

Committee Meeting

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of

SENATE LAW AND PUBLIC SAFETY COMMITTEE

"The Committee will meet to review, discuss and hear testimony regarding the Attorney General's report concerning the awarding of State aid to the Township of Lyndhurst"

LOCATION: Room 319
State House
Trenton, New Jersey

DATE: September 22, 1993
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Louis F. Kosco, Chairman
Senator John J. Matheussen, Vice-Chairman
Senator Bradford S. Smith
Senator John H. Ewing



ALSO PRESENT:

Anne M. Stefane
Office of Legislative Services
Aide, Senate Law and Public Safety Committee

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey 08625



COMMITTEE NOTICE

**TO: MEMBERS OF THE SENATE LAW AND PUBLIC SAFETY
COMMITTEE**

FROM: SENATOR LOUIS F. KOSCO, CHAIRMAN

SUBJECT: COMMITTEE MEETING - September 22, 1993

*The public may address comments and questions to Anne M. Stefane,
Committee Aide, or make bill status and scheduling inquiries to Kathleen
Espieg, secretary, at (609) 984-0231.*

**The Senate Law and Public Safety Committee will meet on Wednesday,
September 22, 1993 at 10:00 AM in Room 319, State House, Trenton, New
Jersey.**

**The committee will meet to review, discuss and hear testimony regarding
the Attorney General's report concerning the awarding of State aid to the
Township of Lyndhurst.**

Issued 09/17/93



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SENATOR LOUIS F. KOSCO (Chairman): We will call the meeting to order of the Law and Public Safety Committee. I just want to point out before we have the roll call that this meeting is being transcribed, and that Glenn is here as my counsel to the Senate Law to assist me. I would like to have a roll call.

MS. STEFANE (Committee Aide): Senator Smith?

SENATOR SMITH: Here.

MS. STEFANE: Senator Ewing?

SENATOR EWING: Here.

MS. STEFANE: Senator Matheussen?

SENATOR MATHEUSSEN: Here.

MS. STEFANE: Senator Kosco?

SENATOR KOSCO: Here.

I want to point out that Senator Jack Ewing is being appointed to temporarily serve on this Committee. Here is a letter from Senator DiFrancesco.

The Law and Public Safety Committee has among its responsibilities legislative oversight concerning the activities of that Department, including the Office of the Attorney General. The purpose of this Committee meeting is to hear testimony from representatives of the State Board of Education and employees of the Department of Education, concerning the legal representation afforded to the State Board of Education and its Legal Committee by the Attorney General in one specific area; that is, the proceedings, the testing of then Commissioner Ellis' decision to rescind his \$1.5 million grant of discretionary funding for Lyndhurst.

From published reports there are questions that warrant the attention of this meeting. According to the Attorney General, the State Grand Jury is currently investigating the entire Lyndhurst matter. We are also mindful that the Lyndhurst affair has been the subject of an SCI report and a recent Attorney General's report. It is not our

intention today to investigate this entire affair, rehash old ground, or in any manner infringe upon the prerogatives of the Grand Jury. Rather, it is our intention today to focus solely on the narrow issue of the Attorney General's representation of the State Board in a timely fashion.

Since there remain important questions not answered at all in the recent comprehensive Attorney General's report, we believe this inquiry is essential. Before we begin to call witnesses, I want to note that Senate President Don DiFrancesco has had a strong and consistent interest in the public knowing all the facts surrounding this affair. The Senate's passage of legislation calling for an independent counsel demonstrates our desire that the facts in this event be brought to light in a nonpolitical, nonpartisan fashion. His decision to ask for this meeting was not made lightly, recognizing that predictable charges of politics would be levied at this meeting. However, the questions left unanswered in the Attorney General's so-called comprehensive report of August 16 compel the Legislature to address them in this appropriate fashion.

Let me be clear: If the questions that will be disposed of here are founded, there is every reason to question the ability of the Attorney General to conduct an objective and impartial investigation in the Lyndhurst scandal. If these questions are founded, all of New Jersey should be disturbed at an Attorney General's Office that would put obstructing independent inquiries ahead of a full airing of all the facts.

Last, I want to note that Monday night at 6:30 p.m. I received a written request from the Attorney General to cancel today's meeting, which may be the latest example of the Attorney General's effort to deny a full review of the facts in the Lyndhurst affair.

I want to make a statement regarding the testimony of employees of the Department of Education. The Legislature is watching closely the treatment of witnesses who appear here

today. Reprisals and repercussions will not be tolerated. The people who take time to appear here have the assurance of the Senate President and myself that we will take all appropriate measures to make sure there is no fallout from their willingness to tell the truth.

Do any of the Senators have any comments to make before we begin?

SENATOR EWING: Nothing.

SENATOR KOSCO: The first witness that we will call will be John Klagholz, from the State Board of Education.

EUGENE J. SULLIVAN, ESQ.: May I address the Committee, please? (no response)

SENATOR KOSCO: Okay, John, welcome, and thank you for attending. If you could introduce us to who you have with you here--

JOHN T. KLAGHOLZ: Well, my name is John Klagholz, and this is Gene Sullivan, a specially retained counsel to represent the State Board of Education in this matter. I believe, Senator, he has an opening statement, if that is permitted?

SENATOR KOSCO: MmmHmm. (affirmative response)

MR. SULLIVAN: If I may, Senator, thank you.

SENATOR KOSCO: Go ahead.

MR. SULLIVAN: My name is Eugene Sullivan. Yesterday I was retained by the Attorney General's Office and the Governor's Office to act as Special Counsel in connection with this hearing to provide legal advice to members and representatives of the State Board of Education in connection with their appearance here. I was told that I was being engaged so that their representation would be independent of the Attorney General's Office. I was told that the Attorney General's Office's position is that they want to cooperate with this investigation.

I will tell you that I contemplated that questions the Committee might ask could potentially involve either the executive privilege or the attorney/client privilege. I counseled members of the Board that these were privileges which they have which exist for good reasons, but that they could make a judgment to waive them. I also advised them that they could waive by simply taking a poll of the Board. Since there wasn't time for a formal meeting, they could act by majority, but they could not act individually.

As of this moment I am able to tell the Committee that they were able to contact a majority of the Board members, not all, but enough to have a majority, and on that basis I advise that the State Board of Education waives the attorney/client privilege or the executive privilege insofar as it may apply to any questions which are asked of them regarding the Lyndhurst matter. Not all Board members were contacted because we simply couldn't reach them in the time available, but we do have the majority vote, and on that basis the privilege will be waived for the members of the Board who are here, as well as the staff members who are here.

I do not know personally which Board members received letters from the Committee, invitations to appear and/or testify. We have here Bob Woodruff, the Vice-President of the Board, who is appearing on behalf of the President of the Board because she is in a meeting at Higher Education this morning, and for that reason could not attend herself. John Klaghorn -- Klagholz, I'm sorry. We also have Roslyne Novack, who is counsel to the State Board, and Jeff Lieberman, who is a staff attorney, both of whom were -- received letters from this Committee. As I say, I was engaged simply to provide advice to these individuals in connection with their appearances and testimony here.

Thank you.

SENATOR KOSCO: You were engaged by whom?

MR. SULLIVAN: The Attorney General's Office with the approval of the Governor's Office.

SENATOR KOSCO: You were engaged by the Attorney General's Office to represent the Department of Education, and you are being paid by who?

MR. SULLIVAN: Ultimately, it would be by the State through the Attorney General's Office.

SENATOR KOSCO: By the Attorney General's Office?

MR. SULLIVAN: Yes. It is a normal procedure when the Attorney General has to deal with a situation which either involves a conflict or an appearance of conflict, to engage outside special counsel. They do that to deal with the problem, and the mandate that I have is to function independently of the Attorney General in this matter.

SENATOR KOSCO: Senator Matheussen?

SENATOR MATHEUSSEN: Isn't that, in and of itself, a conflict, your being hired and engaged by the Attorney General's Office, but yet your client is the State Board? How can you represent one when being hired by the other and stay independent of what the Attorney General's Office is trying to clear itself of today?

MR. SULLIVAN: I can only respond that this is the mechanism in law by which the government deals with problems of this kind. There is a mechanism--

SENATOR MATHEUSSEN: Do you understand my concern, though? You are actually being retained by the Attorney General's Office who is trying to avoid the appearance of perhaps an impropriety or the appearance of a conflict, and your client actually is the State Board.

MR. SULLIVAN: Yes, except that I was told that I was to function independently; that that was my responsibility, and I can only tell you that I intend to do that job exactly the way I was told -- to function independently of the Attorney General. It is not to my benefit, in any substantial way, to

be involved in this assignment, so that I do not feel as though I am compromised in terms of my ability to provide independent advice to these representatives of the State Board.

SENATOR MATHEUSSEN: And please be assured that my position today is not here to in any way -- and I use this term lightly -- indict you or bring you into any focus which is other than representation of the School Board. But my concern lies with the fact of being literally retained by one party to represent another, when that person who is doing the retaining is trying to avoid the impropriety or the appearance of impropriety.

Did you have any consultations or any conversations regarding your briefing before coming today with the Attorney General's Office--

MR. SULLIVAN: No.

SENATOR MATHEUSSEN: --or the Governor's Office?

MR. SULLIVAN: No.

SENATOR MATHEUSSEN: You have not?

MR. SULLIVAN: That is correct.

SENATOR MATHEUSSEN: All of your information then would not come from them?

MR. SULLIVAN: My mandate -- my mandate here -- was to provide counsel to the representatives of the State Board independently. And I was told that any decisions they made regarding their testimony or positions to take on privilege belonged to them, and that they would exercise them; that neither the Attorney General's Office nor the Governor's Office would participate in that decision. He would leave it to the State Board to function independently. That is my mandate.

SENATOR MATHEUSSEN: Have you had any prior relation with the State before today?

MR. SULLIVAN: I was in the Attorney General's Office for 15 years, from 1975 until 1989. When I left I was the Assistant Attorney General in Charge of Litigation.

SENATOR MATHEUSSEN: Thank you.

SENATOR SMITH: Mr. Chairman? I have a question.

SENATOR KOSCO: Just one point, that possibly what you are talking about as far as the Attorney General hiring someone to represent them, we are probably looking at a legal proceeding. This is not a legal proceeding; this is a legislative proceeding. This is a legislative hearing, it is not a court, so I think that there may be some differences there if you were to be asked to represent something. But I just wanted to point that out.

My other question to you, John, would be: Is this at your request? Did you request to have this attorney present with you, or an attorney with you?

MR. KLAGHOLZ: Not specifically. However, it is not an unusual practice where the State Board of Education in its official capacity serves to act, that a special counsel would be appointed to provide advice.

SENATOR KOSCO: Whether they ask for it or not.

MR. KLAGHOLZ: That's a difficult question to respond to specifically.

SENATOR KOSCO: Thank you. Brad?

MR. SULLIVAN: If I may, Senator, I don't know--

SENATOR KOSCO: Excuse me; excuse me. Brad?

SENATOR SMITH: I just want a point of clarification. It was-- You were not requested to be here by the State Board of Education. They did not ask you to be here; it was the Attorney General's Office that asked you to be here.

MR. SULLIVAN: Yes. I was engaged by the Attorney General's Office to represent the representatives of the State Board.

SENATOR SMITH: But there was no request by the State Board or any of their members that you -- that they have a special counsel appointed to represent them, was there?

MR. SULLIVAN: I do not know what conversations took place between the Attorney General's Office and the State Board before I was engaged.

SENATOR SMITH: But as far as you know there was no such request?

MR. SULLIVAN: I don't know what conversations took place.

SENATOR SMITH: Okay.

SENATOR KOSCO: Thank you. Senator Ewing?

SENATOR EWING: Question: What are you being paid? What is your fee?

MR. SULLIVAN: We didn't discuss fee yesterday. Customarily, when the Attorney General pays outside counsel, it pays them hourly.

SENATOR EWING: At what rate?

MR. SULLIVAN: And customarily, the rate is less than what lawyers normally charge.

SENATOR EWING: What is the rate?

MR. SULLIVAN: We didn't discuss a rate.

SENATOR EWING: I think it would be interesting to hear what the rate will be.

MR. SULLIVAN: I certainly will supply that to the Committee. I will raise that. Because I was only called at 4:00 yesterday, there was not time to discuss the fee arrangement. I have acted as Special Counsel before. When I was in the Attorney General's Office I supervised special counsel, and as a general practice we had a prevailing rate that we paid that was less than the market rate that normally -- the market rate that lawyers normally charge. So--

SENATOR EWING: But that is a wide spread what lawyers charge. But anyway, John Klagholz, I would like to know: Do you feel you needed a lawyer here today?

MR. KLAGHOLZ: I feel very comfortable in appearing without counsel and in cooperating to the fullest extent

possible. But if I may interject, Counsel -- Senator, I have, and I actually fully intended to look for an opportunity to interject during the proceedings here this morning, my concern -- and Senator Kosco already addressed it -- that while I am not an employee of the State of New Jersey out -- beyond my functioning as a member of the State Board of Education, our staff members are, and I have some concern and some fear that reprisals or condemnations may attach to them. And within that context, I am very happy that special counsel, who is in private practice, not State practice, has agreed to appear here and, if for no other reason than to advise them of their legal rights, including their right to protections.

