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PUBLIC MEETING

before

SENATE JUDICIARY COMMITTEE

(Reappointment of Chief Justice Robert N. Wilentz
of Perth Amboy to succeed himself, for the term prescribed by law)

July 24, 1986
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

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

ALSO PRESENT:

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

New Jersey State Library

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Trenton, New Jersey 08625

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Chairman
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CHARD VAN WAGNER
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LLIAM L. GORMLEY
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New Jersey State Legislature
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MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE

FROM: SENATOR EDWARD T. O'CONNOR

DATE: JULY 18, 1986

RE: COMMITTEE MEETING, THURSDAY, JULY 24, 1986

The Senate Judiciary Committee will meet on Thursday, July 24, 1986 at 10:30 A.M. in Room 424, State House Annex. The following nominee will be interviewed.

TO BE CHIEF JUSTICE OF THE SUPREME COURT:

Robert N. Wilentz of Perth Amboy to succeed himself, for the term prescribed by law.

The following bills will be considered:

S-2085 Russo — Provides for predictable salary increases for Workers' Compensation Judges and also provides a cap thereon.

A-1086 — Permits recovery of attorney's fees in a civil suit when the legal position of the nonprevailing party was not justified.

OTHER NOMINATIONS MAY BE ADDED.

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SENATOR EDWARD T. O'CONNOR, JR. (Chairman): Good morning, everyone. We are about to start. Chief, will you please come up and have a seat? During the course of the hearing, I am going to ask that photographers refrain from coming up into the area where the Committee is seated or beside the table in the back. I request that if you want to take some still pictures, you do it now. We will give you approximately five minutes to do that. Chief, we will begin after the photographers have finished taking the pictures they need. (brief pause) We are going to take another two minutes, if you will, and then we are going to start. (brief pause)

All right, gentlemen, thank you very much. I would appreciate it if we could get started now.

Good morning, ladies and gentlemen, and Chief Justice Wilentz. Chief, this morning I would like to begin by introducing you to the members of the Committee -- rather introducing the Committee to you. Beginning on my far right is Senator Lee Laskin. To his left is Senator Bill Gormley; to his left is Senator Donald DiFrancesco; to his left is Senator John Dorsey. To my immediate right is Mr. John Tumulty, Staff Aide to the Committee. I am Senator Edward O'Connor, Chairman of the Committee. To my left is the Vice Chairman, Senator Ray Zane; to his left, Senate President, Senator John Russo; and to his left Senate President pro tem, Senator Carmen Orechio. To Senator Orechio's left is Senator Richard Van Wagner.

I would also acknowledge the presence in the room of Senator John Caufield, on the far left, and Senator Chris Jackman. To my rear, I notice Senator Wayne Dumont and Senator Peter Garibaldi. I think Senator Matthew Feldman is also in the room.

Chief, to begin the questioning then, at a press conference last Friday, Senator Garibaldi raised some questions -- made some allegations in connection with your reappointment. In order to afford you an opportunity to

respond to those, I would like to ask a few questions, and I know that other members of the Committee would as well.

Could you clarify for the Committee your residential status?

CHIEF JUSTICE ROBERT N. WILENTZ: I will try to.

SENATOR O'CONNOR: Excuse me, Chief. Before we even begin that, I should advise you that there has been a request from Senator Gerald Cardinale that all the witnesses today -- which would include yourself-- Or, rather, his request was that you be placed under oath to answer questions. I do not believe that is an unreasonable request. I will ask that you be sworn. I will also state, at the outset, that any of the witnesses who appear today will also be sworn before they testify.

So, if you would then, Chief, do you swear or affirm that the testimony you are about to give to this Committee, and the answers you will give to the questions are the truth, so help you God?

CHIEF JUSTICE WILENTZ: I swear and affirm that the answers I am about to give are the truth, the whole truth, and nothing but the truth, so help me God.

SENATOR O'CONNOR: Thank you very much. Chief, would you hit the button in front of you so that we can--

CHIEF JUSTICE WILENTZ: This one?

SENATOR O'CONNOR: Yes. The first question -- and I interrupted you, I know -- was, would you clarify for the Committee your residential status?

SENATOR DORSEY: Excuse me. Senator O'Connor, may I just ask a question? How do you expect to conduct the questioning today? Do you anticipate doing it one Senator at a time -- all of the various topics he may raise -- or do you plan to do it topic by topic to give continuity to the various topics?

SENATOR O'CONNOR: Well, I would-- On each issue, it was my intent to ask the other members of the Committee, after my question was answered, whether they had any further questions on that particular issue. Chief?

CHIEF JUSTICE WILENTZ: Concerning my residence -- as I was about to say -- it is a rather long story, and one which necessarily involves details about my family.

SENATOR DORSEY: Chief Justice, I don't mean to interrupt you, but could you speak up? I am having difficulty.

SENATOR RUSSO: I don't know if that microphone is-- Maybe if you pull it closer to you.

CHIEF JUSTICE WILENTZ: This is a problem I don't usually have. Okay, is that better? (affirmative response) I will try to keep my voice up.

I will first explain how I came to take a New York apartment, which was in 1971. At that time, my son, James, was in Columbia College. My daughter, Amy, was about to go into her last year of high school at the Fieldston (phonetic spelling) School in New York. My son, Tom, was going to Rutgers Prep. I think he was about to go into seventh grade.

SENATOR O'CONNOR: Chief, pardon the interruption. Gentlemen, I said at the outset that the picture taking would be limited to the first five minutes before we began. So I ask that you all now go behind the tables, please, and not take any pictures during the questioning.

CHIEF JUSTICE WILENTZ: Jim was 10 or 20; Amy, 16 or 17; and Tom about 12 years old. Jim had previously gone to Rutgers Prep. He then went to the Putney (phonetic spelling) School for one year, and then his last two years of high school were at the Fieldston School in New York. At that time, he lived -- both of those years -- outside of Perth Amboy. He lived with first my wife's parents for one year, and then he lived with my sister and brother-in-law for one year. So, his contacts by that time were substantially in New York. We

didn't see much of Jim. He didn't come to our home in Perth Amboy often at all. We would have to go to New York to see him.

My daughter Amy had been at the Fieldston School for four or five years. Her contacts were mainly in New York; her friends were mainly in New York. She had gone to Rutgers Prep for quite a few years before that, so her friends in Perth Amboy were very few even before she went to the Fieldston School. More and more, she was staying at night in New York on week nights, sometimes on weekends, and we didn't know the people she was staying with. But it was quite clear she would be staying more and more as her New York friendships became even more solid, and as she became more independent and older.

We had decided, for educational reasons, to send Tom to the Fieldston School as well. In 1971, he was about to go -- the next year -- to the Fieldston School. What I had been doing was arranging for transportation from my Perth Amboy home every day for Tommy to go to Rutgers Prep, and for Amy to go to the Fieldston School. It became apparent to both my wife and to me that if we wanted to have any life with our children, we had better get ourselves a New York apartment. We were not seeing Jim much at all. He was not seeing his sister or brother much at all. We were more and more seeing less and less of our daughter, and the prospect was that we would soon be seeing less and less of our younger son. So, we decided to try and take a New York apartment, sell our house, because the thought was that the kids would then find themselves in New York as their place of living, and we would not need the kind of house we had in Perth Amboy, which was large enough for all five of us. We decided to take an apartment in Perth Amboy, where I would stay during the week. My wife would come there -- not every night, but once in a while -- and I would spend weekends in New York. That way the children -- Amy and Tommy, specifically -- would come to a place where their mother would be most of the time -- every night -- and where their father would be on weekends.

I wasn't confident that that style of life would be suitable, or that I would be able to take that kind of split residence, so we tried to lease an apartment, and we nearly concluded a one-year lease. But, the deal fell through at the very last moment, and we had the opportunity to buy what seemed to me a very good bargain -- a co-op -- in Manhattan, on the corner of 79th Street and Madison Avenue.

SENATOR O'CONNOR: What is the time frame now, Chief, that we are up to?

CHIEF JUSTICE WILENTZ: This is 1971. We bought that apartment, and my split residency life commenced. I would come into Perth Amboy most of the week -- Monday through Friday. Once in a while I would be in New York on a Wednesday night, or a Thursday night. My wife would come into Perth Amboy two times a week, once a week. She would stay overnight with me in Perth Amboy. She would have lunch with her friends. I would get someone to drive her back. And, we saw the children; and saw much more of them than I otherwise would have seen. And they came to the apartment in New York. Tommy, at that time, lived in the apartment in New York. Amy, at that time, lived in the apartment in New York, and Jimmy lived at Columbia College, where he went to school.

So that is how my life style worked from 1971 to 1979. I would also come into the law firm on Saturdays, but I was in New York every weekend, except for vacations, which we took during the winter, and except for the summer, where we have a home down the shore where we stayed, usually going sometime in June and coming back sometime in September.

The picture changed somewhat during those years from '71 to '79. Amy went to college at Harvard, but when she came back from college on weekends, it was New York that she came back to, so we could see her when she was not staying at college. Jimmy turned out going to NYU Medical School, so he remained in New York, and Tom continued at the Fieldston School, and continued living with us for most of that time.

In 1979, when I was appointed Chief Justice, the situation was as follows: Jim had finished medical school. He was now up in Boston on an internship, or residency, or one of those various things that people do when they get out of medical school. Amy had gotten a job in New York. She worked for "The Nation" magazine. She had her own apartment by then in New York. Tom, I believe, was in one of his years at Columbia College; it may have been his last year. He had an apartment in New York. In other words, none of them lived with us at that point. Two of them still lived in New York, and my older son was in Boston.

I think it might give you some idea of the extent to which this split residency affected my ties to New Jersey to tell you that all of my friends then, and all of my friends now -- practically all, practically without any exceptions -- are people who I have known from New Jersey. As a matter of fact, even the people I know in New York are people who I have met in New Jersey, down the shore in the summertime. The contacts that I had with Perth Amboy and with New Jersey before 1971 continued, and perhaps intensified, during those years, and I will tell you about some of them.

At the time I was appointed to be a judge, I had previously had these contacts, all of which started between 1971 and 1979: Associate Editor of the "New Jersey Law Journal." In other words, I was appointed Associate Editor after I had taken the New York apartment, had my Perth Amboy apartment, and my Deal home. The same applies to all of these: Member of the Board on Trial Attorney Certification -- that was appointed by the Supreme Court; member of the New Jersey Section of the American Bar Foundation; New Jersey Section of the American College of Trial Lawyers; appointed to be a member of the New Jersey Economic Recovery Commission. I believe the Governor appointed me, and I am not sure which Governor. A delegate to the Democratic National Convention of

1976; unsuccessful candidate in the election for delegate to the Democratic National Convention of 1972; Counsel, Campaign Committee for Brendan Byrne; Counsel, New Jersey State Democratic Committee; Treasurer of Citizens for Leone; one of the finance chairmen of Senator Williams' campaign in 1976; Co-chairman, or something resembling it, of Citizens for Muskie in the unsuccessful primary of 1972; counsel of the New Jersey Turnpike Authority; Director of the New Jersey National Bank. This next one is the only one where the appointment, or whatever you might call it, didn't occur during those years 1971 to 1979 -- Chairman of the Perth Amboy High School Scholarship Fund, but the work of that Fund continued during those years -- my work on it. Member of the Perth Amboy YMHA Board of Directors; member of the Public Issues Committee of the New Jersey Division of the American Cancer Society.

My New Jersey contacts, at least until the time I became Chief Justice, remained very, very strong. Practically all of those contacts were dissolved, I resigned, they were terminated when I became Chief Justice.

The mail that was sent to me or to my family-- All of the important mail-- Not all of it, but a lot of the important mail came to me in Perth Amboy. My credit card billing was always to Perth Amboy and was switched to my Perth Amboy apartment. My bank statements were always sent to Perth Amboy -- to my Perth Amboy apartment. Anything and everything having to do with Social Security taxes, unemployment taxes, medical claims, all of those things -- then and now -- all went to my Perth Amboy apartment. Anything having to do with any investments that I had at that time came to my Perth Amboy apartment.

In terms of where the family celebrated birthdays and holidays, generally it would be where the kids were, or where my wife might want to celebrate. Her birthday we celebrate in New York. My birthday -- to the extent it is celebrated -- is

in New York. My two older children's birthdays occur when we are down the shore. They are one day apart, and that is a big family celebration down the shore at Deal. Tom's birthday is in November, and that is celebrated -- to the extent it is celebrated -- which means perhaps going out for dinner -- in New York. At Christmastime, unless we happen to be away, we would be in New York. On New Year's Eve we would invariably be in Perth Amboy with our old friends, in the same building where my apartment is, because the New Year's celebration is hosted by our friends Rosemarie and Tom Sinatra, who own the building where I am a tenant.

For all the time that I have had the Perth Amboy apartment, I have had a maid who comes in once a week. There may have been a time when she came in twice a week; I'm not sure, but we still have that maid. In any event, that was the situation to 1979, when I was appointed.

It continued that way, but only for one year, really. In 1980, a lump in my wife's breast was diagnosed as cancerous. She had a modified radical mastectomy, and from that time until 1984, she had 10 operations, all of them under general anesthesia. Besides the obvious changes that would have in one's life, I would stay in New York more often than I had. I would stay there a night or two before the operation; I would stay there while she was in the hospital; and, I would stay there a night or two more after the operation. So, the frequency and length of my stay in Perth Amboy was somewhat diminished, not substantially, but it was somewhat diminished.

In 1984, we continued to go down to the shore. The other aspects of my life did not change. We went away, perhaps, even a little bit more on vacation in the winter, and continued to go down the shore in the summer. In 1984, at the tenth operation -- after it -- it was determined-- Those 10 operations, I don't want you to think were all dreadful. I mean, to me, it is dreadful to have an operation, but some of

them -- a great many of them -- were reconstructive operations. At the end of the tenth operation, it was discovered that there had been some metastasis. There was some growth where it should not have been. This was 1984, in October, and it was decided that my wife should get the treatment of chemotherapy.

At that point, I decided that, given her concerns, given what I assumed -- and correctly, obviously -- was her state of mind, I was not going to leave her alone at night. I would leave her as little as I possibly could. It became apparent to me -- near the end of that year -- that my Perth Amboy residence, in terms of tax laws -- that I was staying more than the 183 days that New York uses as its criteria. That became apparent to me near the end of 1984, at which time I paid the New York State income tax. I had, of course, been paying the New Jersey gross income tax -- as I continue to -- along with my Federal taxes, etc.

The chemotherapy went through the year until June or July of 1985. We took a vacation during the winter; we were in Deal during the summer. We went away, as we had started to in the summer. We had taken trips to Europe besides being at Deal.

SENATOR DORSEY: This was the summer of '85?

CHIEF JUSTICE WILENTZ: This was the summer of '85, yes.

SENATOR DORSEY: Just one clarification on '84. Do I understand that in '84 you paid New York State income tax, New Jersey income tax, and Federal income tax?

CHIEF JUSTICE WILENTZ: That is correct.

SENATOR DORSEY: All three?

CHIEF JUSTICE WILENTZ: That is correct. In 1985--

SENATOR O'CONNOR: Excuse me, Chief. Senator Dorsey, and other members of the Committee, I would ask that you channel your questions through the chair.

SENATOR DORSEY: I'm sorry.

CHIEF JUSTICE WILENTZ: In 1985, I would come to Perth Amboy and stay overnight very rarely. I would only do it where there was something I deemed essential that I had to go to that required me, in a way where physically it would have been too much for me to go into New York. So, there were some occasions when my wife was alone, but very, very few. The chemotherapy continued in 1985. The timing of the vacation had to be done with the chemotherapy in mind, and it continued until 1986. So, essentially, she was in chemotherapy for two years.

There was another change that was caused by that, which was that on the day she got chemotherapy, I stayed in New York all day, not just at night; and on the day after she got chemotherapy, or the day after that, depending on how we judged her reactions to be. Sometimes the reactions-- It turned out after a while that the worst reaction she had was not the very day after, but two days after. I would stay with her then. So, while she got chemotherapy I stayed in New York, not only at night, but for two days when she got her chemotherapy shot. You don't get them every week; you get them four weeks, five weeks, and then you get off them for three weeks or four weeks. It changes back and forth that way. But clearly I was in New York well, well over the 183-day limit, and paid my tax in New York in 1985 as well, and in 1986 as well, and my New Jersey gross income tax, undiluted, undiminished in any way by the New York tax, and the Federal tax, also.

When her chemotherapy had reached a certain point, she took a series of tests, and it was discovered that it had not been as effective as we had hoped. After consulting with various doctors, she was given a hormonal pill. It was hoped that that would be effective, and might also make her eligible for other kinds of treatment in the future. The hormonal pill had the advantage, it seemed, of not having the kind of reaction -- advantage to her, obviously -- that the chemotherapy had; advantage to me, in that it appeared to me

that I might be able to not have to be in New York as much as I had been.

Unfortunately, as we were about to go down the shore in June, she became very ill. We later learned that it was a reaction to that hormonal pill. I took her to the hospital. Doctors told me to take her to the emergency room, and she was in the hospital from June 28 until July 11 of this year. She has now switched to a different hormonal pill. She has been on it, I guess, for a week or two -- maybe longer than that -- no, I guess it is about a week or two, and it seems to be going rather well.

To fill in some blanks, Jackie had been very active in Perth Amboy, even though she was born in New York. When we took the New York apartment, she maintained her contacts in Perth Amboy, but they diminished somewhat over the years, even going into 1979. She had always been interested in art, and in 1980, after her first operation, she became very, very interested -- very engrossed -- in her art work. It proved to be an important tonic for her, and she did very, very well at it. She became a commercial artist. She had never done that before. She has had her art works in a gallery that she is involved with in New York. But, the very simple point is, even though from 1980 to 1984 when she had these operations, even though she still came into Perth Amboy once in a while, it was less and less. Her friends from Perth Amboy have been, and will remain her best friends, but she didn't get in as much as she used to. After 1984, when she started chemotherapy, she has not come into Perth Amboy at all. That is not strictly true. She was in on New Year's Eve in 1984 and 1985.

So, as of right now, my daughter has remained in New York at her New York apartment. She is no longer with "Nation." She works for "Time Magazine." She had worked for the Newsday newspaper, so she has been in New York all that time. My son, Tom, has remained in New York at an apartment.

He is pursuing a career in music. And, just this July, my son, Jim, who was down in Atlanta, has commenced the practice of medicine -- or will one of these days very shortly -- in New York City. So, from the point of view of my wife and me, the major objective of having the apartment has succeeded even beyond what we had hoped for. It has been extremely important to us.

For me it has meant this peculiar split residence, and all of the problems that causes, not just to me, but to this Committee and to others. For my wife, at the moment, it has made her life rather bearable -- more than bearable, quite happy, with her art work and with seeing her children.

A couple of other miscellaneous matters: The question is, where is home? Home is in Perth Amboy when I am in my Perth Amboy apartment. Home is in Deal when I am at my home at Deal. And, home is in New York when I am with my kids in New York.

The report of a credit card-- Oh, in terms of mail, my wife has the bills for her shopping in New York sent to our apartment in New York, so those bills do go to New York. I think I used to keep the books -- the checkbooks. I know I did. At some point, my wife started to keep those books. So, at one point the checkbooks were kept in Perth Amboy, and at another point later on, they were kept in New York. Right now, most of the business of making out checks and going over statements and things like that -- at least the books themselves -- are in Perth Amboy, at least the most active account.

In terms of what this means to the State, forgetting about one's point of view about the mere fact that I am in New York that much at the present time, I get up early enough so that when I am in New York I leave my New York apartment between 6:15 and 6:30. I get back around 7:30, 8:00 at night. I work in the car going from New York to Perth Amboy or to

Trenton or wherever I am going. I work in the car going back. I work all the time when I am in New Jersey. And, when I am back in New York and have dinner with my wife, and I am through with dinner, I work after dinner. And, I work on Saturday, and I work on Sunday, and I work when I am in the hospital. I bring boxes around with me wherever I go. I don't think people see me any more without me or someone else carrying a box, or more than one box. I bring them up to the hospital. And, unfortunately, at times I take work with me when I go away on vacation, although I try not to.

I enjoy the work immensely. I do not mean to portray this as any kind of suffering. It is very challenging; it is engrossing. But the point is, insofar as the State of New Jersey is concerned, I am giving it as much as I can possibly give it; I think as much as anyone could possibly give it. There is another side to that coin. New York is not a playland for me. I can't remember the last time I went to a movie. I can't remember the last time I went to the theater, to a concert, or to anything like that in New York, or elsewhere. My tennis game during these years has similarly suffered.

In terms of the future concerning my residences, I hope that this present treatment will go okay, in which case I hope I will be able to resume what had been my prior way of living, and will be able to stay in Perth Amboy the way I used to, although probably not as much as I used to, and probably never as much as I used to. That is my hope. I hope my wife will be able to come in and join me every now and then.

I guess that is about all I have to say on that question.

SENATOR O'CONNOR: Chief, on the question of your residence in New York and on the question of your driving back and forth to New York, one of the claims that was made by Senator Garibaldi was that you are routinely driven to and from New York City by a New Jersey employee. Would you comment on that?

CHIEF JUSTICE WILENTZ: That is absolutely correct. When I became Chief Justice, I was advised by my predecessor that a car would be available, and a driver -- a driver who would not only be a driver, but someone who would look after my security and have some concerns about my chambers and other things like that. But, it was quite clear that that person and that car would be available for me. Every since I was Chief Justice, I have had that State car and I have had that driver, who happens to have been exactly the same driver who drove Chief Justice Hughes while he was Chief Justice. So, Senator Garibaldi is correct.

SENATOR O'CONNOR: Okay. On the question of residency, are there other questions from the Committee, beginning with Senator Zane?

SENATOR ZANE: Mr. Chief Justice, I don't think I have problems with your decisions. I feel -- as I know other members of the Committee do -- about the autonomy of the three separate branches, so that is not really the area of my personal concern. In fact, in some regards, being familiar with some of your decisions, and those of the court under you, I think you have done, at times, things that this Legislature was afraid to do. But for you, we might not have some of the direction in this State that we have.

But, I do have some concerns. I might add, at the outset, that I really appreciate your candor and openness, which I wouldn't expect anything different from you, or from anyone of your caliber. But, the questions I would like to ask are: The New York income tax-- Does the State of New York define residency when someone becomes subject to their tax?

CHIEF JUSTICE WILENTZ: My understanding, Senator, does not go beyond what I said. My understanding is very simply this: If you are in New York more than 182 days -- namely if you are in New York 183 days or more during any year, you are subject -- you are liable -- for their tax.

SENATOR ZANE: Does that definition, under New York law, say that for the purposes of income taxes payable to the State of New York, that you, therefore, are considered a resident of the State of New York if, in fact, you exceed 182 days?

CHIEF JUSTICE WILENTZ: I have no idea if the word "resident" is the key word, but the law is as I have stated it -- at least my understanding of the law is as I have stated it.

SENATOR ZANE: As I understand the Constitution -- and, please, you correct me if I am wrong on this -- our Constitution does not require that a sitting justice be a resident of the State. Is that accurate?

CHIEF JUSTICE WILENTZ: There is no literal requirement. I am not about to interpret whether someone might argue that it is implied. There is no specific, explicit requirement.

SENATOR ZANE: We all have personal opinions. Do you happen to have a personal opinion as to whether a sitting justice of the Supreme Court of the State of New Jersey should be a resident of the State of New Jersey?

CHIEF JUSTICE WILENTZ: Obviously, he should.

SENATOR ZANE: Do you feel that you are a resident of the State of New Jersey as opposed to being a resident of the State of New York?

CHIEF JUSTICE WILENTZ: Senator, I just don't want to characterize it. I have told you all I can tell you. New Jersey is where I was born, where I grew up. It is where my heart is; it is where my work has been. It has been everything and anything about me. I am in New York at the times I am there for the reasons I have given. I hope that makes me a New Jersey resident; I think it does, but I will leave that to others to characterize.

SENATOR ZANE: Chief Justice, you mentioned a home in Perth Amboy in 1971. Then, during the course of your comments,

up to and including, I think, 1979, you began speaking about your apartment.

CHIEF JUSTICE WILENTZ: We sold the Perth Amboy house in 1971, and I rented the Perth Amboy apartment in 1971, the same year that we bought a New York apartment. There was no longer any purpose -- any point -- in having a house in Perth Amboy large enough for a family of five, when three of the kids were not going to be part of the family in Perth Amboy.

SENATOR ZANE: Do you have a vehicle -- a personal vehicle of your own?

CHIEF JUSTICE WILENTZ: No, I do not. When we are down the shore, I rent a car.

SENATOR ZANE: Does your wife have a vehicle of her own?

CHIEF JUSTICE WILENTZ: No, she does not.

SENATOR ZANE: At the present time and, let's say, prior to your -- or about the time of your wife's illness, how frequently would you say, over the course of the year, you actually-- Within the last two years, let's talk about, or three -- whatever you choose-- How frequently would you say you stayed in Perth Amboy? Try to be as specific as you can.

CHIEF JUSTICE WILENTZ: I really can't be very specific, Senator.

SENATOR ZANE: Why can't you?

CHIEF JUSTICE WILENTZ: I just don't-- It was not with any regularity. In other words, I attempted, after the diagnosis was such that she had to start chemotherapy, to try to stay in New York every night. So, if I had to estimate, I would say maybe once in a month, at the most.

SENATOR ZANE: You stayed at--

CHIEF JUSTICE WILENTZ: At Perth Amboy.

SENATOR ZANE: Perth Amboy?

CHIEF JUSTICE WILENTZ: Yes.

SENATOR ZANE: Would that be the pattern of the past three years?

CHIEF JUSTICE WILENTZ: It would be the pattern since October, 1984. That is when the diagnosis was made; that is when the chemotherapy started.

SENATOR ZANE: Does your wife vote?

CHIEF JUSTICE WILENTZ: Yes.

SENATOR ZANE: Where does she vote?

CHIEF JUSTICE WILENTZ: In New Jersey.

SENATOR ZANE: Could you describe for us-- You've laid everything out, and I'm sure you feel like you're under a microscope at this point, but that is the price we pay, I guess, in public office. Could you describe for us your Perth Amboy apartment?

CHIEF JUSTICE WILENTZ: My Perth Amboy apartment consists of a fairly large living room, a bedroom right off that living room, which also performs the purpose of a place where I eat, when I used to eat there -- in other words, it has a table there, as well as two beds -- a nice-sized kitchen, a bathroom, a very, very large closet, and a couple of other closets. That's it.

SENATOR ZANE: Is there much in the way of furniture there? Is it fully furnished?

CHIEF JUSTICE WILENTZ: Oh, yes, it is fully furnished.

SENATOR ZANE: Mr. Chief Justice, if you were to retire, where would you retire to -- the State of New Jersey, the State of New York, or elsewhere?

CHIEF JUSTICE WILENTZ: It would depend on what I was retiring to do, and I really don't know what the answer to that question is.

SENATOR ZANE: You know, I know you didn't want it asked before -- and if you decline I will respect that -- but I am going to ask it again. Do you feel that you are a resident of the State of New Jersey?

CHIEF JUSTICE WILENTZ: I do, yes. I feel that is my alliance; that is my home; that is my State. New York is--

Obviously, I am no longer a stranger there, by any stretch of the imagination, but my connection with New York has depended upon all of these various factors.

SENATOR ZANE: Well, I don't know what else to conclude, except I'm hearing you say you feel in your heart, emotionally, etc., that you are a resident of the State of New Jersey, but I also hear you say that physically, with the exception of possibly 12 days a year, since October of 1984 -- physically, you have been residing, or living, within the State of New York, not the State of New Jersey.

CHIEF JUSTICE WILENTZ: Except for the summer; except for when we go away on vacation in the winter; and, except for the daytime, when I am in New Jersey almost all the time, except on the days when my wife gets the chemotherapy. So, I am still attached to New Jersey. I won't argue the point with you, Senator. I have told you what my background is. I have told you the contacts I had when I took the apartment in New York. You know the circumstances which force me to be there when I am there. It doesn't change my outlook about how I feel about myself and New Jersey.

SENATOR ZANE: I have no further questions.

SENATOR O'CONNOR: On the question of residency, Senator Dorsey?

SENATOR RUSSO: What order are you following?

SENATOR O'CONNOR: Do you want to ask questions?

SENATOR RUSSO: Well, if you are going to follow one, we might as well know now for the whole hearing. Yeah, I do want to, on probably every category.

SENATOR O'CONNOR: Okay, we'll get to you next.

SENATOR RUSSO: Okay.

SENATOR DORSEY: Chief Justice, you responded to Senator Zane's question that you do not believe there is any provision in the Constitution requiring a justice of the Supreme Court to be a resident of the State of New Jersey. Is

it your understanding that there is or is not a statute that requires a justice of the Supreme Court to be a resident of the State of New Jersey?

CHIEF JUSTICE WILENTZ: I know of no statute that explicitly requires a justice of the Supreme Court to live in New Jersey.

SENATOR DORSEY: Are you familiar with the statute that generally requires all public officers to be residents of the State of New Jersey, if they hold office in the State of New Jersey?

CHIEF JUSTICE WILENTZ: That statute has been called to my attention.

SENATOR DORSEY: Do you think that statute is drawn in such a way that it is broad enough to cover justices of the Supreme Court?

CHIEF JUSTICE WILENTZ: I would express no opinion on that, Senator.

SENATOR DORSEY: Would you agree that your wife -- your wife in contrast to yourself -- is clearly domiciled and a resident of the State of New York?

CHIEF JUSTICE WILENTZ: I am not sure. I am not sure about the extent to which, for various purposes, the rule that used to obtain, which is that in some cases the wife's domicile is the same as the husband's domicile-- I am not sure about the extent to which it no longer obtains. That is the only answer I can give you on that.

SENATOR DORSEY: So, you offer no opinion on that question?

CHIEF JUSTICE WILENTZ: No, I don't.

SENATOR DORSEY: Senator Zane seemed to be struggling with the fact that your claim of residency in New Jersey is based upon a mental state, rather than your physical presence here in the State of New Jersey. Is that basically the dilemma that this question is placed in, in terms of your residency?

