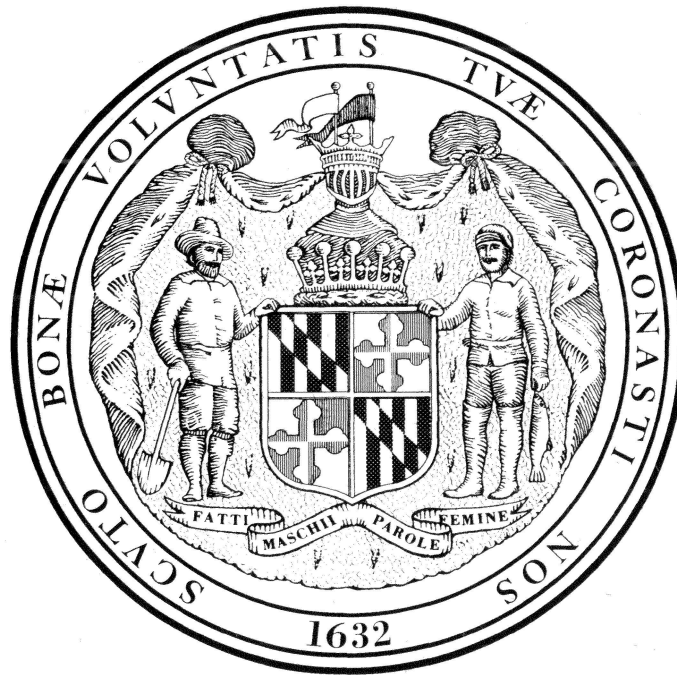


THE SPECIAL COMMITTEE ON STATE EMPLOYEE RIGHTS AND PROTECTIONS

Final Report: Findings and Recommendations
Volume I

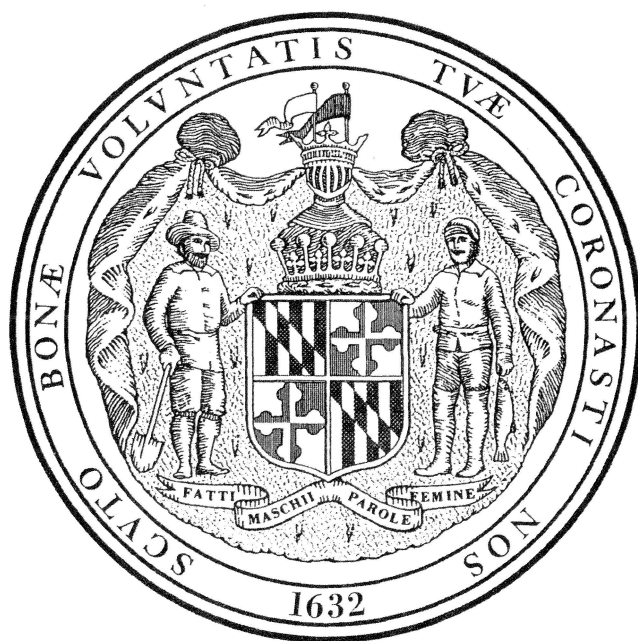


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THE SPECIAL COMMITTEE ON STATE EMPLOYEE RIGHTS AND PROTECTIONS

Final Report: Findings and Recommendations
Volume I



ANNAPOLIS, MARYLAND
OCTOBER 2006

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Special Committee on
State Employee Rights and Protections**

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John J. Hafer
Paula C. Hollinger
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¹ Delegate Luiz R.S. Simmons was appointed in December, 2005, to replace Delegate Anthony Brown, originally appointed to the Special Committee in July 2005. Delegate Brown requested to be withdrawn from the Special Committee to avoid any appearance of a conflict of interest because he had announced his candidacy for Lieutenant Governor.



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

October 30, 2006

The Honorable Thomas V. M. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch., Speaker of the House of Delegates
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Special Committee on State Employee Rights and Protections is pleased to submit to the Legislative Policy Committee a final report on its findings, conclusions, and recommendations.

The Committee was created by Resolution of the Legislative Policy Committee that was adopted on August 25, 2005. The Committee met 20 times over the course of the past 19 months, scheduling background briefings, hearings, and work sessions to accomplish the examination with which we were charged.

Notwithstanding the efforts of others to dismiss our work as fruitless and a waste of time and money, we strongly believe that the Committee's work was highly productive and meaningful and well worth the funds expended, as that amount was calculated by the nonpartisan Department of Legislative Services. With the assistance and guidance of our counsel, Ward B. Coe III, Esquire of the law firm of Whiteford, Taylor, and Preston, our examination leads to the following conclusions:

- Under the current Administration, separations of State employees occurred that were illegal, arbitrary, or inconsistent with improving State government;
- Methods of termination utilized by the current Administration were inconsistent and often demoralizing; and
- Legislation should be introduced to clarify State law and add protection for certain State employees.

The report recounts the circumstances surrounding the involuntary termination of numerous former State employees and reviews the applicable legal standards. A fair reading can only support the conclusion that, in many cases, those terminations were illegal, arbitrary, or inconsistent with improving State government.

The Honorable Thomas V. M. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Legislative Policy Committee
October 30, 2006

We also ask that you accept the findings as to the firings of those State employees as we did – as very disturbing and contrary to how State government should treat its valued workforce.

Beyond our comments about the contents of this report, we note that the Governor's delegation of the hiring and firing of at-will employees to the Appointments Office, while most likely neither illegal nor unconstitutional, is completely unprecedented. That office historically has been devoted to the appointment of individuals to boards and commissions where political affiliation may be a valid criterion for selection. However, in the context of the management and fair treatment of State personnel and the termination of highly qualified employees, the use of the Appointments Office by the current Administration in the manner described in our report may have contributed to both the perception and reality of unlawful political firings.

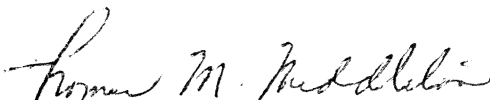
We wish to thank Ward Coe and his associates, without whom this report would not be possible. Mr. Coe, who was selected to serve as counsel by a unanimous vote of the Committee, conducted himself at all times – both during Committee hearings with witnesses and in all his other work on behalf of the Committee – in accordance with the highest professional standards.

We are thankful for the participation of the Office of the Counsel to the General Assembly in our deliberations and in its pursuit of legal action, taken at the direction of the Committee, against certain individuals who refused to answer questions during their testimony before us.

We also wish to thank the dedicated staff members of the Department of Legislative Services who have diligently assisted our work over these past months.

Finally, we wish to acknowledge and thank the former State employees who appeared before us to testify about their separations. We know that it took courage and fortitude to come forward with their testimony. Without them, we would not have been able to get to the truth of what really happened.

Respectfully submitted,



Senator Thomas M. Middleton
Co-Chair



Delegate Adrienne A. Jones
Co-Chair

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Executive Summary

This report describes the activities, findings, and recommendations of the Special Committee on State Employee Rights and Protections. The Committee was established by Resolution of the Legislative Policy Committee dated August 25, 2005, and met over the ensuing year. Numerous employees came forward who were separated by the current Administration. Only one came forward from a prior Administration. The Committee recognizes that it was much more likely for witnesses to come forward who had lost their employment more recently.

The following is a summary of the Committee's findings and conclusions:

- In January 2003, the Ehrlich Administration issued a strong directive to change the State workforce. Units of State government were pressured to review all at-will positions with the goal of considering replacing personnel with employees dedicated to carrying out the policies of the Administration.
- The Appointments Office, which has traditionally been used for the appointment of boards and commissions, was placed in charge of the effort to replace at-will employees and the Governor delegated hiring and firing authority to the Appointments Secretary.
- In some cases, there is evidence that separations were made based on political considerations in violation of constitutional rights and State law.
- In other cases, there were random separations of competent employees, which were not reasonably calculated to improve the performance of State government and which were likely to have had an adverse impact on the management of State government and on morale. State officials, in some cases, could give no plausible explanation for the terminations and in other cases evaded answering questions on the subject.
- In still other cases, employees were unreasonably barred from being considered for other State positions, an unusual practice that was authorized by the Governor's Appointments Office.
- Some State officials did not know the law with respect to who had the authority to terminate employees or whether political considerations could be used.
- Terminations were carried out in an inconsistent manner, from negotiated separations to immediate terminations, with terminated employees escorted out by security personnel and enlargements of their photographs posted at security stations in the building in which they worked. The different methods of termination had no relationship to whether or not the employees would pose a threat on being notified of their termination.
- There are ambiguities and inconsistencies in State law regarding protections for employees.

Committee Recommendations

Appointing Authority

Clarify the law to emphasize that only the lawfully designated appointing authority of a State employee may terminate that employee.

This clarification will not have any impact on the Governor directing terminations within State agencies or terminating those who are within his appointing authority for failing to follow his directions.

Management Service

Provide additional protection to employees in management service up to a certain grade level, but do not provide the full extent of protections afforded to skilled or professional service employees. Amend the law to provide that personnel actions for management service employees shall be made without regard to the employee's political affiliation, belief, or opinion or *any other non-merit factor*. Provide that the appointing authority is required to give a terminated management service employee the reason for his or her termination. In the appeal process, place the burden on the employee to prove that the reason was arbitrary, capricious, illegal, or in violation of the employee's constitutional rights.

Special Appointments

Clarify which special appointments are patronage positions and require that employees be notified of that status. State law currently contains a presumption that special appointments can be terminated for political reasons. Reverse the presumption by amending the law to provide that personnel actions for employees who are special appointments shall be made without regard to the employee's political affiliation, belief, or opinion unless the Secretary of Budget and Management has determined pursuant to controlling case law that the position is a patronage position.

Political Terminations

Clarify the law to make it clear that illegal political terminations include a termination to create a position for a new employee with regard to the new employee's political affiliation, belief, or opinion.

Remedies

Create a private right of action in State court for political firings in violation of State law and the Maryland Declaration of Rights Article 40 that provides for damages and attorneys' fees and does not require exhaustion of administrative remedies.

Employee Rights

State employees should be notified in writing of their classification and the rights pertaining to it when they are hired. If there is a change in their classification, the employee should be notified of it in writing and of the rights pertaining to the new classification.

Number of At-Will Employees and Special Appointments

Consider a legislative study of the number of at-will management service employees and the rationale of having entire departments or substantial parts of them designated at-will.

Positions Designated as Special Appointment by DBM

Consider requiring DBM to report to the legislature on the designation of positions as Special Appointments.

Separation Procedure

Clarify the law to state that neither the Governor's Office nor the Appointments Office may utilize the Department of Budget and Management to effectuate separations.

Separate the function of the Director of the Office of Personnel Services and Benefits from the appointment activity of the Governor's Office or Appointments Office.

Retirement Program Options

- Consider restoring the pension break to at-will employees terminated after 16 years of service for no cause.
- Consider providing an option for employees who are terminated for no cause to buy additional time in service to qualify for the State's retirement program.
- Refer these options to the Joint Pension Committee.

Introduction and Background

At its interim organizational meeting on June 14, 2005, the Legislative Policy Committee (LPC) voted to establish the Special Committee on State Employee Rights and Protections (hereinafter called the Committee) to examine allegations of abuse and illegalities within the State Personnel Management System with respect to terminations and separations of at-will employees. The presiding officers appointed twelve members of the LPC to constitute the membership of the Committee.

The first task of the Committee was to develop its charge in studying the issues. During its first meeting on August 22, 2005, the Committee considered a draft resolution describing its charge. At its second meeting on August 25, 2005, the Committee considered amendments to the draft and voted to recommend, to the full LPC for its adoption, the resolution as the charge of the Committee. On August 25, 2005, the LPC adopted the recommendation of the Committee. (See **Appendix A** – Resolution of the Special Committee on State Employee Rights and Protections.) To summarize, the Resolution directs the Committee to examine:

1. (a) Whether Maryland law affords sufficient protections for State personnel against involuntary separations for illegal or unconstitutional reasons; and

- (b) Whether the government structure and procedures for decision making with respect to involuntary separations sufficiently protect State personnel from illegal or unconstitutional actions;

2. (a) Whether the manner in which administrations have determined the subjects of involuntary separations and effected such separations is fundamentally fair and consistent with best practices for personnel management; and

- (b) What effect involuntary separations have had on the overall quality and professional standards of the State government workforce; and

3. Whether additional statutory protections are needed to safeguard the rights of State personnel; . . .

The Resolution further directed the Committee to submit a report of its findings and recommendations to the Legislative Policy Committee. The Committee's report follows.

Among the organizational activities undertaken by the Committee were the drafting of rules and procedures by which the Committee would be governed and the selection of an attorney to serve as counsel to assist the Committee in executing its charge. The Committee established two subcommittees to accomplish these tasks: the Subcommittee on Rules and Procedures and the Subcommittee on Staffing. Senators Middleton, Stoltzfus, Hollinger and Delegates Jones, Edwards and Brown constituted the membership of the Subcommittee on Rules and Procedures. The Subcommittee on Staffing had, as its members, Senators Frosh, Currie and Stoltzfus and Delegates Cryor, Clagett and McIntosh.

The Subcommittee on Rules and Procedures met twice to draft the rules and procedures by which its proceedings would be governed. On September 14, 2005, the Subcommittee on Rules and Procedures recommended a set of rules and procedures for its proceedings, which were adopted by the full Committee. (See **Appendix B** – Code of Fair Procedures.)

The Subcommittee on Staffing agreed to advertise in the major daily newspapers for counsel to assist the Committee. (See **Appendix C** – Hiring Process, which describes the procedure adopted by the Committee on hiring an attorney to assist the Committee.) The subcommittee received a number of resumes and established a day of interviews. After conducting eight interviews, the Subcommittee on Staffing recommended that the Committee hire Mr. Ward B. Coe, III, of Whiteford, Taylor & Preston L.L.P. to serve as Counsel to the Committee. Mr. Coe was chosen from among a number of prominent attorneys who interviewed with the subcommittee. The members of the full Committee voted unanimously to hire Mr. Coe. In his acceptance of the position, Mr. Coe indicated that he would be assisted by Ms. Ranak K. Jasani, another attorney in his firm.

As required by its resolution, the Committee began its work with extensive background research on personnel management. During the course of its examination, the Committee was given an historical overview of the development of the State Personnel Management System and was briefed on existing State employee rights and protections. The Committee collected information about State statutes and regulations governing the personnel operations of State government with respect to terminations of at-will employees. Additionally, the Committee was briefed on at-will employment in the private sector, in other states, and in the federal executive workforce and on best practices on the use of at-will employment in the public sector. Data on terminations, separations, resignations, and retirements in Maryland's State Personnel Management System from 1995 through September 2005 were presented to the Committee for its examination.

Since early fall 2005, the work of the Committee has also focused on gathering information from former State employees and Administration officials. Chief among counsel's responsibilities was guiding the Committee as it prepared to gather information from these former State employees and Administration officials. A number of individuals had already made contact with the presiding officers and members of the General Assembly before the Committee's inception. Once the members of the Committee were announced, those members also began to receive information from former employees. To ensure that the Committee received as much information as was possible, an advertisement was placed on the General Assembly's website, alerting the public to the existence of the Committee and advising them

how to contact Committee counsel. Additionally, each member of the General Assembly received a memorandum from the Co-Chairs of the Committee alerting them to its existence and charge and informing them of how they may contact the Committee with information. (See **Appendix D** – Website Notice to Public and Notice to Members of the General Assembly).

In November 2005, Committee staff, staff in the Office of Policy Analysis (OPA), and Committee counsel began conducting a number of telephone and personal interviews with former State employees who alleged that their terminations were illegal. With the advice of Mr. Coe, staff developed a survey questionnaire which was used to conduct telephone interviews of former employees who contacted the Committee, members of the General Assembly, or Mr. Coe. In addition to contact information such as name, address, and telephone number, the survey questions explored details about the job from which the former employee was terminated. The information included the employee's employment history, circumstances surrounding the employee's termination, supervisors of the former employee, whether or not the former employee had received regular and routine evaluations of job performance, whether or not any severance pay was given and whether or not the employee would be interested in testifying before the Committee. (See **Appendix E** – Survey Instrument.)

Approximately sixty individuals contacted the Committee, members of the General Assembly as a whole, and counsel. Committee staff attempted to follow up on each of those contacts. Not all former employees who were contacted appeared before the Committee. Some former employees appeared voluntarily; however, a number conditioned their appearance on being subpoenaed by the Committee.

In addition to hearings to gather background information about the State Personnel Management System, the Committee conducted hearings where testimony was received from more than twenty former State employees, cabinet secretaries and other state employees. With each hearing that took place, more former State employees contacted the Committee with information. The Committee believed that it was important to interview these additional witnesses although this proved to be extremely time-consuming. Some former merit system employees who alleged that they had been involuntarily separated were among the interviewees. The Committee viewed its charge as reviewing terminations of at-will employees, however, and did not examine in detail the removal of merit system employees.

In the course of its examination, the Committee requested a number of documents from the Administration that the Committee believed would shed light on the Administration's handling of those terminations and separations. The Administration did not comply fully and completely. **Appendix F** is a graphic representation of the requests made by the Committee and the responses of the various executive agencies and the Administration. Additionally, much of the information that was supplied was heavily redacted. In the redactions, the Administration asserted executive privilege and its custodial responsibility with respect to personnel records as the reasons, among others, for withholding and redacting certain documents. The Committee authorized its counsel to issue subpoenas for withheld documents.

In the course of conducting its examination, the Committee discovered that the nature and scope of the issue was sufficiently broad as to require more in-depth and deliberative study than could be conducted within the original timeframe. Because of delays on the part of the Administration in complying with requests for documents and refusal to answer questions in public hearings, and the intervening work of the Legislative Session and the Special Session, the Committee voted to extend its existence four times beyond its original January 4 deadline. Additionally, the refusal on the part of some Administration officials who had been subpoenaed to answer a number of questions posed by counsel and Committee members prompted the Committee to vote to request the courts to compel the testimony of these individuals. The courts' refusal to expedite its review of the Committee's request to compel the testimony of certain Administration officials caused a further delay for the Committee, prompting it to extend itself again until September 1, 2006, or 10 days following the conclusion of the testimony of these Administration officials. On August 9, 2006, the Committee heard testimony from its final witness, a former Administration official. At the conclusion of its August 9 hearing, the Committee voted to request the courts to compel the testimony of this witness, as well, and to extend the Committee until 10 days following the conclusion of this witness' testimony. A court date of October 26, 2006, has been set in the first motion to compel testimony, and a court date of October 25, 2006, has been set for the second motion.

In the following report, there is a brief overview of the history of the development of the State Personnel Management System and characteristics of the State workforce in terms of classifications of employees. The Maryland system is compared to the federal and other state workforce classifications. This report will also examine statistical data pertaining to separations of employees with an emphasis on the separations of at-will employees. The analysis of these data can be found in **Appendix G**.

The report will also examine the testimony of separated at-will employees and certain Administration officials who presented testimony at public hearings of the Committee. The report will then analyze applicable law. Finally, the report will summarize the Committee's findings and conclusions and make recommendations relating to the status, rights, and protections of at-will State employees.

Historical Overview of the Federal and State Personnel Management Systems

Federal Personnel System

The origin of Maryland's civil service system can be traced to the federal level. During the first century of the United States' existence, selection for government positions was hardly a rational process. Although it is believed that appointments made by presidencies as early as George Washington's were made on the basis of merit, the process deteriorated greatly by the Jackson presidency into a spoils system. By the mid-nineteenth century, patronage dominated the selection process and turnover in elections meant a turnover in personnel, crippling institutional stability, integrity, and memory.²

The assassination of President Garfield in 1881 by a disgruntled job seeker was the catalyst for the passage of the Civil Service Reform Act (better known as the Pendleton Act) in 1883. The Pendleton Act classified certain jobs, (removing them from the patronage ranks), prohibited any obligations for employees to contribute to political funds or render political service, prohibited the firing or demoting of employees for political reasons, and established the Civil Service Commission to administer a personnel system based on merit rather than on political connections. The Civil Service Commission also promulgated procedures for merit selection, which included competitive examinations for positions, retention, and promotion of federal employees.

Passage of the Pendleton Act stimulated civil service reform at the State level, although states were relatively slow to follow. Among the first states to adopt merit systems were the states of New York and Massachusetts. It took amendments in 1939 to the Social Security Act (originally passed in 1935) to force development of merit-system standards in state personnel systems. Those amendments required states to place all employees who worked in departments receiving federal grants-in-aid into a merit system. It was this act that brought about at least partial merit systems in all state governments. Requirements for the covered agencies were consolidated in one document in 1948 and revisions of the Social Security Act in 1963, 1971, and 1979 barred discrimination on the basis of race, national origin, and other personal factors unrelated to merit and provided for affirmative action to achieve equal employment opportunity for all.

²The information contained in this overview was summarized from a presentation to the Special Committee on October 18, 2005, by David Smulski, an analyst with the Office of Policy Analysis.

Further protections for government workers came with passage of the Civil Service Reform Act of 1978. That act protects “whistleblowers” who disclose illegal or improper government activities and streamlined and simplified dismissal procedures for employees who must be terminated for cause. The act also replaced the Civil Service Commission with the Office of Personnel Management and established a Merit System Protection Board to insure compliance with merit system principles and laws.

Maryland State Personnel System

Maryland was the ninth state to adopt a merit system, developed along the lines of the federal civil service system, nearly forty years after the adoption of the Pendleton Act. The first significant legislation affecting the State’s personnel system was Maryland’s Merit System Law, enacted in 1920 (Chapter 41, Laws of Maryland). This law established a framework that established classes of employees, provided for competitive examinations and eligible candidate lists, provided for the separation of employees, allowed vacation, sick, personal, and accident leave, and provided for the responsibilities of the Secretary of Personnel.

Over the next 70 years, revisions to the merit system law were piecemeal, but numerous. Changes to the law provided for: prohibitions against discrimination; protections against disclosure and confidentiality of records; the hiring of contractual employees; a probation period after promotion; specification of reinstatement qualifications; permanent hiring of temporary employees; incentive awards; time off for religious observance and seasonal leaves of absences; the participation of retired employees in the State Employees’ Health Insurance Program; and grievance procedures. Another minor revision in 1989 brought about the Executive Pay Plan.

The first of significant changes in the merit system law began in the late eighties with the establishment of several independent personnel systems in several agencies. Several Maryland entities, including the University System of Maryland, Morgan State University, and St. Mary’s College (1988), the Department of Transportation (1993), and the Maryland Environmental Service (1993) were granted the authority to establish their own policies and practices without regard to the personnel system followed by other executive agencies. While these systems are independent of the personnel system currently administered by the Department of Budget and Management (DBM), their organizations do mirror the larger system. The impetus for the change was to satisfy the agencies’ request for increased “flexibility.”

A major overhaul of the State’s personnel system occurred in 1996. The impetus for this major revision was brought about by the 1993 Commission on Efficiency and Economy (the Butta Commission) and the 1995 Task Force to Reform the State Personnel Management System. Among the 115 recommendations of the Butta Commission was the recommendation to revise the seventy year old personnel system. The 1995 task force recommended that the State develop a personnel management system that would streamline and simplify the State’s personnel policies, decentralize personnel management functions, and provide consistent application of human resources management principles in the Executive Branch. In response to these two studies, the General Assembly enacted the State Personnel Management System Reform Act of 1996 (Chapter 347, Laws of Maryland).

By a separate act, (Chapter 349, Laws of Maryland, 1996) the General Assembly abolished the Department of Personnel and placed the Administration and operation of the State's personnel management system within DBM. Among the key changes brought about by the 1996 reforms were the reclassification of employees from unclassified to executive and management service and classified to skilled service and professional service and the creation of a category of "special appointments" in each of these new classifications. Other key features of the act included the shared responsibility between DBM and State agencies for recruitment and selection of staff and a requirement for written position descriptions and annual and mid-year performance appraisals for employees in the skilled, professional, and management services.

Since the enactment of the 1996 Act, a few other changes have been made. Chapter 549 (Laws of Maryland, 1997) clarified that personnel actions concerning employees or applicants in the management service must be made without regard to the employee's political affiliation, belief, or opinion and that these protections are in addition to whatever legal or constitutional protections such employees have. The law also clarified that except for special appointments or applicants for special appointments, personnel actions concerning employees or applicants for employment in the skilled service or professional service of the State Personnel Management System or comparable position in the independent personnel systems in the Executive Branch of State government shall be without regard to political affiliation, belief, or opinion or other non-merit factor.

Additionally, in 1996, 1999, and 2001, by executive order and legislative enactments, a significant number of State employees in the Executive Branch and employees of the State's public institutions of higher education were granted collective bargaining rights.³ In 1999, the Standard Pay Plan went from 22 grades and 6 steps to 22 grades and 16 steps. In 2000, the Executive Pay Plan converted from an 11 grade, 7 step structure to an 8 grade structure with minimum and maximum rates. Also, the Standard Pay Plan increased by 4 to 26 grades.

³ These collective bargaining rights were granted pursuant to Executive Order 01.01.1996.13. Chapter 298, Laws of Maryland, 1999, codified the provisions of the Executive Order.

Overview of the Public Sector Workforce in Other States, at the Federal Level, and in Maryland⁴

Other State Workforce Data

The Department of Legislative Services conducted a survey between June and October 2005 of all states and the District of Columbia to obtain the total number of full-time equivalent (FTE) positions in state government and the number of FTE positions considered to be at-will. (See **Appendix H**.) The response rate was approximately 80 percent or 39 states, excluding Maryland. Personnel data were not reported uniformly by the states. **Chart 1** shows the percentage of at-will employment reported by the respondents. Of the 39 respondent states, at-will employment ranges from near 0 percent in New Hampshire to 100 percent in Arkansas. The average at-will employment of other states' workforces is 22.7 percent; the median is 14.9 percent.

⁴Joshua Watters and Lori O'Brien, analysts in the Office of Policy Analysis, presented the data in this section at a briefing for the Special Committee on October 18, 2005.

Chart 1.
At-will Employment in Other State Governments

	<u>State</u>	<u>Reported Total Employees</u>	<u>Reported % At-will</u>
1	Arkansas	27,368	100.0%
2	North Carolina	90,091	99.4%
3	Georgia	82,631	73.8%
4	Missouri	60,047	41.5%
5	Massachusetts	43,529	36.9%
6	South Dakota	13,153	35.1%
7	Oklahoma	25,832	34.2%
8	Idaho	19,113	32.2%
9	Utah	25,081	31.5%
10	Colorado	44,335	29.1%
11	Arizona	40,528	23.6%
12	Ohio	64,001	19.5%
13	Mississippi	36,877	19.3%
14	Nebraska	17,693	18.6%
15	Florida	114,752	18.5%
16	Washington	64,255	18.2%
17	Delaware	14,445	17.6%
18	West Virginia	37,817	15.7%
19	Tennessee	45,388	15.0%
20	Rhode Island	15,902	14.9%
21	Connecticut	53,039	14.1%
22	Kentucky	36,615	12.9%
23	North Dakota	7,316	12.4%
24	Hawaii	21,858	9.1%
25	New Jersey	66,716	6.8%
26	Vermont	8,096	6.6%
27	Iowa	19,304	6.1%
28	Nevada	16,442	5.5%
29	Oregon	35,806	5.1%
30	Alabama	31,164	5.0%
31	Indiana	34,485	4.4%
32	Illinois	39,427	4.1%
33	Montana	11,957	3.5%
34	New Mexico	22,138	3.2%
35	Maine	14,120	2.9%
36	California	205,879	0.7%
37	Michigan	54,860	0.3%
38	Virginia	71,809	0.3%
39	New Hampshire	12,302	0.0%
	Average		22.7%
	Median		14.9%
	Maryland		12.1%

Source: Department of Legislative Services, "Other States' At-will Workforce Survey," June – October 2005

Maryland has comparatively fewer at-will employees than most respondent states. On an FTE basis, 12.1 percent of positions in Maryland's SPMS and the MDOT are classified as executive service, management service, special appointments, or MDOT at-will. These figures are 10.6 percentage points less than the average at-will employment for respondent states and slightly lower than the median at-will employment for respondent states.

The range of percentages of the at-will workforce in the survey states is demonstrated in **Chart 2**. In almost a third of the states the percentage that at-will employment represents of the total workforce is between 10 and 20 percent.

Chart 2.
Range of At-will Employees in Other States

<u>At-will Range</u>	<u>Number of States</u>
Less than 5%	9
5% – 10%	7
10% – 20%	12
20% – 50%	8
Greater than 50%	3

Federal Executive Branch Workforce Data

The federal executive branch workforce is split fairly evenly between competitive (merit) positions and excepted, senior executive service, and Plum Book (at-will) positions. The competitive service has 1,359,580 positions, representing 51 percent of the total executive branch workforce, and the excepted and senior executive service (SES) combined have 1,307,750 positions, including 8,944 positions published in the "Plum Book."

Excepted Positions

Certain positions are "excepted" from the competitive service by law, by executive order, or by the Office of Personnel and Management. Those positions are categorized as Schedules A, B, and C. Schedule A describes special jobs and situations for which it is not practical to use standard qualification requirements and to rate applicants using traditional competitive procedures, such as chaplains, certain positions in isolated locations, and attorney positions. Schedule B is used primarily for the Student Temporary Employment Program, the Student Career Experience Program, the Federal Career Intern Program, and other student programs. Schedule C describes positions that keep a confidential or policy-determining relationship with

their supervisor and agency head. With Schedule C, clearance for applicants must be received from the White House Presidential Office. Most employees separated from Schedule C positions have no appeal rights under the Merit System Protection Board; however, some agencies have administrative appeal procedures.

Some federal agencies are entirely in the excepted service. They utilize their own hiring systems that establish the evaluation criteria to fill positions. Examples of such agencies include: the Federal Reserve System's Board of Governors, the Central Intelligence Agency, the U.S. Department of State, the Federal Bureau of Investigation, the National Security Agency, the Postal Service (59 percent of 1,307,750 excepted and SES employees), and the United States Mission to the United Nations. In many cases, these agencies' procedures parallel those used for competitive service hiring.

Senior Executive Service (SES)

The SES was established through the Civil Service Reform Act of 1978 to develop a cadre of highly competent senior executives with leadership and managerial expertise and to provide for an executive system that is guided by the public interest and free from improper political interference. All positions in the SES are federal grade GS-15 or above, including Executive Schedule IV or V or equivalent positions. Certain positions that meet these criteria are excluded. These include positions filled through Presidential appointment, with Senate confirmation, in agencies or agency components excluded by law (e.g., independent government corporations, the intelligence agencies, and administrative law judges), and non-executive technical positions in GS-15 or above.

There are four types of appointments to the SES: career reserve, non-career, limited term, and limited emergency. Positions in the career reserve require competitive selection and have employment entitlements (not at-will). They are not time-limited, require impartiality, and involve the day-to-day administration of an agency. Employees in the career reserve do not have responsibility for or substantial involvement in the determination of the major policies. There is a government-wide minimum of 3,571 career reserve positions. Non-career appointments do not require competitive selection, have no entitlements after being appointed (at-will), and are not time limited. Positions in this category are limited to 10 percent of the government-wide allocation and 25 percent of an individual agency's allocation. Limited term appointments are non-renewable appointments for up to 3 years for time-limited project work. Limited emergency appointments are non-renewable appointments for up to 18 months to meet a bona fide, unanticipated, urgent need. **Chart 3** shows the distribution of federal civilian employment and the SES in federal FY 2000 through 2003. Career status SES allocated positions constitute over three quarters of the SES allocated positions, insulating the "brain trust" of the federal government from politics. Non-career status positions in the SES remain under 10 percent of the SES allocated positions.

Chart 3.
Senior Executive Service

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Total Positions, Executive Branch	2,644,800	2,645,700	2,649,900	2,659,600
SES Allocated Positions	7,813	7,795	7,671	7,786
Career Status	6,066	6,118	5,962	5,948
Noncareer Status	593	265	575	631
Limited Term Status	165	243	166	157
Unfilled	989	1,169	968	1,050
SES Allocations, as Percentage of Total Workforce	0.30%	0.29%	0.29%	0.29%

The Plum Book

Positions in the Plum Book represent a relatively small percentage of at-will federal employment and can be found in the excepted and SES categories. In September 2005, Plum Book positions comprised .034 percent (9,000 positions) of the Executive Branch civilian workforce, which includes policy and supporting positions. Included are agency heads and their immediate subordinates, policy executives and advisors, and aides reporting to these officials. These positions are subject to noncompetitive appointment and salaries are paid on the federal Executive Schedule or salary-equivalents. Examples of positions listed in the Plum Book are in the SES General, the Senior Foreign Service, or the excepted service Schedule C. **Chart 4** shows the distribution of the Plum Book positions throughout Executive Branch civilian employment.

Chart 4.
Plum Book
Executive Branch and Civilian Employment
and the Plum Book
September 30

	<u>1996</u>	<u>2000</u>	<u>2004</u>
Total, Federal Executive Branch Civilian Workforce	2,786,300	2,644,800	2,649,319
The Plum Book			
Presidential Appointments, Senate Confirmation	1,119	1,167	1,101
Presidential Appointments, No Senate Confirmation	250	223	314
SES General Positions ¹	3,184	2,802	4,553
SES Noncareer Appointments	701	648	701
SES Limited Term Appointment	125	169	118
Schedule C	1,465	1,254	1,556
Statutorily Excepted Appointments	459	366	601
Total Plum Book Positions	7,303	6,629	8,944
SES Allocations, as Percentage of Total Executive Branch Workforce	0.26%	0.25%	0.34%

¹ Characterized as "Career Appointment or Vacant" in 1996 and 2000.

Chart 5 compares characteristics of merit and at-will employment between the Maryland and the federal executive civilian workforces. While slightly more than half of federal positions are protected under the general competitive service, 88 percent of Maryland positions enjoy job protections. While there are limits on the number of noncompetitive appointments in the SES, no such limits exist on comparable positions in Maryland. Additionally, within the federal SES, there are a guaranteed number of Career "Management" positions for individuals selected on a competitive basis and who do not serve at-will. Maryland has no comparable guaranteed number of management service positions.

Chart 5.
Comparisons between the Federal System and Maryland

	<u>Federal</u>	<u>Maryland</u>
Job Protections under General Competitive Service	51%	88%
General Exceptions	Excepted Service	Special Appointments
Agency-specific Exceptions	Excepted Service	Special Appointments
Position-specific Exceptions	Plum Book, SES	Executive and Management Service
Numeric Limits on Number of Noncompetitive Appointments	SES	No
Published List of Non-competitive Positions	Plum Book	No
Guaranteed Number of "Career" Management Positions	Yes	No
Compensation Based Solely on Performance (Pay Bands)	SES	EPP

Maryland State Workforce Data

As of January 2005, the Maryland State workforce, including the Judiciary, the Legislature, and the higher education and transportation systems, totaled about 86,000 individuals. Executive branch agencies, including higher education and the Department of Transportation (MDOT), represented about 95 percent of the total workforce. The Legislature and the Judiciary represent much smaller percentages at roughly .9 and 3.75 percent, respectively. (See **Chart 6.**) Among executive branch agencies, those agencies under the State Personnel Management System (SPMS) and MDOT accounted for nearly 65 percent of the Executive Branch workforce. Higher education accounts for about 26 percent of the total Executive Branch workforce. Other independent agencies represented about 6 percent of total Executive Branch workers.⁵

⁵ Examples of independent agencies include the Maryland Stadium Authority, the Maryland Food Center Authority, the Maryland Automobile Insurance Fund, Injured Workers' Insurance Fund, Maryland Insurance Administration,

Chart 6.
State Workforce by Personnel System
Total State Workforce

<u>Personnel System</u>	<u>Total Workforce</u>
Total State Workforce	86,267
Legislative Branch	789
Judiciary	3,235
Executive Branch	82,243
Higher Education*	21,350
Nonbudgeted*	4,841
State Personnel Management System (SPMS)	45,386
Transportation (MDOT)	10,666
 <i>Subtotal SPMS & MDOT</i>	 <i>56,052</i>

Note: Nonbudgeted includes the Maryland Stadium Authority, Maryland Food Center Authority, Maryland Automobile Insurance Fund, Injured Workers' Insurance Fund, Community and Public Health Administration, Maryland State Department of Education (MSDE) Headquarters, College Savings Plans of Maryland, and Maryland Environmental Service.

* FTE positions

Source: Department of Budget and Management, Maryland Department of Transportation, Department of Legislative Services

As shown in **Chart 7**, 83 percent of employees in the SPMS are in the professional or skilled services and enjoy full employee protections inherent in a merit system. About 6,000, or 13 percent, of SPMS employees are either at-will or special appointments. Under MDOT's Human Resources System about 87 percent of the employees are in the career service and 8 percent are at-will.

Most special appointment positions can be at-will; other special appointments may have some job security, as specified in statute. In Maryland, as sometimes happens with federal excepted service positions, at-will and special appointments can occur by statute or are designated by the personnel agency. In Maryland, that agency is the Department of Budget and Management (DBM).

Chart 7.
State and MDOT Personnel Systems
State Personnel Management System

<u>Service</u>	<u>At-will?</u>	<u>Positions</u>	<u>% of Total</u>
Executive Service	YES	188	0.4%
Management Service	YES	1,869	4.1%
Special Appointment	MAYBE	3,983	8.8%
<i>Subtotal</i>		<i>6,040</i>	<i>13.3%</i>
Professional Service	NO	3,167	7.0%
Skilled Service	NO	34,698	76.5%
<i>Subtotal</i>		<i>37,865</i>	<i>83.4%</i>
Other		1,481	3.3%
<i>Total SPMS</i>		<i>45,386</i>	<i>100.0%</i>
MDOT Human Resources System			
Executive Service	YES	754	7.1%
Commission Plan	YES	14	0.1%
Other Attorney General Field Positions	YES	39	0.4%
<i>Subtotal</i>		<i>807</i>	<i>7.6%</i>
Career Service	NO	9,275	87.0%
Other		584	5.5%
<i>Total MDOT HRS</i>		<i>10,666</i>	<i>100.0%</i>
Total SPMS and MDOT HRS		56,052	100.0%
Total Protected Under SPMS or MDOT HRS		47,140	84.1%

Note: Skilled service includes positions classified as uniformed police.

Source: Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

Summary of Testimony of Witnesses Who Appeared Before the Committee

Introduction

The Committee heard testimony from former State employees and current State officials at its meetings on December 13 and 20, 2005, January 10, 20, 30, May 4, 11, 22, and August 9, 2006. In addition, Committee staff interviewed numerous other former State employees, obtained affidavits from some, statements from others, and created memoranda of their interviews of others. The Committee also requested documents from various agencies and, in some cases, issued subpoenas for documents.

