

15 CHAIRMAN SHOTT: Further discussion?
16 Delegate Fast. Followed by Delegate Pushkin.

17 DELEGATE FAST: Thank you, Mr. Chairman.

18 During this impeachment proceeding,
19 these hearings, I kept copious notes, and one complete
20 note tablet and multiple pages in another note tablet,
21 and when Mr. Canterbury was testifying, he said that
22 only Justice Workman had asked him to hire certain
23 employees. She hired three employees and one contract
24 employee, who was John Pritt, and he testified that --

1 or she -- yayh, Mr. Canterbury testified that the
2 Court's IT department was adequate to handle the work --
3 the IT work that needed to be done; nevertheless, she
4 wanted him hired to do IT work.

5 Later, he was not working out, and he
6 reported that to Justice Workman, and she said, "Find a
7 way to make it work." And so in this Article XIII, it
8 says that she did then and there waste State funds,
9 requiring and encouraging unnecessary hiring and
10 retention of employees and contracting services.

11 And then it goes on to say, "some
12 instances of which constituted the apparent repayment of
13 political favors." But the unnecessary hiring and
14 retention of employees and contracting services, that's
15 exactly what happened here. That's the --

16 That is the main point of Article XIII.
17 First of all, she says, "Hire someone" that they didn't
18 need. Unnecessary hiring.

19 And then when he went to her and said,
20 "He's not working out," she said, "Make it work."
21 Unnecessary retention.

22 So that is the -- the main part of this
23 Article that we're focusing on here. That's a problem
24 right there.

1 I don't care if you worked -- and he --
2 she also -- or he also confirmed that he did the website
3 work during her campaign. To me, that's secondary.

4 Primary is, you don't need someone, you
5 say, "Hire them anyhow." Secondly -- secondly, when
6 they're -- when you're told, "They're not doing their
7 job right" and she says, "Keep them on anyhow," there's
8 a problem there, so I obviously support the Article.

9 CHAIRMAN SHOTT: Further discussion?

10 Delegate Pushkin.

11 DELEGATE PUSHKIN: Thank you,
12 Mr. Chairman. Will the gentleman from the 15th yield?

13 CHAIRMAN SHOTT: What was the question?

14 DELEGATE PUSHKIN: I was asking if the
15 gentleman from the 15th --

16 CHAIRMAN SHOTT: Will the gentleman
17 yield for a question?

18 DELEGATE FOSTER: Sure.

19 DELEGATE PUSHKIN: Thank you. Thank
20 you. I see that you have a hard copy of Justice
21 Workman's campaign -- most recent campaign finance
22 report in front of you; is that correct?

23 DELEGATE FOSTER: I do.

24 DELEGATE PUSHKIN: And you said you saw

1 a \$50.00 reimbursement to Dee Hill?

2 DELEGATE FOSTER: That's a -- there is a
3 \$500.00, a \$610.00, \$696.00, \$777.97 and \$50.00.

4 DELEGATE PUSHKIN: Okay.

5 DELEGATE FOSTER: A monthly basis
6 payment for salary, is what it looks like.

7 DELEGATE PUSHKIN: All right. And I
8 note -- do you have the campaign finance report for
9 Justice Davis? I saw that you were going through that
10 yesterday. You pulled that up?

11 DELEGATE FOSTER: I -- I do have it.

12 DELEGATE PUSHKIN: Okay. Do you have
13 the -- did you pull up the one for Justice Walker?

14 DELEGATE FOSTER: I have Loughry,
15 Ketchum, Davis and -- everyone but Walker.

16 DELEGATE PUSHKIN: You don't have
17 Walker's?

18 DELEGATE FOSTER: No, I don't have
19 Walker's.

20 DELEGATE PUSHKIN: Okay, thank you.

21 CHAIRMAN SHOTT: Further discussion?
22 Further discussion?

23 If not, the question before the
24 Committee is the adoption of Article XIII. All those in

1 favor will say --

2 DELEGATE LANE: Roll call.

3 CHAIRMAN SHOTT: Roll call has been
4 demanded. Is demand sustained?

5 Let's put those hands up again. Is
6 demand sustained?

7 Demand is not sustained.

8 Demand is sustained. All right. Three?
9 I think that's all it takes.

10 DELEGATE BYRD: What's the --

11 CHAIRMAN SHOTT: You didn't see them?
12 All right. Hold your hands up one more time. There
13 were three. Yeah, four, actually.

14 All right. Demand is sustained.

15 If you're in favor of the adoption of
16 Article XIII, you'll vote "aye" or "yay;" opposed, "no"
17 or "nay." Clerk will please call the roll.