SENATOR EWING: But, John, what sort of reprisals would there be? Have there been reprisals in the Department?

MR. KLAGHOLZ: Well, it is often difficult to tell what might happen in government following an investigation.

SENATOR EWING: We're talking about the Department of Education now. Let's talk about that.

MR. KLAGHOLZ: Yes. I don't wish to indict the Commissioner -- current Commissioner of Education. Indeed, I think she is fully cooperative of this proceeding, as well as the appearance of staff members. So I have no particular concern in that regard.

SENATOR EWING: No, but I am talking about above the Commissioner that pressure is brought, and has been brought.

MR. KLAGHOLZ: I would hate to see either one of these two staff members disciplined in any way--

SENATOR EWING: Definitely not.

MR. KLAGHOLZ: --and I certainly would be most disappointed if their positions were terminated or eliminated, or in any fashion they were made to suffer for their cooperation here.

SENATOR EWING: Definitely not. They certainly should not be, because we are trying to help the State -- the children in this State.

MR. KLAGHOLZ: Precisely.

SENATOR EWING: That is the main thing.

MR. KLAGHOLZ: Exactly.

SENATOR EWING: And I can't believe any administration would bring reprisals.

MR. KLAGHOLZ: Yes, I don't believe so either.

SENATOR EWING: I think it would be despicable if they did.

MR. KLAGHOLZ: Yes, it would. But because there is always the eventuality, I am pleased that counsel is here.

SENATOR KOSCO: Thank you very much.

I think we are going to get right on with some questioning. The questions we have will be directed to you, and we would-- The person who is asked the question is who I would expect to answer the questions. Okay?

First, I would like you to provide us with a thumbnail sketch of your background and your experience with the State Board of Education, particularly with regard to the handling of contested cases that come before the Board. Have you had occasion to interact with the Attorney General's Office before in contested cases prior to the Lyndhurst case?

MR. KLAGHOLZ: I was appointed to the State Board of Education by Governor Byrne in 1982, and reappointed to a second six-year term by Governor Kean. During-- And I am now finishing my second six-year term. During my time on the State Board of Education, I have served in a number of capacities. I was elected by the Board members to serve as Vice-President of the Board, a position which I held for three years. I was Chairman of the Legal Committee for four years, and after all of which I was elected to serve as President of the State Board, a position which I held for four years.

So that during the almost 12 years -- or 11 years that I have been a member of the Board, I have served in each of the official positions, and most particularly relative to the Legal

Committee activities of the State Board of Education. Those activities are essentially derived from a standing committee of the State Board of Education and for the purpose of receiving a certified record of a matter on appeal to the State Board from a determination of the Commissioner of Education.

The Legislature has empowered the State Board with those quasi-judicial responsibilities, to the extent that all matters or controversies or disputes which are determined by the Commissioner, the losing party has, as a matter of right, an opportunity or a right to appeal the Commissioner's determination to the State Board of Education. In order to procedurally process the number of cases that the State Board will ultimately determine on appeal, the Legal Committee is established and consists typically of five members. But depending on circumstances it may be four, but it is never more than-- It is never a majority of the Board. It is always less than an effective majority.

The Legal Committee primarily reviews the records in the appellate matter, discusses the case, and prepares a recommendation to the full State Board of Education as to what will be the final agency determination, after which any party -- aggrieved party is entitled to appeal to the Appellate Division of the Superior Court.

In the process of fulfilling the duties and responsibilities, the Legal Committee has assigned to it staff members. In particular, two who are here today are both attorneys-at-law and both members of the Bar. In addition, there are additional staff members to provide the support services that they need in order to provide the services that we need.

Annually, the Legal Committee addresses, I suppose on average, between -- and a broad average -- between 70 and 100 cases, which is to say that in terms of my involvement since I

joined the Board, I have participated in the determination of probably between 700 and 850 cases.

SENATOR KOSCO: Can you give me some examples of the Attorney General's role in some of these cases?

MR. KLAGHOLZ: For all of the time that I have participated, there is always a Deputy Attorney General who is assigned to the Legal Committee and that -- to provide assistance in the fulfilling of our role and responsibility. That deputy is always different than the deputy who might represent the Commissioner of Education, for example, and it is never the same deputy that has participation in any other aspect of the case. The deputy's functional role is to independently provide advice and assistance to the Legal Committee during its deliberations. In that sense, I recall having the opportunity to deal with many, many deputies -- Al Ramey, Janie LaVecchia, Gina Murray, Dave Powers (names spelled phonically), and any number of other deputies.

SENATOR KOSCO: Maybe you can tell us how, and in what context the Lyndhurst case came before the State Board, and can tell us what the Legal Committee is and what is its role in cases of this kind?

MR. KLAGHOLZ: Like any other case that comes before us, this matter arose out of a determination of the Commissioner of Education to rescind a discretionary grant which he had previously awarded to Lyndhurst on the basis of an application submitted for that purpose.

Having rescinded the grant, however, the Lyndhurst Board of Education filed an appeal to the State Board contesting the Commissioner's determination to rescind, and additionally contesting the basis on which the rescission was made. That appeal was filed -- or at least notice of the appeal was filed to the State Board in December -- on December 3 of 1991 by a letter that filed the notice.

That brings the matter to us, and then procedurally a variety of things would happen. For example, the Office of the Attorney General would certify the record below, as we say, which then becomes the record on appeal. Briefing schedules will be established so that each party has notice as to when their legal papers have to be filed in support of their appeal and in opposition to the positions stated.

Thereafter, and once the record is certified, it is scheduled for consideration by the Legal Committee, during which a conference will occur to discuss among the Committee members: Firstly, the issues in the case, the legal arguments made by the parties, the sufficiency of the record for purposes of determining the appeal, and to otherwise prepare a recommendation to the State Board.

SENATOR MATHEUSSEN: Through the Chair, if I may just interject.

SENATOR KOSCO: Go right ahead.

SENATOR MATHEUSSEN: The question from the Chairman, and perhaps I am interpreting your answer to be more in a general sense now-- We're not talking specifically about the Lyndhurst case; we are talking about in a general sense this is the way the procedure would work?

MR. KLAGHOLZ: That's correct.

SENATOR MATHEUSSEN: Quite frankly, I wish you would proceed in that fashion just for now, because I myself would like a familiarity with how your Board -- how the Legal Board works as the State Board of Education, and how it interacts with cases on appeal. Not so much just with Lyndhurst, but I want to find out for myself your function with regard to the other cases. Now, you have mentioned that you have been there since 1982 and you served in this capacity for those years. If you could be, in a general sense, telling us what you've done before the Lyndhurst case, because that is really what I am concerned with. Before I can make any decision as to how the

Lyndhurst case has been looked at by your Committee, I would like to know what you have done before.

MR. KLAGHOLZ: Okay, and what I have testified to so far is responsive to that, in that whether it is the Lyndhurst case or the Englewood Cliffs case or Abbott v. Burke or any other case that is before us on an appeal, it all -- every one of them experience exactly the same procedure.

SENATOR MATHEUSSEN: And your testimony was anywhere between 700 and 850 appeal cases you have heard since being there in 1982 -- ballpark?

MR. KLAGHOLZ: I have participated in determination, yes.

SENATOR MATHEUSSEN: Okay. You mentioned a case that certainly strikes home to me and one that's probably been one of the more predominant cases of our State, and that's Abbott v. Burke. Could you give us some detail with regard to the procedure in that case?

MR. KLAGHOLZ: Certainly. Again, the Commissioner of Education rendered a determination. He has primary jurisdiction to hear and determine all controversies and disputes which arise under school law. Any determination of the Commissioner is appealable to the State Board of Education, so that in the Abbott v. Burke case, for example, once the Commissioner rendered his determination, the entire record was then certified to the State Board of Education, which is to say all of the items that comprise the record and on which the Commissioner rendered his determination, are, in essence, packaged and delivered to the Office of the State Board of Appeals.

SENATOR MATHEUSSEN: And by whom are they delivered?

MR. KLAGHOLZ: By the party who has control of the record.

SENATOR MATHEUSSEN: And who is that?

MR. KLAGHOLZ: Well, in some cases it is the Office of the Attorney General. If the specific-- I am not sure in each case who ultimately has the legal responsibility, but the point, nevertheless, is, the record does come to us--

SENATOR MATHEUSSEN: MmmHmm.

MR. KLAGHOLZ: --with a notice of appeal.

SENATOR MATHEUSSEN: And the record is certified by whom?

MR. KLAGHOLZ: If I can-- Can I look for support for that response?

SENATOR MATHEUSSEN: Sure.

MR. KLAGHOLZ: Pursuant to law and regulation, the appeal -- the file is to be certified by the Commissioner of Education. In practice, that does not always happen, and one of the parties to the litigation is the one who physically supplies the documents, or, alternatively, staff member of the legal -- members of the Legal Committee will go to the Division of Controversies and Disputes and secure the record. But important in that record is what we refer to as the, "Statement of Items." That is what it is exactly, a listing of all of the documents or items below. So it finds its way to us. If not in the strictly correct sense, vis-a-vis a certification by the Commissioner of Education, the record does come before the State Board Legal Committee.

SENATOR MATHEUSSEN: And what in Abbott v. Burke-- What specific role did the AG's Office play in that case once the record was certified and came to you?

MR. KLAGHOLZ: Fundamentally to provide advice and assistance to the Legal Committee in formulating its recommendation to the full State Board of Education. In that context, that does not mean, nor has it ever meant, that the Attorney General or the Deputy Attorney General is there to make the decision for the State Board of Education.

SENATOR MATHEUSSEN: Their role is strictly counsel?

MR. KLAGHOLZ: Exactly, and to respond to any legal questions which are put to him or her, and to otherwise avoid participation in the policy discussion or issues which may be relevant in any matter.

SENATOR MATHEUSSEN: In your role with regard to the Legal Committee, was that the activity, and was that the role that the Attorney General played in Abbott v. Burke?

MR. KLAGHOLZ: Yes, in fact, it was. And the DAG in that case would-- Her most difficult role, I suppose, was making certain that the State Board was able to decide the case, but during the conferencing of the case, or the deliberations which led to the determination, not offend the Open Public Meetings Act. And it was her -- it was her advice that, when I was President of the Board, appoint various committees to deal with various aspects of that case, which would allow an interchange and an involvement of the full Board in a deliberative process, and still not offend the Open Public Meetings Act. But we were not instructed by her to -- as to how to decide the case. She was responsive in terms of getting the documents that we needed or otherwise providing advice on the legal issues.

SENATOR MATHEUSSEN: Does the Attorney General's Office in the other cases -- those 700 to 850 other cases -- act in the same way they did in Abbott v. Burke?

MR. KLAGHOLZ: I have not had any experiences which would suggest otherwise. I mean, we--

SENATOR MATHEUSSEN: Is there ever--

MR. KLAGHOLZ: It is not unusual, and particularly for the time that I was a member of the Legal Committee, to engage the deputy in policy discussions in the form of a debate, such as to challenge the discussion and to look for participation that was positive and constructive, all the while silently the reminder existed that we are the ones who must make the decision, and they all respected that.

SENATOR MATHEUSSEN: Sometimes it's a -- as an attorney myself, it is always nice to know that I don't have to make the decision, just give it to counsel.

MR. KLAGHOLZ: It's easier.

SENATOR MATHEUSSEN: Was there ever an occasion where the AG's Office acted as an advocate for one position or the other? In other words, you have to make a decision on the record. Did they ever have to participate as an advocate for one side or the other?

MR. KLAGHOLZ: No. Indeed, that would be contrary to their function, specifically relative to the need for independence. As you can each imagine, the litigants in these cases are all -- all hold the same expectation, and that is that they will-- They are entitled to, and will receive, fairness and due process, and that the issues which they place before us will be treated in such a manner. It would be contrary to the role of an independent counsel to the Legal Committee, as distinguished from the Board itself, to participate as an advocate for one or the other side, because that would be the constructive equivalent of denying the other side his reasonable expectation to fairness. So we did not-- I have not experienced that in a general sense.

SENATOR MATHEUSSEN: Thank you. I have nothing further, Mr. Chairman.

SENATOR KOSCO: Brad?

SENATOR SMITH: Yes. Is there a Chairperson of your Legal Committee?

MR. KLAGHOLZ: Yes, and typically that is the Vice-President of the Board, and currently it is Mr. Woodruff, who is seated behind me.

SENATOR SMITH: Okay. And who are the other members of the Legal Committee, at this point in time?

MR. KLAGHOLZ: Nancy Schaenen, Ron Butcher, Bonnie Green. I am not sure if there are other members.

SENATOR SMITH: Okay.

MR. KLAGHOLZ: I think that's it.

SENATOR SMITH: Fine.

MR. KLAGHOLZ: Jim Jones was a member, but he recently passed away. And Betty Dean was a member, and she has resigned and moved onward. So they're short.

SENATOR SMITH: Okay. All right, you mentioned receiving the record for review and these different cases that come before the Legal Committee, and a statement of items which I guess lists documents and other parts of the record.

