

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9416 HOUSE RULES

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1 A Yes, this is the list.  
2 MR. SYREN: No, I'll make the same objection, Your  
3 Honor.  
4 HEARING OFFICER: Overruled.  
5 Q Did anyone.....  
6 HEARING OFFICER: Five will be admitted.  
7 (Committee's Exhibit 5 admitted)  
8 Q Did anybody from District 19 ask you for a copy of this  
9 list?  
10 A Yes.  
11 Q And who was that?  
12 A District Chairman Les Syren.  
13 HEARING OFFICER: I'm sorry?  
14 A District Chairman Les Syren.  
15 Q Did, to your knowledge Ms. McKay, did anybody from the  
16 Republican Party ask Republican Legislators to send  
17 thank you letters to people who attended this event?  
18 A No.  
19 MR. SPAAN: That would conclude my questions, Your  
20 Honor.  
21 HEARING OFFICER: Mr. Syren.  
22 MR. SYREN: No questions, Your Honor.  
23 HEARING OFFICER: Do members of the Committee have  
24 questions? I have one if the Committee will permit, before the  
25 Committee asks. When was it Mr. Syren asked for the list?

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1 A The night of the straw poll.

2 HEARING OFFICER: That's all I have. Do members of the  
3 Committee have questions?

4 CHAIRMAN MAC NEILLE: I have one.

5 LINDA S. MCKAY

6 testified as follows on:

7 INQUIRY

8 BY CHAIRMAN MAC NEILLE:

9 Q Did you make it available to Mr. Syren that night or at  
10 some later date, do you recall?

11 A That evening.

12 CHAIRMAN MAC NEILLE: That's all I have.

13 HEARING OFFICER: Mr. Granger.

14 LINDA S. MCKAY

15 testified as follows on:

16 INQUIRY

17 BY MR. GRANGER:

18 Q Yes, I'm Ed Granger, this is the list that you  
19 provided, the one that we have in our hand?

20 A That is.

21 Q Or looks like anyway?

22 A There was more that I provided. That isn't the  
23 complete list.

24 Q There was all 5,000 names on it then?

25 A No, sir. The list that I -- the list that I gave --

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1           that Les had a copy of was everybody that signed in in  
2           his district, but that doesn't look like it's the full  
3           copy of them all.  
4    Q           And you would have given.....  
5    A           It was thicker.  
6    Q           .....this to anybody.....  
7    A           Um-hum. (Affirmative)  
8    Q           .....that asked for it?  
9    A           Yeah. It was public knowledge.  
10   Q           And where is this list retained, in.....  
11   A           At my office.  
12   Q           .....your office?  
13   A           In secured files or no?  
14   A           It's locked up. Um-hum. (Affirmative)  
15               MR. GRANGER: Thank you.  
16               HEARING OFFICER: Representative Toohey.  
17               REPRESENTATIVE TOOHEY: Thank you. Is it proper to ask  
18   Mr. Syren a question?  
19               HEARING OFFICER: No, it's not. He's not under oath,  
20   neither of the lawyers are under oath.  
21               MS. MCCOY: I wondered about that.  
22               REPRESENTATIVE TOOHEY: Can he be?  
23               HEARING OFFICER: That.....  
24               REPRESENTATIVE TOOHEY: Since he is on the -- part of  
25   the.....

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1 HEARING OFFICER: That's something we'll take up when  
2 this witness isn't on the chair.

3 REPRESENTATIVE TOOHEY: Thank you.

4 HEARING OFFICER: Go ahead.

5 MS. MCCOY: I'd just like to clarify one thing.

6 LINDA S. MCKAY

7 testified as follows on:

8 INQUIRY

9 BY MS. MCCOY:

10 Q So you gave Mr. Syres (sic) the list that evening, so  
11 you had a copy machine that was available and just ran  
12 a copy and kept the original list?

13 A Yes. We have the original.

14 Q Okay.

15 A And anything that went out were copies.

16 Q Okay.

17 HEARING OFFICER: Representative Toohey.

18 REPRESENTATIVE TOOHEY: Thank you. I'm learning very  
19 slowly.

20 LINDA S. MCKAY

21 testified as follows on:

22 INQUIRY

23 BY REPRESENTATIVE TOOHEY:

24 Q May I ask you, were you there at the sign-in area?

25 A No, ma'am, I was at the office.

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1 Q At the office the entire time?

2 A Um-hum. (Affirmative)

3 Q So you weren't aware of who was signing people up?

4 A No, ma'am.

5 REPRESENTATIVE TOOHEY: Thank you.

6 HEARING OFFICER: Any other questions from the  
7 Committee?

8 MR. SPAAN: The Chair.....

9 HEARING OFFICER: Mr. Spaan, just a minute.

10 MR. SPAAN: Sure.

11 HEARING OFFICER: No other questions, go ahead.

12 MR. SPAAN: I had one follow-up.

13 LINDA S. MCKAY

14 testified as follows on:

15 REDIRECT EXAMINATION

16 BY MR. SPAAN:

17 Q Ms. McKay, when you say, this list doesn't appear to be  
18 complete, is it because there were more names on the  
19 list you remember?

20 A I would have to compare the list that you have with the  
21 names that I have. But there were a lot more  
22 documentation in the files that I have.

23 Q Okay.

24 MR. SPAAN: Thanks.

25 MR. SYREN: I have some questions, Your Honor.

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LINDA S. MCKAY

testified as follows on:

CROSS EXAMINATION

BY MR. SYREN:

Q Ms. McKay, good afternoon I represent Representative Jerry Sanders. Could you tell the Committee how you came to possess this list?

A When the straw poll was completed, all the district chairs had to bring their files to the office at the closing of the polls. And all the district chairs that came in and would pertain and want copies for the districts were allowed to have copies for their districts.

Q Do you remember hearing about some discussion with the Executive Committee of the Republican Party as to whether or not these lists would be open to the public or not?

A I don't recall. I believe that they were going to be open to the public for a percentage -- or 15 cents a page for copies.

Q I see. You didn't generate this list yourself; is that right?

A Excuse me?

Q You did not generate this list yourself; is.....

A No.

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1 Q .....that right? And do you remember looking at it the  
2 night of the straw poll?

3 A Yes.

4 Q And are there other people that work at the office --  
5 at the headquarters for the Republican Party?

6 A Yes.

7 Q And do those people work there sometimes when you're  
8 not there?

9 A Yes.

10 Q Okay. And is it possible that somebody could have come  
11 into the office while you weren't there and somebody  
12 was in charge and somebody could have come in and asked  
13 for a copy of the list and it would have been given to  
14 them; is that correct?

15 A Yes.

16 MR. SYREN: I have no further questions at this time,  
17 Your Honor.

18 HEARING OFFICER: Committee members have any questions?

19 MR. GRANGER: Yes.

20 HEARING OFFICER: Sir.

21 LINDA S. MCKAY

22 testified as follows on:

23 INQUIRY

24 BY MR. GRANGER:

25 Q If there was any other copies of this that was handed

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1 out to anyone, they would have had to pay the 15 cents  
2 a copy?

3 A At that -- during the straw poll time we had part-time  
4 help and if the part-time help asks for them to pay 15  
5 cents a copy, it was then obtained. If they just took  
6 it, you know, don't worry about it, then there would be  
7 no records of who had copies. And when we asked for a  
8 percentage or 15 cents for a copy, we don't necessarily  
9 write down their name and number. We just put it down  
10 for copies.

11 Q I guess you partially answered my next question because  
12 I was going to ask if, in fact, there was a receipt in  
13 your files that would indicate that anybody else had  
14 received a copy of this or not?

15 A No. But also any of the district chairs that wanted to  
16 come in and pertain a copy to all the sign-in sheets  
17 are also allowed to do that as well.

18 Q For free?

19 A Um-hum. (Affirmative)

20 MR. GARNETT: Thank you.

21 HEARING OFFICER: I have a question. I see some  
22 people's names more than once on the sign-in sheet, do you  
23 know why that would be?

24 A No. I would have no knowledge of that. I wasn't there  
25 at the sign-in, I was at the office.

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1 MR. SYREN: A couple other questions.

2 LINDA S. MCKAY

3 testified as follows on:

4 RE CROSS EXAMINATION

5 BY MR. SYREN:

6 Q About -- with reference to copies, do you know if it  
7 ever happens that somebody comes in makes copies of the  
8 Party and just doesn't sign the receipt?

9 A Yes. It happens all the time.

10 Q Okay.

11 MR. SYREN: No further questions, Your Honor.

12 HEARING OFFICER: Thank you.

13 MR. JACOBUS: Your Honor, may I ask one question to put  
14 a matter on the record?

15 HEARING OFFICER: Sure.

16 MR. JACOBUS: Ms. McKay, was the list subsequently  
17 released to Motznik Computer Services where the public had free  
18 access to it -- not free access, but at cost access?

19 A Yes. We -- we gave all the paperwork -- all the  
20 originals to Motznik to make copies of to put on to a  
21 disk for release for purchase from Motznik. We were  
22 supposed to obtain those on a computer disk as well,  
23 which we have not. And then they came back to our  
24 office.

25 HEARING OFFICER: Does that lead to additional

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1 questions? Thank you, ma'am. Thank you, Counsel.

2 MR. SPAAN: Your Honor, at this time I'd call Ms. Susie  
3 Barnett.

4 HEARING OFFICER: Ms. Barnett, would you raise your  
5 right hand.

6 (Oath administered)

7 MS. BARNETT: Yes.

8 HEARING OFFICER: Please be seated.

9 SUSAN BARNETT

10 called as a witness on behalf of the Committee, testifies as  
11 follows on:

12 DIRECT EXAMINATION

13 HEARING OFFICER: And for the record, would you state  
14 your full name?

15 A Susan Barnett.

16 HEARING OFFICER: What's your mailing address?

17 A 7 -- mailing address, 1611 West 15th, 99501 --  
18 Anchorage 99501.

19 HEARING OFFICER: Your occupation, please?

20 A Aide to the Legislative Ethics Committee.

21 HEARING OFFICER: Thank you. Mr. Spaan.

22 MR. SPAAN: Thank you.

23 BY MR. SPAAN:

24 Q Ms. Barnett, how long have you been employed by the  
25 Ethics Committee?

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1 A Since July of 1993.

2 Q And what are your duties, Ms. Barnett?

3 A My duties appear to be shuffling papers today. I have  
4 a responsibility to assist the Committee in fulfilling  
5 their statutory obligations and that would include  
6 providing informal advice, providing training to those  
7 under the Ethics Code and educational purposes and  
8 investigating cases.

9 Q Okay. In regards to your responsibilities, Ms.  
10 Barnett, regarding investigating cases, did you  
11 investigate the case the Committee is considering  
12 today?

13 A Yes, I did.

14 Q Okay. In general terms, could you tell the Committee  
15 the investigative work you did?

16 A My work was to gather information, to collect the  
17 documents and to interview potential witnesses.

18 Q Okay. And who did you work with in conducting this  
19 investigation, if anybody?

20 A I worked with you.

21 Q I'm going to hand you, Ms. Barnett, what's been marked  
22 as Committee Exhibit 11 and ask you if you recognize  
23 this document?

24 A Yes, I do.

25 Q And do you know how this document was obtained?

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1 A This document was obtained in response to a subpoena  
2 that was given to Pam Varni of Legislative Affairs  
3 Agency.

4 Q Okay. And what did the subpoena request?

5 A These -- I don't have it in front of me, but the  
6 subpoena requested the backup computer files from the  
7 computer of Jeanne Lovell, who is staff to  
8 Representative Sanders for the period of time January  
9 29th through March.

10 Q Well, let me not trick you.

11 A I'm sorry.

12 Q Let me hand you a copy of the subpoena and see whether  
13 or not that refreshes your recollection.

14 A For the backup files from the computer hard drive used  
15 by Jeanne Lovell, Legislative aide to Representative  
16 Sanders between January 29th, 1996 through and  
17 including March 5th, 1996 relating to the March 4th,  
18 1996 letter Representative Sanders sent to District 19  
19 Republican Party Straw Poll participants.