The Committee was also provided with copies of records from the personnel files of former employees to aid in the examination of witnesses. Counsel to the Committee obtained such documents with the consent of the respective former employee upon execution of a "Waiver and Release" pursuant to § 10-616(i) of the State Government Article of the Annotated Code of Maryland.

Thirty witnesses testified before the Committee in person. Former employees who were involuntarily separated were requested to testify based on the relevance of their testimony to the Resolution and their willingness to appear. Many of those willing to appear wanted to be subpoenaed. Other former employees with relevant information did not want to appear for privacy reasons and their rights were respected. Some former employees now work in industries regulated by their prior employers and were concerned about affecting the relationship between their employers and the regulators and declined to appear. Other former employees who were interviewed related experiences which did not address issues raised by the Resolution. The former employees who appeared before the Committee were not all of the former employees with relevant information but represented the types of involuntary separations that took place.⁶ This section of the report will summarize the testimony received by the Committee at each of its meetings.⁷

⁶ Witnesses contacted the Department of Legislative Services, Committee members, or other members of the General Assembly and counsel followed up. Each hearing resulted in additional contacts. No former employees from prior administrations initiated contacts. One employee from a prior administration was identified by a Committee member, contacted by counsel and appeared.

⁷ Several witnesses objected and refused to testify with respect to any specific facts or details concerning separation of former employees and other questions posed by the Committee and its counsel.

The Committee's Fact-Finding Efforts

The Committee directed counsel to interview former employees and Administration officials, obtain documents, and examine witnesses at hearings before the Committee. Lack of cooperation from some Administration officials, departments, and certain State employees hindered the Committee's access to documents and delayed its conclusions. Some agencies failed to produce documents or delayed in producing them. Several Administration officials refused to be interviewed by Committee counsel prior to hearings. At hearings before the Committee, certain witnesses refused to respond to questions under oath without any legitimate legal grounds. One key witness, Joseph Steffen, stated that he was willing to appear voluntarily but mysteriously disappeared when he was called. Gregory Maddalone, his self-professed good friend who communicated with him regularly, testified that he did not know where Steffen was and provided inaccurate contact information for him.

Certain departments failed to make a complete production of requested documents. **Appendix I** shows a series of document requests, which Committee counsel made, and the responses of various agencies. Certain agencies refused to produce documents in response to requests or subpoenas to produce them, or produced heavily redacted documents based on the assertion of privileges. Others produced documents after substantial delays. For instance, the Public Service Commission failed to respond to a November 22, 2005 document request until May 3, 2006.

The Committee directed that it would not hear from Administration officials unless they made themselves available to be interviewed by Committee counsel. Public Service Commission Chairman Kenneth Schisler, Department of Human Resources Secretary Christopher McCabe, Department of Juvenile Services Secretary Kenneth Montague, Department of Natural Resources Secretary Ronald Franks, Department of Transportation Secretary Robert Flanagan, Maryland Department of Transportation Chief of Staff David Marks, and Department of Budget and Management Executive Director of the Office of Personnel Services and Benefits Andrea Fulton would not make themselves available to meet with Committee counsel prior to the hearings. The Committee decided to hear their testimony despite their refusal to be interviewed. Appointments Secretary Lawrence Hogan, Deputy Secretary Diane Baker, Governor's Counsel Jervis S. Finney, Esq., Director of Governor's Office on Crime Control and Prevention Alan Wood, former Special Assistant to General Manager of Maryland Transportation Authority Gregory Maddalone and Assistant Secretary of Department of Natural Resources Michael Slattery made themselves available for interviews.

Certain witnesses refused to answer a number of questions posed by Committee counsel and Committee members, asserting objections and citing "the personnel privilege." Certain witnesses also refused to respond to questions on advice of counsel. The only "personnel privilege" recognized by Maryland law is § 10-616(i) of the State Government Article of the Annotated Code of Maryland. Section 10-616(i) provides:

[A] custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.

(2) A custodian shall permit inspection by: (i) the person in interest; or (ii) an elected or appointed official who supervises the work of the individual.⁸

The scope of the privilege under § 10-616(i) is limited to inspection of personnel records. Section 10-616(i) does not bar testimony relating to an employer's independent recollection of a former employee's job performance or basis for that employee's separation. Despite the limited privilege provided by § 10-616(i), certain Administration officials broadly asserted a privilege and refused to testify regarding the reasons employees were separated. A number of officials did so despite admitting that they never reviewed personnel records; hence, there was no legal basis for the refusal to testify. Others asserted the privilege inconsistently, giving reasons for separations where it served their purposes and refusing to testify in other circumstances.

In response to the refusal of some Administration officials and certain witnesses to answer questions posed by the Committee and its counsel, the Committee directed the Attorney General's office to file motions to compel testimony. In June 2006, the Office of the Attorney General on behalf of Delegate Adrienne Jones, Co-Chair to the Special Committee of Employee Rights and Protections filed a petition in Circuit Court for Baltimore County for an order compelling testimony of Craig Cheseck and Gregory Maddalone. Although Delegate Jones filed a motion to shorten time in order to expedite the matter and complete the Committee's work, this motion was denied. The Court has scheduled a hearing on the matter for October 26, 2006. On August 22, 2006, Senator Thomas M. Middleton for the Committee filed a petition for an order compelling testimony of Joseph Steffen in Circuit Court for Harford County. The motion for an order shortening time was denied despite the fact that the defendant did not oppose it. A hearing date has been set for October 25, 2006. The resolution of both of these matters could affect the content of this Report, which may be supplemented pending the outcome of these proceedings.

Change of Administration

Robert L. Ehrlich, Jr. was sworn in as Governor of the State of Maryland on January 15, 2003. He was the first Republican Governor since 1968. Administration witnesses testified that part of the Governor's mandate was to reshape State government by making it more responsive and efficient and by reducing its size. The Governor established a procedure for hiring and separating⁹ State employees which is set forth in several memoranda which were exhibits presented at Committee hearings. Additionally, according to the testimony of Appointments Secretary Lawrence Hogan, the Governor delegated his hiring and firing authority to him.

Exhibit 1 is a memorandum from Secretary Hogan to Department Secretaries dated February 3, 2003. It refers to the important task of building the Ehrlich-Steele team to carry out the mandate given by Maryland voters. It further describes procedures for hiring and dismissals. For hiring, departments were required to submit a list of intended hires to the Appointments

⁸ This privilege yields to requests to review personnel records under subpoena pursuant to §10-613(a) of the State Government Article of the Annotated Code of Maryland.

⁹ Hereinafter, for the purposes of this Report all terminations, firings, dismissals and forced resignations, unless otherwise expressed will be referred to as "separations."

Office. The Appointments Office would vet the names with the Governor's staff. After the Governor's staff approval, the paperwork would be submitted to the Department of Budget and Management's Office of Personnel Services to initiate the hiring process.

Dismissals were processed by departments submitting a Dismissal Memorandum to the Appointments Office. The Appointments Office would vet the dismissals with the Governor's staff, and once dismissals were authorized, would deliver the letter to him for final action.

Exhibit 2 is a memorandum from the Governor to Department Secretaries dated February 24, 2003. It states that one responsibility of the Secretaries is to bring into the Administration the best people to manage the important functions of government. It further states that the Appointments Office, headed by Secretary Hogan, would lead this important objective and emphasizes that hires and dismissals should be cleared through the Appointments Office and the Governor's Chief of Staff.

Exhibit 3 is another memorandum from the Governor to Department Secretaries dated April 1, 2003. It reminds Secretaries of the need to focus on the task of fundamentally reshaping the State's government and directs them to set a goal of reducing the number of employees in their departments. It also states that an important goal is to:

Ensure that every at-will position is served by an individual that is dedicated to carrying out the policies of this administration. There are hundreds of competent and loyal professionals who are eager to serve the people of Maryland as part of this administration. I want them quickly placed and put to work in my government.

The memorandum proceeds to describe the Appointments Office's role in this mission and states that Secretary Hogan will be visiting each of the Secretaries to assess progress. It also emphasizes that the Governor expects Secretaries to move forward with interviewing and hiring individuals identified by the Appointments Office.

Exhibit 4 is an August 12, 2003 memorandum from the Governor to Secretary Franks of DNR which appears to be a form memorandum sent to all Secretaries. It again emphasizes the goal of transforming State government and bringing in "fresh blood along with new ideas, enthusiasm, and talents to support our Administration and what we are trying to accomplish." The Governor asks Secretaries to "perform an immediate review of the at-will employees in your department. These are positions appointed by, and serving at the pleasure of, the Governor." The memorandum directs Secretaries to provide a detailed report by October 1 on progress with regard to at-will employees hired, interviewed, pending, and terminated.

The memoranda create a sense of urgency and priority. The goals appear consistent with the Administration's stated mandate. The following summary of testimony will show how these memoranda were implemented.

Department of Human Resources

Thomas Burgess

Thomas Burgess testified before the Committee on December 14, 2005. He is currently head of personnel at the Department of Public Works for Baltimore City. Mr. Burgess received his Bachelor's Degree from the University of Maryland in 1977 and has attended numerous human resources and personnel training programs. He has had a twenty-eight year career in human resources. Burgess entered employment with the State at the Prince George's County Department of Social Services as a Personnel Specialist Trainee. In September of 1990, he joined the Department of Human Resources as a personnel officer. He was selected to be Manager of Employee Relations in 1993. He was promoted to Director of Personnel at DHR in June of 1999 and remained in that position until his involuntary separation in February 2004. Burgess was classified as a management service employee. He received various commendations during his tenure at DHR, including an Employee of the Year award in 2002, and he received only positive reviews.

Prior to January 15, 2003, Burgess never received direction from the Governor's Office or Appointments Office regarding the hiring or involuntary separation of employees at DHR. During the transition period in December 2002, Burgess was directed by the Governor's transition team to submit a report identifying all at-will positions within DHR. Burgess created the report, which is **Exhibit 5**, and submitted it on December 16, 2002, to the transition team. Burgess understood that the purpose of the request was to identify for the incoming Administration all at-will positions within the Department.

On January 16, 2003, Burgess met with Secretary McCabe for the first time to discuss personnel issues. Secretary McCabe inquired as to the number of at-will employees and stated his intention to make changes in the Department to move in employees loyal to the Governor.¹⁰ He also expressed his intention to replace Charles Henry as Executive Director of the Family Investment Administration. Mr. Henry had been a career State employee. Burgess asked Secretary McCabe to reconsider Henry's termination, whose performance was not at issue. Secretary McCabe indicated that direction for Henry's termination was coming from the Governor's Office and that he thought that Henry was a "Glendening holdover."¹¹

On February 3, 2003, Burgess attended a meeting of personnel directors conducted by Michael Richard, Deputy Appointments Secretary and Andrea Fulton, Executive Director of the Department of Budget and Management Office of Personnel Services and Benefits, to discuss personnel changes. The February 3, 2003, memorandum from Lawrence Hogan, Jr., Appointments Secretary to Department Secretaries, which is **Exhibit 1**, was passed out at the meeting. The memorandum described a new procedure for hiring and dismissal of employees.¹²

¹⁰ In his testimony, Secretary McCabe described his remarks as expressing the clear need to bring aboard people who would fulfill the Governor's expectations.

¹¹ Secretary McCabe testified that he was seeking a change of leadership and would find another position for Mr. Henry.

¹² Secretary McCabe affirmed the new procedure set forth in the memorandum and testified that he understood that the Appointments Office would be involved in vetting dismissals.

For the first time in Burgess' experience, hiring and firing decisions were routed for approval through the Appointments Office and the Governor's staff. Standard forms were developed to submit proposed hires and terminations to the Appointments Office, the Executive Director of the Department of Budget and Management, the Secretary of the Department of Budget and Management, and the Governor's Chief of Staff.

Generally, the process for forced separations involved DHR receiving a list of employees which the Appointments Office was seeking to insert into various positions. The list was in a notebook and identified the name, address, priority ranking of positions, other data, and party affiliation of the applicant. **Exhibit 6** includes the online application form which was used by the Administration. The last page, which is entitled "Optional Information," includes a box to designate party affiliation. Burgess testified that Secretary McCabe attempted to place individuals based on qualification, but some employees were identified for replacement or termination because of party affiliation. Deputy Secretary Elizabeth Seale compiled reports on hirings and firings on a regular basis and provided them to the Governor's Office. **Exhibit 7** is a list of at-will employees who were involuntarily separated from employment at DHR while Burgess was there.

Michelle Lane was placed at DHR. She was on the payroll of the Governor's Office and provided liaison to the Appointments Office with respect to hiring and involuntary separations. She had direct contact with Michael Richard and Mary Beth Carozza. She questioned Burgess about a list of at-will employees. Burgess saw a list that Ms. Lane had of employees with "DL" next to their names, which Ms. Lane stated stood for "death list." Mr. Burgess met with Ms. Lane on a regular basis.

Ms. Lane inquired of Mr. Burgess about Deborah Resnick, who worked for the Prince George's County Department of Social Services (DSS). In Mr. Burgess' presence, Ms. Lane phoned Joseph Steffen in the Governor's Office and confirmed that Ms. Resnick worked at Prince George's County DSS. Lane informed Burgess that Ms. Resnick had to be fired because she had worked under the Glendening Administration. Burgess contacted Resnick's appointing authority, who stated that there were no performance issues with Resnick and that she did not want Resnick fired. Resnick had begun working at DHR in 1995. Resnick's appointing authority ultimately asked Mr. Burgess whether Resnick could resign or retire instead of being terminated and ultimately she did so. The direction for Ms. Resnick's removal came from the Governor's Office.¹³

Ms. Lane also instructed Burgess to terminate Shu Ping Chan, Luis Ortega, and Alison Reed. She informed Burgess that her instructions on all of these terminations came from the Governor's Office.

¹³ Secretary McCabe recalled receiving a request from "someone" in the Appointments Office regarding Ms. Resnick's employment and requesting her termination.

Shu Ping Chan was employed in the Office of Asian Pacific Affairs. He was not in a political policy-making position. He began his employment in 1994 and was separated in May 2003. He was highly regarded and Denise Maker, Deputy Secretary of DHR, did not want him terminated. Lane's direction to terminate Mr. Chan came from the Governor's Office. He was replaced by a candidate referred by the Governor's Office who had a letter of reference from the head of the Maryland Republican Party.

Luis Ortega worked in the Hispanic Affairs Office. He began his employment in 1995 and was separated in March 2003 at the direction of Ms. Lane relayed from the Governor's Office.¹⁴ Mr. Ortega was not in a political policy-making position and was terminated to be replaced by an individual referred from the Appointments Office.

Vashti Savage was the Deputy of the Office of Technology and Human Services. He was hired in February 1994 and was not in a political policy-making position. He had no negative performance issues and his personnel file was not reviewed prior to termination in February 2004. Direction for his separation came to Secretary McCabe from the Governor's Office and the Chief of Information Technology was opposed to his separation.¹⁵ He was replaced by a referral from the Appointments Office.

Erlene Wilson was Director of Public Information. She began her employment in 1990 and was separated in June 2003. She was replaced by a referral from the Appointments Office. Secretary McCabe was opposed to terminating Ms. Wilson, who was a good performer.

Dr. Brenda Redding was employed by the Baltimore City Department of Social Services and was a good performer. Burgess was advised by Secretary McCabe that she had to be removed so she could be replaced by an Ehrlich loyalist.¹⁶ There were no performance issues with Dr. Redding.

Diane Gordy had a position with the Office of Corporate and City Affairs and worked closely with Secretary McCabe. She was in a management service position. Lane asked Burgess about Ms. Gordy's fundraising activities for Kathleen Kennedy Townsend. Ms. Gordy had a "DL" next to her name on Lane's list. Directions came from the Appointments Office through Lane to remove Gordy.¹⁷ Secretary McCabe asked Burgess to find another position for Gordy and ultimately she became Director of Social Services in Frederick County.

¹⁴ Secretary McCabe testified that he made the decision to terminate Mr. Ortega and that it did not arise from any directive from the Appointments Office.

¹⁵ Secretary McCabe contradicted this testimony.

¹⁶ Secretary McCabe testified that his decision to terminate Ms. Redding was based on his desire to effect a change of leadership to someone who supported the Administration.

¹⁷ Secretary McCabe testified that he did not receive direction from the Governor's Office to remove Ms. Gordy from her position.

Joseph Steffen was assigned to DHR in July or August of 2003 as Governor's Liaison. He remained on the payroll of the Governor's Office. Mr. Steffen's office was on the same floor as Secretary McCabe. Steffen had a "hit list" with five names on it and shared information regarding those individuals with the Appointments Office.¹⁸ The names on the "hit list" included Elizabeth Seale, Deputy Secretary; B.J. Harris, Chief of Staff; Denise Maker, Deputy Secretary; Ted Martin, CFO; and Mr. Burgess.¹⁹

Mr. Martin was a career State employee who began employment with DHR in 1977. Burgess was informed by the Secretary that Mr. Martin had to be removed so that he could be replaced by a referral from the Governor's Office. There were no performance issues behind the decision to remove Martin. The Secretary thought very highly of him and did not want him terminated. Martin opted to retire rather than to be terminated.

Denise Maker was employed by DHR in 1989. She applied for the position of Deputy Secretary after Secretary McCabe was appointed Deputy Secretary. Mr. Burgess recommended her to the Secretary. Ms. Lane asked Burgess about Ms. Maker's fundraising activity for Kathleen Kennedy Townsend. Maker was informed by Secretary McCabe in November of 2003 that the Governor's Office was requesting that she be relieved of her duties as Deputy Secretary. Lane reported Maker's political activities to Michael Richard of the Appointments Office in a conversation that Burgess witnessed. Burgess testified that the Secretary did not want to let Maker go, but that he was instructed to do so by the Administration.²⁰

Deputy Secretary Seale informed Mr. Burgess that he was on a "hit list" because he had recommended Ms. Maker for a promotion. Subsequently, Chief of Staff Harris advised Burgess that there were concerns from the Governor's Office that he was hiding holdover employees from the Glendening Administration and was moving too slowly to hire referrals from the Appointments Office. On December 2, 2003, Burgess met with the Secretary to discuss a personnel issue and, during the meeting the Secretary informed Burgess that he had been instructed to remove Burgess by Secretary Hogan and Mr. Kreseski because of Burgess' recommendation of Maker for a promotion.²¹ Deputy Secretary Seale also confirmed to Burgess that the Governor's Office had directed Burgess' removal. Ultimately, Burgess was informed by the Secretary that he would be terminated or he could choose a five grade demotion at DHMH. Burgess had consistently received marks of outstanding and exceeds standards or their equivalent on his performance evaluations, as well as occasional pay-for-performance bonuses, as reflected in **Exhibit 8**. Burgess inquired about positions at the Department of Public Safety and MAIF. He was directed to contact Andrea Fulton, who stated that she would inquire about them. Ms.

¹⁸ In his testimony, Secretary McCabe acknowledged his awareness that Mr. Steffen had a list of employees, who he felt were not adequately serving the Department, but would not characterize it as a "hit list."

¹⁹ In his testimony, Mr. Steffen denied his awareness of a "hit list", but conceded that he may have seen a list of those names.

²⁰ Ms. Maker served as Deputy Secretary of Programs and held a political policy-making position. Secretary McCabe gave her the option of forced separation or demotion to Baltimore City DSS to work under Charles Henry. Ultimately, Mr. Burgess arranged for Ms. Maker to use her leave time to retire. She was just shy of her 16 years for qualified State retirement.

²¹ Secretary McCabe contradicted this testimony.

Fulton later contacted Burgess and informed him that Diane Baker of the Appointments Office refused to allow Burgess to take same grade positions at either MAIF or Public Safety.²² Ultimately, the only other State job made available to Mr. Burgess was the lower grade position at DHMH, which he accepted. **Exhibit 9** is Burgess' separation letter. **Exhibit 10** consists of two letters of recommendation for Burgess from Deputy Secretary Seale and Catherine M. Shultz, counsel to DHR.

Secretary Christopher McCabe

Secretary McCabe voluntarily appeared to testify before the Committee on December 20, 2005. He was appointed Secretary for the Department of Human Resources effective January 15, 2003. He had been provided with transition documents by the Appointments Office which included a list of at-will employees. On his first day, he met with all of the local directors of Social Services and executive staff and informed them of his expectations regarding performance as well as changes that would be forthcoming at the highest level. He made clear the need to bring aboard people who would fulfill the Governor's expectations.²³

Secretary McCabe testified that, initially, he did not receive any direction from the Governor's Office or Appointments Office regarding the involuntary separation of employees. The Appointments Office identified individuals who were qualified and eager to work in human services. Secretary McCabe testified that he never saw a list containing the names of people the Appointments Office wanted terminated, nor did he receive instructions to that effect. He recalled the Governor wanting to put together the strongest possible team. The Governor's Office provided names of people interested in performing human resources work and made clear the need to improve the Department's performance as well as to change its culture. He received directives to employ people who were supportive of the Governor.

Secretary McCabe was aware of the meeting Mr. Burgess attended on February 3, 2003 and of the memorandum of that date from the Appointments Office which is **Exhibit 1**. He understood the Appointments Office would be involved in vetting dismissals, but did not know what kind of information they reviewed and did not recall if they confronted him regarding the reasons for any terminations. **Exhibit 11** is a memorandum dated September 4, 2003 from Secretary McCabe to Secretary Hogan regarding "Appointed Positions" and provides an update to Secretary Hogan's inquiry concerning DHR's progress in appointing new leadership. In this memorandum, Secretary McCabe identified the presence of approximately 301 at-will positions and reported that over 80 candidates had been interviewed and 24 hired and moved into these at-will positions in an effort to honor the Administration's desire to bring in new talent and change the culture of DHR.

²² During her testimony Andrea Fulton stated that she received an appointment approval form for Mr. Burgess only for a position at DHMH.

²³ Secretary McCabe submitted a memorandum to the Committee dated December 20, 2005, in which he stated that he collaborated with the Governor's Office to identify leadership that had the same mission and vision. He further stated that he has built a management team in the central office of the Department that is stronger than it has been in many years.

Upon separation, at-will employees were provided with a form letter, which did not give the reason for termination. The basis for terminations at DHR was whether the Secretary determined that a change was in the best interest of the Department and the Administration. The Secretary determined the time frame for terminated employees to leave based on whether they posed any risk. This policy was implemented by him and practiced on a case-by-case basis.

The Governor's Chief of Staff, Stephen Kreseski, recommended Joseph Steffen as an aide in the evaluation of programs at DHR. He was on loan to the Department for a brief period of time and was given an office on the same floor as the executive staff. Mr. Steffen met with the executive director and executive team. The Secretary learned that Steffen had a list of employees whom he felt were not adequately serving the Department but he would not characterize it as a "hit list." He instructed his Chief of Staff to communicate to Steffen the inappropriateness of the list and stated that it was inconsistent with his own desire to maintain healthy morale. Steffen never made termination recommendations to the Secretary. The Secretary delegated such conversations to his Chief of Staff. He was not aware of whether Steffen shared information with the Appointments Office. On one occasion, Steffen attended a DHR executive office meeting but did not participate. He met on an individual basis with the executive directors. Prior to Steffen's arrival, the Secretary had a meeting with him during which they discussed the Department and performance issues the Governor's Office was concerned about. The performance issues did not entail personnel issues.²⁴

Mr. Steffen's possession of a Prince of Darkness statue and a "you're fired" t-shirt concerned the Secretary. Steffen had a dark sense of humor that made the Secretary, and others, uncomfortable. When the Secretary learned that Steffen was requesting personnel payroll records, he prepared a memorandum with the assistance of Burgess reflecting concerns about this activity and sent it to the Governor's Office. At one point, the Secretary complained to Kreseski regarding Steffen and stated that it was time for Steffen to move on.

The Secretary disagreed with Burgess' testimony regarding the desire to terminate Charles Henry. The Secretary testified that he recognized the importance of the welfare assistance program and he informed Burgess of his intent to change the leadership for this reason. He had not known Mr. Henry and the Secretary indicated to Burgess that he would try to find an opportunity that would enable him to finish his career in the Baltimore City Department of Social Services. He had not reviewed Henry's performance evaluations.

The Secretary stated that he was not pressured by the Appointments Office to terminate Burgess. He did not discuss with Diane Baker or anyone else in the Appointments Office whether Burgess would be permitted to take a position at Maryland Automobile Insurance Fund (MAIF) or Public Safety. Both Diane Baker and Andrea Fulton agreed that they would search for other positions for Burgess.

²⁴ Mr. Steffen testified that part of his mandate from the Governor's and Appointments Office was to identify and recommend personnel at DHR for separation.

He understood that Deborah Resnick had held a position with Governor Glendening's office and that she was transferred to the Prince George's County Department of Social Services (DSS). He recalled being requested by someone in the Appointments Office to determine whether she was contributing. He called Karen Lynch, the Director of DSS, in Prince George's County and inquired about Ms. Resnick. He did not recall any information about her performance and did not know if her records were reviewed prior to the decision to terminate her. The decision was made by the Secretary. He could not recall the person in the Appointments Office who felt her termination was necessary. He informed Ms. Lynch of the decision to terminate Ms. Resnick.²⁵

The Secretary testified that his termination of Luis Ortega did not arise from any directives from the Governor's Office or the Appointments Office. It was founded on his solicitation of resumes for the position. Performance issues were not part of his decision to terminate Mr. Ortega. The decision to terminate Shu Ping Chang was basically the same as that with respect to Ortega.

The Secretary disagreed with Mr. Burgess regarding the termination of Brenda Redding who was Assistant Director of Family Investment, part of the Baltimore City Department of Social Services. He did not tell Burgess that Ms. Redding needed to be removed to make room for an Ehrlich loyalist. Her termination was based on his desire for leadership change to someone who supported the Administration.

Diane Gordy was Executive Director of the Social Services Administration. He believed that her abilities were undervalued and underutilized there and asked her to transfer to the position of Acting Director of the Frederick County Department of Social Services. She has become the permanent Director and has turned the agency around. The Secretary never received any directive from the Governor's Office to remove her from the position of Executive Director of the Social Services Administration.

The Secretary was unaware of any directive from the Governor's Office to remove Vashti Savage. He was terminated at the request of the Executive Director of the Technology Office for performance reasons.

²⁵ Director Karen Lynch informed Committee counsel that she was Ms. Resnick's appointing authority. While she was out of the office Ms. Lynch received a call on her cell phone from Secretary McCabe, who informed her that he was on his way to the DSS to terminate Ms. Resnick. He stated that he had been informed or directed by the Governor's Office (or Appointments Office) that Ms. Resnick had to be terminated that day. Ms. Lynch stated that Ms. Resnick had been contributing in a very favorable way to DSS in conducting foster parent recruitment for approximately 6 months, and thus was stunned by the decision. Ms. Lynch informed Secretary McCabe that Ms. Resnick was a valued employee. When he insisted that he had been informed that she must be separated, Ms. Lynch thought it would be kinder and would create less of a spectacle if she terminated Ms. Resnick herself. Secretary McCabe did not inquire whether Ms. Resnick was contributing, nor did he ask Ms. Lynch to review her personnel file. Ms. Lynch did not want Ms. Resnick to be terminated, and she did not believe this was Secretary McCabe's desire either. She would have rated Ms. Resnick as an "exceeds" or "outstanding" employee.

The Secretary had seen database lists containing job applicants and resumes. The lists reflected party affiliation of the applicant and this information probably helped in determining which people could be presumed to be allies of the new Administration. Hiring decisions were ultimately made based on experience in human services work. There is a dearth of such candidates with the result that recruiting had to be done on a nationwide basis. Political affiliation was just one of many factors considered.

Celeste Nader

Celeste Nader testified before the Committee on May 4, 2006. She received her Bachelor's Degree from the University of Maryland in 1965 and completed her Master's Degree in Social Work in 1970 while working in a work/study program for the Baltimore City Department of Public Welfare (now DSS). She received a Post-Master's Degree in Administration in 1974 from the University of Maryland School of Social Work. Ms. Nader is also a licensed, certified Social Worker.

Ms. Nader was employed by the State for 38 years before she was terminated. She began working as a social worker in the Baltimore City foster care program, and after receiving her Master's Degree she served as a Supervisor and Administrator for the program. During the 1980s Nader worked as an intake specialist for the Family Investment Center, for which she later became District Manager and then Regional Chief. In 1993, Nader became the Business Manager of DSS. In this capacity she oversaw approximately 21 different administrative programs, and served as audit liaison for Federal, legislative, DHR, and Baltimore City audits. Nader reported directly to the Director of Social Services. Ms. Nader was initially classified as a merit system employee. She was reclassified around 2000 to be an at-will, management service employee.

Ms. Nader consistently received "Superior" and "Outstanding" ratings on her performance evaluations. She was awarded bonuses for her "Outstanding" evaluations which she anonymously donated to an agency for foster care programs. She considered herself to be a dedicated employee.

Ms. Nader served on the Mayor's Advisory Committee for Mental Health in Baltimore City. She was initially appointed under Mayor Schmoke, and after two terms of service Mayor O'Malley asked her to remain on the Committee.

In 2003, Floyd Blair was appointed by Governor Ehrlich to be Interim Director of Baltimore City DSS. Nader attended meetings with Mr. Blair. She received praise from Mr. Blair regarding her work and reputation within the agency and on her fiscal and budget management. Mr. Blair informed his staff that he appreciated institutional knowledge and had no plans to fire anyone. Tony Cobb, who worked on the Governor's election campaign, was assigned to DSS as Deputy Director. He supervised Ms. Nader until Ms. Nader was transferred to work under the supervision of Charles Henry, who was a transfer from DHR.

Ms. Nader was separated on November 17, 2003. At 10:30 that morning, she was called to meet with Director Blair. When she entered his office, Mr. Blair, Tony Cobb, Charles Henry, personnel representative Marie Haavik and B.J. Harris were present. Blair read Nader a notice of separation authored by Secretary McCabe which is **Exhibit 12**. She was informed that her separation would be effective in two weeks, but was given the option of resigning, which she refused.

Ms. Nader believes that altercations with Charles Henry may have contributed to her separation. In July 2003, Henry asked Nader to give him his paycheck early due to his upcoming vacation. Nader informed Henry that this would be contrary to policy. Henry was angry with Nader and demanded as the “Deputy Secretary” that she provide him with the advance paycheck. Nader asked for his request in writing, which she believes antagonized Henry further. She never received his request in writing.

On another occasion, Mr. Henry sought to take money out of the “flex” account. When Nader resisted his request, Henry was again angered. Approximately one week prior to Nader’s separation, Henry asked Nader to place a new prospective employee for DHR, Barbara Samuelson, on the payroll for Baltimore City and to backdate her start date to August, at the Governor’s request. Nader expressed concerns that such action was contrary to policy. Ultimately, Henry went directly to Nader’s payroll staff and ordered them to make the change. The staff complied and told Ms. Nader. Nader then asked Henry to put his request in writing. Nader did not believe this ever occurred.

Ms. Nader was not provided any reason for her termination. Although she had received positive performance evaluations during her tenure at DSS, after Mr. Henry became her direct supervisor she never received a review despite her repeated requests. Morale was heavily impacted after her termination, which preceded additional personnel changes.

Ms. Nader is a registered Democrat, but voted for Governor Ehrlich. She worked on Mayor Schموke’s campaign and voted for Mayor O’Malley. She believes that her colleagues were aware of her politics.²⁶

In November 2004, Samuel Chambers was appointed as the new Director. Nader wrote to him on November 1, 2004 asking for a position at DSS. Her letter appears at **Exhibit 13**. She received a letter addressed “Attention Social Worker/Caseworker” from DHR Secretary McCabe describing the need for social workers, and stating that DHR was in the process of hiring 130 child welfare workers across the State. **Exhibit 14**. Despite that need, she received a letter from Director Chambers of Baltimore City DSS stating that, although her qualifications and experience were impressive, they did not have any positions available.

Ms. Nader has applied for numerous State positions, and has sent out over 100 resumes. The stigma of her termination however, has thwarted her ability to gain new employment. She eventually found work at the Maryland SPCA as a pet adoption counselor.

²⁶ In 2004, Ms. Nader filed suit in the Circuit Court for Baltimore City on the grounds that her separation was based on her political affiliation and thus, unlawful. The Circuit Court held that her claim was untimely and that due to her at-will status, DHR did not need cause to fire her. The decision was affirmed by the Court of Special Appeals in an unreported opinion. Ms. Nader petitioned for certiorari to the Court of Appeals, which has been denied.

Maryland Department of Transportation

George W. Casey

George W. Casey, Assistant Vice President for Human Resources with Loyola College, testified before the Committee on December 20, 2005. Mr. Casey received his Bachelor's Degree from George Washington University in 1974 and later received a Master's Degree in Counseling and a Doctorate in Applied Anthropology and Business Administration. He began his professional career in human resources as a personnel officer for Citizens Bank. He subsequently was the Training Supervisor and Human Resources Manager at Safeway for 18 years and served as Director of Human Resources Education with Food Market Institute. He applied for a position with the Maryland Department of Transportation (MDOT) in September of 2001 through a competitive selection process. He was hired as Director of Human Resources, a grade 24 position, in which he reported to the Assistant Secretary. Casey was classified as an executive service employee. His position description is set forth at **Exhibit 15**.

From September 2001 through January 2003, Casey was not aware of any arbitrary terminations of at-will employees at MDOT. All terminations during that period of time were for cause. Separations would be initiated by the supervisor, manager, or administrator of the employee; and the Secretary, as the appointing authority, would sign off on separations before they were authorized.

Brandon Hill was appointed Deputy Administrator at the Maryland Transit Administration (MTA) in 2003 by direction of the Administration. Mr. Hill advised Mr. Casey that he had a notebook of people that the Administration was trying to place in positions. Hill directed that all MTA personnel files be transferred to his office in the Finance Department. Michael Feurer, Director of Human Resources at MTA, reported this to Casey. Hill ordered this action after Mr. Feurer raised concerns about appointees Hill had placed when background checks revealed matters of concern.

Mr. Feurer had good performance appraisals and had served effectively as HR Manager. David Marks, Chief of Staff, informed Casey that the Administration wanted to replace Feurer with Jennifer Jenkins and that, additionally, Lynda Nichols, John Dudnanski, and Christine Parker were to be separated from the MTA. All had good performance appraisals. Each was summoned to Hill's office and given one hour to resign or be separated. Their enlarged photographs were posted at the entrance of the building and guards escorted them out of the building. Casey was informed of these events by the employees themselves.

Mr. Casey attended the February 3, 2003, meeting of human resource directors with Michael Richard and Andrea Fulton. He also received the February 3, 2003, memorandum, **Exhibit 1**. His understanding was that the new procedure would be that he would review potential terminations with David Marks, but that terminations would be made only after the Appointments Office had approved them. He consulted with Secretary Flanagan and they determined to offer "soft landings" to accommodate some employees' special circumstances, under which they would allow the employees to resign, run out their sick leave, or retire in exchange for signing a release. Casey sent weekly reports to the Appointments Office relating to vacancies, personnel activities, and movement. Eventually these were sent on a monthly basis. Mr. Marks maintained a database of similar information. The activity relating to separation of

employees greatly increased in 2003 to the point where Mr. Casey kept his own database regarding it, which is set forth at **Exhibit 16**. This exhibit reflects data only up to March of 2004 and shows 18 terminations and four retirements.

Judith Scioli had been press secretary under the Glendening Administration but was placed as a Public Information Officer for the Maryland Port Administration where she reported to James White. Mr. White reported favorably on her performance. Casey was asked by Andrea Fulton to go the Port Administration and review her file in secret to determine if she was an at-will employee. There was no request to review the file for performance. He objected because he did not want to do the review in secret. Ms. Fulton then reviewed the file herself. Ms. Scioli had been out on medical leave for a serious medical condition. She was terminated while she was on medical leave, but was permitted to run out her sick leave and retire on disability in exchange for signing a release. David Marks informed Casey that Scioli was terminated because she had been Governor Glendening's press secretary.²⁷

Anne Welsh was a speech writer in the Secretary's office who was known to be competent. Her separation was directed by the Appointments Office and she believed she was separated because she was active in Democratic politics in Prince George's County.

The Department of Budget and Management asked for a report on various public information officers employed by the department, including Catherine Ginter, Thomas McLamore, Anita Farrow, Elizabeth Sampere, and Tom Hampton. All were involuntarily separated. Mr. Casey was not aware of any problems relating to any of their performances and was not asked to review any of the personnel files prior to their separation.

James Terraciano was employed in Homeland Security and was separated by direction of the Appointments Office. There were no performance issues and he was well regarded. Casey believes that he was separated because of his Democratic political activities and connections.

Suzanne Bond was Chief of Staff at MTA and her separation was directed by the Appointments Office. David Marks informed Casey that Secretary Flanagan opposed Ms. Bond's separation. Bond's personnel file was not reviewed and no performance reason existed for her separation.

²⁷ Secretary Flanagan testified that Ms. Scioli caught his attention because she was being paid a higher salary than others.

James Wall had been a manager at MTA. He filed an EEOC claim prior to his termination and wrote an anonymous letter regarding alleged intimidation tactics of John Gowland, Chief of Staff, and his assistant, Greg Maddalone.²⁸ David Marks consulted with the Appointments Office and Deputy Secretary Kittleman and Mr. Wall's separation was directed. Wall had no personnel issues.

Mr. Casey learned from David Marks that they were no longer permitted to do "soft landings." Andrea Fulton directed the Department that such treatment of employees was inconsistent with the way other departments were handling separations.

Mr. Casey complained to the Secretary about certain employees getting pay raises as soon as they were appointed while others were subject to the salary freeze. He also reported that certain employees, including Gregory Maddalone and John Gowland, were awarding themselves pay increases without the approval of the appointing authority. He sent an e-mail to all parties advising that this was improper. Shortly thereafter, he was told by David Marks that he was marked by the Appointments Office for separation. The day before his termination, Mr. Casey received a voice-mail message which was a recording of "goose step" marching. He believed that it was from someone taking pleasure at his termination. He was terminated by a letter dated September 3, 2004, set forth as **Exhibit 17**. His performance appraisal had an overall rating of outstanding, as reflected in **Exhibit 15**. **Exhibit 18** is a letter signed by Secretary Flanagan highly recommending him for employment.²⁹

Casey testified that there was a substantial increase in involuntary separations after January 2003, which had a significant negative impact on morale.

