

1

2

COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC MEETING

4

BEFORE THE COMMITTEE ON APPROPRIATIONS

5

- - -

6

Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, December 2, 1997
9:45 a.m.

7

8

- - -

9

BILL 970709 - Authorizing transfers in
appropriations for FY 1997 from the General Fund,
the Grants Revenue Fund, Director of Finance.

10

11

BILL 970710 - Authorizing transfers in
appropriations for FY 1997 within the Aviation
Fund.

12

13

BILL 970711 - Authorizing transfers in
appropriations for FY 1998 within the General
Fund.

14

15

BILL 970741 - Authorizing transfers in
appropriations for FY 1998 within the General
Fund.

16

17

18

19

20

21

22

23

24

25

PRESENT:

COUNCILWOMAN JOAN L. KRAJEWSKI, Chair
COUNCILMAN MICHAEL A. NUTTER, Vice Chair

COUNCILWOMAN AUGUSTA A. CLARK
COUNCILMAN W. THACHER LONGSTRETH
COUNCILMAN RICHARD T. MARIANO
COUNCILWOMAN DONNA REED MILLER
COUNCILWOMAN ANNA C. VERNA
COUNCILMAN ANGEL ORTIZ

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

VINCENT VARALLO ASSOCIATES, INC.
Registered Professional Reporters
Eleven Penn Center Plaza, Suite 600
Philadelphia, PA 19103
(215) 561-2220

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

BILLS 970709, 970710	PAGE
Dean Kaplan, Budget Director, City of Philadelphia-----	4
Thomas J. Nestell, Deputy Commissioner, Philadelphia Police Department-----	10
Thomas Costello, Commissioner, Department of Prisons, City of Philadelphia-----	17
BILLS 970711, 970741	
Dean Kaplan, Budget Director, City of Philadelphia-----	24
Carlton Johnson, Chief Deputy City Solicitor, Civil Rights Litigation, Law Department-----	33
Joseph DiPrimio, Esq., Court Administrator, First Judicial District of Pennsylvania-----	40
Josephine Mangano, Director, Administrative Services, Recreation Department-----	72
- - -	
Public Meeting-----	76
- - -	

1

2 CHAIRWOMAN KRAJEWSKI: Good morning.

3 Thank you for waiting. The Committee on

4 Appropriations is now in session.

5 Will the clerk please read the

6 bills.

7 THE CLERK: Bill No. 970709, an

8 Ordinance authorizing transfers and appropriations

9 for Fiscal Year 1997 from the General Fund from

10 certain or all city offices, departments, boards and

11 commissions, and from the Grants Revenue Fund,

12 Director of Finance, Provision for Other Grants, to

13 the General Fund certain or all city offices,

14 departments, boards and commissions.

15 Bill NO. 970710, an Ordinance

16 authorizing transfers in appropriations for Fiscal

17 Year 1997 within the Aviation Fund from certain or

18 all city offices, departments, boards and

19 commissions, to certain or all city offices,

20 departments, boards and commissions.

21 Bill No. 970711, an Ordinance

22 authorizing transfers in appropriations for Fiscal

23 Year 1998 within the General Fund from certain or

24 all city offices, departments, boards and

25 commissions, to certain or all city offices,

1 BILLS 970709, 970710

2 departments, boards and commissions.

3 And Bill No. 970741, an Ordinance
4 authorizing transfers of appropriations for Fiscal
5 Year 1997 within the General Fund from certain or
6 all city offices, departments, boards and
7 commissions, to certain or all city offices,
8 departments, boards and commissions.

9 CHAIRWOMAN KRAJEWSKI: Thank you.

10 We will first take testimony on Bill
11 No. 970709 and Bill 970710. These are
12 fiscal-year-end transfers.

13 Mr. Kaplan.

14 MR. DEAN KAPLAN: Thank you. Good
15 morning, Councilwoman Krajewski and members of the
16 Appropriations Committee. I am Dean Kaplan, the
17 city's Budget Director.

18 Bills No. 970709 and 970710 are
19 required for the FY '97 year-end closing of the
20 financial records of the city.

21 As you know, once each fiscal year
22 ends, the Finance Department's accounting bureau
23 closes the books on the year's financial
24 transactions and begins to compile the annual report
25 of the city covering that fiscal year.

1 BILLS 970709, 970710

2 In that process the accounting bureau
3 identifies reconciliations which need to take place
4 between the transactions to be reported in the
5 financial report and appropriations for each
6 department included in the city's operating budget
7 as adopted by Council.

8 We then prepare the ordinances before
9 you today, which match up those two sets of
10 numbers.

11 Bill No. 970709, first ordinance, is
12 the Fiscal Year 1997 year-end transfer ordinance
13 which is for the city's General Fund.

14 I have attached an exhibit to my
15 formal testimony which details the 73 transfers in
16 this ordinance.

17 The unusually high number of
18 transfers in this year's closing ordinance is
19 largely the result of the implementation of the
20 city's new labor agreements.

21 And as you will recall, the city
22 traditionally does not budget in advance in each
23 department for labor agreements which will be
24 negotiated in the following year.

25 And that has necessitated a variety

1 BILLS 970709, 970710

2 of transfers between departments to reconcile those
3 numbers at the year end.

4 Approximately \$38 million of
5 unbudgeted labor costs were incurred in FY '97. And
6 most of those transfers are related to covering
7 those costs in the departments which incurred them.

8 Again, while the Administration's
9 target budget process anticipated all these costs,
10 they were not necessarily in the classes or in the
11 departments where they needed to be to fund the
12 labor agreements.

13 Bill No. 970710 is the Fiscal Year
14 1997 year-end transfer ordinance for the Aviation
15 Fund.

16 This bill requests a transfer of
17 \$450,000 to fund increased personnel costs
18 associated with the Fraternal Order of Police
19 interest arbitration award within the Aviation
20 Fund's police department budget.

21 In summary, I respectfully request
22 that the committee favorably consider both of these
23 bills. And I also request a suspension of the Rules
24 to permit consideration of these ordinances on first
25 reading at the next City Council session.

1 BILLS 970709, 970710

2 Obviously I would be happy to answer
3 your questions. And there are numerous
4 representatives of the Administration here to answer
5 specific questions about departments' adjustments.

6 CHAIRWOMAN KRAJEWSKI: The police
7 department is requesting an increase of \$18.6
8 million in Class 100.

9 What caused the shortfall in FY '97
10 appropriations?

11 MR. KAPLAN: The largest reason for
12 the police department change is involved with the
13 arbitration award.

14 As you will recall, the arbitration
15 award involved about \$18 million in -- to resolve a
16 variety of grievances between the city and the FOP
17 as a one-time payment. And that's where the
18 majority of their budget shortfall came for the
19 year.

20 In addition, however, there was a
21 separate award which reimbursed people who entered
22 the Police Academy just before that.

23 The FY 1992 police arbitration award
24 would have been paid as if they would have come in
25 under the new pay scale.

1 BILLS 970709, 970710

2 And eventually a grievance was
3 resolved, costing the city about \$2 million to
4 provide back pay for those recruits.

5 In addition, there are a variety of
6 lump-sum payments which totaled -- regular time and
7 overtime -- which totaled about \$7.5 million.

8 Again, as members of Council are
9 aware, because of the structure of the city's
10 retirement plan, frequently after a pay increase
11 goes into effect, members of the Fraternal Order of
12 Police will retire shortly thereafter.

13 So we saw a very high peak in
14 retirements in July, August, and September of last
15 year.

16 In addition, we have seen a steady
17 increase in costs of overtime, regular time in the
18 department. And we have begun to take a look at
19 that in the current year.

20 We are talking to the courts
21 specifically about the costs that have risen with
22 the opening of the new Criminal Justice Center, as
23 uniformed officers are required to come to Center
24 City to testify in trials; rather than the previous
25 method, where they were out in the districts, and

1 BILLS 970709, 970710

2 could stay on patrol and then come in when their
3 case was heard.

4 The Mayor recently met with members
5 of the Court's administrative governing board. And
6 we are involved in beginning discussions to see
7 where we may be able to try to keep as many officers
8 as possible in the districts, which should reduce
9 that overtime.

10 CHAIRWOMAN KRAJEWSKI: Thank you.

11 Are there any other questions from
12 members of the committee?

13 COUNCILMAN NUTTER: Yes, Madam
14 Chair.

15 CHAIRWOMAN KRAJEWSKI: Councilman
16 Nutter and then Councilman Mariano.

17 COUNCILMAN NUTTER: Thank you.

18 Mr. Kaplan, let's go back to the
19 police area.

20 In the testimony that was forwarded
21 to us the other day, there is a line in the
22 testimony that reads, "However, they were hired at
23 the salary rate agreed to in the July 1993
24 contract," these are apparently the officers who
25 were hired in March of '93, "which was lower than

1 BILLS 970709, 970710

2 the current salary rate as of March of 1993."

3 Could you explain to me how you would
4 hire someone in March of 1993, but give them a
5 salary as of July of '93 contract? How do you do
6 that?

7 MR. KAPLAN: I am going to ask
8 representatives of the police department to answer
9 that specifically.

10 However, I believe that Deputy
11 Commissioner Nestell is here. Although, remember
12 that recruits are paid at a different level than
13 full-time officers once they leave the Academy.

