



**ROGER D. MOE**  
**MAJORITY LEADER**

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## Senate

State of Minnesota

December 11, 1995

Senator Ember Reichgott Junge, Chair  
Subcommittee on Ethical Conduct  
205 Capitol  
St. Paul, MN 55155

Subj: Discipline of Senator Joe Bertram, Sr.

Dear Senator Reichgott Junge:

On or about September 29, 1995, Senator Joe Bertram, Sr., pleaded guilty in District Court to theft of a leather vest worth less than \$100, a petty misdemeanor. He paid a fine and court costs totaling \$194.

As a result of that conviction, on October 3, 1995, Senator Bertram resigned his position as Chair of the Committee on Agriculture and Rural Development and his position as Chair of the Subcommittee on Veterans of the Committee on Governmental Operations and Veterans.

Senate Rule 75 authorizes your Subcommittee to "serve in an advisory capacity to a member or employee upon written request and . . . issue recommendations to the member or employee."

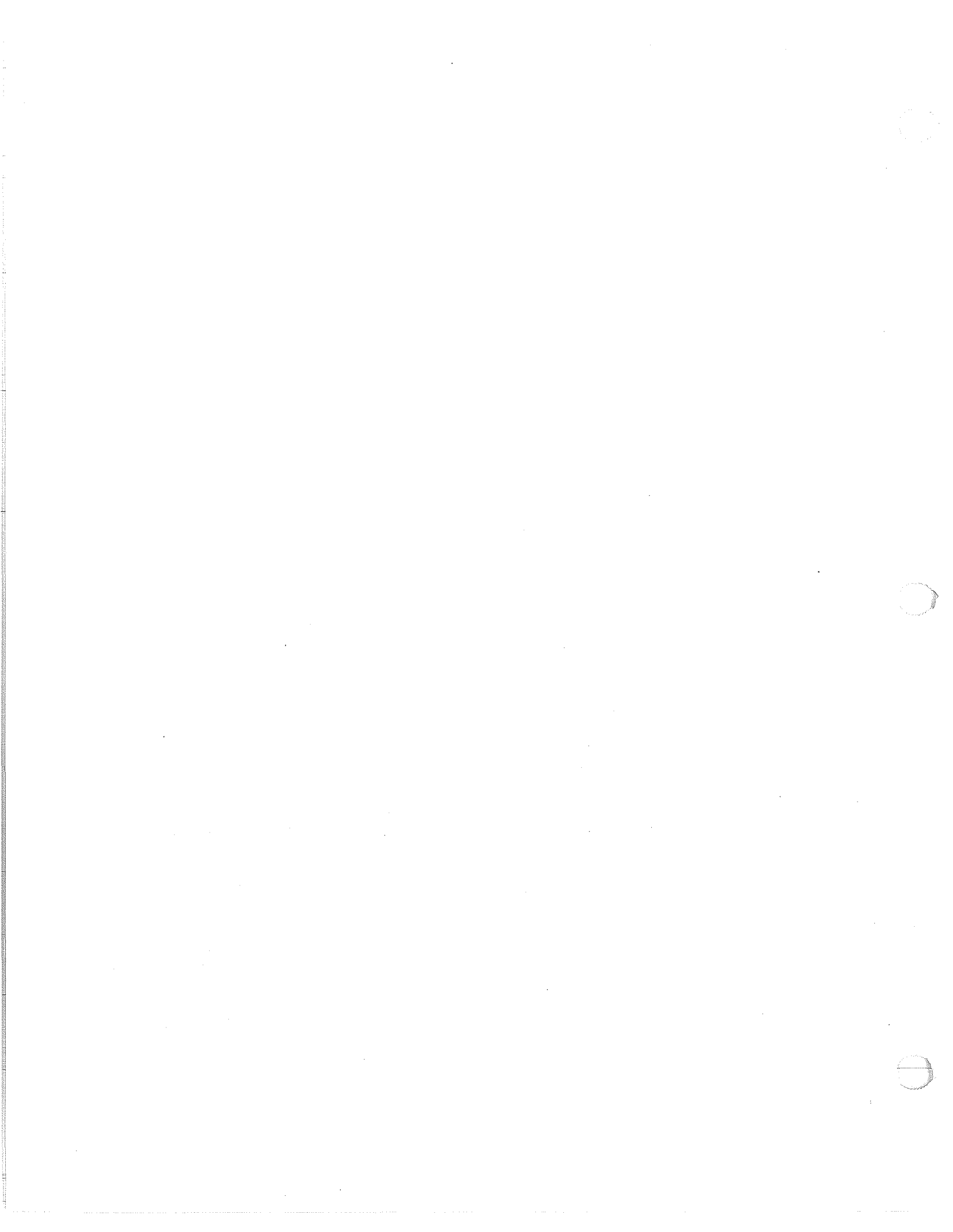
As Chair of the Committee on Rules and Administration, I request that the Subcommittee on Ethical Conduct determine what disciplinary action, if any, is appropriate for the Senate to take against Senator Bertram, considering the crime of which he has been convicted, the punishment imposed by the District Court, and the action he has already taken to resign his leadership positions.

Sincerely,

A handwritten signature in black ink that reads "Roger D. Moe". The signature is written in a cursive style.

Roger D. Moe  
Senate Majority Leader

cc: Senator Joe Bertram, Sr.



**Senate Counsel & Research**

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**Senate**  
**State of Minnesota**

December 21, 1995

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**To:** Senator Ember Reichgott Junge  
Senator Dennis R. Frederickson  
Senator Steven G. Novak  
Senator Roy W. Terwilliger  
Judge Douglas K. Amdahl  
Judge Robert J. Sheran

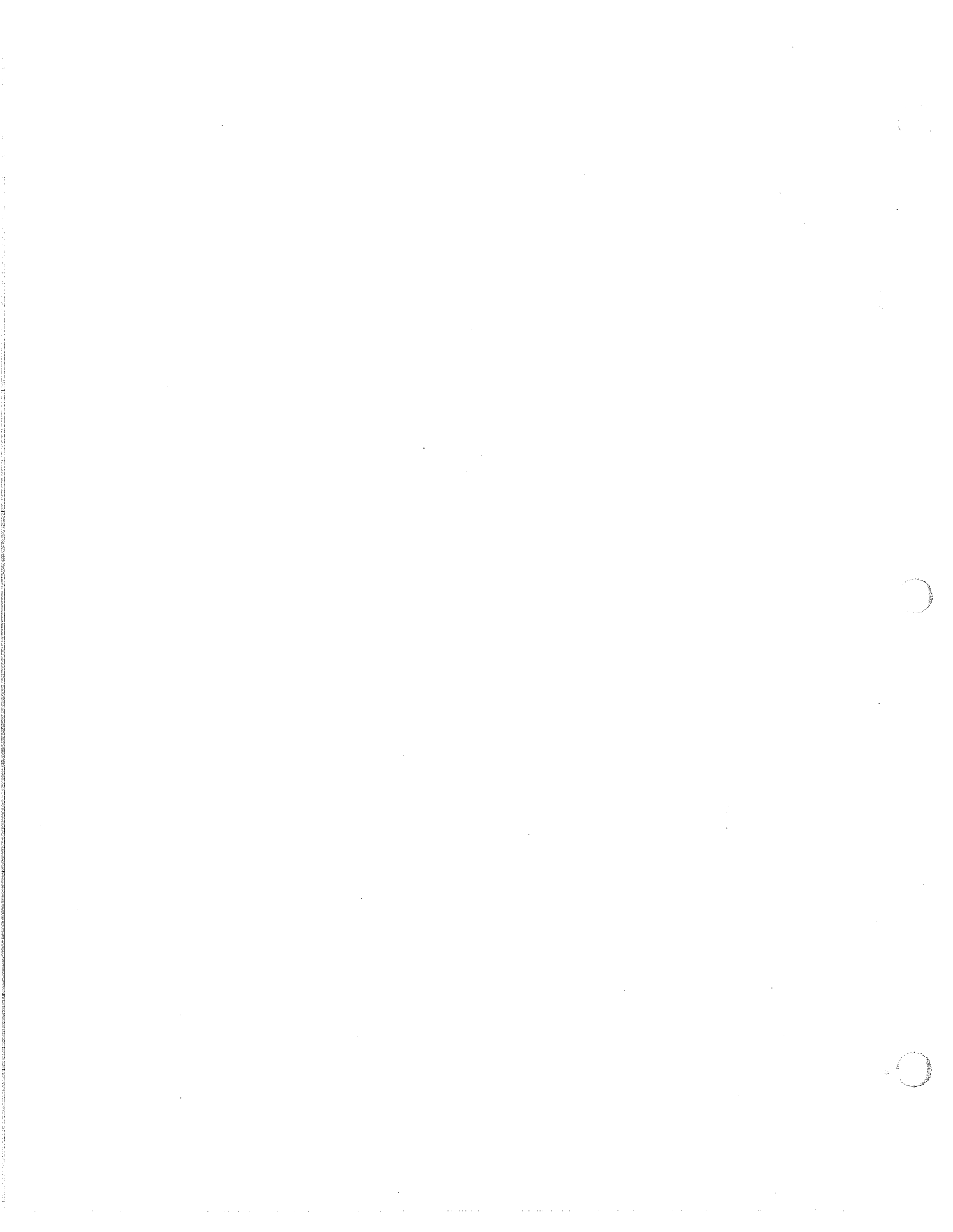
**From:** Peter S. Wattson, Senate Counsel *PSW*  
296-3812

**Subj:** Complaint Against Senator Bertram

Enclosed is a complaint filed by Senators Dean Elton Johnson and Thomas M. Neuville against Senator Bertram relating to the incident on which Senator Moe has already asked the Subcommittee for advice.

PSW:mjr  
Enclosure

cc: Senator Joe Bertram, Sr.





# Senate

State of Minnesota

Senator Ember Reichgott Junge, Chair  
Senate Special Subcommittee on Ethical Conduct  
205 State Capitol  
St. Paul, MN 55155

STATE OF MINNESOTA  
COUNTY OF RAMSEY

FORMAL COMPLAINT TO THE  
ETHICS SUBCOMMITTEE OF THE  
SENATE RULES COMMITTEE

Affiants, Senators Dean Elton Johnson and Thomas M. Neuville, each first being duly sworn under oath, state and allege on information and belief as follows:

1. Affiant Dean Elton Johnson is a duly elected member of the Minnesota State Senate from District 15.
2. Affiant Thomas M. Neuville is a duly elected member of the Minnesota State Senate from District 25.
3. On the afternoon of September 26, 1995, the owner of Zapf's Western Leather Goods Store in Paynesville called the City of Paynesville Police reporting an incident of shoplifting by Senator Joe Bertram.
4. Other employees of the store also observed Senator Joe Bertram placing a leather vest in a bag and leaving the store without paying for the article of clothing.
5. The owner of the store, Mr. Charles Paul Koshiol, alleges that he confronted Senator Bertram regarding the shoplifting incident as Senator Bertram reached his truck upon exiting the store. When confronted at his vehicle with the incident, Senator Bertram first tried to hide the article of clothing within the truck.
6. The owner of the store further alleges that at this time, Senator Bertram offered him \$1,000 if the store made no mention of this incident to the police.



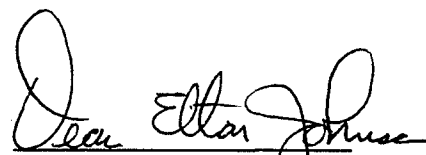
7. Senator Bertram pled guilty to a petty misdemeanor regarding the intentional theft of this article of clothing.

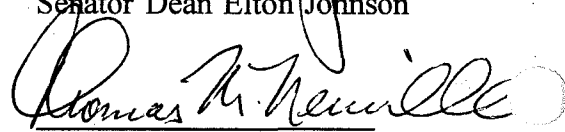
8. As such, it is your affiants' belief that Senator Bertram has breached his ethical duty to the Minnesota State Senate and the people of Minnesota by committing a criminal act involving theft and the attempted cover-up of this crime by utilizing his position and offering a \$1,000 bribe to the shopkeeper, thereby violating accepted norms of Senate behavior, betraying the public trust, and bringing the Senate into dishonor or disrepute.

9. Affiants hereby formally complain of the conduct of Senator Joe Bertram in this matter and respectfully request the Minnesota State Senate Special Subcommittee on Ethical Conduct to investigate this matter pursuant to Rule 75 of the Permanent Rules of the Minnesota State Senate and to recommend to the Senate appropriate discipline and sanctions.


Further your affiants sayeth not.

Date: December 20, 1995

  
Senator Dean Elton Johnson

  
Senator Thomas M. Neuville

Subscribed and sworn to by Senator Dean Elton Johnson and Senator Thomas M. Neuville  
this 20th day of December, 1995, before Gen Olson, Senator,  
34th District, Minnesota, ex officio notary public. My term expires January 1,  
1997.

  
Ex officio Notary Public

# INITIAL CRIME REPORT

## PAYNESVILLE POLICE DEPT.

221 WASHBURNE AVE. • PAYNESVILLE, MN 56362

Offense/Incident Shoplifting Theft				ICR# 95238	
Location: City/Twp. City of Paynesville	Photos: Yes No No	Date Occurred 9/26/95	Date Reported 9/26/95	Time Reported 12:25	
Location Occurrence Zapf's Leather Goods 114 W James St Paynesville			Reporting Officer Schmitt		
Victim/Complainant Charles Paul Koshiol		Address 114 W. James St Paynesville			
Phone Victim	Victim Bus. Phone 243-3797	Victim Bus. Address	Victim D.O.B. 7/28/48		
Reported By same	Reporting Address		Reporter D.O.B.		
Reporting Bus. Address		Reporting Bus. Phone		Reporting Home Phone	

Evidence Taken  
black leather vest, Steer Brand, style# 594 Size Medium, value \$89.95

Vicinity

Property Loss Description

Victim's Signature:

Narrative  
On 9/26/95 at approximately 12:25 hours, writer was called by Stearns County Dispatch to go to Zapf's Leather and Western Store in the City of Paynesville to take a shoplifting theft complaint from Charles Koshiol, the owner of Zapf's Leather and Western Wear. When I arrived at the store I spoke with Mr. Koshiol. Mr. Koshiol stated that a Mr. Joseph Bertram had walked out of his store without paying for a black leather vest. He showed me the vest and I took it as evidence and described as follows: Steer Brand, Style# 594, Size medium, black leather vest retail value of \$89.95. It was contained in a plastic white bag. Mr. Koshiol stated that he had been suspicious of Mr. Bertram taking things from his store in the past so when Mr. Bertram entered the store his employees were told to keep a close eye on him. Mr. Koshiol stated that Mr. Bertram came into the store to pick up a pair of boots and the boots were placed in a plastic bag and given to Mr. Bertram. Michelle Lynn Hoffenkamp, an employee of the store alerted Mr. Koshiol that Mr. Bertram had placed a black vest in the bag with the boots and walked out of the store without paying for them. Michelle stated that Mr. Bertram had been looking into the leather room at vests and that she had seen him take a vest off of a hanger and walk towards the downstairs area of the store. She stated Mr. Bertram placed the vest in the bag with the boots and was in the women's and children's section of the store. She stated Mr. Bertram asked her if this was the children's and women's section and she stated yes. At this time Michelle stated that she looked, that she could see inside the bag and saw some black fringes that she knew were not on the boots that he had put in the bag and would be fringes that would be on the vest that he was looking at in the vest department of the store and had placed in the bag. At this point Michelle stated that Mr. Bertram walked out of the

PERSONS NAMED IN REPORT

Name	D.O.B.	Code	Name	D.O.B.	Code
Charles Paul Koshiol	7/28/48	C			
Michelle Lynn Hoffenkamp	4/15/74	W			
Joseph Leo Bertram	7/3/54	S			

DISPOSITION:    Unfounded     Cleared by Arrest     Exc. Circ     Ref. Other Agency     Inactive     Other

Officer's Signature	Supervisor's Signature	Addl. Reports <input type="checkbox"/>
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ORIGINAL REPORT       SUPPLEMENTAL REPORT       ADDITIONAL VICTIMS       ADDITIONAL STOLEN PROPERTY  
 MODIFIED ORIGINAL       CASE STATUS CHANGE       ADDITIONAL OFFENDERS       ADDITIONAL RECOVERED PROPERTY

PAGE \_\_\_\_\_ of \_\_\_\_\_ PAGES

store and she notified Mr. Koshiol that Mr. Bertram had taken a vest from the store without paying for it. Mr. Koshiol stated that he ran out of the store and saw Mr. Bertram just getting into his pickup up truck. Mr. Koshiol stated that Mr. Bertram saw him coming and seemed to be very nervous and dumped something out of the bag onto the floor of the pickup truck. Mr. Bertram started talking to Mr. Koshiol stating what a wonderful job he did on repairing his boots and at this point Mr. Koshiol saw the black vest laying on the front seat floor of the pickup truck. Mr. Koshiol asked Mr. Bertram about the vest. Mr. Koshiol stated he just hung his head. Mr. Koshiol stated he asked Mr. Bertram about the vest again and what he was trying to do. At this point Mr. Bertram hung his head again and told Mr. Koshiol that he would pay for the vest. Mr. Bertram told Mr. Koshiol that he would like to speak with him at his residence and wanted Mr. Koshiol to come over to his residence and discuss this matter. Mr. Koshiol stated that it was too late that he thought that they should walk down to the police department and take care of this matter. Mr. Bertram stated that he did not want the police department to find about this matter and Mr. Koshiol stated that they already knew that he had possibly been taking things from the store in the past. I transported Mr. Koshiol down to the Paynesville Police Department where I met with Chief Drager. At this time I telephoned Mr. Bertram ~~at his residence~~ <sup>APU 3320</sup>, if he would come to the Police Station and speak to us. Mr. Bertram stated that he would and when he arrived he spoke with Mr. Koshiol and Chief Drager. Mr. Koshiol mentioned to Mr. Bertram that he suspected him of taking other things from the store and mentioned a coat and a shirt. At this time Mr. Bertram offered to take Mr. Koshiol over to his house and allow him to look in his closets at the clothes in the closet to verify that the coat and the shirt was not there. Mr. Koshiol asked me if I could accompany over to the Bertram's and Mr. Bertram stated that that would be okay and we did. Upon entering the house Mr. Bertram showed us a closet with some leather coats and I also asked Mr. Bertram if he had any objections to us looking in his bedroom closet and he stated he had no objections and showed us the closet. Mr. Koshiol checked the closet and did not find anything out of the ordinary that he could identify as coming from his store. We returned to the Paynesville Police Department where Mr. Bertram again spoke with Chief Drager and Mr. Koshiol. At approximately 1:31 p.m. I requested a statement from Mr. Bertram and read him the warning and statements of rights. Mr. Bertram stated that he understood his rights and wished to speak with an attorney before giving a statement. At this point all questioning was stopped and Mr. Bertram left. I took a taped statement from Mr. Charles Paul Koshiol in regards to this shoplifting complaint. At this time I requested Mr. Koshiol to return to his store and see if Michelle Hoffenkamp could come and give me a statement. Ms Hoffenkamp and Charles Koshiol came into the police station and I explained to Ms. Hoffenkamp the procedure I was going to use to tape her statement. At this time Mr. Koshiol stated that he would like to tell me something that he forgot on his statement. Mr. Koshiol stated that Mr. Bertram had offered him a thousand dollars to forget the whole thing and told him that he would give him lots of business and get him more business. Mr. Koshiol also stated that Mr. Bertram had conveyed to him that he had taken a shirt on one prior occasion but had returned the shirt. Mr. Koshiol stated that in looking at his records he could see no record of Mr. Bertram being credited for a shirt or a sale of such a shirt.

Footnote: On 9/15/95 at approximately 10:30 hours writer was called by Stearns County Dispatch to go to Zapf's Western Leather Store and speak with the owner, Charles Paul Koshiol. Mr. Koshiol just wanted to inform us as a matter of information that he suspected that Mr. Joseph Bertram had been taking things from his store but could not be 100% sure at this time. He stated he just wanted us apprised of this situation as he was going to have his employees keep a very close eye on Mr. Bertram the next time he came into his store. Mr. Koshiol me possible items taken by Mr. Bertram such as a leather coat, a shirt and a belt but was un to say 100% sure that Mr. Bertram had taken these items but he had great suspicions as Mr. Bertram was in the area where th items had disappeared and on one occasion was the only other person in the store at that time.

SUBJECT IDENTIFIED	SUBJECT LOCATED	<input type="checkbox"/> ACTIVE <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ADMICLOSED <input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-18 FOUND <input type="checkbox"/> EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE	<input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> EXTRADITION DENIED	<input type="checkbox"/> VICTIM DECLINES COOPERATION <input type="checkbox"/> JUVENILE - NO CUSTODY		
REPORTING OFFICER'S NAME	DATE	NUMBER	APPROVING OFFICER	DATE
FOLLOW-UP INVESTIGATION		OFFICER		UNIT NUMBER
<input type="checkbox"/> YES <input type="checkbox"/> NO				



# STATEMENT

TIME 1:30 p.m. DATE 9/26/95 PLACE Paynesville Police DEpartment

I, Charles Paul Koshiol Having been advised that I may consult an Attorney \_\_\_\_\_ and knowing that anything that I say may be used against me in a Court of Law, and knowing that I do not have to make any statement at all, do hereby volunteer the following to \_\_\_\_\_

\_\_\_\_\_ who has identified himself as \_\_\_\_\_

I am 47 years old. Date of birth 7/28/48 I live at 114 W. James Street. (Business address)  
Paynesville

Q. Chuck on 9/26/95 at approximately 12:25 p.m. did you call the Paynesville Police Department in reference to a shoplifting complaint.

A. ~~XXXXXX~~ Yes, I did.

Q. You are going to have to wait until I quit

A. Okay.

Q. Otherwise Gayla is going to get all confused.

A. Sorry.

Q. Um, How did you receive this complaint of the shoplifting?

A. My manager, Michelle Hoffenkamp.

Q. What did Michelle tell you?

A. Well, um we had suspected Senator Joe Bertram of shoplifting from us in the past and so our helpers has been alerted to keep an eye on him and she observed him in the store and to make a long story short she is going to give you her complete statement but when she was certain that he had put a vest in his bag and with no intention of paying for it she ran into the back room and got me, told me that he had gone out the front door and I ran out the front door, met him at his car at his pickup truck and he had just placed the bag in the front seat passenger side of his vehicle and when he saw me he got real nervous and he quick opened up the car door or didn't close it but reopened it and dumped the contents of the bag and grabbed the repaired boots and closed the door and uh and uh very quickly this happened because I had just reached him and then he started talking to me about how good of a job to keep my mind off of what he had put in the car and what a good job I had done on the boots and this and that and I said Joe I want to see the bag. Well then he opened up the door and I picked up the bag of course which was empty and I pointed to the vest on the floor and I said Joe what's that and he hung his head and he said it's a vest and I said Joe What is That and he said it's a vest and I said Joe what in the hell are you doing? Then he hung his head and he said I'll pay you for it and I said No, it's too late for that it's what the hell is going on here. So then we talked and I told him sit in his car let's talk and he said he didn't want to do that. He asked me to come to his house and I said no let's go over to the police station. He said, I don't want them involved. I said they are already involved. Well what do you mean. I said they already know that we suspected you a week ago and so I made a report a week ago, I said they are already involved it's too late for that and then of course he wanted to pay me for the vest and I said no, uh he said come to my house, talk to me in my house. I said no. So I said I wanted the vest, let me take the vest and that I'd call him. I took the vest, he didn't want to make a scene on the street. I said I don't blame you but let me have the vest, put it back in the bag, I'll go back inside and you go home and I'll give you a call. So I went in and immediately called the Paynesville phone number for the office here and no one answered, so then I called 911 and talked to Jane and told her that I wanted the police to either call me or come talk to me because we had caught a shoplifter, so Tony came a few minutes later, 5 minutes later probably and I told him that yes this is Joe and this is what happened and our suspicions had panned out so I did call

I give this statement without threat, coercion or promise of any kind; I have read the above statement consisting of 2 pages, each of which has been signed by me, and acknowledge receipt of a true and correct copy thereof.

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

Signed:

Charles Paul Koshiol

STATEMENT OF: Charles Paul Koshiol

- A. cont. Joe and told him I would come right over and so then I went to the police station and talked to Bill, the three of us talked and then called Joe again and another five minutes had gone by of course and asked Joe if he would come downtown and I guess that's about all I need to say, hugh. ha,ha,ha
- Q. Um, was this a car or a pickup truck that he was driving?
- A. A pickup truck, a little pickup truck. I don't know, I don't know what they are.
- Q. Did he convey to you that anything like this has ever occurred before?
- A. Well he admitted that he took a shirt, he said Chuck I swear I'm honest with you I only took I only did this one time and that was a shirt and I brought that back, now I don't remember that I mean I don't remember him bringing that shirt back, he's brought a lot of things back in fact today the reason he came into the store he brought back a belt that he claimed that his wife bought for him in July and so he brought it back for credit, well we looked it up and there is no record of it being sold and that's exactly what alerted us or not exactly what alerted us one of the things that alerted us before to be suspicious of him because of the other things he had brought back. He brought back a belt that we know he wore on two occasions and yet he brought back this belt and it had never been worn, no evidence of ever being worn and brought that back for credit and yet we know that he owns one of those belts that he's worn it. So um the shirt deal that I told Tony about a week ago or whenever that was I mean I didn't make a verbal statement about that but I'm 90% sure he took that um we also suspected that he took a jacket and I guess if you need me to say anything more about those things I can but um he did admit that he took a shirt although he said he brought that back and he's you know he's acting like he felt guilty about taking it and he brought it back
- Q. But you don't remember him bringing any shirt back?
- A. Well, I'd have to look at the records. I don't know when this would have been. In fact who did he say that was? I'd have to look that up.
- Q. Did he tell you or give you a reason why he brought the shirt back?
- A. No, Oh no he didn't say like he's saying today I brought, well he's not really he admitted taking it he admits stealing it. He didn't say there was any misunderstanding.
- Q. To your understanding did he know he did something wrong?
- A. Oh without a doubt.
- Q. And did he offer you any
- A. Well he's a
- Q. thing for this?
- A. Of course he's begging me to drop the charges and as much as I would like to have compassion I guess I have to do what's right. He said he would give me all kinds of business which of course he does anyway but um of course he wants to buy the vest, he's offered to give me money and give me all kinds of other business and obviously he thinks his career is on the line here and wants me and he tells me he will do anything to get him off this hook.
- Q. Can you describe to me the vest that he took?
- A. Well it's a black vest a black leather vest, um Steer brand it's got conchos on the front \$90.00 vest, it's got lapels uh it's just a western style black leather vest.
- Q. And you gave this vest to myself who is Tony Schmitt, Paynesville Police Officer?
- A. Yah, I took it out of his truck and brought it into the store and when you came into the store, Tony, I gave it to you and pointed it and said this is the vest that he took and obviously he also, he didn't see it I guess here in the office but uh yah that's the one.
- Q. Okay and the employee who alerted you to this was again?
- A. Michelle Hoffenkamp, my manager, Michelle Hoffenkamp.
- Q. Is there anything you would like to add to this statement?
- A. I couldn't think of what.

This statement is ended at 1:46 p.m. and the person taking this statement was Tony Schmitt Paynesville Police Officer, Badge 702.

Charles Koshiol

# STATEMENT

TIME 2:32 p.m. DATE 9/26/95 PLACE Paynesville Police Department

I, Michelle Lynn Hoffenkamp Having been advised that I may consult an Attorney \_\_\_\_\_ and knowing that anything that I say may be used against me in a Court of Law, and knowing that I do not have to make any statement at all, do hereby volunteer the following to Tony Schmitt who has identified himself as Police Officer for the City of Paynesville

I am \_\_\_\_\_ years old. Date of birth 4/15/74 I live at 12881 175th ST NE Atwater, MN

It is now 2:32 p.m.

- Q. Michelle could you spell your full and complete name?  
A. Michelle Lynn Hoffenkamp.
- Q. Are you employed for Zapf's Western Leather Goods Store?  
A. Yes, I am.
- Q. In what capacity?  
A. As a manager.
- Q. Were you working on 9/26/95 between the hours of 12 p.m. and 12:30 p.m.?  
A. Yes I was.
- Q. Did you report to the owner of the store, Charles Koshiol, a theft?  
A. Yes I did.
- Q. Can you convey to me what occurred during this time? We are talking the time period of approximately 12:15 to 12:20 hours.  
A. Okay, um Joe Bertram had walked in our store and asked for his repaired boots. I had walked in the back to get them for him and brought them out and he asked me to put them on his charge. He walked into the leather room and was looking at leather vests, came back and asked me to put his boots in a bag for him and I did as he asked. He walked back into the leather room, I stayed at the counter where I could keep him in my sight and he walked by a leather vest and took the vest off the hanger and walked by the stairs that go downstairs and slipped it in his bag and then he walked over by the kids boots and asked me if it was the ladies department and I said yes it was kind of leary of what else he had in his bag, kind of peaked over so I could see in it and saw some fringes in there that were not on his repaired boots and then he had walked back over by the vests again and was looking at a leather jacket he kind of liked and then he came to the counter with me and asked me if he had a credit from the belt he just brought back and I said yes and then he left.
- Q. Okay and then did you notify Mr. Koshiol that he had left the store with the vest in the bag?  
A. Yes I did.
- Q. And what did Mr. Koshiol do?  
A. He ran through the store like a mad man and out the door and caught Joe at his pickup.
- Q. And that's the last you saw of Mr. Bertram?  
A. Yes it was.
- Q. How do you know Joseph Bertram?  
A. He comes to the store, he's been a good customer for like the last six months, he comes into the store like once every two weeks or once a week approximately looking at boots that Chuck designs and he's purchased some belts there and stuff and I guess he always comes in seeing what we've got new and .
- Q. So you have charged to him in the past so you know his name?  
A. Yes.