18 THE CLERK: Delegate Byrd.

19 DELEGATE BYRD: No.

20 THE CLERK: Delegate Canestraro.

21 DELEGATE CANESTRARO: No.

22 THE CLERK: Delegate Capito.

23 DELEGATE CAPITO: No.

24 THE CLERK: Delegate Deem. Delegate

1 Fast.

2 DELEGATE FAST: Yes.

3 THE CLERK: Delegate Fleischauer.

4 MINORITY CHAIR FLEISCHAUER: No.

5 THE CLERK: Delegate Fluharty.

6 MINORITY VICE CHAIR FLUHARTY: No.

7 THE CLERK: Delegate Foster.

8 DELEGATE FOSTER: Yes.

9 THE CLERK: Delegate Hanshaw.

10 VICE CHAIR HANSHAW: Yes.

11 THE CLERK: Delegate Harshbarger.

12 DELEGATE HARSHBARGER: Yes.

13 THE CLERK: Delegate Hollen.

14 DELEGATE HOLLEN: No.

15 THE CLERK: Delegate Isner.

16 DELEGATE ISNER: No.

17 THE CLERK: Delegate Kessinger.

18 Delegate Lane.

19 DELEGATE LANE: Yes.

20 THE CLERK: Delegate Lovejoy.

21 DELEGATE LOVEJOY: No.

22 THE CLERK: Delegate Miller.

23 DELEGATE MILLER: No.

24 THE CLERK: Delegate Moore.

1 DELEGATE MOORE: No.
2 THE CLERK: Delegate Overington.
3 DELEGATE OVERINGTON: Yes.
4 THE CLERK: Delegate Pushkin.
5 DELEGATE PUSHKIN: No.
6 THE CLERK: Delegate Queen.
7 DELEGATE QUEEN: Yes.
8 THE CLERK: Delegate Robinson.
9 DELEGATE ROBINSON: No.
10 THE CLERK: Delegate Sobonya.
11 DELEGATE SOBONYA: Yes.
12 THE CLERK: Delegate Summers.
13 DELEGATE SUMMERS: No.
14 THE CLERK: I'm sorry? Delegate
15 Summers?
16 DELEGATE SUMMERS: No.
17 THE CLERK: Delegate Zatezalo.
18 DELEGATE ZATEZALO: Yes.
19 THE CLERK: And Mr. Chairman.
20 CHAIRMAN SHOTT: Yes.
21 On the question of the adoption of
22 Article XIII, there were 10 ayes, 13 nays, 2 members
23 absent and not voting.
24 Article XIII is rejected.

1 We have dealt with Article XIV. We have
2 adopted a new Article XV, and we have two to go. You
3 should have received proposed Articles. Amendment No. 1
4 does not have a sponsor. Is that --

5 Who are the sponsors of number --

6 DELEGATE PUSHKIN: Mr. Chairman.

7 CHAIRMAN SHOTT: Pardon me? Delegate
8 Robinson offers a -- what is shown at the top left-hand
9 corner as an AMD-1. Everyone should have a copy of
10 that, and it basically deals with the personal pictures
11 and frames. Does the delegate desire a unanimous
12 consent to explain the amendment in lieu of having it
13 read?

14 MINORITY CHAIR FLEISCHAUER: Mr.
15 Chairman, I think there were several other members that
16 wanted to join on that amendment --

17 CHAIRMAN SHOTT: All right.

18 MINORITY CHAIR FLEISCHAUER: -- if it's
19 not objectionable - including me - to the -- to the lead
20 sponsor.

21 CHAIRMAN SHOTT: I tell you what, if you
22 all just identify yourselves to the clerk after we deal
23 with it, we'll add that to the -- to the amendment.

24 Gentleman from -- Delegate Robinson,

1 would you like to explain the amendment in lieu of
2 having it read?

3 DELEGATE ROBINSON: Thank you,
4 Mr. Chairman.

5 This amendment basically is closely,
6 narrowly scoped into framing, that Justice Loughry had
7 personal items framed, personal pictures, and then the
8 custom frames, paid for by State money, were removed
9 from State offices and converted to private use.

10 CHAIRMAN SHOTT: Questions re -- to the
11 sponsor regarding the amendment? Questions?

12 Or questions of counsel regarding the
13 effect of the amendment?

14 If not, are there amendments to the
15 amendment? Are there amendments to this amendment?

16 If not, is there discussion regarding
17 the amendment?

18 Delegate Capito, followed by Delegate
19 Fast.

20 DELEGATE CAPITO: Can I ask a question
21 of counsel?

22 CHAIRMAN SHOTT: Sure. Counsel, do you
23 have a copy of the amendment?

24 MR. CASTO: I do, Mr. Chairman.

1 CHAIRMAN SHOTT: Delegate Capito, you
2 may proceed.

3 DELEGATE CAPITO: I apologize, Counsel,
4 but what are the elements of felony embezzlement?

5 MR. CASTO: Without the statute in front
6 of me, I'm not going to testify as to what the elements
7 are.

8 DELEGATE CAPITO: Is there a mens rea
9 element?

10 MR. CASTO: I think that there is. I
11 think you have to be in -- I think you have to be in
12 lawful possession and convert it to your own use. I
13 think that's -- essentially you're in lawful possession
14 of an item and then convert it to your own use or take
15 it for your own use.

16 DELEGATE CAPITO: Okay.

17 MR. CASTO: A custodian of an item who
18 then uses it for their own benefit would be -- is the
19 basis behind most embezzlement and conversion crime.

20 DELEGATE CAPITO: And contrary to the
21 letter we received the morning -- this morning, it is
22 our counsel's opinion that the Supreme Court of Appeals
23 is indeed subject to the State Ethics Act.