CHIEF JUSTICE WILENTZ: If it is a dilemma, so be it, Senator. It is more than a mental state. It is a pattern of behavior over the years that I have described and the years before. It is the continued contact with people of the State of New Jersey. It is the continued working in the State of New Jersey. It is the summer home in the State of New Jersey. It is everything and anything about me, not just a mental attitude. It is the simple truth that for the reasons I have given, I was physically in New York during these past two years during the times that I have said. I don't mean to say that even during those two years I was in New York the majority of the time. In terms of time, I am still in New Jersey the majority of my time. When they talk about days in New York, they talk about any amount of time of the day I am in New York.

SENATOR DORSEY: Would it be correct to say that your family life, at least since October of 1984, centered around the New York apartment, or residence?

CHIEF JUSTICE WILENTZ: My family life in terms of my kids--

SENATOR DORSEY: No, your family life generally, not just your kids -- your family life.

CHIEF JUSTICE WILENTZ: Well, I am not sure I can answer it that way. I was going to say, Senator, that in terms of my children, my family life with them has been in New York for quite some time, except in the summer. In terms of my family life with my wife, it has been in both Perth Amboy and New York. I suppose, looking at it that way for the last two years, I have been with my wife in New York much more than I used to be. I am still with her down the shore during the summer.

SENATOR DORSEY: I did not hear this before, but I thought Senator Zane said that in your testimony you said you only resided, or stayed 12 nights in the Perth Amboy residence since October 12, 1984.

UNIDENTIFIED MEMBER OF COMMITTEE: That's a year.

SENATOR DORSEY: A year? In the last year?

UNIDENTIFIED MEMBER OF COMMITTEE: Two years.

CHIEF JUSTICE WILENTZ: He was presumably taking the testimony that I stayed in Perth Amboy not regularly, only when it was absolutely necessary, and he asked me to give him an estimate. I estimated once a month, if that much. He multiplied that by 12. I assume that is where he got the figure from.

SENATOR DORSEY: What period of time-- What number of days has your wife stayed in Perth Amboy over the same period of time?

CHIEF JUSTICE WILENTZ: She has not come to Perth Amboy at all since the diagnosis of a further metastasis in 1984, except New Year's Eve, I think.

SENATOR DORSEY: The chauffeur who drives you-- The State employee who drives you from New Jersey to New York, after he takes you to the 79th Street address, does he then return to New Jersey, and then go back and pick you up in the morning?

CHIEF JUSTICE WILENTZ: That is correct.

SENATOR DORSEY: What is his salary?

CHIEF JUSTICE WILENTZ: Pardon me?

SENATOR DORSEY: What is his salary?

CHIEF JUSTICE WILENTZ: I have no idea.

SENATOR DORSEY: No further questions.

SENATOR O'CONNOR: Senator Russo?

SENATOR RUSSO: Mr. Chief Justice, at this time I am not going to go into any discussion of the opinions you may have rendered. Frankly, I am not so sure we should at any time. But, since that will probably be opened later, I won't resist the opportunity, though I am not-- In my own personal opinion, I do not think it goes to whether any justice should be reappointed. I said that during Justice Pollock's renomination.

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You may have covered this. You have a driver's license?

CHIEF JUSTICE WILENTZ: Yes, I do.

SENATOR RUSSO: From which State?

CHIEF JUSTICE WILENTZ: New Jersey.

SENATOR RUSSO: Okay. The particular statute -- 52:14-7-- Has that statute, to your knowledge -- forgetting now what your own personal opinion might be as to the statute-- Has that ever been interpreted to require a judge of the Superior Court or a justice of the Supreme Court to reside in this State?

CHIEF JUSTICE WILENTZ: Senator, I have never researched that statute. My belief is that it has never been so interpreted.

SENATOR RUSSO: You have indicated, Justice Wilentz, that you personally feel that a justice of the Supreme Court should be a resident of New Jersey and, of course, you feel you are a resident, and you have explained some of the circumstances as to why you are out of the State as much as you are. Let me ask you this: In the event you are confirmed by the Senate, do you have any -- in view of the discussions that have arisen -- plans to do anything differently with regard to your "residence"?

CHIEF JUSTICE WILENTZ: To call it a plan, Senator, would not be quite accurate. I believe, and hope, that the present treatment my wife is receiving will enable me to be in my Perth Amboy apartment at night more than I have been. It is not chemotherapy. It is not the kind of thing that causes the reactions that chemotherapy does. So, my plan is, if her health allows it -- and it appears that it will; the prognosis is good in that respect -- I intend, as much as I can, to resume the periods of time that I used to stay in Perth Amboy, and would hope that she would, too. I certainly have no plan in the other direction.

SENATOR RUSSO: Well, Mr. Chief Justice, the answer I was hoping you would give was that-- You know, when you were sworn in as a member of the court, no one ever told you you had to be a resident of New Jersey, or that you had to spend so many days here. In all fairness to you, I can find very little criticism on the issue of residency. But now it has been raised. You are the highest judicial officer in this State. The answer I desperately hoped for was-- There ought not be any cloud over a person in your office. If this Senate confirms you -- barring, of course, medical reasons, and the tragic things that have happened in the past, which hopefully, pray to God, they won't again to your wife, and that she is well-- But, barring that, that New Jersey is going to be your home, not 12 days a year, or not six months, but basically full-time, without any question, so there can't be any borderline. That is what I was hoping for.

I think that is what you ought to give consideration to, really, and I am not suggesting that it is required. I am not suggesting that you have done anything that you shouldn't have, because no one-- I never dreamed there was any requirement, this statute or otherwise. So, I don't think there can be any criticism of your "residence." But, it has been raised. Properly, improperly, doesn't matter; justifiably or not. For the highest judicial officer in this State, I would hope you would put the issue to rest once and for all, whether it be Perth Amboy -- I would suggest Toms River -- but New Jersey, you know, clearly and unequivocally, as your home. That doesn't mean a summer home in Florida, or a ski condo in Colorado, or what have you, once in a while.

CHIEF JUSTICE WILENTZ: A summer home is as close as I get to Toms River, Senator.

SENATOR RUSSO: Watch it!

CHIEF JUSTICE WILENTZ: But, more seriously, you have heard the circumstances of my life, and they are what they are.

SENATOR RUSSO: Yeah, but you see, Chief, the problems concerning the illness of your wife really come after -- I think, if I followed your testimony-- Basically, the New York connection -- we'll call it that -- is back in 1971, and you told us something about the kids, and so forth. Again, I don't raise these comments in any way critically of what you have done. I just, you know, would hope -- and who knows, maybe you will give it some thought -- that because you are the Chief Justice-- You know, you are not the Municipal Court Judge in Old Bridge; you are the Chief Justice. There is a quest and there is a statute and there are arguments raised, and things of that sort, and I would think that it would go a long way toward easing the concerns of the people of this State -- legislators and so forth -- if it were made unequivocally clear that if, in fact, you are reconfirmed as Chief Justice, and tenured for life, that it is going to be clear so it cannot be disputed that you are a resident of New Jersey.

I will just leave you with that thought for now, and maybe we will talk about it later. I do think, though, that it should be made very clear that there is no truth whatsoever to the allegation I have heard that the reason you live in New York is because you want to be closer to Governor Kean. (laughter)

CHIEF JUSTICE WILENTZ: Senator, I know this is not what you want to hear, but I do not want to play any games with you or with this Committee. I am not going to leave my wife in a position that will devastate her life, her personality, everything about her. I hope I have done enough for this State, I hope I have been a good enough Chief Justice to allow something that isn't quite what I would like -- I don't mean to diminish it -- or what you would like-- I am not going to do that to my wife.

I hope, as I said before, that I can resume what I did, and I think I can, but I don't want to tell this Committee

that I am going to take her out of New York and bring her to Perth Amboy, after all that has happened. That is not in the cards, honestly, in my opinion.

SENATOR RUSSO: I appreciate your candor.

SENATOR O'CONNOR: Senator Orechio?

SENATOR ORECHIO: Chief Justice, where is the office of the physician of Mrs. Wilentz? Is it in New Jersey or in New York?

CHIEF JUSTICE WILENTZ: New York, Senator. Even before we had an apartment in New York, we both had physicians in New York.

SENATOR ORECHIO: When she required hospitalization, was it a New York hospital or a New Jersey hospital?

CHIEF JUSTICE WILENTZ: A New York hospital.

SENATOR ORECHIO: A New York hospital?

CHIEF JUSTICE WILENTZ: Yes. Her doctors -- the staff of Mount Sinai Hospital-- That is where she had all of her operations.

SENATOR ORECHIO: Can you describe for us your daily regimen -- when you leave New York, when you are in your office in Perth Amboy, and when you go home?

CHIEF JUSTICE WILENTZ: Yes, I can, Senator.

SENATOR ORECHIO: In terms of time.

CHIEF JUSTICE WILENTZ: Yes. I leave the apartment in New York regularly between 6:15 and 6:30 in the morning. I would arrive at my chambers in Perth Amboy -- if that is where I was going -- at approximately 7:15 in the morning. I stay at my chambers; I work at my chambers; I eat at my chambers. I do nothing but work during all of that time.

At about 6:15, I go to my apartment in Perth Amboy, and I often have a drink at my apartment in Perth Amboy. And, at about 6:30, I leave for New York. While I am in the car going in the morning, and while I am in the car going to New York in the evening, I work. I take boxes of work with me.

When I get to New York, I have dinner with my wife at the New York apartment, and then I work later on in the evening. I get to sleep at approximately 11:00, 11:30, midnight, and sometimes later. Is that the kind of information you wanted?

SENATOR ORECHIO: Yes. What I am wondering, also, is, what time do you arrive in New York at your apartment?

CHIEF JUSTICE WILENTZ: Seven-thirty, eight o'clock at night.

SENATOR ORECHIO: And what time do you normally go to bed?

CHIEF JUSTICE WILENTZ: Eleven, eleven-thirty, midnight, one o'clock.

SENATOR ORECHIO: Those hours after dinner while you are awake, is that when you are working on whatever matters you have having to do with the court?

CHIEF JUSTICE WILENTZ: All kinds of matters, Senator, whether the court is meeting or isn't meeting.

SENATOR ORECHIO: So, basically, what you're saying is, you leave at 6:15, you arrive in Perth Amboy at 7:15, and for the most part during your waking hours, you are really involved for about 15 hours with activity that has to do with New Jersey, as well as with your function as Chief Justice.

CHIEF JUSTICE WILENTZ: Correct.

SENATOR ORECHIO: One other question: You talked about your immediate family -- Mrs. Wilentz and your children. What about other members of your family -- your brother, your sister, your father? Do they live in New Jersey or in New York?

CHIEF JUSTICE WILENTZ: My mother and father live in New Jersey -- in Perth Amboy. They have an apartment in Long Branch, where they go in the summer, maybe even longer than the summer. My brother and his wife live-- I don't know if they have moved yet, but they are about to move to Metuchen, but they have lived in New Jersey all the time -- Fort Lee, I

believe. My sister lives in New York; has lived there for quite a few years. She and her husband lived in New Jersey for quite a few years before that.

SENATOR ORECHIO: In terms of your father and mother, and certainly before--

CHIEF JUSTICE WILENTZ: My-- Oh, go on, I'm sorry.

SENATOR ORECHIO: Before your wife became ill, was it part of your family regimen to visit or be visited by them in New Jersey?

CHIEF JUSTICE WILENTZ: We used to have-- My mother used to have all of us there at Thanksgiving. In other words, everyone, no matter where they were, would come to her Perth Amboy home for Thanksgiving. That hasn't happened for some time. I would visit them when I left work before I would go to my Perth Amboy apartment. When I was staying in Perth Amboy at night, I would go there; on occasion, I would eat there with them in Perth Amboy. There were various religious holidays, but that was quite some time ago, when we would go to their house, not during the period since I have been Chief Justice.

SENATOR ORECHIO: In terms of your other social activities, do you see your State University play football?

CHIEF JUSTICE WILENTZ: I haven't seen a football game for quite some time.

SENATOR ORECHIO: No other questions, Mr. Chairman.

SENATOR O'CONNOR: Questions from the Committee? Senator Laskin?

SENATOR LASKIN: No.

SENATOR O'CONNOR: Senator Gormley?

SENATOR GORMLEY: No questions.

SENATOR O'CONNOR: Senator DiFrancesco?

SENATOR DiFRANCESCO: Chief, I know you have spent a lot of time on this issue, but just for my own purposes, you said that this statute was called to your attention. I believe it is 52:14-7. You have outlined all of the facts about where

you are physically, how you feel about New Jersey versus New York, and whatever. Is it your testimony that you are a resident of the State of New Jersey within the framework of this statute?

CHIEF JUSTICE WILENTZ: Senator, I have not researched the statute. I am not that familiar with the statute. In fact, I was not aware of the statute until quite recently. So, I am not about to tell you my interpretation of it. I note it is collected among statutes that have to do with the Executive Department, but more than that I just don't know.

SENATOR DiFRANCESCO: See, I feel, based upon my quick reading of the statute -- and nothing has been called to my attention otherwise -- that it would apply to all judges, for example, in the State of New Jersey. If you are suggesting to me that it hasn't been researched by yourself and that you can't really express yourself legally, but on the other hand you are laying out the facts to me, and asking me to draw my conclusion as to whether or not that means you are a resident of the State of New Jersey-- Is that really what your position is -- that you are laying out the facts, and we draw our own conclusions?

CHIEF JUSTICE WILENTZ: Senator, it may become essential for me to come to a conclusion on that. I simply have not done so, either on the question of its applicability to judges, or assuming its applicability about whether or not I am a resident of New Jersey within the meaning of that statute, assuming the word "resident" is used, and I think it is.

SENATOR DiFRANCESCO: Now, just to further clarify -- for my purpose -- what you said before about the 12 days, the one times 12, and the 300, you talked about sleeping versus working. Is that correct?

CHIEF JUSTICE WILENTZ: That is correct.

SENATOR DiFRANCESCO: Is that what one of your points was, the few hours in New York--

CHIEF JUSTICE WILENTZ: I don't know if it was a point; it was a fact.

SENATOR DiFRANCESCO: I have nothing else.

SENATOR O'CONNOR: Mr. Chief Justice, getting back to some of the claims and allegations that were made by Senator Garibaldi, there was some claim of impropriety on your part with respect to the decision to have a Union County judge preside at the Nelson trial. Would you comment on that?

CHIEF JUSTICE WILENTZ: Yes. (short conference among Committee members) Shall I respond?

SENATOR O'CONNOR: Yes, please.

CHIEF JUSTICE WILENTZ: I received a telephone call from the Assignment Judge of Middlesex County — Judge Breitkopf -- advising me of certain facts concerning the Nelson matter, and requesting that I get the case out of Middlesex County because, in his opinion, no judge in Middlesex County would be able to handle that case. What I should have done, instead of literally getting it out of Middlesex County, was to transfer a judge from another county into Middlesex. I made an error, and the way the order was framed was that the case was transferred to Union County to such judge as might be assigned by Assignment Judge Beglin. Very simply, there was no purpose whatsoever in sending the case to Union County, but every purpose in not having a Middlesex County judge sitting on the case.

Shortly after that, I recused myself from the case because my former firm became the attorneys for Mr. Nelson in his ethics matter. But, since that time, that aspect of the matter has been cleared up, and Judge Beglin has sent the case back to Middlesex, but with the Union County judge he designated, Judge McKenzie.

I would like to tell the Committee what Judge Breitkopf told me. I would like to tell the Committee what his reasons were for requesting me to get that case out of the

hands of any Middlesex County judge. I cannot do so. It would be grossly unfair and improper for me to do so. It is a little difficult for me to explain to the Committee, but I simply cannot give the reasons he gave me. The only analogy that I would suggest -- although there may be others -- is that sometimes a judge has a presentment that a Grand Jury is about to hand down and, under the law, people named in the presentment have the right to object to the release of the presentment because they think it will unfairly affect their reputations. So, the judge has a hearing and makes a decision. In some cases, Mr. Smith, whose name is in the presentment, will not-- The judge strikes the name from the presentment. That judge, in my opinion, if asked about what the proceedings were that he had before him-- If he said, "Well, I had this application of Mr. Smith, who didn't want his name to stay in the presentment," he would have deprived Mr. Smith of the fairness of the whole proceeding he is intended to give him.

I am not suggesting the analogy as to my inability to give you the reasons for the transfer or the change of judges. It is a complete analogy. Whatever the reasons are, they are not to do a favor for Senator Lynch. The judge who suggested the transfer, while I am sure he knows Senator Lynch, because Senator Lynch is a very active practitioner in Middlesex, doesn't have the same kind of political stripes that I apparently have. And, as the Senator was quoted as saying, "You don't do a favor for someone who was the head of the Judiciary Committee and the Majority Leader, by taking a case out of the hands of the judges who know him best and, presumably, like him best." That is my answer to that.

SENATOR O'CONNOR: Thank you. Are there any questions on this particular issue? Senator Dorsey?

SENATOR DORSEY: Chief Justice, was it normal practice and procedure for Judge Breitkopf to have called you, rather

than someone else, or to have called someone else before the question was posed to you?

CHIEF JUSTICE WILENTZ: In this area, Senator, I am not positive what normal practice is. I did not regard it as at all unusual. The rules about transfer of venue don't purport to cover the situation of judges of a county feeling, because of the circumstances of a case, that it should not be handled in that county. I believe when Judge Coruzzi was indicted, Judge DiMartino -- the Assignment Judge of Camden County -- called me. It was obvious that it could not possibly be handled by any judge in Camden County. When Mr. McGraff, who was the Clerk of the District Court in Essex County, was to be tried on a charge in Essex County, I believe that Judge Marzulli -- the Assignment Judge of Essex County -- called me. It is possible he called the Administrative Director, who called me. I don't regard the difference as significant.

SENATOR DORSEY: You testified a minute ago that you made the decision to transfer the case to Union County. You then went on to say that that probably was not the action you should have taken; you should have simply transferred a judge from Union County to hear the case in Middlesex County.

CHIEF JUSTICE WILENTZ: Correct.

SENATOR DORSEY: When did it occur to you that your first decision was not the most appropriate decision under those circumstances?

CHIEF JUSTICE WILENTZ: It didn't occur to me that it wasn't the most appropriate; it occurred to me that I had made a mistake. It occurred to me when I read the newspapers a couple of days thereafter, with the defense counsel and the prosecution both saying, "We don't understand it. This is crazy. This is wrong to send it to Union County."

SENATOR DORSEY: Right.

CHIEF JUSTICE WILENTZ: I just hadn't thought of it. My objective was that no Middlesex County judge handle the

matter. I made the error of phrasing the order, or signing the order -- and, frankly, it is the way I thought about it -- as one of changing venue, which change was wrong.

SENATOR DORSEY: Well, when you discovered it was a mistake -- or decided it was a mistake -- on any basis, why did you not immediately change the order, which I presume you had originally issued, to the form that you then thought most appropriate?

CHIEF JUSTICE WILENTZ: I would have-- Senator, I would have gladly done it, except by then I had recused myself in the matter, because I learned that my former firm represented Mr. Nelson in his ethics matter.

But, when I gave the order to Justice Clifford, as is apparent from what I have read anyway about Judge Beglin, I told him that I believed I had made an error.

SENATOR DORSEY: Okay, thank you.

SENATOR O'CONNOR: Any other questions on this issue? (no response) Mr. Chief Justice, what role did you play in the decision to have the records of the ethics proceeding involving Assemblyman Doyle sealed?

CHIEF JUSTICE WILENTZ: The factual premise of that question is, I think, totally mistaken. Would you repeat that question, Senator?

SENATOR O'CONNOR: What role, if any, did you have in the decision regarding the ethics proceedings -- involving the sealing of the ethics proceedings concerning Assemblyman Doyle?

CHIEF JUSTICE WILENTZ: I think you are referring to the sealing of a record of settlement in a lawsuit in which Assemblyman Doyle was a party. There is no sealing of any ethics record concerning Assemblyman Doyle, that I am aware of.

SENATOR O'CONNOR: Okay. With respect to the corrected question, then.

CHIEF JUSTICE WILENTZ: Okay. The role I had was this: I read the paper one morning, or I read the clips we get

from the press, of a reporter complaining, in the article, that a lawsuit which had been brought against the Assemblyman had been settled, and that the record of settlement had been sealed. The article was complaining that the judge shouldn't have done it, and people now don't know that the settlement was. There were political overtones to both the sealing and the complaint. In other words, this was a very important public official, and I guess the reporter didn't think it was right that the -- that whatever the settlement was, wasn't known.

The minute I read that, I called up the Assignment Judge, who happened to have been the judge who tried the case, and who sealed the record. It was Assignment Judge Arthur Blake. I asked him how come this was sealed -- the settlement was sealed. He advised me that counsel on all sides requested it, consented to it, etc. I said, "I think it's wrong. The fact that counsel agrees to seal a record doesn't mean a record should be, could be, ought to be sealed, and I want you to correct it." He said he would.

I have looked through my file since then, and I note that on September 9, I got a copy of his letter to all counsels, saying: "This will confirm the fact that I have unsealed this record, and all counsel have consented to the unsealing of this record." It was the record of the settlement of the case, I believed, and I assumed the matter was finished until I read about a week or so later that the reporter was still complaining about the record being sealed, at which time I again called the Assignment Judge. I found that while the parties had been notified, the press had not been notified, and I told the Assignment Judge, "Obviously, you don't always advise the press of every order and everything else, but in this case, quite clearly, it is very important that the press be told that it is no longer sealed." And, by letter to me dated September 27, he advised me that he had advised the press that the record was no longer sealed.

SENATOR O'CONNOR: Are there questions on this particular issue that has just been raised?

SENATOR RUSSO: Just one.

SENATOR O'CONNOR: Senator Russo.

SENATOR RUSSO: I think this is totally irrelevant to why we are here today, but just to clear the air-- There were no findings of ethical improprieties against Assemblyman Doyle, or lawyer Doyle, I should say, or litigant Doyle, in that particular matter, were there?

CHIEF JUSTICE WILENTZ: Not that I know of, Senator.

SENATOR RUSSO: He was involved in litigation as a party or an attorney. I think--

CHIEF JUSTICE WILENTZ: I believe he was the named party in that action.

SENATOR RUSSO: The party, right. It had no connection or relationship to his legislative capacity in any way, directly or indirectly, that you are aware of, did it?

CHIEF JUSTICE WILENTZ: My recollection, which is really very, very weak on that because the only thing I have any real recollection about is the sealing-- But I do believe it was in his capacity as a lawyer -- period.

SENATOR RUSSO: Then, in fact, as I understand you, rather than you playing any part, as has been suggested by a particular legislator recently, in covering something up, it was, in fact, you who directed that the matter be opened and unsealed. Is that correct?

CHIEF JUSTICE WILENTZ: That is correct.

SENATOR RUSSO: I see. That appears of record?

CHIEF JUSTICE WILENTZ: The telephone calls do not appear of record. The copy of the letter the judge sent to counsel telling them the record was unsealed, I have. The copy -- not a copy, his original letter to me, some weeks later, telling me that he had advised the press, yes, I have that.

SENATOR RUSSO: This is a matter of public record, is it not?

CHIEF JUSTICE WILENTZ: The fact that it was sealed and unsealed is certainly a matter of public record -- I guess.

SENATOR RUSSO: And anyone, of course, who had taken the time to be careful would have been able to ascertain these facts?

CHIEF JUSTICE WILENTZ: I don't know, Senator.

SENATOR RUSSO: On that, that's all.

SENATOR O'CONNOR: Any other questions from the Committee on this issue? (no response) Mr. Chief Justice, am I correct that you had a telephone call with Assemblyman Bishop concerning pending legislation restricting the power of the courts to seal records?

CHIEF JUSTICE WILENTZ: Yes.

SENATOR O'CONNOR: Would you tell us the circumstances?

CHIEF JUSTICE WILENTZ: I will. The circumstances are that I read in the paper that there was a bill pending before some committee. I think I got it simply by reading the paper. It is possible someone told me, but I am not sure of that. I knew that we were then -- we, the court system -- working on-- The bill related to the sealing of records. It was a proposal that would, in some way, restrict the courts' ability to seal records. It was not a very stringent kind of restriction, but it was clearly in that area, and I think I realized that it was probably caused by the situation concerning Assemblyman Doyle. I think I realized that; I think it was.

In any event, I saw it. I knew we were working on it, and I knew that we were going to try to do something that would be satisfactory. I did not want to get in a situation where the Senate -- or the Legislature -- would be regulating something that I thought we had more of an obligation to regulate. I certainly didn't want to get involved in what might be inconsistent regulations, without even touching on powers of the Legislative Branch or the Judicial Branch, and I made the horrendous error of picking up the phone and talking to this

Assemblyman on the spur of the moment. I never should have done it. We had a lovely conversation. I wasn't intimidating. I don't know if I know how to be intimidating, and he didn't take it as being intimidating. But, it was an interference that should not have occurred.

It was communication that was quite legitimate, but from the Chief Justice it sounds wrong; it is wrong. I should have done what I normally would do, which is to call the people in the AOC and say, "They've got a bill over there. I think it is the kind of thing we ought to do. Will you please talk to the sponsor, find out if it is something we can cooperate on, etc." Instead of that, I called him, and I was wrong. I apologize. It was a most unfortunate time to make that particular error, because I was involved, at that time, in the courtesy question concerning Judge Pressler.

SENATOR O'CONNOR: Senator Russo?

SENATOR RUSSO: Well, now that we've got a little bit of an unpleasant roll going, let's get it over with all at once. What comment do you have, Chief Justice Wilentz, about -- let's put it in quotes, because I don't mean it quite the way -- I can't think of another word, though -- your conduct during the Pressler matter, particularly your holding a press conference on the subject in the Governor's outer office?

SENATOR DORSEY: Excuse me, John. I don't want to interrupt, but you're getting off the call to Bishop. Could we finish that one first?

SENATOR O'CONNOR: I think Senator Dorsey is correct, Senator Russo. We will get to that point, but--

SENATOR RUSSO: I didn't know you had it on your agenda. I thought that while you were talking about communications with the Legislature and the courtesy issue that was mentioned, it might be-- But, if you do have it on the agenda further down, then I will certainly wait.

SENATOR O'CONNOR: We'll take that issue up right after this one, but for the moment, I would like to restrict it to the former Assemblyman Bishop situation.

SENATOR RUSSO: I've lost the element of surprise now. (laughter)

SENATOR O'CONNOR: Senator Van Wagner?

SENATOR VAN WAGNER: Mr. Chief Justice, I just wanted to ask a question regarding your testimony relative to the phone call you made to Assemblyman Bishop. You characterized it as a spur-of-the-moment reaction. In essence, would you say that from this point forward that perhaps you would not react in that matter -- the spur-of-the-moment reaction -- based on the fact that you have an AOC that can do those things?

CHIEF JUSTICE WILENTZ: I would hope so, Senator, not only from that moment forward, but from that moment backward. It was just most unfortunate. I shouldn't have done it.

SENATOR VAN WAGNER: Would you say it is unusual for a Chief Justice to make that type of a phone call, or would you--

CHIEF JUSTICE WILENTZ: It is unusual for me; I assume it was unusual for Chief Justice Hughes; I assume it was unusual for Chief Justices Weintraub and Vanderbilt, but I am not at all certain. It is not unusual for me to speak to legislators about appropriations or about salaries, but about other kinds of matters, especially a pending bill, to talk to a sponsor in that way is not right.

SENATOR VAN WAGNER: That was my next question. Despite your reluctance now to perhaps pose a question regarding legislation that affects the administration of the courts, I would assume, and I would hope, that you would not extend that reluctance to discussions of budgetary concerns which have an effect on the State, which may require you to discuss that with members of the Appropriations Committee, or associated committees.

CHIEF JUSTICE WILENTZ: I would have no reluctance on that score at all, Senator; nor even on legislation that doesn't deal with the appropriations budget. It is necessary for the Judiciary and the Legislature to communicate, to exchange views. The problem was the method I used.

SENATOR VAN WAGNER: My concern, although I have a sensitivity to the line of questioning in terms of the possibility of intimidation, and things of that nature-- In fact, it would be more my concern if the Chief Justice of this State were reluctant to comment or to express his views to a legislative member of a particular committee regarding the administration or budget of the court.

CHIEF JUSTICE WILENTZ: It is not an easy problem, and I think it probably becomes the most important factor. The kind of unilateral contact between the Chief and a Senator or an Assemblyman sponsoring a bill is sufficiently infused with the possibility that someone will say intimidation, overbearing, or something like that, so that that kind of contact, as an initial contact, is probably most unwise. That doesn't mean that if the subject is important enough that the legislator can't, at some point, if it is deemed sensible, sit down with the Chief Justice and the AOC, with his aide, or some other legislators. I don't mean to build any wall between the Legislature and the Judiciary, or the Legislature and my office.

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

SENATOR O'CONNOR: Thank you, Senator. Senator Dorsey?

SENATOR DORSEY: Chief Justice, Assemblyman Bishop happened to be my Assemblyman at that time. He advised me that the call was made to his home; it was made at 8:30 in the morning. As I understand it, you reflected, upon reading about his legislation, that it was, in fact, in connection with the Doyle matter, in which apparently he and then Assemblyman Gallo were attempting to obtain copies of the records of that settlement. Now, apparently, very quickly after making the

call, you reflected that the call was inappropriate, and you then wrote a letter to the Assembly generally -- specifically to Bishop and Alan Karcher -- apologizing for having made the call.

Now, why was the call wrong, Chief Justice?

CHIEF JUSTICE WILENTZ: I explained it as best I could, Senator. The thing that was wrong about the call was that there is a possibility, when a Chief Justice picks up a phone to call an Assemblyman, that that Assemblyman might feel intimidated. More than that, it might be felt that even if he were not intimidated, it might appear that he was intimidated. It is possible to take the position also that there should be no contact even by the AOC with a legislator, and that all such contacts whould be through the Speaker of the Assembly, or the head of the committee, or something like that. I have not taken that position.

SENATOR DORSEY: Am I to understand that the reasons that call was inappropriate -- particularly since it obviously was very much a political matter between members of very different parties in the Assembly -- the reasons that that call should not have been did not occur to you until after the call had been made, Chief Justice?

CHIEF JUSTICE WILENTZ: Absolutely. As a matter of fact, I have no recollection of thinking of this as a political matter. In other words, I just didn't have that in mind at all. I had in mind an apparent situation where the Legislature was about to do something concerning a matter that the courts had a very strong interest in, and I didn't want to get involved in that at all. I maybe should have thought about the other, but did not, in the least bit.

SENATOR DORSEY: I will accept that. I find myself surprised that the reasons for not making the call would not have occurred to you before you made the call.