14 COUNCILMAN NUTTER: I understand.

15 DEPUTY COMMISSIONER THOMAS J.

16 NESTELL: Good morning, Councilwoman Krajewski and
17 members of the Appropriations Committee.

18 COUNCILMAN NUTTER: Good morning.

19 DEPUTY COMMISSIONER NESTELL:
20 Councilman Nutter, in response to your question, at
21 the time that those officers were hired, the
22 negotiations were going on, there was a new rate
23 being set for recruit officers.

24 An agreement was made that they would
25 be hired under the assumption that that new rate

1 BILLS 970709, 970710

2 would be won in the arbitration award.

3 COUNCILMAN NUTTER: An agreement
4 between who, Deputy Commissioner?

5 DEPUTY COMMISSIONER NESTELL: The
6 original agreement, to my recollection, was between
7 the city and the FOP administration at that time.
8 Now, what happened is, the FOP administration
9 changed.

10 Each officer signed a statement
11 saying they were being hired at the lower rate.
12 However, when the FOP administration changed, the
13 new administration filed a grievance concerning
14 that, and the arbitrator ruled in favor of the FOP.

15 COUNCILMAN NUTTER: Well, did anyone
16 have any concern that you were negotiating a rate
17 for someone that had not formally been agreed to?

18 I mean, why wouldn't you just sign
19 them up at the rate that was in effect at that
20 time?

21 DEPUTY COMMISSIONER NESTELL: All I
22 can say to that is that the thoughts were, at that
23 time, that this was going to be the rate, it would
24 be the rate in the contract, as opposed to delaying
25 the hiring of the class until the contract was

1 BILLS 970709, 970710

2 awarded.

3 MR. KAPLAN: Through negotiations it
4 was agreed that we would hire them at the new rate,
5 but hire them sooner.

6 The city has also traditionally taken
7 the position that when it negotiates --

8 COUNCILMAN NUTTER: Can you bring the
9 microphone a little closer.

10 MR. KAPLAN: The city has also
11 traditionally taken the position that when it
12 negotiates an agreement with union leadership, that
13 it is in fact binding subsequently, as well. And
14 obviously to do otherwise would be extremely
15 difficult. We would have to constantly speculate as
16 to what changes might or might not occur.

17 I think that there was no question
18 that at the time we had to assume that an agreement
19 which was signed by the then FOP leadership was
20 binding.

21 And obviously in the -- that when
22 that administration changed and the subsequent
23 leadership filed a grievance, you know, that
24 obviously changed the situation.

25 But it would be difficult for us to

1 BILLS 970709, 970710

2 take that position in all cases.

3 As you know, in the case of the
4 AFSCME agreement in 1996, we similarly had a change
5 in leadership.

6 And although the new union leadership
7 talked about attempting to renegotiate that
8 agreement, in fact the Administration took the
9 position that the leadership in place at the time
10 was duly authorized to make that agreement, and in
11 fact that is the one that stood.

12 COUNCILMAN NUTTER: If you could
13 forward to the members of the committee, through the
14 Chair, a copy of the arbitrator's ruling, I would be
15 interested in reading that.

16 Secondly, in the same testimony it is
17 stated that, "Additionally, lump sum employee
18 separation payments of \$1.7 million were higher than
19 expected, overtime for sworn officers was \$4.8
20 million higher than expected, and regular time for
21 sworn officers was \$947,600 higher than expected."

22 The part that comes out at me in that
23 statement was the regular time for sworn officers
24 being higher than projected.

25 That intrigued me, since we know how

1 BILLS 970709, 970710

2 many officers we have, we know how many hours they
3 work, we know what their regular time is.

4 I understand that we might not always
5 be able to anticipate overtime and lump-sum
6 separation payments. But how do we miscalculate the
7 number of hours for regular sworn officers?

8 DEPUTY COMMISSIONER NESTELL:
9 Councilman, my recollection on that is, there was a
10 3 percent raise in that year, which we had not
11 projected that there was going to be a raise,
12 through the arbitration. So that accounted for a
13 good portion of that.

14 And some of the other money, I
15 believe, is related to -- no, it wouldn't be related
16 to the holiday.

17 I believe that the majority of it is
18 related to the raise that was awarded through the
19 negotiations, that we had not projected that that
20 would be in the regular salary.

21 However, when they did get the raise,
22 then, of course, we had to pay it. And it wasn't in
23 our original projection.

24 COUNCILMAN NUTTER: All right. Thank
25 you.

1 BILLS 970709, 970710

2 CHAIRWOMAN KRAJEWSKI: Councilman
3 Mariano.

4 COUNCILMAN MARIANO: Mr. Kaplan, you
5 stated to Councilman Nutter 4.8 million higher than
6 expected for police overtime.

7 And before when you gave your
8 statement, you talked about, now that the district
9 courts are pretty much done away with, and everybody
10 is down here in this Criminal Justice Center, if we
11 do away with the preliminary hearings, how much
12 could we save there? Do you have any ballpark
13 figure on that?

14 Because I don't know how much of that
15 is actually court time.

16 DEPUTY COMMISSIONER NESTELL:
17 Councilman, I believe it would run into somewhere
18 between 1 and 2 million dollars if the preliminary
19 hearings were done away with.

20 COUNCILMAN MARIANO: So we could save
21 maybe close to 2 million without preliminary
22 hearings?

23 DEPUTY COMMISSIONER NESTELL: Yes.

24 COUNCILMAN MARIANO: Let's do it.

25 Thank you.

1 BILLS 970709, 970710

2 CHAIRWOMAN KRAJEWSKI: Any other
3 questions?

4 COUNCILWOMAN VERNA: Yes.

5 CHAIRWOMAN KRAJEWSKI: Councilwoman
6 Verna.

7 COUNCILWOMAN VERNA: Mr. Kaplan, can
8 you give us an explanation for the personnel
9 services for the Department of Human Services and
10 Philadelphia Prisons? It is \$2,868,000, and the
11 purchase of services is \$1,495,000.

12 MR. KAPLAN: Yes, I can.
13 Commissioner Costello is here and will respond, as
14 well. However, let me work backwards.

15 The Class 200 increase, as well as
16 the Class 100 increase, are both related to the
17 unusually high prison population we experienced in
18 the early part of the fiscal year.

19 Although the average for the year was
20 only about a hundred inmates over the projected
21 average, the budgeted average, of about 5600, there
22 was a spike to about 5900 in the August and
23 September period in 1996.

24 One of the two things we did to deal
25 with that was, continue to house inmates out of

1 BILLS 970709, 970710

2 county, with contracts with Luzerne and Carbon
3 County. And that is the reason for the Class 200
4 variance of about one and a half million dollars.

5 We no longer, to my knowledge -- and
6 the Commissioner can verify this -- to my knowledge,
7 we no longer house inmates out of county, in part
8 because of those high costs. And we have managed
9 since that time to manage our population to avoid
10 doing that.

11 The Class 100 costs are similarly
12 related to the overtime that was necessary to handle
13 the additional prisoners and to have them have the
14 prison population be as high as 5900, to have
15 additional areas of the prisons opened and to cover
16 those costs during the spike, and then the
17 average -- slight population over average through
18 the year.

19 COMMISSIONER COSTELLO: Good morning,
20 Councilwoman Krajewski, members of the
21 Appropriations Committee.

22 In response to the question,
23 Councilwoman --

24 COUNCILWOMAN KRAJEWSKI: State your
25 name for the record.

1 BILLS 970709, 970710

2 COMMISSIONER THOMAS COSTELLO: Tom
3 Costello, Commissioner of Prisons.

4 That is correct, we are no longer
5 housing inmates out of county. Those costs were
6 incurred during that fiscal year.

7 And basically what Mr. Kaplan says is
8 the rationale that we used in incurring those extra
9 costs during that year.

10 COUNCILWOMAN VERNA: And can you give
11 us an explanation about the purchase of services
12 over a million dollars, please?

13 MR. KAPLAN: I believe the purchase
14 of services is the out of county. We use purchase
15 of services Class 200 to pay Carbon and Luzerne
16 Counties for the cost of housing the out-of-county
17 prisoners.

18 COUNCILWOMAN VERNA: Over a million
19 dollars?

20 MR. KAPLAN: Yes. It is extremely
21 expensive.

22 COMMISSIONER COSTELLO: The cost is
23 \$60 per day, per inmate, Councilwoman. \$60 per day,
24 per inmate out of county.

25 COUNCILWOMAN VERNA: But we are not

1 BILLS 970709, 970710

2 doing that anymore?

3 COMMISSIONER COSTELLO: No, ma'am, we
4 are not.

5 COUNCILWOMAN VERNA: Thank you.

6 Excuse me. Would that also include
7 medical attention that inmates have to receive?

8 COMMISSIONER COSTELLO: It would
9 include the basic medical treatment; such as, a
10 cold, things of that nature.

11 Additional medical costs, any
12 excessive medical costs, such as various tests or
13 maybe an operation, something of that nature, would
14 be paid for separately, in addition to the \$60 per
15 day.

16 COUNCILWOMAN VERNA: Thank you.

17 CHAIRWOMAN KRAJEWSKI: Councilman
18 Nutter.

19 COUNCILMAN NUTTER: Thank you.

20 Mr. Costello, in the same area --
21 first, excuse my lack of familiarity with the rest
22 of the geography of the state.

23 How far away is either Luzerne County
24 or Carbon County?

25 COMMISSIONER COSTELLO: Carbon County

1 BILLS 970709, 970710

2 is about 60 miles away and Luzerne County is about
3 90 miles away.