I give this statement without threat, coercion or promise of any kind; I have read the above statement consisting of 2 pages, each of which has been signed by me, and acknowledge receipt of a true and correct copy thereof.

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

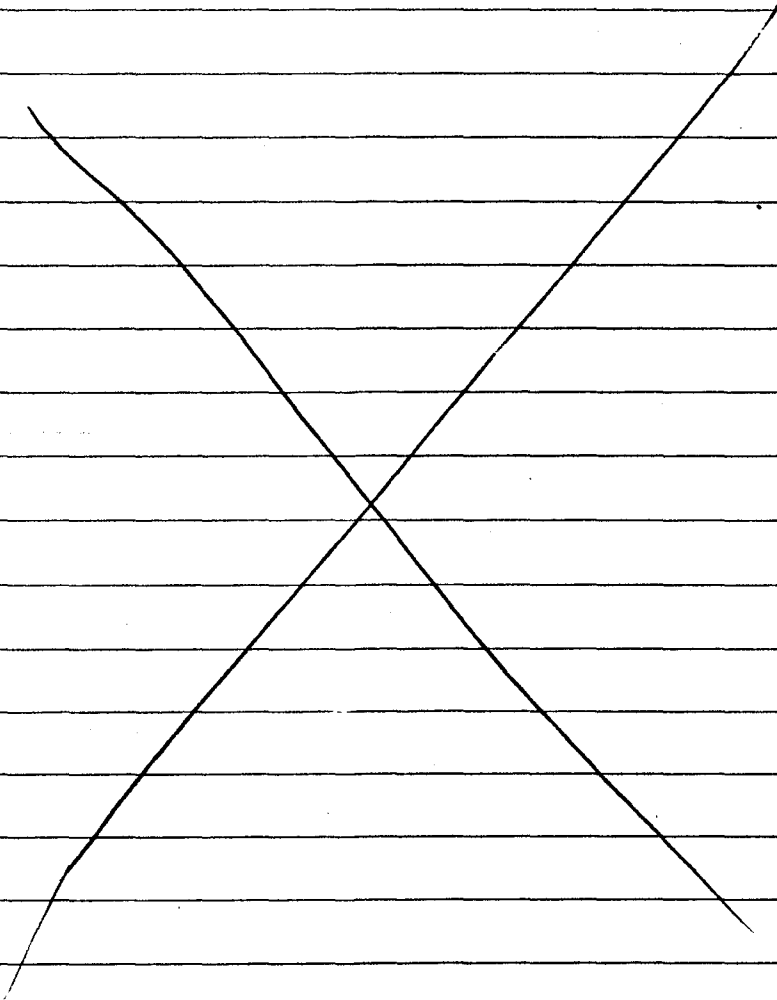
Signed:

Michelle Lynn Hoffenkamp

STATEMENT OF; Michelle Lynn Hoffenkamp

- Q. When you said that you could you were keeping a close eye on Mr. Bertram was there a reason for that?  
A. Um, earlier in the month we had suspected that he had stole a shirt from us but we hadn't seen him take it but he was like the only person in the store at the time so we kind of had a little thing between all of us that when he would come in that we would keep a close eye on him just to check out.  
Q. Okay. Michelle is there anything you would like to add to this statement?  
A. I don't think so.

That will be the end of the statement. The ending time would be 2:36 p.m.  
Again the statement was taken by Tony Schmitt, Paynesville Police Department Badge # 702.



*Michelle Hoffenkamp*



## 1 APPEARANCES:

2 JOHN R. KOCH, Attorney at Law, 501 St.  
3 Germain Street, P.O. Box 1556, St. Cloud, Minnesota  
4 56302, appeared on behalf of the State of Minnesota.  
5

6 HARRY BURNS, Attorney at Law, 111 North  
7 Ninth Avenue, St. Cloud, Minnesota 56301, appeared on  
8 behalf of the Defendant.  
9

10 The Defendant, JOSEPH LEO BERTRAM, was  
11 personally present through all sessions of court  
12 herein.  
13

14 (Whereupon, the following proceedings were  
15 duly had:)  
16

17 THE CLERK: State versus Joseph Bertram.

18 THE COURT: Mr. Koch and Mr. Burns, I'm  
19 going to meet this issue head on. Mr. Koch,  
20 Mr. Bertram is a prominent elected official in this  
21 area. The practice of the Court has usually been when  
22 that sort of thing occurs and this sort of incident  
23 occurs, to find an outside Judge. As the State's  
24 attorney in this case, it's conceivable that you might  
25 have to worry that because of Mr. Bertram's stature in

1 the community he might be treated more lenient, and  
2 before we proceed I just want you to know if you are  
3 willing to do so with this Court handling it.

4 MR. KOCH: Your Honor, we certainly have no  
5 objection to this Court sitting on this matter. I  
6 believe there has been a disposition, I think, and  
7 that the various penalties of that disposition are  
8 within a very narrow line. And I think, Your Honor,  
9 that we certainly have no objection to you sitting on  
10 this matter.

11 THE COURT: Mr. Burns, similar question.  
12 Because of your client's stature, you might have to  
13 worry that a local Judge might be tempted to bend over  
14 backwards and, accordingly, treat your client more  
15 harshly than someone charged in similar  
16 circumstances. There is always the very common  
17 practice of assigning a Judge outside the community.  
18 Are you willing to go ahead with this Court handling  
19 the situation?

20 MR. BURNS: Yes, Your Honor, we agree to you  
21 hearing this case.

22 THE COURT: Mr. Koch?

23 MR. KOCH: Your Honor, at this time the  
24 matter has been charged as a misdemeanor. We would  
25 certify it as a petty misdemeanor. There has been

1 discussion that Senator Bertram will enter a plea to  
2 that. I believe that the discussion has been that  
3 there will be a fine of \$150, and I believe that there  
4 will be surcharges and then no contingencies over and  
5 above that.

6 THE COURT: Mr. Burns, is that the  
7 agreement?

8 MR. BURNS: Yes, Your Honor, that's  
9 correctly stated.

10 THE COURT: Mr. Bertram, do you understand  
11 the charge against you?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you had enough time to talk  
14 to your attorney?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Has your attorney -- I have a  
17 number of things to go through with you. Has your  
18 attorney advised you of your right to trial in this  
19 matter and the other constitutional protections that  
20 you may take advantage of if you chose to have a  
21 trial?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand that if you  
24 had such a trial you'd be presumed innocent, the State  
25 would be required to prove the case against you beyond



1 a reasonable doubt. You would have various other  
2 rights, including the right to question and  
3 cross-examine witnesses against you, of course the  
4 right to remain silent. When you plead guilty you  
5 give up all of those constitutional protections.  
6 There won't be a trial. Is that what you want to do?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You've had enough time to talk  
9 to Mr. Burns and you thoroughly understand what you  
10 are doing?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Mr. Bertram, to the charge of  
13 theft on September 26, 1995, do you plead guilty or  
14 not guilty?

15 THE DEFENDANT: Plead guilty.

16 THE COURT: This occurred in the city of  
17 Paynesville, in Stearns County; is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: You were in Zapf's Leather Goods  
20 Store in that city on September 26?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Did you remove an article of  
23 merchandise from that store and leave the store  
24 without paying for it?

25 THE DEFENDANT: Yes.

1 THE COURT: In doing so did you know that  
2 was wrong?

3 THE DEFENDANT: Yes.

4 THE COURT: I understand the value of that  
5 merchandise was 89 or \$90; is that essentially  
6 correct?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you make any attempt to pay  
9 for that merchandise?

10 THE DEFENDANT: No.

11 THE COURT: Is it fair to say that by  
12 leaving the store without paying for it your intent  
13 was to steal the item?

14 THE DEFENDANT: Yes.

15 THE COURT: The Court finds a factual basis  
16 for and accepts the plea. Mr. Koch, anything further  
17 regarding sentence?

18 MR. KOCH: No, Your Honor.

19 THE COURT: Mr. Burns?

20 MR. BURNS: I have nothing further.

21 THE COURT: Mr. Bertram, anything you want  
22 to tell me before I decide what to do?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: The sentence of the Court is a  
25 fine of \$150, together with surcharges and various

1 other fees. Mr. Bertram, the total would come to in  
2 the neighborhood of \$180 to \$190. Can you pay that  
3 today?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: That should take care of it.  
6 Thank you, gentlemen.

7 (The proceedings were adjourned.)

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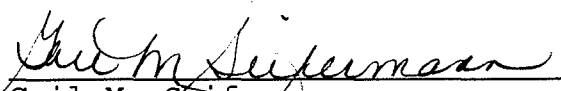
25

## REPORTER'S CERTIFICATE

1  
2  
3 I, Gail M. Seifermann, do hereby certify that I  
4 recorded in Stenotype the proceedings in the matter of  
5 State of Minnesota -vs- Joseph Leo Bertram;

6  
7 I further certify that thereafter and on this  
8 same date I transcribed into typewriting the foregoing  
9 transcript of the said recorded proceedings, which  
10 transcript consists of the preceding 7 pages;

11  
12 I further certify that said transcript of such  
13 proceedings is true and correct to the best of my  
14 ability.

15  
16  
17   
18 Gail M. Seifermann  
19 District Court Reporter  
20 Stearns County Courthouse  
21 St. Cloud, MN 56301  
22 (612) 656-3672

23  
24  
25 Dated: December 19, 1995

609.52 Theft.

Subdivision 1. Definitions. In this section:

(1) "Property" means all forms of tangible property, whether real or personal, without limitation including documents of value, electricity, gas, water, corpses, domestic animals, dogs, pets, fowl, and heat supplied by pipe or conduit by municipalities or public utility companies and articles, as defined in clause (4), representing trade secrets, which articles shall be deemed for the purposes of Extra Session Laws 1967, chapter 15 to include any trade secret represented by the article.

(2) "Movable property" is property whose physical location can be changed, including without limitation things growing on, affixed to, or found in land.

(3) "Value" means the retail market value at the time of the theft, or if the retail market value cannot be ascertained, the cost of replacement of the property within a reasonable time after the theft, or in the case of a theft or the making of a copy of an article representing a trade secret, where the retail market value or replacement cost cannot be ascertained, any reasonable value representing the damage to the owner which the owner has suffered by reason of losing an advantage over those who do not know of or use the trade secret. For a check, draft, or other order for the payment of money, "value" means the amount of money promised or ordered to be paid under the terms of the check, draft, or other order. For a theft committed within the meaning of subdivision 2, clause (5), (a) and (b), if the property has been restored to the owner, "value" means the value of the use of the property or the damage which it sustained, whichever is greater, while the owner was deprived of its possession, but not exceeding the value otherwise provided herein.

(4) "Article" means any object, material, device or substance, including any writing, record, recording, drawing, sample specimen, prototype, model, photograph, microorganism, blueprint or map, or any copy of any of the foregoing.

(5) "Representing" means describing, depicting, containing, constituting, reflecting or recording.

(6) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(7) "Copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing, or sketch made of or from an article while in the presence of the article.

(8) "Property of another" includes property in which the actor is coowner or has a lien, pledge, bailment, or lease or other subordinate interest, and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife. It does not include property in which the actor asserts in good faith a claim as a collection fee or commission out of property or funds recovered, or by virtue of a lien, setoff, or counterclaim.

(9) "Services" include but are not limited to labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment services, advertising services, telecommunication services, and the supplying of equipment for use.

(10) "Motor vehicle" means a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air.

Subd. 2. Acts constituting theft. Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(1) intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property; or

(2) having a legal interest in movable property, intentionally and without consent, takes the property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property; or

(3) obtains for the actor or another the possession, custody, or title to property of or performance of services by a third person by intentionally deceiving the third person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(a) the issuance of a check, draft, or order for the payment of money, except a forged check as defined in section 609.631, or the delivery of property knowing that the actor is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(b) a promise made with intent not to perform. Failure to perform is not evidence of intent not to perform unless corroborated by other substantial evidence; or

(c) the preparation or filing of a claim for reimbursement, a rate application, or a cost report used to establish a rate or claim for payment for medical care provided to a recipient of medical assistance under chapter 256B, which intentionally and falsely states the costs of or actual services provided by a vendor of medical care; or

(d) the preparation or filing of a claim for reimbursement for providing treatment or supplies required to be furnished to an employee under section 176.135 which intentionally and falsely states the costs of or actual treatment or supplies provided; or

(e) the preparation or filing of a claim for reimbursement for providing treatment or supplies required to be furnished to an employee under section 176.135 for treatment or supplies that the provider knew were medically unnecessary, inappropriate, or excessive; or

(4) by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person; or

(5) intentionally commits any of the acts listed in this subdivision but with intent to exercise temporary control only and:

(a) the control exercised manifests an indifference to the rights of the owner or the restoration of the property to the owner; or

(b) the actor pledges or otherwise attempts to subject the property to an adverse claim; or

(c) the actor intends to restore the property only on condition that the owner pay a reward or buy back or make other compensation; or

(6) finds lost property and, knowing or having reasonable means of ascertaining the true owner, appropriates it to the finder's own use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to the owner; or

(7) intentionally obtains property or services, offered upon the deposit of a sum of money or tokens in a coin or token operated machine or other receptacle, without making the required deposit or otherwise obtaining the consent of the owner; or

(8) intentionally and without claim of right converts any article representing a trade secret, knowing it to be such, to the actor's own use or that of another person or makes a copy of

an article representing a trade secret, knowing it to be such, and intentionally and without claim of right converts the same to the actor's own use or that of another person. It shall be a complete defense to any prosecution under this clause for the defendant to show that information comprising the trade secret was rightfully known or available to the defendant from a source other than the owner of the trade secret; or

(9) leases or rents personal property under a written instrument and who with intent to place the property beyond the control of the lessor conceals or aids or abets the concealment of the property or any part thereof, or any lessee of the property who sells, conveys, or encumbers the property or any part thereof without the written consent of the lessor, without informing the person to whom the lessee sells, conveys, or encumbers that the same is subject to such lease and with intent to deprive the lessor of possession thereof. Evidence that a lessee used a false or fictitious name or address in obtaining the property or fails or refuses to return the property to lessor within five days after written demand for the return has been served personally in the manner provided for service of process of a civil action or sent by certified mail to the last known address of the lessee, whichever shall occur later, shall be evidence of intent to violate this clause. Service by certified mail shall be deemed to be complete upon deposit in the United States mail of such demand, postpaid and addressed to the person at the address for the person set forth in the lease or rental agreement, or, in the absence of the address, to the person's last known place of residence; or

(10) alters, removes, or obliterates numbers or symbols placed on movable property for purpose of identification by the owner or person who has legal custody or right to possession thereof with the intent to prevent identification, if the person who alters, removes, or obliterates the numbers or symbols is not the owner and does not have the permission of the owner to make the alteration, removal, or obliteration; or

(11) with the intent to prevent the identification of property involved, so as to deprive the rightful owner of possession thereof, alters or removes any permanent serial number, permanent distinguishing number or manufacturer's identification number on personal property or possesses, sells or buys any personal property with knowledge that the permanent serial number, permanent distinguishing number or manufacturer's identification number has been removed or altered; or

(12) intentionally deprives another of a lawful charge for cable television service by:

(i) making or using or attempting to make or use an unauthorized external connection outside the individual dwelling unit whether physical, electrical, acoustical, inductive, or other connection, or by

(ii) attaching any unauthorized device to any cable, wire, microwave, or other component of a licensed cable communications system as defined in chapter 238. Nothing herein shall be construed to prohibit the electronic video rerecording of program material transmitted on the cable communications system by a subscriber for fair use as defined by Public Law Number 94-553, section 107; or

(13) except as provided in paragraphs (12) and (14), obtains the services of another with the intention of receiving those services without making the agreed or reasonably expected payment of money or other consideration; or

(14) intentionally deprives another of a lawful charge for telecommunications service by:

(i) making, using, or attempting to make or use an unauthorized connection whether physical, electrical, by wire, microwave, radio, or other means to a component of a local telecommunication system as provided in chapter 237; or

(ii) attaching an unauthorized device to a cable, wire, microwave, radio, or other component of a local telecommunication system as provided in chapter 237.

The existence of an unauthorized connection is prima facie evidence that the occupier of the premises:

- (i) made or was aware of the connection; and
- (ii) was aware that the connection was unauthorized; or
- (15) with intent to defraud, diverts corporate property other than in accordance with general business purposes or for purposes other than those specified in the corporation's articles of incorporation; or
- (16) with intent to defraud, authorizes or causes a corporation to make a distribution in violation of section 302A.551, or any other state law in conformity with it; or
- (17) intentionally takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner.

Subd. 3. Sentence. Whoever commits theft may be sentenced as follows:

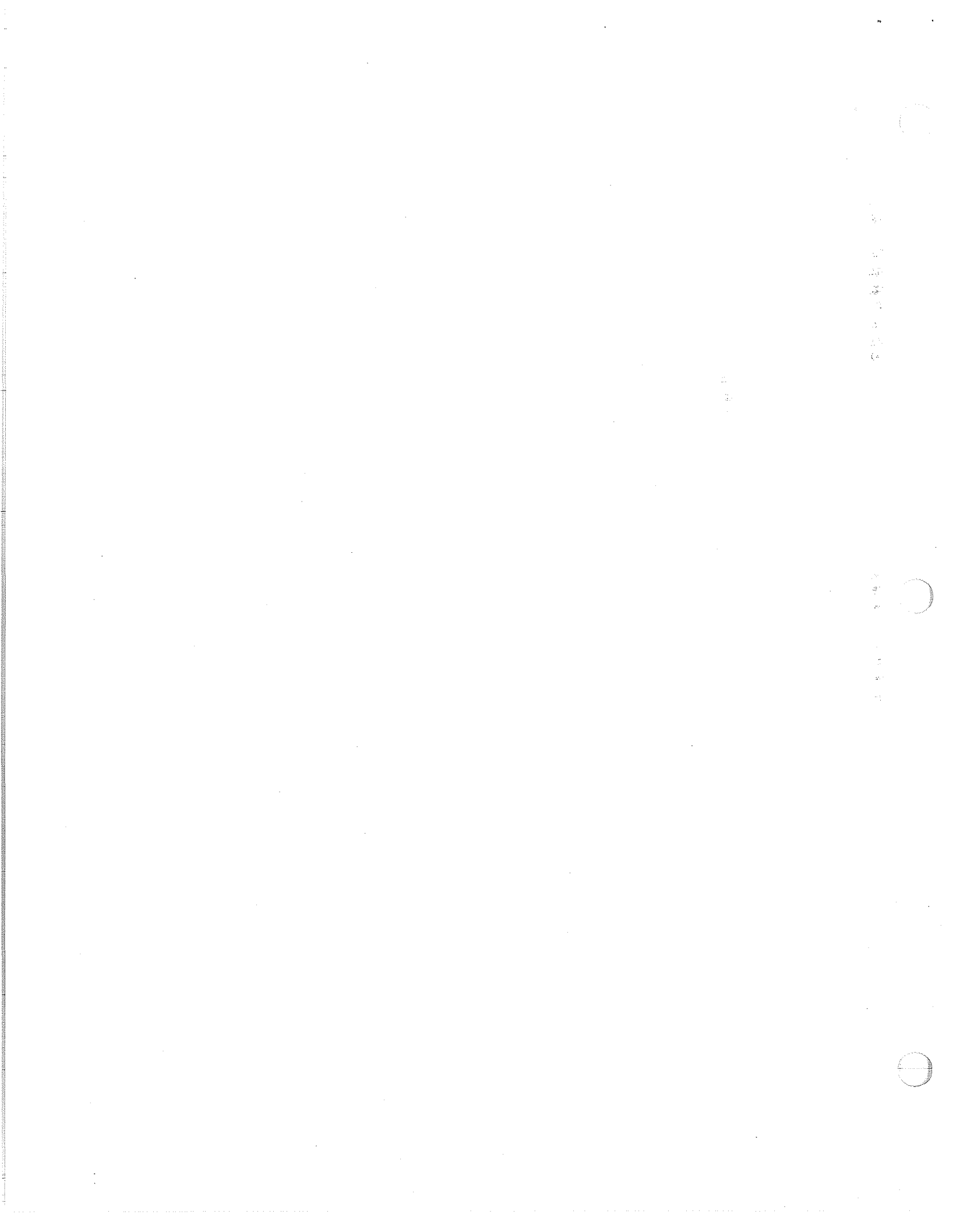
- (1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the property is a firearm, or the value of the property or services stolen is more than \$35,000 and the conviction is for a violation of subdivision 2, clause (3), (4), (15), or (16); or
- (2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of the property or services stolen exceeds \$2,500, or if the property stolen was an article representing a trade secret, an explosive or incendiary device, or a controlled substance listed in schedule I or II pursuant to section 152.02 with the exception of marijuana; or
- (3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if:
  - (a) the value of the property or services stolen is more than \$500 but not more than \$2,500; or
  - (b) the property stolen was a controlled substance listed in schedule III, IV, or V pursuant to section 152.02; or
  - (c) the value of the property or services stolen is more than \$200 but not more than \$500 and the person has been convicted within the preceding five years for an offense under this section, section 256.98; 268.18, subdivision 3; 609.24; 609.245; 609.53; 609.582, subdivision 1, 2, or 3; 609.625; 609.63; 609.631; or 609.821, or a statute from another state in conformity with any of those sections, and the person received a felony or gross misdemeanor sentence for the offense, or a sentence that was stayed under section 609.135 if the offense to which a plea was entered would allow imposition of a felony or gross misdemeanor sentence; or
  - (d) the value of the property or services stolen is not more than \$500, and any of the following circumstances exist:
    - (i) the property is taken from the person of another or from a corpse, or grave or coffin containing a corpse; or
    - (ii) the property is a record of a court or officer, or a writing, instrument or record kept, filed or deposited according to law with or in the keeping of any public officer or office; or
    - (iii) the property is taken from a burning, abandoned, or vacant building or upon its removal therefrom, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle; or
    - (iv) the property consists of public funds belonging to the state or to any political subdivision or agency thereof; or
    - (v) the property stolen is a motor vehicle; or
- (4) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the property or services stolen is more than \$200 but not more than \$500; or
- (5) in all other cases where the value of the property or services stolen is \$200 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both, provided, however, in any prosecution under subdivision 2, clauses (1), (2), (3), (4), and (13), the value of the money or property or services received by the defendant in violation of



any one or more of the above provisions within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this subdivision; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

Subd. 4. Wrongfully obtained public assistance; consideration of disqualification. When determining the sentence for a person convicted of theft by wrongfully obtaining public assistance, as defined in section 256.98, subdivision 1, the court shall consider the fact that, under section 256.98, subdivision 8, the person will be disqualified from receiving public assistance as a result of the person's conviction.

HIST: 1963 c 753 art 1 s 609.52; 1967 c 178 s 1; Ex1967 c 15 s 1-3; 1971 c 23 s 55; 1971 c 25 s 92; 1971 c 697 s 1; 1971 c 717 s 1; 1971 c 796 s 1; 1971 c 845 s 14; 1975 c 244 s 1; 1976 c 112 s 1; 1976 c 188 s 6; 1977 c 396 s 1; 1978 c 674 s 60; 1979 c 258 s 15; 1981 c 120 s 1; 1981 c 299 s 1; 1983 c 238 s 1; 1983 c 331 s 10; 1984 c 419 s 1; 1984 c 466 s 1; 1984 c 483 s 1; 1984 c 628 art 3 s 5; 1985 c 243 s 7,8; 1986 c 378 s 1; 1986 c 435 s 10; 1986 c 444; 1987 c 254 s 9; 1987 c 329 s 8-10; 1988 c 712 s 7; 1989 c 290 art 7 s 5; 1991 c 279 s 32; 1991 c 292 art 5 s 80; 1992 c 510 art 2 s 14; 1994 c 636 art 2 s 41; 1995 c 244 s 20



## 609.42 Bribery.

Subdivision 1. Acts constituting. Whoever does any of the following is guilty of bribery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both:

(1) Offers, gives, or promises to give, directly or indirectly, to any person who is a public officer or employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person's performance of the powers or duties as such officer or employee; or

(2) Being a public officer or employee, requests, receives or agrees to receive, directly or indirectly, any such benefit, reward or consideration upon the understanding that it will have such an influence; or

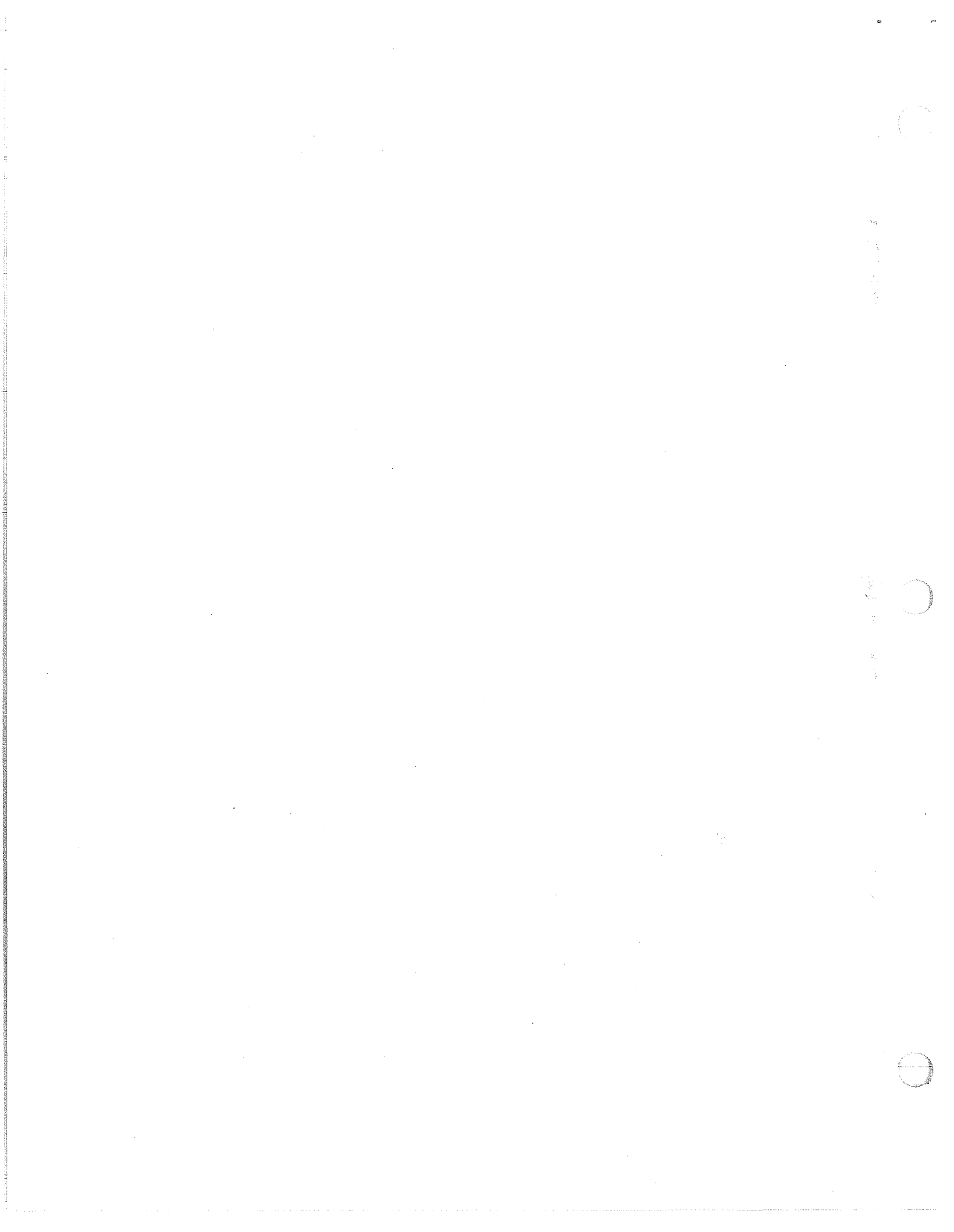
(3) Offers, gives, or promises to give, directly or indirectly any such benefit, reward, or consideration to a person who is a witness or about to become a witness in a proceeding before a judicial or hearing officer, with intent that the person's testimony be influenced thereby, or that the person will not appear at the proceeding; or

(4) As a person who is, or is about to become such witness requests, receives, or agrees to receive, directly or indirectly, any such benefit, reward, or consideration upon the understanding that the person's testimony will be so influenced, or that the person will not appear at the proceeding; or

(5) Accepts directly or indirectly a benefit, reward or consideration upon an agreement or understanding, express or implied, that the acceptor will refrain from giving information that may lead to the prosecution of a crime or purported crime or that the acceptor will abstain from, discontinue, or delay prosecution therefor, except in a case where a compromise is allowed by law.

Subd. 2. Forfeiture of office. Any public officer who is convicted of violating or attempting to violate subdivision 1 shall forfeit the public officer's office and be forever disqualified from holding public office under the state.