20 Q And did you receive a response to your subpoena -- or  
21 to our -- my subpoena, I guess?

22 A Yes.

23 Q And did that -- what did you do when you received the  
24 response with the information?

25 A The -- at the time LAA, the Legislative Affairs Agency

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1 legal division was assisting Pam Varni in complying  
2 with this subpoena and so Pam Finley of the legal  
3 division contacted me and said that they were prepared  
4 to comply and at that time she and I discussed -- I was  
5 aware of an object -- a letter of objection to Pam  
6 Varni written from Mr. Syren. And so it -- at my  
7 suggestion, Pam Finley pouched, under seal, the  
8 response to the subpoena.

9 Q Okay. And did you then receive a sealed package?  
10 A Yes, I did.  
11 Q What did you do next with that package?  
12 A I turned that over to Michael White's office.  
13 Q And was it later unsealed and a copy given to you?  
14 A It -- I don't know if it -- I received from Michael  
15 White, with an order this information and I know Mr.  
16 Syren received it.

17 MR. SPAAN: I move Exhibit 11, Your Honor.  
18 HEARING OFFICER: Is there objection?  
19 MR. SYREN: No objection.  
20 HEARING OFFICER: Eleven will be admitted.  
21 MR. SPAAN: Okay.

22 (Committee's Exhibit 11 admitted)

23 MR. SPAAN: Now, I'm going to do your job.  
24 MS. BARNETT: Other duties as assigned.  
25 MR. SPAAN: Does every Committee member have a copy?

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1 COMMITTEE ACKNOWLEDGEMENT BY NODDING AFFIRMATIVELY.  
2 MR. SPAAN: Thank you.  
3 Q Ms. Barnett, what does the first page of Exhibit 11,  
4 what is it?  
5 A It is a form letter dated March 4th, 1996.  
6 Q And who is it -- is it addressed -- when you say, form  
7 letter, what leads you to believe that it's a form  
8 letter?  
9 A Under the -- normally where you'd find the name and  
10 address is -- are the words, first name, last name,  
11 mailing address, so this is where you plug-in names and  
12 addresses.  
13 Q And is there a name attached as the sender of the form  
14 letter?  
15 A Representative Sanders.  
16 Q And at the bottom does there appear to be initials?  
17 A Yes, JS and colon, JL.  
18 Q And did Representative Sanders have any employees  
19 during March of 1996 with the initials JL?  
20 A Yes.  
21 Q And who would that be?  
22 A Jeanne Lovell.  
23 Q The next -- what else -- excuse me, did you hear Mr.  
24 Woods when he read the letter into evidence that he  
25 received?

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1 A Yes, I did.

2 Q Does this appear to you to be the same letter?

3 A Yes, it does.

4 Q What is attached to the letter?

5 A Attached to the letter is a several page mailing list.

6 Q And did you have an opportunity -- do you know what

7 this is called in the terms of the trade, this mailing

8 list?

9 MR. SYREN: Foundation.

10 A No.

11 MR. SPAAN: Well, that -- she didn't have the

12 foundation.

13 MR. SYREN: Foundation.

14 HEARING OFFICER: Hold your objections, she said no.

15 MR. SPAAN: Right.

16 MR. SYREN: Well, she hadn't answered, I mean.....

17 HEARING OFFICER: Okay.

18 MR. SPAAN: Okay.

19 Q Did you feel that you had received all the information,

20 Ms. Barnett, that was requested by the subpoena?

21 A No, I didn't.

22 Q And did you take any steps to follow-up on this?

23 A Yes, I did.

24 Q And what was that, what did you do?

25 A I contacted LAA legal and at that time Pam Finely was

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1 gone and a James Crawford, who is also a reviser of  
2 statute for LAA legal talked to me and he was following  
3 -- or assisting Pam in this process as well, Pam Varni,  
4 excuse me.

5 Q And what, if anything, Ms. Barnett, did you request  
6 from -- what was the individual's name, I'm sorry?

7 A Jim or James Crawford.

8 Q Okay. Did you request any follow-up information?

9 A Yes. I asked him if there was any information in what  
10 we had -- or in relation to what we had requested in  
11 the subpoena that indicated dates or times.

12 Q Okay. And did he follow-up with any information?

13 A Yes. He sent me a letter and a one page document  
14 indicating times that the documents were opened.

15 Q I'm going to hand you a copy of Exhibit 12 which has  
16 already been admitted into evidence so the Committee  
17 should have that, and ask whether or not this is the  
18 information you received -- that you did receive?

19 A Yes, it is.

20 Q And what follow-up information does that provide?

21 A This, as he writes, it suggests that one of the  
22 documents was apparently last modified on March 4th,  
23 1996 at 10:38 a.m. and that the other document was  
24 apparently last modified on the same date at 10:43 a.m.  
25 And those documents are referred to as straw poll and

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1 poll.

2 Q Okay. And what information, I believe you testified,  
3 it was a request for a specific computer -- what  
4 computer was that?

5 A Jeanne Lovell's computer.

6 Q In Representative.....

7 A In Representative.....

8 Q .....Sanders' office?

9 A Right.

10 Q In Juneau?

11 A Correct.

12 Q I'm going to hand you what's been marked as Exhibit 13  
13 and ask you to identify that, please?

14 A It's a calendar of March 1996, with February and April  
15 at the bottom, as well.

16 MR. SPAAN: At this time, Your Honor, as an aide to the  
17 Committee, I'd move the admission of 13.

18 MR. SYREN: No objection, Your Honor.

19 HEARING OFFICER: Thirteen is admitted.

20 (Committee's Exhibit 13 admitted)

21 Q Ms. Barnett, does March 3rd -- what day of the week  
22 does that fall on?

23 A Sunday, March 3rd.

24 Q What about March 4th?

25 A Monday, March 4th.

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1 Q And what's the date on the letter, if you remember,  
2 that Mr. Woods received?

3 A The date is March 4th.

4 Q And when was the mailing date?

5 A The -- March 5th, the following day, 1996.

6 Q And then March 5th would be a Tuesday?

7 A Yes.

8 Q Did you take any steps to determine whether March 4th  
9 or March 5th were State holidays?

10 A Neither were State holidays, I looked into that.

11 MR. SPAAN: Mr. White, perhaps if I could take a break  
12 and address the Chair for a second, I believe Mr. Syren might  
13 want to be heard on this.

14 I had next planned on inquiring with Ms. Barnett over a  
15 conversation she had with one of Representative Sanders former  
16 and now current employees on the expectation that she'd be  
17 instructed to take the Fifth Amendment. I don't know if that  
18 is going to be the instruction or not. If it is the  
19 instruction and if she follows it, I believe Ms. Barnett's  
20 conversation would be -- with that of a party opponent, it'd be  
21 an admission. This is an individual who works for  
22 Representative Sanders, so if I had an indication from Counsel  
23 that Ms. Perez was going to answer the questions, I would not  
24 inquire of Ms. Barnett or I'll bring her back here and put her  
25 back up, however the Chair would like to proceed.

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1 HEARING OFFICER: Well, I think she's going to -- Ms.  
2 Barnett's going to be here the entire hearing.

3 MR. SPAAN: Okay.

4 HEARING OFFICER: Why don't we take that in order, Mr.  
5 Spaan.

6 MR. SPAAN: Okay.

7 HEARING OFFICER: If she was not going to be here for  
8 some reason then I would say, then go ahead and deal with it  
9 now.

10 A Who would shuffle the papers?

11 MR. SPAAN: Your Honor, that concludes my examination  
12 at this time, subject to the right to recall Ms. Barnett should  
13 it become necessary.

14 HEARING OFFICER: Mr. Syren.

15 SUSAN BARNETT

16 testified as follows on:

17 CROSS EXAMINATION

18 BY MR. SYREN:

19 Q Ms. Barnett, I have a couple of questions for you. I'm  
20 handing you -- let's start out with, this is called --  
21 well, why don't you read the title of that document.

22 A This is -- is it all one document?

23 Q It is.

24 A Okay. Responses to Representative Sanders' First Set  
25 of Interrogatories and it is the House Subcommittee of

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1 the Select Committee on Legislative Ethics.

2 Q All right. Could you flip to the end of that and see  
3 who signed it, please?

4 A We have several signatures, so if you want me to start  
5 -- on the verification page.....

6 Q You signed that? You signed that.....

7 A Yes.

8 Q .....right?

9 A Yes.

10 Q All right. I'd like you to look at the answers to  
11 question number -- Interrogatory 3, please? Could you  
12 please read Question #3.

13 MR. SPAAN: Your Honor, and again, I don't know how  
14 strongly I feel about this, but I don't know if he's having her  
15 to read -- I think he should ask her the question and if she  
16 gives a different answer, then if it's intended to impeach Ms.  
17 Barnett, he can certainly do it.

18 MR. SYREN: I'm just trying to lay a foundation for  
19 something that's coming later, Your Honor.

20 HEARING OFFICER: I'll let him go ahead. At this point  
21 I don't know whether he's trying to impeach her or just get the  
22 position of the parties which he can do through the  
23 interrogatory.

24 A You would like me to read?

25 Q Please read Interrogatory #3, please?

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1 A Interrogatory #3. Please provide the name, telephone  
2 number of each and every witness you intend to call at  
3 the trial in this matter? Response: The witnesses  
4 identified to date are as follows.  
5 Q Okay. And now what I'd like you to do is read your  
6 answer for H under that section?  
7 A Patricia Perez, care of Lester Syren.  
8 Q All right. And you signed this interrogatory, right?  
9 A Yes, I did.  
10 Q Okay. Did you review it before you signed it?  
11 A Yes, I did.  
12 Q All right. When did you speak with Patricia Perez?  
13 A The first time I spoke with her was October 31st, 1996.  
14 Q Okay. And what date did you sign these?  
15 A These were signed on the 7th of October.  
16 Q Okay. So you signed these the 7th noting that I would  
17 -- any communication should be directed to her and then  
18 you spoke to her later on the 31st, is that right or  
19 thereabouts?  
20 A I signed that Patricia Perez, care of Les Syren --  
21 Lester Syren.  
22 Q All right. And then you spoke to her after you signed  
23 those; is that right?  
24 A Yes, I did.  
25 Q And was I present during that conversation?

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1 A No, you were not.

2 MR. SPAAN: Your Honor, the objection is, I was -- I  
3 told this -- I told you I wanted to go into this conversation,  
4 you ruled to wait on it. So I guess it's the relevance at this  
5 time. If I do get into it, it then would be relevant.

6 HEARING OFFICER: I'll sustain it. Mr. Syren, why  
7 don't you save that line of cross.

8 MR. SYREN: I'm fini -- I'm ready to move on to another  
9 area, Your Honor.

10 HEARING OFFICER: Okay.

11 Q Do you recall if the Committee received other discovery  
12 requests from Representative Sanders besides that  
13 document?

14 A I'm not trying to avoid answering you, I am -- we have  
15 received over a lengthy period of time -- or over an  
16 extended period of time several things from you. Maybe  
17 could you direct me a little bit more?

18 Q Sure.

19 A And I could answer yes or no.

20 Q I'll do that. Could you tell me who that's directed  
21 to, the first paragraph -- the bottom of the first  
22 paragraph?

23 A The answer shall be signed by Margie Mac Neille and a  
24 copy of the answers together with your objections, if  
25 any, shall be served.

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1 Q Okay. And you signed, not Margie Mac Neille; is that  
2 right?  
3 A That's correct.  
4 Q I'd like to hand you another document and I wonder if  
5 you could state the title of that document, please?  
6 A This is responses to Representative Sanders' Second Set  
7 of Interrogatories Propounded to Margie Mac Neille.  
8 Q Okay. And I wonder if you could read the answer to --  
9 well, how about if you read Interrogatory #1.  
10 A Interrogatory #1. Please identify by name, address and  
11 phone number each and every person who assisted in any  
12 way with the letter dated September 28, 1995,  
13 hereinafter letter, addressed to Representative Sanders  
14 and signed by Ms. Margie Mac Neille.  
15 Q Okay. And could you please read the answer to that?  
16 A Response.....  
17 MS. VORDEPSTRASSE: Excuse me. Can I ask the Counsel  
18 if you are going to enter these as exhibits.....  
19 MR. SYREN: I.....  
20 MS. VORDERSTRASSE: .....the items that you are.....  
21 MR. SYREN: Unfortunately I don't get to answer any  
22 questions. Either I will or I won't and we'll find out then.  
23 Q Please answer the question.  
24 MS. VORDERSTRASSE: Shouldn't he provide them as  
25 exhibits in reference to his examination here?