Now, in your letter, you advised that it had been your practice -- the letter you wrote on September 23, by way of apology to Bishop and the Assembly generally-- You advised: "I had never directly contacted a legislator concerning legislation, with the exception of the appropriations bill as it affects the Judiciary, and the further exception of legislation concerning judicial salaries." Do you recall that?

CHIEF JUSTICE WILENTZ: Yes.

SENATOR DORSEY: Has that been your practice since you have been Chief Justice?

CHIEF JUSTICE WILENTZ: I believe so.

SENATOR DORSEY: Now, other than legislation, have you contacted legislators about other types of matters that come before them which they are asked to pass upon?

CHIEF JUSTICE WILENTZ: I assume so, Senator, but I just -- as of this moment -- can't think of any particular situation.

SENATOR DORSEY: What about judicial nominations?

CHIEF JUSTICE WILENTZ: I don't think so. It is possible that if a person were coming up for reappointment, and I heard that a particular Senator was going to -- or threatened to exercise courtesy, it is possible, and now that I have thought of that, I think there was an occasion where I did speak to a legislator.

If you are talking about initial appointment, I don't believe I ever have.

SENATOR DORSEY: You did speak to me about a reappointment in--

CHIEF JUSTICE WILENTZ: Yes. I remembered that as I was saying it.

SENATOR DORSEY: Now, other than that, you're telling me that you have not initiated any other contacts with legislators during your term?

CHIEF JUSTICE WILENTZ: No. I am telling you that I can't think of any. In other words, you're saying, "You never, ever called a legislator." I'm sure I must have, but about what and under what circumstances, I don't know.

SENATOR DORSEY: Thank you.

SENATOR O'CONNOR: Senator Laskin?

SENATOR LASKIN: Mr. Chief Justice, I am not going to get into any particular decisions or specific incidents, because I really think that would be inappropriate. But, I think you know me well enough; I am an awfully strong traditionalist, and I believe very strongly in the separation of powers.

What I want to put to rest today, for me, personally, so I hope that I never see it again, and I think you are indicating that -- I think you are-- I, personally, resent a judge -- a Municipal Court judge, a Superior Court judge, a Chief Justice -- making public statements -- making public statements, whether they be policitcal or pseudo-political, on public issues, other than through the normal channel of making an opinion -- deciding a case. So, I want you to know that I was really very upset over this incident where you spoke to some legislator or you took a public position on an issue.

The issue is really unimportant. Taking the position outside of the judicidal structure is what bothered me. You indicated today that perhaps it is not the appropriate thing to do, and perhaps it was done in haste, or whatever. I am not trying to embarrass you; I just hope that I am getting the feeling from you that you feel the same way.

CHIEF JUSTICE WILENTZ: Senator, I feel very strongly the same way if what we are talking about is a judge making a statement on a public issue, making it publicly, as a judge, on a social issue, on a legislative issue. I agree with you completely. While I regard my call to the Assemblyman as wrong, I think of it as wrong more in the sense that I

indicated before. I did not mean to imply either to him, or to anyone, that I thought his position on that legislative issue was worse than ours, or better than ours. I didn't mean to imply any position on any legislative issue, but I understand the connection.

SENATOR LASKIN: See, I have no problem with a legislator contacting the Chief Justice. I have no problem with that because then it is discretionary with the Chief Justice as to whether or not he will discuss that particular subject matter with that particular legislator. Some legislators are, perhaps, I guess, more or less honorable than other legislators, but that is a discretionary decision with the Chief Justice as to whether or not he will respond. I have no problem with that.

But, I was really very upset when I read in the paper that you -- not you Wilentz, you the Chief Justice -- were making some comments that I really thought shouldn't be made at all. Whether the subject matter of the comment was good, bad, or indifferent really didn't bother me. The fact that it was made bothered me, if you understand my point.

CHIEF JUSTICE WILENTZ: Yes, I do.

SENATOR O'CONNOR: Senator Zane, then Senator Russo.

SENATOR ZANE: Mr. Chief Justice, the conversation you had with the Assemblyman we are discussing-- Could you tell us what that conversation actually was? What did you say?

CHIEF JUSTICE WILENTZ: "Hello, is this Assemblyman Bishop?" "Yes." "Assemblyman, I am sorry to call you so early in the morning, but I just read that you apparently have a bill pending in such and such a committee that has to do with sealing of records." "Yes, yes I do," although he had a bit of a southern drawl, as I recall it. I said, "Assemblyman, you may not be aware of it, but we have been working on this matter of courts sealing records for some time. As a matter of fact, I am having a meeting with the assignment judges today, and we

are going to consider it. I think it might be uncomfortable for me if the Legislature goes ahead with this and winds up with one kind of set of rules, and we wind up with another kind." He said, "Yes, that probably would not be a good thing." I said, "I would appreciate it if you would consider withholding any further action until we get a chance to put our stuff in place and see if that is satisfactory to you."

He said, "Well, that sounds fine with me." I said, "Well, good," and, you know, "some day I would love to meet you." He said, "Yeah, I would like to meet you, too, Chief." Five minutes -- tops.

SENATOR ZANE: One other quick question. Looking to the third branch--

CHIEF JUSTICE WILENTZ: Five minutes of a big mistake, but it was five minutes.

SENATOR ZANE: I understand. Just one other question. Looking at the third branch of government, the Executive Branch-- Are you, occasionally -- from time to time, etc., whatever -- called upon by the Chief Executive to discuss legislative matters, other than judicial salaries and appropriations?

CHIEF JUSTICE WILENTZ: Not at all.

SENATOR ZANE: Thank you very much.

SENATOR O'CONNOR: Senator Russo?

SENATOR RUSSO: Justice Wilentz, the difficulty, I guess, in this, you know, whole area, is that everybody has a different viewpoint. I sat listening to your testimony about apologizing for the call to the Assemblyman, and, frankly, I can't for the life of me understand what you are apologizing for. If what you are telling us is that if you are confirmed, the remainder of your tenure in the court you are not going to get involved on issues that affect the court, I am not so sure you are going to be serving effectively.

CHIEF JUSTICE WILENTZ: No, I didn't mean to say that at all, Senator. What I meant to say was, while it is quite clear that probably well over three-quarters of the Legislature wouldn't feel the least bit intimidated by a call from me, it is possible that some people might perceive it as intimidation. So, the things there has to be communication on, there is going to be communication on. But, I will avoid the possibility that someone will regard it as an intimidating approach.

SENATOR RUSSO: Let me suggest to you, Mr. Chief Justice, that-- You certainly don't need advice from me as to how to run the Judiciary, I'm sure. I don't know if I would know what I was talking about. But, let me suggest to you that when a matter is pending before the Legislature -- and I don't only mean judicial pay raises, and I don't only mean, although I include appointments -- reappointments -- but legislation, I think you have an obligation to pick up the phone and talk to us. Any of us who are intimidated by it don't belong here. We ought to be able to listen to you, evaluate what you say, and make a judgment. But I certainly don't think there ought to be any suggestion coming out of these hearings that your input into the process-- It should not only be considered proper, but welcomed and encouraged. I, for one, feel that we ought to do that.

CHIEF JUSTICE WILENTZ: When I feel that the interest of the court is involved in legislation, you will hear from me.

SENATOR RUSSO: Now, of course, I don't mean to go the step further -- I can't dare mention it now, because I will be ruled out of order twice by the Chairman -- to the extent of public comments on things such as senatorial courtesy, press conferences, and the like. But, we will come back to that.

But, I don't think your call to that Assemblyman was in any way improper. As a matter of fact, I think where it deals with the court, you should -- you have an obligation to

make that position known. I think the Chief Justice who finds the time to talk to legislators on matters important to the court is the one who is really doing his job well. I don't think that ought to be discouraged.

That's all for now.

SENATOR O'CONNOR: Senator Russo, I think at this point it would be appropriate to take up the question that you were ruled out of order on before, that being the nomination -- the renomination of Judge Pressler.

SENATOR RUSSO: I remembered your ruling well, Mr. Chairman. It will be recalled on the floor of the Senate at the appropriate time.

Let me go right into that then, Chief, the thing I started to suggest before. I'll never forget that day when I had to walk over to the Governor's office on a matter, and walked into a crowded outer office and saw you conducting a press conference on senatorial courtesy and on Pressler -- and/or both, I think it was both. You had many-- As I recall, you had many strong public comments about the concept of senatorial courtesy, the evil practice, and so forth. I just want to say -- as I think I have told you personally when we talked about it -- that is where I thought you made a serious mistake. I suspect from our conversations that you felt the same way. I am totally unconcerned that we are going to see that type of thing, you know, in the future, because that is where I thought the Judiciary was now being brought into the political arena.

I guess, too, it wouldn't have been so bad if the press conference -- although it still would have been wrong -- had been held in the Supreme Court chambers, but it was held in the outer office of the Governor, who was leading the fight against senatorial courtesy at that time. So, I raise it with a comment that I thought that was totally unappropriate, but to invite a reaction from you.

CHIEF JUSTICE WILENTZ: I will react, Senator. It would have been preferable that the conference -- assuming that there should have been a conference -- a press conference at all-- It would have been preferable that it be held at the Justice Complex. It would have been a little bit difficult on that particular day, because the Governor had just had a press conference himself. The Legislature, as I recall it, was going full blast, and I wanted the attention that I had a chance of getting much more of in that place than at the Justice Complex.

I am not sure that was a wise decision in terms of the location for calling the press conference. Whether calling the press conference itself was a wise decision, is something that one, I think, can debate. I regarded the possibility that senatorial courtesy was going to be allowed to prevent the reappointment of someone who I regard as a very superb judge as being something I could not tolerate, and would not tolerate without fighting as hard as I could, because I regard it the independence of the Judiciary, not just that judge, but the Judiciary.

You mentioned before certain kinds of things you think I -- or a Chief Justice should do, if he is going to do his job. As far as I was concerned, there was absolutely no room even for debate in my mind as to what I should do.

Now, whether it could have been done just as effectively by issuing a judicious statement making exactly the same points, I don't know. I have been told by some people that they think the only way that particular situation could have been resolved the way it was, was the way I did it. I am not sure they are right, and I, therefore, have these concerns about it, because I have no doubt that it has very seriously and adversely affected my relationship, perhaps, with the Senate itself, certainly with some members of the Senate.

But, on the issue of whether or not I should have taken a firm position -- a public position, a continued

position -- on that, I am still totally convinced that I had to. I am not sure it achieved what I wanted, which was to strengthen the independence of the Judiciary, or at least to prevent it from being decimated. But, I viewed it that way at that time.

SENATOR RUSSO: I think, if I might offer a comment, that you almost undermined it by that. I think I assume too many things here today in some of these questions, and this is another occasion. I somehow just assume that were that situation to arise again in the future, no way would you react the way you did, and I'm not so sure now from what you just said but that you might not. I think the issue of senatorial courtesy -- with all due respect, Mr. Chief Justice, and I have never been a proponent of it -- is none of the business of the Judiciary.

CHIEF JUSTICE WILENTZ: I think the independence of the Judiciary is very much the business of the Judiciary. It is very much my business. I'll tell you, Senator, as long as I think -- and I have made it quite clear I am talking about reappointment, and not about appointment-- As long as I think that kind of action has the potential impact of diminishing the independence of non-tenured judges -- not that particular judge, but the entire system -- I am going to speak up on it.

SENATOR RUSSO: Needless to say, the rationale you have just given is one I agree with -- as most of us do -- as we so indicated in your own very case. But whether the Senate of the State of New Jersey -- or any other state, or the United States -- has a concept known as senatorial courtesy or not, is a political issue. It is a political issue. If you don't believe that, read some of the Governor's statements on it. It is a political issue. I submit to you, Mr. Chief Justice, it has nothing to do with the Judiciary, and if it affects the independence of the Judiciary, so be it. It is a political issue. That is where I think you and the court almost got into

serious difficulty with the Legislature. Should it occur again, I caution you, as sincerely as I can, to stay out of it -- the political concept of whether or not there should be senatorial courtesy. The kindest statement you made in that press conference outside the Governor's office-- It was a condemnation of the Legislature for having the concept, maybe justified, but it was coming from a sitting Supreme Court Justice. I urge you to restrain yourself on that kind of an issue. It is not the independence of the Judiciary that is first. It is a political concept that may affect the independence of the Judiciary.

CHIEF JUSTICE WILENTZ: Senator, I don't want to express my disagreement too many times with you. I do disagree with you. I don't care what label is given to the action. Obviously, it has a very, very substantial political content. If I view that action as threatening the independence of the Judiciary -- and I do so view it -- there is nothing that is going to prevent me from saying so, and fighting, as best I can -- I hope, perhaps, in a more dignified way -- fighting as effectively as I can to let the Legislature know.

I told the people at that press conference that the Legislature, and the Senate, in particular, was to be complimented because the courtesy custom was so deeply ingrained -- and I knew it -- and had practically never, ever been used on reappointment. I felt then, as I do now, that the Senate has, in that respect, behaved itself marvelously well concerning the courts. What I was concerned about, was that every judge without tenure would take a look and see this particular judge, who is just known throughout the system as hard-working, sensational in terms of intellectual ability-- If that judge could be turned down, then they've got to know that they are potentially at the mercy of their Senator.

So, I felt it was terribly important. Now, it's arguable, and I'm sure there are plenty of judges who would

agree with you, that no matter how important I thought it was, the ultimate result was not a good one. I am not confident one way or the other on that, but I just don't know what to do. I can't sit back and say, "So be it. It's political, so--"

SENATOR RUSSO: Well, that is what we do about your decisions all the time. But, you know, the danger here is-- You know, in my judgment -- I don't know if you agree, and I won't call on you to say whether you do or not because it would put you on a spot -- this Senate is really a fantastic institution. It doesn't appear to be, but it always manages, in its slumbering way, to work things out in the right way. I really believe that you came close to undermining the right result; in other words, to producing the counter-result, because there was a lot of resentment in the Senate. There was almost a feeling of, "Well, let's show him." Fortunately, that didn't happen.

But, you know, we do manage in our own way. What I'm saying is, leave the political issues to us. You know, we usually can work them out. Have some confidence in us, and stay out of that kind of a political issue. Now, I suspect in view of what you have said, and how strongly you feel about it, that my words fall on deaf ears, and they may well be wrong.

CHIEF JUSTICE WILENTZ: Hardly. Not so, Senator. You're talking about, leave the political issues to you, and I couldn't agree with you more.

SENATOR RUSSO: Yeah, but you don't agree with what is a political issue.

CHIEF JUSTICE WILENTZ: The one issue, that even though it is also political, happens, also, I think, to affect the Judiciary in such a critical fashion, that it would be the worst abdication of responsibility on my part to sit back. That is how I feel.

SENATOR RUSSO: All right. I will just leave it with the thought then that you may satisfy the emotional feelings of

some who think you should speak up, but I suspect that you will probably be counterproductive in the result by doing so. But, that is just one opinion.

Thank you, Chief.

SENATOR O'CONNOR: Senator Zane, then Senator Dorsey.

SENATOR ZANE: Mr. Chief Justice, I almost think that your comment that you would involve yourself further, and I think the suggestion is there, to the same extent that you did in the Pressler matter -- and I have to say this, because it is a feeling I have -- borders on arrogance. I don't think it is any of your business. I say this respectfully and also as an officer of the court, but I just don't think it is any of your business whatsoever. The court we give you to work with is a process left to the Legislative Branch and the Judicial Branch, and I think that our Constitution very clearly provides that. The Governor appoints and we advise and consent. I see no room within that language -- anyplace constitutionally -- to give you any say whatsoever on a public level.

I think if you have comments to make privately, I think that is your business. But I happen to think -- and I have to say this to you-- I think you diminished the dignity and respect of the court of this State by involving yourself in the Pressler matter to the level you did. I would follow it up by asking you a question: What would you do to an Assignment Judge who involved himself by calling a press conference and suggesting that a certain judge who may not be reappointed, should be, and have that Assignement Judge chastise a local Senator for possibly blocking an appointment, or suggesting that that individual should not be reappointed, for any one of a number of reasons -- let's assume valid? What would you do?

CHIEF JUSTICE WILENTZ: I would tell that Assignment Judge, "You better never do that again," and I would ask that Assignment Judge, "How come you did that?" because if there is anything that is clear, it is that that kind of an extremely

difficult decision is one for me to make, no one else. That Assignment Judge cannot get involved in that at all.

SENATOR ZANE: Therefore, you're saying that the same action -- because I think the scenario I just portrayed is very similar-- You're saying you are above that, and that, to me, is arrogance.

CHIEF JUSTICE WILENTZ: Well, Senator, I'm terribly sorry that I appear arrogant to you. I'm saying-- What I am trying to say -- it is not that I am above it -- is that I am the one who is responsible. The way the Judiciary in this State--

SENATOR ZANE: With all due respect, Chief Justice, you are not responsible. You are not responsible for who sits on the court in this State. Show me where in the Constitution it provides that you are, in fact, responsible. God knows, I'm sure you know the Constitution far better than I will ever know it, but where does it show that? And, I'll tell you where it shows that the Governor -- the Chief Executive -- the Executive and the Legislative Branches are responsible for all of the appointments.

CHIEF JUSTICE WILENTZ: Senator, I am not going to repeat the responses I made to Senator Russo. The only point at which I would certainly rethink what I did was the manner in which I did it.

SENATOR ZANE: I have no further questions.

SENATOR O'CONNOR: Senator Dorsey?

SENATOR DORSEY: Chief Justice, after the public press conference, or perhaps before that, did you, at that time, in connection with Pressler, request the opportunity to address the Senate on the Pressler matter?

CHIEF JUSTICE WILENTZ: I requested it at the same time, yes.

SENATOR DORSEY: My understanding was that the President of the Senate ruled that that would be inappropriate.

CHIEF JUSTICE WILENTZ: That is correct.

SENATOR DORSEY: And, did you subsequent to that time, however, then meet with various members of the Senate -- perhaps six legislators -- at a very nice restaurant near Route 3, in a side room, to discuss the issue of the Pressler renomination?

CHIEF JUSTICE WILENTZ: Yes, I did. I don't know if it was a side room, but it was not the main, regular, open restaurant.

SENATOR DORSEY: It would be correctly described as a private meeting, would it not?

CHIEF JUSTICE WILENTZ: Yes, I think so.

SENATOR DORSEY: And, in press reports of that meeting, Senator Feldman stated that you had argued very strongly for the Pressler reappointment. I think that was probably a fair statement of your comments at that time, was it not?

CHIEF JUSTICE WILENTZ: I think that is correct.

SENATOR DORSEY: At that time, Senator Russo suggested to you that it was inappropriate for you to be at that meeting. Do you recall his comments at that time?

CHIEF JUSTICE WILENTZ: No, I do not.

SENATOR DORSEY: You don't recall them?

CHIEF JUSTICE WILENTZ: No, I don't.

SENATOR DORSEY: Has it ever occurred to you since that time--

CHIEF JUSTICE WILENTZ: I take it that I understood your question. You're saying that Senator Russo told me that it was inappropriate for me to be there at that dinner. Is that what your question was?

SENATOR DORSEY: Yes, Chief Justice. At the outset--

CHIEF JUSTICE WILENTZ: I don't recall that. He may very well have done it, but--

SENATOR RUSSO: That's not true, you know, so before you represent that in your questioning--

SENATOR DORSEY: I didn't represent it. I asked whether--

SENATOR RUSSO: Well, yeah, but don't-- Come on, John, if you have some basis for it, that's fine. But, that is not true.

SENATOR DORSEY: All right, I'll withdraw it. Since that time, and based upon what is being said today, do you still feel it was appropriate, not for you to argue for Wilentz in the independence of the Judiciary -- I'll accept that as appropriate-- Do you still feel it was appropriate for you to have met in a private meeting to, in essence, discuss Wilentz and the stripping of Cardinale of his senatorial courtesy?

CHIEF JUSTICE WILENTZ: I'm really not sure, Senator. I mean, appropriateness sometimes gets to be a question of what the appearance will be to the public. And, apparently, some substantial portion of the public -- I don't know what portion-- I assume the way the press writes these things up suggests something about public reaction. There was an overtone of something evil going on. So, if -- I hope not -- the situation occurs again, and I am invited to attend such a meeting, I would certainly have some very serious second thoughts. I would probably say, "I think you should let the press know about the meeting." That is probably the first thing I would say.

The second thing I would say is, "I think the meeting ought to be at either the office of the President of the Senate or at my office -- the chambers of the Chief Justice." But, the truth is -- and now I am no longer responding-- My response to your question is that the form and the procedure concerning the meeting was not the kind of thing I would want to do again, not because I think the meeting was wrong, but because it was perceived as a secret meeting, something done behind someone's back.

The meeting itself, as I understood it, was called by the leadership of both parties of the Senate, to discuss with me what they regarded and what I regarded as an extremely difficult problem. That was something-- Let's put it this way, given what I felt was the very strong interest of the Judiciary in the matter, I was not about to say no. As a matter of fact, I thought it possibley could be constructive. I wasn't quite sure what the object of calling the meeting was, and I am still not quite sure what it was, but it was clear that the legislators there, who were quite important on both sides, wanted me to be there -- at least it was clear to me that they did -- and it seemed to me the kind of thing that there should be communication about, if the Legislature, through its leaders, wanted it.

SENATOR DORSEY: Now, in connection with the Pressler matter, one of Senator Cardinale's principal complaints about Pressler -- Judge Pressler -- was the decision she had concurred in, in the matter of, I think it was State vs. Hodge. That matter ultimately -- in a relatively short period of time afterward -- came before the Supreme Court for decision. You are familiar with that.

CHIEF JUSTICE WILENTZ: Well, I don't know what a relatively short time means, but it got before us. I don't know; I don't remember the time period.

SENATOR DORSEY: Okay. And, the Supreme Court reversed Judge Pressler's ruling, or the ruling by the Appellate Division, and essentially held that the sentence that was meted out at that time was totally inappropriate under the statute.

CHIEF JUSTICE WILENTZ: I think it was not only a question of being inappropriate, I think the judge, in rendering sentence, didn't give accord to some pretty explicit stuff in the Code of Criminal Justice.

SENATOR DORSEY: I thought it was a real good opinion by the Supreme Court, but in that opinion, if I recall correctly, you abstained from participation.

CHIEF JUSTICE WILENTZ: That is correct.

SENATOR DORSEY: Was that abstention based upon the fact that you had involved yourself in the Cardinale matter?

CHIEF JUSTICE WILENTZ: Yes, that is correct.

SENATOR DORSEY: Therefore, by involving yourself in the Cardinale matter, you had put yourself in a position where you could not fulfill your most basic obligation to the citizens of this State by rendering a decision as the Chief Justice. Is that not so?

CHIEF JUSTICE WILENTZ: That is not correct. I would consider my obligation to preserve -- or to attempt to preserve the independence of the court -- the Judiciary -- as affected, as I saw it, by the threat of use of senatorial courtesy, as much more important than my obligation to be one of the sitting justices in the Hodge matter, not that I knew -- obviously, not that I knew, because when I first exercised my right to speak up -- if I have any such right -- there was no complaint about the Hodge matter at that time.

SENATOR DORSEY: Chief Justice, I will not use quite as harsh a term as Senator Zane of arrogance, but what becomes clear, I think, as we go in and continue in this examination, is that oftentimes you have very admirable aims, or ends, that you think should be achieved. I happen to agree with you on the importance of independence of the Judiciary. As a matter of fact, on the basis of that I was forced to do what I did with Justice Pollock recently. On the other hand, it seems to me that, regardless of how good those ends are, you seem, with some repetity (sic)--

CHIEF JUSTICE WILENTZ: With some what?

SENATOR DORSEY: Repetity. You seem to lose sight of what means, of what actions are appropriate on your part as the

head of a coequal branch of government and, because of what you have done, I tend to agree with what Senator Russo has said this morning; that is, you have undercut, you have undermined, in the long term -- not necessarily in the short term, because Pressler got confirmed -- but have undermined in the long term the true independence of the Judiciary and the separation of those respective branches of government as, at least I think, they should be separated.

CHIEF JUSTICE WILENTZ: Senator, I know -- and I could be wrong, I guess -- the height of arrogance is to say that I know I am not arrogant. I really am not. I obviously -- I hope it is obvious -- believe what I am saying very deeply. I know I could be wrong. I find it difficult to believe that my initial premise, namely that this exercise of courtesy on reappointment has an impact on independence-- It would be almost impossible for anyone to budge me from that belief, although I would listen. What I am not as confident about, and what one gets less and less confident about, is whether I achieved the goal, which is independence, or whether I hurt it.

I thought, quite obviously, that I helped it. I am not sure I did, but that is what I was trying to do.

SENATOR DORSEY: Chief Justice, I understand what you're saying. Do you understand what I have said? Do you understand that I feel as strongly about what I have said as what you have said?

CHIEF JUSTICE WILENTZ: Yes. I have no doubt of that.

SENATOR O'CONNOR: Any other questions? Senator DiFrancesco?

SENATOR DiFRANCESCO: I thought Senator Russo--

SENATOR O'CONNOR: Senator Russo, for the second time?

SENATOR RUSSO: I do have one question to clarify something, if I may.

SENATOR O'CONNOR: Are you deferring to Senator Russo, Senator DiFrancesco?

SENATOR DiFRANCESCO: No. Well, he's the Senate President. I mean, I am intimidated by the Senate President. (laughter) When he calls me on the phone, I become intimidated.

SENATOR O'CONNOR: All right. Let's hear from Senator DiFrancesco, Senator Russo, and Senator Orechio, in that order.

SENATOR DiFRANCESCO: Chief Justice, when Senator Russo quesioned you before about this calling of legislators, and I think Senator Van Wagner made reference to it--

SENATOR ORECHIO: We can't hear you.

SENATOR DiFRANCESCO: (speaking louder) When Senator Russo questioned you and gave you his advice as to whether or not you should call legislators about legislative matters -- and I think Senator Van Wagner also made his point-- Let me make my point, because they speak for themselves only on this point. Now, I have, since 1982 -- in 1982, 1983, and 1984, I was Minority Leader -- received perhaps, at the most, three calls from you, and not since I have not been Minority Leader. I have met with you, perhaps, at the most, three times, including the alleged secret meeting. I was not intimidated by those phone calls, nor was I intimidated by those meetings, because we spoke generally about legislative matters. I perceived that to be all right, because I was Minority Leader and I think you were using a mechanism, in a way, to perhaps deal with an appropriation for higher salaries, generally speaking, and you dealt with statistics, etc.

But, I don't believe that the Supreme Justice of the Supreme Court of New Jersey -- and I think you made this point earlier -- should be calling individual legislators, either at 8:30 in the morning, or at 10:30 in the evening, about legislative matters. I think you were right when you said there was a mechanism you can use through your own staffs to make the points you want to make. I want to make it clear that I think a number of people would agree with me on that point, at least in the Senate, and I didn't want to let that go

because Senator Russo made a strong point about you should be calling legislators. I don't believe that is true. I really think that would be wrong, and I think I agree with you on that point.

With regard to the secret meeting-- Are we on this secret meeting?

SENATOR O'CONNOR: We are still on the entire Pressler issue.

SENATOR DiFRANCESCO: I don't think I was involved in calling that meeting. I don't have that great a recollection of the meeting, but I don't think I was involved in calling it because I was Minority Leader -- I was the Republican Leader. Senator Gagliano was there, and Senator Dorsey was there at the restaurant, and they were in the leadership. I don't think we were involved in the calling of the meeting, because you had indicated you thought both parties had requested your presence. However, my presence was requested by Senator Orechio. I personally didn't see any problem with it. I asked Senator Gagliano and Senator Dorsey, I believe, to come along, and we did, in fact, meet in a room -- a side room -- of a restaurant in Nutley. I don't know if it was a secret meeting or not. I don't believe it was inappropriate for me to be there but, on the other hand, I'm not sure it was appropriate for you to be there, in retrospect again.

As you have said on many occasions--

CHIEF JUSTICE WILENTZ: Well, I have not often been called by the President of the Senate about a matter about which I felt so strongly that I had a press conference for the first time in my career. That doesn't happen to me -- that combination of circumstances.

I made it quite clear to the President, and he made it quite clear to me, that this was going to be a bipartisan group of Senators. I think he probably told me who they were going to be, but I am not positive. I am almost sure he mentioned

you. I said, "Well, do they know I am going to be there?" I mean, it wasn't simply that it was going to be a bipartisan group. I wanted to make sure that I didn't come as a surprise to them. I was assured that they did know, and that it was agreeable to them. He didn't say, "They also invite you." I don't think he said anything like that, but you knew -- you meaning the other part of the -- the Republicans.

I have a vague recollection, but I am not sure, that I called someone. I wanted to at least establish word with someone from the Republican side that I was going to be there, but I am not sure whether I was successful.

SENATOR DiFRANCESCO: I think you perhaps did.

CHIEF JUSTICE WILENTZ: I think I may have spoken to you.

SENATOR DiFRANCESCO: Yes.

CHIEF JUSTICE WILENTZ: Before.

SENATOR DiFRANCESCO: Right.

SENATOR O'CONNOR: Senator Russo, Senator Orechio, and Senator Van Wagner.

SENATOR RUSSO: I think Senator DiFrancesco really basically covered this, but just to be clear beyond any question-- I think he facetiously referred to it, as some have, and, of course, as it was referred to in the newspapers a week or so ago as a secret meeting. Let's clear it up beyond any question. The meeting was called, as far as you know, as far as I know, and I think Senator DiFrancesco, by the Senate President, Senator Orechio. I think he followed a request by you to speak to the entire Senate, and it involved the leadership of both parties. I was there as Chairman of the Judiciary Committee that was hearing it. The Majority and Minority Leaders were there. I think Senator Gagliano was there, Senator DiFrancesco, and Senator Dorsey. No one was ever told to keep it secret, were they, as far as you know?

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CHIEF JUSTICE WILENTZ: No. Frankly, I would not have regarded it as the kind of thing I would tell anyone about, because that is not the business Chief Justices are in. But, there was no overtone in my mind that there was secrecy, frankly.

SENATOR RUSSO: I think the next day it was well known around -- at least as far as I know -- the State House and the media, was it not, as far as you remember, if you do?

CHIEF JUSTICE WILENTZ: Yes, either the next day or the day after. I'm not sure which.

SENATOR RUSSO: And, there was a discussion at that meeting, as I recall, about, you know, what the Senate's procedure should be with regard to a nomination of a member of the Judiciary. As I recall, that was the discussion that we all took part in. Isn't that right?

