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**PUBLIC HEARING**  
before  
**SENATE JUDICIARY COMMITTEE**  
on  
**THE REAPPOINTMENT OF JUDGE SYLVIA B. PRESSLER**

Held:  
October 3, 1983  
Room 114  
State House Annex  
Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Senator John F. Russo, Chairman  
Senator Joseph Hirkala, Vice Chairman  
Senator John A. Lynch  
Senator Edward T. O'Connor, Jr.  
Senator Carmen A. Orechio  
Senator Raymond J. Zane  
Senator John H. Dorsey  
Senator John P. Gallagher  
Senator John B. Paoletta  
Senator James P. Vreeland, Jr.  
Senator William L. Gormley

**ALSO PRESENT:**

John J. Tumulty, Team Supervisor  
Office of Legislative Services  
Aide, Senate Judiciary Committee

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**SENATOR JOHN F. RUSSO (Chairman):** Let's begin with the main reasons why we are here today, and they are the nominations of James Galdieri to be a member of the Hackensack Meadowlands Development Commission, and Roger Kahn to be a judge of the Tax Court. Does anyone want to be heard on these two nominations? Does any member of the Committee have any comments on these two nominations?

**SENATOR ORECHIO:** Mr. Chairman, the only comment I have is with regard to former Senator Galdieri who served with us, as you remember, with distinction in this house. At the present time, I would be very happy to move his nomination.

**SENATOR RUSSO:** Has the Senator from the home county signed off on these, John?

**MR. TUMULTY:** Yes.

**SENATOR ORECHIO:** I think he is one of the persons who gave it up yesterday.

**SENATOR RUSSO:** All right, it looks like it is going to be a short day. Can we have a motion on these two nominations? Senator Gallagher?

**SENATOR GALLAGHER:** I'll move it.

**SENATOR RUSSO:** A second?

**SENATOR ORECHIO:** I'll second it.

**SENATOR RUSSO:** Roll call.

**MR. TUMULTY:** Senator Russo?

**SENATOR RUSSO:** Yes.

**MR. TUMULTY:** Senator O'Connor?

**SENATOR O'CONNOR:** Yes.

**MR. TUMULTY:** Senator Orechio?

**SENATOR ORECHIO:** Yes.

**MR. TUMULTY:** Senator Zane?

**SENATOR ZANE:** Yes.

**MR. TUMULTY:** Senator Dorsey?

**SENATOR DORSEY:** I haven't signed off with Roger Kahn yet.

**SENATOR RUSSO:** Oh. We will withdraw for the moment the name of Roger Kahn and continue moving only on the name of James Galdieri.

**MR. TUMULTY:** Senator Gallagher?

**SENATOR GALLAGHER:** Yes.

MR. TUMULTY: Senator Vreeland?

SENATOR VREELAND: Yes.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: Yes.

MR. TUMULTY: The nomination is released.

SENATOR RUSSO: Okay, we will now proceed with the--

SENATOR ORECHIO: Senator Zane has something to say.

SENATOR RUSSO: I'm sorry. Ray?

SENATOR ZANE: Senator, why was the last nominee withdrawn?

SENATOR RUSSO: We don't have a sign-off.

SENATOR ZANE: Oh, okay.

SENATOR RUSSO: The Committee will now proceed with the confirmation hearing of Judge Sylvia Pressler. Let me first introduce the members of the Committee.

Appropriately, to my far right, are: Senator Gormley of Atlantic County; Senator Gallagher of Monmouth County; Senator Vreeland of Morris County; and, Senator Dorsey of Morris County. To my right is John Tumulty, and I am Senator John Russo. To my left, are: Senator Joseph Hirkala, the Vice Chairman of the Committee, of Passaic and Bergen Counties; Senate President, Carmen Orechio; Senator Zane of the Gloucester area; Senator Edward O'Connor of Hudson County; and, Senator John Lynch of Middlesex County, who made a shrewd move yesterday that I won't mention.

Let me first outline some ground rules for this hearing. Those of you who are planning to testify, please listen carefully, because these ground rules are going to be adhered to.

In our usual procedure, after the nominee is brought forth and is questioned by the Committee, we ask anyone who wishes to be heard to come forward.

The first thing I want to make very clear is that no person in this room will be in any manner allowed to be intimidated, badgered or humiliated. That goes for both sides. So, heed that, because it will be strictly adhered to.

We are interested today in one thing -- the suitability, or whatever word you want to use, of Sylvia Pressler to be reappointed as

a judge to the Superior Court of New Jersey -- her character, her temperament, etc.

I'm not going to totally foreclose discussion of her decisions, but I want to remind you that we, particularly on this Committee, since we have different philosophies, don't always agree on decisions of many judges, so I don't want, in effect, a rehash, a retrial or an appeal of the judgments or decisions of any judge. We are more interested, as I said, in her character, integrity, honesty, temperament, etc. However, some reasonable latitude will certainly be granted to all witnesses, but I suggest that when you get the first caution from the Committee, you heed it, because the second one may well end up in a termination of your testimony.

We are not going to have repetition ad nauseam. After comments are made for or against the nominee, as the witness comes forward, I will ask if the witness is speaking for or against the nomination. Whatever the answer may be, I'll ask whether or not there are any new reasons or comments that the witness would like to offer. If it is just basically a repetition of those that have been offered, then we will simply enter the name on the record as being for or against, and go on to the next witness.

We have set no arbitrary time limit. On the other hand, we're not going to go on forever at this hearing.

We have received voluminous correspondence, and some have asked that the correspondence be entered into the record. I will turn some of this correspondence over to the Committee Aide to be entered into the record. No testimony will be allowed that is unattributed or unsigned, nor will oral testimony be allowed as to what someone said or would say if he were here, but isn't here. Correspondence will be accepted into the record.

Probably the most significant letter I received, which only some of you will appreciate, came to me marked "Personal and Confidential." It simply says, "Dear Sylvia, Why don't you move to Ocean County?" This was signed by "Joel."

COMMITTEE AND AUDIENCE: (laughter)

SENATOR RUSSO: For those of you who don't know the significance of that letter, ask someone who does.

I think I've covered the basic ground rules. We do not operate with the same rigid formality as the Senate President does in the Senate Chamber. If you want to take off your jacket in this warm room, feel free to do so. We have a little more casual atmosphere here.

Do any members of the Committee want to make any preliminary comments before we call Judge Pressler? (no response)

Incidentally, I think when I introduced the Committee, Senator Paoletta was not here yet -- the person in the blue suit with the bushy hair. (laughter)

SENATOR PAOLELLA: Mr. Chairman, I was in the Justice Building being detained by guards while waiting for an important package of information. They were so darned slow that I am late for this meeting. I apologize to the Committee for that. The Judiciary has always been a little bit slow within the Legislative Branch.

SENATOR RUSSO: I've noticed that too.

SENATOR ZANE: Not when the Chairman's flights are on time.

SENATOR RUSSO: Ray, do you want to say something?

SENATOR ZANE: Mr. Chairman, in the correspondence you received and just turned over to the Committee Aide, is there anything in your opinion that the rest of the Committee should be aware of?

SENATOR RUSSO: No, basically they are letters of support and opposition. What I intend to do is to have the Committee Aide make copies for the Committee. There is nothing that I thought was of particular significance over and above what you've all heard. If anyone would like to review that while the hearing is going on, feel free to do so.

Are there any other comments? (no response) If not, I would like to call on Judge Pressler, please.

J U D G E   S Y L V I A   B.   P R E S S L E R: Good morning, gentlemen.

SENATOR RUSSO: Good morning, Judge Pressler. Judge, after your testimony is concluded, you are welcome to remain right there if you like.



Let's see, who would be considered the home county Senator on the Committee who would like to introduce the judge, or shall I go ahead? Senator Hirkala or Senator Paoletta?

SENATOR HIRKALA: Mr. Chairman, Judge Pressler has had a distinguished career in the Judiciary of the State of New Jersey. I believe that because of her outstanding record and the fact that the Governor, with all of the resources at his command, has seen fit to nominate Judge Pressler for reappointment, is an indication that she is outstandingly qualified, competent, and she has the kind of ability that is needed in the Judiciary of our State.

SENATOR RUSSO: Senator, introduce the Judge to the Committee members.

SENATOR HIRKALA: Judge Pressler, at my far left is Senator John Lynch, Assistant Majority Leader, a Senator from Middlesex County. Next is Senator Ed O'Connor of Hudson County; Senator Raymond Zane of Gloucester County; and, Senate President Carmen Orechio. To my far right is Senator Bill Gormley of Atlantic County; Senator John Paoletta of Bergen County; Senator John Gallagher of Monmouth County; Senator James Vreeland of Morris County; Senator John Dorsey of Morris County; and, our Chairman, Senator John Russo of Ocean County.

JUDGE PRESSLER: Thank you very much, Senator.

SENATOR RUSSO: Thank you, Senator Hirkala. Judge Pressler, we have your questionnaire before us, and I assume that all of the Committee has had an opportunity to read it. We will review it generally now.

You are a 1959 graduate of Rutgers Law School. Is that correct?

JUDGE PRESSLER: That is correct.

SENATOR RUSSO: You also have a Bachelor of Arts from Boston in 1955?

JUDGE PRESSLER: Right.

SENATOR RUSSO: Queens College in New York from 1952 to 1954, and of course, you went to Hunter College High School in New York City before that. Is that correct?

JUDGE PRESSLER: Yes.

SENATOR RUSSO: You were first appointed to the bench in 1977 -- to Superior Court? I'm sorry. Bergen County Court would have been your first appointment. Is that correct?

JUDGE PRESSLER: That is correct.

SENATOR RUSSO: Before that, Judge, you were a hearing examiner in the Division of Civil Rights, City Solicitor in Englewood, and First Assistant County Counsel in Bergen.

JUDGE PRESSLER: That is right.

SENATOR RUSSO: Judge Pressler, you are married and have two children. Is that correct?

JUDGE PRESSLER: Yes.

SENATOR RUSSO: How old are they?

JUDGE PRESSLER: My children are nineteen and nine years old, a girl and a boy, in that order.

SENATOR RUSSO: Insofar as litigation is concerned, Judge, at one time you were a plaintiff in an automobile accident and trial case that was settled. Is that right?

JUDGE PRESSLER: That is correct.

SENATOR RUSSO: You were a defendant in the matter brought by a prisoner. Is that right?

JUDGE PRESSLER: That is correct, Senator. It was dismissed by a Federal court.

SENATOR RUSSO: Are you in good health, Judge?

JUDGE PRESSLER: I hope so, yes, thank you.

SENATOR RUSSO: Judge Pressler, one of the criticisms that has been raised in these proceedings before today -- I would like to give you the opportunity to comment on that now -- involves the question of your temperament with regard to a demeanor on the bench. Of course, you are familiar with that. As a judge, you have sort of been muzzled, not only by the fact that you are a judge, but probably by good sense, not to comment. But, now you are here before this Committee.

Would you like to comment with regard to those particular criticisms?

JUDGE PRESSLER: I would first like to thank the Committee for the opportunity to be here and to be heard, and for its consideration. I do, of course, understand and appreciate the important constitutional function which the Committee plays in a matter of this kind. As I said, I am very happy to have the opportunity to be here to answer all of your questions.

The question as to whether I think my general courtroom demeanor is appropriate is, of course, a difficult one for me to answer. I do not profess to any infallibility. I am a human being with human frailties, human failings, and I make mistakes. It may very well be that without ever intending to give offense to a lawyer or a litigant, offense was taken. But that, of course, I am sorry for.

I should tell the Committee that I deplore as much as anyone an inappropriate judicial attitude in the courtroom. I, myself, was a practicing lawyer for thirteen years, and I am well aware of the offense that can be felt. I live with a practicing lawyer, and he is well aware of the offense which can be felt. If I have given it, I am sorry. On the other hand, I see my function, and especially my function in the Appellate Division, where I have sat for the last seven years, to be one which does require, in the interests, of course, of the litigants -- always the most important -- the appearance of justice and the attorneys, the employment of the Socratic method, as it were, in order to enable the Appellate Division panel to reach the part of the legal issue as quickly as possible, in what must be a limited time, to explore the legal difficulties of a problem and to enable the lawyers to enable the court to best perform its appellate function of determining the legal issues in the case. If that enterprise has seemed to a lawyer from time to time to be abrupt or impatient or a method not calculated to permit him to proceed in the argument as he had hoped, I can only say that we work with the exigencies and necessities of the appellate process. Again, I have never intended any offense.

Thank you, Senator.

SENATOR RUSSO: Thank you, Judge. I might just comment at this point on something that I've had occasion to say to judges when we

talked about this subject in the ten years I've been on this Committee. I often remind them of the attitude and, of course, I'm somewhat prejudiced by it, of one of the finest human beings I ever knew -- and I spent two years as his clerk on the Supreme Court in the Appellate Division -- and that was Judge Catino, who most people in this room know and most lawyers around the State know. Throughout his career, it was almost as much a pleasure to lose a case before him as it was to win one. By the time he finished praising the losing attorney, the attorney was even able to increase the fee because the client was so impressed by the accolade. You always knew when you lost because Judge Catino started out by telling you that it was the finest brief he ever read.

Although he tried his best, he was able to lose a case without bitterness. So, I often try to remind judges -- it matters whether you win or lose -- but, if you have to lose, it is certainly nice to have the judge praise you and be nice to you.

I don't address these comments particularly to you, Judge Pressler, but to any judge in New Jersey. It just doesn't cost five cents to do that, and it is great. Lawyers all around the State still remember that very great human being. I'll never forget him.

Are there any questions of Judge Pressler from the Committee at this time? (no response) If not, Judge, where would you be most comfortable? Do you want to remain right where you are, or would you like to resume your seat in the audience? Whatever is most comfortable for you--

JUDGE PRESSLER: If it is all right with you, Senator, I will resume my seat and return if there are questions.

SENATOR RUSSO: Certainly, just don't leave.

JUDGE PRESSLER: I'm not going anywhere.

SENATOR RUSSO: All right. I assume there are no other witnesses. (no response) I guess I assumed right, didn't I?

Senator Cardinale?

GERALD CARDINALE: I believe you have a witness list on which I am not the next speaker. I would not want to presume to testify ahead of others who have signed up ahead of me. So, I will wait my turn.

I would, however, like to let you know clearly that I do wish to testify.

SENATOR RUSSO: Okay. Senator, the practice in the Committee is that the courtesy is first extended to a Senator, if he wishes to be heard first. If you want to, you can be heard first, but if you would rather wait, we can wait.

SENATOR CARDINALE: I would prefer, Mr. Chairman, to take my proper turn, as I see it, which is to appear along the list where I signed in.

SENATOR RUSSO: Okay. Vincent Apruzzese, President of the New Jersey State Bar Association? Good morning.

**V I N C E N T   J .   A P R U Z Z E S E:** Good morning. Thank you, Senator. Senator, and other distinguished members of the Senate Judiciary Committee, first of all, I appreciate the opportunity to be here for this extremely important matter. I would just like to briefly indicate why the New Jersey State Bar Association has authorized my presence.

I have the privilege of representing over 13,000 lawyers in the State of New Jersey. We, of course, as well as the Legislature, are extremely concerned about the judiciary. Our State Bar Association, in cooperation with the Governor, several governors, has a Judicial Appointments' Committee. Because of the controversy surrounding this particular appointment, we thought it would be a good idea if the Chairman of our Judicial Appointments' Committee were to be here this morning as well. Following my remarks, James Pitney, who is Chairman of our Judicial Appointments' Committee, will advise this Committee of the procedure we follow, and what was followed in this particular instance.

I would like to make one general comment, if I may, and then a specific comment. My remarks will be brief.

It seems to us, the representatives of the State Bar, and we have given this matter a good deal of thought, that the independence of our judiciary has been thrust into this controversy because of the fact that there have been quite a few comments about judicial decisions. I do not expect to dwell on any of those this morning. But, we think it

is critically important for our system to operate, and to operate well, that the independence of a judge be preserved. I don't think it would serve the interest of anyone, particularly the public, if a judge had to be concerned, in arriving at decisions, about his or her self-preservation, or the possibility of a problem at reappointment time because of a particular decision.

I think, also, that when one looks at the record of a jurist, there can emerge, if indeed there are problems with a particular jurist, a disturbing pattern.

When one deals with thousands of cases and literally thousands of decisions, it is possible, at any given time, by any given jurist, to perhaps make a mistake. That is why we have appellate courts and, of course, none of us have a monopoly on sound judgment.

In any event, we were concerned, we are concerned, and we would like to register that concern with this Committee, about the strong need for the independence of our judiciary. We would hope that the decisional process would not be marred, if you will, by undue concern or attention to a particular decision of a given jurist.

Lastly, I would like to say that Judge Pressler has served with distinction for ten years. She is uniformly regarded as one of the hardest working judges, one of the most talented, and has authored extremely articulate, well-reasoned opinions that are known throughout the State. I would submit to you, gentlemen, that she is eminently qualified for reappointment, and the New Jersey State Bar Association has so indicated.

As I said earlier, Senator Russo, with regard to the work of the Judicial Appointments' Committee, and what it does, James Pitney will speak to that question.

SENATOR RUSSO: Thank you, Vince. Do I correctly understand that you don't think the Judiciary Committee and/or the Senate has or should have the right to look into the decisions of a judge on reappointment, at all?

MR. APRUZZESE: I don't think I said they don't have the right to look into decisions at all. The point I was trying to make is, I believe if there is an emerging pattern in the decisional effort

of a particular judge, certain things might appear to be striking or matters of concern. I would think, certainly, that would be most appropriate.

I think what I was rather trying to indicate, Senator, is in any given case, a judge is called upon to make very, very difficult value judgments frequently. Someone has to be the final arbiter. My only concern is, in that particular process, any judge should not be concerned about how that may affect a particular legislator, if you will, at the time of reappointment. It seems to me, there is a proper role for that independence that must be maintained.

SENATOR RUSSO: Okay, Vince. It will suffice for the moment to say, I don't agree with you. I think the system has worked rather well, and I think to foreclose the Legislature from looking into decisions, other than where it is a consistent pattern which becomes a subjective thing, is hardly workable. I believe in the independence of the judiciary, I think as strongly as you do, but I think the judiciary in New Jersey, which is recognized as one of the finest in the country, as I understand it, has survived rather well under the system. I think judges in New Jersey have done what they thought was right and what they had to do, knowing that it would be subjected to scrutiny by the Legislature and the public, and it has worked rather well. I think that test has passed, and I would not want to foreclose the Legislature from consideration of that aspect, because I just don't think we are going to see abuses. We never have yet, and I don't think we are going to see them now. But, that is just a matter of opinion. Senator Dorsey.

SENATOR DORSEY: Every time I say I absolutely agree with you, I get cut off. I want to say that I absolutely agree with what Chairman Russo just said. I would also like to inquire, do your comments apply equally, not only to the Legislative Branch in exercising its functions in the course of renomination, but also to the Executive Branch?

MR. APRUZZESE: Well, it would seem to me that anyone who discharges a public act, whether it be Executive or Legislative, certainly can be scrutinized by the public or private people. I didn't

mean to suggest that none of these things could be scrutinized. The point I have been trying to make is, that if someone clearly and unequivocally does not follow a specific written law, or a specific duty, it seems to me, they will be called to task, be they judges, legislators, or executive people. When you get into the difficult area of value judgments, where someone must make a judgment, utilize discretion, or express an opinion in a given area, they are not blaringly clear at all times. It seems to me that in a discussion of those types of decisions, which invariably are decisions that have to be made, particularly by the judiciary, that is where I sound a note of caution, as I did.

SENATOR DORSEY: I want to say that I agree with your concept, that one decision does not necessarily make a pattern or does not characterize anything and everything that a particular person has done. I certainly agree with Senator Russo, that the Legislature, in performing its functions in the renomination process, has the right, if not the duty, to review the work product. With your exception and your qualification in mind, I hope that your comments apply equally to the Executive Branch, as well as to us poor legislators.

SENATOR RUSSO: To amplify just a bit, I think if the Legislature were barred from it-- I guess what we are saying is, no matter who the Governor is, he doesn't open the back door of his office when he sits down and talks to his counsel, or whomever, and say, "Shall we reappoint Judge Pressler or someone else?" He doesn't open that door and invite media in when he decides that he or she has had a pattern of decisions he liked or didn't like. I don't necessarily refer to Governor Kean -- any Governor. This is the strongest executive in the country. The door isn't opened, and there are no limitations on what he can talk about, he or she, or think about. So, I think what we are saying is, should there be such limitations on the Legislature if they aren't there on the Governor? Maybe some day we will have a system where we can open the process on both ends, not just on the Legislature.

MR. APRUZZESE: Senator Russo, I wouldn't want to restate what I have tried to say, except with one last observation. It may be



we are talking about a difference of degree, I don't know. I have tried to indicate what I consider to be the degree of emphasis that might be needed or appropriate, and perhaps that is the area of difference.

SENATOR RUSSO: Senator Gallagher.

SENATOR GALLAGHER: Thank you, Mr. Chairman. Mr. Apruzzese, every member of this Committee is elected by the people of this State, as are all other Senators not here. No one at the Bar Association is elected by the general public. As such, we have a responsibility in the advice and consent procedure, to review everybody who comes before us on the basis of their performance, and in essence, to protect the general public where necessary, and see that they are getting qualified individuals. So, I think there are very valid reasons for this Committee to look into all aspects of any particular nominee. I, for one, and I know everyone on this Committee, fully intends to make their decisions based on all the information made available to them.

My question after that little statement to you is, you indicated you support this particular nominee. Do I derive from that statement that you, and the members of the Bar Association, after reviewing all matters -- and I assume that when you say you reviewed the nominee, you went into depth and reviewed all the information that has become available, and maybe more -- have you reached a decision that there is no such pattern with this particular nominee, and that it is an isolated case or two?

MR. APRUZZESE: First of all, let me say that the Judicial Appointments' Committee of our State Bar Association reviewed this nomination, and did so prior to most of the notoriety in the press. As a result of that notoriety, the Bergen County organization had an additional meeting -- as a matter of fact, I understand their Judicial Appointments' Committee invited Senator Cardinale to attend -- and the various information that was brought to our organization was reviewed. I met for two hours with Senator Cardinale to discuss with him any of the problems he had, because he had made known that he had some reservations. In fact, he had strong reservations, and he was consulting with lawyers and people in the profession. I took the

opportunity to call him, and I complimented him on the fact that it appeared he had an open mind from what I had read in the press, and I would be happy to sit and discuss it with him.

I have had additional meetings of our Bar Association subsequent to this, not only with our Executive Board, but with our Board of Trustees, and I have discussed this with our Chairman of the Judicial Appointments' Committee. We have looked at whatever information we have been able to garner, and it is our collective judgment, Senator -- and our Board met last Friday -- to endorse this reappointment, and authorize this appearance by both myself and Mr. Pitney.

SENATOR GALLAGHER: Thank you very much.

SENATOR RUSSO: Vince, when Governor Byrne was Governor, he set, and apparently followed, a policy that he would nominate no person to be a judge who the Bar Association did not approve. Is that correct?

MR. APRUZZESE: I don't know whether Governor Byrne said that or not.

SENATOR RUSSO: Oh, you don't. Do you know whether Governor Kean has said, or indicated he will follow that same procedure?

MR. APRUZZESE: I do know we have an agreement with the Governor that we will report, based upon the Governor's request, our findings as to whether someone is qualified or unqualified. In that particular agreement, we reserve the right, if a name goes forward who we do not find qualified, to make any adverse comment we think appropriate. But, I am not personally aware, Senator, of any statement made by Governor Byrne or, for that matter, any statement that may have been made by Governor Kean.

SENATOR RUSSO: Okay. Senator Gallagher?

SENATOR GALLAGHER: I have just one more question, so we have a clear understanding of the Bar Association's participation in this. Have you ever rejected any nominees, potential nominees?

MR. APRUZZESE: Yes, we have.

SENATOR GALLAGHER: You have. Have you given full reasons as to qualifications, period, with regard to those nominees who were rejected?

MR. APRUZZESE: Any time that action was taken by the Bar Association, we reported to the Governor, and our arrangement with the Governor is, everything we do is confidential. I might also add, that is the nature of the agreement we have had with the Governor. We do that out of concern for the nominee, if you please. The only reason this particular matter is being discussed as it is, is because it did develop into such a high profile and public comment. I would suggest as well, that it was our opinion that we speak to the Governor's Office and indicate that, rather than speak out on something which was submitted as confidential. We did want his office to know that in this particular instance, we thought the confidentiality might be waived because it was in the area of the public domain.

SENATOR GALLAGHER: But, you are giving him reasons as to why they are not qualified, is that true?

MR. APRUZZESE: Yes, we are. If people had been nominated and we took a position in opposition to them, we did, in fact, so advise the Governor.

SENATOR GALLAGHER: And my last question is, how is your Judicial Review Board selected?

MR. APRUZZESE: We have a Judicial Appointments Committee that consists of a representative from each of the twenty-one counties; two Vice-Chairmen, one from South Jersey and one from North Jersey; and then, a Chairman. That Committee is appointed by the President of the Bar Association. They serve four terms. The Committee does rotate. I might just add -- it is not a specific answer to your question, Senator Gallagher, but, in my thirty years, since I have graduated from law school and have been active in bar affairs, it is one of the most industrious, hard-working committees I have ever seen in operation.

SENATOR GALLAGHER: My last question is -- because you are here not really to be given consideration for this post -- have you ever, or has the Bar Association ever reported back to the Governor that they were rejecting someone who had already served on the bench and was up for renomination?

MR. APRUZZESE: We have tried to check our files, and to my knowledge, no one who has ever been nominated for reappointment has

been opposed. I would say there have been people who were renominated, but because of various questions that arose or were brought to the attention of the Committee, we called these people, subject to reappointment, before the Committee for an interview and to question those particular nominees, as perhaps this Committee might, about specific areas that were matters of concern. That has been done. As a matter of fact, in the past year and a half, I, personally, was there when it was done in at least two or three instances.

SENATOR RUSSO: But never has the Bar Association, to your knowledge, ever recommended against the reappointment of a judge?

MR. APRUZZESE: Not to my knowledge, sir.

SENATOR RUSSO: I mean, doesn't it sort of sound, as we have been accused of occasionally, like the "good old boys club" a little bit?

MR. APRUZZESE: Well, as far as I know, anyone can draw any conclusion they would like from that. I don't really know, and I'm not privy to the information, but a law partner of mine was once in the Senate, and he was, as a matter of fact, Chairman of this Senate Judiciary Committee. I asked him, "Has the Senate Judiciary Committee ever refused to reappoint someone who has come before that Committee on some grounds?" To my knowledge, that has never happened. I stand corrected, if I am wrong, but I am not aware of any.

SENATOR RUSSO: Senator Dorsey.

SENATOR DORSEY: We don't feel bound by that heresay precedent.

SENATOR RUSSO: Right. But, let me just tell you that there have been occasions when our opportunity to do that has been wiped out from under us by the Governor. There was one this past year, where the Governor, unilaterally -- and again, the doors weren't open, the media wasn't invited in, and so forth -- made a decision not to submit to us or to withdraw from us the nomination of a sitting judge. But, there was no criticism of that, you see, nor any explanation as to why.

SENATOR GALLAGHER: In that case, they recommended approval?

SENATOR RUSSO: I do believe so, although, I can't say for sure. I think the Bar Association did recommend approval, but the

nomination was withdrawn by the Governor's Office while it was pending before this Committee.

MR. APRUZZESE: I don't know of the matter you are referring to, specifically.

SENATOR RUSSO: Are there any questions? Senator Vreeland.

SENATOR VREELAND: I just have one question that I would like to ask the gentleman. To the best of your knowledge, has every County Bar Association endorsed this applicant for reappointment?

MR. APRUZZESE: Senator Vreeland, under normal circumstances, every County Bar Association does not take action. I think in this particular matter, because it became such a raging controversy, the last information I had -- and you must bear in mind that County Bar Associations normally meet once a month, and some of the County Bars have not met -- the last count was, at least to my personal knowledge, fifteen of the twenty-one counties had met and endorsed the reappointment of Judge Pressler. I believe, subsequent to the count of fifteen that I had, which was prior to last Monday, when a lot of people thought the matter might be heard on that particular day, some additional counties have endorsed Judge Pressler for reappointment. But, I do not profess to tell you that I have an up-to-date count on all twenty-one counties. No one has raised any opposition to the reappointment, that I am aware of.

SENATOR VREELAND: Well, I think you stated previously that your Judiciary Review Committee, which is composed of a member from each County Bar Association, has approved that; am I correct?

MR. APRUZZESE: Yes, sir. That is correct.

SENATOR VREELAND: Thank you.

SENATOR RUSSO: Okay. Senator Cardinale, do you want to say something at this time?

SENATOR CARDINALE: I have just a few questions, if I might, of the witness. Or, would you rather I hold those questions until later, when I make my actual presentation? I think it would be simpler. There are going to be just a few.

SENATOR RUSSO: I'll tell you what, Senator, suppose we hold them for now, reserving, perhaps, the right to do so later, after your presentation, okay?

SENATOR CARDINALE: As long as Mr. Apruzzese is going to stay.

SENATOR RUSSO: Vince, will you stay?

MR. APRUZZESE: I will, if you want me to.

SENATOR RUSSO: Yes. Please do, in the event we do have questions. Are there any other questions of the witness? (no response) Okay. Thank you, Vince.

MR. APRUZZESE: You're welcome.

SENATOR RUSSO: Don't go anywhere. I think, Vince, that you mentioned someone from the Bar Association wanted to follow up on your testimony?

MR. APRUZZESE: Yes. Mr. Pitney.

SENATOR RUSSO: James Pitney, Chairman of the Judicial Appointments' Committee of the Bar Association. Good morning, Mr. Pitney.

JAMES PITNEY: Good morning, Senator Russo. Good morning, gentlemen. As has already been stated, I am the Chairman of the Judicial and County Prosecutor Appointments' Committee of the State Bar Association. Vince Apruzzese has indicated that our Committee consists of twenty-five members, the Chairman; two Vice-Chairmen, one from North Jersey and one from South Jersey; a representative from each county; and, the President of the State Bar Association, Mr. Apruzzese.

The Judicial Appointments' Committee has been in existence since 1969. Through agreement with the present Governor and the past four Governors of this State, our Committee is charged with the responsibility of reviewing the qualifications of individuals who are under consideration for appointment to the judiciary and for appointment to the position of prosecutor in the various counties.

In evaluating sitting judges who are up for appointment and for tenure, we typically rely on four sources of information. Number one is the Report of Past Ethics Complaints, which is prepared for us by the Administrative Office of the Courts; number two, we rely on the investigation and report of the Judicial and County Prosecutor Appointments' Committee of the County Bar Associations; number three, we rely on the investigation and report of that member of our Committee

from the county from which the appointment emanates; and, number four, needless to say, we rely on our own individual knowledge about the nominee.

Typically, we do not call sitting judges before our Committee. The investigations by the Judicial and Prosecutor Appointments' Committee of the County Bar and by the members of our Committee, include interviewing numerous attorneys who have appeared before the sitting judge, as well as interviewing other judges who have worked with the judge in question. Both our Committee and the County Bar Committees are careful to talk with defense counsels, public defenders and prosecutors. In addition, we talk with a random sample of eminent members of the bar who have been exposed to and who have appeared before the particular judge. When questions arise, they are resolved through further investigations.

These procedures were followed carefully in the case of Judge Sylvia B. Pressler. I will state to the members of the Committee that there were no ethics complaints filed against Judge Pressler. I will also state that this is a rather unusual occurrence, particularly for a judge who has, in the past, sat on matrimonial matters. Typically, some of the matrimonial judges have a great many complaints filed against them, but there were no complaints filed against Judge Pressler in the ten years in which she has been sitting.

The Bergen County Judicial Appointments' Committee, at a meeting held in June, gave Judge Pressler high marks for her legal ability, her productivity, her comportment, and her demeanor. Our Committee, I should say parenthetically, requires the County Committees to fill out extensive questionnaires dealing with such matters of knowledge of substantive and procedural law, ability to communicate orally and in writing, basic fairness, reputation for hard work, reputation for decisiveness, and reputation for moral courage, among other characteristics.

As I stated, the Bergen County Judicial Appointments Committee gave Judge Pressler high marks. I would like to read into the record at this point, if I may, a letter which we received prior to our consideration of Judge Pressler at our meeting in June. This is a

letter addressed to me from the Chairman of the Judicial Appointments Committee of the Bergen County Bar Association:

"Dear Chairman Pitney:

"Last Friday, I chaired a meeting of the Bergen County Judicial Appointments Committee, which considered the proposed judicial reappointment of The Honorable Sylvia B. Pressler.

"The Committee, after due consideration of Judge Pressler's qualifications, a personal interview of the candidate, and due deliberation, voted unanimously to recommend to the State Committee favorable action on Judge Pressler's judicial reappointment.

"Anyone who knows or who has ever appeared before Judge Pressler, is well aware that she is an exceptionally well qualified jurist. Judge Pressler's contributions to the substantive law of this State are well documented, as are her scholarly and thoughtful opinions.

"The Judge's contributions to the procedural law of this State require no restatement by the undersigned. Judge Pressler is a superior jurist who cares about the quality of justice and the litigants. The State of New Jersey needs more judges like Judge Pressler, and the Bergen County Bar Association is pleased that Governor Kean intends to reappoint Judge Pressler, who is an exceptionally qualified judge.

"I am returning to you the completed confidential report on Judge Pressler, and if you have any questions about the enclosed report, or wish to discuss any portions of this report, please telephone me. Very sincerely yours, Barry Krolin"

The members of our Committee from Bergen County also conducted an extensive investigation, interviewing sitting judges, prosecutors, public defenders, and other members of the bar who had appeared before Judge Pressler, and gave her equally high marks.

Twenty-one members of our Committee were present at the meeting on June 20, when Judge Pressler's name came up before us. All of us had either appeared before Judge Pressler or were familiar with



her opinions, or, at the very least, were familiar with her scholarly annotations of the New Jersey court rules. I am sure those members of this Committee who are members of the Bar have had occasion to refer to that volume.

In other words, Judge Pressler was well known to us to begin with. Judge Pressler was found qualified for reappointment and tenure by the unanimous vote of all twenty-one members of our Committee. The Governor was so advised by letter from me, dated June 22, 1983.

I can only reiterate what Mr. Apruzzese has previously stated. Our Committee is strongly of the view that Judge Pressler has been an outstanding jurist, and is clearly worthy of reappointment and tenure. We affirmatively urge this Committee to confirm her reappointment.

SENATOR RUSSO: Thank you, Mr. Pitney. Are there any questions from the Committee? (no response) Again, thank you very much, Mr. Pitney.

SENATOR ZANE: Mr. Chairman?

SENATOR RUSSO: Yes, Senator Zane?

SENATOR ZANE: Mr. Chairman, do we happen to know whether or not the Governor's Office does what we know to be a four-way check on a reappointment?

SENATOR RUSSO: The four-way check is done on every nomination that comes before the Senate. However, that four-way check is not available to us generally. I have just sent a request over to the Governor's Office in this particular instance for the four-way check to be made available to the Committee, or in the alternative, to the Chairman. I am waiting for a reply. Normally, we do not receive it, although it is done in every case -- the original or the reappointment, as I understand it.

Next is Mary O'Hara.

M A R Y O' H A R A: My name is Mary O'Hara, and I live in Burlington County. I sent a letter to each one of the Senate Judiciary Committee members.

SENATOR RUSSO: Is that the letter dated September 23, 1983.

MS. O'HARA: That is exactly right.

SENATOR RUSSO: We have that, and it is part of the record.

MS. O'HARA: Thank you. My concern is that an individual does not have any input into examples -- true examples -- of fabricated facts. I am concerned about the individual, whereas the Bar Association is concerned about the lawyers uniting. We know that Boards today often grant unanimous decisions where everyone gets together and simply agrees. This is okay. Why? Because it does not harm them personally in any way.

However, in my case, I have been harmed, but the harm was not in the loss of three and one-half months salary and the corresponding benefits, because I did not get a hearing. The loss is continuing. The loss is my position as a media specialist.

There was evidence in the decision that this was a sex discrimination case, that I was not given a hearing by the administrative law judge because--

SENATOR RUSSO: Ms. O'Hara, let me interrupt you. The administrative law judge may be up here some day for reappointment, but not today. Direct your comments to the qualifications of Judge Pressler, the only person who is before us today.

MS. O'HARA: I would have to say that I oppose Judge Pressler's reappointment because I feel that the individual clients do not get justice, and lawyers, of course, are altogether with the judges. There is no opportunity for the client to speak in any law case, except to appear as a witness. This is why I am here today.

I think the Senate Judiciary Committee should consider the examples that have been provided of individuals who are not being heard.

May I just conclude by saying that the administrative law judge who denied the hearing did not have tenure, and the Appellate Division should reverse the decision when they see that there is something wrong. In this particular case, I have cited fabricated facts in my letter to you. I would ask you to please consider the poor individual clients' requests. That is all I have to say.

SENATOR RUSSO: Thank you, Ms. O'Hara.

Ed Houghton?

SENATOR CARDINALE: Mr. Chairman, will that witness likewise stay?

SENATOR RUSSO: Well, I am not going to be able to corral every witness, Senator Cardinale. That is going to be up to them. If you want to make that request of them-- I can't direct them to stay.

SENATOR CARDINALE: I appreciate that, and for that purpose, may I ask you to reconsider your earlier decision that we hold all of these questions and keep all of these people here? I think we can get on the record the answers to a few points that concern me, and we can do it as they each appear. With all due respect to the chair, that would be a process that might allow a little more orderly consideration of this.

SENATOR RUSSO: I appreciate the suggestion, but I don't think it would be more orderly.

Mr. Houghton?

EDGAR VAN HOUGHTON: Senator Russo, that is Edgar Van Houghton.

SENATOR RUSSO: What is it?

MR. VAN HOUGHTON: Van Houghton.

SENATOR RUSSO: Oh, I'm sorry. Van Houghton.

MR. VAN HOUGHTON: I am the Senatorial candidate for the Eleventh District.

SENATOR RUSSO: We're not interested in that. Just talk about the nominee who is before us.

MR. VAN HOUGHTON: One of the underlying causes for my decision to run is the issue involved in senatorial courtesy.

SENATOR RUSSO: Nor are we interested in that. That issue is not before this Committee. The only issue before this Committee is the qualifications of this judge's reappointment. Are you here to speak for or against her reappointment?

MR. VAN HOUGHTON: I am here to speak against her reappointment.

SENATOR RUSSO: Will you give us the reasons why you are against her reappointment, based upon her qualifications, character, demeanor, or what have you? Stay away from any political or other issues. That is not the purpose of this hearing.

MR. VAN HOUGHTON: Senator, it was my desire to speak in terms of senatorial courtesy.

SENATOR RUSSO: You are not going to be allowed to do that, so that is over with. Let's go on now. If you have anything else to add, fine. If not, that will end your testimony.

MR. VAN HOUGHTON: No, that is what I wanted to speak about.

SENATOR RUSSO: Our next witness is The Honorable Alfred Clapp. Good morning, Judge Clapp.

**A L F R E D C. C L A P P:** Senator and members of the Judiciary Committee, I am here because I had so much contact and work with Judge Pressler. I have been Chairman of the Supreme Court's Civil Practice Committee for the past thirty-five years. Judge Pressler is an eminent author and an outstanding expert in this field of the law.

So, I've had the privilege of working with her a great deal. I think that expresses, in a few words, what I have to say, urging very strongly that she be reappointed. I might say, incidentally, that I speak as a former Senator from Essex County, former presiding Judge of the Appellate Division, where Judge Pressler is now assigned, former Dean of Rutgers Law School, which she attended, and, for many other reasons. I strongly urge that she be reappointed to the Superior Court of New Jersey.

SENATOR RUSSO: Thank you, Judge. I just might say that whether or not we agree with you, it is an honor to have you here. I can remember admiring your work when I was at Columbia Law School, and I have ever since. We are very happy to have such a distinguished person here, as well as so many others here today. Thank you for taking the time.

JUDGE CLAPP: Thank you, sir.

SENATOR RUSSO: Thank you. Along the same line of eminence, Justice John Francis, former Justice of the New Jersey Supreme Court. Judge Francis?

**J U S T I C E J O H N J. F R A N C I S:** I should say it is nice of you to allow me to share with you some factual material. It seems relevant to this proceeding, and I hope it will be of some service to you.

As you indicated, I am a retired Justice of the Supreme Court. I spent almost twenty-six years in trials of the Appellate

Courts, and the last fifteen of those years were spent in the Supreme Court.

Shortly after my retirement, I was appointed Chairman of the newly created Advisory Committee on Judicial Conduct. I have been there for the almost ten years of its existence. The broad authority to discipline and remove judges, and the grounds for it, really came from you gentlemen of the Legislature.

The Supreme Court then, in 1974, adopted procedural rules to implement the authority, and the ethical conduct of all judges from the municipal courts came under the watchful eye of the public, legislators, judges, lawyers, and litigants.

The Committee was and is, as I am sure all of you know, made up of two retired Supreme Court Justices, four lawyers, and three laymen. Originally, there was some criticism of membership by laymen. The people, particularly perhaps lawyers, said, "How can laymen judge judges?" The question was answered really very quickly, because it soon became obvious that legal knowledge should not be a necessary test for membership in our Committee. It was enough if the laymen and women on the Committee were reasonable people and knew the difference between right and wrong.

So, for almost ten years now, the lay members have joined in administering, honestly and equitably, the rules of judicial conduct adopted by the Supreme Court, which are to regulate and guide the ethical conduct of all judges.

Newspapers and other media publicity was given about the creation of the Committee, its functioning, and the fact that it would entertain complaints against judges who were allegedly guilty of unethical conduct in the handling of cases and litigants.

In the almost ten years of its operation, the Committee has received and acted upon 656 complaints against members of the judiciary. Our Committee classified the complaints in its public reports over the years. Generally, they were classified in this manner: misconduct in office; willful failure to perform duties; engagement in political activity; intemperate conduct; conduct prejudicial to the administration of justice, which brings the judicial office into disrepute; and, finally, incompetence.

As you can see, the categories opened the way to the public for the presentation to the Committee of a wide variety of complaints of unethical conduct against judges. That does not mean that a complaint should be made charging that the judge made a mistake in applying a principle of law or committed a legal error in deciding a case. Those subjects present grounds for appeal to the Appellate Courts, which have broad power to rectify them. Our Committee has no jurisdiction in those matters. We deal largely with allegations of bad courtroom conduct by judges, arrogance, rudeness, intemperate conduct, belittling of litigants and lawyers, and harassment and ridiculing of witnesses.

In the area committed to us for decision by the Supreme Court and the legislative authority rendered in 1970, we have not been spared work.

Of the 656 complaints I mentioned, 627, or 96% of them, have been completely investigated and processed. I will not take your time now to give you the statistical results of our disposition of those complaints. If you wish, at the conclusion of this statement, I will be glad to furnish you with a summary outline of their disposition.

This brings me to what I really came to say. I hope you do not feel it has taken me too long to get around to it.

Our Committee has been in existence for substantially the entire period of Judge Pressler's occupancy of the bench. During that period, and although we have had all kinds of complaints about judges, from intelligent to bazaar, we have never had a formal or informal complaint, or even a letter of complaint, against Judge Pressler.

In these days, when emotions run high in litigation, and even the loss of a case frequently stimulates an unmeritorious complaint against the judge who decided it, Judge Pressler's record looks very good on the matter of reappointment. That is what I came to say.

SENATOR RUSSO: Justice Francis, as I said to Judge Clapp, we are not only appreciative of your offering your thoughts, but we are very honored to have you before this Committee. Of course, I had the privilege of serving with the Supreme Court at a time when you were there also. Along with, I think, every member of this Committee, I

admire your work, and we are grateful to you for taking the time to come before us today.

JUSTICE FRANCIS: Thank you very much. I should say that I watched you from across the corridor, in that long year that you were with Justice Catino. I think all of us felt then that you had a pretty good future ahead of you.

SENATOR RUSSO: Well, you noticed I fished for that compliment very carefully and thoroughly, and am I glad you picked it up, Justice. (laughter) Senator Gallagher.

SENATOR GALLAGHER: Thank you, Mr. Chairman. Mr. Justice, I want you to understand that some of these questions I am asking are primarily to determine some information on which I can make my judgment. It has nothing to do with being for or against this particular nominee.

You mentioned 600 and some complaints of one type or another. How many of those are for municipal judges and how many of those are for judges at the level of Judge Pressler?

JUSTICE FRANCIS: I think I can tell you that fairly accurately. In the early days of the Committee, the great majority of the complaints were against municipal court judges. Most of our hearings in those days involved municipal court judges. That is not true now. The situation with respect to municipal court judges has improved tremendously, but, there are still a number of hearings. I will give you the figures of the complaints in the various courts.

SENATOR GALLAGHER: Mr. Justice, you can give those to me later. I would like to have the disposition information as well, if you can make that available to me later.

JUSTICE FRANCIS: I have that here.

SENATOR GALLAGHER: I think we can settle my question. Roughly, how many complaints would you say, of those 600, fall into the category of judges at the level of Judge Pressler and higher?

JUSTICE FRANCIS: Very few in the early days; more now than ever before. Let me just give this report that you asked for, for the last court year. In the 1982-1983 court year, we disposed of twenty-five complaints against superior court judges. Would you like the results of those?

SENATOR RUSSO: Well, perhaps, Justice-- Senator Gallagher, could you get them later, rather than take the time of the Committee?

SENATOR GALLAGHER: Yes. No problem.

SENATOR RUSSO: Are there any other questions?

SENATOR GALLAGHER: Thank you, Mr. Chairman.

SENATOR RUSSO: Okay. If not, for the benefit of the Committee, we are going to take a very brief five minute recess. We will resume promptly in five minutes. Thank you, Justice Francis.

(Recess)

#### AFTER RECESS

SENATOR RUSSO: Will everyone take your seats, please? While we are waiting on the nomination of Roger Kahn, may we have a motion to approve?

SENATOR O'CONNOR: So moved.

SENATOR RUSSO: A second?

SENATOR ORECHIO: I second.

SENATOR RUSSO: Roll call?

MR. TUMULTY: Senator Russo?

SENATOR RUSSO: Yes.

MR. TUMULTY: Senator Hirkala?

SENATOR HIRKALA: Yes.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: Yes.

MR. TUMULTY: Senator Orechio?

SENATOR ORECHIO: Yes.

MR. TUMULTY: Senator Zane?

SENATOR ZANE: Yes.

MR. TUMULTY: Senator Dorsey?

SENATOR DORSEY: Yes.

MR. TUMULTY: Senator Vreeland?

SENATOR VREELAND: Yes.



MR. TUMULTY: The nomination is released.

SENATOR RUSSO: Steven Radin? Steven R-A-D-I-N, I think? Is he here?

SOMEONE FROM AUDIENCE: He is in the hallway.

SENATOR RUSSO: He is in the hallway? All right, while we're--

SOMEONE FROM AUDIENCE: He's here now.

SENATOR RUSSO: Good morning, Mr. Radin. What position do you hold?

**S T E V E N   R A D I N:** Good morning. I am just a hard-working practicing attorney from Newark, New Jersey.

SENATOR RUSSO: Are you here to speak for or against the nomination?

MR. RADIN: For the nomination.

SENATOR RUSSO: Do you have anything new or different to add, other than to register your support of the nominee for the same reasons that have been given by those supporting her so far?