Alonza Williams

Alonza Williams submitted an Affidavit, which appears at **Exhibit 19** and was presented to the Committee on May 4, 2006. He was involuntarily separated from his employment with the Maryland Department of Transportation in July 2003. Prior to his employment with the State, he earned a Bachelor's Degree from the University of Maryland in 1979. He also attended American University where he pursued his Master's Degree in Communications. From 1993 until 1999 he served as Mayor Schmoke's Deputy Press Secretary. From 1999 until 2001, he worked as the spokesperson for the Baltimore County Fire Department. He also worked for County Executive Dutch Ruppersberger as a spokesperson from December 2001 until December 2002.

²⁸ Secretary Flanagan testified that Mr. Maddalone was making judgments with respect to personnel changes and was in communication with the Appointments Office.

²⁹ Secretary Flanagan testified that David Marks may have drafted the letter of recommendation, upon Mr. Casey's request.

After responding to an advertisement in the *Baltimore Sun* for a Manager of Public Affairs position with MDOT, Mr. Williams was interviewed by Jack Cahalan (then MDOT public affairs director), Suzanne Bond (Director of Communications for Maryland Transit Administration), and Frank Ford (who held the position he was applying for). Williams raised concerns during the interview regarding job security once the new Administration took office. He accepted the position of Manager of Public Affairs after Mr. Cahalan assured him that the position would be secure.

As Manager of Public Affairs, Williams' responsibilities included handling media inquiries and writing press releases. He was classified as an executive service employee, although he was not in a policy-making role. Williams received compliments on his work on a regular basis. Although he never received a formal performance evaluation, he was never advised of any complaints or criticisms regarding his work.

Mr. Williams first learned that his own job was in jeopardy during July 2003. A few days prior to leaving for a week-long vacation, he was informed by Bond that his job may not be waiting for him when he returned. Bond received this information from Robert Smith, Administrator of the MTA, who heard it from Cahalan and Secretary Flanagan. Due to the recent personnel changes, Williams was not surprised by this news.

When he returned to the office after his vacation, Williams received a phone call from Bond informing him that he was being separated and that she had a letter for him. At Bond's office, he was handed a letter signed by Mr. Smith informing Williams of his separation. The letter presented an option to resign in lieu of a forced separation. Mr. Williams was paid severance for approximately three weeks.

The separation letter also stated that he would not be allowed to apply for or work in any other position with the State.³⁰ Williams objected to the letter's content in writing to Smith. He never received a response.

Mr. Williams was never given a reason for his separation. Shortly after he left MDOT, he was informed by former co-workers that the individual who replaced him was connected to the Administration. Williams also learned that his replacement was not permitted to return calls to the press.

Mr. Williams is a registered Democrat. He believes that his supervisors were aware that he served in former Mayor Schmoke's re-election campaign and that he had previously worked for former County Executive Ruppertsberger. He believes that his separation was motivated politically to give his position to a friend of the Administration.

After his involuntary separation from MDOT, Williams found employment as the Director of Communications for the Baltimore County Public Schools where he worked for one year. Thereafter, he worked as a spokesperson with the *Baltimore Sun*. That position was eliminated in December 2005.

³⁰ This is a highly unusual procedure for at-will employees.

Secretary Robert L. Flanagan

Secretary Flanagan testified before the Committee on December 20, 2005. He was appointed by Governor Ehrlich to serve as Secretary for the Maryland Department of Transportation in early March 2003. He asserted that the current Administration's bipartisanship is demonstrated by the fact that half the cabinet secretaries are Democrats.

Secretary Flanagan stated that he was only willing to testify as to the big picture and would not address specific terminations. He had general knowledge regarding the hiring and firing process but never received specific direction. He did not recall seeing anything in writing regarding personnel actions. He stated that he had no recollection of the February 3, 2003, memorandum which appears at **Exhibit 1**, but testified that the meaning of "vetting" in the memorandum meant that if a decision was going to occur that it should occur in "unison" – to make sure that all interested parties would stand by the decision.

The Secretary stated that he was not involved in personnel changes, but that typically Mr. Marks would communicate directly with the Appointments Office. Secretary Flanagan was never informed of any criteria to consider when making separation decisions. He did not know whether recommendations for terminations first came from the Appointments Office or within MDOT.

Secretary Flanagan then stated that he personally decided or approved all personnel decisions in the Department. He also testified that he has not always agreed with all of the Appointments Office's ideas concerning personnel changes.

Secretary Flanagan testified that political affiliation would be considered in a personnel action only to the extent that the person could be part of their team. He testified that he was accurately quoted in the Sun regarding MDOT becoming increasingly Republican. A copy of this article appears at **Exhibit 20**.

Mr. Casey was advised to vet personnel actions recommended by Secretary Flanagan with the Appointments Office. Secretary Flanagan recalled that a number of employees were given the opportunity to resign instead of being terminated. He believed that 297 employees have been terminated at MDOT during his tenure, and this number may include terminations, resignations, retirements and transfers.

Secretary Flanagan stated that with respect to the law regarding termination of at-will employees, he found no distinction between policy-making and implementing; he considers policy-making to be a broad concept. He explained that he considered his exercise of statutory authority and power to be subject to the will of the Governor. There was direction from the Administration to review current employees, but he did not recall specifically from whom this direction came.

Secretary Flanagan also stated that there was a general understanding that public information officers (PIOs) spoke for the Administration, and therefore they were appropriate for separation. Many of the evaluations were conducted before Secretary Flanagan was appointed. Some may have been made by Trent Kittleman. Some PIOs were kept and others were let go.

Secretary Flanagan directed Mr. Casey to confer with Ms. Fulton regarding personnel actions. Secretary Flanagan counseled Casey regarding the need to remain collegial, and he had reason to believe that friction developed between Fulton and Casey, but this was not a deciding factor in Casey's eventual termination. He decided to separate Casey because he believed there were more experienced and capable candidates to take Casey's place. Secretary Flanagan testified that he was unaware of Casey's political affiliation and that it had nothing to do with his separation. Casey's recommendation letter was probably drafted by Marks. Casey had asked Secretary Flanagan for the recommendation letter.

Secretary Flanagan recalled asking Judy Slater for information regarding the percentage turnover during the Ehrlich versus Glendening administrations. Secretary Flanagan also heard that there was friction between Ms. Slater and Chief of Staff David Marks.

Judy Scioli caught Secretary Flanagan's attention because she was being paid more than others.

Gregory Maddalone was originally Chief of Staff to MTA General Manager John Gowland, and is currently at MDOT. He was selected by the General Manager for this position. Mr. Maddalone worked on computer-related issues. Secretary Flanagan expected Maddalone to make judgments regarding personnel matters with the Appointments Office, and believes that some of Maddalone's recommendations were acted upon.

Gregory Maddalone

Gregory Maddalone testified before the Committee on May 4, 2006, and was represented by counsel. He is currently employed at the Maryland Department of Transportation as an Emergency Response Manager. He worked on staff for Congressman Ehrlich from 2000 to 2002. He also worked on the Governor's campaign and was on the transition team. He was staff liaison to the Governor's transition team for information technology assessment. He has taken some course work in information technology.

After the Governor took office, Maddalone worked for the Governor's Office on information technology from January 15, 2003, until the end of October. He was then employed by the MTA in a new position, which was created for him, Special Assistant to General Manager John Gowland, with whom he had a relationship from the transition team.

Mr. Gowland directed him to review all at-will positions with their directors and make assessments of them. Mr. Maddalone denied that the purpose was to make assessments of employees with respect to whether to terminate them. He stated that he did not make assessments by himself, but that they were made through the chain of command with directors who supervised the personnel. He conducted meetings with the chain of command, Gowland and senior staff to review concerns.

Mr. Maddalone's testimony regarding his role on terminations was evasive. He denied, for a second time, that a component of the assessment process was to identify people who might be terminated. When asked whether he identified people who were recommended for terminations, he responded, "I identified people that were executive service personnel." When asked again whether he recommended employees for termination, he responded "the MTA has, I

believe, over 200 individuals, I do not recommend termination of over 200 individuals.”³¹ Finally, when asked again whether part of his job was to analyze the list and make recommendations for termination, he answered, “that would be correct but not of employees on my own.”

Mr. Maddalone talked to supervisors of the employees but did not look at personnel files. He did not observe employees doing their jobs. There was a list of employees who served at the pleasure of the appointing authority, Secretary Flanagan. He did not know what happened to the list. He provided Diane Baker in the Appointments Office with a list of vacant PINs. He was in e-mail contact with Diane Baker while he was at MTA.

Recommendations for termination went through the chain of command at MDOT. They were sent with Gowland’s authority to Robert Smith and David Marks, Chief of Staff at MDOT. He would not give reasons for terminations and did not recall that he discussed reasons with Mr. Marks. He made recommendations on behalf of Gowland; he would have had conversations pertaining to those recommendations. He did not take notes or record his thoughts anywhere. He denied that the objective was to create vacancies in which to place employees who were dedicated to carrying out the policies of the Administration.³² They wanted employees who were willing to be part of the Administration’s desire to make the MTA more efficient and more responsible. The list of at-will employees did not include party designations.

Mr. Maddalone recommended five individuals for termination. His qualifications for participating in that process were that he was Special Assistant to the General Manager. He did not have any experience in working for a transportation authority.

Exhibit 21 is an e-mail from him noting that the Appointments Office wanted a database created that included various information regarding terminations. Maddalone refused to answer who at the Appointments Office communicated that to him. He did not know if the database was ever created.

The Appointments Office provided the MTA with a list of resumes of applications to place in positions there. They were not required to hire those individuals. When there were vacancies, Maddalone communicated those to the Appointments Office through the chain of command. **Exhibit 22** is an e-mail which reflects the chain of command, recommending termination to David Marks and from him to Diane Baker and Trent Kittleman. **Exhibit 23** includes Gowland in the chain of command.

Mr. Maddalone stated that assessments were made of all at-will employees at the MTA and that he would have had some role in all of them. He stated that political affiliation was never a factor in a recommendation for termination and that he never communicated a reason for a termination.

³¹ During his testimony, Secretary Flanagan stated that Mr. Maddalone made recommendations for terminations, which were acted upon.

³² This statement is directly contradicted by the Governor's Memorandum to Departmental Secretaries of 4/1/03, Exhibit 3

Mr. Maddalone was subsequently transferred to the Maryland Port Administration as legislative liaison. His role there did not include identifying at-will employees and recommending them for termination. His duties were limited to legislative affairs.

In response to a question from Senator Middleton, Maddalone stated that he was represented by counsel, but refused to say whether he was paying for his counsel. He further stated he was not aware as to whether the list for recommending terminations went through Mr. Smith, Director of the MTA.

David Marks

David Marks is Chief of Staff at the Department of Transportation, appointed in April 2003 by Secretary Flanagan. His duties include serving as liaison to the Governor's Office and Appointments Office relating to proposed hiring and firing decisions. Diane Baker of the Appointments Office made him aware that any names for hiring or termination were to be sent to the Appointments Office for approval.

Mr. Marks recalled seeing a list of MDOT at-will employees that he believed came from the Department of Budget and Management. It was never really used to do a comprehensive review of at-will employees for termination.

Mr. Marks had a role in reviewing terminations, which were subject to the Secretary's approval. He would transmit information to the Appointments Office. He never received any criteria that were to be used in the termination process. He never discussed party affiliation or heard anyone discuss party affiliation. He could not estimate the number of at-will employees terminated from the MDOT during 2003. Lists of positions were provided to Diane Baker for consideration for termination. Trent Kittleman and Greg Maddalone were copied on the list. He was unsure, with respect to the MTA, whether the list was provided to Robert Smith. Most often recommendations from the MTA would come from Maddalone.

Mr. Marks stated that he never discussed any employees' political affiliation with Maddalone or the Secretary. Ms. Baker would respond to the e-mails with recommendations for termination either in writing or by phone. Marks did not keep track of the proposed terminations. Marks understood that the Appointments Office had a State-wide perspective and would advise the Administration of any political resistance that a termination would incur.

Mr. Marks did not participate in terminating employees. He recalled employees being terminated without notice and being escorted out by security guards. Subsequent terminations were not carried out in that manner. Guards were used in specific cases in which the terminated employee was considered a risk, as determined by the Deputy Administrator for the MTA, Brandon Hill.

Mr. Marks did not recall George Casey being required to make regular reports regarding hiring and firing to the Appointments Office. He was required to file a report on a weekly basis that included the MDOT's vacancy list.

Mr. Marks' understanding of the law is that any at-will employee serves at the sufferance of the Governor and can be dismissed for any reason, including political affiliation. Marks stated that he did not review opinions of the Attorney General's office before participating in terminations.

Exhibit 24 is an e-mail from Marks to Diane Baker dated May 4, 2004, "seeking permission to terminate the following MTA individuals." Six individuals' names are blanked out. The e-mail is copied to Trent Kittlemen and Greg Maddalone.

Exhibit 25 includes an e-mail series, which starts with an e-mail from Greg Maddalone dated January 30, 2004, seeking termination of a transportation engineering manager. Contrary to Maddalone's testimony, there is a reason given, that the employee is "unreliable with his performance" and that the situation is well documented. The e-mail is forwarded from David Marks to Diane Baker who replies that she will "get the sign off."

Office of the People's Counsel

Paula Carmody

Paula Carmody testified before the Committee on December 20, 2005. She received a B.A. from McGill University in 1977 and a J.D. from Antioch School of Law in 1980. She worked with the Legal Aid Bureau from 1980 until 1984, the United Auto Workers from 1984 to 1988, and in 1988, applied for a position with the Office of People's Counsel (OPC). She was hired by People's Counsel, the Honorable John Glynn, in October of 1988 and remained with the Office until her involuntary separation in September 2003. She was classified as a special appointment. **Exhibit 26** is a letter from Hon. John Glynn informing the Department of his desire to hire Ms. Carmody.

The OPC is an independent State agency, which acts in the interests of residential and non-commercial utility consumers. In her 15 years at OPC, Carmody represented the Office in rate cases for gas and electric companies before the Public Service Commission (PSC). From 1991 to 1995, she represented the OPC in complex bankruptcy proceedings. In the mid-1990s, she participated in electric and gas restructuring proceedings and represented the OPC before the PSC and the legislature. She received three outstanding service awards, which are reflected at **Exhibit 27**. During her tenure at the OPC, the Governor's Office was never involved in personnel issues.

People's Counsel Michael Travieso was separated in August of 2003. Carmody described Mr. Travieso as a very effective People's Counsel and a major advocate for residential consumers.

Andrea Fulton of DBM called the office that day and communicated to Travieso that he was being terminated.³³ He was required to leave on the day he was terminated. He asked if he could return the next day to organize his caseload, but the request was denied and security officers came to the office to escort him out. After Travieso left, Sandra Guthorn was appointed acting People's Counsel. There were eight attorneys left in the office.

On September 10, 2003, Ms. Carmody was at home preparing for a meeting when she received a call from Ms. Guthorn informing her that she was coming to Carmody's house to speak with her. Guthorn had received a call from Andrea Fulton the previous day directing her to terminate Carmody. At Carmody's house, Guthorn handed her an envelope bearing her termination letter which is set forth at **Exhibit 28**. The termination letter was presented as a memorandum from the Office of People's Counsel, but did not identify the author. The author was Fulton, who transmitted the memo to Guthorn by e-mail. Guthorn informed her that she was given no reason for Carmody's separation.³⁴ The separation was effective immediately. Carmody came to the office to pack up her personal effects and to organize her files. She then was escorted from the building. She was never informed of why she was separated or who authorized her separation.³⁵

Ms. Carmody was unaware of any criticism of her work. She was promoted steadily while at the OPC and received outstanding service awards. **Exhibit 29** is a November 4, 1991, letter from John M. Glynn, People's Counsel, reclassifying Ms. Carmody from Assistant People's Counsel II to Assistant People's Counsel III. It describes Carmody as "an extremely exemplary attorney whose writing skills and ability to work independently have proven to be invaluable." **Exhibit 27** consists of three letters from People's Counsel Glynn and Travieso presenting Carmody with outstanding service awards.³⁶

³³ Ms. Fulton testified on May 22, 2006 that she was directed by either Secretary Lawrence Hogan or Deputy Secretary Diane Baker of the Appointments Office to terminate Mr. Travieso. She was not provided any reason for his termination. At that time, the People's Counsel's appointing authority was the Governor. PUC § 2-202.

³⁴ Ms. Fulton testified that Diane Baker directed her to tell Ms. Guthorn to terminate Ms. Carmody. During her testimony on May 22, 2006, Ms. Baker stated that she assumed the direction to terminate Ms. Carmody came from Mr. Hogan, and that she had no recollection of discussing the termination with anyone including Ms. Fulton. Further, Ms. Baker testified that she never directed the termination of Ms. Carmody. Mr. Hogan initially testified that he had no recollection of Ms. Carmody's separation. Later, Mr. Hogan testified that Ms. Carmody was terminated at the request of the incoming People's Counsel Patricia Smith. (At the time of Ms. Carmody's separation, Ms. Guthorn was Acting People's Counsel). Ms. Smith stated in an interview with Committee counsel that she had nothing to do with Ms. Carmody's termination.

³⁵ Ms. Guthorn testified that she was told by Andrea Fulton that the decision to terminate Ms. Carmody came from the Governor's or Appointments Office. In addition, Ms. Guthorn testified that she did not want Ms. Carmody fired.

³⁶ Ms. Guthorn, who supervised Ms. Carmody and was familiar with her work for a period of 15 years, testified that Ms. Carmody was competent, knowledgeable, and a vigorous advocate.

After her termination, Carmody was out of work for approximately seven months. During that time she appealed her termination to then Acting People's Counsel Sandra Guthorn on the grounds that her termination was illegal or unconstitutional. A copy of her Appeal appears at **Exhibit 30**. **Exhibit 31** is a letter from Ms. Guthorn to Ms. Carmody denying her appeal. She was eventually hired by the Attorney General's Office and is currently employed as an Assistant Attorney General in the Consumer Protection Division.

Ms. Carmody believes that it takes a considerable amount of time to develop expertise in the complex area of utility regulation and that she developed that expertise. She could not conceive of any work related reason for her termination. She was a registered Democrat, which was generally known. She had conducted poll work on Election Day and contributed to Democratic campaigns on both the State and federal levels. She was given no opportunity to transition any of her workload.

Sandra Guthorn

Sandra Guthorn testified before the Committee on December 20, 2005. She received her B.A. from the University of Maryland and a J.D. from the University of Baltimore School of Law. She was a law clerk at the Office of People's Counsel and then was hired as an Assistant People's Counsel in 1985. She was appointed Deputy People's Counsel in 1997 and served in that position until 2004. She is presently Manager of Energy Policy with Pepco Energy Services. Ms. Guthorn worked under the following People's Counsel: Gary Alexander, Jack Kane, The Honorable John Glynn, and Michael Travieso. She was familiar with the work of Paula Carmody for 15 years. She testified that Ms. Carmody was competent, knowledgeable and a vigorous advocate.

Prior to 2003, Guthorn was not aware of any terminations in the OPC directed by the Governor's Office or Appointments Office. She was on vacation when Travieso was terminated and heard about it from him. She never learned the reason for his termination. After his departure, the OPC was forced to drop certain active cases. Guthorn was appointed Acting People's Counsel by letter from the Governor dated August 11, 2003, which is set forth at **Exhibit 32**.

On September 9, 2003, Guthorn received a voicemail from Andrea Fulton asking her to call immediately. She called and Fulton told Guthorn that she was sending her a letter for Paula Carmody's separation. Guthorn argued with Fulton on the phone for approximately 10 minutes. She asked why Carmody was being separated and Fulton responded that she did not know why but that it was coming from the Appointments Office.³⁷ Fulton described it as a "done deal." Guthorn said she did not want to terminate Carmody and Fulton responded that if Guthorn would not do it, then she would inform Carmody herself. Ultimately, Guthorn felt that it would be kinder to Carmody if she were the one to deliver the news. Fulton transmitted the separation letter to Guthorn by e-mail, which is set forth at **Exhibit 33**. The separation letter is unauthored.

³⁷ During her testimony Ms. Fulton confirmed that the direction she received to terminate Ms. Carmody came from Diane Baker. Ms. Baker testified that she never directed Ms. Fulton to terminate Ms. Carmody.

The next morning, Ms. Guthorn went to Ms. Carmody's house and informed her that she was being separated. It was a very emotional conversation. When Guthorn returned to the office, she called a staff meeting and informed everyone of Carmody's separation so that they could assist her when she came in. Carmody returned to the office and organized her files and updated other attorneys on the status of her cases. The OPC was down two attorneys and Guthorn, who already had a busy caseload, was forced to take on some of Carmody's caseload.

Morale in the office was seriously affected when Mr. Travieso was terminated and even more affected by Ms. Carmody's termination. The manner of the terminations had a chilling effect on the office and everyone worried that their separation might occur next.

When Guthorn received Carmody's appeal, she contacted Fulton for assistance but was informed that she must handle it. She denied the appeal because, at that time, she did not believe that there was a violation of constitutional rights. It was also very clear to Guthorn from her communications with Fulton that she did not have the discretion to reinstate Carmody. Guthorn resigned from the OPC in March of 2004 because it was no longer a place where she enjoyed working.

Department of Natural Resources

Lauren Wenzel

Lauren Wenzel testified before the Committee on January 20, 2006. She received an undergraduate degree from Oberlin in 1984 and a Master of Science in Natural Resources from the University of Michigan in 1991. She began work at DNR in 1993 as a Tributary Strategies Coordinator, as part of the effort to clean up the Chesapeake Bay and to explore options to improve water quality. In 1995, she became Director for Education and Bay Management, working with other agencies to develop strategies to protect the Bay. Her work involved tributary strategies and conservation education along with a variety of related tasks. She was classified as a management service employee. Ms. Wenzel's work reviews were all excellent and **Exhibit 34** contains a Certificate of Appreciation and four letters expressing appreciation for her work. She was in good standing at the time that she was terminated on April 25, 2003.³⁸

On April 25, 2003, Ms. Wenzel was asked by her superior, Mark Bundy, to accompany him to the office of Mark Belton, Assistant Secretary for DNR. She was given a termination letter, read it and was stunned. She asked why she was being terminated and was simply referred to the letter, which did not express why. No one ever gave her a reason for her termination. She was told to leave the office by the end of the day. Subsequently, she was allowed to clear out her office over the weekend.

³⁸ During his testimony on May 22, 2006, Secretary Franks stated that he reviewed Ms. Wenzel's personnel file with Assistant Secretary Mark Belton prior to her termination. During his testimony on the same day, Secretary Hogan stated that while he could not specifically recall Ms. Wenzel's termination, he probably discussed political appointments at DNR with Secretary Franks.

Ms. Wenzel was unemployed for approximately four months after her termination. She had been somewhat active in Democratic politics and worked the polls for Kathleen Kennedy Townsend in 2002. She was not active in politics at work and did not believe that people at DNR knew her politics. To this date, she has never been told why she was terminated.

Bruce Gilmore

Bruce Gilmore testified before the Committee on January 20, 2006. He is a 1973 graduate of the University of Maryland School of Law. He began working for Senator Paul Sarbanes in January of 1975 as a Special Assistant and Project Director. In 1983, he became a lobbyist for the Department of Natural Resources. In 1988, he was selected to form and direct the Boating Administration, which he ran until it was disbanded in 1995. He was then selected to be Director of Licensing and Registration, an agency within DNR, where he remained until April 25, 2003. His duties included administering titles, assigning numbering of boats, and excise tax collection. The agency also licensed recreational hunters and fishermen and commercial watermen. He supervised approximately 40 employees and reported to Assistant Secretary Mark Belton. Gilmore was a management service employee.

In March of 2003, Mr. Gilmore asked Mr. Belton about the likelihood of retaining his job. His job was not political and he wanted to keep it. Belton informed him that Secretary Hogan had a list of jobs at DNR that were of interest to people not currently employed by the Department. Gilmore's position was one of the jobs on Hogan's list.

On April 25, 2003, Assistant Secretary Belton called Gilmore, who was on leave that day, to ask him to come to the office to discuss an important personnel matter. Belton stated "Bruce, you knew this was going to happen." When they met, Gilmore was given a letter from Secretary Ronald Franks terminating him and offering him an opportunity to resign. Gilmore opted to be terminated. Belton informed Gilmore that his job was being taken by an active Republican who was involved in hunting and fishing issues on the middle Eastern Shore. Gilmore subsequently learned that his replacement was Sharon Carrick.³⁹ Mr. Belton informed Mr. Gilmore that he enjoyed working with him over the years. Gilmore's termination was effective immediately, but he was allowed to come to work two days in the following week to sort out his papers.

Mr. Gilmore was politically active for Democratic candidates throughout his career. He also helped campaign for Republican Robert Neall when he ran for County Executive for Anne Arundel County. He ran a fund for the Kathleen Kennedy Townsend campaign, and his party affiliation and activities were known at DNR.⁴⁰ All of his political work was done on his own time.

³⁹ Secretary Franks testified that Ms. Carrick was recommended by the Appointments Office. He further testified that although Ms. Carrick was hired before Mr. Gilmore was terminated, there was no cause and effect relationship. Ms. Baker stated that she had no knowledge about Mr. Gilmore's termination. This testimony contradicts Exhibit 82, which is an e-mail from Mark Belton to Ms. Baker in which Ms. Carrick is described as a "binder one candidate" and which states, "I intend to dismiss Bruce Gilmore...this Friday, April 25th" and that Ms. Carrick "wants to start next Wednesday, April 30th."

⁴⁰ Secretary Franks testified that he was aware that Mr. Gilmore was an active Democrat.

In September of 2003, Gilmore returned to work for Senator Sarbanes. In June of 2004, he went to work for the Chesapeake Bay Foundation. He was just short of completing 20 years at DNR when he was terminated. He was aware that he was in an at-will position. He believed that the terminations which took place in April of 2003 had a substantial negative impact on morale at DNR. Gilmore's termination substantially reduced his retirement benefits.

Diane Evans

Diane Evans testified before the Committee on January 20, 2006. She graduated from Illinois College in 1970 and moved to Maryland in 1973. She has been active in Anne Arundel County politics, first as a Republican and later as a Democrat. She served two terms on the Anne Arundel County Council and ran for County Executive as a Democrat.⁴¹

Ms. Evans became employed by DNR in March of 1999 working for the Rural Legacy Committee for Land Preservation. She also became involved in bay education policy and growth management as a planner. She chaired the Land Conservation Work Group Committee and reported to Mark Bundy. She understood that she was an at-will employee and that she was in good standing. Evans was classified as a special appointment.

On the afternoon of April 25, 2003, Mr. Bundy asked Evans to accompany him to Assistant Secretary Mark Belton's office where she was given **Exhibit 35**, a letter from Secretary Franks. The letter terminated her employment as of that day and gave her the option to resign in lieu of termination. Evans was told that her termination had nothing to do with her work. She asked if she was being terminated for political reasons and neither Mr. Belton nor Mr. Bundy commented.⁴² She requested that she be allowed to come in on her own time in the following week to organize and prepare for her replacement and that was permitted.

On April 6, she wrote to the Governor asking to be reinstated at DNR to continue her work on environmental issues. She received no reply.

Ms. Evans remained involved in County politics as a Democrat after a failed run for County Executive. She attended a Kathleen Kennedy Townsend political event and contributed to her campaign. She was also the administrative campaign person for George Maloney, who ran as a Democrat for County Council in her district. She has never been informed why she was terminated.

⁴¹ Secretary Franks testified that he knew that Ms. Evans was active in Anne Arundel County Democratic politics.

⁴² During his testimony on May 22, 2006, Secretary Franks stated that he reviewed Ms. Evans' personnel file with Assistant Secretary Mark Belton prior to her termination, but that he did not recall any specific information from the personnel file or from Mr. Belton which supported his decision to terminate her.

Dr. Gary Smith

Dr. Gary Smith testified before the Committee on January 20, 2006. He is a marine scientist with a background in geophysics. He came to work at DNR in 1989 as a contract employee at the Oxford Lab on the Eastern Shore as a research statistician. His work involved oyster issues, including assessing populations, failing harvests, and habitats. His work was strictly scientific research that was expressed through papers, books and presentations. He was also an adjunct professor at the University of Maryland working on these issues. He was classified as a skilled service employee.

Dr. Smith was terminated on July 30, 2003, by letter set forth at **Exhibit 36**. The letter advises that the Board of Public Works eliminated the appropriation for his position. At the time of his termination, Smith was writing a paper that was critical of oyster management policies. A copy of this paper appears at **Exhibit 37**. It stated that the oyster environment was so degraded that no increase in the current management structure could reverse the habitat's decline. The work was not criticized by his superiors at the Oxford Lab and was well-received by the academic world.

Dr. Smith was salaried by DNR and brought in additional grants to support his research. His supervisor, Victor Kennedy, called him into his office on July 29, 2003 and informed him that the project was being eliminated and, therefore, Smith no longer had a job. Smith and Mr. Kennedy went to Annapolis on the 30th where Smith was given his termination letter. Kennedy indicated shock at the elimination of the program and stated that it was a grave mistake to let Smith go. Smith had worked for the State for 13 years, just two years short of the 15-year early retirement date.

Within months, Smith's program was replaced by a very similar program that continued the work of examining oyster habitats. Dr. Smith believes that his views were not well-received by the upper echelon at DNR and he had been told to "take it easy." His replacement is more of a "team player."

Michael Slattery

Michael Slattery testified before the Committee on January 20, 2006. He received a Bachelor's Degree in Environmental Sciences from the University of Virginia. He started working with the Department of Natural Resources in 1986 and worked through the ranks to become Director of Wildlife in 1997. He was aware that his position was at-will and that he was serving at the pleasure of the Secretary. He received excellent performance reviews throughout his career. The House and Senate passed resolutions recognizing his contributions to the State of Maryland, the People of Maryland, and to the Department of Natural Resources. During the Glendening Administration he developed philosophical disagreements with some of the policies he was being asked to carry out, which he thought were contrary to accepted procedures and policies. He would ask that his instructions be put in writing but they never were. As an example, there was a hunting and trapping program for youth that had been in place for years and he was told to cancel it.

Mr. Slattery was terminated in April of 2001 after the close of the General Assembly. It did not come as a surprise because it was well known by him and his colleagues that his relationship with his superiors was strained. Either just prior to his termination or a year earlier, Jennifer Crawford from the Governor's Office contacted Slattery the day before Youth Trapping Day and told him to cancel it. Youth Trapping Day is a long-standing tradition which educates young people in humane methods of hunting and trapping. Slattery replied that it was not possible to contact all the families coming with such short notice.

Mr. Slattery considers himself to be a career civil servant and stated that he had chosen to enter a role that was also political in nature. He was aware of the risks of serving in an at-will position. He was given the option of resigning or being terminated and no reason was given for his separation. He believes that his separation came from his superiors within the Department with the concurrence of the Governor's Office.

Mr. Slattery was with the DNR for 15 years prior to his separation. He then worked for U.S. Fish and Wildlife until he returned to DNR in 2003. He is currently Assistant Secretary for Forest, Parks and Wildlife.

Thomas Burke

Thomas Burke submitted a Statement and Affidavit to the Committee on January 20, 2006. He attended the Merchant Marine Academy at King's Point and the State University of New York at Farmingdale. He then spent 20 years in the marketing/advertising business.

In 1989 Mr. Burke was hired by Governor Schaefer to serve as Director of the Governor's Chesapeake Bay Communications Office. In that position, he attended cabinet meetings and provided the Governor with recommendations regarding Chesapeake Bay matters. Burke also worked on Governor Schaefer's re-election campaign. He worked for the Governor's Office for approximately 7 years.

Approximately one month after the inauguration of Governor Glendening, Burke was transferred to the Department of Natural Resources (DNR) where he worked in the Chesapeake Bay office. Among his other duties, Burke drafted speeches for the Governor, the Secretary, and Assistant Secretary of DNR. In addition, from 1999 to 2000, he participated in rewriting the Chesapeake Bay Agreement. Later, Burke conducted assessments of the Chesapeake Bay program and prepared response letters on behalf of the Governor and the DNR Secretary.

After Governor Ehrlich's inauguration, Burke continued to work in the Chesapeake Bay office at DNR. He met with Secretary Franks on a regular basis. Several of these meetings were also attended by Craig Cheseck. Burke provided background information and briefings to the Secretary and his staff. He understood that his position was at-will and in the management service. He did not occupy a political policy-making position.

Mr. Burke received good performance reviews at DNR and was rewarded on occasion for exceptional service. In addition, DNR sent him to attend a three-week program for Senior Executives in State and Local Government, at the Kennedy School of Government, Harvard University.

On April 25, 2003, Burke was directed to Assistant Secretary Belton's office. Belton presented Burke with a memo from the Secretary which appears at **Exhibit 38**, stating that he was to be separated and giving him the option to resign. There was no discussion or explanation of this action in terms of his performance or abilities. Belton asked whether he was willing to resign on the spot. Burke asked for additional time to consider his options. Ultimately, Mr. Burke was unwilling to resign and informed Mr. Belton of this. Consequently, he was involuntarily separated.

Mr. Burke was given until the day's close of business to empty his office. Upon request, he was given an additional two days to clear out his office. He had received no advance warning or notice of the separation nor was he provided with any explanation.

Mr. Burke believes he was separated due to his political affiliation with the Anne Arundel Democratic Party or his campaign activities on behalf of Lieutenant Governor Kathleen Kennedy Townsend.⁴³ He believes the direction to separate him came from the Appointments Office, which could have been aware of his political activities.

Mr. Burke presently resides in New York State, where he is employed by Cornell University's Cooperative Extension Service as an Agricultural Educator at the Suffolk County Farm in Yaphank.

Eric Schwaab

Eric Schwaab submitted an affidavit to the Committee on January 20, 2006. He proffered his testimony in writing because a work conflict prevented him from attending a hearing.

Mr. Schwaab was forced to resign from his position as Director of the Fisheries Service for DNR in late March 2003. Prior to his separation, he had worked for DNR for approximately 20 years and had been in the Fisheries Service Director position for 4 years. At the time of his separation, Mr. Schwaab was a management service employee.

Mr. Schwaab was awarded a Bachelor of Science Degree in Biology from McDaniel College in 1982 and a Master's Degree in Geography and Environmental Planning from Towson University in 1992. He earned his advanced degree on a part-time basis on his own time and expense while he was an employee of DNR.

Mr. Schwaab began his career at DNR in October 1983. His first position was as a Natural Resources Police Officer. He also held positions as Park Ranger, Manager of the Deep Creek Lake Natural Resources Management Area, Chief of Waterfront Operations for the State Forest and Park Service, and Chief of Resource Management for the State Forest and Park Service. He served as Director of the Forest Service from 1992 to 1995 and Director of the Forest, Wildlife and Heritage Service from 1995 to 1999. His career at DNR was characterized by movement from entry level positions through a series of transfers and promotions to increasingly senior positions in various agencies of the Department.

⁴³ Secretary Franks testified that was not aware that Mr. Burke was active in Democratic politics or that he worked on the Townsend campaign.

During the week of March 10, 2003, Mr. Schwaab was approached by Secretary Franks who asked him to provide a verbal review of his resume. Secretary Franks offered as explanation his need to defend Schwaab against “people” who were seeking to have him removed from his DNR position.⁴⁴ Secretary Franks further stated that he wanted to keep Schwaab in his position and wanted to be prepared to defend him.

On Friday, March 14, 2003, Schwaab was summoned to Secretary Franks’ office. Secretary Franks, along with two of his assistant secretaries, informed him that he was to be separated immediately. He was provided the alternative of resigning, also to be effective immediately. Secretary Franks also informed Schwaab that it was not his decision to separate him and that he was being directed by others to carry out this action. Secretary Franks admitted to Schwaab that, although he was the formal appointing authority, he had no real authority to make appointment decisions. Mr. Schwaab believed that it was their intention to have him leave the building that afternoon, with his sole severance consisting of accrued annual leave. He was unwilling to resign under those circumstances.

Mr. Schwaab offered to resign if DNR would meet certain conditions, including compensation for six weeks of earned compensatory time, providing a neutral or positive job reference for future employers, and designating a specific individual to serve as the Department’s representative for reference purposes. Secretary Franks indicated that he lacked the authority to meet those conditions, but would be willing to run it by his contacts and seek approval. The Secretary was unsuccessful in obtaining permission, and Schwaab was told to leave the building with the letter of termination, which could be rescinded if a resignation agreement were reached prior to Monday morning. Over the weekend, Schwaab was informed that DNR would accept his resignation conditions and his letter of resignation was submitted on March 17, 2003.

Although he was provided no formal explanation for his separation, Mr. Schwaab previously had been informed by Secretary Franks that “people” were “out to get [him].” During his time at DNR, Schwaab had received exemplary performance reviews.⁴⁵ He believes the direction for his separation came from the Governor’s Office. He believes that his termination resulted from several fishery management regulatory actions and policy decisions that were made during his tenure as Director of the Fisheries Service. He did not characterize the position he was separated from as policy-making in the political sense.

Mr. Schwaab was a registered Democrat and his colleagues were aware of this. He had contributed to the Kathleen Kennedy Townsend campaign and had recently attended a fundraiser for Mayor O’Malley. His position at DNR did not originate as a result of his political affiliation, nor did any of his subsequent transfers or promotions result from his political affiliation. Schwaab did not believe that his party affiliation was the primary reason for his separation. He believes that his reasoned analysis of science and careful, objective evaluation of policy options, such as blue crab conservation action, made key people uncomfortable enough with the policy outcomes to seek his removal.

⁴⁴ Secretary Franks testified that he did not recall explaining to Mr. Schwaab that he needed to defend him against outsiders seeking to have him removed from the Department.

⁴⁵ During his testimony, Secretary Franks recalled positive evaluations for Mr. Schwaab’s professional work.

Mr. Schwaab believes that DNR has suffered from a loss of institutional knowledge due to the removal of talented employees from the Department. He believes further that these people were generally not motivated by political ideology. Additionally, qualified and experienced professionals both within and outside of current agencies will be less likely to take on senior management positions. Schwaab also opined that the recent personnel actions will have a decidedly chilling effect on the willingness of future managers to evaluate science and policy options, and, if necessary, recommend politically unpopular courses of action.

Mr. Schwaab is presently serving as the Resource Director at the International Association of Fish & Wildlife Agencies in Washington, DC.

