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PUBLIC HEARING

before

SENATE JUDICIARY COMMITTEE

on

The nomination interview of Stephen E. Mochary
to be a Judge of the Superior Court
for the term prescribed by law

December 8, 1986
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Senator Edward T. O'Connor, Chairman
- Senator Raymond J. Zane, Vice Chairman
- Senator Joseph Hirkala
- Senator John A. Lynch
- Senator John F. Russo
- Senator Richard Van Wagner
- Senator Donald T. DiFrancesco
- Senator John H. Dorsey
- Senator William L. Gormley
- Senator Lee B. Laskin

ALSO PRESENT:

- Senator Richard J. Codey
District 27
- John J. Tumulty
Office of Legislative Services
Aide, Senate Judiciary Committee

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New Jersey State Legislature

SENATE JUDICIARY COMMITTEE

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M E M O R A N D U M

TO: Senate Judiciary Committee
FROM: Senator Edward T. O'Connor, Chairman
DATE: November 24, 1986
RE: Committee Meeting, December 8, 1986
Supplemental Agenda

The Senate Judiciary Committee will meet on Monday, December 8, 1986 at 10:00 A.M. in Room 424, State House Annex, Trenton. The following nominations will be interviewed.

TO BE JUDGES OF THE SUPERIOR COURT:

Robert F. Cavanaugh of Jersey City, to succeed himself, for the term prescribed by law.

J. Leonard Hornstein of Bayonne, to succeed himself, for the term prescribed by law.

Walter J. Hudzin of Jersey City, to succeed himself, for the term prescribed by law.

Joseph T. Ryan of Bayonne, to succeed himself, for the term prescribed by law.

Stephen J. Schaeffer of Jersey City, to succeed himself, for the term prescribed by law.

Robert L. Garrenger, Jr. of Piscataway, to succeed himself, for the term prescribed by law.

Albert J. Scarduzio of Westmont, to succeed himself,
for the term prescribed by law.

Birger M. Sween of Woodcliff, to succeed himself,
for the term prescribed by law.

Arthur J. Lesemann of Englewood, to succeed himself,
for the term prescribed by law.

Kenneth R. Stein of Livingston, to succeed himself,
for the term prescribed by law.

Michael J. Degnan of West Orange, to succeed
himself, for the term prescribed by law.

Bernard Rudd of West Orange, to succeed himself, for
the term prescribed by law.

John A. Ricciardi of Allenwood, to succeed himself,
for the term prescribed by law.

Burton J. Ironson of Springfield, to succeed
himself, for the term prescribed by law.

Maurice J. Gallipoli of Short Hills, for the term
prescribed by law.

Serena Perretti of Short Hills, for the term
prescribed by law.

Alvin Weiss of Livingston, for the term prescribed
by law.

Murry D. Brochin of Millburn, for the term
prescribed by law.

Stephen E. Mochary of Montclair, for the term
prescribed by law.

Robert W. O'Hagan of Ocean, for the term prescribed
by law.

Theodore J. Labreque, Jr. of Holmdel, for the term prescribed by law.

Lawrence M. Lawson of Neptune, for the term prescribed by law.

Frank M. Donato of Little Falls, to succeed himself, for the term prescribed by law.

David S. Cramp of East Hanover, for the term prescribed by law.

Sybil R. Moses of Hackensack, for the term prescribed by law.

Naomi G. Eichen of Teaneck, for the term prescribed by law.

Burrell I. Humphreys of Wayne, to succeed himself, for the term prescribed by law.

TO BE A PROSECUTOR OF WARREN COUNTY

Richard C. Hare of Hackettstown, for the term prescribed by law.

The following nominations will be considered:

TO BE A MEMBER OF THE NEW JERSEY BUILDING AUTHORITY

Morton A. Siegler of Hopatcong, to succeed himself, for the term prescribed by law.

TO BE A MEMBER OF THE COMMISSION ON RADIATION PROTECTION

Henry Powsner, M.D. of Princeton, to succeed himself, for the term prescribed by law.