MR. RADIN: The only thing new I have to add is that I appeared before Judge Pressler during the time that she was a Hearing Examiner for the Division of Civil Rights. I noticed and observed that during that time she was compassionate and understanding, with a full grasp of the law in a very sensitive area. That is the only thing I have to add.

SENATOR RUSSO: Thank you very much, Mr. Radin. Thank you for coming in.

SENATOR RUSSO: Andrew Napolitano. Mr. Napolitano, what position do you hold?

**A N D R E W   N A P O L I T A N O:** I am another hard-working lawyer, Senator.

SENATOR RUSSO: Mr. Napolitano, are you speaking for or against the nominee?

MR. NAPOLITANO: I'm speaking in favor of the nominee.

SENATOR RUSSO: Do you have any new or additional reasons other than those which have been given?

MR. NAPOLITANO: The only additional reason is, and I would address myself to the members of the Committee who are not practicing attorneys, I know Judge Pressler from having practiced and appeared before her, and I also sit with her on the Supreme Court Civil Practice Rules Committee. Those of you who are not practicing lawyers should know that Judge Pressler, I think, is held as the standard with respect to her commentary on the rules, which are, of course, the lifeblood of what trial lawyers have to use every day.

I think you should know it would be a gross disservice to the trial bar and to the judiciary were she not to be reconfirmed.

SENATOR RUSSO: Thank you, Mr. Napolitano. Thank you for coming, sir.

MR. NAPOLITANO: Thank you.

SENATOR RUSSO: Frank Montagna?

**FRANK MONTAGNA:** I'm here to speak against the nomination of the reappointment of Judge Pressler. Please excuse me, I have a horrible sore throat.

SENATOR RUSSO: Is the microphone on?

MR. MONTAGNA: It is on. It must be my voice.

SENATOR RUSSO: What are your reasons for opposing the nomination?

MR. MONTAGNA: My reasons are, Judge Pressler reversed the decision in which I was the complaining witness. I would like to add that I had no knowledge that this case was being appealed. I make that statement because one of the Supreme Court judges said that we have an opportunity, as complaining witnesses or a victims, to express our views through an appeal system.

This decision was rendered on March 1, 1983. It is now October, and I finally received a copy of this last month. By pure accident, I was told that this decision was reversed. So, you see, gentlemen, we don't have an avenue of recourse.

I realize that there are a lot of people here, but I want to touch this very briefly.

Judge Pressler, in reaching her decision, alluded to certain statements in this brief, which I think were appalling to me and my

wife. One of the statements she made was that she felt this was a private dispute between two neighbors. She has that right. But, she also alluded to, in that same statement, that I was using the criminal justice system for civil remedies.

I just want to give you a few dates, gentlemen.

SENATOR RUSSO: Mr. Montagna, let me interrupt. This is an opinion that she rendered in the Appellate Division. Is that correct?

MR. MONTAGNA: Yes.

SENATOR RUSSO: Have you appealed it to the Supreme Court?

MR. MONTAGNA: I just told you the reason why I could not. There is a time, as you well know, that you are allowed to appeal a decision. If this decision was rendered on March 1 -- I'm not blaming her for that, I'm blaming the prosecutors in our county for that -- and I received this -- I'm not going to tell you how I received it -- in September, how could I possibly appeal this decision?

SENATOR RUSSO: Okay. The point I want to make to you, Mr. Montagna, is that we're not here to, in effect, sit as the Appellate Court of that decision. If you have comments concerning her demeanor, her temperament, her character, her integrity, or what have you, fine. But, the fact that there are things in there that you don't agree with, or where you think she was wrong, is really not a proper subject for us on this Committee.

MR. MONTAGNA: Well, my second point, if you will allow me, Mr. Russo -- I took a long ride here. I'm from Mr. Orechio's home town. It is a decision based on her making a statement that all the appeals by the defendant were appealed by her. She then stated -- and she took it upon herself, and I'm not a lawyer -- I was always under the impression that if you don't raise an issue before an Appellate judge or any judge, she or he is not the person to reverse the decision. She stated that these two complaints, which I have in front of me, were never signed, and I quote "by a judicial officer, a police officer, a deputy clerk, or a court clerk."

Very briefly, on the right-hand side, my name appears in one; my wife's name appears in the other. Below it appears the name of Karen Byrne. I would like to ask you to ask Judge Pressler if she

knows who Karen Byrne is. She happens to be the court clerk in the Town of Belleville, and indeed, these complaints were signed. I would like to know how she reversed the decision, saying that no judicial officer, no court clerk, nor deputy clerk signed these complaints? If she did make that decision, does she have the right to reverse a decision when that issue was not brought before her? She does state that in there -- that the defendant never raised that issue.

They are the two questions that I would like to have this Committee ask Judge Pressler. If you nominate this woman, remember, the people in this State -- you are listening to attorneys here. It sounds like buddy-buddy day here, but remember, the people in the State elect every one of you.

I will do my best, if the representatives in my town, don't go against this nomination--

SENATOR RUSSO: I can assure you that especially at this time of the year, we don't need any reminding that the people--

MR. MONTAGNA: Well, I would like to remind Mr. Orechio because he is very familiar with it. May I say one more thing? I'm here as a citizen. I don't want to lose my job. That is what I am saying, sir.

SENATOR RUSSO: Okay, are there any questions? (no response)

Thank you very much, Mr. Montagna.

Alexander Waugh, Jr.?

ALEXANDER WAUGH, JR.: I am here to testify in favor of the appointment. I do not want to add to what has been said by prior witnesses about Judge Pressler's work on the Civil Practice Committee, which I think is outstanding, so I am just going to add that I have appeared before Judge Pressler. My point of view did not prevail that day, but I spent the whole morning in the courtroom and I thought her demeanor and her reasoning were certainly very judicial. Thank you.

SENATOR RUSSO: Thank you, Mr. Waugh.

Marvin Mann? Are you Mr. Mann?

MARVIN MANN: Yes, sir.

SENATOR CARDINALE: Because Mr. Mann has come over to me, I would like to indicate that Mr. Mann is not here at my request. There

is someone else who could testify with respect to the same case and who is involved in it, but I don't think Mr. Mann is an appropriate witness before this Committee. I don't want anyone to think that he is testifying because I've asked him to. I only make that statement because he came over to me.

SENATOR RUSSO: Okay.

MR. MANN: Is it possible--

SENATOR RUSSO: Have a seat, Mr. Mann. Are you here to speak for or against the nominee?

MR. MANN: I am here today to speak against the reappointment of Judge Sylvia Pressler. I would appreciate it if this Committee would give me the opportunity to be heard. I am objecting, because there is in this State of New Jersey a silent, fraudulent deed racket in which very influential people in this State are involved, which is--

SENATOR RUSSO: Confine yourself to the nominee and her qualifications, or lack of them. Speak about that and nothing else.

MR. MANN: I am objecting to the reappointment of Judge Pressler because of her judicial discretion. She has disregarded the rules of evidence.

My sister is a cancer patient. She owned property in Short Hills, New Jersey -- property valued at \$600,000. She appeared before Judge Sylvia Pressler, and she made one request of Judge Sylvia Pressler. She said, "I request that you inspect the original forged deed." Judge Sylvia Pressler refused to inspect the original forged deed, a deed that states that my sister, who is a cancer patient, sold her property to a swindler for \$1.00 -- property, I want to emphasize, which was valued at \$600,000. Judge Sylvia Pressler rubber stamped--

SENATOR RUSSO: Hold your voice down, speak in a calm manner, and we'll be glad to continue to hear you.

MR. MANN: Yes, sir. I want to thank the Committee for giving me the opportunity to be heard.

My sister's property was stolen from her by silent-deed forgery. She had hoped that when she appeared before Judge Sylvia Pressler, she would receive justice. Instead, Judge Sylvia Pressler rubber stamped the decision of the judge below. She refused to inspect a forged deed that contained--

SENATOR RUSSO: You told us that.

MR. MANN: Sir, sir--

SENATOR RUSSO: Was this an Appellate Division matter that she was sitting on?

MR. MANN: Yes.

SENATOR RUSSO: With two other judges?

MR. MANN: That is correct.

SENATOR RUSSO: Was your sister represented by counsel?

MR. MANN: My sister originally had counsel, but the counsel had a serious conflict of interest.

SENATOR RUSSO: Keep your voice down.

MR. MANN: The counsel who represented the defendant has involvement in the casino industry in Atlantic City where he owns large stockholdings. The law firm that was representing my sister did not inform her that they were representing the same casino in Atlantic City--

SENATOR RUSSO: No, no, talk about--

MR. MANN: (continuing) and, there was a serious conflict of interest. On the day my sister appeared before Judge Sylvia Pressler, she appeared pro se, without any attorney.

SENATOR RUSSO: Was there an appeal to the Supreme Court?

MR. MANN: Before I answer that -- we had read in the newspaper where Judge Wilentz has stepped off the bench and has started to protect Sylvia Pressler.

SENATOR RUSSO: Just a moment. Was there an appeal to the Supreme Court? Yes or no?

MR. MANN: There was an appeal to the Supreme Court. I hope you are not trying to use that to prevent the television and the news media from knowing about a silent, fraudulent deed racket that is ripping off the people of the State of New Jersey, and because influential people are involved--

SENATOR RUSSO: You've got about five seconds to calm down and shut up, or you are going to be out of this room. Do you understand that? Now, we allowed you to come here and testify, and we welcome you. You are going to be given a full opportunity to testify,

but it is going to be on the terms of this Committee, whether you like it or not. If you want to criticize her, you may do so.

Now, let me go back to where I was. Keep your voice down, because the next time you raise it, that ends your testimony. Do you understand that?

MR. MANN: Yes, sir.

SENATOR RUSSO: Was there an appeal to the Supreme Court?

MR. MANN: Yes, sir.

SENATOR RUSSO: Is it pending, or has it been resolved? Has that appeal been heard yet by the Supreme Court? Do you know?

MR. MANN: She has cancer and has been under chemotherapy for one year, but she is working on paperwork to give to the Supreme Court.

SENATOR RUSSO: Okay, so it is still pending?

MR. MANN: The case, I would say, is pending, or should be pending before the Supreme Court. The Supreme Court Justice, as you know, Mr. Wilentz, whose family personally knows the defendant in this matter -- I believe that we should not have any cover-ups here today.

What I have to say, which is in the interest of the people of the State of New Jersey -- the voting public -- I believe you should not try to stop me. The public should know before election day what I have to say, who is involved -- because not only my sister--

SENATOR RUSSO: You're raising your voice again.

MR. MANN: I'm sorry, sir. I want to apologize. My sister has been a victim. She is a cancer patient who has been victimized by the judicial system for many years. She owned the property since 1971, and it was stolen from her when she went to Memorial Cancer Hospital in 1977. A forged deed came, which was back-dated to the year 1974. Because in the State of New Jersey, we do not have any rules as to when a deed must be recorded, we have operating in the State of New Jersey a silent, fraudulent deed racket, which is operated by officers of the court.

SENATOR RUSSO: Mr. Mann?

MR. MANN: Yes?

SENATOR RUSSO: You see, the problem is not that you are right or wrong. We have formed the judgment there. This Committee is not here--

MR. MANN: No, I--

SENATOR RUSSO: You can't listen when you are talking. Relax. This Committee is not here to make a determination of whether there is a forged deed racket.

MR. MANN: I understand the system.

SENATOR RUSSO: Just a minute. We have no jurisdiction to do that anyhow.

MR. MANN: That is correct.

SENATOR RUSSO: All we are here to determine are the qualifications of a particular nominee for reappointment. Especially with an Appellate Review in process, we're really not ultimately concerned about the correctness of a legal decision that she has rendered.

What comments do you have about her character, integrity, or demeanor, because I don't want you to keep repeating the same thing over and over again. This is not the forum for it.

Now, do you have anything to add concerning her particular qualifications?

MR. MANN: Yes, sir. Sylvia Pressler is the person who wrote the comments and annotations to a book titled, Rules Governing the Courts of the State of New Jersey. Although she wrote the comments and annotations and her name appears on that book, she refuses to live up to the rules which she wrote in that book. I have underlined each and every rule that she has violated repeatedly. I had planned to go into each and every violation of the rules. Since she wrote the comments and annotations, she should have more knowledge of violations than myself or any other person in this State. She is the first person to violate her own rules, and she should be the example-setter in this State. Because she is violating those rules, she does not deserve to be reappointed to the bench, and because she is allowing and protecting a silent, fraudulent deed racket in this State -- and, she was put on notice that this silent, fraudulent deed racket is being operated by friends, former law partners of the the former Governor of this State of New Jersey-- These former law partners have been stealing the property of the aged and the sick, and they have been--

SENATOR RUSSO: Okay, Mr. Mann.



SENATOR ORECHIO: Mr. Chairman, what do the former Governor's law partners have to do with Judge Pressler?

MR. MANN: Sir, I--

SENATOR RUSSO: Mr. Mann, you just finished your testimony.

MR. MANN: I did not finish my testimony.

SENATOR RUSSO: You just finished your testimony.

MR. MANN: I have not. If are you going to stop me from talking, then I--

SENATOR RUSSO: I'm going to have you thrown out of here.

MR. MANN: If you are going to have me thrown out of here, I'm going to ask the people--

SENATOR RUSSO: Out.

MR. MANN: (continuing) to remove each and every person on election day--

SENATOR RUSSO: Joseph O'Donnell, our next witness?

MR. MANN: If you don't allow me to speak here, I am going to ask the people to remove all of you from office, because you are all protecting a silent, fraudulent deed racket, in which my sister's property was stolen from her.

(At this point, witness was bodily removed from hearing room by two State Police officers.)

SENATOR RUSSO: Joseph O'Donnell? Mr. O'Donnell, are you here speaking for or against the nominee?

**J O S E P H   O ' D O N N E L L :** I am here to speak for, Senator Russo.

SENATOR RUSSO: Are you an attorney?

MR. O'DONNELL: Yes, I am.

SENATOR RUSSO: Do you have anything to add other than what has been said, other than to register your support?

MR. O'DONNELL: Yes, I do.

SENATOR RUSSO: Go ahead, sir.

MR. O'DONNELL: I have come here to speak to you on behalf of two organizations. First, on behalf of the Mercer County Bar Association, of which I am privileged to be President. The Mercer Bar Association is approximately six hundred--

SENATOR RUSSO: (interrupting) We understand all of that. What do you have to add that hasn't been said in support of the nominee?

MR. O'DONNELL: The other capacity in which I speak is as President of the Association of Trial Lawyers of America, New Jersey Branch -- seventeen hundred lawyers. Let me explain the organization a little.

SENATOR RUSSO: (interrupting) We are not interested -- in a lot of things today, as you can tell.

MR. O'DONNELL: I understand that.

SENATOR RUSSO: Do you have anything to add about the nominee that hasn't been said?

MR. O'DONNELL: Yes, I do.

SENATOR RUSSO: Say it.

MR. O'DONNELL: The Plaintiffs' Trial Bar continually trusts and tests the trial judges of this State. These are the attorneys that file the cerebral palsy cases, the formaldehyde cases, the dioxin cases and the Ford Pinto cases. The consensus of our organization, which is seventeen hundred members, is that Judge Sylvia Pressler is well qualified, and is one of our most sensitive and brilliant jurists. She is able to quickly identify the sensitive issues that exist between victims of torts and industry.

We also regard Sylvia Pressler as one of the finest teachers in the State of New Jersey. Our organization, along with the Mercer Bar, and I'm sure lawyers throughout the State, are thankful to Judge Pressler for the time she has contributed to teaching young lawyers, teaching other members of the bar, and generally elevating the practice of law and the competence of young trial lawyers in our State.

I thank you very much for your attention, Senator Russo.

SENATOR RUSSO: Thank you, Mr. O'Donnell. Stick around, I think there is a question. Senator Gallagher?

SENATOR GALLAGHER: Mr. O'Donnell, do you review all of these prospective judges, and judges for reappointment, much like the Bar Association?

MR. O'DONNELL: No, we do not.

SENATOR GALLAGHER: You don't? What do you base your comments on then?

MR. O'DONNELL: Our organization, when we heard about the Judge Pressler difficulty, was shocked and incensed, and felt it was important that we, for the first time, do something to take a stand and make our feelings known about this jurist. I wrote a letter on behalf of the bar, indicating it was our particular feeling that we did not want Judge Pressler caught up in any fight over senatorial courtesy, or any other legal issues. But, we would like her judged strictly on her outstanding contributions as a jurist and as a teacher, because the second qualification, teacher, tells you something remarkable about this woman.

SENATOR GALLAGHER: I appreciate your giving, whatever it was, on behalf of the Judge, but I asked you a question. On what information did you base your conclusion? Did you review it with all these trial attorneys? Did they bring their comments to you, or are you taking off on your own?

MR. O'DONNELL: No, I am not taking off on my own. My appearance here is pursuant to a vote of the Board of Trustees and the membership. While all seventeen hundred members were not able to be polled in the short time I had before I appeared, our entire Board and our membership, as many as we were able to contact -- Judge Pressler is not a stranger to us, and for a long time her reputation has been known to all the members of our organization.

SENATOR GALLAGHER: Thank you very much.

SENATOR RUSSO: Thank you, Mr. O'Donnell.

Sylvia Cordenauer? Good morning, Ms. Cordenauer. I received a batch of material from you, and of course, I spoke to you on the phone last night. I can understand generally your purpose in being here. Were you here at the beginning of the hearing? You said you would be late because you had to be in court this morning.

MS. CORDENAUER: We just got here from Elizabeth.

SENATOR RUSSO: Okay. I want to then briefly reiterate the guidelines and ground rules, because we're going to follow them. Sometimes it results, as you just saw, in unpleasanties, but on the

other hand, we're going to do what we think is right. If someone doesn't agree with us, so be it. I think though that we can conduct this hearing with some decorum and dignity without having these kinds of problems.

We're interested in the qualifications of the nominee, particularly character, integrity, honesty, temperament, etc. We would like to restrict ourselves to that issue. We can't agree with every one of her decisions or any other judge's decisions. We all know that. Nor are we going to go into matters that are outside the realm of this Committee's hearing today, namely the qualifications of this nominee.

I have been urged by the Committee to place time limitations on witnesses, but so far I've resisted that, because it may be that some particular witness has a need for more time. I don't want to cut anyone short, but on the other hand, I want it restricted to the purpose of this Committee in a proper manner. I am sure you understand that, but I'm sort of repeating it for anyone who got in late and is going to testify after you.

With that in mind, I would like you to proceed with your testimony concerning the qualifications of this particular judge for reappointment.

**SYLVIA CORDENAUER:** Well, I do have a question before I proceed with that. What I wanted to speak about was the quality of her decisions that we consider to be illegal and unconstitutional. I hope that would be appropriate.

**SENATOR RUSSO:** There are some of us who feel it would be totally inappropriate, and there are some of us who feel we should allow some reasonable discussion. The reason is, we don't sit here as an Appellate Court, of course. Anytime any judge renders a decision that someone isn't happy with, there is a recourse -- to appeal it to higher courts. We don't want to sit here today as an Appellate Court for all of her decisions that someone didn't agree with. We don't think that is our function. We are more concerned with her character, integrity, temperament, and things of that sort than whether we do or do not agree with her decisions. Do you understand that we just couldn't review all of her decisions over the past ten years?

MS. CORDENAUER: Well, would you consider a decision that was stated prior to the time that the papers were received relevant to the matter -- a decision signed by Judge Pressler on a date prior to the time that the papers were actually filed and received by her?

SENATOR RUSSO: Suppose you give us the name of the case and the date, etc.

MS. CORDENAUER: All right.

SENATOR RUSSO: Before you do, Senator Zane has something to say.

SENATOR ZANE: Mr. Chairman, before you comment, I'll be more than glad to abide by whatever the rules are of the Committee, but you've indicated that we are really not interested in decisions and what has happened. I would just like to point out that that is contrary to the position that the Governor has taken, and the Governor has based some of his decisions -- in particular, on a reappointment that I am familiar with -- upon decisions, and absolutely nothing else. I don't happen to think, despite the fact that he holds such a high office, that his wisdom or judgment is any greater than this collective Committee's. So, I question a little bit in my mind whether or not -- I know time is a concern -- we should really take that position. I just mention that for the purpose of discussion in case anyone else happens to feel that way. I can be specific and say to you that the Governor's Office evidently based the decision earlier this year on just that -- decisions rendered by a judge.

SENATOR RUSSO: I think I would respond to that by saying that the Governor oftentimes does things that I don't agree with, and perhaps you also. That is why I didn't want to adopt any blanket rule so that we will not go into decisions. On the other hand, I don't want us to sit here and, in effect, act as an Appellate Court for every one of her decisions. I just tried to strike some kind of a balance. Hopefully, it will be a sensible one.

Senator Gallagher?

SENATOR GALLAGHER: Mr. Chairman, I sort of agree with Senator Zane. I think we have an opportunity, when a judge has been on the bench for awhile, to take a look at his or her record, which we

don't really have available when we first appoint a judge. I think we do have to give some consideration to some of the decisions to determine whether there is the pattern that Mr. Apruzzese referred to earlier. I think we have to look at some of these to see if that pattern, in our minds, exists.

SENATOR RUSSO: Okay, let's see where we are going. Senator Dorsey?

SENATOR DORSEY: Mr. Chairman, I certainly agree with Senator Zane. I'm not sure whether he is agreeing with me now, or I'm agreeing with him on that point relative to decisions. I would just make this suggestion to you. I do not believe that these non-lawyer, lay witnesses understand the manner in which you would have them make only direct responses, or for instance, direct testimony. I frankly think that they become more hyper when you interrupt, and correctly so, than if you were dealing with legal minds that understand the analytical process. They are afraid they are going to be totally cut off, and frankly, I think it would be fairer to them if you gave them a time period, and permitted them to say whatever it is they wish to say. The whole process would probably be speedier, and they would probably feel that they had been able to express themselves, rather than to be tacked down as a judge tacks a lawyer down in trying a case.

SENATOR RUSSO: I have a problem with that. For example, if we were to set, say ten minutes, for a witness, one witness may legitimately need twenty minutes. On the other hand, I don't want to spend nine minutes of the ten minutes listening to testimony that is totally irrelevant or out of order just because that person has been allowed ten minutes.

Look, we all do the best we can, and that is what I'm doing. If it isn't right, it isn't right. But, we're going to continue this way and hope it works out.

Go ahead, Ms. Cordenauer.

MS. CORDENAUER: I want to thank you for the opportunity to testify on behalf of lay people, particularly women. My testimony is going to be confined to a series of recent incidents, which really stemmed from ten years of litigation.

I appeared in the court of Judge Matturri of Essex County, and I was denied my constitutional rights three times. I was told that I couldn't file applications because I ordered transcripts, that I had no status in the court, and things of that sort. I filed an emergency appeal on the constitutional issues with Judge Pressler on September 1, 1983. I left Judge Matturri's court when I was told that I had no status to file applications and went to Judge Scalera, the Assignment Judge, who was on vacation, and I ended up with Judge Marzulli, the standing Assignment Judge. I was then told to go to the Appellate Division. The Essex County Appellate judges were on vacation, so I called Judge Pressler and was given the opportunity to go to her chamber, to her court, the next morning at 10:30 in Bergen County.

I was told to bring a simple certification detailing what had happened in Judge Matturri's court, which I did. That evening, I hastily drew up a certification and a little outline of a notice of an emergency appeal. I was accompanied by two people, an associate and a relative the next morning, September 2.

When I got to the Bergen County Courthouse, Judge Pressler was not there, so I went in and saw her secretary. I gave her a copy of my certification, and I told her that I would wait outside. As I left the office, Judge Pressler entered. She did not see me, and I heard her say to her secretary, pointing her finger, "Is that her?" I was a little upset because I felt that her rather sarcastic remark indicated that I was facing a losing battle. Nevertheless, I went out into the hall and confided my fears to my associate and relative. I paced up and down the hall, and was finally called into her chamber.

I thought there was going to be oral argument, and I brought the two people in with me. I was told, "no," that this was going to be a private hearing in her chamber -- Judge Pressler, her secretary, whose name I don't recall, and myself. The other two people were told to leave, and they did.

We discussed the matter. It involved three issues, and they were set forth in my certification. It involved ten years, or more relevantly, six years of absolute unconstitutional treatment of me in the Essex County Court building due to my organizational role in Women

for Legal Awareness. We detailed some documents written by some of the various officials who worked for the New Jersey Supreme Court, as well as some quotes of various members of the judiciary, which referred to my role within the organization.

I ended up with three requests in my certification. One was to have enforcement of the order that I had originally gone to Judge Maturi for. Two was a change of venue stating that I could not be treated fairly in Essex County, because I was viewed as a thorn in the side of the Essex County Courthouse by various individuals. Three was to assign my matter to a court where I would receive just treatment.

A copy of the original certification which was prepared that evening is attached to the documents, and I have one for each of the honorable members of the Committee.

Judge Pressler dealt with the first issue which was the enforcement of the order. She spoke to the adversary who stated that the order had been complied with, but I begged to differ with her. She made another phone call and found that, in fact, I was accurate. The order had not been complied with. She was given notice that it would be complied with that day by one o'clock.

We then went on to the other issues about the change of venue and a court where I could hope for some fair treatment, as well as incorporating two other appeals of the major part of the case. I explained to her that I was having a problem -- that a matter that was a formal appeal had been listed as a Notice of Leave for Appeal, which meant that it could be turned down by the Appellate Court instead of giving me my right to proceed with the appeal.

She instructed me on how to incorporate the appeals and how to proceed with those. She also instructed me that in order for me to proceed with the emergency appeal, I had to return to Judge Maturri's court that day, and that I had to get a signed order from Judge Maturri. She said that the appeal with her could not be filed without that. I agreed to do that.

We arranged for the order to be complied with. I will just briefly go over it, because I did get compliance by the end of the day. I returned to Judge Maturri, got a copy of the signed order



which denied me the right to proceed in his court, and I took it home over the weekend.

At the beginning of the week, I prepared a formal Notice of Appeal, annexing the denied order, redid my certification into a proper letter brief, and returned to file it with Judge Pressler on September 8. Now, that was a holiday -- Rosh Hashanah -- and she was not there. I went to Judge Petrella's chambers and handed five copies to the secretary. I had a cover letter which she signed, and she signed "Received, September 8." So, the documents were filed September 8.

I didn't hear anything on the matter; however, I was quite pleased with the fact that Judge Pressler was willing to take and handle a controversial matter, to say the least. I commented about her fortitude in doing this to various members of committees that I serve on.

When the problem with Senator Cardinale surfaced, I was more inclined to think that he was wrong, and in fact, it was I who made a motion to the Essex County Advisory Board on the Status of Women that they support her reappointment due to the fact that this one contact with her, as far as I was concerned, meant that she was trying to right a great wrong.

On Friday, September 23, I appeared on the Bergen County Courthouse steps and voiced my opinion against senatorial courtesy. I referred to Judge Pressler's writing abilities and the fact that she does write the comments for the New Jersey Court rules.

The next day, September 24, I received two orders in the mail. I received a notice from the Appellate Division saying that the five copies of the appeal, which I had given to Judge Petrella's secretary on September 8, were filed and docketed. I also received an order from Judge Pressler dealing with the issues. The order stated that -- I would like to read that directly from the order she signed--

SENATOR RUSSO: It would help greatly if you could summarize as much of this as you can, because we do have a lot of witnesses and it is going to be a long day. As best you can, so that it will not affect your presentation, please summarize.

MS. CORDENAUER: Well, the order stated that she received the papers, she heard the matter and argued the matter, and she decided the matter on September 2, which is actually before she could do so, because she had not received the signed order from Judge Matturri. That was the morning when she instructed me how to go about redoing the papers and filing them properly.

The accompanying document, in a separate envelope from the Appellate Division, stated that the papers were just simply filed. That was physically impossible for her to do -- to decide the matter before she had the proper papers.

The most relevant part of the order was that she cast out the issues of the unconstitutional treatment, the request for a change of venue, and the request for the matter to be assigned to a court where I could receive just treatment. She stated that the issue was denied as moved, because the order was complied with. What she did was to actually ignore everything but the simplest issue. As far as I am concerned, this was a manipulative act to cover up a great travesty that was being conducted in the Essex County Courthouse as a backlash against women who were fighting for their rights -- for their legal and financial rights in marriage and upon divorce. I think that is the gist of my testimony.

I have the accompanying documents, which absolutely affirm everything that led up to the events in Judge Matturri's court. I also have a copy of the transcript where Judge Matturri said that I could not appear in his court -- that I had no status to appear.

SENATOR RUSSO: Would you like to leave those documents with us?

MS. CORDENAUER: I have copies for each of the honorable members of the Committee.

SENATOR RUSSO: John, will you accept those? I thank you very much. I particularly thank you for presenting your testimony in a calm and reasonable manner. We appreciate that very much.

MS. CORDENAUER: I always do that. I thank you very much.

SENATOR RUSSO: Thank you.

Senator Cardinale is next on the list. Would you like to testify now, Gerry?

SENATOR CARDINALE: How many others do you have?

SENATOR RUSSO: Well, there are about five or six. We will be breaking at one o'clock for lunch, so what would be your preference, Senator?

SENATOR CARDINALE: Why don't we take some of the others, and perhaps then we can give this an uninterrupted--

SENATOR RUSSO: Certainly.

SENATOR RUSSO: Nancy Stultz from NOW. Good morning.

NANCY STULTZ: Good morning.

SENATOR RUSSO: You are from the National Organization for Women?

MS. STULTZ: I am from the National Organization for Women, yes, sir.

SENATOR RUSSO: Are you here in support of or in opposition to the nominee?

MS. STULTZ: In support, sir.

SENATOR RUSSO: Do you have anything to add, other than what has been said? If not, we will simply register your support. If there is something you would like to add that is not repetitious, we would be happy to hear it.

MS. STULTZ: I wasn't sure if the following comments would be appropriate, but in light of others--

SENATOR RUSSO: Go ahead.

MS. STULTZ: On temperament -- I think our Organization came out in support of Judge Pressler about September 10, on the basis of the high level of qualifications, as supported by the Bar Association and a number of people who have worked with her and know of her work.

I agree with Senator Russo -- that this is the type of procedure where judges can be heard and their decisions taken into account on reappointment. I think that is fair. But, we do not have a chance for a hearing on every single judge that comes up.

SENATOR RUSSO: Yes, you do. You do.

MS. STULTZ: Well, they don't occur on every single judge.

SENATOR RUSSO: Fortunately.

MS. STULTZ: I think so. Basically, what we see here-- Our Organization, by the way, has been the recipient of many, many phone calls from people who feel they can't speak out because they work for courts or because they are attorneys. So, we are speaking out here.

I cannot express the depth of the outrage, particularly from women attorneys and women involved in the court process, who feel, in this case, that there is a higher standard being exacted of Judge Pressler than there would be for other judges.

We have been asking for more appointments of qualified women--

SENATOR RUSSO: (interrupting) I'm sorry to interrupt. I really think we have to confine our comments to Judge Pressler, not whether there should be more or less women or whether the standards are different--

MS. STULTZ: When you do get specific cases of women on the bench, there have been few role models, where, in some sense, the temperament that is necessary for good justice has conflicted with the traditional role that women have been playing. That is one reason why a difference in standard is being applied here.

We strongly support the reconfirmation of the Judge. I just cannot express to you the depth of feeling that we have been hearing from our membership, from women involved in the system. The irony of her being called "part of the old boys network," I think, best expresses that.

One additional comment on the depth of feeling about the shape of the campaign being used against her--

SENATOR RUSSO: (interrupting) I would ask you not to continue on that.

MS. STULTZ: I will not continue on that. We strongly urge the reconfirmation by this body and by the full Senate of Judge Pressler.

SENATOR RUSSO: Thank you. I would just simply state that I hope the attitude of this Committee applies no different standards to judges, whether they are women or men. I think the Senate, as a whole, has not. Frankly, I don't think Senator Cardinale does either.

Whether we agree with him or not, he is expressing his view on a judge. I don't think the sex of the judge is relevant to him or any of us; I hope not anyway.

SENATOR PAOLELLA: I have a question, Mr. Chairman.

SENATOR RUSSO: Of the witness?

SENATOR PAOLELLA: Yes.

SENATOR RUSSO: Senator Paolella.

SENATOR PAOLELLA: It is October, and I heard a familiar phrase, the word "campaign." I would just like to ask this particular witness, what role, if any -- whether or not she thinks she has a role in the campaign to press the renomination and confirmation of Sylvia Pressler? Are you in the campaign, too, or not?

MS. STULTZ: We are in a campaign because we feel it necessary to answer charges. Yes, we are. I said I thought that was appropriate for judges-- It is appropriate that we, NOW, are very aware of the fact that the nomination and renomination of judges is a political act.

SENATOR RUSSO: Thank you very much, Ms. Stultz.

SENATOR ORECHIO: Mr. Chairman, I would like to make a statement.

SENATOR RUSSO: Senator Orechio.

SENATOR ORECHIO: Just so the public isn't confused, I think at this time it is appropriate for me to say -- the comment that was used before -- every candidate, whether he or she be a candidate for a judicial office or non-judicial office, has the potential of having a hearing before this Committee. When a candidate is nominated by the Governor, it is in the press. Of course, there is notice from the Committee, and meetings are scheduled to review the nominations of candidates proposed by the Governor. What we are doing today is a standard operating procedure. This matter, of course, has received more notice than others, and consequently, this particular scene. But, every candidate gets a hearing. Thank you.

SENATOR RUSSO: Just to carry that on for a moment, there was one time, I recall, when a particular newspaper criticized us for not going into enough depth. Our function is that every nominee for the

bench, among others, whether a new appointment or a tenure appointment, comes before this Committee. And, every time that nominee sits here, since I have been here, and since the Chairman before me, we turn to the audience and ask if anyone wants to be heard on it. Now, if on one hundred prior nominees nobody wants to be heard, and on this one a lot do, it's not because we are singling out Judge Pressler. We are giving everyone a reasonable chance to be heard, not a full and unlimited chance. That is the purpose of the hearing. Senator Gallagher.

SENATOR GALLAGHER: Let me make just one comment, John. People make statements that the appointment of judges is a political act. All these people coming here are involved, in some shape or form, in politics, and so are we, as candidates and with our respective parties. This is a governmental function. We have a rightful place in this function, and that is advice and consent. What we are doing here today, we do with everybody whom the Governor appoints. The only reason this one is highlighted, is because there is so much controversy over it, some supporting and some opposing. As the Chairman said, and as the President of the Senate said, that can happen with any single appointment that comes through here.

If the public or your groups want to participate in it, we meet many times during the year to go through these things. This is a legitimate governmental function by the elected representatives of the people of the State of New Jersey. We are not playing politics here, and we are not weighing one sex against the other, or one party versus the other. We put people through who are from both political parties and from both sexes. I think we ought to get to the point that it is a governmental function, and it is a legitimate one, and let's not call it a political appointee, etc.

SENATOR RUSSO: Thank you, Senator Gallagher.

SENATOR RUSSO: Phoebe Seham, New Jersey Women Lawyers' Association. Good morning.

P H O E B E S E H A M: Good morning, Senator Russo.

SENATOR RUSSO: Are you for or against?

MS. SEHAM: The New Jersey Women Lawyers' Association would like you to reconfirm Judge Pressler. I do not have disastrously

different things to say from what other people have said but, in anticipating some of the questions of Senator Gallagher, I would like to talk a little bit about how we arrived at this decision.

We are a new organization; we are about two years old. We are, obviously, not part of the "old boys' network."

SENATOR RUSSO: Yet.

MS. SEHAM: Well, I think when we are, it is going to have a different name, Senator. We are not officially part of the judicial selection process; we would like to be. I am departing from my prepared statement, which you have a copy of. I have spent many, many hours over the past three weeks telephoning representatives of the approximately fourteen independent women lawyers' groups in this State which we are an umbrella for, first to talk to them about the situation in general, and then to come back to them after they have had a chance to consult with each other, with their boards and with their organizations.

We also had a conference in New Brunswick this past Saturday, where approximately ninety-five women lawyers, representing organizations in various parts of the State, met and had a plenary discussion over this. So, we have a different method of arriving at our decision making, than perhaps the older, more established and more affluent organizations do.

There has been overwhelming support for the reappointment of Judge Pressler, based on her reputation and based on the personal experience of the women lawyers whose opinions have been consulted. My personal experience is very small. I appeared before Judge Pressler on one occasion when she was on the trial bench, with a matrimonial case in which she was extraordinarily considerate and gentle with my client, who was the plaintiff. It was an extreme cruelty case, there was a lot of embarrassing testimony, and we got through it very well because of Judge Pressler's consideration.

We talked about the matter of courtroom demeanor. Again, there is overwhelming support for a belief that this has been entirely appropriate and fitting.

I will be glad to answer any questions you might have.

SENATOR RUSSO: Thank you very much.

MS. SEHAM: Thank you for this opportunity.

SENATOR RUSSO: Senator Vreeland, do you have a question?

SENATOR VREELAND: I just have one question. Are you an attorney?

MS. SEHAM: I am the President of the New Jersey Women Lawyers' Association, Senator. Yes, I am an attorney. I have been an attorney for ten years.

SENATOR RUSSO: Thank you, Ms. Seham.

Maria Elana Costellitos? Have a seat, please. Are you here in support of or against the reappointment?

**MARIA ELANA COSTELLITOS:** This is something that the Committee needs to decide. I am only going to speak about the facts.

I am involved in a matrimonial case where my children from the first marriage both have property. Today the property is deeded to them. During the divorce trial, the property was deeded to them. We went through all the evidence that protected the price of the property.

The defendant--

SENATOR RUSSO: Ma'am, let me interrupt. When I asked you if you were for or against, you indicated that you were going to let this Committee decide, and we're not going to try to fathom that. If you would like to be heard either for or against the nominee, based upon her qualifications, integrity, demeanor, or character, I would be glad to hear that testimony.

We are not going to relitigate your case. If you would like to offer a comment concerning this nominee, one way or the other, whichever way you want, we'll listen to it, but only dealing with her qualifications to be a judge, not a determination of your case all over again.

difficult to understand. The transcriber translated the information the best she could, and it follows.)

MS. COSTELLITOS: I don't think she is qualified to be a judge. As a great scholar or a professor in a law school, she would be fantastic, but as a judge, she lacks wisdom and manners. She is very quick with her decisions, and these decisions are illegal. They



complicate the case more, and they originate years of litigation after the decisions.

I can give the facts if you want them. She doesn't comply with the Code of Ethics. The Code of Ethics orders that every charge that involves misconduct or illegality of another charge will not cover up, but will correct the situation.

Well, the deed to the property was denied validation at the trial in 1979. The Appellate Division declared the marital distribution of this property invalid and ordered Judge Strelecki to produce all the evidence that she suppressed. Judge Pressler covered up all the evidence that Judge Strelecki suppressed. They are (inaudible). The latest order of Judge Strelecki is the order of August 5, 1981, which contained an admission forcing me to sign documents against my will and my duties. It was a false statement about the status of the property, naming it a marital home when the October 3, 1980 appellate determination declared that this was illegal.

Judge Pressler signed her September 14, 1981 order, covering the August 5 illegal orders by denying the release requested. The release was (inaudible) of a legal order. Judge Pressler did not state in her order the release--

SENATOR RUSSO: Excuse me, may I interrupt you? Was there an appeal taken to the Supreme Court from those orders?

MS. COSTELLITOS: Yes, but after many letters and many dispositions to the Supreme Court, the thing has never been righted. I sent a confidential letter to Judge Wilentz which contained the brief of the legal order of August 5, and the order later signed by Judge Pressler on September 14. Judge Wilentz answered that he did not want to break the confidentiality and that he could not intervene in pending cases.

I asked (inaudible), "What is pending an executive order other than the execution?" The later orders of Judge Strelecki and Judge Pressler were executed causing damages and court discredit. Who is to pay for these damages according to the laws of the State? How can the trust of the courts be restored?

I went through approximately--

SENATOR RUSSO: May I ask you this? Is it fair to say that your criticism of Judge Pressler is that she signed these orders which covered up what Judge Strelecki did?

MS. COSTELLITOS: There are more.

SENATOR RUSSO: There are more? Will you go on to the next point then?

MS. COSTELLITOS: Yes. The consequences are that I made a posterior emergency appeal motion, and Judge Pressler denied two other court orders that somebody dispositioned in the State which were in violation of the appellate orders that were written in the October 3 determination by the Appellate Division.

In addition, this was in violation of the Federal guarantees of the deed of property. Not only this, but when I (inaudible) five more court actions in the Appellate Division, they didn't want to see the evidence. They based their decision solely on the statements of Judge Pressler and on the statements of Judge Strelecki. They were false, illegal, and in violation of the court orders and the Constitution.

After this, I went through seven court actions--

SENATOR RUSSO: Let me ask you another question. In all of these actions, did Judge Pressler at any time mistreat you or abuse you or anything of that sort?

MS. COSTELLITOS: Oh, yes.

SENATOR RUSSO: She did? Tell us about that.

MS. COSTELLITOS: When I arrived at the court -- I am pro se -- Judge Pressler believed that I was the lawyer, and she said, "Come in. We're going to have coffee together." And I said, "Oh, thank you, your Honor. I didn't expect this." She, at this moment, realizing that I wasn't a lawyer, said, "You -- out." So, I went out to the corridor.

SENATOR RUSSO: That sounds like this Committee, doesn't it?

MS. COSTELLITOS: I went out to the corridor, which has only one door to the chamber of Judge Pressler. Suddenly, after a minute or a minute and a half, Judge Pressler's clerk came out and said, "You cannot wait in the corridor." He took me to another room and closed

the door. So, naturally, I opened the door, I went through the corridor, and I entered the chamber of Judge Pressler with the other attorney.

In the decision, she said that she would vacate the illegal order. She said so, and she told the defendant attorney to make the order. This was false, because afterwards, she signed just the opposite. This order was an emergency for a correction that I had September 2, but this order was not given to me September 2, but September 14. I had this action with Judge Matturri, and everything was a joke. Judge Matturri did not want to see the deed of the property, did not want to see the October 3 order.

SENATOR RUSSO: Stick to Judge Pressler; we have enough problems with that alone, without getting into Judge Matturri. He might be here next week.

MS. COSTELLITOS: Everything was rehearsed before I arrived at the court. They dismissed the case, with a false statement under oath that there never had been an emergency appeal before Judge Pressler, and that the deed to the property had been legally validated. Everything was false.

I requested the transcripts, but they would not give them to me. Finally, I requested the transcripts of the false statement under oath, and they said, "The tape recorder--"

SENATOR RUSSO: Who are they?

MS. COSTELLITOS: Well, I received a letter that said, "The tape recorder--"

SENATOR RUSSO: Was it from Judge Pressler?

MS. COSTELLITOS: It was from the court.

SENATOR RUSSO: Well then, we are not going into that. You see, what is happening here, and I hope you will bear with me -- we are really litigating your case all over again. We would just as soon leave those headaches to the Supreme Court. I mean, we do not get involved in that, although sometimes they step down and get involved in our legislative and Senate stuff, but we do not do it the other way around. So, we want to leave that to the Supreme Court. That is their headache.

MS. COSTELLITOS: Yes.

SENATOR RUSSO: I am going to ask you now to sort of summarize for me any other criticisms of Judge Pressler, her temperament, her character, without going into the orders and so forth, because there is an avenue of appeal. It is not the Judiciary Committee; it is the Supreme Court. So, just summarize for me, or we are never going to finish today.

MS. COSTELLITOS: Well, sir, I am not interested in politeness. If they treat me impolitely, it's okay, as soon as they comply with the law. They are not complying with the law. If you will allow me one more minute, I will say that Judge Pressler plays a very active part in the judiciary system. In this judiciary system, I went through seventy court actions without getting enforcement of the law, not with the court orders that they themselves signed. The Federal warranty (inaudible) deed of property has not been honored until the present day. There are about twenty actions in the different courts waiting for an answer.

I was threatened by a judge that the case will be in the Appellate Division forever, where Judge Sylvia Pressler is. It needs to be noted that we have fantastic judges. The judges who signed the October 3, 1980 belated application never wanted to hear the case. The President of the Appellate Division, The Honorable Judge Alcorn, has disqualified himself in my case. He did not want to take it.

SENATOR RUSSO: You're going -- you're really--

MS. COSTELLITOS: One moment more, and I will be finished.

SENATOR RUSSO: Okay.

MS. COSTELLITOS: Judge Kearney refused to hear the case assigned to him; Judge Stanton refused to answer the motion to acquire title; and, Judge Scalera refused to file the complaint against Judge Strelecki in the Law Division. In the appeals that I filed, I usually changed the name of the motion. They were denied without explanation and without substantiation. I got back these appeals in the transcripts, after dozens of requests to the Appellate Division and to the higher officers of the court. Thank you so much.

SENATOR RUSSO: Thank you very much. The next witness will be Genevieve Fullerton Neider. Incidentally, we have just three

witnesses left before Senator Cardinale, and I would like to finish the three of you before lunch, if you are able to help us out by being as brief as possible, and yet saying what you have to say.

Okay, Ms. Neider, are you with any organization, or are you speaking on your own?

**GENEVIEVE FULLERTON NEIDER:** I am speaking on behalf of Mr. Arthur Mai. I have power of attorney to do this.

**SENATOR RUSSO:** We made a determination at the beginning of the hearing that we were not going to allow testimony or documents that were unattributed to be referred to.

**MS. NEIDER:** This is not unattributed.

**SENATOR RUSSO:** Well--

**MS. NEIDER:** I don't think you understand.

**SENATOR RUSSO:** I don't think I do.

**MS. NEIDER:** This man is an eighth grade graduate. He has been terribly, grossly mistreated in the trial courts. He has a farm of thirty-four acres, worth about \$35,900 per acre. He was grossly mistreated. The lower court abused its judicial discretion. When it went up to Judge Pressler, the man was so sick by then over what had happened to him, that I brought the oral argument down that he was going to deliver. As a result of that, when she saw me there, I said, "The man is too sick to deliver his oral argument, may I read it? I have power of attorney to do it." She was very abrupt, very crude, and she ordered me out. She did take the document, but I do not believe she ever read it, because terribly serious violations have taken place in the code of judicial conduct, the code of professional responsibility, and all principles of ethics.

**SENATOR RUSSO:** I think we received a lengthy outline in writing of Mr. Mai's problem. Is that correct, ma'am?

**MS. NEIDER:** Yes, but there is much more to it than that. You don't have the transcript.

**SENATOR RUSSO:** If you would like to submit the transcript, please do so. We have this other material before us, and we will review it.

MS. NEIDER: Yes, but please don't cut me off until I say this, if you don't mind, Senator. I happen to be a former high school teacher; I am a Phi Beta Kappa; and, I was a valedictorian in high school, and I know whereof I speak. All of these things are proved in documents.

Now, the one thing that is different about this case, and all the other tragic cases that have come before Judge Pressler, is that this one is still pending. There has been gross misconduct, misrepresentation and lies by a receiver who never should have been appointed. Judge Pressler's opinion-- I will also give you a copy of that, but I'll have to Xerox it; I don't have it with me right now, but I will get it to you, as well as the transcript. Judge Pressler's opinion makes a false assumption. Apparently, this eighth grade graduate -- of course, she didn't call him that, but she knew it from the record which was submitted -- didn't cooperate. He wanted to subdivide his land to pay off a small balance due his ex-wife of only \$12,000, plus interest. One three-acre lot would suffice to do that. But, this illegally appointed receiver, in violation of all the court rules -- I don't have the number in front of me, but the specific number is in the second ethics complaint-- Nevertheless, it is now being sold and he might be evicted this very week, if someone from someplace-- I am so glad this Committee is convening today, because at least you are answerable to the people. Also, I have filed something with the Attorney General's Office on Mr. Mai's behalf.