4 COUNCILMAN NUTTER: Okay. And can
5 you tell me why we ended up having inmates in those
6 counties, versus Bucks, Chester, Delaware, or
7 Montgomery?

8 COMMISSIONER COSTELLO: When we
9 polled the area, those particular counties were the
10 only counties willing to accept Philadelphia County
11 prisoners.

12 COUNCILMAN NUTTER: They were the
13 only counties willing to accept them or they were
14 the only ones that had space for them?

15 COMMISSIONER COSTELLO: Well, they
16 were the only ones that had space available for
17 additional housing at the time.

18 COUNCILMAN NUTTER: So it is not that
19 the other four counties refused to take Philadelphia
20 prisoners; it is that they did not have space for
21 them?

22 COMMISSIONER COSTELLO: That was
23 their explanation to me, they did not have the
24 space.

25 COUNCILMAN NUTTER: In your testimony

1 BILLS 970709, 970710

2 and in Mr. Kaplan's testimony you make reference to
3 these catastrophic medical costs.

4 Is your testimony that the contract
5 with Prison Health Services only covered things like
6 a cold or something like that, and everything else
7 we had to pay extra for?

8 COMMISSIONER COSTELLO: No. The
9 contract with medical services covered every aspect
10 of medical services that were required.

11 However, certain inmates incurred
12 excessive costs that were well over the normal
13 medical costs incurred by an average inmate, or an
14 average sick inmate.

15 COUNCILMAN NUTTER: Well, without
16 talking about anyone in particular, can you give us
17 some examples?

18 COMMISSIONER COSTELLO: Somebody who
19 had to be on dialysis for several months, for
20 example. Someone who needed a major operation, like
21 a heart operation, something of that nature.

22 COUNCILMAN NUTTER: You are saying
23 that those costs are not covered by the contract
24 with this company?

25 COMMISSIONER COSTELLO: The costs are

1 BILLS 970709, 970710

2 covered up to \$35,000 a year.

3 So if those medical needs exceeded
4 the \$35,000 limit, those were costs that were
5 categorized under the catastrophic costs.

6 COUNCILMAN NUTTER: Okay. And in
7 your testimony you make reference to, apparently, as
8 a result of the Jackson v. Hendrick consent decree,
9 that there was a need to increase the daily pay rate
10 for prisoners, for inmates; is that correct?

11 COMMISSIONER COSTELLO: That's
12 correct, sir.

13 COUNCILMAN NUTTER: Okay. Just a
14 question in that area.

15 Does the Philadelphia prison system
16 require any payment by inmates for any of the things
17 that they receive, similar to the practice in some
18 other jurisdictions around us?

19 COMMISSIONER COSTELLO: At this time
20 the prison system in Philadelphia does not require
21 any fees of that nature.

22 COUNCILMAN NUTTER: Has that issue
23 ever been explored?

24 COMMISSIONER COSTELLO: We are
25 looking at it now, Councilman.

1 BILLS 970709, 970710

2 COUNCILMAN NUTTER: What does that
3 mean?

4 COMMISSIONER COSTELLO: The
5 possibility of medical fees is on the table right
6 now, in the research stage.

7 COUNCILMAN NUTTER: When do you think
8 you will have a plan?

9 COMMISSIONER COSTELLO: I would say
10 we would have somewhat of a proposal some time early
11 next year.

12 COUNCILMAN NUTTER: Some time early
13 next year.

14 So you are talking January, February
15 time period?

16 COMMISSIONER COSTELLO: I would say
17 around that time.

18 COUNCILMAN NUTTER: All right.

19 Thank you very much.

20 CHAIRWOMAN KRAJEWSKI: One question,
21 Mr. Costello.

22 Your testimony states that the
23 additional Class 100 funds are required to increase
24 inmate population in arbitration with the union
25 representing the correctional officers.

1 BILLS 970711, 970741

2 What is the current inmate population
3 at the prisons now?

4 COMMISSIONER COSTELLO: As of 12
5 o'clock last night, the current overall number is
6 5,743.

7 CHAIRWOMAN KRAJEWSKI: I beg your
8 pardon?

9 COMMISSIONER COSTELLO: 5,743.
10 Of the 5,743, 32 are in other
11 jurisdictions under the custody of the Commissioner
12 of Prisons.

13 So we have an in-house total of 5,711
14 today, with 545 female inmates. That includes the
15 female inmates, the 5,711 total.

16 CHAIRWOMAN KRAJEWSKI: Thank you.
17 Any other questions?

18 Thank you.

19 Now we will take testimony on Bills
20 No. 970711 and 970741.

21 Mr. Kaplan.

22 MR. DEAN KAPLAN: Thank you again,
23 Councilwoman.

24 The Administration also requests this
25 committee's favorable consideration of Bill 970711,

1 BILLS 970711, 970741

2 which is the first Fiscal Year 1997 omnibus transfer
3 ordinance for the city's General Fund.

4 Let me briefly summarize the items
5 which are in the transfer.

6 First, we are asking for \$500,000 for
7 the Recreation Department to fund the expansion of
8 the after-school program from 20 to 66 sites during
9 the year.

10 The Administration has also asked for
11 a \$500,000 increase for City Commissioners, to cover
12 increased costs resulting from the impoundment of
13 voting machines during the summer, which required us
14 to repair and prepare the voting machines for the
15 November General Election in an extraordinarily
16 short time and drove up our overtime costs.

17 And an increase in the hauling costs,
18 the hauling contract for the machines. When we
19 deliver them to the polling places, the costs for
20 moving them.

21 There was only one bidder on the
22 contract this year, and obviously that tends to
23 drive up the price.

24 We are expecting that this sum of
25 \$500,000, in fact, will probably not cover all of

1 BILLS 970711, 970741

2 the requirements of the Commissioners this year for
3 two reasons.

4 The major reason is that state
5 legislature has recently passed legislation
6 increasing payments to the members of the Board of
7 Elections in each division. And that will go into
8 effect for the primary.

9 I believe judges will go to a maximum
10 of \$100 and other members of the Board to \$95.

11 In addition, we have not seen the
12 final bills yet for the voting machine preparation
13 for November, or for the hauling costs for
14 November.

15 So we have asked for this on an
16 interim basis to make sure that the commissioners
17 can pay their bills in the interim.

18 We will be returning, once we have
19 the final bills for those first two items, to
20 request any additional amount for that, or
21 reduction, if that is the case, and also the amount
22 necessary to fund the increase for the election
23 judges in the spring. And I suspect we will propose
24 that as a Class 200 transfer in January.

25 The bill also requests a \$55,000

1 BILLS 970711, 970741

2 increase in the Public Property budget to cover the
3 transfer of the security guard contract in the
4 Concourse at MSB from the Revenue Department to the
5 Public Property Department.

6 And also a \$275,000 transfer from
7 Class 200 to Class 300 for Property because the City
8 Hall custodial contract now does not include
9 materials.

10 We will be purchasing them directly
11 and providing them to the vendor. So they will need
12 that money in Class 200, rather than Class 300.

13 There is a request for \$85,000 for
14 the Clerk of Quarter Sessions for two items.

15 One is the necessary personnel to
16 cover the three new municipal courtrooms that will
17 be opening in January, as planned by the State
18 Supreme Court.

19 And the remainder of that funding is
20 to provide a few additional personnel for the
21 clerk.

22 As you may recall, at the budget
23 hearing last year they complained they did not have
24 sufficient funding for staffing and couldn't cover
25 their -- all of the courtrooms.

1 BILLS 970711, 970741

2 We sat down with them, and with
3 Council staff as well, and went through their
4 budget, and determined that they did need a small
5 additional amount in order to fulfill their duties.

6 The addition to the reduction -- the
7 funding for these various transfers, new transfers,
8 are, in addition to the Revenue Department piece,
9 are from the city's indemnities budget. And we are
10 projecting a slightly slower than an average pace of
11 claim settlements this year.

12 We are hoping that is a long-term
13 trend. But we are confident that for the year there
14 will be approximately a million dollars available to
15 fund those transfers.

16 There are also three transfers which
17 are within departments. One is the \$300,000 shift
18 within prisons, which one of the members just
19 referred to, to cover the cost of inmate payments
20 required by the consent decree there; a \$65,000
21 shift in the Controller's Office to handle their
22 data management costs; and a \$55,000 shift to allow
23 a transfer for the Health Department to pay the
24 Delaware Valley Poison Control Center.

25 Again, I request the Committee's

1 BILLS 970711, 970741

2 favorable consideration of this and a suspension of
3 the Rules for this bill.

4 Would you like me to continue on the
5 other piece?

6 COUNCILMAN NUTTER: Madam Chair.

7 MR. KAPLAN: Would you like me to
8 continue, or should we discuss this first?

9 CHAIRWOMAN KRAJEWSKI: I am sorry.
10 You may continue. Thank you.

11 Finally, the Administration is asking
12 approval of Bill 970741, which would transfer \$8.8
13 million to the First Judicial District of
14 Pennsylvania to cover its operating costs for the
15 month of January 1997.

16 Undoubtedly this seems a bit
17 strange. As you will recall, we provided funding
18 for the courts in Philadelphia County for one half
19 of the year this year.