24 MR. CASTO: I think that's the opinion

1 of nearly everyone in this room.

2 DELEGATE CAPITO: Thank you,
3 Mr. Chairman.

4 CHAIRMAN SHOTT: Delegate -- Delegate
5 Fast.

6 DELEGATE FAST: Question of counsel,
7 please.

8 CHAIRMAN SHOTT: Go ahead.

9 DELEGATE FAST: Counsel, was -- was
10 there any evidence that any framed items -- I mean, when
11 I went into Justice Loughry's office, I counted, I
12 believe, 18 framed items either hanging on the wall or
13 sitting on the desks, and was there any evidence that
14 anything had been found anywhere other than the Capitol?

15 MR. CASTO: Let me say this: I don't
16 know that we have any evidence that's been presented to
17 this Committee that there are items elsewhere other than
18 the Capitol.

19 We've heard some testimony with regard
20 to items that were framed. My recollection is -- and I
21 cannot point to you the specific page in the purchasing
22 documents that we have, but my recollection is that
23 there are something like a low six-figure value on items
24 that were framed by the Court.

1 I want to say it's somewhere in excess
2 -- barely in excess, but in excess of \$100,000 that were
3 framed for Court purposes and for which we have
4 receipts.

5 My recollection - to the best of my
6 recollection - is that there was somewhere around \$6,000
7 to \$7,000 of that which could be directly attributed
8 based upon receipts that we had, and of that, my
9 recollection is that approximately \$1500 of that was
10 directly attributable to Justice Loughry.

11 DELEGATE FAST: Okay.

12 MR. CASTO: What happened with those
13 items and where those items are is not something that I
14 have within my knowledge.

15 DELEGATE FAST: Okay. It may be the
16 items still in there that we saw yesterday? It could be
17 something else.

18 MR. CASTO: I would say that's entirely
19 possible, based upon the limitations of my knowledge.

20 DELEGATE FAST: One last question. Item
21 -- framed items that are hanging on the walls in there
22 right now, when that justice leaves, could the pictures
23 be removed, the frames remained, and someone else could
24 fill the frames with their own pictures if they wanted

1 to?

2 MR. CASTO: I'm not somebody who has the
3 ability to tell you about custom framing. I didn't see
4 the items yesterday, so I don't have a vivid
5 recollection. I've been over to the Court, I think,
6 twice in the past couple yays.

7 And I don't have a vivid recollection of
8 what was in any of the justices' offices to tell you
9 that.

10 I mean, someone who was a professional
11 framer would perhaps have a well-founded opinion on
12 whether or not a particular frame could be reused. I
13 certainly don't.

14 DELEGATE FAST: Thank you.

15 CHAIRMAN SHOTT: Delegate Robinson is
16 willing to yield for that question if you want to ask it
17 directly to him. He's the sponsor of the amendment.

18 DELEGATE FAST: I have no desire to ask
19 him to yield. Thank you, Mr. Chairman, for the offer.

20 CHAIRMAN SHOTT: All right. Delegate
21 Fleischauer.

22 MINORITY CHAIR FLEISCHAUER: Thank you,
23 Mr. Chairman. I'd like to ask the gentleman from
24 Kanawha to relate what he recalls about the testimony

1 about specific items that had been framed and that were
2 no longer in the Court's chambers or anywhere else.

3 CHAIRMAN SHOTT: Will the -- will the
4 gentlemen yield?

5 DELEGATE ROBINSON: Happy to, happy to.

6 CHAIRMAN SHOTT: I thought so. All
7 right.

8 DELEGATE ROBINSON: I believe ju --
9 Mr. Canterbury's testimony was that there were specific
10 personal items, a framed newspaper article of Justice
11 Loughry's child, a sheet of \$2.00 bills and a book
12 cover. I don't believe our -- our record of his
13 testimony is available yet, but it should be tomorrow we
14 have that.

15 We also -- yesterday we were speaking
16 with Mr. Angus and asked if there's any possibility that
17 those items could be in storage or anywhere in the
18 Supreme Court's possession, and he made clear that that
19 was not possible.

20 MINORITY CHAIR FLEISCHAUER: So you were
21 saying that one of the items was a copy of the cover of
22 his book -- correct?

23 DELEGATE ROBINSON: Yeah, the items that
24 I'm relating my amendment to are directly personal items

1 that could have no use to the State.

2 MINORITY CHAIR FLEISCHAUER: Wasn't there
3 also some item -- some framed piece of art work that
4 related to his marriage?

5 DELEGATE ROBINSON: I believe so. I
6 believe that was a -- an etching or something, and also a
7 watercolor or something of his married name as Loughry
8 would --

9 MINORITY CHAIR FLEISCHAUER: In another
10 language.

11 DELEGATE ROBINSON: I don't know the
12 details of it. I just know it was personal and related to
13 his wedding and had no State use. And as you know, custom
14 framing is cut to the exact size of the document or photo
15 and is not usable in the future as it's sealed and shut by
16 a professional, I guess, framer.

17 MINORITY CHAIR FLEISCHAUER: So the
18 testimony was that there were several thousand dollars
19 worth of personal items that had been framed at Supreme
20 Court expense that are no longer at the Court and no
21 longer in the warehouse anywhere, that the -- that the
22 current employees know of.