His property is being sold for one-fourth its value, and the receiver knew this all along, because he is a neighbor right across the street. The receiver could have subdivided one lot, so that this poor old man could have lived there in his declining years. He inherited this farm from his parents. The ex-wife never contributed anything to its purchase. One lot was stolen by this receiver, at far below the market value, and Judge Pressler ignored the rule that says, right in the court rule book, that a receiver must get the fair market value. One lot was subdivided, leaving a \$12,000 balance to the ex-wife, which one more lot would have covered. One of the last lots was one the receiver sold for \$18,000 -- and I saw the sign on it by the party who

bought it. When you call there -- any of you can call there -- you'll find it is being sold for \$35,900.

Now, Judge Pressler ignored the fact that the visiting judge, Judge Leahy, in the lower court, abused his judicial discretion by ordering the entire farm sold, so she is just as guilty. On top of that, the receiver lied to the judge and said there was a certain order that gave Mr. Mai only four months to subdivide, which is absolutely untrue. I have now produced all the documents that Judge Pressler could have gotten.

The lower court judge, whose name I will not mention, said, "Oh yes, I see that."

SENATOR RUSSO: Was Judge Pressler sitting on the Appellate Division when she did these things, with two other judges?

MS. NEIDER: No, one other judge, for some reason.

SENATOR RUSSO: One other judge, okay.

MS. NEIDER: That makes no difference.

SENATOR RUSSO: Has an appeal been taken to the Supreme Court?

MS. NEIDER: The Supreme Court was asked -- that was before we found these documents which are in the second ethics complaint. They just ignored the whole matter.

SENATOR RUSSO: The Supreme Court ignored it?

MS. NEIDER: Oh, they didn't pay any attention to it. The great Judge Pressler, I mean, why would they? After all, if she says it's okay, it's okay. So, I want you to know, this receiver never should have been appointed. The lower court judge was guilty of abuse of judicial discretion. He saw an order--

SENATOR RUSSO: He is not before us today.

MS. NEIDER: No, but she approved it. Oh, she is just as guilty; I am leaving his name out purposely. The buyer -- just let me say one thing. If you cut me off I'll forget it, so please, Senator, I am a loyal Republican, and when I say this--

SENATOR RUSSO: Then, you're cut off. (laughter) Please continue.

MS. NEIDER: When I say this, I do not mean any disrespect to the Governor, but his cousin is a very prominent man, and he lives right across the street from this very valuable land, and he has always wanted to buy it. He has bought other land in the neighborhood, so he is now buying it with the cooperation of Judge Pressler, who let this receiver pass through with his lie to the lower court. He is now buying it for one-fourth the value of what this poor old man should get. He only owes \$12,000. Even with the interest, one thirty-acre lot would satisfy the judgment.

SENATOR RUSSO: Okay.

MS. NEIDER: Now, one more thing.

SENATOR RUSSO: You keep saying one more thing.

MS. NEIDER: Oh, but it is very important, Senator.

SENATOR RUSSO: This is the last one now.

MS. NEIDER: All right. Therefore, in the oral argument, which she abruptly took out of my hand -- she wouldn't let me read it, even though I told her I had power of attorney to do it. In that, it says that this poor man, when he fired a certain lawyer-- His name is in here, but I don't know whether you want me to give it. He is now a judge in Flemington, so she protected him completely, because when poor Mr. Mai discharged this lawyer, his lawyer refused to turn over the file. Judge Pressler decided this case against all principles of ethics, and against the rules of evidence. She decided it, even though she knew his former lawyer had all the documents. All she had to do was say, "This is a serious violation."

I have gone to many lawyers, and I have paid for their interviews to help this poor old man. One lawyer -- he may be wrong, he is a Trenton lawyer, but, he said-- (laughter) I take that back; I didn't mean it that way. But, anyhow, he charged me a great deal of money for this, and he said that not only is it against the civil court rules for any lawyer to withhold a file from a client when he wants another lawyer, but he also said, and I am quoting this lawyer -- if I'm wrong, don't blame me -- he said, "It is now a criminal offense." But, whether it is a criminal offense or not, it has always been against court rules for a lawyer to withhold a file. This lawyer, I'll



let you know this, was paid in advance in full. He is not owed a penny, but now he is a judge; he is a judge in Flemington and, therefore, he was protected by Judge Pressler.

Judge Leahy looked -- I don't know whether he was hallucinating, or whether he was just collusive -- but, he saw an order which did not exist. I have more documents, and I am so glad that all of you gentlemen who are elected by the people, and who are answerable to the people, can help this poor man. Now, I have filed some of this with the Attorney General.

I know that you are here only to investigate Judge Pressler's reappointment, but, gentlemen, you have it within your power to also stop anything that is going to happen to evict this man this coming Friday. He was not sure exactly what it was when he got this motion. I said, "May I read it?" However, he was so upset that he couldn't find it. Maybe I will be able to get a copy from the court, but I can't really tell you whether he is being evicted or what is happening to him.

This is a terrible thing that is happening to this man, and it is not concluded. It is still continuing this week. I know that many of you will feel that this is a terrible injustice when I give you the rest of the papers -- there are two ethics complaints -- but the Ethics Committee can't answer for you. They can't stop them.

Now, one more thing--

SENATOR RUSSO: Maybe if you were a good, loyal Democrat, we would give you one more thing, but that is enough now, isn't it?

MS. NEIDER: Well, I had to put that in because I feel that the Governor's cousin has been involved unwittingly--

SENATOR RUSSO: Keep talking. (laughter)

MS. NEIDER: That is very funny. However, I feel I do not want anyone to misinterpret my remark about a relative of the Governor. My whole family has been Republican, but I don't like what is going on right now. It is the fault of the receiver, who never should have been appointed. Now, in his papers--

SENATOR RUSSO: Okay, come on now. It's lunchtime, and we're all getting hungry. We have really been very patient with you.

MS. NEIDER: Let me just end this way. Will you gentlemen, who are investigating chiefly the reappointment of Judge Pressler, be kind enough in your duty as legislators answerable to the people, to also make sure that the Attorney General takes some action to stop all of this, until there is a full investigation? Mr. Mai would appreciate it, because right now-- I'm sure all of you, if you saw a crime being committed, if you saw a holdup, even though--

SENATOR RUSSO: Okay, we--

MS. NEIDER: Let me finish; please don't interrupt me. If you saw a holdup, you would definitely try to do something to stop it. Well, the way this man's farm is being taken from him is just as though a gunman had a revolver at his head, saying, "Give me your farm. You cannot pay your debt with a subdivision." Therefore, please help to stop this. Also, please consider everything Judge Pressler did wrong in this particular case. She has violated many, many principles, many court rules, and she has protected a nonexistent order that the lower court judge saw. Where he saw it, I don't know. It does not exist.

Thank you for your help, and Mr. Mai thanks you too.

SENATOR RUSSO: Thank you, ma'am. This Committee will now recess until 2:05 for lunch. We will resume promptly at that time.

(RECESS)

SENATOR RUSSO: We will now resume the proceeding. First of all, where is Senator Zane? Ray, in response to the request for the four-way check, the Attorney General came here during the lunch break with a four-way check in hand, but he would not turn it over to the Committee or to me; he simply pointed out that it contained nothing derogatory. I have not seen it. So, in response to that request, we were not given the four-way check.

SENATOR ZANE: I just hope that some day someone around here will recognize that we are a coequal branch of government. We are asked, and charged by law, to advise and consent on a gubernatorial

appointment, and I happen to think that the information which was provided to the Governor should also be made available to us. I don't think there is any spirit of cooperation between the Administration and this body if, in fact, this information is not provided. It makes it suspect in my mind and it won't be clarified until I see it.

SENATOR RUSSO: Nadene Taub. Good afternoon, madam.

N A D E N E T A U B: Good afternoon. I am here in support of the reappointment of Judge Sylvia Pressler. Let me make a brief remark explaining who I am, and the basis for that support.

I am a Professor of Law at Rutgers Law School in Newark. I have been a member of the Bar of the State of New Jersey for fourteen years, and I am the Director of the Women's Rights Litigation Clinic at the Law School.

The basis for my support is my reading of Judge Pressler's decisions, my use of, and indeed reliance on, the rules which she has worked so hard to draft and provide commentary on, my appearances before her as an attorney, discussions with my colleagues at both Rutgers Law Schools, and my observation of her contributions when she comes to our law school as a member of report panels and other teaching type functions.

I would simply note that everyone I have talked to at the law school, and I would make it clear that includes quite a few of my colleagues, agrees that she is a model for judges throughout the State. Her behavior, her temperament, and her integrity are all of the highest. There is no doubt that she has brilliant analytic ability. She has a commitment to fairness and performance that excels in the area of service to this State, and I, too, urge you to act affirmatively on this appointment. Thank you.

SENATOR PAOLELLA: Mr. Chairman?

SENATOR RUSSO: Senator Paolella has a question.

SENATOR PAOLELLA: Did you say she is a model?

MS. TAUB: Yes, do you have difficulty with that?

SENATOR PAOLELLA: I have difficulty reconciling why we are sitting here, with this place jammed with cameras, while you are telling us she is a model. Does that mean you find that everything

that has gone on here, and all of the negative comment that has been made is, in effect, fabricated?

SENATOR RUSSO: Just a moment, that question is out of order. Next question.

SENATOR PAOLELLA: That is a question that is not out of order.

SENATOR RUSSO: Are there any other questions? (no response)  
Thank you, Madam.

SENATOR PAOLELLA: I repeat the question.

SENATOR RUSSO: Virgil Popescu.

SENATOR PAOLELLA: You are joining the conspiracy, Mr. Chairman.

**VIRGIL POPESCU:** Do you have a bible by any chance?

SENATOR RUSSO: Are you speaking for or against the nomination?

MR. POPESCU: Against.

SENATOR RUSSO: Please give your comments regarding the qualifications of Judge Pressler and limit your remarks to her qualifications.

MR. POPESCU: I swear to tell the truth and only the truth, so help me God.

My name is Virgil Popescu. I am from Franklin Township, Somerset County. I have had two bad experiences with Judge Pressler. Unfortunately, I have not had the opportunity to debate with her on certain interpretations of the law, namely the rules of the court, which are copied by her, not written by her, as many people believe.

However, in spite of my broken English and my heavy accent, I will try to speak in clear, plain words when I tell the general public who Sylvia Pressler really is.

I came to the State of New Jersey in 1974. Due to the fact that I was unable to speak English, I had no choice but to take a job as a heavy machinist assemblyman, where, from the beginning, I was one of the best workers. I had the highest classification. I worked for Midland Rose Company in Somerset, New Jersey.

After two and one-half years I improved my English.

SENATOR RUSSO: Mr. Popescu, I am going to have to interrupt you.

MR. POPESCU: Yes?

SENATOR RUSSO: Please direct your testimony solely to the qualifications of Judge Pressler and nothing else.

MR. POPESCU: Okay. If I jump ahead to the qualifications of Judge Pressler, you are not going to understand anything. Probably the members of the Judiciary Committee will understand, because they have received a personal letter from me. It was directed to every one of you. In fifteen pages I explained to you exactly what she did to me. Fortunately, I am not just here with you, the Judiciary Committee; I am here with the public. I am here with the best. So, therefore, I feel obligated to explain to them, very briefly, how I became involved in arguing an appeal before Judge Pressler.

SENATOR RUSSO: Mr. Popescu, we respect your opinion that you have an obligation to the general public, but we are going to conduct this hearing the way we think we should. All we are interested in here is your testimony to this Committee. Now, you might want to talk to the press out in the hall, or whatever. But, we want to know what your testimony is concerning the qualifications of Judge Pressler, nothing else.

Please abide by our rules so that we don't have any problems.

MR. POPESCU: I get the message. I am sitting here with a dictatorship and I am going to comply with your rules. I am playing the game on your territory.

SENATOR RUSSO: Right.

MR. POPESCU: During a Workers Compensation proceeding, where I had a case for a back and neck injury, I realized that the court was an organized crime place, and I made many allegations and I have proof concerning those allegations. However, the Attorney General chose not to prosecute any of those criminals due to the fact that one of them was the father-in-law of the prosecutor. His daughter was a deputy attorney general, and so on and so on, and the Valachi chain was very well linked.

They turned against me and prosecuted me for contempt of court because I had the courage to make open allegations to the judge.

They summoned me before Judge Diana and I was asked what my defense was. I told Judge Diana that the truth--

SENATOR RUSSO: (interrupting) Excuse me. Please get to Judge Pressler, not Judge Diana, nor the Italian gentleman, nor anyone else -- just Judge Pressler. Do you have any testimony concerning her?

MR. POPESCU: Sure.

SENATOR RUSSO: Then please go directly to it or I am going to terminate your testimony.

MR. POPESCU: Okay, sir. During the month of August, 1981, I appeared before Judge Pressler in Morristown to argue my contempt charges. I was allowed to speak for about thirty minutes. Judge Pressler interrupted me and she asked me the following question: "If you make allegations that the doctors, the judges, the attorneys, the prosecutors -- and everybody else -- are corrupt, do you think I am corrupt also?" Well, that was a good question coming from her. It proved to me that she is very intelligent, and probably she expected me to be a coward and give a big smile and say, "No, ma'am. You are the greatest living person." But, I just looked at her and said, "Ma'am, I never saw you before in my entire life. I have never heard of you. I didn't investigate your background. But, if you affirm the conviction of thirty days against me because I was telling the truth, then I have no doubt that you are corrupt also."

At that point Judge Pressler scratched her head and looked around. She said, "Okay, whatever you say, Mr. Popescu. Deputy Attorney General?" The Deputy Attorney General was a woman. She told her side of the story. And, at the end of her testimony I got up to refute, as is specified in the rules of the court. It was a big surprise for me to hear that Mrs. Pressler drafted and provided commentary on a set of rules, since she was the first one to violate them.

She said, "I have had enough of you. You have said everything." And, she cut me off right there, and there went my appeal.

Later, I accepted her decision. Judge Pressler affirmed the thirty-day conviction. She also made an interesting recommendation

that I had to submit to a psychiatric examination. I was just laughing because this is a very old trick used by the communist governments in order to eliminate your position.

I didn't play her game. I filed an appeal to the Supreme Court of New Jersey, where, unfortunately, the appeal is standing before her friend. I don't have any chance to win that appeal, but I will go further to the United States Supreme Court. This is the first case.

Now, to the second case. Because of the corruption of the Workers' Compensation Board, I was unable to proceed with my case and I was unable to collect any benefits, despite the fact that I had a broken neck, a broken back, and paralysis on the right side, proven by medical testimony. Therefore, I filed a suit for intentional injury against the employer. I considered that suit to be stronger and more important for me. Therefore, I talked to probably fifty or sixty attorneys in the State of New Jersey. I chose the best, and he represented me in that case. Judge Lucas decided that case.

Because I accepted several payments made to me voluntarily by an insurance company, that gave immunity to the employer and I could not sue them anymore, although the Workers' Compensation law specifies clearly, in black and white--

SENATOR RUSSO: Get to Judge Pressler.

MR. POPESCU: I will get to Judge Pressler; she is coming.

SENATOR RUSSO: Quickly.

MR. POPESCU: Yes, sir. By the way, how much time do I have to speak?

SENATOR RUSSO: I am going to have to put a limit on you. I don't want to cut you short, but on the other hand you must deal with the subject at hand, namely Judge Pressler's conduct. Stay with that only.

MR. POPESCU: Yes, because if I have the time I can increase the speed of my speech and then I can get everything in.

SENATOR RUSSO: I will be glad to give you the time.

MR. POPESCU: Okay. Give me ten minutes.

SENATOR RUSSO: No, you have five.

MR. POPESCU: Okay, five minutes.

Well, as I said previously, Judge Lucas dismissed the case against me in court, based on his personal opinion. However, he did me a favor and allowed my case against the four supervisors to stand because they were not State employees and I was allowed to sue them in order to get something from them.

On November 21, 1981, I appeared before Judge Pressler again. At this time, I couldn't stand to see her face again and I chose to stay out of court. I sent my wife to court who speaks English and German. She is very intelligent. I wanted her to give me the facts, exactly, because I suspected one hundred percent that I was going to be a loser in spite of the fact that my attorney was one hundred percent sure that he was going to win the case because the Workers' Compensation law, under Section 34:15-8, gives me the right to sue the employer.

During the appeal, my attorney gave a great performance and the attorney for the defense didn't have any answers to the issues raised by my attorney. Both my attorney and my wife came outside very excited. They told me that I was going to be a winner. I asked them to tell me who was on the three-judge panel, and they said, "Pressler, Michels, and Trautwine. I said, "That's it. I am a loser. That woman has a vendetta against me and she is not going to let me get away with what I said to her the last time." They said, "Forget it. They are not prejudicial." I said, "Okay, we'll see."

Two days later, we received a letter from the clerk of the Appellate Division which directed us to file additional briefs in light of a previous case, Bryan Jeffers. I immediately went to the law library and I studied the case. I was very excited when I looked into this case. We had to win from the start. But, I was a little bit disgusted by the way Judge Pressler interpreted the law. She was not considering my case on its own merits. She wanted to imitate another case, decided by another judge.

However, my attorney filed the brief. On January 5, my attorney received a phone call from Judge Pressler's law clerk, putting pressure on my attorney to file the briefs immediately because there were only five more days left and they wanted to have the briefs so the



case could be decided. My attorney said, "Okay. The big Judge Pressler said so. Send the briefs."

One month later, I received something that I couldn't believe when I read it. She became the trial judge. She became the jury. And, she decided that I subjected myself to the risk of injury, that I was supposed to walk away if I realized something was dangerous, and since I did not do so, then I had no case. My case was dismissed entirely. It was decided in favor of the defendants.

Well now, Judge Pressler ignored the Federal Labor law which says clearly that a worker does not have the right to refuse a job on the grounds that it may look unsafe to him. However, he may have the right to refuse a job where there is imminent danger. There was no such thing in my case. I didn't see any danger. If I was guessing, I wouldn't have a broken neck and back and I wouldn't have been paralyzed for months. But, I didn't know.

Looking back to these two decisions, I have no doubt that this woman is very intelligent, but not as much as some believe, and not as much as she believes she is. Because, if she was that intelligent, she would not make such decisions. Judge Pressler could afford to do such things because she knew that she had behind her an entire conspiracy that supports her no matter what. If she does wrong, if she does right-- anything she does -- she is a most favored judge because she is Sylvia Pressler. Now, because I testified in the beginning that I would swear to tell the truth and only the truth, I have to point out to you that I am not anti-Semitic. I have many Jewish friends -- families and individuals.

SENATOR RUSSO: You will not comment on ethnic background, color, or anything of this sort before this Committee.

MR. POPESCU: I see.

SENATOR RUSSO: Your time is up, Mr. Popescu. If you need another moment or so, please conclude your testimony.

MR. POPESCU: Okay. I have to make a final comment. I am not here begging you for charity or for mercy, nor to say, "Please help me; give me some money or something because this woman hurt me." I am here because if this case, decided by her, is going to be affirmed by

the Supreme Court of New Jersey -- or if they refuse to handle my case -- then the case decided by her is going to become a pattern for all the workers in the State of New Jersey who are going to be injured intentionally by their employers. None of them is going to sue his employer for intentional injury because this case was decided by Judge Pressler and, as I said previously, she is greatly admired and she has many followers, such as the woman who came here and stated that Judge Pressler was a model for her. Thank you.

SENATOR RUSSO: Thank you, sir.

Roger Lowenstein. Mr. Lowenstein, are you here for or in opposition to the appointment?

ROGER LOWENSTEIN: For.

SENATOR RUSSO: Do you represent any organization?

MR. LOWENSTEIN: I issued a statement on behalf of the Harvard Law School Association of New Jersey, but I would like to make it clear that I am here as an individual today. There are judges that are members of that group and I don't want it to appear that I am speaking in any way for the members of the judiciary. I am here as another hard-working litigator.

I would like to add just one small item to what has already been mentioned.

SENATOR RUSSO: Okay.

MR. LOWENSTEIN: I share something, Senator, that you mentioned earlier, before lunch -- the great, good fortune to have clerked for a really terrific judge. I clerked for Haydn Proctor who was on the Supreme Court, and I had a chance to observe Justice Catino. You mentioned demeanor, and I certainly share your respect for what it is like to come before a man like Justice Catino and be treated civilly and with respect. It means everything to those of us who appear in court every day, to walk out of that court, win or lose, with a feeling that we have accomplished something for our clients. Winning isn't always possible, especially in an adversarial situation.

The one comment that I would like to leave this Committee with is as follows: Those of us who are in court every day -- and I have been a litigator now for fifteen years -- in conversation amongst

ourselves, agree that it is clear to a great extent that the practice of law is a lot less fun than it used to be, particularly in the litigation wing of the law practice, which is a minority percentage of the practice. Those of us who are in court every day, and who have to prepare to be in court, talk quite a bit about the fact that to some extent things aren't as much fun as they used to be, and part of that has to do with the tremendous press of work. This spills over as well to the judiciary. I would guess that it is far less fun to be a judge than it was, say, ten years ago.

Enjoyment of the practice is critical, and the key to it as far as I am concerned -- and this relates to Judge Pressler and why I am here testifying -- is the following: I, as a practicing attorney, go into court after I have spilled my guts out preparing a brief. I understand the issues -- I think I do. I am ready to argue my case and I come before a judge who is so busy and who is under such pressure because of the docket that an opinion is issued which really comes from left field. There can be nothing worse for a practitioner. One walks out of court feeling totally and completely worthless; that he has let his client down; and that the tremendous effort he has put into his case has all been for nothing. That happens all too often.

With Sylvia Pressler, one may not get the demeanor one gets with Justice Catino. No one can ask everyone to be a Justice Catino, with his kind of civility. But, I can tell you this. She has read the briefs. She understands the legal issues. Win, lose, or draw, there has been an honest, intelligent dialogue on the questions of law that are before the court.

If you think about it in the total context, it is that intellectual dialogue between judge and litigant which is at the heart of our democratic system. Judges don't have armies to support their judgments. What they have is rationality, intelligence, wisdom, and the hope that if they are good enough the rest of the community will support their decisions.

SENATOR RUSSO: Do you have anything else on Judge Pressler?

MR. LOWENSTEIN: Other than that, nothing. I appreciate the opportunity to be here. I admire the patience of the Committee. I think what you are doing is critical and I thank you.

SENATOR RUSSO: Thank you very much, Mr. Lowenstein. We appreciate your testimony.

SENATOR PAOLELLA: Mr. Chairman?

SENATOR RUSSO: Senator Paolella?

SENATOR PAOLELLA: I have a comment and a question. My comment is that was a refreshing breath of credibility, Mr. Lowenstein. And, I have a question for Senator Orechio before we get into the testimony and the questioning of Senator Cardinale. May I ask that through the Chair?

SENATOR RUSSO: Yes, if he would like to answer it.

SENATOR ORECHIO: It depends on the question asked.

SENATOR PAOLELLA: Senate President, Carmen Orechio, because at the conclusion of the last meeting of the regularly scheduled Senate session, the confusion was so great that I couldn't ask you this question, and I don't know the answer to it. By what authority are we here today, and by what rule are we here, when it is my understanding anyway that Senator Cardinale has not officially signed off on Judge Pressler's nomination?

SENATOR RUSSO: I hit the prority button, but it didn't quite work. Senator Paolella, we are not really going to get into a discussion of that issue before this Committee at this time.

SENATOR PAOLELLA: Has he been stripped? What was the ruling of the Senate?

SENATOR RUSSO: You can ask him that later. If you want me to, I will take a recess now. But, during the proceedings of this Committee we are not going to get into anything other than the confirmation proceeding of Judge Pressler.

I don't mean to suggest the question isn't fair or proper, but it just isn't at this time. If you would like, I will call a recess now.

SENATOR PAOLELLA: It is something of a procedural question that ought to be answered before we move further into the substance of this.

SENATOR ORECHIO: May I answer, Senator?

SENATOR RUSSO: No, you may not. The question and the answer are ruled out of order. If you want a recess, I will be glad to give you one, otherwise we will go on.

Senator Gallagher?

SENATOR GALLAGHER: Mr. Chairman, I assume that since we are starting with Senator Cardinale, that the only witnesses left are going to be the Senator and the nominee. I then have to assume that we will not have the pleasure of the Chief Justice's presence, nor the opportunity to talk with him. It seems to me that he introduced himself into this situation, publicly, quite a bit. I had hoped that he would be here in order to discuss with him why he did that, and so that he would make himself available to this Committee.

SENATOR RUSSO: Well, he is not here. The thing is, he chose not to appear. Of course, we can't do anything much about that. I really don't know what to say beyond that.

Are there any further comments before we get on with Senator Cardinale? (no response) Okay, Gerry.

SENATOR CARDINALE: Thank you, Senator. The question was raised regarding other witnesses. I will be calling several people during my presentation to punctuate various points, or to support various points, regarding the qualifications, or lack of them, which I am seeking to establish before this Committee.

Just to recap for you a moment -- and this recap will be very brief -- what we have heard so far on behalf of Judge Pressler is a case that has essentially been made by lawyers, judges, organized bar, men, women, and their partisans, in a battle to maintain control of the system which they have admitted, up until now, they have controlled.

Those who come in opposition have been less facile with their words, less facile in illustrating their cases and making their specific points. They aren't lawyers. They have been mocked, really, by this Committee, and I wonder how much the mockery has served to divert attention from some of the issues?

SENATOR RUSSO: Mocked by this Committee?

SENATOR CARDINALE: I believe so. It is an opinion I am expressing.

SENATOR RUSSO: Senator Cardinale, I had no intention of restricting you as I have other witnesses because you are a colleague. But, if you choose to use any of your time to criticize this Committee -- and you may be right in your criticism -- I am not going to sit and listen to it. So, bear that in mind and go on with your testimony. I will give you every leeway possible, but I am not going to sit here and listen to you criticize this Committee. We have done our best, or I have done my best. I know it isn't going to please everybody, but I don't have to sit and listen to it.

So, stay with the issue that we are concerned with, namely the renomination, if that should be the outcome, and go on with your testimony.

SENATOR CARDINALE: I am finished with that part of the presentation.

SENATOR RUSSO: Yes.

SENATOR CARDINALE: Let me go back to something, because the point was not succinctly made by the witness. It is an important point and it goes right to the heart -- although the case is not important -- of the kind of thing that is most objected to by me and by many others about the way Judge Pressler operates in court.

The case is the State of New Jersey versus Marie D. Ross. It is a dog case. I don't mean that figuratively; I mean it literally. It is a dog case, and you have to understand something of the case in the lower court before you can begin to appreciate what the issues were when it came before the Appellate Division.

It was a case of a neighbor with a barking dog that kept the other neighbors from sleeping at night. It was heard in the lower court, and in the lower court the decision was, "Hey, the dog has been barking, and stop the dog from barking in the future." It came to the Appellate Division, believe it or not. And, in the Appellate Division there were many issues raised. However, the ruling was based on a gratuitous judgment by the court, on an issue not before the court and not raised in the lower court: That these original complaints, these summonses -- I think that is what people speak of them as -- were signed only by the complaintant. That's what it says in here. The

gentleman involved testified earlier, and he just gave me these papers. They are here. He tried to show them to us; however, he didn't offer them as proof. They are signed by a deputy clerk of the court. That is one of the things I have said about another case which is a far more important case, and one which we will discuss: That evidence is called upon to justify a decision, which evidence does not, in fact, exist in the case. I say to you, that is exactly what we have here in a very unemotional, cold, cut-and-dried type of case.

A woman appeared here from the Organization of Woman on Legal Awareness, and you know she provided all of us -- me too -- with a tremendous sheaf of paper. I have gone through most of it and I have tried to sum it up on one sheet of paper so I could see it and tell you, what it contains. I have to say to you that I have just summed it up. It is only an analysis of what is in all of these papers. But, you can all sum it up for yourselves, if you will wade through it before you come to your decision.

She believed, in the first few days of September, that Judge Pressler was going to render favored treatment to her. I think that is well contained in here. This conclusion, coupled with general feminist concerns -- and she is a member of the Essex County Advisory Board on the Status of Women -- caused her and her organization to demonstrate on the Bergen County Courthouse steps, together with the illustrious Assemblymen, a Freeholder, and, standing on the side, an ex-justice of the Supreme Court who did not actively demonstrate but merely observed.

Then, several days later, or perhaps just the next day, the roof caved in, and she discovered -- and she says it here -- that "Carmen Orechio was not really supporting my position." Up until then she thought, in her papers, that, "Senator Orechio and I were in cahoots on this particular blocking of a judge."

She thought that this was so because she felt that the judges who, she felt, were abusing their constitutional privileges were friends and associates of Senator Orechio. I don't know whether they are or not, and it is not important. That is what she says she thought.

SENATOR RUSSO: Gerry, we have--

SENATOR CARDINALE: I know you do.

SENATOR RUSSO: We have all of this and she has testified. I would rather hear from you as to your objections to the nominee, even though we have talked about them and we have heard about them. Still, I don't think we ought to take time to summarize another witnesses' testimony before this Committee, and whose documents are all before us.

SENATOR CARDINALE: I wanted it made clear, and I think I have made clear why she was under a misapprehension and why, perhaps, she decided to take her organization from a position of support for Judge Pressler to a position of opposition to Judge Pressler. That's all of her doing and none of mine.

Now, we talked about a number of cases during the course of this proceeding and I am not going to be repetitive. However, I think this is necessary because it was mentioned on the floor by an illustrious Senator that we keep in mind that we can't just talk about one or two cases; we have to talk about a pattern. I think Mr. Apruzzese spoke of equalities, if patterns were illicit. So, I would like to talk about three cases which involve a pattern.

All of you have in your packets of information a letter and some dockets, and some various moving papers on a particular case. I am not going to give the name. This is the one I mentioned to you earlier, where the name must be held in confidence. All of the Senators here have that name. The woman herself is here to testify as to what went on at a hearing which resulted in the release of an inmate at Greystone.

Before she comes up here, I would just like to summarize some of the things she has told me so that you will know, in a concise form, what it is I am attempting to illustrate. What she told me and what she has in her letter is that contrary to the weight of psychiatric opinion -- contrary to all of the psychiatric opinion -- the prisoner was released -- the inmate was released -- at great harm to himself over a period of time. This is the gentleman's mother.

SENATOR RUSSO: Put the microphone in front of her. The light is on, is it not?

SENATOR CARDINALE: Yes, it is. I would just like to say that because she is not an attorney, she is not familiar with these



kinds of proceedings. I would just like to ask her a question or two, so that this Committee can have the benefit of the things that she has told to me in the past.

SENATOR RUSSO: Go ahead.

SENATOR CARDINALE: Would you just tell this Committee how that hearing was conducted, what happened at the hearing, and some of the things that followed thereafter?

UNNAMED WITNESS NUMBER ONE: I will tell you the exact truth of what happened at the hearing. I was called to go to the hospital. Judge Pressler was the judge at the time who was discharging the patients at Greystone. She wanted to have my son freed. I knew my son needed supervision with his medication. I appealed to her. She told me, "Sit down, you have nothing to say."

Doctor Pustroem appealed to her. He said, "I have this patient. He is on the way to recovery. He should not be discharged now." She said, "I want all his papers, to be rid of him. He is a free man." From that time on, I went through hell with my family. I had no peace of mind, all because she made the wrong decision.

She was so rude. I know my son went through such sorrow and pain and she wouldn't listen. Today he is crippled. He is back in Greystone, all because she made the wrong decision.

I didn't sleep nights, or anything. I had no peace of mind. My family was destroyed through this decision. Please don't let her do it to anyone else, I beg you. Don't. (witness crying) I am sorry. I didn't mean to do this.

SENATOR CARDINALE: All right, let's stop now.

UNNAMED WITNESS NUMBER ONE: I'm sorry.

SENATOR CARDINALE: I have to ask you just one more question because it is very important for the Committee's consideration, and that is, you were present at the hearing?

UNNAMED WITNESS NUMBER ONE: Yes, I was.

SENATOR CARDINALE: Did any psychiatrist, social worker, or other person with professional knowledge suggest that your son should be released?

UNNAMED WITNESS: Doctor Pustroem didn't want him released. He said he wasn't ready.

SENATOR CARDINALE: Did anyone else there testify, other than the judge, that he should be released?

UNNAMED WITNESS NUMBER ONE: No, just Judge Pressler. And, I don't know why she did it.

SENATOR CARDINALE: I thank you very much.

UNNAMED WITNESS NUMBER ONE: I'm very sorry.

SENATOR CARDINALE: Just one more question. You did indicate to me that the doctor made some remarks to you, after the case, about what was going on there that day.

UNNAMED WITNESS NUMBER ONE: Yes.

SENATOR CARDINALE: Would you repeat that for the benefit of the other Senators?

UNNAMED WITNESS NUMBER ONE: I went to Doctor Pustroem and I said, "Couldn't you stop them?" He said, "It is out of my hands. It is the system. I am very sorry. I wish I could have stopped it."

SENATOR CARDINALE: Did he make any remarks to you about what was going to happen with all the prisoners there that day?

UNNAMED WITNESS NUMBER ONE: Yes. He said a lot of them were violent, but they were getting out just the same. They had to make a clean sweep.

SENATOR CARDINALE: I thank you very much.

SENATOR RUSSO: Thank you, Ma'am.

UNNAMED WITNESS NUMBER ONE: Please listen because I am telling the truth. Don't let them do it to anyone else.

SENATOR CARDINALE: In order to bring you an additional case that establishes this pattern, I have a deposition from a gentleman who is not here with us. I have his notarized statement and I have a tape recording of his voice. I would beg the Committee's indulgence to just listen to the tape recording of his testimony. I will give you his deposition and his written statement.

SENATOR RUSSO: Does the tape recording follow the written statement?

SENATOR CARDINALE: In what fashion?

SENATOR RUSSO: Does it contain basically the same content as the written statement?

SENATOR CARDINALE: The written statement sums up what is on the tape recording. The statement will be about as long on the recording as the testimony you have just heard, and it goes to essentially the same point.

If you will grant that that testimony will be accepted as being duplicated and as being another case, and if you will take just these written documents, that's fine. But, I would beg your indulgence. You know, we have heard at great length from people who have made nothing but self-serving statements. This is a point that I think you should hear.

SENATOR RUSSO: Gerry, would you pass up the original tape?

SENATOR CARDINALE: Sure.

SENATOR RUSSO: Do you have just the one copy, or do you have another copy?

SENATOR CARDINALE: I have several copies. I did not attempt-- Frankly, I expected him to be able to come here today, and I did not prepare.

SENATOR RUSSO: Basically, the tape is substantially what is in here, is that correct?

SENATOR CARDINALE: The tape goes into a great deal more detail about what is in here. What he says in here is, "I attended a hearing regarding the release of my nephew, Francis Rindquest. The hearing was held early in 1975. My impression was that Judge Pressler disregarded the opinions of the attending experts, and had already decided to release the patient."

He goes on and says that in a very punctuated form. He then tells some of the things that occurred subsequently, and what has happened to the patient since that time. If you want to listen to it, you may. It has been played to the press before.

SENATOR RUSSO: How long is it?

SENATOR CARDINALE: Six minutes -- five minutes.

SENATOR RUSSO: All right, go ahead.

**TAPE RECORDING IS AS FOLLOWS:**

"This is Senator Cardinale. We are about to record an interview with Mr. Herbert Rindquest, and he has some experiences that he would like to relate to me.

Mr. Rindquest, do you mind if I record this?

A. No, I do not.

Q. Do you mind if I release this information to the press, to newspapers, on radio, or any other manner whatsoever so so that it can become public knowledge?

A. No, I don't have any objection.

Q. Would you come a little bit more close to the machine so that we get a good sound level?

Q. Would you state your full name?

A. Earl Herbert Rindquest.

Q. And, where do you live, Mr. Rindquest?

A. 130 McKinley Avenue, Dumont, New Jersey.

Q. What relationship do you have to this man that you are going to talk about?

A. The patient who was released is my nephew. His name is Francis Rindquest.

Q. Do you have any personal, direct knowledge of the circumstances that led to his release?

A. I attended the hearing in the spring, I believe, of 1975 at which Judge Pressler presided, and I attended with his sister.

Q. Thank you. Where is his sister now?

A. She lives in Riverdale.

Q. Is there some reason why she can't speak here?

A. She is away on vacation in Florida at the present time.

Q. Thank you. But, you were present, personally?

A. I was at the hearing.

Q. Can you tell me, at the hearing did any professional staff at the hospital, or any other professional staff-- Were they present?

A. There were several people present as a screening board, I would guess. I believe there were four or five. I am not sure of the number. There was a doctor, a social worker, and a psychiatrist, as I remember it.

Q. Can you tell me, more or less, what they said, or even pretty specifically what they said, if you can remember?

A. Well, the consensus was that Francis should not have been released, or couldn't be released.

Q. Why did they say that?

A. Because of his attitude. I am not familiar with medical terms, but I would say he was schizophrenic. At times he had been choking his sister. I didn't believe that he was capable of being on his own on the street, period.

Q. Did any of them say, or did all of them say, that he might be a danger to himself or to others if he were released?

A. I don't recall that he would be dangerous, except that he wouldn't be capable of taking care of himself. As far as being dangerous, I can't recall.

Q. But, had any of those experts, psychiatrists, social workers -- any of them -- said he should be released?

A. Not that I can recall. They seemed to be of the opinion -- all of them had the same opinion -- that he shouldn't be released.

Q. Can you tell me about the manner of the hearing? Were you asked to testify?

A. No, we were not. As I remember, it seemed to be all cut and dried before we had even gotten there. As I recall, neither one of us was asked to give any kind of an opinion. We did say off the record -- not off the record, but we did say that we agreed with the experts, that he should not be released. We did say that at the hearing.

Q. So then, you did speak in protest?

A. Oh, yes.

Q. Who was moving for him to leave? Was there someone there who was moving for his release?

A. Outside of the judge, do you mean?

Q. Outside of the judge.

A. No, there was no one there that I could-- No. I don't think there was anyone that advocated his release.

Q. What happened? What did the judge do?

A. Well, the judge evidently deliberated in her mind and just said that he should be released and that seemed to be the end of it. There were no further questions that I recall or any discussion, but he was to be released.

Q. Would you say it is a fair characterization of what went on there that the judge determined he should be released in the face of uncontested evidence that he should be retained?

A. Yes, I believe that she had made up her mind that he was going to be released.

Q. You didn't clear up yet-- What was your impression at the time?

A. My impression was that the evidence of the experts didn't seem to matter too much.

Q. Do you know what happened to him since that time -- after he was released?

A. Well, he has been in several halfway houses, I guess they call them. He was in Newark. He was in Asbury. He was in Keansburg. He was in and out of Marlboro several times. Originally, when he was in Newark, I got a call that he was in New York and that he had left the place. I tried to get him back into Newark but they wouldn't take him. They said he had signed himself out. I finally was able to get him into (inaudible) again for an evaluation and they discovered at that time that he had an ulcer. They operated on him and put him in the Asbury Carlton down in Asbury. From that time on he seems to have trouble.

I am not positive of this, but it seems that when he was in the Asbury Carlton they discovered a fire in his room, and he was released at that time. I believe that is the sequence (inaudible) and I believe he went back to Marlboro at that time.

I do know that he was angry with some bank down there. I am not sure what town, but I know he threw a brick through a bank window.

Q. How do you know?

A. His sister told me. She was told by someone down in the

area down there. (inaudible) through the window of the bank.

Q. Did he get into any trouble for this?

A. I think yes, when he went back to Marlboro again.

Q. Do you know of any other specific anti-social acts that he might have engaged in after this incident?

A. Not specifically, no. No.

Q. Now, you are making this statement of your own free will?

A. I sure am.

Q. I want to go back just to the hearing process again, now that we talked about a few things (inaudible). In that hearing process, can you characterize that as a fair hearing, where true facts that were presented at the hearing led to the judge's conclusion, or would you characterize it as the judge having made up her mind before the hearing and ignoring the facts?

A. It would seem to me that the judge didn't pay any attention to what the expert evidence was as to his behavior.

Q. And, that is from your actual personal experience at that hearing?

A. I was at the hearing and it was my impression.

Q. And again, you don't mind your name being used?

A. No, I don't.

Q. You don't care if I put this on radio or television, or anything like that?

A. I have no objection.

Q. Mr. Rindquest, you are a very brave person (inaudible) and I thank you very much. My secretary is typing, right now, those statements (inaudible) giving us the authority to use this. (inaudible) We are going to have you sign that. Would you mind jotting down a few points? Give us what you just said in brief form (inaudible) nothing fancy and then putting your signature on it, please.

Mr. Rindquest, another question occurs to me, and that is, would you feel that this patient had in some way benefitted from being in the program?

A. No, he hasn't benefitted in any way that I can think of.

Q. Do you think his family has benefitted in any way?

A. No, he has been trouble to them and -- that's it; he has been trouble to himself and to his family.

Q. Thank you very much."

#### END OF RECORDING

SENATOR CARDINALE: Thank you. That is the last tape I will have to play. The other witnesses are here.

You all have in your folders a criminal indictment, number S930-74. It involves one Jimmy Lee Harris. The facts that led up to that indictment are cited in various complaints, and they are as follows: A woman was coming home at about 11:00 at night on the bus, and she got off that bus in Ridgefield, New Jersey. That is in Bergen County.

Jimmy Lee Harris followed her off that bus, and when the bus left they were alone on the sidewalk. He choked her, according to the complaint, stole some of her possessions, and went on down the road a little bit. A policeman came on the scene. He assaulted the police officer. He took a gun from the police officer. Two shots were fired, neither of them hitting anyone. The prosecutor has indicated a third shot misfired, which might have killed the police officer.

The indictment is on four counts: Attempted murder of the police officer; assault of the police officer; robbery; and assault of the woman.

The indictment was dismissed by virtue of insanity, and Jimmy Lee Harris was committed in the last days of July, 1975, to the Vroom Building.

SENATOR RUSSO: Excuse me. Do you mean the indictment was dismissed by reason of insanity, or that the defendant was found not guilty by reason of insanity? It is not terribly important, but I just wondered.

SENATOR CARDINALE: Well, that is a technical term, and you know, John, I am not a lawyer. I think it says dismissed, but I am not sure. Okay?

SENATOR RUSSO: Okay.



SENATOR CARDINALE: I think you have that in your papers anyway. You have a number of things in your packet, one of which is the report from the prosecutor, named Rappaport, to the first assistant prosecutor of Bergen County, who at that time was Rodger Breslin. What you don't have is the actual transcript because I didn't copy that for all of you. However, I have a copy of the actual transcript right here.

In any event, about three months later, Judge Pressler was holding hearings at the Vroom Building, and Jimmy Lee Harris came before her by various orders, which she had issued prior to that time.

I am not going to read the entire transcript because it is twenty-eight pages, but I am going to read you a few things. One, who appeared? The witnesses: Doctor Joacum G. Elizando, Mr. Rappaport, and Mr. Langi are the only witnesses listed. In fact, in the transcript Jimmy Lee Harris does testify in his own behalf. And, in fact, his mother does testify a little bit. They are not listed here on the witness page, but they do testify.

You have in the prosecutor's report lines and pages, and I am going to refer to some of those, not all of them, because there is no point in prolonging this.

On page eight, the psychiatrist -- the only psychiatrist -- says: "He has shown further deterioration in his mental condition. He remains psychotic and in need of hospitalization."

On the next page, he says: "In order to give him the medication, we have to get two or four attendants and hold him and give it to him against his will."

On the next page -- that is page ten -- the court asks him a question: "If he were now discharged, would you regard him as being a danger to himself or to others? And, the witness says: "If he is discharged into society, yes."

Now we can jump ahead to the end, I am going to indulge myself by reading some of the last few comments, because this is where the decision-making process was going on -- I believe -- if it hadn't gone on before the hearing:

THE COURT: Mr. Harris, how did you get in that trouble at Ridgefield? You were high on drugs or on liquor?

MR. HARRIS: I had a little bit of liquor.  
THE COURT: It disagrees with you, liquor?  
MR. HARRIS: Slightly. You know.  
THE COURT: And, you picked a fight with a cop?  
MR. HARRIS: Yea.  
THE COURT: Pretty stupid, isn't it?  
MR. HARRIS: I thought it was, the way it went down.  
THE COURT: I'm sorry, what did you say?  
MR. HARRIS: I thought it was, the way it went down.  
THE COURT: What do you mean by that?  
MR. HARRIS: You know what I mean, jail -- couldn't get out.  
And, up in the "nut house."  
THE COURT: When you got sober again, is that what you mean?  
MR. HARRIS: Right.  
THE COURT: If I were to discharge you right now and you were to walk out of this courtroom, what would you do?  
MR. HARRIS: What would I do?  
THE COURT: Where would you go?  
MR. HARRIS: I would go on home with my mother.  
THE COURT: To Massachusetts?  
MR. HARRIS: Right.  
THE COURT: Good luck to you, Mr. Harris. You may go home with your mother to Massachusetts. I am satisfied that the State has not shown by a preponderance of the evidence that this patient, if discharged, would be a danger to himself or to others within the Krol definition, and I will discharge him without conditions. I wish you luck, Mr. Harris.  
MR. RAPPAPORT: (the prosecutor) I would like to be heard. If you say according to the Krol definition, we did have the testimony of the doctor that he would be dangerous.  
THE COURT: I have made my finding, Mr. Rappaport. Good luck, Mr. Harris.  
MR. RAPPAPORT: Is there any assurance--  
THE COURT: Stop picking fights, especially with cops."

You will note in the report of the prosecutor that he says he entered Chambers and he asked for a delay in the actual release of this prisoner.

I asked the local prosecutor, who sits there now and who was in this office at the time, "What is the purpose of asking for that delay?" And, he said, "Well, obviously, so we could ask for an appeal because once the prisoner is gone and out of state, there is very little good we can do with an appeal."

I call your attention to the response. I have to caution you as I read this that there is a name on this sheet that I am not permitted to divulge, and neither are you. So, I will say "blank" when I come to that name.

"Immediately after the hearing, I spoke to the judge in Chambers, asking for a stay of execution as was allowed for "blank". I was told, 'No way'." He finished his report, saying: "As you indicated, we can only hope that Mr. Harris does not commit any criminal acts while in Massachusetts or in New Jersey, if he should return. Meanwhile, we should now concentrate on the 'blank' situation."

You all have this, I believe, in your packets. The dateline is Thursday, December 18, 1975. The headline is: "Insanity Dilemma; How Can We be Safe?" And, one of the statements in this -- there are many -- is: "Five weeks ago in Massachusetts, a man released by Bergen County Judge, Sylvia Pressler, under the landmark decision, 'State vs. Krol', walked into his mother's bedroom and stabbed her eight times." That is Jimmy Lee Harris.

We have talked about demeanor as a separate issue from this case, but I believe demeanor bears on the decisions -- all three of them that we have discussed so far -- and that demeanor is characterized by arrogance. Arrogance of intellect or arrogance of power, whatever it is, interferes with the judicial performance. That is why the Judicial Canons of Ethics require that judges have a different kind of demeanor than we see exhibited in these transcripts, and in other ways.

Now, I would like to call another witness who is not going to testify on a specific court case, but is going to testify as to demeanor. I could call a number of them who would all testify exactly the same, but I am not going to bore you with that. I am going to bring one gentleman up. He is an employee of the Bergen County Court House. Mr. Neil, will you come in?

SENATOR RUSSO: Gerry, before you get on to the next witness, this might be a good time for us to take about a ten minute break. I think we all need it.