Phillip Douglas Bissett

Phillip Douglas Bissett was interviewed by counsel and prepared an affidavit for submission to the Committee.

Mr. Bissett was an employee of the Department of Natural Resources from February 17, 2003 until March 24, 2003. His position was Legislative Liaison and he reported to Deputy Secretary Peter Jenson.

It was not part of Bissett's job to review employee performance and make recommendations for termination. He never recommended that the employment of any DNR employee be terminated.⁴⁶

He was not aware of the reasons why Dr. Gary Smith, Bruce Gilmore, Lauren Wenzel, Diane Evans, or Eric Schwaab were terminated from their employment at DNR. He did not participate in any discussions with anyone at DNR relating to their termination.

Secretary C. Ronald Franks

Dr. Franks, the Secretary of the Department of Natural Resources, appeared voluntarily to testify before the Committee on May 22, 2006. Secretary Franks was appointed in February of 2003. After his appointment, he was advised that DNR terminations and hires would go through the Appointments Office. Mark Belton, the Assistant Secretary, took care of reviewing "at-will" employees, hiring and firing. He left DNR in early 2005.

Exhibit 39 is an e-mail dated April 22, 2003, from Belton to Deputy Secretary Richard in the Appointments Office and Diane Baker. The e-mail refers to hiring Sharon Carrick as Director of Licensing and Registration Service. Ms. Carrick was recommended by the Appointments Office. Secretary Franks was involved in the decision to hire her. He knew that she was involved with the Republican Central Committee. Secretary Franks also knew that Gilmore was an active Democrat. He did not know if word came from the Appointments Office to terminate Gilmore. If it had come it would have come to Mr. Belton. Secretary Franks

⁴⁶ Secretary Ronald Franks agreed with Mr. Bissett's statements regarding his duties at DNR.

occasionally had contact with the Appointments Office if there was disagreement on terminations or hires. Secretary Franks decided to terminate Gilmore and replace him with Carrick. Secretary Franks primarily had contact with Michael Richard from the Appointments Office and some contact with Mr. Hogan and Ms. Baker.

The Secretary testified that Bruce Gilmore, Lauren Wenzel, Tom Burke, and Diane Evans were all terminated on April 25, 2003 at his direction. Assistant Secretary Belton and Secretary Franks reviewed personnel files on each of them. Belton gave Secretary Franks verbal recommendations regarding the terminations. Secretary Franks did not recall any specific information from the personnel files or from Belton which supported the decisions to terminate. He did not recall anything about the political activities of the employees who were fired except that Diane Evans was active in Anne Arundel County politics. He did not recall discussing Ms. Evans' political activities with anyone. He knew of her activities from a personal acquaintance before becoming Secretary. It was not a factor in terminating her. Secretary Franks was not aware that Tom Burke was a Democrat who was active in politics and worked on the Townsend campaign. He was not terminated to give room to applicants from the Appointments Office, nor were the others.

Secretary Franks denied that Mr. Gilmore was terminated to make room for Ms. Carrick. He said that although Carrick was offered the job before Gilmore was terminated, there was not a cause and effect relationship. He did not take part in the terminations; Mark Belton did them.

Eric Schwaab was also terminated. He did not recall explaining to Mr. Schwaab that he needed to defend him against outsiders who were seeking to have him removed from the Department. He stated that there was no vendetta against Schwaab. He recalled outsiders occasionally weighing in on different individuals but did not recall individual names.⁴⁷ He also recalled positive recommendations as to Schwaab's professional work.

Mr. Belton and Secretary Franks were required to report to the Governor's Office through the Appointments Office on recommended actions concerning all "at-will" employees. **Exhibit 40** is a memorandum from Governor Ehrlich to Secretary Franks dated August 12, 2003, advising that changing the culture of State government is one of the most important missions of the Administration, and requesting that he perform an immediate review of all at-will employees within DNR and provide a detailed progress report to Appointments Secretary Hogan. **Exhibit 41** is a report on "at-will" employees prepared by Mr. Belton. Lists of prospective employees came from the Appointments Office but Secretary Franks did not recall a designation of political affiliation beside names. Belton reviewed the lists and gave them to Secretary Franks. Belton also brought resumes to the Secretary. He did not recall whether political affiliation or activities were mentioned, though they might have been. He stated that party affiliation was not a consideration in hiring and that he is a Republican who has three Democratic assistants.

⁴⁷ In his Affidavit, Mr. Schwaab testified that Secretary Franks informed him that he needed to defend him against outsiders who were seeking to have Mr. Schwaab removed from the Department.

Secretary Franks did not recall filing reports responding to the Governor's memorandum other than **Exhibit 41**. Hogan visited to check on the progress in reviewing "at-will" employees. He recalls several conversations with Hogan and disagreements with him but not the specifics. He recalled disagreeing with Hogan about hiring people who did not have skills that he needed. Secretary Franks would not characterize the effect of termination of employees as having a negative impact on employee morale. The report marked as **Exhibit 41** reflects the number employees terminated.

Department of Juvenile Services

Susan Fernandez

Susan Fernandez testified before the Committee on January 30, 2006. She has a Bachelor's Degree in Art History, a Master's Degree in Applied Social Sciences and a JD from Georgetown University. She worked in legal services for farm workers in upstate New York and became legislative coordinator for the City Council of Rochester. Her first employment with the State of Maryland was as a contract employee for the Department of Human Resources doing legislative liaison work. In 1994 she became Director of Women's Services. She was subsequently appointed to the position of Deputy Secretary for Planning, a position which she held for eight years. With the change of administrations in 2003, she expected to be relieved of that position, which was political policymaking.

On January 4, 2003, she received a facsimile transmission from the Ehrlich transition team. The cover page referred to a Kathleen Kennedy Townsend fundraiser and stated "We know where you are." On January 11, 2003, she received a letter stating that upon the swearing in of the Governor she would be relieved of her position.⁴⁸ She had been employed by the State for 14 ½ years and was 18 months shy of qualifying for pension benefits.

Upon receipt of her separation notice, she approached Secretary Montague and Secretary Flanagan to inquire about job opportunities in their Departments. She was subsequently offered a position at the Department of Juvenile Services as Director of Research. She began on February 14, 2003, at a salary of \$75,000 (considerably lower than her salary at DHR). She was a management service employee. As Director of Research, she established the Office of Research, developed a strategic plan for DJS, performed research, and worked with the data system. She reported to Deputy Secretary Salzbach. She received only positive performance reviews and feedback.

⁴⁸ Ms. Fernandez's position was in the executive service, subject to patronage termination.

Approximately one month after Ms. Fernandez began at DJS, Deputy Secretary Salzbach informed her that she had saved her job.⁴⁹ Michael Richard of the Appointments Office had found out that Fernandez was working at DJS and had called Deputy Secretary Salzbach and Secretary Montague to inform them to terminate her. Fernandez had never met Richard before and was told that Secretary Montague intervened on her behalf and that, as a result, she kept her job.

During the winter of 2003, Fernandez was recuperating from eye surgery when she received a call from Secretary Montague. He informed her that things had changed and that she need not return to work. He gave the phone to Kathy Marr from personnel, who as a reason simply stated “that’s the way it is.” She was never offered any further explanation.⁵⁰

Prior to her separation, Ms. Fernandez was approached by Joe Steffen, who introduced himself. Mr. Steffen attended meetings with the Secretary at DJS, where he would simply observe. Fernandez heard rumors that Steffen had a list of people to cut from the Department and inquired with Secretary Montague about her job security.⁵¹ Secretary Montague informed Fernandez that she had nothing to worry about. Ms. Fernandez was separated about two weeks later.

After her separation, Ms. Fernandez sought employment with the State in various departments. She was informed by a friend at the Department of Public Safety and Correctional Services that the Appointments Office would not permit it. She performed some consulting work for six months and later was employed with the Veteran Teachers Association in Baltimore City. She now is employed by Heritage High School in Baltimore as an 11th grade teacher.

Ms. Fernandez was not in a policy-making position. She is a registered Democrat and was very involved in the Townsend campaign, to which she donated. Her political activities were generally known to her co-workers.

⁴⁹ During his testimony on May 22, 2006, Secretary Montague affirmed that he and Deputy Secretary Salzbach intervened with the Appointments Office on behalf of Ms. Fernandez to save her job.

⁵⁰ Secretary Montague explained that he received a phone call from his Chief of Staff advising him that the Appointments Office wanted to terminate Ms. Fernandez. He also testified that he did not object to the Appointments Office’s direction to terminate her.

⁵¹ During his testimony, Mr. Steffen stated that he recommended the termination of Ms. Fernandez, and circulated a memorandum to Mr. Hogan, among others, regarding Secretary Montague’s reluctance to make personnel changes.

Dr. Wanda Maynor-Kearse

Dr. Wanda Maynor-Kearse testified before the Committee on May 4, 2006. She received a Bachelor's Degree in Special Education from Coppin State College in 1974 and a Master's Degree in Special Education from Coppin State College in 1975. She received her Doctorate of Education specializing in Urban Education from Temple University in 1984 and completed a post-doctoral fellowship in developmental pediatrics at Johns Hopkins University in 1985.

While she was earning her doctorate, Dr. Maynor-Kearse worked as a Special Education teacher in Baltimore City schools from September 1975-1984. After she completed her post-doctoral fellowship, Johns Hopkins offered her a position as Assistant Director from 1985 through March 1988. She physically worked at Maryland State Department of Education (MSDE) during this time. When her Hopkins grant ended, MSDE offered Maynor-Kearse a position. She worked at MSDE from March 9, 1988 through July 25, 2000.

Dr. Maynor-Kearse held various positions at MSDE. She became a Regional Administrator, responsible with team members for monitoring juvenile services educational programs and adult correctional programs. She also became chief of the non-public school section where she reviewed applications to ensure that, if a public school system could not educate a child, proper education and funding would be provided.

In July 2000, Department of Juvenile Services Secretary Bishop Robinson offered Maynor-Kearse the position of Superintendent of Education. As Superintendent, Kearse was responsible for ensuring that teachers who were performing well could obtain education to maintain their certifications so they could remain employed, and that children received a proper education by a certified, qualified teacher to enable transfer of their juvenile system credits into the public school system. Kearse supervised between 117 and 150 employees statewide. She was responsible for everyone at DJS in an education position. She was a management service employee.

Dr. Maynor-Kearse received outstanding performance reviews from 1988 until she was separated in 2005. She and her staff were told on a regular basis that they were doing an outstanding job. She was specifically assured by Deputy Secretary Carl Sanniti that she and her staff had nothing to worry about as long as he and the current Administration were in place.

On February 17, 2005, Dr. Maynor-Kearse learned from her administrative assistant that there were rumors that she was going to lose her job. Kearse requested a meeting with Secretary Montague for February 18, 2005 to discuss the rumors.

On February 18 2005, Dr. Maynor-Kearse went to Secretary Montague's office for their scheduled meeting. The Secretary and Kathy Marr, Director of Personnel for DJS, were present. Secretary Montague handed Maynor-Kearse her termination letter, which appears at **Exhibit 42**. He told her that he had always admired her work and that she had done a fabulous job. In light of the Secretary's commendation, Maynor-Kearse asked why she was being terminated. Secretary Montague stated that they were bringing in a new Administration and new leadership. Maynor-Kearse's termination was effective March 4, 2005, but her leave was effective immediately. If Dr. Maynor-Kearse had not been terminated she would have been able to retire with full benefits on June 30, 2005.

Dr. Maynor-Kearse recalled observing Joseph Steffen at DJS beginning in late January or early February 2004. Dr. Maynor-Kearse encountered Mr. Steffen in an elevator and introduced herself. Mr. Steffen replied "I know who you are." Mr. Steffen occupied an office on the 5th Floor (the same floor as the Secretary's office).

Despite numerous attempts, Dr. Maynor-Kearse has been unable to obtain employment. Since her separation, Maynor-Kearse has learned that several teachers and principals have left, morale is very low, and two members of her staff plan to retire in September when they become eligible. All of them had planned to work another 10-15 years beyond their eligibility, but that is no longer the case.

Secretary Kenneth Montague

Secretary Montague testified before the Committee on May 22, 2006. He was appointed Secretary of the Department of Juvenile Services (DJS) on January 15, 2003. Later that year, Mary Beth Carroza, Deputy Chief of Staff, advised him that Mr. Steffen was coming into the Department to do an assessment of operations. The Secretary was told that Steffen's office would be on the executive floor and that he would attend the Secretary's meetings. He recalled being told that Steffen would be reporting on DJS activities to the Governor's Office or Appointments Office.

Mr. Steffen attended some but not all of the DJS staff meetings. He did not make any recommendations to the Secretary about terminating employees. The Secretary was not aware until the day of his testimony that Steffen was making recommendations to terminate DJS employees. He did not see any documents in which Steffen recommended terminations. No one from the Appointments Office told him that Steffen was sending them termination recommendations. He was not aware that Steffen was in regular e-mail contact with Diane Baker.

Mr. Steffen's role at DJS was not generally known. The workforce was suspicious and nervous because they did not know exactly why he was there. There were rumors from DHR about Steffen identifying employees for termination. Steffen was at DJS for five to six months. He was moved suddenly from DJS and the Secretary was not advised of his departure.

When the Secretary first arrived at DJS, he and his staff did an assessment and found no reliable data collection research capacity. He hired Susan Fernandez as Director of Research in February 2003 to run a three to four person research staff. He was aware that there were four occasions where the Appointments Office was involved with hires or fires and Deputy Salzbach would have contact with Diane Baker. The Secretary never routinely dealt with the Appointments Office outside of Hogan's visits or when he was in Annapolis. Hogan was looking at hirings, not terminations, when he visited DJS.

Secretary Montague could not recall a phone inquiry made by Michael Richard of the Appointments Office concerning the hiring of Fernandez or directing the Secretary to fire Fernandez. He recalled, however, that he and Deputy Salzbach successfully intervened on Fernandez's behalf to retain her position.

On a later date, when he was at a conference in New Mexico, Secretary Montague received a phone call from his Chief of Staff stating that the Appointments Office wanted him to terminate Ms. Fernandez. The Secretary phoned Fernandez while she was on medical leave and advised her that she was being terminated. **Exhibit 43** is the termination letter for Fernandez. **Exhibit 44** is a December 18, 2003 e-mail from Fernandez to the Secretary. The Secretary agreed with paragraph 2 which states that he praised her work many times over the last nine months and publicly praised her a couple of weeks before her termination. He did not agree that he was directed to terminate her. Ms. Fernandez received all positive reviews in terms of her work. There were other issues beside her performance so when the suggestion was made to terminate her, he did not object. There had been difficulty with Fernandez's relationships in the workplace and he had conversations with her about this issue.

Subsequent to Ms. Fernandez's termination, the Secretary learned that she had been active in the Kathleen Kennedy Townsend campaign. The "strong suggestion" to terminate her from the Appointments Office was not coupled with any reasons such as a statement that she did not get along with people.

Exhibit 45 is a summary of his decision after holding a conference concerning Fernandez's protest of her termination. She was not terminated for misconduct. On page 3 of the opinion, it states that "notwithstanding the lack of evidence, it should be noted that Maryland law does not prohibit the Department of Juvenile Services and other executive branch special appointments from being made with regard to political affiliation." SPP 5-208(b).⁵² The opinion concludes that Fernandez failed to demonstrate that her termination was illegal or unconstitutional.

Next, Secretary Montague recalled that Dr. Wanda Maynor-Kearse had served as Managing Director of Educational Services, and was terminated in February of 2005. He affirmed that she had received outstanding personnel evaluations. He admitted that he told her that when she was terminated that she had been doing a great job. He testified that Dr. Maynor-Kearse had to be terminated for Sherry Meisel, her replacement, to come to DJS. Secretary Montague explained that Ms. Meisel was needed to take the Department in a different direction.

⁵² This subsection is examined in detail at pg. 120.

Maryland Insurance Administration

Deborah Rosen McKerrow

Ms. Deborah Rosen McKerrow is 57 years of age and received a Bachelor of Science Degree in Journalism from the University of Maryland. She received a Master's Degree in Management from the College of Notre Dame. Her professional experience included working in public relations at the University of Maryland Baltimore County, Franklin Square Hospital, Essex Community College, and CareFirst. She also spent 20 years as an adjunct professor at Towson University teaching Public Relations and Advertising. A copy of McKerrow's resume appears at **Exhibit 46**.

In 2000, McKerrow sent her resume to the Maryland Insurance Administration (MIA) and was interviewed by former commissioner Steve Larson. Two weeks later she was hired as Director of Communications and Consumer Services.

As Director of Communications, McKerrow managed internal and external communications and media relations. She was responsible for website design, outreach programs, the agency's annual report, and complied with PIA requests. She also worked on the Holocaust Insurance Task Force, CareFirst insurance hearings, and the staffing of disaster recovery centers for Hurricane Isabel. McKerrow was classified as a special appointment.

In June 2003, Commissioner Redmer was appointed to MIA. He convened a meeting and informed the current staff that he was going to keep all of them.⁵³ Ms. McKerrow reported directly to Commissioner Redmer, who was complimentary of her work.

On October 15, 2003, Ms. McKerrow attended a mandatory meeting for all PIOs at the Governor's Office. The meeting's attendees included all PIOs except those from the Comptroller's and the Attorney General's offices. Paul Schurick welcomed the attendees and informed everyone that Glendening holdovers had been investigated and that they had chosen to keep some of them. Mr. Schurick further stated that "you are the re-election committee. Everything we do from this point forward is for the reelection of the Governor." The Governor came in shortly thereafter and addressed the group. Mr. Schurick also discussed the objective of branding and requested that the Governor's message and picture appear on all press releases where appropriate. Pizza and beer were served.⁵⁴

⁵³ Special Committee counsel interviewed Mr. Redmer on March 27, 2006. Mr. Redmer explained that he likely made this statement because his personal style is to not make any personnel changes to an organization for a period of 2 months, which gives him time to become familiar with the environment and his staff.

⁵⁴ Ms. McKerrow's recollection and testimony was publicly confirmed by Tori Leonard – another former MIA employee. Ms. Leonard was reported in the *Baltimore Sun* article, "Ex-Aides Recount Political Pressure" (Jan. 31, 2006) to have attended the meeting Ms. McKerrow testified regarding, where pizza and beer were served, and agreed with her recollection stating, "our direction was to highlight the accomplishments of the administration in a way that would bolster the Governor's re-election effort." Ms. Leonard is a registered Republican. In the same article, top gubernatorial aide Paul Schurick contested Ms. McKerrow's recollection regarding the meeting stating, "If she said that, she lied under oath."

After the meeting, McKerrow reported the proceedings to Commissioner Redmer and Deputy Commissioner McMahan.⁵⁵ She started putting the Governor's name on all press releases where appropriate in an effort to implement the new strategy. In March of 2004, the Governor's press secretary commented favorably on the work McKerrow was doing but indicated that he was not pleased with some of the Commissioner's actions. McKerrow subsequently met with Commissioner Redmer and relayed Mr. Massoni's concerns, asking Commissioner Redmer to keep her informed of media related activity. Commissioner Redmer expressed his pleasure with McKerrow's work.

On May 28, 2004, McKerrow was directed to come to a meeting with the Commissioner. Commissioner Redmer stated that they had decided to go in a different direction and that her services were no longer needed. Deputy McMahan then handed her a termination letter which is set forth at **Exhibit 47**. The Director of Personnel informed McKerrow that she would be escorted out of the building and that she would not be permitted to speak with staff. She was told she could come to the office after hours on the following Tuesday to clear out her personal effects. Ms. McKerrow asked Commissioner Redmer why this was happening and he explained that he was told not to say anything but that she had been nothing but an exemplary employee and that they had decided to go in another direction. McKerrow understood "they" to refer to the Governor's Office. She was escorted back to her office where she learned that her e-mail and computer had been turned off and then she was escorted out of the building.

Ms. McKerrow was replaced the next day by Joseph Steffen. She was earning approximately \$68,000 to \$69,000 when she left MIA. She believes that Mr. Steffen was hired at a salary of \$72,000.

After separation, McKerrow received unemployment benefits for 26 weeks while she was applying for work. Her family went through their savings and supported themselves on a home equity loan. She never received a performance evaluation under Commissioner Redmer although she received positive feedback on a regular basis.

Alan Clark

Alan Clark testified before the Committee on January 30, 2006. He received a Bachelor's Degree in Economics from Florida Atlantic University and a post-graduate certification in Actuarial Sciences from the University of Florida. He is a certified, credentialed actuary, a member of the American Academy of Actuaries, and a member of the Casualty Actuarial Society.

Mr. Clark went to work for Krum and Forster in New Jersey doing actuarial work. In August of 1994, he responded to an advertisement in the *Baltimore Sun* for an actuary position with the Maryland Insurance Agency. He was interviewed by the chief actuary and another member of the staff and was offered the position. He started as an MIA Specialist III, Property Casualty Actuary on October 12, 1994. His job duties included rate filings for personal automobile, workers' compensation, and homeowner's insurance. He also reviewed plans for

⁵⁵ Mr. Redmer recalled Ms. McKerrow reporting to him after this meeting, but only recalled that the purpose of the meeting was to maintain consistency of messages. Mr. Redmer did not recall any specific conversation about what occurred, nor did he recall that the attendees were labeled the "re-election committee."

strategic and regulatory compliance to determine whether the rates were fair and reasonable. He performed about 1,000 filings per year. Clark was classified as a special appointment. He remained in his position until June 2004, receiving several salary increases. He never received a negative review.

Before 2003, Mr. Clark was never directed by a supervisor to give political consideration to any actuarial review. In 2003, he worked on a filing by CNA for an 80% increase for nurse insurance which the nursing board policy holders opposed. A hearing was requested, which was held by Associate Commissioner for Property Casualty Pamela Randi Johnson. At the hearing, the petitioner presented previously unknown data and, based on it, Mr. Clark recommended disapproval of the rate increase. Ms. Randi Johnson was very upset with Mr. Clark's recommendation.

In December of 2003, State Farm filed for rate increases on homeowners' policies. Clark recommended that the increase be disapproved and, shortly thereafter, a co-worker took the filing away from him on Randi Johnson's instruction and sent it to an outside consultant which rubber-stamped it.

Subsequently, Medical Pro filed a rate increase for medical malpractice insurance coverage. A hearing was requested. Clark reviewed the filing and asked questions about how the new rates compared to other insurance companies' rates. Clark found that Med Pro's rates were very excessive compared to Medical Mutual's and prepared a memo for Randi Johnson to that effect.

At a meeting on April 29, 2004 Ms. Randi Johnson met with Mr. Clark and others. **Exhibit 48** is an agenda for the meeting. Clark learned that his supervisors had been encouraging his co-workers to provide disparaging or discrediting information about him. He also learned that his supervisors had instructed his co-workers to go through his personnel file. At the meeting Randi Johnson informed Clark that the Governor was very unhappy with his work and that he was undermining the Governor's agenda. She instructed him to refrain from working on the Med Pro filing and said that they were going to close the filing before the hearing. She further stated that a determination on the filing outcome could be made in advance of the hearing and instructed Clark to write a report that justified the decision. Clark stated that this would require him to compromise his professional standards and cloud the law but Randi Johnson responded "it's my way or the highway." Subsequently, the Med Pro filing was taken away from Clark. It was also forwarded to an outside consultant, which approved the filing with minor adjustments and never addressed the issues which Clark raised. At this meeting, Clark also learned that the memo which appears at **Exhibit 49**, which mandated that filings no longer be passed on to him but instead on to co-workers, had been previously circulated.

Mr. Clark notified an EEO officer of Ms. Randi Johnson's request that he violate professional standards and statutory guidelines. He later learned that Randi Johnson had instituted a new rate filing policy and that he would not receive any controversial filings. He was ordered to report to David Diehl regarding any actuary decisions although Mr. Diehl was not an actuary. On another occasion, Randi Johnson warned him that she never wanted to see the words "actuarially justified" in writing.

On June 23, 2004, Mr. Clark was informed by his supervisor that Norvell Byrd from Human Resources wanted to see him. Mr. Byrd handed him a letter, **Exhibit 50**, telling him his job was being abolished. No reason was provided. This came two weeks after he received a salary increase, which was noted in **Exhibit 51**.⁵⁶ Security was summoned to escort him out of the building but he was permitted to return after hours to collect his personal effects. Following his separation, he was out of work for five months and found new employment in November of 2004, at the Actuarial Association of Washington, D.C. where he heads the Actuary Department. He was the sole income provider for his family. He believes that the budgetary reason given for his separation was a pretext and that the real reason was his refusal to violate the law and his EEO complaint.

Maryland Environmental Service

Vincent Gardina

Vincent Gardina testified before the Committee on May 4, 2006. He has been a Democratic member of the County Council in Baltimore County since 1990. He received a Bachelor of Science Degree in Environmental Science and Geography from the University of Maryland, Baltimore County in 1977. He also received a Bachelor of Science Degree in Computer Science from the University of Baltimore in 1986 and a Master's Degree in Environmental Engineering from Johns Hopkins University in 2002. He began working at KCI in Hunt Valley as an environmental engineer after receiving his Master's.

In 2003, he responded to an advertisement on the internet for a project manager job with Maryland Environmental Services (MES). He sent a resume and was interviewed by Cece Donovan and one other person. He was hired into a grade 18 position at \$56,000. He went to work on April 14, 2003. He did not get the job because of any political influence.

Mr. Gardina's duties as Project Manager are set forth at **Exhibit 52**. He had six or seven people reporting to him. Among other things, he managed MES client's compliance with State and federal regulations on dredging projects. He received positive feedback on how he was doing his work and received additional assignments. His first performance appraisal dated June 30³⁰ appears at **Exhibit 53**, and has an overall rating of 3.35 which falls between "fully successful" and "clearly superior." He had not received any criticism of his work.

In August of 2003, Mr. Gardina attended the Maryland Association of Counties Conference (MACO) Conference in Ocean City. At that conference, Gardina believes that political opponents learned that he worked at MES.

⁵⁶ During his telephone interview, Mr. Redmer explained that Mr. Clark's position was eliminated due to a mandated budget and reorganization requirement. Because the rate filing actuarial work could be performed outside, Mr. Clark's position was no longer necessary. The abolishment of Mr. Clark's position was not targeted but rather every PIN was examined for possible cuts.

On September 16, 2003, Gardina met with Beth Wojton, Director of Administration at MES, who handed him a letter set forth at **Exhibit 54** terminating his employment without cause. He asked if his termination was for budgetary reasons and the response was that he knew what was going on. He was told that Mr. Sparkman tried to intervene on his behalf but was overruled. He then asked if it was political and received no response. He asked if he could say good-bye to his staff but was told that he would be escorted to his desk and out of the building.

Subsequent to his termination, Gardina learned that before his termination, David Marks stated to Dennis Eckert, President of the Perry Hall Civic Association, that he was aware that Gardina was going to be terminated.

Mr. Gardina subsequently filed a lawsuit alleging that his termination violated his constitutional rights because it was on the basis of his political affiliation and seeking damages and reinstatement.⁵⁷ The State took the position that the Governor lacked the necessary authority to provide the equitable relief sought (reinstatement). That position is taken in **Exhibit 55**, the Governor's Motion to Dismiss, at page 1 of the Motion and page 5 of the supporting memorandum. In the memorandum, the Governor states that he "cannot possibly be ordered to reinstate the Plaintiff, as he lacks the necessary authority to hire MES employees or enter into employment contracts on behalf of MES under Title 3 of the Natural Resources Article." The memorandum further states that the Governor only possesses the power to appoint the Director of MES and public and private sector members of the Board.

John S. Sparkman

John S. Sparkman submitted an affidavit, **Exhibit 56**, to the Committee on May 2, 2006, and a second affidavit dated June 21, 2006, **Exhibit 57**. Mr. Sparkman served as Director of the Maryland Environmental Service (MES) from May 27, 2003 until July 2005. Mr. Gardina was employed prior to Mr. Sparkman's appointment.

Mr. Sparkman first learned of Mr. Gardina's status as a county councilman for Baltimore County at the MACO Conference in Ocean City during August 2003. In September 2003, Sparkman received a telephone call from Diane Baker inquiring why Gardina had been hired. Sparkman explained that Gardina was hired prior to his appointment as Director, and that he did not know anything about the terms of his hiring. Ms. Baker informed Sparkman that Gardina "needs to be let go" "because he is too political." Baker asked Sparkman to provide Gardina's salary, title, and PIN. Sparkman did not initiate Gardina's termination and he initially resisted it. The direction to terminate him came from the Appointments Office through Ms. Baker. Sparkman later received an e-mail dated September 9, 2003 from Baker saying that the Appointments Office had signed off and he could let Gardina go. The e-mail is set forth at **Exhibit 58**. A subsequent e-mail on September 11 from Baker to Sparkman states, "given recent events, the sooner the better to make the cut." Sparkman's affidavit indicates that, aside from the direction he received from the Appointments Office, he had no reason to inquire into Gardina's employment.⁵⁸

⁵⁷ The lawsuit was settled by an agreement to pay Mr. Gardina \$100,000.

⁵⁸ Mr. Sparkman also stated that he was not aware of any concerns relating to Mr. Gardina's job performance.

Mr. Sparkman did not have any conversation with Lawrence Hogan, the Appointments Secretary, regarding terminating Mr. Gardina before his actual termination. He did not initiate Gardina's termination. The only conversation he had with Hogan about Gardina's termination occurred well after he was terminated and around the time of settlement of Gardina's lawsuit. Hogan stated that he had met with the Attorney General's staff which was handling the case and Sparkman had also met with the Attorney General's staff. Because the matter was in suit, they were careful not to discuss it in detail.

Mr. Sparkman initially resisted Ms. Baker's direction to terminate Mr. Gardina. After that, he received criticism from the Appointments Office about not doing enough to terminate employees of MES and to appoint new employees referred by them. Both Baker and Hogan expressed this criticism. Sparkman made it clear that MES needed specialized people, often professionals with licenses, and that they were not referring qualified candidates. Ultimately, he was told he would be asked to resign from the position of Director of MES and he agreed to do so, subject to the payment of a satisfactory severance agreement.

Public Service Commission

Randy Allen

Randy Allen testified before the Committee on May 4, 2006. He earned his Bachelor's Degree in Accounting from Bentley College in 1979 and is a licensed CPA in both Texas and Maryland. He began his career in Texas with Dallas Power & Light Company and then managed the electricity accounting staff with the Texas Public Service Commission. He subsequently worked for the Texas Office of Public Utilities Council as a state-appointed consumer advocate. Mr. Allen moved to Maryland in 1990 and spent nine years performing accounting work for a consulting firm and then for his own firm.

In 1999 Mr. Allen was hired by the Maryland Public Service Commission as the Director of the Accounting Investigation Division. He reported directly to Executive Director Greg Carmean. His duties included running the investigative division, which was responsible for all accounting-related aspects of regulating the utilities and included rate-making functions. He was also required to perform an annual fuel audit. He supervised a staff of five accountants and one secretary. In his capacity as Director, Allen testified before the legislature regarding his technical analysis of proposed utility rates. He was a management service employee. A description of Allen's job is provided at **Exhibit 59**.

Mr. Allen received consistently favorable performance evaluations which are set forth at **Exhibit 60**. Written comments on his evaluations noted his strong analytical skills, excellent understanding of regulatory policy, and that he regularly provided new approaches to problems and functioned as a team leader. Although his evaluations were positive, shortly after Kenneth Schisler was appointed chairman, Chairman Schisler admonished Allen not to be so hard on utilities' rate increase requests.

On April 15, 2004, Craig Cheseck, Chairman Schisler's Chief of Staff, summoned Allen to the office of the Department's former personnel director where he was met by Andrea Fulton and two armed security guards. After Mr. Cheseck departed, Ms. Fulton handed Mr. Allen his

termination letter, **Exhibit 61**, informed him that his employment was being terminated immediately and that if he opted to resign in lieu of termination, he would be provided a “neutral reference.” Fulton did not respond to Allen’s questions regarding why he was being terminated. She directed him to gather his personal belongings and leave the building. The two armed officers accompanied Allen to his desk and then escorted him out of the building.

Subsequently, Mr. Allen was contacted by Commissioner McDonald, who informed him that she did not know why he was terminated and was not advised beforehand by Chairman Schisler. **Exhibit 62** is a copy of an affidavit signed by Commissioners McDonald, J. Joseph Curran, and Harold Williams, which states that they were not informed of the termination of PSC employees beforehand, were not provided any rationale for the terminations, did not participate in the decisions, and did not delegate firing authority to the Chairman. Mr. Allen was immediately replaced by an individual with no utilities accounting experience, and thereafter by a Commission employee without Mr. Allen’s experience.

Mr. Allen had previously informed the PSC that he has served as campaign treasurer for Howard County Democratic candidate C. Vernon Gray. After Mr. Gray’s defeat, Allen remained as treasurer for the next several years. Allen’s PSC colleagues were most likely aware of his political activities, none of which he conducted within the scope of his employment.

Mr. Allen was never provided with any reason for his termination. After his termination, he remained unemployed for a period of 15 months, which imposed a significant financial burden on his immediate family. Allen ultimately was employed on July 25, 2005, as the Chief Accountant with the Northern Branch of the USDA’s Rule Development Utilities programs, in Washington, D.C., where he remains today.

Since his separation, Mr. Allen has been told by former PSC colleagues that his former unit has suffered from a total lack of leadership, and that other management and technical staff have left, taking with them the Commission’s “brain trust.”

Chrys Wilson

Chrys Wilson testified before the Committee on May 4, 2006. She earned her undergraduate degree in 1973 from Glassboro State/Cheyney State. She earned her Master’s Degree in Administration from Cheyney State in 1978. Prior to State employment, Ms. Wilson’s work experience included working in the public school system as a teacher and principal, serving as Assistant Deputy Director of Intergovernmental Affairs with the U.S. Department of Agriculture during President Clinton’s Administration, and working for the New Jersey Board of Public Utilities. Ms. Wilson was active in local, State, and national Democratic politics.

In 1996 Ms. Wilson was hired by the PSC as Manager of External Relations after interviewing with the Commissioners and Chairman H. Russell Frisby. Her duties included directing, managing, and supervising the employees in the Office of External Relations, providing consumer assistance, responding to requests for review of issues from utility customers, reviewing consumer complaints on appeal, serving as chief spokesperson for the PSC for media, traveling throughout the State to educate consumers regarding rate restructuring, and providing comments and recommendations to the Chairman and other executives at the PSC. Wilson was classified as a management service employee.

Ms. Wilson reported directly to the Chairman, who at the time of her separation was Kenneth Schisler. Wilson received informal and formal reviews, and achieved the highest rating of outstanding consistently from all the chairmen she served, with the exception of Chairman Schisler from whom she never received a formal review. She was informed by Chairman Schisler, however, that she was doing a great job. She never received any negative feedback on her work. Performance evaluations are set forth at **Exhibit 63**.⁵⁹

On April 15, 2004, Ms. Wilson was invited into an office at the PSC occupied by Andrea Fulton. Two armed guards stood inside the office beside the door. Fulton handed Wilson a letter, **Exhibit 64**, which informed her of her immediate termination as an “at-will employee.” Wilson asked why she was being terminated and Fulton stated that she was not required to provide a reason. Wilson reached for the phone and stated her intention to call her attorney, but Fulton instructed the guards not to allow her to touch the telephone. Wilson was given the option to resign and accept a neutral reference in lieu of termination, but refused it. She understood this option to mean that if she refused to resign and was terminated she would be given negative references. Wilson was escorted to her office by the guards who were instructed not to allow her to touch anything, except her purse. She passed by Chairman Schisler’s office where two more guards were stationed, and heard the voices of other commissioners expressing concerns regarding the separations.

When Ms. Wilson reached her office, she attempted a second time to call her attorney, but was stopped by one of the guards, who placed his hand on hers and instructed her to put down the phone. As she was being escorted out of the building, she stopped at the ladies’ room. Wilson was humiliated by being escorted under guard. As she was composing herself, she heard the guards tell a woman to find out what Ms. Wilson was doing in there. As she was escorted out of the building with a guard on either side, she passed by the security desk and saw a series of 9” x 12” photographs of Blaine Keener, Randy Allen, Robert Higginbotham, Andy Mosier, and herself. In her 10 years of employment with the PSC, Ms. Wilson had never observed similar treatment with respect to an employee’s termination.

Ms. Wilson was replaced by Christine Nizer. Prior to employment with the PSC, Ms. Nizer served as Chief of Staff for the House Republican Minority Caucus, during which time Chairman Schisler was the Minority Whip.

Ms. Wilson is a registered Democrat, and it was known within the PSC that she served in the Clinton Administration. Wilson had also attended fundraisers and speeches for Lt. Governor Kathleen Kennedy Townsend.

After her separation, Wilson learned from Commissioner McDonald that she was fired because she was considered pro-consumer and BGE officials asked Chairman Schisler to let her go. This was corroborated by Commissioner Riley.

On May 27, 2004, Wilson filed suit against the Public Service Commission in the Circuit Court for Baltimore City seeking declaratory and injunctive relief, including reinstatement. The Circuit Court held that Chairman Schisler exceeded his authority when he terminated Wilson

⁵⁹ Ms. Wilson prepared and presented an Exhibit Book to the Special Committee to assist and supplement her testimony.

without the approval, acquiescence, or delegation of authority of a majority of the full membership of the Commission. The Court determined that it was clear that the full commission, not the Chairman, was the appointing authority. In the absence of a delegation, Wilson's termination was illegal. This decision was affirmed by the Maryland Court of Appeals. The Circuit Court ordered that Ms. Wilson be reinstated immediately to her prior position with full back-pay from the date of termination.

On the day after Ms. Wilson's reinstatement, the Commission sent a letter to Ms. Wilson stating:

While the Commission respectfully disagrees with the [Circuit] Court's determination and intends to note an appeal, the Commission currently is bound by the directive. Therefore, the Commission hereby reinstates Ms. Chrys Wilson to the position of the Manager of External Relations effective October 29, 2004.... Furthermore, the Commission hereby notifies Ms. Wilson that she is being terminated from her Management Service position with the Maryland Public Service Commission effective October 29, 2004. Ms. Wilson is directed not to report to work. Ms. Wilson is hereby granted administrative leave for October 29, 2004.⁶⁰

Exhibit 65.