TO BE A MEMBER OF THE AGRICULTURE DEVELOPMENT COMMITTEE

G. Erwin Sheppard of Bridgeton, to succeed himself, for the term prescribed by law.

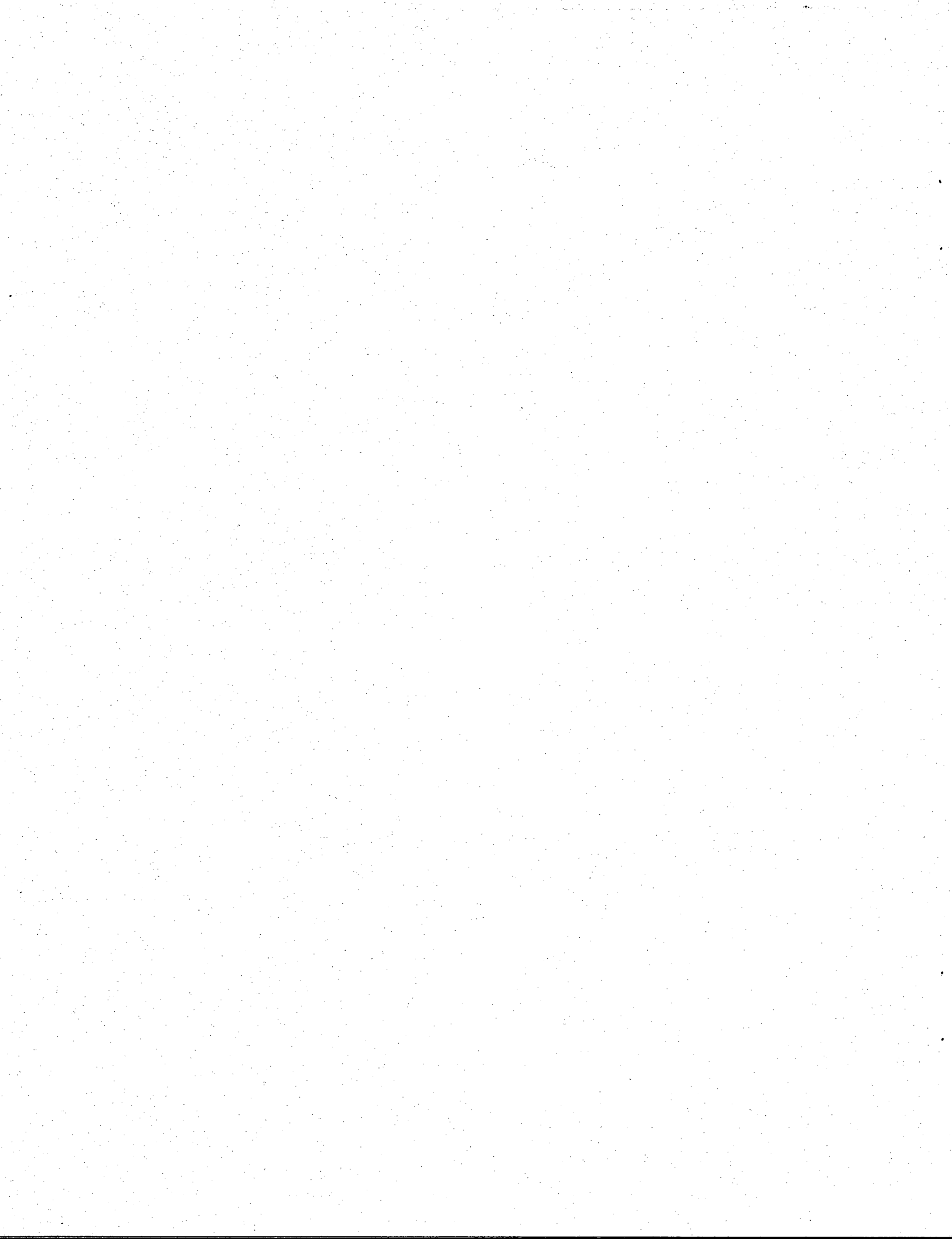
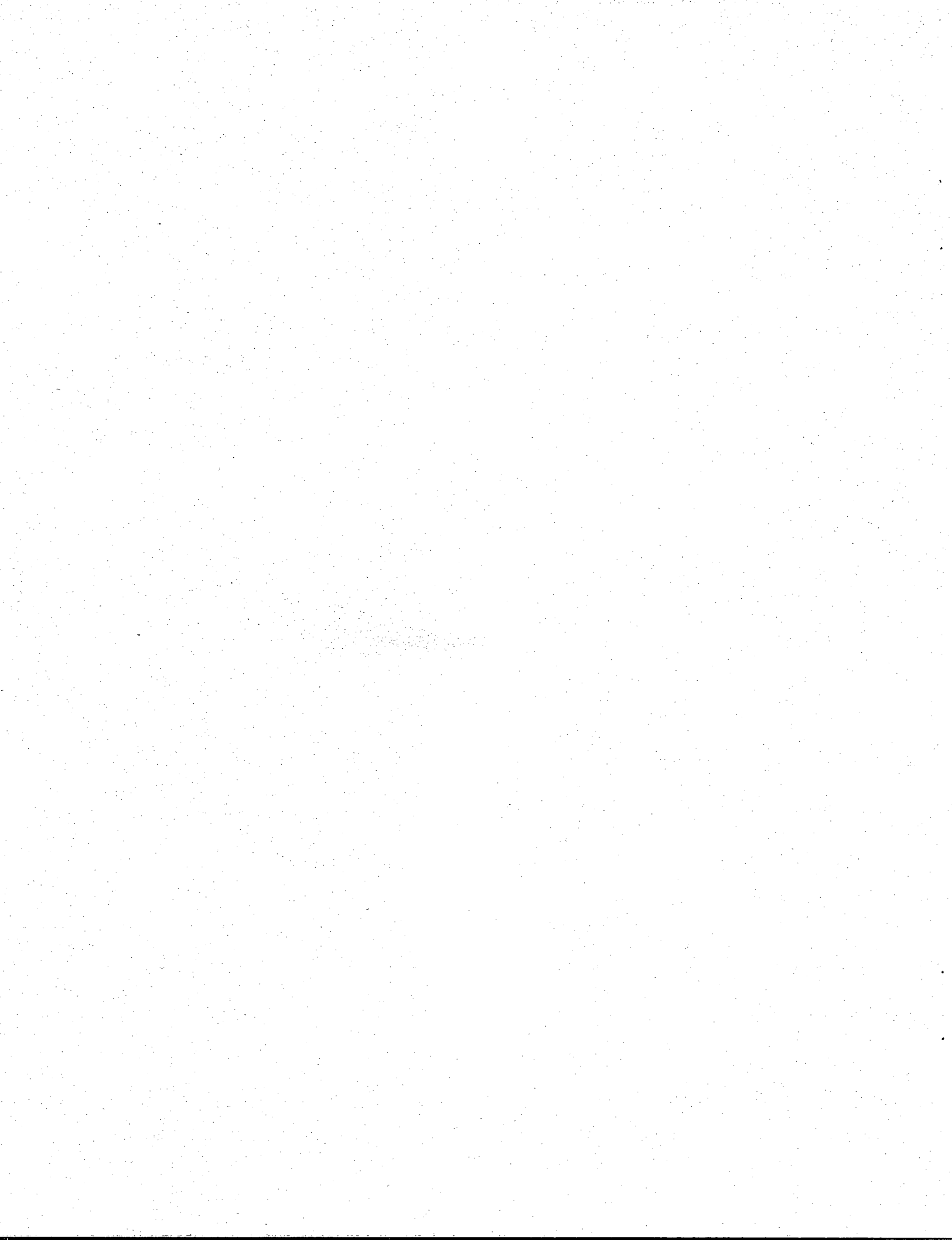


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(Senator Edward T. O'Connor, Jr. Chairman of the Committee, introduces Stephen E. Mochary, and recognizes Senator Richard J. Codey to begin Mr. Mochary's nomination interview.)