CHIEF JUSTICE WILENTZ: We took part in a discussion about Judge Pressler, senatorial courtesy, and everything and anything related to it.

SENATOR RUSSO: Right. Did you say that you would be reluctant, for example, to have a meeting as we did that night with legislators on--

CHIEF JUSTICE WILENTZ: I would take certain precautions, Senator Russo. When I get hit in the press, it somehow sticks. When legislators get hit, it doesn't, perhaps. I have to be concerned. This Committee isn't the only committee that gets annoyed at me when I get criticized. There are other justices; there are judges. So I have to think very, very hard. I try to learn my lessons, because they come painfully. No one seems to be yelling about six Senators who were at a secret meeting. Frankly, that is not the burden of the article. It is that the Chief Justice was there.

SENATOR RUSSO: Would you quit referring to it as a secret meeting, Chief?

CHIEF JUSTICE WILENTZ: Pardon me?

SENATOR RUSSO: Would you quit referring to it as a secret meeting?

CHIEF JUSTICE WILENTZ: Well, I don't think I'm the one who started it, Senator.

SENATOR RUSSO: I don't think you are either.

CHIEF JUSTICE WILENTZ: No, I'm not. What I would do, obviously-- To me, it was the most natural thing on earth. But, having seen the reaction, I would be more cautious. I suppose I should be more cautious--

SENATOR RUSSO: I just closed--

CHIEF JUSTICE WILENTZ: --about appearances, which I don't think are that important.

SENATOR RUSSO: Well, a funny thing, you see, you don't seem to have any reluctance or apologies concerning the issue of the press conference and senatorial courtesy, but you almost again apologized for having a meeting with leadership of the Senate -- and open discussion on the same subject.

I might suggest to you that if in the future the issue ever comes up again, if you have a choice between a press conference and a meeting of this type, especially since we are picking up the check, have the meeting and not the press conference.

CHIEF JUSTICE WILENTZ: I don't really know that I didn't pay my share.

SENATOR RUSSO: Oh, that's a new issue.

CHIEF JUSTICE WILENTZ: But, Senator, I am not apologizing for attending that meeting. Anyone who thought that I wouldn't go to that meeting, given who called it, given the circumstances-- Don't be mixed up by me. I am not apologizing at all. What I'm saying is, given the fact that this kind of reaction occurs, and it affects the Judiciary -- there's no doubt about it -- I just have to be more careful -- period.

SENATOR O'CONNOR: Senator Orechio?

SENATOR ORECHIO: Mr. Chairman, as a matter of policy, whenever the Senate President wants to raise a question, or question a witness, does that mean he preempts everyone else on the Committee?

SENATOR DORSEY: No. We'll take a vote on that.

SENATOR ORECHIO: Does he have no limitation on the number of times that he can take over this proceeding?

SENATOR O'CONNOR: Senator Orechio--

SENATOR ORECHIO: Are you intimidated by him, Mr. Chairman?

SENATOR O'CONNOR: Senator Orechio, no, not at all. In fact, I have ruled him out of order on two occasions today. As we have been hearing, today we are very much concerned with the perceptions that the public has. So, I agree with you that there may be that perception.

SENATOR ORECHIO: For the benefit of the Committee and those assembled, you heard from my interpreter about what happened at that meeting -- how it was arranged -- but I think what I should do is make some clarifying statements.

As I recall, this meeting was called by me as a result of the invitation you had extended to the Senate to appear before us regarding this matter. Then, at a caucus of Senate Democrats, the decision was made -- and I supported that decision -- that you should not come before us. At the time, I talked to minority members, and suggested to them that I thought it would be a good idea to have a meeting that would be convenient and central -- of course, I had a personal bias, because I live in Nutley and didn't have to travel too far -- but that we have a meeting to discuss the matter as it related to the reappointment of Judge Pressler.

Secondly, I don't think at all that your calling a press conference was arrogant. I think your compulsion and obsession to preserve the integrity of the court was paramount. However, I think the device you used made it

questionable. I also concur with several others who have indicated to you previously that the attack on senatorial courtesy was not within your province or your domain to express publicly.

But, relating to legislative activities and bills that go through the various houses, what is the court's policy when there is pending legislation relative to the court, or which will have an impact on the court, in terms of whether or not you have representatives attend those meetings? As a matter of fact, when we have various departments of government impacted by bills, they, for the most part, have representatives at the committee meetings. They generally express themselves, or are heard, whether it is by testimony or by letter. I am just wondering what your policy is on that matter.

CHIEF JUSTICE WILENTZ: Our policy is-- We have one legislative liaison person. His name is Charles Hollenbeck. He has, as one of his responsibilities, advising us of legislation that he thinks affects the judicial system. I don't mean substantive law; I mean the Judiciary as an institution. On occasion, he is asked by a committee -- a legislative committee chair, "Does the court have any position on this? Does the AOC have any position on this?" and on occasion he will be instructed to state our position. On occasion he will be instructed that we have no position, or that it would be inappropriate to express one.

So, we are trying to have a little bit better liaison and communication with the Legislature.

SENATOR ORECHIO: Getting back to the Assemblyman Bishop matter, if you didn't make the phone call, and that bill-- Of course, I understand that you were talking that day, or visiting with Assignment Judges relative to that issue, and maybe that is why time was of the essence.

CHIEF JUSTICE WILENTZ: I may have given you a misunderstanding. It happened to be the day of the regular Assignment Judge meeting with me.

SENATOR ORECHIO: But, it was in your mind to discuss the matter?

CHIEF JUSTICE WILENTZ: That was one of the things I was going to bring up. That is correct.

SENATOR ORECHIO: All right. If you didn't make that phone call, and the bill was working its way through the system, would you have had a representative at that committee hearing to discuss -- or at least disclose to the committee and express the court's opinion on that pending legislation?

CHIEF JUSTICE WILENTZ: I am not sure, Senator, whether we had legislative liaison at that time in 1983.

SENATOR ORECHIO: Well, suppose you did.

CHIEF JUSTICE WILENTZ: If we did, it would have been the perfectly legitimate, proper, right function for a representative of the AOC with that kind of function to say to the committee, "We think this is a matter that should be handled in the court system. We don't want to argue about it with you, if possible. We would hope you would agree, and give us a chance to address the problem, and hold this legislation so that we don't wind up with both the Legislature and the courts addressing the problem in different ways.

In short, my answer to your question is, I would think it would have been appropriate for such a person to speak in that fashion.

SENATOR ORECHIO: Chief Justice, being the highest member in standing of our judicial system in the State of New Jersey, I think everybody recognizes that the independence of the court is paramount -- the integrity of the court is paramount, and that your responsibility to the court really relates to the quality of justice that is delivered here in New Jersey. I agree with the three branches, but it seems to me that with the court at the helm -- the integrity of the court, the independence of the court -- what impacts on how we react to renominations, I think, is essential to that objective, is it not?

CHIEF JUSTICE WILENTZ: I'm not quite sure what you mean.

SENATOR ORECHIO: Well, the point I am trying to make is, we all covet the system in New Jersey of the three independent branches. What I am saying is that the quality of justice and how the court proceeds to deliver that quality of justice is dependent upon the judicial system, the appointment system. If someone's reappointment is going to be threatened by a Senator, or Senators, then that has to impair the quality of justice in the court system.

CHIEF JUSTICE WILENTZ: I believe so.

SENATOR ORECHIO: No other questions, Mr. Chairman.

SENATOR O'CONNOR: Senator Van Wagner?

SENATOR VAN WAGNER: Mr. Chief Justice, I would just like to, very concisely and as briefly as I can, pursue a statement that you made earlier concerning the situation surrounding Judge Pressler. You indicated -- and I am paraphrasing, rather than quoting--

CHIEF JUSTICE WILENTZ: Right.

SENATOR VAN WAGNER: --that it seemed to you that someone who had performed in such a superb manner, and had such a distinguished career, and was, in fact, an extremely intelligent person -- that she should be blocked by this practice outraged you, in a sense. Let's assume that this same situation occurred to a judge who you might not have had the same strong feelings about, but who had, in every other case, performed his or her judicial duties in that same manner. Would you still have had the same reaction?

CHIEF JUSTICE WILENTZ: I hope so; I hope so, Senator. There were other situations where one could say that the judge involved certainly did not have the reputation statewide that this judge had. I did nothing about those because it was too late for me to even attempt to do anything about it. They both worked out without my doing anything about it.

The thing about the Pressler situation wasn't that she was more important, or that the principle was any the less important when it was a judge who was a very good judge, but perhaps just didn't have some of the qualities she has. It is that, given her reputation, it dramatized the potential damage to the Judiciary. It dramatized the ability to end a judge's career no matter how great that career was. So, in that respect, it had a little extra edge of potential harm.

But, as far as the principle of independence is concerned, and my position, it would not make any difference whatsoever, as long as it wasn't a judge who simply should not be reappointed.

SENATOR VAN WAGNER: Mr. Chairman, I hope, following that same line of questioning, although not directly related to it, at some time later in this Committee hearing, that we could pursue that issue in terms of judicial qualifications, but I don't think it is appropriate at this point.

Thank you.

CHIEF JUSTICE WILENTZ: Thank you, Senator.

SENATOR O'CONNOR: We'll get to that at the appropriate time, Senator. Senator Gormley?

SENATOR GORMLEY: They should put a plague in the restaurant in Nutley to memorialize the meeting. On this site--

I am distressed from a goal point of view as it would pertain to the press conference.

CHIEF JUSTICE WILENTZ: From a what point of view?

SENATOR GORMLEY: From a goal point of view. I think this is more commentary than a question, because this has been rehashed. I think there are common goals that many of us have as they pertain to courtesy, as they refer to the quality of the Judiciary. I would think that from a point of view of accomplishing what you were seeking, you, unfortunately, lent credence to the opposite side of the argument. Let's take the opposite extreme -- the elected Judiciary. I think what you do

by involvement in the political process -- and, you know, we have seen this in history; we have seen court packing with Roosevelt, when he crossed the line-- When you have instances such as this, I think you lend credence to the other side and the other extreme. I say that as one who agrees with the opinions that you expressed at that press conference. I thought they were correct. However, in terms of-- If the press conference was not for publicity, it was your intent to help accomplish certain goals. I think in the long term -- I think Senator Russo was correct -- those goals were and would have been accomplished anyway with regard to that particular appointment. But, what you do when you become involved in the process -- when you cross the barrier -- is, I think you lend credence to the other side.

So, I have to-- There is no sense going through questioning, going back and forth over the meeting. But the reality is, the goal is the independence of the Judiciary. It, in my opinion, harmed it. I am obviously not going to change your opinion on that issue at this point, but I think you have to reflect, when you become involved in a press conference, and what is even perceived as the political process, because as you have pointed out from the meeting at the restaurant, it became the secret meeting, and it wasn't the secret meeting. If we are going to keep the Judiciary independent, if there are going to be individuals in the Legislature who want to preserve that independence, based upon a separation of powers, it is important that the Judiciary remember that even if there be an appearance of political involvement, you are giving credence to those who are the ones you would be wanting to disagree with the most.

That's all.

CHIEF JUSTICE WILENTZ: I understand your statement, Senator.

SENATOR O'CONNOR: Senator Laskin?

SENATOR LASKIN: Mr. Chief Justice, let me give you this scenario. Let's say that a judge was nominated for a second term, and he came to appear before this Committee for questioning at a hearing. This is a renomination. Do you feel that you, under the appropriate circumstances -- maybe you have strong feelings one way or the other about that nominee-- Do you feel that it would be appropriate for the Chief Justice to appear before this Committee to testify for or against that individual?

CHIEF JUSTICE WILENTZ: Totally inappropriate--

SENATOR LASKIN: All right. Why would it be--

CHIEF JUSTICE WILENTZ: --with one exception. If the Committee asked me to testify about something that I knew about that judge -- it may be, it may be appropriate.

SENATOR LASKIN: Let's assume you were not asked. I will give you the example so that there is no misunderstanding. Let's assume you were not asked, and you just said, "Hey, there's a judge coming up before that Committee, whether I like that person, or I don't like that person." Do you think it would be inappropriate for you?

CHIEF JUSTICE WILENTZ: Totally inappropriate.

SENATOR LASKIN: Why?

CHIEF JUSTICE WILENTZ: That is the legitimate function given by the Constitution to the Senate. It is the Senate's power, through this Committee, to decide for good reason, bad reason, no reason. I would not interfere with it any more than I would interfere with the Governor deciding not to reappoint a judge. If the Governor asked, I presumably would tell what I know.

SENATOR LASKIN: Now, I agree with that. Let's take Judge Pressler's renomination. Let's put aside the issue of senatorial courtesy, and let's say that Judge Pressler appeared before this Committee, and you felt as strongly about her then as you did before. Why wouldn't you then, because you felt so strongly about this nominee, appear before this Committee?

CHIEF JUSTICE WILENTZ: It is none of my business, and it doesn't have anything like the potential impact on judicial independence that courtesy on reappointment has. That judge knows that he or she is before a Committee. At least there is someone there who is going to judge him or her openly, fairly, unfairly, but that is what the Constitution says.

SENATOR LASKIN: So, the remarks you made earlier that you would involve yourself under similar circumstances, only apply to the issue of senatorial courtesy?

CHIEF JUSTICE WILENTZ: Absolutely.

SENATOR LASKIN: So, if a judge appears before this Committee for a full hearing, you feel it is inappropriate for you to appear?

CHIEF JUSTICE WILENTZ: Absolutely, unless invited by the Committee, and even then I would have to think twice.

SENATOR LASKIN: Okay. Now, I don't understand the difference, personally, but that's a matter of opinion. I don't think you should be involved at all, whether it be courtesy or otherwise.

Now, "appearance of impropriety" are words that you know very well. Am I right?

CHIEF JUSTICE WILENTZ: Yes, Senator.

SENATOR LASKIN: A lot of decisions have been written?

CHIEF JUSTICE WILENTZ: Yes.

SENATOR LASKIN: When you say that you would probably hold a similar press conference, or you are not positive, but you're not going to say that you wouldn't--

CHIEF JUSTICE WILENTZ: Let me put it to you this way: That about which I have most doubt concerning my activities in the Pressler matter was the tactics. I am not sure but that a press conference isn't in the long run counterproductive. So, that is what I meant. I have a further doubt, which is on the merits. It is not only this Committee, but others in the Judiciary who, while agreeing with my

objective, while agreeing with the impact that courtesy on reappointment has on independence, disagree about whether or not I really helped the situation.

So, my doubts are: a) about tactics, if it were deemed advisable by me to get involved again; and b) I would obviously have to consider very, very hard the question -- which is not a constitutional question, but a practical judgment question -- of whether I would do more harm than good.

SENATOR LASKIN: I think more harm than good was done because of my feeling about the independence of the Judiciary. You see, you and I agree that at all costs -- at all costs -- the system -- the judicial system -- should be independent. Maybe I even think more strongly than you, if that is possible, because I absolutely believe in the independence of the Judiciary.

Let me explain where I am coming from. I live in South Jersey. People have heard me make this comment many times in the past. I live across the river from a state which, in my opinion -- I am not asking you to comment, because that would be inappropriate -- but, in my opinion, has the most corrupt, inept judicial system in the country. Judges run for office. They accept political contributions. They do favors in return for votes. Every conceivable evil, in my opinion, exists in the judicial system of Pennsylvania. So, a lot of times I may over-react to things that are done in our judicial system because that is my background. When I see a judge giving a press conference, I relate to Philadelphia. I relate to judges making political speeches. So, perhaps it is an over-reaction; I understand that.

But, I think it is highly inappropriate for another reason, because of the appearance of impropriety concept that is so ingrained in our system. I think that is an appearance of impropriety by a judge, by the system, and I think it undermines the system. You know, it doesn't appear to be

improper to me, but it could appear, and it does appear to be improper to Joe Average, citizen, who really does not understand the tecnicalities of the legislative or judicial systems.

I think when a judge is making a public statement, certainly in my part of the State, people relate to what happens in Philadelphia, and they say, "Oh, that judge is nothing more than a politician. What the heck is he doing making a statement. Why is he having a press conference? Why is he attending a so-called secret meeting?" The appearance of the impropriety is what really bothers me. I just don't understand how you could even think that it would be proper under any circumstances to go into a press conference or a meeting -- whether it be secret or otherwise, it doesn't matter -- or make any public statements outside of the very strict realm of the judicial context. That is what I really, honestly don't understand. I wish you could convince me otherwise.

CHIEF JUSTICE WILENTZ: Well, Senator, I am not about to try, because I am not sure that the kind of public statement I made was the best way to make the point that I felt had to be made. I have a feeling -- I'm not sure -- that your reaction might have been quite different had I released, through the public information officer of the Administrative Office of the Courts, a statement about judicial independence and how it is affected by courtesy on reappointment, urging strenuously that this particular judge be considered by the Committee of the Senate. I take it your reaction might be different.

SENATOR LASKIN: I don't know.

CHIEF JUSTICE WILENTZ: Okay.

SENATOR LASKIN: I would say, the way I look at it--

CHIEF JUSTICE WILENTZ: In other words, the form of it is perhaps almost as important as the substance, and I am not suggesting it isn't.

SENATOR LASKIN: Again, mine is a very personal opinion. I don't like to see a comment at all by a judge, other than within the context of a judicial opinion. I really feel very strongly about that.

SENATOR O'CONNOR: Thank you, Senator Laskin, and thank you, Chief Justice. It is now 1:30. We are going to adjourn for lunch. We will resume at 2:15, at which time--

SENATOR RUSSO: Mr. Chairman, before you do-- For other Senators who are in the room, the Senate will immediately convene for a quorum call -- immediately -- before lunch.

SENATOR O'CONNOR: We will resume at 2:15. Mr. Chief Justice, I ask you to return at that time. At 2:15, we will take up two nominations before we resume with the questioning of Chief Justice Wilentz.

(RECESS)

AFTER RECESS:

SENATOR O'CONNOR: We will now continue with the questioning of Chief Justice Wilentz where we were before we broke for lunch. Chief Justice, would you please come up and take a seat again? Senator Dorsey?

SENATOR DORSEY: Mr. Chairman, before we begin, we would like to make a request, on this side of the aisle, for two things: Number one, the issue of residency has played a greater role than anticipated this morning, and we would request that the Committee request of Mr. Porroni, who is head of OLS, that he render an opinion for us as to whether or not a Justice of the Supreme Court must be a resident of the State of New Jersey, and must continue to be a resident of the State of New Jersey to serve in that capacity.

Number two, we ask that Mr. Porroni render a decision based upon the testimony of the Chief Justice today as to whether or not, in his opinion, the Chief Justice is a resident of the State of New Jersey for purposes of complying with any statutory or constitutional requirement that he be a resident. In that connection, we would ask -- we can't require, I suppose -- that the Chief Justice submit copies of his tax returns, so that Al Porroni would have those to consider, along with the testimony this morning, in rendering his opinion. Hopefully, that opinion could be rendered before we would be asked to vote on the Chief Justice's nomination.

SENATOR DiFRANCESCO: I'll second the motion. Did you put that in the form of a motion?

SENATOR DORSEY: Yes.

SENATOR O'CONNOR: All right. There is a motion that has been made and seconded. Take a roll call on the motion.

MR. TUMULTY (Aide to the Committee): Senator Zane?

SENATOR ZANE: Yes.

MR. TUMULTY: Senator Lynch?

SENATOR LYNCH: No.

MR. TUMULTY: Senator Orechio?

SENATOR ORECHIO: No.

MR. TUMULTY: Senator Van Wagner?

SENATOR VAN WAGNER: No.

MR. TUMULTY: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MR. TUMULTY: Senator Dorsey?

SENATOR DORSEY: Yes.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: No.

MR. TUMULTY: Senator Laskin?

SENATOR LASKIN: Yes.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: No.

MR. TUMULTY: It was five to four. The motion is not adopted.

SENATOR O'CONNOR: Chief Justice, I would like to go on to another area that has been mentioned, and which certainly has been covered in the papers. This is with respect to actions on your part in opposition to legislation which was sponsored by Senator Richard Codey, dealing with the subject of access to sentencing records. Would you comment on what interaction you had with Senator Codey, and whether you feel that was appropriate or inappropriate?

CHIEF JUSTICE WILENTZ: Senator Codey called me -- rather he called the Director, Mr. Lipscher, and asked for the sentencing record of either three or four judges in Essex County. What he wanted was the record of conviction, the judgment of conviction, and the wrap sheet that goes with the judgment of conviction. It was not clear why he wanted them. Mr. Lipscher advised me of the call.

I called Senator Codey and had a very, very extensive conversation with him. It became apparent to me, although the Senator says it was not his reason, that he wanted the public to know what the sentencing record was of judges. I think by the time the conversation was through, he meant all judges in Essex County, because when I asked him about these particular judges, he said they were just an example.

The very strong impression I got was that the Senator wanted this known to the public so that the public would be able to express itself on the criminal sentencing records of these judges.

I told him it was an extremely difficult subject for me because it is one of the most difficult areas on the basis of which to make a reasoned evaluation of a judge; that the kinds of things the public would have to know in order to really rationally, fairly come to some conclusion about a judge's performance were just enormous; that they would not be

disclosed by the kind of information he was seeking, that, indeed, it would be very, very difficult to put together all of the information that would be needed.

I told him that, furthermore, I was very concerned that its impact and its design would be to pressure judges in a certain direction -- harsher sentencing, stiffer sentencing -- and that it had a very distinct risk of affecting their independence in that one area where I think independence is more important than any other, which is the sentencing of people who have been convicted of a crime. I told him that I would consider it, and that I would get in touch with him.

I then wrote him a very, very, very long letter explaining why I would not give him that information. The letter indicated essentially that I thought it was an impermissible threat to the independence of the Judiciary, that it was the most sensitive area of judicial discretion, that the kinds of things we have in place, although not guaranteeing perfection in criminal sentencing, were well designed, as best as one can design them to assure that judges are not, I will say off the wall in their sentencing patterns, and that it is the practice of Assignment Judges, and others, to discuss with judges sitting in criminal their sentences, because those discussions don't have any overtones of pressure, either from the people or from Senators.

I told him, furthermore, that I thought the record was rather clear, that there was one thing in general that the sentencing judges in New Jersey did not need, and that was any instruction to be more severe, because their sentences have become more and more strict as they perceived the problems in crime growing more and more. I told him that most of the information he wanted was public, but that I would not aid in what I considered a venture that would have the effect and have the intention of pressuring judges through the public. I said that I thought a sentence made by a judge to please the public

was no better or no worse than a sentence made by a judge to please a politician, to please a crony, or to please anyone except his own conscience.

Senator Codey responded, saying I had mistaken his intent. It was not at all to have that purpose of pressuring anyone; it was simply for the ultimate purpose of being able to exercise his right to advise and consent that he wanted that kind of information, because he had had some difficulty in the past with the whole question of getting enough information, not only about judges, but apparently about others. He said that was what he wanted it for.

I responded, saying it was still the same problem, although not with the same kind of implications, and that the problem of evaluating a judge on his sentencing record was the most difficult evaluation problem there is, and that I did not think what he wanted would be wise. I indicated that we were attempting -- and having some success -- in designing a method of evaluating judges that would provide more information in the future. But even that committee, which is the best that I know of, has still not been able to come to grips with that aspect of evaluation.

I think that is my answer.

SENATOR O'CONNOR: So, your involvement then amounted to a phone conversation with Senator Codey?

CHIEF JUSTICE WILENTZ: Yes. I think there was only one; it was a very long conversation, right at the outset. And then the exchange of letters, my letter to him -- the very long letter -- his response, and then my further response.

SENATOR O'CONNOR: Thank you. Are there any follow-up questions on this issue? (no response)

I would like to go back, if I may, and this is at the request of Senator Lynch, who was not here, to the Nelson issue. Senator Lynch?

SENATOR LYNCH: I'm sorry I was late this morning, but I had some personal commitments. Unlike a court, Senator O'Connor and Senator Russo are lenient, so it will be sanctioned.

I missed your testimony with regard to the Nelson case, and I wanted to delve into that a little bit because there has been a great deal of misunderstanding as to what occurred and why it occurred.

The first thing I want to do is set the record clear that you and I have never discussed that case -- never, ever, ever.

CHIEF JUSTICE WILENTZ: That is correct, Senator.

SENATOR LYNCH: The first knowledge I had of your actions in transferring the case to Union County was what I heard about from the press.

CHIEF JUSTICE WILENTZ: I assume that is a fact.

SENATOR LYNCH: What bothers me about that situation, however, is that the case was transferred by your order, without hearing and without input from counsel or anyone. So, the press reacted to that, and I believe rightfully so, because I know when I heard about it, it surprised me no end that that could have occurred in a case that is receiving a great deal of notoriety, without input from counsel, without a motion having been heard, or without something having been instigated by the court, with some type of a due process proceeding.

I am led to understand from your testimony, and from some of the reseach I have been doing for the last couple of weeks as this has become a much more notorious issue, that the original order may have been prepared (indiscernible), and that your original intent may very well have been to do what would normally be done in a case of that nature, to bring in a judge from another county, because all of the judges in Middlesex County knew Mr. Nelson and had worked with him, and he had tried cases before all of them. Is that the case?

CHIEF JUSTICE WILENTZ: My original intent, unfortunately, was incorporated in the order. I was simply grossly mistaken. There was absolutely no point in transferring it to Union. Yes, it was so that the matter would not be heard by any Middlesex County judge, but there was no reason to send it to Union County. All that needed to be done was to send a Union County judge to Middlesex, and it was my error, pure and simple.

SENATOR LYNCH: That type of action is taken frequently?

CHIEF JUSTICE WILENTZ: As I mentioned to the Committee-- First of all, Senator, your point about counsel being contacted-- I think that the procedures I have used in the past are wanting in that respect, and that in practically every and any case, it would be a benefit, and pure and simple fairness to contact counsel. I mentioned the Coruzzi case. We didn't contact counsel. Should have, but I mean, obviously, that matter was going to be transferred so that no Camden County judge was going to hear it. I mentioned the case in Essex County where the clerk of the District Court was on trial. No judge in Essex was going to hear it. Probably in both of those there would be no harm in at least hearing counsel, although it is hard to conceive of any argument. But I have done this kind of thing before. In the Sugar case, for instance, for different reasons -- totally different reasons -- I had Judge Scalera go down to whatever county it was in -- I don't remember -- and try the case. I had Judge Imbriani go into Monmouth County to try the alleged mob trial.

I have done this for various reasons on various occasions, perhaps, and certainly in this case, with less thought for what counsel might want to say. Had I contacted counsel or had the judge in Middlesex or anyone contacted counsel, it never would have been transferred to Union. A Union County judge would have been assigned.

SENATOR LYNCH: Had the prosecutor's office or Mr. Nelson's attorney--

CHIEF JUSTICE WILENTZ: Both of them.

SENATOR LYNCH: --heard of the proposed formal order, you would have been checked out with regard to the facts.

CHIEF JUSTICE WILENTZ: Absolutely. It would have been corrected very quickly. I have never seen both sides of a criminal case agree more quickly that what I had done was wrong.

SENATOR LYNCH: But, faced with that type of publicity following the event of unilaterally transferring this case to Union County, the proceedings then went further, and counsel for the prosecutor's office, as well as counsel for the defense moved before the Assignment Judge -- Judge Beglin -- in Union County to have the case transferred back to Middlesex County. Judge Beglin, having received an order from the commander in chief transferring the case to Union County, and not having heard anything further from your office, and after hearing counsel, decided not to transfer the case back to Middlesex County almost without reason.

CHIEF JUSTICE WILENTZ: Precisely. The reason he gave is as you stated, that it was not up to him to overrule my order.

SENATOR LYNCH: Now, I heard what you said this morning--

CHIEF JUSTICE WILENTZ: May I explain how that happened?

SENATOR LYNCH: --with regard to recusing yourself from any proceedings regarding the case, but I find it difficult to understand how recusing one's self does not allow you -- from a factual standpoint -- to advise the Assignment Judge in Union County that the order that was issued, was issued with a mistake of fact.

CHIEF JUSTICE WILENTZ: What I did, Senator, was, when I recused myself and assigned all responsibility for that matter and all matters related to it to Justice Clifford as Acting Chief Justice, I advised him-- I don't mean to blame the delay on Justice Clifford, but the fact is, I advised Justice Clifford that I had not intended to transfer the matter to Union County. I just did not feel that being recused I could or should talk to anyone other than Justice Clifford.

SENATOR LYNCH: But, it seems odd to me, and it seems almost insensitive, knowing the publicity that was being generated as a result of this unusual order, in a case of great notoriety-- It seems almost insensitive that Judge Beglin, as my information tells me, did not learn about this mistake of fact on your part from Justice Clifford, or from yourself, or anyone in the Supreme Court or the Administrative Office of the Courts, but rather learned of this from another judge -- another judge in Middlesex County.

CHIEF JUSTICE WILENTZ: That I don't know, Senator. I had assumed--

SENATOR LYNCH: And then he unilaterally transferred the case back to Middlesex County, all of which led to an awful lot of publicity, and rightfully so, by a press and a public that perceives this as being something unusual, and that is correct.

CHIEF JUSTICE WILENTZ: I had assumed, until you said what you said, that Justice Clifford had contacted Judge Beglin. Apparently I am wrong. But I agree with you, the delay was unwarranted, and for those in the area who were being accused, it must have seemed insensitive, and worse than insensitive. I'm sorry it occurred.

SENATOR LYNCH: The word-- I don't buy the word "arrogance." I don't think that is before us today, and I don't think that is in your make-up or in your background, because you are clearly a very competent administrator, and

competent jurist, or competent legislator and competent lawyer. But the area of sensitivity may be relevant to the issues we are discussing here today. The symptom of the Nelson case may very well carry forward in some other areas where some of the bar and the bench and the public perceive what is taking place as being insensitive.

CHIEF JUSTICE WILENTZ: I cannot quarrel with you. From your point of view, there is no reason for you to consider this anything but grossly insensitive. I only hope you would try to understand the situation I was in from my point of view. I was very, very troubled by the publicity. It bothered me terribly that that case continued to stay there, even though it had been sent there by mistake. I felt that having recused myself, the only thing I could do was to tell Justice Clifford, in no uncertain terms, that it had been an error. I really felt that I couldn't do anything else, and I felt very badly about it.