HIST: 1963 c 753 art 1 s 609.42; 1976 c 178 s 2; 1984 c 628 art 3 s 11; 1986 c 444



**SENATOR  
JOE BERTRAM, SR.**

**COMMITTEES:**

Chairman, Agriculture and Rural Development  
Gaming Regulation  
Taxes and Tax Laws  
Veterans and General Legislation  
Rules and Administration  
Income and Sales Tax Subcommittee



**Senate**  
**State of Minnesota**  
**Joe Bertram**

**ST. PAUL OFFICE:**  
323 State Capitol  
St. Paul, MN 55155  
612-296-2084

**ST. PAUL OFFICE STAFF:**  
Janet Baumgartner  
Al Reuvers

**PAYNESVILLE OFFICE & HOME:**  
887 Flanders Drive  
Paynesville, MN 56362  
612-243-4708  
**FARM OFFICE**  
612-987-3401 or 612-987-3589

October 3, 1995

Senator Roger Moe  
Chair, Senate Rules and Administration Committee  
Room 208 State Capitol  
St. Paul, MN 55155

Dear Senator Moe:

The recent event which resulted in a petty misdemeanor is an incident I am not taking lightly. To that end, I have decided to resign as Chair of the Agriculture and Rural Development Committee and Chair of the Veterans' Subcommittee of the Governmental Operations and Veterans' Committee. These resignations are effective immediately.

I fully understand the seriousness of this matter and am sincerely sorry. I must be held accountable for what I did and must work to restore the trust of my constituents and fellow members of the Minnesota Senate. I intend to work hard to regain the confidence of the people who elected me and at the same time concentrate on my family.

Before I can forgive myself, I must be forgiven by my dear friends, and my constituency and ask for their compassion.

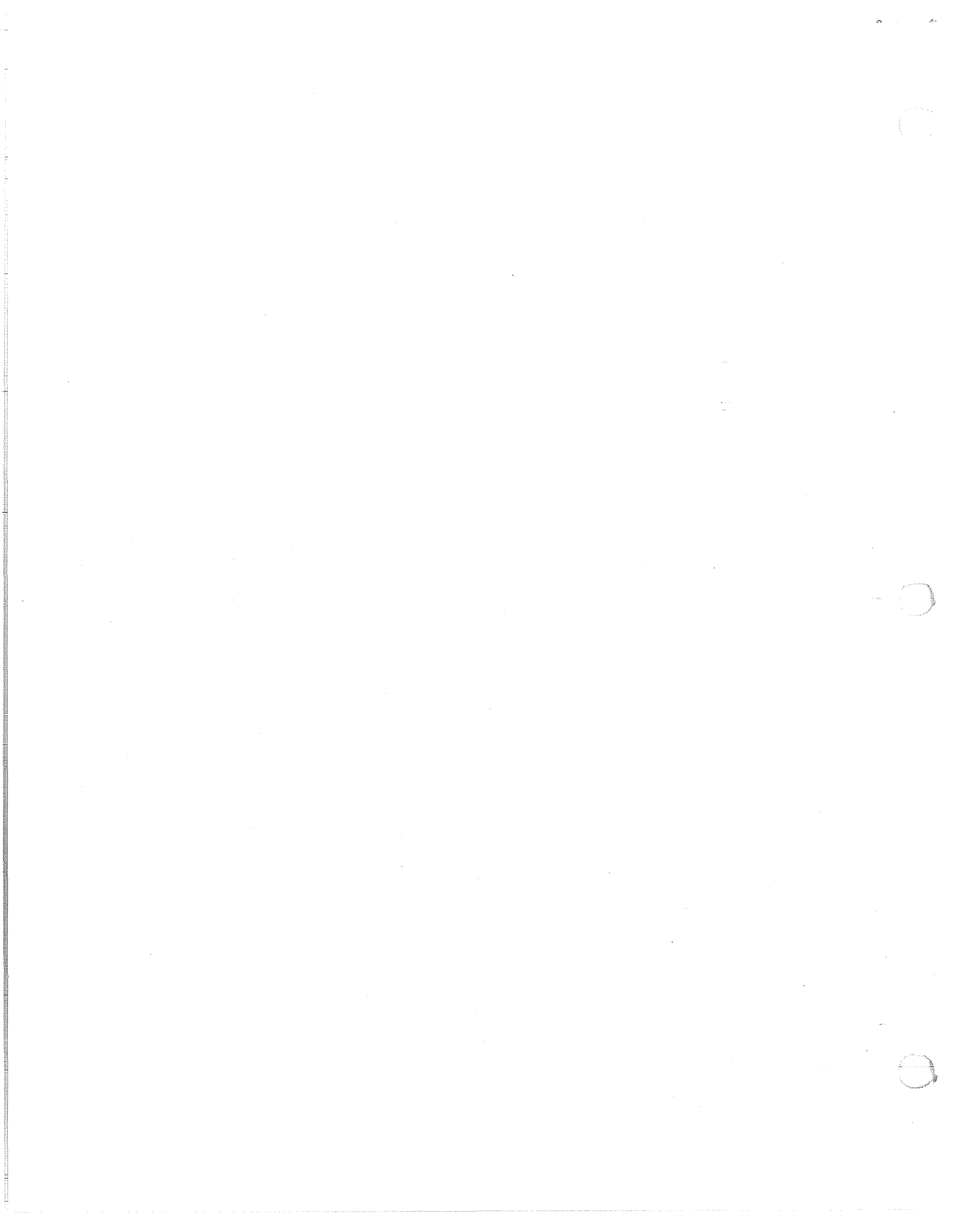
I appreciate your concern and compassion during these trying times for me and my family.

Sincerely,

  
Joe Bertram, Sr.  
State Senator

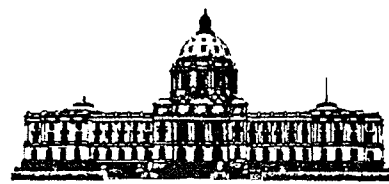
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**Paid for by People to Re-elect Joe Bertram, Bob & Pat Brenay, Albany, Chairpersons**



**EMBER REICHGOTT JUNGE**  
**ASSISTANT MAJORITY LEADER**

Senator 46th District  
Room 205 State Capitol  
75 Constitution Avenue  
St. Paul, MN 55155-1606  
Phone: 296-2889  
and  
7701 48th Avenue North  
New Hope, Minnesota 55428



**Senate**  
State of Minnesota

January 2, 1996

Senator Joe Bertram  
Room 323 State Capitol  
St. Paul, MN 55155

Dear Sen. Bertram:

On December 11, 1995, you were given notice of the request for disciplinary action against you filed by Senator Moe. On December 21, you were given notice of the complaint against you filed by Senator Dean Johnson and Senator Neuville.

A hearing on those matters is scheduled for Wednesday, January 3, 1996, in Room 112 of the Capitol, beginning at 6:00 p.m..

Enclosed are copies of Senate Rule 75, under which the Subcommittee on Ethical Conduct is now operating, the rules of procedure adopted by the Subcommittee in 1994, and Minn. Stat. § 3.153, setting forth the subpoena power of the Subcommittee.

You may appear at the hearing to present evidence and argument on your behalf. All testimony will be taken under oath. You may present witnesses whose testimony is competent, relevant, and material to the subject of the hearing. For any witnesses you intend to call, please inform the Subcommittee at least 24 hours before the hearing of the witness' name, address, and phone number, and a brief summary of the testimony you expect the witness to give.

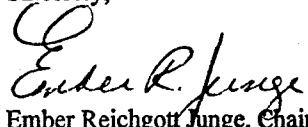
You may appear with counsel, and may cross-examine any witnesses that may testify against you.

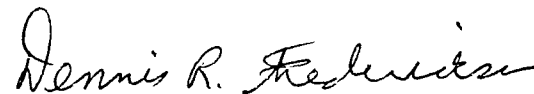
The hearing will be recorded on magnetic tape, and Subcommittee will also have a court reporter present to make a stenographic record. You may request a copy of the tape or a transcript at your expense.

The hearing will be a public proceeding.

If you have any questions about how the Subcommittee intends to proceed, please contact one of us or Senate Counsel.

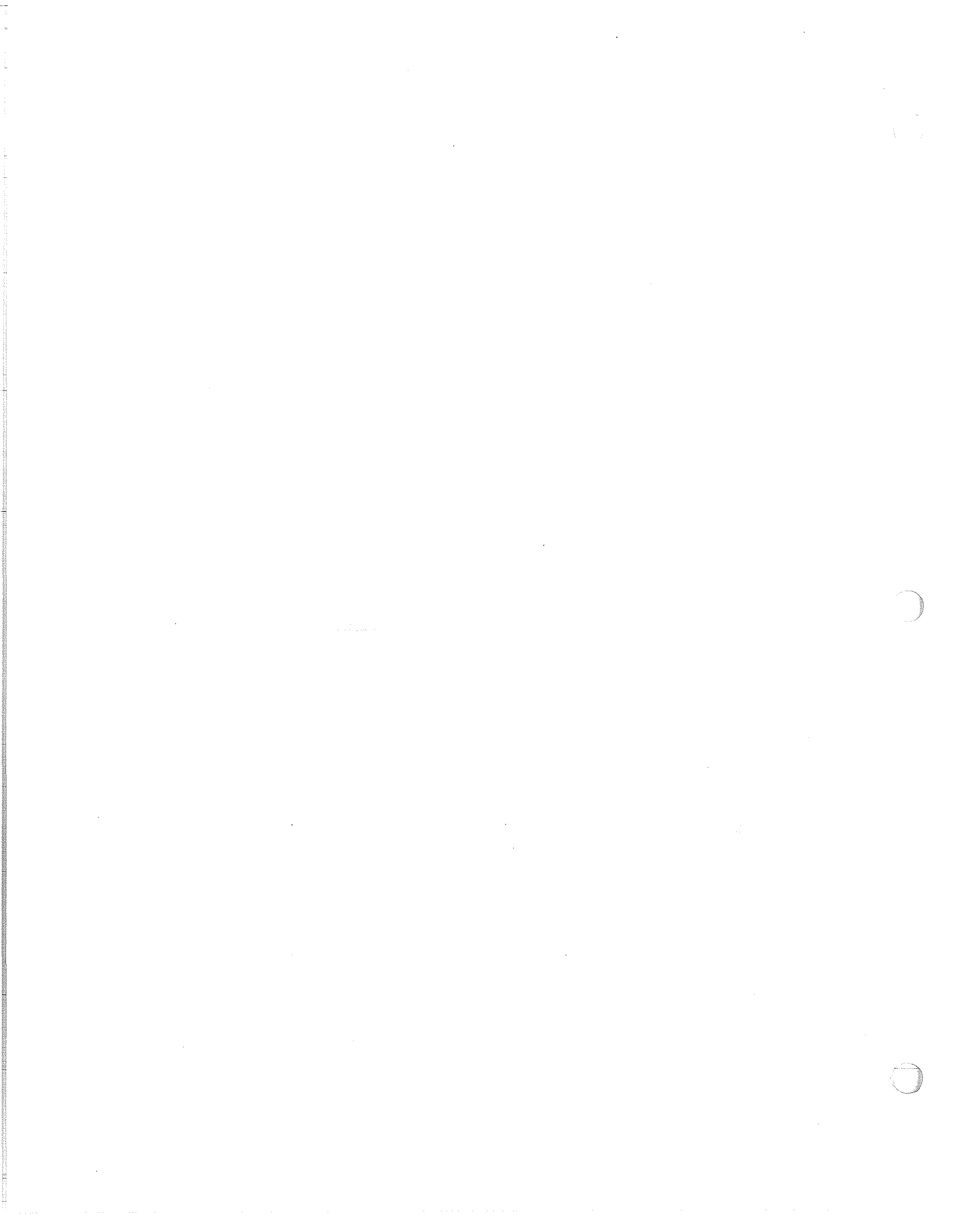
Sincerely,

  
Ember Reichgott Junge, Chair  
Subcommittee on Ethical Conduct

  
Dennis R. Frederickson  
Ranking Member

**COMMITTEES:** Vice Chair, Ethics & Campaign Reform • Vice Chair, Rules & Administration •  
Taxes & Tax Laws • Education • Education Funding Division • Judiciary • Chair, Special Subcommittee  
on Ethical Conduct • Legislative Audit Commission • Legislative Commission on Planning & Fiscal Policy •  
Legislative Coordinating Commission

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**Questions Regarding:  
Senator Joe Bertram**

1. What was the value of stolen item (vest).
2. What was Senator Bertram's response to store owner when confronted by alleged theft (shoplifting)?
  - A) Did Senator Bertram promptly admit theft or did he try to convince owner not to report.
  - B) Did Senator Bertram offer the store owner money or other benefit as an inducement not to report to law enforcement?
  - C) If so, how much money was offered?
3. What was Senator Bertram's explanation of events to law enforcement (Police chief and investigator).
  - A) Did he try to deny or justify conduct?
  - B) Did he promptly admit responsibility?
  - C) Was he remorseful?
4. How did Senator Bertram arrange to enter plea to petty misdemeanor only two (2) days after the theft?
  - A) What charges could Senator Bertram have been charged with.
  - B) Did prosecutor obtain victim input regarding sentence / plea agreement.
  - C) Did any prosecutor consider possible charges regarding the alleged bribe?
  - D) Was there any discussion with Bertram regarding the effect of his plea as barring future prosecution for bribery.
  - E) Why did prosecutor believe plea was fair.
5. What is the store owner's opinion as to the appropriateness of Senator Bertram's "criminal" punishment.
  - A) Is he aware of any false statements made by Bertram since the "plea" was made.
6. In his statement to the public after the plea, has Senator Bertram taken full responsibility for his actions?
7. To what extent does dishonesty / theft of Senator Bertram bring the Senate into disrepute or betray the public trust.

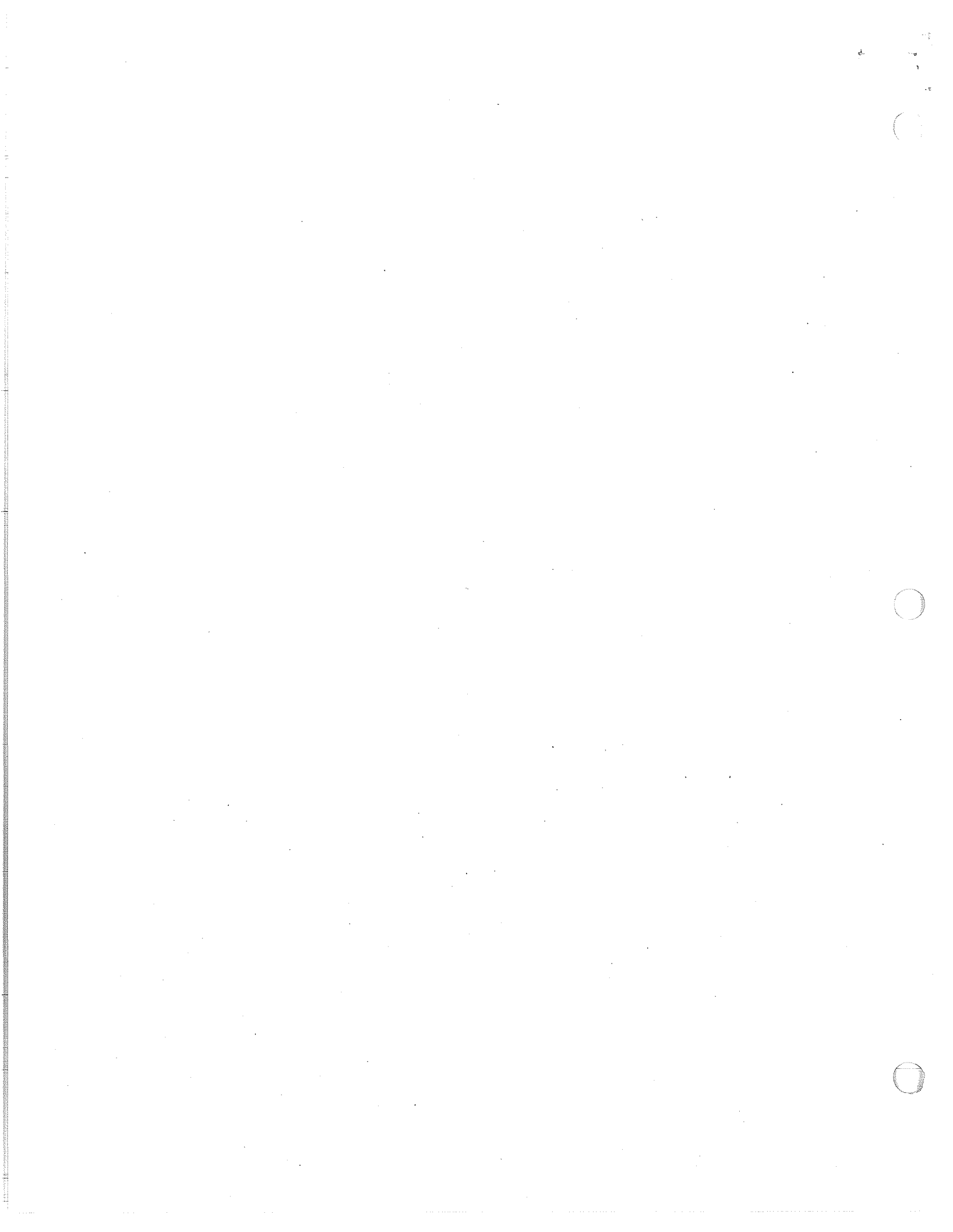


**MINNESOTA SENATE**  
**SUBCOMMITTEE ON ETHICAL CONDUCT**

**CONDUCT OF SENATOR JOE BERTRAM, SR.**

**TESTIMONY OF JANUARY 3, 1996**

**Transcribed on January 5, 1996**



1 Proceedings held on the 3rd day of January, 1996, before the Minnesota Senate  
2 Subcommittee on Ethical Conduct, Room 15, State Capitol.

3  
4 Members of the Committee include:

5  
6 Senator Ember Reichgott Junge, Chair

7 Senator Dennis R. Frederickson

8 Senator Steven G. Novak

9 Senator Roy W. Terwilliger

10  
11 Peter S. Wattson, Senate Counsel

12  
13 Chief Justice Douglas K. Amdahl, Outside Counsel

14 Chief Justice Robert J. Sheran, Outside Counsel

15  
16 **A P P E A R A N C E**

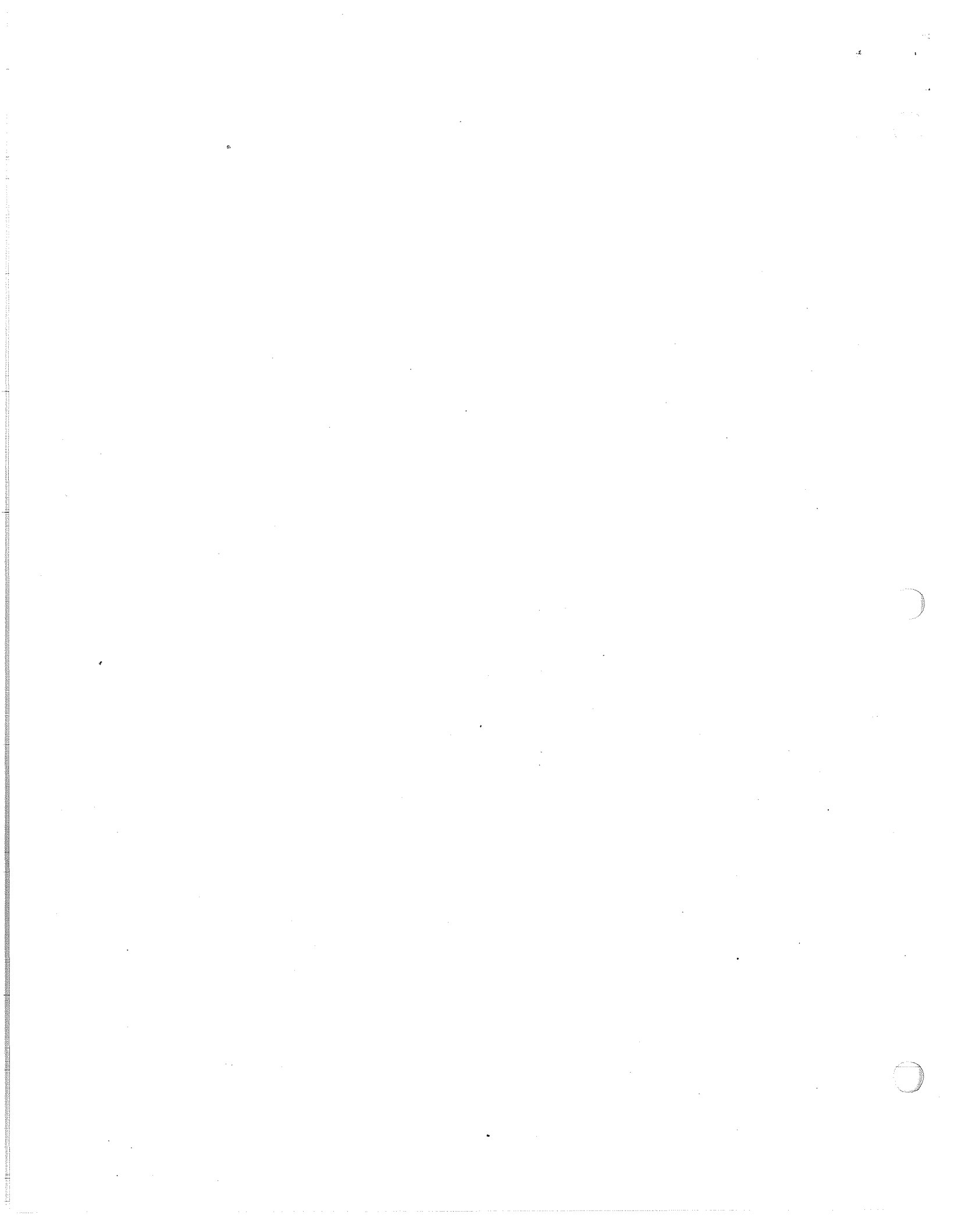
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18 Phillip S. Resnick, Attorney at Law, Resnick, Bass & Carlson, P.L.L.P., Suite 1710, 701  
19 Fourth Avenue South, Minneapolis, Minnesota 55415, appeared on behalf of Senator Joe  
20 Bertram, Sr.

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22 **W I T N E S S E S**

23  
24 William Drager, Chief of Police, Paynesville, Minnesota

25 Charles Koshiol, Owner of Zapf's Leather and Western Wear, Paynesville, Minnesota

26 Senator Joe Bertram, Jr.  
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1 **CHIEF WILLIAM DRAGER**

2 called as a witness, having been first duly sworn, testified as follows:

3 SENATOR REICHGOTT JUNGE: (Chief Drager is sworn in) Chief would you please identify  
4 yourself for the record.

5 CHIEF DRAGER: My name is William Drager. I am the chief of police for the city of  
6 Paynesville.

7 SENATOR REICHGOTT JUNGE: And again, I want to express my appreciation for  
8 your coming this evening to help us with our proceeding. Senator Terwilliger did you want to  
9 restate your question for the chief.

10 SENATOR TERWILLIGER: Thank you Madame Chair. Chief Drager, I was just  
11 curious, the arrest was made on the 26th of September and on the 29th the decision, the plea  
12 bargain was made. How was the statement, the initial crime report and the statement that we  
13 have prepared before us here, perhaps you haven't seen them, but probably are familiar with  
14 them. Were they available to the prosecuting attorney at that time?

15 CHIEF DRAGER: Yes, they were.

16 SENATOR TERWILLIGER: How long, how long does it normally take.

17 CHIEF DRAGER: If I can remember correctly, I believe that everything was done on that  
18 same day. The date of the incident.

19 SENATOR REICHGOTT JUNGE: It was typed up on that day and distributed to the  
20 prosecuting attorney?

1 CHIEF DRAGER: Yes.

2 SENATOR TERWILLIGER: Thank you.

3 SENATOR REICHGOTT JUNGE: Any other questions at this time on that? All right,  
4 thank you chief, appreciate that. Okay, then I assume then that Senator Neville is done with his  
5 discussion on that portion. At this time then Senator Bertram will be afforded the opportunity to  
6 make a statement. So why don't you approach with Mr. Resnick. And Senator Bertram, I just  
7 want to also clarify for the record, as I did in the earlier proceedings, that you and I have had a  
8 conversation and that I have indicated to you that you would have an opportunity to appear  
9 before the committee this evening, that you would have an opportunity to present whatever  
10 witnesses you would like on your behalf that's relevant to the issues before us, and that you have  
11 the right to appear with an attorney, and that you have the right also to ask questions of the  
12 witnesses that might be brought in today as well. So, with that, I need to swear you in. Senator  
13 Bertram would you stand and raise your right hand please. You do solemnly swear that the  
14 evidence you shall give relative to the cause now under consideration shall be the whole truth  
15 and nothing but the truth, so help you God?

16 SENATOR JOE BERTRAM: I do.

17 SENATOR REICHGOTT JUNGE: Thank you Senator. You may be seated.

18 MR. RESNICK: I think at the present time, I will make a brief statement on behalf of  
19 Senator Bertram.

20 SENATOR REICHGOTT JUNGE: Could you identify yourself for the record, sir.  
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1 MR. RESNICK: My name is Phillip Resnick and I am Mr. Bertram's attorney or Senator  
2 Bertram's attorney.

3 SENATOR REICHGOTT JUNGE: And where do you office?

4 MR. RESNICK: In Minneapolis.

5 SENATOR REICHGOTT JUNGE: Please proceed.

6 MR. RESNICK: Thank you Madame chair. At the outset I agree with most if not all of  
7 the remarks stated by Madame chair regarding the status at this time and the attempt to make  
8 inquiry into matters into which I believe are really outside of the purview of this committee. One  
9 thing I can say is that it is my understanding that it was an outside prosecutor that was appointed  
10 by the city that handled this matter and in my experience of almost 25 years in practicing almost  
11 extensively criminal defense law, when you have a situation that involves a misdemeanor or a  
12 petty misdemeanor and a person is given a tab charge, they can set up a court date almost  
13 immediately and have the case resolved. And, it is also unusual, in my experience, that once  
14 that's done at the first opportunity and the first appearance, to have the police reports filed in  
15 court with the court file, though they are submitted to the prosecuting attorney, and the reason  
16 being that if the person comes in and admits to the offense immediately, it is not necessary to  
17 have the reports because the individual provides the factual basis for the offense. The offense to  
18 which Senator Bertram admitted is a petty misdemeanor offense. It is not recognized in the State  
19 of Minnesota as a crime. It is not recognized by the rules of evidence in the courts of the State of  
20 Minnesota as an offense involving dishonesty or false statement and that comes from a decision

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1 of the Supreme Court, the author was not either of our esteemed former justices here, but one of  
2 their colleagues Justice Peterson, who stated that even a misdemeanor shoplifting offense is not a  
3 conviction involving dishonesty or false statement within the meaning of the Minnesota Rules of  
4 Evidence and certainly a petty misdemeanor is not useable as impeachment for any purpose nor  
5 is it considered to be an offense involving dishonesty or false statement and Justice Peterson  
6 noted that this was the rule which was followed by most of the federal courts in the United States  
7 from which the Minnesota Rule of Evidence was derived. So, for this committee to seek to  
8 impose any sanction or penalty on Senator Bertram, who came forward and readily admitted his  
9 involvement in the offense, considering the fact that it is not a crime and that he has already been  
10 subjected to punishment, would seem to me to be inappropriate. And secondly, as long as I am  
11 afforded the opportunity to speak, as I alluded to before, I don't think that those police reports  
12 and those records are part of the criminal offense. The criminal offense is the admissions in the  
13 transcript of what was admitted to the court and what the court considered in imposing the  
14 sentence and, whether or not there can be any other charges brought based upon the other  
15 allegations, I think that if, in fact, a prosecutor would deem it appropriate and deem it to be  
16 probable cause that there could be another charge brought and I wouldn't consider it to be double  
17 jeopardy. The only charge that I could conceive of that could come out of those spurious  
18 allegations would be a charge of obstruction of justice, which is a separate and distinct crime  
19 from any offense that the person may have committed. And if there is to be any further  
20 investigation or charges brought, it seems to me, under the separation of powers doctrine, that it

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1 should be brought by the appropriate body and that is the prosecuting authority. And again, for  
2 this committee to consider allegations which are outside of the offense I think is totally improper,  
3 and I would also remark that the proceedings that we're having, at least as I read these rules, are  
4 unusual in that this complaint was filed by two Republican senators during a time period when  
5 there was a recess. Now the rules seem to provide that a complaint is supposed to be filed while  
6 they are, while the Senate is in session. And I know in discussing with Mr. Wattson that  
7 apparently some semantic discussion between whether or not adjournment and recess are the  
8 same thing but it would seem to me the spirit of the rule is that the Senate should be sitting while  
9 these complaints are filed. That was not done in this particular instance. And secondly, as I read  
10 the rules the preference is that probable cause be determined by an executive committee in a  
11 closed session that is not open to the public. Now certainly we agree that the court record can  
12 suffice as probable cause for that offense, the petty misdemeanor, but the complaint dragged  
13 along with it these other spurious allegations in order, as I can see, to avoid having this matter be  
14 discussed in executive session to determine whether or not there was probable cause and sought  
15 to make this a public forum solely for political purposes. And I think that also violates the spirit  
16 of the rules.