Let me ask you also what you anticipate your further time need will be, just so we can plan our--

SENATOR CARDINALE: (interrupting) Probably an hour, give or take a little bit, not much more than that of actual time.

SENATOR RUSSO: All right, we will discuss that.

SENATOR PAOLELLA: Mr. Chairman, before we break, I would like to ask the Chair a question.

SENATOR RUSSO: Yes?

SENATOR PAOLELLA: Inasmuch as you are conducting this meeting with a certain degree of constraint on not only the witnesses but on the members of the Judiciary -- your fellow State Senators -- I feel it necessary that I ask your permission as to whether or not I should return the call of Chief Justice Wilentz. Apparently he wants to talk to me on the phone in the midst of these hearings. What do you think I should do, Mr. Chairman?

SENATOR RUSSO: During the recess, in the back, I will give you this great scoop on what you should do.

SENATOR PAOLELLA: Are you going to apologize after the meeting?

SENATOR RUSSO: Oh, yes.

SENATOR PAOLELLA: You will apologize to me after this is all over?

SENATOR RUSSO: Absolutely. In fact, even in advance, how's that? We will take a ten minute recess.

(RECESS)

**AFTER RECESS:**

SENATOR RUSSO: Senator Cardinale, would you resume?

SENATOR CARDINALE: Yes. During the recess, someone asked me a question and it occurred to me that I didn't ever punctuate -- you know, I am not an attorney -- the point of the three cases. Before I even do that, let me recite to you what happened with these hearings that were held at Greystone. There were some four hundred or so hearings held. Two hundred of them resulted in orders for patients to be released, and ninety of those two hundred signed themselves back in. Ninety of the patients disagreed with the judge's decision.

However, my point is not that I disagree with the judge's decisions. I do, but my point is far deeper than that. The point that I am trying to illustrate with these three cases is that the judge made these decisions counter to the great weight of the evidence. Someone on the floor said last Monday, "So, there were three thousand decisions; so one or two are going to be wrong." I think we all can live with that. We all understand that. One or two can be wrong. But, just to make an illustration -- and not to make light of it at all -- we are coming to the end of the baseball season, and I think everyone knows that three strikes and you are out in a ball game. And, if a batter is up -- I know Senator Orechio knows this; he strikes out a lot of people -- when we are at a ball game and he has two strikes against him, if on the third pitch he hits the ball up into the center field bleachers and the umpire says, "Strike three," the umpire might make that decision stick, because the umpire has that authority, but I think it might be difficult to get a renewal of his contract.

What we are talking about here are not a couple of close calls that were decided the wrong way. What we are talking about here are obvious calls, where there is no explanation, within reason, for the calls having been made the way they were, particularly in the Harris case, where we have the entire transcript of the proceeding. We are not just dealing with a witness' recollection. We are dealing with an exact transcript, word for word. That is the problem.

Now, I would like to call Bob Neil. I would like to tell you something about Bob. Bob is not a Senator, obviously. He is not even an Assemblyman. He is not a judge. He is not a lawyer. But, he does work in the courthouse, and on a daily basis he has an opportunity to observe certain things. It is very difficult for someone who works in the courthouse to come here and testify on a matter like this. However, Bob is going to tell you about a very specific incident that occurred some weeks ago in the courthouse.

I want you all to know how I found out about this. A week ago Sunday, I got them to open up the County Council's office. They opened up that office on the basis of a letter that I received from the Chief Justice, indicating that I could have all of the facts with respect to two cases. What came to me as "all of the facts from those two cases" were two little sheets of paper. One was a sort of summary of what had been going on with these people, with little notations next to the summary, and the other was a document released on "such-and-such" a date.

I could not believe that was the entire rhetoric that was available with respect to those cases. So, I went to the County Council's office and they opened the place up to me on the basis of that authority from the Chief Justice and they gave me what you have in your packets now with respect to those two cases. And, that is still not the complete record, because we asked for the transcripts, which do exist, and we still haven't gotten them.

But, in the course of all of that, someone said, "Did you hear what happened around here?" They were all very silent. There were a couple of secretaries and a couple of maintenance people, and they related to me what Bob is now going to relate to you. I thought it pertained to the question of demeanor and it pertains to the question of temperment, even though it is not a court case and it is not the most important thing you are going to hear. But, I think it is another piece of a puzzle, and when you put it together I think you are going to have a better understanding of why I oppose this nomination, and why I believe you should oppose it.

Bob, will you tell these people where you work?

**ROBERT NEIL:** I work in the courthouse in Hackensack. I am a foreman. One Saturday, we were doing the floors in the main lobby and we had just laid a coat of finish on it -- plastic sealer. We looked at the door and we saw Judge Pressler coming in. She was coming in through the door and I, and several other guys, told her to stop. We said that she would ruin the floor and we would have to do it over again. Her reaction to this was -- well, she called us a bunch of animals, me and the people who were there working with me. I didn't like it and nobody else liked it.

**SENATOR CARDINALE:** Thank you very much, Bob. Does anybody here have any questions to ask Bob that would expand on that or in any way--

**SENATOR RUSSO:** Direct your remarks to the Chair, Senator Cardinale.

**SENATOR CARDINALE:** Well, I thought you were anybody, but--

**SENATOR RUSSO:** (interrupting) If at any time any--

**SENATOR CARDINALE:** (interrupting) I am sorry, Senator. I thought you were included in that group.

**SENATOR RUSSO:** The decorum of the meeting will be run by the Chair, correctly or incorrectly.

**SENATOR CARDINALE:** Thank you.

**SENATOR RUSSO:** Let me simply say that if at any time any member of the Committee wants to break in and ask any witness a question, just let the Chair know. I assume from your silence you know you have always had that right, and you still do.

**SENATOR ZANE:** Mr. Neil, you have never appeared as a litigant before Judge Pressler, have you? You have never been involved in any kind of criminal activity, nor have you been sentenced?

**MR. NEIL:** No.

**SENATOR PAOLELLA:** Did you have some predisposition against the judge prior to that meeting on the day in question? Did you have another incident or something with her?

**MR. NEIL:** No, nothing.

**SENATOR PAOLELLA:** You didn't have a chip on your shoulder or anything like that?

**MR. NEIL:** No.

SENATOR CARDINALE: Let me just ask another question to put this matter into a better perspective. How many of you were there when you were called a "bunch of animals?"

MR. NEIL: There were, I think, eight of us there at the time.

SENATOR CARDINALE: Do any of the others feel as you do, do they feel in some way demeaned or less human as a result of the actions of the judge in that incident?

MR. NEIL: Yes. There were four or five of us there at the time and they all felt the same.

SENATOR CARDINALE: Thank you. I don't have anything else if no one else does.

SENATOR ZANE: Mr. Chairman?

SENATOR RUSSO: Senator Zane.

SENATOR ZANE: What was the specific comment you made to Judge Pressler as she entered, and what was her specific response, generally, if you can recall?

MR. NEIL: She came in and the fellow next to me yelled, "Hold it a minute," and then he proceeded to tell her that it was just waxed, or sealed, and that she would have to enter another way through another door, and she turned around and called us a bunch of animals.

SENATOR ZANE: Did she proceed in after that, or did she go back out the door?

MR. NEIL: No. She went out the door and one of the workers brought her in through another entrance.

SENATOR ZANE: She just said you were a bunch of animals?

MR. NEIL: Yes.

SENATOR RUSSO: Okay, continue, Senator.

SENATOR CARDINALE: I agreed during the recess to handle the questioning of two attorneys who I have so rudely kept waiting. The questions are for both of them. First of all, I think they have indicated they are members of the bar, and I would just like to call this audience's attention -- and the Committee's attention, really -- to the fact that they do make their living practicing before the courts. They have testified that up until now they have controlled the



process of appointment, to some degree, through their own review process.

Now, recently there was a judge in this State -- just a few months ago, I guess -- who went to jail, and I would like to know if they gave a favorable approval to that judge.

MR. PITNEY: I can answer that question by saying that I have only been on this Committee, and the Chairman of this Committee, for the past fourteen months, and to my knowledge this judge was not passed upon during my tenure. Beyond that, I cannot answer the question.

SENATOR CARDINALE: Let me pose the question in a different way.

SENATOR RUSSO: Well, let me ask you, Senator Cardinale, how that is relevant to this particular hearing? I didn't want to cut off the answer.

SENATOR CARDINALE: I think it is extremely relevant, because I believe the process used by these committees to approve judges has not been a process of delving into the qualifications of the individuals, but it has been a process of deciding whether these individuals had the right connections, the right political background, and the right political activity. I believe that has governed most judicial appointments in this State.

In terms of reappointment -- and I don't know whether that judge was reappointed or was just on an initial appointment -- I think it has a bearing, in that this is a documented case; it is not an allegation. This process has led to at least one judge being convicted and sent to jail. And, I think there probably have been some others, if we did the research to find out, who have done other things, but maybe not necessarily things that have led to jail.

Further, senatorial courtesy has been called very much into question during this whole matter. You know, I think if I were a Senator who had proved a judge did something like that, I would feel awfully guilty myself if, in fact, I had not done a thorough background check on that individual. I think that the Bar Association, which has admitted it has done what it can do with respect to these appointments, and which has participated in the process, ought to feel a little remorse as well because of what has resulted from that case.

SENATOR RUSSO: Senator, the reason I asked the question earlier about whether Governor Kean has continued the policy of Governor Byrne, which was to appoint no judge the Bar Association hadn't approved of, was because I, both privately and publicly -- and very bitterly privately -- complained to Governor Byrne that in effect he was giving senatorial courtesy to the Bar Association, and yet he didn't want to give it to the Senate. So, I totally agree with you on that point. I wouldn't give the Bar Association any such right -- and I am a lawyer -- any more than I would any other group.

But, nevertheless, the issue before us today is the confirmation of Judge Pressler. Whether the Bar Association, either erroneously or otherwise, has approved other judges -- and I suspect they have done so more than once, erroneously -- I do not think is at issue before us today; therefore, the question will be ruled out of order.

SENATOR CARDINALE: With all due respect to the Chair, you have allowed Bar Association upon Bar Association to come up here and testify -- with no other qualification other than the fact that they are Bar Associations -- on behalf of Judge Pressler. And, I have heard no other evidence here as to her qualifications other than from those groups. I believe that if this were a court of law, casting doubt on the credibility of witnesses for one side of the case -- and I am not a lawyer -- is a very valid exercise and it would be allowed, even in a court of law. Since our rules are more informal, I think it should be allowed here.

SENATOR RUSSO: Senator Cardinale, every witness who wanted to testify here today, pro or con, has been allowed to testify. They haven't been allowed to testify because they were Bar Associations. They would have been allowed to testify if they came here as individuals, or as members of the bar, or as leaders of the bar, or what have you. This is not a court of law. I guess the reason that I really don't want to be a judge is probably because I would be a lousy one; therefore, it being in error, I am still ruling the question irrelevant to this proceeding. So, go on with the next question.

SENATOR CARDINALE: Then the next question would have to be for Mr. Apruzzese. He said no one had raised any objection to her nomination when he testified here. Now, Mr. Apruzlese, have you been out of the State, or have you been present in this State?

MR. APRUZZESE: Well, I don't believe I said no one had raised an objection. Obviously, we wouldn't be here if that were the case.

While I have the microphone, Senator Russo, in this last exchange--

SENATOR RUSSO: (interrupting) Now you just answer the question and that is all, or you won't have the microphone.

MR. APRUZZESE: There was a matter that came up earlier this morning, and I would like an opportunity to--

SENATOR RUSSO: (interrupting) Certainly, we will be glad to allow any witness a reasonable opportunity to testify further if we have to. So, you will be given an opportunity. Remind me again at a hearing. Senator Cardinale now has the floor.

Next question, Gerry?

SENATOR CARDINALE: I think we can let these gentlemen do what they need to do. One of them wants to go play tennis and I think he is entitled to do that. I don't know what Mr. Apruzzese wants to do, but he indicated he would like to leave. So, I have no further need to keep them here.

MR. APRUZZESE: Senator Russo?

SENATOR RUSSO: Yes?

MR. APRUZZESE: I answered a question for Senator Gallagher this morning that I thought was very appropriate, and our staff has since checked information as to--

SENATOR RUSSO: (interrupting) Will you remain here, please? You will have the opportunity to speak, but I am not going to interrupt the Senator, unless he is willing to waive his time. Otherwise, I am not going to interrupt his presentation.

SENATOR CARDINALE: I'll let him do that. Let him.

MR. APRUZZESE: Senator Gallagher asked a question as to whether the Judicial Appointments Committee of the Bar Association had

ever found a judge who was up for reappointment not qualified. I said that I believed to my knowledge it had not been done.

My knowledge has been informed, if you will, since that question. Our staff has checked the records and they advise that there were two judges up for reappointment during the Cahill Administration that our Committee found not qualified. There was one judge during the Byrne Administration that was up for reappointment that our Committee found not qualified.

SENATOR DORSEY: When you say up for reappointment, do you mean they had been renominated by the Governor?

MR. APRUZLESE: Yes. They were submitted and that was the finding of the Committee.

SENATOR DORSEY: Thank you.

SENATOR CARDINALE: A little while ago a gentleman was carried out of here by a couple of State Troopers. I made the statement before he got up that I didn't think he really should have been the person testifying with respect to that particular case.

The case is very interesting. His ability to present it was extremely limited. He is not even the litigant in the case. The litigant in the case is his sister, and it is his sister who is the school teacher. She is about fifty-seven years old. I keep referring to her when I speak as an older person, but I guess I am getting close to that age myself, and I don't consider it quite so old anymore.

But, what happened in that case was a very interesting situation. You will have to bear with me a little bit because you will need to know something about the case below to understand what happened in the Appellate Division before Judge Pressler.

Forget about the fraud racket. I introduced a bill with respect to that. I talked to both Senators Orechio and Russo about that problem. We can correct that problem to a large degree in the Legislature, and that is not an issue here. But, what is an issue is what happened in the Appellate Division when that case came before them. There was an order in the court below, and that order was, essentially, a dismissal of the complaint, a finding that the deed wasn't forged, etc.

There were some interesting things that happened along the way with respect to a side issue here. A Judge Morrison, a lower court judge, issued a probable cause order referring the individuals who were accused of being forgers to the prosecutor -- I think of Essex County. I have a copy of his order here. Now, this is a judge who took a look at some of the facts in the case and said there was at least probable cause.

Two, I showed this supposed forgery to a number of attorneys and one of them said, "Oh my God, this is such a terrible forgery they even left out the middle initial."

Three, one of the witnesses to this supposed deed made a tape recording and transcript -- which is here -- and said, "You never appeared before me to sign this document which I had supposedly witnessed."

All of those things were contained-- And, of course, the original deed was one of the items called into evidence in the case below.

He started to talk about whether they had representation before the Appellate Division or not. They appeared pro se. But, they did have representation by a very well-known, highly-regarded law firm in the case below. That law firm, for whatever reason -- and it is in the papers here on the case -- decided not to proceed with representing them.

When they announced their intention to carry this case to the Appellate Division, it was called a reconstituted record, a pro se plaintiff, and it was heard. Their complaint was that the only pertinent question in the case was for the judge to look at the fraudulent signature -- in their eyes fraudulent signature -- and make a determination. There were many complex side issues in the case, but that was the central issue.

Their complaint is not that the judgment was rendered incorrectly, but that the judge refused to call into evidence, in the reconstituted case, the one specific piece of evidence -- the deed. He refused to allow them to project the handwriting expert's actual blowups of the signature which show, at least in their eyes, that this was an open and shut case of forgery.

Then another interesting thing happened. All of you know, and I know, but they didn't because they are fairly simple people, what a stamp on a case that says, "Not for publication unless approved by the committee," etc., means. They didn't know what that meant, literally. They didn't know that just means it is going into the law books. They thought it meant they couldn't show it to anybody. So, they filed a motion. And, in that motion they asked for five things. The last of those five things was that they be relieved of that proscription about publication, and that they be allowed to take this to "60 Minutes," to newspapers, to television, and to everyone else. I think if someone had just read that request of theirs -- someone in the court system -- it would have been very obvious that there had just been a misunderstanding. Someone could have told them that. But, no, what they got was an "order denied" situation. That's all. Very simple. When they came to my office with these two big file folders and papers, they were literally shaking because the sister felt that she might go to jail for showing them to me. It wasn't until I got an attorney to explain to them that they were perfectly within their right to show this to anyone that they finally said something about this case.

Now, why do I think this is particularly important? It is not because of the merit of the case. I can't judge that. It is not my position to do so. It is because of the way it was handled. It would seem to me that people are being denied, in our court system, something very basic because they are pro se -- and notice how many people who came here today were pro se. They are being denied a very basic right if they expect the judge to look at what happened in the court below, to at least look at what they feel is an obvious abuse of judicial discretion.

We have mentioned that in the past. People have said Appellate Courts can't do that under our laws as they are organized. I will refer you to Article 6, Section 5:3 of the Constitution of the State of New Jersey. It gives very broad powers to the Appellate Division. Whether they choose to exercise these powers or not, I can't say. But, this is a case that was very clear with this combination of

circumstances. Pro se makes up one percent of what appears in the Appellate Division. In our interviews with the justices and with Judge Pressler, it was indicated that there were very few reconstituted cases that get to the Appellate Division. It would seem to me that more care should be exercised in those cases, not less care -- not shutting these people off. I think that is exactly what happened in this case, and that is my specific objection with respect to this case.

Mr. Chairman, do you want to see any of the items I have talked about? Would you like to see Judge Morrison's order? Would you like to read from it? Would you like to see the application they made?

SENATOR RUSSO: Senator, I think if you have anything with you that you would like to present to the Committee, you can hand it out to the members of the Committee.

SENATOR CARDINALE: Thank you, then let me do that.

SENATOR ZANE: Mr. Chairman?

SENATOR RUSSO: Senator Zane.

SENATOR ZANE: I had not heard Judge Pressler's name mentioned with regard to this last discussion. I don't know what you are dealing with.

SENATOR CARDINALE: Okay. Let me be more specific then. She was one of three judges in the Appellate Court who heard this case. What these individuals have related to me is that, because she had written the rules, they made reference to some of the rules -- or references about those rules were made to them -- and it was indicated to them that the rules do not require that we look at the original deed. I don't think that the rules preclude looking at the original deed. I don't know what the rules require the judge to do. I don't think the rules really require the judge to do very much. But, we heard already, from another case, where in the Appellate Division the judge gratuitously brought in an argument that was not made in the pleadings by either side. They denied a pleading which is so essential to a case, when obviously they had the ability to order a new trial below. There are so many circumstances that would seem to cry out for them to take care and to at least order a new trial below, not reverse, because now the records are lost.

This was a six hundred thousand dollar piece of property. A half interest in this property was transferred under very suspicious circumstances while this woman was in the hospital and expected not to come out. She did die. The deed is recorded three years after the supposed date of the signature. If all of those circumstances are put together, that in itself is an unusual circumstance.

This would seem to me to cry out, even if a judge isn't reading this case. If a judge who has any kind of feel for the job is doing this, my expectation is that something should have taken place. There should not have been this callous attitude of denial.

SENATOR ZANE: Was the appeal timely filed?

SENATOR CARDINALE: Yes, I believe it was. I don't believe that was an issue. If he reconstituted, the record may have given him some extensions of time, or something like that. But, the intention to appeal, I think, was very quickly stayed.

Now, since you want those, just let me--

SENATOR RUSSO: You could, if you want, just give them to the bailiff after your presentation, if you don't want to interrupt now.

SENATOR CARDINALE: No, I would not like to do that. I would just like to read the opening lines of Judge Morrison's orders, so that you all have it fresh in your minds. I know what happens on these committees, because I have served on some of them myself. You tend to get loaded down with so much paperwork, that unless the case is made verbally, it may not register.

"THE COURT: Mr. Telser, I have given everybody an opportunity to speak, so I guess it is my time. As I see it, I find probable cause as to all. Now, I have some reservations with respect to--"

I think you understand. (Senator Cardinale, speaking to unknown person) That doesn't belong to me; it belongs to the gentleman who was carried out, or his sister. Please make sure that it is returned. This is a conversation that was taped and there are Superior Court certifications which will be made available to you. You will get copies of them. I am not going to read the whole thing. Let me characterize it and then you can read it for yourselves. One of the



witnesses to the deed is having a conversation now with a person who claims to have been defrauded, and within this conversation he says-- There is a little tape here too. I don't know if you want that played. I am not going to ask you. I said I wouldn't play any more tapes. This is a recorded conversation. He says, "Gee, fellow, you never came before me to sign that. No way. I know you didn't. You know you didn't. I don't understand what is going on." That is the sum and substance of what is in here. He later testifies very differently in court.

I referred to this, but you can see it. I think it is very short. Let me read it. Number five: "I request the Committee on Opinions to permit me to publish its decisions, rendered on June 10, 1983, to the news media, radio, T.V., and "60 Minutes," so that the public in the State of New Jersey should know that there is no time limit in the State of New Jersey to record deeds, giving forgers, swindlers, and rip-off artists a field day in the State of New Jersey."

That is denied, the right to publish and to bring it to the news media. The denial is here on the opposite page. That should do, really, for that case.

Now, if you will bear with me, I will find my notes and tell myself what to do next.

SENATOR PAOLELLA: Can we ask questions? Oh, do you want to ask a question?

SENATOR RUSSO: Senator Gallagher.

SENATOR GALLAGHER: Mr. Chairman. What year was that case, Gerry?

SENATOR CARDINALE: This year.

SENATOR RUSSO: June 10th, wasn't it?

SENATOR CARDINALE: June of 1983 was when these various orders were entered.

SENATOR GALLAGHER: Thank you.

SENATOR RUSSO: Senator Paolella.

SENATOR PAOLELLA: Senator Cardinale, in the normal course of events -- your qualifying judges and other State appointments -- you get to call into play the subpoena powers of State Senators, to use the

vast resources of State Government, unlimited amounts of dollars, and I understand we have courier services available so that you can pick up all of this material, is that true?

SENATOR CARDINALE: Well, that is very interesting, because there was a gentleman here -- I think you voted on him already -- who happened to be assigned to go to the courthouse. He was assigned by his superior, it was not an independent activity on his part, to be present when all of these files were opened up to me. He was shivering and shaking in his boots. And, if I didn't have a letter from the Chief Justice himself, stating that I was entitled to all the information on everything, I wouldn't have gotten anywhere.

But, I will tell you what I did not get, and I still haven't gotten, and that is the transcripts of two of those records. I have not received the transcripts on all of the Greystone cases. And, I asked for, and was guaranteed I would get-- When Jimmy Lee Harris was heard, there were sixteen cases heard in that series of hearings. I am not certain whether it was one or two days, and I asked for everything from those two days. I knew the names of two of the cases, but I wanted to be able to answer the objections which were made by Senator Feldman on the Senate floor that, "There are so many cases, why don't you review many of them?" The rest of them have not been made available to me. Two cases have been made available to me.

The other one involves an individual whose name I cannot reveal; it hasn't been in the press. That was a case where there was opinion on one side and opinion on the other side, and the judge made a close call. I think it was the wrong call, but I am not calling it into question because in that case there was opinion on both sides.

To more specifically answer your question, in the period of time that has been allotted, I have done a number of things: One, I have gotten a tremendous amount of help from some young law students who have voluntarily gone out and sought information in one or another place. I have hired some professional staff to do that, but not tremendous numbers of people. Some of them were here today. And, my staff and I have worked almost around the clock in order to get these documents.

In the case of Jimmy Lee Harris, for instance, we got that in bits and pieces over a period of three weeks, and one of the reasons I kept hedging with the press was that I did not want to say anything specific until I had the documents in my possession. Everything that I am talking about today is documented to the "enth degree." I am not talking about anything here that is an allegation. Do you want to hear allegations? I can give you allegations that you wouldn't believe. I have books full of allegations that I can't study. I don't have the staff. I don't have the resources to study those. I don't know who does. Maybe someone in the Executive Branch does. But, we don't have -- at least I don't -- the subpoena power to go in and get this information.

I think there might be, in this Committee, such power. I don't know. There might be such power in the Administrative Branch; I don't know. And, in the Judiciary -- they can get anything they want.

SENATOR PAOLELLA: In other words, so that I am not misled, and no one in this room is misled, this is all you could gather, given the resources you had, but this is not necessarily all there is to gather, is that what you are saying?

SENATOR CARDINALE: Absolutely and positively. What I have been able to put together with the, I would say, almost interference of--

You know, let me tell you how the Jimmy Lee Harris transcript came to me. I was told it didn't exist. I was given one sheet of paper by the courts on Jimmy Lee Harris. Then I went and talked to the prosecutor in Bergen County. He said to me, "You are entitled to everything that is on the public record." And, he sat down and went through his file and gave me some information. But, I was not entitled to everything that was in his file, because some of it was not on the public record.

As I began to talk more and more to some of the people in the court system about this, and began to ask more and more questions, it looked like I knew it all. And, believe it or not, on a Saturday afternoon, about 4:00, a State Trooper showed up at my door with this transcript, which heretofore "had not existed." It was nowhere to be found. There was no way one could get it.

I was told the transcripts on all the Greystone cases didn't exist. One of my staff went down to the shorthand reporting service in Bergen County and was told they did exist. You can get each and every one of them. You just need the proper orders from the proper authority, and all of those cases can be examined, probably by this Committee. You can make a determination on one after another of those cases. However, I do not have the resources, nor the authority, to go in and get each and every one of those transcripts. Does that answer your question?

SENATOR PAROELLA: Well, I guess my question is, for those critics of yours -- and I am not suggesting that I have taken a position -- that suggest that you don't have much, I guess the answer is that you have done all one person can do with what you have had to work with, is that a safe statement to make?

SENATOR CARDINALE: John, I guess I could have slept one hour a night instead of two; but, barring that, yes, I have done as much as I can.

SENATOR GORMLEY: I have a question.

SENATOR RUSSO: Senator Gormley.

SENATOR GORMLEY: On the subject of interference, could you give us the names of those who interfered?

SENATOR CARDINALE: Well, I am characterizing it in a specific fashion. But, let me give you some names: Chief Justice Wilentz has been helpful in some instances. He has given me certain information, but that information has been incomplete. And, in another instance--

SENATOR GORMLEY: (interrupting) And, as we go through interference, will you state whether it was negligent or intentional?

SENATOR CARDINALE: Well, here is a memorandum.

SENATOR RUSSO: Bill, what I am concerned about is this: Are we going to shift this hearing to a trial to determine whether the Chief Justice has been helpful, or has not helpful, or are we going to stay with the nominee?

That may be a proper, legitimate inquiry, but I think we have to concern ourselves with the renomination of Judge Pressler today, and

the discussion of the evidence concerning that is all we ought to be considering. Maybe the Chief Justice has been an obstructionist, maybe he has not, but shouldn't that be discussed at another time and in another place?

SENATOR GORMLEY: Well, an innuendo has been made here, and I thought it would be best to address that innuendo, because if we are going to move forward, we might as well name names and decide whether it was intentional, criminal, or what the Senator thinks it was. We should put it on the table, instead of leaving it as an innuendo.

SENATOR RUSSO: Well, let's briefly respond to Senator Gormley, and then get on to the subject at hand.

SENATOR CARDINALE: I was about to read you a memorandum. Let me tell you the significance of it first. When the press conference was held in the Governor's office by the Chief Justice -- he had previously spoken to the press, but when that press conference was held -- there were members of the bar who were absolutely incensed, and there were judges who were incensed at that time. And, I believe several judges would have come forward and said some things that I would love to be able to put in the record. As a matter of fact, one judge did talk to John Shaw of the Bergen Record, and John Shaw published that judge's remarks. That judge said, "Well, she uses language I would never use." That was in the Bergen Record, and I believe that John Shaw would not have made that up. He is an honorable reporter.

Shortly after that appeared, there was a memorandum issued. It was on September 16th. It is from Robert Wilentz. It is a memorandum to all judges, and to all judges on recall. It reads as follows -- it is just two short paragraphs: "For reasons which I deem more than sufficient, I have become publicly involved in a dispute concerning Judge Pressler's reappointment. Briefly, I concluded that the independence of the Judiciary was at stake, and that my constitutional duty as administrative head of the courts requires that I take such steps as are necessary to preserve that independence. No other judges, including judges on recall, should become individually involved in any way, shape, or form in this matter. Such individual

action on the part of a judge, in my opinion, would represent an unwarranted involvement in the political process.

"Obviously, and for the reason set forth above, I believe my position is different."

What is this? This is a gag order. This is an order gagging every judge, from the Supreme Court Justices, down to each and every Municipal Court judge. You know it went to the Municipal Court justices as well -- and some of them are part-time people.

If any of them were inclined to divulge any details, or to tell me where to look for things, this order stopped them. That was two weeks ago. Since this order was issued, only one judge has had the guts to talk to me. And, what he did was, he gave me this order. That is the sum and substance of what he was willing to do. But, even in doing that, he used a six-person relay in order to make it impossible for anyone to trace it back to him.

SENATOR PAOLELLA: Mr. Chairman?

SENATOR RUSSO: Senator Gormley, are you finished?

SENATOR GORMLEY: Well, just let me finish with this subject. So, the nature of the interference is that memorandum?

SENATOR CARDINALE: That is one very specific type of interference.

The second specific one is, you have heard from two witnesses today. One was on tape, and the other one sat here. I was led to believe by the Chief Justice and his people, primarily Mr. Townsend, that the only documentation that existed with respect to those two cases was the two sheets of paper. I have provided this Committee with reams of paper on these cases.

SENATOR GORMLEY: So, you are saying Mr. Townsend misled you?

SENATOR CARDINALE: Yes.

SENATOR GORMLEY: Are there any other instances?

SENATOR HIRKALA: Mr. Chairman?

SENATOR RUSSO: Senator Hirkala?

SENATOR HIRKALA: Mr. Chairman, at this time I would like to say that the memorandum that Senator Cardinale read, he characterized as a "gag order." I characterize the Chief Justice's memorandum as one

that is proper and informative to the courts. There is nothing in the memorandum that has attempted to gag anybody in any shape, manner or form.

SENATOR RUSSO: Now do you see why they want to get into this area? This Committee is not going to get into a debate today about whether or not it is a gag order. We are now going to return to the business that I think we came here for: the renomination of Judge Pressler. We will no longer discuss what evidence isn't here, or what evidence was prevented, or gagged, or what have you. We will only discuss what evidence is properly before us.

SENATOR GORMLEY: Mr. Chairman?

SENATOR RUSSO: Pardon me?

SENATOR GORMLEY: Mr. Chairman, through you.

SENATOR RUSSO: Yes.

SENATOR GORMLEY: The reason why I brought the subject up is exactly what you are talking about. When words are dropped, such as "interference," obviously it raises innuendo in anyone's mind. What is the nature of the interference? When one is presenting a case and infers interference -- and I believe Senator Cardinale honestly believes he was interfered with -- we have to know if that is going to be left on the record, unanswered. We have to be informed.

Now, if interference remarks, such as these, are not going to be left on the record, fine. But, that is my predicament. I have to have an answer to remarks like that.

SENATOR RUSSO: I think I know the reason you brought that up. I think we have gotten the issue somewhat clarified. I hope so. In any event, for better or for worse, we will now get back to the Pressler hearing, and we will stick just to the Pressler hearing, okay?

Senator Gallagher?

SENATOR GALLAGHER: Mr. Chairman, can we get into the matter of the Chief Justice at another date?

SENATOR RUSSO: I have no problem with that.

SENATOR GALLAGHER: Thank you very much, because I think we should.

SENATOR RUSSO: All right. Gerry, continue with the Pressler matter.

SENATOR CARDINALE: Thank you. With all due respect to the Chair, she is mentioned in this memorandum.

SENATOR RUSSO: I understand that, but I think we ought to get back now to the Judge's qualifications, or lack of them.

SENATOR CARDINALE: Did I distribute Judge Brody's decision to all of you? (Affirmative Reply)

You all have that? I just wanted to make sure you had it. I have a lot of copies here, and I didn't know if we had forgotten to give them to you.

This young lady is involved in this case. You have heard me speak about this case before. She has expressed a desire to join me, and to help me -- and she has been very helpful -- with respect to a number of issues surrounding the sentence in the Hyde vs. New Jersey case.

Now, let me tell you something about the case, from the record below. In the record below, the case was a case which began-- She is going to tell you more about this case herself. But, the events that led to this case began two weeks before her eleventh birthday. They continued until the age of thirteen, when she left her home, eventually sought police protection, and a prosecutor was appointed to defend her interest.

Three indictments were issued. There was a plea bargain. One of the indictments had a guilty plea associated with it, and the other two were dropped as part of the plea bargaining arrangement. There was no mention of a specific sentence with respect to the plea bargain.

There was no trial. During the course of the sentencing hearing, there were lots of suggestions made. But, what strikes me is, a public defender was involved. From what I know of this case, the defendant had substantial assets, and while this may not be important at all to any of you, it is important to me, because he was being represented by a public defender. And, this raises one of the first questions about the conduct of this case: Why was this individual represented by a public defender when there were substantial assets involved? There may be a very simple answer to this question, but I



don't know what the answer is. It would seem to me that someone whose assets were that substantial should bear the cost of his own defense. In fact, the defendant had to pay a fine, which I don't think was any kind of a problem for him to pay. It was a substantial fine. I don't think the public defender paid it.

In the case below, the judge, in his wisdom, said a few things. He said: "I was going to give you ten years, but I am bending over backwards, and I am only going to give you sixty-three days." The statute calls for ten to twenty years, with a presumptive sentence of fifteen years.

I want you to know this is one of the three rape case sentences that we are going to discuss here. This is the first one.

I think I should read a little bit from his decision, if I can locate which one it is. There were a number of sentencing hearings. The reason I have to read from this is, there were two opinions in the Appellate Division. One opinion affirmed everything that is here, and it was that opinion to which Judge Pressler assented. The other opinion takes issue with some of it.

I am not going to read it all to you, but let me read some salient points. The court, speaking to the public defender says: "I could give him twenty right now." The public defender's name is Mr. Brickman and he says: "I'm quite sure of that, your Honor; however, the matter which Mrs. Moncasi raised, would indicate that in some way, shape, or form there was a bargain for a fifteen-year sentence." Now, Mrs. Moncasi was the prosecutor.

THE COURT: No, that's not what she said at all. She just urged me to impose the presumptive. The difficulty in this case is, the court has wrestled with this case at length. I don't like you, Mr. Hodge. I think you are a nasty, dirty little man, but that is not what I am here to sentence you for. I am here to sentence, based on a combination of factors which include punishment, deterrence, and rehabilitation, all in the context of a meaningful sentence that will accomplish something that should neither be too lenient, nor should it be too harsh. I shall be mindful of

what a prison system is and what it is not. I am troubled because of the natural reaction to anybody who has been in your position -- of anybody to someone who has been in your position -- even assuming this girl is an evil person-- (defendant interrupts judge)

DEFENDANT: Well, judge, I don't consider--

SENATOR CARDINALE: The court cuts him off.

THE COURT: I am not asking you yet. (Judge continues with interrupted thought) --and has led you on. Still, there is absolutely no excuse for the conduct that was carried on. By the same token, the girl is out of the house. She is now married and is leading, essentially, her own life. I must think not only of the past but of the future. "In your favor, you have no prior record. You are steadily and regularly employed. You have other family people depending on you. I think the possibility of this happening again is not very strong."

So, those are the mitigating and the aggravating circumstances.

He goes on: "I think that says why he came out with the sentence of sixty-three days." His case was heard in the Appellate Division. Judges Antell and Pressler concurred with those mitigating circumstances, and Judge Brody filed a dissenting opinion.

Now, I want you all to understand, as I am sure most of you do, that Judge Brody is a judge of equal rank to the other two. Judge Brody had access to all the factual data in this case, as did the other two. And, he says: "I dissent because a prison sentence, although not statutorily mandated, is plainly called for in this case." Now, that is opinion, and you can agree or you can disagree with that opinion. And, there is room for more than one opinion.

"Notwithstanding the broad discretion granted a sentencing judge, I find in this case a clear showing that it was mistakenly exercised." Again, that is opinion, but it is a little stronger statement.

"The crime is egregious." I still haven't found out exactly what that word means. "The mitigating factors are comparatively few." Now, he is talking about circumstance. "Defendant's conviction for these repeated aggravated sexual assaults can rest on either of two statutorily defined circumstances: The girl was no more than twelve -- she says eleven -- when these assaults began. He is her stepfather, having married her mother when the child was a year old.

"The Legislature designated aggravated sexual assault a first degree crime, carrying a custodial sentence range of ten to twenty years, with a presumptive custodial sentence of fifteen."

I am not going to read all of this. I am going to skip a little bit. He mentions that the prevalence of the crime is becoming apparent, and he goes on with some statistical analyses, supported by State statistics. Then he says, "Most of the mitigating factors" -- note the language -- "noted by the judge are not supported by the record." And, that is not opinion; he is stating what is there for all to see.

The judge stated that the defendant has a stable family history. If you know the nature of the case, I think that is almost laughable. That statement comes from the fact that his wife told this to the investigating probation officer. Did it affect that probation officer? No. He prepared the pre-sentence report, and he recommended incarceration.

I find the defendant's own statement more persuasive. Well, let's not go into all of it.

He says, "I see no basis for concluding that the defendant would not repeat the forbidden contact with a young daughter who resides with him." The judge said, "I think the possibility of this happening again is not very strong." Judge Brody says, "I am less able to predict what may happen behind the doors of this home."

Another factual circumstance: The psychiatric care which incarceration would allegedly interrupt is described nowhere in the record. Judge Brody didn't find a record of psychiatric care. What did he find? A letter from a doctor is paraphrased in an addendum to the pre-sentence report. In it, the doctor says he finds nothing wrong with the defendant, except general depression.

Without describing what treatment he is providing, the doctor simply concludes that, "A prognosis regarding any potential recurrence of the sexual behavior mentioned above is contingent on continued psychiatric care."

The letter appears to be little more than an accommodation, and there is no evidence. What there is is evidence that such care was not provided. He went to the V.A. and they told him, "We are too busy. We have too many cases, and yours is not one where we will provide that kind of on-going care."

Judge Brody quotes the trial judge, and he says: "Very frankly, I think I bent further than I originally intended to bend. Originally, I intended to put you in jail for ten years." But, Judge Brody observes he didn't say what changed his mind.

"I do not agree that this girl who finally fled the home and went to the police with her story, has put the experience behind her." And, he concludes by saying, "The sentence imposed in this case is more suited to a disorderly person's offense than to a devastating crime against a child. Having due regard for the judge's decision to favor mitigating factors, I would reduce the crime one degree lower, for sentencing purposes, and modify the sentence by substituting a term of five years' imprisonment for the probationary term which is the minimal custodial sentence for a second-degree crime."

Now, to comment on, A, these mitigating circumstances that are cited here, and, B, the effect of this sentence on her on-going life, the victim of that crime has joined me here at this table. She has given reports to me. She has given them to various people of the press. She is a very, very brave person to come here today to talk to you. But, she has decided to do this of her own free will. As a matter of fact, she is eager for the opportunity. Laura?

I would like to conduct this, perhaps, by using a question and answer type of forum. But, if any of you have a specific question, please feel free to ask your question.

Laura, let me start off by asking you to tell the Senators how you feel about testifying here.

**L A U R A (LAST NAME WITHHELD):** A little nervous, but other than that I am all right.

**SENATOR CARDINALE:** Laura, you are the girl in this case?

LAURA: Yes, I am.

SENATOR CARDINALE: When I met with Laura, I want all of you to know that I was very suspicious as to whether or not I had the right person. There were files given to me in this particular case that were closed to the general public. I asked Laura a series of questions that only she could have known the answers to, and she gave me all the right answers. So, I became confident that she was really one and the same person. I want you to know that during this entire circumstance, it made me very nervous, because I didn't know whether or not I was being set up by someone with the wrong person. But, I do not have any reservations about that fact any longer. If any of you do, I would like you to express that doubt, through the Chair, at this point in time.

SENATOR RUSSO: Continue.

SENATOR CARDINALE: Laura, tell us in your own words the events that led up to this situation, where you eventually went to the police.

LAURA: My stepfather sexually abused me several times, and after I told my mother, her attitude changed towards me, and I was very emotionally upset.

I went to my grandparents and then I went to DYFS, and they took me over to the police department.

SENATOR CARDINALE: Laura, when did it first happen?

LAURA: About two weeks before my eleventh birthday.

SENATOR CARDINALE: And, would you tell some of the -- not gorey details, but some of the circumstances? Was there any enticement of any sort, on your part or on his part? What led to the first incident?

SENATOR RUSSO: Senator Cardinale, I am not going to restrict you, but I ask you to think for just a moment about whether this is necessary. I know the issue that you are driving at, namely the actions of Judge Pressler in the sentencing on appeal. We have heard what you have described. You have read from it. And, we know about the case extensively from the material you have sent us and from your conversations with us. I ask you to take a moment and think about whether it is necessary to go through with this testimony.

I, for one, don't think that it is. The Committee may disagree with me, but I don't think it adds anything. I think you are running the risk of some serious harm.

SENATOR CARDINALE: I share your concern, and I always have as I have gone into this case. But, there was an interview in the judge's chambers which I have not furnished you with because I don't have permission to furnish you with it. Yet, the data contained within that interview were in the hands of Judge Hamlin -- actually he conducted it -- and Judges Antell and Pressler, as well as Judge Brody. Within that information is a whole series of facts, without which you cannot make a determination as to whether Judge Pressler and Judge Antell had information that was counter to the decision. Nowhere does her testimony appear, with respect to the mitigating factors.

SENATOR RUSSO: You say there was information that the judges had. How do you know that? Or, where is it, I should say?

SENATOR CARDINALE: I have it.

SENATOR RUSSO: Well then, why didn't you supply it to the Committee?

SENATOR CARDINALE: I have been instructed by the court that I cannot share it. It was given to me, but I cannot share it with anyone. There are three series of papers that I am not allowed to share with anyone. She is willing to talk about the salient points, but not all of the points in here. I am not going to go into all of them, but some of them are important.

SENATOR RUSSO: Well, I think, as you mentioned earlier, we have subpoena power. Will we need a resolution for that? We will subpoena if we have to. I can't imagine the court taking the position that they would prefer to put this young lady through this rather than give us the information.

I don't know, what is the risk? The court isn't going to take any action against you. I suggest you give it to us and tell the court to go out and fish.

SENATOR CARDINALE: Well, bearing that in mind, I am going to limit her testimony, relying on your word that you will obtain that information, not from me but from the court, before you make your decision.

SENATOR RUSSO: Where did you get it? Which court?

SENATOR CARDINALE: This is an interview in chambers with Judge Hamlin.

SENATOR RUSSO: Who told you not to give it to us?

SENATOR CARDINALE: The Supreme Court.

SENATOR RUSSO: Chief Justice?

SENATOR CARDINALE: Townsend.

SENATOR RUSSO: Is there anyone here from the Administrative Office of the Courts? (affirmative answer) Would you please go out and make a telephone call, and tell the Chief Justice we want that material?

SENATOR PAOLELLA: Do you want me to call him, Mr. Chairman?

SENATOR RUSSO: Senator Paolella will call him. (laughter)

SENATOR PAOLELLA: He has been calling all day.

SENATOR RUSSO: I will return his call.

SENATOR CARDINALE: I am just going to ask her, briefly, to comment on some of the mitigating factors that are cited in the record.

SENATOR ZANE: Mr. Chairman?

SENATOR RUSSO: Senator Zane?

SENATOR ZANE: Before he gets into that, I would like to ask a question. Didn't you indicate that there was a three-count indictment, a plea bargain, and a plea of guilty with no recommendation as to sentencing? Is that correct?

SENATOR CARDINALE: Yes.

SENATOR ZANE: You might shed some light on that, and we may have a better feel for it. Two of the counts were dropped?

SENATOR CARDINALE: Yes.

SENATOR ZANE: What count remained?

SENATOR CARDINALE: The count of abuse at the age of twelve. The three counts were aggravated sexual assault during the eleventh year; aggravated sexual assault during the twelfth year; and, contributing to the delinquency of a minor, or something like that, during the thirteenth year -- endangering the welfare of a minor.

SENATOR ZANE: Which of the two counts were dropped?

SENATOR CARDINALE: The first and the third. A guilty plea was entered on the second count.

SENATOR ZANE: The aggravated assault in the twelfth year?

SENATOR CARDINALE: Yes.

SENATOR RUSSO: I have a question for you. In view of the fact that there was a dissent, did the case go to the Supreme Court?

SENATOR CARDINALE: It will go.

SENATOR RUSSO: It is pending there now?

SENATOR CARDINALE: It is pending.

SENATOR HIRKALA: Mr. Chairman?

SENATOR RUSSO: Senator Hirkala?

SENATOR HIRKALA: I don't think we should hear this witness. I think we may be doing her more irreparable harm than is imaginable. There is no necessity for it.

I am willing to listen to Senator Cardinale. He has his notes. He is on top of everything that he wants to tell us. I don't believe, in the interest of this child's future well-being, that this Committee should parade her before the entire State.

I think this is very, very harmful to her, and she will find that out in the future. Mr. Chairman, I wish you would make a ruling and not permit this witness to be interrogated by Senator Cardinale.

SENATOR CARDINALE: Mr. Chairman, let me address that point.

SENATOR RUSSO: No, what I think we will do, since you indicated you were only going to hit a couple of things, is to do that and then go on.

SENATOR CARDINALE: Thank you. Laura has stated to me, verbally and through a series of thoughts -- not directly, necessarily -- that the reason she wants to be here is because the sentence itself has diminished, in her view, her humanity.

The events can never be changed, but somehow-- And, she has said this. She has a tape recording of it. She has given interviews to the press. All her friends know, and if they don't like her because of it, they are not her friends. She does not feel she was at fault. Okay?

Let me ask her the questions. One of the mitigating factors cited here is that he has a good, stable job and a good, stable family life. Would you comment on that?



LAURA: He has been out of work more than he has been working. And, if he were stable, he wouldn't have done to me what he did.

SENATOR CARDINALE: Do you have a feeling with respect to whether he has the capacity -- as was in dispute here between the various judges -- to do this again? There is another girl in the home. Do you have any thoughts with respect to how safe it is for that other person to be in the home, or for him to have gone back home, as the sixty-three day sentence would allow?

SENATOR RUSSO: I am not going to let her answer that before this Committee. I am not going to allow any further questions regarding that subject matter. The case is before the Supreme Court. I am sorry. If the Committee wants to overrule me, I will encourage that and I will permit it. Otherwise, I am not going to allow this girl to go into that area.

SENATOR CARDINALE: Laura, how do you feel about the sentence in the lower court, and the opinions of the Appellate Justices with regard to that sentence?

LAURA: Very unhappy. He did it to me and I don't think it is fair.

SENATOR CARDINALE: Would you feel that some of your humanity had been restored if he got a longer sentence?

LAURA: Yes.

SENATOR CARDINALE: I have asked as many questions as I am going to. If I can rely on your representation that all of you are going to read that pre-sentencing report, which is essentially an interview in chambers, I can rest with this right at this point, and just say that if any of you have any questions, through the Chair, you may ask them.

SENATOR RUSSO: We, of course, can only read it if we get it. So far, the only person in this room that has it is you. If the court authorizes its release, or however else we get it, I promise you, if we get it before we make a decision, we will read it. I think I speak for every member of the Committee when I say that.

SENATOR CARDINALE: That's a little different than the way you stated it earlier.

SENATOR RUSSO: I did?

SENATOR CARDINALE: Yes. Earlier you said that you would get it and you would read it before you rendered a decision.