MR. KLAGHOLZ: That's correct.

SENATOR SMITH: Could you tell me what typically is involved, or is contained in the record that comes to the Board -- to the Committee?

MR. KLAGHOLZ: Yes, it would be-- And still in the general discussion mode, and none of my--

SENATOR SMITH: Right.

MR. KLAGHOLZ: --comments here just finished relate specifically to Lyndhurst.

SENATOR SMITH: That's right.

MR. KLAGHOLZ: Generally, the record would include the transcripts from the trial below in the Office of Administrative Law. If there has been an Administrative Law hearing, then the record is part of the appeal record. So too are the exceptions which the parties file to any recommendation by the Administrative Law Judge to the Commissioner. Then the Commissioner's decision, and exceptions to that, and then the appellate briefs filed by the parties to the State Board.

SENATOR SMITH: So the record in each particular case can be rather voluminous. Is that accurate?

MR. KLAGHOLZ: Yes.

SENATOR SMITH: Does each member of the Legal Committee get copies of the entire record, or are they just made available to you if you want to look at them?

MR. KLAGHOLZ: It is made available to each member of the Legal Committee, indeed the entire Board, but staff -- our staff attorneys are required to review the record completely and to summarize it and provide, where appropriate, what you might call a bench memo, and the like.

SENATOR SMITH: Okay. So customarily then, the members of the Legal Committee would be reviewing a memo or brief by the Attorney General on staff with respect to each particular case?

MR. KLAGHOLZ: Well, although I am aware of an Executive Order that says, "All attorneys in any agency are really employees of the Attorney General's Office," our staff members -- staff attorneys-- I personally don't consider them Deputy Attorneys General. They are staff attorneys who review the record for us.

SENATOR SMITH: Well, fine, but typically what you as a member of the Legal Committee end up reviewing is the summary that is prepared by the staff. Is that accurate?

MR. KLAGHOLZ: That's correct.

SENATOR SMITH: And then if in reviewing that summary various questions come up about the record that might not be contained in that summary, you -- the legal counsel is there to answer those questions and provide that information to you. Is that accurate?

MR. KLAGHOLZ: That's correct.

SENATOR SMITH: And during your deliberations, is it customary that questions do come up about the record that have to be responded to by the attorneys?

MR. KLAGHOLZ: It is not unusual at all.

SENATOR SMITH: Okay. And have you had good cooperation with that kind of information being provided and having received responsive answers to your questions?

MR. KLAGHOLZ: Yes.

SENATOR KOSCO: Okay?

SENATOR SMITH: That's all. Thank you.

SENATOR KOSCO: Thank you.

SENATOR EWING: I have a couple of questions.

SENATOR KOSCO: Senator Ewing?

SENATOR EWING: John, what did you expect the Attorney General representing the Legal Committee to do in this case?

MR. KLAGHOLZ: Specifically this case?

SENATOR EWING: The Lyndhurst case.

MR. KLAGHOLZ: This case represented, from the very beginning of the appeals process, a troublesome case in that there was not much of a record. There had been no Office of Administrative Law hearing. The Commissioner had, on his own motion, rescinded the grant, and really the record was limited to the application process, which is to say the physical applications and amendments to it filed by Lyndhurst, and some additional documents which evidenced a communications -- a series of communications between the Department and Lyndhurst, the county office of the Superintendent of Schools and Lyndhurst, and back and forth. But there was not a full record. What was lacking -- giving you some of my own thought processes -- was any record which supported or excused the -- what I call the underlying issue, and that is the initial misrepresentation by Lyndhurst, and on the basis of which the Commissioner rescinded the grant.

But, there wasn't anything that existed in the record to -- which would allow us to decide whether or not any additional remedies might be warranted or expected vis-a-vis the misrepresentation by Lyndhurst for the express purpose of inducing the Commissioner to award a million-and-a-half dollars. And the Legal Committee discussions on that issue centered on whether or not the action of Lyndhurst representatives, the Superintendent of Schools and others-- Did that action per se arise to the level of a criminal conspiracy? Was it just a mistake that they misunderstood the

criteria? Did they have a mathematical error and didn't recognize they had already adjusted for the so-called error? Or, was this a deliberate attempt to induce the Commissioner to award a grant on misrepresented grounds?

We have no evidence in the record to say yes or no. It just was not dealt with. What we did have in the record was a motion to dismiss the appeal before us filed by Lyndhurst because an agreement -- a settlement agreement had been reached between the Commissioner and Lyndhurst. So that if the parties had settled their differences by way of a settlement, there was thereafter no appeal, so they would seek to withdraw their appeal and the case, and that would be that.

The problem with that is, under our rules the State Board of Education must view the settlement agreement and approve the settlement agreement before it will grant a motion to dismiss or to dissolve the appeal. We didn't have the settlement in the record, so we couldn't decide whether or not the settlement represented a reasonable settlement which protected the interests of the State, and particularly its children -- or didn't. Thus, we could not allow the appeal to be dismissed until the record did contain that settlement.

It took several letters before we finally got a copy of the settlement, along with some questions as to whether or not the settlement which was actually produced represented the original settlement on which the motion to dismiss was filed. So we then asked for the original settlement so that we could supplement the record sufficient to satisfy those two fundamental questions: Firstly, did the settlement represent the interests of the State; and secondly, but primarily, would we fairly fulfill our fiduciary responsibilities if we -- by failing to address the underlying issue?

We just didn't have a record, though, on which we could make the determination.

SENATOR EWING: Who was your letter to?

MR. KLAGHOLZ: On the settlement? There were several letters.

SENATOR EWING: To who -- or to whom?

MR. KLAGHOLZ: Let me see if I have them.

SENATOR EWING: And what were the dates of them?

MR. KLAGHOLZ: I can tell you that. (pause as Mr. Klagholz looks through his papers) Do you have the documents? (no response) I am looking at my notes.

SENATOR EWING: John, rather than delay it, why don't you report back to the Chairman as to--

MR. KLAGHOLZ: Okay. We can supply those documents. I can tell from my notes that on March 6--

SENATOR KOSCO: Excuse me, John. If we could bring a chair around, we could have Ros come right up here and sit with you. It would-- Bring one of these black chairs around over here, or whatever. Thank you.

MR. KLAGHOLZ: On March 16, Ms. Novack requested copies of the settlement.

SENATOR Ewing: To who?

MR. KLAGHOLZ: Yeah, that's-- I believe the letter was to both the Attorney General's Office and to--

SENATOR EWING: Yeah, but just to the office?

MR. KLAGHOLZ: No. Here it is, Senator. March 16 is to John Agnello (phonetic spelling), who is counsel to Lyndhurst: "Reviewing the records indicates," -- "asking for a copy of the settlement agreement."

On April 22, by letter to Robert DelTufo and John Agnello, over the signature of Robert Woodruff, who is Vice-President and Chairman of the Legal Committee, an additional request for the settlement.

SENATOR MATHEUSSEN: Was the Attorney General's Office provided a copy of the March 16 letter?

MR. KLAGHOLZ: Deputy Attorney General Nancy Kaplan Miller was, yes.

SENATOR MATHEUSSEN: Received a copy of that letter?

MR. KLAGHOLZ: It was forwarded to her; I assume she received it.

SENATOR MATHEUSSEN: Thank you.

MR. KLAGHOLZ: On April 27-- I stayed awake last night and put these documents in exact order, and now for some reason-- I think my kids must have mixed them up on me last night.

SENATOR EWING: You kept them in your own personal possession, I hope?

MR. KLAGHOLZ: Yes, I did. We can supply -- we can supply them.

SENATOR KOSCO: Okay. We can supply them maybe--

SENATOR EWING: What did you expect the AG's Office to do for you?

MR. KLAGHOLZ: In the Lyndhurst matter?

SENATOR EWING: Yeah.

MR. KLAGHOLZ: Assist us in devising a process which would produce the documents that we needed to decide these two issues.

SENATOR EWING: Well, did they do that?

MR. KLAGHOLZ: No.

SENATOR EWING: They did not provide a process?

MR. KLAGHOLZ: No. What happened ultimately -- and speeding through time, if I may a little bit-- The Legal Committee, in July, made a recommendation, or published a recommendation that the next-- Typically the way it works, at the next State Board meeting, the State Board would act on it. That July 15 meeting Legal Committee report contained the recommendation to the State Board that the entire matter be referred to the Attorney General for an investigation and development of these factual records.

However, and not unusually, the parties filed what they call "exceptions" to the Legal Committee report, which, in

essence, is why they support it or why they disagree with the recommendations contained in the report. Both the Attorney General's Office and Lyndhurst filed exceptions to the recommendation of referral to the Attorney General, primarily because they felt that the settlement was legal, appropriate, and proper, and there is no reason to develop a factual record because there is nothing to dispute; that the issue is resolved from their perspective, which is to say, "We've reached settlement."

SENATOR EWING: Well, the AG's Office is the one who said, "This settlement is okay without you people reviewing it, or the State Board."

MR. KLAGHOLZ: That's right. At the following Legal Committee meeting, however, we suggested-- Members of the Legal Committee were discussing that perhaps what should occur is, we would remand the entire matter to the Commissioner, with direction that he refer it to the Office of Administrative Law, and we would have an agency hearing. An Administrative Law Judge would hear the case. But we were advised that that probably wouldn't be productive, because there was no adversity. The parties--

SENATOR MATHEUSSEN: Who advised you that?

MR. KLAGHOLZ: At that time it was the Deputy Attorney General who was working with the State Board on this case at that time -- legal case.

SENATOR MATHEUSSEN: Do you remember his or her name?

MR. KLAGHOLZ: His name is-- I believe it is Robert Stoloff.

SENATOR MATHEUSSEN: Stoloff?

MR. KLAGHOLZ: Stoloff.

SENATOR MATHEUSSEN: And he advised you that there was no--

MR. KLAGHOLZ: Well, at a point-- They crossed over initially. Now in the spring of '92, Doug Derry was the DAG

involved. My recollection is, by June, DAG Stoloff and Derry were involved, and by August of '92, only Mr. Stoloff was involved. My recollection is that Mr. Stoloff's advice was that, "OAL won't hear it, because there are no adverse parties, and you can't force people to litigate a factual issue that there is no disagreement on.

SENATOR MATHEUSSEN: Can I interrupt you just a moment? And I hate to belabor this point, but for my own satisfaction and perhaps for members of the Board -- or maybe I am the only one-- I want to understand procedurally what happens in other cases. I am very interested in what happened in this case, and I know that is why you are here today, and I thank you for that. But I also want to make sure in my own mind that how this case is handled is either the same or differently than what has been done in the past.

So, if you bear with me just one moment-- Would you go back for me and explain-- First of all, is this the first time that you have ever encountered two parties -- two adverse parties -- coming to an agreement, that being the Commissioner's Office, or anyone else coming to you with a settlement agreement before you have had an opportunity to hear the case?

MR. KLAGHOLZ: No, we get settlement agreements many times.

SENATOR MATHEUSSEN: Is that something frequently or--

MR. KLAGHOLZ: No, it's not--

SENATOR KOSCO: I think what he is asking is the procedure. Is it the first time you had this happen before?

MR. KLAGHOLZ: Yeah, it happens not infrequently. Most cases are litigated and on up to the Supreme Court in some cases. But that settlement offer would be submitted-- Particularly in tenure cases, it is not at all unusual. Neither is our response ever different. We must have the settlement agreement before we will consider approving the settlement agreement.

SENATOR MATHEUSSEN: And who normally provides you with the settlement agreement?

MR. KLAGHOLZ: The Appellate.

SENATOR MATHEUSSEN: The Appellate provides that. Okay. And that is the reason why you sent, in this case, to the attorney in the Lyndhurst case asking for the settlement agreement.

MR. KLAGHOLZ: Right.

SENATOR MATHEUSSEN: What role generally does the Attorney-- Not in the Lyndhurst case now, but what role does the Attorney General's Office play with regard to your review of settlements?

MR. KLAGHOLZ: None. Typically, if there is a legal question, the-- I suppose it is fair to say that if any member of the Legal Committee asks the DAG for some opinion, you know, "Can they do this?" there would be a response. But ordinarily, and as a matter of policy, the Legal Committee members would not need assistance. We would look at the settlement, and if, hypothetically, for example, a tenure settlement comes in where the Board agrees to drop the tenure charges and pay the teacher a half-a-million dollars and, "We'll drop the appeal," we would not-- We would say to that, "No deal."

Similarly, where a settlement might offer in return for a termination of the appeal a good recommendation for a teacher who had been accused of child abuse or molestation, we would not appeal that -- we would not accept that, and we wouldn't need advice as to whether we could or should.

So typically, settlements are dealt with by the Legal Committee members.

SENATOR MATHEUSSEN: Who gets you the background information for you to make the decision on whether or not to accept or reject a settlement?

MR. KLAGHOLZ: Ms. Novack would be-- If the settlement does not come to us, that is to say it is not filed

by the parties, then it is her responsibility to get it before the case is scheduled to be considered. And typically, she will give the parties a certain amount of time to produce the document, and its--

SENATOR MATHEUSSEN: How long does that process usually take?