20 We were hoping that the Court would
21 be funded by the state at this point, pursuant to
22 the Allegheny decision in 1997 and the Court's
23 subsequent decision in July of 1996. Obviously that
24 has not happened.

25 I think that all the members of this

1 BILLS 970711, 970741

2 Council are painfully aware of what we could do with
3 the kind of funding that goes in Philadelphia into
4 the courts each year. It will just be under
5 \$106,000,000. That's the full-year budgeted amount
6 for FY '98.

7 However, rather than having that
8 funding available ten years after the first Supreme
9 Court decision, and 18 months after the Supreme
10 Court attempted to enforce that decision, we still
11 have seen absolutely no movement at the state
12 level.

13 We are requesting that we provide
14 only partial funding for the remainder of the year
15 for the First Judicial District in order to bring
16 some attention to this important issue at the state
17 level.

18 I think that all of you are also
19 aware of the fairly narrow balance in the city's
20 five-year plan.

21 There is a balance of about \$34
22 million at the end of the five years. And that's
23 before we made the decision to not collect the
24 personal property tax over the five years, which is
25 worth \$88 million.

1 BILLS 970711, 970741

2 It also includes about \$70 million in
3 future target budget reductions and assumptions
4 about income from riverboat gambling and other
5 sources in the out years.

6 We obviously cannot make our
7 long-term funding picture work unless the state
8 steps up to its obligation.

9 And I think that our suggestion today
10 is that it is time to try to bring some attention to
11 this at the state level and provide a more limited
12 amount of funding for the courts.

13 And in this bill, as well, I
14 respectfully request the committee's favorable
15 consideration and suspension of the Rules to allow
16 first reading.

17 CHAIRWOMAN KRAJEWSKI: Councilman
18 Nutter.

19 COUNCILMAN NUTTER: Thank you, Madam
20 Chair. And I apologize to the Chair. She is moving
21 much quicker than I am today.

22 Mr. Kaplan, I need to take you back
23 for a moment to Bill 970709.

24 There is a \$10 million transfer to
25 Finance for what is a pretty significant amount of

1 BILLS 970711, 970741

2 indemnity coverage. I understand that a large chunk
3 of that comes as a result of a Superfund case.

4 What I would like to ask you about
5 those, the \$2.8 million balance coming from the
6 settlement of various cases that you could not
7 anticipate.

8 In conjunction with that, in the Law
9 Department's testimony, there is a need for a
10 transfer of \$500,000.

11 The testimony reads that, "A number
12 of cases arose against the police department and the
13 District Attorney's Office from alleged improper
14 arrests by police officers in the 39th Police
15 Direct.

16 "Potential conflicts of interest
17 dictated that outside legal counsel be employed to
18 defend the city against these claims."

19 Mr. Kaplan, are you in a position, or
20 are there people in the room in the position, to
21 discuss why there was a need to hire outside legal
22 counsel, and what were these potential conflicts of
23 interest?

24 MR. KAPLAN: Yes; representatives of
25 the Law Department are here and are available to

1 BILLS 970711, 970741

2 answer that question.

3 CHAIRWOMAN KRAJEWSKI: Is there
4 anyone here from the Law Department?

5 Good morning. Please state your name
6 for the record.

7 MR. CARLTON JOHNSON: Carlton
8 Johnson, Chief Deputy City Solicitor for Civil
9 Rights Litigation.

10 MS. SHELLY SMITH: Shelly Smith,
11 Divisional Deputy City Solicitor for Civil Rights
12 Litigation.

13 COUNCILMAN NUTTER: Thank you and
14 good morning.

15 First, is it my understanding that in
16 most instances the Law Department represents the
17 police department or the District Attorney's Office
18 if we are subject to suit?

19 MR. JOHNSON: Yes, that is correct.

20 COUNCILMAN NUTTER: Why in this
21 particular instance did the city find the need to
22 hire outside legal counsel?

23 MR. JOHNSON: With regard to the
24 District Attorney's Office -- and just so it is
25 clear for the record, it is not only in the case of

1 BILLS 970711, 970741

2 the District Attorney's Office.

3 Sometimes the city has legal
4 conflicts that prevent us from representing our own
5 employees; for example, where the police department
6 has taken disciplinary action against that employee,
7 we have a conflict.

8 And that case is referred out usually
9 to FOP counsel to represent the employee. And the
10 city provides indemnification, meaning that we pay
11 for the counsel.

12 With respect to the District
13 Attorney's Office, the District Attorney's Office in
14 some of the 39th District cases was joined as a
15 defendant.

16 Because we are in a conflict
17 situation, meaning a legal conflict, where there are
18 certain defenses that the District Attorney's Office
19 would proffer that are not available to the City of
20 Philadelphia, or to our individual defendants, it is
21 necessary legally for us to obtain counsel for
22 them.

23 For example, they have certain
24 defenses of immunity, defenses that are not
25 available to us; for example, prosecutorial immunity

1 BILLS 970711, 970741

2 that is not available to the city.

3 But there are also actual factual
4 issues that arise with respect to who bears the
5 legal obligation with respect to what happened to a
6 particular plaintiff that may arise where the
7 District Attorney's Office may claim that the
8 responsibility falls on the shoulders of the
9 individual police officers or the police department,
10 and the police department may take a contrary
11 position.

12 Under those circumstances, obviously,
13 the Law Department cannot provide representation of
14 both parties. We would be clearly conflicted out
15 legally.

16 COUNCILMAN NUTTER: In these
17 particular cases, was the representation just being
18 presented, being provided, for the Office of the
19 District Attorney in general, or were there
20 individuals in the office who required this outside
21 legal counsel defense?

22 MR. JOHNSON: In some cases the
23 District Attorney is actually named as a defendant.

24 But also, in other situations, the
25 specific district attorney who may have handled the

1 BILLS 970711, 970741

2 underlying criminal case may have been named as a
3 defendant. So it is depending on the case, but
4 there are mixed scenarios.

5 Sometimes it was the District
6 Attorney's Office itself named as a defendant. In
7 other cases it was a combination where individuals
8 were also named as defendants.

9 COUNCILMAN NUTTER: Lastly, are you
10 in a position -- have these cases now been settled?

11 MR. JOHNSON: To date, 55 39th
12 District cases have been settled. There are 49
13 pending cases.

14 COUNCILMAN NUTTER: Is the outside
15 legal counsel representing the District Attorney's
16 Office or the police department in those cases, as
17 well?

18 MR. JOHNSON: In some of the cases.
19 In cases where the District Attorney's Office is a
20 defendant or a potential defendant, yes.

21 There is a light at the end of the
22 tunnel, I am happy to say. We are winding down.

23 The problem, in terms of
24 representation, is that when the District Attorney's
25 Office null processus additional cases, those cases

1 BILLS 970711, 970741

2 then become ripe for potential civil rights claims.
3 So we won't know what the total numbers of cases are
4 probably for several years.

5 However, we are in a wind-down
6 phase. And I think you are going to see a dramatic
7 reduction in the amount of assistance needed from
8 outside counsel, particularly since most of the
9 legal issues have been resolved or researched or
10 work on by outside counsel in conjunction with our
11 office.

12 COUNCILMAN NUTTER: My last question
13 in this area. For the cases that have been settled,
14 in the case of the outside legal counsel defense,
15 has the city won those cases, have we lost those
16 cases, has there been a mixture of the two?

17 MR. JOHNSON: It has been a mixture
18 of the two.

19 If you look at the overall cost of
20 settlement, I believe that I can represent to
21 members of this committee that the city has done an
22 outstanding job in representing the taxpayers in
23 resolutions of those suits.

24 Most people who are familiar with the
25 39th District litigation outside of our jurisdiction

1 BILLS 970711, 970741

2 are absolutely astounded, including the federal
3 judges who handled these cases, at the terms under
4 which the city was able to resolve the 55 cases to
5 date.

6 COUNCILMAN NUTTER: If you could
7 provide to us through the Chair the disposition of
8 the various cases and any settlements or judgments
9 coming out of those cases, I would appreciate it.

10 MR. JOHNSON: You will have that on
11 your desk this afternoon.

12 COUNCILMAN NUTTER: Thank you very
13 much.

14 MR. JOHNSON: Thank you.

15 COUNCILMAN NUTTER: Thank you, Madam
16 Chair.

17 CHAIRWOMAN KRAJEWSKI: Councilwoman
18 Verna.

19 COUNCILWOMAN VERNA: Mr. Kaplan,
20 regarding the First Judicial District, can you tell
21 us how that will work?

22 Will the state merely reimburse the
23 city for the court employees, or would the
24 20,000-odd court employees then become state
25 employees?

1 BILLS 970711, 970741

2 MR. KAPLAN: Well, I think that
3 that's part of our frustration with this process, is
4 that we just don't know.

5 I mean, in July of 1996, when the
6 Supreme Court issued a Writ of Mandamus compelling
7 the state legislature to develop a valid funding
8 plan, that's exactly the kind of issue which we
9 would obviously all like to know the answer to, that
10 we were hoping they would answer, that they would
11 respond to.

12 As you know, the Supreme Court
13 appointed former Justice Montamuro to develop a plan
14 to respond to that. It was originally due in
15 January of 1997. He was given a six-month
16 extension. And the plan which he came out with in
17 July did not finally address all of those issues.

18 It is our understanding that the plan
19 is under consideration by the state legislature, but
20 not in any active way at all.