17 SENATOR REICHGOTT JUNGE: Senator Bertram did you wish to add?

18 SENATOR BERTRAM: Not at this time.

19 SENATOR REICHGOTT JUNGE: Okay. Mr. Resnick, if I may, on behalf of the  
20 subcommittee just respond to a couple of things. This is an unusual body in that it doesn't

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1 follow what would be the normal rules of evidence and such in the courts and this is indeed by its  
2 title a special subcommittee on ethical conduct. The issues brought before us are brought before  
3 us in two ways. One includes a complaint that was filed by the complainant, that was filed by  
4 the complainant who is sitting here and in that it raises the issue that goes outside of the theft and  
5 therefore it is, and it is an ethical issue, and therefore is within our jurisdiction as a  
6 subcommittee. A complaint filed with us does not necessarily have to be on the basis of a crime  
7 that has been committed. In fact, in a previous situation involving another Senator, we spent  
8 nearly five months of the session in exactly the same situation in a fact finding mode to find out  
9 what indeed happened because there was no criminal conviction. We were thwarted in our  
10 attempts in that case only because the witnesses would not, would not appear and they had some  
11 very valid reasons based on tribal immunity and such. So the jurisdiction of this committee is  
12 broader than that of just what comes before us in the context of a criminal complaint. So that is  
13 what I wanted to clarify first. Secondly, regarding the rules and how we got here. The inquiry  
14 was first raised by our Majority Leader, Senator Roger Moe, who requested the advice of the  
15 ethical subcommittee, which is the prerogative of any member to request the advice of the  
16 subcommittee. That inquiry can take place at any time. It was followed by a complaint. There  
17 was some question as to the timing of that complaint but in looking at the rules, I believe that I  
18 am certainly comfortable with the interpretation, I think Senate counsel is, that it is appropriate to  
19 file a complaint at this time and act on it, but the full Senate cannot act on it until the full Senate  
20 is in session and that will occur on January the 16th. The difference between earlier years and

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1 this is because the Senate adjourns on a sine die basis at the end of the even-numbered year and  
2 the Senate will not come into session in the same body, if you will, or that same year to act on  
3 any recommendations that the subcommittee makes, but in this case, this is the end of the odd-  
4 numbered year, the Senate is coming into session and so we believe that it is appropriate to  
5 entertain these complaints at this time. And I would suggest that it is probably better in the  
6 context of the overall business of the Senate and of the public that we are able to deal with these  
7 issues prior to the start of the session.

8 MR. RESNICK: Well, I can understand that the rules can be construed either your way or  
9 my way. I'm talking about the spirit of the rules. I have appeared before the lawyers' board, the  
10 medical board, the chiropractic board, the nursing board, and just about every board that licenses  
11 people in this state and all of them have similar rules in that initially when there's a complaint  
12 that is made against someone, it is not made public until there is a determination that there is  
13 probable cause that the person has committed some type of infraction, and that includes even the  
14 medical board which has the most public exposure of any board, and the purpose of that  
15 obviously is to protect the individual who has to appear before that. I don't see where someone  
16 who is a state senator should be afforded any less protection, and particularly in this instance  
17 where nothing has been alleged that Senator Bertram has done anything directly to or in front of  
18 this body. He has not abused this body. There are a number of members who are sitting now  
19 who have committed drunk driving offenses who probably most of the populace would consider  
20 to be far more serious and dangerous than what has occurred here and I don't believe that I have

1 seen any action taken against those individuals. So I am just questioning why it would seem to  
2 be proper under this circumstance and not under other circumstances and there is at least an  
3 appearance, in my opinion, of Senator Bertram being singled out in this instance.

4 SENATOR REICHGOTT JUNGE: Senator Frederickson.

5 SENATOR FREDERICKSON: Madame chair, to the point of whether or not probable  
6 cause hearings are public or nonpublic, I would like to ask Mr. Wattson to review with us what  
7 the Senate rule on that point tells us.

8 PETER WATTSON: Madame chair, Senator Frederickson, as you know, the Senate rules  
9 require all meetings of Senate committees and subcommittees to be open to the public. The rule  
10 that imposes that requirement is Senate Rule 58. The rule creating this subcommittee is Rule 75  
11 and it has a special exception to that Rule 58 and it's the first item in your packet right after the  
12 tab on rules. It says in the fourth paragraph, second sentence: "In order to determine whether  
13 there is probable cause to believe that improper conduct has occurred, the subcommittee may, by  
14 a vote of three of its members, conduct a preliminary inquiry in executive session to which the  
15 requirements of Rule 58 do not apply. The executive session may be ordered by a vote of three  
16 of its members whenever the subcommittee determines that matters relating to probable cause are  
17 likely to be discussed. The executive session must be limited to matters related to probable  
18 cause. Upon a finding of probable cause, further proceedings on the complaint are open to the  
19 public." So it's only for that purpose of determining probable cause that the subcommittee may  
20 close the meeting and it certainly is not mandatory that the meeting be closed, it's permissible.

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1 SENATOR REICHGOTT JUNGE: Senator Frederickson.

2 SENATOR FREDERICKSON: Madame Chair, Mr. Wattson, I think you just covered  
3 again the point that I was going to make. The operative word there is "may," we may close the  
4 meeting. We can also decide to leave it open.

5 MR. WATTSON: Yes.

6 SENATOR REICHGOTT JUNGE: And that would be by motion and vote of three  
7 members. So if the motion were to occur, I would suggest that it would be at the second stage of  
8 the proceeding. This part I think there is clearly probable cause.

9 MR. RESNICK: We have no objection to that, the first part, I indicated that.

10 SENATOR REICHGOTT JUNGE: So, if a member makes that motion we must act on it  
11 at that time, but the subcommittee is-it's within the subcommittee's discretion. Mr. Resnick, I  
12 was just trying to respond to some of the issues that you raised. I would like to see if there are  
13 any other members of the committee have questions for Mr. Resnick.

14 SENATOR TERWILLIGER: Madame Chair.

15 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

16 SENATOR TERWILLIGER: Mr. Resnick, I'm somewhat troubled by the line of your  
17 discussion, okay, to begin with. Do you believe the police reports to be untrue? What we have  
18 here?

19 MR. RESNICK: Do I believe them to be untrue?

20 SENATOR TERWILLIGER: Do you believe them to be untrue?

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1 MR. RESNICK: Do I believe the content of them to be untrue –

2 SENATOR TERWILLIGER: That is correct.

3 MR. RESNICK: or do I believe the officers to be untrue?

4 SENATOR TERWILLIGER: The content of what we have before us, I believe you have  
5 seen.

6 MR. RESNICK: Yes, I believe the content to be untrue.

7 SENATOR TERWILLIGER: In what way?

8 MR. RESNICK: Well, I think that's what we're going to get into when I get a chance to  
9 examine the witnesses.

10 SENATOR TERWILLIGER: You made the charge, you made the statement Mr. Resnick  
11 that you felt that the charges were spurious and I guess I'm perhaps I'm getting ahead of us here  
12 but it does bother me when I, when we're looking at the record and based upon that record we're  
13 told that that is factual and that is what the plea bargain is been made upon and then to have you  
14 turn around and say it was a plea bargain was struck and then at the same time to find that the  
15 record is spurious, I'm a little bit confused. Forgive me, but I don't understand you.

16 MR. RESNICK: I'm talking about the allegations –

17 SENATOR TERWILLIGER: Forgive me, but I don't understand you.

18 MR. RESNICK: Excuse me. If you listen to me carefully, I'm talking about the  
19 allegations outside of the criminal charge of theft. Those other allegations are spurious. That's  
20 the allegations to which I refer.



1 SENATOR TERWILLIGER: Madame chair.

2 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

3 SENATOR TERWILLIGER: We are not to get into that particular –

4 SENATOR REICHGOTT JUNGE: Not at this time.

5 SENATOR TERWILLIGER: – portion at this time?

6 SENATOR REICHGOTT JUNGE: I would still like to stay with the petty misdemeanor  
7 portion.

8 SENATOR TERWILLIGER: Okay, fine. I will return to it Madame Chair.

9 SENATOR REICHGOTT JUNGE: Senator Bertram or Mr. Resnick, one question I had  
10 was whether there was a statement taken from you at the time this occurred. There is no  
11 statement in the record. Was there ever a statement taken by the police as to your account of the  
12 facts?

13 MR. RESNICK: No, there was not.

14 SENATOR REICHGOTT JUNGE: Okay. Senator Bertram or Mr. Resnick, the question  
15 that I have here is, I have, I am unclear from the records from the crime report. It is clear that  
16 there was admission to the theft of the leather vest. Was in fact there, it appears there was also  
17 an admission to an earlier incident as well involving a shirt, is that correct?

18 MR. RESNICK: That is incorrect.

19 SENATOR REICHGOTT JUNGE: That is incorrect. Okay. If I read the– that he had  
20 indicated, I believe, that he had taken a shirt at one time but had returned it–

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1 MR. RESNICK: What is it that-

2 SENATOR REICHGOTT JUNGE: Mr. Koshiol also stated that Mr. Bertram had  
3 conveyed to him that he had taken a shirt on one prior occasion but had returned the shirt. Is that  
4 something that is an admission or is that just his statement.

5 MR. RESNICK: May I ask what it is you're reading from Madame Chair?

6 SENATOR REICHGOTT JUNGE: This is from the police report. Do you have those  
7 materials?

8 MR. RESNICK: I do, but we seem, Madame Chair, to have gone beyond what you -  
9 what you ruled. My understanding of what you ruled was at this juncture we were just  
10 discussing the admission to the petty misdemeanor offense of this vest. Which in itself is a petty  
11 misdemeanor because the value was \$89.

12 SENATOR REICHGOTT JUNGE: Perhaps I haven't been clear in my questioning Mr.  
13 Resnick. I want to understand exactly what the petty misdemeanor offense included. How many  
14 thefts it included.

15 MR. RESNICK: One theft.

16 SENATOR REICHGOTT JUNGE: All right. So there has not been an admission then to  
17 any other - vests?

18 MR. RESNICK: That is correct.

19 SENATOR REICHGOTT JUNGE: Okay. Senator Bertram did you wish to speak to  
20 that?

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1 SENATOR NEUVILLE: Madame Chair, I would like to request that Senator Bertram  
2 just in his own words tell us what happened with respect to taking of the vest.

3 MR. RESNICK: Well, I believe that we have the transcript of his guilty plea, do we not?  
4 I don't think there is anything for him to add to that at this time.

5 SENATOR REICHGOTT JUNGE: Senator Neuville, that's why I was asking if there  
6 was a statement of some sort. We don't seem to have that.

7 SENATOR NEUVILLE: Madame Chair.

8 SENATOR REICHGOTT JUNGE: Senator Neuville.

9 SENATOR NEUVILLE: Senator Bertram, in your – in the transcript you admit to – that  
10 you removed an article of merchandise without paying for it and that you made no attempt to pay  
11 for it and that you left the store without paying for it and it was your intent to steal the item and  
12 your answer to that was “yes.” Your attorney has just said that he doesn't consider that to be a  
13 crime involving dishonesty. I would just ask you, do you think that it's dishonest to steal a vest?

14 MR. RESNICK: Well, I think –

15 SENATOR NEUVILLE: Madame Chair, please I think that Senator Bertram should  
16 answer this. It is a question to him, not to his attorney.

17 SENATOR REICHGOTT JUNGE: Senator Neuville, I want to confer with counsel here  
18 for a moment. Mr. Resnick, I'm advised that, since Senator Bertram is represented by competent  
19 counsel that it would be appropriate for Senator Bertram to answer the questions; however, you  
20 may register whatever objections you may have. If I believe the objection is one that we need to

1 respect and honor, I will do so.

2 MR. RESNICK: Well, I appreciate being considered competent and I will say that the  
3 reason for pleading guilty, why nearly everyone pleads guilty to a petty misdemeanor offense, is  
4 because it is not a crime. I mean, it is the same thing as if you were given a ticket for speeding  
5 and you didn't think you were speeding, but rather than go through the expense and the  
6 frustration of fighting the case, you plead guilty because there's a fine involved and it's not  
7 considered for any purpose to be a crime and those are the reasons that Senator Bertram pleaded  
8 guilty and I can assure you that had he known that all of these other things which were not  
9 conveyed to him, although the prosecutor may have had those at the time of the offense, if all  
10 those were known, and I didn't represent him at the time, but I don't think he would have taken  
11 the course of action that he did.

12 SENATOR REICHGOTT JUNGE: I think Mr. Resnick the committee will take that into  
13 account, as it will all other information, but I do think Senator Bertram, it is an appropriate  
14 question.

15 SENATOR BERTRAM: Madame Chair and members, do you want me to answer the  
16 question that I was asked by Senator Neville?

17 SENATOR REICHGOTT JUNGE: Would you like to restate the question please Senator  
18 Neville.

19 SENATOR NEUVILLE: I'm just asking if you believe that it's dishonest to take a vest  
20 that you took out of a store with the intent of taking it and without paying for it.

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1 SENATOR REICHGOTT JUNGE: Senator Bertram.

2 SENATOR BERTRAM: Madame Chair, Senator Neuville, when I go back to that  
3 incident I will concur with what my attorney indicated. At the particular time my emphasis was  
4 to get this matter over and to get it behind me and in turn that's what I did. And I would indicate  
5 that if I had seen this report prior to my pleading guilty I would have not taken the legal steps  
6 that I did and I just want to make for the record very clear that I did not see this report only after I  
7 pleaded guilty. Only after I was asked questions and only after that period of time was I given  
8 this. And I just want to also say that for any of these members Madame Chair, for any of you  
9 that are in a predicament that I would be in my children were followed from school – from  
10 coming home with television cameras and media people. Our house was surrounded by media  
11 folks. And in turn it was our attempt as a family to stop this charade and to end it and to go on  
12 and get it behind us and that is the purpose of me at that point pleading guilty to a petty  
13 misdemeanor.

14 SENATOR REICHGOTT JUNGE: I think Senator Neuville the fact that he pleaded  
15 guilty implies the dishonesty in that.

16 SENATOR NEUVILLE: No Madame chair, I won't pursue it because I think that the  
17 conclusion is obvious.

18 SENATOR REICHGOTT JUNGE: Senator Frederickson.

19 SENATOR FREDERICKSON: I'll pass, Madame Chair.

20 SENATOR REICHGOTT JUNGE: Further questions on the theft issue?

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SENATOR FREDERICKSON: Madame Chair.

SENATOR REICHGOTT JUNGE: Senator Frederickson.

SENATOR FREDERICKSON: Madame Chair, Senator Bertram, after your last statement, I'm not entirely clear. You did admit that you stole the vest when you—in court?

SENATOR REICHGOTT JUNGE: One moment please. Senator Bertram.

SENATOR BERTRAM: Madame Chair, Senator Frederickson, if I would've not admitted at that time, it would've went on to a jury trial which would of then imposed further pain onto my family.

SENATOR FREDERICKSON: Madame Chair, Senator Bertram—

SENATOR REICHGOTT JUNGE: Senator Frederickson.

SENATOR FREDERICKSON: So you did admit to stealing the vest in court?

SENATOR BERTRAM: Madame Chair, yes I did for that purpose.

SENATOR FREDERICKSON: Madame Chair, Senator Bertram—

SENATOR REICHGOTT JUNGE: Senator Frederickson.

SENATOR FREDERICKSON: I assume you pled guilty because you really had taken the vest?

SENATOR BERTRAM: Madame Chair, there are a lot of circumstances involving this matter. My reason for pleading guilty was in behalf of my family. For the very – my pain that it had caused in those number of days and to get it over I was going to admit to anything to get it behind me and when I was given the opportunity to plead to a petty misdemeanor, I chose to do

1 that.

2 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

3 SENATOR TERWILLIGER: Madame Chair, then I am confused by the statement from  
4 the police record, Senator Bertram, which states that you admitted taking the vest. Now, you're  
5 stating that you just pleaded guilty to taking the vest just to get this behind you. Did you or did  
6 you not take the vest?

7 MR. RESNICK: Well, the question is of the offense is whether or not he took the vest  
8 without –

9 SENATOR TERWILLIGER: Mr.– Mr.– Madame Chair

10 MR. RESNICK: – the intent to pay for it.

11 SENATOR TERWILLIGER: Madame Chair, Madame Chair, I was asking –

12 SENATOR REICHGOTT JUNGE: Mr. Resnick –

13 SENATOR TERWILLIGER: – that question of Senator Bertram not of counsel.

14 SENATOR REICHGOTT JUNGE: Was Mr. Resnick speaking for purposes of stating an  
15 objection?

16 MR. RESNICK: Yes.

17 SENATOR REICHGOTT JUNGE: And what was the objection?

18 MR. RESNICK: Well, the objection is he's reading from the report, the record is the  
19 record and I would object to any further questions that go outside of what the record is. There's  
20 a transcript of the plea, that's what it said. He has now stated his reasons for doing so and now

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1 we're just rehashing the same questions.

2 SENATOR REICHGOTT JUNGE: Mr. Resnick –

3 MR. RESNICK: Repetitious, I guess would be the legal objection.

4 SENATOR REICHGOTT JUNGE: Mr. Resnick, I think it is important, however, that the  
5 members understand the record and often times the witness can help us to clarify that. In a  
6 previous proceeding today with another member of the Senate we had nearly two hours of  
7 questioning regarding a record so that we could better understand what it was that was before us.  
8 So I do think the question is appropriate. Senator Terwilliger, if you could restate the question  
9 then for Senator Bertram.

10 SENATOR TERWILLIGER: Madame Chair, then I will – I will refer to page 5 of the  
11 copy I have of the court file, guilty plea and sentencing, page 5, starting at line 12. “Do you  
12 plead guilty or not guilty?” Senator Bertram? Did you not in fact plead guilty?

13 SENATOR BERTRAM: Madame Chair, I did.

14 SENATOR TERWILLIGER: Madame Chair, then –

15 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

16 SENATOR TERWILLIGER: – line 22, “did you remove an article of merchandise from  
17 the store and leave the store without paying for it,” Senator Bertram?

18 SENATOR BERTRAM: Madame Chair, I did.

19 SENATOR TERWILLIGER: Following page. In doing so, did you know that was  
20 wrong?

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1 SENATOR REICHGOTT JUNGE: Senator Bertram.

2 MR. RESNICK: Well, your honor, your honor. Madame chair –

3 SENATOR REICHGOTT JUNGE: I would have – I would have the same concern.

4 Senator Terwilliger I would have the same concern. Senator Terwilliger, I don't think we need  
5 to – to just read the record, if you have questions about the record that would be –

6 SENATOR TERWILLIGER: Madame Chair, I guess I am just troubled when I hear  
7 people state that they pled guilty just because of circumstances and that they really didn't steal  
8 something when in fact here in the record it's stated line and verse that he stole it and, and I  
9 would just like to make everyone understand that in fact that is what the record shows, you did  
10 plead guilty to that and I guess I don't understand why we have counsel here attempting to  
11 shroud that.

12 SENATOR BERTRAM: Madame Chair.

13 MR. RESNICK: He doesn't dispute the fact that he pleaded guilty. I mean that's –

14 SENATOR REICHGOTT JUNGE: Mr. Resnick.

15 MR. RESNICK: – what we've indicated from the beginning and that's why we've made  
16 objections to going beyond what the record is.

17 SENATOR REICHGOTT JUNGE: Senator Bertram, when you pled guilty, you were  
18 telling the court the truth, were you not?

19 SENATOR BERTRAM: Madame Chair, can I have a minute?

20 SENATOR REICHGOTT JUNGE: Yes, of course.

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1 SENATOR BERTRAM: Madame Chair.

2 SENATOR REICHGOTT JUNGE: Senator Bertram.

3 SENATOR BERTRAM: Madame Chair, at the time when this entire incident occurred, I  
4 pled guilty because I was guilty, as I indicated then and as I indicate now, of walking out of a  
5 store with something that I had not paid for. But I was not given the opportunity at that  
6 particular time to make any other statements. In other words, the answer was "yes" or "no."  
7 That was all I was afforded to say at that particular time.

8 SENATOR REICHGOTT JUNGE: Okay, do you have anything?

9 SENATOR TERWILLIGER: Madame Chair.

10 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

11 SENATOR TERWILLIGER: I will only make a statement. I won't pursue it anymore  
12 because I think it's obvious what's happening here. It – the record is very clear, it states, "Did  
13 you make any attempt to pay for the merchandise? No. Is it fair to say that leaving the store  
14 without paying for it – your intent was to steal the item? Yes." And I think that's what we're  
15 asking for Senator Bertram, is just let's not shroud it in a lot of different shading of whether or  
16 not you were informed or not the fact is the records show clearly that that's what happened. And  
17 I guess I would feel better about it if you would just simply say "Yes, I did."

18 MR. RESNICK: Well, may I make another objection. If that is what the records shows,  
19 we admit that that's what the record is, then why are we pursuing this? The question here is he  
20 admitted to a petty misdemeanor offense. You've got a transcript of his admitting to that. There

1 is a court record of a conviction, if you will, of that petty offense and a fine. Now that is the  
2 record. Now it seems to me that the only reason, as I alluded to at the outset, is to go beyond  
3 that, is to just embarrass Senator Bertram.

4 SENATOR REICHGOTT JUNGE: Mr. Resnick, I'm going to hit that other issue head-on  
5 that I failed to hit before and I know that you weren't here earlier in the day when I made my  
6 opening remarks about the proceedings here, but I think it's important that you and Senator  
7 Bertram hear what I said earlier. Although this is a political body, we as a subcommittee have  
8 put politics back there at the door. We are working as a bipartisan group in an attempt to simply  
9 find what happened, ask the appropriate questions, and come to appropriate action and  
10 resolution. As a subcommittee, we are charged with that responsibility, we are working together  
11 as a foursome, a bipartisan foursome to try to come to a consensus conclusion. I said earlier and  
12 I will say it again that if I believe that any member of this body, any witness, any complainant, or  
13 any other person begins to bring politics into this proceeding, it is going to be ruled out of order  
14 with a very firm gavel, and you can count on me doing that. I think the record at this point  
15 speaks for itself.

16 SENATOR TERWILLIGER: Madame –

17 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

18 SENATOR TERWILLIGER: I think perhaps – thank you Madame Chair. I think  
19 perhaps the reason for what is taking place here is come into question and I – this is an ethical  
20 conduct hearing. Rule 75, paragraph 3. “The subcommittee shall investigate a complaint by a

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1 member of the Senate in writing, under oath received during a legislative session regarding  
2 improper conduct by a member or employee of the Senate. Improper conduct includes conduct  
3 that violated a rule or administrative policy of the Senate, that violated accepted norms of Senate  
4 behavior, that betrayed the public trust, or that tended to bring the Senate into dishonor or  
5 disrepute.” That is why we’re here to talk about that particular paragraph, as far as I’m  
6 concerned.

7 MR. RESNICK: I understand that. But as I say, what our position is is that there is a  
8 record of that. There isn’t any need for any further inquiry regarding that.

9 SENATOR REICHGOTT JUNGE: Yes, Mr. Resnick, I am satisfied that the record does  
10 speak for itself and we’ve had sufficient questioning on that.

11 MR. RESNICK: Thank you.

12 SENATOR REICHGOTT JUNGE: Are there any other questions of another nature that –  
13 on this part, on part one of the proceeding at this time? May I ask our outside counsel if there is  
14 any issue or question that should be asked that has not been.

15 CHIEF JUSTICE DOUGLAS AMDAHL: I have none to ask.

16 SENATOR REICHGOTT JUNGE: All right then I would – at this point then suggest that  
17 we move on to the second stage of the proceeding and again appreciate your questions and  
18 answers on the first stage. Now the second stage is a fact finding proceeding. At this time now,  
19 we are in a situation where there is a dispute on the record. That dispute, however, comes before  
20 us in the form of the complaint, as well as references in the court record. In order to process this  
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1 one, I believe it's important that we hear from all of the witnesses involved that would have first-  
2 hand knowledge of the issue before us as stated in the complaint. Let's see – is number 6, as  
3 stated in complaint that the owner of the store further alleges that at this time Senator Bertram  
4 offered him \$1,000 if the store made no mention of this incident to the police. That is the issue  
5 that I am going to limit the fact finding investigation to. I think to follow the procedure that we  
6 have done in all of the other matters before us, I am going to ask Senate Counsel to review the  
7 disputed allegations first. We will have Senator Neuville make his statement, Senator Bertram,  
8 you will then have opportunity, no let me ask. Counsel, should we call the other witnesses first  
9 and then have Senator Bertram? The other witnesses first, you will have opportunity to ask them  
10 questions and then Senator Bertram will be last. This would be the time, by the way, if a  
11 member wished to close the proceedings for the purpose of finding probable cause, to make such  
12 a motion. That motion will be in order, I think, until we get to the witnesses as well, so if it is  
13 made at that time I will also entertain it. Mr. Wattson, why don't you proceed.

14 MR. WATTSON: Madame Chair, as you have pointed out, paragraph six in the  
15 complaint of Senators Johnson and Neuville has alleged that Senator Bertram offered the store  
16 owner a \$1,000 bribe if he made no mention of the incident to the police. In the police report,  
17 turning to the second page of the first police report, this is contained about three-quarters of the  
18 way down the page, it says, the sentence beginning over to the right-hand side "At this time, Mr.  
19 Koshiol stated that he would like to tell me something that he forgot on his statement. Mr.  
20 Koshiol stated that Mr. Bertram had offered him a thousand dollars to forget the whole thing and

1 told him that he would give him lots of business and get him more business.” That is the  
2 allegation in the complaint.

3 SENATOR REICHGOTT JUNGE: Okay. Senator Neuville, your statement.

4 SENATOR NEUVILLE: Madame Chair, I don’t have a statement of my own, I would  
5 just request that the witnesses be called and questioned.

6 SENATOR REICHGOTT JUNGE: Okay. Before we do that, may I just again remind  
7 everyone that when the witnesses are before us, the members of the panel will have an  
8 opportunity to ask questions. Senator Neuville will have an opportunity to ask questions and  
9 you, Mr. Resnick and Senator Bertram, all have that opportunity as well. Thank you. If you  
10 could be excused we will then call the witness at this time. Mr. Resnick, do you intend to be the  
11 questioner on behalf of Senator Bertram?

12 MR. RESNICK: I do.

13 SENATOR REICHGOTT JUNGE: Okay. Can I suggest that you sit at the end of the  
14 table then.

15 MR. RESNICK: All right, thank you. I don’t know what the practice is here, but in court  
16 it is customary to have the witnesses sequestered so that they don’t hear the other’s testimony  
17 when they’re speaking about the same subject, and if there is such a rule here, I would make that  
18 request.

19 SENATOR REICHGOTT JUNGE: Well, that’s where the judicial process and the  
20 legislative process are different. We always have open meetings. Is there a possible violation of  
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1 rights involved, may I ask our outside counsel, if we do not sequester one of the witnesses.

2 CHIEF JUSTICE DOUGLAS AMDAHL: I do not think so.

3 CHIEF JUSTICE SHERAN: Nor do I.

4 CHIEF JUSTICE DOUGLAS AMDAHL: You need not sequester.

5 SENATOR REICHGOTT JUNGE: All right. Then on that advice we will not. All right  
6 then Mr. Koshiol if you might come forward please and I will ask you to be sworn in.

7 **CHARLES KOSHIOL**

8 called as a witness, having been first duly sworn, testified as follows:

9 SENATOR REICHGOTT JUNGE: Thank you. Mr. Koshiol, would you please be seated  
10 and introduce yourself and tell us a little bit about who you are affiliated with.

11 MR. KOSHIOL: Okay. My name is Charles Koshiol. I own a store in Paynesville,  
12 Minnesota called Zapf's Leather and Western Wear.

13 SENATOR REICHGOTT JUNGE: Mr. Koshiol, do you understand that we are limiting  
14 this phase of our questioning only to the issue that counsel has outlined regarding the offer of  
15 money.

16 MR. KOSHIOL: Yes.

17 SENATOR REICHGOTT JUNGE: All right.

18 MR. KOSHIOL: I have to say that your chronological order in the way you stated that's a  
19 little bit wrong. This offer came after we had already been at the police station.

20 SENATOR REICHGOTT JUNGE: Okay. The first question I'm just going to ask you  
21 for all of our benefit is for you to just tell the story. What happened?

1 MR. KOSHIOL: From the shoplifting on?

2 SENATOR REICHGOTT JUNGE: Regarding the offer of money situation.

3 MR. KOSHIOL: Okay.

4 SENATOR REICHGOTT JUNGE: I mean when did that first arise, what caused you to  
5 believe it was an issue –

6 MR. KOSHIOL: All right. We were at the police station talking with Joe, talking with  
7 both Tony Schmitt and Bill Drager.

8 SENATOR REICHGOTT JUNGE: Please identify those for the record.

9 MR. KOSHIOL: I'm sorry.

10 SENATOR REICHGOTT JUNGE: Please identify who they are when you say Tony  
11 Schmitt.

12 MR. KOSHIOL: Okay. Tony Schmitt was the officer involved and Bill Drager is the  
13 Chief of Police. So the four of us were talking. Joe had confessed to taking the vest. He had, to  
14 my accusation of other items, had confessed to taking a shirt.

15 MR. RESNICK: Your honor, or excuse me, Madame Chair, I object to these statements  
16 because it's beyond what we're talking about.

17 MR. KOSHIOL: Okay.

18 MR. RESNICK: As I understand it.

19 SENATOR REICHGOTT JUNGE: I don't – this is now – let me restate. This is a fact  
20 finding investigation. There is no allegation here that has been proven true or false. We are  
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1 simply obtaining information.

2 MR. RESNICK: But I thought we were obtaining information pertaining to this alleged  
3 bribe. As I understand what the statements that the witness is about to discuss pertains to  
4 something that is outside of that. If I may make a suggestion, it would seem to me that rather  
5 than let the witness give a narrative, that perhaps he be asked questions so he can give answers so  
6 that we don't get beyond what you indicated the scope of this portion of the hearing.

7 SENATOR REICHGOTT JUNGE: I would agree with that, Mr. Resnick, if all of us were  
8 lawyers. We are not trained in the process. We're legislators and the way we operate is by  
9 legislative hearing and I'm afraid that we need to honor what process is about here but still  
10 respect everybody's rights.