SENATOR RUSSO: I didn't say any such thing.

SENATOR CARDINALE: I'm sorry, then I misunderstood you.

SENATOR RUSSO: You misunderstood me.

SENATOR CARDINALE: I am not going to comment any further. I think perhaps there have been a number of misunderstandings here.

SENATOR RUSSO: There may well have been. Hopefully, there won't be any more.

SENATOR PAOLELLA: I think there is going to be at least one more.

SENATOR RUSSO: Senator Gallagher.

SENATOR GALLAGHER: Yes. Do I understand we are either going to get this information from the Chief Justice, or we are going to have that information made available to us in another form? Are we going to face up to not having it if we don't get it?

SENATOR RUSSO: Senator Cardinale has referred to certain evidence that he has in his possession, and I asked for it. He said he couldn't give it to me without the permission of the court. I asked someone to phone the court and get permission, if possible, and if we get it, fine, then we will see what is in it. And, if we don't, I really don't know what else we can do beyond that.

SENATOR CARDINALE: Physically, it is in my hand.

SENATOR RUSSO: If you are prepared to give it to us--

SENATOR CARDINALE: I have marked it for my own purposes, in red pen, "confidential," because that is the instruction I was given by the court. Now, you are all Senators. I really don't know. Many of you are attorneys. I don't know what I am allowed to do. If you can get permission from the court, which you should be able to get in five minutes if they want to give it to you, you can read this for yourselves. It is here. Physically it is present. It is on the table.

SENATOR RUSSO: Okay. Next area?

SENATOR CARDINALE: I would like to briefly comment on two other sentencing situations which Judge Pressler has been involved in. I understand a member of the Committee has done a good deal of research on one of them, and will make an at-length presentation to the Committee with respect to that particular case.

However, I am going to comment on that one very briefly. There were two other cases. I guess they were both reported cases. One is Anderson. It is rather recent. In the Anderson case, there were a number of independent rapes. They were all lumped together in one trial, along with a number of other charges. The gentleman was given a custodial sentence of thirty-five years by the lower court, with the proviso that there would be no parole in the first five years. That proviso was appealed to the Appellate Division, and Judge Pressler contributed to the decision that the five year, no parole, would be removed from that sentence, on the basis that it was a first offense.

Second--

SENATOR RUSSO: (interrupting) Gerry, can I interrupt you for just a second?

SENATOR CARDINALE: Sure.

SENATOR RUSSO: I was just advised that the Chief Justice, through his aide, has indicated that the report you mentioned earlier was impounded to protect the young lady, but since she is now married and emancipated -- or whatever -- that no longer applies. So, the Chief Justice has given permission for you to give it to the Committee only. To save a bit of time at this point, if you will have it photocopied, please give it to the Committee only. Gentlemen, please respect that confidentiality so we can have it for the purpose of our determination.

Forgive the interruption, Senator. Go ahead.

SENATOR CARDINALE: The other case, which will be explained at length by an attorney who is on your Committee, because it is a very complex legal question, is the case of Chapman -- State vs. Chapman. It is 189, New Jersey Supra 3, '79. It is also a split decision. Judge Pressler decided in the majority, with respect to this decision.

I didn't know about it at the time I interviewed Judge Pressler, so I couldn't ask about this case, as I could not ask about Jimmy Lee Harris. But, I did ask about the Hodge case, and I think you all know what the response was because it was in the press: In that decision she went along for the ride. It was Judge Antell's responsibility, and she just went along with him, as if to indicate that she did not make her own independent decision. I don't know if she went along for the ride on this one, but the dissenting opinion was-- And, I am just going to read a few words of this opinion. The effect of this case, as I understand it, was to reverse the Legislature's intent in cases of this type, which was to impose mandatory minimum sentences. And, the dissenting judge says:

"It is fundamental that the meaning of a statute must be sought in the language in which the act is framed; and, if that is plain, the sole function of the court is to enforce it according to its terms."

That brings me to the final case I would really like to talk about. It is not an emotional case, but it goes to the same point that the Chapman case goes to, and that is legislative intent.

The case is Zigmond. Somewhere in all of these papers we have the exact citation, but I think it is a fairly well-known case. Zigmond was a school teacher, and Zigmond had a problem. The Legislature passed a law liberalizing maternity benefits to school teachers. In the course of the old law, there was a requirement that those maternity benefits, primarily pension benefits, would be given to the individual, if an application for those benefits was made within one year of returning from maternity leave.

In the new law there was a statement attached to the bill which indicated that the benefits were being liberalized. And, they were. But, the statutory requirement of one year was the same.

Now then, in Zigmond, for a number of reasons, none of which bear on the final decision -- specifically, they are excluded from bearing on the final decision -- Judge Pressler ruled, as a member of the Appellate Division -- I think she wrote the decision -- that since the Legislature said it was a liberalization, they should have changed

the one year rule, which they left in the bill, to a longer period of time; therefore, she allowed the benefits. This application was made by Zigmond two and one-half years late. Judge Pressler construed the Legislature's leaving the one-year rule in as somehow being improper, when we were in fact trying to liberalize the benefits.

I suggest to all of you that while I am finished with this case, there are literally hundreds that you might find, where this particular judge has done a very similar kind of act. I am not going to bore you with each and every one of them. She has construed the legislative intent in a very different manner than was intended by the Legislature.

I will just mention one case with respect to land use, the Dover case. Such an unclear decision has been made in that case that she has had to go around the State to various bar associations and they talk about it -- the bar associations do -- as a feather in her cap, because she has been willing to do that. I say if she is truly such an intelligent judge that she can make these decisions which change the law so dramatically, and if she makes those decisions in such a way that no one understands them, not even all the learned attorneys, and if she has to go around the State explaining what they mean, then in my view, she is not a competent judge.

I submit to you that the things I have mentioned here leave me, as they should leave you, with the feeling that this is a judge who is totally, completely, and absolutely incompetent. She is not someone who should be held up as a pillar of the community, or as a pillar of the judiciary, but as someone who is incompetent. I suggest to all of you that my constituents, the people in my district, despite all the negative publicity that has come down on my head through some false things printed in some newspapers-- And, you know, there is a newspaper which circulates in Nutley that is owned by the brother of a Senator who is here today. That newspaper castigated me, among other things, as an attorney -- of all things. That newspaper said one of the reasons I shouldn't be listened to in this matter was because I was a practicing attorney who lost three cases. And, on all counts, that's wrong.

But, despite all the negative publicity, I hear from my constituents that they do not want judges who do the types of things that have been done in these sentences, and in the releasing of prisoners. They don't want judges, even if they are operating within the law, who do those things. And, frankly, they don't want judges -- and I don't think any legislators should want judges such as this -- who change the acts of the Legislature. These are very simple things. The Legislature said one year. We are dealing with a numerical determination here, and the judge says the Legislature should have made it more than a year; therefore, "I am going to rule in favor of Zigmond."

I will now conclude, but if any of you have any questions on this or on any of the other cases that I have talked about, I would be very happy, and I would consider it a privilege to sit here and answer those questions, as long as you want to ask them.

SENATOR RUSSO: Thank you, Senator. Are there any questions? Senator Lynch.

SENATOR LYNCH: Senator, you have talked about some cases that I was unaware of. One of them was the Chapman case. I take it that was a decision handed down by two Appellate judges in favor--

SENATOR CARDINALE: (interrupting) It was a two-to-one decision.

SENATOR LYNCH: One opposed. Who were the judges?

SENATOR CARDINALE: I believe Senator Dorsey is going to discuss this at length.

SENATOR DORSEY: Judges Michaels, Pressler, and Trautwine.

SENATOR CARDINALE: Okay.

SENATOR LYNCH: In the Zigmond case, was that also a two-to-one decision?

SENATOR CARDINALE: No, I don't think it was a two-to-one decision. You will have to bear with me if I have to go through all of these papers. I recited from memory, but I will find it. It is in here somewhere.

Okay, I have it. It is Zigmond vs. the Board of Trustees, TPAF. It is 182, New Jersey Supra 50. It is Matthews, Pressler, and Petrella.

SENATOR LYNCH: Was it unanimous?

SENATOR CARDINALE: I think it was. Let me just find that.

SENATOR LYNCH: How about the Dover case? Was that unanimous too?

SENATOR CARDINALE: I will have to find that, but I think it was unanimous.

SENATOR DORSEY: Zigmond was reversed.

SENATOR CARDINALE: Zigmond was later reversed.

SENATOR LYNCH: You have made some comments with regard to the scope of judicial review in Judge Pressler's cases, since she has been sitting on the Appellate Division, and you said that she is bound by certain rules of court with regard to that scope of review. You are cognizant of those, correct?

SENATOR CARDINALE: To some degree. However, I read-- Maybe I didn't. Let me just repeat it if I have been unclear. Article 6, Section 5, Subsection 3 of our State Constitution says: "The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any case on review."

Now, I believe that gives them, with respect to cases like Mann -- where there is something that cries out for attention -- an opportunity to depart from the normal rules and procedures they have established for themselves -- their normal operating standards. And, in fact, I cited the Ross case here -- which is the dog case -- where that did occur, where in a very unimportant case the judge made a gratuitous offering of information. You know, we must be consistent. If we are going to make a claim that we can't do something because our hands are tied by these rules, then we should never do it.

If, when it is convenient we say, "My hands are tied, and that is why I made this decision," and if in another case we say, "Oh, we can do whatever we want to do," then that inconsistency itself is an aspect of incompetence that I would call to the attention of this Committee.

SENATOR LYNCH: Then what you are saying is that in some cases you would exercise that discretion and decide that the lower court abused its discretion, and in other cases you would not?

SENATOR CARDINALE: That's right. And, I am also suggesting--

SENATOR LYNCH: How many cases did you receive from the Administrative Office of the Courts, or the Supreme Court, that delved into the background of Judge Pressler?

SENATOR CARDINALE: I don't know.

SENATOR LYNCH: Hundreds?

SENATOR CARDINALE: To what degree are you talking about?

SENATOR LYNCH: Were you given case names, opinions that were rendered, or subject matter of cases over the last several years?

SENATOR CARDINALE: They gave various synopses.

SENATOR LYNCH: Were you given that information?

SENATOR CARDINALE: Hold on. You are asking me a question; I am going to give you the answer. What the Supreme Court delivered to me was a stack like this (demonstrating) -- I didn't count them -- of synopses of cases, not transcripts, not even full opinions. I got some full opinions from law students who decided, on a voluntary basis, to go out and do some research, and do some work, in order to make certain determinations. Now, I have not tried to share every single thing with this Committee. I have attempted not to be, as the Chairman has indicated, repetitive.

I suggest if you would like to do an analysis of each and every one of the three thousand decisions, you can do that. Some of them are significant. Some of them deal with significant areas, and some of them do not deal with significant areas.

What I have found to be most significant are not the reported cases. What I have found to be most significant are the cases that are unreported, because I think there is a difference in the operating standards of this particular judge, with respect to reported and unreported cases.

SENATOR LYNCH: Let's review those for a moment. It seems to me, number one, you have the Greystone case and the Harris case, both of which occurred prior to Judge Pressler's appointment to the Superior Court in 1976, and prior to her elevation to the Appellate Division in 1977.

SENATOR CARDINALE: Three.



SENATOR LYNCH: You have three, and they all occur prior to her most recent appointment of seven years ago. I assume that her record was before this Committee, and it was before the Senate, and it was before the State Bar at the time she was appointed in 1976.

You have, as well, an opinion that deals with Judge Hamlin's sentence in the case that was barred here this afternoon, and you say it was an abuse of her discretion because she did not find that Judge Hamlin had abused his discretion by imposing such a minimal sentence.

SENATOR CARDINALE: No, that is not my contention at all.

SENATOR LYNCH: And, you have a--

SENATOR CARDINALE: (interrupting) That is not my contention at all.

SENATOR LYNCH: Your contention is what?

SENATOR CARDINALE: My contention is that the basis for that decision was fabricated; that there are not, on the record, the mitigating factors which are cited by the judge; and that if, in fact, Judge Pressler or Judge Antell read the case -- read it in full detail, as you are now going to be able to do -- they could not have come to the conclusion they came to, nor could Judge Hamlin have come to that conclusion.

I consider that a case of judicial indiscretion, of "going along for the ride," so to speak. Now, Judge Hamlin and Judge Antell are not here before us.

SENATOR LYNCH: You say to us that we have the full record. We do not have the pre-sentence report in front of us, to my knowledge. We don't have the defendant in front of us, who obviously made many statements in open court to the judge. We don't have a lot of things that the trial court had the ability to weigh, in order to make its determination, in front of us. And, we are limited in scope, just like Judge Pressler was.

That is what we have to know, what it is all about. Isn't this case pending before the Supreme Court, and wasn't it a two-to-one decision?

SENATOR CARDINALE: The full record was before Judge Pressler, including all of the items you say you don't have.

Now, if you are making the contention that there are items in that pre-sentence report, for instance, that would bear on your decision, then I think you ought to get the pre-sentence report.

Now, I had that. It was left at my office. I don't have it here physically, but I am sure you can get it. I am sure Judge Pressler has it, right in her possession now. And, if you want to have all of that information, obviously all of that information is available. It was available to Judge Brody, because he spoke about those items.

What is obvious to me, in reading those two opinions, is that Judge Brody looked at the case, and he said, "Hey, guys, this stuff isn't here. You talk about it, but it is not here." He quotes from this letter. There was no evidence of ongoing psychiatric care. One of the things you will see, if you read this stuff, is that he went to the V.A. and said, "I want to get the psychiatric care file," and they said, "No, we are not going to let you have it, because we can't." Therefore, he did not get the psychiatric care file. That psychiatric care was a very important point as a mitigating circumstance, because if that psychiatric care were interrupted by a custodial sentence, then it bears on the entire question.

Now, I don't say that ongoing psychiatric care, of and by itself -- but, this is a matter of opinion -- is a necessary deterrent to send someone to jail for a crime of this nature. However, the judge said he felt that way, and Judges Antell and Pressler said, "We feel that way too." But, the fact of the matter is that there was no ongoing psychiatric care and they knew it, or they should have known it if they read the papers before them. That is my objection.

Yes, I do object to the sixty-three day sentence, but that is not my real objection here. The technical objection that I make is incompetence, not leniency.

SENATOR LYNCH: How about all the other cases that you had the time and the ability to review, with your staff, with people you hired, and with people you had as volunteers -- the thousands of cases. Have you found in any of those cases where Judge Pressler exercised sound discretion, where she came to determinations that you might have come to?

SENATOR CARDINALE: Senator Lynch, you are an attorney, aren't you?

SENATOR LYNCH: Yes, but have you--

SENATOR CARDINALE: Have you ever prepared an Appellate Division case?

SENATOR LYNCH: Yes, I have.

SENATOR CARDINALE: How long have you spent in the preparation of one Appellate Division case?

SENATOR LYNCH: I am not here to answer your questions; I am here to ask some questions right now, Senator Cardinale.

SENATOR CARDINALE: I have a feeling you are attempting to dodge the ultimate issue in this case.

SENATOR LYNCH: Oh, no.

SENATOR CARDINALE: And that is that you are what the rest of the people who have come here all morning long are, a disgruntled litigant, and that you have two cases that pre-date 1976--

SENATOR RUSSO: Senator Cardinale, just a moment. Take a breath and relax. John, continue with your questions.

SENATOR CARDINALE: Senator Russo, he has asked a question.

SENATOR RUSSO: Do you have a question pending now, Senator Lynch?

SENATOR LYNCH: Yes.

SENATOR RUSSO: Rephrase it.

SENATOR LYNCH: How many of Judge Pressler's cases that have been supplied to you by the court have you personally reviewed?

SENATOR CARDINALE: I was answering that, but you also said something which is on the record, and I am going to address that first.

SENATOR RUSSO: No, you are going to answer the question first.

SENATOR CARDINALE: I don't know exactly how many -- hundreds. It is obvious to anyone who understands. And, maybe you don't understand, even though you are an attorney. I don't know what kind of a practice you have, or what you do. I know you are a Mayor.

However, it is impossible, physically, in four or five weeks, to do -- and I answered this already when Senator Paoletta asked it --

much more than I personally, physically, have done. And, understand, I am not an attorney.

SENATOR LYNCH: You said you worked twenty-two hours a day. You obviously spent, in the media, somewhere between twenty and thirty thousand dollars for what I consider to be distasteful advertising. If you were so concerned about the total record of Judge Pressler, it seems to me you--

SENATOR RUSSO: Senator Lynch, just a moment, slow down. This Committee will now take a five minute recess.

**(Five Minute Recess)**

SENATOR RUSSO: We will now resume. All right, let's settle down. Senator Lynch, do you have any further questions?

SENATOR LYNCH: I just want to make a statement to clarify one point, Senator, and then I will go along with your gag order. Senator, you made a remark with regard to the fact that you don't know what kind of law I practice, but you know I am a mayor. Well, I have been a practicing lawyer for twenty years, the first fifteen of which I spent as a trial lawyer in a courthouse every day of the week, until I made the mistake of becoming a politician.

During those fifteen years, I represented all kinds of people involved in post-litigation and litigation, where you had disgruntled litigants suing judges, court reporters, State troopers, doctors, and lawyers on the opposite side. I was the recipient of this on several occasions. So, I think I have some idea of what a disgruntled litigant is.

SENATOR RUSSO: Thank you, Senator. Are there any other questions from the Committee? Senator O'Connor?

SENATOR O'CONNOR: Senator Cardinale, I listened rather attentively throughout your presentation, and with all the specific cases you gave us -- you referred to the Ross case, the Hodge case, the Anderson case and the Chapman case -- in all the extensive research I gather you and members of your staff have done, with all that, have you come across even one case where a complaint of judicial misconduct was lodged against Judge Pressler?

SENATOR CARDINALE: Mr. Chairman, may I answer?

SENATOR RUSSO: Yes, you may.

SENATOR CARDINALE: First, before I address that, I would just like to apologize to Senator Lynch. If I left the impression with you that I was questioning your ability as an attorney or casting any aspersions on that, I honestly did not know whether you were a practicing attorney or not. I only knew, and please accept this, that you were a mayor. I really did not know about the rest of your background. I did not make that as an insulting remark, and I hope you can accept that thought.

Now, I have forgotten what your question was, Senator O'Connor.

SENATOR RUSSO: Were there any complaints of judicial misconduct filed against Judge Pressler, that you came across?

SENATOR CARDINALE: We specifically asked that question -- or maybe the information was just given to us gratuitously by Judge Francis -- and there was never filed, with them, a complaint of judicial misconduct. Let me just go a little further. We explored this at great length with Judge Francis, and the committee that hears these kinds of things, and you may have seen in the press that Chief Justice Hughes suggested to me, by letter and by phone, that I pursue the matter in this fashion.

Now, I heard something different today from Judge Francis, but in our interviews what he indicated to us -- and it was published in several newspapers, you know, which transcribed the texts of those tapes -- was that of the six hundred and some odd, and I think in the interview with us it was 680 complaints that had been received over a period of nine years, only ninety-some-odd had been thoroughly investigated. The others had been dismissed as frivolous. Of those, only forty-some-odd have gone any further. He further explained--

SENATOR RUSSO: (interrupting) Gerry, they didn't deal with Judge Pressler, did they?

SENATOR CARDINALE: No, none of them did.

SENATOR RUSSO: The question was, "Have you come across any instances of complaints of judicial misconduct filed against Judge Pressler?" and I think the answer is no.

SENATOR CARDINALE: The answer is no, absolutely no.

SENATOR RUSSO: Okay. Are there any other questions? (no response) If not, we will have Judge Pressler back up. That reminds me, while we are getting ready, about the first case I had in court. I was a young lawyer and I brought a pile of books. I didn't know what was in any of them at that time, but that so intimidated the other attorney -- so, beware.

JUDGE PRESSLER: Gentlemen, the hour is very late. I very much appreciate the opportunity to make a response. I will be as brief as I possibly can. You are familiar with many of the charges. I did not know that you had all of these packets. I'm glad that you do, because it means you will have had an opportunity to study them, and I will not have to go into any great length.

There were charges I heard here today which I have never heard before. I would like to respond to those charges first, very quickly, and then I would like to say just a few words about the charges that have been recurring in the press.

Three of my opinions were challenged either because they were soft on rapists, as I understand it, or because I refused to follow the legislative will. Those of you who are lawyers, and I hope those of you who are not, understand that every judge who takes an oath, takes an oath to uphold the Constitutions of the United States and of the State of New Jersey. Part of the performance of that responsibility is to comply with legislative will. I have participated in many cases which have involved issues of statutory construction. The one polestar of our decisional efforts in these cases is to attempt to define, enforce and explain the will of the Legislature. That is our function; that is what we do, and I believe that I, myself, have never, nor has any colleague I have ever sat with in the Appellate Division, flaunted legislative will on a statutory construction matter.

As to the cases, the State against Anderson -- yes, it was a rape case. The legal issue in that case was whether or not Section 2C:14-6 of the 1979 Code of Criminal Justice, which the Legislature in its wisdom gave us, and which is far superior to our previous set of criminal laws -- the issue was only as to the meaning of a subsequently convicted offender. The Legislature has provided for mandatory prison

terms, not discretionary with any judge, in the case of a person convicted of a sex crime for a second or a subsequent time. The issue in Anderson, which I wrote and which was published, was the meaning of "previously convicted."

We construed that statute as we believed the Legislature intended it, and what you were not told is that the State Supreme Court unanimously affirmed that decision on the opinion below -- Anderson.

I heard mention today of Ziegmont. That involved maternity leave. The question was whether or not the teacher in issue, who had brought her claim late, still had a viable claim. My panel, the Appellate Division, by unanimous opinion, and also one which I authored, held that it was not the legislative intention to preclude a person under these circumstances from benefits. The agency below had held to the contrary, and decided that her case was not an exceptional case warranting legislative relief. My panel of the Appellate Division held that statute permitted this application and that it was, in fact, an exceptional case. The State Supreme Court dealt with that issue in an opinion which accepted fully--

I don't have to give these citations, gentlemen. In any case, the Supreme Court opinion fully accepted the reasoning of my panel of the court regarding the viability of the claim. The bottom line was a reversal, because whereas we awarded the claim, the Supreme Court was of the view, and I'm sure properly so, that it should be sent back to the Administrative Law Judge for reevaluation of the facts. But, in terms of statutory construction, we were agreed with.

I do not fully understand the reference I heard to the Dover Township case. I can tell you, however, that that was another unanimous opinion of my panel. Certification was requested from the Supreme Court. Certification was denied, which meant that not as many as three of the seven Justices thought the issue required further expansion at that time. It is a difficult opinion to read, because it deals with an issue at the very edge of zoning and planning law, namely, where does the Board of Adjustment jurisdiction end. Clearly, only the governing body has jurisdiction on certain land use problems. It was very complex.

I will refer very briefly to the State against Chapman, which I also heard mentioned here today for the first time. That, as it turns out, is another sex offender problem. We dealt in that issue with an extremely complex question of legislative intention, and it is my fervant hope that the Legislature may see fit to explain exactly what its intention was. Our difficulty with that case was, having studied all of the legislative history, including all of the 1965 Study Commission comments, all of the cases, and reading the hearing transcripts insofar as they were available, we could not find a clear, definite legislative answer to the question, the Chapman question, which was whether or not when a sentencing judge exercises his discretion to impose a diagnostic treatment center sentence, he can also impose a mandatory parole ineligibility period. The whole concept of mandatory parole ineligibility came in only in 1979 through the Criminal Code, so I hope perhaps that this is a matter that an appropriate committee of the Legislature might want to address.

In terms of sex offender sentencing, and I may as well address that one now, prior to the 1979 code, we had in this State the Sex Offender Act. The Sex Offender Act required that a defendant accused of certain serious sex crimes, as was the defendant in our famous case here, be examined at the State Adult Diagnostic and Treatment Center. That center then issued a report to the sentencing judge indicating whether or not in its view the defendant was a compulsive and repetitive sex offender. Once that determination was made with the determination that he was subject to treatment, the trial judge had no sentencing discretion at all, and was required to commit that defendant to the center for an indeterminate term.

The sex offender treatment prior to 1979 was extremely controversial. In the original versions of the New Jersey Criminal Justice Code it was left out altogether, so that sex offenders would be treated as any other criminal, without any psychiatric alternative. At the very last minute, as we learned from our investigation of history in connection with Chapman, a modified form of sex offender treatment was included in the code, which gave the sentencing judge the option to treat the offender, either as a sex offender with a psychiatric



alternative, or as a defendant subject to the ordinary criminal process. That arose directly in Chapman.

Relating that to Hodge, I would say to this Committee, and I'm sure many of you know it, that New Jersey is quite unusual in permitting appeals from excessive sentences at all. In most jurisdictions, including the Federal jurisdiction, if a sentence is legal, no appeal lies at all. New Jersey, however, evolved a doctrine in about 1965 permitting an appeal on a sentence, only because in a very extraordinary case, a trial judge imposing a legal sentence would have been believed to have really badly misused that discretion. Therefore, although the Appellate Court gets many, many, many sentencing appeals -- I am told that last year, or last court term, my panel had 145 or 147 of them, all of which were affirmed -- many appeals are taken, but very few appeals ever result in relief. The reason for that is because of the jurisprudential concept in this State that if a sentence is legal, there is a very wide range of sentencing discretion in the trial judge.

Judge Hamlin exercised that discretion on the material which is before you, some of which has been supplied, but not all of which is before you, because you do not have the report of presentence investigation, which is confidential to protect the sources. There was one legal issue before my panel of the Appellate Division, not whether or not we approved of the conduct -- we all deplored it -- and not whether or not any of the three of us, had any of us been the trial judge, would have imposed the same sentence. The only issue before my panel, as it is in every excessive or sentencing case, is whether or not the trial judge, considering all of the information he or she had before him or her, some confidential, some not, seeing the victim, seeing the defendant, having the feel of the whole man, properly exercised discretion in using the aggravating and mitigating circumstances which are set forth in great number in the New Jersey Criminal Code.

Judge Antell and I believed that although the case was very close, Judge Hamlin had done so. Judge Brody, as you know, wrote a dissent to the contrary. I have been quoted as using a most

unfortunate expression, "Going along for the ride." It is an inexcusable thing for a judge to have said. I do not excuse it; I regret it very much. I can explain it only by saying it was said at the end of a three-hour, very tense meeting, under what I believe to be confidentiality, which had been requested for that meeting. I think, however, that the transcript of that meeting, in context, indicates that I was not at all casual about my vote in that case, that I considered it extremely carefully and, as is always the case when there is a dissent in the Appellate Division, which does not often happen, it was discussed, debated and argued. We read each other portions of the record; we took it very seriously.

I may have been right, I may have been wrong. I understand that the Supreme Court has the case scheduled for argument next week, and I do not think, under those circumstances, that I should comment on that case any further.

Stella Mann and her brother, and this story about the forged deed-- I will tell this Committee that when I first heard the Senator refer to this case at the interview we had together on that Monday, which you probably have a transcript of, I did not immediately recognize the case, because it did not sound like anything I was really familiar with. It was not until several days later that, as they say, the penny finally dropped, and I realized what he was talking about. There appears to be a notion that the appeal in that case was presented on a reconstituted record, because the record was lost and, therefore, we should have taken all of the evidence which the trial court had, and which was reproduced in facsimile in the transcript.

That is not what happened at all. I brought this pile of material up here only to show you the transcripts in the case. There was one argument day, at the very end after all the days of trial, after all of the motions that had been made in the case, in the very last proceeding before the trial judge, who was extremely patient and careful with this case -- there was a motion made again for a new trial, which he denied. The reconstituted record consists of legal argument and a legal decision, and that is all. The deed is reproduced in good facsimile in the record, and that is why it was not accepted.

We were determining, in that case, not whether or not there was a forgery. That was the job of the trial judge. We were determining whether or not there was substantial, adequate, credible evidence in the record to support the opinion of the trial judge, and we concluded that there was.

We knew that Ms. Mann was pro se; we knew that Ms. Mann was quite upset about the case. We always try to accommodate pro se litigants. I think we understand what a terribly difficult situation it is for them to be in court without legal advice, not knowing what is going on. As I have said before, we try very hard to accommodate them in every possible procedural way. Unfortunately, we cannot always satisfy them. I remember the Stella Mann argument very well, because we scheduled it for the last argument on the calendar so she would not feel pressed by the business of other cases, and could tell us everything she wanted to tell us about the appeal.

Another charge I had never heard before concerned the State/Ross summonses. That is a reported decision and you are, of course, free to read it. We were required to reverse in that case, not because we were indulging in any new fact-finding of any kind, but because the summonses and complaints in those municipal court proceedings, upon which all of the proceedings rested, were fatally defective in that there had been no probable cause-finding stated on those summonses by any person authorized to do so. Unfortunately, it was the complaining neighbor whom you heard this morning -- I never saw him -- who apparently just found out about the decision, who made the findings of probable cause, and that is not consistent with the criminal justice process as, of course, you are all aware.

I will address myself, very briefly, to the Greystone hearings. This is a most complex and difficult subject. In the early 1970's, there began to be a development of awareness in this country that the legal institutions had abandoned persons who had been committed subject to dubious due process, to state institutions. The United States Supreme Court handed down several decisions which said that mentally ill persons also have rights. They cannot be committed on an order entered on the advice of two psychiatrists, without any

kind of hearing at all, and then warehoused in state psychiatric institutions. I tell you, gentlemen, and I'm sure many of you are aware, that our State psychiatric institutions were warehouses. It was very, very sad; it was very tragic; and, it was very difficult for me to come away from those institutions after my very many days of hearings there, without a terrible sense of tragedy and sadness.

When the United States Supreme Court handed down those decisions, Chief Justice Richard Hughes was then the Chief Justice of this State. He took an immediate and serious interest and entered an order, a directive -- this was prior to the promulgation of any rules or any formalized response -- requiring that judges go into the State psychiatric hospitals and find out what had happened to people committed there five years ago, ten years ago, twenty years ago. I found a man who had been committed fifty-nine years before I arrived there, and his only problem was that he was a deaf mute. So, there we are.

It was a very specific order that review hearings were to be conducted with every person in a State psychiatric hospital who was there under a New Jersey court order. I was assigned to conduct these hearings for Bergen County. I discovered in my papers, two memoranda which I had sent to my Assignment Judge, which he passed on, describing my activities at Greystone for the first wave of hearings and for the second wave of hearings. The first wave of hearings included 400 patients who had been in Greystone for over ten years, without any court review, without any initial hearing, and I am very sad to tell you, without any psychiatric treatment. There was at that time only one board-certified psychiatrist at Greystone, and he was assigned to the children's unit, which was a very fine, effective unit. Other than that, the understanding was minimal, the physical environment was unbelievable, and the support staff was practically nonexistent.

At the same time that all these developments were taking place, the Legislature funded community mental health centers to try to come into this picture for these people. What we were mostly doing, was going through every patient with at least one psychiatrist, or, in most cases, whoever the treating physician was, a social worker, and a

representative from the local facility in whatever the catchment area was. I assigned counsel to represent every single one of these people. I have statistics with me -- I don't have to give them to you -- as to how we took care of our first 400. With most of them, we continued the commitment, because they had no place to go anyway. They would have had to find some kind of alternate residence or intermediate care facility. At that time, there was in operation in the Department of Institutions, something called the "Bureau of Local Operations," which was involved in trying to find a place for these people to go.

The second wave was eighty-nine hearings, and they followed a similar course. I then became involved in doing all of the initial commitments, and all of the pro-hearings, which followed the Supreme Court decision that persons who were acquitted of crimes by reason of insanity were not to be treated as criminals. They were to be treated as mental patients. They were to be released to what we call the "least restrictive alternative," if there was one.

That is the background of my experience, which was very intense in 1974 and 1975, but not since then, in the mental health field. I was given to understand by the Clerk of the Supreme Court that the Senator had requested all of the papers in four cases. That is four out of, I suppose, conservatively estimated, six or seven hundred mental health hearings of one kind or another which I conducted. I do not know which of the four cases, if indeed it was one of the four cases, was the unfortunate woman with her very serious problem, and I feel for her because it is a bad problem, and I saw hundreds and hundreds of families with this bad problem. I do not know which, if any, of those four cases she is involved with, if indeed she is involved with any of them. However, and I will not reveal names either, of the four cases, one is the Harris case, which you have been told a great deal about. The other three cases -- one of them was the one where you heard the tape from the uncle. The material I was given, after the Senator had also asked for that material, showed that I had reviewed that patient at Greystone -- this was Mr. Winquist -- I had reviewed that patient, entered an order that the commitment continue for another six months until another periodic review, and directed that

a social investigation be made to see if there was some alternative placement for him.

The next time I returned to Greystone, which was about, not six months, but maybe eight months later, I was told that the hospital had discharged him as improved. I believe you gentlemen have that certificate of discharge in your materials. I did not discharge Mr. Winquist; I continued his commitment.

The second of the four was a voluntary admission. Before he was scheduled for a hearing before me, he voluntarily admitted himself, so I don't know if that is the case.

On the third one of the cases, I see that I entered two orders. Neither was an unconditional release; they were very specific as to medication requirements, notices to prosecutors, and social requirements in terms of residence, in terms of seeking employment, and in terms of where he would live. I don't know what became of that gentleman either. I certainly hope he made it, but I don't know if that is the case.

We come now to Jimmy Lee Harris. Jimmy Lee Harris was a nonresident of the State of New Jersey, who wanted to return home to Massachusetts. His mother was aware of his problems, and wished to take him home to Massachusetts. I could not impose conditions of release, the usual that I would impose, for attendance at a mental health clinic, taking medication, reporting here, reporting there, because a county court judge in New Jersey -- in fact, I think no judge in New Jersey -- has jurisdiction to impose extraterritorial conditions. It was my understanding that the mother understood his condition and would seek appropriate care for him in Massachusetts.

There was nothing in his record which suggested that he would use a knife or that he would attack his mother. I saw the piece in the Daily News when it happened some months later. As you can well imagine, I felt terrible. I felt just terrible that I had released this man and that he had hurt his mother, although at the time I thought it was the right thing to do. A minor issue on the day this was reported was that these hearings were all by Justice Hughes' order of confidentiality, and the Daily News report made it clear that

a participant at that hearing had breached the confidentiality, and that was another matter I discussed with my Assignment Judge.

I followed the progress of Mr. Harris' mother and was very much relieved to learn that she had recovered. What I am telling you, is that we, none of us, are infallible. I am not infallible; I told you that at the beginning. I do make mistakes. I try, however, very hard. In dealing with mental health problems, the risks are particularly great because you are dealing with imponderables that all the psychiatric opinion in the world cannot answer. You either accept the risk and do the best you can, or maybe you just continue to warehouse all of these unfortunate people.

With respect to infallibility of judgment when dealing with mental health patients, I am going to take two minutes of your time to tell you this. I committed a person once because, based on the psychiatric evidence and the rest of the testimony, I concluded he was mentally ill, seriously so, and that he was a danger to the community. So, I committed him to a State hospital -- a psychiatric institution. Some months later, I was unaware of it, but he was released by the staff at the hospital as sufficiently improved and no longer dangerous. I came to learn of this one day when my daughter, then thirteen, the earliest riser in the household, noticed a peculiar-looking man wandering around the back yard fooling around with a knife. She aroused us, her parents; we looked out the back window, but we did not see anything and, you know, we wondered what this was all about. Shortly thereafter, she left for school. She walks to school, and she saw that person sitting in a parked automobile two or three doors up from my house. She was alarmed, and she ran to the corner and called us from a neighbor's house. I telephoned the Englewood police and they responded promptly. There he was, a person I had committed as dangerous, having been released by the hospital as sufficiently improved and no longer a danger, sitting in his car, fully armed with a knife and a gun, waiting for me to emerge from my house. I was told by the psychiatrist, who next got his hands on him, that I had no alternative but to unlist my telephone and move. Therefore, we left a home where we had been very happy, and bought another house.

Those are the risks of dealing with mental patients. I am very sorry about Mrs. Harris. I will probably regret Mrs. Harris' injuries as long as I have a mind to regret with. I can only tell you that it was a long, difficult assignment. We were bound to make mistakes. I know of no other catastrophe that resulted, and I did the best I could. I tell you that, gentlemen, in terms of my ten years on the bench. I am not going to belabor you with reviewing my ten years on the bench, except to tell you that I make mistakes, and that I am reversed by higher courts. I do my best; I try to follow my constitutional oath. I am not altogether sure why these six or seven cases appear, or have been made to appear with such drama, and I readily concede their dramatic content. I ask you, however, to look at my record, to fairly evaluate my judicial performance over the last ten years, and I think that that judicial performance is fully there before you.

I hate, after my purgation, to return to the one thing I have left out. I just heard this business about the floor in the lobby today. I recollect an incident, where on a Saturday I went to the usual, only open entrance in the courthouse. It is not open, but everyone who has occasion to be there has a key. It is the only entrance to which I or anyone else has a key. I came to that entrance and, as I was about to enter the lobby, I heard a great deal of screaming. I did not know what the import of the screaming was, and I stood there really not knowing what was happening. Finally, a person came to me and said, "They have just done the floor. May I take you around to another entrance?" which he did. I continued to my chambers and I passed one of my colleagues in the hall. He smiled at me as he saw me coming down the dark corridor from the other entrance, and he said, "Oh, you got assaulted in the lobby this morning too, didn't you?" I have no recollection of using any term of which I would be ashamed about anyone. I just do not recall that ever happening. I wanted to set the record straight on that.

If there are any questions by any members of the Committee, I will be most happy to answer them if I can.



SENATOR RUSSO: I might say, Judge, that the most impressive part of that testimony about the waxed floor was the fact that you were working on a Saturday.

JUDGE PRESSLER: You're very kind, Senator.

SENATOR RUSSO: Are there any questions for the Judge?

SENATOR DORSEY: I have some questions.

SENATOR RUSSO: Senator Dorsey.

SENATOR DORSEY: Judge Pressler, in discussing the Hodge case, I believe I understood you to say that you had taken the case very seriously, and that you and the panel had discussed it at some length before entering your decision.

JUDGE PRESSLER: That is correct, sir.

SENATOR DORSEY: Am I to understand that as a member of that panel -- and I have no way of knowing how you operate -- that before you joined in the procurium opinion, which was the majority opinion, you, in fact, knew the essence of Judge Brody's dissenting opinion?

JUDGE PRESSLER: Certainly. I think I reveal no collegial confidence when I tell you this. We prepare the cases in advance; they are all read in advance. We exchange tentative views in advance. The court calendar starts at ten; we convene at nine or earlier to go over the cases again, particularly to see what we want to concentrate on at the oral argument, and to see where our agreements and disagreements among ourselves lie and what we want focused on.

After the argument, we exchange views again. It was clear that despite various alternatives, and discussions, debates and arguments, Judge Antell and I felt one way, as developed in the procurium, and Judge Brody felt the other way.

SENATOR DORSEY: Then, there is no question that you knew what Judge Brody's feelings were and what he, in essence, was going to say in his dissenting opinion?

JUDGE PRESSLER: Absolutely, and his opinion was circulated to the majority before either of the opinions was filed. We always do that, in case the dissent turns out to be so persuasive as to get another vote.

SENATOR DORSEY: Thank you. I would just say, of course, we all make mistakes. I will not hold you responsible for any; I am not trying to do that. But, I am going to say I find the sentence which was upheld in this case really shocking to the conscience, based upon what I have been able to learn about the case, and based upon reading this interview with the young lady who appeared here today.

In the case of the State versus Chapman, you discussed the fact that I did not believe you noted that that, again, was a split decision. It was, wasn't it?

JUDGE PRESSLER: That is correct, sir.

SENATOR DORSEY: Am I to understand that again in that case, before rendering the opinion, which was the opinion written by yourself, the majority opinion, you knew Judge Michaels' feelings in connection with a search for legislative intent?

JUDGE PRESSLER: Certainly, sir. I do not think I am revealing or betraying a collegial confidence when I tell you I wrote that opinion four times, and two of them went the other way. We found it an extremely difficult constructional problem. I hope the Legislature answers that question.

SENATOR DORSEY: Well, I think it is fair to say that the Legislature probably feels it did answer that question many times, in terms of mandatory sentences brought on, particularly by Senator Graves. Is that case on appeal -- the Chapman case?

JUDGE PRESSLER: I don't know for sure, but I would be very much surprised, in view of the dissent, if the right to appeal was not exercised. I am quite sure that it was. It is an answer that the trial judges need to have, and I would be very much surprised if it was not taken up on appeal.

SENATOR DORSEY: You also wrote the decision in the Wilno versus New Jersey Manufacturers' Insurance Company, correct?

JUDGE PRESSLER: I do not recall the case, Senator.

SENATOR DORSEY: The case involved the issue as to whether or not a dune buggy would be considered a passenger automobile for the application of no-fault.

JUDGE PRESSLER: Oh, yes, I recall the case now.

SENATOR DORSEY: That, again, was a case in which the court was involved in a search for legislative intent, correct?

JUDGE PRESSLER: Yes, sir.

SENATOR DORSEY: And, I take it that in that case you recall the dissenting opinion by Judge Alcorn?

JUDGE PRESSLER: I recall it very well. The question was whether or not a sand buggy, or a dune buggy as they are called, is a vehicle for purposes of the Personal Injury Protection law.

SENATOR DORSEY: You ruled that it was, and he argued that it was not?

JUDGE PRESSLER: Correct.

SENATOR DORSEY: Was that case appealed?

JUDGE PRESSLER: That case was appealed. My recollection is that by a split vote, the court agreed with Judge Alcorn.

SENATOR DORSEY: In the case where Senator Cardinale called the mother here today -- I forget the name of that case. Do you know the name?

JUDGE PRESSLER: No, that is my problem in responding.

SENATOR DORSEY: Senator Cardinale, do you know the name of that case?

SENATOR CARDINALE: You have it in your file. The name is confidential as to the individual. That was the agreement of the Committee, that that name would not be--

SENATOR DORSEY: (interrupting) All right, Senator Cardinale. I am not trying to criticize you. Before coming here today, did you review any of the transcripts that were involved in that case Senator Cardinale had?

JUDGE PRESSLER: Senator, there was a great effort made, as I understand it, to accommodate the Senator. Only two transcripts were located having to do with all mental commitment hearings. I received a message, and I believe Senator Cardinale probably received the same message, that the court reporter, who was with me on most of those cases, said that after five years he had destroyed his notes, and there cannot be any transcripts. I have seen two.

SENATOR DORSEY: Now, as I understand what was said here today, and I thought it was from a written record -- Senator Cardinale can correct me if I am wrong -- the only expert testimony that was given, excluding the mother, was that of the State psychiatrist who, in essence, said that this man would be a danger to himself and to the public if he was released. Now, it is probably unfair for me to ask you whether you have any recall of that situation, but, do you?

JUDGE PRESSLER: Are you referring now to the one disclosed name, Jimmy Lee Harris?

SENATOR DORSEY: No, I don't think I am referring to Jimmy Lee Harris. Am I referring to Jimmy Lee Harris, Senator Cardinale?

SENATOR CARDINALE: Yes, you are.

SENATOR DORSEY: All right.

JUDGE PRESSLER: Jimmy Lee Harris is the one who stabbed his mother in Massachusetts. The woman who was here today -- I don't know which case she had to do with.

SENATOR DORSEY: All right, then it is the Jimmy Lee Harris case; I was confused. As I understand what was read, in the Jimmy Lee Harris case the only expert testimony was that of the psychiatrist, who indicated -- it was read specifically -- that this man was a danger to himself and a danger to the public. Am I correct in assuming that Senator Cardinale has, in fact, read the only kind of medical testimony that was before you when you made that decision?

JUDGE PRESSLER: Sir, the testimony did go on, but I concluded that it was equivocal. There were also many documents, and many reports from all of the persons who had treated and had contact with this patient. There were also the representations and statements made by the attorney whom I had designated to represent all of these people. I do not have a full record; I only have what was able to be reconstituted. However, it was my view from the totality of the evidence, that the doctor who testified certainly made clear his preference to have this person put into a civil hospital, rather than into the Vroom Building.

SENATOR DORSEY: Do I understand that the only medical witness who appeared was the doctor who Senator Cardinale quoted from? His name is spelled L-i-z-o-n-d-o.

JUDGE PRESSLER: That is correct. He was the only one who appeared.

SENATOR DORSEY: I take it it is fair to characterize that what he said was something more than just his desire, but was a specific recommendation that he should not be discharged into society. Is that not correct?

JUDGE PRESSLER: He drew that ultimate conclusion, as I recall the transcript -- I'm rummaging for it -- after making various other kinds of statements about his condition. It was my obligation to evaluate that testimony under all of the circumstances.

SENATOR DORSEY: But, there was no conflicting medical testimony by any other doctor, correct?

JUDGE PRESSLER: That is correct, Senator; that is correct.

SENATOR DORSEY: I just want to say that I have no question about your intelligence and your competency. I have made absolutely no effort in this matter to seek opinions from attorneys as to how they felt one way or the other. However, as an attorney who occasionally has the opportunity to practice law, I do walk through the courthouse in Morris County once in a while, and I will tell you that I have had a number of attorneys, whom I have not sought out, but who have sought me out, who have told me they felt that when appearing before you in the Appellate Division they had been very unfairly treated. One attorney told me that you had asked the same question of him no less than twelve times, apparently characterizing your attitude as one not satisfied with his initial answer, and that this was a procedure you went through to show your displeasure with him. I have never appeared before you; I have not been an unsuccessful litigant. What I say, I say because I hope you will keep it in mind in the future, because I have not sought these opinions. These opinions have sought me, and I can only assume that these attorneys who have spoken to me have said these things in good faith.

JUDGE PRESSLER: I would just like to comment that it is very difficult to respond to that kind of remark, especially when I do not recall any circumstance where I asked a question twelve times. That is not my style, nor my habit. I may come across sharp, but we have a

limited time for a great deal of work. If my effort to get to the heart of an issue has offended anyone, as I say, I regret it. I am glad to be told, and it is something to be aware of.

SENATOR DORSEY: Well, I want to assure you, Judge, that it is not easy. It is somewhat difficult for me, as a practicing attorney, to bring these facts to your attention. I am not specifically involved in your confirmation as a Senator from your county, but I will say that I have no reason to doubt the truthfulness of the attorneys who have spoken to me.

JUDGE PRESSLER: I appreciate that, Senator.

SENATOR RUSSO: I might just add in passing, that with regard to the sentence in the sex case, Judge Pressler, based upon the information we have, I totally agree with Senator Dorsey that the sentence that was upheld was almost, at least in my judgment, and based upon what we know, unconscionable -- the sentence meted out by the trial judge in that case, based upon the information we have, and we may not have it all.

JUDGE PRESSLER: The Supreme Court will tell us all its views shortly.

SENATOR RUSSO: Right and, of course, even that will not mean that-- (laughter) Sorry, Justice Francis. All it means is that they have one opinion, and we may have another one.

JUDGE PRESSLER: May I just add one thing? I have a statement which I have been authorized to read for the record here. It is from the present prosecutor on the Jimmy Lee Harris case, and I will give it to the Committee if it wants it. All I want to say is that the prosecutor says, "Under the circumstances of the hearing, the fact that the defendant was a nonresident and the mother was seeking to return him to his home in Massachusetts in order to take care of him, and the general guidelines that state the decision of the judge was reasonable...." That was after he explained that he had directed his office to take an adversarial position at the hearing. If you would like to have this, I will leave it with you.

SENATOR RUSSO: Yes, would you? Senator Gallagher?