21 And, obviously, that's something that
22 we would like to know; we just don't.

23 CHAIRWOMAN KRAJEWSKI: Excuse me.
24 Who is here from the Court system to speak?

25 Good morning. Please state your name

1 BILLS 970711, 970741

2 for the record.

3 MR. JOSEPH DiPRIMIO: Good morning,
4 Councilwoman Krajewski, members of the
5 Appropriations Committee. My name is Joseph
6 DiPrimio. I am the Administrator of the
7 Philadelphia courts.

8 Yesterday we learned from
9 Mr. Kaplan's office that this current transfer
10 ordinance was being presented.

11 It causes the First Judicial
12 District, the Philadelphia courts, to, frankly, be
13 in crisis.

14 When we were before Council last
15 February, we submitted a 12-month budget, which was
16 in the amount of 105 and a half million dollars.

17 In cooperation with the city
18 Administration, we broke it out into the first six
19 months of the fiscal year and then, of course, the
20 second six months because of this uncertainty of
21 statewide funding.

22 The Philadelphia courts and its
23 leadership never questioned the resolve of the
24 Supreme Court or the legislature to fund or to
25 transfer to unified funding.

1 BILLS 970711, 970741

2 However, it was our observation,
3 based on other states that have gone to state
4 unified funding, that it was an incremental or a
5 phased-in approach. Frankly, we were right.

6 The report that Mr. Kaplan referenced
7 is the interim report of the Master on the
8 transition to state funding of the unified judicial
9 system, and was issued in mid summer of 1997.

10 What this report says is that the
11 first phase of the transfer to unified state funding
12 would not begin until Fiscal Year 1999.

13 That means -- and for the local, in
14 fact, it means only 12 Philadelphia court employees
15 would be shifted to state funding.

16 The bulk of the transfer should occur
17 in the two subsequent fiscal years. So that by the
18 Year 2001, the full transfer to state funding would
19 have occurred.

20 By coming before the Council
21 Committee today asking for a month transfer
22 appropriation, it causes the Philadelphia courts to
23 be unable to plan long term for the balance of this
24 fiscal year.

25 And, accordingly, it just gives us

1 BILLS 970711, 970741

2 total uncertainty about what our future will be
3 serving the citizens of Philadelphia during the
4 balance of this fiscal year.

5 We respectfully suggest to the
6 Appropriations Committee to allow the Court to
7 receive its funding for the second half of the
8 fiscal year, which Council had appropriated last
9 February.

10 CHAIRWOMAN KRAJEWSKI: Let me ask,
11 what happens if the Commonwealth does not assume the
12 responsibility? What happens?

13 COUNCILMAN DiCICCO: If the
14 Commonwealth does not assume the responsibility, I,
15 frankly, believe that the Supreme Court will
16 mandamus the state legislature.

17 But I hear, Councilwoman, that there
18 are very delicate negotiations going on with the
19 state legislature with the Governor's office and
20 with the Supreme Court designed to allow for the
21 transition, the staggered transition, to statewide
22 funding, in accordance with the suggestion made by
23 Justice Montamuro's report.

24 CHAIRWOMAN KRAJEWSKI: Of course this
25 is all based on assumptions; right?

1 BILLS 970711, 970741

2 MR. DiPRIMIO: Well, assumptions, but
3 also based on what was done in other jurisdictions.

4 For example, the State of new Jersey,
5 our sister state, recently completed state
6 unification. That was over a three-year phased
7 implementation.

8 And the belief is that it will be
9 mirrored, something like that will be mirrored, in
10 the Commonwealth of Pennsylvania.

11 CHAIRWOMAN KRAJEWSKI: Councilwoman.

12 COUNCILWOMAN VERNA: I think there
13 are a lot of unanswered questions here.

14 What happens to one's pension? Is
15 anything being discussed about that?

16 MR. DiPRIMIO: These are questions
17 that are currently being asked.

18 It is my understanding that the
19 Administrative Office of Pennsylvania courts has
20 retained services of professional consultants to
21 look at the blending or the various possibilities
22 that may occur, given the differences between city
23 pensions and state pensions.

24 Frankly, it would impact me
25 personally, as well, and all the Philadelphia court

1 BILLS 970711, 970741

2 employees. And I am certain Council have the same
3 concerns, what would be the bottom result of this.

4 Quite honestly, these are questions
5 that I am not in a position to answer in toto.

6 COUNCILWOMAN VERNA: But I would
7 think that if the state were to reimburse the city,
8 then, I think, that everybody would remain within
9 the city pension, would they not?

10 MR. DiPRIMIO: Yes; given that
11 scenario.

12 COUNCILWOMAN VERNA: However, if the
13 state takes over, I think we are going to have a
14 real problem, like with many of the employees, as
15 far as their pensions are concerned.

16 MR. DiPRIMIO: You are correct,
17 Councilwoman. So the uncertainty looms out there.

18 But our immediate crisis is the fact
19 that the Philadelphia courts -- and we still remain
20 Philadelphia courts -- are the hostages in this time
21 of uncertainty.

22 Clearly Council recognized the need
23 to fund the courts for the 12 months, but the second
24 half of the funding has not been implemented.

25 And I am here today to respectfully

1 BILLS 970711, 970741

2 request the Appropriations Committee allow the
3 transfer of the full six months so that the Court
4 can continue to function and serve the needs of its
5 citizens.

6 COUNCILWOMAN VERNA: How are the
7 other cities dealing with this issue?

8 MR. DiPRIMIO: I understand right
9 now -- in Pennsylvania?

10 COUNCILWOMAN VERNA: Yes.

11 MR. DiPRIMIO: That's an interesting
12 concept.

13 Philadelphia is the only judicial
14 district, the only county, that is on a fiscal year
15 budget basis. All the other Courts are on an annual
16 year.

17 So last year, when we prepared for
18 the budget submission, we were confronted with being
19 staggered in the beginning. The statewide funding
20 should have occurred January, but it didn't.

21 The other counties merely had to
22 budget for a full calendar year, which they did. At
23 the conclusion of their calendar year, they will be
24 confronted, perhaps, with the same issues.

25 Or perhaps they won't have as big a

1 BILLS 970711, 970741

2 problem because the implementation of the statewide
3 funding will begin, as it is planned, for July 1 of
4 1998. So they will have more information upon which
5 to work.

6 COUNCILMAN NUTTER: Question.

7 CHAIRWOMAN KRAJEWSKI: Councilman
8 Nutter.

9 COUNCILMAN NUTTER: Thank you, Madam
10 Chair.

11 First let me start by saying that it
12 appears to me, Mr. Kaplan and Mr. DiPrimio, that you
13 guys would like to engage us in a fairly high-stakes
14 game of chicken, and you want us to be in the middle
15 and be jerked around. And I don't particularly like
16 it.

17 MR. DiPRIMIO: Councilman Nutter --

18 COUNCILMAN NUTTER: Mr. DiPrimio, you
19 have respectfully come and said, give us the rest of
20 the funding.

21 You are sitting next to Mr. Kaplan
22 who says, give them January and let them figure out
23 the rest.

24 The Supreme Court says, the Courts
25 should be funded January 1, 1998.

1 BILLS 970711, 970741

2 Isn't that correct?

3 MR. DiPRIMIO: That's a correct
4 statement.

5 COUNCILMAN NUTTER: Something called
6 a Writ of Mandamus?

7 MR. DiPRIMIO: That's correct.

8 COUNCILMAN NUTTER: Now, what does
9 that mean?

10 MR. DiPRIMIO: It is my understanding
11 that if a mandamus action was taken, it would be a
12 judicial order compelling the legislature to issue
13 the funds necessary to run the Courts.

14 COUNCILMAN NUTTER: So why don't they
15 do it?

16 MR. DiPRIMIO: I am not in a position
17 to answer that. I just don't know.

18 That may happen.

19 COUNCILMAN NUTTER: Then why are you
20 left to come here and ask us to engage in this
21 bizarre behavior, when the Supreme Court has issued
22 a Writ of Mandamus, legislature has its
23 responsibility, and now you are left to come down
24 here, hat in hand, asking for the rest of the
25 funding, when I think we said we weren't going to do

1 BILLS 970711, 970741

2 it from jump street? I think we said we were doing
3 it until the end of the year.

4 Mr. Kaplan now comes and says, well,
5 give them January so they can meet payroll, and then
6 maybe we will engage in some month-to-month transfer
7 ordinance scheme, which is just the craziest thing I
8 have ever heard.

9 In addition to the fact that after
10 about February, we can't do that anyway.

11 So what do you guys want?

12 COUNCILWOMAN Verna: I think,
13 Councilman, somebody is trying to put somebody's
14 feet to the fire.

15 Mr. Kaplan, would you suggest that?

16 MR. KAPLAN: I think that would be an
17 accurate characterization.

18 We have no tools. The state has been
19 sued twice. The Supreme Court has ruled in our
20 favor twice. We have waited for ten years.

21 Obviously, you know, Mr. DiPrimio and
22 I have a good relationship. We get along well. And
23 I agree with him completely.

24 New Jersey and a number of other
25 states have taken many years to transfer their

1 BILLS 970711, 970741

2 systems to state control. However, they didn't wait
3 ten years at the beginning to do it to start.

4 They got together, they publicly
5 debated a plan, they implemented it.

6 We have a situation where the Supreme
7 Court has, to its credit, gone around the state and
8 solicited the input of the various counties and
9 judicial districts, and then has disappeared into
10 the ether. We have not heard boo from them since
11 the Justice's report in the summer.