SENATOR LYNCH: If I were the Assignment Judge in Union County, and I had received this order, I would -- I think I would anticipate that if it was issued under some mistake of fact, there would be communication with me so that I wouldn't continue that mistake in my proceedings. That's what hurts.

CHIEF JUSTICE WILENTZ: I agree with you.

SENATOR LYNCH: So, the mistake was compounded, as it were.

CHIEF JUSTICE WILENTZ: Yes, it was.

SENATOR LYNCH: The other area I wanted to catch up with was on this judicial evaluation, particularly as it relates to the testimony you gave with regard to Judge Pressler.

I got the feeling from listening to you this morning -- and I think this needs to be clarified -- that when you find -- and the Executive finds -- that a sitting judge who is up for reappointment is more than competent, the Senate should bow. I suspect what you were saying, however, was simply with

regard to the senatorial courtesy issue, that that should not be used to block a sitting judge, not that this Judiciary Committee should not be able to vote down that nominee.

CHIEF JUSTICE WILENTZ: I made it quite clear, I think, in answer to questions by Senator Laskin, that if this Committee considers a judge who I think is the best judge in the system and votes that judge down, I wouldn't say peep. I would hope the Committee would ask me for an opinion, but that is the function of the Senate -- this is the representative of the Senate, and that is the way it works -- as I would not attempt, unless asked, to persuade the Executive to reappoint.

SENATOR LYNCH: When the Executive chooses not to reappoint a sitting judge, does the Executive get input from you?

CHIEF JUSTICE WILENTZ: If the Executive asks, yes; otherwise, no.

SENATOR LYNCH: And that has occurred?

CHIEF JUSTICE WILENTZ: It certainly has.

SENATOR LYNCH: And that failure to reappoint is done by the Executive without hearing?

CHIEF JUSTICE WILENTZ: Absolutely -- any way the Executive wants to do it.

SENATOR LYNCH: Do you provide judicial evaluations to the Executive at all today?

CHIEF JUSTICE WILENTZ: We have not gotten to the point where I could really consider what we provide a judicial evaluation with all that implies. My belief is that the Executive gets a record -- if there is any -- of complaints against the judge from the Advisory Committee on Judicial Conduct. I believe the Executive also requests, and gets, a resume -- I am not sure of this -- of the time sheets that the judges turn in on a weekly basis. Probably a personnel record. In other words, whatever we have that is shown as a matter of record. If the Executive goes on to ask me for an

opinion, I would give an opinion, and I would give it based upon the best information I could get, which would include more than our records.

SENATOR LYNCH: I have no further questions.

SENATOR O'CONNOR: Just a follow-up to that, if I may. It is my understanding that the AOC is presently in the process of implementing a statewide program on judicial evaluations. Will the results of that, at some point, be made available to this Committee when a judge is coming up for consideration for reappointment?

CHIEF JUSTICE WILENTZ: Yes, although that is not the primary purpose of the program, which is the Committee on Judicial Performance and Improvement -- or whatever its name is. The primary purpose is to make the judges better, but a clear subsidiary purpose is to be of help to the Executive and the Legislature, the Senate, and this Committee in particular, on reappointment. It is intended that as the tools of this Committee are perfected, information will be given to the Executive, and whatever we give to the Executive will be given to this Committee, assuming the Executive reappoints.

SENATOR O'CONNOR: Thank you. Senator Van Wagner?

SENATOR VAN WAGNER: I wonder if I might pursue the evaluation process just a little bit?

CHIEF JUSTICE WILENTZ: Right.

SENATOR VAN WAGNER: You have already answered the question I was about to ask you, which is, whatever evaluation technique, or whatever the results of that will be, will, in fact, be shared equally with the Judiciary Committee?

CHIEF JUSTICE WILENTZ: Correct. There will be a difference in timing. In other words, it will go to the Executive first. If the Executive decides not to reappoint, then it won't go anywhere. If there is a reappointment, it will then go to the Judiciary Committee.

SENATOR VAN WAGNER: Mr. Chairman, if I might, is it proper for me now to perhaps pursue with the Chief Justice the method in which the evaluation will be done?

SENATOR O'CONNOR: Ask your question.

SENATOR VAN WAGNER: Thank you, Mr. Chairman. There has been some indication, if not in a specific sense, certainly in a general sense, that there is, in some instances, some concern. Upon reading the report I received from Mr. Michael Park, which I received about three days ago -- I had the opportunity to read it in some detail--

CHIEF JUSTICE WILENTZ: Is that the Commission's most recent report?

SENATOR VAN WAGNER: I refer to the document concerning the "Non-judicial Responsibilities of the Chief Justice, 1979-1986."

CHIEF JUSTICE WILENTZ: Oh, that's somewhat different. Go on, Senator.

SENATOR VAN WAGNER: However, it does cover a number of activities that the court has been involved in--

CHIEF JUSTICE WILENTZ: Yes, it does.

SENATOR VAN WAGNER: --in terms of case disposition--

CHIEF JUSTICE WILENTZ: Right.

SENATOR VAN WAGNER: --in terms of the relationships with other branches and agencies, and in terms of the implementation of various types of operations. The question that was raised in my mind in going through this and considering some of the other circumstances involving the administration of the courts, it seemed to me that this document, in many cases, pointed to the statistical progress made in terms of tort calendar and things of that nature. I realized that that is part and parcel of the evaluation of the judge, in terms of his or her ability to properly dispose of cases under their jurisdiction.

But I am wondering, in terms of the actual evaluation process itself, how involved will the judge be in that process? Will, in fact, there be the opportunity for that judge, prior to the reappointment being made and the information being set forth to both the Governor and the Committee -- an opportunity for those judges to involve themselves in the evaluation process that is set up by the Chief Justice?

CHIEF JUSTICE WILENTZ: Yes. The judge will not only have the opportunity, but the plan, when it is fully in place, contemplates an initial evaluation of a judge after he or she has been on the bench for two years; in other words, after the judge begins to understand and feel what it's like to be a judge, gains some experience, and presumably some expertise. At that time, the initial evaluation will take place, which, as you presumably know, consists of what I believe is a highly refined set of questionnaires that goes to lawyers who have most recently tried cases before that judge. Another set of questionnaires goes to lawyers and asks the lawyers about their experiences with that judge for a six-month period. There are a whole batch of techniques designed as best one can, including questions of the Appellate Division and of the Supreme Court -- as best one can to find out what this judge is like in various ways -- the judge's legal ability, the judge's disposition, the judge's comportment, the judge's ability to manage his or her calendar.

After that is put together, it is given to the judge. It also goes to the court; it also goes to me. I believe it also goes to the Assignment Judge. The plan of evaluation includes the appointment of a commission. I think it is proposed to have three members on it -- three retired judges or justices.

SENATOR VAN WAGNER: Yes.

CHIEF JUSTICE WILENTZ: They are supposed to sit down with that judge and discuss those areas in which the judge

seems to be inadequate; those areas in which the judge seems to be lacking; those areas in which the judge seems to be good. Very often, judges are terribly surprised when they find out that someone thinks their comportment, their disposition, their behavior is not good. The hope is that the judge, by virtue of that, will do his or her best to improve; will give a better judicial performance than before.

So, in that respect -- I don't know if that is what you had in mind -- but in that respect, the judge will be very, very much a part of the program. It is contemplated that later, perhaps when the judge has been there for four years, or five years -- probably more five and six, I guess -- there would be a further evaluation. I believe the judge would be told of it as well, in order that the judge could comment on it, and add his input to those who see it. It would be that later evaluation that would be used in the event the Executive appoints -- reappoints, rather -- and the Judiciary Committee--

SENATOR VAN WAGNER: Well, perhaps I can explain to you some of the concerns.

CHIEF JUSTICE WILENTZ: Right.

SENATOR VAN WAGNER: Some of them somewhat reflect on comments that were made earlier relative to the area of sensitivity, let's say. This is not in relationship to the same questions, but in the overall.

As I read this report, it struck me that--

CHIEF JUSTICE WILENTZ: The report you are talking about is not the report of the Judicial Performance Committee, but rather the document that we prepared--

SENATOR VAN WAGNER: To outline the accomplishments of the court over a seven-year period.

CHIEF JUSTICE WILENTZ: Right; exactly.

SENATOR VAN WAGNER: I understand that. It seemed to me, however, that there seemed to be an emphasis on disposal of cases, a statistical emphasis, if you will. I guess the

concern I am expressing, and the reason for my questioning, is that I would hope that whatever evaluation procedure is developed, that there would be as much emphasis, if perhaps not more, on areas that you just described, rather than on the statistical areas related to caseload, efficiency of operation, disposition of cases.

It seems to me that those areas, at least to me -- and, of course, I am not an attorney -- but those areas, it would seem to me, if I were to have the opportunity to evaluate that criteria as a member of this Committee, would, in fact, be as important, if not more important, than the ability of that judge to dispose of 50 cases in a month, or whatever.

CHIEF JUSTICE WILENTZ: Senator, you are expressing the concern that lawyers have expressed to me, and the concern that judges have expressed, not simply about this program of judicial evaluation, but about much else, during my tenure. To answer your question directly, there are three general areas that are evaluated: The judge's ability to dispose of cases. To manage his or her calendar is one of the three. It is not more important than either of the other two. In some cases, we know very well that there are superb judges who couldn't manage a calendar ever, and who simply do not want to and can't deal with administrative problems. They are still wonderful judges.

The evaluation is intended to be an overall, well-rounded picture of the judge. It is not going to be a case of frowning at a judge because the number of cases hasn't been high enough, or proclaiming the judge is some kind of a saint because it has been.

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

SENATOR O'CONNOR: Senator Gormley?

SENATOR GORMLEY: Chief, the evaluations of judicial performance-- You have stated-- This is for future reference. I think this is a very important point. Those evaluations are going to be made available to this Committee?

CHIEF JUSTICE WILENTZ: The evaluations of judges in their fourth or fifth or sixth year -- I am not sure whether it is fifth and sixth, or fourth and fifth -- will be made available, not necessarily precisely the material that comes back to the Committee, because there are some aspects of that information that are grossly unfair, that the people who have been advising this Commission tell the court that they can identify as being grossly unfair, and for the benefit of the court as well, we want that kind of information identified. But, substantially all of that evaluation will be made available, first to the Governor, if the Governor reappoints, or if the Governor indicates he intends to reappoint, and whatever is made available to the Governor will be made available to this Committee thereafter.

SENATOR GORMLEY: Upon nomination, if the Governor chooses to nominate a sitting judge-- That information will be made available to the Judiciary Committee?

CHIEF JUSTICE WILENTZ: Correct. The method of availability is something I would want to -- if I am there -- discuss with the Judiciary Committee. Whether you would want it made available to the Chair and ranking minority member, or what, I don't know. We haven't gone that far yet. But, it would be made available to the Judiciary Committee, presumably in the manner suggested by that Committee.

SENATOR GORMLEY: When would this process begin? When do you see the initial meetings to set it up beginning?

CHIEF JUSTICE WILENTZ: The process, we believe, will begin on a statewide basis in December of this year -- December or January. The plan is initially to evaluate judges who have had two years to four years of experience. In other words, I'll call that the "improvement evaluation," as distinguished from the reappointment evaluation. The reason for that-- There are several reasons why we intend to do it that way.

Reason number one is, much as the Committee has worked and worked and worked and believes it has as fine a product as possible, they really don't know what bugs there may be in it, what problems there may be, whether it may turn out to be unfair and need revision. So, they are reluctant to start out with judges on an evaluation for reappointment purposes, when they are not as sure as they can be of the validity of the work. So, there will be that testing period.

The next round of judges would include -- after there is a fair examination of the validity of the instrument-- The next round of judges would include some who would be coming up for reappointment. That would not be until a year after that. So, it is not about to happen tomorrow, probably not until somewhere in the fall of 1987.

SENATOR GORMLEY: Is a part of the full-scale system being in place-- There is, I assume, some process, obviously, of review at this point at the time of renomination. There must be something prepared, or some conversations, or some dialogue with the Executive.

CHIEF JUSTICE WILENTZ: We give the Executive generally what the Executive asks for. I indicated in one of my answers, the traditional things that have been asked for -- I don't know -- centuries, as far as I know. The dialogue occurs only if the Executive says the he would like to speak to me.

SENATOR GORMLEY: Well, if we were to make the traditional requests, would the Judiciary Committee be given that traditional information -- whatever it has been in the past?

CHIEF JUSTICE WILENTZ: I would give the Judiciary Committee, at the very least, that which I gave the Governor.

SENATOR GORMLEY: Okay, and that would be-- Let's take the extreme case. There have been circumstances where the Executive Branch has indicated that they would not release certain information to the Judiciary Committee.

CHIEF JUSTICE WILENTZ: My position has always been that any information I give to the Executive concerning the reappointment of a judge will, upon that nomination, and upon request of this Committee, go to this Committee.

SENATOR GORMLEY: Thank you.

SENATOR O'CONNOR: Senator Zane?

SENATOR ZANE: Mr. Chairman, I was not looking to ask a question on evaluation, but to go on to another subject. If anyone else has another question on that, I will yield.

SENATOR O'CONNOR: On evaluation, Senator Laskin? (in response to signal from Senator Laskin)

SENATOR LASKIN: Sort of. Mr. Chief Justice, we have been discussing-- I guess it is sort of a thing with me that I like to get back to the independence question, if I can relate it to the current subject, and I think I can.

CHIEF JUSTICE WILENTZ: It is very much related.

SENATOR LASKIN: Okay. There is no doubt that at least you and I agree -- and I am sure most everyone else agrees -- on the independence of the Judiciary, the system. Now we are going into another area where we have to talk about the independence of the judge as an individual. I am starting to worry.

CHIEF JUSTICE WILENTZ: There is plenty to worry about.

SENATOR LASKIN: But, you see, when we talk about independence, it is not only independence from politics and whatever can come from it, but it should truly be an independence so that that judge can do what he is supposed to do without fear of retribution, without any fear. What concerns me now is, are we getting to the point where independence only applies to the political process, to the public pressure, but does not apply to within the judicial system? Are your judges your judges, or are they the judges of the system, if you follow what I'm saying?

CHIEF JUSTICE WILENTZ: Yes, I understand. The concern, from the very beginning -- and the very beginning goes back to before I became a judge-- The concern of the court, from the very beginning of this program, was that it would intimidate judges, unfairly pressure judges, and perhaps have some tendency to make the judges seek a favorable evaluation, as distinguished from doing the job as best they could. The judges' concern was not, I believe, initially or even primarily and even now, about being subject to me and my evaluation, and Mr. Lipscher, in his evaluation. Their concern was that they would be subject to an anonymous -- and it is anonymous -- evaluation of the bar. They felt it was terribly unfair to have that occur. They were very concerned that they were going to be expected to conform to that which would please the bar. The result of those concerns, from the very beginning, has been that this program has moved very, very cautiously, conservatively, slowly, so that the judges would understand the enormous amount of care and detail that was going into designing the program, so they would know that it would be fair, and that they would not be subject to unfair, anonymous assertions.

I am not trying to say that the bench likes the program, but I think the depth of their concern has changed enormously. I don't believe there is any concern that I will manipulate the program, or someone in my position would. There is still some concern that it might not be fair, but not nearly the same kind of concern. It is a difficult balance to strike, because on the one hand there is an enormous legitimate interest in evaluating a judge. On the other hand, there is a very, very difficult question of how you do it without compromising that judge's independence. There are some people who have taken the position that the reappointment process was intended only to touch those who clearly were incompetent. That apparently is not the feeling of the government at this

point and, in any event, we are trying to design this so that it will both improve the judges -- which is its main function -- but also provide information for the Executive and the Legislature.

SENATOR LASKIN: Let me give you this scenario: I am a judge at the trial level. I want to be independent; I don't want anybody telling me what to do. I don't want to have to worry -- not just telling me what to do -- but I don't want to have to worry that when I make a decision, somebody is going to hold it against me who might have the power to reappoint me.

I am now out there in 1986, and I see this guy, Wilentz, who is an activist Chief Justice, who participated greatly in the Pressler matter, who came out publicly -- in my opinion -- as a guy out on the street who thought he was involved politically, but not in a partisan sense, and all those other things we talked about this morning. Perception. I am now one of the judges, and I say, "My God, this Wilentz is a powerful guy. I better do what he wants me to do. He's got political ties. He's got strong allies. He was able to make sure that Pressler got reappointed, even though I knew from the newspapers that she didn't have a chance." Perception. It may be all wrong.

Am I independent in the true sense, or am I only independent of the Executive and the Legislature, but not really independent of my structure -- my Chief Justice -- who really shouldn't be able to tell me how to decide cases? Am I saying to myself now, "Gee, I better be nice to Wilentz, because he's got ties, and I know he can make sure I am not reappointed"?

CHIEF JUSTICE WILENTZ: Well, Senator, your question, I think, goes well beyond the judicial evaluation question.

SENATOR LASKIN: Well, that adds to it.

CHIEF JUSTICE WILENTZ: There is very little, if anything, in that, that would reassure or frighten a judge who

has the point of view you have suggested. I think the judges of this State know what I am by now. I think they know by now that that is not their Chief Justice.

SENATOR LASKIN: Should a judge have to decide on the individual occupying the position, or should that judge be able to say, "The Chief Justice -- no matter who he is -- is a guy that I really don't have to worry about"? Not that Wilentz is a nicer Chief Justice than somebody else, and I know how he is, but succeeding him may be a guy by the name of Smith, who may be a bum.

CHIEF JUSTICE WILENTZ: I really don't know how to answer that, Senator. It is possible that you could have a Chief Justice, given the power that is given in our system, who would talk to a Governor about every reappointment, because that is the only way that this kind of power could really affect the judges. There could be some kind of an alliance of that kind. That is a possibility. There is nothing in the institutional relationship that prevents it. The only thing that prevents it are the kind of people who get put in the position. I can't tell you more than that. It is a tough question. If the question is, how do you guarantee that no Chief Justice will ever have that kind of power? then it is a tough question. I don't find it a tough question for me. I do not think I am perceived -- I hope I am not -- as some kind of a power person who is going to push the judges around and throw them out. I mean, I think the judges know that I am very interested, and perhaps have been too interested, in not letting the courts get further behind than they were. But I think that by now they have heard from their Assignment Judges, not that I am a softy, or anything, but that--

SENATOR LASKIN: No, I assure you, they have not heard that.

CHIEF JUSTICE WILENTZ: --I am really not the kind of person who would create that kind of fear.

SENATOR O'CONNOR: Senator Zane?

SENATOR ZANE: Anyone else on the evaluation of Judges?

SENATOR VAN WAGNER: If I might-- I think, Mr. Chief Justice, if I could pursue the earlier line of questioning, and perhaps tie in a little bit to what was stated by Senator Laskin, and earlier by Senator Gormley-- I am gratified that those evaluations will be shared with this Committee. The mechanism of evaluation itself, I think, can play a major role in ensuring in the judge's mind -- that individual judge's mind -- that, in fact, it is as fair a system as can be. As part of that mechanism, I would hope that the evaluation process would include a self-evaluation by that judge which would become part of the personnel file, which would, in a sense, at least be available for rebuttal to any other possible political evaluation -- small "p" political -- that might take place.

CHIEF JUSTICE WILENTZ: I believe that is part of the evaluation process, Senator. Also, I should say that throughout these six or seven years of preparation, there have been innumerable discussions between Justice Handler and the other people on the Commission with the judges of the vicinages, to let them understand, so that if there is anything to be concerned about, it wouldn't be a concern based upon lack of knowledge of what this is all about.

But, in direct answer to your question, I have a recollection that self-evaluation is part of the full evaluation. If it isn't, it certainly will be, but I believe it is.

SENATOR VAN WAGNER: Would it be your intention -- and this is my final question on the matter-- Assuming that an evaluation mechanism is developed, would it also be your intention to submit to the Judiciary Committee the mechanism itself as it is being developed for our own informational purposes, so that we might also provide, perhaps, some input as to what some of the members might feel is important?

CHIEF JUSTICE WILENTZ: I don't see any reason why, if you want to see the evaluation system and learn absolutely everything about it-- I don't see any reason why we shouldn't make it available to you. The reason I say I don't see any reason why, is because I am not quite as knowledgeable in this as the people who have been working on it -- Justice Handler and the Commission. I, frankly, see no reason why you couldn't see it.

If it is your intent in seeing it to give us suggestions on how to improve it, fine. You will find it a very technical subject, but I see nothing wrong with that.

SENATOR VAN WAGNER: It is my feeling -- and, again, as a novice member of the Judiciary Committee -- that there has been great discussion about the independence of judges and the Judiciary, and I am concerned about the independence of the Judiciary Committee in terms of being able to make an independent evaluation of those individuals who come before us. Any mechanism that may be developed insofar as judicial evaluations, any program that is developed in that regard that is shared with us, to me, strengthens the independence and the ability of this Committee to operate in the fashion that it is designed to operate in.

CHIEF JUSTICE WILENTZ: I understand.

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

SENATOR O'CONNOR: Senator Zane?

SENATOR ZANE: Mr. Chief Justice, are you, from time to time, consulted by the Executive Branch pertaining to reappointments of judges in the various counties?

CHIEF JUSTICE WILENTZ: Sometimes, but not often.

SENATOR ZANE: Okay. Do you recall, we had a judge in one of the counties I represent--

CHIEF JUSTICE WILENTZ: I recall.

SENATOR ZANE: --who was not reappointed. There was an awful lot of controversy surrounding that locally. Do you recall whether or not you were consulted on that reappointment?

CHIEF JUSTICE WILENTZ: I was.

SENATOR ZANE: You were. Do you recall whether or not you had a recommendation to the Governor on that reappointment?

CHIEF JUSTICE WILENTZ: I do.

SENATOR ZANE: Do you recall what your recommendation was?

CHIEF JUSTICE WILENTZ: I do, but I will not reveal it, Senator.

SENATOR ZANE: Why won't you reveal it?

CHIEF JUSTICE WILENTZ: Because I would regard that discussion between me and the Governor's office as a confidential discussion.

SENATOR ZANE: You know, there was an awful, awful lot of controversy within my county about that.

CHIEF JUSTICE WILENTZ: I am aware of that.

SENATOR ZANE: And I became deeply involved in it, and was accused of a great many things pertaining to that reappointment. Suggestions were made. I am going to tell you what was said. Suggestions were made by the Governor's office that you, in fact, were consulted on that reappointment, and that it was your advice to the Governor's counsel at the time, that that individual not be reappointed. Do you wish to comment any further on whether or not you advised--

CHIEF JUSTICE WILENTZ: No, I don't, except to say this: If, in that kind of a situation, the Governor's office ever said something contrary -- represented something contrary to what my recommendation had been, if I had learned of any such thing, even if it weren't in the press, if I were certain that such had been the case and it was contrary to the fact, I would make the fact known. In other words, at that point I would not regard any confidentiality obligation as existing.

SENATOR ZANE: Fine. Then, if I understand what you're saying correctly, and since you did not respond I am assuming then that the information that was passed on to me,

which violated what you felt was that confidence -- that you, in fact, recommended that Samuel Bullock not be reappointed.

CHIEF JUSTICE WILENTZ: No, Senator. You are assuming that I learned that the Governor's office had made some kind of recommendation -- or rather, that the Governor's office had represented that I had made some kind of a recommendation. I learned of no such thing.

SENATOR ZANE: I am sitting here telling you they did.

CHIEF JUSTICE WILENTZ: I am not about to comment on it after the fact, Senator. I am not about to do that. I hope you can understand that I don't mean to suggest that I don't understand the kinds of problems it must have created for you. It does create problems for me if whatever dealings I have with the Executive are not kept confidential.

SENATOR ZANE: The further problem it created -- and I will tell you right here -- was that that individual had been a longtime friend of mine, and that individual -- that judge -- told me that he had a conversation with you, and that during that conversation -- and I don't know that that is accurate; I wasn't privy to that -- but that during that conversation you had assured him that you would speak on his behalf for reappointment. That individual, very frankly-- I lost a friendship over it, unjustifiably so, in my opinion, which is not of any concern to you, and I don't mean that disrespectfully; it shouldn't be. But the Governor's office absolutely told me to the contrary of what this friend of mine told me your position was. That is why-- Well, I have to tell you, I am disappointed that you are not responding to it. That is a longtime problem I have had personally.

CHIEF JUSTICE WILENTZ: I will not do so.

SENATOR ZANE: Thank you.

SENATOR O'CONNOR: Are there any other questions from the Committee?

SENATOR DiFRANCESCO: Yes, Senator O'Connor.

SENATOR O'CONNOR: Senator DiFrancesco?

SENATOR DiFRANCESCO: May I ask that we take a 10-minute recess for a conference in our meeting room back here to discuss a few procedural matters?

SENATOR O'CONNOR: All right. We will be in recess for 10 minutes.

(RECESS)

AFTER RECESS:

SENATOR O'CONNOR: This hearing will come to order. On behalf of the Committee, I will make a request of the Office of Legislative Services that it render an opinion, for the benefit of the Committee, as to the criteria which are necessary to establish residency within the meaning of the law in the State of New Jersey.

Now, I understand that some of the members of the Committee would like to address motions to the Chair. Senator Dorsey?

SENATOR DORSEY: Mr. Chairman, I think that after our discussion inside, it was proposed that we would make a motion, but would first make some inquiries of the Chief Justice. Mr. Chief Justice, do you have your tax returns with you today?

CHIEF JUSTICE WILENTZ: No, I do not.

SENATOR DORSEY: Are they someplace where a messenger or an aide could be sent to pick them up and bring them here?

CHIEF JUSTICE WILENTZ: Yes, I think so.

SENATOR DORSEY: How long do you think it would take for them to be gotten and presented to the Committee?

CHIEF JUSTICE WILENTZ: Two, three hours.

SENATOR DORSEY: Well, we would request that you take a moment and instruct whomever it might be to pick up those returns, if at all possible, so they can be presented to the Committee.

CHIEF JUSTICE WILENTZ: If that is what the Committee wants me to do.

SENATOR ORECHIO: My understanding, Mr. Chairman, was that they would be for him to relate to, not to be presented to the Committee.

SENATOR DORSEY: Yeah, fine.

SENATOR RUSSO: They are not to be turned over to the Committee.

SENATOR DORSEY: Yes, fine, but he needs to have them.

SENATOR ORECHIO: Yeah, in his possession, not in the Committee's possession.

SENATOR DORSEY: Mr. Chairman, I think the Committee has generally decided to obtain as much information relative to the issues before the Committee as possible. In that regard, this Committee did not receive, as I understand it, the so-called four-way check. It is my understanding that the Committee wishes to receive it and, therefore, I will make a motion that a specific request from this Committee be made to the office of the Governor to provide us -- this time, the Committee -- with the four-way check in connection with the renomination of the Chief Justice of the Supreme Court, which we assume was made by the Administration prior to submitting the nomination.

SENATOR ZANE: Second.

SENATOR O'CONNOR: Motion by Senator Dorsey; seconded by Senator Zane.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: Yes.

MR. TUMULTY: Senator Zane?

SENATOR ZANE: Yes.

MR. TUMULTY: Senator Lynch?

SENATOR LYNCH: Yes.

MR. TUMULTY: Senator Orechio?

SENATOR ORECHIO: Yes.

MR. TUMULTY: Senator Russo?

SENATOR RUSSO: Yes.

MR. TUMULTY: Senator Van Wagner?

SENATOR VAN WAGNER: Yes.

MR. TUMULTY: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MR. TUMULTY: Senator Dorsey?

SENATOR DORSEY: Yes.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: Yes.

MR. TUMULTY: Senator Laskin?

SENATOR LASKIN: Yes.

MR. TUMULTY: The motion is adopted.

SENATOR O'CONNOR: Mr. Tumulty, would you notify the appropriate staff from the Governor's office of the motion by the Committee?

MR. TUMULTY: Yes, Senator.

SENATOR O'CONNOR: Mr. Chief Justice, at this point, in light of the decision of the Committee that you have available for your own reference your income tax returns, what I propose is that we adjourn further questioning of you until that point, and we will hear from members of the public who have come today to address the Committee on your reappointment.

CHIEF JUSTICE WILENTZ: Might I ask this, Mr. Chairman: Is it your intention, or your idea that I will be able to get those returns here for this evening for further questioning, or is it--

SENATOR O'CONNOR: If that is possible.

CHIEF JUSTICE WILENTZ: I'm not sure it is. I mean, I will try, but I would like to know what the Committee's

pleasure is. You would like me to try to have them here this evening?

SENATOR O'CONNOR: Well, if you could have the returns back here within two hours-- I think the Committee certainly intends to proceed for that length of time.

SENATOR DORSEY: Otherwise, I assume we will have to continue to another day.

SENATOR O'CONNOR: That's a possibility, that we will continue until another day. We do have 14 people who have indicated their intention to testify before the Committee.

CHIEF JUSTICE WILENTZ: I'll do my best.

SENATOR DORSEY: Thank you.

SENATOR O'CONNOR: Thank you.

CHIEF JUSTICE WILENTZ: Thank you.

SENATOR O'CONNOR: Is Mr. Raymond Trombadore, President, New Jersey State Bar Association, here? (affirmative response) Mr. Trombadore, please be seated.

R A Y M O N D T R O M B A D O R E: I understood the ground rules were to swear witnesses.

SENATOR O'CONNOR: You are correct; thank you for reminding me.

MR. TROMBADORE: I take it I am to be sworn.

SENATOR O'CONNOR: Do you swear or affirm that the testimony you will present to this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

MR. TROMBADORE: I do.

SENATOR O'CONNOR: Thank you. Please be seated.

MR. TROMBADORE: Senator O'Connor and members of the Senate Judiciary Committee, I want to thank you first for permitting me to address the issue before you. I am here as President of the New Jersey State Bar Association, and I am here in place of the Chairman of our Committee on Judicial and Prosecutorial Appointments. The one prior case where we appeared before the Committee in a situation like this, it was

the Chair of that Committee who reported. Mr. Pitney, who chairs that Committee is away; he is out of the State, so I am here to report for him on the findings of the State Bar Committee.

As the members of this Committee know, the State Bar Association has an agreement with the Governor of the State of New Jersey, an agreement that goes back some 20 years. Under the terms of that agreement, the State Bar Association is asked to pass upon the qualifications of all persons the Governor is about to consider for appointment either to the Judiciary or to the office of prosecutor. When the Governor announces that intention to the State Bar Association, its Committee, which has a counterpart in every county of the State, conducts an investigation, and then deliberates on the qualifications of that person.