SENATOR GALLAGHER: Thank you, Mr. Chairman. Judge, first off, I am not an attorney, and my concern in this matter is not so much how the attorneys are treated, but how the general public is treated. I am dealing entirely with the facts which have been brought before me, and I have to tell you that I'm a little bit troubled reading some of these things and getting the impression that you have ignored, for one reason or another, the expert testimony of some of the medical people. I have heard in two or three cases here that you chose to release people. One was Jimmy Lee Harris.

JUDGE PRESSLER: That is correct.

SENATOR GALLAGHER: Okay. The other was -- we have this, as Senator Cardinale said, from the mother who was here.

JUDGE PRESSLER: I wish I could know the name of the mother so I could respond. Someone could show it to me.

SENATOR GALLAGHER: Well, Senator Cardinale has it, if he would like to give it to you. What I am getting at is, I get the impression that you are replacing their expert opinions with your own, letting some of these people out when maybe they shouldn't be let out, based on the expert testimony before you. Now, that concerns me greatly.

I do not have all of the cases here; I only have a few of them. I don't know, if I ask you the question whether this is the general practice, I am probably going to get a self-serving answer back. But, I have to tell you that this disturbs me, and anything that you can do to alleviate my concern by whatever you can say to me now, I would greatly appreciate.

JUDGE PRESSLER: Well, I appreciate having an opportunity to respond. I cannot agree that I ignored the psychiatric testimony in a case which I do not know of, because I have no recollection and cannot say. I was always, in my view, guided by the psychiatric testimony and, ordinarily, it is the obligation of the judge to evaluate expert testimony. I know that that sounds difficult when experts are testifying about matters not within the judge's expertise. But, this is something that judges must do all the time they are hearing a case. One expert says one thing, the other expert says another thing, and how

is the judge supposed to evaluate? The judge evaluates by using all of the usual ingredients that go into the judgmental process.

Juries, lay juries, which probably have less acquaintance with the matter than the judge does, are also asked to perform this evaluating, weighing function between absolutely contradictory experts. I think my point, Senator, is this. Although a person has the credentials of an expert, his opinion is, nevertheless, never binding on a court, and may be affected by all of the other circumstances and evidence, and the totality of the case. If that were not so, then of course, we would not need judges and we would let the experts make the decisions. I do not believe, and I can't tell with this woman because I don't know what case it was-- I know that in the four cases I was told were concerns of the Senator's, I only released one of them, and that was Jimmy Lee Harris. So, I do not know the case. The Jimmy Lee Harris case was a difficult, exceptional case, and perhaps I was wrong. Of course, perhaps I am wrong all the time. I just try hard to be right, and that was one that I felt terrible about.

SENATOR GALLAGHER: Judge, I realize we all have difficult decisions -- we are going to have a difficult decision here -- in that, when you have conflicting opinions from experts, you have to come to some judgment. But, I haven't heard anyone here say that there was another opinion from another expert. I got the impression from listening and from reading this that there was only one medical opinion, and that you ignored that medical opinion, not that you determined which of them was more accurate.

JUDGE PRESSLER: Perhaps I did not make my point and I can try again. An expert's testimony is not required to be accepted. That is easier to understand in the case of conflict. The testimony of that doctor, if you read it, yes, it did come to the conclusion that the man was not yet ready. There were other factors in that case which led me to the conclusion that the family's interest, the mother's interest who wanted him, society's interest, would be best served by her taking him home with her to Massachusetts. She appeared to understand the difficulty. One of the problems with institutionalization in New Jersey, is that if there is no home in New Jersey, there is no halfway



measure for the gradual, conditional release, which is what we routinely use. Requirements for going to clinics, for monitoring medications -- all of those appropriate safeguards for a release, were not available to me in this case, because the man was going to Massachusetts. I had no jurisdiction to require them. Certainly, it would have been a conditional release had his home been here and his mother here. So, my choice was really to leave him there, with a lot of background about what being left there meant, because I had been there a lot, or assuming, believing as I did, that his return to Massachusetts would result in whatever necessary follow-up care he required there. I guess I made a bad decision.

SENATOR GALLAGHER: I just have two more questions, Mr. Chairman. I am concerned about one bad decision that is going to affect society, but I am more concerned because it wasn't just this one case. It was said on two or three other occasions by witnesses before us, that the only medical evidence that was put forth was to keep the individual in. Now, I understand it is difficult to talk about these other cases if you do not know exactly what they are, but we did have these people before us. Maybe the Senator can get that information to you and you can comment on it later.

My final question, because I do not want to prolong this hearing, is-- I hope you are going to find the majority of people on this particular Committee find the sentence on that one particular case to be unconscionable. I would like to know how anyone could find in a case like that, whether it is on appeal or whether it is at the lower court, sixty-three days. I mean, what type of thinking goes on in someone's head that he or she can agree that that is the type of punishment that should be meted out for that type of action.

JUDGE PRESSLER: Sixty-three days, with five years' probation. I know that the five years' probation doesn't sound very punitive. If you focus on the deplorability of the crime, there is no question that vengeance, punitive considerations and deterrents might warrant a more severe sentence. The Legislature, in the Criminal Code, said that on a second offense of this nature, there would be a minimum mandatory five-year term -- on a second offense. This was not a second

offense. The general philosophy of sentencing, as I understand it, is that it has a number of aspects. In addition to the punitive and deterrent aspects, there is also the aspect of rehabilitation, which is not only for the purpose of rehabilitating the individual, but is also for the purpose of avoiding recidivism so he does not become a hardened criminal, a future threat to society, if that can be accomplished. On the second sex offense, the Legislature has made it clear that the rehabilitative aspect of the sentence, and the affect of the sentence on others who are affected, namely, the family members, should simply not be taken into account. But, those factors, the so-called "mitigating" factors are to be taken into account on a first offense of this nature.

The judge imposed a legal sentence, and he thought it was an appropriate sentence within his discretion. If he was wrong, and if Judge Antell was wrong, and if I was wrong, I hope the Supreme Court will be right. They will have the opportunity to discuss the elements of the sentencing philosophy as applied to this case.

I am looking at the sheet on the mother who testified. All I see that I did -- and I see there are four or five other judges' names mentioned here -- is that I reviewed the case, and I provided that the patient would be discharged, pending placement, with a continuation for a three-month review. Now, I don't know how the discharge ultimately followed seven months later, if it was a hospital review, if they had found an ultimate placement or if the discharge was under my order. Usually, when a person is continued, it takes another order to discharge him, and I do not see another order of mine here.

SENATOR GALLAGHER: I think I heard that once, Judge. Thank you, Mr. Chairman.

SENATOR RUSSO: Are there any other questions from the Committee? (several responses at once) I'm sorry; there are three requests, and I have to take them in order. Senator Zane, do you want to defer to Senator Orechio?

SENATOR ZANE: No. I just have one question to clarify something. Judge, earlier today, there was testimony about a matter that was before you, and the decision was dated, as I understood it

anyhow, prior to the sale of the documents. Was that a typographical error?

JUDGE PRESSLER: No, Senator, it wasn't, and I'm glad you reminded me about it so I can explain it. The Appellate Division judges are available, although we sit only in panels, as individual judges on emergency matters. The testimony you heard today was for the most part accurate. She sought various types of relief, most of which were in terms of her status as an appellate, her constitutional rights, change of venue and prejudice of the judges. Those were not emergent matters. As to those matters, I assisted her in the filing of her formal papers with the court. There was only one emergent matter which she brought before me, and that was that her alimony payment was late. I spent a day on the phone with her husband's lawyer, who refused to come to the hearing, and the probation department, to get her her alimony. So, I entered an order the following day, saying that the emergent application was mute, because the alimony order had been complied with, and that her other applications for relief were going to be considered in the normal Appellate schedule. So, that was the confusion.

SENATOR ZANE: Judge, there was also a comment from the gentleman over there in the blue sweater -- I forget the matter -- that there were several complaints which were part of the record that was submitted to you, and that the matter was apparently dismissed by you because the complaints, the summonses, had not been signed. Yet, the comments that you made earlier indicated that apparently the nature of the complaint had not been set forth on the summons itself. Is that correct?

JUDGE PRESSLER: Well, as I recall it, we have facsimiles of the summons in the record. The deputy clerk's signature appeared on the summons taking the jurat, but the probable cause finding which is required to be made by an official, was signed by the complaining witness. The complaining witness cannot make the probable cause finding or, in fact, issue the summons, and his name appeared on the summons.

SENATOR ZANE: And that individual to satisfy that, could have been a deputy clerk, is that correct -- as the testimony we heard before?

JUDGE PRESSLER: A deputy clerk could have issued it, yes.

SENATOR ZANE: Now, the summonses -- I see Senator Cardinale coming over, and apparently he is going to hand them to you.

SENATOR CARDINALE: No, I am going to have them duplicated for the Committee, so you can actually see them.

SENATOR ZANE: Senator Cardinale, may I suggest that you hand them to Judge Pressler and let her just take a look at them for a second?

JUDGE PRESSLER: In the meantime, I might tell the Committee that the opinion is the State against Ross, and it is a published opinion. So, our reasoning is there.

SENATOR ZANE: Judge, were they the two complaint summonses that were submitted to you, if you recall?

JUDGE PRESSLER: These appear to be the originals of the facsimiles we had.

SENATOR ZANE: And, they bear the signature of a deputy clerk?

JUDGE PRESSLER: As I read it, it says as follows: "The undersigned states that he has just and reasonable grounds to believe, and does believe, that the person named above committed the offenses herein set forth." Underneath, there is a signature block; that is where the official signs. Under the signature block it says, "Signature and identification of officer - to be signed when issuing summons." That is the constitutional requirement to probable cause, and it was signed by the complaining witness. The fact that the clerk may have taken his jurat does not affect the constitutional problem of the complaining witness having issued the probable cause finding. That is all I wish to say on that.

SENATOR ZANE: Mr. Chairman, just one more question. It has been said back and forth, and denied, that Senator Cardinale was a litigant before you, an unsuccessful litigant. Was he, or was he one who was just named in litigation, but was not really a principal to litigation, as has been represented?

JUDGE PRESSLER: I recall three cases. I think the one which you are referring to was a case called "Columbian Iron Metal," or something like that, versus Redford. The Senator was a named party. His company, of which he was the sole owner, was a named party, and an employee of his was a named party. During the course of that trial, it was necessary for me to determine whether or not the corporation was solvent, because there was a "piercing the corporate veil" issue. It was also represented to me at the beginning of the hearing by the attorney for the defendant, that if a judgment were entered against the employee, the Senator would indemnify him.

Based on the testimony of the Senator at the trial that the corporation was not insolvent and that the employee would be indemnified, I dismissed the action against the Senator individually, because the corporation, through its other employee, had been responsible for the conduct. But, I think the record makes clear that the financial interest was direct.

SENATOR RUSSO: Senator Orechio?

SENATOR ORECHIO: Mr. Chairman, I guess I have been here eight hours now, along with the other nine members of the Committee, and I do have a couple of questions for Judge Pressler. However, at this time I would like to respond to some testimony that was alluded to earlier in this proceeding. Because of my patience, like the others, since we have adhered to the discipline that you have exacted in the way of rules which are very, very stringent, I would like to make a short statement.

SENATOR RUSSO: A short statement.

SENATOR ORECHIO: Sylvia Cordenauer testified earlier, and some of the comments she made alluded to a letter that was sent to Senator DiFrancesco. I don't know why it was addressed to him, since he is not even a member of the Committee, but anyway, on Page 5 of her statement she makes reference to me, and I think Senator Cardinale touched upon it when she alleged that there apparently was a conspiracy between Senator Cardinale and myself to block the reappointment of Judge Pressler, and that Senator Cardinale was the "front man."

Also in this statement on Page 5, she states positively that in the processing of an appeal on her matter, it was revealed that there were six years of unethical and illegal acts by an array of lawyers and judges, all of whom are close associates and friends of Senator Orechio. Number one, I don't know who she is referring to and, number two, I have never discussed any case that Sylvia Cordenauer had before the court with any judge or any attorney. As a matter of fact, I never met her before, nor never even knew she existed. This statement is an absolute distortion of the truth.

In connection with Senator Cardinale before, with reference to an editorial that appeared in a local newspaper that my brother owns, in his capacity as publisher of that newspaper, and other newspapers, in his editorial columns he writes about national issues, State issues, and local issues. If he had consulted me, I would have told him that you are a dentist, not a lawyer. Therefore, I apologize for my brother.

Judge Pressler--

JUDGE PRESSLER: Sir?

SENATOR ORECHIO: In 1982, you heard an appeal involving a case referred to as Fusco versus Fusco, wherein a trial court granted a father biweekly visitation rights with his five-year old daughter, even though the father was serving a thirty-two year sentence in a State prison for a conviction on a first degree murder. I wonder if you can tell me, and the other members of the Committee, what your decision was in your capacity as an appellate judge.

JUDGE PRESSLER: The decision in that case, as I recall it, and that is also a recorded opinion, was that the trial judge had taken no psychiatric testimony, had taken no testimony from anyone, and had decided that the application on the papers under what lawyers are unhappily calling these days the "162 practice," where papers are submitted and a judge will decide that there is no need for evidence or argument-- Our decision in that case was that the situation was so grave, the possibility of harm to a five-year old child being conducted to visit at a State prison was so serious, that the decision as to whether she should or should not be required to visit with her father

-- no one even knew there was a place in the prison where she could see him without bars -- the decision was simply that a trial would have to be conducted in order to determine the best interests of the child under those circumstances. We also tried in that decision to lay out guidelines for criteria to be considered when a dramatic visitation of that kind is under consideration.

SENATOR ORECHIO: The Legislature, not too long ago, passed a statute which provided that a person who is in possession of a handgun will be guilty of a third-degree crime. All of us on this Committee, of course, are concerned about handguns, the illegal possession of handguns, and we are concerned about what they can lead to. As a result, a gentleman was convicted of having a handgun in his possession. The matter came before you, and a challenge was based on the statute being unconstitutional. I was wondering what your opinion was on that matter when it came before you.

JUDGE PRESSLER: If you are referring to the statutory presumption that if a person has a handgun, his possession is presumed to be illegal, therefore placing upon him the burden of coming forward to show that it was legal, that is a recent decision of my panel, the State against McCandless. We sustained the presumption as being constitutional and in accord with public policy, and having a nexus with public policy.

SENATOR ORECHIO: Thank you. Judge, one final question. Over the last couple of weeks as this matter, this controversy began to gather some momentum, capped with the cases which were introduced today by Senator Cardinale, which have, I think, certainly received a fairly good hearing, I was wondering since you have been a member of the Judiciary for, I guess, ten years, how many cases have you participated in?

JUDGE PRESSLER: In the Appellate Division, not counting motions, because I don't think anyone ever counted those, I have participated in approximately 3,000 cases. That is over the last seven years. In the trial court, I know I did about 700 mental health cases. In addition to that, I did hundreds and hundreds of others. I was on the Non-jury and Prerogative Writ calendar, and I was very busy

for the most part. I'm sure there were cases in the trial court well into the many, many hundreds.

SENATOR ORECHIO: Can you indicate how many opinions you offered?

JUDGE PRESSLER: We got a printout, and the printout showed about 159 published opinions signed by me, and about twenty-five procurium opinions which I authored.

SENATOR ORECHIO: How are cases selected for publication?

JUDGE PRESSLER: A case is recommended for publication if the author, the individual judge in the trial court, or the panel in the Appellate Division, believes it addresses a question of law which will provide guidance to the bench and the bar for the future, that is, if it is an opinion which will create some kind of precedent or break some new area of the law. The law books are expanding in terrible proliferations, so we do try to exercise restraint on what we recommend for publication, so the law books will only have those decisions which have what we call "precedential value," that offer guidance or determine a question of law that has been unsettled, or something of significance. Once an opinion is recommended for publication, it is submitted to a Supreme Court Committee on Publications, which reviews the opinion and--

SENATOR RUSSO: (interrupting) Senator Orechio, do you want to withdraw the question?

SENATOR ORECHIO: Judge Pressler--

JUDGE PRESSLER: That is enough of an answer.

SENATOR ORECHIO: You know, Mr. Chairman, I really think you are kind of rude. I think you should have permitted Judge Pressler to finish. I think that is outside the boundaries of your function as Chairman of the Committee. I would like to hear Judge Pressler continue.

SENATOR RUSSO: Do you know how long I have waited to be able to sit up here and say to a judge, "Answer the question," or "Confine your answer to the question?" It has been twenty years, Senator Orechio, and I don't want to let that opportunity pass by.



SENATOR ORECHIO: Mr. Chairman, sometimes a witness, as you probably recognize from your own experiences, needs time to amplify points that have to be made in order for a person to understand. I am not a lawyer, and that is the reason why I appreciate her remarks. May she continue, please?

SENATOR RUSSO: She may.

JUDGE PRESSLER: An opinion recommended for publication is reviewed by the Supreme Court Committee on Opinions and, if it is deemed to be publication-worthy, it will be published. On the other hand, all opinions of the Supreme Court are routinely published, since that is the highest court in the State.

SENATOR ORECHIO: Thank you very much, Judge Pressler.

JUDGE PRESSLER: Thank you, Senator Orehcio.

SENATOR ORECHIO: Mr. Chairman, I thank you. I have no other questions for the Judge at this time.

SENATOR RUSSO: Thank you, Senator Orehcio. Senator Hirkala?

SENATOR HIRKALA: Judge Pressler, there was some testimony, and many references to a rape case in which there was a sentence imposed of sixty-three days. Now, you didn't impose that sentence, did you?

JUDGE PRESSLER: Sixty-three days, plus five years' probation. I did not impose it; I voted to affirm it on the grounds that it did not constitute the use of discretion.

SENATOR HIRKALA: That is what I wanted. I did not want an impression given to the general public in this State, that that sentence was imposed by you. You imposed it, in effect, by concurring on an appeal before the Appellate Division. Now, many of us in this State are not sophisticated enough to know the difference between the duties of a trial judge and the duties of an appellate judge. You have served in both capacities. Would you now, at this time, give us a brief resume of what a trial judge's duties are, and what an appellate judge's duties are?

SENATOR RUSSO: Senator Hirkala--

SENATOR HIRKALA: It's very simple; it would only take a minute.

SENATOR RUSSO: Senator Hirkala, even though I know I am probably dead wrong, I am still going to rule the question out of order. Fellows, I know you are all having such a good time that no one wants to leave, but we have been here almost ten hours now, and I would ask that the Committee keep that in mind so that we can finish up soon.

SENATOR DORSEY: John?

SENATOR RUSSO: Senator Dorsey.

SENATOR DORSEY: Judge Pressler, Senator Zane asked you before about the litigation where Senator Cardinale appeared before you. You said you recalled three times, but you discussed only one. I would like to set this straight, because there was a discussion on the Senate floor about this last week. There were three instances, and we were correct in saying that in two of them he was named as a party plaintiff, or a party defendant, solely in his capacity as an elected official of the Borough of Demarest. Is that correct?

JUDGE PRESSLER: I am certain that is correct as to one of the other two instances. I have never been able to find or reconstruct the documents on the third.

SENATOR DORSEY: But, you have nothing to indicate that in those two cases he was a personal defendant, correct?

JUDGE PRESSLER: That is correct, sir.

SENATOR DORSEY: Now, in the case where he did appear as a personal defendant -- I was given this transcript last week by Senator Cardinale. It is dated June 8, 1976, and I read, from what I assume is your opinion -- it says, "The court." I should also say that as a general finding, I do not find Dr. Cardinale personally liable on any basis at all. I assume that on that basis you dismissed the complaint against him personally. Is that not so?

JUDGE PRESSLER: That is correct. That was a corporate situation.

SENATOR DORSEY: You dismissed the complaint against Senator Cardinale on a personal basis, correct?

JUDGE PRESSLER: That is correct.

SENATOR DORSEY: The fact that he may have had some other connection with the corporation or with another individual did not

affect your dismissal, or the basis for the dismissal against Senator Cardinale, correct?

JUDGE PRESSLER: That is absolutely correct.

SENATOR DORSEY: Fine; I wanted to make that point clear. One other point under the Hodge case -- you pointed out to Senator Gallagher incorrectly, that the Hodge case was dealt with in one context because Hodge was, as you classified him, a first offender, correct?

JUDGE PRESSLER: That is correct, sir.

SENATOR DORSEY: I think the point that we would like to have you observe in this instance is that, although Hodge might under the law be a first offender, what Hodge was doing in this case was not a one-time sexual assault. It was, based upon the record, a continuing series of assaults that went on over a period of years. Is that not correct?

JUDGE PRESSLER: That is correct, Senator.

SENATOR RUSSO: Are there any other questions?

SENATOR PAOLELLA: I have a question.

SENATOR RUSSO: Senator Paolella.

SENATOR PAOLELLA: Mr. Chairman, am I going to be allowed to ask a few questions uninterrupted, or am I going to make a long statement at the end? I offer that to you--

SENATOR RUSSO: Are you going to be allowed to ask a number of questions uninterrupted, or are you going to make a long statement at the end? Well, I don't know; I don't know what you want to do.

SENATOR PAOLELLA: Well, what do you want me to do? You can make it hard or easy.

SENATOR RUSSO: Well, Senator Paolella, come on, we've done fine. You know, my colleague to my left is upset because he said I cut him off. So, if you are going to ask questions that are irrelevant, you are going to be cut off too; if not, you won't.

SENATOR PAOLELLA: Judge Pressler, you have been quoted in the press as having stated that you do not suffer fools gladly, so you can probably appreciate my position. I think Johnny Carson once said to a guest who gave him a lot of trouble, "You know, you only do this show one night. I have to come back and do it every night."

I have a few questions for you, but they are not necessarily on your decisions. I will not question those. As an attorney in Bergen County, and a person with relatives in the courthouse who work as court stenographers, I am very aware of your decisions and your daily habits. I have signed off on you, so I think that makes a statement as to my position with regard to your abilities. I do want to ask you though, in regard to reappointment, and very briefly, what effect do you think the seven-year reappointment requirement, that is coming back before this Committee in seven years, and the lifetime tenure -- what effect do they have on you in your daily operations as a judge? Do they enter at all into your decision making? Do you worry about it?

JUDGE PRESSLER: If the Chair requests, I will answer the question. I never thought about it until this hit the press.

SENATOR PAOLELLA: So, it's not something that frightens you, having to come before the Judiciary Committee for reappointment?

JUDGE PRESSLER: The Judiciary Committee has a constitutional obligation.

SENATOR PAOLELLA: That's good; that is what I wanted you to say. Has the celebration of this case in any way led you to fear that you might lose your abilities, be inhibited or be biased in your functions as a judge, if you are to be reconfirmed?

JUDGE PRESSLER: I'm sorry, Senator, I'm not sure I understand that question.

SENATOR PAOLELLA: All of the calamity we have endured for the last month with regard to your reappointment, do you feel that is in any way going to inhibit, bias, or make you unable to perform your duties as a judge, either in the Appellate Division or elsewhere?

JUDGE PRESSLER: Are you referring to a bias I may feel against specific persons, or are you talking about a generalized problem?

SENATOR PAOLELLA: In general, have you been traumatized?

JUDGE PRESSLER: I do not feel I have sustained, or will sustain a work-affecting, generalized trauma. (laughter)

SENATOR PAOLELLA: Okay. Can we introduce medical testimony? (more laughter) I have one more question. Perhaps it is not relevant, but I hope you will indulge me and answer it. Are you more comfortable as a trial judge or as an appellate judge?

JUDGE PRESSLER: If the Chair wishes, I will answer that question for the Senator. I enjoy being an appellate judge. Apparently, there are those who think I do not get along with people too well. I was never aware of that until all of this either. I enjoy the work of an appellate judge. It is very much suited to my temperament.

SENATOR PAOLELLA: In a last ditch effort to ferret out any doubts that I might have, how about the methods of choosing judges in New Jersey? What do you think of this as a method? Is it satisfactory, or do you think it can stand some improvement?

SENATOR RUSSO: That is not before us in this hearing.

SENATOR PAOLELLA: That is my question. Are you overruling it?

SENATOR RUSSO: Yes, yes.

SENATOR PAOLELLA: Well, you'll never get my vote on this Committee. I have no further questions, thank you.

JUDGE PRESSLER: Thank you, Senator.

SENATOR RUSSO: Thank you, Senator Paoella. Are there any other questions from the Committee? (negative response) Okay, that concludes the hearing. The Committee will go into recess now, and make a determination as to whether or not we are prepared to vote on this nomination, or whatever the Committee's wishes might be. Whether or not we will do so before a dinner break, or after, will be something the Committee will determine right now.

Before we go into recess, I want to thank the Committee for the manner in which it has cooperated, and its demeanor during this hearing. It was an extremely difficult task for every one of us, I'm sure. I want to thank those witnesses who testified. The fellow in the back who was asked to leave earlier apologized and came back. He wanted to testify further, but the Committee decided they did not want to hear anything further.

It's been a tough day, so no matter what the result is, gentlemen, I do thank you very, very much for your cooperation. Let's go into recess now and make a decision about what we are going to do. Before we go though, Senator Orechio wants to add something.

SENATOR ORECHIO: Mr. Chairman, I just want to announce that, number one, no matter what we decide, we are still going to handle the insurance bills and, number two, since probably every Senator is in this room, for planning purposes, I just want my colleagues to know that I do not expect this session to be too long. When the decision on Judge Pressler is released, we will consider the insurance bills. Thank you.

JUDGE PRESSLER: Mr. Chairman, my thanks to you for your patience and indulgence.

SENATOR RUSSO: Thank you, Judge Pressler. We will now recess.

(RECESS)

#### AFTER RECESS

SENATOR RUSSO: The Committee will resume. Quiet, please. As soon as a nomination is made, the Committee is prepared to vote. To be a member of the Morris County Board of Taxation, Susan Yancey-Disbrow and Douglas Romaine. (Moved and seconded. Roll call taken by John Tumulty. Unanimous yes.)

MR. TUMULTY: The nominations are released.

SENATOR RUSSO: Is there any further business to come before the Committee?

SENATOR VREELAND: Mr. Chairman?

SENATOR RUSSO: Senator Vreeland.

SENATOR VREELAND: I just want to thank you for bringing this up, because we wanted some action, you said you would do it, and you did. Thank you.

SENATOR RUSSO: Thank you, Senator. Is there any further business to come before the Committee?

SENATOR HIRKALA: Yes, Mr. Chairman.

SENATOR RUSSO: Senator Hirkala.

SENATOR HIRKALA: Mr. Chairman, we have had a long and protracted hearing. Now that all the witnesses have testified, it is quite evident that Judge Sylvia Pressler is a brilliant, dedicated and competent jurist. I am happy that Governor Kean has submitted her nomination for reappointment. She is deserving of this appointment and, without any further expressions from myself, I will move that we report the nomination favorably.

SENATOR RUSSO: Is there a second to the motion?

SENATOR O'CONNOR: Second.

SENATOR RUSSO: Seconded by Senator O'Connor. Roll call.

MR. TUMULTY: Senator Russo?

SENATOR RUSSO: The Committee has indicated that those of us who wish to make a statement at the time of casting his vote should be permitted to do so. I have limited myself today to only harsh and offensive rulings. I have not given my opinion or statement, so I will do so at this time.

First of all, I want to comment on Senator Cardinale. There have been questions raised about personal litigation before Judge Pressler as being perhaps his motivation for what he has done. There have been other criticisms as well. I want to say at this time that I attribute no personal motivation to Senator Cardinale's conduct in this matter at all. I think Senator Cardinale, whether we agree with him or not, is probably one of the hardest working and the most thorough colleagues we have. If we each investigated every nominee as thoroughly as he has this one, we would probably have a better system and a better Senate.

Incidentally, a question was also raised about conflict, and I personally find no ethical or legal conflict whatsoever in his proceeding, handling, or voting on this matter at all. Senator Cardinale, though as you know we have not agreed too much on this matter, I think you are to be commended for doing what you believe is

right. Whether it is right or not is beside the point. You are doing what you believe is right, and I do not think there should be any criticism of you for that. I commend you for doing the best you can. I know that I am being recorded, but I would repeat it anywhere. I have no hesitancy in saying that.

I think on the testimony that has been presented -- very honestly, the testimony about prior decisions does not impress me at all, for this reason. We have a procedure in this State that is very important to all of us, the appellate procedure right on up to the Supreme Court, and the Federal courts as well, where that be necessary. I find it very difficult to take any judge's opinions -- and there are many of them I do not agree with -- and deny reappointment based upon the fact that I think they were dead wrong. If I did that, I would have difficulty even with Supreme Court appointments, because there have been a number of those that I thought were dead wrong too, going back to the time I clerked with them and argued against some of the decisions they made, right up to the present day.

But, that is what the system is all about. In every one of those cases, in every one of those books, and there are hundreds of them now, some lawyer thought he was absolutely right when the court decided he was wrong. But, that is the system we live under; it is a system of justice and law, and not of men. So, I find very little to quarrel with in the sense of the decisions. Although I may not agree with Judge Pressler on occasion, where her decisions are wrong, if they are wrong, there is an appellate process. So, I am totally unimpressed by that testimony.

There was one thing I was not going to comment on, but because there have been allegations that Judge Pressler's demeanor or conduct toward pro se litigants is something that has been offensive, I want to assure you all, and I can tell you firsthand, she does not discriminate. I appeared before her about five years ago; I was in the Senate and a member of this Committee, and I have to tell you, I came away feeling she was rude and offensive to me. So, she does not discriminate at all. I came back -- and I told her about this -- I



came back from the hearing literally throwing books against the wall. But, I couldn't help but think during this Committee hearing, that there has to be a lot of people out there today who think I was rude and offensive in making my rulings here today, even though I was doing the best I could.

I was offended by that and, incidentally, there was nothing specific, just a manner or demeanor on her part that I did not think was really quite appropriate judicially. I thought about it an awful lot, and then I realized that every judge is different. Obviously, and I take issue with anyone who quarrels with this, she is a brilliant jurist. Perhaps as a brilliant jurist, her mind is running ahead of the social niceties on how to treat litigants or lawyers, but I have a feeling that after this past month, and the ordeal she has been through, we will never have that difficulty with Judge Pressler again if she is confirmed.

I see that as no reason on my part to deny her the continuation of her judicial career. I might say she is not the only judge I found offensive in my career; there have been others. But, I think to deny her the continuation of her career would be too tough a penalty, and too high a price to pay on the part of any judge. So, I just want to make it clear that I don't think a non-lawyer representing litigants gets treated any differently in her courtroom than lawyers, or lawyer/Senators for that matter. So, on balance, I think in good conscience I have to cast a vote in favor of the nomination, and I so cast that vote at this time. Please continue the roll.

MR. TUMULTY: Senator Hirkala?

SENATOR HIRKALA: I vote aye.

MR. TUMULTY: Senator Lynch?

SENATOR LYNCH: Yes.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: Before I cast my vote, I would just like to make one or two comments. First, to Senator Cardinale, who requested -- and there was a notice in the press -- that there be a meeting today of the Joint Committee on Ethical Standards, of which I am the Chairman, I think he would agree with me now that the logistics

did not permit the holding of such a hearing today. The original meeting was noticed for one o'clock, and I think we have greatly imposed on the members of the Assembly, which is not in session today. But, in any event, I indicated this to Senator Cardinale earlier, and it has already been stated by the Chairman of this Committee.

I, too, find no legal or code of ethics violations in what you have done which would prevent you from voting on the nomination, assuming it is released from this Committee. That said, I, also, have been equally unimpressed with what I have heard. I know what a sincere effort has been made by Senator Cardinale. I have a great respect for the judiciary in this State. I, like Senator Russo, was a clerk for a judge, one of the finest judges, Judge Lynch, Judge John Lynch, who died this past year. From what I have heard here, I am convinced even more than before I came to this hearing, that Judge Pressler is worthy of renomination, and I will vote "yes."

MR. TUMULTY: Senator Orechio?

SENATOR ORECHIO: First, I would like to inform Senator Russo that I have found him to be rude and offensive, and I do not think that disclosure about his experience with Judge Pressler is any different than some of us have had. So, I do not think that is an argument that should be held against her, based on his experience.

Secondly, I think our assignment today is really to review the qualifications of Judge Pressler in terms of her fitness to continue to serve on the Superior Court. Judge Pressler certainly has proved that she is human; she has proved that she is fallible; and, she has proved she is imperfect, like all of us. I think all of us in this room probably encompass varying degrees of imperfection, various degrees of infallibility. However, the basic questions I think we should answer when voting on this nomination today really embody whether or not Judge Pressler is competent, whether or not she is a sound, rational, logical thinker, and whether or not she possesses a judicial temperament.

I think when you handle -- and that is the reason why I asked the question today -- the voluminous number of cases that Judge Pressler has been involved in, and then when you hear the number of

cases which were cited today by Senator Cardinale, I think any cases taken out of context or focused upon-- The aspect of possessing a judicial temperament should be what we are evaluating and judging today and, therefore, I want you to know I am supporting Judge Pressler.

MR. TUMULTY: Senator Zane?

SENATOR ZANE: Mr. Chairman, there is an old custom that has prevailed in this State House for many, many years, a custom that I happen to believe in. However, I find today that we are beyond that custom. I find myself with a responsibility as a member of this Committee that goes beyond that custom. I think one must first look at Senator Cardinale. I am very impressed with the amount of time and effort he has put into this, and the sincerity he has demonstrated to us today, I think, is extremely convincing. He firmly believes in what he is doing and in what he has presented here. Now that we are in that position where we are sitting as members of the Judiciary Committee with that responsibility, I think there is something we have to balance. I have problems with some of the issues. I have a problem with someone who indicates he may have ignored professional advice to the contrary in a discipline other than his. In that, Mr. Chairman, I sense arrogance, but that does not surprise me. I say this as gently as I can, but as sincerely as I can. I have always sensed a degree of arrogance within the judiciary, particularly the Appellate Division, so I am not terribly offended by that today.

I think if we balance everything, and we listen to the arguments and the way in which Judge Pressler defended herself, if you will, I am convinced it would be a wrong decision not to submit her name to the entire Senate for further consideration and, on the basis of that, I am going to vote to release the name.

MR. TUMULTY: Senator Dorsey?

SENATOR DORSEY: Mr. Chairman, Senator O'Connor, Senator Zane, I want to say I find myself very gratified today, particularly to have the comments of Senator Russo and Senator O'Connor relative to Senator Cardinale's motivation. I think he has been motivated by the very best motivation there can be, that is, to carry out his constitutional duties as a Senator. I want to say I think everyone at

this table agrees that his motivation has not been base. I think he has done more than anyone else has ever done in terms of reviewing a nomination. I have some trouble with the thought that may have been cast about today that he could have done more, or that there were more cases to review. Frankly, I think he raises some very critical questions about the Judge, and about her performance. There is no question that she is very bright; there is no question that she is very articulate.

I am troubled that Senator Zane is troubled by the arrogance he mentioned; I am troubled by what attorneys from Morris County have said to me; and, I am still shocked by the decision in the Hodge case. However, I agree that it would be far too great a penalty to deny this Judge an opportunity for reappointment, and on that basis I will vote to release it.

MR. TUMULTY: Senator Gallagher?

SENATOR GALLAGHER: As I indicated a few hours ago, I am not particularly concerned with the treatment of attorneys. What I have been trying to get here all day are some facts with regard to the situation before us. During the mid-1970's, with all the releases that were called for by the Federal government in the mental health area, I think we found relatively few situations there that would be critical of this Judge's form. While I think most people are going to find that the sentence in the Hodge case is difficult to accept, I have to admit also that we do not have all the pre-sentence information available to us, as Senator Lynch pointed out. Again, this was an Appellate Court decision on the part of Judge Pressler, which is along the lines that Senator Hirkala pointed out.

I am not perfect, and I do not think anyone is perfect. I think there was only one perfect individual. There are checks at a higher level, and I think the Hodge case will be checked at a higher level. I want to point out very strongly, though, I think this Committee has a rightful place in the advice and consent procedure, and I think today we exercise that governmental function to the fullest. At this point, I see no reason to hold back on this nomination; therefore, I will vote to release it to the Senate so the full forty Senators can give it their consideration.

MR. TUMULTY: Senator Paoletta?

SENATOR PAOLELLA: If I might, Mr. Chairman, a brief statement. I really care a lot less about what happens here today, than I care about what happens tomorrow, next week and next year, with regard to the institutions of government, which include the Judiciary. I have been most offended not by opinions I have read excerpts from, nor those I have read in full with regard to cases Judge Pressler has decided, but I am most offended by the repeated attacks and vilifications of colleagues. I find that at times the media has abused its powers, and has directed and focused them unfairly on Senator Cardinale. I take great offense at those who would come into this chamber today and attack one who is attempting to fulfill his constitutional responsibilities, merely because his opinions diverge from popular opinion, media opinion or status quoism, those who couch an attempt by one who is seeking to fulfill his constitutional obligations as a campaign. It is anything but that.

If I have evidenced in my perceptions over the last four weeks anything that smacks of a campaign, it is the proliferation and community of spirit and purpose evidenced by the Judiciary -- and that offends me greatly -- members of the bar, and the media, for that coalition, as I have observed it in the last month, represents a political force potentially capable of coopting and coercing the Legislative Branch of government.

Since I am not a judge, and I will never get to say this, I'll say it now. I need not reach the substantial questions in this case, in that I can clearly dispose of my duties on a more fundamental level, the level of simply stating I will abstain, not because I do not believe in the merits of this judicial appointment, not because it is mute at this point because it already has enough votes to get out of this Committee, but I abstain because of the abuses I have seen in this system of choosing judges, the abuses I have seen, and the interference I feel has occurred as a result of intrusion from the Judicial Branch.

Very simply, the issue of the merits of Judge Pressler is conceded at this point in time, but is minimized in relation to the abuses and potential dangers I have outlined. So, I would register an abstention on that basis.

MR. TUMULTY: Senator Vreeland?

SENATOR VREELAND: Thank you. Mr. Chairman, I just want to say I was prepared to vote "no" on this nomination, primarily because of the presentation by Senator Cardinale, which I thought was excellent. On the basis of the cases he presented to us, I think many of Judge Pressler's decisions were bad, in my opinion, particularly in the one case, the rape case, but I have to say this. Judge Pressler won my vote by saying she was not infallible, and that maybe some of her decisions were not the best. I think that in itself swayed my opinion, and I am going to vote "yes."

SENATOR RUSSO: Senator Orechio has an announcement before we go on with the roll call.

SENATOR ORECHIO: Mr. Chairman, I would like to announce that as soon as Senator Gormley concludes with his vote, we will take a dinner break, and will then reconvene at nine-fifteen in our respective caucus rooms. We have an important matter of insurance to discuss later. It is too important just to whisk through here, get it done and go home.

SENATOR RUSSO: And, a confirmation.

SENATOR ORECHIO: That's right, and a confirmation. I also want, despite Senator Paoletta's conduct today, to announce that those who were nominated -- for the post of Judge of the Tax Court, Judge Roger M. Kahn, and as a member of the Hackensack Meadowlands Development Commission, James A. Galdieri -- will be confirmed on an emergency basis.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: First of all, I would like to compliment Senator Russo on the hearing today. It was an incredibly difficult task. It was to a great degree precedent setting, and I think it was a good precedent to set. He showed that the same difficulties he might have, Judge Pressler might also have, because of the fact that when you make decisions, people are going to be upset and are going to disagree. They have the right to disagree in our system, and Senator Cardinale only exercised his right under advice and consent. If he cares to do it, that is what he should do, because he has that obligation to his district.

When you review the facts as presented and review the testimony of Judge Pressler, and when you look at the number of cases in which she was involved and the complexities of those matters, and when you weigh the job she has done, I think these things outweigh the arguments in opposition. I will be voting in the affirmative.

MR. TUMULTY: The nomination is released.

SENATOR RUSSO: Judge Pressler, congratulations. It will be voted on the floor later tonight. Thank you, gentlemen; you did a good job.

(HEARING CONCLUDED)







THE STUDENT  
GOVERNMENT ASSOCIATION

Chris Vota  
Senator  
English Dept.

of  
TRENTON STATE COLLEGE  
Trenton, New Jersey 08625

Student Center  
office: 771-2244  
home: 771-0504

October 3, 1983

Dear State Senator:

I write this letter to you stating my opposition to the New Jersey State Senate at this time confirming Appellate Division Judge Sylvia Pressler to another term on the bench.

I attend Trenton State College, a campus whose reputation for treating victims and prosecuting suspects of sexual assault has sunk to nearly as abysmal a level as Judge Pressler's apparent treatment of a rape case. Many of us here feel victims of sexual attack who know their attacker will never get justice: confirming Judge Pressler at this time may also confirm this fear.

I use the word "may" because to date I've received by way of the press much of only one side of the case in question: that of a minor whose stepfather repeatedly raped her. Pressler, with the majority of an appellate panel, upheld a lower court's sentence of 63 days, according to your colleague, Senator Gerald Cardinale of Bergen.

As someone less experienced in government, I have learned there are at least two sides to every story. I have heard Senator Cardinale's side, I'd like to hear more from Judge Pressler.

However, as a beginning politician, I have also learned the public interest can best be served if it, too, hears a side to this affair which would help vindicate Judge Pressler. As you are probably aware, this matter of a second term has aroused a public response from Mahwah to Cape May and beyond the state's borders: I personally feel New Jersey cannot afford to lose the public trust in its courts if its people are informed of Judge Pressler's confirmation after hearing mostly a negative viewpoint of her service.

I strongly feel more elements surrounding this case need to be publicized before the Senate votes for confirmation. For instance, I have read that Pressler was justified in granting a lenient sentence because the stepfather required psychiatric care, but if that is so, why give him any jail time and remand him to a facility which could give him proper treatment.

The way it looks in the press, this guy just got 63 days and was out to continue abusing the girl with a slap on the wrist as his only deterrent, I'm there's a lot more to this. The public has to be assured before Judge Pressler comes up for a confirmation vote the decision she upheld is not merely legal but right, therefore just.

In closing, whatever you decide, consider some of New Jersey's voters will remember in November.

IX

Sincerely,

*Chris Vota*  
Chris Vota

# WPCNJ of new jersey

78 Alberta Avenue  
Trenton, New Jersey 08619

women's political caucus October 3, 1983

TO: MEMBERS OF THE STATE SENATE JUDICIARY COMMITTEE

Hon. John Russo, Chairman

Hon. John Dorsey

Hon. Jack Gallagher

Hon. William Gormly

Hon. Joseph Hirkala

Hon. John Lynch

Hon. Carmen Orrechio, Senate President

Hon. Edward O'Connor

Hon. John Paoella

Hon. James Vreeland

Hon. Raymond Zane

In behalf of the Women's Political Caucus of New Jersey, I am expressing our support for the confirmation of Judge Sylvia Pressler to the Superior Court's Appellate Division and urging members of the Senate Judiciary Committee to approve of her nomination submitted by Governor Thomas H. Kean.

We are proud to join the state's judiciary and legal community, together with other concerned New Jerseyans, in asking that you take affirmative action on her nomination today.

Judge Pressler has served with distinction on the Appellate Division for seven years and her confirmation would give her tenure on the bench. She has deservedly been recognized as a legal expert in matters of practice and procedure and has authored a book on the subject. There are many lawyers who have appeared before her who have benefited from this experience and as a result have prepared better cases and represented their clients in a better way.

As an organization dedicated to increasing the representation of women in government at all levels - executive, legislative and judicial, we are vitally interested in her case. She was among the first women attorneys in our state to be named to the state's judiciary and is the only woman serving on the important Appellate Division. Throughout her judicial career, she has demonstrated dedication to public service.

Judge Pressler is eminently qualified. She brought the highest credentials when she came to the judiciary. Her experience on the bench has demonstrated what a great legal mind she has. Members of the judiciary and legal community respect her professional competence and her brilliant credentials. These abilities have been well discussed by the Governor, Chief Justice of the Supreme Court of New Jersey, President of the New Jersey State Bar Association and many others who support her confirmation. Editorials across the state have cited these important reasons for supporting her nomination.

While WPC-NJ has been outraged by the abuse of senatorial courtesy in her behalf, her renomination has become an important crusade for the women's equality movement. It has given the opportunity to give praise and show appreciation for one of the ablest members of the state's judiciary.

The role of a judge is to be decisive and opinionated, traits that have been long identified with men. As a judge, Ms. Pressler has demonstrated these qualities as she should. It seems that this has bothered some people.

We think that the comments of Beverly B. Book, a political scientist at the University of Wisconsin, apply to the Pressler case. "The nature of the job as a judge requires women to act in a manner that is stereotyped against them."


It seems that State Senator Gerald Cardinale has difficulties in dealing with a woman in a very powerful position as Judge Pressler.

Page 2 - MEMBERS OF THE STATE SENATE JUDICIARY COMMITTEE

We feel that it would be an injustice to Sylvia Pressler's future career on the bench if she were judged on Senator Cardinale's charges which you are well-aware of .

WPC-NJ urges you to release her name for confirmation. We hope that justice will prevail for Judge Pressler in Trenton today.

Sincerely,

  
Eileen P. Thornton, Chairperson  
Judicial Committee and  
Immediate Past State President

EPT:br

CC: Elizabeth Cox, State President

SEP 29 1983

193 Madison Ave.  
Roskill, N.J. 07626

September 28, 1983

Dear Senator Cardinale,

A brief note to express my displeasure concerning the Senator's action in the recent Judge Reader affair. It is unbelievable how your fellow Senators and the press will go to any length (at the public's expense) and strive to reappoint her just because it appears to be the easier way. My husband & I are extremely disheartened & grossly disappointed that the Judiciary branch is so feeble & refuses to be made answerable to the electorate.

We do want you to know that this unfortunate incident strengthens our support & we shall work more intensely to see that your Senate seat is secure. Thank you for representing us.

4X

Toni & Bill Mela

4/10

9/27

Dear Senator:

I have followed closely your cause regarding the re-appointment of Judge Pressler.

The opposition is taking the usual tact of strong defense is a stronger offense. I would not claim to be in total favor of senatorial courtesy; however, it has its purpose and I believe this is a good example.. Since the new courts and constitution the Judiciary has attempted to control all three phases of Government--Legislative--Executive--and Judicial. They have run rampant in the state, going the gamut from ordering court houses built--by back door judicial decisions actually creating ordinances--intimidating other judges, lawyers and most of all litigants. There was a time when an assignment judge was more an administrative figure trying to see that the courts were professionally operated. To this date you can see that lawyers, litigants and employees are afraid to be quoted or identified.

In South Jersey the Sheriffs, Surrogate and County Clerks have actually taken the Assignment Judge to court to see who controls the hiring and firing of their employees.

The Judiciary have usurped the power of the Boards of Freeholders in directing them to spend many times the desired amounts of money to create and maintain their own whims. They indiscriminately cause the hiring and firing of employees who were hired as County employees and now claim they are Judiciary employees. Their flagrant flaunting of their power has caused serious miscarriages of justice throughout the state. Lawyers are afraid to speak out for fear of retribution.. Their insistence, in many cases, of non-political activity by Court employees is totally contrary to their own activity.

The Chief Justice himself in this ruthless display of attempted favoritism because of personal feeling is a direct reflection of the dictatorial attitude of the higher echelon of the courts.

Through their alter ego, the AOC, they create whatever goofy type of innovative programs they feel like. If it is too costly they could care less; if it fails--so what! Through his confidant, Mr. Lipsher, the Chief Justice does as he pleases.

The constant bragging by the Judiciary about how much better they are than the adjoining states leaves a good deal to be desired.