12 We are waiting to hear any sort of
13 proposal which we can answer some of the questions
14 which have been raised here about pensions and other
15 issues. The Courts are in the dark, we are in the
16 dark. And there is, frankly, no way to make them
17 move.

18 I mean, I think, my personal belief
19 is, if we don't take this kind of action, we will
20 never see this resolved. This is the only thing
21 actually we have left with us. Letters, calls, it
22 is not working.

23 And obviously we don't mean to put
24 Council in the middle. And I think your
25 characterization is correct. Really the Judicial

1 BILLS 970711, 970741

2 District is in the middle.

3 But we are in a position where we are
4 spending \$100 million a year while they fiddle.

5 COUNCILMAN NUTTER: Based on this
6 display here this morning -- I will only speak for
7 myself -- I am not particularly moved to do anything
8 for either of you under these circumstances, until
9 we get some better answers.

10 Now, the Chair will certainly make a
11 decision or make a recommendation, or we will have
12 some discussion about it.

13 But I think that we are at a pretty
14 pathetic state of affairs that we have to have this
15 kind of public display and testimony with people
16 running back and forth to their parents seeking a
17 quarter. That is a pretty sad situation.

18 Mr. DiPrimio, I have some other
19 questions for you, unless some of my colleagues want
20 to continue to pound you into the ground about your
21 previous testimony.

22 Mr. DiPrimio, let me ask you, I
23 guess, if there is a court system functioning in the
24 next couple of months -- and I assume that there
25 will be -- a matter has come to my attention with

1 BILLS 970711, 970741

2 regard to salaries and certain classifications of
3 employees, specifically the law clerks that work for
4 the various judges.

5 It is my understanding that there is
6 a classification known as a Law Clerk I, Law Clerk
7 II, and Law Clerk III; is that correct?

8 MR. DiPRIMIO: I believe that is
9 correct.

10 COUNCILMAN NUTTER: And I assume
11 that, based on the numbers that go with the Law
12 Clerk title, that there are certain qualifications
13 that as you go up in the ranks, either by your
14 performance or by your tenure, that you can move up
15 from a I to a II to a III?

16 At least on the city side, that's
17 normally pretty much how things operate. Is that
18 the same in the Court system?

19 MR. DiPRIMIO: Yes.

20 COUNCILMAN NUTTER: So is it based on
21 your tenure or is it based on who you work for?

22 How do you move from I to II to III?

23 MR. DiPRIMIO: It may be a
24 combination of both.

25 For example, a new graduate from a

1 BILLS 970711, 970741

2 law school would come in as a Law Clerk I.

3 COUNCILMAN NUTTER: What's the
4 starting salary for a Law Clerk I?

5 MR. DiPRIMIO: I am going to say
6 approximately \$30,000. I may be wrong.

7 However, if a new law clerk comes in
8 with substantial years of experience as a lawyer,
9 that person may move up quicker or may actually
10 start at a higher rate.

11 Alternatively, if they have, I think
12 it is five years of service, they could move up
13 quicker the same way. In other words, they would
14 achieve the rank of a III, as opposed to staying at
15 the rank of a I.

16 COUNCILMAN NUTTER: This is based on
17 tenure?

18 MR. DiPRIMIO: Yes.

19 COUNCILMAN NUTTER: Where does the
20 part about who you work for come into play?

21 MR. DiPRIMIO: I believe that only
22 factors in with President or Administrative Judges
23 and Supervising Judges.

24 COUNCILMAN NUTTER: What do you mean
25 by that?

1 BILLS 970711, 970741

2 MR. DiPRIMIO: Well, President Judge
3 would be the judicial leader in charge of a
4 particular court. For example, Judge BonavitaCola
5 is the President Judge of the Court of Common
6 Pleas.

7 Within each court there are
8 Administrative Judges. In the Court of Common Pleas
9 there are three Administrative Judges. And they, in
10 turn, have law clerks who, because of the additional
11 duties associated with the HA's position, they would
12 be entitled to a higher law clerk job.

13 COUNCILMAN NUTTER: Let me ask you
14 this question: If you just work for a judge who is
15 not in the administrative hierarchy -- I don't want
16 to demean anyone's title -- but a nonsupervising
17 judge, can you move from a I to a II to a III, or
18 can you only move to the higher categories if you,
19 in fact, work for a supervising judge?

20 MR. DiPRIMIO: It is my understanding
21 that you can -- given the years in service, it is my
22 understanding that you can move up through the
23 steps.

24 COUNCILMAN NUTTER: And how do you do
25 that?

1 BILLS 970711, 970741

2 MR. DiPRIMIO: Based on tenure.

3 For example, if you are here, I think
4 it is five years, you would be able to move up
5 through those steps.

6 COUNCILMAN NUTTER: Is that something
7 you apply for, or does the personnel person come and
8 give you your five-year pin and say, "Thanks for
9 being here, and now you can be a law clerk, too"?

10 MR. DiPRIMIO: No. The judicial
11 staff, which would include the secretary, the tip
12 staff, and the law clerk are appointees of the
13 presiding judge, of that particular judge.

14 And the progressive promotion, if you
15 will, would occur at the recommendation of that
16 judge.

17 COUNCILMAN NUTTER: So the judge
18 needs to make a recommendation?

19 MR. DiPRIMIO: That's my
20 understanding, that's correct.

21 COUNCILMAN NUTTER: Okay.

22 CHAIRWOMAN KRAJEWSKI: Excuse me one
23 moment, Councilman.

24 Anyone who is here to testify on Bill
25 970709 or 970710, you can leave, unless you want to

1 BILLS 970711, 970741

2 stay.

3 Thank you all very much.

4 Are there any other questions?

5 Councilwoman Verna.

6 COUNCILWOMAN VERNA: Mr. Kaplan, I
7 don't want to belabor this issue. But when we talk
8 about the Courts, or the court system, we are not
9 including the D.A.'s Office or the Sheriff's Office,
10 who have been funded for the entire year; we are
11 simply talking about the Court system itself?

12 MR. KAPLAN: Yes.

13 COUNCILWOMAN VERNA: Has that ever
14 been defined, as to what the state would be taking
15 over?

16 MR. KAPLAN: No. One of the tasks
17 assigned to Justice Montamuro was to make a
18 recommendation about what would be included and what
19 would not be.

20 Clearly the vast majority of what he
21 would be recommending would be the Judicial District
22 in each county or multiple counties. In some cases
23 there are ancillary functions.

24 For example, in most places the
25 sheriff is essentially the jailer, unlike in

1 BILLS 970711, 970741

2 Philadelphia.

3 In some cases there are other court
4 functions which will be probably funded by the state
5 and some which will be funded locally.

6 And that's part of the answer we
7 would like to have.

8 COUNCILWOMAN VERNA: Is there any
9 indication as to when this report will be
10 completed?

11 MR. KAPLAN: I don't think so.

12 He did issue an interim report in --

13 MR. DiPRIMIO: The interim report was
14 issued in mid summer of 1997. And it does provide
15 the schedule of the suggested implementation, which
16 would begin with July 1 of 1998.

17 The local impact being, 12 employees
18 would become state employees.

19 By the year --

20 COUNCILWOMAN VERNA: But we don't
21 know whether they would actually become state
22 employees or whether the city would be reimbursed?
23 We don't know what would happen to their pensions?

24 MR. DiPRIMIO: That's correct.

25 COUNCILWOMAN VERNA: We don't know

1 BILLS 970711, 970741

2 what happens to their accumulated sick and vacation
3 times?

4 MR. DiPRIMIO: You are absolutely
5 right.

6 COUNCILWOMAN Verna: Who hires, who
7 fires.

8 I think there are a lot of very
9 unanswered questions here.

10 CHAIRWOMAN KRAJEWSKI: Well, I think
11 that those answers all have to come up by February.

12 Because I know you have to come back
13 here in February. So I hope you come back prepared
14 to answer those questions.

15 MR. DiPRIMIO: We will do our best to
16 get those answers from the state and from the
17 Supreme Court.

18 CHAIRWOMAN KRAJEWSKI: I don't want
19 to see the court employees not having any salary
20 right now.

21 But you do have to come back in
22 February. And we will be here, believe me.

23 COUNCILMAN NUTTER: One last thing.

24 CHAIRWOMAN KRAJEWSKI: Councilman
25 Nutter.

1 BILLS 970711, 970741

2 COUNCILMAN NUTTER: Lastly,
3 Mr. DiPrimio, based on the questions that I asked
4 you earlier, I will want to have some further
5 discussion with you about that ranking system and
6 how long people have to work in the system -- this
7 is back to the law clerk issue -- their in-service
8 time versus their previous time as a lawyer, how
9 long they have to work for a particular judge, those
10 kinds of issues.

11 As you very thoughtfully responded to
12 some questions I had asked in another Appropriations
13 Committee, I would appreciate getting the same kind
14 of response from you on this issue, as well as just
15 what kind of experience a person had before they
16 came, and where does that factor in in terms of
17 where they start or how quickly they are able to
18 rise up through the system.