SENATOR CODEY: Thank you, Mr. Chairman. Let me just say, Mr. Chairman, I'd like to read a statement, and then go into questions of the prospective nominee.

We are here today to hear the matter of Stephen Mochary as a conditional nominee. For me to question the fitness of the integrity of an individual is not a comfortable task. I pursue this questioning only because of the serious doubts raised in my mind as to Mr. Mochary's qualifications for the bench. During the past few months I've been gathering as much information as I possibly could on the background of Mr. Mochary. It has been an extremely difficult and time-consuming task. As many of you know, Mr. Mochary was involved in several complicated legal proceedings related to the creation of a forestry complex in the Province of Manitoba, Canada.

Let me give you some idea of the complexity of the case. The government of Manitoba established a commission of inquiry for the sole purpose of investigating the PAS Forestry Complex. The government inquiry alone generated over 29,000 typewritten pages of testimony from over 80 witnesses. In addition, the commission also looked at 3300 exhibits, comprising an additional 21,000 typewritten pages.

Here is a quote from the report of the inquiry commission: "The complexity of our task derives from a number causes. For example, we learned, as time went on and information was accumulated, that persons and corporations in at least seven European countries, six states in America, three Canadian provinces, and the Bahamas, have been involved to a significant degree in one or more aspects of the project. Many corporations of varying legal character were formed in several

countries and utilized to a greater or lesser extent. Bank accounts in numbers slightly exceeding 100 sprung up, equally divided between European countries, the United States, and Canada. Money, often in large amounts, was moved from country to country and bank to bank, in a manner and to an extent which only can be described as extraordinary. Whatever may have been the purposes served by all these transfers of money, one inevitable result was to make the task of ascertaining what really was done with the money exceedingly difficult."

That quote will give you some idea of the difficulty of the case. Keep in mind that this affair also generated countless other materials arising out of a criminal action in Canada, an SEC suit, criminal action in the United States, and civil suits instituted both in Canada and the United States. So, as you can well imagine, the task of unravelling the complicated web of schemes and frauds is not an easy one.

If the background on Mr. Mochary was conducted properly, it had to be the most exhaustive, time-consuming investigating of any judicial nomination in recent history. Unfortunately, after doing my own research, I cannot believe that a thorough investigation was undertaken by anyone involved with this nomination, although I must admit, the Governor's Office was both candid and free in their discussions with me concerning the nomination.

It is also unfortunate that the State Senate, and particularly this Committee -- and particularly -- do not have all the resources to do a thorough investigation. Nevertheless, I will attempt to bring to light some of the facts regarding Mr. Mochary's involvement in the forestry complex. First, let me remind you, we are not dealing with penny-ante fraud and theft. We are talking about a fraud of such magnitude that it has been described by some as a Canadian Watergate.

Second, let us keep in mind that Stephen Mochary was not a peripheral figure in this case. He was intimately involved in the day-to-day workings of the forestry development and the corporations connected to that development. He was not merely an outside counselor to the project, he was one of those indicted for fraud, and was named in four other legal actions stemming from the case. Whatever the outcome of these cases might have been, questions are raised to Mr. Mochary's fitness to serve as a member of our judiciary.

Third, I would like to remind everyone here that this is not a trial. We are not talking about Mr. Mochary's guilt or innocence. The courts and the SEC have already answered to his guilt or innocence. What we are talking about is plain and simple: A man's fitness to serve on the bench. The Code of Judicial Conduct provides that, and I quote, "A judge should avoid impropriety, and the appearance of impropriety in all activities." It is impossible to argue that Mr. Mochary's involvement in the forestry complex did not involve, at the very least, the appearance of impropriety. We are not going to decide today whether Stephen Mochary was guilty of any of the 34 counts of fraud brought by the Canadian government against him and other defendants. A more appropriate question is, why would someone remain a fugitive from Canadian justice for over four years, and is that the type of person who we would have sitting on our court? Someone who avoided a Canadian courtroom for over four years. Does this not reflect on someone's ability to sit on the bench?

Another crucial question we want to look at is, why has Mr. Mochary been less than candid with this Committee since his nomination? Briefly, here's an outline of the Canadian case: In the mid-sixties, the Province of Manitoba sought to nurture private enterprise in the creation of a forestry complex in Manitoba. To accomplish this goal, the Manitoba Development Fund was created by the Canadian government to

oversee development and financing of this project. In 1965, Monica AGH Corporation (phonetic spelling), owned and controlled by Alex Kasser, Mr. Mochary's father-in-law, received an option to develop the complex. The ownership and control of Monica by Kasser was never disclosed. In 1966, Churchill Forest Industries was granted timber concessions in exchange for a commitment to develop, own, and operate the forestry complex. Kasser's ownership of both Monica and Churchill were undisclosed.

Financing for the project was to come principally from the Manitoba Development Fund -- the Canadian government -- but Churchill Industries had to come up with a significant equity capital. Technopulp, a New Jersey corporation owned by Kasser, was signed by the MDF and Churchill Industries as managing engineering consultants. Stephen Mochary was counsel to Technopulp. Additionally, Technopulp was located at the same building in Montclair which housed the lawfirm of Mochary and Mochary. In fact, the phone numbers for Technopulp and Mochary Law Firm were identical.