MR. KLAGHOLZ: Usually within a month after they notify us that they have reached a settlement, they will produce the settlement.

SENATOR MATHEUSSEN: Does the AG's Office ever play a role in providing background information in these settlement cases?

MR. KLAGHOLZ: Not necessarily helping, but in protecting the public interest, which is to say if the settlement is submitted, we have to see it before we can protect the public interest.

SENATOR MATHEUSSEN: To make sure that it is in conformance with public policy or in the interest of--

MR. KLAGHOLZ: Yes, exactly.

SENATOR MATHEUSSEN: Going back to what Senator Ewing was addressing, in the spring of 1992, what took place then? It started off in-- Did it start off in March -- March 16 or something like that -- the request for information in the Lyndhurst case?

MR. KLAGHOLZ: Right, to get a copy of the settlement, and then procedurally trying to actually secure the physical document. My involvement as an ad hoc member of the Legal Committee didn't begin until, I believe, either May or June. And in March, and up until that point, the case was really being dealt with from a procedural standpoint -- getting the record, getting the settlement, and so forth.

SENATOR MATHEUSSEN: Why was the Attorney General included, in the beginning of April, requesting the record --

requesting the background information to either -- for you to be able to review the settlement?

MR. KLAGHOLZ: I don't believe I am able to answer that, although certainly Ms. Novack, if you call her, will be able to provide all the details on those staff aspects.

SENATOR MATHEUSSEN: Okay, very good. What was your understanding of the performance of the AG's Office in this particular matter -- in the Lyndhurst case?

MR. KLAGHOLZ: In fairness, I understood, or at least my perception was that the involvement of the AG's Office was to zealously do what they could do to convince us to accept the settlement and to forget about the other issue.

SENATOR MATHEUSSEN: What other issue?

MR. KLAGHOLZ: The underlying issue, which is: Is there any evidence-- It appeared to me that-- If I may digress for just a moment--

SENATOR MATHEUSSEN: Please.

MR. KLAGHOLZ: The exceptions filed by the parties to our July 15 Legal Committee report, one by Lyndhurst, one by the Attorney General's Office, argued strongly in favor of the settlement. But that in reviewing the statement of facts in the Attorney General's exceptions, it seemed to me -- and I am not an attorney -- it seemed to me that the statement of facts itself set forth a rather clear prima facie case of criminal fraud. And the Legal Committee had by that time already spent considerable time discussing, "Is there such a prima facie case of criminal fraud? Did Lyndhurst deliberately misrepresent material facts for the express purpose of inducing the Commissioner to give them a million-and-a-half dollars? If they did, should we ignore that?"

The parties in their exception said, "Yes,"--

SENATOR MATHEUSSEN: Should ignore it?

MR. KLAGHOLZ: --by fair implication they argued so strongly that the settlement was fair and--

SENATOR MATHEUSSEN: Who were the parties at that point?

MR. KLAGHOLZ: It was the Lyndhurst Board of Education and the Attorney General.

SENATOR MATHEUSSEN: So the Attorney General had become a party representing the Commissioner?

MR. KLAGHOLZ: That's right. Exactly.

SENATOR MATHEUSSEN: But was that the same Attorney General who would be handling the review and the production of the background information in order for you to approve or disapprove the settlement, or was that a different DAG?

MR. KLAGHOLZ: No, that would be a different one. But Ms. Novack, again, may have--

SENATOR MATHEUSSEN: So now we have -- to satisfy my own ignorance in this matter -- now we have two AGs, DAGs in this case: One representing the Commissioner vigorously, purporting to say, "This is a good settlement," and one who is supposed to be independently giving you counsel -- based on your prior experience at the DAG's Office -- giving you legal counsel as to whether or not to accept this settlement. Is that correct?

MR. KLAGHOLZ: Yes, that's correct. This August 3 exception filed by the Attorney General in response to our July 15 report was signed by Louis Scheindlin, Deputy Attorney General. There were many deputies involved in this case.

SENATOR MATHEUSSEN: Who was the DAG handling the case on your behalf -- not on the Commissioner's behalf, but on your behalf? Who was the DAG in that case?

MR. KLAGHOLZ: Mr. Stoloff.

SENATOR MATHEUSSEN: In your-- In your interaction with Mr. Stoloff, can you characterize his position? Was it one of counsel or what, if anything, with respect to the settlement?

MR. KLAGHOLZ: No, I don't think it was one of counsel. I think it was one of advocacy. He urged approval of the settlement.

SENATOR MATHEUSSEN: Is that somewhat different than other counsel before, in other settlement agreements that you've reached before?

MR. KLAGHOLZ: In my judgment, yes.

SENATOR MATHEUSSEN: It is somewhat different?

MR. KLAGHOLZ: Vastly different.

SENATOR MATHEUSSEN: Do you feel that he then, in your own experience now, in this 700 or-- I don't know how many settlement cases you've had, but I'm sure there have been--

MR. KLAGHOLZ: Many.

SENATOR MATHEUSSEN: You've said before that there were many.

In your experience, did you feel as though he crossed the line of counsel into advocacy, something that had not happened before, in your experience?

MR. KLAGHOLZ: Yes. It's fair to say that he and I had some, shall I say serious discussions as to what his role was.

SENATOR MATHEUSSEN: What would-- Could you describe those discussions for us?

MR. KLAGHOLZ: Hostile, certainly aggressive.

SENATOR MATHEUSSEN: Hostile on whose part?

MR. KLAGHOLZ: Well, that might depend on who you asked. (laughter)

SENATOR MATHEUSSEN: Okay. Well, I guess I'm asking you.

MR. KLAGHOLZ: Yes. I could not understand, by August -- the latter part of August, our August Legal Committee meeting -- I could not understand why -- why we could not get assistance to find the appropriate mechanism to address the underlying issue. It was in July-- It was by August that we

had received the advice that OAL is bad because the parties aren't adverse. That, well, you could refer it to the AG's office, but the August 3 exception is so strongly in support of the settlement that that appeared to be potentially unproductive.

SENATOR MATHEUSSEN: Who was that August 3rd produced by? Was it your counsel, or was it counsel to the Commissioner?

MR. KLAGHOLZ: No, this is by-- This is by the Commissioner's counsel, Mr. Scheindlin.

SENATOR MATHEUSSEN: And who was that DAG.

MR. KLAGHOLZ: He's the DAG presumably that's arguing on behalf on the Commissioner. It opens: "Please accept this letter brief in lieu of a more formal submission as exceptions on behalf of the Commissioner of Education."

SENATOR MATHEUSSEN: But I'm saying who, specifically? Who was the person? Could you identify the DAG in that case. Who's representing the Commissioner?

MR. KLAGHOLZ: Louis-- Louis Scheindlin. He's the one who signed it in any event.

SENATOR MATHEUSSEN: Okay.

MR. KLAGHOLZ: But in any event, I came up with the-- I had thought long and hard, how do we address the underlying issue given the absence of any appropriate or reasonable mechanism, and suggested that the State Commission of Investigation might be an appropriate body.

SENATOR MATHEUSSEN: Who did you make that suggestion to?

MR. KLAGHOLZ: The Legal Committee. That was at one of our Legal Committee meetings, and ultimately--

SENATOR MATHEUSSEN: Did Mr. Stoloff participate in that discussion as to so far as recommending it to the SCI?

MR. KLAGHOLZ: He participated. My recollection is is that he thought that was unnecessary, and that it would not -- not be a good idea.

SENATOR MATHEUSSEN: How do you know-- How do you know your recollection is that he thought it was unnecessary? What specifically did he do or say to lead you to that conclusion?

MR. KLAGHOLZ: We had had-- We had had several discussions up to that point and afterwards as to whether or not we should just accept the settlement.

SENATOR MATHEUSSEN: Right.

MR. KLAGHOLZ: And that it appeared to me that his--

SENATOR MATHEUSSEN: Now, you're saying we again. Who is we?

MR. KLAGHOLZ: The Legal Committee including Mr. Stoloff, who was present. But it seemed to me that his-- He was zealously guarding the settlement, and was not assisting us, I don't believe. In all fairness to him, I do not believe that he provided any advice beyond, "You should accept the settlement."

Now, I would also say that he, at various times through the summer and on into March and April of '93, presented legal arguments as to why we should do what it is he was suggesting.

SENATOR MATHEUSSEN: How did he present those legal arguments, in written form or in just--

MR. KLAGHOLZ: Well, verbally.

SENATOR MATHEUSSEN: --discussions with the--

MR. KLAGHOLZ: Verbally at a March -- I believe it was March 2 or March 3 -- '93 Legal Committee meeting, when he verbally argued that we didn't have jurisdiction to address the underlying issue; that is to say, if there was a criminal conspiracy, there's nothing we can do about that. If there is a misrepresentation in the civil sense, we could only affirm the Commissioner's decision to rescind the million-and-a-half discretionary grant, but we had no jurisdiction over the million-and-a-half DCA grant there, because we have no

jurisdiction over DCA. Therefore, it would be improper for us to order the Board of Education to return the DCA grant to the State of New Jersey, with which I was in agreement. But I also felt we had no jurisdiction to order Lyndhurst Board to return the DCA grant to the Township of Lyndhurst, with which we disagreed.

We had established, for purposes of resolving the entire issue, what we referred to finally in our report as a proximate cause relationship; that is to say, between the initial misrepresentation on the application and the ultimate receipt of the DCA grant, there was no break in the chain of events.

SENATOR MATHEUSSEN: You discussed in your deliberations regarding this settlement the possibility of criminal wrongdoing or civil wrongdoing on the part of Lyndhurst and others involved. And I assume you-- Well, I don't want to assume anything. Was your counsel involved in that -- Mr. Stoloff -- in those deliberations?

MR. KLAGHOLZ: Yeah, he was present.

SENATOR MATHEUSSEN: It's Mr. Stoloff-- It's your testimony Mr. Stoloff said that it should -- you did not have jurisdiction to not only deliberate, but to come to any conclusions with regard to those findings on your part?

MR. KLAGHOLZ: That's correct.

SENATOR MATHEUSSEN: Did your counsel tell you how they could be resolved if you did not have jurisdiction?

MR. KLAGHOLZ: No.

SENATOR MATHEUSSEN: Your-- The role of counsel then was simply to advocate on behalf of a settlement?

MR. KLAGHOLZ: I-- I-- That's my perception.

SENATOR MATHEUSSEN: Is it my--

MR. KLAGHOLZ: It's not his role. I think that's what happened.

SENATOR MATHEUSSEN: I'm not asking what his role is, I'm asking what specifically he did or did not do?

MR. KLAGHOLZ: He advocated for the-- All through the entire process there was a directed effort to avoid resolving this matter beyond accepting the settlement, or ultimately, beyond limiting the remedy to recovery of the discretionary funds, and to do nothing further.

SENATOR MATHEUSSEN: Do you feel as though you adequately presented to your counsel that you or the Board, or all of you collectively together, had grave concerns about an impropriety or wrongdoing on the part of the initial grant or the settlement?

MR. KLAGHOLZ: On many occasions. In fact, I challenged him that it was my belief that as an officer of the court, he had the duty to point out to us the potential criminal wrongdoing if it existed.

SENATOR MATHEUSSEN: And when you pointed that out to him, what, if anything, was his response?

MR. KLAGHOLZ: We have no jurisdiction over the DCA, nor did we have any jurisdiction over the interagency transfer process, and that even if we did, the interagency transfer process was a lawful process. To which I recall responding that I don't question that. That's not--

The question is whether one can use a lawful -- an otherwise lawful process -- to achieve an unlawful result; that even if the interagency process is valid, could that process be used to extract funds from the Employee Health Benefits Fund, give it to DCA, who would give it to the municipality, who would give it to Lyndhurst so they didn't actually suffer any penalty. They got a million-and-a-half they didn't deserve, and we took it back, and they got it again.

SENATOR MATHEUSSEN: And Mr. Stoloff's response to that question?

MR. KLAGHOLZ: There was no further response. We just don't have jurisdiction. I didn't think we had jurisdiction over DCA either, nor did I think we had jurisdiction over the

interagency transfer process. But we clearly had jurisdiction over the Lyndhurst Board of Education, which extended to disallowing their receipt of funds contrary -- received contrary to statute.

He did not agree, and ultimately there was a letter produced, unsolicited, which embodied that same--

SENATOR MATHEUSSEN: From Mr. Stoloff?

MR. KLAGHOLZ: No, actually this time it was from another Deputy Attorney General, and her name was Marlene Zuberma -- as I'm looking through here -- by letter dated March 16, which is the day before our March 17 Legal Committee meeting at which we would finalize the recommendation to be presented to the State Board. Our recommendation was to be withhold -- affirm the withholding of the DC -- of the discretionary funds; order the -- order the local board to transfer the DCA grant back to the municipality, because that's all we could do; to otherwise express our concern over what, in fact, we ultimately characterized as fraud on the part of Lyndhurst. But this letter was signed by Marlene Zuberma.

SENATOR MATHEUSSEN: Mr. Klagholz, based on your past experience with settlements and the number of years that you've had in that area, contrasting it to the situation that developed in Lyndhurst and the case that was presented before you at that time, your conclusion as to the Attorney General's office's role -- I'm talking about Mr. Stoloff's role now -- was he acting as counsel on behalf of the Board, or was he acting as an advocate on behalf of the settlement?