Not to be repetitive, but the outburst and request of the Chief Justice to speak before the Senate is a good example of the arrogance of a spoiled child. He is a product of one of the most powerful political machines in the state, which is still run by his father; a party boss who still maintains a firm with over 75 lawyers whose tenacles extend all over the state. This firm fans lawyers out to all parts of the state as litigants feel that it behooves them to hire a member of the firm from which the Chief Justice emanates.

This firm, or the father himself, contributes to candidates around the state (Senatorial ) to gain favor. It was no secret that this legendary figure selected and elected Richard Hughes Governor, and after many judicial appointments and favors, made him Chief Justice with a promise that his successor be Daddy's son. This is a fact and has been espoused.

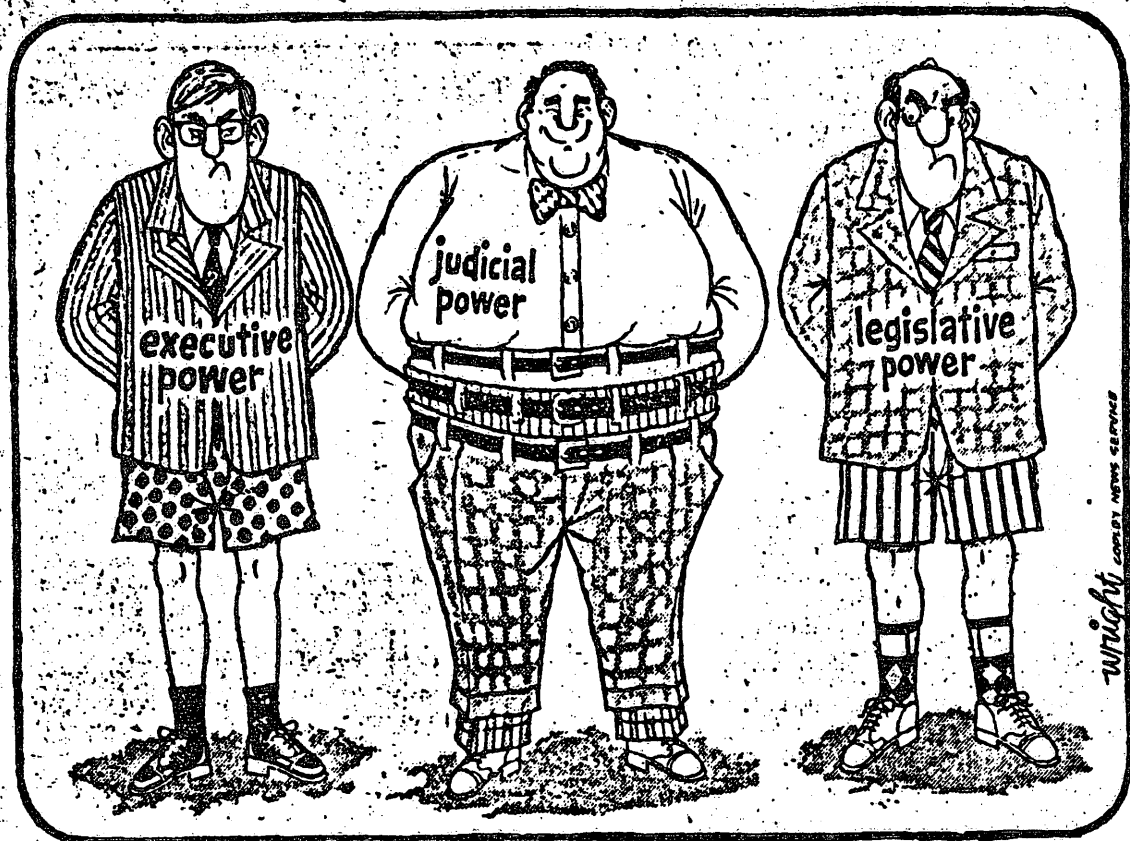
You and your associates are to be commended. A counter offensive should be mounted with a joint legislative committee to investigate just what has been going on. You have opened a can of worms. Let it all run loose. Keep up your courage--maybe justice can be reached and there is more where this came from. The people who are doing the hollering, including the newspapers, are not informed and are using Senatorial Courtesy to create an emotional issue. This is only the tip of the iceberg. I am certain that if you start an inquiry you will have lawyers and others wanting to testify. It will be similar to a mob investigation--they will want to remain anonymous, nameless, and if a public investigation, they would want to be masked.

Sincerely,

G. M. M.  
11/10/77

Postmark As Jersey

5X



RE: REAPPOINTMENT JUDGE SYLVIA PRESSLER

DEAR SENATOR CARDINALE:

THOUGH WE ARE NOT OF YOUR DISTRICT, THIS FAMILY SUPPORTS YOU IN YOUR DECISION AGAINST REAPPOINTMENT OF THE ABOVE NAMED INDIVIDUAL. I HAVE BY PHONE MADE KNOWN TO THE GOVERNOR'S OFFICE, AND TO THE OFFICE OF MY SENATOR PAOLIELLA, THAT THE INTRUSION OF THE JUDICIARY INTO LEGISLATIVE AND GOVERNMENTAL BUSINESS HAS BECOME TOO MUCH.

I BELIEVE THAT THE ABOVE CARICATURE SPLENDIDLY EXEMPLIFYS HOW THE COURTS HAVE REVERED THE ABUSERS OF OUR ELECTED OFFICIALS. JUDGE WILKINZ SHOULD BE CENSURED.

VERY TRULY YOURS

Stephen Thompson

P.O. BOX 532

Saddle Brook, N.J. 07662

C/C TO SEN J. PAOLIELLA  
+  
ASSY LEGIS KOSCO

6X

DIANA MCGRATH  
445 COLONIAL RD  
RIDGEWOOD NJ 07450 25AM

Western  
Union **Mailgram**



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NEW JERSEY STATE JUDICIARY COMMITTEE  
STATE HOUSE  
TRENTON NJ 08652

I AM OPPOSED TO THE PRACTICE OF SENATORIAL COURTESY IN JUDICIAL  
APPOINTMENTS AND URGE IT BE APOLOGIZED IN THE STATE OF NEW JERSEY  
IMMEDIATELY . I SSUPPORT THE REAPPOINTMENT OF SYLVIA B PRESSLER AS  
APPELLATE JUDGE.  
DIANA MCGRATH

1328 EST

MGMCOMP MGM

7x

Read in full.

85 Durie Avenue  
Closter, N.J. 07624  
September 23, 1983

State Senator Gerald Cardinale  
350 Madison Avenue  
Crosskill, NJ 07626

Dear Senator Cardinale:

I am writing at this time to give my support to your decision to deny the renomination of Judge Pressler.

Your characterization of her as rude and arrogant are, in my opinion quite accurate. Moreover, these qualities come across in what I believe to be a selective and unfair manner.

Some eight years ago I witnessed the "Nigite vs. Borough of Closter" trial in Judge Pressler's court room in Hackensack in which a developer was seeking to overturn a denial by the Mayor and Council of a variance application to construct apartments in a one family residential zone.

Her interruptions, rudeness, and condescending attitude toward the Citizens/Interveners attorney who was supporting the Borough's position were in marked contrast to her favorable treatment of the developer's attorney.

Her behavior made it clear to me that she had become an advocate rather than an impartial judge.

The decision to overrule the Mayor and Council was not surprising since it was clear the case would be decided upon the law as Pressler wished it to be rather than the law created by legislative intent.

Neither was it surprising that the decision was unanimously reversed at the Appellate Division.

Judge Pressler's attempts to create the law rather than interpret it are not unique in New Jersey.

The concept of an "Activist Judiciary" which will move to fill what it perceives to be a legislative void has been a reality for some time in the Garden State.

This is a dangerous situation. The constitution provides for a clear separation of powers.

The Legislature OCCASIONALLY makes bad law. When the Judiciary makes law it is ALWAYS bad law because it is a usurpation of power.



It is not difficult to imagine the danger to the concept of home rule (be it zoning, education, or whatever) in an appellate court situation where one other judge "goes along for the ride" with Judge Pressler.

Do not waver in your decision to block this renomination. It is perhaps a once in a lifetime opportunity to send the Judiciary a message to stick to interpreting the law rather than creating the law.

Very truly yours,

*Charles A. Evans Jr.*

Charles A. Evans, Jr.

MARY ALICE O'HARA  
25 Dartmouth Drive  
Delran, New Jersey 08075  
(609) 461-2476

September 23, 1983

*Senator John Russo*  
Senate Judiciary Committee  
Room 347, State House Annex  
Trenton, New Jersey 08625

Dear Judiciary Committee Members:

Judge Pressler (Appellate Division) reappointment is of public interest. I want the Senate Judiciary Committee to consider the failure of Judge Pressler to act justly, competently and in the public interest in the case of Mary O'Hara v. Board of Education of the Vocational School in the County of Camden, A-578-80-T3 (Appellate Division, Superior Court of New Jersey) opinion filed October 2, 1981, before Judges Pressler, Matthews and Petrella.

Prior to the date scheduled for oral argument in September 22, 1981, I asked to argue the unresolved violations of N.J.S.A. 18A:6-10 concerning my loss of salary for the period September 1, 1979 thru December 17, 1979 without having charges filed with the Commissioner of Education; N.J.S.A. 18A:16-4 requiring "...the employee shall...be reemployed with the same tenure as he possessed at the time his services were discontinued, if he has tenure...".

My lawyer had placed on appeal only a procedural issue as to whether or not the ALJ had discretion to dismiss my petition at the prehearing conference. Another lawyer had informed me that the Appellate Division would not reverse the lower forums, unless there exists unresolved issues of law to be decided.

The Appellate Division heard my argument of the violations of N.J.S.A. Judge Pressler, obviously knew something was wrong with the case when the lawyer had not placed these statutory violations on record. Judge Pressler asked me whether my lawyer was properly representing me. Judge Pressler knew these statutory violations should have been heard because these violations were part of the Transcript of the prehearing conference. Yet, Judge Pressler did not "dissent" in the October 2, 1982 per curiam opinion.

Women's groups are supporting reappointment of Judge Pressler. However, Judge Pressler and myself were the only women involved in this Appellate Division matter. She must have been aware that the employer was acting arbitrarily as a result of my having filed a "sex discrimination" complaint because the employer pays only the "male" educational media specialist from its "media specialist" salary guide while paying the "female" educational media specialist from a substantially lower salary guide for personnel being employed under the lower qualifying "instructional" (classroom teacher) salary guide. This lower salary guide also discriminates in paying some holders of a Bachelor Degree higher salary than other Bachelor degreed personnel; paying some holders of a Master degree higher salary guide than other holders of a Master degree - a continuing unresolved violation of N.J.S.A. 18A:29-2, et seq.

In case A-578-80-T3, the October 2, 1981 opinion contains many errors. Examples of errors include: (see copy attached)

Reference: Page 2 of opinion, lines 20-21:

"It was not until towards the end of the year that O'Hara finally submitted a doctor's name to the Board for approval..."

Error: O'Hara had submitted the name of Dr. Wm. Oliver soon after the Board's request was received in June 1979. The Board then arbitrarily changed its request to have an examination made by a treating physician to the demand that the examination be done by other than a "treating physician." See p.2, lines 11-12. The Board did not meet in July when I was no longer ill.

Reference: Page 2 of opinion, lines 21-22:

"That doctor was approved and submitted his report."

Error: In September 1979 the prior approval of doctors' names before an examination may be made by a physician of the employee's choice (Dr. Samuel S. Lyness and Dr. Harry O. Manser) was not accomplished by the Board, which arbitrarily decided for the first time that this employee must make "a complete investigation of their background in order to submit their names to us." See attached copy of September 20, 1979 employer letter. On October 17, 1979 the Board approved Dr. Lyness but interferred by mailing Dr. Lyness documents that he found offensive and refused to examine the employee. Dr. Lyness never submitted any document or report. No other "doctor was approved and submitted his report."

Judge Pressler should have been competent to know that the ABOVE quotes are untrue and fabricate the true facts of the matter. Judge Pressler owed a duty as a competent judge to "dissent" from such an opinion. In the public interest, the Appellate Division opinion must be correct. Judge Pressler did not "dissent" which shows that this non-tenured judge failed to perform efficiently as public demands.

It is important to note that the opinion rendered discusses the statute, N.J.S.A. 18A:16-2 while the parties never had a hearing on it respecting whether it is the intent of the Legislature to keep an employee from "choice" of a physician by allowing a Board to arbitrarily deny that "choice of physician" for capricious reasons. Most importantly, the Appellate Division failed to cite any case law to support its exclusive argument re N.J.S.A. 18A:16-2.

Reference: Page 5 of opinion, last three sentences:

"She was obviously free to file timely petitions raising whatever issues were appropriate. Indeed, we are advised that a subsequent petition was filed. Affirmed."

Exception: The petition before the Appellate Division seeking the salary and benefits lost could not be raised again. By the per curiam opinion, Judge Pressler knew of the "sex discrimination" complaint petition; yet, failed to order the consolidation to hear the "entire controversy" as the State of New Jersey claims to follow. The subsequent petition", case docket A-1827-81-T2 Mary O'Hara v. Bd... (same case name) also ignored the "sex discrimination"/salary issue by the same lawyer's failure to place the documents into evidence; Supreme Court of New Jersey docket 20,747 refused the two petitions for certification (1) filed by Mary O'Hara, and (2) filed by the State Board of Education.

Senator Cardinale is concerned that the Appellate Division fabricates facts and I share this same concern. The only way to demand improvement in the courts is to present examples of errors and person who has responsibility for allowing such error.

In the examples which I have set forth hereinabove, Judge Pressler did not care enough to "dissent" in the opinion, A-578-80-T3. No one knows who actually composed the erroneous facts that now are taken as official document of the State of New Jersey.

Judge Pressler owed the public interest a duty to "dissent" in this opinion when she knew or should have known of the errors. Her failure to exercise the ordinary care required of a judge herein shows that she did not perform her duties satisfactorily.

Non-tenured judges know (or should know) that their opinions may contain slight imperfections, but in this case the denial of a hearing on the Statutes that were violated is a grave concern to public interest-especially to a client who obviously was being "duped" by her lawyer in both petitions running at the same time, causing double legal expenses, unnecessarily and not in conformity with the "entire controversy" doctrine.

I have not only lost salary and corresponding benefits, but I have never been returned to my tenured "educational media specialist" employment; effective December 17, 1979 I was "reemployed" in a nontenured lower-qualifying occupation, under an unused "elementary school teacher" certificate; in continuing retaliation to prevent me from receiving the Board's "media specialist" salary guide I was suspended on March 18, 1982 for complaining about A-578-80-T2. See attached, Charge One, Subcharge A.

My employment problems were compounded by the erroneous Appellate Division opinion which Judge Pressler has responsibility.

My letter to you is to present an example of the need for tenured judges who are concerned about accuracy of statements, court's following case law precedents, etc. Judge Pressler was not concerned with these requirements in A-578-80-T3.

Very truly yours,

*Mary Alice O'Hara*  
Mary Alice O'Hara

Attachments

NOT FOR PUBLICATION WITHOUT THE APPROVAL  
OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A- 578-80-T3

MARY O'HARA,

Petitioner-Appellant,

v.

BOARD OF EDUCATION OF THE  
VOCATIONAL SCHOOL OF THE  
COUNTY OF CAMDEN,

Respondent-Respondent.

ORIGINAL FILED

OCT 2 1981

ELIZABETH McLAUGHLIN  
Clerk

10

Argued: September 22, 1981 - Decided: OCT 2 1981

Before Judges Matthews, Pressler and Petrella.

On appeal from the New Jersey State Board of  
Education.

Stephen J. Mushinski argued the cause for ap-  
pellant (Parker, McKay & Criscuolo, attorneys).

Mary O'Hara also argued the cause pro se.

Robert F. Blomquist argued the cause for re-  
spondent. Board of Education of the Vocational  
School of the County of Camden (Davis &  
Reberkenny, attorneys; Mr. Blomquist on the  
brief).

James R. Lazzari, Attorney General of New  
Jersey; Alfred E. Ramey, Jr., Deputy Attorney  
General of counsel and on the brief.  
Statement in lieu of brief was filed on behalf  
of the State Board of Education.

11

38

CURIAM

This is an appeal from the determination of the State Board  
of Education affirming the dismissal of appellant's claim against  
the Board of Education of the Vocational School of Camden County  
(School Board).

2-1-15

On May 17, 1979 the School Board adopted a resolution requiring O'Hara to be examined by a physician in accordance with N.J.S.A. 18A:16-2 before reporting to work in September 1979 as a vocational school librarian. She apparently had been absent from her employment since September 5, 1978 due to a "disabling physical condition."

By May 31, 1979 letter the School Board designated a Dr. Brown to conduct the physical examination, but also gave petitioner the option to be examined by a physician of her own choice, provided that choice was first approved by the Board. See, N.J.S.A. 18A:16-3. <sup>Later</sup> The School Board further advised her that it wanted a report by an independent physician and not a treating physician. 10

On August 10, 1979 petitioner submitted to the School Board a statement by Harry E. Manser, D.O., which said "physical examination reveals patient to be free of all communicable disease. Mrs. O'Hara is in good health." The School Board had not approved Dr. Manser and deemed his statement insufficient. Accordingly, on August 16, 1979 the School Board adopted a second resolution directing her not to return to work in September for the 1979-1980 school year. It was not until towards the end of the year that O'Hara finally submitted a doctor's name to the Board for approval. That doctor was approved and submitted his report. By December 12, 1979 letter the School Board advised O'Hara that she could return to work on December 17, 1979. Upon her return to work she was assigned as a mathematics teacher instead of being returned to her position of vocational school librarian. 20

O'Hara appealed to the Commissioner of Education and a hearing conference was conducted by the Office of Administrative Law. An attorney had entered an appearance for O'Hara but she then notified the Office of Administrative Law that she was going to represent herself. At that conference she attempted to raise a number of issues not embraced in the petition and which the Administrative Law judge felt were unrelated to the issue before him. At the close of the hearing the appeal was dismissed. Thereafter the attorney who had originally entered his appearance on behalf of O'Hara reentered his appearance and requested that the matter be reopened. That request was denied. O'Hara then filed written exceptions, pro se. On May 7, 1980 the Commissioner of Education rendered a final decision concurring with the findings and decision of the Administrative Law judge dismissing the appeal, although permitting the unrelated issues to be thereafter raised by a separate petition. This decision was appealed through counsel to the State Board of Education, which affirmed the Commissioner on September 3, 1980. It is this decision that is challenged on this appeal.

The record on this appeal including the transcript of the hearing before the Administrative Law judge, makes it clear, and it was so conceded at oral argument, that appellant, for whatever her reason, had not complied with the resolution of the Board to obtain approval of an examining physician before she could return to work. N.J.S.A. 18A:16-2 clearly authorizes the School Board to require such an examination.

Every board of education shall require all of its employees, and may require any candidate for employment, to undergo a physical examination, the scope whereof shall be determined under rules of the state board, at least once in every year and may require additional individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal, physical or mental health.

10

Any such examination may, if the board so requires, include laboratory tests or fluoroscopic or X-ray procedures for the obtaining of additional diagnostic data.

N.J.S.A. 18A:16-3 authorizes the School Board to designate the physician for examination, and if that physician is used, the School Board pays the cost of the examination.

N.J.S.A. 18A:16-3 reads:

#### Character of examinations

20

Any such examination may be made by a physician or institution designated by the board, in which case the cost thereof and of all laboratory tests and fluoroscopic or X-ray procedures shall be borne by the board or, at the option of the employee, they may be made by a physician or institution of his own choosing, approved by the board, in which case said examination shall be made at the employee's expense. (Emphasis added).

30

Appellant's brief omits mention of the very important proviso that her choice of a physician had to be approved by the School Board. Because it was clear at the prehearing conference that there had been noncompliance with the School Board's resolution until the end of 1979, the Administrative Law Judge, pursuant to N.J.A.C. 6:25-1.10, dismissed her appeal from that action of the School Board as without basis, and denied an informal request to amend her



petition to assert unrelated complaints against the School Board. There had been no discovery or preparation as to those complaints which were brought to the attention of the Administrative Law judge for the first time at that conference. The dismissal of her further requests for amendments of her petition to allege those grievances were without prejudice to her filing of a new petition which could raise all of the matters not then before the Administrative Law judge.

Clearly, the School Board was within its statutory authority requiring prior approval of a physician to conduct an examination. Appellant obviously could not prove before the Administrative Law judge that she had such prior approval and it is conceded that she had no such prior approval. She failed to comply with the School Board's demand. In failing to comply, she was not entitled to return to work in September 1979. There is no merit to her appeal with respect to the dismissal of the petition by the Administrative Law judge. 2. 2:11-3(e)(2).

With respect to the dismissal of the proposed amendments by the Administrative Law judge, it is clear that this dismissal was without prejudice and was well within his discretion.

Administrative Law Judge's Decision 33 N.J. 556, 561 (1968). Nor was there any prejudice to appellant. She was obviously free to file timely petitions raising whatever issues were appropriate. Indeed, we are advised that a subsequent petition was filed.

Affirmed.

*[Signature]*

I hereby certify that the foregoing is a true and correct copy of the original in my office.

LAW OFFICES  
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CLARENCE P. REBERKENNY  
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ARTHUR J. ABRAHAMOWITZ  
KENNETH D. ROTH  
IRA S. HEDDAL  
WILLIAM D. LAVERY, JR.  
KENNETH R. MIKE  
ROBERT P. BLOWQUIST  
MARTIN S. ETTIN

TELECOMMER  
667-667-7434

JOHN S. FIELDS  
11836-0797

September 20, 1979

Ms. Mary A. O'Hara  
25 Dartmouth Drive  
Delran, New Jersey 08075

Re: Camden County Vocational School

Dear Ms. O'Hara:

Receipt of your letter of September 17, 1979, is hereby acknowledged. You have submitted the names of Doctors Samuel S. Lyness and Harry C. Mosser for Board approval.

You merely submitted names, you gave no addresses and no background information for the Board to make an intelligent decision.

In view of the above, would you please supply us with as much information as you have concerning these two Doctors. I assume that you made a complete investigation of their background in order to submit their names to us.

Very truly yours,



William C. Davis, Solicitor  
Board of Education of the Vocational  
School in the County of Camden.

WCD:mp

cc: Donald C. Springale,  
Superintendent.

18X

#20

Pm 12-20



SEP 23 1983

ARTHUR R. SCHMAUDER

550 Broad Street (7th Floor)  
Newark, New Jersey 07102  
September 22, 1983

Honorable Carmen A. Orechio  
President, N.J. State Senate  
800 Bloomfield Avenue  
Nutley, New Jersey 07110

Honorable John F. Russo  
Chairman, Senate Judiciary Committee  
917 N. Main Street  
Toms River, New Jersey 08753

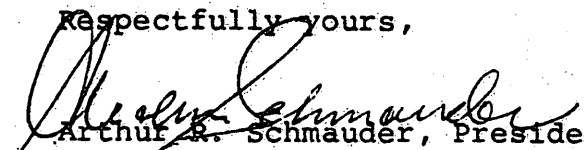
Dear Senators Orechio and Russo:

We ask that you use your offices to prevent the use of Senatorial Courtesy by one Senator for the purpose of blocking reappointment of a Superior Court Judge. If the entire Senate merely defers to the request of one Senator so as to block reappointment of a Judge then reappointment turns not upon the "advice and consent of the Senate" pursuant to Article 6, §6, ¶1 of our Constitution, but rather upon the opinion of only one Senator.

Separation of powers was intended to provide for a measure of independence in the Judiciary. Should Senatorial Courtesy be allowed to block reappointment, the public perception will be of Judges acting during the seven year initial appointment period in fear that by antagonizing a single Senator they will not be reappointed. The appearance of impartiality is as important to the administration of justice as is the fact of impartiality. Should one Senator be publicly on record respecting an issue in suit, be related to a party to the action, be a party himself, or act as counsel to a party in litigation, immediate doubts will be raised.

Senatorial Courtesy deserves no place in the exercise of the Senate's Constitutional function of rendering advice and consent on judicial reappointment. We hope the Senate will base its advice and consent upon Judge Pressler's merits.

Respectfully yours,

  
Arthur R. Schmauder, President  
COLUMBIA LAW SCHOOL ASSOCIATION  
OF NEW JERSEY

ARS:dc



## WOMEN'S RIGHTS LAW REPORTER

15 WASHINGTON STREET, NEWARK, NEW JERSEY 07102

(201) 648-5320

SEP 23 1983

September 21, 1983

To Whom It May Concern:

We are writing in support of Judge Sylvia B. Pressler, whose reappointment will be determined at a special session of the New Jersey Senate to be held on Monday, September 26. Judge Pressler is one of the finest jurists in the state and is the only woman sitting on the entire Appellate Division of the Superior Court. We deplore the blatant political chicanery of State Senator Gerald Cardinale in seeking to use senatorial "courtesy" to deny Judge Pressler her well deserved reappointment.

Senator Cardinale is abusing the unwritten policy of senatorial "courtesy". He has stated that he opposes the Judge because as a litigant in private matters in four cases before Judge Pressler, he lost three of those cases. His ill-considered decision has no reasonable basis beyond personal factors.

Although the validity of the senatorial "courtesy" device is open to question, this particular use of it is a perversion of whatever legitimacy it may possess. As provided by the New Jersey Constitution, "the governor shall nominate and appoint, with the advice and consent of the Senate." The advice and consent should be based on the nominee's qualifications, competence and integrity. None of those issues has been addressed, and instead, senatorial "courtesy" has deteriorated into an instrument of personal vendetta.

This action has broad institutional ramifications beyond the denial of one of New Jersey's most outstanding judges. It threatens the fundamental concept of an independent judiciary, opening all judges to the personal whims of elected officials.

We urge the Senate to act responsibly and to reappoint the Honorable Sylvia Pressler to her seat on the appellate bench.

Sincerely,

The Editorial Board of the  
Women's Rights Law Reporter,  
A student publication of Rutgers  
Law School in Newark, N.J.

New Jersey State Library

LAW OFFICES

Goldberger, Mandell, Seligsohn, O'Connor & Rhatican

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ALEXANDER AVIDAN  
JULIUS STEIN  
COUNSEL

SEP 23 1983

September 22, 1983

\* MEMBER N. J. & N. Y. BAR

\*\* MEMBER N. J., MD. & D. C. BAR

\*\*\* CERTIFIED CIVIL TRIAL ATTORNEY

Senator John F. Russo  
917 North Main Street  
Toms River, New Jersey 08753

Dear Senator:

As a trial attorney with over fifteen years of experience I have had the opportunity of repeatedly appearing in our trial and appellate courts. Though during the years I have been concerned about the quality of the judiciary, I have never gotten involved in the selection process. I suppose I was always happier hoping to be assigned to a "smart judge" rather than working to see that only "smart" judges were appointed.

As you know during the years there have been repeated attacks upon the practice of "senatorial courtesy." There probably has been some justification for this practice, but since it belongs in the political arena many attorneys, including myself, have never gotten overly concerned with its existence. However, when the exercise of "senatorial courtesy" starts to interfere with the quality of the judiciary then I, as a practicing attorney, am concerned. As previously indicated I have always been happy to take the luck of the draw at the time of assignment to a particular judge. Fortunately, in my experience I have had mostly competent attorneys appointed to the judiciary. Every so often I have run into outstanding judges and then wonder why all judges appointed cannot be of that particular calibre. I suppose one of the reasons that can be stated for the not overly abundant number of judges fitting the category of outstanding is because of the necessity of going through "a political process."

However, when after the political process is over with and there has been an appointment of an outstanding judge it is a shame that that same "political process" can cause us to lose the services of such an individual.

We presently are confronted with the exercise of senatorial courtesy to block the appointment of Judge Sylvia Pressler to the Superior Court. Judge Pressler has always been an outstanding member of the judiciary and I do not need to repeat for you her accomplishments or reasons why she should be re-appointed. These are probably well known to you and not really what is in issue here. What is in issue is the integrity and independence of the judiciary.

I am presently President of the Trial Attorneys of New Jersey and I know that members of the organization are greatly concerned about this issue. It would seem that if a party litigant or even an attorney is also a New Jersey Senator, that senator would have an unfair advantage in any court room setting if, through the exercise of senatorial courtesy, the senator was capable of blocking the appointment of any sitting judge. I know that I, myself, would want to be absolutely convinced that no attorney or party could have any influence or control over a sitting judge before I would permit my case to be tried before that judge. It is this independence or appearance of independence that is being threatened by the exercise of senatorial courtesy on Judge Pressler's re-appointment. It is an influence that need not exist and if its existence continues, must be opposed by any true advocate who seeks justice for his client.

I bring these strong concerns to your attention because of the position that you hold in the State Senate and your expressed concerns about the issue of senatorial courtesy. If senatorial courtesy must exist as an entity in this state, its existence is only proper at the pre-appointment stage. At that stage all of the political influences have been dealt with and resolved. The exercise of senatorial courtesy at the re-appointment stage takes on the appearance of an attempt to influence the judiciary, which appearance is intolerable.

I appreciate your taking the time to consider the thoughts expressed herein and hope that you can bring

yourself to over-ride this particular case of senatorial courtesy and work toward the abolition of this practice at least as it relates to the re-appointment process.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Gerald B. O'Connor".

GERALD B. O'CONNOR

GBO:pk



Read:

9/21/83

September 20, 1983

Dear Senator Cardinale -

you are to be congratulated  
for sticking to your convictions on  
Prosser. She is everything you  
say she is and more. I have  
~~never~~ seen a judge more arrogant.

I sat in her court one day.  
She must have been tired because  
she sat on the bench with her head  
in her hand and elbow on the bench  
chewing away on gum. She has  
no dignity.

Orechio must be looking  
for an appointment. His type is  
always misunderrated.

Sept. 21, 1983

The Honorable Mathew Feldman  
State Senate of New Jersey  
Trenton, N.J.

Dear Senator Feldman:

I am writing this letter to urge you to demand immediate action on the part of the Senate to confirm Governor Kean's re-appointment of Judge Sylvia Pressler as Superior Court Judge. I feel that no senator in good conscience can ignore such over-abuse of power by one senator to block the appointment of such an outstanding public servant, be it for revenge over prior failed litigation or merely arrogant political muscle flexing. I feel that if you and your fellow senators sit idly by and allow this injustice to take place, it will be one of the most disgraceful and cowardly acts on the part of the Senate and would lead to a further erosion in the faith people can place in the integrity of their elected officials.

I hope that you will have the courage and the conviction to do what is right in this matter and compel the Senate to do the proper and honorable thing.

Respectfully yours,

Ellen Lombardo  
Englewood Cliffs

SEP 23 1983

Virgil Popescu  
124 Clifton Street  
Somerset, New Jersey, 08873  
(201)846-5860.

September 21, 1983.

TO: HONORABLE THOMAS H. KEAN  
Office of the Governor  
State House  
Trenton, New Jersey, 08625

HONORABLE ROBERT N. WILENTZ  
Supreme Court Justice  
State House Annex  
Trenton, New Jersey, 08625

Mr. Carmen A. Orechio  
President of the Senate  
777 Bloomfield Ave.  
Nutley, New Jersey, 07110

Mr. Joseph Hirkala  
Senator, Majority Leader  
663 Main Avenue  
Passaic, New Jersey, 07055

Mr. Donald T. DiFrancesco  
Senator, Minority Leader  
1906 Westfield Avenue  
Scotch Plains, N.J., 07076

Mr. Robert E. Gladden  
Secretary of the Senate  
501 Cooper Avenue  
Camden, New Jersey, 08102

✓ Mr. John F. Russo  
Senator  
917 North Main Street  
Toms River, N.J., 08753

Mr. John A. Lynch  
Senator  
96 Bayard Street  
New Brunswick, New Jersey, 08901

Mr. Edward T. O'Connor, Jr.  
Senator  
1761 Kennedy Blvd.  
Jersey City, New Jersey, 07305

Mr. Raymond J. Zane  
Senator  
44 Cooper Street, Room 209  
Woodbury, New Jersey, 08096

Mr. John H. Dorsey  
Senator  
355 Route 46  
Mountain Lakes, New Jersey, 07046

Mr. James P. Vreeland, Jr.  
Senator  
1220 Route 46  
Parsippany-Troy Hills, N.J., 07054

Mr. John P. Gallagher  
Senator  
590 Route 35  
Middletown, N.J., 07748

Mr. William L. Gormley  
Senator  
29 North Shore Rd.  
Absecon, New Jersey, 08201

Mr. John B. Paoletta  
Senator  
2 S Main Street  
Lodi, New Jersey, 07644

Mr. Gerald Cardinale, M.D.  
Senator  
350 Madison Avenue  
Cresskill, New Jersey, 07626

SIRS :

PLEASE TAKE NOTICE THAT SYLVIA B. PRESSLER IS A CORRUPT  
JUDGE. SHE DOES NOT DESERVE THE HONOR TO BE A SUPERIOR  
COURT, APPELLATE DIVISION JUDGE.

It is a very strong allegation, but since I have evidence to prove  
it, I am willing to repeat it thousands of times, anywhere, at anytime,  
under any circumstances.

I had two separate incidents with Sylvia B. Pressler, and at this time I have no doubt that she is one of the biggest enemy of the Working People of New Jersey, and she does not deserve the Honor to be a Judge.

It is a very long story, but I will try to make it, as short as I can.

Due to the fact that this story can be a very good subject for the T.V. Show "That's Incredible" it is my believe that you will have enough patience to read it entirely.

#### INCIDENT NO. 1.

On May 11, 1978, I was the subject of an Intentional Injury caused to me by the Employer Midland Ross Co., form Weston Canal Road, Somerset, New Jersey, 08873.

At that time my English was very poor, and I had to thrust entirely, and to comply with the Instructions of an incompetent attorney, who filed in my behalf a Worker's Compensation Claim.

Shortly after the accident, Fireman's Fund Insurance Co., stopped my benefits in a illegal manner. In the meantime, I advanced my English and purchased a copy of the Worker's Compensation Law. After I read the Law and analized the facts, I reached the conclusion that in fact the Worker's Compensation Court is a Place of Organized Crimes, where the Judges, some of the attorneys and some of the doctors, in perfect agreement with each other are robbing the rights of the disabled people.

I requested Investigations from the State Agencies, and wanted to press criminal charges against Compensation Judge Fred H. Kumph, for Official Misconduct, but all my requests were denied without any investigations.

After I became more persistent and more determined, finally the Somerset County Prosecutor's Office, took complaints from me,

against Susan Bischoff of Fireman's Fund Ins. Co ; Dr. David Miller, of Easton Ave., New Brunswick ; Dr. David J. Flicker of Kingsman Rd., South Orange ; and Dr. Paul O'Sullivan of Woddlawn Ave., W. Orange, who testified at the Worker's Compensation Court and committed Perjury. None of those doctors took x-ray pictures from me, or performed a myelogram, but they had the courage to say that I was perfectly healthy, and I was a fake and a malingerer. These Criminals were never prosecuted due to the following :

The Assistant Prosecutor Michael Rosemberg from Somerset County was the Son-in-Law of Dr. Flicker. Rosemberg's wife, Kathrin Flicker was Deputy Attorney General. Dr. Flicker himself is the Star Expert Witness in the majority of the State Prosecutions. Dr. Miller was represented in this matter by the Senator William Hamilton. The attorney representing Dr. Miller, Dr. Flicker and Susan Bischoff was Robert N. Golden of Somerville who is a former Assistant Prosecutor from Somerset County, and his former partener Stephen Chiampi was the ProSecutor, several years before this matter. According to all these facts is obvious why all these Criminals were never prosecuted.

Attorney Robert Golden was in fact the attorney who represented the Employer Midland Ross Co. at the Worker's Compensation Court, and at his request Judge Fred H. Kumph pressed charges of Contempt of Court against me, because of my allegations of him being corrupt. Later Robert Golden and another attorney Paul E. Graham who was representing the Employer at the Superior Court matter, organized the Prosecution against me for Contempt of Court, and participated direct in prosecuting me.

In this prosecution my defense was the TRUTH, but Superior Court Judge Wilfred Diana considered that the Truth is not a defense in the Contempt matter, and he didn't allow me to intorduce the Truth as a Defense. In this matter I was representing myself. Finally Judge Diana convicted me to 30 days of Jail, while in other cases he gave suspended sentences or probation to burglars and robbers. In some instances the Trial was held behind the closed doors, in a execution style.

On August 30, 1982, I argued my Appeal in the Contempt Matter, before Judges Pressler and Brody at the Court House in Morristown. Employer's attorney Paul E. Graham was there with the Prosecution team.

At one point Judge Pressler asked me that , if all the participants at the Worker's Compensation Court were corrupt, I am the only one to be right ? Judge Pressler asked me if she was corrupt also ? Probably she expected me to have a smilly face and to say to her :

" No Madam, you are the most honest person in the world" ! But my answer was the following looking straight in to her eyes :

" Madam , I never saw you in my entire life until today, I never heard of you and I didn't investigate your background, but if you affirm the conviction, then I have no doubt that you are corrupt also ! Honestly !

Well Mrs. Pressler is a tough woman, with a very high position in the Administration of this State, and she didn't expect from me to tell her the truth. She beleived probably that, I was a coward type, looking to get some simphaty from a higher Judge, but she had all wrong, because all my life I was telling the truth, and expressed my feelings in a honest way,

After the Deputy Attorney General finished the Argument, then it was my turn to conclude the Argument as provided by the Law, but Judge Pressler who was really disturbed and agravated by my previous statement, raised her palm in front of me and said :

"You said enough already "!

And in this way, my Appeal ended, after I was forced to witness the indecent conduct of Sylvia Pressler, who was sitting at the bench in very indecent positions and scratched her head repeatedly.

A few weeks later, Judge Pressler reached her Decision in which she affirmed the 30 days conviction. However she gave me the opportunity to go to be examined by the County's Psychiatrist !!! This was a typical conspiracy like in communism when they wanted to eliminate the opposition, and have people declared legally insane.

Due to the fact that I am more sain, more inteligent and more educated than Sylvia Pressler, I refused to play her game, and the case is pending now in the Supreme Court of New Jersey, before Pressler's friends.

#### THE SECOND INCIDENT

On May 7, 1979 I filed a Law Suit against the Employer for Intentional Injury. The Suit was filed in the Superior Court and I was appearing Pro Se.

On May 1980, I hired Thomas J. Shamy, Esq., of North Brunswick, to represent me in this matter.

In the meantime, my benfits were stopped illegally by the Ins. Company, and I had very hard time in reopening them due to the Conspiracy between the Judges, lawyers, doctors and the Ins. Co. My physical situation was seriously agravated and had a heart attack in the Court room as well as in other palces. Accroding to all these bad experiences, I abandoned my Worker's Compensation Claim, before I had any Award from the Court.

Shortly after he was hired, Shamy Esq., filed an Amendment and introduced 4 individuals as Employer's Co-Defendants.

On November Superior Court Judge David G. Lucas, signed an Order an Order dismissing the Complaint against the Employer. However he let the case to go against the 4 individuals defendants. Judge Lucas considered that the benefits received initially through the Worker's Compensation, gave immunity to the Employer for Intentional Injury, although these benefits were sent to me voluntarily in the begining by the Ins. Co.

An Appeal and a Cross-Appeal was filed against Lucas's Decision, by the attorneys on the record.

I personally filed Complaints against Judge Lucas, with the Governor, Supreme Court and State Commissions of the Investigations.

The Supreme Court bothered to inform me that they dismissed my Compalint, but I never heard anything from the Governor or State Commissions of Investigations.



On November 21, 1982, an Oral Argument was heard at the Appellate Division in Morristown before Judges Pressler, Michels and Trautwein. Due to the fact that I had previous experiences at the Appellate Division, and I didn't thrust them, I sent my wife as a Court Observer at this Appeal. She has Degrees in English and German and also studies of Business Administration. She was fully aware with the case since in the begining she translated fro me the Worker's Compensation Law and wrote for me all my pleadings, Arguments or letters.

At this particular Appeal I had a very strong hunch that these corrupt Judges are going to make me a looser again, and told so my attorney Thomas J. Shamy. However I made a mistake by not telling Shamy about my previous experience with Sylvia Pressler, but I did so being firmly convinced that Pressler is a part of the State Conspiracy and she is very influent upon other Judges. Now after I saw how strong the Governor and the Cheif Justice are fighting to keep her on the Job, I am more convinced then ever !!!

Before the Appeal, Shamy Esq. was very confident of winning the case on the grounds that the Law of the State of New Jersey, was clearly on our side.

During the Oral Argument, Defendant's Attorney Clyde Szuch, of Morristown, raised the same old defense which they had from the begining that the fact of receiving some benefits from the Worker's Compensation is giving immunity to the Employer. At no time the Defendant was able to prove that he didn't intent to injure me intentinally.

The Argument of my attorney Thomas J. Shamy was clear, strong and just that the Worker's Compensation Law in the State of New Jersey is permitting a Common Law Suit for "Intentional Wrong".

See please N.J.S.A. 34:15-8.

" If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occuring while such person was in the same employ as the person injured or killed, except for intentional wrong"

According to the informations received from my wife, during the Oral Argument Judge Pressler was sitting on the bench in a very indecent position and make all kind of faces to the attorneys.

On Decmber 17th.,1982, a letter was received from the Appellate Division, in which they requested the following:

"The Court requests that counsel file supplemental briefs on the above captioned matter as to wheter or not the allegations made by petitioner against the respondent constituting cause of action with particular reference to the testimony of the appellant during the Worker's Compensation proceedings describing the alleged conduct constitutes an "intentional wrong" as intended by N.J.S.A. 34:15-8. Parties to comment in this regard on the relevance of Bryan Vs. Jeffers, 103 N.J. Super 522, Appellate Division 1968. File original and one copy with the Clerk's Office in Trenton and serve Judges in Chambers on or before January 10,1982, at the addresses noted below:

Hon. Sylvia B. Pressler  
Court House  
Hackensack,N.J.,07601

Hon. Theodore Trautwein  
Court House  
Hackensack,N.J.,07601

My attorney Thomas Shamy, complied strictly with the Instructions of the Appellate Divsion's letter and filed his Brief in the light of "Brian vs. Jeffers. This case was 100% in our favor, since made the distinction between " gross negligence" and "intentional wrong" I personally provided Judges Pressler and Trautwein with a few Lb. of documents, from which was obvious that at all times I accused the Employer of "Intentional Injury" and at no time I accused them of gros negligence.Also I provided the Judges with several statements from co-workers in which they coroborated my allegations. The reason why I provided the Judges with additional documents, was that I didn't have thrust in them, not for a second, and I wanted them to be in a impossible position of reaching a corrupt Decision.

On January 5th.,1983, the Law Clerk of Judge Pressler, telephoned attorney Shamy's office and put pressure on him to send the Supplemental Briefs immediately, since the last date allowed by the Court was January 10th. and the Brief had to be theere in time.

On January 6, 1983, Shamy Esq. mailed the Supplemental Brief, which was received and filed by the Appellate Division on January 7, 1983. On January 20, 1983, The Appellate Division Judges Pressler, Michels and Trautwein affirmed the Decision concerning the Employer Midland Ross Co. and reversed the Decision concerning the 4 individuals.

Finally my Law Suit for "Intentional Injury" was dismissed entirely and probably these corrupt judges beleived that this is going to be the END of it.

Actually , almost that happened due to the fact that Shamy Esq., was very upset and disapointed and it was hard for him to decide to proceed any further.

An Investigation was done immediately and it was revealed that in fact the Corrupt Pressler, put pressure on my attorney to file the Brief immediately, although the last day was January 10th, and he had 5 more days to comply with the Instructions. But in the other hand Judge Pressler allowed the Defendant's attorney to file his Brief only on January 12, 1983, instead of January 10, 1983.

Legally my Appeal was Unopposed since the Defendant's attorney failed to file his Brief within the time prescribed. But here , we were not dealing anymore with the Law of the State of New Jersey, we were dealing with Pressler's Corrupt Law.

It was obvious that Judge Pressler gave the opportunity to the Defendant's attorney to study my attorney's Brief, before he filed his, and have the opportunity to speculate the weaker points if there were any.

Since my attorney's Brief complied 100% with the Instructions given by the Appellate Division's Clerk, Defendant's attorney had nothing to speculate, therefore he ignored totally the Instructions given by the Appellate Division in their letter, and came up with a brand new ridiculuos defense which was fully appreciated by the Judges Pressler, Michels and Trautwein in reaching their Decision. Defendant's attorney argued that, that even if the Defendant injured me intentionally that was in fact more a gross negligence, which does not constitutes an Intentional Wrong, as defined by the Statutes.

This new idea was fully appreciated by Judges Pressler, Michels and Trautwein in reaching their Decision. At the present time I am firmly convinced that the Defendant's attorney Brief was done, under the instructions and control of the CORRUPT JUDGE SYLVIA B. PRESSLER.

Pressler, Michels and Trautwein wrote in their Decision :

"We further note that an employee need not perform an improperly assigned task. Clearly , he has a panoply of resources when such an assignment is given to him other than simply submitting to the risk of probable injury".

Apparently Judge Pressler was not aware , or just ignored the Federal Labor Law, which states as follows :

"Ordinarily , you do not have the right to walk off the job because of potentially unsafe work place conditions. If you do so, your employer may take disciplinary action. However, you do have the right to refuse (in good faith) to expose yourself to an imminent danger.

My injuries were traumatic in nature and at no time I had any idea that from doing this unhuman job I will have broken back, broken neck and damages to the nerves of the entire right side of the body and more aggravated to the leg and hand.

In the documents submitted by me to Judges Pressler, Michels and Trautwein there was evidence that in 1977, at the same employer, I refused to submit myself to a probable injury and I was fired. In that particular incident , I was afraid of heights and refused to work on the top of a V shaped ladder, of 20 Feet, but now in the last incident I had no idea that I will get hurt.

In reaching her Decision, Judge Pressler chose to violate my constitutional right of being equally protected by the Law. Even if I was not walking away from the Job as Pressler and her partners decided, that issue was for the Defendant's attorney to raise it, and for the Jury to decide if I had any contributory negligence, and under no circumstances for the Judges Pressler , Michels and Trautwein.

In his Appeal Briefs, my attorney Thomas J. Shamy, in a very polite way accused these Judges of making a Judicial Error.

From the point of an Appeal, this may look like a Judicial Error, but from a Realistic Point of view, this is a clear case of Corruption.

Judge Pressler and her parteners chosed to protect the Employer and the 4 individuals, who committed a Crime and who are fully encouraged by Judge Pressler to commit other crimes, on the grounds that the Worker's Compensation Law is giving them Immunity. According to Presller's Decision from now on the Employer is going to say to other workers: I am going to injure you, and I do not care, because I have Judge Pressler who is giving me full immunity !

The most relevant case, decided in this direction is a case of the Ohio Supreme Court :

"Worker's Compensation was not set up to cover Intentional Injuries by the Employer, says the Ohio Supreme Court. The Court reverses lower-court decisions that employes who sued their chemical company employer were not prevented from doing so by the Ohio Constitution and the State Worker's Compensation. The employees can pursue their suit for damages from exposure to dangerous chemicals since they claim the company knew of the conditions.

(U.S.News & World Report, May 3, 1982.)

While in other States the Courts are protecting the Society, here in the State of New Jersey, judges Pressler, Michels and Trautwein are protecting the Criminals, as they did in my particular case and God knows, how many other cases. Apparently these Judges forgot that who is protecting a Criminal, becomes a criminal himself.

If that case from Ohio, appears to be more a case of gross negligence, in my case such a confussion does not exist, as Pressler tried to interpret.