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1 HEARING OFFICER: I don't know, we'll have to wait and  
2 see, I guess. He doesn't want to indicate. But, I just -- Mr.  
3 Syren, if you could make sure that what you're asking is clear  
4 enough so people understand it.

5 MR. SYREN: Yes, it will be, Your Honor.

6 Q If could you please, just read the answer to that  
7 question, thank you.

8 A Response: See general objections.

9 Q All right. Could you repeat -- recite the answer to  
10 the remaining questions, the remaining interrogatories,  
11 don't recite the question, just recite the answer,  
12 please?

13 MR. SPAAN: Your Honor, under the rule of completeness,  
14 I at this time, move this -- get copies of it so everybody can  
15 see what the questions were and.....

16 MR. SYREN: You know what Your Honor, I'd like to.....

17 MR. SPAAN: .....look at the answers. Let's make it an  
18 exhibit.

19 MR. SYREN: .....finish my direct and then he can cross  
20 examine or redirect and he can bring all of those items up.  
21 But for orderly.....

22 HEARING OFFICER: Well.....

23 MR. SYREN: .....for orderly process.....

24 HEARING OFFICER: .....he can do it during your  
25 examination. What I want to get at is, are you just -- are you

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1 going beyond the fact that she signed it rather than Ms. Mac  
2 Neille or are there other.....

3 MR. SYREN: No. And, Your Honor, I mean I could tip my  
4 hands and tell you everything, all of my strategy, I'd prefer  
5 not to do that.

6 HEARING OFFICER: Well, it would help me make a ruling  
7 whether to interrupt you or not.

8 MR. SYREN: Well, I don't even know what the objection  
9 is, Your Honor. He just wants everybody to have a copy of  
10 this.

11 MR. SPAAN: It's under the.....

12 HEARING OFFICER: The objection is under the rules and  
13 off the top of my head, I think it's maybe 102 or 1002, it says  
14 that, you know, when part of a document is referred to, the  
15 other party has the right to have the entire document brought  
16 in at that time.

17 MR. SYREN: Fine. If Mr. Spaan would like to interrupt  
18 the proceedings and have a copy of this made available, that's  
19 fine.

20 MR. SPAAN: Well, I can.....

21 HEARING OFFICER: It's getting close to a time for a  
22 break.

23 MR. SPAAN: I mean, does the Committee want it so they  
24 could follow it?

25 HEARING OFFICER: Yes.

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1 MR. DONAHUE: We want all the facts and all the things  
2 you can get.

3 REPRESENTATIVE TOOHEY: Yes. All available items.

4 MR. SPAAN: Could I inquire of Ms. Barnett how long  
5 this is going to -- we don't have copies of these, do we?

6 A No, we don't.

7 MR. SPAAN: So we will have to make copies.

8 HEARING OFFICER: Mr. Syren, can you at least say this  
9 much, is the entire document something you're going to go over  
10 or just certain pages?

11 MR. SYREN: The answers, certainly.

12 HEARING OFFICER: Okay. Then we can make the entire  
13 copy. Why don't we take a 15 minute break, will that be enough  
14 because you're not going to get a break?

15 A Oh, that's right, I'm not the witness anymore, now I'm  
16 the copier.

17 HEARING OFFICER: Although Mr. Spaan has been doing a  
18 good job passing out documents. Off record.

19 (Off record)

20 (On record)

21 HEARING OFFICER: We'll be back in session. I  
22 understand the document that we've been speaking about has now  
23 been distributed and I see Exhibit 14 written on the bottom, is  
24 that for purposes.....

25 MR. SPAAN: Right.

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1 HEARING OFFICER: .....of this proceeding?  
2 MR. SPAAN: Right. Yes, it is.  
3 HEARING OFFICER: Okay. You may continue, Mr. Syren.  
4 MR. SYREN: Thank you, Your Honor.  
5 **BY MR. SYREN:**  
6 Q Ms. Barnett, I wonder if you could read the answers to  
7 the interrogatories?  
8 HEARING OFFICER: All of them?  
9 MR. SYREN: Yes.  
10 Q Do they all say the same thing?  
11 A Okay. One, two, three, four, five, six, seven, eight,  
12 nine, 10, 11, 12, 13, 14, 15, and 16 all say, see  
13 general objections.  
14 Q All right. And these are directed again to Ms. Mac  
15 Neille, right?  
16 A Yes.  
17 Q All right. Are they signed by anybody?  
18 A They are signed by Michael Spaan, attorney for the  
19 House Subcommittee.  
20 Q All right. Thank you. Who signed the service of  
21 process, this is for something that's going to come up  
22 later on?  
23 A Donna Daniels.  
24 Q Okay. The next question, did you ever have any  
25 conversations with Mr. Miller -- Mike Miller, who filed

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1 the complaint in this matter?

2 A Yes, I did.

3 Q Are you aware that there was a petition for review  
4 filed in this case?

5 MR. SPAAN: Your Honor, if this is just kind of  
6 interest, I'd object to the relevance of it.

7 MR. SYREN: I have about three questions to ask, Your  
8 Honor, about three questions.

9 HEARING OFFICER: Does this mean you withdraw your  
10 objection?

11 MR. SPAAN: No. I mean I think one question is fine.  
12 But I mean I don't want to choke this to death.

13 MR. SYREN: Well, Your Honor.....

14 HEARING OFFICER: What I'm.....

15 MR. SYREN: .....the problem is Ms. Barnett has been  
16 involved from the get-go on this.

17 HEARING OFFICER: What is the relevance of it?

18 MR. SYREN: Can I connect up, Your Honor? I just want  
19 to ask her -- the relevance, I guess here is cooperation,  
20 that's an issue in this case is whether or not Representative  
21 Sanders has cooperated with the Committee.

22 HEARING OFFICER: Go ahead.

23 BY MR. SYREN:

24 Q Are you aware of the petition for review that was filed  
25 in this case -- an appeal that was filed to the

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1 Superior Court in this matter?  
2 A To the Superior Court?  
3 Q That's right.  
4 A Yes.  
5 Q Okay. Do you recall whether it was assigned to Judge  
6 Murphy and he issued an opinion?  
7 MR. SPAAN: Objection. Relevance to this hearing.  
8 MR. SYREN: And this goes to cooperation, Your Honor.  
9 HEARING OFFICER: But the issue isn't the cooperation  
10 of the Committee, the issue is the cooperation of  
11 Representative Sanders.  
12 MR. SYREN: Well, I think that -- using your tit for  
13 tat Rule of Evidence, Your Honor.....  
14 HEARING OFFICER: Well, except there's a statute that  
15 specifically addresses the issue of the cooperation of the  
16 respondent is something the Committee to consider.  
17 MR. SYREN: That's right, Your Honor. And I think  
18 again, using the rule of tit for tat, what's good for the goose  
19 has to be good for the gander. I'd like the Committee to know  
20 whether or not they have cooperated in the investigation as  
21 well. It seems to me that's absolutely relevant, I mean it's  
22 all the same issue.  
23 HEARING OFFICER: The objection is sustained. The  
24 Committee is not on trial.  
25 Q What did Mr. Miller tell you in his conversations?

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1 A I have had several conversations so let me -- are you  
2 asking a general statement? The first was when he  
3 brought in the complaint. I believe this was the first  
4 conversation I had with him -- no, I apologize, I  
5 believe that he asked how -- for a complaint form and  
6 how a complaint is filed was the first time --  
7 conversation I had with him.

8 Q All right. And what else did he tell you?

9 A That he intended to file a complaint.

10 Q All right. Did he tell you that he had run in an  
11 election against Representative Sanders and lost?

12 A I don't -- I don't believe that he told me that. I  
13 think I may have been aware of it, but I don't believe  
14 he told me.

15 MR. SYREN: I have no further questions at this time,  
16 Your Honor.

17 HEARING OFFICER: Mr. Spaan, do you have any further  
18 questions?

19 MR. SPAAN: Yes.

20 **SUSAN BARNETT**

21 testified as follows on:

22 **REDIRECT EXAMINATION**

23 **BY MR. SPAAN:**

24 Q Ms. Barnett, I want you to refer, if you could, tack to  
25 Exhibit 14.

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1 A Yes.

2 Q Why don't you -- if I understood your testimony that  
3 each one of these answers referred to the general  
4 objection, okay?

5 A Correct.

6 Q Now, the first interrogatory referenced a letter dated  
7 September 28th, 1995 addressed to Representative  
8 Sanders and signed by Ms. Mac Neille, to your knowledge  
9 did this letter have anything at all to do with the  
10 investigation under consideration by this Committee  
11 today?

12 MR. SYREN: And I'll object to this calls for a legal  
13 conclusion and for her to make a -- issue some sort of legal  
14 opinion as to relevance.

15 HEARING OFFICER: Why don't you ask her what it is and  
16 then the Committee can.....

17 Q Do you know what letter Mr. Syren is referring to, the  
18 September 28th, 1995 letter?

19 A I'm hesitant to say that I absolutely am sure which  
20 letter this is at this time. I haven't looked at this  
21 for a while, so.....

22 Q Do you remember when.....

23 A .....there have been a lot of letters.

24 Q With your review of these interrogatories, Ms. Barnett,  
25 was there anything that you saw that was relevant to

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1 the case under consideration by the Committee today?

2 MR. SYREN: Same objection.

3 MR. SPAAN: I asked in her opinion, Your Honor.

4 MR. SYREN: Then.....

5 HEARING OFFICER: I'm going to give an instruction to  
6 the Committee and hopefully that will eliminate the need for  
7 these questions. A party can serve discovery requests to  
8 another party asking them for information. If they're not  
9 satisfied with the responses, what they can do is they can file  
10 what's called a motion to compel to the judge or to the hearing  
11 officer if there's such a proceeding. In this case, to my  
12 knowledge, there was no motion to compel any further answers  
13 and these responses have marginal relevance. Mr. Spaan, do you  
14 have further questions?

15 MR. SYREN: Excuse me, wait, I'm sorry, Your Honor, did  
16 you say these responses have marginal relevance?

17 HEARING OFFICER: Yes.

18 MR. SYREN: I wonder for purposes of establishment of  
19 the record of actual basis, if you could give reasons for  
20 saying that?

21 HEARING OFFICER: Because you're asking this witness  
22 questions -- the responses being see general objections. If  
23 there's a complaint about those responses, what you should have  
24 done is filed a motion to compel and that would have been ruled  
25 upon and if there was an improper exercise, of failing to

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1 respond to them, an order would have been issued for them to  
2 respond further.

3 MR. SYREN: All right. It's -- are you saying that I  
4 can't object that they're incomplete now?

5 HEARING OFFICER: I'm saying that the means to ob --  
6 your objection to them being incomplete isn't relevant to any  
7 issue in this case is what I'm saying.

8 MR. SYREN: What I'm worried about, I guess, is that  
9 you're issuing an order that they're not relevant and nobody's  
10 made an argument whether they're relevant or not. You haven't  
11 heard any arguments on that issue at all yet. You haven't  
12 heard any arguments on that issue, that's why I'm worried about  
13 you making a ruling without any motions, without any argument.

14 HEARING OFFICER: Well, what I'm saying is the time for  
15 the motion would have been once you received these responses,  
16 if you felt they weren't responsive, not during a trial.

17 MR. SYREN: Right. And it sounds like -- my difficulty  
18 is that you're stating is that they're not relevant.

19 HEARING OFFICER: Well, tell me.....

20 MR. SYREN: I can raise.....

21 HEARING OFFICER: .....tell me what the relevance is.  
22 I tried to ask you that before and you refused saying you  
23 didn't want to lay out your whole case.

24 MR. SYREN: No. I think I have stated how these are  
25 relevant, Your Honor. But if you have.....

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1 HEARING OFFICER: Tell me what the relevance is.

2 MR. SYREN: .....questions -- if you have questions, I  
3 prefer that -- and I've already stated what they were and  
4 you've let me on that basis, ask questions about these, but I  
5 would rather finish the direct examination and then if you have  
6 questions at the end, we can answer those. But again, I'm not  
7 under oath and I'm not testifying here.