MR. KLAGHOLZ: Clearly an advocate on behalf of the settlement, or by that time, a limitation in our determination to just the discretionary funds and to nothing else. He had moved from advocate for the settlement to a limited remedy based on jurisdictional issues and was very -- was very zealous.

SENATOR KOSCO: Just-- I have one question. I'm going to get right to that question, and I want to ask you, why did the Board ultimately decide to refer the matter to the SCI, and had this ever been done in the past?

MR. KLAGHOLZ: It had never been done in the past, and the only reason was that we had-- We couldn't think of any other way to develop a factual record that would allow us to decide the entire issue, including the underlying issue. There was no-- It was the Legal Committee's suggestion to go to the SCI only because we didn't know what else to do.

One other suggestion-- I think Mr.-- As it comes to me, Mr. Stoloff recommended that we could ourselves do the investigation. We could hold, for example, oral -- compel oral arguments where we would drag the parties before us and make them answer our questions. But in reality we don't have the skills to do that.

We're-- It's a-- We're a lay board. We certainly don't have investigative skills. We absolutely don't have the legal skills necessary to adduce the kind of testimony and oral argument that would settle the record. So we rejected the oral argument alternative out of hand. We can't do that.

That left either SCI or nothing. We didn't know what else we could do.

SENATOR KOSCO: So the reason that this has never been done in the past is because in the past you never had an inaccurate record, or an inadequate record. You always had the record to back up the information. In this particular case you never did receive it?

MR. KLAGHOLZ: That's right.

SENATOR KOSCO: Senator?

SENATOR EWING: John, you might have told it before, but I -- I guess I missed it. Has the AG representing the Law Committee ever recommended a settlement without you people thoroughly reviewing it, and also going before the State Board?

MR. KLAGHOLZ: No, not to my recollection.

SENATOR EWING: So this would be the first time.

The other question I want to ask is: On the SCI, as I gather, you asked for -- I can't remember the wording, but it was like an informational hearing on it or something, rather than asking for a real investigation. I'm not-- As I understand, there are different ways of asking the SCI. If you ask one way, they subpoena the people. What they did do, they did not subpoena anybody, so they didn't put them under oath or anything, and the people would go, "I don't remember," "I can't recall." or anything like that. So nobody could perjure themselves that way. Why did your Committee ask for such a lukewarm type. Was that at the urging of the AG?

MR. KLAGHOLZ: No, honestly, it was not. We didn't know how to frame a request, because we had never requested the development of a factual record.

SENATOR EWING: Did you ask Scoloff -- Stoloff or whatever?

MR. KLAGHOLZ: Well, he was present while we discussed this.

SENATOR EWING: But he offered no information as to, do you really want to get down to the bottom of this thing, you should ask for this type of investigation? He didn't offer that?

MR. KLAGHOLZ: No, I don't recall that at all.

SENATOR EWING: He really had no interest in the whole thing, did he, whatsoever?

MR. KLAGHOLZ: It appeared to me--

SENATOR EWING: He could care less about the children if he could. Thank you.

SENATOR KOSCO: Yes.

SENATOR SMITH: I'm trying to understand your concern about the record and the request or feel for a need for more information. Now, as I understand it, normally when you

receive cases on appeal, you have a record available to you that was created in front of an administrative law judge. Is that correct?

MR. KLAGHOLZ: That's right.

SENATOR SMITH: And that could involve transcripts of testimony, documents, and other types of evidence I suppose? Is that correct?

MR. KLAGHOLZ: That's correct.

SENATOR SMITH: Now, in this particular case with Lyndhurst, what was being appealed to you was a decision by the Commissioner of Education to take back \$1.5 million? Is that correct?

MR. KLAGHOLZ: That's right.

SENATOR SMITH: And that appeal was coming to you from Lyndhurst--

MR. KLAGHOLZ: That's--

SENATOR SMITH: --saying, you know, "Overrule this decision and give us the money back." Is that correct?

MR. KLAGHOLZ: That's right.

SENATOR SMITH: So when that appeal came to you, there was no record before an administrative law judge that gave you the details with respect to the background of the case? Is that right?

MR. KLAGHOLZ: Exactly.

SENATOR SMITH: So you felt, in essence, there was a large gap here as compared to what you normally had in front of you when you were viewing an appeal?

MR. KLAGHOLZ: That's right. Although, we did have the application; we did have the budgets; we did have the revised A-4-F form; we did have communications between copies of letters between Lyndhurst and the county superintendent. It was not-- The record was certainly not vast nor even big, but it was not devoid of some facts, and on the basis of which the appearance of misrepresentation was evident.

SENATOR SMITH: Okay, but you-- And because of that you felt you needed to know more detail? Is that accurate?

MR. KLAGHOLZ: That's correct.

SENATOR SMITH: And your search for more detail led at one point, apparently, where it was suggested that this be referred to an administrative law judge to gather more information?

MR. KLAGHOLZ: Right.

SENATOR SMITH: And what was the recommendation with respect to that approach?

MR. KLAGHOLZ: It would probably not be productive because the parties were -- had no adverse interests at that time, and what would they litigate.

SENATOR SMITH: And whose recommendation was that?

MR. KLAGHOLZ: Well, it was my recommendation, as I recall, to remand. But the advice or -- which probably is fairly good advice, was that -- was from Mr. Stoloff -- that if you do that, it's just not going to -- it's not going to be productive, which is true.

SENATOR SMITH: So basically, it was Mr. Stoloff that recommended that an administrative law judge hearing would not be productive as far as finding the facts?

MR. KLAGHOLZ: That's right. He expressed the opinion that you can't force these two sides to litigate for the development of a record when they don't disagree in the first place.

SENATOR SMITH: All right. When did Mr. Stoloff first get involved in this? He's not one of your staff attorneys?

MR. KLAGHOLZ: No, he's not.

SENATOR SMITH: He was someone specially assigned.

MR. KLAGHOLZ: My recollection is June of '92, but I am not clear on that.

SENATOR SMITH: What was the status of the case when he became involved?

MR. KLAGHOLZ: I'm unable to answer that, Senator. But Ms. Novack may, very well. She was-- I was asked to participate in the Legal Committee at a time which was after the matter had been appealed. So I wasn't involved in the case from its very inception in the Legal Committee.

SENATOR SMITH: Okay. So while this appeal was pending before the Legal Committee, at some point in time there was suddenly a recommendation that a settlement had been reached and this Committee should consider that settlement?

MR. KLAGHOLZ: That's-- That's right.

SENATOR SMITH: Had you dealt-- You, at that point in time, really hadn't found a way to discover the facts that you wanted to discover? Is that correct?

MR. KLAGHOLZ: That's right.

SENATOR SMITH: So before you had all the facts, apparently you are faced with a recommendation that the case be settled? Is that accurate?

MR. KLAGHOLZ: That's correct.

SENATOR SMITH: And that recommendation came from who?

MR. KLAGHOLZ: From-- From Mr. Stoloff. And may I interject that -- and I've said it before, again -- is that I have no personal animus or malice towards Mr. Stoloff at all. In fact, if I were in need of private counsel, I would very likely seek to retain him. The issues here, however, were on whose behalf was he advocating? Was he seeking to assist the Board in resolving what we had announced was a very troubling issue, and did his experience before us produce any substantive help in determining how to secure the record or have one developed, and to otherwise address, if not dispose of, but at least address the underlying issue. And either because he misunderstood the issue that we were arguing, or for some other reason felt that jurisdictional issues stood in the way and that we should firstly approve the settlement, and secondly limit our remedy to -- our determination to the discretionary grant and not the DCA grant or any part of that.

SENATOR SMITH: Well, my point is, while you were considering this appeal by Lyndhurst, there was a recommendation made by Stoloff or the Attorney General's office that a settlement had been reached, and that this should be approved?

MR. KLAGHOLZ: Well, if not a direct recommendation that was certainly the implication. It was the position of the Attorney General's office on behalf of the Commissioner. I don't recall him ever saying, "I recommend you approve the settlement." But whether we approved the settlement or would wasn't the issue until firstly we had the settlement.

SENATOR SMITH: Well was the Board aware -- or your Legal Committee aware that while you were considering this appeal, negotiations apparently were going on to settle the case?

MR. KLAGHOLZ: We knew that there were discussions ongoing to settle it. But that didn't-- That's not relevant until we first see what it is. What is the settlement?

SENATOR SMITH: Right. And-- All right.

MR. KLAGHOLZ: Bearing in mind that we have before us an active appeal that the parties want dismissed because they've reached a settlement. Okay, it's an easy matter. What's the settlement? Let me take a look at it.

SENATOR SMITH: Now you--

MR. KLAGHOLZ: If we take a look at it and agree with it, we'll dismiss the appeal.

SENATOR SMITH: You mentioned there were some written information given to you in support of confirming the settlement. Is that correct?

MR. KLAGHOLZ: Confirming it?

SENATOR SMITH: And I think you testified information -- factual information given to you by the Attorney General's office which you thought indicated that there was some criminal involvement.

MR. KLAGHOLZ: Yes. Well, specifically it was the statement of facts in the August 3, '92 exceptions filed by the Attorney General's office, which I can make available to you. It's a matter of public record anyway.

SENATOR SMITH: Their exceptions to what?

MR. KLAGHOLZ: Our Legal Committee report of July 15.

SENATOR SMITH: And that report indicated what?

MR. KLAGHOLZ: That we would-- I better not guess. I'll just get it right here.

It said in effect that we can't ignore the questions that have been raised by published reports concerning the source of the grant money; that we found that we would recommend that because of the Attorney General's responsibility to ensure protection of the public interest, resolutions of the questions relating to the propriety of the dispersments of those moneys could be best effectuated by the Attorney General. Given the nature of our jurisdiction and our fiduciary responsibility to the citizens of New Jersey, we would refer those questions to the Attorney General for investigation and resolution.

To which the Attorney General responded that settlement in this matter is legal, reasonable and appropriate, and fully consistent with past practice of the Department of Education, and compelled by the Commissioner's responsibility.

SENATOR MATHEUSSEN: Which Attorney General?

MR. KLAGHOLZ: Well, this is the Louis Scheindlin, August 3 response.

SENATOR MATHEUSSEN: That's the Commissioner's--

MR. KLAGHOLZ: That's the Commissioner's representative.

SENATOR SMITH: But that response contained some factual information, which again led you to believe that there may have been criminal conduct?

MR. KLAGHOLZ: That's right.

SENATOR SMITH: All right. When you approached Mr. Stoloff and asked him what could be done about the apparent criminal misconduct, his response was that nothing could be done? The Board had no jurisdiction?

MR. KLAGHOLZ: Well, and my recollection may be faulty, so to some extent I'm--

SENATOR SMITH: Well, I'm not asking you for -- to quote anybody, but just your understanding of it.

MR. KLAGHOLZ: We didn't have a record on which to reliably approach the underlying issue. The only issue that we had before us was the settlement, and by then, particularly, the arguments of the parties in favor of settlement. And it was my impression, at least, that his-- If he had the decision to make, he would have approved the settlement and thought we should.

SENATOR SMITH: All right. In the 700 to 850 cases that you've reviewed before, have you ever come across the situation where you thought that there may have been criminal conduct involved?

MR. KLAGHOLZ: I'm sure.

SENATOR SMITH: And in those kind of situations, what do you ordinarily do?

MR. KLAGHOLZ: We would refer the matter. I'm-- What comes to mind is a teacher or a principal, who was lifting some money out of the student activity account.

And did we-- (conferring with associate)

I'm not sure if we referred that to the local prosecutor. Yeah, sometimes we refer to the local prosecutor or inform the Division.

SENATOR SMITH: Okay. Thank you.

SENATOR KOSCO: Thank you. Before I ask the question about why did you ultimately decide to go to the SCI, my question, just to follow up on that is, whose idea was it when you finally made the decision?

MR. KLAGHOLZ: To go to the SCI?

SENATOR KOSCO: Yeah.

MR. KLAGHOLZ: I believe I recommended that.

SENATOR KOSCO: It came from the Board?

MR. KLAGHOLZ: Yes.

SENATOR KOSCO: And what was the feeling from the AG's office? What was their attitude towards that?

MR. KLAGHOLZ: I don't think they thought that was such a good idea.

SENATOR KOSCO: Did they give you a reason?

MR. KLAGHOLZ: This was the August meeting, and at the same meeting we were reviewing the August 3 exceptions, and the parties wanted settlement, which may in itself have been fine, except that it didn't address the underlying issue, and that still is the issue which has yet to have been addressed by anybody or any agency. There is no record on that.

Well, I shouldn't say that. The SCI did comment on it, but then attached a letter -- a cover letter -- where they presented the rather gratuitous remark that Lyndhurst misrepresented, but didn't mean to, or words to that effect, which-- You know, it just didn't resolve the issue.

SENATOR KOSCO: And what transpired when the SCI report-- When you received that report what happened?