In the case of new appointments, the candidate is asked to appear before the Committee. The Committee consists of some 24 people, one representative from each of the counties, a chairperson, and two deputy chairs. In the case of reappointments, an appearance is not normally called for, but the same process is exercised. The county committee is asked to conduct an investigation and to submit a report. The member of the statewide Committee from the county from which that candidate comes, likewise conducts an investigation, and then the full Committee deliberates on the qualifications of the candidate.

Until this year, the Committee would make one of three decisions: We would submit a report that the candidate was either well-qualified for the office considered; qualified for that office; or not qualified. As of May of this year, we adopted a new set of standards, by agreement with the Governor, so that we now report one of two findings: Either that the candidate is qualified, or that the candidate is not qualified.

The Committee was asked to consider the reappointment of the Chief Justice sometime earlier this year, and did conduct such an investigation. It met in May of this year to deliberate on the qualifications of the Chief Justice for reappointment. Each of the counties was consulted, and members of the statewide Committee consulted with officers of a number of other bar committees -- specialty bars, as we refer to them -- such as the Garden State Bar, the Women's Bar Association, the Hispanic Bar, and so forth.

After deliberation, the Committee reported to the Governor, without exception, and by unanimous vote of the Committee, that it considered the Chief Justice qualified for reappointment. We have been authorized by the Governor to bring that report to this Committee, because the report of the State Bar Committee, under normal circumstances, is directed only to the Governor's office.

In consideration of the qualifications of the Chief Justice, the State Bar took into account a number of matters which had been the subject of some public discussion, and reviewed the performance of the Chief Justice over the past seven years, at least in terms of the function of the court and of the Chief Justice specifically in a number of areas: One, in the administration of justice, and two, in the regulation of the profession itself, where the court exercises ultimate power.

I know that reports have been submitted to the members of this Committee concerning the activities of the court in that period of time, but I would like to recite, just briefly, some of the things which we have considered to be significant in that period of time, matters which the State Bar Association feels have brought great distinction to the State of New Jersey in terms of the reputation of its judicial system.

The State of New Jersey is regarded throughout this country as having, if not the finest judicial system in the land, certainly one of the finest judiciaries in the country.

The State Bar Association is proud of that reputation. We think must of that can be attributed to the leadership of the court in terms of a number of reforms which have been instituted, much in the tradition of the reforms that brought us to the forefront of judicial administration with the adoption of our new Constitution in 1947.

In the field of criminal law in the past seven years, we have reduced the time for disposition of a case from arrest to sentence by almost one-half of the median time of almost one year, to approximately 180 days. In the field of the administration of civil justice, we have undertaken pilot programs, and the court has instituted recently, with much comment and input from the bar, a program on differentiate case management, a report which, by the way, contained much sensitive material that aroused a lot of comment from the bar. A process was then put into effect where the bar was permitted to make numerous recommendations for revisions in that report.

In the field of court support services, the Commission on Efficiency in the Management of the Courts made numerous recommendations for bringing the management of the courts of this State into the 20th century, many of which have been implemented. We have seen reforms in the field of probation, in support services, in the Municipal Court, and in the Tax Court. We have created in the State a new Family Court. A report was issued just yesterday indicating the initial success of that program.

With respect to the regulation of the bar, lawyers, of course, are sensitive to that topic. We are proud, in this State, of having originated a number of programs which, again, have brought credit to the State of New Jersey in terms of acting in the public interest, acting for the protection of clients' rights, and the property rights of clients. In the last seven years, we have restructured the disciplinary system in this State. We have created the Office of Attorney Ethics.

We now fund that system with lawyer money, rather than taxpayer money, and we have adopted new rules of professional conduct. Indeed, New Jersey was the first and only State to adopt those rules in the form promulgated initially by the Kutak Commission.

It is largely these accomplishments on the part of the court which I feel commend the recommendation brought to the Governor by the State Bar Association and, in turn, to this Judiciary Committee. In terms of qualifications and competence, it is the recommendation of the State Bar Association that the Chief Justice be considered qualified for reappointment.

SENATOR O'CONNOR: Thank you, Mr. Trombadore. Are there any questions from the Committee? Senator Gormley?

SENATOR GORMLEY: Are there any negatives in the report?

MR. TROMBADORE: Yes, yes. We got as many people as you got, obviously, who can differ on topics. No negatives in terms of the question of competence. No negatives in terms of the ultimate determination of competence and qualification. We had criticism from members of the bar with respect to style, attitude, and some members of the bar who felt that reform was brought without consideration for the impact of reform upon the members of the bar. I think that is inevitable.

What I say, Senator Gormley, is that we have expressed those concerns as the State Bar Association directly to the Chief Justice. We have never had -- and I speak from personal experience; I have served on five of these task forces -- a closed door at the Supreme Court. Contrary to the impression of some people, we have always had a forum where we could appear and express to the Chief Justice our concerns. For at least the last five years, the President of the State Bar Association, and other members of the bar, have been welcomed by the Chief Justice in terms of expressing those concerns, and the reaction and receptivity, I think, have been positive.

I don't know of another court that has, in fact, invited the Bar Association to join in a partnership in court administration. This Bar Association has been so invited.

SENATOR GORMLEY: But those negatives are reflected in the report?

MR. TROMBADORE: Yes, they are. Well, let me put it this way: They are reflected in the deliberations of the Committee. The report itself is a report which simply states to the Governor the ultimate conclusion of the Committee, namely that the candidate is qualified or is not qualified. Other than that, there is no formal report. When I answered your question, I took it to mean the report that comes to our Committee, the kinds of discussions that we have and the kinds of deliberations we have.

SENATOR GORMLEY: Therefore, the report that is being issued -- that is issued to the Governor, which you are making available to us at this time, does not reflect whatever criticisms might have been put forth at your Committee level?

MR. TROMBADORE: Only to the extent that I have just indicated; that is correct. We have no reticence about saying that the matters are, in fact, deliberated openly in the Committee, and we have differences of opinion on specific issues, of course, and there are criticisms, as there must be.

SENATOR GORMLEY: Are the reports going to be issued in the future to this Committee?

MR. TROMBADORE: Only with the consent of the Governor. We had that same question put to us for at least the last 10 years, and this agreement has been in existence for 20 years. The agreement does not permit us, in the normal case, to disclose our findings except to the office of Governor. We would have no problem with working with this Committee, if the compact with the Governor permitted it. I have said that before.

SENATOR GORMLEY: When is the term of the compact up, so we can--

MR. TROMBADORE: It is subject to the agreement of each Governor, and whenever a new Governor takes office, we visit with that Governor and review the whole question of the appointive process. We don't involve ourselves in the selection process, or in the political process, but purely in the appointive process itself in terms of performing what we think is a public service to the Governor's office in terms of reviewing those people whom he considers for these offices. We have had complete cooperation from the time that this system was first inaugurated. I must say that the State Bar has enjoyed, I think, an excellent relationship with the Executive Branch and, I would hope, with the Legislative Branch as well, in that regard.

SENATOR GORMLEY: Would the State Bar consider making a request to the Governor that they continue to make these reports available to the Judiciary Committee?

MR. TROMBADORE: We discussed it in the past, and one of the concerns, of course, was that if, in fact, the scope of disclosure was broadened, the danger of dissemination of information would become much greater, and the confidentiality of the program would then be impinged upon. I think we can find ways of doing this which would satisfy the needs of the Senate Judiciary Committee, and at the same time satisfy the needs of the Governor, but I haven't persuaded people of that as yet. Ultimately all of us, I think, are interested in the same thing. The caliber of the Judiciary is of the utmost importance. To the extent that the bar can give you the benefit of its experience in terms of relating its experience with people considered for public office, we think that is important.

SENATOR GORMLEY: And you think you could do that?

MR. TROMBADORE: We are going to be doing that, in a large part, with respect to the system of evaluation of sitting judges, which was discussed earlier. Much of that process will involve evaluation by lawyers, because the people who best know how judges perform are the lawyers who practice in their courts. I was delighted to hear the Chief Justice say that that information is going to be available to this Committee, because, in effect, it is going to give this Committee the work product of lawyers, as well as the work product of the court. It may well be that the onset of that program can be married to, or welded with the kind of evaluation program we have done in the appointive process for 20 years.

I would like to add one other thing for the Committee. The question of evaluation of sitting judges originated, at least in my knowledge, approximately 11 years ago, as a result of the very thing we are doing here -- consideration of a sitting judge for reappointment, where we had a problem and called the judge in. The problem was one of temperament. We confronted the judge with the fact that many lawyers felt he had a problem of temperament. As a matter of fact, I can recall vividly the way in which the issue was put to that judge. He came in, he was introduced to the Committee, and the person conducting the interview said, "Judge, we are told by many of the lawyers who practice in your court that you are a son of a bitch. What do you have to say about that?" The interview went on from there for a half hour. Six months later, after that judge was confirmed, we got a letter from that judge, who said how grateful he was to the Committee, that his eyes had been opened to a problem he did not know existed. He pleaded with the Committee to make available that kind of an evaluation to all judges.

We then appointed a committee to study the question of evaluation of sitting judges, feeling that there was much merit. A judge, after all, is insulated from his peers. He

does not get a chance to know how he is doing. He puts on the robe, and nobody ever tells him what kind of a job he is doing. Lawyers are afraid to criticize him because they have to appear before him. So, the State Bar has been in the forefront of urging a system of evaluation. We do a form of evaluation in terms of the reappointment of judges, but there is no set system for doing it on a routine basis, except at the point of reappointment. I think that is something which, at this point, may be reexamined, because of the role of the bar in the evaluation process.

SENATOR GORMLEY: Is it your opinion, and also the Committee's opinion, that with the exception of the Governor's consent, you would make this information available to us on every nomination?

MR. TROMBADORE: I can't say that I have discussed that with the Committee. I served on the Committee for 11 years, and just rejoined the Committee two months ago. The President sits as a member of the Committee. I was off of the Committee for the last five years, but I did serve for 11 years. Certainly the attitude then was as I have expressed it, but I haven't discussed it in the last two months.

SENATOR GORMLEY: Thank you.

SENATOR O'CONNOR: Are there any other questions from the Committee? Senator DiFrancesco?

SENATOR DiFRANCESCO: Mr. Trombadore, just exactly what is the method you use in coming to a conclusion with respect to a judge and, in this case, the Chief Justice? Just tell me how this Committee works, how many members it is comprised of, who are they, what questions do they ask, and what forms to they give the Chief Justice to fill out? I don't know anything about this. I would like to know, if you want to tell us.

MR. TROMBADORE: The Committee consists of 24 people. One member from each of the 21 counties; in addition, a

chairperson, a vice chair for North Jersey, and a vice chair for South Jersey. These people are appointed by the President of the State Bar Association. They serve three-year terms, and their terms are staggered so that each year seven new people -- or seven people are appointed or reappointed to the Committee.

Each county likewise maintains a Committee on Judicial Appointments. It is a counterpart committee which works with the statewide Committee of the State Bar Association. The committees at the county level, until just recently, have been of different sizes. We had some committees with five members; some with 12 members. We have just now published uniform standards for the appointment of and the size and composition of those committees.

Whenever a name comes to the State Bar Association from the Governor's office, we receive with the letter indicating the Governor's intention to appoint a questionnaire--

SENATOR DiFRANCESCO: Let me stop you there. The Governor sends the State Bar -- not the local bar -- a name--

MR. TROMBADORE: That is correct.

SENATOR DiFRANCESCO: --from a particular county.

MR. TROMBADORE: That is correct. That is directed on a confidential basis to a staff member who is assigned for that purpose. That letter simply says, "I am considering the appointment of John Smith to be a Judge of the Superior Court," or "to be a Judge," he may not mention the court, "in Gloucester County," or in Union County, or whatever. "Will you please evaluate that person's qualifications for that office?" That name is then circulated to all the members of the statewide Committee with an agenda, indicating that on a certain date the Committee will meet to deliberate upon the qualifications of that person.

If it is a person from Union County, the member of the statewide Committee from Union County will complete a questionnaire -- a uniform questionnaire -- and he will do so

on the basis of a personal investigation conducted by him or by her. The investigation typically is conducted by speaking to all of the judges who sit in the vicinage before whom that person might have practiced; members of the trial bar with whom that person has had experience; and leaders of the bar who know that person; typically, 40 or 50 personal interviews, either by telephone or in person.

SENATOR DiFRANCESCO: In this case -- this is Middlesex County-- Who is the individual who represents Middlesex County?

MR. TROMBADORE: In this case, we did not ask for specific county reports, but we received them, even though we didn't ask for them. In the case of Middlesex County, we received a report from Jack Borrus, who is a member of the statewide Committee. But we also designated the vice chair for North Jersey to conduct his own investigation, which was done by calling 18 of the 21 counties, as well as seven specialty bars, and eliciting from them the opinions of those local areas with respect to the question of reappointment. Each member of the Committee -- because the office is a statewide office -- was then asked to bring to the Committee deliberations their personal knowledge of the operation of the court, and their own experience in terms of that operation. And I have to say that is rather diverse, because we have a fairly diverse composition of people on that Committee; I might say people who have been extremely active in the trial courts, who are selected because of their involvement in the court system.

The statewide Committee then receives a report from the county, in the case of a typical appointment, and we then receive the report of the county member of the statewide Committee. Then we deliberate on the basis of that, after interviewing the candidate. In addition, we ask for a check from the Office of Attorney Ethics to determine whether there have been any complaints, either from the Fee Arbitration

Committees or from the Ethics Committees concerning that candidate. If we are dealing with a sitting judge, we ask for a report from the Committee on Judicial Conduct as to whether there were any complaints with respect to that judge.

Those things were done in this case, and we did receive those reports.

SENATOR DiFRANCESCO: Ray, in those particular reports-- When you say you asked for a report, these are not conclusions; these are just reports. If there are, for example, any complaints, they would list those complaints and whatever detail they have?

MR. TROMBADORE: That is correct. We received a report dated May 27 from Patrick Monoghan, Professional Services of the Committee on Judicial Conduct, indicating they had reviewed their files and found no reports. The report from the county representative is completed on a form which is used for that purpose, which contains evaluations in a number of areas ranging over legal knowledge, legal skills and ability, competence, comportment, management skills, integrity -- a list of standards which are designed to define the matter of competence and judicial qualification. So, the work of the Committee is fairly extensive.

SENATOR DiFRANCESCO: Ray, now, you then come to a conclusion in a meeting of some sort. Or, is there a meeting where all of the representatives of the State Bar Committee sit together?

MR. TROMBADORE: Yes, almost every month, because the number of appointments that come to us -- or at least the number of names that come to us for consideration -- is fairly considerable. We review a renew appointment and every reappointment. The typical work load is to review 10 or 11 names each month. We usually meet starting at nine o'clock in the morning, and we sometimes go until 5:30, interviewing new people, reviewing reports on people up for reappointment, and then deliberating on each case.

At the end of the day, we collect the various determinations of the Committee. We initially report them by telephone to the Governor's counsel, and then the chair of the Committee -- in this case, Mr. Pitney -- will arrange to meet with Governor's counsel and review with him in more detail the findings of the Committee.

SENATOR DiFRANCESCO: Someone from the Governor's counsel's office is not present at this meeting?

MR. TROMBADORE: No, but we have invited Bill Harla to attend one of our meetings. He will attend our next meeting just to witness the operation of the Committee.

SENATOR DiFRANCESCO: Would it be possible for a member of this Committee, for example, to attend one of those meetings, or regularly?

MR. TROMBADORE: With the Governor's consent, yes. We would not object, but we would need the Governor's consent because the compact does not contemplate that.

SENATOR DiFRANCESCO: Is this a written compact?

MR. TROMBADORE: Yes, it is. It is a written compact, and it is reviewed with each Governor. We have made revisions to it. I must say that Governor Kean has pledged his cooperation to continue this. In fact, we have been asked to make recommendations for improving the system, and we have made a number of recommendations. We have just issued a rather lengthy manual which describes in great detail everything that I have said here, which includes in the appendices all of the forms that are used. I should think this Committee would welcome copies of that, and we have no problem with circulating those copies. I think you would find it interesting to know the process that we utilize. The process itself is not confidential. The actual proceedings are confidential.

SENATOR DiFRANCESCO: Was the Chief Justice interviewed?

MR. TROMBADORE: No. He was interviewed in 1979. I sat on the Committee when he was interviewed. But, as I said, in the normal case, judges who are up for reappointment are not interviewed. There are exceptions to that. When we receive numerous complaints about a sitting judge which indicate to the Committee that there are problems, before the Committee will issue a report that that judge is not qualified, the Committee will call in that judge and put the problem to the judge to get a response, to give that judge an opportunity to present his case, as it were. That was not done in this case.

SENATOR DiFRANCESCO: When was this report communicated to the Governor?

MR. TROMBADORE: I believe it was May 29.

SENATOR DiFRANCESCO: May 29?

MR. TROMBADORE: Yes, I think so. I can be more sure if I look at my calendar. Just bear with me. (witness consults his calendar) The date on the evaluation report is May 29, but it may not have been the day that the Committee met. But I think that is correct, because it was a week after I was inducted into office.

SENATOR O'CONNOR: Do you have any more questions, Senators?

SENATOR DORSEY: Yes, just one more.

SENATOR O'CONNOR: Senator Dorsey.

SENATOR DORSEY: Mr. Trombadore, the recommendation is either qualified or unqualified. Correct?

MR. TROMBADORE: That is correct.

SENATOR DORSEY: What are the criteria which the Committee members consider in rendering a decision as to whether he is qualified or unqualified? I mean, I assume the criteria does not include how he dresses or what his family life may be. What are the criteria that are considered for the purpose of rendering that decision? Is there a check list or something we could look at?

MR. TROMBADORE: Yes, yes. We have 11 separate criteria.

SENATOR DORSEY: Eleven separate--

MR. TROMBADORE: Eleven separate general standards against which every candidate is tested. I am sorry that I can't recite them by heart, but they start with: Does the candidate have an exceptionally high legal ability and knowledge of the law, and skill in applying the law? That kind of thing. We range from that type of overall ability -- legal skill -- to temperament -- Does the candidate have the necessary demeanor and temperament and patience, and so forth? -- on to issues of integrity, ability to avoid undue influences, ability to make decisions free of biases, to be objective.

The standards parallel very closely the standards that are utilized by the American Bar Association in performing reviews for the Attorney General's office with respect to appointments by the President of the United States. We have no litmus test.

SENATOR DORSEY: We have that?

MR. TROMBADORE: I am not suggesting you do. I am simply saying that our standards are those objective standards -- objective to the extent that you can say they are.

SENATOR DORSEY: I understand. Okay.

MR. TROMBADORE: Obviously, much of that is subjective in the sense that you are bringing to bear your own personal judgment concerning the individual.

SENATOR DORSEY: Thank you.

SENATOR LYNCH: Any other questions from the Committee? (no response) Thank you very much, Ray.

MR. TROMBADORE: Thank you.

SENATOR LYNCH: The next witness will be Ms. Jean Belsante, New Jersey State Representative, Concerned Women for America. Will you please swear her in, John?

MR. TUMULTY: Ms. Belsante, do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

J E A N B E L S A N T E: Yes, I do.

SENATOR LYNCH: Go right ahead.

MS. BELSANTE: Thank you. Gentlemen of the Committee: My name is Jean Belsante, and today I am here as the New Jersey State Representative of Concerned Women for America, a national organization of women from all walks of life, which, according to "Time Magazine," of September 2, 1985, is larger than the combined following of the National Organization for Women, the National Women's Political Caucus, and the League of Women Voters. We are, in fact, recognized as the fastest-growing women's activist group in America and, perhaps, the world. During the past year, for example, our New Jersey membership dramatically rose from 7000 to 9000 in numbers, while nationally it grew, in 1979, from nine women to over 500,000, which is our present membership nationally.

A central purpose of our organization is to defend the rights of the family and to protect our ever-dwindling religious freedoms and constitutional rights. Today, more than any other time in American history, American women are seeking to influence the public policy decisions of our legislatures and courts. As women who believe in God and traditional family values, we have affirmed and published twelve basic concerns of paramount importance for us today, which provide the foundation for our activities, one of which upholds, "the sanctity of human life for the unborn, the handicapped, and the elderly."

Under the Wilentz court, we have experienced a very sharp decline in the regard for human life:

1) We have witnessed a court that upheld the so-called "right" to abortion, using as its basis the revised New Jersey State Constitution as adopted in 1947, when, in fact, abortion was illegal;

2) We have witnessed a court that has engineered a devastating and nearly complete framework for the eventual legalization of euthanasia, not only in our State, but in all of America, as their decisions are very clearly setting a national precedent.

As just one illustration, I would point out the Claire Conroy decision, which extended the earlier Quinlan decision. The Wilentz court took the formerly designated basic necessities of food and water, and redefined them as medical treatment, thereby ushering in a legal provision for passive euthanasia; that is, taking no action to save a life.

3) We have witnessed a court that has rendered these and other life and death decisions in such a manner as to employ judicial activism -- a term that, of course, denotes a clear usurpation of power by judges who prefer to make laws, rather than to interpret them. The term "judicial activism" is not indigenous to New Jersey. It flourishes in other state courts, extending all the way to the United States Supreme Court. So critical to this issue before us is the term judicial activism, that I have chosen to focus attention upon it during the remainder of my testimony.

This law-making role of the robed elite is evident in a number of national decisions, including Roe vs. Wade, when abortion was first legalized by the U.S. Supreme Court in 1973; and, again, on June 5, 1980, when a Federal judge ruled that Parma, Ohio must provide 300 units of low-income housing annually. In short, decisions and regulations once considered the province of legislators are increasingly made by judges, prompting Professor William Forrester, former Dean of Cornell Law School, to refer to our U.S. Supreme Court as the "Legiscourt."

Knowing that no agency or official is infallible, no matter how well-meaning, our founding fathers wisely and very protectively provided governmental checks and balances, in

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order to ensure that each branch could prevent another from becoming too powerful.

Similarly, our own New Jersey Constitution prudently echoes this theme under Article 3, Paragraph 1 -- which I am sure you are familiar with and which has been mentioned today -- stating: "The powers of the government shall be divided among three distinct branches, the Legislative, Executive, and Judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."

As I pondered the previous limitation of power just read, another portion of our State Constitution caused me to reflect on the Mount Laurel II decision of the Wilentz court, that portion being Article 4, Section 6, Paragraph 2, which says: "The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature."

Curiously, nowhere in our State Constitution do we find any mention of the Judicial Branch's authority to legislate. And so, the logical question is, by what authority was the Mount Laurel decision legislated by the Wilentz court? If this power is not authorized by our State Constitution, has it been usurped?

Some of the political giants in United States history have answered this question in terms of Federal considerations, which would, seemingly, apply to the Wilentz court.

Thomas Jefferson wrote: "You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. The Constitution has erected no such single tribunal."

Andrew Jackson had this to say: "The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive."

Abraham Lincoln expressed it this way: "If the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."

And, finally, James Madison, recognized as the Father of our United States Constitution, summarized it succinctly with these words: "In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself."

I would remind you, in closing, these were men who possessed astonishing wisdom. They walked through their own politically hazardous corridors of history to defend our constitutional freedoms, some even pledging their lives, their fortunes, and their sacred honor.

This, then, is clearly the challenge before you gentlemen today: To protect our State Constitution from usurpation or encroachment. Moreover, as our duly-elected Legislative Branch of government, you must jealously guard the legislative powers delegated to you, and only to you.

Concerned Women for America of New Jersey, therefore, urges you to reject the reappointment of Chief Justice Robert N. Wilentz. We believe New Jersey deserves a man who will

truly keep the sacred oath of his office; that being, to uphold the New Jersey State Constitution of this beloved Republic, the most cherished form of government any nation has ever known.

SENATOR LYNCH: Any questions from the members of the Committee? (no response) Thank you very much. The next witness will be John Tomicki, New Jersey Right to Life Committee.

J O H N T O M I C K I (speaking from audience): Mr. Chairman, may I ask a favor of the Committee? Mr. Calvin, I believe, is also on the witness list. He called to tell me yesterday that he had a pressing family matter, and I would have no objection -- if the Committee would have no objection -- if he took my place at this time, and I will take his place whenever his name comes up on the Committee list.

SENATOR LYNCH: Sure.

MR. TOMICKI: Thank you.

W I L L I A M C A L V I N: Thank you. Through the Vice Chairman, Senator Zane, I would like to thank the Committee for this opportunity to testify today. I am here representing the 3000 members of the New Jersey Christian Action Council. We are basically an educational and lobbying organization, concerned with protecting some of the most endangered species in our country -- unborn children, handicapped children, and the elderly. We usually focus our lobbying attentions on our Congressmen. We don't communicate with you gentlemen very often, but we certainly think this is an important time to do that.

We would really like to address two areas today. One is some of the decisions that Judge Wilentz has been a part of, and secondly -- really, some of the things you gentlemen got into earlier today -- his overall philosophy and some of the problems that a lot of us have with his attitude toward our Constitution, the separation of powers, and the independence of the Legislature, rather than just the Judiciary.

I found it very impressive this morning to hear some of the personal details of the Chief Justice's life. I am not as interested as you are in his residency. It seems like we lost the Statue of Liberty to New York; we might have lost our Chief Justice, too. But I think it was really interesting to hear how that man's compassion for his wife overrode even some of the political pressure that Senator Russo might have been trying to put on him to say that he was going to move back to New Jersey when her health problems went by. I certainly respect him for that, and for the compassionate concern that he obviously shows for his family members. I think that is the kind of thinking that our organization is supportive of.

Unfortunately, I am very disappointed that I don't seem to see that kind of compassion for some of the people who come before him in some of the decisions he has made. That is what I would like to address at this point.

One case is the case of Right to Choose vs. Governor Byrne in 1983. At that time, the court was considering a 1981 New Jersey law which you gentlemen, or your predecessors, had passed and which had been signed by the Governor, that was going to limit the use of Medicaid funds for abortions only to cases where the mother's life was in danger. When the United States Supreme Court considered a very similar piece of legislation from another state, in a case called Harris vs. McRae (phonetic spelling) in 1980, they upheld that legislation. They said it was constitutional under the United States Constitution.

Unfortunately, for some reason, Justice Wilentz, over a very strong dissent by Justice O'Hern-- Justice O'Hern noted the impropriety of invalidating your legislative act, especially under the circumstances involved. Wilentz went right ahead and swept away that state legislation, and swept away the very reasonable limitation which you gentlemen had put into it.

Another case is the Claire Conroy case, getting a little bit closer, really, to the situation of the Justice himself. Here was a woman who was impaired. She was in a nursing home because of her health problems. You gentlemen passed State legislation creating an Ombudsman for the Institutionalized Elderly, which was designed to protect human patients. Justice Wilentz, along with Schreiber, who wrote the opinion, and the other judges, callously approved starving a woman to death in a nursing home. I didn't have the opportunity to talk to Justice Wilentz, but I did talk for several hours to Justice Schreiber and Justice Pollock about that case. I was shocked to hear their attitude and, really, their insensitivity in that area.

I think, as legislators, you should really be concerned with restoring respect for the sanctity of human life. Obviously, Mrs. Wilentz is a valuable human being. She is created in God's image. She had a mastectomy. That doesn't make her less of an important person. She was having chemotherapy and having side effects. That didn't make her less of an important person. Well, there are other people in New Jersey who might be handicapped or retarded or not born yet. That doesn't make them less important people created in God's image. I think there has to be a consideration when people like Justice Wilentz come before you gentlemen.

Another case in the same line, was the so-called wrongful life case, where Justice Wilentz and the court set a very dreadful precedent where people can sue their obstetricians when handicapped children are born. That is a tremendous threat to every child in the womb. We are all very fortunate in this room. We have already been born. We are not going to be sought out by some fancy new test that is going to tell people we are going to have psoriasis when we grow up, and that our parents are going to sue the doctors for wrongful life when we are born.

So, that is one area I think you gentlemen need to focus on. I was amazed that my predecessor here was the first person to mention the famous Mount Laurel case after we had been here for six hours. I think you have to think about the cases this Justice has rendered. I would ask you to seriously look at some of the cases where respect for the sanctity of human life has really been weakened by the New Jersey Supreme Court under his leadership.

The other area I think is very important -- which you did touch on this morning -- is the independence, not of the Judiciary, but of the State Legislature. The underlying basis for our liberties in this country is that each branch of government acts in its own proper sphere of influence -- you gentlemen spoke about that a lot today -- the sphere of influence delegated to it by the U.S. Constitution and by our State Constitution. Both of those documents provide a system of checks and balances and a separation of powers. The power you gentlemen have is the legislative power. You are elected by the people. Senator Laskin thinks it would be terrible for us to elect judges in New Jersey, because the Judiciary is supposed to have a certain role. But, you gentlemen are elected by the people. You are our representatives, and you are the ones who should be making the decisions. Whether they are decisions regarding life and death, zoning for low- and moderate-income housing, or whatever it happens to be, the legislative role is yours, and in too many cases courts, under people like Justice Wilentz, have usurped that power in the recent past.

I think the comments to Senator Russo this morning really proved the fact that the New Jersey court has become one of the most extreme examples of judicial activism in this country. He has helped in the progress of changing the court from a group that doesn't make the law, but usurps power and then makes the law, whereas it should be a group that

interprets the law. They should start with the Constitution, and look at what you do and decide if your actions are constitutional. They shouldn't be writing legislation. They are doing that in too many cases.

You can go all the way back to the Magna Charta, in English common law, and you will find that the principles of government that our laws are based on say that power is not the most important thing in society. Justice is first. Thomas Jefferson made this clear in the Declaration of Independence, where he talked about inalienable rights. Well, rights aren't inalienable if whoever sits in this chair like the gentleman this morning can take them away. If the courts can take away rights, then they are not inalienable and we have lost our basic fundamental freedoms.

I would challenge you, gentlemen, to really seriously examine all of these questions as you all consider this gentleman.

Just to sum up, I think his approach to the legal system is one of usurping power, taking more and more power into the hands of the courts, and I think it violates the Constitution. I think he is violating your independence and your constitutional rights as our legislators. On behalf of our membership, I would urge all of you to vote not to reappoint Justice Wilentz.

Thank you very much.

SENATOR O'CONNOR: Thank you. Our next speaker will be Corrine Driver, Office of Child Placement Review.