23 DELEGATE ROBINSON: That's not in the
24 Supreme Court's possession.

1 MINORITY CHAIR FLEISCHAUER: Okay, thank
2 you.

3 CHAIRMAN SHOTT: Further questions?
4 Delegate Sobonya.

5 DELEGATE SOBONYA: Question of counsel.
6 Has this been referred to the prosecutor for criminal law
7 and felony embezzlement violations, to your knowledge?

8 MR. CASTO: Not to my knowledge. You'd
9 have to ask the sponsor. He would have better knowledge
10 than I.

11 DELEGATE SOBONYA: That's okay. Thank
12 you.

13 CHAIRMAN SHOTT: Further questions?
14 Delegate Lane.

15 DELEGATE LANE: Counsel, this is a
16 technical question maybe, but do we have a problem on
17 basing an Article on evidence that was -- or hearsay
18 evidence that was picked up on the tour yesterday?

19 I mean, I just heard the gentleman from
20 Kanawha testify that he was told that those articles were
21 nowhere around, but that wasn't anything that we've had
22 from the witness stand.

23 Is that a problem?

24 MR. CASTO: Well, let me say this:

1 Currently we still - at this time, to my knowledge - do
2 not absolutely know what standard of evidence the Senate
3 will apply in the trial of these items.

4 And our general rule and practice
5 throughout the preparation of these Articles has been to
6 confine those Articles to things for which we had sworn
7 testimony or other proof in the form of documents, etc.,
8 which would meet high evidentiary standards.

9 Perhaps -- you know, perhaps the
10 gentleman could furnish the rationale for a hearsay
11 exception or something of that nature. But that decision
12 would be one you all would have to make as -- as
13 presenters of the Articles, as to whether you felt that
14 the evidence that the gentleman had presented for the
15 amendment -- for the -- the grounds that he has placed in
16 the amendment would be sufficient to meet the test of the
17 Senate.

18 You'd be the ultimate arbiter on that.

19 DELEGATE LANE: Okay, thank you.

20 CHAIRMAN SHOTT: Further questions?

21 Delegate Miller.

22 DELEGATE MILLER: Thank you, Mr. Chairman.
23 Counsel, as -- as we've ventured down this
24 path over the last several weeks, having been appointed a

1 manager, we have, in some cases, referred to information
2 that has come to my knowledge as a result of speaking to
3 people and interviews and things like that, and I don't
4 know if it carries any more weight just because I am
5 delegated as a manager or not.

6 But the -- the information that the
7 delegate from Kanawha put forth is accurate. When --
8 when looking -- searching for particular framing that was
9 alleged to have been -- or we received information and
10 testimony that had been purchased, a -- I think
11 specifically a feather name framing, wedding pictures,
12 \$2.00 bills, etc., that were not present in the -- in the
13 justice's chamber, and when security was asked, his
14 response was, "If they're not on the wall, they are not
15 in storage," for whatever weight that the Committee may
16 want to give that.

17 And I hate to be testifying, so to speak,
18 but since -- since I've been involved in some of those
19 things along the way, I felt it -- that if -- if you feel
20 that that's proper.

21 MR. CASTO: It's not my call as to whether
22 or not it's proper, but that would be -- that would be
23 above my pay grade.

24 DELEGATE MILLER: Or the -- if proper for

1 the Chair to consider.

2 Thank you, Mr. Chairman.

3 CHAIRMAN SHOTT: To the members of the
4 Committee, Delegate Robinson has asked leave to reform
5 the proposed amendment, and the reformation would
6 simply -- if you'll follow with me down on the third line
7 from the bottom, after the word "benefit," he is
8 proposing to strike out the language "in violation of
9 State criminal law of felony embezzlement pursuant to
10 West Virginia Code Section 61-3-20," and in place of the
11 words "and also," he proposes to substitute the word
12 "which."

13 So if you'll go back to the fourth line
14 up, we'll start with "and converted to his personal use
15 and benefit which constitutes use of State resources for
16 personal gain, in violation of the State Ethics Act, West
17 Virginia Code Section 6B-2-5."

18 So basically the reference to the
19 violation of the -- of the felony of embezzlement is
20 stricken in the reformed amendment.

21 Did I correct -- did I state that
22 correctly?

23 DELEGATE ROBINSON: (Nodded
24 affirmatively).

1 CHAIRMAN SHOTT: Is there any objection
2 to the gentleman's request to reform his amendment?

3 The Chair hears none.

4 Further questions regarding the -- the
5 amendment now as it's been reformed?

6 Is there discussion?

7 Delegate Hollen. Question of counsel.

8 DELEGATE HOLLEN: Question of counsel. I
9 just have a question here. It's "items that were
10 subsequently removed from State offices and converted to
11 his personal use and benefit."

12 Do we have any knowledge that A, that
13 they were removed besides they're nowhere around, no
14 one's seen them? And "converted to his personal use,"
15 where's the knowledge that if they're not -- if they're
16 missing, where is the knowledge that they were actually
17 converted for his personal use?