In 1969, Churchill Float Mill was incorporated in Nevada. Technopulp and Churchill Forestry Industries were consolidated into Churchill/Pulp. This structural change was never disclosed to the Manitoba Development Fund, as was required by the terms of the development agreement. This consolidation enabled the defendants to conceal the fact that they were recycling loan disbursements from the Manitoba Development Fund, and earnings from the project, and supported equity contributions to Churchill Forest Industries.

The financial scheme involved the following steps:

- 1) Churchill would replace money from the MDF, which is the Manitoba Development Fund, to pay development costs.
- 2) Churchill would deposit the money at the Royal Bank of Canada at Winnipeg, Manitoba, in an amount equal to the required percentage of equity invested.

3) The Royal Bank would confirm they received equity investment designated for stock purposes.

4) The Manitoba Development Fund would issue the appropriate amount of Churchill stock in the name of Churchill/Pulp's nominee, the Swiss Bank Corporation.

5) The Manitoba Development released loan amounts and Churchill issued note of debt (word inaudible) backed by property.

Simply put, this was a scam. They were recycling loans from the Manitoban government. Additionally, by forming what were, in effect, dummy corporations, Kasser, Mochary, and their group were able to hire these corporations to perform work for the project and pay them exorbitant fees. These fees went right into Kasser's pocket. Additionally, Churchill and Technopulp earned commission fees for the total work performed. Therefore, they received a double-dip commission for the work supposedly performed by the dummy corporations.

The result of this scheme was that the Manitoba Development Fund advanced 38 million to Churchill Industries, and 92 million to all companies as loan disbursements. Manitoba Development Fund received divestitures for 40 million from Churchill Industries.

In late 1970, Churchill Industries defaulted on its interest payments and the Manitoban Development Fund was awarded all of Churchill assets.

This is a brief review of the tangled web of facts surrounding this case. The following legal proceedings arose as a result of the ill-fated forestry complex:

1) In 1971, Alexander Kasser, Stephen Mochary, and other defendants were charged with 34 counts of fraud involving the forestry complex development.

SENATOR ZANE: Senator Codey, when was that?

SENATOR CODEY: 1971. In the early 1970s, the SEC instituted suit against Alexander Kasser, Stephen Mochary,

Churchill Forestry Industries, Churchill/Pulp, and Technopulp Machinery, and other defendants seeking injunctive relief and an account of moneys surrounding the forestry development project and the repayment of moneys.

Thirdly, Canada instituted civil suit against all the companies involved in this forestry development, including Stephen and Mary Mochary. These suits were settled for 9 million. Included in the settlement were Stephen and Mary Mochary.

Mr. Mochary, if I may? Is it not a fact that in 1974, by way of information which is analogous to an indictment, you were charged with various crimes, including fraud, conspiracy, and theft?

S T E P H E N E. M O C H A R Y: Senator, I'm not positive of the date, but what I do know is that all charges -- any and all charges that were brought against me--

SENATOR CODEY: My question is, were you so charged?

MR. MOCHARY: Well, I don't know what the date was; I don't know the number. I'm trying to respond to your question to give a full answer. And a full answer, I think, is that any and all charges--

SENATOR O'CONNOR: Excuse me, Mr. Mochary. Hit the button in front of you; we're having difficulty hearing you. (indicating microphone switch)

MR. MOCHARY: Any and all charges that were brought against me were completely dismissed in 1983. And all -- any and all criminal proceedings terminated completely without any liability whatever on my part, without the payment by me of any kind of fine or any kind of plea.

SENATOR CODEY: But, you were indicted in 1974.

MR. MOCHARY: Well, as I say, I don't know what the date was, and I don't know the number.

SENATOR CODEY: Okay. In 1976, the Province of Manitoba did seek your extradition?

MR. MOCHARY: That's correct, Senator. They not only sought my extradition, they came down here to New Jersey, to the United States District Court, requested my extradition along with two others. The special prosecutor from Manitoba was allowed to conduct the hearings himself. Manitoba presented something over 2000 pages of evidence. I don't know if you're familiar, Senator, with the procedures in an extradition request, but it's an unusual kind of proceeding in several respects.

First of all, the requesting country is the only one allowed to present evidence. So that I and the other people whose extradition was being requested were not even allowed to put in any evidence. In addition, all the evidence that was submitted by the requesting party was to be taken as true. In addition to that, the burden of proof in an extradition hearing is the threshold burden of probable cause to believe that a crime was committed. In other words, all the requesting party had to prove was the same burden that anyone proves to get a search -- a simple search warrant.

Now, in spite of all of this, and after a three day hearing, after briefs of hundreds and hundreds of pages had been filed -- in a three day hearing in front of the U.S. Magistrate in Newark, the Magistrate found that there was no probable cause to believe that I or either of the other two men whose extradition was also requested, had committed any crime. In fact, the Magistrate also found -- because one of the allegations was that I had helped to -- I had helped my father-in-law to conceal his interests in two of the companies that you mentioned Senator -- and the Magistrate explicitly found that based on the evidence submitted by the Province of Manitoba -- and I didn't even have a chance to submit any of my own--

SENATOR CODEY: Were you represented by counsel at that hearing?

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MR. MOCHARY: I certainly was. I certainly was, Senator.

SENATOR CODEY: Okay.

MR. MOCHARY: That based on the evidence submitted by the Province of Manitoba it was clear to her that the Province of Manitoba knew in fact that Mr. Kasser had an interest in both of the companies which the province was concerned about.

SENATOR CODEY: Mr. Mochary, why did you not go to Canada to face those charges?

MR. MOCHARY: Senator, frankly, before you mentioned it to me in your office this summer, no one had ever mentioned that to me, and I frankly didn't even consider it as a possibility.

SENATOR CODEY: You weren't up for a judgeship.

MR. MOCHARY: I had always felt-- That's true Senator. I had always felt from the beginning, when I first learned of charges against me, that they were a complete and utter charade. That they had no validity whatever.