C O R R I N E D R I V E R: My notes say, "Good morning, Senators." Good afternoon, Senators. I am Corrine Driver, a taxpaying citizen, a volunteer, and an advocate for children and families. I am here because I would like to support the reappointment of our very special Chief Justice. You have a very big job to do today, or tomorrow, depending upon how quickly things go. I respect what I have seen this morning.

You have all asked a lot of good questions. I guess it is notable to me, that after seven years in office there haven't been more questions -- a larger variety of questions.

I have just come down from Rhode Island to give this testimony. They just had to -- I believe it was -- impeach their Chief Justice, after far fewer than seven years. I think that speaks well of Chief Justice Wilentz.

I have no vested interest in being here. I will neither benefit nor not benefit except as a resident of this State based on the actions of this Senate regarding the appointment of Chief Justice Wilentz. However, I fear for another group of people, and I am here on their behalf.

Families and children in this State -- the disinfranchised families and children -- have been very deeply involved in my volunteer work on the local, county, State, and national levels. My major volunteer activity is going to the Newark Courthouse every week to review the cases of children in placement who have been removed from their homes by DYFS -- the abused and neglected children of this State -- and to meet with that population.

As a result of that, I have worked within the court system and have a good sense of it. I know firsthand that Chief Justice Wilentz is a champion for these children, and particularly for those who can be diverted from the courts. He has spent an amazing amount of time trying to keep families out of the court system. How many Chief Justices do you know of who have done that? And how many states have that kind of leadership? If that is activism, gentlemen, then three cheers for activism.

As Vice President of the National Association of Foster Care Reviewers, I can attest to his national reputation among volunteer count-appointed special advocates as recognizing the value of embracing the use of citizens within the courts. His leadership has been cited as recently as last

week in Providence at the National Council of Juvenile and Family Court Judges. I must state that New Jersey is fortunate to have a Chief Justice who has demonstrated that families are also his priority, and I would suggest that I wrote those comments before this morning. And, if you haven't had a demonstration since then, I would be surprised.

As Chairperson of the State Child Placement Advisory Council, I also have personal knowledge of the Administrative Office of the Courts and the administration of the court. Having been privy to that administration through the Child Placement Review Act, I must tell you it is significant when the bureaucracy -- it is significant, and laudable I might add, when the bureaucracy gets a kick in the derriere to become efficient. When it comes to children who have been taken out of their homes as a result of suspected abuse and neglect, what may seem like a speedy trial to some can be half a life to that child. Think about it. Put yourselves in the shoes of a three year old removed from home, put into a home with strangers, and wanting to go home. Define speedy.

Under Chief Justice Wilentz, the Family Court has sprung to life, and the Chief Justice has repeatedly demonstrated his willingness to include a cross section of citizens, such as myself, in court matters and policies, by forming inclusive committees to tackle major issues. This was spoken to earlier by the gentleman from the Bar.

As a citizen depending on my Senate to make an unencumbered decision on the future of New Jersey's courts, it concerns me greatly and pouting and politics are threatening to cheapen the debate of the Chief Justice's value to this State -- his State -- of New Jersey. I was interested that only once this morning did we talk about quality of time when questions were being asked about residency. Is it more important to be asleep someplace or awake someplace?

New Jersey citizens want an excellent, nonpolitical court system. Criteria for this important decision which you have to make very soon, should relate to justice, fairness, knowledge, intelligence, ability, compassion, caring, understanding, comprehension. I wish I had heard more of those words, and I hope you will keep them uppermost in your decision-making.

Robert Wilentz embodies these virtues. New Jersey is fortunate to have him as a resident and as Chief Justice. I respectfully suggest his reappointment must not be denied.

Thank you.

SENATOR O'CONNOR: Thank you, Ms. Driver. Senator Laskin?

SENATOR LASKIN: Before you leave, could you just recite those standards you gave us in the last two or three sentences? You say, "New Jersey must have," and I think you said, "compassion, sincerity--"

MS. DRIVER: These are my own. This isn't any--

SENATOR LASKIN: No, no, but I would like to hear them.

MS. DRIVER: Okay -- justice, fairness, knowledge, intelligence, ability, compassion, caring, understanding, and comprehension.

SENATOR LASKIN: Okay. I would just like to tell you, from my perspective -- and I think I am saying it on behalf of everybody on this Committee -- everyone on this Committee would like to see a system embodying justice, fairness, knowledge, intelligence, ability, compassion, caring, and those other two words. I don't think there is one person on this Committee who would disagree with your description. It is just a question of making sure that we have these qualities.

MS. DRIVER: I am speaking on behalf of the fact that I believe we do, embodied in Chief Justice Wilentz.

SENATOR O'CONNOR: Thank you, Ms. Driver.

We still have a number of witnesses who have signed up. It is the Committee's intention to give everyone the opportunity to address it. I would ask, in light of the hour and in light of the length of time we have been considering this nomination today, that if you are going to be repetitive, that you not be so, but tell us merely that you agree with the previous speaker or you disagree. If you have a written statement, we would appreciate it if you would present the written statement, rather than reading it, and we will make it part of the record.

In that regard, I will advise you that I have received a letter from the former Attorney General, Irwin I. Kimmelman, in which he is submitting a six-page written statement, and we are making that a part of the record. Just to summarize, it is very supportive of the nomination of the Chief Justice.

The next speaker -- and I am going to go back -- will be Mr. John Tomicki. Mr. Tomicki, you yielded in favor of Mr. Calvin. Would you like to address the Committee at this point?

MR. TOMICKI (speaking from audience): Well, I do not want to jump ahead in deference to the other people who are here who have waited long hours. I do not think it would be fair to them. (Remainder of Mr. Tomicki's comment inaudible to transcriber since he was not situated near a microphone.)

SENATOR O'CONNOR: Very well.

MR. TOMICKI: I am trying to be as respectful to them as you are (inaudible).

SENATOR O'CONNOR: Okay. Mia Anderson will be the next speaker.

UNIDENTIFIED PERSON FROM AUDIENCE: Mr. Chairman, she had to leave, but she had intended to speak on behalf of the nomination.

SENATOR O'CONNOR: Thank you very much. Ciro Scalera, Executive Director, Association for Children of New Jersey.

C I R O A. S C A L E R A: Thank you, Mr. Chairman and members of the Committee. I submitted a brief, one-page statement for your record. I will just summarize my testimony.

I represent the Association for Children of New Jersey. It is a statewide child advocacy organization, designed to try to promote positive public policies for children.

During Chief Justice Wilentz's first term, we believe he has been a strong advocate for children in terms of his administration of the court system. Basically, we feel he has promoted two fundamental policies that have contributed to improving the way the court process deals with children and families.

First, he has acted to open up this process to the public. The court system has -- for many, many years -- essentially been a shielded or a closed system, one that citizens have not had a lot of access to, involvement in, or participation in. We feel the policies that the Chief Justice has promulgated have set a positive tone of opening up the court process, from the bottom levels right up to the Supreme Court itself, in terms of involving citizens in advisory panels and on citizen volunteer projects, such as volunteers in probation, child placement review, and other mechanisms. We feel that has been a very positive development.

Secondly, we feel he has made and set a policy tone in terms of the importance of children and familial issues, in the sense that traditionally in the court processes other interests, those of other divisions -- the law divisions, the matrimonial divisions -- perhaps have overshadowed the interests of what was the Juvenile-Domestic Relations Court, but which is now the Family Court. We believe he has been a strong proponent of the Family Court, in working to see that policies are enacted that would upgrade the quality and the professionalism of how the Family Court interacts with society, and the court's burgeoning role as a social arbiter.

Much of what has been put on the court, through legislative or other enactments-- We feel that there has been an attempt to try to upgrade the professionalism of that, and that that, too, has been a positive development, one that has enhanced the way the court interacts with the hundreds of thousands of children and families who are processed through its system each year.

For those reasons, we support the renomination of the Chief Justice.

SENATOR O'CONNOR: Thank you very much. Questions? (no response) The next speaker will be Mr. John R. Connor.

J O H N R. C O N N O R: Mr. Chairman and members: I do not have a statement, per se; however, I have produced some backup exhibits in a quantity of six, and I would like to distribute them around, if that is okay with you.

My name is John Connor, and I am a resident of Essex County. I have lived my life in the town of Millburn, New Jersey. I appear before you today basically in opposition to the renomination of the Chief Justice, solely because of litigation that I have been involved with for several years. I could, as a matter of fact, deal with numerous instances that I feel are pertinent to the issue before the Committee. However, I intend to narrow it to a single issue. I have, therefore, incorporated in this brochure materials that are pertinent to the issue of my allegation that the Chief Justice was basically party to a fraudulent decision in the Supreme Court of New Jersey in connection with litigation that I had pending before him.

As very brief background to this matter, the litigation concerns the matter of Connor vs. Flynn, a Chancery matter that had been pending for years in Essex County. It was conducted by my mother, Mary A. Connor, who died in 1977. At the time of her death, her posture basically was that she had prevailed in her litigation to the extent of winning

approximately $30,000, which became later a Superior Court Trust Fund that amounted to nearly $60,000.

In her will, she appointed me her executor. I was not allowed to serve as executor on the basis of the objections of several of the attorneys who had liens on the $58,000 trust fund. And, in item 2, the very first page, one of the firms involved notified the court, in a memorandum opinion, that they opposed my appointment as executor of the estate. In the remainder of section 2 I submit an excerpt -- not the entirety -- of my appeal of the 1979 probate judgment that not only admitted Mrs. Connor's will to probate, but disqualified me from the office of executor of her estate.

I replied to that brief with four arguments, only two of which will be at issue in my appearance here. In the latter part of section 2, I presented two arguments for overturning the Trial Court's probate judgment that disqualified me from serving as executor. The first argument challenged the jurisdiction of the Trial Court to even hold the hearing; the second argument challenged the Trial Court's legal authority to prevent me from serving as executor of that estate. I argued that basically under New Jersey law I had no legal disability, and I could not be prevented from serving as executor.

I took that appeal to the Appellate Division of the Superior Court of New Jersey, and in section 3 there is reproduced an order signed by Justice Robert A. Matthews of that court, wherein, on the second page, there is an opinion which states that arguments one and two have already been adjudicated below and affirmed, and therefore are barred by res judicata.

I submit to the Committee that those arguments could never be barred by the doctrine of res judicata--

SENATOR RUSSO: Mr. Chairman, may I interrupt for just a moment?

SENATOR O'CONNOR: One second, Mr. Connor. Senator Russo.

SENATOR RUSSO: With all respect to Mr. Connor, we can't re-litigate cases before this Committee when a judge comes up. We have had this so many times in the past. It is not our function. Some of us aren't even lawyers; some aren't even good lawyers -- and I don't exclude myself; maybe myself included.

MR. CONNOR: I am not asking the Committee to re-litigate.

SENATOR RUSSO: Well, you are going into the facts, as I understand it, of a matter you had before the court, and actions or decisions of the court -- if I understand it correctly. Mr. Chairman, I would suggest that that could keep us here for about a month and a half on different people.

MR. CONNOR: No, I will be through in five minutes, Senator Russo, I can assure you. My basic point is, my arguments were dismissed on a false finding of res judicata. I had no appeal. I have a constitutional right to an appeal on the merits, and that was absolutely wiped out by a fraudulent finding that the Chief Justice refused to overturn when I took the case before him. He is a party to a fraudulent order of the Supreme Court of New Jersey. He was willing to dismiss that appeal based on that fraud and, consequently, he has encountered ethics problems under Canons I, II, and III.

SENATOR RUSSO: Well, there is a place for that. You've got the Committee on Judicial Ethics, if that would be the proper place. It certainly isn't this Committee.

MR. CONNOR: Well, I think it is germane. I think any facts should be brought to the Committee's attention which would reflect on his ethical qualifications to hold his office. Am I not correct?

SENATOR RUSSO: Yeah, except that what you are saying now, so far -- I think, and I read your -- or skimmed through your documents -- doesn't demonstrate any ethical problems. It demonstrates questions of law, where you say he is wrong, he

should have done something, you know, that he didn't do. We can't be the arbiters of that.

MR. CONNOR: Are you referring to the documents I just gave you?

SENATOR RUSSO: Yes.

MR. CONNOR: Well, I admire your speed in reading it.

SENATOR RUSSO: I read fast.

MR. CONNOR: Well, the fact of the matter is, not only does it present an ethical problem, but it presents a serious problem of fraud under the criminal statutes of this State. And, if that is the type of proceeding that has to be instituted in order to provide the appropriate forum for it, then so be it.

I notice the Chief Justice has been excused from the hearing for a couple of hours. He is not available for questioning on these issues. I very much regret that, but the fact--

SENATOR O'CONNOR: Mr. Connor, on that point, the Chief Justice will not be answering questions regarding specific cases that he is involved in. What we are here for is to determine his suitability and his fitness and his qualifications for reappointment as Chief Justice.

MR. CONNOR: I think a Chief Justice who dismisses an appeal based upon a fraudulent finding of res judicata, where arguments in the Appellate Division were thrown out, not considered on the merits, and fraudulently dismissed-- I feel that is an issue that belongs before this Committee, and that the Committee certainly cannot duck its responsibility to look into the matter, if necessary in a plenary hearing.

Now, my other point is, there have been-- Was this simply a mistake or error with no consequences? I submit that there were enormous consequences, because the administrator who is allowed now to preside over this estate on the basis of his fraud, has been able to disburse $58,000 from a trust fund,

without even appearing as a party in the litigation to defend the estate of Mrs. Connor against claims against that trust fund. In sections 7 and 8, you will see the orders disbursing those moneys, and in neither order is the administrator of the estate of Mary A. Connor listed as a party, and at no time has he ever defended. That has all been made possible because my appointment as executor was basically fraudulently maintained, when those two arguments in this brochure were not considered on the merits. They were thrown out on the basis of a nonexistent judgment that has never been identified, nor pleaded by any party to the appeal. It simply does not exist.

That is a factual matter that is within the comprehension of even an attorney -- a non-attorney, as some of us are. On the basis of that argument, I request that the Committee seriously look into the file, instead of closing its mind to it, because you will find that the issue is definitely there, and it is an issue that he should answer to. If it isn't handled in this forum, there is another forum for that to occur.

So, I thank you, Mr. Chairman, for allowing my appearance.

SENATOR O'CONNOR: Thank you, Mr. Connor. The next speaker to address the Committee will be Mr. Virgil Popescu.

SENATOR LYNCH: Mr. Tumulty, will you swear in the witness, please?

MR. TUMULTY: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

V I R G I L P O P E S C U: I do.

SENATOR LYNCH: Go ahead, Mr. Popescu.

MR. POPESCU: My name is Virgil Popescu. I am a resident of Somerset County, New Jersey. Thank you very much for allowing me to testify today, but first of all, I should thank Senator Cardinale, who, several years ago, opened this kind of proceedings. Now, I thank Senator Garibaldi, who had

the courage to stand up for the general public of New Jersey, and for what he thinks is just. I admire him for that.

I have been here since ten o'clock this morning, and I heard the questions which the Senators put to Chief Justice Wilentz. I didn't hear anybody asking him if he took an oath of allegiance when he started his job, or if he ever violated that oath of allegiance. Further, he should be asked if he remembers the contents of that oath, which simply just requires him to interpret the Constitution of the United States of America and to interpret the Constitution of the State of New Jersey, and the laws of this State.

By failing to do so, every time he violates the Constitution he is commiting perjury. That is a crime of the third degree. By doing so -- by violating his oath -- every time he makes favors for somebody, or violates the rights of another, then he is guilty of official misconduct. This is a crime of the second degree.

So, I heard Mr. Wilentz testify in his own behalf. Actually, what he did was just incriminate himself. If we had a trial here today and the spectators were the jury, he just got a conviction, because Mr. Wilentz, by his own testimony, proved that he is unfit to occupy this job as the Chief Justice of the Supreme Court of New Jersey.

Now, looking into his personal background, he was counsel for the campaign for Governor Byrne. In exchange for his services, he was appointed directly Chief Justice of the Supreme Court of New Jersey. I don't remember any of his credentials of years of experience as a Municipal Court Judge, as a County District Court Judge, as a Superior Court Judge, as an Appellate Division Judge, or as a Justice in the Supreme Court of New Jersey. He was pushed all the way to the top. The people were patient, and waited seven years to see how the Chief Justice did his job. Unfortunately, he didn't do it so well, since we are here today.

Personally, I have two different incidents in which Chief Justice Wilentz was involved. He assigned orders and he

made decisions concerning my health, my life, and my liberty. The first case was a Workers' Compensation Court case, where, despite my lack of knowledge of the English language-- I just came to this country several years ago. During 1979 and 1980, I was not able to read or write English, and my speech was very much impaired. However, I never had a broken mind, and I could realize that the Workers' Compensation Court was a place of organized crime, and my pride was robbed by judges, insurances, and lawyers. I expressed myself openly as to that judge.

I requested investigations by the authorities and other State officials, including the Supreme Court of New Jersey.

SENATOR RUSSO: Mr. Chairman-- Excuse me, Mr. Popescu.

SENATOR O'CONNOR: Senator Russo.

SENATOR RUSSO: Mr. Chairman, I make the same point I made earlier. The witness is now going into matters of his own private litigation. We could just go on forever if we were to have to consider that, all of which is not relevant to what we are here for today. I would ask that if the witness has specific items concerning the integrity -- or whatever -- but not that he is dissatisfied and that the court ruled erroneously, or the Chief Justice ruled erroneously, if that be the case-- Otherwise, we re-litigate everything that appeared before the Supreme Court, or any sitting judge.

SENATOR O'CONNOR: You are correct, Senator Russo. I would ask you, sir, to direct your comments to the qualifications or fitness of the Chief Justice, rather than to your own particular case, with which you are obviously dissatisfied.

SENATOR VAN WAGNER: Mr. Chairman?

SENATOR O'CONNOR: Senator Van Wagner.

SENATOR VAN WAGNER: As kind of a follow-up to that, may I also ask that if a witness is going to characterize a certain kind of an action, that he at least be specific as to

why he is characterizing it that way? Otherwise, as Senator Russo said, we could be here forever, in terms of what someone's opinion is, regardless of whether or not it has any factual validity.

SENATOR O'CONNOR: Thank you, Senator. Proceed, Mr. Popescu, but with that limitation.

MR. POPESCU: This little bottle is nitroglycerin pills. I just took one before I raised from my seat, because two months ago I almost died from a heart attack, which was caused to me by Chief Justice Wilentz and his people. I took that pill not to get so upset here and die here at this table. I should stay home and take care of my health, but I felt I was born to be honest and to be just. If I have to die here today for justice, I will be happy to do so. I am not a coward running away from Justice Wilentz or anyone else.

Now, as far as I am concerned about Senator Russo, when I was here several years ago testifying against Judge Pressler, he was presiding. He obstructed justice at that time by stopping me from testifying. He is doing the same thing today.

SENATOR ZANE: Mr. Chairman, we are doing the exact same thing. Can we please -- Mr. Chairman, I am requesting through you-- You know, he may not like Senator Russo and what he had to say, but can't we just talk about Chief Justice Wilentz?

MR. POPESCU: That is correct.

SENATOR ZANE: It has been a long day. Why don't you get to the point now?

MR. POPESCU: I'll get to the point, sir. At the Workers' Compensation Court, after I made my allegations, nobody investigated and, further, I was convicted to 30 days in jail for contempt of court because of my allegations. Filing an appeal, I got to the Chief Justice. How he got to sign on workers-- How do you want me to jump to the subject without giving you the details?

SENATOR O'CONNOR: Mr. Popescu, please get to the Chief Justice's qualifications and his fitness. That is what we are here for.

MR. POPESCU: Okay. As to his qualifications, plain and square, I think he is corrupt and incompetent, and he is not making the right decisions. As an example, I was convicted to 30 days in jail for contempt of court, and my appeal was pending in the Supreme Court of New Jersey before Chief Justice Wilentz. I was waiting for a letter to advise me I had won the argument, or when the case was going to be decided. I was convicted in 1981. I filed the appeal, and in 1985, it was still pending in the Supreme Court of New Jersey, and I was waiting for an answer.

Instead of hearing anything from the Supreme Court of New Jersey, I was made aware that Chief Justice Wilentz, and his clerk, figured out that when I called the judge of the compensation court corrupt and incompetent, I was crazy. Then, during the trial in 1981, I was mentally incompetent to understand the issues presented against me as a result of their opinion. Without asking me anything -- I was representing myself -- Chief Justice Wilentz appointed a lawyer from Somerville to represent me in further proceedings, which was a motion in Somerville in 1985 on May 9. There was an order from Judge Diana to have me committed to the Marlboro Psychiatric Institution for 30 days or more, depending upon the circumstances.

SENATOR ORECHIO: Mr. Chairman, Mr. Chairman, is this gentleman's testimony relevant to the matter that is before us?

SENATOR O'CONNOR: Senator Orechio, I agree with you that it is not. Mr. Popescu, we have admonished you now -- I think this is the third time -- to get on to the subject as to qualifications and fitness. I am going to have to ask you at this time to yield the floor to the next speaker, because we are not getting any closer to what we are here for.

MR. POPESCU: Isn't this part of his qualifications and his competency?

SENATOR O'CONNOR: No, I haven't heard anything yet.

MR. POPESCU: Well, I have an appeal pending. When a Chief Justice becomes a doctor and reaches medical conclusions that I am crazy-- Nobody ever questioned my mental status in 42 years. I have degrees in law and and engineering. I think I am qualified to do almost anything like he does. I was thrown into the crazy house for 10 days. I was supposed to stay there for the rest of my life because Chief Justice Wilentz instructed the doctor to falsify the records over the telephone. So, that is not relevant to this issue, sir? It's not relevant, or are the accusations too heavy? I have proof. I have papers here to prove anything I am saying.

SENATOR O'CONNOR: If you would like to submit a written statement to the Committee, Mr. Popescu, I would suggest you do that. But--

MR. POPESCU: A written statement?

SENATOR O'CONNOR: Yeah.

MR. POPESCU: Why don't you let me talk, and let the press hear, and let the general public know what the Chief Justice did to me?

SENATOR O'CONNOR: Because you are not getting to the point, Mr. Popescu, and we have a number of people who have been sitting here all day waiting to address the Committee, who are being patient. I think we have been more than patient with you trying to get to the point. So, at this point, I am going to ask that you yield the floor, and I will ask that the next speaker, Carol Kasabach--

MR. POPESCU: I have one more phrase to say.

SENATOR O'CONNOR: Carol Kasabach, Director, New Jersey Office of Governmental Ministry for the Lutheran Church, will be our next speaker.

MR. POPESCU: Sir, can I conclude with one single phrase, please?

SENATOR O'CONNOR: Conclude, conclude.

MR. POPESCU: Sir, under the Nazis, under the communists, their opponents were eliminated by the same proceedings. They were put in mental institutions; they were put in jail and, further, they were killed. I don't think Chief Justice Wilentz is any better than a Nazi or a communist. If they cry always, "Never again," to the Jews, now Chief Justice Wilentz, who is a Jew, is doing that to me. He forgot what happened to his own people.

SENATOR RUSSO: Mr. Chairman, I don't see why we have to listen to this. If you are not going to rule him off the podium, I'll make a motion to do so. But, we shouldn't have to listen to that kind of nonsense here.

MR. POPESCU: I'm leaving, Mr. Russo. Don't get upset.

SENATOR RUSSO: Good-by. Thank you.

MR. POPESCU: Thank you.

SENATOR O'CONNOR: The next speaker, please -- Carol Kasabach.

C A R O L K A S A B A C H: Good evening. My name is Carol Kasabach. I am the Director of the New Jersey Office of Governmental Ministry, which is a ministry of advocacy through a partnership of the New Jersey components of the Lutheran Church in America, the American Lutheran Church, and the Association of Evangelical Lutheran Churches, together with the New Jersey Council of Churches and the Lutheran Social Services of New Jersey.

I come to you to speak in support of the reappointment of Robert N. Wilentz as Chief Justice of the New Jersey Supreme Court. The purpose of the office I represent is to advocate justice for the poor and the powerless, those who do not have a voice, or those folks whose voice is not heard.

Today, under the leadership of Chief Justice Wilentz, I feel that the Supreme Court is meting out justice for all our citizens, including the poor and the powerless.

SENATOR O'CONNOR: Excuse me, may I just interrupt you for a second.

MS. KASABACH: Yes.

SENATOR O'CONNOR: Do you have any formal written statement?

MS. KASABACH: No, I don't, but I am just going to be one more minute.

SENATOR O'CONNOR: Okay, fine.

MS. KASABACH: In my former position as the Associate Director of the Governor's Committee on Children's Services Planning, I had many contacts with the Chief Justice, primarily with the Youth Services Commission. I was in attendance at many meetings with him, and was aware of his sensitivity, and his understanding of the total juvenile justice problem -- the problems of the juveniles in this State.

The Chief Justice has a willingness to tackle the tough issues and a commitment to do that. I know that the Supreme Court should be led by someone of integrity, competence, and a concern for justice, and that man is Robert Wilentz.

That is all I have to say.

SENATOR O'CONNOR: Thank you very much. Former Justice Morris Pashman.

M O R R I S P A S H M A N: Swear me in.

SENATOR O'CONNOR: Oh, I'm sorry. Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. PASHMAN: I do, Senator. Thank you very much for the opportunity to appear. I am aware of the time; I am aware of your caveat about repetition; and, most importantly, I am aware of your realistic patience and graciousness in allowing so many of us to have a few moments to speak.

In view of the revisions in whatever I had to say, I will limit myself to the accomplishments -- what I call the administrative deeds -- of the Chief. Having lived in the system for some 20 years -- 24 years to be exact -- on the trial level, the Chancery, and so forth, and on the collegial court, starting with the first day that the Chief took over, which was August 10, 1979, I was just exposed to the wonderful opportunity of serving with this man for four of those years, until my recent retirement. I just want to note, if I may, that the Chief, in the first instance, did not request that I appear. He did not even give me permission, frankly, which I sought, to testify in his behalf. In fact, when asked, he did not approve the request.

Yesterday afternoon -- and I mean yesterday -- really late in the afternoon, I just felt very strongly that under the circumstances there might be several areas that others would not touch upon, and I felt compelled to come forward, perhaps, and therefore asked to be released. I asked the Chief to be released from that commitment, and here I am.

I want to tell you about a meeting in Williamsburg, Virginia. The Chief Justices have a meeting once a year for some four or five days. This one was several years ago. The Chief, because of illness problems in the family, could not attend, and asked me, as the senior Justice, if I would go. I just want to report to you, within a moment, the reactions and what occurred in Williamsburg.

The respect for the administrative process that 48 Chief Justices had was just overwhelming. I say 48, because one of the Chief Justices did not show, which adds up to 49 with me. That was an appearance and an experience that I shall never forget. I want to tell you that I am supporting in full measure whatever Mr. Ray Trombadore and Ms. Driver had to say. Therefore, I have decided to just tell you, very briefly, about what occurred there.

The respect for, and the recognition of the judicial standard and the judicial standing of New Jersey were, I can assure you, just overwhelming. The leadership and the accomplishments of this Chief as an outstanding administrator in this country are unanimously applauded. I respectfully observe to you that every citizen, in my opinion -- every citizen in New Jersey -- can rightfully take pride in the reputation of our court system.

I had the good fortune to serve on some seven or more Supreme Court committees and task forces. There have been many in New Jersey, some of which I did not serve on. The Criminal Speedy Trial -- where I have served -- Civil Procedures, the Family Court, the Written and Electronic Media, Justice O'Hern's Liaison Family Court Committee, Judicial Evaluation, PTI, Mental Health, and so forth; very importantly, the different forms of discrimination committees, which were generated through the understanding and the compassion of the Chief Justice, including Sex Discrimination, in which the State of New Jersey is a leader in the United States in bringing this matter to the fore and promulgating rules and doing what has been done thus far.

Now, in many of these, the leadership provided by the Chief in the Civil and Criminal Courts, and those committees in the Family Court and the appellate processes, and other areas-- All of this has resulted in meaningful procedural revisions. The progress, I want to assure you, in the Criminal Speedy Trial Program is significant. The Civil Speedy Program is now under way; it is in full swing. At this very moment, there is a pilot program in Bergen County concerning processes improvement in the civil area, and that may turn out to be really the model in the final analysis.

So much for that. And my last moment, if you will, please-- I want to take you into the conference room of the Supreme Court for just a moment. I am not sure whether I have

permission to do this, frankly, or whether I should. But, there it is. I think it is very, very important, in light of what has been said today. I would like you to know that the Supreme Court meets in conference at least once a week, probably more, during the period after oral argument of eight or ten cases -- whatever may have been scheduled -- the week before. During that conference, every Justice of the Court is given all the time he or she requires to articulate exactly how he or she feels about the issues involved, about the merits of the case. He or she has the right to ask all the questions that he or she sees fit, to present his or her side -- his or her version -- of how the court should go. All of this is done uninterrupted each and every week, and each and every conference. In the final analysis, the vote of the court is a composite of the individual judgments of each of the seven members of that court. When you read an opinion, it is the opinion of seven -- or six, of course, if someone was disqualified, or perhaps five in rare instances. But, it is a composite of the entire court, and not one person.

This is important because the system that has been utilized by the Chief in encouraging that type of discussion is, I think, conducive to an excellent appellate system. The assignment of opinions of the Chief Justice, again, which is a very strategic and important function, has been done with fairness, with understanding, and with a readiness to distribute important decisions to each of the individuals on an equal basis throughout the term. This requires a little further discussion, which I am not going to get into now, but it is an important administrative procedure, and our Chief Justice is excellent at it. Again, this reflects his administrative skills to the fullest.

All of this, I respectfully say to you, has brought about enlightenment and exciting administrative changes, resulting in the orderly administration of civil and criminal

justice, which includes the Family Court, the appellate processes, and all of the facets.

I thank you very much for the opportunity of addressing you. (leaves witness table)

SENATOR O'CONNOR: Justice, thank you for that very nice presentation.

MR. PASHMAN: (returns to witness table) Oh, I'm sorry. I should have remained for questions, if any. I didn't mean to walk away.

SENATOR O'CONNOR: Senator Laskin, any questions?

SENATOR LASKIN: Justice, I wrote down a couple of words that you said about this recent conference you attended -- or whatever it was. You said the New Jersey judicial system was unanimously applauded.

MR. PASHMAN: And the Chief Justice.