MR. KLAGHOLZ: We received it, and then the Legal Committee-- We received it in January of '93, and the Legal Committee considered the effect of the report, which itself presented some procedural problems. If we adopt the findings as our own-- Or, should the parties be given an opportunity to present arguments for or against that, should they be permitted the opportunity to contest denial of due process because they didn't cross-examine witnesses and the like-- Ultimately we just-- We just adopted their findings as our own, and together with the record which already existed, gave us sufficient opportunity and grounds to order the return of the DCA money.

SENATOR KOSCO: Did the Attorney General's office take a position on that -- on that report?

MR. KLAGHOLZ: I don't recall, specifically, whether -- whether he did on that or not. But the SCI report was useful to the Legal Committee for purposes of ultimately recommending that the second grant, the DCA grant, be ordered returned. And it's -- that then became the new issue, if you will, where Mr. Stoloff's position was we had no jurisdiction over that agency -- DCA -- therefore we had no jurisdiction over their funds, therefore we had no jurisdiction over the return of those funds.

SENATOR KOSCO: At that time did you have any concern about the performance of the Attorney General in this particular -- in this case?

MR. KLAGHOLZ: About the what? I'm sorry, sir.

SENATOR KOSCO: The Attorney General's office.

MR. KLAGHOLZ: Yeah, I didn't hear the whole question.

SENATOR KOSCO: At that time that you -- that this position was taken, did you have any concern about the performance of the Attorney General's office?

MR. KLAGHOLZ: Well, I was hopeful that-- Yes. The answer is, yes.

SENATOR KOSCO: You had some--

SENATOR MATHEUSSEN: What was your concern?

MR. KLAGHOLZ: I tried to avoid saying-- I felt, and speaking just for myself rather than for the Legal Committee, I felt that we must be on two parallel trains of thought that would never intersect, that the legal papers prevented -- presented a compelling underlying issue, as did the SCI report, and that to allow Lyndhurst to profit by its own wrongdoing vis-a-vis the DCA grant surely was not acceptable to anyone, no matter what the jurisdictional issues were. If there is some jurisdictional problem, how do we resolve that?

We concluded, largely on our own, that the way we do that is to-- And I'm not suggesting we contrived a resolution. But our-- We concluded our jurisdiction rested in the education statutes which preclude a Board from receiving funds from a municipality except for specified purposes and which must be spent for those purposes in the year in which it was received. And the facts supported the conclusion that Lyndhurst did not comply with that, thus we had jurisdiction.

SENATOR MATHEUSSEN: Did you express that concern to Mr. Stoloff or any other member of the DAG's office?

MR. KLAGHOLZ: Yes, many times.

SENATOR MATHEUSSEN: And what was their response?

MR. KLAGHOLZ: Well, we had some serious disagreement as to whether or not the statute said that, and whether or not even if it did, that was sufficient to allow the remedy. In fact, it's the principle issue in the March 16 AG's letter to us, that we were misinterpreting the statute.

The problem, however, with that is that it is the State Board that is empowered by the Legislature to decide these cases, and the higher level courts have found that we are -- that includes, necessarily, the right to interpret the law, so that-- Which is a long way of saying, we're the ones who make the decision, not the Attorney General.

SENATOR MATHEUSSEN: Did you ever confront Mr. Stoloff and ask specifically, or address specifically, your concerns about who he was representing in this case?

MR. KLAGHOLZ: I believe at one time I may have questioned him as to who it is he was representing.

SENATOR MATHEUSSEN: And what, if anything, was his response?

MR. KLAGHOLZ: He resented my comment.

SENATOR MATHEUSSEN: What led you up to the point of having to ask that?

MR. KLAGHOLZ: I was growing weary of continually reciting the facts in the factual record, and that -- and trying to rehash the need to address, if not resolve, the underlying issue. And we would get into these discussions, "The record says this." And, "Well, the record doesn't say that, the record says this. Here's the document." That type of thing. So we had a push and shove match.

SENATOR MATHEUSSEN: I have, I guess, perhaps in one concluding question; and that is, do you feel as though you had a disagreement -- you've made that very clear that you did. Did you feel as though you were being prevented to get to the underlying issue by anyone, including Mr. Stoloff?

MR. KLAGHOLZ: We never got to the underlying issue.

SENATOR MATHEUSSEN: Did you feel as though you were being prevented to getting to that?

MR. KLAGHOLZ: Yes.

SENATOR MATHEUSSEN: And were you specifically centered on that on Mr. Stoloff?

MR. KLAGHOLZ: He's-- Yes, he's the only one there. And I may very well need to confess an equal vigor in terms of not allowing the appearance of criminal conduct to persist, as he was vigorous in seeing to it that we complied with the law as he interpreted it. That's what I mean by the-- I mean, I would have hated to leave this case with the thought that, "Geez, we see some criminal conduct, but hey, we don't have jurisdiction so the hell with it."

SENATOR MATHEUSSEN: What was the basis for your rejection?

MR. KLAGHOLZ: It's unfair. It violates our fiduciary responsibilities; it violates the public trust; that the record in this case manifests the attitude that's-- "What's wrong with it? So we gave them a million-and-a-half bucks and used this big mechanism. What's the big deal?"

SENATOR MATHEUSSEN: And did your counsel agree or disagree with your ultimate findings?

MR. KLAGHOLZ: He disagreed with our ultimate findings as published in our final State Board decision. But by that time, it didn't matter.

SENATOR MATHEUSSEN: Thank you.

SENATOR KOSCO: I think I have some final questions, possibly, and-- Were you subsequently interviewed by the Criminal Justice about the Lyndhurst case?

MR. KLAGHOLZ: Yes, I was.

SENATOR KOSCO: And did you advise them of your concerns?

MR. KLAGHOLZ: Well, it was more of a deposition, so I didn't have an opportunity to do anything except answer their questions. But the interview did not -- certainly was not as probing as this has been.

SENATOR KOSCO: Did you provide them with anything else -- notes or any writings that might have contained some--

MR. KLAGHOLZ: Well, I did have my file, and they did ask for a copy of some handwritten notes that I had made following a discussion with Ms. Novack, and relative to advice that Mr. Stoloff was giving her to give to us.

SENATOR KOSCO: Okay.

Do you have a question?

SENATOR SMITH: Mr. Klagholz, would it be fair to say that you felt that if you had accepted Mr. Stoloff's recommendations with respect to accepting the settlement that you would, by doing that, in effect be abrogating your responsibility and violating the public trust?

MR. KLAGHOLZ: Absolutely.

SENATOR SMITH: And is it also fair to say that throughout this whole incident with respect to Lyndhurst, you would -- you had the feeling that you were being stonewalled with respect to getting to the bottom of this case, the underlying issue?

MR. KLAGHOLZ: Yes. In fact, we still have not gotten to the bottom of it.

SENATOR SMITH: And in this instance that stonewall was in effect the Attorney General's office?

MR. KLAGHOLZ: That may be more broad than I would characterize it. Certainly--

SENATOR SMITH: Let me say-- Let me say, then, that stonewall was, in effect, the specific Attorney General that was handling the matter and with whom you were dealing.

MR. KLAGHOLZ: I would say, yes, with one qualification, and that-- This is the confession that I offered earlier that, on an issue such as this I'm, I suppose, like a pit bull. I'm just not going to let go. And a need-- Because I can't let go. I mean, it would violate my oath of office.

I'm not sure that Mr. Stoloff had the same sensitivity to my oath of office as I had to my oath of office, and that clearly there we conflicted in that regard. But it is nevertheless my perception that this case took far, far too long to conclude, and -- and largely because the arguments presented were in favor of the settlement firstly, and then limitation to -- limiting our authority to the discretionary grant or anything else.

It just took-- It just took way too long.

SENATOR SMITH: Mr. Klagholz, just for purposes of my clarification, your line of work, or your business, or your professional background is what?

MR. KLAGHOLZ: Insurance.

SENATOR SMITH: Insurance?

MR. KLAGHOLZ: I'm an independent insurance agent.

SENATOR SMITH: Well, let me commend you for your sense of justice and your sense of what is right and what is wrong, and remind you that the people you're dealing with have legal training and legal background. And I think you exercised some very good judgment with respect to your questions and the pursuit that you followed here in getting to the underlying issue. You're to be commended for that.

MR. KLAGHOLZ: Thank you, Senator.

SENATOR KOSCO: Thank you. I would suggest that you stay right there, and we'll discuss some things with Ros Novack now.

Roslyne, I'd like you to-- You have been employed with--

ROSLYNNE G. NOVACK, ESQ.: I'm an employee of the Department of Education. The State Board does not have any employees; it can't.

SENATOR KOSCO: And your capacity?

MS. NOVACK: I'm assigned to the State Board, and I have been since 1984, when I was hired. I have a unique reporting relationship within the Department. Myself and this -- the Appeals Office staff, the four of us that work in the Appeals Office -- are the only people within the Department that take the direction with respect to our substantive work from the Board itself, although we administratively report to the hierarchy within the Department. So it's split authority, but the-- Because the State Board hears appeals from determinations by the Commissioner of Education there's a split, substantively, to maintain the integrity of the decision-making process within the agency, with the objective that when a decision is made and leaves the agency, it is the best and most legally proper decision that could be made because it's had a bi-level review, and the review of the State Board has been independent.

SENATOR KOSCO: Thank you. And you've been--

MS. NOVACK: And also, for those interested in the background, before the budget constraints in New Jersey made us not do this, we used to do an annual report. And this one has our staff, our functions, our organizational chart as it was in the book the last time they ever did it, and summary of our activities for that year in that year. So I offer that to you at your leisure.

SENATOR KOSCO: And your experience in contested cases is pretty -- pretty deep then, and long?

MS. NOVACK: Yes. I was-- I've been there since 1984, and so if you subtract the-- The Board makes generally-- Seventy would have been a low year. Since I've been there it's been around a hundred to a hundred-and-twenty determinations, counting motions. And the appeals generally are from determinations made by the Bureau of Controversies and Disputes in contested cases, but also any determination of the Commissioner. Any determination of the Commissioner is appealable to the State Board of Education, so that they hear direct appeals from, like the Division of Finance, if there is a determination made on the Commissioner's behalf.

SENATOR KOSCO: What was your specific role and your assignment in the Lyndhurst case?

MS. NOVACK: As it is in any case, I am the staff person for the Board. I'm responsible for managing the Appeals Office, and that means that I'm responsible for making sure that the regulations are complied with by the parties, and that the papers move through the State Board and can be -- the record can be provided -- made available to the Board members. I obtain the record. I make sure it's sufficient. I look over all the papers. I make sure the notice letters go out, etc., etc., etc. And I'm liaison with the Attorney General's office.

SENATOR KOSCO: And as a staff attorney, did you attend the August 1992 Legal Committee meeting?

MS. NOVACK: Yes.

SENATOR KOSCO: And was there a suggestion at that meeting that the Lyndhurst case be referred to the SCI?

MS. NOVACK: Yes.

SENATOR KOSCO: What was the response of the Attorney General's office at that time.

MS. NOVACK: Well, at that point, as I remember the discussion at that meeting, the Committee members wanted it to go to the SCI because by that point, in the first document -- in the first Legal Committee report -- as the document shows,

they had recommended sending the underlying appeal to OAL, and the unanswered questions to the Attorney General's office. Since that hadn't been enthusiastically received, by the August meeting when they came in, the idea was around to send it to the SCI. That came out of the Committee members, and my recollection is that the concerns were the independence of the -- that there be an investigation to find out what happened, and that it be done by a body that was just not interested.

SENATOR KOSCO: So Stoloff proposed that the investigation be done by the Attorney General's office?

MS. NOVACK: At that point he said that he-- Yeah, he changed his position because earlier he had not felt that this was something that the -- that he did not feel that they should refer the matter to the AG's office in the--

SENATOR KOSCO: Why do you think he flip-flopped on that issue?

MS. NOVACK: I-- He definitely didn't want it to go to the SCI. He said to me at various times that the SCI did not-- This was not the kind of case that the SCI handled, that this was not the kind of thing of interest to that -- you know, that was appropriate to them.

SENATOR KOSCO: So the Attorney General's office did not want this to go to the SCI?

MS. NOVACK: I can't say that. All I can say is that--

SENATOR KOSCO: In this particular--

MS. NOVACK: --Bob Stoloff was very clear that he did not think that should occur.

SENATOR KOSCO: Okay. The Legal Committee thereafter decided to refer the matter to the SCI, and did you subsequently receive a phone call from the Attorney General's office, from Stoloff about this matter?

MS. NOVACK: Yeah, at the end of August. As part of my job I have to do the -- I do the writing. I develop the written documents, and after the Legal Committee report had

been reviewed in light of the exceptions, and they had decided to change the recommendation that they were going to make to the full Board that had to be embodied in a draft decision. And that was my job was to develop that.

SENATOR KOSCO: What did he request?

MS. NOVACK: Pardon?

SENATOR KOSCO: What was his request?

MS. NOVACK: I don't understand.

SENATOR KOSCO: When he called you, what was his request?

MS. NOVACK: Oh, well-- Can I take you through the sequence?

SENATOR KOSCO: Sure.