18 MR. CASTO: I think that would be an
19 inference you would have to draw from the facts as a
20 whole based upon the gentleman's amendment and the
21 testimony you've heard this afternoon.

22 I think that would be an inference that
23 you - and ultimately the Senate, as trier of fact - would
24 have to draw based upon the probable disposition of these

1 items.

2 DELEGATE HOLLEN: It is merely
3 speculation. Thank you, Counsel.

4 CHAIRMAN SHOTT: Delegate Capito?

5 DELEGATE CAPITO: Thank you,
6 Mr. Chairman. Counsel --

7 MR. CASTO: Yes, sir.

8 DELEGATE CAPITO: -- is it your opinion,
9 or are you of the opinion that the term "converted" is
10 being used in the now -- well, let's see, it's the fourth
11 line from the top.

12 -- as a term of art?

13 MR. CASTO: I think to a degree that it
14 is. We've removed, by reforming the gentleman's
15 amendment, the specific intent element that's present in
16 larceny and embezzlement that it be a permanent intent to
17 deprive the possessor and use it for one's own personal
18 benefit.

19 But to my mind - I'm like you -
20 conversion does seem to me to be a term of art, which does
21 essentially mean using it for one's own personal use and
22 benefit when it's not explicitly intended to be so used.

23 DELEGATE CAPITO: Okay.

24 Thank you, Mr. Chairman.

1 CHAIRMAN SHOTT: Further questions
2 regarding the reformed amendment?

3 Further questions?

4 Delegate Moore?

5 DELEGATE MOORE: Thank you, Mr. Chairman.
6 Counsel, just to reiterate - and I think
7 Delegate Hollen touched on this - so we don't have any
8 specific evidence, or I guess testimony, to the stated
9 lines in here about picture frames being used for
10 personal use. Do we know that as a -- has that been
11 testified?

12 MR. CASTO: No, sir, there's been no test
13 -- direct testimony on that fact, to my knowledge,
14 from -- from any of the witnesses.

15 DELEGATE MOORE: Okay, thank you.

16 CHAIRMAN SHOTT: Delegate Summers?
17 No? Okay.
18 Any other discussion or questions?
19 Delegate Miller, followed by Delegate
20 Fast.

21 DELEGATE MILLER: Thank you, Mr. Chairman.
22 Counsel, as used in -- in previous
23 Articles, which -- which gave me caution all along the way
24 - but we used them consistently throughout the day - with

1 the Article that is proposed by the gentleman from
2 Kanawha, is this something that is a potential violation,
3 whether or not we have definitive proof or not, again, as
4 we have used throughout the day in other Articles?

5 MR. CASTO: I would feel much more
6 comfortable if there were some limitational language like
7 that in there. Other than the fact that we state that it
8 absolutely was removed and converted, I think there is
9 certainly a probability that that is the case, but we
10 have at this time no direct evidence that it is the case.

11 We can have evidence that the items are
12 no longer there, but what the ultimate destination of
13 those items is, I don't think that we've heard any
14 evidence at this time.

15 DELEGATE MILLER: I would pitch that
16 toward the gentleman from Kanawha. I mean, it's his --
17 it's his proposal, so I'm not sure if he would want to
18 insert the word "potential" to make it consistent with
19 other Articles or not.

20 DELEGATE ROBINSON: Yes. Yes, I --

21 CHAIRMAN SHOTT: Where would that word be
22 inserted?

23 VICE CHAIR HANSHAW: I think before
24 "converted," Mr. Chairman, but it --

1 CHAIRMAN SHOTT: Would it be before the
2 word "converted"? "Potentially converted to his personal
3 use and benefit"? Is that what you're seeking to do?

4 (A discussion was had off the record.)

5 CHAIRMAN SHOTT: Pardon? It's your all's
6 amendment. You tell me where you want it.

7 DELEGATE MILLER: I mean, it's not --
8 it's not my amendment, so all I can do is make the
9 suggestion for whoever the -- made the proposals.

10 CHAIRMAN SHOTT: Gentle -- yes, Delegate
11 Robinson.

12 DELEGATE ROBINSON: Mr. Chairman, my
13 confusion of the placing of this is -- is due to the fact
14 that in no way do I see the State of West Virginia using
15 a professionally and custom framed picture of Justice
16 Loughry's name because -- when he got married or a
17 picture of his son, and these things, so I'm wondering
18 what the "potentially converted to personal use," how that
19 would affect it, because in my mind, it was personal use
20 the day he had it personally framed and you and I paid for
21 it.

22 CHAIRMAN SHOTT: And I'm not seeking this
23 amendment. This is -- I was under the impression you
24 wanted to reform. If you don't, fine, we won't. Do you

1 want to reform or not?

2 DELEGATE ROBINSON: I think I would
3 decline to reform.

4 CHAIRMAN SHOTT: Okay, very good. Is
5 there further discussion regarding the reformed
6 amendment?

7 Delegate Fast.

8 DELEGATE FAST: Thank you, Mr. Chairman.
9 Conversion, by definition, is a form of theft. It's used
10 in various statutes to signify theft, and so --

11 Moving on. This here, this Article, is
12 an accusation which we are endowed to bring forth, if
13 we're going to, accusations, which we have -- which is an
14 impeachment. But this is based upon no evidence.