I was proven correct in that when the Manitobans came down here--

SENATOR CODEY: In other words, you're saying they were political indictments.

MR. MOCHARY: Senator, I'm saying they were either political, or strategic for the purposes of fighting what was almost a war on all continents to try to preserve the government's seizure of the assets in January, 1971. This had been a big -- one of the few -- major political issues while the complex was being built, and after it was put into receivership. It continued to be a massive political issue in the Province of Manitoba.

SENATOR CODEY: Yeah, but you have said to me that you were indicted for political reasons. Is that correct?

SENATOR CODEY: Senator, I don't think I said that. What I said was I felt that the charges were a charade. I

think there may have been political motivations; there may have been motivations to do with the legal warfare going on--

SENATOR CODEY: Yeah, but you would agree with Judge Perretti's decision, correct?

MR. MOCHARY: I certainly would.

SENATOR CODEY: Well, she said that they -- the offenses -- were not of a political nature.

MR. MOCHARY: Well, that's correct, Senator. But, what we were trying--

SENATOR CODEY: You said they were, but the Magistrate that didn't -- ruled in your favor in the extradition -- said that they were not of a political nature.

MR. MOCHARY: Senator, I think you're confusing the way the phrase political issue is raised here. I said that I felt that there may have been political considerations in bringing those charges. Whether something is in fact-- Whether facts constitute a political defense in an extradition hearing is a very technical legal issue, and one goes to prior case law to see what is meant in the law of the United States by "political prosecution." And the Magistrate, I believe said -- I don't have a very clear recollection of that portion of the opinion, but I believe said -- that we didn't fit into the political exception because I wasn't in a political party; it wasn't a political uprising. You know, the kind of things that everyone recognizes, and says, "Yes, that's political."

SENATOR CODEY: Mr. Mochary. Conspiracy is not--

SENATOR O'CONNOR: Excuse me, Senator, one second. Senator Russo, you had a question?

SENATOR RUSSO: Just let me, if I can clear up in my mind. What do you mean then, you said they were politically motivated, or may have been politically motivated? In what sense? Can you explain that?

MR. MOCHARY: Well, Senator Russo, the -- as I said -- project had been embroiled from the beginning in political

controversy. All the contracts were signed by one political party. After all the contracts were signed, and they were signed between 1965 and, I think, May of 1969-- And by the way, parenthetically, that's when I began my involvement in the complex, the very end of May, the beginning of June, 1969. After all the contracts were signed, sealed, and delivered. In June of 1969, the party that had signed all the contracts lost an election to the party who had been claiming all along that this was a political give-away; these were foreigners. There was very much of a national feeling going on all over Canada at this time against any kind of foreign investage.

When that election occurred in June of 1969, the new party coming in made efforts, we felt -- we being people involved in building the complex -- to really undermine it. To sabotage it. And, really, to cause it to go into receivership, so that they could take it over. And there was certainly evidence that indicates that that could have been the case. I'm not here to argue whether it was or it wasn't.

SENATOR CODEY: Senator Russo, did I interrupt you?

SENATOR RUSSO: Yeah, I just wondered what the definition of political was, and you--

SENATOR CODEY: He brings up political, and he says they took over-- The new party took over in 1969.

SENATOR RUSSO: He means-- Up in Canada. Politically in Canada. All right.

SENATOR CODEY: He was indicted in 1974, five years after they came into power.

MR. MOCHARY: Same party in power.

SENATOR CODEY: Yes, I can bring that to mind. Five years after they were empowered, you were indicted. Mr. Mochary, is it a fact that, as a result of a plea bargain in 1983, Churchill Forest Industries pleaded guilty to one count theft and paid a \$1 million fine?

MR. MOCHARY: Senator, there was a dismissal of all of the criminal charges in 1983.

SENATOR CODEY: Did they pay a \$1 million fine Mr. Mochary.

MR. MOCHARY: I'm trying to answer you, Senator.

SENATOR CODEY: I wish you would.

MR. MOCHARY: In 1983, all the charges against all of the individuals, and all of the corporations, except Churchill Forest Industries, were dismissed. That dismissal-- Those dismissals were a result of a fairly lengthy period of discussions and negotiations. I was not a party to those discussions. I was not involved in any way, shape, or form in those discussions. I was not consulted about those discussions. I was not represented in those discussions.

All I know is that I was given a letter -- I believe the letter is dated September 20, 1983, and I submitted it to this Committee -- that said that all the charges were dropped, and there would be no further proceedings. Now, that's the extent of my knowledge.

SENATOR CODEY: Mr. Mochary--

MR. MOCHARY: Now, I am told -- I am told -- that Churchill Forest Industries agreed to pay a fine -- I believe the amount is correct, \$1 million -- agreed to plead guilty to theft of more than \$200. I'd also point out at this time that at this point in time -- in 1983 -- Churchill Forest Industries was defunct. It was bankrupt. It had been declared bankrupt after the receivership. The receivership, of course, resulted in all of its assets being taken. There was nothing left.

SENATOR CODEY: Okay, but you will admit that they paid a million dollar fine, correct? Isn't it true that by your own admission--

SENATOR O'CONNOR: Senator, before your next question, Senator Zane had a question on the last one.

SENATOR ZANE: I don't know whether you were going to ask this or not, Senator Codey. Who were the principals in this Churchill Corporation, both in 1983, also in '69, and also in '73 or '4 when you were indicted? Who were the principals?

MR. MOCHARY: My father-in-law, and his wife and children.

SENATOR ZANE: During that entire period of time?

MR. MOCHARY: Excuse me?

SENATOR ZANE: During that entire period of time? The years I mentioned -- '69 through '83?

MR. MOCHARY: I'm not-- Well, certainly, some of those people were involved at all times. In other words, the ownership never went outside those people.