11 MR. RESNICK: Well everyone seems to be skilled at asking questions. That's all it  
12 takes.

13 SENATOR REICHGOTT JUNGE: All right. Senator Frederickson.

14 SENATOR REICHGOTT JUNGE: Yes. Mr. Resnick, you will, of course, have  
15 opportunity to question when he is done. Senate Counsel here has suggested that perhaps he  
16 might be able to lead the witness through and maybe that would be the best way to go. So, we  
17 will have –

18 SENATOR NEUVILLE: Madame Chair.

19 SENATOR REICHGOTT JUNGE: – Senate Counsel proceed. Senator Neuville.

20 SENATOR NEUVILLE: While I understand as a complainant the complaint was based  
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1 on police reports. I mean that's the only investigation that we did in order to file the complaint.  
2 Recognizing that that's all you can consider for disciplinary purposes, I don't see the harm in just  
3 asking this witness to tell his story. What harm does it do for this committee to hear all the facts  
4 surrounding this incident? You may only consider the ones that are relevant with respect to your  
5 disciplinary decision, but it seems like we're getting over technical here and I mean it would  
6 seem to be appropriate, you just ask this witness what happened.

7 SENATOR REICHGOTT JUNGE: Well, I did, I tried that. Mr. Resnick –

8 MR. RESNICK: Madame Chair –

9 SENATOR NEUVILLE: – and let him say what he wants to say.

10 MR. RESNICK: Well, Madame Chair, as a matter of due process, I don't think that's  
11 appropriate. I think both the rules of due process require that we be given written notice of what  
12 the allegations are. We have been and the allegations contain precisely what you limited the  
13 allegations to and I think anything beyond that would be contrary to both the rules and to my  
14 client's right to due process.

15 SENATOR TERWILLIGER: Madame Chair.

16 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

17 SENATOR TERWILLIGER: I'd like to restate my comments in earlier quoting of Rule  
18 75. That this is an ethical conduct hearing to determine whether or not disrepute has been  
19 brought upon the Senate. I would feel that it would be most appropriate, as in any legislative  
20 hearing, to hear this witness tell his words how he saw the incident. I think that is the purpose of  
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1 this being here to see – this is not a criminal proceeding, it is not in the same vane as a courtroom  
2 hearing and I think it only appropriate that he be asked and be allowed to give his statement as he  
3 started to.

4 MR. RESNICK: We are entitled to have written notice of the allegations. There are nine  
5 allegations in writing in the complaint and, as I say, regardless of what the rules are, the rules  
6 must conform, and this hearing must conform to due process and that would be limiting the  
7 evidence to those nine allegations in the complaint.

8 SENATOR REICHGOTT JUNGE: I believe that this is all related to the nine allegations  
9 in the complaint. However, it's times like this that I'm glad we have outside counsel and I'm  
10 going to ask them for their advice and how to proceed at this time.

11 CHIEF JUSTICE DOUGLAS AMDAHL: And we agree. Overrule the objection, let the  
12 man testify.

13 SENATOR REICHGOTT JUNGE: Tell his story?

14 CHIEF JUSTICE DOUGLAS AMDAHL: Yes.

15 SENATOR REICHGOTT JUNGE: Thank you. Will you please proceed.

16 MR. KOSHIOL: Thank you. There was a – while we were discussing this, while we  
17 were talking about this, I – obviously I asked him about other things that I had thought he had  
18 stolen and he suggested that we go to his house and – to prove that he didn't have any more  
19 stolen merchandise, which I said “yes, I would like to do that” and I asked Tony if he would  
20 come along, the police officer, Tony Schmitt. I asked Tony if he would come along and as we  
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1 left, Tony got into the squad car, I got into Joe's pickup, and so we drove to Joe's house and  
2 while we were on the way, he – of course there were no charges filed at this time, but he was  
3 obviously worried about what was gonna happen to his career and so he was pleading with me to  
4 not do this to him. He kept saying don't do this to me. You don't have to press charges against  
5 me. There's other ways we can do this and he said things like "I'll give you more business, I'll  
6 do anything I can. I'll give you more business, I'll bring my friends in, I'll buy more things from  
7 you, I'll give you a \$1,000" and I didn't answer him, but that's what he said. And after we had  
8 gotten back to the police station later, there were just three of us in the room, Chief Drager and  
9 myself and Joe, and he was going through the same list of things, "Please don't do this. I'll bring  
10 you more business, I'll bring my friends in, I'll buy more things from you, I'll give you money,"  
11 and I'm saying things exactly the same wording that he used because I've been thinking about  
12 this whole story ever since it happened. I haven't forgotten and so those are the two times that he  
13 offered me money.

14 SENATOR TERWILLIGER: Madame Chair.

15 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

16 SENATOR TERWILLIGER: The record indicates an offer of \$1,000, is that correct?

17 MR. KOSHIOL: That's a hundred percent correct. That was – he and myself driving to  
18 his car – driving to his house in his pickup truck.

19 SENATOR TERWILLIGER: Thank you.

20 SENATOR REICHGOTT JUNGE: Mr. Koshiol, my question in looking at the court  
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1 records, police records is that you neglected to say this the first time when the – when your  
2 statement was taped and then you called back the officer and said “By the way, here is additional  
3 information.” Why did you not say it the first time?

4 MR. KOSHIOL: I guess I kind of wanted to protect him at first. The man was my friend  
5 and I gave my – all the facts about the shoplifting and yet as I went back to work I was bothered  
6 by this, by that and I thought that it would be a good idea to have this on record and so I told –  
7 called Tony back and said, “It wasn’t really part of the deal, it probably wasn’t really part of the  
8 shoplifting but yeah, it is part of the deal and it bothers me and I think that this should be part of  
9 this record.”

10 SENATOR REICHGOTT JUNGE: And did Tony tape that second part of your  
11 statement?

12 MR. KOSHIOL: No, no.

13 SENATOR REICHGOTT JUNGE: Do you know why he didn’t do that?

14 MR. KOSHIOL: I was already back at work. I guess rather than to have me come back  
15 over and tape it, I said it on the phone. It went in the report. I certainly agreed that it’s right.  
16 I’m not – I guess, I mean I can’t answer that for Tony why he didn’t ask to have it taped.

17 SENATOR REICHGOTT JUNGE: And did you tell Tony exactly what you’ve told us or  
18 just did you say the part about the thousand dollars?

19 MR. KOSHIOL: I think I just told Tony that – I called him back and said I think there’s  
20 something that I should add to my report and that is when we were on our way to Joe’s house, he

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1 made an offer of a thousand dollars to me. He – I mean I don't remember exact wording, but  
2 that's basically what I said.

3 SENATOR REICHGOTT JUNGE: Senator Frederickson.

4 SENATOR FREDERICKSON: Madame Chair, Mr. Koshiol, were you involved in the  
5 court proceedings when Senator Bertram plead guilty to the other charge?

6 MR. KOSHIOL: No, I wasn't.

7 SENATOR FREDERICKSON: Did you ever talk to the county attorney or did the county  
8 attorney have discussions with you about what had transpired?

9 MR. KOSHIOL: I – I only heard – the court case itself?

10 SENATOR FREDERICKSON: Yes.

11 MR. KOSHIOL: I only heard what took place and what was said after it was over.

12 SENATOR FREDERICKSON: Madame Chair, Mr. Koshiol, did the county attorney or  
13 anybody from the county attorney's office ask about this \$1,000 offer?

14 MR. KOSHIOL: When I discussed it with the city attorney, let me think. I guess I don't  
15 remember who I asked but I did ask either the city attorney or the acting city attorney.

16 MR. RESNICK: Well, Madame Chair, I'm going to object to any –

17 SENATOR REICHGOTT JUNGE: Mr. Resnick.

18 MR. RESNICK: –statements made by someone who is not here as a witness and not  
19 going to be here as a witness as hearsay and denying our right to confront our accuser.

20 SENATOR REICHGOTT JUNGE: What was your question again Senator?  
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1 SENATOR FREDERICKSON: Madame Chair, I was asking Mr. Koshiol if he  
2 remembered any discussions, I said the county attorney, or any investigator or personnel from the  
3 county attorney's office about the \$1,000 offer.

4 SENATOR REICHGOTT JUNGE: He is speaking to his recollection –

5 SENATOR FREDERICKSON: To his recollection.

6 SENATOR REICHGOTT JUNGE: – of any conversation, so I will allow it, but the  
7 objection is noted.

8 MR. KOSHIOL: When I asked this person, one of these two lawyers, I don't remember  
9 which, about this, he said it wasn't a crime for him to offer me money. If he'd offered one of  
10 the policemen money to not press charges it would have been a crime. Him offering me money  
11 to simply drop charges is not a crime and so that's why I think – I think that's why it all got  
12 forgotten. In all honesty, here was a man who was desperate to get himself out of a pickle. You  
13 know – you know. In Joe's defense, he was just very worried about what was gonna happen.

14 SENATOR REICHGOTT JUNGE: Mr. Koshiol, would you please talk a little bit more  
15 about your relationship with Mr. Bertram prior to this time.

16 MR. KOSHIOL: Well, I've known him for 20 years. Always considered him a friend. I  
17 don't know his wife, I don't know his children, I'm not that close. Our families go way back.  
18 His father and my father are good friends. I just – one time I had an employee that had a  
19 handicap and we tried – we were trying to get some medical aid figured out for this fella and Joe  
20 helped us with that. He was real helpful with that. That's really the only business dealings I've

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1 ever had with him. He was a good customer. He bought an awful lot of merchandise from me.

2 Does that answer your questions?

3 SENATOR REICHGOTT JUNGE: Yes, certainly mine. Let me just see if there are  
4 other questions from the panel. Senator Terwilliger.

5 SENATOR TERWILLIGER: Madame Chair, Mr. Koshiol, since this incident, how has  
6 your business been in Paynesville? Been up or down or –

7 MR. KOSHIOL: I certainly wouldn't, I certainly wouldn't attribute a slower business to  
8 this problem. I appreciate you asking, but I think all business is somewhat down. I don't think  
9 that this caused me any loss of business.

10 SENATOR REICHGOTT JUNGE: I was going to question the relevance of that. Are  
11 you trying to make a tie to that?

12 SENATOR TERWILLIGER: No Madame Chair, I was just curious. In a smaller  
13 community where people tend to know –

14 SENATOR REICHGOTT JUNGE: Oh, I see.

15 SENATOR TERWILLIGER: – each other a little bit better, I just was curious if this was  
16 going to have any negative impact because of a person coming forward.

17 MR. KOSHIOL: I kept a list of pros and cons. I kept a list of the –

18 SENATOR REICHGOTT JUNGE: I see.

19 MR. KOSHIOL: – hate phone calls and –

20 SENATOR REICHGOTT JUNGE: I see. I'm sorry, I didn't –

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1 MR. KOSHIOL: – the supportive phone calls. I had both.

2 SENATOR REICHGOTT JUNGE: Further questions?

3 SENATOR TERWILLIGER: Thank you.

4 MR. KOSHIOL: Appreciate that.

5 SENATOR REICHGOTT JUNGE: Senator Neuville.

6 SENATOR NEUVILLE: Madame Chair, Mr. Koshiol, this conversation you referred to  
7 with the city attorney or acting city attorney–

8 MR. KOSHIOL: I'm sorry, I can't hear you.

9 SENATOR NEUVILLE: The conversation you had about – with the city attorney relating  
10 to the offer of money. How long after the incident did that occur.

11 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

12 MR. KOSHIOL: Well, it was either – I think it was two days after. I think it was the  
13 second morning.

14 SENATOR NEUVILLE: So, was it before the plea?

15 MR. KOSHIOL: Oh yeah, oh yeah.

16 SENATOR NEUVILLE: It was before the plea. Okay, thank you.

17 SENATOR REICHGOTT JUNGE: Mr. Resnick.

18 MR. RESNICK: Thank you Madame Chair. Mr. Koshiol, have you had an opportunity  
19 to, other than the city attorney, to talk with anyone regarding this matter since you originally  
20 spoke with the police?

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1 MR. KOSHIOL: Well, I talked with his attorney Harry Burns in a meeting that we had  
2 Thursday morning, would've been the second day.

3 MR. RESNICK: Anybody else?

4 MR. KOSHIOL: Any other attorneys?

5 MR. RESNICK: No. Have you talked to anybody else?

6 MR. KOSHIOL: About the -

7 SENATOR REICHGOTT JUNGE: Excuse me while I just jump in here one moment.  
8 One difference between the court proceeding and the legislative proceeding is that all of the  
9 questions and answers must go through the chair of the committee. It's part of our decorum and  
10 tradition, as Senator Bertram well knows. So I would ask, Mr. Resnick, that when you make  
11 your question you begin by saying "Madame Chair" and then you address your question and then  
12 also if the witness would do the same. Would you like to repeat your question, Mr. Resnick?

13 MR. RESNICK: Madame Chair - do I say "Madame Chair" or may I ask the witness, is  
14 that -

15 SENATOR REICHGOTT JUNGE: No, just "Madame Chair" and then proceed.

16 MR. RESNICK: Oh. Madame Chair, Mr. Koshiol, did you understand the question that I  
17 asked previously?

18 MR. KOSHIOL: You asked me if I talked with any other people about this bribe. Did I  
19 tell any other people about this?

20 MR. RESNICK: About the incident in general.  
21

1 MR. KOSHIOL: I told lots of people about it.

2 MR. RESNICK: All right. Did you talk to the police again at all about it?

3 SENATOR REICHGOTT JUNGE: Mr. Koshiol, you need to follow the same procedure.

4 MR. KOSHIOL: I'm sorry, Madame Chair –

5 SENATOR REICHGOTT JUNGE: Otherwise it gets into a fairly adversarial process and  
6 we need to keep that through the chair.

7 MR. KOSHIOL: Madame Chair –

8 SENATOR REICHGOTT JUNGE: Madame Chair.

9 MR. KOSHIOL: Madame Chair –

10 SENATOR REICHGOTT JUNGE: Mr. Resnick –

11 MR. KOSHIOL: Mr. Resnick –

12 SENATOR REICHGOTT JUNGE: Got it. Thank you.

13 MR. KOSHIOL: I spoke with the police many, many times in the two and a half days  
14 following this incident.

15 MR. RESNICK: Now you also spoke with some reporters too, at one time. Madame  
16 Chair, Mr. Koshiol, you also – it may take me a while to get this right.

17 SENATOR REICHGOTT JUNGE: I understand. It's fine.

18 MR. RESNICK: –Also spoke with some reporters, isn't that right?

19 MR. KOSHIOL: Madame Chair, Mr. Resnick, I made a promise to Joey Bertram and Jeff  
20 Bertram on Monday night in a meeting that I had at one of the private houses that I would not

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1 talk to the media and I did not talk to the media. In fact, the first day after this happened I lied to  
2 the media and said I didn't know anything about a shoplifting. I was trying to protect Joe. And  
3 the next time they came in I said "no comment" and the next time they came in I said "no  
4 comment" and the TV crews were there and I said "no comment." I never talked to the media.

5 MR. RESNICK: But – Madame Chair, Mr. Koshiol, you acknowledged that initially you  
6 told the media that nothing happened, is that right?

7 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes, that's correct.

8 MR. RESNICK: Now, do you recall the sequence – Madame Chair, Mr. Koshiol, do you  
9 recall the sequence of events surrounding the taping of your tape recorded statement?

10 MR. KOSHIOL: Madame Chair, Mr. Resnick, very well.

11 MR. RESNICK: All right. And Madame Chair, Mr. Koshiol, do you recall your contact  
12 with Tony Schmitt regarding the statement that – the recorded statement that you had given him?

13 MR. KOSHIOL: Can you repeat that?

14 MR. RESNICK: Madame Chair, Mr. Koshiol, do you recall the circumstances of your  
15 contacting Tony Schmitt regarding the recorded statement that you gave him?

16 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

17 MR. KOSHIOL: Madame Chair, Mr. Resnick, I was in the police station. Joe was in the  
18 police station. We had gone through all our talks, we went to Joe's house, we came back, we  
19 still had more talks, then I made the recorded statement, yes.

20 MR. RESNICK: All right. And –

21

1 SENATOR REICHGOTT JUNGE: Mr. Resnick.

2 MR. RESNICK: Madame Chair, Mr. Koshiol, the question I was asking was regarding  
3 your subsequent contact with Mr. Schmitt.

4 MR. KOSHIOL: Okay.

5 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

6 MR. KOSHIOL: Madame Chair, Mr. Resnick, right after I made the recorded statement I  
7 think the statement was already typed up. I'm not sure, but I think the statement was already  
8 typed up and I signed it and that's a two-page police report and when that was done, I was at  
9 work and then I phoned the police station, Tony answered, and that's when I told him about it.

10 MR. RESNICK: All right.

11 MR. KOSHIOL: So in other words, it didn't get written down because it was already  
12 written down and signed and then I realized I probably should have mentioned this.

13 MR. RESNICK: Well, then Madame Chair.

14 SENATOR REICHGOTT JUNGE: Mr. Resnick.

15 MR. RESNICK: Mr. Koshiol, Officer Schmitt gave you an opportunity to read over the  
16 typewritten statement, did he not?

17 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

18 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes he did.

19 MR. RESNICK: Fine. And do you recall when that was?

20 SENATOR REICHGOTT JUNGE: Mr. Koshiol, the record shall reflect negative nod.

21

1 MR. KOSHIOL: Well um, when that was – what time it was?

2 MR. RESNICK: Mhmm.

3 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

4 MR. KOSHIOL: Not really. It would have been two hours after this all took place, I  
5 don't know.

6 MR. RESNICK: Madame Chair, Mr. Koshiol –

7 SENATOR REICHGOTT JUNGE: Mr. Resnick.

8 MR. RESNICK: Officer Schmitt gave you an opportunity to make any corrections in the  
9 statement, did he not?

10 MR. KOSHIOL: Madame Chair, Mr. Resnick –

11 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

12 MR. KOSHIOL: – Yes he did.

13 MR. RESNICK: And Madame Chair, Mr. Koshiol, you in fact did make some corrections  
14 in the statement, did you not?

15 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

16 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes I changed some spelling, some things.

17 MR. RESNICK: All right. And Madame Chair, Mr. Koshiol, those corrections are  
18 reflected by your initials appearing in the appropriate spots where you made corrections, right?

19 MR. KOSHIOL: Madame Chair –

20 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

21

1 MR. KOSHIOL: Mr. Resnick, yes.

2 MR. RESNICK: All right. Now Madame Chair, Mr. Koshiol, you were asked in the  
3 recorded statement by Officer Schmitt if Mr. Bertram, Senator Bertram offered you anything for  
4 this, correct?

5 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

6 MR. KOSHIOL: Madame Chair, I'd have to read that. I don't remember.

7 MR. RESNICK: Madame Chair, may I show the statement to the witness?

8 SENATOR REICHGOTT JUNGE: Yes. The question "and did he offer you anything for  
9 this?" is - that's what you are referring to?

10 MR. RESNICK: Correct.

11 SENATOR REICHGOTT JUNGE: That does appear to be a question that's recorded in  
12 the statement. Do you recall that Mr. Koshiol.

13 MR. KOSHIOL: I'd have to read it in context. Excuse me.

14 SENATOR REICHGOTT JUNGE: Please.

15 MR. KOSHIOL: I wish I'd have read this before, I'm really sorry. I mean, I need to read  
16 this and see where this chronologically sits in here.

17 SENATOR REICHGOTT JUNGE: Take your time.

18 MR. KOSHIOL: Okay, thank you.

19 MR. RESNICK: Well, Madame Chair, perhaps we can save a little time if I can ask Mr.  
20 Koshiol this question.

21

1 SENATOR REICHGOTT JUNGE: Well, does the witness want some more time.

2 MR. KOSHIOL: I'd just as soon – I'd just as soon give an answer to that first question if  
3 you don't mind.

4 SENATOR REICHGOTT JUNGE: And the question, shall we repeat that for the record?

5 MR. RESNICK: I believe the last question was, "Do you recall being asked if Senator  
6 Bertram offered you anything for this?"

7 SENATOR REICHGOTT JUNGE: Mr. Koshiol, are you prepared to answer now?

8 MR. KOSHIOL: No, not yet.

9 SENATOR REICHGOTT JUNGE: Okay, take your time.

10 MR. KOSHIOL: Okay, Madame Chair, Mr. Resnick, to answer your question, when he  
11 was asking me, "Did he offer you anything for this?" his question, the police officer's question,  
12 had to do with when I caught him with the vest. Yes, and I answered yes, he did try to pay me  
13 for the vest and I answered, "No, it's too late to pay me for the vest, we're going to the police  
14 station." So, in context, what you're asking me here was not talking about, "Did he offer you a  
15 bribe?" His question here is, "Did he offer to pay for the vest?"

16 MR. RESNICK: Which page are you reading from?

17 MR. KOSHIOL: Just right where you showed me to.

18 SENATOR REICHGOTT JUNGE: Mr. Koshiol, I think the question, let's see, it's about  
19 two-thirds of the way down – and did he offer you anything for this – and did he offer you and  
20 you said well, he's a – anything for this – and then your answer begins of course he's begging me

21



1 to drop the charges, etc. Have you seen that paragraph?

2 MR. KOSHIOL: Yes.

3 SENATOR REICHGOTT JUNGE: Okay. Is your question relating to that?

4 MR. RESNICK: Yes it is Madame Chair, and the question is that doesn't say anything  
5 about being offered a \$1,000, does it?

6 SENATOR REICHGOTT JUNGE: No, I think the record on that speaks for itself.

7 MR. RESNICK: All right.

8 MR. KOSHIOL: Madame Chair, Mr. Resnick, when Tony asked me this question, I  
9 assumed he meant, "Did he try to pay you for the vest?" He didn't ask me, "Did he offer you a  
10 bribe to drop the charges?" He asked me, "Did he try to pay you for the vest?" I'm talking about  
11 - I'm in the middle of a discussion trying to give him the whole story of the shoplifting.

12 MR. RESNICK: All right.

13 MR. KOSHIOL: And so in my head, I'm still back at the guy's pickup truck.

14 MR. RESNICK: Well, Madame Chair, Mr. Koshiol -

15 SENATOR REICHGOTT JUNGE: Mr. Resnick.

16 MR. RESNICK: This statement wasn't typed up at the same time it was being recorded,  
17 was it?

18 SENATOR REICHGOTT JUNGE: Well, I don't know that he would know that.

19 MR. RESNICK: Well, okay, do you know?

20 MR. KOSHIOL: Madame Chair, Mr. Resnick of course not.

21

1 MR. RESNICK: All right. And so Madame Chair, Mr. Koshiol, it was I believe you said  
2 several hours later that it was typed up?

3 MR. KOSHIOL: Madame Chair, Mr. Resnick, no I would've said 15 minutes later.

4 MR. RESNICK: All right. But you didn't – Madame Chair, Mr. Koshiol, you didn't add  
5 anything to the statement regarding any alleged bribe that was made to you, is that right?

6 MR. KOSHIOL: Madame Chair, Mr. Resnick, this statement was talking about a  
7 shoplifting. It was not talking about all the other discussions we had. It was not talking about all  
8 the other things that went down. It was not talking about the discussions we had about other  
9 things that I asked him about, other thefts that I asked him about, all this was about was the  
10 shoplifting. I didn't include anything else in there because this was only about the shoplifting.

11 SENATOR REICHGOTT JUNGE: Okay, Mr. Koshiol let me ask you – so in this you  
12 say, and I quote from the statement “He said he would give me all kinds of business, which of  
13 course he does anyway, but of course he wants to buy the vest, he's offered to give me money  
14 and give me all kinds of other business.” Now it says there “he's offered to give me money and  
15 give me all kinds of other business and obviously he thinks his career is on the line here.” Now,  
16 are you saying that the statement you made in the typewritten statement here refers to the  
17 shoplifting or to the offer of money.

18 MR. KOSHIOL: Okay, Madame Chair.

19 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

20 MR. KOSHIOL: When I answered – when he asked me, “Did he offer you anything for  
21

1 this?" I had it in my head that he's asking me, "Did he pay – offer to pay for the vest?" The rest  
2 of the discussion when I get down towards the end, yes, that's talking about all the other things  
3 we talked about and that is talking about the money offer that he made me.

4 SENATOR REICHGOTT JUNGE: What is talking about the money he offered you?

5 MR. KOSHIOL: Well, let me count lines.

6 SENATOR REICHGOTT JUNGE: Read to me what you say refers to that.

7 MR. KOSHIOL: All right. When I start saying, "He's offered to give me money, he's  
8 offered to give me other kinds of business," that's what I was referring to was the bribe offer.

9 SENATOR REICHGOTT JUNGE: The offer of money.

10 MR. KOSHIOL: Right.

11 SENATOR REICHGOTT JUNGE: I would ask too, members that the word "bribe" I  
12 think is a volatile word. We haven't proven that. I would ask if people could talk about it in  
13 terms of "offer of money." Okay.

14 MR. KOSHIOL: Okay.

15 SENATOR REICHGOTT JUNGE: That's all it is at this point. It has not been proven to  
16 be any kind of a bribe. Okay. All right. But you're saying that that statement refers to the offer  
17 of money?

18 MR. KOSHIOL: Madame Chair, yes.

19 SENATOR REICHGOTT JUNGE: All right. Mr. Resnick, did you have further  
20 questions?

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1 MR. RESNICK: Yes, Madame Chair, Mr. Koshiol, have you had an opportunity to look  
2 at Officer Schmitt's report?

3 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

4 MR. KOSHIOL: Madame Chair, I don't recall.

5 SENATOR REICHGOTT JUNGE: Do you mean, Mr. Resnick, the report in our packet  
6 here, the Paynesville Police Department report?

7 MR. RESNICK: Correct. And I believe – yes it does say reporting Officer Schmitt.

8 SENATOR REICHGOTT JUNGE: That would not be your statement, it would be his  
9 report of – that includes the reference to –

10 MR. KOSHIOL: Okay, Madame Chair, no I have not seen that report.

11 SENATOR REICHGOTT JUNGE: Mr. Resnick.

12 MR. RESNICK: Madame Chair, Mr. Koshiol, according to Officer Schmitt, the statement  
13 taken from you was after Mr. Bertram left. Does that coincide with your recollection?

14 MR. KOSHIOL: Madame Chair, I wouldn't have know if Joe was still at the office  
15 because I was at work.

16 MR. RESNICK: All right. You were at work?

17 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

18 MR. KOSHIOL: Madame Chair, Mr. Resnick, I stated before that I made this statement  
19 in one of these (picks up tape recorder) the lady at the city hall typed it all up, Tony Schmitt  
20 came to my work, I signed it, he left, I called him back and said, "You know, I should've said  
21

1 that this offer of money was a \$1,000. This bothers me. I didn't say that in my report." Tony  
2 said, "I'll put it in there."

3 MR. RESNICK: Madame Chair, Mr. Koshiol.

4 SENATOR REICHGOTT JUNGE: Mr. Resnick.

5 MR. RESNICK: Was this after the statement was typed up?

6 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

7 MR. KOSHIOL: Madame Chair, yes.

8 MR. RESNICK: So, Madame Chair, Mr. Koshiol, you had an opportunity to write it in  
9 there yourself.

10 MR. KOSHIOL: Madame Chair, Mr. Resnick, I said that he offered me money in my  
11 statement. That was enough for me at the time. Later I decided to say, "You know, I should tell  
12 him how much money this is he offered me." I was bothered by this.

13 MR. RESNICK: All right, Madame Chair, Mr. Koshiol according to Officer Schmitt –  
14 that he took the statement from you after Senator Bertram left and Madame Chair, Mr. Koshiol,  
15 at that time he requested that you return to the store and bring back one of your employees to  
16 also give a statement, does that coincide with your recollection?

17 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes, that coincides with my recollection. I  
18 did not know that Joe was gone, I don't think that matters.

19 MR. RESNICK: Well, but –

20 SENATOR REICHGOTT JUNGE: Mr. Resnick.

1 MR. RESNICK: –then Madame Chair, according to Officer Schmitt, that after you came  
2 back with the employee and Officer Schmitt was explaining the process of taking the statement,  
3 that it was at that time you told him you would like to add something to the statement. And at  
4 that time, you told him about this \$1,000. Now, Madame Chair, my question Mr. Koshiol, are  
5 you saying that Officer Schmitt’s recollection of the events as contained in his report is  
6 incorrect?

7 MR. KOSHIOL: Madame Chair –

8 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

9 MR. KOSHIOL: Mr. Resnick, I really don’t remember – my recollection was that I  
10 called Tony and you’re reminding me that I brought Mitch back with me, Mitch is my manager,  
11 Mitch is the one who saw him take the vest. I didn’t remember bringing her back, walking her  
12 over to the office, but apparently I did. If that’s when I told this to Tony, that’s when I told this  
13 to Tony. I don’t remember. My recollection was that I phoned him after I had signed these  
14 papers.

15 MR. RESNICK: All right.

16 MR. KOSHIOL: I do know that after I signed the papers it was Mitch’s turn to go over  
17 and make a statement and I thought she walked over on her own. I don’t remember, I would not  
18 have sworn either way. But if Tony said that I brought over there and gave him that, that  
19 addition verbally to him, then I must have, I don’t remember that.

20 MR. RESNICK: All right. So Madame Chair –  
21

1 SENATOR REICHGOTT JUNGE: Mr. Resnick.

2 MR. RESNICK: Mr. Koshiol, you're not saying that Officer Schmitt was inaccurate in  
3 his reporting of the events.

4 MR. KOSHIOL: Madame Chair, Mr. Resnick, I would certainly not say – I would  
5 certainly not say he was incorrect.

6 MR. RESNICK: All right. Now Madame Chair, Mr. Koshiol, is it your contention that a  
7 similar offer was made to you in the presence of Chief Drager when you were at the police  
8 station?