15 As counsel alluded, there's no evidence
16 as to where these things are. We don't have evidence.
17 It's not like we have a signed contract that we saw with
18 -- on the other Articles. Here, we don't have any
19 evidence. What we do have is: Justin Robinson was
20 recalled to this Committee on July the 26th, 2018, and he
21 talked about the framing issue.

22 He said - and counsel was pretty close on
23 his numbers - but he said from 2009 until -- I didn't get
24 the second yayr, but it was a long span of yayrs. I think

1 he said -- maybe 18, but I'm not sure.

2 \$114,788 total spend -- expenditures on
3 framing. Of that -- of that, \$6,288 was the cumulative
4 total that they could attribute to justices' framing
5 activity, all the justices, during that multi-year time
6 period, \$6,288.

7 Of that \$6,288, Justice Benjamin spent
8 \$2,357 on framing items; Justice Davis, \$998.00;
9 Justice Ketchum, \$597.00; Justice Workman, \$998.00; and
10 Justice Loughry, \$1,337. That's the only proof we have.

11 He's almost half as less as Justice
12 Benjamin. \$1,337. That's all the proof we have. We
13 don't know where -- if something is missing then -- that
14 Steve Canterbury talked about, we don't know where it is,
15 so that would be an accusation without evidence because
16 of that, and the numbers, the hard and fast numbers, that
17 we have, I would move to not accept this Article.

18 CHAIRMAN SHOTT: Delegate Pushkin.

19 DELEGATE PUSHKIN: Thank you,
20 Mr. Chairman.

21 We did -- in the testimony from Steve
22 Canterbury, we heard -- we heard of at least -- if I
23 remember correctly, at least four items that were personal
24 in nature that were framed at the expense of the taxpayer.

1 We heard of a sheet of \$2.00 bills, an article about
2 Justice Loughry's son, I believe a watercolor in regards
3 to his wedding, and -- and the book cover.

4 There might have been one more - I can't
5 remember - but I know there was -- so there was at least
6 four. Yesterday, when we took the tour of the Courts, we
7 saw that none of those items were in his office, and
8 there were several places where there could have been
9 framed items hung.

10 There were places that I noticed, I --
11 because I was specifically looking for it, where there
12 were still holes in the wall where something was hung and
13 they were no longer there.

14 We know that he, Mr. -- Justice Loughry
15 does not have an office at, you know, another building
16 that would be a government building like where they rent
17 City Center East or something like that.

18 This is his office that is paid for by the
19 taxpayers. If something is gonna be furnished in that
20 office paid for by the taxpayers, it should be in that
21 office. And it was not in that office.

22 To me, that's evidence that I saw with my
23 own eyes. I heard -- we know that it was framed. We know
24 that he had -- through sworn testimony, somebody stated

1 under oath that he had these items framed and that we paid
2 for it and they're not in his office.

3 To me, that's stronger evidence than a
4 lot of the evidence I heard earlier today. And I think
5 -- I believe it was stated earlier that, you know, we're
6 not trying this case over here. We're bringing the
7 charges here. You know, they can prove that over in the
8 Senate.

9 But I believe it was stated by the
10 gentleman from the 32nd earlier - I can't remember how
11 you stated it, but you know - this is a -- this is, you
12 know, more like a -- I know it's not a Grand Jury, but
13 it's more akin to a Grand Jury.

14 There's definitely a -- a pretty good
15 possibility that those items that we paid for are in his
16 home, because we know where they're not. And they're not
17 in his office, and we do know that we paid for them.

18 CHAIRMAN SHOTT: Before I invite any
19 further discussion, let me just make an observation. Is
20 there anybody in this room that really believes that if
21 the Senate rejects all of these counts against Justice
22 Loughry, they will impeach him for these frames?

23 I mean, is there anybody that really
24 believes that?

1 All right. Further discussion. It's
2 getting late. Long day. Forgive me for editorializing,
3 but I couldn't resist.

4 Any further discussion? If not, the
5 question before the Committee is the adoption of the
6 reformed amendment. All in --

7 DELEGATE ROBINSON: Can I close?

8 CHAIRMAN SHOTT: Yes, you may close.
9 Delegate Robinson.

10 DELEGATE ROBINSON: Mr. Chairman, I
11 offered this amendment because I think it's very
12 inappropriate to have your wedding pictures, your name,
13 your inauguration to be framed privately and publicly set
14 out. I didn't have my inauguration pictures framed at
15 the State expense.

16 So if you think it's appropriate for the
17 State to pay for your pictures, your wife's pictures,
18 your kid's pictures, your dog's pictures to be framed at
19 the cost of the taxpayers, vote against it. Let's not
20 stick it in there. Thank you.

21 CHAIRMAN SHOTT: Question before the
22 Committee is the adoption -- roll call has been demanded.
23 Is the demand sustained?

24 Demand is sustained.

1 The clerk will read the -- call the roll.
2 If you're in favor of the reformed amendment, you'll say
3 "aye" or "yay." If you're opposed, "no" or "nay." Please
4 call the roll.