SENATOR ZANE: When you say--

MR. MOCHARY: Whether it changed or not, I'm not sure.

SENATOR ZANE: When you say his children, is that his wife -- your wife, as well?

MR. MOCHARY: That's correct. That means my wife and my brother-in-law.

SENATOR ZANE: Were you counsel to that corporation?

MR. MOCHARY: I was really one of many lawyers for Dr. Kasser. And--

SENATOR ZANE: Then, is the answer yes, you were counsel to that corporation?

MR. MOCHARY: I may have served from time to time and done some work for them, but I considered myself more a lawyer for him as many others were.

SENATOR CODEY: Senator, let me read this letter.

SENATOR O'CONNOR: Senator--

MR. MOCHARY: Senator, excuse me, if I may. Senator Zane, in other words, I really was working for an individual who had interests in corporations. And I've done that for many other individuals since then. I think it's a very common thing for lawyers to do. They represent individuals who may own several corporations, and perform services for the different corporations.

SENATOR O'CONNOR: Before your next question, Senator, Senator Russo, you had a question?

SENATOR RUSSO: Senator O'Connor, yes. And, unless there are some specific things that Senator Codey feels right now should be put on the table. But, you know there are some rather heavy things involved, and my suggestion was going to be subject to what -- you know, the Senator wants it complete today -- that a copy of this information by Senator Codey be given to the Committee and to the nominee so that we can have an opportunity to, you know -- it's 12:30 now, and this looks like a matter that's going to require, perhaps, hours of our time, not minutes, you know, to find out whether there's merit to those matters that are contained. And, I don't think we can gloss over it; I think it's going to have to be looked into thoroughly before we can vote on this nominee. So, my suggestion was going to be that subject to any matters the Senator feels he has to present today, that a copy of this information be given to us, and to Mr. Mochary, and then a further hearing scheduled at a time when he can be prepared to respond to it, and we can understand it better, and be ready for it.

SENATOR O'CONNOR: Is there any reason, Senator Codey, that we can't proceed along those lines?

SENATOR CODEY: Well, I would like to put certain things on the record at this point, Senator.

SENATOR O'CONNOR: Right. Just before you do, I know Senator--

SENATOR CODEY: I don't think it'll be that extensive or that long.

SENATOR O'CONNOR: Senator DiFrancesco has--

SENATOR DiFRANCESCO: Well, my request is to put it off until I have a copy of, not only his statement, but every question he wants to ask this witness. You know, we walk in here, and the Senator makes a long statement, he has a lot of questions, and I understand all of that. But, I would like to be a little better prepared myself, and I want the witness

better prepared. I think it would be much more beneficial if it were put off, if Dick Codey made a copy of everything he wants to present here available to the witness and to ourselves, so that we can finish this at an appropriate time.

SENATOR O'CONNOR: Senator Zane?

SENATOR ZANE: Mr. Chairman, I think it's unfair to ask that -- and I say this respectfully -- to ask Senator Codey to present a copy of every question he's going to ask, in advance.

SENATOR O'CONNOR: No, I agree with that.

SENATOR ZANE: I think that's unreasonable.

SENATOR DiFRANCESCO: Why? Why is it unfair?

SENATOR ZANE: I think to ask him to -- whatever documentation he's going to rely upon, to make that available to us, I think is eminently fair. However, what I would like to ask-- We always go through this nonsense about the Governor's Office and the four-way checks, and they always hold back on them to protect the nominee for whatever there might be. In this particular case, Mr. Mochary, I'd like to ask you, would you consent to the Governor's Office releasing the four-way check that they made of you?

MR. MOCHARY: I certainly would.

SENATOR ZANE: And you would so direct them? If they refuse on some procedural issue to give us a copy of that, I'm sure you retained a copy of what you submitted to them -- any documentation.

MR. MOCHARY: I have.

SENATOR ZANE: Would you then direct them to release a copy of your four-way in full to this Committee?

MR. MOCHARY: Senator, I don't mean to be disrespectful. I will ask them. I don't know that I'm in a position to direct them. But, I will certainly ask them in an unqualified way to please release it, if that's the Committee's wish.

SENATOR DORSEY: Well, Ray it's not my understanding that you would have a copy of their four-way check.

SENATOR ZANE: Well, no there is certain information, I'm sure that he provided to them in response to questions, and I also -- my request really is that he ask them -- I didn't mean to say direct -- that he ask them to make that information -- the entire four-way available to us. I'm tired of this nonsense from the administration -- this one and prior ones -- of not making it available to us.

SENATOR DiFRANCESCO: I don't have any problem with the four-way. I didn't want to leave the impression that Mochary actually has a copy of it himself.

MR. MOCHARY: Senator, for the record, I don't have a copy. What I do have is a copy of the confidential questionnaire that I filled out and submitted to the Governor's Office, and a copy of the State Police's questionnaire which I filled out and submitted back to the State Police. So, that's what I have a copy of. But I will ask that the Governor's Office release any material they have.

SENATOR O'CONNOR: All right, let me just get us back on track. Senator Codey, at the conclusion of our hearing today, you will make available to the Committee, and to Mr. Mochary a copy of the statement that you read at the beginning of the meeting. We will not require you to submit any questions that you're asking. Mr. Mochary, I invite you to file a written response to the statement that Senator Codey has made, and you will have an opportunity to do that before the next time that the Committee meets. And, I understand that Senator Codey needs about another 10 minutes today. Is that correct, Senator?

SENATOR CODEY: Yes.

SENATOR VAN WAGNER: Mr. Chairman, before Senator Codey continues, I wonder -- because at sense, we're going to have another opportunity to hear this witness -- but I wonder

if staff would also obtain some background information on Section 7A of the Securities Act of 1933, as well as--

SENATOR DORSEY: We'll get that from chief counsel over there, right?