MS. NOVACK: I developed the document, provided it to the Attorney General's office as we always do for their review to see if it's legally defensible, and in return, I got a fax back from him with some suggestions or comments. At that point I called Bob Woodruff and John to see what I should do about it, and then made contact with Stoloff. And he was-- He called me on a -- I think it was a Friday afternoon, and it was, as I recall -- and he wanted me-- At that point he wanted me to take the item-- The notice letters had gone out to the parties; it was on the agenda for the State Board meeting for decision. And the draft decision had been out and he wanted me to take it off the agenda, because he wanted the opportunity to speak to--

SENATOR KOSCO: To take what off the agenda?

MS. NOVACK: The case.

SENATOR KOSCO: Sending it to the SCI?

MS. NOVACK: No, he wanted the case-- The Board had not acted yet.

SENATOR KOSCO: Okay.

MS. NOVACK: The State Board had not decided. This was at the point at which--

SENATOR KOSCO: He wanted it taken off the agenda completely?

MS. NOVACK: Yes.

If I'm not being clear what I'm telling you, stop me--

SENATOR KOSCO: MmmHm.

MS. NOVACK: --and I'll go back over it.

SENATOR KOSCO: Was this request proper? I mean, is that a proper request to be made from the--

MS. NOVACK: I had never had such a request before. Generally, the relationship I have with the DAGs is very, very collegial as with -- you know as with the -- we're, we're-- It's a team effort to get cases decided legally, properly, in a good -- you know, in a good quality kind of way. If something is to be taken off the agenda list, generally that would occur because I saw a problem and called up the chairperson of the Legal Committee, and that's, that's-- If it was in that status, it would stay on the agenda until the public meeting, at which point the chairperson would announce that it was being withdrawn and give the reason why.

SENATOR KOSCO: Why do you think he took it off the agenda, or he requested it.

MS. NOVACK: He said that he wanted to talk to the Board members -- all of the Board members, not just the Legal Committee -- and he said that he had had a meeting with his people the day before, that they had met and that he wanted to talk to them, to the full Board. And again, I think it was in that conversation that he-- I mean, I had a lot of phone conversations with him over time. I think it may have been then that he said that -- you know, reiterated -- this wasn't the kind of case they should have, that the amount of money-- You know, it was--

SENATOR KOSCO: Did this upset you, that you received this--

MS. NOVACK: I was extremely upset, and wound up being-- If he had been my superior, I guess it would have been insubordinate. But at that point I immediately called John Klagholz. I called Bob Woodruff first and couldn't get him, and then called John Klagholz, because I was very, very upset. And I had told Bob Stoloff that he should call -- you know, call Bob or John. You know, I wasn't going to-- I could not take it off the agenda, and I wasn't going to deal with this any further. And from that point on, I tried to keep myself out of the middle.

SENATOR KOSCO: Thank you.

Does anyone have any questions?

SENATOR EWING: Yes, I do.

SENATOR KOSCO: Senator?

SENATOR EWING: Ms. Novack, you mentioned something, "amount of money." You said, Stoloff--

MS. NOVACK: Yeah, I think--

SENATOR EWING: In the conversations you said something did, in fact, and then you said, "amount of money."

MS. NOVACK: Well, early on -- and this is-- I'm trying-- It's real hard because they're different meetings and different phone conversations. But John was focused on the idea that the Lyndhurst Board of Education, we didn't-- You know, we didn't know the individual people or what had actually happened in terms of -- aside from rescinding the grant, you know, aside from getting the money back to the Department, whether there had been wrongdoing. He was very concerned with wrongdoing on the part of, you know, who, but the actors-- And at this point we didn't even know who the actors were, fully, because there was no real record.

So he was very concerned about that, and I think it was in that context that Criminal Justice came up -- the idea of, you know, that if we referred it to the AG's office, the Criminal Justice would be involved. I remember Stoloff saying

to me not -- I thought it was at a meeting, but maybe it was in a phone conversation -- that a million-and-a-half was just not a lot of money, and that it was not--

SENATOR EWING: He said that?

MS. NOVACK: Yeah, yeah.

SENATOR MATHEUSSEN: What, what-- I'm sorry. What did you just say?

I'm sorry, Senator. I--

SENATOR EWING: Evidently he said to her that a million-and-a-half is not very much money.

SENATOR MATHEUSSEN: Mr. Stoloff said to you that a million-and-a-half is not very much money?

MS. NOVACK: I don't think he said it wasn't a lot of money, but in terms of the kinds of investigation -- the things Criminal Justice is interested in, this wasn't of the magnitude. It wasn't--

SENATOR EWING: We'll have to ask the AG what his dollar limit is.

SENATOR MATHEUSSEN: Yeah, I'm only not acting surprised, I'm acting totally amazed.

SENATOR EWING: I'm shocked by it. Taxpayers money--

SENATOR MATHEUSSEN: Those were his words?

SENATOR KOSCO: Thank you.

Senator Smith?

SENATOR SMITH: I want to go back to a question I was asking before and couldn't get a response to it. When did Mr. Stoloff get involved with this case and the Board, do you know?

MS. NOVACK: Okay. Procedurally, and as John told you, we handle all our cases the same. We have regulations, and we're real anal retentive. This case came in -- the appeal was filed in the same month, I think it was. A phone call came into the office by-- I didn't take the call. It was the appellant. Agnello called in and said that they had settled the case, and he was told, as anybody would be if they called,

that when you want to withdraw an appeal on the basis of a settlement, you must submit 17 copies of the settlement agreement, and it has to be reviewed and approved by the State Board of Education. And that's what led us to the -- trying to get all those letters, you know, the letters to try and get the document itself.

At that point in time it was a-- It wasn't even a docketed case. It hadn't even entered a briefing schedule. The problem was to get it in some kind of posture, and having the parties filing things to get it before the Legal Committee. Without the settlement agreement and without the file, there's no way that I can present this thing to the State Board -- get it to them so that they can consider it and dispose of it.

To make a long story short, our regular deputy tried to facilitate us getting the settlement document, which then placed him in a position where he could no longer advise the Board on the particular case.

SENATOR SMITH: Can I--

MS. NOVACK: And we got assigned Doug Derry, who is--

SENATOR SMITH: Well, wait. Explain that, would you?

MS. NOVACK: What do you mean?

SENATOR SMITH: Why your regular Attorney General couldn't handle this.

MS. NOVACK: Our Deputy?

SENATOR SMITH: Yeah.

MS. NOVACK: We have a Deputy who is regularly assigned and that I work with, and the Board works with--

SENATOR SMITH: All right.

MS. NOVACK: --on a regular basis, and he is currently David Powers, and he generally-- He is available to the Board to give advice on any of their cases, okay.

SENATOR SMITH: Right.

MS. NOVACK: In that context, at a Legal Committee meeting where they were discussing -- the Committee was discussing the problem of getting the settlement document -- he was helpful in facilitating getting that document, because the appellant was not providing it. And the Deputy Attorney General who was -- had been representing the Commissioner had left the Department of Law. So we were kind of floating around there trying to get a document, and you have an appellant who won't provide it, and you don't have anybody on the Attorney General's side that's staffing this. So he facilitated that. Having done that, he then could not advise the Board on the case.

So he facilitated us getting, as they always do--

SENATOR SMITH: Was that his opinion that he couldn't advise them on the case, having--

MS. NOVACK: You'd have to ask him, but it's my recollection.

SENATOR SMITH: --tried to get the document.

MS. NOVACK: I mean, that would normally be what occurred, because he arranged for us to have another Deputy assigned, and that was Doug Derry, who's the Senior Deputy who is under the supervision of Bob Stoloff. And we started off with Doug Derry.

SENATOR SMITH: Okay.

MS. NOVACK: Okay? At that point in time you're up to June. You're up to the first Legal Committee report that contained those various recommendations.

Doug advised the Board through, I guess in the summer, and then there was a meeting at which he brought Bob Stoloff and introduced him to the Committee, and then there was the shift in who was representing. But that's basically how it was structured.

SENATOR SMITH: Well, what was the Committee considering at that point in time, the settlement agreement?

MS. NOVACK: Yes, because it was the time period from June to July was where they determined to develop the Legal Committee report mailed in July that recommended rejecting the settlement, sending it to OAL, and sending the rest of any unanswered questions over to the Attorney General's office.

SENATOR SMITH: So the Committee recommended rejecting the settlement, and then it was at that point in time that Mr. Stoloff came into the picture?

MS. NOVACK: Well he was supervising Doug Derry before that. And I'm not real clear. It had to be-- I thought it was-- I thought it was the July meeting, but maybe it was the June meeting where Doug was going to be on vacation and he brought Bob Stoloff over to introduce him. But he was the supervisor, and in a case of this type it's not -- it's not-- I mean, it wasn't out of the norm at all for -- for, you know-- It's just a chain of command.

SENATOR SMITH: Okay. I'm just trying to understand when he got actively involved.

MS. NOVACK: Yeah, I know. It gets a little--

SENATOR SMITH: And it was Mr. Stoloff that made the telephone call in August and requested that this subject come off the agenda?

MS. NOVACK: Yeah, by that-- Yeah. And at that point from there on after, he's the-- It's directly-- Bob Stoloff, directly, was the person who was advising the Board on this case.

SENATOR SMITH: Okay. Now you had stated earlier that when he called you and requested that it come off the agenda he said, "He had talked to his people, and that he wanted to discuss this with the Board?"

MS. NOVACK: Yeah. He said that they had met on the day before, which I think was Thursday. There had been a meeting, and that he wanted the opportunity to speak to the Board.

SENATOR SMITH: Do you know who that meeting was with?

MS. NOVACK: No.

SENATOR SMITH: Someone in the Attorney General's office I assume, where he said, "His people"?

MS. NOVACK: I would-- I would-- I would think that would be a safe assumption, but, you know, that's not something that was within my purview.

SENATOR SMITH: Okay. Was there any way in which this case was handled which was different than your experience in handling other cases?

MS. NOVACK: Ah, yeah.

SENATOR SMITH: And in what respect?

MS. NOVACK: Well, from the very -- from the very beginning. I'm not real comfortable with having to do this, but since I'm here, I'll go ahead.

SENATOR SMITH: Well, I think you're doing fine.

MS. NOVACK: When the appeal was filed, and I've tried to explain the structure to you so that you know, and as John said, there is a regulation that says the Commissioner certifies the record. But in the real world, we have to go-- Most of our cases come from the Bureau of Controversies and Disputes, and at that point in time, we would go get a file. And that would have been an OAL file; it would have been a regular file coming out of a controverted case.

SENATOR SMITH: Right, with a record.

MS. NOVACK: With a record.

We also get appeals. Like if-- The Division of Finance is what comes to mind, because there are certain statutes that the Commissioner acts -- where the file and the proceedings are at the Division of Finance. And we call downstairs to that Division and we get a record. I instruct them or somebody on my staff tells them, "There's been an appeal from a determination made by the Commissioner," and we explain to them what a record is, and we tell them to provide

us with the file containing all the documents upon which the Commissioner relied in making the determination on appeal, and if there are any internal memos or whatever. And we suggest, sometimes, that they get in touch with the Attorney General's office if they need help in ascertaining which things belong in a record or don't, okay. So we facilitate that coming up to our office.

In this case the appeal was not from anything that had been structurally handled within the Department in the Division, but we needed the file in a clerical sense to open the appeal. From the day that it came in, the person who actually does that came to me, and the problem was to find a file so we could open the appeal. And I think we--

Those files were all in John Ellis' office, and I went back there and went with his secretary and saw that -- saw the file. And it was clear to me that there were a lot of things in there that weren't things that would ultimately be in a record. And through the course of events, we facilitated getting the file -- I think, through his secretary -- over to the Deputy Attorney General who was representing the Commissioner, and it was her task to establish the record.

And we usually do not-- We don't get statements of items. I mean, that isn't-- We'd love it, but we don't. We usually just get a file thrown at us. But in this particular case it went over there, and ultimately we got that the Deputy worked out with the Commissioner, and that was their thing, and certified the record to us with a statement of items comprising the record.

SENATOR SMITH: So the record basically didn't come through the channels to which you were accustomed?

MS. NOVACK: No, no. No, and it was more-- Even in-- I mean, I know some cases where the Division -- because you're talking about divisions that are not adjudicative at all, they may call and if there's staffing available, they'll

get help from the Attorney General's office in like, "Should this memo be in here or shouldn't it," you know, or some kind of help like that. But this was different from the beginning than any matter that had come through the Board in lots of ways.

SENATOR SMITH: Was there anything else that comes to mind that you felt was somewhat different in this case than in other cases?

MS. NOVACK: The file disappeared twice.

SENATOR SMITH: What do you mean?

MS. NOVACK: We couldn't find it. I mean, I-- Ultimately the record -- the file that we have in my office -- and again, I mean, you're going different levels of staff. John's level of detail is not-- I'm in day-to-day operations, but the person who actually did that would have more knowledge about where the -- you know--. I just know that we wound up having to get Xeroxed copies of the documents that were the statement of items comprising the record and recreating our file, because it disappeared.

SENATOR SMITH: And that was-- You had to recreate the file two times.

MS. NOVACK: I know we had to recreate it one time. The first time, I don't remember at what point that was.