9 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

10 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes indeed. After we got back from Joe's  
11 house, after I talked with him personally in his car or in his truck, then it was just Officer Drager  
12 and myself and Joe talking and he, Joe, made pretty much the same series of comments, "I'll do  
13 things for ya, I'll bring you more business, I'll bring you my friends, I'll do anything for ya, I'll  
14 give ya money." And those are the exact word – words he used, "I'll give you money." And  
15 yes, that was in front of Officer Drager and that was before I made this statement.

16 MR. RESNICK: Madame Chair, Mr. Koshiol.

17 SENATOR REICHGOTT JUNGE: Mr. Resnick.

18 MR. RESNICK: Those statements that you just ascribed to make it clear were made in  
19 front of Chief Drager, prior to the time that you made this written statement, is that correct?

20 MR. KOSHIOL: Madame Chair, Mr. Resnick, that's what I just said.

21

1 MR. RESNICK: And, Madame Chair, Mr. Koshiol, is it correct that this \$1,000 figure  
2 came up at that time when you were with or in the presence of Chief Drager?

3 MR. KOSHIOL: Madame Chair, Mr. Resnick, do you want to take notes? I'm sorry to  
4 be rude, but all this double talk, I've given you the story. When I first got over there to the police  
5 station Joe was at home, police report will show this. I went over to the police station, Tony  
6 called Joe, said, "Come on down here," when we sat and talked, Joe confessed, hung his head,  
7 we discussed a leather jacket that I was asking Joe about. In other words, accusing him of taking  
8 a leather jacket and he said, "You can come to my house and I'll prove ya I don't have this  
9 leather jacket." On the way to his house, he made this bribe or this offer of a \$1,000. We came  
10 back, I drove with Joe, we came back, we talked more in the office again, this time it was Officer  
11 Drager and myself and he had made me a second offer for money and that was with Officer  
12 Drager there. After that, Officer Drager got mad, he slammed his fists down and said, "Joe, do  
13 you think you can buy yourself out of this?" he walked out of the room. He went into a different  
14 office. I walked out of the room, I had a discussion with Officer Drager, I looked him in the eye  
15 and said, "Look me in the eye and tell me I'm doing the right thing by pressing charges." He  
16 said, "The man just offered you money. You think this is right to let him go?" I said, "I'll sign a  
17 statement, that answers my own question." Now I don't want to get into all this. I don't want to  
18 see this man's career go down, but I'm gonna be honest and you can ask me questions all night  
19 long and I'm gonna be honest about the whole darn thing. I don't have anything to gain about  
20 this. I don't want to be here.



1 MR. RESNICK: Well, Mr. Koshiol, or Madame Chair.

2 SENATOR REICHGOTT JUNGE: Mr. Resnick.

3 MR. RESNICK: Mr. Koshiol, perhaps we could get out of here sooner if you would listen  
4 to the question I asked and answer the question that I had which was, was the \$1,000 figure  
5 mentioned in front of Chief Drager?

6 MR. KOSHIOL: Madame Chair, Mr. Resnick, no.

7 MR. RESNICK: It was some sum of money?

8 MR. KOSHIOL: Madame Chair.

9 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

10 MR. KOSHIOL: Mr. Resnick, his words were exactly, "I'll give you money."

11 SENATOR REICHGOTT JUNGE: So he declined to give an amount the second time?

12 MR. KOSHIOL: Pardon me.

13 SENATOR REICHGOTT JUNGE: He declined to give an amount the second time, is  
14 that correct.

15 MR. KOSHIOL: Madame Chair, it's not like he declined to give me an amount, that's  
16 just what he said.

17 SENATOR REICHGOTT JUNGE: All right. He said the \$1,000 the first time but no  
18 amount the second time.

19 MR. KOSHIOL: Yes.

20 SENATOR REICHGOTT JUNGE: All right. Mr. Resnick.

21

1 MR. RESNICK: Madame Chair, Mr. Koshiol, when you first made this complaint, in fact  
2 didn't the officer come to the store rather than you're going to the station?

3 MR. KOSHIOL: Madame Chair, Mr. Resnick.

4 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

5 MR. KOSHIOL: Are you saying the shoplifting complaint?

6 MR. RESNICK: Regarding this vest.

7 MR. KOSHIOL: Madame Chair.

8 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

9 MR. KOSHIOL: Mr. Resnick, Joe walked out of the store with the vest in the bag. I  
10 stopped him at his truck. We had our discussion, he offered to pay for the vest, I said "No, it's  
11 too late for that," I asked him to come to the police station with me, he said, "I don't want Drager  
12 to know about it." I said, "Drager already knows about it, I made a police report about ya a week  
13 ago." Joe wanted me to come to his house. I refused. "I'm not going to your house, we're going  
14 to the police station." I said, "Joe, give me the vest, I'll bring it back in the store, I'll meet ya at  
15 your house." I had no intention of going to his house, but I told him this. He drove away. I  
16 went in. I called - first I called the office of the - the local office and couldn't get through so I  
17 called 911 and said, "Have one of the officers in Paynesville come to the store concerning a  
18 shoplifting," and Tony Schmitt came to my store, yes, to answer your question.

19 MR. RESNICK: All right. Madame Chair, Mr. Koshiol, so rather than your going to the  
20 police station, the officer actually came to your store, correct?

21

1 MR. KOSHIOL: Madame Chair, Mr. Resnick, I just said yes to that question. Then I  
2 went to the police station with the officer –

3 MR. RESNICK: All right.

4 MR. KOSHIOL: –then he called Joe, then Joe came down to the police station, we're  
5 talking a block away.

6 MR. RESNICK: Right. Madame Chair, Mr. Koshiol, and then you decided to ride back  
7 to Senator Bertram's house with him rather than accompany the officer, is that right?

8 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes.

9 SENATOR REICHGOTT JUNGE: And you were alone at that time in the truck, is that  
10 right?

11 MR. KOSHIOL: Madame Chair, I was alone in the truck with Joe Bertram.

12 SENATOR REICHGOTT JUNGE: With Senator Bertram. Just the two of you at time.

13 MR. KOSHIOL: Yes.

14 SENATOR REICHGOTT JUNGE: Okay.

15 MR. RESNICK: And, Madame Chair, Mr. Koshiol, it was at that time you allege that this  
16 offer of money was made.

17 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes.

18 MR. RESNICK: Now, Madame Chair, Mr. Koshiol, isn't it a fact that when you first  
19 confronted Senator Bertram at his truck regarding this vest that he offered to pay for the vest?

20 MR. KOSHIOL: Madame Chair, Mr. Resnick, when I got to the – when I got up to him,  
21

1 he reached inside the truck –

2 MR. RESNICK: Madame Chair, Mr. Koshiol, you are accusing me of prolonging these  
3 proceedings, but again, if you would just answer the question that I ask you, we could get  
4 through this a lot more quickly.

5 MR. KOSHIOL: Madame Chair.

6 MR. RESNICK: Now did he or did he not offer to pay for the vest when you came to the  
7 truck?

8 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

9 MR. KOSHIOL: Madame Chair, Mr. Resnick, after I caught him with the vest in his  
10 truck, yes he offered to pay for it.

11 MR. RESNICK: And, Madame Chair, Mr. Koshiol, he offered to pay whatever it cost,  
12 did he not?

13 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

14 MR. KOSHIOL: Madame Chair, Mr. Resnick, he just said, "I'll pay for it." When I said,  
15 "What is this Joe," he said, "It's a vest." I said, "What in the hell are you doin'?" He said, "I'll  
16 pay ya for it." I said, "No, it's too late for that."

17 MR. RESNICK: Didn't he–

18 MR. KOSHIOL: Don't put words in my mouth.

19 MR. RESNICK: Didn't he offer to pay whatever it cost?

20 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes, he wanted to pay for the vest.

21

1 MR. RESNICK: All right. And didn't he say he didn't care if it cost a \$100 or a \$1,000,  
2 he'd pay for it?

3 MR. KOSHIOL: Madame Chair.

4 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

5 MR. KOSHIOL: Mr. Resnick, he asked me later, we were still on the street discussing  
6 this he asked me, "How much is the vest, let me pay ya for it." This was the second time he  
7 asked me, "Can I pay ya for the vest?" I said, "No, it's not a matter of your paying for the vest  
8 now because you've stolen it. It's too late for that. So yes, he asked me twice, "Can I pay ya for  
9 the vest." Second time he asked me, "How much was the vest."

10 MR. RESNICK: And did you respond?

11 MR. KOSHIOL: I said, "I'm not gonna take your money." Excuse me, Madame Chair, I  
12 said, "I'm not gonna take your money, it's too late for that, you've stolen and we're going to the  
13 police station."

14 SENATOR REICHGOTT JUNGE: Mr. Koshiol, did Senator Bertram make the statement  
15 that Mr. Resnick asked you? The statement being –

16 MR. KOSHIOL: Madame Chair, the statement being –

17 SENATOR REICHGOTT JUNGE: Regarding –whether

18 MR. KOSHIOL: –how much is the vest –

19 SENATOR REICHGOTT JUNGE: –it's \$100 or a \$1,000

20 MR. KOSHIOL: No, he did not make that statement at all, no. He asked me simply,  
21

1 "How much is the vest, I wanna pay ya for it."

2 SENATOR REICHGOTT JUNGE: He didn't say, I think the question was, "Whether it's  
3 \$100 or \$1,000, I will pay you for it."

4 MR. KOSHIOL: Madame Chair, that's not what he said at all.

5 SENATOR REICHGOTT JUNGE: You don't recall any statement to that effect.

6 MR. KOSHIOL: Madame Chair, he did not say anything like that at all. The only  
7 reference of a thousand dollars was when he offered me a thousand dollars to not press charges  
8 against him and that was in his truck going to his house, later. I mean this is all later. This is  
9 after we've talked to the police before we've made a police report but when we were talking to  
10 the police, after he's confessed to taking the vest, after he's confessed to taking a shirt, after I've  
11 asked him questions about other shoplifting that I had, that I felt he might have been involved  
12 with. Is that chronologically gotcha on the right track?

13 SENATOR REICHGOTT JUNGE: Yes, thank you Mr. Koshiol. Mr. Resnick.

14 MR. RESNICK: Thank you Madame Chair. Mr. Koshiol, but you already had made the  
15 complaint to the police, had you not?

16 MR. KOSHIOL: Madame Chair, Mr. Resnick, I made two complaints to the police on  
17 Joey Bertram.

18 MR. RESNICK: On this particular date, when the vest was taken you had already made  
19 the complaint to the police, had you not?

20 MR. KOSHIOL: Madame Chair, Mr. Resnick, I don't quite understand your question. If  
21

1 your question is, had I made a complaint to the police when I was talking with him at his pickup  
2 truck, no, I just watched him walk out the door with it.

3 MR. RESNICK: Well, but you, after that, called the police and talked to Officer Schmitt  
4 who came to your store and you made your complaint that he had taken a vest from your store  
5 without paying for it, correct?

6 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes.

7 MR. RESNICK: All right. So that the statement, Madame Chair, that you attribute to  
8 Senator Bertram took place after you had already made your complaint to the police. Isn't that  
9 right?

10 MR. KOSHIOL: Madame Chair, Mr. Resnick, if you say that this is the complaint, this  
11 came later. My statement in formally – in formally charging Joe Bertram came later. When I  
12 accosted him at his truck, obviously I hadn't talked with the police about this shoplifting, it just  
13 happened. I brought – I asked him to go to the police station. I hadn't talked to a policeman –

14 MR. RESNICK: Madame Chair, Mr. Koshiol, you're not saying that he offered you  
15 \$1,000 to forget this when you accosted him at his truck –

16 MR. KOSHIOL: Bingo.

17 MR. RESNICK: –you're claiming he made this statement when you were driving from  
18 the police station where you claim he admitted to taking the vest that you had already talked to  
19 Schmitt about him taking the vest, so there already was a complaint made with the police and  
20 then is when you claim when you and he were driving alone that he made this offer, is that right?

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1 MR. KOSHIOL: Madame Chair, Mr. Resnick, I think you got it in order now.

2 MR. RESNICK: Now, Mr. Koshiol, Madame Chair, Mr. Koshiol.

3 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

4 MR. RESNICK: You claim that you're a friend of Mr. Bertram's, Senator Bertram's?

5 MR. KOSHIOL: Madame Chair, Mr. Resnick, I used to be.

6 MR. RESNICK: Well, but you acknowledge that you don't know his wife, correct?

7 MR. KOSHIOL: Madame Chair, Mr. Resnick, I know her name is Mary. I don't know  
8 her personally.

9 MR. RESNICK: No, and you don't know his children.

10 MR. KOSHIOL: Madame Chair, Mr. Resnick, I know he has two or three children. I  
11 don't know them.

12 MR. RESNICK: And Madame Chair, Mr. Koshiol, other than the time that you were  
13 invited to come over with the police to look at his house, you've never been in his home, have  
14 you?

15 MR. KOSHIOL: Madame Chair, Mr. Resnick, no, I had never been at his home.

16 MR. RESNICK: And, Madame Chair, Mr. Koshiol, he's never been in your home, has  
17 he.

18 MR. KOSHIOL: Madame Chair, Mr. Resnick, no, he's never been to my home.

19 MR. RESNICK: And Madame Chair, Mr. Koshiol, you've never had dinner with Senator  
20 Bertram, have you?

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1 MR. KOSHIOL: Madame Chair, Mr. Resnick, no.

2 MR. RESNICK: Okay.

3 SENATOR REICHGOTT JUNGE: Mr. Resnick, if I might interrupt, Mr. Koshiol, have  
4 you ever been in a situation of disagreement with Mr. Bertram before?

5 MR. KOSHIOL: Madame Chair, no. Madame Chair, this man was a good customer. I  
6 consider most good customers friends. I don't know him real, real personally, he was a good  
7 customer, I trusted him. He came to my father's 70th birthday party and brought a flag that was  
8 real nice. I don't know the man real well. I don't know what this has to do with anything.

9 SENATOR REICHGOTT JUNGE: But you've never had a – like a dispute with Senator  
10 Bertram where you've been angry at each other for a particular reason?

11 MR. KOSHIOL: Madame Chair, no.

12 SENATOR REICHGOTT JUNGE: Mr. Resnick.

13 MR. RESNICK: Madame Chair, Mr. Koshiol, but the only reason that you term him a  
14 friend is because he was a good customer at the store, correct?

15 MR. KOSHIOL: Madame Chair, Mr. Resnick, I would say he is 80 percent a friend  
16 because he's a good customer, he's 20 percent a good friend because – or a friend because I  
17 knew him, I trusted him, he does a lot of good for the community, my father knows his father so,  
18 yeah, I would definitely called him a friend.

19 MR. RESNICK: All right. And over – Madame Chair, Mr. Koshiol, over the years you  
20 indicate that he has purchased a lot of merchandise in your store, is that right?

21

1 MR. KOSHIOL: Madame Chair, Mr. Resnick, yes, that's correct.

2 MR. RESNICK: I have no further questions at this time.

3 SENATOR REICHGOTT JUNGE: All right. Any follow-up questions by the  
4 committee? Senator Neuville. But first before you do Senator Neuville, any follow-up  
5 questions by the committee? Okay, all right, Senator Neuville.

6 SENATOR NEUVILLE: Madame Chair, I just want to follow-up on something that you  
7 were asked by Mr. Resnick –

8 MR. KOSHIOL: You gotta talk louder.

9 SENATOR NEUVILLE: I'm sorry. I'll get closer. You made reference to – one of your  
10 answers referred to talking to the media and in your answer you said that you had a meeting with  
11 Joe and Jeff Bertram, and that they had asked you not to talk to the media about this offer for  
12 money, is that true?

13 MR. KOSHIOL: Madame Chair –

14 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

15 MR. KOSHIOL: – I didn't catch your name, I don't – oh

16 SENATOR NEUVILLE: Senator Neuville.

17 MR. KOSHIOL: Neuville, Senator Neuville, yes, I had a meeting with them the night  
18 after this all happened. Mostly because I was under a lot of pressure from my father who used to  
19 be a business partner to handle this a different way. To not press charges. I was under a lot of  
20 pressure from Representative Jeff Bertram to not handle this this way and I agreed to meet with  
21

1 them to try to discuss other options to try to give the guy a break and at that time, I agreed that I  
2 would not stir the waters any more than they already were for him by not talking to the media.

3 SENATOR NEUVILLE: Madame Chair.

4 MR. KOSHIOL: Do you understand?

5 SENATOR NEUVILLE: All right

6 SENATOR REICHGOTT JUNGE: Senator Neville.

7 SENATOR NEUVILLE: Madame Chair and Mr. Koshiol, this took place then before the  
8 plea, after you had talked to the police, one day after the incident, and where did this meeting  
9 occur?

10 MR. KOSHIOL: Madame Chair, Senator, this happened the night of the shoplifting.

11 SENATOR NEUVILLE: Oh, the night of.

12 MR. KOSHIOL: And it happened – we met at Jeff Bertram's house.

13 SENATOR NEUVILLE: And did they request the meeting?

14 MR. KOSHIOL: Madame Chair, Senator, Jeff requested the meeting.

15 SENATOR NEUVILLE: And Senator Joe Bertram was there?

16 MR. KOSHIOL: Madame Chair, Senator, yes.

17 SENATOR NEUVILLE: I'd like you to – I know you've paraphrased it, but can you  
18 recall more precisely, exactly what Senator Bertram asked you to do, at that meeting.

19 MR. KOSHIOL: Madame Chair –

20 SENATOR REICHGOTT JUNGE: I would like to confer with counsel for one minute

21

1 before you answer that. I'd like to consult with our outside counsel for a minute. Thank you. I  
2 am, I am an attorney, but I don't practice in the courts. I needed to get a little bit of advice. I'm  
3 advised at this point that my concerns were not sufficient enough to bring up at this time so Mr.  
4 Koshiol, please proceed. Where were we, I'm sorry, I apologize.

5 SENATOR NEUVILLE: The last question Madame Chair was what did Senator Bertram  
6 say to you that night at the Bertram house regarding not talking to the media or others about this  
7 incident.

8 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

9 MR. KOSHIOL: Madame Chair, Senator, in all fairness, I wanted to give Joe a break and  
10 Jeff talked to me at supper time the first day and asked me, "What do you want out of this, do  
11 you want to – what do you want out of this?" and I said, "Well, obviously he needs to find – he's  
12 stealing from me, he's gotta problem, he's gotta fix himself. He's gotta figure out why he's doin  
13 this. "He said what – "Do you want to see his career go down?" "No, I don't want to see that,  
14 but I'm a businessman. Somebody steals from me, they go to the police.

15 SENATOR NEUVILLE: Excuse me, Madame chair.

16 SENATOR REICHGOTT JUNGE: Senator.

17 SENATOR NEUVILLE: Who is this that's saying this to you. Who are you referring to?

18 MR. KOSHIOL: This is – this is – I'm trying to set up how this meeting came about and  
19 I'm sorry.

20 SENATOR NEUVILLE: I wasn't sure who you were attributing those last comments to.  
21

1 MR. KOSHIOL: Those are Jeff.

2 SENATOR NEUVILLE: Jeff Bertram.

3 MR. KOSHIOL: Jeff Bertram.

4 SENATOR NEUVILLE: All right.

5 MR. RESNICK: Madame chair, I don't think that's responsive to what the question was  
6 is what Senator Bertram said, not what his brother said.

7 SENATOR REICHGOTT JUNGE: I would ask to as much as possible to confine your  
8 testimony to Senator Bertram.

9 MR. KOSHIOL: Madame Chair, Senator, and Mr. Resnick, I didn't want to tell – I don't  
10 want to betray this man. I don't want to see this man hurt. You want me to tell the whole story,  
11 I'll tell the whole story. We went to his house, I said, "Here's what I want to do." First of all,  
12 Jeff didn't believe me. Jeff didn't believe that, that Joe stole. So I said, "Look Jeff, if we all talk  
13 –"

14 MR. RESNICK: Madame Chair, again, I think the relevant questions are what Senator  
15 Bertram said –

16 SENATOR REICHGOTT JUNGE: Yes, I agree.

17 MR. RESNICK: –not what his brother said.

18 SENATOR REICHGOTT JUNGE: I agree. What was the question again Senator  
19 Neville?

20 SENATOR NEUVILLE: Well, Madame Chair, let me try to rephrase it and get you  
21

1 focused in.

2 SENATOR REICHGOTT JUNGE: If you could focus it more towards Senator Bertram.

3 SENATOR NEUVILLE: Yeah, I was trying to do that but there was a meeting the night  
4 of the shoplifting, it was initiated by a request by Jeff Bertram, you went to the Bertram house,  
5 did Senator Joe Bertram say anything to you that night at that meeting?

6 MR. KOSHIOL: Madame Chair, Senator.

7 SENATOR REICHGOTT JUNGE: Mr. Koshiol.

8 MR. KOSHIOL: He didn't say anything pertaining to a \$1,000 offer, if that's what you're  
9 trying to get me to say.

10 SENATOR NEUVILLE: Well, no, did he say anything to you about not talking to  
11 anybody about this incident.

12 MR. KOSHIOL: Madame Chair, Senator, no, that was mostly Jeff. I made an agreement  
13 that if Joe told the truth to Jeff would agree to tell his wife, and his parents that what happened in  
14 this shoplifting thing, because they'd never believe me, and I said, "If you will do this, I will not  
15 talk to the media. I won't do anything more than is already gonna happen. I'm not gonna do  
16 anything to hurt ya. I don't want to see you hurt. That's not my purpose of this. My purpose is  
17 to follow the law." And it was an agreement between Jeff and Joe and myself that if Joe would  
18 talk to Jeff and tell him the truth that I would look into the possibility what my options were in  
19 pressing charges or not pressing – charges were already pressed, but whether I could drop  
20 charges or whether it was feasible for me to drop charges and in return, I would not talk to the

1 media.

2 SENATOR NEUVILLE: Okay. Madame Chair.

3 SENATOR REICHGOTT JUNGE: Senator Neuville.

4 SENATOR NEUVILLE: Just to clarify. Was there anyone else present besides yourself  
5 and Joe and Jeff Bertram at this meeting?

6 MR. KOSHIOL: Madame Chair, Senator, no.

7 SENATOR NEUVILLE: Just the three of you. Was there any further promises made to  
8 you or threats in order to get you not to talk to the media at that meeting?

9 MR. KOSHIOL: Madame Chair, Senator, no.

10 SENATOR NEUVILLE: Okay. I have no further questions.

11 SENATOR REICHGOTT JUNGE: Thank you. Counsel, I believe you wanted to clarify  
12 a discrepancy?

13 PETER WATTSON: Madame Chair, I think it's obvious from the testimony tonight just  
14 what did happen but I want to get back to the complaint that brought us here and show how the  
15 testimony is a little bit different from what the complaint alleged and that is in the complaint in  
16 paragraph 5, it describes when Mr. Koshiol confronted Senator Bertram at his truck, exiting the  
17 store. Paragraph 6 says that the owner of the store, Mr. Koshiol, further alleges that at this time  
18 Senator Bertram offered him \$1,000. But I think you've seen from the testimony that that is not  
19 true. The offer was not made at the truck immediately upon leaving the store, it was made  
20 sometime later. So that portion of the allegation is not true as to the time and apparently that

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1 never was Mr. Koshiol's testimony. He never alleged that. There was a little confusion, I guess,  
2 because the police report seems not to indicate the time when that \$1,000 offer was made. It  
3 doesn't indicate the time when he said, "He offered me money." It appeared, I guess, to many  
4 people who read the report, that that meant the time was at the truck, but it's very clear from the  
5 testimony it did not occur then, it occurred later.

6 SENATOR REICHGOTT JUNGE: Senator Neuville.

7 SENATOR NEUVILLE: Madame Chair, I would request that I be permitted to offer an  
8 amendment to paragraph six to just indicate that at a later time Senator Bertram offered the  
9 \$1,000.

10 MR. RESNICK: Well, Madame Chair, we would vehemently object to that. As I  
11 indicated before, regardless of what the rules are, the constitution affords Senator Bertram the  
12 right to due process, which is to have written notice of the allegations and the accusations against  
13 him so that he can confront those. And to amend this in midstream whether or not it's because  
14 someone misconstrued what this said, whether Mr. Neuville may have talked to Mr. Koshiol, or  
15 had someone talk to Mr. Koshiol, it really doesn't make any difference. The allegation here is  
16 when this was made, that came from someplace and to amend it now is to violate the right to due  
17 process.

18 SENATOR REICHGOTT JUNGE: Senator Neuville, I think that counsel has made the  
19 point that needs to be made. They're inconsistent. I think we all should go with the testimony  
20 that we've heard today, that's why we brought testimony in and at this point I don't think it's  
21



1 necessary to make any formal motions.

2 SENATOR NEUVILLE: All right.

3 SENATOR REICHGOTT JUNGE: It's just assumed that the testimony would –

4 SENATOR NEUVILLE: Madame Chair, if I may.

5 SENATOR REICHGOTT JUNGE: Yes.

6 SENATOR NEUVILLE: Just – just to state for the record that this was – complaint was  
7 based on information and belief from the police report. So I don't think that the substance of the  
8 charge is any different.

9 SENATOR REICHGOTT JUNGE: Okay, then.

10 MR. RESNICK: Well, wait a minute now. Madame Chair.

11 SENATOR REICHGOTT JUNGE: Mr. Resnick.

12 MR. RESNICK: I'd like to know what the substance and belief this was based upon.  
13 because it does make a difference. It certainly affects the credibility of this individual if at  
14 different times and different places he attributed this conduct to have occurred at different times  
15 and different places.

16 SENATOR REICHGOTT JUNGE: I will let Senator Neuville answer that, however, Mr.  
17 Resnick, they have made a complaint based on their understanding of the facts at that time. The  
18 reason we have a hearing is to, is to –

19 MR. RESNICK: Which is all the more reason –

20 SENATOR REICHGOTT JUNGE: –fact-finding investigation

1 MR. RESNICK: --why they should have had an executive hearing and done this in  
2 private.

3 SENATOR REICHGOTT JUNGE: Senator Neuville, did you wish to respond to Mr.  
4 Resnick's suggestion?

5 SENATOR NEUVILLE: Well, Madame Chair it doesn't bear on the credibility of this  
6 witness because it was a complaint stated on information and belief by myself and Senator Dean  
7 Johnson. And at the time, I believe we attached a copy of the police report to the complaint and  
8 that was the basis for the complaint.

9 SENATOR REICHGOTT JUNGE: Mr. Koshiol, I just simply wanted to say this to you.  
10 I recognize that it took some courage for you to come this evening and I appreciate your  
11 willingness to do that to help this process. You did have some tough questions this evening and I  
12 just want to thank you for coming this evening and helping us to find out just what happened and  
13 to tell us your side of the story. It is only one side, we will hear the other side and I don't know  
14 if you'll be staying for the rest of the hearing. Is there need for rebuttal? Yeah, I guess you  
15 might need to stay just in case there's additional questions at the end. So I just want to thank you  
16 for your time and testimony, you've been most patient.

17 MR. KOSHIOL: Thank you.

18 SENATOR REICHGOTT JUNGE: Thank you. At this time then, we have one  
19 remaining witness to call before Senator Bertram and that would be the chief, Chief Drager.  
20 Would you please raise your right hand? Oh, I'm sorry, you are previously sworn, you do  
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1 continue to be under oath then. Chief Drager would you once again identify yourself for the  
2 record and your affiliation.

3 CHIEF DRAGER: I am William Drager, Chief of Police for the City of Paynesville.

4 SENATOR REICHGOTT JUNGE: Chief Drager, I'm going to start with the same  
5 question I asked of Mr. Koshiol and that is again, we are trying to limit our investigation here,  
6 our inquiry to the offer of money situation. Can you tell me just exactly what you know about  
7 that, what you observed with regard to that.

8 CHIEF DRAGER: When Officer Schmitt and Mr. Bertram and Mr. Koshiol returned to  
9 the police station after going to Mr. Bertram's home, we met in a room there and Joe was very  
10 upset and I could – he was saying, "Do you realize what this can do to my profession? It could  
11 ruin me." I recall him making statements, "I can, I can do more business with you," he was  
12 talking to Mr. Koshiol, "I can bring you more business, I will do anything." I do not recall at  
13 that time, Mr. Bertram saying anything in regards to giving Mr. Koshiol money. When Mr.  
14 Bertram was going through this, "I'll do more business with you, I'll bring you more business,  
15 I'll do anything," that type of thing, I, myself, became extremely upset. I think you have to  
16 understand that we're from a community of 2,200 people, Joe Bertram lives in my community,  
17 I've known him for a good number of years. We've gotten together on a lot of community  
18 functions such as DARE programs, prayer around flagpole, what have you, and when Joe was  
19 saying these things, I was thinking, "Joe, please, don't say something you're gonna be sorry for,"  
20 and at that point I got up and I said, "Dammit Joe, who do you think you are? Do you think you

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1 can buy this thing off?" I would advise you not to say any more." And at that point, I left the  
2 room.

3 SENATOR REICHGOTT JUNGE: Chief Drager, did you have any further discussions  
4 with Senator Bertram on this matter?

5 CHIEF DRAGER: Not that I can recall.

6 SENATOR REICHGOTT JUNGE: So your recollection is that he said, "I will bring you  
7 business and I will do anything," is that – is there anything else that he told you with regard to  
8 that?