SENATOR VAN WAGNER: Well, you know, I'd prefer to have it from staff. At least we can review those areas.

SENATOR DORSEY: They don't know anything about that (word inaudible)--

SENATOR VAN WAGNER: See if they're largely technical in nature.

SENATOR DiFRANCESCO: They're not into Federal law.

SENATOR VAN WAGNER: I'm not into Federal law myself.

SENATOR DiFRANCESCO: Well, you are into Federal law. You started the downfall of Ivan-- (laughter)

SENATOR O'CONNOR: Let's continue then with Senator Codey's questions. Senator?

SENATOR CODEY: Mr. Mochary, as you said before, Churchill Industries paid a million dollar fine. In response to Senator Zane's question, you said you were employed generally by your father-in-law. Correct?

MR. MOCHARY: That's correct, Senator.

SENATOR CODEY: Okay. His question was were you general counsel to CFI. I have a letter here of January 14, 1970, from you, Mr. Mochary, to Churchill Forest Industries:

"Gentlemen, this letter sets forth my understanding of our agreement whereby you have retained me as your staff attorney for Churchill Forest Industries Services."

SENATOR DiFRANCESCO: I'm going to object to this. I really feel strongly that we ought to have copies of these things before he starts questioning a witness on letters that are written. It's nothing to do personally with Senator Codey. I just think that it's appropriate to have the material in front of us that he's referring to and asking the witness about. I don't think that's an unreasonable request, since we're going to continue this hearing at another time.

SENATOR O'CONNOR: Senator-- Well, we are going to continue it, and the witness will certainly have an opportunity to respond to it in writing, or otherwise. I don't think there's any impropriety with respect to this question. This is a letter that Mr. Mochary wrote.

SENATOR DiFRANCESCO: I didn't say impropriety. I think it's ridiculous to proceed. I'll use the word ridiculous to ask him questions about a letter that I'm not looking at. He's going to read another letter now, just like he read a statement, he made reference to a transcript. Let's have the material in front of me, so that I can read the letter along with him, so I understand what his question is. Or let him ask the questions later.

SENATOR O'CONNOR: All right, we're going to proceed. Do you understand what the question was?

MR. MOCHARY: No, I frankly don't.

SENATOR CODEY: Well, you had answered in response to Senator Zane that you were not counsel to CFI; that you had been retained generally by your father-in-law. As I read to you, I have a letter here from you dated January 14, 1970, to Churchill Forest Industries, setting forth an agreement hiring you as the staff attorney -- staff attorney for the Churchill Forest Industries Services.

SENATOR O'CONNOR: Are you familiar with the letter, Mr. Mochary?

MR. MOCHARY: No. I have--

SENATOR O'CONNOR: Show him the letter, Senator.

MR. MOCHARY: I have no recollection-- I don't doubt that there's such a letter. I mean, it doesn't trouble me that that letter-- It doesn't trouble me at all. I think, Senator Codey, you're trying to characterize, perhaps, what I said to Senator O'Connor, it was not my answer. What I said was, I work for Mr. Kasser. I did work for many corporations--

SENATOR CODEY: Mr. Mochary, all I wanted to do was establish the fact that you were counsel for CFI. The letter does that. That's all, sir.

SENATOR O'CONNOR: Next question.

SENATOR CODEY: Okay. Isn't it a fact that you were a party defendant in civil lawsuits emanating from alleged fraud with respect to the PAS project in Manitoba?

MR. MOCHARY: Senator, unless you can tell me what cases you're talking about, I'm not-- I don't have any recollection of that.

SENATOR CODEY: Well, (portion of sentence inaudible) a particular case. Were you a defendant -- a party defendant -- in civil lawsuits emanating from the forestry complex?

MR. MOCHARY: You yourself, Senator, mentioned that I was a defendant in a civil case brought by the SEC in 1974, in, as a matter of fact, the Federal Courts in New Jersey.

SENATOR CODEY: Okay. And, is it not a fact that there was one lawsuit settled by you and your co-defendants for the sum of approximately \$9 million?

MR. MOCHARY: No, that's not true.

SENATOR CODEY: That's not true?

MR. MOCHARY: No, that's not true, Senator.

SENATOR CODEY: Okay. You do, of course, remember filling out your judicial questionnaire?

MR. MOCHARY: Yes, I do Senator.

SENATOR CODEY: Okay. On your questionnaire, on page seven -- I don't know, could Mr. Tumulty give Mr. Mochary a copy of the questionnaire? Mr. Mochary, in that response to that question, you mentioned that you were a lawyer for Technopulp, which was involved in the Manitoba project -- the forestry complex. But you failed to mention that you were counsel for CFI. Is that correct?

MR. MOCHARY: Well, Senator, I'm not really sure what you're driving at, but I was paid by Technopulp Incorporated.

That's all I meant. Right now, I represent a lot of different corporations. I wouldn't have listed them in the answer to this. I work now as a partner in the law firm of Lane and Mittendorf, just as at this time I worked for Technopulp, Incorporated. They paid me. I did other work for other corporate entities in which Mr. Kasser had an interest. I did other work for Mr. Kasser.

SENATOR CODEY: Well, but you mentioned that you were counsel for Technopulp, but you did not mention that you were counsel for Churchill Forest Industries.

MR. MOCHARY: Senator, I--

SENATOR CODEY: That's all I'm saying.

MR. MOCHARY: What I'm trying to say is, as a lawyer, I don't list all the clients that I'm counsel for. In other words, I listed--

SENATOR CODEY: I didn't say that.

MR. MOCHARY: I list now in my questionnaire--

SENATOR O'CONNOR: Next question, Senator. I think that's been explained.

SENATOR CODEY: Okay. You also recall being asked on your judicial questionnaire, on question 25, "Have you ever been otherwise a party to or personally involved in any legal proceedings?" And, in the answer to 25, I do not find anywhere where you mention the settlement of any lawsuits regarding the \$9 million that I mentioned previously.