Ms. Wilson believes that she was separated for political reasons. Craig Cheseck, the Chairman's chief of staff, had informed Wilson that they were making room for their own people. Mr. Cheseck's duties included gathering information and making recommendations to Chairman Schisler. Cheseck also attended staff meetings, during which he informed Wilson that he was at the PSC because the Governor wanted to move his own people into the PSC. Wilson recalls rumors that Mr. Cheseck possessed a list of names of employees to be terminated.

Blaine L. Keener

Blaine L. Keener testified before the Committee on May 4, 2006. He is the former Chief Engineer for the Public Service Commission. He received a degree in Mechanical Engineering from Lehigh in 1987 and a Masters Degree in Management from SUNY. He also spent four years in the army as an engineer. He then went to work for Merck, and in 1993 answered a newspaper ad for an engineering job at the PSC. He interviewed for the position of Public Service Engineer I – Gas/Pipeline Safety Engineer with the Chief Engineer and an Assistant Chief Engineer and was hired March 1, 1993. His hiring letter is set forth at **Exhibit 66**. He was promoted in 1994 to a Level II Engineer and in 1995 to a Level III Engineer. In August of 1998, he was appointed to Assistant Chief Engineer. In July of 2002, he was made Acting Chief Engineer following his superior's retirement.

⁶⁰ The letter was signed by three commissioners, including one, Allen M. Freifeld, who was newly appointed to the Commission since Ms. Wilson's initial termination. A majority of the Commission effected the second termination, however, and it was upheld.

After going through an in-house interview process, Mr. Keener was awarded the job of Chief Engineer in February 2003. In that position, he supervised nine engineers and one secretary. He was classified as a management service employee. He reported to Tony Myers, the Assistant Executive Director.

Exhibit 67 is a performance evaluation for Mr. Keener dated March 2003. The evaluations are all either "outstanding" or "exceeds standards." The overall rating is outstanding and he is described as having done "an outstanding job and performing at an outstanding level." From 1998 on, all of his evaluations were on the outstanding level and all feedback and written communications were positive.

Mr. Keener was on a selection panel, which included Tony Myers and Craig Cheseck, to hire a new chief assistant engineer. After the sixth interview, Mr. Keener and Mr. Myers thought the interview process was over. Cheseck told them that there would be three more applicants from the Appointments Office. Keener went on vacation and, when he returned, he was told to call Richard Schafer, one of the three applicants from the Appointments Office and offer him the position. In Keener's opinion, Mr. Schafer was not the most qualified for the position and had no experience in the relevant field. The majority of his experience was in management in the telecommunications industry. He believed the appointment was directed by the Governor's Office through Cheseck. Schafer was referred by the Appointments Office, but Keener would have chosen "probably four" other applicants over Schafer. Cheseck did not question any of the applicants during the interviews and Keener had no idea why he was on the interview panel.

Exhibit 68 is a letter from the Metropolitan Washington Council of Governments thanking Mr. Keener for his participation as a speaker. Two days later, he was terminated by **Exhibit 69**, a memorandum dated April 15, 2004, from Chairman Schisler. On April 15, he received a voice mail message to come to the personnel office in the afternoon. When he went to the office, a woman whom he learned was Andrea Fulton was behind the desk and an armed plainclothes officer was standing in the corner. Ms. Fulton handed him the termination letter. Keener asked for a reason and Fulton responded that there was no reason. He was told to go upstairs and pack his things and go. The termination letter stated that if he resigned, he would be given a "neutral" recommendation. He was escorted by two plainclothes officers to his office, packed his personal belongings, and left. Richard Schafer was Keener's replacement.

Mr. Keener spent seven months looking for employment and currently works for the Federal Department of Transportation in Pipeline and Hazardous Safety Material. He has filed suit in Baltimore City for illegal termination. As in the case of Chrys Wilson, Keener's separation was found to be illegal because it was done without the consent or delegation of the Commission. Like Wilson, Keener was reinstated and then fired a second time in September of 2004 while his suit was pending.

Mr. Keener did not have any discussion with Ms. Fulton regarding the option of resignation. He believes that he was terminated in order to have a person referred from the Governor's Office take his job.

Craig Chesek

Craig Chesek joined the Public Service Commission in July of 2003 as Special Assistant to the Chairman. He was the first person to hold such a position. His duties were to make sure that operations ran well. He reported to the Chairman but not to other Commissioners. His public utility experience consisted of working in Washington, D.C. on energy issues for Congressman Ehrlich. He was not given responsibility to evaluate personnel for termination but the Chairman would talk to him about terminating individuals to get his feedback.

Mr. Chesek was shown **Exhibit 70**, an e-mail to Diane Baker dated October 7, 2003, which states "The Chairman would like to terminate Robert Higgenbothorn [sic]. I discussed the reasons for the termination with Lisa earlier in the day." Prior to that date, he discussed that termination with the Chairman. He was instructed by his attorney not to answer any questions regarding the discussion. In response, Chesek explained that he discussed potential terminations of other PSC employees with the Chairman in the later part of the 2004 legislative session. The Chairman would inform Chesek when he was going to advise the Appointments Office that he wanted to terminate someone. He sent the October 7, 2003, e-mail to Diane Baker because the Chairman asked him to send it. Chesek was instructed by his attorney not to answer the question of who "Lisa" is in **Exhibit 70**. Chesek did not review personnel records of the terminated employees.

Next, Chesek was shown **Exhibit 71**, which is an e-mail from Diane Baker to Greg Maddalone forwarding communication from Gineen Bresso to Baker on May 19, 2004, which states: "I spoke with Craig Chesek yesterday and he wanted you to forward [blocked] updated resume to him. He did not want the e-mail from me to him for obvious reasons. Attached is [blocked] resume. Thanks again for your help with this." Chesek stated that he was unaware that Gineen Bresso, who was a Special Assistant to the Office of the Governor, was referring to Andy Beach (the blocked name), her fiancé. Despite Ms. Bresso's e-mail to Baker referring to her conversation with Chesek regarding forwarding Beach's resume, Chesek does not recall discussing Beach's hiring with Maddalone.

Mr. Chesek knew the five employees who were terminated on April 15, 2004 and had worked with Ms. Wilson. He saw resumes of candidates sent from the Appointments Office to the PSC Chairman, who shared them with Chesek. He did not recall political parties identified on them. He did not recall telling Chrys Wilson that the Governor wanted to get his own people employed at the PSC or that her position was secure.

The Appointments Office sent the resume of Richard Schafer to the PSC. Chesek attended his interview. He concurred in the decision to hire Schafer, who had the strongest background in managing engineers.

The Chairman conferred with Mr. Chesek about terminating Mr. Allen. Chesek did not know that Allen was an active Democrat until articles appeared after the previous week's hearing. Allen's replacement at the PSC lasted about a year. On April 15, Chesek went to Allen's office around 4:30 and told Allen to come with him. He took him to the 16th floor to the office where Ms. Fulton was stationed. He did not stay for the termination. Chesek had never spoken to the utilities about Allen and was not present when the Chairman told Allen he was too tough on the utilities. He was present when the Chairman discussed displeasure with his handling

of a case concerning Carnival Cruise Lines and the Maryland Pilots. Cheseck did not review any personnel files of the employees terminated on April 15 and was not aware of any personnel file review prior to the terminations.

Mr. Cheseck never received comments from any BGE employee about how Chrys Wilson did her job, nor did he receive such comments from any other utility representative. He received no such comments about any of the employees who were terminated on April 15, 2004.

Mr. Cheseck was only aware of Ms. Wilson's Democratic Party activities through the fact that she had a picture of President Clinton in her office. They also had discussed the presidential campaign and he knew that she was a Democrat and that she supported Senator Edwards. She was replaced by Christine Nizer, who worked in Homeland Security for the Governor's Office. Before that, she was Chief of Staff to the minority caucus in the legislature. She was not referred to the PSC by the Appointments Office; the Chairman hired her.

Mr. Cheseck also discussed with the Chairman the termination of Andy Mosier. His attorney instructed him not to answer any questions about the discussion.

Mr. Cheseck had never worked in a place where five professional employees were terminated without notice and escorted out by security guards. Cheseck stated that he really did not think about what impact the terminations would have on morale. He then stated that he discussed with the Chairman that the event would have an impact on morale and that it was important for the Chairman to reassure people that things were going to be alright. He agreed that they would be kidding themselves if they thought that everything was going to be "rosy" over the terminations.

When Mr. Cheseck met with the Chairman a few days before the April 15 terminations, the Chairman explained the reasons why he terminated the employees. His attorney instructed him not to answer why the employees had to be fired. Cheseck stated that the photos posted in the lobby were behind the security stand.

Mr. Cheseck concurred with the Chairman's judgment regarding three of the five employees who were fired. He refused to respond regarding the other two because of pending litigation.

Chairman Kenneth Schisler

Chairman Schisler testified before the Committee on May 11, 2006. He was appointed Chairman of the Maryland Public Service Commission on July 1, 2003. He was unsure of his date of confirmation but it was perhaps April 2004.

He testified that he did not believe that he was tasked with building a team of employees loyal to the current Administration. He claimed that the idea is a conspiracy and that his job was to hire the best professionals. Chairman Schisler denied seeing **Exhibit 1**, which is a memorandum sent by Lawrence Hogan to all Department Secretaries dated February 3, 2003, regarding hiring and dismissals. Chairman Schisler objected to being asked questions about material which he was not provided beforehand, although he refused to meet with Committee counsel before appearing to testify.

After raising the same objection as before, Chairman Schisler also denied having previously seen **Exhibit 2**, which is a memorandum from Governor Ehrlich to Department Secretaries regarding hiring and dismissals, which states, "I have specifically tasked the Appointments Office to seek, vet, and interview qualified and dedicated individuals for my Administration." Chairman Schisler stated that no one informed him that he was to submit proposed dismissals from the PSC to the Appointments Office. He did, however, inform the Appointments Office of proposed dismissals. The Chairman testified that the Appointments Office did not forward names of candidates for hiring to the PSC. He then stated that he was provided a list of individuals interested in working for State government by the Appointments Office. He stated that he was never told to give immediate attention to candidates whose names were forwarded from the Appointments Office. He then contradicted himself and stated that he was never given a list, but instead was given a stack of printed resumes. There were no political designations.

Chairman Schisler had seen a list of existing at-will positions at the PSC. He first claimed he never used the list for purposes of hiring and firing, but then stated he would consult the list to see the status of an employee when making termination decisions. When questioned regarding **Exhibit 3**, which is a memorandum from Governor Ehrlich to Department Secretaries dated April 1, 2003, regarding the Appointments Office, requesting that "every at-will position is served by an individual that is dedicated to carrying out the policies of this Administration," Chairman Schisler again posed the same objection.

Chairman Schisler stated that his foremost objective was to keep the agency working in a cohesive and collegial manner. He believed he was given some guidance with respect to hiring and terminating employees. When asked whether he submitted terminations to the Appointments Office in writing, he responded that he had no recollection of any such document. He was aware of **Exhibit 70** which is Mr. Cheseck's e-mail of October 7, 2003, to Diane Baker regarding terminating Robert Higginbotham. The purpose was to solicit feedback from the Appointments Office because of potential negative feedback from members of the General Assembly.

Chairman Schisler objected to answering when he had first researched his authority to terminate employees without the consent of other commissioners. He also objected to the question of whether he had such research done. He then withdrew his objection and stated that he had the issue researched and had the opinion of the general counsel of the PSC provided in his October 17, 2005, letter. He again refused to answer when such advice was first provided.

Chairman Schisler stated that, contrary to the Court of Appeals decision in *Public Service Commission v. Wilson*, 389 Md. 27 (2005), he believes that the Chairman was historically considered to be the appointing authority. He presented letters to support his claim, which are set forth as **Exhibit 72**.⁶¹

⁶¹ These documents do not support Chairman Schisler's assertion that the chairman of the PSC has been historically considered to be the appointing authority. Even though one of the documents reflects past Chairman Glenn Ivey terminating an employee, there is no indication of whether or not the Commission delegated its authority to the Chairman, which would have been lawful. In *PSC v. Wilson*, the Court found that although the "appointing authority" is not identified expressly in the statute with regard to the Commission, the statutory scheme in the Public Utility Companies Article demonstrates that the Commission, as a whole, is the body that possesses the authority to

Chairman Schisler stated that he made termination decisions but he consulted with Andrea Fulton. He also talked to Craig Cheseck.

With respect to **Exhibit 73**, which is an e-mail from Joseph Steffen to Michelle Lane suggesting that they keep a particular candidate in mind for the PSC, the Chairman denied any knowledge. **Exhibit 74**, which is an e-mail between Steffen and Lane, states "I'll say something to Cheseck about Barksdale today – Cheseck is CoS at PSC – and once Schisler is confirmed as PSC Director, they can start cleaning house." Chairman Schisler testified that the "cleaning house" comment had no relation to any conversation he ever had with Cheseck. He never told anyone that he had the intention of "cleaning house" at the PSC. He knew of no occasion in which Cheseck made similar comments and stated that Cheseck would not have had the authority to do so even had he made the comment. Chairman Schisler did not know of any conversations in which Cheseck spoke with Steffen.

Chairman Schisler stated that the decision to terminate Randy Allen was made on April 15, 2004. He testified that Commissioners McDonald, Curran, and Williams were consulted prior to the termination. He then stated that he did not consult the other commissioners prior to the day of the termination and that he informed them of the decision on that day. Commissioners McDonald, Curran, and Williams have provided an affidavit, **Exhibit 62**, which states "we have not been provided any information nor any rationale in reference to the termination of employment of [Keener, Allen, Higginbotham, Wilson and Mosier]."

Chairman Schisler could not recall whether Mr. Allen's performance evaluations were positive or negative. He had no recollection of looking at his file. He objected to answering questions regarding his work performance. He then stated that he believed that Allen was not developing the accounting professionals in his department, was difficult to work with, and was a disruptive force. He was not terminated for cause because he was an at-will employee. Chairman Schisler never documented any of his complaints about Allen and stated that he was not Allen's supervisor. He further stated that Allen would take all of the challenging work and leave menial tasks for other employees. He stated that Allen reported to Greg Carmean but that he did not speak to Mr. Carmean about terminating Allen "in order to protect him." He denied that he was aware of Allen's activities on behalf of Democratic candidates. Chairman Schisler stated that he would speak with Cheseck about important issues but stated that he was unprepared to describe conversations he had with Cheseck about Allen because he was not informed about the types of questions he would be asked at the hearing.

Chairman Schisler testified that he would not characterize Allen as a loyal or hardworking employee. He then stated that he did not have any recollection of anything he had done that was disloyal. He instructed Ms. Fulton to give Mr. Allen his termination letter and denied knowing whether Mr. Allen was escorted out by security. He evaded the question as to whether it was his direction to have Allen escorted out by security. He did not know Allen well enough to know if he would be destructive after the termination. He also denied that Allen's

appoint and terminate at-will employees. Because the initial termination was not effectuated by the Commission as a whole, that termination was unlawful.

picture was posted in the lobby in order to prohibit his entrance into the building. He stated that pictures were provided to security “for their reference.” They were posted in the private security area in the lobby. It was Chairman Schisler’s decision to provide the photographs.

Chairman Schisler testified that use of security was designed to “leave the terminated employees’ dignity intact.” The Chairman conceded he had no reason to believe any of the terminated employees would react violently and agreed that none of the employees had violent streaks.

Chairman Schisler refused to divulge the date of hire of Blaine Keener, former Chief Engineer of the PSC, without a personnel waiver. He denied directing Mr. Keener to hire Richard Schafer as Assistant Chief Engineer. He claimed that Keener specifically recommended Schafer for the position.

Chairman Schisler described Keener as wearing inappropriate apparel, not following directives, defying authority, and lacking control of subordinates.⁶² He did not remember creating any document criticizing Keener and did not recall reviewing his personnel file before terminating him. He stated that, after Keener was terminated on April 14, he was escorted out of the building by security and threatened an employee, kicked a trash can, and ripped off his shirt.⁶³ Security informed Chairman Schisler of Keener’s behavior after he was fired. He stated that his letter of October 17, 2005, named employees who were threatened by Keener.⁶⁴ He agreed that Keener was a good engineer but stated that he was not a good manager.

Chairman Schisler confirmed that Chrys Wilson was also terminated on April 15, 2004. He stated that he was unaware of Ms. Wilson’s political affiliations. He did not speak with anyone regarding the decision to terminate Wilson and did not recall any conversations he had with Cheseck concerning Wilson. He avoided answering whether he was aware of any documents that were critical of Wilson’s work. He described her as defensive and unable to follow protocol and stated that her writing skills were atrocious. He claimed that he spent his weekends revising her letters.⁶⁵

Chairman Schisler stated that he did not discuss Wilson’s termination with anyone outside the PSC. She was escorted off the premises by security.

⁶² Exhibit 67, Keener’s most recent performance evaluation, rates him as “exceeds standards” and “outstanding” in managing subordinates and gives him an overall outstanding evaluation. His supervisor commented that he “continues to perform at an outstanding level. His attention to detail and organizational skills are his strength.”

⁶³ During a conversation with Committee counsel on October 2, 2006, Mr. Keener denied threatening any employee, kicking a trash can or any other office property, or ripping off his shirt.

⁶⁴ The Chairman’s October 17, 2006, letter does not identify the employee who was allegedly threatened by Mr. Keener.

⁶⁵ Exhibit 98 is a group of draft letters and final letters supplied to the Committee by Ms. Wilson. Most of the revisions are minor and would have taken little time to make. No objective reading of the drafts would result in a description of them as “atrocious.”

Andrew Mosier was also terminated on April 15. Chairman Schisler refused to state whether he was escorted out by security, citing personnel confidentiality. He then stated that he assumed Mr. Mosier was escorted out by security.

Chairman Schisler did not remember meeting with Appointments Secretary Hogan to discuss the terminations that took place on April 15. Confronted with his deposition testimony from *Wilson v. PSC* at page 109, in which he stated that he met with Hogan about the five terminations, he stated that he was unsure whether he met with Hogan in person or over the phone but that he did meet with him. He then stated that he met with Hogan in person because his office is on his way home. He could not recall providing Hogan with the names of the employees to be terminated nor could he recall any comments that Hogan made during the meeting. He could not recall whether he mentioned the names of any possible replacements but conceded that he may have mentioned Schafer's name as assistant Chief Engineer. He stated that he never received any instruction from Hogan or anyone else in the Governor's office on whom to hire or fire.

All terminations took place on the 16th floor. Chairman Schisler did not speak to any of the terminated employees. He had no knowledge of any terminated employees of the PSC being escorted from the building by security on previous occasions. None of the employees had a history of vandalism, to his knowledge. He claimed that the effect of the five terminations on morale was not negative. He refused to answer whether he had ever worked in a place in which five terminations were carried out simultaneously with four employees being escorted out by security guards.

Chairman Schisler claimed that any negative effect on morale at the Commission was due to attacks on employees like Mr. Cheseck. He stated that the firing of Cheseck through budget cuts by Delegate Franchot was immoral and political oppression. He said that, because of that firing, the Committee did not have the moral legitimacy to sit in judgment of Cheseck.⁶⁶

Chairman Schisler denied that two uniformed guards were stationed outside of his office during the terminations. He then conceded that guards were placed in a manner on the 16th floor to prevent anyone from getting to his office. He did not terminate the employees himself because he was attempting to lower emotion levels. He conceded that these measures did not help avoid lawsuits and controversy.

Chairman Schisler stated that he had not had the opportunity to review any of the personnel records of the five terminated employees. He refused to answer questions from Delegate Simmons.

Chairman Schisler evaded questions about whether he waited to make the terminations until the legislative session ended and he was confirmed. He then stated that he did not remember his motivation for picking April 15 as the date of termination. He provided no response as to why he would not tell other commissioners about terminations prior to carrying them out. He stated that he did not speak to Mr. Carmean (even though he was the direct supervisor of some terminated employees) because he was attempting to protect him. He also

⁶⁶ The Committee was not, in any way, "sitting in judgment of Mr. Cheseck." It was attempting to get information from him relevant to the Resolution.

stated that he spoke to Senator Jimeno about the terminations beforehand. He conceded that the terminated employees may have been shocked because they were not given any advance notice. He stated that he did not have replacements ready to step in for any of the terminated employees. He conceded that four out of five of the terminated positions were top-level positions (excluding Mr. Higginbotham). He conceded that he was concerned that the loss of these high-level employees would disrupt the PSC's ability to function on a high level but stated he relied on other important employees to maintain continuity.

Chairman Schisler stated that the high employee turnover under him is due to the change in administration, change in party, and availability of high-paying private sector jobs. He admitted that he was given a list of individuals by the Appointments Office who were interested in working for the PSC. He then stated that it was more of a collection of resumes than a list. He refused to answer whether he spoke with legal counsel regarding the terminations. Chairman Schisler believed that one individual either retired or resigned at his request but concedes there may have been more.

Chairman Schisler testified that he never discussed PSC personnel matters with Carville Collins. **Exhibit 75** is an e-mail exchange dated February 7, 2005, between Chairman Schisler and Carville Collins. In the Chairman's e-mail, he refers to "the lobotomy I performed on the Agency." He evaded questions as to whether the lobotomy referred to the terminations of the five employees. He then conceded that he was referring to the personnel changes he made in April of 2004. He then conceded that he may have conferred with Collins about issues surrounding the terminations.

Chairman Schisler refused to answer regarding why he waited until after the legislative session to make determinations. He then stated he could not recall why he waited until April 15.

Carville Collins

Committee counsel interviewed Carville Collins, a partner at DLA Piper Rudnick. A summary of the conversation follows.

Mr. Collins was not aware of the termination of Michael Travieso prior to it taking place. He worked with Mr. Travieso professionally and thought he had a good working relationship with him. In representing his clients, it was necessary to develop working relationships with lawyers from the Office of People's Counsel and employees of the Public Service Commission. It would have been inconsistent with representing his clients for Collins to make recommendations for terminations of employees in those agencies. Some of Collins' clients agreed with positions taken by the OPC and others did not. Collins also had no insight into the suddenness of Travieso's termination.

Mr. Collins had no involvement in the termination of Paula Carmody and made no recommendation relating to it. He also had no insight on the method of termination. He had had little professional interaction with Ms. Carmody.

Mr. Collins did not have any conversations with Chairman Schisler or Mr. Cheseck about personnel decisions at the Public Service Commission. He never spoke to them about individual people. Again, it would have been inconsistent with his clients' interests and his working relationship with employees at the PSC. He had the most contact with Wilson, a little contact with Allen and Mosier, and none with Keener or Higginbotham. His interaction with Wilson was generally around the status of the complaints relating to his clients. He never complained about her and said she was good to work with and responsive.

Mr. Collins had no role in making recommendations for replacements for any employees at the Public Service Commission. He did not recall Chairman Schisler or Mr. Cheseck asking for his recommendation regarding replacements.

Mr. Collins did not make any recommendation regarding Andy Beach's employment. His opinion was not solicited. He heard about the fact that he was hired by the PSC after he was hired.

Department of Business and Economic Development

Marla Posey-Moss

Marla Posey-Moss submitted an affidavit to the Committee on May 11, 2006, which appears at **Exhibit 76**. She earned her Bachelor's Degree in Economics from Spelman College in 1996, and her Master's Degree in Public Policy and Management from the H. John Heinz III School of Public Policy and Management at Carnegie Mellon University in 1998.

Ms. Posey-Moss' employment with the State began when she served as a Governor's Policy Fellow under Governor Glendening in 1998. Her fellowship lasted for two years, during which time she worked for the Maryland State Department of Education and the Department of Business and Economic Development (DBED). After her fellowship, Posey-Moss was hired by DBED as a policy analyst on the recommendation of former Delegate Reverend Kerry Hill.

Ms. Posey-Moss' primary duties as policy analyst included conducting economic research and policy analysis, drafting briefing memoranda, and assisting in the development of regulations for a DBED program. She was classified as a special appointment. She initially reported to Assistant Secretary Rhonda J. Ray.

By the fall of 2003, Ms. Posey-Moss was placed under Chief Economist Dr. Pradeep Ganguly. She reported to Dr. Ganguly for a few weeks prior to taking maternity leave.

Shortly after the Ehrlich Administration took office, employees received weekly e-mails regarding people leaving the Department. Ms. Posey-Moss received an e-mail from Assistant Secretary Ray requesting a list of her accomplishments and an updated resume. While other employees had also received this e-mail, it was inconsistently distributed. Concerned by the request, Posey-Moss contacted the EEOC representative and inquired whether she had a choice in the matter. She was informed that she had a choice and could simply ask Ms. Ray to refer to her employee file. Ultimately, she chose to submit her resume out of fear of the consequences of refusing to do so.

Upon returning from her maternity leave on March 15, 2004, Posey-Moss was given no direction regarding assignments, and she learned that her immediate supervisor, Dr. Ganguly, had been separated.

On or about March 30, 2006, Assistant Secretary Ray requested that Posey-Moss meet her on the 15th floor, which was where the human resources office was located. She met with Assistant Secretary Ray, Charles Billings (Managing Director of the Office of Support Services), Marc Proudford (Director of Human Resources), and another human resources representative. At the meeting, Posey-Moss learned that her position was being eliminated due to a restructuring of DBED. She requested a transfer to another agency or unit but did not receive any such assistance. She received no response to her question regarding why her position had to be eliminated. Only Mr. Billings spoke during the meeting. Ms. Posey-Moss was not presented with any options such as resignation in lieu of forced separation. She remained on the State payroll until May 5, 2004. Her request for extended benefits due to the recent birth of her child was denied.

Ms. Posey-Moss did not believe that her job was eliminated due to restructuring. This rationale seemed pretextual to her in light of recent hires. She is a Democrat and believes that her separation was political in light of the changes she observed at DBED after the arrival of the Ehrlich Administration. Under the previous Administration, she worked on small-business issues, which was important to former Lieutenant Governor Kathleen Kennedy Townsend.

Ms. Posey-Moss feels that a genuine change in the culture and morale occurred at DBED once the Ehrlich Administration came into office. There had been open communication among employees, but after the new Administration arrived, employees became very guarded and careful not to say anything that could be construed as being out of line. The environment was extremely sensitive and everyone's job was under scrutiny during this time.

Ms. Posey-Moss was constantly being placed under supervisors affiliated with the previous Administration, and when she returned from maternity leave, Assistant Secretary Ray would not communicate with her and seemed to distance herself by not inviting Posey-Moss to any meetings or informing her of department activity. Although she returned from her maternity leave in the middle of a legislative session, Ms. Posey-Moss was not asked to attend any legislative meetings at DBED. A relatively new employee with far less education and experience had been hired as a policy analyst prior to the fall and assumed many of her duties and attended meetings in Annapolis.

With the exception of her final year at DBED, Ms. Posey-Moss regularly received favorable performance evaluations. She noticed that a slightly higher proportion of African-American women were let go and a large number of Caucasian men were hired for positions that were created.

Ms. Posey-Moss is presently teaching Spanish on a part-time basis. She also substitute teaches in high school. She has been unable to find full-time employment.

Department of Budget and Management*Andrea Fulton*

Andrea Fulton testified before the Committee on May 22, 2006. She is the Executive Director of the Office of Personnel Services and Benefits. She has been handling State personnel matters for 34 years. **Exhibit 77** is a November 2, 2005, draft letter to the Committee, which sets forth her views regarding the terminations during the current Administration. Due to illness, she was not able to finalize the letter. Her letter emphasizes that the current Administration consulted her about proper procedures for personnel actions and that the use of security and restricted building access in terminations has been a standard practice in the current and prior administrations.

Ms. Fulton testified that either Diane Baker or Lawrence Hogan of the Governor's Appointments Office directed her to terminate Michael Travieso as People's Counsel. She informed Travieso by telephone that he was terminated, asked him to take the things he needed that day, and said they would make arrangements to have him come back at a later time to get his personal things. Mr. Travieso asked to stay another day to finish something, but she followed the standard procedure of having him removed from the office at that time and giving him two weeks' administrative leave.

She received no reason for Travieso's termination. She never heard any concern that he might destroy State property or cease performing his duties. She simply followed the standard practice. She told him that she was not authorized to extend his time even to facilitate a transition to his successor. Her instructions were to have him terminated that day. Shortly afterwards, Sandra Guthorn was made acting People's Counsel.

Diane Baker instructed her to terminate Paula Carmody from the People's Counsel office. Ms. Fulton told Ms. Guthorn that she was sending a termination letter for Ms. Carmody. Guthorn argued against it, saying that Carmody was a good attorney. Fulton denied telling Guthorn that, if Guthorn did not terminate Carmody, she would do it herself. Fulton was not the appointing authority and believed she did not have the authority to effect the termination. **Exhibit 78** is her e-mail to Guthorn regarding Carmody's termination, including a termination memorandum. Only the appointing authority or head of the principal unit could execute a termination letter. Guthorn eventually delivered the termination letter to Carmody.

Ms. Fulton never asked why Carmody was being terminated. She never heard that she was being terminated to make room for a replacement selected by the Governor's Office or the Appointments Office. She never reviewed her personnel file or discussed her competence with anyone other than Guthorn. The Governor delegated to Appointments Secretary Hogan the authority to terminate employees in the event the appointing authority was not available. If Guthorn were unavailable, Hogan could have terminated Carmody.

With respect to the terminations at the Public Service Commission, Ms. Fulton asked Chairman Schisler if he wanted her to conduct the terminations since the PSC did not have a personnel director familiar with termination procedures. He accepted her offer. She never asked why these employees were being terminated, and it did not occur to her to ask if any of the other commissioners participated in the termination decisions.

Ms. Fulton stated that it is standard procedure to involve security officers in terminations because how people will react is unpredictable. The PSC Chairman did not express concerns regarding violent reactions.

Blaine Keener was very upset when he was terminated and leaned in toward Ms. Fulton at her table. Security officers informed her that Keener kicked trash cans around in his office.

The language in the form Termination Memorandum providing that the termination will be withdrawn and a neutral reference will be provided if the employee resigns in lieu of termination was approved by the Office of Personnel's Assistant Attorney General. They stopped using that language after learning that there were concerns about this statement being threatening to employees.

Ms. Fulton personally participated in terminations at the State Department of Assessments and Taxation, Maryland Higher Education Commission, Department of Mental Hygiene, and possibly others. All of these terminations were affected with plainclothes security officers present. Some employees went alone to clean out their offices. In one case, Fulton helped an employee pack belongings the following Saturday.

Ms. Fulton did not hear of any instructions from the Governor's Office to terminate Tom Burgess from the Department of Human Resources. She discussed the termination with Secretary McCabe. She never heard from anyone why he was terminated. She discussed with Burgess other available positions for him. The only appointment approval form she got from the Appointments Office for him was a position at DHMH.

In previous administrations, the procedure of receiving an appointment approval form was not used. They were standard procedure with the new Administration. In prior administrations, she would receive resumes with instructions to find people positions within State government. The Appointments Office in prior administrations dealt only with boards and commissions. Prior to this Administration, she did not deal with permanent State positions through the Appointments Office.

Exhibit 1 is the February 3, 2003 memorandum from Secretary Hogan to all Department Secretaries regarding hirings and dismissals. Michael Richard chaired the February 3, 2003, meeting for personnel directors from the different departments. It snowed that day so only about five directors made it. Mr. Richard distributed the forms for termination and appointment at the meeting and explained the procedure for using the forms. No action could take place until the form had been signed. Richard did not explain the criteria for terminations. At-will terminations required no reason. Richard also did not explain the criteria for hiring. He discussed only the database of online applications. Richard wanted to hire employees who shared the Governor's vision and who would make a difference in State government. Fulton had never seen any lists of job candidates that were forwarded to departments for hiring. She heard about lists from the personnel directors. She also prepared some reports for the transition team identifying at-will employees in each department. A few days after the Governor was sworn in, Mr. Hogan and Mr. Richard contacted her and asked her to prepare a list, by department, of at-will employees and a list of employees in merit-protected positions. She provided the information. They did not say why they wanted these lists.

Ms. Fulton never saw **Exhibit 79**, a memo from the Governor to Secretary Franks dated August 12, 2003, until meeting with attorneys from Mr. Finney's office to prepare to testify before the Committee. She had no knowledge that departments were being requested to report on the total number of at-will employees being hired and fired and never saw such reports.

In response to questions by Senator Stoltzfus, Ms. Fulton stated that security guards have been used during terminations in her 34 years of personnel experience. There have been no significant differences concerning terminations with this Administration and prior administrations. Political affiliation has not come up during discussions regarding employees with any of the administrations she has served.

She never looked at any personnel file for any of the terminations of at-will employees. She also had no input into the decisions. She had never terminated four people from one agency at a time prior to doing so at the PSC.

She met with Chrysovalantis Kefalas, deputy counsel to Jervis Finney, to prepare for the hearing because she is part of the Governor's staff. She understood that Mr. Finney represents the Administration.

Ms. Fulton recommended making sure that written notification is given to employees if their status changes from merit-protected to at-will. She also suggested that the at-will category is too broad. The personnel system needs a review of the testing process and perhaps the termination process. There have been more terminations under this Administration than in the previous Administration, which is not unusual with a new party administration. She estimated that 340 at-will employees had been terminated to date by this Administration.

Governor's Appointments Office

Diane Baker

Diane Baker testified before the Committee on May 22, 2006. She has been the Deputy Appointments Secretary since Governor Ehrlich's inauguration in January 2003. She was employed for eight years as Congressman Ehrlich's office manager. She refused to discuss any specific terminations under advice of counsel. She stated that, in general, decisions regarding termination were signed-off by the Appointments Secretary and Chief of Staff.

Ms. Baker initially refused to answer any questions relating to Paula Carmody's separation. Ms. Baker assumed that the direction to terminate Carmody came from Appointments Secretary Hogan, but she had no direct recollection.⁶⁷ She asked who Carmody was and was informed that Carmody was an attorney in the Office of People's Counsel. Baker then stated that all termination decisions would have been made by the Appointments Secretary or the Cabinet Secretary. She stated she did not know who made the decision to terminate

⁶⁷ During her testimony, Ms. Fulton specifically stated that Ms. Baker directed her to separate Ms. Carmody.

Carmody but said it was most likely Hogan or the Governor's Chief of Staff. She did not recall discussing Carmody's termination with anyone and no one told her why Carmody was being terminated. She was not aware of anyone who represents any utility expressing the opinion that Carmody should be terminated.⁶⁸ She never directed the firing of Paula Carmody or anyone else.

She had never seen **Exhibit 80**, the affidavit of John Sparkman. She did not recall a phone conversation with Mr. Sparkman in which she inquired why Vince Gardina had been hired or a conversation telling Sparkman that Gardina had to go because he was too political. She refused to answer specifics regarding any terminations, including Gardina's, on advice of counsel.

She next testified that she must have discussed Gardina's termination with Sparkman but did not recall the substance of the discussion. She had no recollection of contacting Andrea Fulton concerning Ms. Carmody's termination. In general, she would relay termination decisions made by Hogan or the Chief of Staff to the person responsible for effecting the termination. This would accurately describe her role in Carmody's termination.

She had no recollection of Hogan or anyone else directing her to inquire about Gardina. She did not have the authority as Deputy Appointments Secretary to decide that an at-will employee in a State agency should be terminated. Any appointing authority, including Mr. Hogan, had that authority.

She was aware that Mr. Gardina is a Democratic Baltimore County Councilman and knew this in 2003. She did not recall any discussions with anyone regarding concerns about him working at MES. She did not recall the conversation with Sparkman described in **Exhibit 80**, so she could not say whether she was quoted accurately. **Exhibit 80**, the Sparkman Affidavit, states that, in a phone conversation, Baker informed him that Gardina needed to go because he is too political and asked for Gardina's salary, title and PIN. **Exhibit 81** contains an e-mail dated September 5, 2003, from Sparkman to Baker informing of Gardina's start date, salary, title, and duties. The exhibit contains Baker's response by a September 8 e-mail asking for his PIN and stating, "I believe we may go forward with this." Baker did not acknowledge that she asked Sparkman for this information, had no further comment on the e-mail, and would not "speculate" on whether it alluded to Gardina's termination. She stated that Hogan was the only person in the Appointments Office with whom she would discuss potential terminations. She also probably discussed terminations with the Chief of Staff or Deputy Chief of Staff. She did not believe she would have discussed the reasons for terminating any at-will employee.

Ms. Baker then stated that she could not remember every termination request and had no specific recollection of any discussions concerning reasons for termination. She stated that it was not the Administration's or Appointments Office's policy to terminate people just to

⁶⁸ Committee counsel interviewed Carville Collins, a partner at DLA Piper Rudnick Gray Cary US, LLP, who represents utilities and who was counsel to the Ehrlich transition team. Mr. Collins stated that he made no recommendation regarding the termination of Ms. Carmody and that no one in the Administration sought his views on the subject. Committee counsel also interviewed Michael C. Powell, Esq. of Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC. Mr. Powell made no recommendation regarding Ms. Carmody and his views were not sought.

terminate them. Since it was not her decision to terminate anyone, she could not say whether the overall reason was to improve State government. She was involved in discussions with people who made termination decisions from time to time and they may have given reasons, but she had no recollection of any such discussions.

Ms. Baker's e-mail of September 9, **Exhibit 81**, also states "you can let Vince Gardina go. We have signed off on this end." She stated that any termination information she would have relayed came because Mr. Hogan had signed off. She had nothing further to add and no further recollection of why Mr. Gardina was terminated. She did not know what job Gardina had at MES, never reviewed his file, and did not know if anyone in the Appointments Office reviewed his file.

Ms. Baker did not recall ever being contacted by attorneys defending the State in the Gardina lawsuit. She had never heard anyone say anything about why he was terminated.

When questioned about Susan Fernandez, Baker initially explained that she would not discuss any specific details regarding Fernandez's termination. Baker stated that she assumed that she was terminated by her appointing authority and that she would not discuss the individual who was terminated. She did not believe anyone outside DJS could direct Fernandez's termination. She did not know who Fernandez is or recall anything about her.

Ms. Baker stated she has never seen or heard of a list of State employees who supported Kathleen Kennedy Townsend's gubernatorial campaign.

When shown **Exhibit 21**, she stated that she had never seen the April 29, 2003 e-mail from Greg Maddalone relating to creating a database including termination information. She did not recall binders of potential employees with ratings but they did rank employment candidates in certain ways before sending them out to different agencies for employment. Most of the rankings were based on who knew the candidates and who recommended them. They used a numerical ranking system. For instance, a candidate ranked as #1 was recommended by a legislator or someone on the Governor's staff. She did not have the list with those rankings on them. Referring again to **Exhibit 21**, Baker stated that she did not know if there is a database that reflects terminations.