19 I have some concerns about some
20 potential inequities that some of the clerks are
21 facing in the court system.

22 All right?

23 MR. DiPRIMIO: I would be happy to
24 provide a report.

25 COUNCILMAN NUTTER: Thank you.

1 BILLS 970711, 970741

2 CHAIRWOMAN KRAJEWSKI: Councilman
3 Mariano.

4 COUNCILMAN MARIANO: Mr. DiPrimio,
5 this funding that we talked about from the state, we
6 talked about it being 1.6 million possibly?

7 MR. DiPRIMIO: That's our FY '98
8 operational budget.

9 COUNCILMAN MARIANO: Now, in layman's
10 terms, not the great legal minds that deal in the
11 courts here, if we run out of money, can we just
12 pile everybody in a bus and take them to Harrisburg
13 and leave them out there, instead of leaving them
14 out here?

15 Maybe they would get the message from
16 that, it is time for you to fund our courts? Is
17 that where we are going to be?

18 MR. DiPRIMIO: Well, if Council does
19 not authorize the second half of the fiscal year, be
20 it on a monthly incremental basis or for the full
21 six months, we will not be able to make payroll. We
22 will have to shut down.

23 COUNCILMAN MARIANO: Is this like a
24 giant game of fiscal chicken?

25 MR. DiPRIMIO: Not from where we

1 BILLS 970711, 970741

2 sit.

3 COUNCILMAN MARIANO: I don't want to
4 belittle the job that you do. I know you do a good
5 job and I know the Courts do a good job.

6 But fund it, will you. Not you; the
7 state should fund it, and let's get the funding
8 going.

9 They should have been doing it all
10 along, so they should have a lot of money saved up.
11 Ten years, this decree, the Allegheny decree. It's
12 time.

13 CHAIRWOMAN KRAJEWSKI: Are there any
14 other questions?

15 Councilman Nutter.

16 COUNCILMAN NUTTER: This is not for
17 Mr. DiPrimio.

18 But, Mr. Kaplan, you made reference,
19 I believe it is in the other FY '98 transfer,
20 970711, and it is in your testimony, I believe, or
21 in some off-the-cuff comments you made, you
22 indicated that the costs for the City Commissioner's
23 office jumped as a result of either the last
24 election or your anticipation of upcoming election
25 costs.

1 BILLS 970711, 970741

2 And in one of your pieces it says
3 that transportation costs, I believe, went up 36
4 percent. Could you provide us with an explanation
5 of why that happened all of a sudden?

6 My understanding is that the
7 transportation voting machines has traditionally
8 been bid on by at least two firms, occasionally
9 three, and that has helped to control the price.
10 This year there was only one bidder. So that bid
11 had to be awarded.

12 Normally those bids are opened in the
13 late summer, early fall. Because of the fiscal year
14 timing for the General Election, there is not an
15 opportunity to re-bid it.

16 Also in this case, historically in
17 our experience is if you re-bid an award, you re-bid
18 a bid with only one vendor, you tend to get the same
19 price or a higher price.

20 COUNCILMAN NUTTER: Well, Mr. Kaplan,
21 I assume this is a fairly lucrative business. How
22 do we find ourselves in the position that only one
23 company bids on the transportation of voting
24 machines?

25 MR. KAPLAN: I think that's an

1 BILLS 970711, 970741

2 excellent question. I can't tell you I know the
3 answer, but I will investigate it for you.

4 COUNCILMAN NUTTER: You will get us
5 an answer to that question?

6 MR. KAPLAN: Yes.

7 CHAIRWOMAN KRAJEWSKI: Thank you.

8 COUNCILMAN NUTTER: Just a minute.
9 He said that there were previously three companies
10 that did the business, and apparently this time only
11 one showed up, so we only had one company.

12 This is considered a sole source bid,
13 then, Mr. Kaplan?

14 MR. KAPLAN: I don't believe it is
15 considered -- it is a competitive bid. Anyone is
16 able to bid. And, as I mentioned, in the past -- it
17 was not bid as a sole source.

18 COUNCILMAN NUTTER: Okay.

19 Also in your testimony, if you could
20 get information on, the Department of L & I, in the
21 demolitions budget, they indicate that they did
22 fewer demolitions in FY '97 than in FY '96, and it
23 is primarily attributed to a larger number of
24 commercial demolitions conducted in FY '97 versus FY
25 '96.

1 BILLS 970711, 970741

2 Does that then mean that residential
3 demolitions suffered, or took a hit as a result of
4 increased commercial demolitions?

5 MR. KAPLAN: I don't believe so.

6 Excuse me one second. I am trying to find my note
7 on that.

8 COUNCILMAN NUTTER: It is on Pages 2
9 and 3 of your testimony.

10 MR. KAPLAN: Right.

11 It should not have made a major
12 impact on the number of residential demolitions.
13 Solely because, as you will notice, overall we added
14 about \$2 million at the end of the year to cover
15 additional imminently dangerous buildings.

16 If you go back and break out the
17 additional large ones, we did about a quarter of
18 that, maybe a little bit less, maybe 20 percent,
19 were to do these additional large buildings. So it
20 kind of depends on which way you go at it.

21 If you say compared to the original
22 budget, we actually did more residential demolitions
23 than we originally planned to.

24 Compared to the final budget, yes,
25 obviously if we had done fewer large ones, we could

1 BILLS 970711, 970741

2 have done more, even more residential.

3 I think the fundamental issue is, we
4 did more than we thought we were going to do to
5 begin with.

6 COUNCILMAN NUTTER: Why don't you
7 give me a comparative chart on commercial
8 demolitions FY '97-'96, and residential demolitions
9 FY '97 versus FY '96.

10 MR. KAPLAN: I would be glad to.

11 COUNCILMAN NUTTER: With regard to
12 the transfer ordinance and the \$8 million, just for
13 the record, could you explain to me how we are in
14 the position to transfer \$4.3 million out of the
15 Commerce Department, Economic Stimulus Fund, at the
16 same time when I see Mr. Eisenstat behind you, and
17 he and I are engaged in a discussion about trying to
18 do a project out on 52nd Street, and I am told that
19 there is no money to do the project.

20 Can you explain that to me, please?

21 MR. KAPLAN: Yes. I think you have
22 perfectly made my point.

23 The city would like to have these
24 funds available for those kinds of projects.

25 As you know, last year when we

1 BILLS 970711, 970741

2 prepared the budget, we took the second half of the
3 year funding for the First Judicial District and put
4 it in, really, two budget lines.

5 One was in the Finance, Director of
6 Finance, line for, hopefully, aid to the School
7 District and for additional tax cuts. About another
8 half of it was in a Commerce line for economic
9 stimulus.

10 However, knowing that we might come
11 to this turn of events, we did not spend that
12 money.

13 We did not program it for specific
14 projects yet because we were afraid that what has
15 happened would happen, and that we would need to
16 come back and ask you to transfer that money to the
17 Courts to support them because the state did not.

18 And that's why. And that's where the
19 money comes from.

20 COUNCILMAN NUTTER: Well, why don't
21 you answer this question: Are you telling me that
22 as a result of this transfer, the Commerce
23 Department is not put in the position that prevents
24 it from supporting various neighborhood projects?

25 MR. KAPLAN: The Commerce

1 BILLS 970711, 970741

2 Department's budget, which they testified on before
3 Council, which included their standard list of
4 capital and operating projects, neighborhoods,
5 Center City, economic development, commercial,
6 residential, and other, is not affected by this.

7 These funds would have been
8 additional funds which the Mayor suggested that he
9 would ask Council to dedicate to those three areas,
10 economic stimulus, tax reduction, and the School
11 District, were the state to begin funding the Courts
12 and we had that money available.

13 Since that has not happened, that
14 means there is not additional funding.

15 I cannot speak to the specific issue
16 that you were speaking with Mr. Eisenstat about. My
17 assumption is that the current budget is inadequate
18 to do everything we would like to do.

19 COUNCILMAN NUTTER: Is or is not?

20 MR. KAPLAN: Is inadequate to do
21 everything we would like to do.

22 COUNCILMAN NUTTER: Okay. All right,
23 Mr. Kaplan.

24 CHAIRWOMAN KRAJEWSKI: Are there any
25 other questions?

1 BILLS 970711, 970741

2 Councilwoman Clark.

3 COUNCILWOMAN CLARK: Thank you, Madam
4 Chair.

5 Sir, will you help me understand the
6 issue that you and Councilman Nutter were discussing
7 that dealt with the let of a contract which
8 previously had been bid on by three people, or three
9 companies, which was successfully awarded to one
10 company, and then that company charged an increased
11 35 percent? Help me understand that.

12 MR. KAPLAN: I think that I might
13 have been misheard. What I said was that,
14 traditionally I believe the contract was bid on by
15 at least two companies. I don't know of a time when
16 there was only one bidder recently.

17 And it is my understanding that at
18 least some time in the past there have been more
19 than two, but there have always been at least two
20 companies which bid on this.

21 Obviously in the city's competitive
22 bidding process a bid is prepared, it is noticed in
23 the newspaper, it can be picked up by anybody.
24 Those parties who bid, bid whatever they bid. This
25 year there was only one bidder.

1 BILLS 970711, 970741

2 I believe, although I am not
3 certain -- and that's one of the issues I will
4 research for the committee -- that that is a vendor
5 that we had used before, although I don't believe it
6 was the only vendor that had bid before.

7 Their prices were somewhat -- about
8 somewhat significantly higher than before, but they
9 were the only bidder.

10 COUNCILWOMAN CLARK: But don't we use
11 language like "lowest responsible bid"? And there
12 is a 35 percent increase a responsible bid? And are
13 we bound to accept it simply because one person puts
14 in an inflated bid?