SENATOR SMITH: And that's not the usual course of events, apparently?

MS. NOVACK: We're-- It can happen, but we-- We're real careful. We're real careful. And then after that point, that file was kept in somebody's office. It was secured.

SENATOR SMITH: It was kept where?

MS. NOVACK: It was kept in one of the staff people's office from that point on.

SENATOR SMITH: So that it wouldn't disappear again?

MS. NOVACK: Yeah. I mean, well, to make sure it didn't. Because if a file disappears, we'd be in trouble.

SENATOR SMITH: Right. Anything else that was different or unusual about this particular case that you can recall?

MS. NOVACK: It was unusual that we didn't-- The way the settlement -- that we couldn't get the settlement agreements. It was unusual that the appellant, usually they send it to us.

SENATOR SMITH: Right.

MS. NOVACK: I mean I really was not-- I didn't -- wasn't expecting this to go the route that it did. The appellant just wasn't cooperating at all, and we weren't getting it facilitated at all. I mean, it just-- It was very, very difficult to get to the point where I had 17 copies of a settlement agreement. And when I got the agreement, the copy that we provided to the Board, the first copy was totally unexecuted, and I had knowledge that there had been an original document that the Deputy Attorney General representing the Commissioner had signed and had faxed off to Mr. Agnello, and that document was the one I was expecting to get, but we did not get that one.

SENATOR SMITH: What was that document?

MS. NOVACK: That was the original settlement agreement--

SENATOR SMITH: Oh.

MS. NOVACK: --that we, that we didn't-- We didn't get that one. We got something else later. So it was-- That's not-- Usually things are more professional than that.

SENATOR SMITH: How about with respect to Mr. Stoloff's performance? Anything unusual about that, that you could--?

MS. NOVACK: Yeah, I-- As I characterized the relationship, I am liaison to the AG's office on behalf of the Board, and--

SENATOR SMITH: I'm sorry, you're dropping your voice, and I'm having trouble hearing.

MS. NOVACK: I'm sorry. I perform a liaison function and work-- It's a team, a very colleagueial effort. I do not give advice -- legal advice -- to the State Board of Education, but I do provide support. And that includes, you know, doing research and talking things through and giving support to the Deputy, if that's what's required. And being a -- you know, between the Board members and the Deputy, facilitating communication that way.

That generally has worked very well, even where we all don't agree. Generally what happens is the Deputy and the attorneys -- the staff attorney, myself, and the Deputy -- talk a case through, go over-- We spot legal issues. We make sure all the research is done, etc., etc. It's as a team. And then we get to the Legal Committee-- The legal parameters of what the Board's decision-making can be are pretty clear. You know, if there are any problems, we can bring them to the Committee members.

That is not what occurred in this case at all. It was very-- I guess adversarial is the way I would characterize the way he was towards me.

SENATOR SMITH: In other words, instead of working as a team and working together to provide the information and get the matter resolved, you felt there was an adversarial relationship between you and Mr. Stoloff?

MS. NOVACK: Yes.

SENATOR SMITH: Is there anything that specifically sticks out in your mind that causes you to feel that way?

MS. NOVACK: Well, there were-- I got to the point-- I mean, we did have a number of conversations, and I got to the point where I told Bob Woodruff and John, both, that I wasn't -- I couldn't be in the middle. I mean, it's a sensitive-- When you're an employee of a department, and, you know, you're

not-- You know, I am a lawyer, even though I'm not functioning in the capacity of giving legal advice, so the thing we have in common with the AG's office and the Deputy is to make sure our body, the Board, makes decisions that are consistent with law; that we try and enable them. That's a common interest, to fulfill their obligations to the public. And so it's a split, you know. That's usually the way things work.

In this instance-- But it is a delicate balance sometimes. And in this instance, I got to the point where I felt that I was being bullied to such a degree that my -- that I couldn't speak anymore. I could not have any input. I just couldn't--

SENATOR SMITH: You could not do what you normally did?

MS. NOVACK: Yeah. And the example I'll give you of that is the statutes that John referred to that apply when a district board of education receives money from a municipality. It's a normal part of my function, those were the statutes that we identified, and I provide statutes to them, you know, whatever they need -- cases, whatever.

SENATOR SMITH: Right.

MS. NOVACK: And generally the Deputy will go through -- we'll talk, I mean, as colleagues. We will generally read the statute-- "Oh, you found the statute. Oh, this means this, this means that." In this case he told me-- We were at a meeting, a Committee meeting, and he was interpreting the statute. You know, he just would-- It was basically, "Get lost," you know. He didn't want to see these statutes; he didn't want to hear from me.

SENATOR KOSCO: He is who?

MS. NOVACK: Bob Stoloff.

So it was not a pleasant interaction.

SENATOR SMITH: Thank you.

SENATOR KOSCO: Okay, thank you.

SENATOR EWING: Ms. Novack, this Stoloff, is he still working with you in the Department?

MS. NOVACK: He was not-- He's not normally an education director. He's an Assistant Attorney General who, I think, is general-- He never-- He was not in the education section. He-- We-- He's--

SENATOR EWING: He was just assigned for this particular--

MS. NOVACK: For this particular case, yes. Yeah. And I had not worked with him before.

SENATOR EWING: Okay. Another question I wanted to ask you: You talked about the conversation you had with Stoloff where he asked you to take this particular item off the agenda for the meeting. Were there other times where pressure was brought by him or others from the Attorney General's office regarding this whole matter, and if so, what sort of form was it, the pressure, put on you?

MS. NOVACK: Well, ultimately, every time-- I mean, from that time on, every time he called me, I either called Bob or John, and ultimately just referred him. I said to Bob Stoloff, just-- He was directly dealing with Bob. I just--

SENATOR KOSCO: Bob Woodruff?

MS. NOVACK: Yeah, Bob Woodruff. I just wasn't-- I couldn't function as I normally did. It wasn't a good relationship.

SENATOR EWING: It was not in the best interests of what was trying to be accomplished for the citizens of this State.

MS. NOVACK: That's a conclusion. I mean, in my little terms, I could not function how I normally do with the Deputy or the Assistant AG. I know that, and I have to reiterate -- and I'll say it, just like John did -- I have nothing-- You know, I really don't-- I'm not real thrilled about being here to say things about somebody else, and talk

about this. It's not something I'm happy about. And I don't have any personal animosity against Bob Stoloff, and as a matter of fact, he got me so mad, with the statutes when he said that -- about the jurisdiction under the education statutes and the factual record that when I did the draft -- developed the draft decision with the Committee, at the end-- I mean, I take pride in that document. I think they did a hell of a job, and I'd say I was almost going to send a thank you note to Bob Stoloff, because when he got me so angry that I worked a lot harder in the detail end than I normally would have, even.

SENATOR EWING: On the missing files: Where are they normally kept, or why would they be missing? Can you reason why?

MS. NOVACK: No. We've had some files-- We usually don't lose our files. I can't comment on that at all.

SENATOR EWING: You don't use your files?

MS. NOVACK: We don't usually lose them.

SENATOR EWING: No.

MS. NOVACK: They're usually in our file drawer.

SENATOR EWING: Well who's under-- Under who's jurisdiction are they? You said they're in the Commissioner's office when you saw them.

MS. NOVACK: No, no. By this time -- the one that's sticking in my mind is the second loss, I do remember. I have a very clear memory of that because we finally needed to get to the file, and I think it was to put-- To-- The matter had been sitting there for a while, and we hadn't looked at the file for a while, and we needed to-- It was again becoming active in terms of getting a document in, or putting something on the Legal Committee agenda, and we went to get the file. A person from my staff went to get the file and it wasn't there. And they looked all over, and it never did-- It just didn't turn up.

SENATOR EWING: Well, was it normal to keep the files in the Commissioner's office?

MS. NOVACK: No, this file was in our-- At this point in time that I'm talking about, it would have been, normally, in our files.

SENATOR EWING: And it was gone, but it had been there previously?

MS. NOVACK: I think so, yes. Yes, because I had worked with it. We had opened the appeal, you know.

SENATOR EWING: Don't you have locked files?

MS. NOVACK: And we had received the record from the Deputy Attorney General. Our files are not locked. We don't have security--

SENATOR EWING: I think maybe from now on you should.

Ms. Novack, I think we certainly appreciate, today, your having the courage to come forward and be so explicit and forthcoming, because you do have the interest of the people at heart, and that's why you're here, and that's why you've been so excellent. I find it fascinating, and so glad that the pressure has not been brought on you previously, maybe, to be sick today, or something like that.

MS. NOVACK: Um-- I was-- I-- No comment.

SENATOR EWING: But really, I think it's-- You should be thoroughly commended for the job you've done.

And I'd just like to read a letter regarding to-- I want to ask John a question, still.

On March 16, I wrote to the Attorney General, and I said: "It has come to my attention that there might be some pressure being brought on members of the Department of Education Law Committee by representatives of the Attorney General's office regarding discussions on the Lyndhurst education situation, which is being discussed by this Committee.

"My understanding is that there appears to be an effort by your Department to downplay the accusations being brought by the State Board of Education Law Committee regarding

the receipt and use of the one-and-one-half million dollars which came from the Department of Education's discretionary fund.

"I'd appreciate your advising me as to exactly what the situation is, and that there will be no undue influence on the members of the Law Committee to play down any facts which are relevant to the investigation."

And that was on March 16. On March 24, I got a letter back from -- signed by the General: "Dear Senator Ewing, I have your letter of March 16, 1993. My Department is nonpartisan, nonpolitical, and serves as attorney, through the Division of Law, for the various agencies of State government. We give legal advice to our clients, pure and simple.

"Career professionals have been advising the State Board of Education, including its Legal Committee, as they legally advise all other agencies of the government."

And I'd like to say, John-- Asking you, John, do you feel they were following those precepts that the General feels so strongly about in his Department, although he's no longer there?

MR. KLAGHOLZ: If they felt that, the manifestation, at least as I perceived it, was different.

SENATOR EWING: Thank you.

SENATOR KOSCO: Thank you. Anyone have any other questions? (no response)

Is Robert Woodward-- Do you have anything you can add to what's already been said?

ROBERT A. WOODRUFF: My name is Bob Woodruff.

I think, very little. I think that John and Ros have given you a very, very clear picture of what went on. There were a couple things that I did want to mention, maybe to clear up a little bit.

No one on the State Board or the Legal Committee did request counsel today. I would agree with John that I think

it's helpful to our staff, but that was not our idea. From the time we got the invitation to appear before you, we intended to come and speak and answer your questions, whatever you did, without the help of counsel. That was our feeling. Again, I don't object in any way if it's going to help our staff.

Secondly, you may wonder why John was so much involved in this -- John Klagholz -- not normally being a member of the Legal Committee. But I think we did describe how the legal cases are assigned to the various members of the Legal Committee. A person on the Committee is assigned a specific case which he or she will sort of shepherd through the discussions in the Legal Committee meeting, maybe write up the report and present to the State Board for its vote, one way or the other.

We do occasionally bring in someone from the Board to assist us if the cases are particularly down that particular person's line of expertise, or if we need additional help. John was asked to come in on this. He had served, as he mentioned before, for some time as a member of the Legal Committee. He had been on the Board for a long time, is very astute on legal matters, and that's why he was given the direction of this case through the Legal Committee.

I think the other questions have been pretty much answered. There was a question-- I think, Senator Matheussen, you had brought up before about how does the Legal Committee study the cases? Is it a summary that's prepared by our staff members when we receive it? And I think there was a little confusion there. We do not get a summary of these cases from our staff. We get the record, and I think that's been brought up from down below, which includes the OAL's decision, the Commissioner's decision, the briefing. We don't always get the transcripts unless we ask for them, but all the Legal Committee

members, as do all State Board members, get all of this information, and we hash it over. And then we talk with our staff and with the Deputy Attorney General.

SENATOR MATHEUSSEN: Mr. Wood, I have one question. It is-- The Attorney General's office, as far as structure is concerned, the Assistant Attorney General is someone who generally has -- is higher in rank than a DAG. Mr. Stoloff, had he been participating in any way, shape, or form with respect to the Board before the Lyndhurst case?

MR. WOODRUFF: No.

SENATOR MATHEUSSEN: And has he done anything since the Lyndhurst case?

MR. WOODRUFF: No. He was assigned just for that case.

SENATOR MATHEUSSEN: Thank you.

SENATOR KOSCO: Okay. Thank you.

I'm going to, at this point, just make a couple of comments, and we will then close this hearing.

First, I want to tell you that I'm very disappointed and shocked that some of our members, at the advice of Senator Lynch were told not to appear here today, because I believe the information that's gathered here today is important to the people of the State of New Jersey, and I think they deserve the right to know exactly what's happening.

Secondly, I want to point out that what I said at the beginning of this hearing is absolutely true. Senator Don DiFrancesco and this Committee and myself have committed to watch exactly what is taking -- may take place with the treatment of those people who have testified here today. And if we see anything that is improper or not the way it is supposed to be, we will be right there, right along with you, to help, and to do whatever has to be done. And that's a commitment from the Senate and this Committee.

I want to thank everyone for being here. It was certainly an informative hearing, and I think that we'll go