Ms. Baker refused to answer any questions regarding Bruce Gilmore or his termination, which she denied knowing anything about. She stated that she did not know who discussed with DNR replacing Gilmore with Sharon Carrick. **Exhibit 82** is an e-mail from Mark Belton at DNR to Michael Richard and Diane Baker dated April 22, 2003. Sharon Carrick is identified as a "binder one candidate," which would have priority because of the recommender's status. Ms. Baker stated she had no recollection independent of this e-mail of any conversation with Mr. Belton regarding Ms. Carrick, although the e-mail states "we've discussed Sharon Carrick previously." She disagreed that the e-mail suggests that Gilmore was terminated to make room for Carrick, although Paragraph 7 of the e-mail says "I intend to dismiss Bruce Gilmore . . . this Friday, April 25th." The e-mail also states that Carrick "wants to start next Wednesday, April 30th," and Carrick replaced Gilmore.

Ms. Baker stated that the Appointments Office did not fire people in order to hire other people. She stated she did not recall anyone discussing why Gilmore was terminated. She did not recall any discussions with anyone regarding dismissing an employee to make room for a candidate who is a Republican or recommended by a Republican politician. She did not recall any discussions regarding dismissing State employees because they were Democrats or active in democratic politics.

Ms. Baker stated that she regularly deleted her e-mails pursuant to instructions from the IT department so as not to clog the system. She agreed that it was possible she deleted e-mails in 2003 during the normal course of business. She disagreed that it was part of the Appointments Office's job to ensure that people placed in at-will positions, no matter what level, would be loyal to the Ehrlich Administration.

Ms. Baker stated that she did not know and did not recall any discussions regarding the terminations of Lauren Wenzel, Tom Burke, or Diane Evans of DNR. She did not know Eric Schwaab or why he was terminated.

The general process was for departments to e-mail, fax, or telephone their proposed terminations or hirings to the Appointments Office. These requests would go on sheets that were signed by the Appointments Secretary and the Chief of Staff. The Appointments Office did not maintain copies of those forms. Originals were sent to Andrea Fulton. She did not know how many at-will employees have been terminated during this Administration. **Exhibit 83** is a March 4, 2004, e-mail from David Marks to Diane Baker regarding proposed terminations at the MTA. In the e-mail, Marks is seeking Baker's permission to terminate various MTA employees. Baker stated that she did not save this e-mail. She regularly deleted e-mails until she received *The Washington Post* PIA request.

Ms. Baker first met Joseph Steffen in 1994 or 1995 when she was working in Washington, D.C. for Congressman Ehrlich. Mr. Steffen worked in Ehrlich's district office. She stated that she did not know where he was and that she last heard from him about a year ago.

She recalled that Steffen was assigned to DHR as the Governor's Liaison in 2003 to look at the agency programs and personnel.⁶⁹ She admitted that Steffen communicated with her by e-mail but not on a regular basis. She refused to answer whether Steffen recommended terminations to her by e-mail.⁷⁰

With respect to Tom Burgess, Baker testified that she did not remember his termination nor did she recall receiving an inquiry as to whether he could accept a position at MAIF or Public Safety at the same grade. She did not recall telling anyone that Burgess could not have a similar grade position.

⁶⁹ Ms. Baker's testimony contradicted Mr. Hogan's testimony. Mr. Hogan stated that reviewing personnel and making recommendations to the Appointments Office were not within the scope of Mr. Steffen's duties at DHR, DJS, or MIA. Mr. Hogan specifically testified that he never asked Mr. Steffen to evaluate personnel and make recommendations for terminations.

⁷⁰ During his testimony, Mr. Steffen stated that he made recommendations to both Ms. Baker and Mr. Hogan by e-mail.

Ms. Baker understood that Mr. Steffen was placed at DJS to help assess a troubled agency and make recommendations on a number of things, including personnel. His next position was as public information officer at the Maryland Insurance Administration. She did not agree that Steffen took it upon himself to recommend terminations there.⁷¹ She probably conferred with Steffen regarding whether employees should be terminated at MIA. **Exhibit 84** contains a June 24, 2004, e-mail chain from Steffen to Baker requesting a list of the at-will employees at MIA. Steffen stated in the e-mail that “this isn’t officially what I do any longer” but “there are some things here I don’t see being changed without a shove coming from your end.” Baker responded by e-mail stating that “last week when we met with Al [Redmer] I gave him the current list and told him to share it with you. Larry was very frank with Al about the disappointment with lack of movement at MIA. Al didn’t seem to like it, but tough.” Steffen’s e-mail response to Baker re: “at-wills” describes a meeting after Diane Baker and Larry Hogan left in which Steffen suggested a termination and received an unfavorable response. He states that “they are not interested in moving people, even to make changes. Al did admit that bringing Ehrlich folks in would mean that some people would be getting canned.” Steffen goes on to state that he did not see too much coming down the road without a push” and suggests two candidates for termination.

Ms. Baker stated that she did not remember asking Commissioner Redmer during their meeting to share the list with Mr. Steffen. She had no comment on whether the purpose of asking the Commissioner to share the list with Steffen was to get his input on terminations. She did not agree that anyone could accurately conclude from reading these e-mails that the Appointments Office was expecting Steffen to identify employees at MIA for termination. She had no knowledge that the list was indeed shared with Steffen, and she refused to answer whether she discussed the termination of the employees whom Steffen recommended. She did not recall Steffen recommending termination of MIA employees identified in the e-mail. She did not recall whether he recommended terminating Melinda O’Malley or inquired as to whether the Assistant Attorneys General at MIA were “at-will.”

She never directed the firing of Paula Carmody or anyone.⁷² She did not remember receiving **Exhibit 83**, an e-mail from David Marks seeking permission to terminate six positions at the MTA.

She refused to answer any questions regarding why Vince Gardina was terminated other than that he was an “at-will” employee. She stated that she had no knowledge why he was included among the 300 or so “at-will” employees who were fired.

Exhibit 79 is a memorandum from Secretary Ron Franks of DNR to Governor Ehrlich with a carbon copy to Larry Hogan. Ms. Baker saw it for the first time during preparation the week before testifying before the Committee. The memorandum summarizes total “at-will”

⁷¹ Mr. Steffen testified that he continued to recommend personnel terminations at MIA.

⁷² This statement was directly contradicted by Andrea Fulton.

employees and terminated employees at the Department. She did not think the Appointments Office kept copies of these memoranda. She was not aware of the Appointments Office destroying such documents after February 1, 2005. When asked who in her office could locate these types of memos, she referred to Appointments Secretary Hogan.

Appointments Secretary Lawrence Hogan

Mr. Hogan testified before the Committee on May 22, 2006. He has been Appointments Secretary for the Governor from January 1, 2003, until the present. When asked who decided to terminate Paula Carmody's employment, he responded, "Long-standing advice of the Attorney General does not allow us to give the details nor the reasons for terminating "at-will" appointed positions." He went on to state that they had removed the People's Counsel and that Hogan was, in fact, the appointing authority and had to make the determination about what to do about the agency and who would be the acting People's Counsel.

When asked whether he had any legal advice that he was the appointing authority for the Office of People's Counsel, he evaded the question and stated that the Governor had delegated certain responsibilities to him. He then stated that the hearing was supposed to focus on low-level civil servants whose rights have been violated and that the statute requires the Governor to appoint the People's Counsel who serves at the pleasure of the Governor.

When asked if Paula Carmody was an attorney in the People's Counsel's office, he responded that he really did not know her or know too many details about her.

When asked again who made the decision to terminate Paula Carmody, he responded that he did not know the answer and that the Committee was not entitled to an answer because "these people serve at the pleasure of the Governor." He then stated that he believed that the incoming People's Counsel wanted some decisions taken care of prior to her arrival. The incoming People's Counsel was Patricia Smith, who was appointed on October 8, 2003. When asked on what he based his belief that Smith communicated that she wanted Carmody terminated, Hogan replied, "that's just my very vague recollection." Later, in response to Committee member questions requesting clarification of Hogan's statement that Carmody was separated at the request of the incoming People's Counsel, Mr. Hogan stated: "I thought that might be the case. I don't really have a direct recollection ..."⁷³ He did not recall discussing with anyone the termination of Paula Carmody. He denied discussing it with Carville Collins or anyone who represents a utility. When asked why Carmody was terminated on less than a day's notice, he responded that she was an "at-will" employee who could be terminated for any reason. He repeated that he did not know why Carmody was terminated. Hogan conceded that Andrea Fulton would have not been the one who decided to terminate Paula Carmody but would have required a directive from someone else.

⁷³ Patricia Smith, current People's Counsel, was appointed on October 8, 2003. Ms. Carmody's termination was directed by Ms. Fulton on September 9, 2003. In an interview with Special Committee counsel, Ms. Smith stated that she did not direct, recommend, or request Ms. Carmody's termination, that she had never had any personal or professional dealings with her, and that, as of September 2005, she did not even know Ms. Carmody's name. She did not know of Ms. Carmody's termination until after her appointment.

When asked with whom he discussed the termination of Vince Gardina, Hogan responded, "I did not discuss the termination of Vince Gardina with anyone." When asked who made the determination to terminate Gardina, Hogan responded, "His appointing authority, John Sparkman."⁷⁴

When asked whether he discussed Gardina's separation with Sparkman, Hogan stated, "I discussed it with Mr. Sparkman," as Sparkman was about to finalize the decision.⁷⁵ He stated that Sparkman had concerns that Gardina got his job as a result of political pressure. He stated that he had one telephone conversation with Sparkman regarding Gardina's termination. He characterized it as Sparkman asking for permission to proceed with the termination and the Appointments Office saying fine, go ahead.⁷⁶

In reviewing **Exhibit 80**, which is John Sparkman's affidavit, Hogan denied that he ever directed Diane Baker to inform Sparkman that Gardina needed to go because he was too political. Hogan went on to state that Sparkman, like many of the witnesses before the Committee, was a former political appointee of the Administration who was terminated. He stated that "Mr. Sparkman said he was pressured by Baltimore County elected officials and public officials and he named a bunch of them and Democratic elected officials in Baltimore County," and that, as a result, he had to hire Gardina.⁷⁷ Hogan again stated that he never had a discussion with anyone about terminating Gardina because of his status as a Baltimore County Councilman.

Mr. Hogan acknowledged that Gardina filed a lawsuit accusing the State of violating his constitutional rights. He stated that he was anxious to work with attorneys defending that lawsuit but was never asked and never called. He stated they never asked a single question about it. He discussed the case with the Governor's counsel who informed him that the Assistant Attorney General felt the lawsuit would be too expensive to litigate and, although it was frivolous, it would be less costly for the State to settle it. Hogan conceded that the Governor had to decide to settle the Gardina case, not the Attorney General.

Mr. Hogan stated that he was not familiar with Bruce Gilmore and did not know about his replacement as a DNR employee by Sharon Carrick. He stated that he imagined that the Appointments Office supplied Carrick's name to DNR as a candidate for Gilmore's position. He described the Appointments Office's role in terminations as ensuring that subject employees held appointed positions and that proper procedures were followed.

⁷⁴ In his affidavit, Mr. Sparkman stated that he was directed by the Appointments Office to separate Mr. Gardina.

⁷⁵ Mr. Sparkman testified by affidavit the only conversation he had with Mr. Hogan about Mr. Gardina's termination occurred well after he was terminated and around the time of settlement of Mr. Gardina's lawsuit.

⁷⁶ In his affidavit, Mr. Sparkman stated that he spoke with Mr. Hogan only after Mr. Gardina was separated.

⁷⁷ In fact, Mr. Gardina was hired by MES before Mr. Sparkman became Director. Mr. Gardina was hired on April 14, 2003, while Mr. Sparkman was hired on May 7, 2003 as Director designate and appointed as Director effective July 1, 2003.

Secretaries of departments were requested to review job applications and binders supplied by the Appointments Office. The resumes were pulled from the online applications that included a party affiliation block. Hogan stated that the party affiliation field was omitted. He had never seen a list of applications that contained party affiliation.

Mr. Hogan had heard of Eric Schwaab, a former DNR employee, and stated that there was probably a discussion with Secretary Franks about him but he could not recall the details. He recalled having some discussions with Secretary Franks about the top political appointments in the Department but could not recall names or details. He never discussed non-political appointments with secretaries nor did any other members of the Appointments Office. He stated that the Appointments Office involvement was limited solely to special appointments. Mr. Hogan declared that the Appointments Office never ordered secretaries to make any personnel changes.⁷⁸

Mr. Hogan explained that the Appointments Office only attended to positions which were special appointments. He explained that by "special appointment" he was referring to at-will positions serving at the pleasure of the Administration. While he never considered party affiliation or politics, Hogan explained "[i]t's very difficult to bring about reform and change in State government if you retain all of the appointees of the previous Administration and you don't bring anyone in to help it out."

Mr. Hogan recalled the termination of five Public Service Commission employees in April of 2004. When Chairman Schisler contacted him about terminating these individuals he asked why it was necessary to fire all five at once. He directed Chairman Schisler to consult with Ms. Fulton to insure that proper procedure was followed. Chairman Schisler asserted that there were issues of staff competency.

Mr. Hogan refused to discuss the separations that occurred at the PSC in specific detail. He imagined that with most terminations there is a cause, and the decision is made based on what is best for the agency.

In Hogan's view, the Governor's memoranda at **Exhibit 1**, which are the memoranda distributed at the February 3, 2003, meeting attended by Tom Burgess, reflect the desire to bring in the best and the brightest. Party affiliation was not a consideration.⁷⁹ He explained that the transition team assembled groups "to go in and do assessments of each agency," after which it made recommendations. Assessments pertained to the performance, processes, and policies of the agencies, and "probably" also addressed personnel. To his knowledge, none of the personnel assessments were provided to the Appointments Office.

⁷⁸ This statement was contradicted by the testimony of Andrea Fulton, Thomas Burgess, Christopher McCabe, Kenneth Montague, George Casey and the affidavits of John Sparkman.

⁷⁹ This was contradicted by Mr. Steffen, who testified that he considered party affiliation in making personnel recommendations to the Appointments Office, some of which were acted upon.

Mr. Hogan stated that he did not draft the January 17, 2003, memorandum contained in **Exhibit 85**, which might have been drafted by then Deputy Secretary Michael Richard. The memorandum stated that the Appointments Office will provide a list of professionals “who have already been identified by the Governor’s staff who should receive your immediate consideration for placement in your Department. . . . It is the policy of this Administration that all ‘at-will’ employees are employed by the Governor, and will serve under your stewardship.” He explained that Mr. Richard’s inexperience may have caused him to misstate Appointments Office policy, creating the impression that all at-will employees served at the will of the Governor himself; however, it was in fact the policy that all of the at-will employees serve at the pleasure of the Administration. The April 1, 2003, memorandum contained in **Exhibit 85** from the Governor to the department secretaries states that “Secretary Hogan will be visiting each of you in your office.” Hogan stated that, for the most part, he made these visits but rejected the notion that they were meant to hasten the dismissal of “at-will” employees and the hiring of new ones.⁸⁰

Mr. Hogan stated that it is inaccurate that Mr. Steffen was at the MIA making recommendations regarding terminations. He was an employee of the Governor who was dispatched by the Chief of Staff and Deputy Chief of Staff to DHR and DJS, two dysfunctional agencies that were having serious problems, in order to do assessments. He never had authority to terminate anyone. He would pass on perceptions of the performance of agency personnel. Hogan was not involved in giving directions to Steffen but was aware that he may have made some recommendations regarding terminations.⁸¹ He never asked Steffen to make personnel recommendations. He further stated that, as far as he knows, Steffen had nothing to do with personnel, at least not from the Appointments Office.⁸²

The August 12, 2003, memo in **Exhibit 85** from the Governor to Secretary Franks is a form document that went to all department secretaries. It was composed by the Appointments Office. Hogan did not believe that the Office kept any copies of those documents. He believed that the Governor was personally disappointed that some cabinet secretaries had not been bringing about as much change in the agencies as he had hoped. He did not believe that the other

⁸⁰ Mr. Hogan’s testimony is contradicted by documents. Exhibit 3, a memorandum from the Governor to departmental secretaries dated 4/1/03, emphasizes the need to ensure that every at-will position is served by an individual dedicated to carrying out the policies of the Administration and states that Secretary Hogan will be visiting each Secretary to assess their progress. The tone of the memorandum emphasizes the urgency of the task. Exhibit 92, an e-mail exchange between Diane Baker and Mr. Steffen, subject “At-wills”, includes Ms. Baker’s description of a meeting with Mr. Hogan and Al Redmer, director of the Maryland Insurance Administration. Ms. Baker describes giving Mr. Redmer the current list (of at-wills) and directing him to share it with Mr. Steffen. She then makes the statement, “Larry was very frank with Al about the disappointment with lack of movement at MIA. Al didn’t seem to like it, but tough.”

⁸¹ Mr. Steffen testified that he was directed by Mr. Hogan to recommend terminations from the agencies and to present his recommendations to Mr. Hogan, among others. The memoranda at Exhibit 87, from Mr. Steffen to Mr. Hogan and others, demonstrate that he did so.

⁸² Mr. Steffen testified that Mr. Hogan, among others, directed him to assess personnel and make recommendations.

departments filed responses similar to the response dated November 7, 2003 from Secretary Franks, **Exhibit 86**.⁸³ He believed that they answered verbally. He stated that it is possible that such responses exist but would not be kept on file at the Appointments Office.

Mr. Hogan believed that either Greg Massoni or Paul Schurick recommended that Mr. Steffen be interviewed by Al Redmer for the public information officer position at MIA. He had no idea whether Steffen had any background in that field. He did not recall discussing Deborah McKerrow's termination and he would not agree that McKerrow was terminated in order to place Steffen.

Mr. Hogan stated that his last communication with Steffen was well before he was terminated from State government. He stated that he "probably had maybe three or four conversations with the gentlemen ever that was just, ya know, passing by, 'how ya doin'".⁸⁴

Senator Frosh questioned Hogan about several memos from Joseph Steffen to him, Mary Beth Carozza, Steve Kreseski, and Jervis Finney in November of 2003 (**Exhibit 87**). Hogan stated that he did not recall having seen any of those memoranda. He repeated that he had very few dealings with Steffen.

One of the memos, dated November 13, 2003 describes Secretary Montague as reluctant to fire anyone. It goes on to state that Steffen will work on building cases against a number of individuals, that suitable replacements will be found, and that the Secretary will be told who is going and who is coming. It concludes, after three partial days at DJS, that the Administration/Appointments Office is going to have to force personnel changes at DJS. Hogan denied any recollection of seeing this memorandum.

Delegate Simmons questioned Hogan regarding whether he understood that under the First Amendment even employees holding special appointment positions could not be terminated for political reasons if they serve in a non-policymaking position. Hogan responded that he understood that you can terminate any at-will employee, any time, for any reason whatsoever in the sole discretion of the appointing authority.

In response to questions from the Committee pertaining to his interaction with Steffen, Hogan stated that he never spoke with Steffen about any employees who were terminated.⁸⁵ Hogan testified that he was not aware of any recommendations from Steffen that were ever acted

⁸³ Exhibit 86, from DNR, was the only report received that responds to the Governor's August 12 memorandum to all secretaries. It was produced by DNR and is addressed to the Governor through Mr. Hogan. A request for such reports from the Appointments Office produced nothing. Mr. Hogan's testimony that other Departments responded verbally to the Governor's memorandum is surprising because it attaches an Employment Status Report and directs recipients to "fax your updates" to Secretary Hogan.

⁸⁴ Mr. Steffen testified that he met with Mr. Hogan in the Appointments Office three times a month. His meetings with Mr. Hogan would range from five minutes to a half-hour, and sometimes would extend over lunch.

⁸⁵ Mr. Hogan's testimony contradicted a memorandum from Joseph Steffen directed to Mr. Hogan informing the recipients of his desire to terminate Suzanne Fernandez from her employment with DJS, despite Secretary Montague's reluctance. See Exhibit 87. Mr. Steffen requests the permission of the Appointments Office to advise Secretary Montague that her employment be terminated.

upon that related to personnel actions. He also stated that he was not involved in moving Steffen from department to department, and that Steffen did not report to him.⁸⁶ Hogan stated that he could not remember ever receiving a personnel recommendation from Steffen, and subsequently stated that he ignored Steffen's recommendations.

Office of the Governor

Joseph F. Steffen, Jr.

Joseph Steffen testified before the Committee on August 9, 2006, pursuant to a subpoena. Mr. Steffen was quoted extensively in the media and appeared or called in to radio talk shows on a regular basis in the Fall of 2005. Committee counsel contacted him on his cell phone in October of 2005 and he promptly returned the call. He expressed a willingness to meet with Committee counsel and to appear voluntarily before the Committee.

On November 4, 2005, Committee counsel met with Mr. Steffen. Steffen voluntarily answered all questions that were asked. At that point, Committee counsel did not have a complete production of documents from State agencies and consequently was not able to conduct a complete interview with Steffen. Steffen, however, expressed a willingness to meet with counsel again and to appear before the Committee. Steffen provided his cell phone number as the primary contact point and provided his address to counsel.

As hearings progressed, Committee counsel occasionally contacted Steffen and Steffen would return the calls. He kept apprised of Committee proceedings through the media. In May 2006, Committee counsel attempted to contact Steffen to have him appear at one of the three hearings to be held in May. Steffen became mysteriously uncommunicative. Numerous voice mail messages to the cell phone number he provided went unreturned. E-mail messages to his e-mail addresses achieved no response. A process server attempted to serve him with a subpoena at the address he provided and was told by another resident that Steffen had vacated the premises suddenly at the end of March. An attempt was made to serve him at another address but the apartment manager said that Steffen had recently moved out, possibly to Virginia. Inquiries with specialized locator sources and databases found no current addresses or leads. An attempt to serve a subpoena to Steffen by certified mail was returned unclaimed.

Greg Maddalone, who described himself as a good friend of Mr. Steffen since 2000, testified before the Committee on May 4, 2006. He maintained regular contact with Steffen and had talked with him a few days before appearing. He stated that he did not know where Steffen was living but that he was working in Virginia. He had Steffen's telephone number and agreed to provide it through his counsel to counsel for the Committee. The number subsequently provided by Maddalone turned out to be the same number that Committee counsel had been using to attempt to contact Steffen. Further attempts to contact him by that number achieved no response.

⁸⁶ Mr. Steffen testified that he reported directly to both the office of the Governor and the Appointments Office. He was acting at all times under the direction of both of those offices.

In July, late 2006, *The Baltimore Sun* reported Steffen working on a campaign in Harford County. Counsel for the Committee obtained a new cell phone number for him and called him. Steffen returned the call and agreed voluntarily to meet with Committee counsel, to accept a subpoena, and to appear at the Committee's next hearing on August 9, 2006.

On August 1, counsel met with Steffen at counsel's office in Towson. Mr. Steffen voluntarily appeared on time and accepted a subpoena to appear on August 9. At that point, Committee counsel had obtained numerous documents to review with Steffen and attempted to interview him about them. Steffen advised Committee counsel that he had an attorney who had told him not to answer any questions by counsel for the Committee. He identified his attorney as George Robinson. Counsel ceased attempting to interview Steffen. He left agreeing to appear on August 9 pursuant to the subpoena.

Committee counsel then contacted Mr. Robinson. Robinson stated that he did not represent Steffen as of August 1. He stated that Steffen had a meeting scheduled with him to determine whether there would be an engagement. Robinson further stated that he did not tell Steffen to state that he was represented nor did he advise Steffen not to talk to Committee counsel. Robinson stated that he would be available on August 9 and that he would like to meet with counsel for the Committee prior to that date with Steffen.

After meeting with Steffen, Robinson contacted Committee counsel and stated that he would be representing Steffen and that he would be appearing on August 9. On August 7, Robinson contacted counsel for the Committee, advising that he intended to file a motion to quash the subpoena for Steffen in Harford County Circuit Court. He further stated that Steffen would not testify on August 9.

On August 8, the motion to quash was heard by Judge Baldwin of the Circuit Court for Harford County. Judge Baldwin denied the motion and held that the subpoena was valid. Steffen and his counsel then appeared on August 9 pursuant to the subpoena.

Mr. Steffen testified that he graduated from Franklin High School in Reisterstown, Maryland in 1977. He worked for approximately one year as a power-saw operator. Next he spent a year working in the billing department for a stevedore company. He spent the next two years working in an internal auditing department for another company.

In 1982, Mr. Steffen worked as press secretary for the National Conservative Political Action Committee (NCPAC). After leaving the NCPAC, Steffen worked on the lieutenant governor campaign of Richard Viguerie in Virginia. He then spent five years working for the Maryland State Bar Association in the finance and payroll departments.

From approximately 1995 to 2003, Steffen worked in Congressman Ehrlich's 2nd District office in Lutherville. He remained in that capacity until Governor Ehrlich was sworn into office. Steffen became part of the Governor's transition team, in which capacity he interviewed employees of the prior Administration. Lawrence Hogan joined Mr. Steffen in interviewing Glendening holdovers.

After completing his transitional team work, Steffen took a job in Governor Ehrlich's finance office, where he reported to Robert Platky, who was director of the finance department, and Steve Kreseski, Chief of Staff. From his time in the finance office, Steffen recalled having seen a reimbursement check from a State employee, for phone use on a joint account she held with Vincent DiMarco, a well-known democratic lobbyist. He pointed out the check to Kreseski and commented, "Isn't this ironic?" By "ironic," Steffen explained that he found it humorous that a State employee in the Governor's Office for Crime Control and Prevention was married to a democratic activist. Shortly thereafter, Kreseski informed Steffen that Mitchell was terminated from State employment.⁸⁷

After his tenure in the finance office, Mr. Steffen was sent to the Department of Human Resources, under the titles "Special Assistant to the Governor" and "Governor's Liaison." Steffen remained on the Governor's payroll and occupied an office on the executive level of DHR, a few doors away from the Secretary's office. His duties included assessing which at-will employees should be terminated and sharing his conclusions with Mary Beth Carozza, Secretary Hogan, Assistant Secretary Baker, B. J. Harris, and Secretary McCabe.

Mr. Kreseski placed Mr. Steffen at DHR and instructed him that he was to conduct reviews and assessments and make recommendations on everything from policy and programs to personnel. Kreseski told Steffen to communicate regarding terminations with the Appointments Office and Secretary McCabe or his Chief of Staff, B.J. Harris. Steffen was instructed to observe the work performance of at-will employees. He completed these assessments while at DHR.

Exhibit 88 is an October 31, 2005 *Baltimore Sun* article in which Steffen was accurately quoted as saying that Hogan directed him "to look deeper, look for file clerks, secretaries. We have people who can do these jobs." Prior to moving to DHR, Steffen met with Lawrence Hogan and Diane Baker regarding his duties. Hogan gave him directions regarding the assessment of DHR personnel, and stated that termination recommendations were to come through the Appointments Office.

Mr. Hogan and Ms. Baker provided Mr. Steffen with a list of at-will employees at DHR. Steffen was to interview the various department heads to see how the departments were running. He was told that the people who were on the list were at-will and could be removed if he deemed necessary. He was advised to report any recommendations to the Appointments Office.

⁸⁷ Alan Woods, Director of the Governors Office of Crime Control and Prevention was interviewed by Committee counsel. He received an inquiry from the Governor's Office as to whether Ms. Mitchell was employed there, but received no direction to terminate her. In fact, Ms. Mitchell was a part-time contractual employee whose contract was being considered for renewal. Although he had no complaints with her work, Mr. Woods had determined not to have her contract renewed for budget reasons prior to receiving the inquiry.

Mr. Steffen could not recall having a version of the at-will list that contained handwritten Ds and Rs next to some employee names.⁸⁸ Steffen admitted that he sometimes used the abbreviations “D” and “R” for Democrat and Republican, respectively, in his e-mail communications.⁸⁹

Mr. Steffen stated that an employee’s political affiliation was one of the factors he considered in recommending terminations. He conceded that it was a factor in his preliminary analyses.

Mr. Steffen explained that as Special Assistant to the Governor while at DHR, he communicated with Hogan and Baker on a regular basis. He communicated his personnel recommendations to Hogan and Baker by e-mail and phone. He would also meet with Hogan and Baker at the Appointments Office in order to convey recommendations. In addition, Steffen attended weekly meetings held at the Governor’s Office two or three times a month.

Mr. Steffen could not recall reviewing any of the personnel files while assessing DHR employees, nor did he recall having had access to the files. With respect to personnel performance, Steffen would speak with Harris or the Secretary. He also observed personnel by attending meetings with them. During these meetings he represented that he was acting at the direction of the Governor. Steffen’s conversations with department heads did not concern individual personnel. Discussions with the department heads concerned the “overall” performance of the departments. He made termination recommendations based upon these discussions.

Mr. Steffen guessed that he recommended three or four employees from DHR for separation. The recommendations were made to Secretary McCabe, Mr. Harris, and the Appointments Office.

In response to media statements made by the Ehrlich Administration to distance themselves from and downplay the role of Steffen, which appear at **Exhibit 89**, Steffen responded that he believed that his roles at DHR and the other departments were significant roles in which he assessed policy and personnel and in which he reported directly to both the office of the Governor and Appointments Office. He was acting at all times under the direction of both of those offices. He believes that any description of him as a “rogue operation” would be inaccurate.

Mr. Steffen stated that he did not have any “hit list,” while at DHR containing the names of Elizabeth Seale, B.J. Harris, Denise Maker, Ted Martin, and Tom Burgess. Although he read in a newspaper report that Michelle Lane had a “death list,” he did not recall her having such a list. While at DHR he communicated regularly with Ms. Lane, who was no longer at DHR, but

⁸⁸ During the interview with Committee counsel on November 4, 2005, Mr. Steffen recalled seeing a list with “D” and “R” designations.

⁸⁹ Exhibit 96, an e-mail exchange with Ms. Baker, reflects this practice.

instead at the Office of Children, Youth, and Families. He may have had some other list containing the above names. Regarding any assessments he made of the individuals on the "hit list," Steffen believed he discussed these individuals with the Secretary and the Appointments Office.

Mr. Steffen recalled assessing Burgess, and Deputy Secretaries Seale and Maker. When asked by either Hogan or Baker whether Burgess should be terminated, Steffen responded affirmatively. His reasons for recommending termination were founded upon discussions with "[d]ifferent people" in the Secretary's office and "some of his fellow colleagues were not impressed." Steffen could only specifically recall speaking with B.J. Harris.

Mr. Steffen stated that he recommended to Hogan and Baker that Maker be terminated based upon an e-mail that had been forwarded by "someone within DHR anonymously, they wiped out their header, that Denise Maker had sent out to other people, other people being department heads, saying do not talk with Joe Steffen." Regarding Maker's termination, Steffen did not remember having made his termination recommendation for Maker in writing. He believed he made the recommendation to Hogan in person.

Mr. Steffen explained his manner of conveying termination recommendations to Hogan as often occurring in person during meetings with Hogan in the Appointments Office two to three times a month. Mr. Steffen continued this method of recommending terminations while at the Department of Juvenile Services, and to a lesser extent after he was placed at the Maryland Insurance Administration. He testified that his meetings with Hogan would range from five minutes to half an hour and sometimes occurred over lunch.

After reviewing the Forced Separation list of names reflected in **Exhibit 90**, Steffen recalled Linda Heisner, Imelda Johnson, Charles Henry, Vashti Savage, Denise Maker, Tom Burgess, and Ted Martin. He stated that he did not know that Burgess had recommended Maker for Deputy Secretary of DHR. He did not recall having made a recommendation to terminate Celeste Nader. Aside from Burgess and Maker, Steffen could not specifically recall recommending terminations of those on the list. He acknowledged that his inability to recall could be due to passage of time. Steffen also recalled recommending to Secretary McCabe that Charles Henry be terminated. He communicated his personnel recommendations to the Appointments Office. Steffen also recommended termination of some personnel at the Baltimore City Department of Social Services during his visits there.

Mr. Steffen stated that he believed that Craig Cheseck and Greg Maddalone had similar roles with respect to recommending personnel terminations at their agencies. He stated that Maddalone is a personal friend and that he has been in contact with him on a regular basis. Despite his e-mail communication to Michelle Lane which appears at **Exhibit 91**, Steffen could not recall having any discussions with Cheseck about "cleaning house" or terminating employees at the Public Service Commission.

Mr. Steffen was moved from DHR to the Department of Juvenile Services during December 2003 or January 2004. The office he occupied was on the same floor as the Secretary. At DJS he again held the title of Special Liaison to the Governor. His mandate at DJS with respect to personnel was the same as it had been at DHR. Steffen acknowledged authoring the memoranda appearing at **Exhibit 87**, directed to Carozza, S. Kreseski, Hogan, and the

Governor's Chief Counsel, Jervis Finney. The memoranda included personnel recommendations and criticisms of Secretary Montague's unwillingness to take certain personnel actions. Steffen's recommendations that Gomez and Fernandez be separated ultimately occurred. He recalled making his recommendation to Hogan that Fernandez be terminated. Steffen stated that he believed that Fernandez had a proven record of not performing in accordance with the beliefs of the Ehrlich Administration. He testified, "That's what I was told by people who knew her better than I. I hardly knew the woman." He concluded that she did not comport with the Governor's desire to "change the culture, change the way things worked." The memoranda that appear at **Exhibit 13** are representative of regular communication Steffen had with the recipients regarding his personnel recommendations. He stated that he generated probably 20-30 memoranda regarding personnel during his time at DJS. Mr. Steffen also recalled discussing his concerns regarding Dr. Kearsse.

While at DJS, Steffen attended meetings once or twice a month which were attended by the Governor's staff (numbering 60 to 70). Hogan attended many of these meeting as did Baker.

Mr. Steffen assumed the position of communications director at the Maryland Insurance Agency in June 2004. He was given that assignment after asking Hogan and Schurick for a public relations position. He interviewed with Commissioner Redmer. Mr. Steffen performed personnel reviews at MIA in concert with the Deputy Commissioner and the Commissioner.

Mr. Steffen acknowledged his statements to Ms. Baker as set forth in **Exhibit 92** regarding his impression of Chairman Redmer's reluctance to make personnel changes at MIA, and conceded that his statements to Ms. Baker expressed his view that terminations at the MIA would not result absent input from the Appointments Office. Steffen understood Baker's e-mail comments to reflect Hogan's disappointment over the lack of personnel movement at the MIA (specifically terminations and replacements with personnel recommended by the Administration). Steffen also affirmed that the reference "OUTS! to be made (per Hogan's request)" referred to terminations of employees in the e-mails at **Exhibit 93**.

Steffen recalled having a couple of conversations regarding his personnel recommendations with Hogan while he was at MIA. He continued to e-mail with Baker about personnel issues. **Exhibit 94** is an e-mail exchange between Steffen and Baker from July 29, 2004 until August 1 in which he inquired whether it is possible to "move some AG folks" at MIA. Baker responded that some of the AGs are special appointment, to which Steffen specifically inquired about Melinda O'Malley. Steffen denied ever recommending terminating Melinda O'Malley.⁹⁰

Mr. Steffen testified that he had no recollection whatsoever of Mr. D'Amico whose termination he referenced in **Exhibit 95**. He conceded that the e-mail indicated that Baker would have checked with him regarding D'Amico, who was being recommended for termination, and that he would have done so and included the information in his response to Baker. Steffen was also unable to recall why Michelle Lane was terminated.

⁹⁰ Steffen stated in his interview with Committee counsel on November 4, 2005, that he recommended termination of Ms. O'Malley.

Mr. Steffen stated that the e-mail exchange with Ms. Baker at **Exhibit 96**, in which he used Rs and Ds to denote Republicans and Democrats, reflected a typical practice.

Mr. Steffen could not recall approaching DHR's payroll department in effort to obtain confidential information regarding certain employees, or any employees.⁹¹ He also did not recall DHR counsel advising him that he could not obtain such information, nor did he recall Deputy Secretary Seale and Harris so advising him. **Exhibit 97** is a memorandum from B.J. Harris to Steffen advising him of civil liability for violations of the Public Information Act.

Mr. Steffen testified regarding his own separation from State employment. He stated that he offered an unsolicited letter of resignation to the Governor on February 8 or 9 of 2005, and it was accepted. He spoke with Mr. Schurick, who was "[t]he only person [he] could get a hold of at that time," regarding the letter and advised Mr. Schurick "[t]hat I think we have a problem coming in the paper and I might have to resign." He sent his resignation letter to Commissioner Al Redmer and the Governor on the morning of February 9, 2005, and left the office that morning. Mr. Steffen was not escorted out of the building by security guards.

Mr. Steffen recalled "one or two conversations" with Committee counsel on his cell phone. He also recalled meeting with Committee counsel in their Towson office. He indicated that he would be willing to appear before the Committee. He stated that toward the end of May, he was in e-mail communication with Richard Cross from the Governor's Office.

On advice of his attorney, Steffen refused to answer questions regarding his out-of-state move during the period of time that the Committee hearings were being held. He also refused to respond to questions regarding his communications with Maddalone, or his method of contact. On advice of his attorney, Steffen refused to answer questions regarding details of his communications with Chesebrough. Steffen also initially refused to answer questions about which attorney instructed him to not speak with Committee counsel at the August 1, 2006 meeting with Committee counsel. After Committee counsel informed Steffen that his attorney, George Robinson, informed counsel that he had not rendered this advice, Steffen stated that the instruction he received came from Aaron Kazi.⁹²

Also on advice of his attorney, Steffen refused to answer questions regarding with whom he spoke regarding his appearance before the Committee. During his employment with the State, Mr. Steffen stated that he spoke with Jervis Finney, chief counsel to the Governor, five to ten times. Some of these conversations regarded personnel matters. Mr. Steffen stated that he did not believe that the Governor was aware of his role with respect to recommending personnel terminations. Steffen did not believe that he ever did anything that exceeded his job description while he was employed by the Administration. He stated that everything he did was within the scope of his employment. He believes the Governor dubbed him the "Prince of Darkness" because he was "[a] little out of the main stream" and to a degree tough and hard-nosed. Steffen stated that he wished to be known as someone who was not hesitant to make recommendations that employees be fired. After Steffen resigned Schurick promised Steffen that he would be

⁹¹ Secretary McCabe testified that he learned that Steffen attempted to access personnel payroll records.