15 MR. KAPLAN: In this case I believe
16 that we, unfortunately, are. And there are two
17 reasons for that.

18 One is that because of the timing of
19 the general election, to go out for another bid and
20 get a hauling contractor, and get them under
21 contract and ready to go in time for the election,
22 would have been particularly a close thing.

23 The second issue, probably more
24 important, is a practical one. And that's that our
25 experience in the past, when this sort of thing has

1 BILLS 970711, 970741

2 happened -- and it does happen on occasion -- is
3 that the second round of bidding will not produce
4 significant savings.

5 And, in fact, in many cases, once it
6 is discovered that there is essentially only one
7 bidder in the market, sometimes I think where you
8 are heading is correct. Sometimes more bidders come
9 in, and you get the price a bit lower. Although
10 they tend not to go as low as the prices were
11 before. Sometimes no one else bids.

12 What we have seen happen in the past
13 is, that bidder will come in with an even higher
14 bid, in the hope that no one else bids again and
15 they get a premium.

16 COUNCILWOMAN CLARK: Mr. Kaplan, this
17 is not a game of cat and mouse. And there can be
18 some minor playing around of margin.

19 Do you consider 35 percent an
20 insignificant increase?

21 MR. KAPLAN: Not at all.

22 COUNCILWOMAN CLARK: Are we putting
23 in place any protections against this kind of
24 manipulation of our process?

25 MR. KAPLAN: As I mentioned to

1 BILLS 970711, 970741

2 Councilman Nutter, I will talk to the Procurement
3 Department about that and report back to the
4 committee.

5 COUNCILWOMAN CLARK: This, to me, is
6 shocking.

7 CHAIRWOMAN KRAJEWSKI: Thank you.
8 Are there any other questions?

9 COUNCILMAN NUTTER: Last thing.
10 Mr. Kaplan, just for the record, we
11 know that you were here about a week or so ago
12 testifying that, for the most part, everything was
13 kind of fine and dandy over in the City
14 Commissioner's office, that the voting machines we
15 have, you know, we can get a fair amount or more
16 life out of them.

17 But less than two weeks later you are
18 here now asking for an additional half a million
19 dollars to deal with either unanticipated costs, or
20 we had machines impounded, we have mechanic
21 contracts going up.

22 And you know as well as I do that we
23 would ultimately lower our costs and eliminate some
24 of these costs if we moved to new voting machines.

25 Your testimony by about two weeks is

1 BILLS 970711, 970741

2 now literally in conflict with itself.

3 Do you either want to explain it? Do
4 you want to recant your testimony from two weeks
5 ago? Do you want to modify it?

6 You put yourself in a very tough
7 position.

8 MR. KAPLAN: I can't agree. I mean,
9 I think that clearly there are going to be cases
10 where we have extraordinary costs. This is one.

11 In this particular case I think you
12 are correct. This particular voting machine
13 requires a fair amount of maintenance. That might
14 or might not be true with other voting machines.

15 COUNCILMAN NUTTER: Mr. Kaplan, there
16 is nothing you can put on this record to convince
17 anyone at this table or any member of this Council
18 or any ward leader in this city, there is nothing
19 that you can tell us today that you could do to
20 prevent the exact same thing from happening next
21 May, next November, the following May, the following
22 November, or any other election going well into the
23 next millennium; isn't that correct?

24 MR. KAPLAN: I agree.

25 COUNCILMAN NUTTER: Thank you.

1 BILLS 970711, 970741

2 CHAIRWOMAN KRAJEWSKI: Councilwoman
3 Miller.

4 COUNCILWOMAN MILLER: Mr. Kaplan, I
5 have a question about the Recreation Department and
6 increasing after-school programs.

7 How many children are we currently
8 serving, and how many more additional children will
9 be served by the increase?

10 MR. KAPLAN: Excuse me one second.
11 Let me find that one for you.

12 I am sorry. I thought it was in the
13 Recreation Department's testimony. The only thing
14 that is there is sites.

15 I am going to ask somebody from
16 Recreation to address that question.

17 MS. JOSEPHINE MANGANO: Good
18 morning. My name is Josephine Mangano. I am the
19 Administrative Services Director of the Recreation
20 Department.

21 We are currently serving about 2200
22 children with after-school programs.

23 COUNCILWOMAN MILLER: So this
24 increase --

25 MS. MANGANO: This is an increase

1 BILLS 970711, 970741

2 from last year, where we served, I believe it was,
3 about 500 children.

4 COUNCILWOMAN MILLER: Okay. The
5 additional sites have already been selected?

6 MS. MANGANO: The additional sites
7 have been selected.

8 COUNCILWOMAN MILLER: And started?

9 MS. MANGANO: And they are started
10 up, yes.

11 COUNCILWOMAN MILLER: And what type
12 of recreation specialty instructors are you having?
13 And are they at each center, or do they kind of
14 rotate and move around?

15 MS. MANGANO: The recreation
16 specialty instructors are in all areas. Some are in
17 performing arts, some are in visual arts, some are
18 in gymnastics.

19 And they go to -- they might have
20 several centers assigned to them. So they will go
21 one or two days a week to the same center, and then
22 they will go to another center.

23 So like maybe on Monday and Tuesday,
24 they will go to one center; and Wednesday and
25 Thursday, they will go to another center.

1 BILLS 970711, 970741

2 COUNCILWOMAN MILLER: Are the
3 after-school programs free of charge?

4 MS. MANGANO: I believe for the most
5 part they are free of charge. I will have to check
6 into that and see if there is some nominal charge at
7 some of the centers.

8 COUNCILWOMAN MILLER: Okay.

9 In terms of a wish list, how many
10 centers, how many after-school programs would you
11 like to set up?

12 Would this mean that most of the
13 centers now have after-school programs, or do we
14 have more that need it?

15 MS. MANGANO: We have 66 that have
16 after-school programs, and we have about 150 staff
17 centers. About three of our programs are off site.
18 Not all of our centers are large enough or equipped
19 for after-school centers.

20 But that would be our goal, to
21 increase the program as much as we could to serve
22 the population of Philadelphia, where the need is.

23 COUNCILWOMAN MILLER: All right.
24 Thank you.

25 MS. MANGANO: Okay.

1 BILLS 970711, 970741

2 CHAIRWOMAN KRAJEWSKI: Thank you.

3 Councilman Mariano.

4 COUNCILMAN MARIANO: One question for
5 the lady.

6 Can we get a list of the centers that
7 do this after-school program? Could you get that to
8 all of us by Council districts?

9 MS. MANGANO: Yes. Yes.

10 CHAIRWOMAN KRAJEWSKI: Would you see
11 that it is sent over to our office.

12 MS. MANGANO: Yes, I will.

13 COUNCILMAN MARIANO: And if it is
14 free; or if there is a charge, how much.

15 MS. MANGANO: Okay.

16 CHAIRWOMAN KRAJEWSKI: Any
17 information you have I would appreciate sent over to
18 my office.

19 MS. MANGANO: Okay.

20 CHAIRWOMAN KRAJEWSKI: Thank you.

21 Are there any other questions?

22 Thank you. That ends our Public
23 Hearing on Appropriations.

24 (Public Hearing adjourned.)

25 - - -

1
2 COUNCIL OF THE CITY OF PHILADELPHIA
3 PUBLIC MEETING
4 of the
5 COMMITTEE ON APPROPRIATIONS
6 - - -
7 Tuesday, December 2, 1997
8 - - -
9 Public Meeting conducted by the Committee
10 on Appropriations, held in Room 400, City Hall,
11 Philadelphia, Pennsylvania, on the above date, to
12 consider action on the following:
13 BILLS 970709, 970710, 970711, 970741
14 - - -
15 PRESENT:
16 COUNCILWOMAN JOAN L. KRAJEWSKI, Chair
17 COUNCILMAN MICHAEL A. NUTTER, Vice Chair
18 COUNCILWOMAN AUGUSTA A. CLARK
19 COUNCILMAN RICHARD T. MARIANO
20 COUNCILWOMAN DONNA REED MILLER
21 COUNCILWOMAN ANNA C. VERNA
22
23
24
25

1 PUBLIC MEETING

2 CHAIRWOMAN KRAJEWSKI: Now we will go
3 into our Public Meeting.

4 Councilman Nutter.

5 COUNCILMAN NUTTER: Madam Chair, I
6 would move that Council Bills 970709, 970710,
7 970711, and 970741 be reported out of this committee
8 with a favorable recommendation, and a further
9 recommendation that the Rules of Council be
10 suspended so as to permit first reading of all of
11 these bills at our next session.

12 (Duly seconded.)

13 CHAIRWOMAN KRAJEWSKI: All those in
14 favor.

15 Those opposed.

16 Thank you. Therefore, Bills No.
17 970709, 970710, 970711, and Bill 970741 will be
18 reported out of this committee with a favorable
19 recommendation, and with a suspension of Rules so as
20 to permit first reading at our next session of
21 Council.

22 Thank you all very much.

23 (Public Meeting adjourned at 10:55
24 a.m.)

25 - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Tuesday, December 2, 1997, were
reported fully and accurately by me, and that this
is a correct transcript of same.

RE: COMMITTEE ON APPROPRIATIONS

DEBRA A. WHITEHEAD, RPR