5 THE CLERK: Delegate Byrd.

6 DELEGATE BYRD: Yes.

7 THE CLERK: Delegate Canestraro.

8 DELEGATE CANESTRARO: Yes.

9 THE CLERK: Delegate Capito.

10 DELEGATE CAPITO: No.

11 THE CLERK: Delegate Deem. Delegate
12 Fast.

13 DELEGATE FAST: No.

14 THE CLERK: Delegate Fleischauer.

15 MINORITY CHAIR FLEISCHAUER: Yes.

16 THE CLERK: Delegate Fluharty.

17 MINORITY VICE CHAIR FLUHARTY: Yes.

18 THE CLERK: Delegate Foster.

19 DELEGATE FOSTER: No.

20 THE CLERK: Delegate Hanshaw.

21 VICE CHAIR HANSHAW: Yes.

22 THE CLERK: Delegate Harshbarger.

23 DELEGATE HARSHBARGER: No.

24 THE CLERK: Delegate Hollen.

1 DELEGATE HOLLEN: No.
2 THE CLERK: Delegate Isner.
3 DELEGATE ISNER: Yes.
4 THE CLERK: Delegate Kessinger. Delegate
5 Lane.
6 DELEGATE LANE: Yes.
7 THE CLERK: Delegate Lovejoy.
8 DELEGATE LOVEJOY: Yes.
9 THE CLERK: Delegate Miller.
10 DELEGATE MILLER: Yes.
11 THE CLERK: Delegate Moore.
12 DELEGATE MOORE: No.
13 THE CLERK: Delegate Overington.
14 DELEGATE OVERINGTON: No.
15 THE CLERK: Delegate Pushkin.
16 DELEGATE PUSHKIN: Yes.
17 THE CLERK: Delegate Queen.
18 DELEGATE QUEEN: No.
19 THE CLERK: Delegate Robinson.
20 DELEGATE ROBINSON: Yes.
21 THE CLERK: Delegate Sobonya.
22 DELEGATE SOBONYA: No.
23 THE CLERK: Delegate Summers.
24 DELEGATE SUMMERS: No.

1 THE CLERK: Delegate Zatezalo.

2 DELEGATE ZATEZALO: No.

3 THE CLERK: And Mr. Chairman.

4 CHAIRMAN SHOTT: Yes.

5 In the question of the adoption of the
6 new Article, which I think would be, what, XVI -- XVI, 12
7 ayes, 11 nays, 2 members absent, not voting. The -- the
8 article is adopted.

9 We have one more Article to go over, and
10 that is offered by Delegates Fleischauer, Byrd, Miller,
11 Canestraro, Fluharty, Isner, Lovejoy, Pushkin and
12 Robinson.

13 DELEGATE PUSHKIN: Mr. Chairman?

14 CHAIRMAN SHOTT: Yes. Gentleman -- put
15 Mr. Pushkin -- Delegate Pushkin --

16 DELEGATE PUSHKIN: I would -- this
17 Article involves the charges of trying to coerce a Court
18 employee to -- to lie to the federal investigators. I
19 think this would probably be a matter be better handled by
20 the federal prosecution, so I'd move to withdraw it.

21 CHAIRMAN SHOTT: There's a question for
22 unanimous consent to withdraw the proposed Article.

23 Is there any objection? The Chair hears
24 none. The Article is withdrawn.

1 Are there any other amendments to the
2 Articles of Impeachment?

3 I believe that we have then resolved all
4 of the Articles. We will ask staff to basically edit the
5 Articles only by omitting those that are -- have been
6 rejected and provide copies to the members of the
7 Committee.

8 You should have on your desk a letter
9 from our Speaker Pro Tem. Would you like to announce the
10 meeting, Delegate Overington?

11 DELEGATE OVERINGTON: Thank you,
12 Mr. Chairman. I sent the letter to Steve Harrison, our
13 Clerk. It states, "Pursuant to the June 26, 2018 motion
14 to adjourn, I do hereby call the West Virginia House of
15 Delegates to reconvene the second extraordinary session
16 on Monday, August 13th, 2018 at 10:00 a.m. in the chamber
17 of the West Virginia House of Delegates. Sincerely, John
18 Overington, Speaker Pro Tem."

19 CHAIRMAN SHOTT: Thank you. Did everybody
20 get that date and time? Next Monday at 10:00 a.m.

21 Correct?

22 The -- we would -- the members of the
23 management group would like your unanimous consent that we
24 be permitted to renumber the Articles to conform with the

1 -- those that have been rejected and some latitude, if we
2 wish, to rearrange -- rearrange the Articles but without
3 changing them.

4 In other words -- in other words, perhaps
5 move in the order that they are in there and give the
6 managers the flexibility to do that as we -- as we
7 present them to the full House.

8 Is there any objection to that?

9 DELEGATE CAPITO: May I make a point of
10 inquiry?

11 CHAIRMAN SHOTT: Point of inquiry. Go
12 ahead. Delegate Capito.

13 DELEGATE CAPITO: Thank you,
14 Mr. Chairman. Along those lines, will the managers --
15 and I'm willing to -- to add to -- to your motion, will
16 the managers and counsel be given some discretion to make
17 what I would consider technical changes to the language
18 that's outside of the Articles, the "Whereas," the
19 "Wherefores?"