8 HEARING OFFICER: Tell me what your view of the  
9 relevance of this line of questioning is?

10 MR. SYREN: This goes to cooperation as I've stated  
11 earlier. What you have stated on the record and correct me if  
12 I'm wrong, is that these answers -- these answers are  
13 irrelevant and there's been no factual basis or determination  
14 for that order, that's what I'm concerned about.

15 HEARING OFFICER: All right.

16 MR. SYREN: If you want to state, as you did with  
17 Representative Sanders.....

18 HEARING OFFICER: I have to make a ruling whether  
19 questioning on these is relevant or not, and my view is it's  
20 not relevant.

21 MR. SYREN: All right. That's different than saying  
22 that the answers, themselves, are irrelevant, that's a  
23 different.....

24 HEARING OFFICER: Very well.

25 BY MR. SPAAN:

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1 Q Ms. Barnett, when is the date that these  
2 interrogatories were signed?

3 A The 11th day of October '96.

4 Q And on the next page do they indicate when they were  
5 served on Representative Sanders' Counsel?

6 A The 11th of October 1996.

7 Q And to your knowledge, was any motion to compel a more  
8 detailed response to these ever made in front of the  
9 Hearing Officer?

10 A Not to my knowledge.

11 Q Do you now remember, Ms. Barnett, what the September  
12 28th, 1995 letter was that was referred to by Mr.  
13 Syren?

14 A I -- I believe that it related to a previous case.

15 Q Okay.

16 MR. SPAAN: I'd have no further questions.

17 HEARING OFFICER: Mr. Syren, do you have any follow-up?

18 **SUSAN BARNETT**

19 testified as follows on:

20 **RE CROSS EXAMINATION**

21 **BY MR. SYREN:**

22 Q As part of your duties are you ever asked to give  
23 opinions about whether a particular person has violated  
24 the Ethics Code?

25 A That's not my job.

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1 Q Okay. And your job is just to find facts, is that all?  
2 A That's not all of my job. My job is to provide an  
3 analysis of the complaints that come in, a preliminary  
4 examination.  
5 Q Okay. Who do you prepare this analysis for?  
6 A For the Sub -- for the appropriate Subcommittee.  
7 Q All right. That would be this Committee here, right?  
8 A In -- if it were a House complaint, yes.  
9 Q Okay. Well, for -- did you do that for this complaint  
10 that was filed in this case?  
11 A Yes, I did.  
12 Q Okay. And what was your analysis?  
13 A My analysis is -- relates to taking the law, looking at  
14 the law that is before the Subcommittee and putting the  
15 complaint next to it and saying, the initial -- look,  
16 if -- does it appear that there's jurisdiction. If  
17 somebody filed a complaint and said Representative so  
18 and so has purple hair and it offends me, then I would  
19 go forward to the committee, give them all the  
20 information and also say, it is not my impression that  
21 we have jurisdiction, that you have jurisdiction over  
22 this.  
23 Q Okay. I have just one more question and that is,  
24 whether -- I'm going to make a statement and see --  
25 just ask you whether or not you agree with this. It is

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1 extremely difficult to distinguish between official and  
2 campaign activities of an incumbent; do you agree or  
3 disagree with that statement?

4 A Would you repeat the statement?

5 Q Sure. It is extremely difficult to distinguish between  
6 official and campaign activities of an incumbent?

7 Would you agree that it is difficult to distinguish  
8 between official and campaign activities of an  
9 incumbent?

10 A At times.

11 Q Okay.

12 MR. SYREN: No further questions, Your Honor.

13 HEARING OFFICER: Anything further, Mr. Spaan?

14 MR. SPAAN: No, sir.

15 HEARING OFFICER: Do members of the Committee have any  
16 questions?

17 MS. MCCOY: One.

18 **SUSAN BARNETT**

19 testified as follows on:

20 **INQUIRY**

21 **BY MS. MCCOY:**

22 Q Margie, in your position.....

23 A Susie.

24 Q Excuse me, Susie, working for the Committee, you bring  
25 documents to us and sometimes make recommendations,

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1 does the Committee always follow your recommendation?  
2 A No.  
3 Q Okay.  
4 A The reason I'm hesitating, if it's okay for me to  
5 answer further?  
6 Q Sure.  
7 A Is that recommendations is a big word and I -- I  
8 actually can't say that that's the way that I feel --  
9 I'm not sure that's what I do.  
10 Q Right. And I'm not either. But it seemed like in the  
11 questioning that that may have been the impression that  
12 was given. But you do always give us all documentation  
13 on complaints?  
14 A Yes.  
15 HEARING OFFICER: Ms. Mac Neille.  
16 SUSAN BARNETT  
17 testified as follows on:  
18 INQUIRY  
19 BY CHAIRMAN MAC NEILLE:  
20 Q Ms. Barnett, on Exhibit 12, which is the letter to you  
21 from Mr. Crawford.  
22 A I recall the letter, go ahead and I'll.....  
23 Q Well, it's on Page 2.....  
24 A Okay.  
25 Q .....which is the listing of -- it's got a couple lines

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1 here and I just wanted to see if I could use you to  
2 interpret them for me?

3 A Certainly.

4 Q But maybe you're -- because maybe you're familiar with  
5 this computer system and I'm not. Do you know whether  
6 the computer that this came off of is the same a the  
7 system that you use?

8 A The same Wordperfect system that I use in the  
9 Legislature?

10 Q Yeah.

11 A I'm -- I'm not sure what you're asking.

12 Q When you look at this, does this look familiar to you?

13 A Yes, it does.

14 Q Do you know what it means -- can you tell me what it  
15 means? Are the names, straw poll and poll over here  
16 with the little pieces of paper with the corners bent,  
17 those are file names?

18 MR. SYREN: Excuse me. I'd like to object on  
19 foundation. I don't know that she knows about these particular  
20 things mean unless she's generated the document herself.

21 HEARING OFFICER: Well, I don't think she's being asked  
22 about the content of the documents.....

23 CHAIRMAN MAC NEILLE: No.

24 HEARING OFFICER: .....just as to whether the names  
25 signify that that is a document.

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1 MR. SYREN: That's asking what this document means. I  
2 don't know if she can do that unless she has generated the  
3 document herself.

4 HEARING OFFICER: Well, she's indicated she's familiar  
5 with this format, you can cross examine her on it.

6 MR. SYREN: This format for this, Your Honor?

7 HEARING OFFICER: Yeah.

8 MR. SYREN: This one? She has one that's maybe like  
9 this, maybe not, I don't know. But this one, unless she had  
10 this piece of paper herself, I don't see that -- foundational  
11 she can testify about it.

12 HEARING OFFICER: Well, I think from her last answer  
13 she can. You can cross examine her.

14 **BY CHAIRMAN MAC NEILLE:**

15 Q Ms. Barnett, do you understand that those would be file  
16 names, poll and straw poll?

17 A On my computer it would appear that would.

18 Q Okay.

19 A My file name would start there.

20 Q And 20k would be a question of how big the document  
21 was?

22 A Correct.

23 Q And is that many pages, one page?

24 MR. SYREN: Same objection.

25 HEARING OFFICER: If you know.

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1 A I'm going to answer, I don't know, because with my new  
2 computer I'm getting a different k on it.

3 Q Okay. And one of these says Microsoft Word docu and  
4 the other says, text document. In your experience with  
5 your computer, what is the distinction there, anything?  
6 Does it mean that they're different in some way?

7 A Microsoft Word is for word processing and I don't use  
8 text documents, so I don't know.

9 Q Okay, thanks.

10 CHAIRMAN MAC NEILLE: That concludes my questioning.

11 HEARING OFFICER: Additional questions by members of  
12 the Committee? Mr. Granger.

13 **SUSAN BARNETT**

14 testified as follows on:

15 **INQUIRY**

16 **BY MR. GRANGER:**

17 Q Susie, on Exhibit 11 that was given to us by the State  
18 folks down in Juneau, I assume it came off of a hard  
19 disk and I assume the hard disk was in an individual  
20 PC, it was not in a central -- these machines are not  
21 hooked together; is that right?

22 A That's correct.

23 MR. SYREN: Objection. Foundation.

24 HEARING OFFICER: Do you know?

25 A It is correct, it's off an individual machine.

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1 MR. SYREN: I'm sorry. I objected, I didn't know if we  
2 had a ruling as to foundation. I don't know that she has  
3 personal knowledge about those computers, especially since she  
4 got this document from somebody else, a different office.

5 HEARING OFFICER: She indicated that she knew the  
6 answer to that. You can cross examine her.

7 Q Then it wouldn't necessarily be the case that this  
8 would have been stored there unless -- I mean it could  
9 have been erased easily by the operator afterwards?

10 MR. SYREN: Objection. Calls for speculation and  
11 foundation.

12 HEARING OFFICER: Overruled.

13 A Like any document, yes. On an individual computer, it  
14 could be erased, deleted.

15 Q But would this be -- would it be normal to keep it or  
16 would it be normal to erase it after you're finished  
17 with it?

18 MR. SYREN: Objection. Vague. I don't know what  
19 normal is.

20 HEARING OFFICER: I'm going to sustain that. That's up  
21 to whoever's using the computer.

22 MR. GRANGER: Okay.

23 HEARING OFFICER: Ms. Barnett's not in a better  
24 position to know the answer to that than you are or any members  
25 of the Committee. Do you have additional questions, Mr.

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1 Granger?

2 MR. GRANGER: No, sir, thanks.

3 MR. SYREN: I have one.

4 HEARING OFFICER: Mr. Spaan, do you have any redirect?

5 MR. SPAAN: No, Mr. White.

6 HEARING OFFICER: Mr. Syren.

7 MR. SYREN: Just one.

8 SUSAN BARNETT

9 testified as follows on:

10 RECROSS EXAMINATION

11 BY MR. SYREN:

12 Q Ms. Barnett, do you have any personal knowledge, at  
13 all, about Exhibit 12?

14 A Is Exhibit 12 the letter from James Crawford?

15 Q Yes. Here, let me hand you my copy.

16 HEARING OFFICER: I'm sorry, could you define what you  
17 mean when you say personal knowledge?

18 MR. SYREN: Any personal knowledge of that letter. I  
19 mean about the information in that letter. I understand what  
20 you're saying, thank you, Your Honor.

21 A I was certainly the recipient of the letter.

22 Q Okay. But you have no independent knowledge, no  
23 personal knowledge about any of the information  
24 contained in that letter; is that right?

25 A Nothing beyond what I've received.

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1 Q Okay. I'm going to ask the question again. You don't  
2 have personal knowledge about the information in that  
3 letter, do you, personal knowledge about the  
4 information in that letter?  
5 A No. I do not.  
6 Q Okay, thank you.  
7 MR. SYREN: No further questions, Your Honor.  
8 HEARING OFFICER: Thank you, Ms. Barnett. You may  
9 assume your other chair.  
10 MR. SPAAN: At this time, Your Honor, we'd like to call  
11 Ms. Perez.  
12 HEARING OFFICER: Did either party move for  
13 introduction or admission of Exhibit 14?  
14 MR. SPAAN: I did, Your Honor.  
15 HEARING OFFICER: Mr. Syren, did you have objection to  
16 that?  
17 MR. SYREN: No.  
18 HEARING OFFICER: Okay. Exhibit 14 will be admitted or  
19 was admitted if you had already asked me.  
20 (Committee's Exhibit 14 admitted)  
21 HEARING OFFICER: Is Ms. Perez telephonic?  
22 MR. SPAAN: Yes, it is. That was the motion that we  
23 had made, Your Honor.  
24 HEARING OFFICER: Right. And that was non-opposed?  
25 MR. SPAAN: Right.

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1 MR. SYREN: That's correct, Your Honor. And we -- I  
2 gave Mr. Spaan a telephone number yesterday and which she'll be  
3 available at this time.

4 MR. SPAAN: And when you're doing that, if I could make  
5 a call quickly and get a witness ready for after.

6 (Off record comments - dialing)

7 HEARING OFFICER: Ms. Perez, this is Michael White the  
8 Hearing Officer. At this time you've been called as a witness  
9 by the Committee, do you understand that?