9 CHIEF DRAGER: Not that I can honestly relate to.

10 SENATOR REICHGOTT JUNGE: Chief Drager, you say you've known Mr. Bertram for  
11 how many years?

12 CHIEF DRAGER: I don't even know. A number of years. I've lived in – I've been on  
13 the police department for 23 years. I guess I got to know Joe when he became Senator, really.  
14 He's a man that I truly respected and admired and I think when this thing happened, I was, you  
15 might say, in shock.

16 SENATOR REICHGOTT JUNGE: Do you consider yourself a friend of Senator  
17 Bertram's?

18 CHIEF DRAGER: Yes, I did. I – he's – I could've very easily gone over to his home any  
19 time I had a problem and felt very comfortable going there.

20 SENATOR REICHGOTT JUNGE: Questions from the committee? Senator Neville.  
21

1 SENATOR NEUVILLE: Madame Chair and Chief Drager, did you have a chance to  
2 review the police report that was prepared by your officer before it was submitted to the city  
3 attorney?

4 CHIEF DRAGER: Madame Chair, Senator, I did review it before it was sent to the  
5 attorney.

6 SENATOR NEUVILLE: Okay. So were you aware that the police report contained at  
7 least a statement by Mr. Koshiol that there had been \$1,000 offered to him by Senator Bertram?

8 CHIEF DRAGER: Madame Chair, Senator, yes, I was.

9 SENATOR NEUVILLE: Was that discussed in any way with the prosecutor as to  
10 whether that should be charged?

11 CHIEF DRAGER: I'm going to answer I don't recall, I really don't.

12 SENATOR NEUVILLE: Okay. Was it you that had any discussions or how did the  
13 police report get to the prosecutor? Was it you that delivered it there or the other officer?

14 CHIEF DRAGER: If I recall correctly, this prosecutor was from St. Cloud. He came - he  
15 met with myself and Officer Schmitt at the police station the following morning and I believe  
16 that's when the report was given to him. I don't remember whether I handed it to him personally  
17 or whether Tony did.

18 SENATOR NEUVILLE: But you don't recall -

19 SENATOR REICHGOTT JUNGE: Senator Neuville.

20 SENATOR NEUVILLE: Madame Chair, you don't recall any discussion then with that  
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1 prosecutor whether there should be separate charges for the offer of \$1,000 that was made to Mr.  
2 Koshiol?

3 CHIEF DRAGER: Madame Chair, Senator, I do not. I do not recall.

4 SENATOR NEUVILLE: Okay. No further questions.

5 SENATOR REICHGOTT JUNGE: Mr. Resnick.

6 MR. RESNICK: I have no questions.

7 SENATOR REICHGOTT JUNGE: Counsel.

8 PETER WATTSON: Madame Chair, Mr. Drager, you said that you had said to Senator  
9 Bertram "Dammit, Joe, who do you think you are?" "Do you think you can buy this thing off?"  
10 Why did you say, "Do you think you can buy this thing off?"

11 CHIEF DRAGER: Madame Chair, sitting there listening to that, he was – he was saying,  
12 "I can bring you more business, I will do more business, I will do anything" and I guess, in all  
13 honesty, my feeling was, "Don't keep going until you do make a bribe here." I wanted to shut  
14 that off. I guess I too wanted to protect him somewhat at that point.

15 SENATOR REICHGOTT JUNGE: You wanted to protect him because he was your  
16 friend?

17 CHIEF DRAGER: I think because he was my friend, because again, I think I even made a  
18 statement this can't be for real. Yes, because he was my friend.

19 SENATOR REICHGOTT JUNGE: Further questions, anyone? At this time, I would ask  
20 outside counsel if you have anything further of this witness.

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1 CHIEF JUSTICE AMDAHL: I have no questions.

2 SENATOR REICHGOTT JUNGE: Chief, we thank you again for making the trip down.

3 We very much appreciate your participation in these proceedings.

4 CHIEF DRAGER: Your welcome. Thank you.

5 SENATOR REICHGOTT JUNGE: All right. At this time then Mr. Resnick, this would  
6 be the appropriate time for Senator Bertram to make his statement regarding this issue.

7 MR. RESNICK: May we have a couple of minutes?

8 SENATOR REICHGOTT JUNGE: Yes, in fact, I think it might be a good idea to take a  
9 ten minute recess.

10 MR. RESNICK: Fine.

11 SENATOR REICHGOTT JUNGE: We'll come back in at 20 minutes of.

12 MR. RESNICK: Thank you Madame Chair.

13 SENATOR REICHGOTT JUNGE: Committee is in recess.

14 (A recess was taken)

15 SENATOR REICHGOTT JUNGE: Committee back to order, our hope is that we can put  
16 a call out for Senator Novak. As far as the remainder of the proceedings tonight, we will hear  
17 from Senator Bertram, have questioning of Senator Bertram, and if there is a request to hear  
18 again from the two witnesses – any further questions to the other witnesses, we will entertain  
19 them briefly. It is getting late and we want to finish the proceeding this evening. But my hope is  
20 that we can do so at a reasonable hour. Senator Bertram, why don't I at least administer the oath,

1 have I done that for you? Yes, I have. Okay, then you will remain under oath.

2 MR. RESNICK: Madame Chair would you like me to question him from here and then  
3 sit next to him when he is being questioned, or?

4 SENATOR REICHGOTT JUNGE: How you wish to do it Mr. Resnick, is fine. Senator  
5 Bertram, you remain under oath. At this time then, is it your wish to have your attorney then  
6 question you?

7 SENATOR BERTRAM: Madame Chair, yes.

8 SENATOR REICHGOTT JUNGE: We will do that then. Mr. Resnick, you may proceed.

9 MR. RESNICK: Thank you Madame Chair. Madame Chair, Senator Bertram, you've  
10 been sitting here throughout these proceedings and you've heard the allegation by Mr. Koshiol  
11 that you had offered him money to not make any charges against you, did you hear him make  
12 those accusations?

13 SENATOR BERTRAM: Madame Chair, yes I did.

14 SENATOR REICHGOTT JUNGE: Senator Bertram. Mr. Resnick.

15 MR. RESNICK: Madame Chair, Senator Bertram, is it true, did you offer him money to  
16 not bring any charges against you?

17 SENATOR REICHGOTT JUNGE: Senator Bertram.

18 SENATOR BERTRAM: Madame Chair, members, the only time that I recollect anything  
19 about money was in two instances. One, where we were discussing on the street and I indicated  
20 after he became a bit excited something to the statement "My God, what are you making such a  
21



1 deal out of this for? If it's worth \$50 or a \$1,000, I'll pay you for it." And the second time I  
2 indicated to him of the thousands of dollars I spend a year in his store.

3 MR. RESNICK: And Madame Chair, Senator Bertram, you did offer to pay Mr. Koshiol  
4 for the vest.

5 SENATOR BERTRAM: Madame Chair, yes I did.

6 MR. RESNICK: All right. And Madame Chair, Senator Bertram, did you at any time  
7 offer to give Mr. Koshiol money for any other purpose?

8 SENATOR BERTRAM: Madame Chair, no, I did not.

9 MR. RESNICK: Madame Chair, Senator Bertram, did you request that Mr. Koshiol not  
10 pursue the charges against you?

11 SENATOR BERTRAM: Madame Chair.

12 SENATOR REICHGOTT JUNGE: Senator Bertram.

13 SENATOR BERTRAM: Yes, I did.

14 MR. RESNICK: Did you make that request in connection with offering him money to not  
15 pursue those charges.

16 SENATOR BERTRAM: Madame Chair, I did not.

17 MR. RESNICK: I have no further questions.

18 SENATOR REICHGOTT JUNGE: Thank you Mr. Resnick. Members of the committee?

19 SENATOR NOVAK: Madame Chair.

20 SENATOR REICHGOTT JUNGE: Senator Novak.

21

1 SENATOR NOVAK: I guess I only have one question, Joe. Even though I have just  
2 heard the testimony, I just want to look you in the eye and ask you a very simple question. Did  
3 you offer this gentleman a payment of the amount of money that's been stated or anything that  
4 approximates that in exchange for dropping the charges?

5 SENATOR BERTRAM: Madame Chair.

6 SENATOR REICHGOTT JUNGE: Senator Bertram.

7 SENATOR BERTRAM: I did not offer an amount of money for Mr. Koshiol not to go to  
8 the police.

9 SENATOR NOVAK: You did not.

10 SENATOR BERTRAM: I did not. The only – and Madame Chair I just wanted –

11 SENATOR REICHGOTT JUNGE: Senator Bertram.

12 SENATOR BERTRAM: –to reoccur as I have been sitting here, I too, have had an  
13 opportunity and will never forget what has happened. The bottom line is, as I indicated, at two  
14 occasions where the thousand dollars came up. I was surprised when I read the report, after I  
15 pleaded guilty, what was said in it.

16 SENATOR TERWILLIGER: Madame Chair.

17 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

18 SENATOR TERWILLIGER: Senator Bertram, then as I understand your testimony, you  
19 are contradicting what Mr. Koshiol also said under oath.

20 SENATOR BERTRAM: Madame Chair, I know that a lot of things that can be said, but I

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1 know at that particular time, of the times that I mentioned about the \$1,000, never did I indicate  
2 that I was going to give him a \$1,000 not to go to the police.

3 SENATOR TERWILLIGER: Madame Chair.

4 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

5 SENATOR TERWILLIGER: Did you state that, "I will do anything, I will give you  
6 money, I will get more business for you, I will do anything to have you not pursue this."

7 SENATOR BERTRAM: At a number of times, Madame Chair, I indicated to him of the  
8 good customer that I am. The number of people that have come to his place because of me. I  
9 indicated very much so, you know, what this is going to do and I was just very set back by  
10 everything but never was I in a position – because as a public official I know much better.

11 SENATOR TERWILLIGER: Madame Chair.

12 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

13 SENATOR TERWILLIGER: I have one final question. Why did you take the vest?

14 SENATOR BERTRAM: Madame Chair.

15 SENATOR REICHGOTT JUNGE: Senator Bertram.

16 SENATOR BERTRAM: Again, I want to clarify. When I walked out of that store that  
17 day, and I wanted to clarify this very much so. I walked out a store that day with a bag with two  
18 boots in it. I was in a hurry, I was walking out doing a bunch of errands in town, while my boots  
19 were being gotten, I went and got and looked at this vest. I put the vest over my arm, I grabbed  
20 the bag of boots, I walked out of the door. When I came out of the door, I went on the

1 passenger's side of my pickup truck. I don't even know if I inserted the – I think I had inserted  
2 the key, I had just opened the door when Mr. Koshiol was behind me.

3 SENATOR TERWILLIGER: Madame Chair.

4 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

5 SENATOR TERWILLIGER: It's really hard to know what to believe when there's been  
6 an admission of guilt, the record clearly states that you admitted freely. You had said earlier this  
7 evening you had taken the vest and now I hear you once again stating, "No, I really didn't, it was  
8 – it got stuck to my arm," or whatever, I don't care to paraphrase it, I'm just simply saying that  
9 Senator Bertram I – I don't think we need to go back over this ground but I think it's really – I  
10 would feel much better if we were just straight forward about it.

11 SENATOR BERTRAM: Madame Chair.

12 MR. RESNICK: Madame Chair, if I may respectfully object –

13 SENATOR REICHGOTT JUNGE: Mr. Resnick.

14 MR. RESNICK: – to these questions. I thought we resolved that issue of the taking of  
15 the vest –

16 SENATOR TERWILLIGER: Madame Chair, Mr. Resnick, I thought we had too, but we  
17 now seem to have re-opened it with his testimony.

18 MR. RESNICK: Well, I think we seem to re-open, respectfully Senator, with your  
19 question.

20 SENATOR REICHGOTT JUNGE: I think there's a point to be made here. We are in the  
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1 fact finding area and we are really to limit our questioning to the area of the offer of money.

2 Senator Bertram, did you ever mention \$1,000 to Mr. Koshiol? Did you ever mention \$1,000?

3 SENATOR BERTRAM: Madame Chair, I did at two occasions. One occasion when I  
4 indicated whatever, and I excuse for what verbiage I used, I think I said the word damn, whatever  
5 this damn thing is worth, if it's worth 50 bucks or a 1000 bucks, I'll pay you for it. The second  
6 time I indicated of the thousands of dollars I spend there a year.

7 SENATOR REICHGOTT JUNGE: So your testimony is that you said if the vest is worth  
8 \$50 or a \$1,000, I'll pay you for it.

9 SENATOR BERTRAM: Madame Chair, that's correct.

10 SENATOR REICHGOTT JUNGE: And you were present when Mr. Koshiol testified  
11 that he did not hear you say that.

12 SENATOR BERTRAM: Madame Chair, yes.

13 SENATOR REICHGOTT JUNGE: Do you have any further explanation for that?

14 SENATOR BERTRAM: Madame Chair, all I can indicate is that, as I stated earlier, there  
15 were a lot of things that were said. I indicated this from the very beginning. I indicated exactly  
16 what I said here tonight from the very beginning.

17 SENATOR REICHGOTT JUNGE: And the second one was you said something about  
18 thousands of dollars. What was that about? I'm sorry.

19 SENATOR BERTRAM: Madame Chair, the thousands of dollars that I had spent a year.

20 SENATOR REICHGOTT JUNGE: Spent in business at the store?

1 SENATOR BERTRAM: (Senator nodded his head.)

2 SENATOR REICHGOTT JUNGE: And in what context did you say that?

3 SENATOR BERTRAM: It was a discussion of saying I'm a good customer, I spend – I  
4 spend a thousand dollars a year at your store.

5 SENATOR REICHGOTT JUNGE: Senator Bertram, have you ever had a dispute with  
6 Mr. Koshiol before this?

7 SENATOR BERTRAM: Madame Chair, I did not that I can recollect that we had  
8 disputes. We know each other as we walk down the street, but I have never had a dispute with  
9 Mr. Koshiol. But I do want to, for the record, indicate that I did with one of his employees.

10 SENATOR REICHGOTT JUNGE: Was that the female manager?

11 SENATOR BERTRAM: That is correct, Madame Chair.

12 SENATOR REICHGOTT JUNGE: Have you ever had a dispute with the police chief?

13 SENATOR BERTRAM: Madame Chair, I did not. The police chief and I, again, were  
14 individuals that know each other, I think he's been to my house probably at one occasion  
15 requesting information. And I also wanted to indicate that the police chief and I did have a  
16 conversation, I believe, a morning – the morning following the incident and my wife was present  
17 as well.

18 SENATOR REICHGOTT JUNGE: Senator Bertram, there just seems to be a fairly broad  
19 inconsistency in the testimony we've heard previously and in yours. Can you give me some  
20 reason why that might be?

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1 SENATOR BERTRAM: Madame Chair, if I could, I would love to. I am troubled as you  
2 are.

3 SENATOR REICHGOTT JUNGE: Questions of the committee? Senator Neville.

4 SENATOR NEUVILLE: Madame Chair, Senator Bertram, you heard the chief's  
5 testimony about what you said in his presence at the police station, did you.

6 SENATOR BERTRAM: Madame Chair, yes, I did.

7 SENATOR REICHGOTT JUNGE: Senator Neville.

8 SENATOR NEUVILLE: Madame Chair, Senator Bertram, do you dispute any part of the  
9 chief's statement as to what he alleges you saying?

10 SENATOR BERTRAM: Madame Chair, as best as I can recollect – recollect, everything  
11 that was said, I think he was pretty accurate in what he indicated.

12 SENATOR NEUVILLE: Okay, thank you.

13 SENATOR REICHGOTT JUNGE: Further questions? Mr. Resnick, anything further?

14 MR. RESNICK: I have no further questions, Madame Chair.

15 SENATOR REICHGOTT JUNGE: Senator Bertram any last statement, anything you  
16 wish to add?

17 SENATOR BERTRAM: Madame Chair, I would appreciate it if my counsel could make  
18 some final comments.

19 SENATOR REICHGOTT JUNGE: That will be allowed. But before we get to that I  
20 think at this time then we are done with the questioning process.

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1 MR. RESNICK'S FINAL COMMENTS.

2 MR. RESNICK: Wouldn't you want to ask the witness the questions first, Madame  
3 Chairman and then have me conclude after all the testimony is done.

4 SENATOR REICHGOTT JUNGE: All right, that would give you that opportunity. I  
5 don't know that anyone has additional questions of the witnesses, the other witnesses, but I was  
6 just going to check. I don't, I just wanted to give that opportunity. No, all right. Then, at this  
7 time, you would make the closing comments.

8 MR. RESNICK: Thank you Madame Judge. Just briefly Madame Chair, I think the  
9 difficulty that some of the member of the committee may be having is that because there are  
10 some differences between what Senator Bertram had to say and what Mr. Koshiol had to say that  
11 one of the two people are not telling the truth and that somehow this committee has to come to a  
12 determination as to who is telling the truth and of course, as the committee knows that has to be  
13 done by clear and convincing evidence, but I would suggest to the committee that there certainly  
14 are some questions regarding Mr. Koshiol's recollection of all of the events that occurred here.  
15 There are statements that he made and testimony that he gave which is directly contrary to the  
16 police reports that you have before you. He did have any opportunity to go over his statement he  
17 made, corrections on his statement, his initials, as he acknowledges appeared thereon and he  
18 makes no reference to this particular statement. The timing of his recollection of this particular  
19 statement does not coincide with Officer Schmitt's timing of the statement and perhaps, most  
20 importantly, his allegation that this bribe, so called, was made twice is refuted directly by the  
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1 chief of police, who Mr. Koshiol acknowledged was in the room together with Senator Bertram  
2 and himself when Senator Bertram allegedly made an offer of money, and as Chief Drager  
3 indicated, he told Senator Bertram when he was asking what could be done to not to proceed  
4 further and Chief Drager told Bertram to be quiet and not – and not to speak any further, and who  
5 knows what may have been in his mind to say after that, in any event that is directly contrary to  
6 Mr. Koshiol's claim that the statement was made a second time in front of Chief Drager.

7 Initially, of course, the claim appeared to be that it was statements made regarding money and  
8 payment and so on were made when Senator Bertram was first confronted by Mr. Koshiol and I  
9 believe that both from Mr. Koshiol's description of himself and perhaps from this committee's  
10 observation of Mr. Koshiol and Mr. Koshiol indicated that perhaps he was a little excited when  
11 he was outside talking to Senator Bertram outside of his truck in discussing what actually had  
12 occurred here. Senator Bertram has indicated what he had said to him at that time. What he had  
13 said to him on another occasion, and it may well be that just as Mr. Koshiol's recollection of  
14 what happened before Chief Drager, that Mr. Koshiol's recollection of when he made this  
15 particular correction to his statement, his recollection of where he made the correction to the  
16 statement, his recollection of how he made the correction to the statement, because he said he  
17 telephoned, and of course the officer said that he appeared there. Mr. Koshiol also recollected  
18 that he called from his store, when the officer wrote down that he sent Mr. Koshiol back to the  
19 store to get the employee who had seen Senator Bertram walk out and to bring her back to give a  
20 written statement and it was at that point that in person is when Mr. Koshiol wanted to make this

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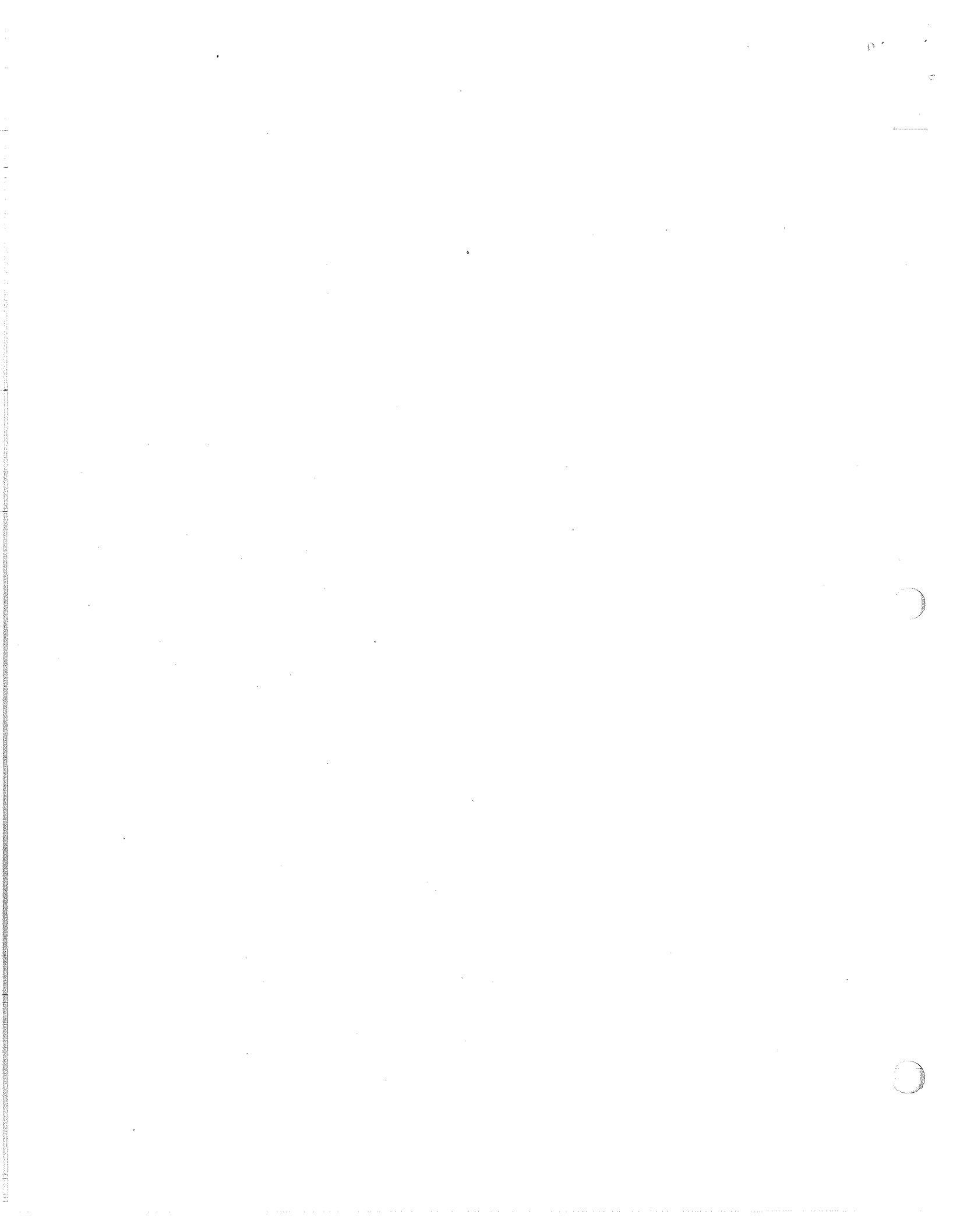
1 amendment to what he had stated before, which I submit is probably the same time that the  
2 statement was written up. So what I am suggesting is, that the fact that there are discrepancies  
3 and disputes doesn't mean that someone is not telling the truth, but I think as we all are aware in  
4 our experience and as we all can see that a person's recollection of the events doesn't always  
5 coincide with the person sitting next to him's recollection of the events. It doesn't always  
6 coincide with other people who are observing or hearing the events and we know that that goes  
7 on in everyday life, and whether it's caused by how we feel at the particular time, whether we're  
8 upset or not, or whether emotional about a situation, we don't recall things perfectly, whether or  
9 not its just tainted, our recollection by our particular position at that time, we don't know.

10 Senator Bertram acknowledges that he did ask, requested, urged that the matter not proceed to a  
11 court matter. He did offer to pay for the vest. He did acknowledge that he'd spent a lot of  
12 money there and Mr. Koshiol acknowledged that as well and perhaps in this exchange that went  
13 on between them the recollection and particularly at the time that Mr. Koshiol says that he made  
14 this recollection perhaps his recollection of the events, although the words were the same, that  
15 the sequence in which they came out and that the meaning of the words was not the same as Mr.  
16 Koshiol heard them to be the same as Senator Bertram conveyed them to him, and I submit to the  
17 committee that if you have to decide by clear and convincing evidence that that's just as  
18 reasonable an explanation as what had occurred and it doesn't mean that neither party or that one  
19 or the other is not telling the truth but that their recollection of the events differ. Thank you.

20 SENATOR REICHGOTT JUNGE: Thank you, Mr. Resnick. Any questions. If not, we  
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1 thank you. Senator Bertram, I also want to thank you for your willingness to come before the  
2 committee. I want to thank you for your cooperation in this investigation throughout and in the  
3 preparations you have done and everything that we have requested and I appreciate that. As you  
4 know, we will be deliberating on this over the next week and will be meeting again on the 9th of  
5 January to make a decision as to what, if any, discipline is appropriate in this case. You and your  
6 attorney are invited to attend on that date. It will be about 1 o'clock or so on January the 9th.  
7 You need not be here, but you are entitled to be here. So, I thank you and with that then I would  
8 ask that you be excused.

9 MR. RESNICK: Thank you, Madame Chair.



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**To:** Senator Ember Reichgott Junge  
Senator Dennis R. Frederickson  
Senator Steven G. Novak  
Senator Roy W. Terwilliger

**From:** Peter S. Wattson, Senate Counsel   
296-3812

**Subj:** Bribery of a Witness Before a Complaint Has Been Filed

You have asked for my analysis of how Minn. Stat. § 609.42, **Bribery**, applies to the facts of the complaint against Senator Joe Bertram, Jr., which was heard by the Subcommittee on Ethical Conduct January 3.

**I. The Facts**

The testimony from Mr. Koshiol at the hearing was that, in Senator Bertram's car on the way to Senator Bertram's house, Senator Bertram had made an offer to Mr. Koshiol that, "I'll give you more business, I'll do anything I can. I'll give you more business, I'll bring my friends in, I'll buy more things from you, I'll give you \$1,000," if Mr. Koshiol would not press shoplifting charges against him. They were the only two persons in the car.

Further testimony from Mr. Koshiol was that, when they had returned to the police station after visiting Senator Bertram's house, Senator Bertram made a similar offer in the presence of the Chief of Police, William Drager. The second offer was, "Please don't do this. I'll bring you more business, I'll bring my friends in, I'll buy more things from you, I'll give you money," if Mr. Koshiol would not press charges.

Chief Drager confirmed the second offer, at the police station, except that he did not recall Senator Bertram saying anything about giving money.

Senator Bertram denies offering Mr. Koshiol \$1,000 not to press charges. He says he did mention a thousand dollars twice in their conversations, but in the context that he would pay for the vest, "If it's \$100 or \$1,000, I'll pay for it," and in the context of the thousands of dollars he had already spent in Mr. Koshiol's store. He said that Chief Drager was "pretty accurate" in his version of what was said.

## **II. The Law**

### **A. Offer of a Benefit to a Public Official**

Paragraph (1) of § 609.42, subdivision 1, applies to a situation where an offer is made to a public officer or employee to provide that person with "any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person's performance of the powers or duties as such officer or employee." The offer need not be of a specific dollar amount. It need not even be an offer of money. Any "benefit" is sufficient. But to be a crime under paragraph (1), it must be made to a public officer or employee. Since Mr. Koshiol is not a public officer or employee, paragraph (1) does not apply.

### **B. Acceptance of a Benefit by a Public Official**

Paragraph (2) applies to the public officer or employee who requests or receives an offer of a benefit of the kind described in paragraph (1). Since Senator Bertram was making the offer, rather than receiving it, paragraph (2) does not apply.

### **C. Offer of a Benefit to a Potential Witness**

Paragraph (3) applies to an offer of a benefit made to "a person who is a witness or about to become a witness in a proceeding before a judicial or hearing officer." Mr. Koshiol was a witness to the crime of shoplifting, which occurred that day and to which Senator Bertram pled guilty in a proceeding before a judge three days later. But the alleged offers were made before Mr. Koshiol had given his sworn statement to Officer Schmitt at the police station and before charges had been filed. The "proceeding before a judicial or hearing officer" had not yet begun. Was Mr. Koshiol "a witness or about to become a witness" within the meaning of the statute?

A similar question was decided in 1986 by the Minnesota Court of Appeals, in the case of *State v. Koon Meng Chan*, 393 N.W.2d 228 (Minn. App. 1986). In that case, an attorney asked a man for information about a workers' compensation claim. The man replied, "what's in it for me?" The attorney said nothing, and the man refused to answer further. The next day, the attorney's client called the man. The man said he wanted ten percent of the client's workers' compensation recovery. They agreed to meet at the client's house to discuss the matter. The client arranged to have a police officer present to record the conversation. The man requested a promissory note for ten percent of the expected recovery, or about \$150,000. This money was to be in exchange for his testimony that he discussed business with the client at a bar the evening of the accident. A workers' compensation claims petition was not filed until several weeks after the conversation.

The Court of Appeals affirmed the man's conviction for bribery. The court quoted with approval from a Kansas case, *State v. Reed*, 213 Kan. 557, 516 P.2d 913 (1973):

It should be noted that there is nothing in the statute which specifically requires that an action or proceeding be pending at the time the attempt is made to deter a witness from giving evidence . . . . [A] person who has knowledge of facts out of which a criminal prosecution might arise is a 'witness' within the meaning of the statute.

\* \* \*

We therefore hold that [the Kansas statute] which makes it an offense to corruptly influence a witness is primarily designed to prevent the corrupt interference with the administration of justice, and its purpose is to go back as far as necessary and say, in effect, that any attempt to so influence prospective witnesses that the truth will not be presented in anticipated litigation is a criminal offense \* \* \* \*. [I]t would defeat the obvious intent of the legislature to restrict the application of such a statute to those persons already served with a subpoena or under legal process to appear in pending actions. To do so would put a premium on the early offering of bribes or threats to prospective witnesses. The corrupt purpose can be equally effected by offers made to those who are as yet only prospective or contemplated witnesses.