⁹² At the time of his testimony, Mr. Steffen was assisting Aaron Kazi in his campaign for election to Harford County Council President.

taken care of. Steffen understood this to mean that “they would look out for [him] in the future” and that he would “[p]ossibly” be provided a job. Steffen stated that he had spoken to Schurick twice since that conversation and most recently late last year. Under advice of his counsel, Steffen would not identify his employers since he left State employment.

Mr. Steffen stated that he read Mr. Cheseck’s hearing testimony transcript three weeks prior to this hearing. He stated that he disagreed with portions of Cheseck’s testimony. When informed of Baker’s hearing testimony that no meetings between Hogan, Steffen, and her had ever occurred, Steffen testified, “I don’t know why Diane would have said that.”

Legal Issues and Analysis

State Personnel Statutes - Introduction

The statutory body of law governing personnel policies and practices in the Executive Branch of the State government is extensive and complex. The statutes and regulations contain some general requirements that affect all employees, but they primarily focus on what is designated as the State Personnel Management System (SPMS). SPMS was created by a 1996 enactment of the General Assembly that incorporated many of the recommendations of the Task Force to Reform the State Personnel Management System. The 1996 enactment abolished the old Merit System structure of classified and unclassified employees and replaced it with a structure that created levels of service for employees based on the general nature of the duties. SPMS also preserved merit-based employment for the skilled and professional services (that is, protection from removal “regardless of the political or religious opinions or affiliations of the employees in those services or of any standard other than business efficiency” (State Personnel and Pension Article, § 6-102) (SPP). SPMS created other levels of service (management and executive services and special appointments) that were non-merit based positions in which the employees serve at the pleasure of their appointing authority and may be terminated without cause, in order to give managers flexibility as to the hiring and prompt removal of certain employees. In the year following the creation of SPMS, the Legislature altered the law in a significant manner with respect to a management service of at-will employees so as to require that “all personnel actions concerning an employee or applicant in the management service...be made without regard to the employee’s political affiliation, belief, opinion.” (SPP, § 5-208(c))

Most of the authority governing State employment is found in the State Personnel and Pensions Article of the Annotated Code of Maryland. Some personnel policies are established, however, in the statute of a particular Executive Branch agency and may be distinct from the procedures in the SPMS. This analysis will provide a summary of the SPMS, as well as a brief discussion of a few Executive branch agencies that have independent personnel systems.

General Provisions for All State Employees

Title 2 – Personnel Systems in the State Government – of the State Personnel and Pensions Article (SPP) sets forth specific rights and protections for State employees in all three branches of the State government. The most noteworthy provide that each State employee “shall be treated with fairness in State employment” and “is entitled to the rights and protections in this title [Title 2]”. (§ 2-301) These protections are specifically provided to every State employee because “the State recognizes and honors the value and dignity of every person and understands the importance of providing employees and applicants for employment with a fair opportunity to pursue their careers in an environment free of discrimination or harassment prohibited by law.” (§ 2-302(a)) In upholding this purpose, personnel actions are required to be made without regard to: “age; ancestry; color; creed; marital status; mental or physical disability; national origin; race; religious affiliation, belief, or opinion; or sex.” (§ 2-302(b)) The rights and protections of employees are enhanced by § 2-303 which states that “the State recognizes the rights and protections afforded to its employees under federal law.” Under that section as well, denial of

employment for medical reasons must comply with applicable federal and State laws, and “a State employee may not be denied the opportunity to seek, qualify for, or receive any promotion solely because the employee is on leave for maternity reasons or sick leave” under specified circumstances.

The rights of each State employee are further protected by § 2-304(a)(1) of SPP which states that “employment by the State does not affect any right or obligation of a citizen under the Constitution and laws of the United States or under the Constitution and laws of the State.”⁹³ Under other provisions of that section, a State employee is expressly authorized to “freely participate in any political activity and express any political opinion”, except for employees of a local board of elections and employees of the Department of Legislative Services.⁹⁴ Section 2-304 also prohibits requiring a State employee to provide any political service or make a political contribution. The use of political influence in personnel actions is also restricted by § 2-307, which states that, “a State employee may not use, threaten to use, or attempt to use political influence or the influence of any State employee or officer in gaining an unfair advantage in any personnel decision affecting the employee, including a decision about promotion, transfer, leave of absence, or increased pay, or in disciplinary actions.”

Overview of the State Personnel Management System

The structure of the State Personnel Management System (SPMS) is provided in Title 6 of the SPP Article. The SPMS is under the authority of the Secretary of Budget and Management (DBM) and “establishes categories of service for employees based on the general nature of the employee’s duties or method of appointment; and provides procedures for the appointment, discipline, and termination of employees in each service.” (§ 6-102) It also “provides for a system of merit employment in the skilled service and professional service, regardless of an applicant’s political or religious opinions or affiliations or of any standard other than business efficiency.” As the head of the system, the Secretary of DBM plays an important role in the management of the system. For example, the Secretary assigns the various classifications of positions in the SPMS and designates the positions that are filled by special appointment. (§ 4-201) The Secretary also establishes the standards and general procedures to be used to classify positions and approves a position classification plan submitted by the head of a principal unit. (§§ 4-202 and 4-203)

The different employment categories in the SPMS are established in Title 6, Subtitle 4 of the SPP Article. The five services are: skilled service (§ 6-401); professional service (§ 6-402); management service (§ 6-403); executive service (§ 6-404); and special appointments (§ 6-405). All positions are in the skilled service unless otherwise provided (§ 6-401). A position is in the professional service if it requires advanced knowledge in a field of science or learning

⁹³ As discussed, *infra*, State employees have federal and state constitutional protections against political firings. U.S. Const. Amend. I; Md. Decl. of Rights, Art. 24, 40.

⁹⁴ Section 2-301 of the Election Law Article prohibits members of the State Board or local board from holding office or taking an active part in political management or political campaign. Section 2-1205 of the State Government Article requires the Legislative Policy Committee to adopt guidelines that govern political activity for employees of the Department of Legislative Services.

customarily acquired by a course of specialized intellectual instruction and study. Additionally, these positions normally require a professional license, advanced degree, or both (§ 6-402). Positions in the management service primarily involve direct responsibility for the oversight and management of personnel and financial resources, require the exercise of discretion and independent judgment, and are not in the executive service (§ 6-403). The executive service includes positions such as the chief administrator of a principal unit or a comparable position; a deputy secretary or assistant secretary of a principal unit, or any other position that the Secretary of DBM determines has similar stature and should be included in the executive service (§ 6-404). Finally, special appointment positions can include individuals in the skilled service, professional service, management service, or executive service. A special appointee is:

1. a position to which an individual is directly appointed by the Governor by an appointment that is not provided for by the Maryland Constitution;
2. a position in which an individual is directly appointed by the Board of Public Works;
3. as determined by the Secretary, a position which performs a significant policy role or provides direct support to a member of the executive service;
4. a position that is assigned to the Government House;
5. a position that is assigned to the Governor's Office; and
6. any other position specified by law to be a special appointment. (§ 6-405)

These different levels of service are the foundation of the SPMS, as the personnel policies governing each individual position are determined by the level of service.

General Procedures for SPMS Employees

There are a few general employment procedures that apply to employees in the SPMS regardless of their class of service. For example, § 7-102 of the SPP Article requires that each employee in the skilled service, professional service, and management service be provided with a written position description that describes the duties and responsibilities the employee is expected to perform and the standards for satisfactory performance. This position description must also be provided to successful applicants before they accept appointment to the position. Additionally, Title 7, Subtitle 5, of the SPP Article requires performance evaluations to be completed every six months for each employee in the skilled service, professional service, and management service.

There are also general disciplinary actions that apply to all employees in the SPMS. In the case of discipline, §11-104 authorizes an appointing authority to take certain disciplinary actions, such as reprimand, suspension, or termination. The causes for automatic termination of employment are listed in §11-105. Before taking any disciplinary action related to employee misconduct, an appointing authority has 30 days to investigate the alleged misconduct, meet with the employee, consider mitigating evidence, impose the discipline, and advise the employee in writing of appeal rights. (§ 11-106)

Provisions for Skilled Service and Professional Service

There are a number of provisions that provide the structure for the hiring and termination process for positions in the skilled and professional service. Special appointees in the skilled service or professional service, however, are exempted from these provisions.

Hiring

If an opening exists in the skilled or professional service, the agency must first develop a position selection plan, which includes a description of duties, minimum qualifications, any limitations on selection, and the process for the appointment. (§§ 7-201 and 7-202) § 7-203 authorizes an appointing authority to select candidates from either an existing list of eligible candidates or by recruitment. If the agency decides to recruit, § 7-204 specifies that job announcements must include the position description, minimum qualifications, descriptions of any tests that will be given, and deadlines and locations for submitting applications. Prior to administering an examination, the appointing authority must determine a list of qualified applicants. This determination ensures that those applicants taking the exam have the minimum qualifications, such as education and experience, necessary for the position. (§ 7-205 and COMAR 17.04.03.04) Tests can be administered to evaluate job-related knowledge, skills and abilities; and credits may be applied towards an applicant's score as long as they exceed the minimum passing score. (§§ 7-206 and 7-207 and COMAR 17.04.03.03) The appointing authority must place applicants into categories, such as best qualified, better qualified, qualified, and unsatisfactory. Appointments are then made from a certain category based on the number of qualified applicants. (§§ 7-208 and 7-209). The final step in the appointment process for the skilled and professional service is a six month period of probation. (Title 7, Subtitle 4)

Separation

For an employee in the skilled or professional service, COMAR 17.04.05.01 specifies that a disciplinary action may be taken because of an employee's unsatisfactory performance of duties and responsibilities, or an employee's misconduct. (See also COMAR 17.04.05.03 and .04) For either type of disciplinary action, the appointing authority must investigate the situation, notify the employee, meet with the employee, and determine the appropriate discipline. In a disciplinary action relating to employee misconduct, the appointing authority must also consider any mitigating circumstances. After an employee receives notice of the appointing authority's determination of the appropriate disciplinary action, the employee has 15 days to file an appeal to the head of the principal unit. Upon receipt of the appeal, the head of the principal unit has 15 days to issue a written decision that addresses each point raised in the appeal. (§ 11-109) In a disciplinary action against an individual in the skilled or professional service, the appointing authority has the burden of proof by a preponderance of the evidence in the appeal proceedings. (§ 11-103) If an employee is on probation when the disciplinary action is taken, however, an employee may only appeal on the basis that the action was illegal or unconstitutional. (§ 11-109) After receiving the decision of the agency, the employee has 10 days to appeal to the Secretary of DBM. The Secretary then has 30 days to mediate a settlement between the employee and the unit or refer the appeal to the Office of Administrative Hearings (OAH). OAH has 30 days to schedule a hearing and notify the parties of the hearing date. At the close of the hearing, OAH has 45 days to issue a written decision. The decision of OAH is the final administrative decision.

(§ 11-110) Except for automatic terminations, each level of review must consider mitigating circumstances when determining the appropriate discipline. (COMAR 17.04.05.02) OAH may not change the discipline imposed by the appointing authority, however, unless the discipline was clearly an abuse of discretion and clearly unreasonable under the circumstances.

Additional Protections

There are additional statutory provisions that provide protections to employees in the skilled service or professional service. In addition to any legal or constitutional protections, §5-208 of the SPP Article requires personnel actions to be made without regard to political affiliation, belief, or opinion, or any other non-merit factor. Section 15-106 also limits the use of political influence in personnel actions by stating “a person may not use the person’s influence or official authority to secure an appointment or an opportunity for an appointment to a position in the skilled service or professional service in exchange or as a reward for personal service or political service.” Finally, § 15-107 prohibits an employee from using a threat or coercion to induce an employee in the skilled service or professional service to resign, take a leave of absence, or waive a right granted by the SPP Article.⁹⁵

Provisions for Management Service, Executive Service, and Special Appointments

There are very few provisions that provide for the hiring and termination of employees in the management service, executive service, and special appointments.

Hiring

Section 7-301 of the State Personnel and Pension Article authorizes an appointing authority to appoint individuals to the executive service, the management service, as special appointments or as emergency appointments. The Secretary of DBM is required to provide guidelines to an appointing authority that ensure that individuals appointed to these positions are qualified to perform the work described in the position description. Individuals who are appointed to a position in the management service or as a special appointment are specifically exempted from the period of probation required for the skilled and professional service by Title 7, Subtitle 4 of the SPP Article.

⁹⁵ However, SPP provides no criminal sanction for firing an employee for political reasons in violation of §15-106 or -107.

Separation

Section 11-305 states that an employee under a special appointment, in management service, or in executive service, serves at the pleasure of the employee's appointing authority and may be terminated for any reason. COMAR 17.04.05.05 clarifies the extent of the at-will status of employees in these positions by stating that an employee may be terminated or disciplined for any reason that is not illegal or unconstitutional. Section 11-113 of the SPP Article authorizes an employee in the management service, executive service, or under a special appointment to file a written appeal of a disciplinary action with the head of the principal unit. The appeal must be filed within 15 days after the employee receives notice and may only be based on the grounds that the disciplinary action is illegal or unconstitutional. The employee has the burden of proof in an appeal and the standard of proof is a preponderance of the evidence. (COMAR 17.04.05.01) Within 15 days after receiving an appeal, the head of the principal unit must issue a written decision to the employee, which is the final administrative decision.

Additional Protections

Section 5-208(c) of the SPP Article provides that all personnel actions for employees in the management service "be made without regard to the employee's political affiliation, belief, or opinion." This protection is in addition to whatever legal or constitutional protections an employee or applicant has.

Specific Personnel Process in Certain Agencies

Maryland Department of Transportation

The head of the Maryland Department of Transportation (MDOT) is the Secretary of Transportation, who is appointed by the Governor with the advice and consent of the Senate. Section 2-103.4 of the Transportation Article authorizes the Secretary of Transportation to establish a human resources management system based on merit for employees of the Department and its units. This system is separate from the SPMS system. COMAR 11.02.02.01 establishes the categories of employees within MDOT, as well as the process for appointment and termination. The largest category of employees is in the career service.⁹⁶ A career service employee is hired from a competitive list of eligibles and may only be terminated for cause after the completion of a required probation period. After examinations are given, eligibles are placed into categories ranging from qualified to best qualified and the appointing authority selects a candidate from the highest category. (11.02.02.02) As the last stage of the appointment process, the career service employee must serve a six-month probation period. (11.02.02.05) The at-will categories in the MDOT system are the executive service and commission service.⁹⁷ Executive service employees are hired based on their experience or other relevant qualifications and serve

⁹⁶ There are 7,037 employees in the career service.

⁹⁷ There are 754 employees in the executive service and 14 employees in the commission plan service.

at the pleasure of the appointing authority. These employees are not required to have a period of probation. Finally, commission plan employees are appointed to positions comparable to those in private industry and also serve at the pleasure of the appointing authority.

COMAR 11.02.08.01 establishes the types of disciplinary actions that may be taken for career service employees, including termination. This regulation specifically states that “disciplinary action is not allowed because of the religious or political opinions or affiliations of any employee, or because of the failure to contribute to any fund.” The reasons that constitute cause for termination of career service employees are listed in COMAR 11.02.08.06. These reasons include incompetence, insubordination, bribery or extortion, act of misconduct, or unwarranted or excessive force. The Secretary must provide the employee a written statement of the charges and the appropriate appeal route, including the time frame for appeal to OAH. Upon receiving notice, the employee has 10 days to appeal the termination to OAH. OAH must hear the appeal within 90 days and render a proposed decision to the Secretary of Personnel within 45 days.⁹⁸ (COMAR 11.02.08.10) Either party has 15 days to file exceptions to the proposed decision, which must be heard by the Secretary of Personnel within 30 days. After the hearing, the Secretary of Personnel has 45 days to render the final decision which is the final administrative decision. The standard of proof is a preponderance of the evidence and the appointing authority has the burden of proof in the termination of a career service employee.

COMAR 11.02.08.07 establishes the procedure for the discipline or termination of an executive service or commission plan employee. An appointing authority may recommend the action to the Secretary of Transportation. In the Secretary’s discretion, the recommended action shall be approved or disapproved. If the Secretary approves the action, the appointing authority sends written notice to the employee, including the appropriate appeal route and time frame. An executive service or commission plan employee may appeal within five work days from the receipt of notice. The appeal is limited to the legal and constitutional basis for the action. After the appeal is filed with OAH, the process is the same for an executive service position or a commission plan position as the process for a career service position. The executive service employee or a commission plan employee, however, bears the burden of proof.

Finally, COMAR 11.02.04.02 states that departmental actions, policies, and management practices are required to be nondiscriminatory and administered without regard to “race, color, creed, political or religious affiliation or belief, national origin, marital status, sexual orientation, gender, age, or physical or mental disability.”

Maryland State Department of Education

The State Superintendent is appointed by the State Board for a term of four years. Section 2-104 of the Education Article provides that “from the nominees proposed by the State Superintendent, the State Board shall appoint all professional assistants to the Department, who shall be in the executive service, management service, or special appointments in the State Personnel Management System.” These professional assistants include no more than three

⁹⁸ It seems that the MDOT regulations have not been amended since before 1996, as the Secretary of Personnel was abolished and all duties were transferred to the Secretary of DBM in the reform of the SPMS system.

Deputy State Superintendents of Schools, assistant State superintendents and directors, and any other professional assistants and agents authorized by the State Board and provided in the State budget. All professional assistants grade 31 and above serve at the pleasure of the State Board and the State Superintendent.⁹⁹ All other professional assistants may be removed in accordance with procedures set by the State Board. In the case of nonprofessional assistants, the State Superintendent is only authorized to appoint and remove all clerical assistants and other nonprofessional personnel in accordance with the skilled service provisions of the SPMS.

The Maryland State Department of Education has developed disciplinary action policies that provide the procedure for the termination of employees. Employees can be disciplined for unsatisfactory performance or misconduct. Only the State Superintendent can authorize the termination of employees. Employees who are not designated as professional assistants/special appointments are removed in accordance with the procedures for skilled service and professional service in the SPP Article.

Employees who are professional assistants and special appointments serve at the pleasure of the State Board and the State Superintendent. An employee is provided written notice of termination at least two weeks before the effective date. Professional assistants from grade 18 through 26 and administrators and supervisors under the Institutional Educator Pay Plan must file a written appeal with the State Board within 10 days of the written notice of termination. The appeal is limited to the legal and constitutional basis for the termination and is conducted by Office of Administrative Hearings (OAH). The OAH provides a recommended decision to the State Board of Education. After OAH provides the recommendation to the State Board, either party has 10 days to file objections to the recommended decision. The State Board issues the final written decision on the termination.

Professional assistants who are not in grades 18 through 26 may be dismissed for cause.¹⁰⁰ This includes reasons such as immorality, misconduct, insubordination, incompetence, or neglect of duty. The employee receives written notice two weeks before the effective date of the termination. Within five days of the written notice, the employee is provided an opportunity to discuss the charges with the Superintendent's designee. The Superintendent's designee must determine if there are reasonable grounds to believe the charges and issue a written decision within three days of the conference. The employee must file a written appeal with the State Board within 10 days of the written decision of the Superintendent's designee and the hearing is conducted by OAH, who provides a recommended decision to the State Board. Either party may file exceptions to the proposed decision within 10 days. The State Board makes the final decision on the termination.

⁹⁹ There are 11 employees at MSDE who are above grade 31. These employees seem to be physicians.

¹⁰⁰ There are 250 employees between grades 18 and 26, 493 employees below grade 18, 944 employees in a special pay plan.

Public Defender

The Office of the Public Defender (OPD) is in the Executive Branch. The head of the Office is the Public Defender, who is appointed by the board of trustees and serves at the pleasure of the board of trustees. Article 27A, § 3(b) authorizes the Public Defender to appoint a deputy public defender, and one district public defender for each district of the District Court. Assistant public defenders may also be appointed by the Public Defender. The deputy public defender, the district public defenders, and the assistant public defenders serve at the pleasure of the Public Defender. The OPD follows the policies and procedures of the SPMS.

Maryland Insurance Administration

The Maryland Insurance Administration (MIA) is an independent unit of State government. The head of the MIA is the Maryland Insurance Commissioner, who is appointed by the Governor with the advice and consent of the Senate, and serves a four-year term. Section 2-105 of the Insurance Article specifies that “all employees of the Administration that serve in a management, professional, or technical capacity are in the executive service, management service, or are special appointments in the SPMS and serve at the pleasure of the Commissioner.”¹⁰¹ All skilled service employees of the administration must be appointed and terminated by the Commissioner in accordance with the skilled service provisions of the SPMS. (IN, § 2-106) As the statute refers to the SPMS for each of the levels of service, all personnel procedures within the MIA are in accordance with the procedures established in the SPP Article.

Department of Business and Economic Development

The Department of Business and Economic Development (DBED) is a principal department of the State government. The head of the Department is the Secretary of Business and Economic Development, who is appointed by the Governor with the advice and consent of the Senate. Article 83A, § 2-102 provides that the Deputy Secretary, staff assistants in charge of particular areas of responsibility, and professional consultants serve at the pleasure of the Secretary. All other employees of the Secretary’s office must be appointed and terminated by the Secretary in accordance with the skilled service or professional service provisions of the SPMS, with the exception of special appointments.¹⁰² Section 2-105(i), however, provides that “department employees hired after June 30, 1995, shall be in the executive service, management service, or special appointments in the SPMS.”¹⁰³

¹⁰¹ There are no employees at the MIA who are classified as professional service employees.

¹⁰² There are only 41 employees classified in the skilled service and no employees are classified as professional service. There are 241 employees classified as special appointments.

¹⁰³ Enacted by Chapter 120 of the Acts of 1995, and modified by Chapter 743 of the Acts of 1997.

Overview of Relevant Case Law and Opinions of the Attorney General of Maryland

Guidance on the ability to terminate a State or other public employee for political party affiliation comes from case law – that is, court decisions arising from lawsuits that establish precedents and which have the same force and effect as lawfully enacted statutes. Political affiliation falls under the rights of freedom of speech and freedom to associate protected by the First and Fourteenth Amendments of the U.S. Constitution. The Supreme Court – the decisions of which are considered to be the supreme law of the land and which prevail over State statutes that are contradictory or silent on the subject of political firings – has developed certain tests and factors in a determination of whether a political firing was constitutional. The fundamental premise of political firing cases can be stated as follows: “to the victor belong only those spoils that may be constitutionally obtained” (quoting Justice Brennan in a 1990 case decided by the United States Supreme Court and discussed below).

United States Supreme Court Cases

The Supreme Court enunciated broad principles of protection for public employees in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). The case involved New York statutes that barred employment merely on the basis of membership in certain types of political organizations. The Court held that political association alone could not, consistent with the First Amendment, constitute an adequate ground for denying public employment. The case established a presumptive prohibition on infringing free speech and association rights of public employees.

In *Elrod v. Burns*, 427 U.S. 347 (1976), non-civil service employees of the Sheriff’s Office of Cook County, Illinois, brought a class-action suit alleging that they were fired or threatened with dismissal for the sole reason that they were not affiliated with or sponsored by the political party of the sheriff. The Supreme Court recognized the impact of the patronage system on an employee’s First Amendment freedoms, stating “political belief and association constitute the core of those activities protected by the First Amendment.” *Id.* at 356. The Court found that, in the case of public employment, restraints on First Amendment protections could be permitted for appropriate reasons. “If conditioning the retention of public employment on the employee’s support of the in-party is to survive constitutional challenge, it must further some vital government end by a means that is least restrictive of freedom of belief and association in achieving that end, and the benefit must outweigh the loss of constitutionally protected rights.” *Id.* at 363.

The Court rejected the argument that patronage was needed to ensure effective government and the efficiency of public employees, but found some merit in the idea that patronage is needed to ensure that the new administration be able to implement new policies that were presumably endorsed by the electorate. To achieve this goal, the Court found that “limiting patronage dismissals to policymaking positions [by a new administration] is sufficient to achieve this governmental end.” *Id.* at 367. The definition of a “policymaking” position was recognized by the Court to be complicated.

No clear line can be drawn between policymaking and non policy-making positions. While non policy-making individuals usually have limited responsibility, that is not to say that one with a number of responsibilities is necessarily in a policymaking position. The nature of the responsibilities is critical.... In determining whether an employee occupies a policymaking position, consideration would also be given to whether the employee acts as an adviser or formulates plans for implementation of broad goals. *Id.* at 367-8.

The Court found that general patronage dismissals are unconstitutional and that such dismissals must be limited to certain types of policymaking positions.

In *Branti v. Finkel*, 445 U.S. 507 (1980), the Supreme Court clarified the test established in *Elrod*. In *Branti*, two assistant public defenders filed an action based on the allegation that the newly appointed public defender was about to discharge the plaintiffs solely for their political affiliation. The Court held that “the ultimate inquiry is not whether the label ‘policymaker’ or ‘confidential’ fits a particular person; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.” *Id.* at 518. The Court recognized that party affiliation may not be relevant to every policymaking or confidential position, and, therefore, a political patronage firing of a public employee serving in a policymaking position for which party affiliation is irrelevant would be unconstitutional. On the other hand, the Court stated that there are positions that would not be classified as “policymaking” but where political affiliation would be a valid criterion and, therefore, patronage firings from those positions would not be unconstitutional.¹⁰⁴

In *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), the Supreme Court extended the holdings of *Elrod* and *Branti* by determining that promotions, transfers, and recalls after layoffs based on political affiliation or support are also an impermissible infringement on the First Amendment rights of public employees. In *Rutan* low-level public employees challenged the Governor’s use of political considerations in hiring, rehiring, transferring, and promoting. The Court concluded that “deprivations less harsh than dismissal that nevertheless press state employees and applicants to conform their beliefs and associations to some state-selected orthodoxy violate First and Fourteenth Amendment rights of employees.” *Id.* at 75. The Court also stated clearly that “the First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees’ freedom to believe and associate, or to not believe and not associate.” *Id.* at 76. As a result, “conditioning hiring decisions on political belief and association plainly constitutes an unconstitutional condition, unless the government has a vital interest in doing so.” *Id.* at 78. Thus, a hiring decision that is made for political reasons could violate the protections of the First Amendment if there is no compelling reason for the position to be political.

¹⁰⁴ The protection afforded public employees has not been diminished by the May 30, 2006, Supreme Court decision in *Garcetti v. Ceballos*, 126 S. Ct. 1951 (2006). The Court held that when a public employee engages in speech as part of his official duties, rather than as a private citizen, there is no First Amendment protection.

Circuit Court and Federal District Court Decisions

The Supreme Court's test established in *Elrod* and *Branti* was applied by the Fourth Circuit Court of Appeals in *McConnell v. Adams*, 829 F. 2d 1319 (4th Cir. 1987). *McConnell* involved two registrars who alleged that they were not rehired by county electoral boards because of their political affiliation. The Court stated that the principles established in *Branti* for dismissals should be applied to the failure to rehire an individual in determining the constitutionality of patronage employment practices. Although Virginia statutes require certain political party affiliation for the members of the electoral boards, there is no requirement that registrars be members of the majority political party. In fact, the Court found that party affiliation would detract from the registrar's job performance. "Party affiliation must be more than a matter of convenience; it must be an appropriate requirement for the position." *Id.* at 1324. As a result, the Court found that the failure to rehire the registrars violated the First Amendment.

In *Stott v. Haworth*, 916 F.2d 134 (4th Cir. 1990), the newly elected Governor of North Carolina had stated during his campaign that his goal was to cut back on the number of state employees holding exempt positions. At the trial court level, the plaintiffs moved for class certification, purporting to represent over one hundred and thirty government employees holding exempt positions who were subject to adverse personnel action. On appeal, the Fourth Circuit held that "mere allegation of political patronage dismissal falls short of stating a cause of action capable of class treatment. The inquiry must focus on the claim of the individual." *Id.* at 141. The Fourth Circuit also restated the test to be applied to a determination about a patronage dismissal.

A threshold inquiry...involves examining whether the position at issue, no matter how policy-influencing or confidential it may be, relates to 'partisan political interests...or concerns.' That is, does the position involve government decision making on issues where there is room for political disagreement on goals or their implementation? Otherwise stated, do party goals or programs affect the direction, pace, or quality of governance? If this first inquiry is satisfied, the next step is to examine the particular responsibilities of the position to determine whether it resembles a policymaker, a privy to confidential information, a communicator, or some other office holder whose function is such that party affiliation is an equally appropriate requirement....in conducting this inquiry, courts focus on the powers inherent in a given office, as opposed to the functions performed by a particular occupant of that office. *Id.* At 142-3

The court held that there was a presumption that the discharge of the employees in exempt positions was proper, but "the critical and dispositive question is whether a particular position is one that requires, as a qualification for its performance, political affiliation." *Id.* As a result, the court invalidated the class certification and remanded the case for resolution of the individual cases.

In *Akers v. Caperton*, 998 F.2d 220 (4th Cir. 1993), a case that arose in West Virginia, the court elaborated on the analysis of *Branti* by creating a balancing test between the employee's policymaking authority, on the one hand, and the employee's First Amendment right to political party affiliation, on the other. The court's decision thus interpreted the *Branti* test of whether party affiliation is an appropriate requirement of the effective performance of the public office position involved as one being a matter of degree. The employees in the *Akers* case were county maintenance supervisors, and the court found that the low-level policymaking authority granted to them did not outweigh their First Amendment rights of political party affiliation. The court noted that although a "[s]uperintendent is frequently in contact with the public, this contact alone does not make an employee a 'communicator' within the meaning of [the Elrod case]..." *Id.* at 225. Using the standard established in *Stott v. Haworth* (discussed *supra*), the court concluded that "there is no rational connection between shared ideology and the performance of this low-level job."

McCrerey v. Allen, 925 F. Supp 1123 (E.D. Va. 1996), involved a claim brought against public officials for violation of First Amendment rights based on political affiliation after plaintiff's discharge from her position as Deputy Administrator for Regulatory Programs of the Department of Professional and Occupational Regulation and her rejection from consideration for the new position of Chief Deputy Director of the same unit of the Commonwealth of Virginia. The new position was created after the employee had been terminated from the Deputy Administrator position. After restating the holding of *Branti*, *Elrod*, and *Stott*, the court found that, if the termination of the employee was politically motivated, it would have been constitutionally permissible as both positions required the holder to be policymakers, privies to confidential information, and communicators.

In *Conjour v. Whitehall Township*, 850 F. Supp 309 (E.D. Pa. 1994), plaintiff asserted that he was terminated from his position as chief of police for his political affiliation, in favor of a political ally of defendant, the new township executive, thus violating his First Amendment rights of speech and association. The plaintiff, a Republican, was not politically active. There was evidence that he was terminated to be replaced by a Democratic patrolman who actively helped the new executive in her campaign. The court held that the First Amendment protects public employees from termination to make room for political supporters because "a citizen's right not to support a candidate is every bit as protected as his right to support one." *Id.* at 317. See also *Bennis v. Gable*, 823 F.2d 723, 731 (3d Cir. 1987).

In response to defendant's affirmative defense that plaintiff was in a policy-making position for which political affiliation was an appropriate consideration for employment decisions, the court explained that "[b]ecause the introduction of political affiliation as an employment factor is a significant encroachment on First Amendment activity and belief, the defendant must demonstrate an 'overriding interest' in order to justify its use." *Id.* at 318. The proper inquiry is:

not whether the label “policymaker” or “confidential” fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.... Should a difference in party affiliation be highly likely to cause an official to be ineffective in carrying out the duties and responsibilities of the office, dismissals for that reason would not offend the First Amendment. *Id.* At 318.

In *Galloza v. Foy*, 389 F.3d 26 (1st Cir. 2004), a case that arose in Puerto Rico and in which a looser standard was used, the court held that dismissal for political party affiliation reasons could be allowed even if the position did not directly implicate partisan political concerns. However, the court also stated that the determination of whether political affiliation is an appropriate requirement for effective performance of a position is fact specific. The court set forth a number of factors to utilize in order to determine whether a position is “policymaking” or “confidential” including the following:

- (1) the compensation level of the position;
- (2) the technical expertise, if any, to perform the job;
- (3) the extent to which the position involves supervision and control over others;
- (4) the degree to which the position confers authority to speak in the name of higher ranking employees who themselves are policymakers;
- (5) the influence of the position over programs and policy initiatives;
- (6) the public perception of what the position entails; and
- (7) the relationship of the position to election officials, political party leaders, and partisan politics. *Id.* at 29-30.

In the *Gallazo* case, the employees who instituted the litigation had been fired by a new executive director, who belonged to the political party that was victorious in the 2000 elections, from their positions as regional administrators in an agency that was responsible for collecting, receiving, and allocating public funds. The fired employees had belonged to the political party in power prior to the outcome of the 2000 election. They claimed that political affiliation was not an appropriate criterion for their jobs as regional administrators. The court held that, as a result of its analysis of the duties of the regional administrators, “[it] is difficult to imagine a more politically sensitive issue than the collection and apportionment of taxes.” *Id.* at 30. It found that the role of the regional administrators was “not inconsequential” because they speak for the regional tax collection office and supervise its activities. The court also found, in reviewing the job description for regional administrators, that their duties were not “purely mechanical or ministerial” but illustrative of a “wide sweep of discretionary powers inherent in the position.” *Id.* at 31-32. Therefore, the court concluded that political party affiliation was essential to the effective performance of the regional administrators and that, as a result, those who had been fired by the new executive director of the political party that had won the election had “no legitimate expectation of continued employment.” *Id.* at 34.

Similarly, in *Butler v. New York State Department of Law*, 211 F.3d 739 (2d Cir. 2000), the court provided factors (in some cases, overlapping with those set forth in *Galloza*) to be considered in determining whether a rational connection exists between political party affiliation and the performance of the duties of the public employee's position. Those factors include whether the position:

- (1) is exempt from civil service protection;
- (2) has some technical competence or expertise;
- (3) controls others;
- (4) is empowered to act and speak on behalf of a policymaker, especially an elected official;
- (5) is perceived as policymaker by the public;
- (6) influences government programs;
- (7) has contact with elected officials; and
- (8) is responsive to partisan politics and political party leaders and officials.

Id. at 744.

In the *Butler* case, the plaintiff was an Assistant Attorney General for New York State who had been fired by the new Attorney General who had been elected in 1995. She claimed that her First Amendment rights had been violated because she was not a policymaker and, as such, was protected from termination because of political affiliation. The court, holding for the defendant – the State of New York – ruled that the plaintiff was, in fact, a policymaker, because “an [Assistant Attorney General] routinely acts and speaks on behalf of an elected official – the [Attorney General]. The court further stated that “[t]here is no likely circumstance in which a shared ideology is more important than when an elected official appoints a deputy who may act in his or her stead.” *Id.* (Internal citation omitted).

In *Carlson v. Gorecki*, 374 F.3d 461, 463 (3d Cir. 2004), another Illinois case, the court examined the powers and duties of the position which had been held by the terminated employee and considered both the historical treatment of the position and the actual work performed by the individuals who held the position. The plaintiffs had been terminated from their positions as special investigators in the Kane County State's Attorney's Office because of their support for the candidate who lost to the defendant in the State's Attorney's election of 2000. The court found that the defendant failed to establish that political affiliation was essential to the special investigators' performance of their job duties. The court noted that the plaintiffs, as was the case with their predecessors, had little discretion and responsibility, other than to locate witnesses, serve subpoenas, transport witnesses to court, and interview witnesses. The court ultimately held that the plaintiffs were protected from patronage firing.

In *McCloud v. Testa*, 97 F.3d 1536 (6th Cir. 1990), an Ohio case, the court created the following four categories of positions in which political party affiliation would be an appropriate requirement:

- (1) Positions specifically named in relevant federal, state, county, or municipal law to which discretionary authority is granted with respect to the enforcement of that law or the carrying out a policy of political concern;

- (2) Positions to which a significant portion of the total discretionary authority available to those covered by category one position-holders has been delegated;
- (3) Confidential advisers who either (a) spend a significant portion of their time on the job advising category one or category two position-holders on how to exercise their statutory or delegated policymaking authority or (b) control the lines of communication to category one or category two position-holders or confidential advisers; and
- (4) Positions that are part of a group of positions filled by balancing out (a) political party representation or (b) selections made by different government agents or bodies. *Id.* At 1557.

In *Testa*, the defendant was the County Auditor who was a Republican and part of a faction of Republicans in that office. The plaintiffs were employees in the County Auditor's office who were also Republican but who supported another individual who was a member of another Republican faction in the office and, as they argued in their litigation, were fired for supporting that other individual in that faction. Thus, the case was about patronage dismissals involving non-ideological facts of the same political party. The court, after an exhausting discussion of the *Branti* and other cases, affirmed the lower court's decision to uphold most of their dismissals because, on the basis of an analysis of the job duties of the plaintiffs, found that they held positions in which political affiliation was essential to the job. However, a significant part of the holding of the decision is that "non-ideological factions [of the same political party] are entitled to First Amendment protection from adverse patronage employment actions...." *Id.* at 1547.

In *Riley v. Blagojevich*, 425 F.3d 357 (7th Cir. 2005), a case that arose out of Illinois, a fact specific analysis was also utilized, and the court examined the job description of the individual who was fired to determine who an official can replace on political grounds. The court ruled that the job description must be "objective, as shown by the methods by which it is created, vetted, and updated to the present." *Id.* at 365. The court further stated that any inquiry about the job description must be "kept realistic rather than being allowed to drift far from the actual duties of the position; in short, on how reliable, how authoritative, the description is." *Id.*

The *Riley* case involved assistant wardens of two prison facilities who had been fired by the Governor of Illinois because they were not of the same political party as that of the Governor. The fired wardens contended that they were not policymakers. The court examined the job descriptions in considerable detail and found that, given the requirements relating to "major, irrevocable policy decisions" and other provisions in them, political affiliation was a legitimate requirement for the positions of assistant warden.

In *Parrish v. Nikolits*, 86 F.3d 1088 (11th Cir. 1996), a case that arose in Florida, the court interpreted *Branti* as holding that party affiliation must be *essential* to effective performance of a position before an employee holding that position can be susceptible to patronage dismissal. The employees in the case who brought the suit had worked in a county tax appraisers office and claimed their First Amendment rights had been violated when they were terminated by a new County Property Appraiser because they had not supported him during the election. The court held "[t]here...[was] no evidence in the record as to whether the Appraiser's Office, whose mission it is to appraise property for tax purposes..., even implicates partisan concerns in the

first instance.” *Id.* at 1093. Therefore, the court concluded, there was no demonstration by the County Property Appraiser that party affiliation was an essential requirement for the effective performance of the employees in his office whom he terminated.