10 MS. PEREZ: Yes.

11 HEARING OFFICER: I'm going to administer the Oath to  
12 you if you'd raise your right hand, please.

13 MS. PEREZ: Yes.

14 (Oath administered)

15 MS. PEREZ: I do.

16 PATRICIA M. PEREZ

17 called as a witness on behalf of Respondent, testified as  
18 follows on:

19 DIRECT EXAMINATION

20 HEARING OFFICER: What's your full name, please?

21 A Patricia Marie Perez.

22 HEARING OFFICER: How do you spell your last name?

23 A P-e-r-e-z.

24 HEARING OFFICER: What's your mailing address?

25 A Post Office Box 21243, Juneau, Alaska 99802.

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1 HEARING OFFICER: And are you in Juneau now?

2 A Yes, I am.

3 HEARING OFFICER: Thank you. At this point Mr. Spaan  
4 will begin his questions.

5 A Thank you.

6 BY MR. SPAAN:

7 Q Mr. Perez, good afternoon, can you hear me?

8 A Yes, I can.

9 Q Where are you currently employed, Ms. Perez?

10 A Right now I am not full-time employed. I'm am starting  
11 a temporary job and then I hope to go back to work with  
12 Mr. -- Representative Jerry Sanders.

13 Q Okay. Are you currently employed for -- 'th  
14 Representative Sanders?

15 A Once the session starts, but right now I am not.

16 Q Okay. Ms. Perez, were you employed with Representative  
17 Sanders in March of 1996?

18 A Yes.

19 Q And did you have an opportunity to work on a letter  
20 dated March 4th, 1996 which were sent to District 19  
21 Republicans thanking them for their participation in a  
22 Republican Straw Poll?

23 MR. SYREN: And at this time I'd like to instruct my  
24 client not to answer the question based on the Fifth Amendment.

25 MR. SPAAN: I'd like to inquire whether or not Ms.

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1 Perez is Mr. Syren's client.

2 HEARING OFFICER: Mr. Perez, did you hear that question  
3 by Mr. Spaan?

4 A I'm sorry, I didn't get the last part of it.

5 HEARING OFFICER: Mr. Spaan had asked, is Mr. Syren  
6 your attorney?

7 A Yes.

8 **BY MR. SPAAN:**

9 Q When did you retain Mr. Syren?

10 MR. SYREN: Okay. Don't answer that question. That's  
11 a matter of attorney/client privilege. And for the record,  
12 Your Honor, it was at least of the date that Mr. Spaan and Ms.  
13 Barnett signed the interrogatory that put me as care of. This  
14 is asked and answered. We're going over redundant information  
15 and the attorney/client privilege.

16 MR. SPAAN: That was for an address of Ms. Perez. But  
17 let me ask another question and Counsel could instruct her to  
18 take the Fifth.

19 Q Ms. Perez, did you have an opportunity to talk to Suzi  
20 Barnett of the Committee Staff -- of the Ethic  
21 Committee Staff?

22 MR. SYREN: And you can go ahead and answer that  
23 question.

24 A Yes, I did.

25 Q And do you remember her asking you whether or not you

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1           were represented by Mr. Syren?

2           MR. SYREN: Okay. And at that point -- at this point  
3 I'd like to instruct her not to answer the question.

4           MR. SPAAN: Your Honor.....

5           HEARING OFFICER: On what.....

6           MR. SPAAN: .....that has absolute.....

7           HEARING OFFICER: .....on what basis?

8           MR. SYREN: Attorney/client privilege and Fifth  
9 Amendment. I don't want to open the door -- we will stipulate  
10 that she had a conversation with Ms. Barnett after Ms. Barnett  
11 knew that I was her attorney, we'll stipulate to that. But the  
12 contents of that conversation.....

13           MR. SPAAN: We're not going to stipulate to that.

14           MR. SYREN: .....or completely. I don't want to open  
15 the door and let that in.

16           HEARING OFFICER: The contents of her conversation with  
17 Ms. Barnett?

18           MR. SYREN: Yes, yes. With the investigator for the  
19 Committee, yes, on the basis of the Fifth Amendment and  
20 attorney/client privilege. Ms. Barnett signed the document  
21 that listed me as her attorney and she talked to her without me  
22 being present.

23           HEARING OFFICER: Well, that does not list you as her  
24 attorney. That says care.....

25           MR. SYREN: I'm sorry, Your Honor, I.....

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1 HEARING OFFICER: .....that says you can be reached  
2 care of you.

3 MR. SYREN: Yeah. And it says the same thing for  
4 Representative Sanders and Jeanne Lovell and Jerry Ward and me,  
5 of course. Your Honor, I think as attorneys we understand what  
6 that means. We know.....

7 MR. SPAAN: It means that is what.....

8 MR. SYREN: .....we know darn well what that means.

9 MR. SPAAN: .....that is.....

10 HEARING OFFICER: One at a time, Mr. Spaan. Are you  
11 done?

12 MR. SYREN: I am.

13 MR. SPAAN: That means that is where we were going to  
14 get a hold of her. I asked Ms. Perez whether or not -- Ms.  
15 Barnett inquired whether or not Mr. Syren was her attorney when  
16 she talked to her. There is no way that could incriminate her.  
17 There is no way that invokes the attorney/client privilege.

18 HEARING OFFICER: I agree. I'm going to overrule the  
19 objection.

20 BY MR. SPAAN:

21 Q Did Ms. Barnett ask you, at the time she talked to you,  
22 Ms. Perez, whether or not you were represented by Mr.  
23 Syren?

24 A No, she didn't.

25 Q Okay. If she had asked you, what would your answer had

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1           been?

2           MR. SYREN: And don't answer the question. That calls  
3 for speculation and invades the attorney/client privilege.

4           MR. SPAAN: I don't think it invades the  
5 attorney/client privilege to ask whether or not she was  
6 represented when Ms. Barnett talked to her.

7           HEARING OFFICER: Well, you asked the question in an  
8 awkward way.

9           MR. SPAAN: Okay.

10          HEARING OFFICER: If she had asked you that, what would  
11 you have said? Perhaps you could ask the direction directly  
12 and I'm not saying an objection would be overruled, but ask it  
13 directly, were you represented at that time, then we can deal  
14 with that.

15 **BY MR. SPAAN:**

16 Q           Do you remember when Ms. Barnett contacted you, Ms.  
17 Perez?

18 A           Do I -- yes, I do.

19 Q           And what was that date?

20 A           It would have been October 31st. I had just gotten  
21 back into town.

22 Q           Okay. And were you at that time represented by Mr.  
23 Syren?

24           MR. SYREN: Objection. And this does invade the  
25 attorney/client privilege as to when that relationship began.

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1 Any communication is privileged. Besides that, Your Honor,  
2 this question has already been answered. Mr. Spaan and the  
3 Committee and Ms. Barnett were on notice that I was asserting  
4 the attorney/client privilege with respect to all of  
5 Representative Sanders employed at the time.

6 Q Ms. Perez, at the time Ms. Barnett contacted you,  
7 unless I'm wrong, your testimony was you were not an  
8 employee of Representative Sanders; is that correct?

9 A Well, I'm on -- I'm on layoff status.

10 Q So you're not.....

11 A Until the session starts, yeah.

12 Q I'm sorry, I interrupted you. Your testimony -- and I  
13 stepped over you, but you were on layoff status?

14 A Yeah.

15 Q And during the time you were on layoff status, do you  
16 receive any compensation at all from Representative  
17 Sanders?

18 A No.

19 Q And when are you scheduled to start with Representative  
20 Sanders again?

21 A It should be sometime next month.

22 Q And when did you learn that you were going to be called  
23 back to work, Ms. Perez?

24 A Well, I've talked with Jerry and Jerry said that if he  
25 was reelected that he wanted me to come back and that

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1 was -- that conversation was when I was still working  
2 for him. I'm -- I'm not sure what time -- I think it  
3 was probably toward the beginning of the session he  
4 asked me if I'd come back to work for him.

5 Q Okay. And you indicated if he was elected that you  
6 would like to do that?

7 A Yes.

8 Q Okay. During the time you were laid off did you take  
9 any other temporary jobs?

10 A No, I haven't.

11 Q Okay.

12 A I planned on it, but I -- no, I don't.

13 REPRESENTATIVE TOOHEY: I'm sorry.

14 HEARING OFFICER: Could you repeat that, please, you  
15 broke up.

16 A I -- I haven't done any temporary jobs yet, no.

17 BY MR. SPAAN:

18 Q Were you employed by Representative Sanders during  
19 March of 1996?

20 A Yes.

21 Q And was one of your fellow employees a Ms. Jeanne  
22 Lovell?

23 A Yes.

24 Q Okay. And what was your job description with  
25 Representative Sanders, what were you fired to do?

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1 A His executive secretary.

2 Q And as such, what were your duties?

3 A I answered phones, did letters, answered the mail,  
4 greeted clients, I setup his schedule and anything  
5 else, you know, that -- you know, just general office.

6 Q As part of the general office work, did you ever have  
7 an opportunity to participate on sending mass mailings?

8 A Yes.

9 Q Okay. And how often would this occur?

10 A I -- mass mailing, I don't remember, I'm sorry.

11 Q Did you ever work together with Jeanne Lovell to  
12 participate in mass mailings?

13 A Yes.

14 Q Okay. Did you participate with Ms. Lovell to mail a  
15 letter dated March 4th, 1996 to participants of the  
16 Republican Straw Poll?

17 MR. SYREN: And at this point I'd instruct my client  
18 not to answer on the basis of the Fifth Amendment.

19 HEARING OFFICER: Could you lay out for me what her  
20 reason -- what the basis for reasonable fear of criminal  
21 exposure is?

22 MR. SYREN: Sure. Under the statute, under the  
23 Committee -- if the Committee finds that an employee has  
24 violated the statute, then the employee, likewise, is referred  
25 by the Committee for sanctions to any.....

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1 HEARING OFFICER: One doesn't have the right to Fifth  
2 Amendment for Committee ethical violation, there has to be a  
3 possibility of criminal exposure.

4 MR. SYREN: Right. Understand. And if Ms. Perez is  
5 running down to the postal office sending out things that would  
6 constitute a violation then she's stealing, she's guilty of  
7 official misconduct just like anybody else. And keep in mind,  
8 Your Honor, that the -- and I've mentioned this to you before  
9 that the Committee has this mandatory requirement that if they  
10 find anything that constitutes probable cause, they turn it  
11 over to the police. So the spectra of reprisals is very real,  
12 I think.

13 HEARING OFFICER: Do you want to be heard?

14 MR. SPAAN: Your Honor, I think with than accomplis  
15 theory and an active imagine, I think he could properly  
16 instruct her to take the Fifth Amendment.

17 HEARING OFFICER: So you don't have an objection or you  
18 do, I can't tell?

19 MR. SPAAN: No, I don't -- I don't know and I guess I'm  
20 looking to the Chair for some guidance. I don't know how far  
21 we could require to check her independent basis to assert the  
22 Fifth Amendment privilege. I think it's a difficult issue. If  
23 Ms. Perez feels and assures us that she's taking a good Fifth  
24 Amendment assertion, I'm prepared to move on to a different  
25 question.

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1 HEARING OFFICER: Then move on.

2 MR. SPAAN: Okay.

3 BY MR. SPAAN:

4 Q What were your normal working hours, Ms. Perez, for  
5 Representative Sanders?

6 A 8:00 to 5:00.

7 Q And what was your normal work week?

8 A Monday through Friday.

9 Q Did you have a computer assigned to you personally?

10 A Yes.

11 Q Did Ms. Lovell have a computer assigned to her  
12 personally?

13 A Yes.

14 Q Do you know whether or not Ms. Lovell participated in  
15 the preparation of a March 4th -- of a letter dated  
16 March 4th, 1996 addressed to participants of the  
17 Republican State Poll that was held in January?

18 MR. SYREN: And I'll object. Same objection, instruct  
19 my client not to answer based on the Fifth Amendment.

20 MR. SPAAN: Yeah. I think this is Ms. Lovell's Fifth  
21 Amendment, not this witness'?

22 MR. SYREN: No. I think this is Ms. Perez' Fifth  
23 Amendment.

24 HEARING OFFICER: Part of the problem is this is one of  
25 the biggest conflicts I've ever seen representing all of these

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1 witnesses as well as the subject of the investigation and it's  
2 hard to sort these things out. Do you want to be heard any  
3 further?