20 CHAIRMAN SHOTT: Yes, we -- you can
21 consider my request to include that type of tech -- the
22 ability to make technical changes that don't change the
23 substance -- pardon me, the substance of the Articles.

24 DELEGATE CAPITO: I'd move.

1 CHAIRMAN SHOTT: Is there any objection
2 to allowing the managers --

3 Yes, Delegate Fleischauer.

4 MINORITY CHAIR FLEISCHAUER: Thank you,
5 Mr. Chairman. I'm just wondering what the purpose of
6 reorganizing them is, because I don't see any need not to
7 follow chronological order in the -- you know, the way
8 they were passed.

9 CHAIRMAN SHOTT: And my only suggestion
10 was if we decide, as managers, that it's more effective
11 to present them in a different order, we would like to
12 have that ability, but if you object, then I won't ask
13 unanimous consent.

14 MINORITY CHAIR FLEISCHAUER: I'm just
15 wondering if that -- what the implications of that might
16 be if we bunch them up so that there's more likely to be
17 a recommendation of impeachment or -- I -- I just don't
18 know what that would mean.

19 And I'm not necessarily objecting; I'm
20 just wondering why we would need to reorder them.

21 CHAIRMAN SHOTT: Well, I haven't said we
22 would. I just said we'd like to have that -- that
23 flexibility.

24 MINORITY CHAIR FLEISCHAUER: Well, I

1 would not -- I wouldn't be unwilling to go along with
2 that, but can we be consulted and then offer any
3 objection at a later time? Because there's a good chance
4 you won't do this.

5 CHAIRMAN SHOTT: I'm just not sure
6 when -- when and how we'd do that, but if you -- if you
7 oppose that, I'll seek a motion to allow us that
8 flexibility as opposed to a unanimous consent.

9 MINORITY CHAIR FLEISCHAUER: I guess all
10 I'm saying is I'm not opposing it, but I think -- I'm
11 asking for courtesy to consult with us and if somebody
12 would explain why they're being reordered, that it would
13 be much more palatable to me.

14 CHAIRMAN SHOTT: What -- what we'll try
15 to do is get -- once we edit out those that have been
16 rejected, we'll get -- we'll submit to all members
17 by e-mail the revision with only those Articles that are
18 -- have been accepted, and if it appears - once we meet -
19 that we -- we may need to reorder them, we'll certainly -
20 as a courtesy - notify you, and you can notify your
21 members if they have any difference of opinion.

22 But that may not be until, you know, 24
23 hours or so before we present them.

24 MINORITY CHAIR FLEISCHAUER: Right. So

1 all members are going to get a copy of what was passed in
2 a relatively short period of time. And then the managers
3 and staff and the leadership of the Committee are gonna
4 make a determination about the final ordering and get
5 back with us about --

6 CHAIRMAN SHOTT: If the order changes, we
7 will notify you so you can notify your members.

8 MINORITY CHAIR FLEISCHAUER: Okay, that
9 sounds good.

10 CHAIRMAN SHOTT: Fair enough?

11 MINORITY CHAIR FLEISCHAUER: Yeah, and if
12 you could notify our counsel too. Earth to Joe. Thank
13 you. That would be appreciated.

14 CHAIRMAN SHOTT: Anyone else have a
15 concern?

16 Yes, Delegate Moore.

17 DELEGATE MOORE: So just to be clear, can
18 -- so the managers are not gonna have the flexibility to
19 be able to reorder these as they see fit as the most
20 effective manner to be able to present them?

21 CHAIRMAN SHOTT: We have that ability;
22 we're just going to provide notice as a matter of
23 courtesy, that that will be done, if we decide to do that.

24 DELEGATE MOORE: So you -- there is that

1 ability?

2 CHAIRMAN SHOTT: Yes.

3 DELEGATE MOORE: Okay.

4 CHAIRMAN SHOTT: That's my understanding.

5 Correct? Anyone else have a concern

6 about that we need to address before we adjourn?

7 All right. Thank you for your hard work

8 today and over the course of the Committee sessions.

9 I'll recognize the Vice Chair for a motion that we

10 adjourn.

11 VICE CHAIR HANSHAW: I move the Committee

12 adjourn.

13 CHAIRMAN SHOTT: All in favor will say

14 "aye".

15 DELEGATES: Aye.

16 CHAIRMAN SHOTT: Opposed, "no".

17 We are adjourned. Have safe travels home.

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1 STATE OF WEST VIRGINIA,
2 COUNTY OF KANAWHA, to wit:

3 I, Teresa Evans, Registered Merit Reporter and a
4 Notary Public within and for the County and State
5 aforesaid, duly commissioned and qualified, do hereby
6 certify that the foregoing proceedings were duly taken by
7 me and before me at the time and place and for the purpose
8 specified in the caption hereof.

9 I do further certify that the said proceedings
10 were correctly taken by me in shorthand notes, and that
11 the same were accurately written out in full and reduced
12 to typewriting by means of computer-aided transcription.

13 Given under my hand this 11th day of August,
14 2018.

15 *Teresa Evans*
16

17 TERESA EVANS, RMR, CRR
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