393 N.W.2d 229-30 (citations omitted).

So, it seems clear that the timing of the offers does not prevent them from supporting a conviction of bribery within the meaning of Minn. Stat. § 609.42, subd. 1 (3).

An older case from the Minnesota Supreme Court is no longer on point. In *State v. Wurdemann*, 265 Minn. 92, 120 N.W.2d 317, where the defendant had attempted to induce a young woman to absent herself completely and give no testimony whatever in an arson case in which it was then contemplated she would be called as a witness, the Court, Sheran, J., reversed the defendant's conviction for bribery on the ground that the predecessor statute<sup>1</sup> was directed:

“\* \* \* not against bribing or offering to bribe a witness *to stay away from the trial*, and *give no testimony at all*, but against bribing or offering to bribe him to give false testimony, or 'to withhold true testimony' when testifying.” (Italics supplied.)

29 Minn. at 93, 102 N.W.2d at 318.

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<sup>1</sup> Minn. Stat. 1961, § 613.09 **Bribing Witness**. Every person who shall give, or offer, or promise to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who shall attempt by any other means fraudulently to induce any witness to give false testimony, or to withhold true testimony, shall be guilty of a felony.

Since that decision, the statute has been amended<sup>2</sup> to prohibit an offer made "with intent that the person's testimony be influenced thereby, *or that the person will not appear at the proceeding.*" (Italics supplied.) The loophole identified by the Court has been closed by the Legislature.

In sum, it is my opinion that the offer described by Mr. Koshiol and confirmed by Chief Drager, even without considering whether there was an offer of money, constituted a bribe in violation of the statute.

### III. Sanction

The punishment set forth in subdivision 1, imprisonment for not more than ten years or payment of a fine of not more than \$20,000, or both, makes bribery a felony. It is a felony regardless of the amount of the bribe. It is not a crime like theft, where theft of a small amount may be only a misdemeanor, or even a petty misdemeanor.

As you know, conviction of a felony makes a person ineligible to hold public office, under Minn. Const. art. VII, §§ 1 and 6. But the bribery statute goes even further. In the usual case, once a felon has been discharged, the felon is restored to civil rights by operation of Minn. Stat. § 609.165, subd. 1. But § 609.42, subd. 2, provides that when a public officer has been convicted of bribery, the public officer "shall forfeit the public officer's office and be forever disqualified from holding public office under the state." Subdivision 3 of § 609.165 specifically recognizes this exception to the general rule.<sup>3</sup>

The Subcommittee does not have the power to convict anyone of a crime. The punishment set forth in the statute would not occur even if the Subcommittee were to find that the statute has been violated. But the Subcommittee will want to consider how seriously the criminal law would treat conduct of this kind when determining what level of discipline is appropriate.

PSW:

Enclosure: Minn. Stat. § 609.42

cc: Chief Justice Douglas K. Amdahl  
Chief Justice Robert J. Sheran  
Senator Joe Bertram, Sr.  
Phillip S. Resnick, Esq.  
Senator Thomas M. Neuville

---

<sup>2</sup> Laws 1963, ch. 753, art. 1, § 609.42.

<sup>3</sup> "This section does not apply to a forfeiture of and disqualification for public office as provided in section 609.42, subdivision 2."



609.42 Bribery.

Subdivision 1. Acts constituting. Whoever does any of the following is guilty of bribery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both:

(1) Offers, gives, or promises to give, directly or indirectly, to any person who is a public officer or employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person's performance of the powers or duties as such officer or employee; or

(2) Being a public officer or employee, requests, receives or agrees to receive, directly or indirectly, any such benefit, reward or consideration upon the understanding that it will have such an influence; or

(3) Offers, gives, or promises to give, directly or indirectly any such benefit, reward, or consideration to a person who is a witness or about to become a witness in a proceeding before a judicial or hearing officer, with intent that the person's testimony be influenced thereby, or that the person will not appear at the proceeding; or

(4) As a person who is, or is about to become such witness requests, receives, or agrees to receive, directly or indirectly, any such benefit, reward, or consideration upon the understanding that the person's testimony will be so influenced, or that the person will not appear at the proceeding; or

(5) Accepts directly or indirectly a benefit, reward or consideration upon an agreement or understanding, express or implied, that the acceptor will refrain from giving information that may lead to the prosecution of a crime or purported crime or that the acceptor will abstain from, discontinue, or delay prosecution therefor, except in a case where a compromise is allowed by law.

Subd. 2. Forfeiture of office. Any public officer who is convicted of violating or attempting to violate subdivision 1 shall forfeit the public officer's office and be forever disqualified from holding public office under the state.

HIST: 1963 c 753 art 1 s 609.42; 1976 c 178 s 2; 1984 c 628 art 3 s 11; 1986 c 444



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# **FAX COVER PAGE**

January 8, 1996

**To: Phil Resnick**  
**Fax Number: 339-1386**

**Number of Pages Sent: 3**  
**(Including this page)**

Following are draft of findings of fact to be considered by the Subcommittee on Ethical Conduct tomorrow morning, Tuesday, January 9, 1996, at 10:00 a.m. in Room 15 of the Capitol.

Senator Neville will be given an opportunity to address the subcommittee regarding the findings and appropriate disciplinary action.

You and Senator Bertram may, if you choose to do so, address the subcommittee regarding the proposed findings and appropriate disciplinary action.

After it has heard from Senator Neville and you, the subcommittee will consider appropriate disciplinary action.

**Fax copy to: Senator Thomas M. Neville**  
**507/645-7233**

**If you have a problem with this transmission, please call (612) 296-3812**

**DRAFT 1/8/96**

A Senate resolution relating to ethical conduct; conduct of Senator Joe Bertram, Sr.

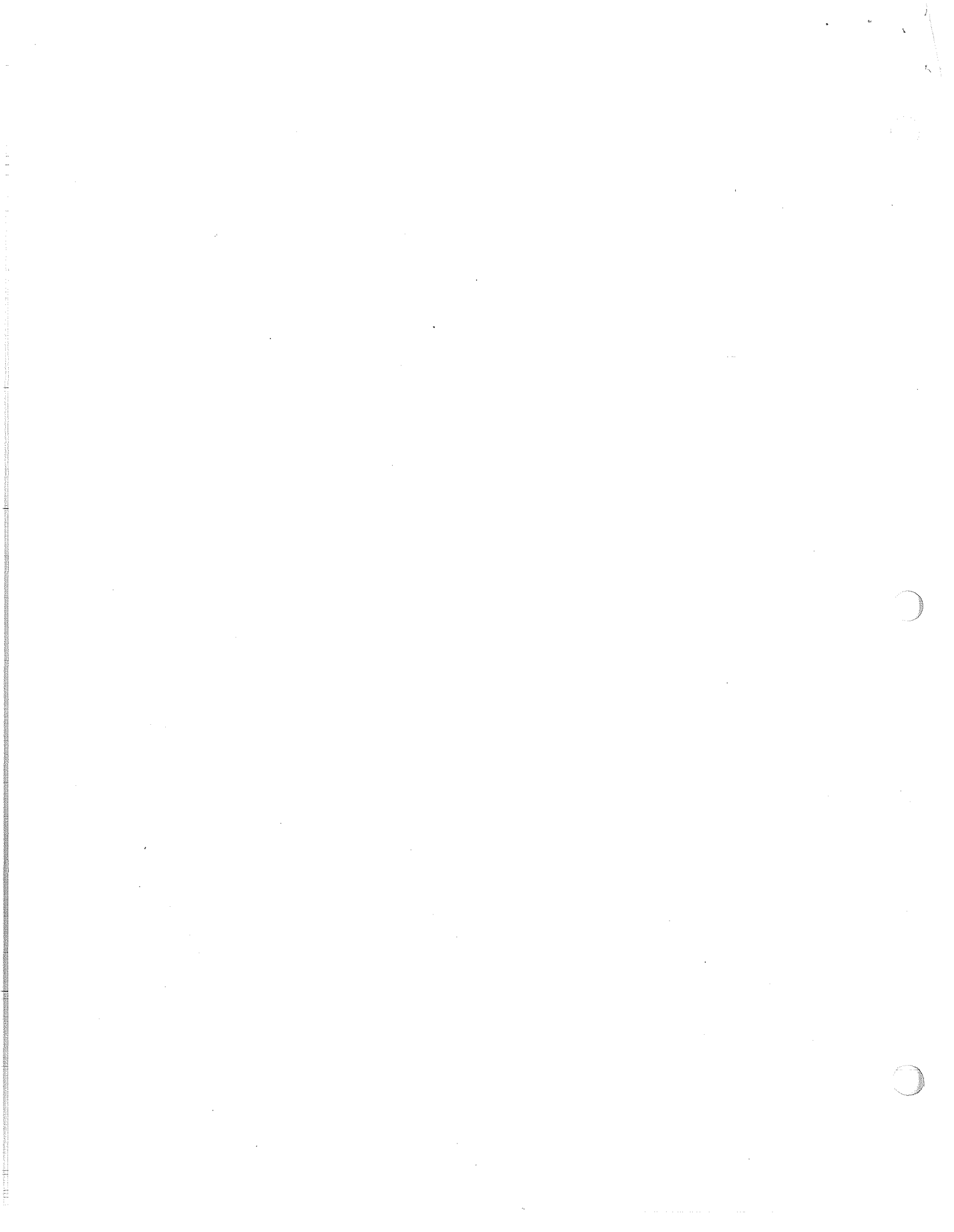
WHEREAS, the Subcommittee on Ethical Conduct of the Committee on Rules and Administration, based on clear and convincing evidence, has made the following findings:

1. Joe Bertram, Sr., was first elected to the Minnesota Senate in 1980. He was reelected in 1982, 1986, 1990, and 1990. He currently represents District 14.
2. On the afternoon of September 26, 1995, Senator Bertram removed a black leather vest with a retail value of \$89.95 from Zapf's Leather Goods Store in Paynesville, Minnesota, without paying for it.
3. The theft was observed by an employee of the store, who saw Senator Bertram place the vest into a white plastic bag and walk out of the store without paying for it.
4. The employee reported the theft to the owner of the store, Charles Paul Koshiol, who ran out of the store and saw Senator Bertram placing the plastic bag into the passenger side of his pickup truck.
5. The store owner confronted Senator Bertram, who offered to pay for the vest. The store owner suggested that they go to the police station together to take care of the matter. Senator Bertram declined, saying he did not want the police to find out about it. He then went to his home.
6. The store owner took the vest and returned to his store, where he called the police.
7. Officer Tony Schmitt of the Paynesville Police Department went to the store, talked with the owner, and gave him a ride to the police station.
8. Officer Schmitt called Senator Bertram and asked him to come down to the police station, which Senator Bertram did.
9. At the station, Senator Bertram invited Officer Schmitt and the store owner to go to his home to confirm that Senator Bertram had no other stolen merchandise there. They agreed.
10. The store owner rode with Senator Bertram to Senator Bertram's house. During the ride, Senator Bertram told the store owner: "I'll give you more business, I'll do anything I can. I'll give you more business, I'll bring my friends in, I'll buy more things from you, I'll give you \$1,000," if the store owner would not press criminal charges against him. The store owner did not reply.
11. After the three men had completed their search of Senator Bertram's home, they returned to the police station.
12. At the police station, Senator Bertram and the store owner met with the Chief of Police, Bill Drager, in an interrogation room, about pressing criminal charges. Senator Bertram, Chief Drager, and Mr. Koshiol agree that Senator Bertram told the store owner: "Please don't do this. I'll bring you more business, I'll bring my friends in, I'll buy more things from you," not to press charges, and that Chief Drager stood up, angrily said to Senator Bertram, "Dammit Joe, who do you think you are? Do you think you can buy this thing off? I would advise you not to say any more," and left the room. Mr. Koshiol testified that Senator Bertram also said, "I'll give you money," but Chief Drager testified he did not recall Senator Bertram saying anything with regard to giving Mr. Koshiol money.
13. On September 29, 1995, before the Honorable Bernard E. Boland, Judge of Stearns County District Court, Senator Bertram pleaded guilty to a violation of Minn. Stat. § 609.52, Theft,

**DRAFT 1/8/96**

a petty misdemeanor, and was sentenced to a fine of \$150, plus surcharges and various fees.

14. Senator Bertram has paid the fine, surcharges, and fees, a total of \$194.
15. On October 3, 1995, Senator Bertram resigned his position as chair of the Committee on Agriculture and Rural Development and his position as chair of the Subcommittee on Veterans of the Committee on Governmental Operations and Veterans.
16. At the hearing on this matter before the Subcommittee on Ethical Conduct, January 3, 1996, Senator Bertram partially repudiated his guilty plea to the shoplifting charge.
  - a. He declined to affirm that he believed that it's dishonest to take a vest out of a store with the intent not to pay for it.
  - b. He declined to affirm that he had told the truth when he pleaded guilty.
  - c. He said that, if he had seen the police report before pleading guilty he would not have done so.
  - d. He said that, "it was our attempt as a family to stop this charade and to end it and to to on and get it behind us and that is the purpose of me at that point pleading guilty to a petty misdemeanor."
  - e. He said that he admitted in court stealing the vest only to avoid a jury trial that would have imposed further pain on his family.



**MINNESOTA SENATE**  
**SUBCOMMITTEE ON ETHICAL CONDUCT**

**CONDUCT OF SENATOR JOE BERTRAM, SR.**

**DISCUSSION OF THE SUBCOMMITTEE**

Transcribed January 8, 1996

1 (Following testimony of the witnesses, and before Mr. Resnick's closing statement, the  
2 following discussion occurred.)

3  
4 SENATOR NOVAK: I have a question of the counsel, but should I do that now or later?

5 SENATOR REICHGOTT JUNGE: Of Mr. Resnick?

6 SENATOR NOVAK: No, our counsel.

7 SENATOR REICHGOTT JUNGE: Go ahead.

8 SENATOR NOVAK: I just want –

9 SENATOR REICHGOTT JUNGE: Senator Novak.

10 SENATOR NOVAK: I just want, Madame Chair, I just want to make sure that I  
11 understand what the law actually is based on what circumstances might or might not be  
12 concerning the possibility of the offering of a – what was the term you wanted used instead of  
13 bribe?

14 SENATOR REICHGOTT JUNGE: Offer of money.

15 SENATOR NOVAK: Offer of money. It would be my understanding that if an offer of  
16 money was made to a public official that that is a crime of a significant nature. If an offer of  
17 money is made to an individual and it's accepted, it's an established crime, I would imagine  
18 going, possibly going both ways, of a significant nature. My question is, is it a crime if an offer  
19 of money is made to a nonpublic official and it's not accepted? That offer is made before any  
20 other legal or illegal, alleged illegalities have been processed, legally, with law enforcement  
21 agencies.

22 PETER WATTSON: Madame Chair, Senator Novak, I think to put this in context, we  
23 should take a look at that law that's in question here and its about the second to the last page in  
24 the Bertram tab. It's a copy of Minnesota Statutes, section 609.42, Bribery. The first part of  
25 subdivision 1 starts out by saying that the following is bribery and the penalty may be  
26 imprisonment for not more than ten years or a fine of not more than \$20,000, or both. That  
27 makes it a felony. We're talking about a felony. The first set of circumstances is the one you  
28 described first, where a person made an offer to a person who is a public official with intent



1 thereby to influence the person's performance of the powers or duties as such officer or  
2 employee. It's not simply the acceptance. It doesn't require the acceptance. It's the making of  
3 the offer to the public official is a bribe.

4 SENATOR NOVAK: So, Madame Chair, counsel.

5 SENATOR REICHGOTT JUNGE: Senator Novak.

6 SENATOR NOVAK: Theoretically, if Mr. Bertram had made that kind of an offer to say  
7 the police chief and that were established to be a fact, that would unquestionably be –

8 SENATOR TERWILLIGER: Madame Chair, I'm a little confused.

9 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

10 SENATOR TERWILLIGER: If you look at that first paragraph, an offer to a public  
11 official, this was not to a public official, it was the reverse. It was to an individual which would  
12 then apply to subparagraph 3, as I read it. If I'm looking correctly at three, which is "offers,  
13 gives, or promises to give directly or indirectly any such benefit, reward, or consideration to a  
14 person who is a witness or about to become a witness in a proceeding before a judicial or hearing  
15 officer with intent that the person's testimony be influenced thereby or that the person will not  
16 appear at the proceeding."

17 SENATOR NOVAK: Well, Madame Chair, Senator Terwilliger.

18 SENATOR REICHGOTT JUNGE: Senator Novak.

19 SENATOR NOVAK: I understand that, and I apologize for working this through in a  
20 way that I can understand it, but I wanted to go through the combination of possibilities that  
21 either did or did not happen so that I could clearly understand the context of law and the  
22 possibilities inherent in that, so I – I frankly understood the answer to my question before I asked  
23 it in the first sense, but because of the different parties that have been involved based on all sorts  
24 of different testimony, I just wanted to track through this as the counsel was beginning to do, so I  
25 probably shouldn't have interrupted him, but I'm trying to systematically either eliminate or add  
26 to the list of possibilities so that I can match them up later with whatever we determine we think  
27 did or didn't happen.

28 PETER WATTSON: Madame Chair, to proceed then, the offer then is a crime under

1 number 1, paragraph number 1. Paragraph number 2 –

2 SENATOR NOVAK: So, again, just to clarify – as I'm trying to understand, as I  
3 understand it there's differences between offers, acceptances, and who those offers of money are  
4 offered to, as I understand it, there's also, it's differentiated between public officials, nonpublic  
5 officials, in some cases it could be a crime to offer and other cases it wouldn't and almost all  
6 cases it would be a crime to receive in exchange for, that's what I'm trying to make sure I  
7 understand.

8 SENATOR TERWILLIGER: Madame Chair.

9 SENATOR REICHGOTT JUNGE: Senator Terwilliger.

10 SENATOR TERWILLIGER: Senator Novak, my apologies for interrupting the direction  
11 you're trying to go, it's just that in this situation, I guess, I was looking at it this isn't – we're not  
12 considering the public officer here, the public official is not being made the offer to, he was the  
13 person in this instance making the offer.

14 SENATOR NOVAK: Madame Chair, Senator Terwilliger, I understand that, although in  
15 the context of this testimony, it appeared – depending on – listening to one person's testimony, in  
16 this case the police chief, in theory, if certain things that have been alleged had been alleged to  
17 have happened with a different person in the same room, in this case the police chief, that would  
18 change the context of the application if, in fact that it happened, so I was just trying to go through  
19 the different possibilities and make sure I understood the context and law, working my way back  
20 to what's being alleged, but helping myself out, I guess, in terms of providing you with a better  
21 understanding of –

22 SENATOR REICHGOTT JUNGE: Senator Novak.

23 SENATOR NOVAK: – I mean this is a serious crime if this were in fact to have  
24 happened.

25 SENATOR REICHGOTT JUNGE: And this is a serious question. I think this is a  
26 question that we do need to talk about at some length as to what all this means. I'd like to  
27 suggest now that I know the context of your question and the involvement of it, I think out of  
28 consideration to our witnesses who are from out of town I'd like to finish with them and then we

1 can turn to this as more of a committee discussion if that's all right with you.

2 SENATOR NOVAK: That's fine, that's why I asked.

3 SENATOR REICHGOTT JUNGE: All right, and you did ask but I didn't understand the  
4 nature of the question.

5  
6 (The following discussion occurred after the witnesses were excused and after Mr.  
7 Resnick had made his closing statement.)

8  
9 SENATOR REICHGOTT JUNGE: Members, we seem to have one issue outstanding  
10 here, perhaps counsel and Senator Novak can go through this issue quickly so that we can, we  
11 can adjourn this evening.

12 SENATOR NOVAK: Thank you Madame Chair. What I would appreciate getting  
13 information on, just making sure that I understand the context of law and penalties is if -- it is my  
14 understanding that if an offer of money is made -- it is my understanding that if an offer of money  
15 is made to a public official, that that would be a significant crime. Also, clearly if an offer of  
16 money was made and acceptance was there, that would also be a crime. My question is if an  
17 offer of money is made to a nonpublic official, but it's not received, is that a crime? That's my  
18 first question.

19 PETER WATTSON: Madame Chair, Senator Novak, as you say, the first kind of  
20 conduct, if an offer were made to a public officer, that's covered by number one, that's a crime.  
21 If the officer receives or agrees to receive the something of value, that's a crime under paragraph  
22 2, but we're not dealing with either situation in paragraph 1 or paragraph 2, on the facts before  
23 us. Our facts are more similar to the situation in paragraph 3, which deals with an offer that's  
24 made to a person who is a witness or about to become a witness in a proceeding before a judicial  
25 or hearing officer with intent that the person's testimony will be influenced thereby or that the  
26 person will not appear at the proceeding. In that case, the person to whom the offer is made need  
27 not be a public official. It's a person who is or is about to become a witness in a judicial  
28 proceeding.

1 SENATOR NOVAK: And, Madame Chair.

2 SENATOR REICHGOTT JUNGE: Senator Novak.

3 SENATOR NOVAK: Counsel, if that were to have happened, in the circumstances that  
4 have been described, what level of crime would that be? Is that dependent on the amount of  
5 money that was offered or just by the action itself?

6 PETER WATTSON: Madame Chair.

7 SENATOR REICHGOTT JUNGE: Mr. Wattson.

8 PETER WATTSON: Senator Novak, no, it doesn't depend on the amount of money that  
9 was offered.

10 SENATOR NOVAK: All right. Then what level of a crime is it?

11 PETER WATTSON: Regardless of the level or the amount of money that's offered, it is a  
12 felony subject to imprisonment for not more than ten years or payment of a fine of not more than  
13 \$20,000, or both.

14 SENATOR NOVAK: Madame Chair, Counsel, is that also the case if that offer were  
15 made and not accepted and that process took place before any legal processes had been fulfilled.  
16 In other words, if it's a prospective.

17 SENATOR REICHGOTT JUNGE: Mr. Wattson.

18 PETER WATTSON: Madame Chair, Senator Novak, clearly if the person to whom the  
19 offer is made has no connection with a judicial proceeding, then there is no violation of the  
20 statute, there's no crime. If the person is in or about to become a witness, then there's a crime  
21 and the question, I think for the committee to ponder over the next several days, is whether in  
22 this case the person to whom the offer was allegedly made was about to become to a witness in a  
23 proceeding. That's a legal question, I think, as to when you are about to become a witness in a  
24 judicial proceeding. There had been no judicial proceeding begun at this time, but there was to  
25 be a judicial proceeding once the complaint was filed. This is a matter that, I think, will demand  
26 some research on my part to see what the cases say about when you are "about to become a  
27 witness."

28 SENATOR NOVAK: The last question I have, Madame Chair, for either the counsel or

1 I'd also especially appreciate the thoughts of our two colleagues here, until Mr. Resnick's last  
2 comment, where he put out a theoretical basis for a difference of opinion, that in fact could  
3 conclude with the notion that neither party lied, would it be your impression or not your  
4 impression that based on the testimony tonight, somebody perjured themselves?

5 CHIEF JUSTICE DOUGLAS AMDAHL: You want me to answer that question.

6 SENATOR NOVAK: Yes.

7 CHIEF JUSTICE DOUGLAS AMDAHL: I think someone --

8 SENATOR NOVAK: someone perjured themselves?

9 CHIEF JUSTICE DOUGLAS AMDAHL: That's my feeling. You've got the same --  
10 maybe you can answer that question yourself, because you'll have to do it yourselves.

11 SENATOR NOVAK: That was my feeling too, but I was wondering what other thought,  
12 I'd appreciate Mr. Sheran's opinion, if he has one, on that subject. Whether he thinks that's clear  
13 or not.

14 CHIEF JUSTICE ROBERT J. SHERAN: The problem I would have if I were in your  
15 position is trying to determine whether or not the storekeeper witness is a reliable witness with a  
16 good recollection and without any motivation to falsify. I'd ask myself those questions with  
17 respect to what he had to say and if I came to the conclusion that he does express himself  
18 accurately, that he seems to have a good memory, he does not have a motivation to falsify, that  
19 he understands the significance of what he's testified, then I would feel that testimony would  
20 have to be given a very strong consideration. But my experience teaches me that when a person  
21 is in an awkward spot, they will sometimes recollect things in ways that are not accurate. Not  
22 with the thought -- the characterization of themselves as being perjurers, but because human  
23 nature being what it is, there is that disposition to put a twist on things that favors one's posture,  
24 and the problem I think that you have to do is to look at the witnesses who appeared here and the  
25 manner in which they testified, their motivation or lack of motivation to report things accurately  
26 and decide whether one or the other is reporting things as they in fact occurred. The idea that  
27 they can both be reporting what occurred accurately is, that's not possible. These are two  
28 different, dramatically different versions of what occurred. I see it, the role of this committee is

1 the fact finders to make a choice between those two and were I in your position, the  
2 considerations that I would be running through my mind are those that I have recited to you and  
3 I'm not prepared to go beyond that.

4 SENATOR NOVAK: Thank you.

5 SENATOR REICHGOTT JUNGE: Counsel.

6 PETER WATTSON: In connection with – I heard your response to Senator Novak's  
7 questions, I wanted to raise an additional issue.

8 SENATOR REICHGOTT JUNGE: Okay. Mr. Amdahl, did you want to add something  
9 or are you –

10 CHIEF JUSTICE DOUGLAS AMDAHL: No, I was just thinking that our role here is to  
11 consider discipline. Your job is to determine whether or not discipline is warranted.

12 SENATOR REICHGOTT JUNGE: At this time, I think we're getting there and very  
13 closely. Can we tie up this level of questioning and I do think the hour is late and we need to  
14 adjourn. So, Mr. Wattson, a final comment.

15 PETER WATTSON: Madame Chair, Senator Novak's questioning was designed to  
16 determine what was required to prove the commission of a crime and I talked about the – my  
17 need to determine, for myself at least, and I think maybe for the committee, of whether the  
18 elements of a crime had been established here, but as you said earlier, the committee's  
19 jurisdiction is not limited to crimes. That, even though the conduct that the committee finds to  
20 have occurred might not fit within the letter of this definition of the crime in paragraph 3, the  
21 committee might find that that conduct, while not illegal, was unethical or improper.

22 SENATOR REICHGOTT JUNGE: That's a good final point. Members of the  
23 committee, I'm going to make a couple of requests. If you want any further information, we  
24 need to know that. You need to make the request of us. I personally would like a transcript of  
25 our good and fair court reporter of the testimony of Mr. Koshiol, the chief, and Mr. Bertram, and  
26 Senator Frederickson.

27 SENATOR FREDERICKSON: Madame Chair, could I have similar copies?

28 SENATOR REICHGOTT JUNGE: I will have that distributed to all the members and our

1 outside counsel. And, in addition, I would particularly like to receive the testimony of Senator  
2 Solon, and I will distribute that as well. Those are my requests. Does anybody else have further  
3 requests? Okay. Again, I want to express my incredible appreciation to the two of you. You  
4 have been an incredible help. More so than I had ever, ever dreamed in each of these procedural  
5 issues. I appreciate very much your candidness and your willingness to work with us. The hour  
6 is late, I know that you will be now deliberating among yourselves. Can you tell me what it is  
7 you expect to provide? I understand that you'll be providing some written comments to us then  
8 in time for the hearing on Tuesday, have you –

9 CHIEF JUSTICE DOUGLAS AMDAHL: I probably am going to submit something.

10 SENATOR REICHGOTT JUNGE: Will they be individual comments or do you wish to -

11 CHIEF JUSTICE DOUGLAS AMDAHL: I'll talk to Justice Sheran about that, I think he  
12 isn't but –

13 SENATOR REICHGOTT JUNGE: Or is it –

14 CHIEF JUSTICE DOUGLAS AMDAHL: I can't tell you now, but I will let you know in  
15 a couple of days.

16 SENATOR REICHGOTT JUNGE: All right. Perhaps I should just talk with you  
17 individually then as to how you wish to proceed at this point then, but we value your advice, look  
18 forward to it someday on Tuesday.

19 CHIEF JUSTICE ROBERT J. SHERAN: I think that I've explained to you the reason I  
20 can't be here next week. I'll be glad to respond to any questions that you may have based on any  
21 information that you may care to send me and if you wish to contact me, the way to do that is  
22 through Darla Vashlow, my secretary, who is at 4200 IDS Building in Minneapolis, the  
23 telephone number is 371-3211, and she will know the mechanics of doing that. I hadn't in mind  
24 any thought of preparing any written observations because I must say that I feel that the  
25 proceedings as they were conducted were in conformity with the requirements of due process,  
26 which is the area to which I would, on the basis of experience, be particularly sensitive and then I  
27 think that the judgments as to what the testimony of what witnesses are to be the basis of your  
28 factual determinations, your background of knowledge and experience is, at least the equivalent

1 of anything I'd have to offer, over and above the comments I've previously made. The other  
2 aspect of it would have to do with the range of impositions that you may decide to invoke and  
3 you haven't reached that point yet, but I think in that area, at least from my perspective,  
4 practically all of that would be a matter of judgment based upon common sense and experience  
5 and the members of this committee have that in abundance so I really don't think I'd have that  
6 much to offer there, but any specific questions, I'm available to respond to inquiry from the chair  
7 or through Peter acting for you.

8         SENATOR REICHGOTT JUNGE: All right. In view of the time, why don't I think  
9 about that with Mr. Wattson and convey a request to you then.

10         CHIEF JUSTICE ROBERT J. SHERAN: That would be fine.

11         SENATOR REICHGOTT JUNGE: Before you leave.

12         CHIEF JUSTICE ROBERT J. SHERAN: No problem.

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