4 MR. SPAAN: What I asked is whether or not she observed  
5 Ms. Lovell to participate in working on the mailing that's the  
6 subject of this inquiry. I think any -- an answer to that  
7 question would perhaps be harmful to Ms. Lovell but certainly  
8 not to Ms. Perez. So I maintain there's no good faith  
9 invocation of the Fifth Amendment as to that question.

10 HEARING OFFICER: Mr. Syren.

11 MR. SYREN: And again, I assert that there is, Your  
12 Honor. I mean quite blatantly, this -- we're talking about her  
13 Fifth Amendment privilege here and I'm her attorney and I'm  
14 telling her not to answer the question but it's not based on  
15 her -- the Fifth Amendment.

16 HEARING OFFICER: I understand that, but I need to make  
17 a ruling whether it's valid or not. And you're not presenting  
18 any facts or any basis for me to make such a ruling. I mean at  
19 this.....

20 MR. SYREN: I can't. I don't want to do that, Your  
21 Honor, because that's -- that's sort of to waive the  
22 attorney/client privilege and the Fifth Amendment privilege  
23 itself.

24 HEARING OFFICER: Well, I find that there hasn't been  
25 an adequate basis for the privilege. I understand Counsel's

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1 position he's going to tell her not to answer. I find that  
2 there hasn't been an adequate showing that there is a valid  
3 Fifth Amendment privilege. The Committee can do what it wishes  
4 to do. I have no power to issue any contempt citations. The  
5 Committee certainly does through the house and it can do so if  
6 it wishes, Mr. Spaan. You're instructing the witness not to  
7 answer?

8 MR. SYREN: I am. I am, Your Honor.

9 HEARING OFFICER: Your next question, Mr. Spaan.

10 BY MR. SPAAN:

11 Q Are you going to follow the advice of Counsel on this?

12 MR. SYREN: Yes. He's asking you -- I'm instructing  
13 you not to answer, Ms. Perez, this is Les Syren.

14 A Um-hum. (Affirmative)

15 MR. SYREN: And he's asking you if you're going to  
16 follow my advice?

17 A Yes.

18 Q Ms. Perez, is there anything that relates to this March  
19 4th letter that you could bring to the attention of  
20 this Committee without incriminating yourself.....

21 MR. SYREN: And I will.....

22 Q .....that would be helpful.

23 MR. SYREN: Okay. I'm going to instruct my client not  
24 to answer based on the attorney/client privilege, Fifth  
25 Amendment, also the question is vague and overbroad.

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1 MR. SPAAN: I've got nothing further.

2 MR. SYREN: And calls for hearsay. Excuse me.

3 HEARING OFFICER: Mr. Syren, do you have any questions?

4 MR. SYREN: No.

5 HEARING OFFICER: Okay. Does members of the Committee  
6 have any questions?

7 PATRICIA M. PEREZ

8 testified as follows on:

9 INQUIRY

10 BY MS. MCCOY:

11 Q Ms. Perez, this is Shirley McCoy, one of the public  
12 members. I would just like to ask you a couple of  
13 questions.

14 A Um-hum. (Affirmative)

15 Q Did you hire Mr. Syres (sic) as your Counsel?

16 MR. SYREN: Objection. That's attorney/client  
17 privilege and asked and answered. And I'm instructing my  
18 client not to answer that question.

19 HEARING OFFICER: Well, it hasn't been asked and  
20 answered. I don't think she said who hired you. But.....

21 MR. SYREN: I think it's established.

22 HEARING OFFICER: .....well, going on to the next one  
23 whether.....

24 MR. SYREN: Excuse me, Mr. Chair.

25 HEARING OFFICER: .....it's privileged or not, do you

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1 want to be heard on that, Mr. Spaan?

2 MR. SPAAN: I don't think whether or not Mr. Syren --  
3 if she hired Mr. Syren is privileged. I mean as to what he  
4 told her, I think it is. I think you could further ask what  
5 she -- if she's paid him any money.

6 HEARING OFFICER: I'm going to overrule the objection.  
7 The issue of retaining Counsel is -- the privilege goes to  
8 confidential communications, it doesn't go to the issue as to  
9 who hired. And there's quite a bit of Federal case law, mostly  
10 on drug cases, that where it becomes an issue of who hires  
11 attorneys in precisely the situation like this where several  
12 witnesses before Grand Jury claim privileges.

13 MR. SYREN: Before a Grand Jury?

14 HEARING OFFICER: At any point in time. There's quite  
15 a body of case law that who is paying an attorney is not  
16 privileged information.

17 MR. SYREN: Okay. We -- I take exception to that  
18 order. And I think it's already been established that I am her  
19 attorney.

20 HEARING OFFICER: Are you instructing her not to answer  
21 the question?

22 MR. SYREN: No, I'm not. You can go ahead and answer  
23 that Patricia.

24 A I forgot what the question was.

25 MR. SYREN: The question is, am I your attorney.

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1 BY MS. MCCOY:

2 Q Did you hire -- did you hire Mr. Syres as your Counsel?

3 A Yes.

4 Q Okay. Are you also personally responsible for paying  
5 any fees to him as your attorney?

6 MR. SYREN: And that is a matter of attorney/client  
7 privilege.

8 MR. SPAAN: And I'd like to be heard on that.

9 HEARING OFFICER: Go ahead.

10 MR. SPAAN: I think the line of cases, Mr. White, that  
11 you brought, particularly when you have a multiple  
12 representation of an individual and his employees, that  
13 question was absolutely proper. The Committee has a right to  
14 know the source of Mr. Syren's payment for the representation  
15 of this witness.

16 HEARING OFFICER: Do you want to be heard further?

17 MR. SYREN: This is, according to the Committee, a  
18 civil matter. The cases that you referenced, I think were for  
19 a Grand Jury and I don't know that there are other cases unless  
20 the Court can identify them, in which that would be relevant.  
21 But clearly, any communication between me and my client is  
22 privileged, including -- and that is a communication, the cost  
23 for representation or any sort of enumeration. Besides the  
24 fact that it's absolutely irrelevant. Representative Sanders  
25 is the one sort of that we're here to discuss today, not my

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1 fee.

2 HEARING OFFICER: Well, the amount of your fee is  
3 irrelevant, even if there is a fee. I don't know if you're  
4 doing this for a fee or pro bono.

5 MR. SYREN: And that's nobody -- I'm sorry.

6 HEARING OFFICER: I mean I'm saying, that's irrelevant.  
7 But if there are witnesses that have relevant information that  
8 are not testifying due to joint representations, that becomes  
9 relevant. And if you're going to tell her not to answer it,  
10 there's nothing I can do. You know, I don't have contempt  
11 powers. The Committee can take it up or not take it up.

12 MR. SYREN: Yeah. And I.....

13 HEARING OFFICER: But I'll overrule the objection. You  
14 give her the instruction you want to give and we'll move on.

15 MR. SYREN: Okay. And I will instruct her not to  
16 answer that question.

17 BY MS. MCCOY:

18 Q Okay. I guess maybe one other question. If you were  
19 not going to be employed by Mr. Sanders next session,  
20 would you be concerned about standing on the Fifth in  
21 your testimony today?

22 MR. SYREN: Don't answer that question, same objection.  
23 Attorney/client privilege. Calls for legal -- Fifth Amendment,  
24 attorney/client privilege and calls for speculation.

25 HEARING OFFICER: Do you have additional questions?

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1 MS. MCCOY: I think that will do it, thanks.

2 HEARING OFFICER: Okay. Representative Toohey.

3 REPRESENTATIVE TOOHEY: Just a question, Your Honor, to  
4 you. Is a client -- is there normally a contract written,  
5 signed that I'm going to represent you and 17 other people?

6 HEARING OFFICER: There's supposed to be, but it  
7 doesn't always get done.

8 REPRESENTATIVE TOOHEY: There's.....

9 HEARING OFFICER: I think the Bar rules now provide  
10 there's supposed to be a written engagement letter or contract,  
11 but it doesn't always get done.

12 REPRESENTATIVE TOOHEY: May I ask Ms. Perez if she has  
13 signed any kind of.....

14 HEARING OFFICER: You may ask it and it may be objected  
15 to.....

16 REPRESENTATIVE TOOHEY: I'm sure it will be.

17 HEARING OFFICER: .....and we'll take it up from there.

18 **PATRICIA M. PEREZ**

19 testified as follows on:

20 **INQUIRY**

21 **BY REPRESENTATIVE TOOHEY:**

22 Q Ms. Perez.....

23 A Yes.

24 Q .....this is Representative Toohey. Have you signed  
25 any kind of contract with Mr. Syren?

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1 MR. SYREN: And I'll instruct you not to answer that  
2 question, Ms. Perez.

3 REPRESENTATIVE TOOHEY: Thank you. No further  
4 questions.

5 CHAIRMAN MAC NEILLE: Joe?

6 HEARING OFFICER: Mr. Donahue, do you have questions?

7 CHAIRMAN MAC NEILLE: No?

8 MR. DONAHUE: Your Honor, I'm confused between criminal  
9 trials, civil trials and this Committee's function of gathering  
10 the facts and I'm somewhat frustrated and I don't know that I  
11 have a question.

12 MR. SYREN: I'll object to speeches during the  
13 questioning. This has happened a number of times and at this  
14 point I'm going to raise the objection. If Committee members  
15 have an objection or a question, that's fine, they can ask it.  
16 But I prefer that we refrain from speeches.

17 HEARING OFFICER: Well, that may be your preference but  
18 this.....

19 MR. DONAHUE: I guess I have a question.

20 HEARING OFFICER: Wait, let me just respond to that.  
21 This Committee runs this procedure. It's a body of the  
22 Legislature and they'll run it as long as it's consistent with  
23 due process.....

24 MR. SYREN: And again.....

25 HEARING OFFICER: .....in the manner the Committee

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1 wishes.

2 MR. SYREN: Well, they have procedures though, Your  
3 Honor, and they've adopted the Administrative Procedures Act.  
4 And I don't know that there's any place for speeches during the  
5 middle of cross examination.

6 HEARING OFFICER: Yes, Mr. Donahue

7 PATRICIA M. PEREZ

8 testified as follows on:

9 INQUIRY

10 BY MR. DONAHUE:

11 Q Ms. Perez?

12 A Yes.

13 Q Yeah, this is Joe Donahue, how are you today?

14 A Fine, thank you.

15 Q Why are you invoking your Fifth Amendment privilege?

16 MR. SYREN: And don't answer that question.

17 MR. DONAHUE: I'm done.

18 CHAIRMAN MAC NEILLE: I have one other question.

19 MS. MCCOY: I have one other question.

20 CHAIRMAN MAC NEILLE: Hey, it's my turn.

21 HEARING OFFICER: Let me make the round and then we'll  
22 get back to anybody.

23 PATRICIA M. PEREZ

24 testified as follows on:

25 INQUIRY

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1 BY CHAIRMAN MAC NEILLE:

2 Q Ms. Perez, this is Margie Mac Neille. I have a  
3 question for you about office procedure during the last  
4 session when you worked for Representative Sanders.  
5 Was there a written policy in your office that you were  
6 aware of about leave slips and taking leave time?

7 A Yes. A handbook that Legislative Affairs put out, the  
8 personnel handbook.

9 Q Okay. Did you put in leave slips when you took  
10 personnel time or did you make it up later?

11 A We would -- well, we would work late. I don't recall  
12 taking leave, but if we took, you know, like a long  
13 lunch or something, I know we'd make it up later  
14 because we did work some late nights when session was  
15 going.....

16 Q Yeah.

17 A .....into the evening and coming in on weekends for  
18 meetings.

19 Q Do you ever recall a time when you would take leave  
20 during the day to do non-Legislative business and then  
21 put in a leave slip for it or makeup the time later?

22 A I'm not sure exactly what you're -- you mean, like did  
23 I take a long lunch and then make it up?

24 Q Or work in the office on some project that didn't have  
25 to do with the Legislature?

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1 A Uh-huh. (Negative)

2 MR. SYREN: If you understand the question.

3 A No, I'm not -- no, I can, you know, say this. There

4 were times when there -- when it was quiet like when if

5 Jerry was up in Anchorage and where we didn't have

6 anything to do for the office, you know, because we

7 didn't have any appointments scheduled or people, you

8 know, after answering the POMs and mail, there was

9 nothing to do but.....