MR. MOCHARY: That's correct, Senator, because there were none.

SENATOR CODEY: Well, I have here in front of me a settlement, dated the 31st of January, 1980. It mentions yourself, and your wife.

MR. MOCHARY: That's correct--

SENATOR CODEY: It's a settlement for \$9 million, sir.

MR. MOCHARY: Well, that's a characterization that you care to put on it, Senator. I wouldn't agree with that characterization. But, I think what your question--

SENATOR CODEY: I don't think this would be a characterization at all.

MR. MOCHARY: Well--

SENATOR CODEY: You did not mention it on your questionnaire.

MR. MOCHARY: That's correct, Senator, I did not. Because the questionnaire said, "Have I ever been involved as a party or personally in any legal proceedings?" Now the legal proceedings that are referred to are lawsuits. The lawsuit-- There's a list of lawsuits attached to that agreement that you're talking about. In none of them was I personally involved as a party. In none of them.

In other words, what happened was there was a lot of civil litigation as a result of this receivership. Litigation all over the world. Ultimately, that civil litigation was all settled in nineteen eighty- -- whatever the date of that agreement is. I think '81, if I'm not mistaken. In 1981. A number of people -- a number of individuals, who had no involvement in any of the civil litigation listed, were made parties to that agreement. In other words, whoever negotiated that agreement said, "Not only do I want all the parties to the litigation to be absolved, but I want other individuals to be absolved, even though they are not parties to the litigation." I took no part in the negotiation of that agreement. I was not a party to it, other than having to sign it at the end. That's really all that happened. I was given a document; a settlement agreement that said, "Here, Mochary, here's a settlement agreement that says that you have no liability to anybody -- any civil liability to anybody for anything that happened in Manitoba, and you will not have any liability." I could have not signed it, I suppose. I would have been crazy not to sign it. I mean, it gave me a complete release. I didn't pay any money for it; I didn't negotiate for it.

Senator, you call it a \$9 million payment.

SENATOR CODEY: No, I didn't say payment. Settlement I said, sir.

MR. MOCHARY: I'm not sure. Well, then I won't respond. If you're not calling it a \$9 million payment, then--

SENATOR O'CONNOR: A question by Senator Zane.

SENATOR ZANE: Senator Codey, you have before you a settlement sheet? Is that what you're talking about?

SENATOR CODEY: Yes, I do.

SENATOR ZANE: Is it an agreement from settling a suit?

MR. MOCHARY: Senator, it's a--

SENATOR ZANE: Does it list a plaintiff-- You could just hold it there; I don't need to see it. (in response to Senator Codey's action to display document) Does it list a plaintiff and defendant?

SENATOR CODEY: Yeah, he and his wife.

SENATOR ZANE: And who's listed as a defendant?

SENATOR CODEY: There's multiple defendants.

SENATOR ZANE: Is Mr. Mochary listed as a--

SENATOR CODEY: Yes, personally, yes.

MR. MOCHARY: Senator, I'm not listed as a defendant. I'm listed as a party of the second part, I think. Nowhere, nowhere, nowhere in that agreement does it say that those parties listed are plaintiffs and defendants. In fact, there's a provision in the agreement, which the Committee will see when it sees the agreement, that says in no way is this agreement to be taken as any admission of any wrongdoing on the part of anyone, and shall not be used in any proceeding of any kind, anywhere, as any kind of admission.

SENATOR ZANE: Mr. Mochary, we all know that people don't make settlements and pay amounts of moneys because nothing happened, and that's a very common disclaimer I'm sure you would agree, a denial of any culpability in anything. I mean, that you'll find in any agreement by-- I'm not impressed by that. But, was this a result of a lawsuit? Were you sued? Were you a defendant?

MR. MOCHARY: No. No.

SENATOR ZANE: Okay.

SENATOR O'CONNOR: Senator Codey?

SENATOR CODEY: My point is on the bringing up what is nondisclosure, Senator. I can go on and on, Mr. Chairman. I appreciate the time you've given me today. I feel bad that some people on this Committee would take this in a partisan nature, which certainly it is not. And, anyone who knows me politically, knows that I don't think that way. Especially in something so important and delicate as a matter of this. But, I thank you for your time, Mr. Chairman.

SENATOR O'CONNOR: Thank you, Senator Codey. And, again, you will make a copy of your statement available to Mr. Mochary and to the members of the Committee. And the other documents that you referred to; the letter and--

SENATOR CODEY: Well, that-- We'd need a storeroom for that.

SENATOR O'CONNOR: No, only the documents that you referred to in asking questions.

SENATOR DORSEY: That questionnaire.

SENATOR O'CONNOR: The questionnaire we have. You referred to a letter from Mr. Mochary to Mr. Kasser, I guess, advising him of the--

SENATOR CODEY: About the Churchill Forest Industry. I'll give you all copies of that.

SENATOR O'CONNOR: Right. And we'd also like a copy of the settlement that you just questioned Mr. Mochary on.

SENATOR CODEY: Give it to the Committee, yes.

SENATOR O'CONNOR: And any other documents, Senator, that you did refer to today. Senator, am I correct that you're finished your questioning now?

SENATOR CODEY: No.

SENATOR O'CONNOR: You're not?

SENATOR CODEY: No, Mr. Chairman, I just -- out of respect to you -- would cut off questions--

SENATOR O'CONNOR: All right, well then, if there are other documents that you intend to rely on, as we continue this investigation, then I would -- or continue this interview -- I would request that you make those available to the Committee, so that, in deference to the point that was made by Senator DiFrancesco, we have the documents in front of us, and it will assist us.

All right, we'll then adjourn today's meeting, and we'll pick it up the next time we meet.

(MEETING CONCLUDED)