Maryland Attorney General Opinions

In Maryland, guidance regarding patronage firings has been provided by the Attorney General. In 1983, the President of the Cecil County Commissioners requested an Attorney General’s opinion on the authority of the Cecil County Treasurer-elect to retain or terminate employees of the County Treasurer’s office. 68 Op. Att’y Gen. 315 (1983). The opinion advised that although there is general authority for the Treasurer to remove at-will employees, the ability to terminate is not absolute. In addition to statutory protections, the opinion stated “it is clear that, when political considerations play a significant role in a public employer’s decision to terminate an at-will employee, the employer runs the risk of violating the employee’s First Amendment rights of belief and association.”

In an Attorney General’s opinion to the Maryland Sheriff’s Association regarding a sheriff’s appointing authority at the beginning of each term, the Attorney General cautioned a sheriff from making personnel decisions based on a deputy sheriff’s exercise of First Amendment rights. 79 Op. Att’y Gen. 419 (1994). After restating the general guidance provided in *Elrod* and *Branti*, the opinion refused to provide any further answers and stated “the answer to whether the First Amendment allows a deputy sheriff to be dismissed because of the deputy’s support of an opponent requires an assessment of the particulars of the situation, especially the exact nature of the working relationship between the sheriff and the deputy.” Each case must be determined based on the specific facts of the case as well as the responsibilities that are particular to the position.

Summary of First Amendment Case Law on Public Employees

The following summarizes case law with respect to the First Amendment Rights of public employees:

1. Generally, public employees may not be terminated, demoted, or replaced based on their political affiliation or beliefs. This prohibition extends to replacing an employee with a political loyalist.
2. Where the employer can demonstrate that party affiliation is an appropriate requirement for performance of the public office, it may be used as a criterion.
3. The burden is on the government to show that some vital government purpose is furthered if party affiliation is used as a criterion for hiring or termination.
4. The analysis of whether party affiliation is an appropriate criterion should focus on the powers inherent in a given position, not on the particular occupant of the position.

Inconsistencies in State Law

State Personnel and Pensions Article

Termination of management service, executive service, and special appointment employees is governed by SPP, § 11-305(b) as follows:

Each employee subject to this section:

- (1) serves at the pleasure of the employee's appointing authority; and
- (2) may be terminated from employment for any reason, solely in the discretion of the appointing authority.
-
- (c)A. an employee or employee's representative may file a written appeal of an employment termination under this section as described under § 11-113 of this title.

Despite the "sole discretion" standard of § 11-305, other statutory provisions appear to place restrictions on the basis for which an appointing authority may terminate an at-will employee. Section 2-304 provides as follows:

- (a) *Public policy; employee rights.* – (1) Employment by the State does not affect any right or obligation of a citizen under the Constitution and laws of the United States or under the Constitution and laws of the State.
- (2) Except as otherwise provided in this section or by federal law, a State employee:
 - (i) may freely participate in any political activity and express any political opinion; and
 - (ii) may not be required to provide any political service.
- (b) *Effect of section.* – Notwithstanding any other law of the State effective on or before June 30, 1973, the restrictions imposed by subsection (c) of this section are the only restrictions on the political activities of an employee, except for:
 - (1) the restrictions imposed on employees of a local board of elections by § 2-301 of the Election Law Article; and
 - (2) the restrictions imposed on employees of the Department of Legislative Services by guidelines adopted under § 2-1205 of the State Government Article.
- (c) *Restrictions on political activities.* – An employee may not:
 - (1) engage in political activity while on the job during working hours; or
 - (2) advocate the overthrow of the government by unconstitutional or violent means.

- (d) *Requiring political contributions prohibited.* – (1) In this subsection, “political contribution” means a contribution as defined in § 1-101 of the Election Law Article.
- (2) A public official or an employee of the State may not require any State employee to make a political contribution.

Section 2-304 appears to protect all State employees, except employees of local boards of election and the Department of Legislative Services, from termination based on political activity off the job, with the exception of advocating the overthrow of the government by unconstitutional or violent means. By implication, if State employees are free to engage in political activity, they could not be fired for it.

Section 5-208 suggests otherwise by providing as follows:

- (b) Except for special appointments or applicants for special appointment, personnel actions concerning an employee or applicant for employment in the skilled service or professional service of the State Personnel Management System or comparable position in an independent personnel system in the Executive Branch of State government shall also be made without regard to:
- (1) political affiliation, belief, or opinion; or
- (2) any other nonmerit factor.
- (c) All personnel actions concerning an employee or applicant in the management service shall also be made without regard to the employee's political affiliation, belief, or opinion.
- (d) The protections of this section are in addition to whatever legal or constitutional protections an employee or applicant has.

By specifying that personnel actions in the skilled or professional service shall be made without regard to politics “except for special appointments,” the statute implies that special appointees in the skilled or professional service may be terminated for political affiliation, belief, or opinion. Subsection (c) prohibits termination of a management service employee based on politics, whether the employee is a special appointment or not. The omission of executive service employees and special appointments from the statutory provision implies that they may be terminated based on politics. Finally, subsection (d) requires for all employees that other legal and constitutional rights be observed.

The statutory provisions are potentially confusing. Section 2-304 suggests that all State employees may engage in off-hours political activity without jeopardizing their jobs. Section 2-508 suggests that this protection exists only for skilled, professional, and management service employees. Section 2-508(c) also appears to apply this protection to special appointments who are in management service.

Appointing Authority

“Appointing authority” is defined in § 1-101(b) as an individual or unit of government that has the power to make appointments and terminate employment. Section 11-305(b) specifies that employees who are special appointments, in management service or executive service, serve at the pleasure of the appointing authority and may be terminated solely in the discretion of the appointing authority. A “principal unit” is defined in § 1-101(k) as a principal department or other principal independent unit of State government.

The Maryland Court of Appeals has held that a termination of a State employee by an official who did not possess “appointing authority” powers is illegal. *PSC v. Wilson*, 389 Md. 27 (2005); *Maryland State Department of Health & Mental Hygiene v. Phoebus*, 319 Md. 710 (1990). In *Wilson*, Chairman Schisler of the Public Service Commission terminated Chrys Wilson without obtaining, or seeking, the approval of the other commissioners. The court held that the governing body of the Commission is the five commissioners appointed by the Governor and stated that § 2-108 of PUC makes it clear that the Commission rather than the Chair is the “unit” under SPP § 1-101(a) that has the power to make appointments and terminate employment. It further held that there was no delegation of authority from the Commission to the Chair, as demonstrated by the uncontraverted affidavit of three commissioners. *Id.* at 58. The court further characterized the Commission’s contention that the Chairman had always acted as the appointing authority as “unsupported” by the record. *Id.*

In *Phoebus*, the director of Deer’s Head Center, which was part of Department of Health and Mental Hygiene, was terminated by the acting assistant secretary of the Department. The court held that the appointing authority was the secretary and that, consequently, the termination was illegal. *Id.* at 715.

In *Wilson* and *Phoebus*, the court looked to the legislation conferring powers on the agency to determine the identity of the appointing authority. The question remains, however, to what extent the Governor or his designees can act as an appointing authority for purposes of terminating employees below the Secretary level in agencies and independent units of State government.

SPP, § 11-305(b) appears to confer authority for terminating employees who “serve at the pleasure” only on the appointing authority. COMAR 17.04.01.04A, a regulation of the Secretary of Budget and Management, appears to reinforce that conclusion, as follows:

An appointing authority, head of a principal unit and management shall have exclusively reserved to them the following general prerogatives, to be exercised consistent with the provisions of the State Personnel and Pensions Article, Annotated Code of Maryland, and any personnel policies issued pursuant to it, to:

(1) appoint, promote, transfer, reassign, discipline, and terminate employees under the appointing authority's jurisdiction...

....

(5) delegate in writing the authority to act on the appointing authority's behalf to any other employee or officer under the appointing authority's jurisdiction. An agency generally must observe the rules, regulations and procedures that it has established.

See Pollock v. Patuxent Institute Board of Review, 374 Md. 463 (2003). Federal authority would suggest that the Governor, like the President, would be bound by such a regulation. *See Nader v. Bork*, 366 F.Supp. 104, 108 (D. D.C. 1973).

On the other hand, the Court of Appeals has recognized that the Governor has broad authority with respect to Executive Branch employees. *See MCEA v. Schaefer*, 325 Md. 19 (1991) (Executive Order increasing workweek for State employees from 35.5 to 40 hours upheld); *McCulloch v. Glendening*, 347 Md. 272 (1997) (Executive Order conferring limited rights to organize on State employees upheld). In *MCEA*, the Court referred to the Maryland Constitution, Article 2, Section 1, which confers the executive power of the State on the Governor and Maryland Annotated Code, State Government, Section 3-302, which provides that, "except as otherwise provided by law, [the Governor] shall supervise and direct the officers and units in that [the executive] Branch." Concomitant with the Governor's constitutional and statutory powers, cabinet agency statutes sometimes have provisions requiring a Secretary to carry out the Governor's policies, which can be interpreted to be a requirement that the Secretary carry out the Governor's policies with respect to which employees of the agency are terminated. *See, e.g.*, Maryland Annotated Code, Health-General, Section 102(b); Natural Resources, Section 1-101(c).

A separate question concerns whether the legislative scheme creating independent agencies immunizes those agencies from the Governor's ability to order the firing of appointees whom he does not appoint by statute. The People's Counsel, for instance, is appointed and removed at the Governor's pleasure and confirmed by the Senate. Maryland Annotated Code, PU Article § 2-202.¹⁰⁵ The People's Counsel has the duty to represent residential and noncommercial users of utilities and public services, duties which are controlled by statute, the Rules of Professional Conduct for Lawyers and the People's Counsel's oath of office. PU §§ 2-202, 2-204. The People's Counsel is the appointing authority for unit employees under §§ 2-203(a) and 2-204(b). From the very nature of its duties, the OPC is independent, charged with the enforcement of its enabling statute. There is no provision in the OPC statute which makes the People's Counsel responsible for carrying out the Governor's policies. The Governor's termination of OPC's employees would violate the notion of the independence of the

¹⁰⁵ During the 2006 Special Session of the General Assembly, Pub. Util. Art. § 2-202, which provided that the People's Counsel is appointed by and serves at the pleasure of the Governor, was revised by passage of Senate Bill 1, on June 23, 2006. SB1 provides that the People's Counsel is appointed by and serves at the pleasure of the Attorney General. Section 13 of the bill provides that the People's Counsel serving as of 6/30/06 continues in office to serve at the pleasure of the Attorney General until a successor is appointed and qualifies.

agency. On the other hand, as a practical matter, because the People's Counsel is removable at the pleasure of the Governor, there is nothing to prevent the Governor from removing a People's Counsel who fails to terminate an OPC employee at his direction.

To summarize, there are ambiguities in State law regarding whether a Governor or his designee may terminate employees below the cabinet level in cabinet agencies or independent agencies. SPP § 11-305(b) and COMAR 17.04.01.04A appeared to confer the authority to terminate employees only on the appointing authority. The Governor's constitutional and statutory powers and legislation creating cabinet agencies suggest that the Governor has the power to direct terminations. As a practical matter, because the Governor's appointment powers over the heads of various cabinet and independent agencies would permit the Governor to terminate the head of an agency who refused to fire an employee at his direction, there may be little distinction for State employees between the issue of whether the Governor has the power directly to terminate them or the power to make the head of the unit do it.

Conclusions and Recommendations

Separations Occurred That Were Arbitrary, Inconsistent With Improving State Government, or Illegal

A series of memoranda from the Governor (**Exhibits 2 to 4**) identified for department secretaries the goal of reshaping State government to make it smaller, more responsive, and to bring in the best talent. The memoranda placed the Appointments Office in charge of this effort from the standpoint of identifying candidates for positions and clearing involuntary separations. Part of the mandate was to “ensure that every at-will position is served by an individual that is dedicated to carrying out the policies of this Administration.” To that end, the Administration compiled lists of at-will positions in the various departments of State government. Directors were asked to perform “an immediate review of the at-will employees in your department.” An August 12, 2003, memorandum stated that “these positions are appointed by, and serving at the pleasure of the Governor.”¹⁰⁶ Secretary Hogan of the Appointments Office was directed to visit each department to assess progress in pursuing these goals.

There is evidence that the manner in which the Governor’s goals were implemented in some departments resulted in the arbitrary termination of competent employees which was not reasonably designed to improve State government. Certain terminations were made without regard to qualifications, performance, or any review of the employee’s personnel file. Certain employees such as Susan Fernandez, Celeste Nader, Diane Evans, and Alonza Williams, either upon their separation or shortly thereafter, were not permitted to re-seek State employment, despite the fact that they were not separated due to performance reasons.¹⁰⁷ Other terminations of employees in management service appear to have been made to create a position for candidates to be appointed for political reasons. Some Administration officials admitted, reluctantly, that political affiliation was a consideration in the decision-making process. The Administration’s website for job applications permitted applicants to identify their political affiliation and there is some evidence that, when the Appointments Office forwarded lists of applicants or resumes, political affiliation was included.

The Appointments Office has traditionally been used by prior administrations only in appointing boards and commissions, where political affiliations may be a legitimate consideration and, in some cases, (such as local elections boards) may be mandated. According to Andrea Fulton, who has worked in personnel matters for the State for 34 years, the Appointments Office, historically and under prior administrations, has never dealt with the separation or hiring of State employees in permanent positions.

¹⁰⁶ This was a misstatement. Generally, at-will employees serve at the pleasure of their appointing authority, typically a department secretary or other head of a unit of state government.

¹⁰⁷ Likewise, according to the testimony of Tom Burgess, the Appointments Office influenced which opportunities he could be considered for upon his separation from DHR.

Although representatives from the Appointments Office were evasive on this issue, it is clear from documents and the testimony of numerous witnesses that the Appointments Office pressured agencies to terminate at-will employees to make room for applicants identified by the Appointments Office. Although representatives of the Appointments Office denied it, it is clear that in some cases the Appointments Office directed terminations. It appears to have been a mistake to confer on an office that was traditionally in charge of patronage appointments the responsibility of directing termination of at-will employees and identifying replacements. In some situations, there is evidence that terminations were illegally based on political considerations.

Administration officials were confused about who the “appointing authority” is for various State employees and thus, who had the authority to terminate. They were also confused about when political considerations could be used.

The Governor’s memorandum of August 12, 2003, **Exhibit 4**, states that at-will employees are appointed by and serve at the pleasure of the Governor when, in fact, most are appointed by and serve at the pleasure of a specific appointing authority such as a department secretary. Mr. Hogan thought he was the appointing authority for the Office of People’s Counsel and that Assistant People’s Counsel “serve at the pleasure of the Governor” when, in fact, the People’s Counsel is the appointing authority for the office. Andrea Fulton’s testimony confirmed this; she further stated that Mr. Hogan could have terminated OPC employees only if the People’s Counsel were unavailable.

Mr. Hogan testified that involvement of the Appointments Office was limited to special appointments; in fact, it was involved, as the Governor’s and Mr. Hogan’s memoranda point out, with all at-will positions. Ms. Baker testified that Mr. Hogan had the authority to make termination decisions. Mr. Hogan admitted that his office composed **Exhibit 4** stating that all at-will employees are appointed by and serve at the pleasure of the Governor. He also suggested that special appointments could be terminated for political reasons even if they did not have a policymaking role.

Secretary Flanagan testified that, with respect to the law governing terminations, he saw no distinction between whether an employee had a policy-making or implementing role. He also stated that, because public information officers spoke for the Administration, they were appropriate for separation. His chief of staff, David Marks, stated that he understood that all at-will employees served at the pleasure of the Governor and could be terminated for any reason, including political reasons. Secretary Montague’s opinion in the Fernandez case states that there is no prohibition against terminating special appointments for political reasons.

At least two operatives of the Administration who had no apparent qualifications other than that they were political loyalists were dispatched to top levels of State agencies to identify employees to terminate. Mr. Steffen was placed on the executive floors at DHR and DJS, on the payroll of the Governor’s Office, and coordinated with the Appointments Office to identify candidates for termination. Placing a qualified consultant in the agencies to perform such a function would have been reasonable in light of the purposes stated in the Governor’s

memoranda; placing Mr. Steffen in such a role was not, and the purpose was most likely to identify candidates for termination for political reasons. Mr. Steffen continued his role at MIA, again coordinating with the Appointments Office.

Mr. Maddalone was placed at the MTA with a similar role, although he initially denied it. Like Mr. Steffen, his primary qualification was that he was a political loyalist.

Finally, the sudden and random terminations exacted a considerable human toll which was obvious in the testimony that the Committee heard. Employees who were the primary providers for their families were suddenly without jobs through no fault of their own. Competent professionals were out of work for lengthy periods of time, attempting to overcome the difficult circumstances of their sudden terminations in getting new jobs. More elderly employees were either unable to find new jobs or forced to take jobs out of their profession and at much lower levels of employment.

The following summarizes, by Department, the report's conclusions regarding terminations.

Department of Human Resources

Thomas Burgess, who had been with the Department of Human Resources for 13 years, testified that, for the first time, the department received direction from the Appointments Office regarding the hiring and termination of employees after January 15, 2003. The department would receive a list of prospective employees whom the Appointments Office was seeking to insert in various positions. Although many employees were placed based on qualification, some employees were identified for placement or removal because of party affiliation. Regular reports were submitted to the Appointments Office regarding hirings and firings.

There is evidence, although disputed, that employees who were not in policy-making positions were terminated to be replaced by referrals from the Appointments Office. There is also evidence that some of the employees who were terminated were performing their jobs well and that there was no reason to terminate them. Thus, one could conclude that they were terminated simply to make way for new employees regardless of their performance.

Political activities or affiliation appear to have been a factor in some personnel decisions at DHR. Secretary McCabe admitted that he saw lists containing job applicants and resumes which reflected party affiliation of the applicant. He agreed that party affiliation probably helped in determining which people could be presumed to be allies of the new Administration and that political affiliation was one of many factors considered in making personnel decisions.

Mr. Burgess described Michelle Lane's role in providing liaison to the Appointments Office with respect to hiring and involuntary separations. He directly observed her phoning Joseph Steffen in the Governor's office to confirm that Deborah Resnick, who had worked under the Glendening Administration, was working at the Prince George's County Department of Social Services. Ms. Lane informed Mr. Burgess that he had to have Ms. Resnick fired because she had worked under the Glendening Administration. Ms. Resnick's supervisor, Director Karen

Lynch of the Prince George's County DSS, opposed the termination of Ms. Resnick, who had been performing well in the role of conducting foster parent recruitment for approximately six months. Secretary McCabe communicated to Ms. Lynch that he had been directed by the Appointments Office to have her terminated immediately. Ms. Lynch would have rated her as an "exceeds" or "outstanding" employee. There appears to have been no justification for Ms. Resnick's termination other than her former political affiliation which would have been a violation of her constitutional rights. Ms. Resnick's termination also appears to have been part of an effort to locate "Glendening holdouts" and terminate them, irrespective of whether their jobs were political and how they were performing.

Some terminations at DHR appear to have been arbitrary terminations of competent employees. One example is Celeste Nader, who had 38 years of experience with outstanding evaluations in the Department of Social Services of Baltimore City. The apparent reason for her termination was that she antagonized a supervisor who requested her to violate protocols regarding certain financial issues.

Mr. Burgess described a number of other terminations of non-policymaking employees in the department who were performing well and whose terminations were directed by the Appointments Office. Some were replaced by individuals referred by the Appointments Office. Secretary McCabe disputed that the Appointments Office directed the terminations, stating that the terminations were his decision. In the case of Ms. Resnick, however, he admitted to having heard from the Appointments Office that she should be terminated. Director Lynch of the Prince George's County DSS stated that the Secretary told her he was directed by the Appointments Office to fire Ms. Resnick.

Maryland Department of Transportation

George W. Casey, Director of Human Resources at MDOT, testified about the high level of separation of employees after the new Administration took office. He sent weekly reports to the Appointments Office regarding personnel activities. He also testified that various employees of the Department who were performing competently were separated by direction of the Appointments Office and replaced by candidates sent from the Appointments Office. Mr. Casey was terminated shortly after complaining that certain employees, including Mr. Maddalone, were awarding themselves pay increases. Mr. Casey's performance appraisal had an overall rating of outstanding.

Secretary Flanagan disputed Mr. Casey's testimony, stating that he personally decided or approved all personnel decisions in the Department. He admitted that political affiliation would be considered in a personnel action to the extent that it answered the question of whether the employee could be part of "the team." He was accurately quoted in *The Baltimore Sun* as describing the MDOT as becoming increasingly Republican. He gave his understanding of the parameters of discretion regarding terminations, stating that he found no distinction between policy-making and implementing and that he considered policy-making to be a broad concept. He also stated that there was a general understanding that public information officers spoke for the Administration and were appropriate for separation. In fact, five public information officers at the Department were terminated. Secretary Flanagan stated that he terminated Mr. Casey to replace him with a more experienced candidate.

David Marks, chief of staff at MDOT, participated in reviewing terminations by transmitting information to the Appointments Office. He stated that he never discussed any employees' political affiliations. His understanding of the law, however, was that any at-will employee serves at the sufferance of the Governor and can be dismissed for any reason, including political affiliation.

Gregory Maddalone was appointed as Special Assistant to the General Manager of the MTA. Secretary Flanagan testified that Mr. Maddalone made recommendations for terminations which were acted on but Mr. Maddalone was evasive about it. He finally admitted that he made such recommendations. He had no apparent qualification for doing so.

Office of People's Counsel

Paula Carmody, Esquire, a 15-year employee of the Office of People's Counsel with an undisputedly excellent reputation, was summarily terminated on September 10, 2003 by direction from Andrea Fulton, Executive Director of the Office of Personnel Services and Benefits, to Sandra Guthorn, Acting People's Counsel. Ms. Fulton's direction came from Diane Baker, who claimed it would not have been her decision to terminate Ms. Carmody and that she believes she would have gotten direction from Secretary Hogan.

Secretary Hogan's answers regarding Ms. Carmody's termination were evasive. He claimed that he did not know who made the decision to terminate her and suggested that the incoming People's Counsel may have (a suggestion that is incorrect). The only justification he could advance for her termination was that she was "at-will" and "served at the pleasure of the Governor." In fact, Ms. Carmody served at the pleasure of the People's Counsel.

The Office of People's Counsel has statutory duties to act in the interest of residential and non-commercial utility consumers. All of the evidence gathered suggests that Ms. Carmody was effectively discharging statutory duties of the office in a manner consistent with the charge of the office and her professional obligations. Her arbitrary termination was fundamentally inconsistent with the effective operation of the Office. She had an active caseload and a number of projects in which she was involved and was given no opportunity to transition any of her projects to other attorneys. Additionally, termination of a highly-competent State employee in a specialized area of work is fundamentally inconsistent with the Governor's objective of making State government work better. Finally, her termination was mandated from outside the OPC and her termination notice was unsigned and not authored by her appointing authority, possibly rendering her termination illegal.

Ms. Carmody's termination was illustrative of a number of terminations. Administration representatives were evasive in answering questions about her termination and could offer no explanation for it. Either the reason for her termination has been successfully covered up or the termination was a glaring example of arbitrariness and bad judgment which would be expected to have an adverse impact on the ability of the OPC to do its job.

Department of Natural Resources

At DNR, Eric Schwaab, director of Fishery Service, was summarily terminated on March 14, 2003, after a 20-year career marked by steady advancement and outstanding reviews. There is evidence that there was pressure from outside DNR to terminate him. He was informed by the Secretary that people were out to get him and, when he was terminated, the Secretary admitted that he had no ability to prevent it. Mr. Schwaab viewed his job as management service and not political. No justification for his termination was offered and it appears to have been arbitrary and inconsistent with the objectives of improving State government.

On April 25, 2003, four additional DNR employees were summarily terminated, including Lauren Wenzel, Bruce Gilmore, Diane Evans and Thomas Burke. All had excellent performance reviews, none had political jobs, none was given a reason for termination and the Committee was presented with no rationale for the terminations. All four had engaged in different levels of activity for the Democratic Party. The Secretary admitted knowing that Mr. Gilmore and Ms. Evans were active Democrats but denied that their political activities were a factor in their terminations.

Although disputed, documentary evidence makes it clear that Mr. Gilmore was terminated in order to provide his position to a candidate who was an active Republican from the Eastern Shore referred by the Appointments Office. **Exhibit 39**, a memorandum from the Assistant Secretary of DNR to the Appointments Office indicates that the candidate was offered Mr. Gilmore's job two days before he was terminated. Mr. Gilmore had worked for Democratic Senator Paul Sarbanes, was politically active for Democratic candidates throughout his career, and ran a fund for the Kathleen Kennedy Townsend campaign. His termination was not explained and the evidence circumstantially indicates that party affiliation was a factor in the decision, which would have violated his constitutional rights.

Diane Evans' activism in Democratic politics was also known to the Secretary. When she was terminated, she specifically asked whether she was being terminated for political reasons and received no comment. Although the Secretary denied that she was terminated for political reasons, because there appears to be no other reason for her termination, an inference may be drawn that there were political reasons for the termination, which would have been illegal.

Michael Slattery was director of wildlife for DNR when he was terminated in April of 2001 after the close of the General Assembly's session. His termination may have been directed by the Governor's office over a disagreement in policies.

Department of Juvenile Services

DJS was identified as an agency in which the Secretary was resistant to terminating employees. Joseph Steffen, upon arrival at DJS, immediately began to send memoranda to Mr. Hogan and others in the Governor's Office regarding the need to force the Secretary to make terminations. As with DHR, Mr. Steffen had no apparent qualifications for assessing the performance of the personnel at DJS. He confirmed that he made recommendations to the Appointments Office for termination of DJS employees.

Susan Fernandez, who was in an executive service position at DHR and was terminated by the new Administration, was employed at DJS in a management service position. The Appointments Office found out that she worked at DJS and directed that she be terminated, which was apparently politically motivated. Secretary Montague agreed that he had successfully intervened on her behalf so that she could retain her position. Subsequently, another directive came from the Appointments Office to terminate her which Secretary Montague complied with because, at that point, he agreed with it. In his view, despite positive reviews, Ms. Fernandez had difficult relationships in the work place which justified her termination.

Dr. Maynor-Kearse was superintendent of education at DJS and was summarily terminated on February 18, 2005, despite outstanding reviews. She had had outstanding evaluations and her termination appears to have been arbitrary.

Maryland Insurance Administration

Deborah Rosen McKerrow, who has a degree in Journalism from the University of Maryland, a Master's Degree in Management from the College of Notre Dame, and over 20 years of experience in public relations, became Director of Communications at the Maryland Insurance Administration in 2000. Her performance reviews were all positive. She attended a mandatory after-hours meeting on October 15, 2003, for all public information officers at the Governor's office. At the meeting, the public information officers were told that they were the re-election committee for the Governor and everything they did from this point on would be for the re-election of the Governor. This direction appears to be in violation of State Personnel and Pensions Article, § 2-304(a)(2)(ii).

Ms. McKerrow was terminated on May 28, 2004, and replaced by Joseph Steffen, who had no educational qualifications for the job. He received the assignment after asking Mr. Hogan and Mr. Schurick for a public relations position. He claimed that his qualifying experience was having worked as a press secretary for the National Conservative Political Action Committee in 1982 and having worked on various campaigns. His primary qualification appears to have been his political loyalty to the Administration. There is evidence from which one could conclude that the termination and appointment of Mr. Steffen, whose qualifications were minimal compared to Ms. McKerrow's, was a personnel action made with regard to political affiliation, belief, or opinion in violation of State Personnel and Pensions Article § 5-208(c) and contrary to the holding in *Conjour v. Whitehall Township*, 850 F. Supp. 309, 317 (E.D. Pa. 1994). Under Fourth Circuit case law, however, including *Stott v. Haworth*, 916 F.2d 134 (4th Cir. 1990) and *Akers v. Caperton*, 998 F.2d 220 (4th Cir. 1993), public information officers such as Ms. McKerrow could be subject to political separation because frequent contact and communication with the public are inherent responsibilities of the position.

Maryland Environmental Service

There is substantial evidence that the termination of Vincent Gardina was based on his political activities in violation of SPP §§ 2-304, 5-208, and his constitutional rights. He was qualified for the position of Project Manager at MES and was performing his job well. Political opponents from his district found out that he had a State job during the MACO conference in August 2003. Shortly thereafter, Ms. Baker, who was aware that Mr. Gardina was a Democratic Baltimore County councilman, phoned his appointing authority, John Sparkman, to ask why he was hired. In fact, Mr. Gardina was hired before Mr. Sparkman was appointed. Ms. Baker told Mr. Sparkman that Mr. Gardina “needs to go” because he is “too political.” Mr. Sparkman’s affidavit indicates that, in September of 2003, he received a phone call from Ms. Baker in which the above statements were made and in which Ms. Baker asked him to provide Mr. Gardina’s salary, title, and PIN. This conversation is in part verified by **Exhibit 81**, a September 5, 2003, e-mail from Mr. Sparkman to Ms. Baker, subject “your question”, in which Mr. Sparkman provides Mr. Gardina’s start date, salary, title and brief job description. Ms. Baker responded on September 8, asking for his pin number. This e-mail exchange was followed by an e-mail from Ms. Baker to Mr. Sparkman dated September 9 stating “you can let Vince Gardina go. We have signed off on this end.” Mr. Gardina was terminated by letter dated September 16, 2003, which is **Exhibit 54**.

There were no concerns related to Mr. Gardina’s performance. His performance appraisal indicated that he was fully successful in performing his job in all regards. **Exhibit 53**.

Ms. Baker was evasive in answering questions about Mr. Gardina’s termination. She claimed to have no recollection of any conversations with Mr. Sparkman or anyone else about Mr. Gardina. When shown the e-mails relating to Mr. Gardina, at **Exhibit 81**, she stated that she would not speculate if they related to Mr. Gardina’s termination (when they clearly do) and had no recollection as to why he was terminated. She further stated that she had no authority to make the decision.

Secretary Hogan also testified evasively about the decision regarding Mr. Gardina. He first stated that he did not discuss Mr. Gardina’s termination with anyone and then testified about a phone conversation in which Mr. Sparkman asked Mr. Hogan for permission to terminate Mr. Sparkman. Mr. Hogan further stated that “Mr. Sparkman said he was pressured by Baltimore County elected officials and public officials and he named a bunch of them and Democratic elected officials in Baltimore County” and that as a result, he had to hire Mr. Gardina. Mr. Hogan’s testimony is not credible; Mr. Gardina was hired before Mr. Sparkman was appointed director of MES.

In a subsequent affidavit, Mr. Sparkman stated that the phone conversation Mr. Hogan testified about in September 2003 regarding Mr. Gardina did not happen. The only conversation he had with Mr. Hogan about Mr. Gardina’s termination occurred well after the termination, shortly before the case was settled. The Gardina case was settled for \$100,000, a substantial amount for an employee whose salary was \$56,000 and it was settled just prior to depositions taking place. In light of Mr. Gardina’s Democratic politics, the discovery of his State

employment by political opponents shortly before the Appointments Office directed his termination, the evasive testimony from the Appointments Office regarding his termination and the lack of explanation for his termination, his termination was clearly illegal and unconstitutional.¹⁰⁸

Public Service Commission

Five employees were summarily terminated from the PSC; the Chairman conceded that four were top-level positions. The Chairman made the termination decisions himself. The terminations were clearly illegal because they were not made by the Commission, which was the appointing authority.

Three of the employees who were terminated (Randy Allen, Chrys Wilson, and Blaine Keener) appeared to have been well-qualified and to have received positive evaluations.¹⁰⁹ Two (Mr. Allen and Ms. Wilson) were actively involved in Democratic politics, although the Chairman denied any political considerations in his decision making.

With respect to Allen, the Chairman failed to consult with the other commissioners, failed to consult with his supervisor, and did not review his personnel files. Although there is no support for his statement anywhere, the Chairman testified that Mr. Allen was difficult to work with and was a disruptive force. There is no documentation whatsoever of this observation. If the Chairman had concerns about Mr. Allen's disruptiveness, it is surprising that he did not consult with Mr. Carmean, Mr. Allen's supervisor. The Chairman's rationale for the termination appears to be pretextual.

Ms. Wilson had extensive qualifications and experience and exclusively positive reviews. The Chairman failed to consult with other commissioners regarding her termination and did not review her personnel file. He claimed that he was unaware of Ms. Wilson's political affiliations, although his chief of staff Mr. Cheseck was, and the Chairman discussed her termination with Mr. Cheseck. His claim that her writing skills were atrocious and that he spent weekends revising her letters appears to be pretextual based on **Exhibit 98**, draft letters and final letters submitted by Ms. Wilson. Ms. Wilson was replaced by a former chief of staff to the House Republican Caucus. It would be reasonable to conclude that Ms. Wilson was terminated to create a place for an appointment based on political consideration in violation of her First Amendment Rights.

Blaine Keener was a highly-qualified chief engineer with substantial experience and positive reviews. There are no documents which support Chairman Schisler's claims that Mr. Keener failed to follow directives, defied authority and lacked control of his subordinates. Chairman Schisler failed to consult with the other commissioners regarding Mr. Keener's termination, failed to review his personnel record and failed to consult with Mr. Keener's

¹⁰⁸ Dennis Eckard, President of the Perry Hall Civic Association in Gardina's district, informed counsel in an interview that, a day or so after Gardina's separation, David Marks informed him that Gardina had been fired and that he had learned that Gardina would be fired about a week before it happened from Del. J.B. Jennings. Marks denied this in his testimony on May 11th.

¹⁰⁹ The other two, Andy Mosier and Robert Higginbotham, did not testify for the Committee and no opinion is expressed here regarding their terminations.

supervisor. If he had reviewed Keener's personnel file and talked to his supervisor, he would have found ratings which directly contradicted his justification for the termination. Mr. Keener was replaced by an employee who was referred by the Appointments Office.

The terminations at the PSC appear to have been arbitrary, and possibly, two of them were based on political considerations. It is difficult to reconcile the Chairman's view that he was improving the Commission when he failed to consult with other commissioners regarding the terminations, failed to review personnel files and failed to consult with the supervisors of two of the employees who were terminated. His testimony that he failed to consult with Mr. Carmean regarding Mr. Allen's termination "in order to protect" Mr. Carmean makes no sense. Finally, the Chairman's testimony that he arranged for armed security guards to escort the terminated employees out of the building to "leave the terminated employee's dignity intact" also makes no sense whatsoever. Such treatment is not likely to boost one's dignity.

Methods of Termination Were Inconsistent and Often Demoralizing

There was considerable publicity regarding the method of terminating employees. Andrea Fulton, with 34 years of experience in State personnel matters, testified that it had always been standard practice to give employees immediate notification, have security guards present, have the employee leave the office immediately, and give them two weeks of administrative leave.

In practice, the method of termination varied considerably. At MDOT, security guards were used on one occasion when several employees were terminated at the MTA. They were not used with most other terminations, apparently without incident. For many terminations, "soft landings" were used where employees were allowed to resign or retire and run out their sick leave in exchange for a release. MDOT was eventually directed to cease this practice.

At DNR, terminations were effected without the use of security guards. Employees were permitted to return to clean out their offices and transition work without incident. At least one employee negotiated a separation package including compensation for accrued compensatory time.

At the PSC, the terminations were dramatic, with the use of security guards, the escorting of employees out of the building immediately, and the posting of their photographs in the lobby. The result was an inflamed work atmosphere and litigation.

There was substantial evidence that most of the terminated employees who testified were doing a good job, and there was no evidence that any of them posed any security risk. There was no apparent purpose in having several employees terminated at once, in having the terminations be sudden, and in the use of security guards for such employees. There was considerable evidence that the result was a negative impact on morale. Such actions are also likely to inflame passions and cause litigation.

Although the manner of effecting terminations may not be an appropriate subject for legislation, the Committee recommends that the units of State government be permitted to effect terminations in a manner in which the heads of the units determine is most consistent with maintaining efficiency and morale rather than having a standard, Statewide method imposed, regardless of individual circumstances.

Legislation Should Be Introduced to Clarify State Law and Add Protections for Certain Employees

Appointing Authority

Clarify the law to emphasize that only the lawfully designated appointing authority of a State employee may terminate that employee.

This clarification will not have any impact on the Governor directing terminations within State agencies or terminating those who are within his appointing authority for failing to follow his directions.

Management Service

Provide additional protection to employees in management service up to a certain grade level, but do not provide the full extent of protections afforded to skilled or professional service employees. Amend the law to provide that personnel actions for management service employees shall be made without regard to the employee's political affiliation, belief, or opinion or *any other non-merit factor*. Provide that the appointing authority is required to give a terminated management service employee the reason for his or her termination. In the appeal process, place the burden on the employee to prove that the reason was arbitrary, capricious, illegal, or in violation of the employee's constitutional rights.

Special Appointments

Clarify which special appointments are patronage positions and require that employees be notified of that status. State law currently contains a presumption that special appointments can be terminated for political reasons. Reverse the presumption by amending the law to provide that personnel actions for employees who are special appointments shall be made without regard to the employee's political affiliation, belief, or opinion unless the Secretary of Budget and Management has determined pursuant to controlling case law that the position is a patronage position.

Political Terminations

Clarify the law to make it clear that illegal political terminations include a termination to create a position for a new employee with regard to the new employee's political affiliation, belief, or opinion.

Remedies

Create a private right of action in State court for political firings in violation of State law and the Maryland Declaration of Rights Article 40 that provides for damages and attorneys' fees and does not require exhaustion of administrative remedies.

Employee Rights

State employees should be notified in writing of their classification and the rights pertaining to it when they are hired. If there is a change in their classification, the employee should be notified of it in writing and of the rights pertaining to the new classification.

Number of At-Will Employees and Special Appointments

Consider a legislative study of the number of at-will management service employees and the rationale of having entire departments or substantial parts of them designated at-will.

Positions Designated as Special Appointment by DBM

Consider requiring DBM to report to the legislature on the designation of positions as Special Appointments.

Separation Procedure

Clarify the law to state that neither the Governor's Office nor the Appointments Office may utilize the Department of Budget and Management to effectuate separations.

Separate the function of the Director of the Office of Personnel Services and Benefits from the appointment activity of the Governor's Office or Appointments Office.

Retirement Program Options

- **Consider restoring the pension break to at-will employees terminated after 16 years of service for no cause.**
- **Consider providing an option for employees who are terminated for no cause to buy additional time in service to qualify for the State's retirement program.**
- **Refer these options to the Joint Pension Committee.**