10 BY MS. MAC NEILLE:

11 Q No. I guess I was asking the question whether you ever

12 remember a time when you said, okay, I'm going to do

13 this project, but it's not State -- it's not State

14 business, so I'm going to do it and then I'll makeup

15 the hours later that I -- that.....

16 A No, no. I mean because I didn't either -- nothing I'd

17 have that would -- that I'd need to do that, I'm sorry.

18 Q You don't remember doing that kind of -- having that

19 kind of project or.....

20 A No. I don't re -- I don't recall doing any kind of

21 projects that weren't, you know, with the job.

22 Q Okay. Thanks.

23 CHAIRMAN MAC NEILLE: That's all the questions I had.

24 HEARING OFFICER: Mr. Granger?

25 MR. GRANGER: I'll pass.

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1 HEARING OFFICER: Any questions?  
2 MS. VORDERSTRASSE: I move by.  
3 HEARING OFFICER: Okay. Mr. Spaan, do you have any  
4 redirect?  
5 MR. SPAAN: No, sir. I believe Ms. McCoy.....  
6 MS. MCCOY: No.  
7 HEARING OFFICER: No, she changed her mind. Do you  
8 have any redirect?  
9 MR. SPAAN: No, sir.  
10 MR. SYREN: Nothing further, Your Honor.  
11 HEARING OFFICER: Ms. Perez, thank you very much for  
12 taking out the time to be present and we will disconnect at  
13 this time.  
14 A Okay, thank you.  
15 MR. SPAAN: Thank you, Ms. Perez.  
16 A Good night.  
17 MR. SPAAN: Your Honor, at this time I would like to  
18 recall Ms. Barnett and have her testify regarding her  
19 conversation with Ms. Perez.  
20 HEARING OFFICER: Very well. Why don't you recall her.  
21 Ms. Barnett, do you understand you're still under the oath that  
22 you took awhile ago?  
23 MS. BARNETT: Yes, I do.  
24 HEARING OFFICER: Okay. The record should reflect that  
25 Ms. Barnett is back in the witness chair. Mr. Spaan.

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1 MR. SPAAN: Thank you.

2 SUSAN BARNETT

3 previously called as a witness on behalf of the Committee,  
4 testified as follows on:

5 REDIRECT EXAMINATION

6 BY MR. SPAAN:

7 Q Ms. Barnett, did you have a conversation with Ms.  
8 Perez?

9 A Yes, I did.

10 Q And do you remember when you had that conversation?

11 A October 31st, 1996.

12 Q Did you ask Ms. Perez whether she was represented by  
13 Lester Syren?

14 A I did not ask her if she was represented by Lester  
15 Syren, I asked her if she was represented by an  
16 attorney.

17 Q And did she respond to you?

18 MR. SYREN: Objection. Calls for hearsay.

19 MR. SPAAN: Your Honor.....

20 HEARING OFFICER: Overruled.

21 MR. SPAAN: .....this is an admission.....

22 HEARING OFFICER: Overruled.

23 Q What was her response, Ms. Barnett?

24 A She said that she was not represented by an attorney.

25 She had been gone for two weeks. When I referenced --

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1 I don't want to go on and on and on, but when I  
2 referenced the subject she said I don't know anything  
3 -- I've been out of town, I don't know what's  
4 happening. She -- she did say she knew something about  
5 the March 4th letter and I asked her questions about  
6 that.

7 Q Okay. And what did you ask her about the March 4th  
8 letter?

9 MR. SYREN: And I'll object, Your Honor. This is, I  
10 think, improper invasion into the attorney/client privilege.  
11 Ms. Barnett knew full well that she was represented despite  
12 what she may or may not have heard from Ms. Perez by the piece  
13 of paper that she signed several days beforehand.

14 MR. SPAAN: Well, let's talk about that piece of paper,  
15 Your Honor.

16 MR. SYREN: Maybe we should have discussion outside the  
17 hearing of the Committee, Your Honor?

18 HEARING OFFICER: Just briefly I want to make sure I  
19 understand what you're saying. Are you saying that it  
20 shouldn't come in because the Committee, at the time, or Ms.  
21 Barnett knew you represented the witness?

22 MR. SYREN: That's correct. It's like the police  
23 knowing that a person is represented by an attorney and they  
24 just go right ahead and take advantage of the situation and  
25 this.....

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1 HEARING OFFICER: But why.....

2 MR. SYREN: .....that's what this -- like  
3 especially.....

4 HEARING OFFICER: .....why would it effect the  
5 admissibility of this proceeding? In a criminal proceeding,  
6 evidence is suppressed of the nature you're talking about.....

7 MR. SYREN: Right.

8 HEARING OFFICER: .....not because of its  
9 unreliability, but because of procedural rules relating to  
10 criminal cases. This is not a criminal case.

11 MR. SYREN: Well, that's where we kind of part company,  
12 Your Honor, I think it is, for the reason that these are  
13 charges. And it's not preponderance of the evidence, it's  
14 clear and convincing -- it's something other than a civil  
15 matter.

16 HEARING OFFICER: It's not a criminal case.

17 MR. SYREN: Well.....

18 HEARING OFFICER: There are not sanctions of going to  
19 jail which distinguishes this from that. I mean what I'm  
20 trying to get at is your remedy. And Ms. Barnett has testified  
21 inconsistent with what you're saying, but aside from that, even  
22 if she were to think she was represented, which she said the  
23 witnesses specifically said she was not, why would the remedy  
24 be the testimony doesn't come in?

25 MR. SYREN: Because of the Fifth Amendment, Your Honor.

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1 She's asserted the privilege under the Fifth Amendment, that's  
2 why and somebody else can't waive that for her.

3 HEARING OFFICER: She waived it herself. According to  
4 the witness, she spoke.

5 MR. SYREN: No. She did not waive her attorney/client  
6 privilege, Your Honor. Ms. Barnett, like the police officer,  
7 engaged in conversations with somebody who was possibly on --  
8 who should be asserting the Fifth Amendment privilege. And if  
9 she's allowed to testify on hearsay about a conversation that  
10 she had with somebody who she knew was represented by an  
11 attorney, whether or not that person at the time said they were  
12 or not, the Fifth Amendment goes right out the window. And if  
13 the Court is willing to do that today, to take away Ms. Perez'  
14 Fifth Amendment, I certainly don't have the contempt power, but  
15 that's a big, big step and that's exactly what will happen.

16 HEARING OFFICER: Mr. Spaan, do you have anything to  
17 add, I'm ready to rule?

18 MR. SPAAN: I do. First of all, when Ms. Barnett  
19 testified, she asked her if she was represented, she testified  
20 that she had a conversation with Ms. Perez which Ms. Perez  
21 confirmed, to the extent there were any conceivable Fifth  
22 Amendment concerns, she has waived those concerns and there's  
23 no reason to disallow this testimony.

24 HEARING OFFICER: I -- I.....

25 MR. SYREN: Well, it's -- it's -- can I respond to

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1 that?

2 HEARING OFFICER: If you're not going to repeat what  
3 you've already said, go ahead.

4 MR. SYREN: No, no. My client didn't have the  
5 opportunity to assert that, Your Honor, just because I wasn't  
6 there. I didn't know about the conversation. And I think at  
7 that point everything is suspect, that's why we through out  
8 those -- we suppress those kind of documents. When the police  
9 are talking to somebody and they don't have an attorney there  
10 and they know that the person is represented by an attorney,  
11 how on earth could she assert that privilege if I'm not there  
12 if the police are running around behind my back talking with my  
13 client.

14 HEARING OFFICER: No.....

15 MR. SYREN: You can't -- you can't do an end run around  
16 that privilege.

17 HEARING OFFICER: The reason that's -- this is  
18 irrelevant, but the reason they're throwing out in a police  
19 case is because -- only if a person is in custody because  
20 that's a coercive environment. I don't think the testimony is  
21 that Ms. Perez was in custody at the time. Ms. Barnett has  
22 testified that she asked if the witness was represented, the  
23 witness volunteered the statement. I find that's not a Fifth  
24 Amendment violation. Even if it were -- well, it's not. And  
25 the witness volunteered the statement and it can come in.

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1 BY MR. SPAAN:

2 Q Ms. Barnett, did you, when you had this conversation  
3 with Ms. Perez, make contemporaneous notes?

4 A Yes, I did.

5 MR. SPAAN: And, Your Honor, at this time I didn't have  
6 those marked, but since Ms. Barnett's version of these facts  
7 and I think in rebuttal to what Mr. Syren's trying to put  
8 forward, I'd like those marked as 16 and put before this  
9 Committee.

10 HEARING OFFICER: Mr. Syren, do you have objection?

11 MR. SYREN: I do, Your Honor. I asked Mr. Spaan, in a  
12 letter some time ago, for any statements or notes of  
13 conversations, it was also requested in my discovery and it was  
14 never produced until now. I didn't even know these notes  
15 existed.

16 HEARING OFFICER: Let me ask you this, are you  
17 intending to call any witnesses or present any exhibits?

18 MR. SYREN: I'd rather not say at this time, Your  
19 Honor.

20 HEARING OFFICER: Well, I mean the reason I ask is you  
21 haven't given an exhibit list or a witness list and you're  
22 making an objection about one exhibit Mr. Spaan may not  
23 have.....

24 MR. SYREN: I'm aware.....

25 HEARING OFFICER: .....included.

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1 MR. SYREN: .....I'm aware of that, Your Honor. No,  
2 no, this is sandbagging. That's -- I mean with all due respect  
3 to Mr. Spaan, I didn't know these notes existed. I asked for  
4 them in discovery formally and.....

5 HEARING OFFICER: Show me the discovery where they're  
6 at? I don't have privy to discovery as you know. I'll tell  
7 the members of the Committee while he's looking, a lot of  
8 things that go on in a court case, the judge does not know  
9 about as what's going, it's just between the attorneys. Mr.  
10 Syren's indicated he asked specifically if there were  
11 statements, I don't know if he did or not and that's what I've  
12 asked him to see.

13 REPRESENTATIVE TOOHEY: Thank you.

14 HEARING OFFICER: Why don't we take a short recess  
15 while you're looking for it. People are getting restless,  
16 we'll take 10 minutes.

17 (Off record)

18 (On record)

19 HEARING OFFICER: Back on record. All members of the  
20 Committee are present. Mr. Spaan, you had indicated there's  
21 something you want to say?

22 MR. SPAAN: Your Honor, Mr. Syren, by way of discovery,  
23 requested every notes we had. I responded to that by  
24 maintaining those investigator notes that Ms. Barnett made were  
25 protected by the work product privilege, I identified that in

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1 response and I did not produce them. I did not intend to  
2 introduce those notes. This line of questioning has gone to  
3 whether or not Ms. Barnett, knowing that Ms. Perez was  
4 represented by Mr. Syren intentionally phoned her up and  
5 attempted to violate the attorney/client privilege and I want  
6 to show the Committee that that's just simply not true. For  
7 that purpose I'd like to introduce her own personal notes,  
8 waive the work product as to those notes regarding the  
9 conversation with Ms. Perez.

10 HEARING OFFICER: But I assume you want to go further  
11 than the part of the notes -- I'm assuming, I may be wrong that  
12 there's something in the notes other than a notation about  
13 whether Ms. Perez was represented or not.

14 MR. SPAAN: It does -- there is, Mr. White. There's  
15 some more summary of the conversation that Ms. Barnett had with  
16 Ms. Perez I'd like the Committee to see as well. But that's  
17 not as important as whether or -- what this conversation was  
18 regarding her representation by Mr. Syren at the time that call  
19 was made.

20 HEARING OFFICER: Are you seeking to get additional  
21 information from the note other than representation issue?

22 MR. SPAAN: No, that's fine. I intend to inquire of  
23 Ms. Barnett regarding the conversation she had with Ms. Perez.

24 HEARING OFFICER: Okay.

25 MR. SPAAN: I don't think the note is necessary as to

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1 that. I think Ms. Barnett could testify as to that.