In 1977, I was fired because I refused to work in the top of the leadder, being afraid of heights. On May 8, 1978 I returned to work. From the very first minute, I was assigned to do a job of gigantic dimentions all by myself. On the other shifts the Employer assigned two workers for the same job, and sometimes they called a third one for help. I had to operate the crane with one hand, and with the other hand, my shoulders, my back, and my legs I had to push and put

together large pieces of steel of approximately 2,000 lb.

When I protested and called the Union for help, the Management refused to treat me equally, and laughing asked me if I refused to work.

However the Union decided that there was no imminent danger and that there was no choice for me, of getting help or another job. The copy of the Grievance was provided to Pressler, and she could see Company's answer to that issue.

Having no choice, I continued to work under that unhuman condition until 4 days later I got hurt. Later the investigations revealed that this job was given to me intentionally in order to get rid of me by two means : to refuse to work and get fired, or to have my bones broken. The Statement of Joe Hutniczak, former Forman, and the Statements of three other workers were very significant to this matter, and all these documents were submitted to Judges Pressler and Trautwein.

The New Jersey Worker's Compensation Law, clearly is giving me the right to sue the Employer and the Four Individuals for "Intentional Injury".

The New Jersey Constitution is not preventing me from filing this Suit against the Employer.

What bothers me the most, is the fact that Governor Kean, and Chief Justice Wilentz, are aware of these above presented facts, and they are still nominating Judge Pressler for another 21 years.

We are not dealing here with just one single isolated case ! Until now cases of Intentional Injury, here in the State of New Jersey, were allowed to go to Trial at the Common Law as provided by the Worker's Compensation Law. Judges Pressler, Michels and Trautwein had the legal obligation to interpret the Law in the way it is, and not to play the role of God, and do what they want !

My case , decided by Pressler, Michels and Trautwein, if is not overturned by the Supreme Court of New Jersey, will become a pattern for all the other cases of the Intentional Injury in employment. As you very well know the majority of the cases are not decided on

their own merriits. Some of the Judges are taking examples from cases decided more than 100 years ago !

Due to the fact that Mrs. Pressler and Michels and Trautwein are having friends in the Supreme Court, there is a very good chance for my case to stay in the way it was decided.

And from now on any other case of Intentional Injury in Employment, will be dismissed in the light of my case, which will become a pattern in the nearest future.

As to this time it is obvious that Judge Pressler, is a vendetta person, who dismissed my case for Intentional Injury, just because she didn't like the way I talked to her in the previous matter of Contempt of Court. Apparently I was not mistaking in that time, since Mrs. Pressler proved now that she is a person of a very low level character, since she decided my case of Intentional Injury according to her personal feelings, and not according to her duty as a Public Servant, and not according to the Laws of this State.

As I specified in my Appeal papers in the Contempt matter, no jail term is going to scare and silence me, as long I am telling the Truth. I just wonder why Sylvia Pressler didn't put me in jail, because I added her on the Corruption List ?

At the present time, I am seriously disabled, with very little chances of improvement. Additionally other organs of my body were affected due to the mental stress caused by Pressler and others, during the time of all these years.

I wonder if Pressler or any of the others, feel sorry about, or care about the fact that they committed a crime, by protecting criminals.

At the present time it would be a mistake for the Senate to let Pressler be appointed for another 21 years. Also it would be a good idea if the Senate will investigate this case presented by me, and do some Justice by having Trautwein and Michels removed from their benches.

I wish the Judges be elected like in other States, and then I am sure that we will get more Justice in the State of New Jersey. According to the Federal Statistics, the State of New Jersey is the most corrupt in the entire nation, and it is my opinion that this corruption is directly under the control of Judges who are appointed for reasons other than professional skills and abilities.

A good example is the Compensation Judge Fred H. Kumph who as an attorney never handled a compensation case, or any other case. He was appointed his entire life in all kind of high positions, despite his qualifications.

Actually the list of incompetent Judges is a very long one and if the Senate Judiciary Committee, desires I will provide them with examples.

At the present time my only handicap in dealing with this kind of problems , is my broken English. However despite this handicap, not too many people can teach me Law, Political Science, Economy or Engineering. Even my enemies, despite of the fact that they do not like me, are not criticizing my intelligence , but contrary they are afraid of it.

I would like to apologise to all of you, for the unusual lenght of this letter, but there was no other way for you to learn the truth. Also I would like to apologise for my broken English, grammar, spelling and typing mistakes.

The most important thing for me, was to inform you about the activity of Judge Pressler, and to give you the opportunity to learn the truth about her. It would be a great mistake, for this unqualified person to be appointed for a term of another 21 years !

If you need any other additional information, or if you want me to testify before the senate, I will be more than happy to cooperate with your request.



CERTIFICATION.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Also, I hereby certify that I am willing to repeat these allegations, under any form, anywhere, anytime, and under any circumstances.

AUTHORIZATION.

The receivers of this letter, indicated on the first and the second page, are hereby authorized to use the content of this letter, entirely or partially, for any purposes including copying, or to publish it in any publication.

Dated: September 21, 1983

/s/ Virgil Popescu  
Virgil Popescu.



# TOWNSHIP OF JEFFERSON

County of Morris

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Office of  
The Mayor

SEP 23 1983

September 21, 1983

Senator John F. Russo  
917 N. Main Street  
Toms River, N. J. 08753


Dear Senator Russo:

As an elected Democratic official in a Republican town for nearly 20 years, and the Democratic candidate for the State Senate two years ago, I am totally appalled and embarrassed by the actions of the Democrats in the State Senate regarding Senatorial courtesy and the actions of Senator Cardinale regarding the judicial nomination of Sylvia Pressler.

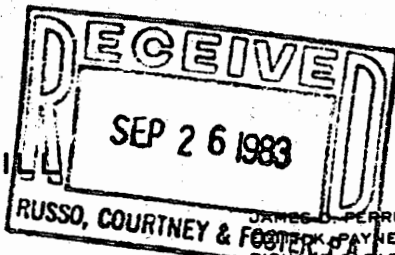
Senatorial courtesy is antiquated, undemocratic, arbitrary, and totally repugnant to an intelligent and informed democratic society. If Senatorial courtesy is to be continued by the Democrats in the State Senate, I am sure that many informed liberals, independents, and Democrats will vote for the other candidates this fall.

I await your response to my feelings regarding this letter.

Very truly yours,

  
Horace Chamberlain, Jr.  
Mayor

HC/ld



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September 22, 1983

Honorable John F. Russo  
616 Washington Street  
Toms River, New Jersey 08753

Dear Senator Russo:

I urge you to approve the nomination of Judge Sylvia Pressler.

I shall not restate the eminent and outstanding qualifications and record of Judge Pressler. Nor shall I belabor issues concerning Senatorial courtesy. Suffice it to say that, by the very nature of things, every practice must have its exceptions and that no properly functioning system can tolerate the injustice which seems to be occurring.

Reappointment of a sitting judge demands much sensitivity in both the nomination and confirmation process to maintain the integrity and morale of the bench and to insure that qualified persons will accept judicial responsibilities. Acceptance of the flimsy and infirm objections of Senator Cardinale--along with implicit condonation of a possible motivation based upon dissatisfaction with the results of appearances as a litigant before Judge Pressler--would undermine these important objectives and do incalculable harm to both the judicial system and to the Senate as an institution.

I appreciate the opportunity to express my views to you; and, as stated at the outset, I urge the Senate to consider and to approve Judge Pressler's reappointment.

Respectfully yours,

Robert J. Del Tufo

September 21, 1983

Dear Senator Cardinals,

I have called you concerning the issue over Judge Pressler's reappointment. I agree with you wholeheartedly. I feel she is rude and careless in making decisions.

In 1975, she released my son and many other patients from Greystone Hospital. Dr. Pustrovn, my son's psychiatrist at the time, told Judge Pressler that my son was not ready to be released. She disregarded his diagnosis, cast aside all his records of illness and care, rudely spoke to me in front of witnesses and released him. At the hearing, I asked to speak. I explained that my son required very close supervision. Judge Pressler said, "sit down! You have nothing to say here." Both my son and my whole family suffered for years through her decision. I can't begin to put the problem in writing. My son walked from town to town without a home or room to sleep in. He eventually got hit by a car and is crippled for life. This suffering was not necessary. She would not listen to anyone. I don't think this woman should obtain the position.

Please keep my name in confidence due to the rest of my family.

Enclosed -

Thank you,  
Mrs. Ferrara

Sept. 21, 1983

The Honorable Mathew Feldman  
State Senate of New Jersey  
Trenton, N.J.

Dear Senator Feldman:

I am writing this letter to urge you to demand immediate action on the part of the Senate to confirm Governor Kean's re-appointment of Judge Sylvia Pressler as Superior Court Judge. I feel that no senator in good conscience can ignore such over-abuse of power by one senator to block the appointment of such an outstanding public servant, be it for revenge over prior failed litigation or merely arrogant political muscle flexing. I feel that if you and your fellow senators sit idly by and allow this injustice to take place, it will be one of the most disgraceful and cowardly acts on the part of the Senate and would lead to a further erosion in the faith people can place in the integrity of their elected officials.

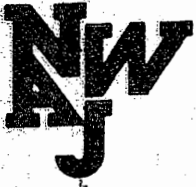
I hope that you will have the courage and the conviction to do what is right in this matter and compel the Senate to do the proper and honorable thing.

Respectfully yours,

*Lucinda Calabrese*  
*Berkeley, N.Y.*

45x

New Jersey State Library



# National Association of Women Judges

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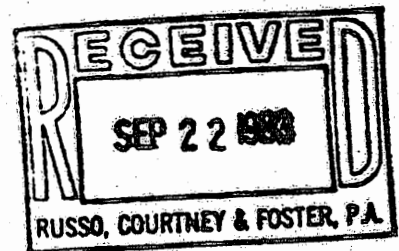
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Superior Court  
Olympia, Washington

### District 14

Judge Judith McC  
San Diego Juvenile  
San Diego, California

September 21, 1983



Honorable John F. Russo  
Chairman, Judiciary Committee  
New Jersey State Senate  
616 Washington Street  
Toms River, New Jersey 08753

Dear Chairman Russo:

I am enclosing a copy of a letter which I have just sent to President Orechio. As the Chairman of the Judiciary Committee, I felt that you would be most interested in knowing the views of the National Association of Women Judges. We hope that you would use your office to ensure the reappointment of Judge Pressler. I am sure you agree that there must be no hint or suggestion that the integrity or the independence of the New Jersey judiciary can ever be undermined by the efforts of an unsuccessful litigant to defeat the reappointment of a highly qualified and conscientious judge.

Sincerely,

Gladys Kessler  
President  
National Association of Women Judges

Encl.

46 X

GK/bmb

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PLEASE REPLY TO

P.O. Box 650

September 21, 1983.

Honorable John F. Russo  
Russo, Courtney & Foster  
616 Washington Street  
Toms River, NJ 08753

Dear John:

I was shocked to hear that the objections to Judge Sylvia Pressler represent a serious threat to her re-appointment. Because of the potential harm to an independent judiciary raised by these objections, I am writing on her behalf.

I am in a position to be very objective. Ironically, on September 27th I am arguing an appeal before the Supreme Court in an important UCC case. In the petition for certification I made the following comment on Judge Pressler's opinion:

"It is respectfully urged that the Appellate Division has unjustifiably engaged in 'judicial legislation' and distorted the plain meaning of the statute in order to achieve what it viewed as a desirable public policy objective."

Accordingly, I can empathize with attorneys who might feel aggrieved by one of her rulings.

However, the notion that an attorney's disenchantment with a judge's decision can serve as a meaningful basis for denying re-appointment is abhorrent. It strikes at the heart of the constitutional separation of powers and would have an obviously devastating impact on present and future judges.

The recent controversy surrounding the California Supreme Court seriously weakened the public image of that state's judicial system. If Judge Pressler were to be denied re-appointment because of the objections advanced, it would be a source of even greater embarrassment for New Jersey.

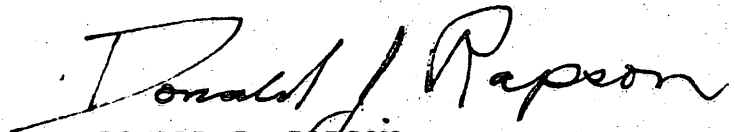
Honorable John F. Russo  
Page 2  
September 21, 1983

In reality, this is not a matter of "senatorial courtesy" but the assertion of objections to a judge's qualifications which are not a valid basis for denying re-appointment.

There can be little doubt concerning Judge Pressler's qualifications as a jurist. Aside from the pernicious effect of denying her re-appointment, the fact remains that she is a significant asset to the bench.

I have always had faith in your good judgment. Here, you are in a position to perform a vital public service by rejecting this threat to an independent judiciary. Please consider this letter when making your decision.

Respectfully,

  
DONALD J. RAPSON

DJR/pm

copy to The Honorable S. Thomas Gagliano



Read

9/20/83

Senator Cardinale:

Congratulations on voting your conviction. As long as Senatorial Courtesy exists, and as long as your vote is not based on political reasons, it is your obligation to vote as you think proper.

Your exercise of your privileges is no more an intrusion on the judiciary (or "integrity" of the judiciary, as the C.J. said) than is his attempt to influence you an intrusion on the privileges (or perhaps "obligation") of the legislature. This is not a "threat" to the independence of the judiciary; I view it as a method of keeping the judiciary acceptable to all branches of government (and therefore the "people"). The judiciary must be accountable, as are the legislative and executive branches.

Ultimately, a judge who meets the criteria of the legislature (presumably based on non-political motives) should be held in higher esteem than one who is not accountable. The C.J. is correct about damage to the judiciary if politics are the basis for the legislature's action. In this case, I believe that politics was not the basis.

In a personal vein, I find it hard to distinguish Judge Pressler's "brilliance" from her liberality. (Perhaps that is a reflection on my ignorance, but I suspect that those who think of her as "brilliant" are accommodating the liberality of her decisions.) On the other hand, I question your holding her husband's actions against her. My God, I hope that no one holds my wife's actions against me.

The objectionable qualities that you have found in Judge Pressler's determinations and extra-judicial statements should be the basis for your continued actions. Appointment to the first term did not carry tenure with it.

For considered reasons, I am keeping this anonymous.

Willis Swales  
9 Raven Road  
Montvale, N.J. 07645  
391-9106

9/22/83

September 20, 1983

The Bergen Record  
150 River Street  
Hackensack, N.J. 07602

Editor:

About the only good thing to come out of the Sylvia Pressler decision is the obvious integrity of Senator Gerald Cardinale. The Bergen Record's attempt to sway the Senator's decision was uncalled for and hysterical most of the time. The judiciary's attempt to coerce the Senator into giving his approval, while standing with one of his own and making public pronouncements, hits at the heart of the separation of powers.

The Bergen Record accuses Senator Cardinale of using unjust influence in denying the reappointment of Judge Pressler. I accuse the Bergen Record of using unjust influence in trying to influence an elected official. If Senator Cardinale is wrong in using his elected position to deny an appointment that he feels is not in the best interests of his constituency, then the voters will tell him. The views of the Bergen Record are just that - the views of your editorial writers and the ownership, and you had stated your feelings very adequately, as soon as the decision came to light. Your office in Trenton was also well aware that Senator Cardinale had informed Governor Kean that he would be opposing the nomination, so it came as no surprise to you. The day after day of vilification is actually an attempt to influence this elected official, and must be recognized as that.

When Judge Wilentz injected into the procedure his press conference and his public letter, he blatantly, if not stupidly, crossed over the separation of judicial and legislative powers. It makes me seriously question his judicial integrity and think of "cronyism." The judiciary panel of the Senate should look at this action very closely, and perhaps convene an investigative board to study it.

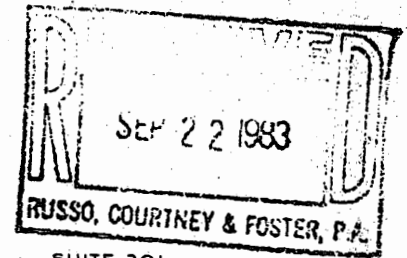
Then there is Judge Pressler herself. If it were personal association that influenced Senator Cardinale to make his decision, then why is that so unjust? If you know the Senator personally, then you know that he is not a vicious, temperamental, nor unforgiving man. He makes his decisions on the intelligent gathering of data collected from many resources. During the course of one day, he hears more opinions than the Bergen Record and Judge Wilentz hear together. His constituency gave him the data to assess in forming the opinion that Judge Pressler was not worthy of reappointment, not his own personal feelings. But then, if that is the impression that Senator Cardinale also received of her, don't deny him the right to say so. She gave him that impression.

The heart of your stories and editorials is political. You (The Bergen Record) do not agree with the Senator politically. It is a matter of conservative and liberal. You would deny the Senator his view and stance, not because of Sylvia Pressler, but because of the view that you have of a conservative. You used the term "arch conservative" in your Sunday editorial like an epithet. Being the conservative is being the bad guy amongst you good guys at the Record.

50 x

Willis Swales  
Willis Swales

**DONALD H. MINTZ**  
ATTORNEY AT LAW



SUITE 301  
55 WASHINGTON STREET  
EAST ORANGE, NEW JERSEY 07017  
201-677-3113

September 20, 1983

Senator John D. Russo  
616 Washington Street  
Toms River, New Jersey 08753

Re: Sylvia Pressler

Dear Senator Russo:

It is with pride that I live in a country where a citizen can address the Chairman of the Judicial Committee of the Senate in which he resides. I trust you understand that I do so most respectfully.

I have been an attorney active in the practice of Law in this State for the past 30 years. I have been very active in Trial Bar, and have taken multiple appeals in the course of this career.

From this background, I know that Judge Pressler is one of the very most knowledgeable and fair-minded jurists to grace our Courts during my professional lifetime. Any allegation as to a lack of professionalism or juristic manners, I deem as specious, and merely the elegant cloak over a skeleton of personal animus.

As a trial attorney with substantial respect for the systems in which I practice, I am chilled by the prospect of appearing as an adversary to a lawyer who either is a Senator, or whose client is a Senator before a Judge who is non-tenured. Will that Judge give unbiased justice?

Senator Cardinelli has been quoted as saying he has appeared four times before Judge Pressler and has lost on three of those occasions. There is an ominous implication in that statement when expressed in the midst of this particular controversy.

Judge Pressler is a brilliant woman and a brilliant lawyer. She invariably comes to the bench fully prepared to discourse upon the issues with the attorneys before her. She edits the best book of Annotated Rules that attorneys can buy in this State. She is a highly respected legal writer and editorialist for the New Jersey Law Journal.

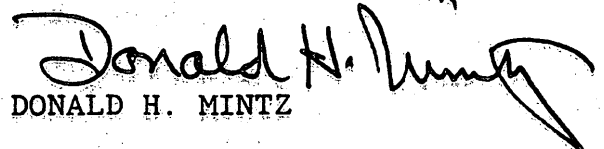
Senator, the Chief Justice seeks to come before you to express the concerns of the Court with respect to the removal of so fine a jurist. Please know that he is expressing the concern of the Bar Associations which have petitioned you, including my own Harvard Law School Association.

The political viability of the present application of senatorial courtesy itself may well be put in jeopardy by such an inappropriate effort as Senator Cardinelli now makes. Considerations of this nature prevailed when it was Judge Perskie who was attacked by Senator McCann some years back.

I sincerely trust that the Legislative Branch would realize the imperatives being expressed by that portion of their constituency most knowledgeable with respect to the qualifications of a Judge.

I expressly request, most respectfully that you permit the Chief Justice to address you at special session and that you encourage the members of the body over which you preside to attend.

Most respectfully yours,

  
DONALD H. MINTZ

DHM/eb

CC: Governor Thomas H. Kean  
CC: Chief Justice Wilentz  
CC: Honorable Sylvia B. Pressler

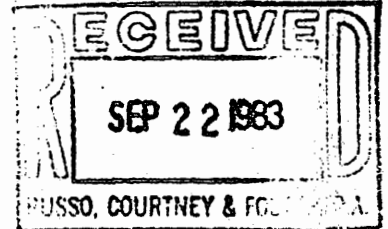
LAW OFFICES OF  
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WILLIAM W. LANIGAN  
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CAMILLE O. BRADFORD  
CARL H. RIFINO

JOSEPH HALPERN  
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(212) 286-0890

4179 WEST GULF DRIVE  
P.O. BOX 141  
SANIBEL, FLA. 33957

REPLY TO:  
BASKING RIDGE, N.J.

September 20, 1983

Senator John F. Russo  
616 Washington Street  
Toms River, New Jersey 08753

Dear Senator Russo:

I write to you with respect to the reappointment of Sylvia B. Pressler to the New Jersey Superior Court.

As a retired Judge of the Superior Court assigned to the Appellate Division, I have had the opportunity of observing and working with Judge Pressler. I have no hesitancy in telling you that she is highly intelligent, hard working and a distinct credit to the administration of justice in our State. It would be a travesty of justice if the Senate did not confirm her nomination.

With full appreciation of how the Senatorial courtesy rule operates, I strongly urge you to use all the power at your command to not permit one Senator's personal objections to override the wishes of the entire Senate, the great majority of the members of the Bar and Judiciary of the State, and the people of this State.

Thank you for your favorable consideration of my request.

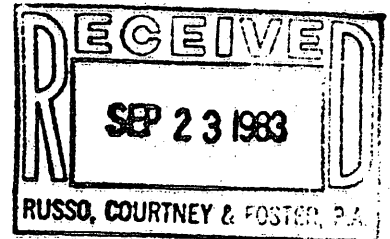
Very truly yours,

A handwritten signature in dark ink, appearing to read "Joseph Halpern".

Joseph Halpern

JH/gs

LORRAINE C. PARKER  
62 RODGERS LANE  
SPARTA, NEW JERSEY 07871



September 20, 1983

Senator John F. Russo  
616 Washington Street  
Tom's River, NJ 07853

Re: Reappointment of Judge Sylvia B. Pressler

Dear Senator Russo:

As a life-long Democrat, a Sussex County committee person and a delegate to the New Jersey State Convention, I strongly urge you to support the call for a special session of the Senate to consider the reappointment of Judge Sylvia B. Pressler and to clear the nomination through the Judiciary Committee.

I also urge you to take ethical considerations into account and amend the unwritten Senatorial courtesy rule to prohibit any senator who has appeared as a litigant before a judge from blocking the reappointment of that judge. Regardless of Senator Cardinale's after-the-fact attempts to justify his action with an unprecedented scrutiny of Judge Pressler's opinions, he cannot escape the inference that he is a poor loser.

In the year I spent working for Judge Pressler, as her law clerk, I found her to be unfailing professional in her treatment of attorneys who appeared in Court or Chambers. If Judge Pressler ever expressed chagrin it was on occasions when attorneys were unfamiliar with their cases and unprepared to argue before the Appellate Division.

Women all over the State cannot help but see that Judge Pressler, as the only woman on the Appellate bench, is the only appellate judge to be subjected to such attacks on her reappointment. The Democrats can be real heroes in this debacle by bringing the nomination to the floor and overwhelmingly supporting this extraordinary woman.

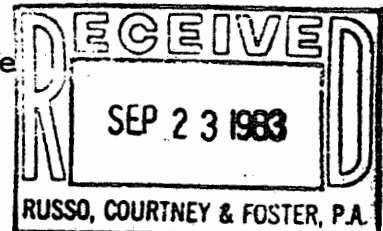
Very truly yours,

*Lorraine C. Parker*  
Lorraine C. Parker

10 OLD STABLE ROAD  
DEMAREST, NEW JERSEY 07627

September 18, 1983

Senator John Russo  
Chairman, Judiciary Committee  
616 Washington Street  
Toms River, New Jersey 08753



Dear Senator Russo:

As a former law clerk to Judge Sylvia Pressler, I am utterly dismayed to find her reappointment blocked by the Senator from my own community. His stance reflects an utter lack of knowledge of the role of the judiciary and a total lack of respect for its independence, one of the few areas where New Jersey has the respect of the rest of the country.

Further, Cardinale's incredible abuse of the curtesy custom is a slap in the face to those of you who work so hard to fulfill your responsibilities in a tripartite system which gives so much power to the executive branch.

In sum, Cardinale's action is at everyone's expense and is contemptuous of the entire democratic system. Further, it is clearly taken for his own vindictive reasons, given his well publicized personal litigation before Judge Pressler.

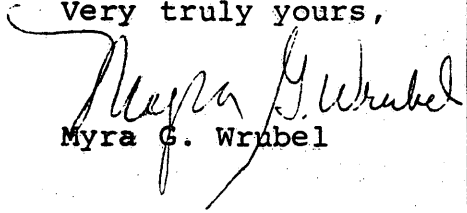
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10 OLD STABLE ROAD  
DEMAREST, NEW JERSEY 07627

The self respect of the Senate in this state requires that an exception be made to the curtesy rule and that Judge Pressler's name be moved so that a full vote may be taken with respect to her renomination. To permit Sen. Cardinale to threaten the independence of the judiciary in this fashion is to permit the Senate to be ruled by the ignorance of one of its members.

I urge you to report Judge Pressler's name for a full floor vote.

Very truly yours,

  
Myra G. Wrubel



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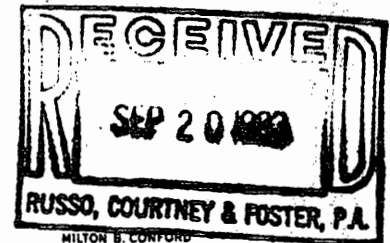
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P. O. BOX 10

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BRIAN J. MOLLOY  
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ROY H. TANZMAN  
RANDALL J. RICHARDS  
CHRISTINE D. PETRUZZELL  
BARRY T. ALBIN  
ROGER B. KAPLAN\*  
PHILIP A. PAHIGIAN\*\*\*  
HELEN DAVIS CHATMAN\*

BONNIE M. S. REISS  
RICHARD P. DAINGERFIELD+  
KAREN ANN KUBULAK  
STEVEN J. TRIPP  
RICHARD J. BINDELGLASS  
LINDA LASHBROOK  
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MAUREEN S. BINETTI  
JAMES M. BURNS  
LILIAN MESSINA NUGENT  
JOHN P. PAONE, JR.

\* ALSO ADMITTED IN V.I.  
\* ALSO ADMITTED IN D.C.  
\* ALSO ADMITTED IN PA.  
\* ALSO ADMITTED IN N.Y.

September 16, 1983

Senator John F. Russo  
616 Washington Street  
Toms River, New Jersey 08753

Dear Senator Russo:

I am very much concerned at the possibility of the defeat of the Governor's intention to reappoint Judge Sylvia B. Pressler to the Superior Court because of the continued objections to her confirmation by Senator Cardinale.

I write to you in the hope that such a result, which I would consider an unmitigated disaster to the State, can be forestalled by people of your standing and devotion to good government.

I have known Judge Pressler since she was my law clerk in or about 1960. I engaged her then because, among other reasons, she was first in her class at Rutgers Law School and recognized to be a brilliant student. Her subsequent career as a lawyer and judge has more than justified my judgment and confidence in her as of 1960.

Prior to Judge Pressler's appointment as a county judge approximately 10 years ago, she served as a Hearing Officer in the Division on Civil Rights where she made a most commendable contribution to the law and practice of civil rights. As a judge, whether in the County Court, the Superior Court, Law Division, or in the Appellate Division, to which she was assigned by former Chief Justice Richard J. Hughes, Judge Pressler made an outstanding record. Her scholarship, sound judgment, and fair judicial demeanor have been bywords among the bench and bar of this State. Her written opinions are of an excellence that would befit the highest court. I have close personal knowledge of her fitness and her outstanding contributions to the judicial system and to justice

WILENTZ, GOLDMAN & SPITZER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

Senator John F. Russo  
September 16, 1983  
Page 2.

in this State by reason of having sat with her on a panel of the Appellate Division for almost two years before my retirement. While Judge Pressler's interrogation of counsel during oral argument of appeals in particular cases was sharp and incisive, as it should be in order properly to develop issues in cases being argued, I never once witnessed any conduct by her, on or off the bench, which could be described as "arrogant" or lacking in appropriate judicial demeanor. Losing counsel often complain without warrant about the demeanor of the judge.

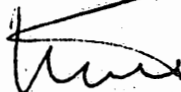
In addition to Judge Pressler's remarkable contribution as a judge, she has been invaluable to the Supreme Court in her work over a period of years on the rules of practice and procedure in the courts. As a practicing lawyer she was reporter to the Supreme Court Committee which revised the rules of court in 1969 and she has been the most active member of the Supreme Court Committee on Civil Practice (on which I also serve) in keeping the rules up to date. Judge Clapp, Chairman of the Committee, can attest to that fact. Additionally, she publishes annually an annotation of the rules which is relied upon by almost all practicing lawyers and judges. This work is performed by Judge Pressler as a public service, without compensation, since Superior Court judges may not be gainfully employed.

If Senator Cardinale cannot be persuaded to withdraw his objections, at least to the extent of permitting the Senate as a whole to vote on this nomination after its consideration and favorable report by the Judiciary Committee, I would suggest that you advocate a reinterpretation of the rule of senatorial courtesy so that the principle would be invocable only by a senator in whose district the nominee resides. Judge Pressler does not reside in Senator Cardinale's district.

My own inclination would be for the absolute disregard of the rule of senatorial courtesy in this case, as I cannot think of a more egregious instance of its abuse than in this case.

With best personal regards, I am,

Sincerely,



MILTON B. CONFORD

MBC/11



MELVYN H. BERGSTEIN  
PRESIDENT

GATEWAY ONE  
NEWARK, NEW JERSEY 07102

(201) 623-5600

SEP 23 1983

September 16, 1983

The Honorable John F. Russo  
Chairman of the Judiciary Committee  
New Jersey State Senate  
917 North Main Street  
Toms River, New Jersey 08753

Dear Senator Russo:

At the officers and trustees meeting of the Essex County Bar Association held on Tuesday, September 13, 1983, the following resolution was passed to represent the views of the 2800 lawyers who are members of our association:

"We endorse the renomination of Judge Pressler. She is an outstanding jurist who has contributed significantly to the growth of New Jersey law. She has a unique mind which should not be lost to the people of this state.

Melvyn H. Bergstein  
President"

Very truly yours,

Melvyn H. Bergstein

MHB:as

H AND A SHEPPARD  
33 HIGHWOOD RD  
WEST ORANGE NJ 07052 13AM

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SEP 14 1983

SENATOR JOHN F RUSSO  
CHAIRMAN OF THE SENATE JUDICIARY COMMITTEE  
917 NORTH MAIN ST  
TOMS RIVER NJ 08753

SEP 14 1983

JUDGE SYLVIA PRESSLER IS A BRILLIANT LAWYER AND AN UNUSUALLY FINE  
JUDGE. PLEASE DON'T ROB NEW JERSEY OF HER JUDICIAL TALENTS AND  
CONTRIBUTIONS. RE-APPOINT HER. SHE HAS MORE THAN EARNED IT.

ANNA MAY SHEPPARD  
ATTORNEY OF NJ AND PROFESSOR OF LAW

1855 EST

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## NEW JERSEY EAGLE FORUM

LEADING THE PRO-FAMILY MOVEMENT SINCE 1972

*They are a woman's group* 24  
SEP 19 1983

VERA ROCHE  
N.J. STATE CHAIRMAN  
P.O. BOX 137  
BROOKSIDE, N.J. 07926  
(201) 543-7626

CAROLYN HABUDA  
MEMBERSHIP CHAIRMAN  
RD 1, BOX 470  
NEWTON, N.J. 07860  
(201) 786-5220

September 14, 1983

Dear Senator Cardinale:

I recently read in the paper that you were considering blocking the appointment of Sylvia Pressler to be reappointed as a judge. It appeared that tremendous pressure was being placed on you to ignore your senatorial responsibility by women's groups, because the judge is a woman. I certainly feel that it is not only your right but, your responsibility if you feel there is an area in which she is not qualified either emotionally or mentally, to voice your concerns and take whatever appropriate measures are necessary to protect the public.

I congratulate Senator Paoletta too, on his courageous support of your right to do so. Just because Judge Pressler is a woman, we cannot overlook our responsibility to the citizens of our state. Thank you for your conscientious approach to this problem.

Very truly yours,

(Mrs.)

*Vera Roche*  
Vera Roche

copy: Senator J. Paoletta



## TRI-COUNTY WOMEN LAWYERS

September 14, 1983

Senator John F. Russo  
616 Washington Street  
Toms River, NJ 08753

Dear Senator Russo:

Tri-County Women Lawyers supports the renomination of  
Judge Sylvia B. Pressler.

We urge you to join us in supporting her.

Respectfully yours,

*Mary Anne Polk O'Meara*  
MARY ANNE POLK O'MEARA  
President

O'M:cph

Reply to: O'MEARA & COUNTESS  
250 West Main Street  
Moorestown, NJ 08057



FROM THE DESK OF  
PHOEBE SEHAM

Amata:

Attached is a copy  
of a letter to Amata  
Cardinals urging the reappointment  
of Judge Sylvia Pressler. New  
York Women Lawyers Association  
feels very strongly about this.

Phoebe Sel

63X

# NEW JERSEY WOMEN LAWYERS ASSOCIATION

P.O. BOX 1279, PRINCETON, N.J. 08540

September 12, 1983

**PRESIDENT**

Phoebe Seham

**VICE PRESIDENTS**

Emily L. Gosnell  
Moonyene S. Jackson  
Ursula Solek

**TREASURER**

Linda Lashbrook

**SECRETARY**

Eleanor J. Lewis

Hon. Gerald Cardinale  
350 Madison Avenue  
Cresskill, New Jersey

Dear Senator Cardinale:

On behalf of New Jersey Women Lawyers Association, I am pleased to have had the opportunity to participate in your enquiries into Judge Sylvia Pressler's qualifications for reappointment to the Superior Court, Appellate Division. To summarize what I heard at our meeting last Friday, lawyers consider Judge Pressler to be brilliant, hard-working, conscientious, scholarly, tough, demanding, fair, and, under appropriate circumstances, flexible, sensitive, and understanding. Her written opinions are models for the instruction and guidance of attorneys in their preparation of future cases.

New Jersey Women Lawyers Association considers Judge Pressler's presence in the Appellate Division a vital part of New Jersey's reputation for good court decisions. I am confident that the overwhelmingly positive results of your enquiries will lead you to endorse Judge Pressler's reappointment in good conscience.

New Jersey Women Lawyers Association has an ongoing interest in the appointment of judges with the highest possible qualifications, and would be pleased to be consulted in any future consideration of judicial candidates.

Very truly yours,

Phoebe Seham, President  
New Jersey Women Lawyers Association



# NEW JERSEY WOMEN LAWYERS ASSOCIATION

P.O. BOX 1279, PRINCETON, N.J. 08540

## STATEMENT BEFORE THE N. J. SENATE JUDICIARY COMMITTEE

OCTOBER 3, 1983

IDENT

Seham

PRESIDENTS

L. Gosnell

Gene S. Jackson

Solek

SURER

Lashbrook

ETARY

or J. Lewis

My name is Phoebe Seham. I am the President of New Jersey Women Lawyers Association. Our Association has been very concerned in the past few weeks with the events surrounding the nomination of Judge Sylvia Pressler for reappointment to the Appellate Division of the Superior Court. We have written to each Senator indicating our unqualified support of Judge Pressler. We are very happy that this Committee is meeting today to consider her nomination, and that we are able to appear before you to give you our views.

In my telephone conversations with scores of representatives of women lawyers groups all over the state, and in a plenary session of the New Jersey Women Lawyers Association conference this past Saturday, attended by approximately 95 women lawyers representing their colleagues in various parts of New Jersey, there was overwhelming agreement that Judge Pressler's qualifications are of the highest caliber, and that her reappointment with tenure should be considered a great asset to the system of justice in this state. Judge Pressler's professional ability, her scholarliness, and her courtroom demeanor are considered by women lawyers to be entirely appropriate, fitting, and desirable for an appellate judge in New Jersey. We are confident that the Judiciary Committee and the full Senate, on mature consideration of all relevant testimony, will act affirmatively on this appointment.

Thank you for your attention.

Phoebe Seham, President  
New Jersey Women Lawyers Association  
19 Creston Avenue, Tenafly, N.J. 07670  
201/567-7160

# NEW JERSEY WOMEN LAWYERS ASSOCIATION

P.O. BOX 1279, PRINCETON, N.J. 08540

September 15, 1983

**PRESIDENT**  
Phoebe Seham

**VICE PRESIDENTS**  
Emily L. Gosnell  
Moonyene S. Jackson  
Ursula Solek

**TREASURER**  
Linda Lashbrook

**SECRETARY**  
Eleanor J. Lewis

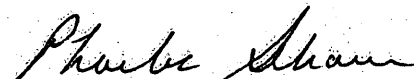
Hon. John F. Russo  
616 Washington St.  
Toms River, N. J. 08753

Dear Senator,

New Jersey Women Lawyers Association urges the New Jersey Senate to demonstrate its integrity and responsibility by meeting in special session to vote on Judge Sylvia Pressler's reappointment. This special action will be an exercise of advice and consent in the true sense of the Constitutional requirement. It will help to erase the bad taste left by the recent abuse of "Senatorial courtesy." And it will forestall the serious breach in our system of justice which would result if sitting judges felt they had to look over their shoulders for fear of incurring the personal displeasure of a present or future legislator.

Thank you for helping to make the system work for the best.

Sincerely,



Phoebe Seham, President  
New Jersey Women Lawyers  
Association

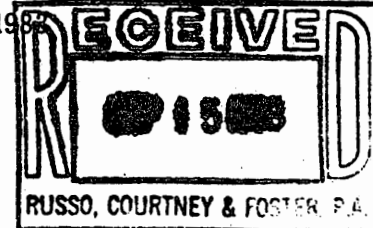


SCHOOL OF LAW

FACULTY

SLP 15 1983

September 12, 1983



John F. Russo, Chair  
Senate Judiciary Committee  
917 N. Main Street  
Toms River, New Jersey 08753

Re: Reappointment of Judge Sylvia Pressler

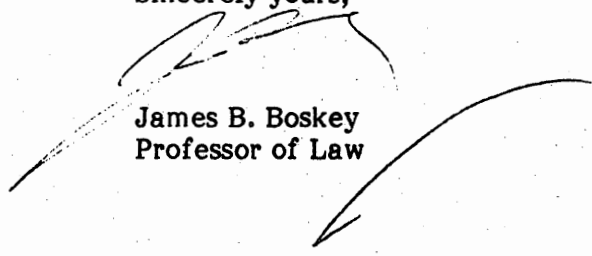
Dear Senator Russo:

I am writing to you concerning the tenure review for reappointment of Judge Sylvia Pressler. I am a member of the New Jersey Bar (having been admitted to practice in 1967) and Professor of Law at Seton Hall Law School (having taught at Seton Hall since 1971). While I am not an active litigator, I have become familiar with Judge Pressler's work on the bench through her opinions (especially in the areas of Matrimonial and Family Law, both of which subjects I teach). On the basis of these opinions, I have long considered Judge Pressler to be one of the outstanding jurists in New Jersey, and feel that the failure to reappoint her to the bench would be a serious loss to the State.

In general, Judge Pressler's work demonstrates an unusual grasp of not only the legal principles involved in the matters that come before her, but also the human factors which, at times may require the application of a judge's of conscience and sense of fair play to see that justice is done within the bounds of the law, but avoiding unnecessary harm to the parties to litigation. This quality is all to rare on any bench, and is one that should be husbanded and retained where it is found.

I would therefore encourage you to renew Judge Pressler's appointment and thereby to maintain an outstanding jurist on the New Jersey Bench.

Sincerely yours,

  
James B. Boskey  
Professor of Law

lea

67x

ELIZABETH BRODY  
208 WEST 5 AVE  
ROSELLE NJ 07203 07PM

Western  
Union Mailgram



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SEP 08 1983

JOHN F RUSSO  
CHAIRMAN SENATE JUDICIARY COMMITTEE  
917 NORTH MAIN ST  
TOMS RIVER NJ 08753

IN MY JUDGMENT SYLVIA PRESSLER IS AN UNUSUALLY ABLE JUDGE  
ALLAN AXELROD, WILLIAM J BRENNAN JR PROFESSOR OF LAW, RUTGERS  
SCHOOL OF LAW - NEWARK

2008 EST

NGMCOMP NGM

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Telegram

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RUS SENATOR JOHN F RUSSO, CHAIR SENATE JUDICIARY COMMITTEE  
MONTON NJ 03625

I UNDERSTAND THAT THERE IS A PROCEDURAL QUESTION CONCERNING THE  
REAPPOINTMENT OF JUDGE SYLVIA PRESSLER. NEW JERSEY SHOULD NOT LOSE  
PRESSLER'S SERVICES EVEN FOR A BRIEF PERIOD. SHE IS ONE OF THE FINEST  
JUDGES IN THE STATE, ADMIRER BY BOTH BENCH AND BAR. AS A SETON HALL  
LAW SCHOOL PROFESSOR, I CAN ATTEST TO HER SUPERLATIVE ABILITIES AS AN  
APPELLATE JUDGE.

CHARLES A SULLIVAN

3 CLINTON AVE

MAPLEWOOD NJ 07040

NNNN

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RUSSO, COURTNEY & FOSTER, P.A.

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422 Wyoming Avenue  
Millburn, New Jersey 07041

September 9, 1983

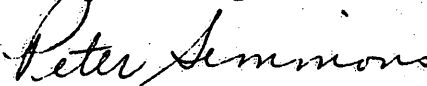
The Honorable John F. Russo  
Chairman, Senate Judiciary Committee  
917 N. Main Street  
Toms River, New Jersey 08753

Dear Senator Russo:

On September 8th I sent you a telegram urging the reappointment of Judge Sylvia Pressler to the New Jersey Superior Court. Unfortunately, and unanticipated, an unnecessary apostrophe appeared in the last word. The message should read:

I urge the reappointment of Judge Sylvia Pressler to the New Jersey Superior Court. Having served with Judge Pressler this past year on the Supreme Court's Committee on the Rules of Professional Conduct, I can say with confidence that her reputation for intellectual and professional brilliance is well deserved. It is judges such as Sylvia Pressler who have made our court system the leader among the states.

Respectfully,



Peter Simmons  
Dean  
Rutgers Law School-Newark

SE 1983

SCHOOL OF LAW - NEWARK - CONSTITUTIONAL LITIGATION CLINIC  
S. I. NEWHOUSE CENTER FOR LAW AND JUSTICE  
15 WASHINGTON STREET - NEWARK - NEW JERSEY 07102 - 201/648-5687

September 9, 1983

Senator John Russo  
Chairman, Senate Judiciary Committee  
917 North Main Street  
Toms River, New Jersey 08753

Dear Senator Russo:

I am distressed to learn that one or more members of the State Senate may be attempting to prevent the reappointment of the Honorable Sylvia Pressler as a Superior Court Judge.

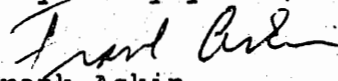
The removal of Judge Pressler from the bench would not only be a tragic loss to the New Jersey Judiciary, it would be a serious blot on the state's reputation for having one of the most forward-looking judicial systems in the nation.

Judge Pressler represents the best of New Jersey's esteemed judiciary. She is a brilliant and compassionate jurist whose vast knowledge of the law combines with a keen sense of justice to render decisions which are widely recognized as among the best of an enlightened legal system. As a teacher of civil procedure, I am especially aware of Judge Pressler's commentaries on the New Jersey Court Rules, which is a valued treatise for New Jersey practitioners.

In addition, Judge Pressler is an outstanding role model for the new legions of young women who have entered law school and become members of the bar over the past decade. Her address to the Rutgers Law School graduating class last June was an inspiration to all of us in the legal community.

I urge you to do all in your power to assure the reappointment of Judge Pressler. We cannot afford to lose her from the New Jersey bench.

Very truly yours,

  
Frank Askin

cc/Senator Carmen Orecchio  
The Hon. Thos. H. Kean

Counsel: Frank Askin - Pamela A. Mann, Member, New York and Pennsylvania Bars only - Elizabeth M. Schneider, Member New York Bar only, Administrative Director. On leave: Jonathan M. Hyman - Eric Neisser, Member, New York and Massachusetts Bars only.

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SENATOR JOHN RUSSO  
917 NORTH MAIN ST  
TOMS RIVER NJ 08753

SEP

WE STRONGLY URGE YOU TO CONFIRM THE REAPPOINTMENT OF THE HON. SYLVIA B. PRESSLER, JUDGE, SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION. HER LEGAL ACUMEN, DEDICATION TO THE JUDICIAL SYSTEM, SENSITIVITY TO THE RIGHTS OF ALL LITIGANTS, AND CONSCIENTIOUSNESS AND DILIGENCE IN TRYING TO INSURE THAT JUSTICE IS DONE ARE AN INSPIRATION TO ALL MEMBERS OF THE BENCH AND BAR. WE HAVE HAD THE PRIVILEGE OF SERVING AS JUDGE PRESSLER'S LAW CLERKS AND OUR EXPERIENCE IN WORKING CLOSELY WITH HER WILL INSPIRE US THROUGHOUT OUR LEGAL CAREERS. WE HAVE ALWAYS OBSERVED HER TO BE EXTREMELY COURTEOUS PERCEPTIVE AND SENSITIVE TO THE INTERESTS OF ALL LITIGANTS APPEARING BEFORE HER HER LOSS TO THE BENCH WOULD BE A LOSS TO ALL CITIZENS OF NEW JERSEY

JULIETTE DENKIN ALICE THIELE SUSAN VERCHEAK MYRA WRUBEL MARSHA WOLF  
1430 PLEASANT VALLEY WAY NO. 26 WEST ORANGE NEW JERSEY 07052

0340 EST

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Seton Hall University

1111 Raymond Boulevard, Newark, New Jersey 07102

SEP 12 1983

September 9, 1983

SCHOOL OF LAW

Honorable John F. Russo, Chair  
Senate Judiciary Committee  
917 North Main Street  
Toms River, New Jersey 08753

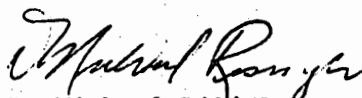
Dear Mr. Russo:

I write in support of Judge Sylvia Pressler's reappointment and tenure. Judge Pressler is one of the brightest and hardest working judges on a very able Appellate Division bench. She has a well-deserved reputation for scholarly and balanced opinions not only in New Jersey, but nationally. Her work on the Supreme Court Civil Rules Committee is legendary, and from personal experience in working with her on the Supreme Court Evidence Committee, I can attest to her intelligence, her good nature and her amazing capacity for work.

Senator Cardinale's threat to attempt an invocation of senatorial courtesy against her is pitifully misguided. I do not know if he in fact is acting out of knavish motives in this matter (as it might seem) but that is beside the point. The point is that the mechanism of senatorial courtesy, by which any single senator may veto gubernatorial appointments from his county, has no place in the process of judicial reappointment.

I will not claim to be a supporter of senatorial courtesy in general. But at least the mechanism in its usual applications may be justified in giving local politicians a political counterweight to the governor's ability to shift the local balance of political power through the appointment process. Once a judge has served for seven years, this rationale disappears. Beyond that, the effect of such a one senator veto on the fearlessness and independence of the judiciary is obvious and would be intolerable. The tradition of the Senate has wisely been not to attempt an invocation of senatorial courtesy on judicial reappointments. Should Senator Cardinale insist on the attempt, the time has come to make it clear that the doctrine simply does not apply.

Sincerely,

  
D. Michael Risinger  
Professor of Law

gd

cc: Honorable Gerald Cardinale  
Honorable Carmen Orechio  
Bergen Record, Trenton Times, Newark Star-Ledger  
125 years of Catholic higher education

73x