2 HEARING OFFICER: Okay.

3 MR. SPAAN: But on this issue of representation, I  
4 think it's important that the Committee see a contemporaneous  
5 note.

6 HEARING OFFICER: Mr. Syren.

7 MR. SYREN: Yes, Your Honor. This is the first time  
8 I've seen these notes. I would have, had I known about them,  
9 that they were going to be used at today's trial, I would have  
10 loved the opportunity to depose Ms. Barnett about them, prepare  
11 for deposition and been able to cross examine her, that's gone  
12 now, my hands are tied on that. I think that's a little  
13 unfair. The other problem we have here is Mr. Spaan listed --  
14 his witness list Ms. Barnett on it and stated specifically, her  
15 testimony will be limited to the identification of certain  
16 documents gathered during the course of the investigation which  
17 presumably were the ones that he presented to me. So there's  
18 been no notice for me for adequate time to prepare any sort of  
19 cross examination with respect to these notes in addition to my  
20 -- objection, excuse me.

21 MR. SPAAN: There was a supplemental witness list which  
22 identified for the Court and Counsel that Ms. Barnett was going  
23 to be questioned regarding her interviews with Ms. Perez and  
24 others once it became apparent to me that there was going to  
25 be.....

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1 HEARING OFFICER: You filed something specifying she'd  
2 be questioned about Ms. Perez?

3 MR. SPAAN: Yes, right.

4 MR. SYREN: Okay. And when did he file that is when  
5 I'd like to know?

6 HEARING OFFICER: Well.....

7 MR. SYREN: That was after the close of discovery.

8 HEARING OFFICER: .....don't ask me, ask him.

9 MR. SYREN: It was after -- what I'm telling you is it  
10 was after the close of discovery, after the witness and exhibit  
11 lists were due, it's too late, Your Honor.

12 MR. SPAAN: I.....

13 MR. SYREN: It's far too late. It's a sandbagging,  
14 that's what's going on.

15 HEARING OFFICER: When was that filed, Mr. Spaan?

16 MR. SPAAN: I believe it was filed, Your Honor, late  
17 last week. Okay, and it was after the close of discovery, but  
18 it was supplemental information I intended to introduce once I  
19 saw the way this was going and I served it on Mr. Syren.

20 HEARING OFFICER: When did you learn Ms. Perez was  
21 likely to take the Fifth?

22 MR. SPAAN: When Jeanne Lovell took the Fifth Amendment  
23 and when Representative Sanders took the Fifth Amendment.

24 HEARING OFFICER: When was that?

25 MR. SPAAN: That was November 8th, 1996.

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1 HEARING OFFICER: And on what date did you file the  
2 supplemental?

3 MR. SPAAN: Your Honor, I'm going to have to take a  
4 look to see if I can find it.

5 HEARING OFFICER: Please do.

6 MR. SYREN: Your Honor, could I note for the record  
7 that Mr. Spaan also signed these discovery requests on October  
8 7th, 1996 and presumably he also drafted them and they also  
9 list my address for Patricia Perez. And I hate to keep harping  
10 on it, but a lay person, I think it's hard to get by the  
11 supposition that Ms. Barnett didn't know what was going on when  
12 she signed those. There's absolutely no excuse for an attorney  
13 -- he can't claim now that he didn't know that I represented  
14 her. He can't claim that if he signed this interrogatory.

15 MR. SPAAN: I can and will.

16 HEARING OFFICER: We're past that issue. That issue's  
17 already been dealt with.

18 MR. SPAAN: Your Honor, I cannot find that in my  
19 material. Perhaps, does Ms. Barnett have a copy?

20 A I have it downstairs. I don't believe I have it up  
21 here.

22 Q And if I could inquire, Ms. Barnett, do you know the  
23 date on that? Perhaps Mr. Syren has it.

24 A No, I don't know the date.

25 HEARING OFFICER: I am going to assume, unless Mr.

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1 Syren indicates otherwise, that what Mr. Spaan says is accurate  
2 that last week, shortly after learning of the witnesses taking  
3 the Fifth, that he provided a supplement and I'm prepared to  
4 rule as follows: That I agree that there has been some  
5 unfortunate surprise. Mr. Syren says he would have taken the  
6 deposition of Ms. Barnett had he known on this potential  
7 statement. I will allow the statement. I will allow Mr. Syren  
8 to withhold his cross examination of Ms. Barnett 'til tomorrow.  
9 If he wants to take a deposition of Ms. Barnett regarding that  
10 information prior to having to cross examine her in front of  
11 the Committee, I will direct that that be done tonight or  
12 tomorrow morning before the hearing so that he has the  
13 opportunity to prepare a cross examination on this issue.

14 MR. SYREN: I would also like to request at this time  
15 before there's any further inquiry that we adjourn this meeting  
16 until I can take up the question that you ruled on,  
17 specifically whether or not Ms. Barnett is allowed to testify  
18 regarding her conversation. We, of course, take exception to  
19 that. We think she's -- our client wasn't afforded the  
20 opportunity to assert her Fifth Amendment privilege at the time  
21 that this contact was made and I don't want to restate all  
22 those objections. But I'd like to take it up with a higher  
23 body.

24 HEARING OFFICER: Well, you'll have an opportunity to  
25 do that, but I'm not going to recess the Committee for that.

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1 The Court has already indicated it doesn't have jurisdiction  
2 over this proceeding. So.....

3 MR. SPAAN: What was your ruling on the notes, Your  
4 Honor?

5 HEARING OFFICER: My ruling on the note, the testimony  
6 is that you may inquire about it. That I think it's valuable  
7 for the Committee to have the information, you did file a  
8 supplement as soon as you learned that it would be relevant and  
9 that to ease Mr. Syren's concerns about his ability to cross  
10 examine the witness, Ms. Barnett will make herself available  
11 either after the close of business -- after this hearing  
12 recesses today or before it starts tomorrow for Mr. Syren to  
13 take a brief deposition to inquire about the note so that he  
14 can be prepared to cross examine her tomorrow.

15 MR. SPAAN: Are the notes going to be admitted or not  
16 is my question?

17 HEARING OFFICER: I'm sorry. Yes.

18 MR. SPAAN: Okay.

19 **REDIRECT EXAMINATION CONTINUED BY MR. SPAAN:**

20 Q Ms. Barnett, do you have a copy of those notes?

21 HEARING OFFICER: And just for procedural purposes,  
22 what we will do so we don't hold -- so we don't have to recess  
23 earlier than we would have is that when you finish your direct,  
24 if Mr. Syren wishes, he can reserve his cross until tomorrow  
25 and you'll have another witness you can call in the

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1 meantime.....

2 MR. SPAAN: I do, Your Honor.

3 HEARING OFFICER: .....we'll move on to.....

4 MR. SPAAN: I have a witness standing by.

5 HEARING OFFICER: .....the other witness.

6 MR. SPAAN: Okay.

7 HEARING OFFICER: Does the Committee understand what I  
8 just did?

9 REPRESENTATIVE TOOHEY: Yes, I understand.

10 MR. SYREN: Your Honor, I have one more document. It's  
11 a computer copy of a document, I'm sure Mr. Spaan would have a  
12 copy of this as well, it's my letter to him dated August 12th  
13 and it said -- or it says here, you should be advised that I'm  
14 asserting the attorney/client privilege with respect to  
15 Representative Sanders' employees, this includes his secretary.  
16 Thus, any inquiries directed to her or any other of  
17 Representative Sanders' employees should come through me.

18 HEARING OFFICER: Well, let me just make sure that I  
19 didn't miss anything. Ms. Barnett, did you -- from your  
20 testimony I think you indicated that you had asked Ms. Perez  
21 whether she was represented when you talked to her?

22 A Yes, I did.

23 HEARING OFFICER: And her answer to you was?

24 A No, she was not.

25 HEARING OFFICER: Okay. That's what I thought you had

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1 said. I thought.....

2 MR. SYREN: Your Honor.....

3 HEARING OFFICER: .....maybe I had misheard that or  
4 something.

5 MR. SYREN: Right. Whether she knew or not, this  
6 letter put Mr. Spaan on notice in August as to the assertion of  
7 the attorney/client privilege.

8 HEARING OFFICER: Well, I don't intend to get into a  
9 long dialogue, but you indicate the letter says employees, she  
10 testified she was not employed at the time in October.

11 MR. SYREN: She was in lay-off status. She was still  
12 his employee. He couldn't hire anybody else to come back that  
13 spring.....

14 HEARING OFFICER: Well, I.....

15 MR. SYREN: .....he had.....

16 HEARING OFFICER: .....I have made my ruling, tell it  
17 to the Supreme Court.

18 BY MR. SPAAN:

19 Q Ms. Barnett, did you indicate on -- when did you make  
20 these notes?

21 A On the 31st of October.

22 MR. SPAAN: And if I could -- ladies and gentlemen, if  
23 you could mark this, I believe it's Exhibit 15, just so we'll  
24 have a record of it.

25 Q And do those -- when did you talk to Ms. Perez again,

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1 I'm sorry?

2 A When did I speak with her a second time?

3 Q Right -- no, I'm sorry, the first -- when did you speak  
4 with her initially?

5 A On October 31st, 19 -- oh, it says, 1995. Now, there's  
6 a major error, it was 1996, which I said below,  
7 contacted her on 10/31/96.

8 Q Okay. And were these notes made at the time you talked  
9 with Ms. Perez or shortly thereafter?

10 A Right after I hung-up the phone.

11 Q And do these notes indicate Ms. Perez' response when  
12 you asked her, Ms. Barnett, if she was represented by  
13 Counsel?

14 A Yes. And I did that at your instruction.

15 Q Okay. And what was her response?

16 A No. That she -- she was not and that she asked me --  
17 that was the first question I asked her at your  
18 direction. And then she said, could you tell me a  
19 little bit more about what it's about, I referred to  
20 the March 4th letter and.....

21 Q Did she provide you with any information regarding the  
22 March 4th letter?

23 A Yes, she did.

24 Q And what information did she provide, Ms. Barnett?

25 A That she recalled the March 4th letter to the District

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1 19 participants -- straw poll participants and that she  
2 assisted by printing and folding and mailing them.

3 Q - And did she indicate what -- who she might have  
4 assisted?

5 A Yes. She said she assisted Jeanne Lovell.

6 Q Did she indicate to you how long that task took?

7 A She -- in -- her words were, it took about a day with  
8 other Legislative duties in between.

9 Q And did she describe how she did participate in this  
10 letter?

11 A By folding and mailing and printing.

12 Q Okay.

13 MR. SPAAN: I'd have nothing further.

14 HEARING OFFICER: Mr. Syren, if you would like an  
15 opportunity to question Ms. Barnett out of the presence of the  
16 Committee to prepare cross examination, you may do so when we  
17 adjourn for the day, if not, you may cross examine her now.

18 MR. SYREN: I'll just ask one question.

19 **SUSAN BARNETT**

20 testified as follows on:

21 **RE CROSS EXAMINATION**

22 **BY MR. SYREN:**

23 Q You note here there's.....

24 HEARING OFFICER: Well, are you going to take her  
25 deposition later?

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1 MR. SYREN: I haven't decided that, Your Honor.  
2 HEARING OFFICER: Okay.  
3 Q There's a major error here, the date I mean it was a  
4 year off, are there any other errors?  
5 A No.  
6 Q Okay.  
7 A I wrote this.  
8 Q How do we know that?  
9 A I'm telling you that I did and it's mine.  
10 Q Okay. But you put down the wrong year, right?  
11 A At the top. But right below I put, Barnett contacted  
12 her on 10/31/96.  
13 Q Okay.  
14 A Yes. I did put down the wrong year at the very top.  
15 MR. SYREN: No further questions at this time, Your  
16 Honor.  
17 MR. SPAAN: Your Honor, before I excuse Ms. Barnett,  
18 can I inquire whether your records reflect Exhibits 1 through  
19 15 have been offered and admitted?  
20 HEARING OFFICER: I have a question about Exhibit 12.  
21 I'm not certain if Exhibit 12 has been admitted. It seems to  
22 me the parties are treating it as if it has, but I don't recall  
23 that it was.  
24 MR. SPAAN: Do the members of the Committee have  
25 Exhibit 12?

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