SENATOR LASKIN: I understand. I think most of us feel that the New Jersey judicial system has been unanimously applauded, by and large, just about since the Vanderbilt days, when this magnificent system really came into its own. I think that the Senate involvement in ensuring that the finest quality judges and justices were appointed had at least as much to do with this unanimous world-wide opinion as anything else. I am selfish enough to believe that, because I really do. I think that all of us up here feel as strongly about our system as how you described it.

With regard to continuation of this unanimous opinion of this magnificent system, we have the awesome responsibility -- and it is -- of making certain that the finest quality people are put into the system, because the system is paramount. There have been some serious questions raised -- I am not saying they are criminal allegations, or anything like that; I certainly don't want to be misconstrued -- but there have been some questions raised about an individual who we are considering. We are not necessarily considering the system, because we think it is pretty good.

I want to make it clear that I think most of us agree with the comments about our Judiciary, the fact as to how the judges are appointed and the scrutiny which they are given by this Judiciary Committee, bearing in mind that the Committee makes a recommendation to the full Senate, and without -- almost without exception, our recommendation is followed. So, I personally appreciate all the nice remarks you made about the system, but we've got to go well beyond that in these proceedings with the Chief Justice as an individual. That is the reason why so much time is being spent on this particular nominee. It is not the system that is in question. I think you understand what I'm saying.

MR. PASHMAN: Senator, I understand every word, and I endorse your concept. I agree with your observations. What I meant to say was, a Chief Justice is an important -- the important factor in the direction of a court, in leading the court, in the sense of administration certainly, which is the area I covered, and in endorsing the acclaim that -- not endorsing, in bringing about the acclaim and the recognition around the country. That is why the New Jersey precedents are cited in so many, many cases, as you know. That is what I meant, as I say, with reference to the C.J. It is an important -- if not the important parcel -- the important individual involved in this direction and in this forward movement.

I agree with this Committee's overview and concern and its absolute -- not its right, its duty to do what it is doing by looking into the qualifications of any nominee.

SENATOR O'CONNOR: Thank you, Justice. The next speaker will be Senator Gerald Cardinale.

SENATOR RUSSO: Mr. Chairman?

SENATOR O'CONNOR: Oh, I'm sorry. Senator Russo.

SENATOR RUSSO: Mr. Chairman, I just want to report back to the Committee on the request for the four-way check. We requested the Governor's office to turn it over to the

Committee, and the Governor's counsel has declined to turn it over to the Committee.

SENATOR O'CONNOR: Thank you, Senator Russo.

S E N A T O R G E R A L D C A R D I N A L E: Mr. Chairman, members of the Committee: I thank you very much for the opportunity to testify here today. While I did not intend it to be part of my remarks, I would briefly comment on some of the things we heard from the last speaker, who was someone whom we all have the greatest affection for.

Why are the New Jersey courts the envy of other states -- and they are? We hear that all the time. Perhaps it is because they are better, and perhaps because it is a slightly different system than some other states enjoy. They do have complete autonomy, and if the record of this Committee, if the record of the full Senate, in terms of evaluations of judges for reappointment, or for initial appointment, is looked upon, we will also have to come to the conclusion that judges in the State of New Jersey are accountable only to themselves.

If the Senate of the State of New Jersey was organized in a similar fashion, while I speculate only, I do suspect that Senators in other states might very well envy the situation of the New Jersey Senate. Our precedents are cited -- and they are. I read any number of cases when I was studying legislation where precedents from New Jersey have been used in other states. I submit to you that that is possibly because they are great, possibly because they are avant-garde, possibly because they have broken new ground. There are some of us who feel that that is not something to be envied by the people of the State of New Jersey, that democracy has been denied to them, in a sense, because they have no vote on the public policies which are ultimately affected by those decisions.

Now, I didn't intend to say any of those things, but I was just prompted to because I heard the remarks of the last speaker.

We are here today to discuss the competence of the Chief Justice, and some other questions that have arisen. I believe that the public is entitled to a certain level of service, and I would like to point to one or two examples. There are many; you know most of them, but I would just like to call this to your attention, because these things, I think, are very important.

Some time ago, a case was heard before a Supreme Court with respect to the death penalty. It was about a year and a half ago. A competent court, while it is a very important question, should certainly have been able to render a decision with respect to that case before the Senate of this State would be granting life tenure to the Chief Justice of that court. I think public opinion would be very much colored by the decision which might very well be rendered with respect to that particular issue.

We heard a little while ago from Senator Dorsey. When you were discussing the Pressler case-- I had a little bit of involvment in that case; I lived with it, I lived with you through it. Senator Dorsey very rightly said to you that the Hodge decision -- which was the premier thing, the thing that got the most publicity -- was later overturned by the Supreme Court. I am not here to rehash the Pressler matter, but I would like to also call to your attention -- many of you were members of the Committee at the time -- that the Chapman case was another similar decision, although of the opposite nature. It went in exactly the opposite direction of the Hodge case. That was also overturned. I mention those two because the issue has arisen, was the Chief Justice merely defending a brilliant jurist?

When one comes to conclusions that a particular employee under one's jurisdiction -- and that is what judges of the lower courts are-- When one makes those decisions, and one is continually wrong, when one is wrong in such important

matters, I think it weighs against the competence of the person making the conclusion of brilliant, because brilliant Appellate Court judges, who differ with dentists about matters of law, and who are later found to be wrong, are hardly the type of people I would characterize as brilliant.

I have a few things that I just want to leave with you. I promised Senator O'Connor, without him even asking, that I would be somewhat brief in my presentation. I know the hour is late; I sit on committees like this, and I don't like to stay later than is needed. But, I would hope that you would give this some consideration. Let me tell you what it is all about.

This came to my office -- as things come to all of your offices, I'm sure. It is a very detailed complaint about a specific action which was taken by the Chief Justice, specifically, in appointing some judges to serve -- judges who had previously been retired. Without reading the entire paper, I would say it is well written. It seems to have been written by a judge or by a lawyer. It takes serious objection to what this writer calls a problem that the judge has in going directly against provisions of the Constitution of the State of New Jersey.

Now, I got this in February. I asked a member of our staff employed by the Senate Minority -- an attorney -- to research this matter for me. That attorney, who is a former Senator, begged off doing that research because he is an attorney, and because this matter impacted on the Chief Justice. But, I see a certain degree of bravery on this panel today in its questioning, and I am going to leave it with you because it raises an issue -- whether it is signed or not -- that needs to be determined, and this Committee is the proper body -- if there is a proper body -- to determine whether or not it violates our Constitution to appoint people to serve temporarily on the bench -- those appointments being made by

the Chief Justice -- after those people have exceeded the maximum age for serving in that capacity.

I am not an attorney. I cannot render that opinion. But, as I read the Constitution as a layman, that is not permitted, but it is happening.

I was very interested in listening today -- it shortened my remarks quite a bit -- when the Chief Justice indicated that he really resides very minimally in the State of New Jersey, if at all, and spends very little time here in terms of other than work time.

He referred to a concept of split residence. Now, it is clear to me from the testimony that the Perth Amboy apartment was never intended to be a family residence. Senator Zane asked about the size of that apartment. If he eats in the bedroom, if there is only one bedroom, certainly a family was never intended to live there. And, we all know, because he told us -- although perhaps it is not clear in everyone's mind -- that he did have a family home also in Perth Amboy, and sold it, and rented an apartment. Among the various indicia of whether or not he resides in one place or another that you are going to have to wrestle with, the fact is, he owns in New York, and he rents in New Jersey.

That situation has prevailed since 1971, long before there was any reported illness to his wife. Now, I feel for anyone who has illness in his family. I see people -- not with such serious problems -- but I see people who have pain. My heart goes out to them because some of them have very, very severe problems, even when they are dental problems. Some of my patients also have medical problems, and some of my patients die from their medical problems, even when they are under treatment in my office. That becomes a very, very tragic circumstance for the families involved, whether they die or whether they are just sick. My heart goes out to anyone who has that kind of a problem in his family. But, it doesn't

change the basic facts that we as a Committee, that you as a Committee, or I on the floor of the Senate are going to have to deal with at some point in time.

We do have -- and I am very pleased to see that you are going to get it -- a staff analysis, which indicates that judges are required by New Jersey statute -- going back 200 years -- to live in the State of New Jersey.

SENATOR O'CONNOR: I'm sorry; let me just interrupt. What is the document you are referring to?

SENATOR CARDINALE: We have a minority staff analysis, and we were very happy to see -- I am happy to see that you are going to get a similar analysis from Legislative Services.

SENATOR O'CONNOR: How long have you had the minority--

SENATOR CARDINALE: I got it this morning. If you would like it, I believe it can be furnished to the Committee. I see no problem with furnishing that staff analysis to the Committee.

SENATOR O'CONNOR: I would request that you do that. May I interpret from your response, then, that the minority members on this Committee had this memo this morning?

SENATOR CARDINALE: I don't know. I was given this in this committee room hours ago.

SENATOR DORSEY: Now, Senator Cardinale, let's not take these proceedings to--

SENATOR DiFRANCESCO: He picked it up in a restaurant in Nutley.

SENATOR O'CONNOR: Well, I'm asking a question. To the extent that the Senator knows the answer, I would be interested.

SENATOR CARDINALE: Let me say this, Senator. You know, in the press it has been announced that there was a great deal of speculation. If the majority staff, which has a greater staff that we do, which has more staff money that we have, and there are more of them than there are of us, hasn't done this, I will be very surprised.

SENATOR LYNCH: Mr. Chairman?

SENATOR O'CONNOR: Senator Lynch.

SENATOR LYNCH: I would like to make a motion. We are getting way off base here. You gave Senator Cardinale an awful lot of liberties. He has dumped on the desk a red herring about an unsigned document today, without ever having presented it to this Committee before, which is obviously showboating. It is the worst kind of showboating you can imagine. Now he is going into opinions of minority staff. Nothing I have heard so far is relevant to the issues of whether or not Chief Justice Wilentz is qualified for reappointment.

The issue of residency and what that law is-- Obviously, we will have memorandums to determine what residency means for that purpose. The Chief Justice has testified with regard to that, and you are rehashing his own testimony. You're summing up, in effect. You are not giving us information that is factual relating to the qualifications of the Chief Justice. If you have those, I suspect that we ought to be hearing them. But, I haven't heard any so far, and I think the courtesies of the Chair have been far exceeded.

SENATOR CARDINALE: Senator Lynch, I don't know what you have been hearing, and I can't comment on that. But I know what I have been saying, and what I have been saying is very pertinent to a lot of people in the State of New Jersey. Whether this man really lives here, or doesn't live here, is pertinent. It is an item for consideration. It took up hours of testimony this morning.

SENATOR LYNCH: Senator, I am not saying that at all. What I am suggesting to you is that you are not giving us any new information on that issue. If you would testify to some information, that would be fine. What you are doing is summing up as to what the Chief Justice testified to this morning.

SENATOR CARDINALE: If you would prefer that I read this entire document to tell you the exact nature of this complaint, I will do that. I will do that.

SENATOR LYNCH: That is a document-- Are you saying you are giving us a document today that is unsigned, uninvestigated, and you're laying it on the desk of this Committee for the first time today, during the proper course of these hearing considerations? That is absurd.

SENATOR CARDINALE: Yes, I am, and I don't think it is absurd at all. What has this Committee convened for? When did this Committee decide it was going to convene and do this nomination? This is the first meeting this Committee has had, as a Committee, since you have announced that you were going to deal with this nomination, and it is properly before you now.

SENATOR O'CONNOR: Senators, Senators, we are getting involved in a great debate here, and we're spinning wheels and wasting too much time with personal debate. Either we will take a recess and let the heads cool, or we can begin again. Senator, if you can get back on the subject, I suggest that you do so.

SENATOR CARDINALE: Senator O'Connor, my head is very cool. I don't know about Senator Lynch; I can only speak for myself.

SENATOR O'CONNOR: Let's get back to the point.

SENATOR CARDINALE: I would ask the Committee to consider a few issues with respect to residency that have not been before you this morning, unless you have determined in your own minds that that is a decided issue.

It has been in the press that credit applications listing a credit address of New York City exists. It has been indicated in the press that 166 Water Street is listed as a prior address on some of those applications. Now, if one looks at a trade union credit report, you get a computer printout and it is a summary of data. Within that summary are individual accounts. The detailed information contained in those individual accounts could have a great bearing on your determinations, because those go back many years. I will give

you an example of the kind of information that can be gleaned if one goes into those individual accounts.

For instance, let's take Brooks Brothers. And, I have no way, Senator Lynch, of knowing if this is accurate or not. This was given to me--

SENATOR VAN WAGNER: Excuse me, Mr. Chairman and Senator, if I might. The credit reports-- I haven't heard reference to this now. The credit reports that the Senator is citing-- How were they obtained? I wasn't aware that individuals could obtain credit reports. I would like to know how they were obtained.

SENATOR CARDINALE: This was obtained--

SENATOR DORSEY: Excuse me; excuse me. Wait a minute, Senator Cardinale.

SENATOR O'CONNOR: Just a second; just a second. I am going to make a ruling.

SENATOR DORSEY: I don't think that question-- In the first place, I don't think Senator Van Wagner's question is necessarily relevant. Senator Cardinale, I think you have to understand that when the Chief Justice testified, he did, in fact, testify that during various periods of time during the last seven years he has, in fact, utilized the New York address for his credit cards, and his wife has used it for her credit cards. So, I think we should just go on from there. It is no longer an issue, because it has been admitted to -- unless my recollection is incorrect.

SENATOR LYNCH: You want to stay away from something that might be a violation of law, I take it.

SENATOR DORSEY: No, that is not it. I am just saying, there is no point in going into it, because the Chief Justice has already admitted what Senator Cardinale is dealing with here, and has dealt with before, that for various periods of time New York City was used as the Chief Justice's billing address for his credit cards. I see no reason to rehash that, or to get into related issues.

SENATOR O'CONNOR: Besides, without someone to testify -- to lay some foundation as to where these records were obtained and how it was that--

SENATOR VAN WAGNER: I think that is relevant.

SENATOR O'CONNOR: I absolutely agree with you. And I don't think it is proper to address that unless someone is--

SENATOR CARDINALE: Senator, I thought this was a legislative hearing. I did not realize that we were in a courtroom or that the rules of evidence applied to what was going to be presented to you.

SENATOR VAN WAGNER: The witnesses are being sworn.

SENATOR RUSSO: Mr. Chairman, may I offer a comment?

SENATOR O'CONNOR: Certainly.

SENATOR RUSSO: I think but for the comments of the Chief Justice as related to by Senator Dorsey, I think this testimony concerning the subject matter is quite relevant. Senator Cardinale, if I correctly look at -- and I don't want to presume too much -- your desk, you don't have these credit reports with you. You don't have the people who have this information with you. You are going to tell us what someone else told you.

SENATOR CARDINALE: No, you didn't listen--

SENATOR RUSSO: Oh, okay.

SENATOR CARDINALE: --very carefully to what I said.

SENATOR RUSSO: I may have misunderstood you.

SENATOR CARDINALE: I said you should examine-- You should use the authority of this Committee. You should ask, and you can then very easily obtain--

SENATOR RUSSO: No, we cannot. It is illegal.

SENATOR CARDINALE: No, you can very easily obtain -- with the consent of the witness -- with the consent of the Chief Justice-- All of these credit reports can be laid before this Committee if you merely ask him to do that. The canons of judicial ethics would require that he submit himself to that kind of scrutiny.

SENATOR RUSSO: Well, he has conceded, basically, the information you refer to, as Senator Dorsey pointed out. He has conceded. There seems to be no purpose in going beyond that.

SENATOR CARDINALE: I'm saying to you that you don't have it in a complete form, and if you had it in a complete form, some things might occur to you that do not now occur to you. You certainly can make a decision, because ultimately your decision is yes or no. There are no degrees of yes or no. But, if you have the full information, your vote might easily change from a yes to a no, or from a no to a yes.

SENATOR RUSSO: They might show, in other words, that maybe he doesn't really use the New York address that he has already admitted that he does use.

SENATOR CARDINALE: No, but they might show when he has used it, how many New York addresses he has used, how far back that dates, whether that corresponds with the things he has said, and what he has done recently with respect to those credit cards. You might get that kind of information. I am only suggesting to you that with respect to one of these accounts, one public spirited citizen called me and told me some things that prompted me to give you this information.

If you don't want to have it, I will not burden you with it.

SENATOR O'CONNOR: I think the point that Senator Russo is making, though, is that you don't have it. What you have is really secondhand information. We don't have the information itself.

SENATOR CARDINALE: I am not indicating, in any way, that this is accurate information. I started to say that. I know nothing of the accuracy of this information. But I am suggesting that you have the ability to obtain the accurate information, if you are interested in obtaining it.

If you are not interested in obtaining it, you don't have to get it.

SENATOR RUSSO: We understand that. We don't need that advice, Senator Cardinale. I think you made your point that there is some credit information, and if the Committee wants to obtain it, they can. I think we have really beaten that one to death pretty well, and we can go on to another one.

SENATOR O'CONNOR: Senator Zane?

SENATOR ZANE: Senator Cardinale, what concerns me is— The implication to it is innuendo by you, and I don't hear you suggesting anything specific about what we might find. We might find a lot of things. What are you suggesting? I mean, do you—

SENATOR CARDINALE: I am suggesting that you would find accurate information with respect to where the subject of this hearing -- the Chief Justice -- claimed his residence to be when he applied for credit at various points in time. If you seek out that information, with his permission, that information can be legally given to you by various and sundry credit agencies. No private citizen, acting on his own, without the permission of the subject of that investigation, is going to get that information.

SENATOR O'CONNOR: Senator Lynch?

SENATOR LYNCH: Yes, Mr. Chairman. I just want to put this in perspective. I am getting a little confused as to this little witch hunt we are being put upon. We have to understand -- this Committee has to understand -- that we have received a nomination from the Governor. We asked for a four-way, but we didn't get it. But, that four-way was done, and obviously it was done sometime after Senator Cardinale received this unsigned document he is presenting to us today; he said he received it in February. All of this other information relating to his residency, and so forth, I assume has been checked out in one form or another by the Governor's people through the four-way, but we are not privy to that.

We are going to have to make a decision on residency based upon facts. Senator Cardinale says we are not bound by the rules of evidence, and that's true. But we are, Mr. Chairman -- and I know you have always respected this -- bound by the rules of fairness. When you come in here with this kind of witch hunt information, suggesting to us that we should go off on a merry chase tomorrow, at this eleventh hour, it seems to me that you are trying to confuse the real issue, which is the competency and qualification of the Chief Justice.

SENATOR CARDINALE: I am not confusing anything, Senator. If you asked this witness -- who is in the back of the room -- to give his permission, to sign an authorization slip, and you submitted that to a list of seven or eight stores, you would get this information within 24 hours, I'm sure, because it is readily available; it's there. It is not a witch hunt. It is not looking for anything that doesn't exist. It is not doing anything but clearing up allegations which have been made in the press; allegations which have been reported, I'm sure, not just to me, but I am sure these things have been reported to many Senators of this State, as these issues have hit the press, and as there are people out there who know something, or think they know something. And, I don't know what they know.

SENATOR LYNCH: Did you bring this to the attention of the Governor and the Governor's counsel to see if they might be willing to investigate it, and possibly withdraw his nomination?

SENATOR CARDINALE: The Governor has declined to speak to me about this nomination, or even to receive communications -- some 2500 to 3000 that I have received from members of the Governor's own party. I doubt that the Governor is going to redo his four-way check, just as he isn't going to give, apparently, a copy of that four-way check to us.

We are an independent branch of government, nevertheless, and we should be able to perform our function,

with our abilities, and with the resources we have available to us. If this Committee has chosen to abandon the normal way we did things, in consideration of the high position here, then this Committee has a responsibility to conduct a thorough investigation. I opened my remarks, Senator Lynch, by saying that I was very impressed with what went on here this morning and with the thoroughness of the questioning. I am not taking objection to that. But, I am calling to your attention that there is an avenue that you did not explore, which might be useful to you if you do explore it.

I am not going to insist any more than I have, that you explore it. It is not a witch hunt to seek valid information. You sat a man here, and you asked him a number of questions. Is that a witch hunt? No, it is not a witch hunt at all. You are asking questions and giving someone an opportunity to answer. I am not saying to go out and find out if the man is a communist. I am saying, "Go out and find out what is in these papers which exist, and which have existed for years." That's no witch hunt.

Now, let me get onto another topic, because we are not going to agree, and you do what you choose with that. I heard a good deal of testimony that went to the point which you are going to make up your minds on, on domicile and residence, but one thing I am not sure was clearly brought before the Committee -- and the transcript won't be ready -- was the voting record of both the Chief Justice and his wife in Perth Amboy. I did have a staff member check that. I didn't check it myself, and I have only a verbal report of that check. It indicated that for all of the elections, including the elections where there has been testimony that she hasn't even been in New Jersey more than New Year's, and that he hasn't been in New Jersey more than, at a maximum, once a month, they continued to vote in Perth Amboy.

I don't know, firsthand, what that means, but I would call to your attention that the rest of the Senate is going to depend on this Committee to find out what that means, or whether it means anything. I can call on my own experience when I was a county committeeman, that when people moved, and attempted to continue to vote from the area they had moved from, there were some things done to prevent that from happening.

We heard a great deal of testimony this morning about a secret "meeting." I think it was Senator Russo -- I'm sorry he is out of the room -- who said it was not secret the next day. Well, I guess some people knew about it the next day; I knew about it at one o'clock in the morning, when I was called by a member of this Committee, and spoke to several people, who told me the meeting was going on, and who invited me to come to it, which I declined to do. But I would submit to you that for some time -- more than a day or two -- afterwards, the press didn't even believe that the meeting had occurred. I did tell some of them about it within the next several days. It is not secret any more, but it was secret for a period of time.

You dwelt at great length this morning on intimidation of legislators who receive phone calls. Several of you indicated that you had received phone calls from the Chief Justice, and I received one once. It has a bearing, because an issue in this case that has been in the press -- and it hasn't been mentioned at this Committee meeting -- was that Senator Garibaldi invited the Chief Justice to meet with him. Now, the Chief Justice, when he called me, invited me to meet with another judge, and insisted that that judge come to the meeting with me. At least, when that judge opened her statement, she said she was there only because she was directed to do so by the Chief Justice.

Now, you talked some about double standards, although you didn't use the term. But, if it impacts on the

independence of the Judiciary for the Chief Justice to have met with Senator Garibaldi and to have cleared these things up before they became blown up as much as they were in the newspapers, why did it not impact three years ago on the independence of the Judiciary for a judge of the Appellate Court to meet with me, in a case that -- at least from my perspective -- was a more celebrated case in the end, than this one? I think it is an inconsistency in behavior pattern that needs to be pointed out.

Back to the issue of intimidation, I would like to leave with you -- and this I am going to leave with you, and it was signed by the Chief Justice-- Back at that Pressler time -- I will just give you a little background of what this letter is all about; I am not going to read the entire letter -- a very well-respected attorney in Bergen County met with me, and attempted to convince me that I was wrong in my assessment of Judge Pressler. In the course of that conversation, he said, "And, by the way, you better get off this, because they have people at the Administrative Office of the Courts working overtime and on weekends to dig out what they can on Gerry Cardinale." I thought of that, and I dismissed it. I said, "He's just puffing."

But, then things began to happen, so I inquired of the Chief Justice--

SENATOR ZANE: Senator, may I interrupt you for a moment?

SENATOR CARDINALE: Yes, you may.

SENATOR ZANE: I would like to know the name of the attorney who approached you, and sat down and had that conversation. I am tired of innuendo. Who was it? I want his name. If you want this Committee to do a job, we'll do a job. I want his name. Who was it? Who was it?

SENATOR CARDINALE: I am not going to betray the confidence, particularly of an attorney.

SENATOR ZANE: Well, then I hope you don't testify any more about it. If you are going to be man enough to say something as serious as what you are saying, then, damn it, I want the name of that attorney. I want him before this Committee.

SENATOR CARDINALE: His name is irrelevant, Senator, because--

SENATOR ZANE: It is not irrelevant.

SENATOR CARDINALE: --the Chief Justice admits, in his letter, that the offices of the courts were searched--

SENATOR ZANE: I don't want to hear any more.

SENATOR CARDINALE: --and he signed the letter. If there is an indication of intimidation, or an attempt at intimidation, you know I don't intimidate easily, Senator, and it didn't intimidate me. But, I'll tell you something, it is not the form of government that I thought I lived under, where-- There is no function of the court, that I know of, to build a dossier, to find out about legislators, to do what. I was not on trial. The issue was a legislative issue. It was not a subject of court determination, and this is an admission.

SENATOR LYNCH: Why don't you read that letter so it's not another innuendo, so we all know--

SENATOR CARDINALE: I am going to give you a copy.

SENATOR LYNCH: Why don't we read it so that the public will know what is in it?

SENATOR CARDINALE: Would you like me to, Senator?

SENATOR O'CONNOR: Yes.

SENATOR ZANE: Mr. Tumulty, before we do that, I am going to ask you, through the Chairman, do we have a right to compel a witness to answer a question? Do you know?

MR. TUMULTY: We don't have subpoena powers, as a committee directed by resolution of the body.

SENATOR ZANE: The full Senate?

MR. TUMULTY: Yes.

SENATOR CARDINALE: I'll tell you what I will do with you, Senator Zane. I will ask the attorney involved if I may reveal his name to the entire Committee, or if he can speak with you, or if he can speak with the Chairman of the Committee, to confirm that conversation having taken place.

SENATOR ZANE: I would appreciate that.

SENATOR CARDINALE: I will do that. There is a very sensitive issue here. You heard a moment ago, the head man in your Bar Association say, in his remarks -- not specifically on this point, but he said it -- "Attorneys are afraid to criticize judges." That is what he said; I am not supplying that. That is why it has to be done through this Committee situation. Only the Committee can do it.

Now, I think that attorney might feel at risk. He told me something in confidence, and I have to respect that confidence. But he can speak to you, or speak to the Chairman of the Committee, if he so desires, and I will call him.

SENATOR O'CONNOR: Read the letter, please.

SENATOR CARDINALE: It's lengthy. It is addressed to me, and it is labeled "Confidential." I want you to know, since I am reading the label -- "Confidential" -- that I wrote a letter to the Chief Justice, and told him I didn't consider it confidential, since the object of this search was obviously made available to the press. The letter reads as follows:

"Dear Senator: This letter supplements my letter of September 15" -- it is dated September 16 -- "concerning your request for information about any work done by the Administrative Office of the Courts to 'dig out some information on Gerald Cardinale.' I have completed my inquiry and have turned up only one additional bit of information which may help explain the call that you got. One of the two cases that I had heard about in which you were a litigant before Judge Pressler, and on which I had requested information, was apparently difficult to locate. Judge Pressler apparently

remembered the part of the Appellate Division before which the case was argued on appeal (she had been the trial judge) and asked the then Presiding Judge of that part to see if he could locate the case. All Judge Pressler could remember was that you were a named defendant (individually); she could not recall the names of other defendants. The Appellate Division Judge kept his records in a way that would enable him to identify a case only if he had the name either of the plaintiff or of the first named defendant. He was unable to locate the case." I will just add, in that particular case, there were three defendants; I was not the first named. That is why the computer didn't find me. "Judge Pressler therefore called the Clerk of the Appellate Division, described the problem and was advised by the Clerk that their computer system would be able to locate a case in which someone was a defendant, even if not the first names defendant. I assume that the Clerk of the Appellate Division thereafter told someone to search for a case in which you were a defendant -- not any case in which you were a defendant, but a case in which your company was sued for various items and you were sued as well. The search was made, and the case located."

SENATOR LYNCH: Is that the conclusion?

SENATOR CARDINALE: No. Well, essentially it is the conclusion.

SENATOR LYNCH: Is that the conspiracy to search out information to hurt Senator Cardinale that you are referring to? Or, was that a search of the public record by Judge Pressler, who was under attack by you, to find out what litigation you were involved with that she was involved with?

SENATOR CARDINALE: Senator, let me say this: If there is a license on the part of the Judicial Branch of government to seek out information -- whatever that information might be -- about members of another branch of government-- I believe the independence of the Legislature has been

compromised. I believe that the force -- the money of the State of New Jersey is being brought to bear by one branch of government against another branch of government. You and I do not even have the staff or the resources to press out all of the kinds of facts that we might elicit, and this Committee is even reluctant, apparently, to press on in finding those facts, even where it has the resources. But, we don't have the resources that the Administrative Office of the Courts has available to it.

SENATOR LYNCH: You could have obtained the same information, or I could have, or this Committee could have as Judge Pressler did. Very simple. And, we would have received the same response, I'm sure.

SENATOR CARDINALE: Well, let me tell you something, Senator. I couldn't even find that case it was so long ago. At that time it was so long ago, and we are three years down the road. I only got that transcript from a reporter. I only got that transcript from a reporter, actually a month after the newspapers were writing that I had lost the case. The reporter said to me, "Why don't you just say you didn't lose the case? It's there in the transcript." The Administrative Office of the Courts gave that case, and if one reads very carefully, one finds that the language, of the initial reports at least, was very carefully worded. It doesn't say that I lost the case. I noticed that Senator Orechio -- when he made his statement -- didn't say I lost the case. But that was the impression that was given; that was the focus that was changed; and that is the point. The focus was changed from the qualifications of the judge in question to whether the Senator who was asking the questions was a good guy or a bad guy.

If that can be done to us, then the people we represent have lost something. We are an independent functioning branch of the government of this State, and as long as we are an independent branch, we serve to provide a system

of checks and balances. When we cease to provide those checks and balances, protections have been lost by the people. I think it is important, and I am leaving you copies of the letter.

Senator, that is all I have to say. If there are any questions from any member of the Committee, I would be more than happy to respond.

SENATOR GORMLEY: Excuse me, Gerry.

SENATOR O'CONNOR: Senator Gormley?

SENATOR GORMLEY: The 2500 pieces of correspondence-- Were those the white postcards?

SENATOR CARDINALE: Yes, they were. There were other pieces of correspondence, but the bulk--

SENATOR GORMLEY: Were the white postcards.

SENATOR CARDINALE: -- of the 2500 were those white pieces.

SENATOR ORECHIO: Mr. Chairman, I would like to ask Senator Cardinale a question.

SENATOR O'CONNOR: Senator Orechio.

SENATOR ORECHIO: You referred to the meeting that was alluded to earlier -- the one in the restaurant in Nutley -- as a secret meeting. How do you characterize a private meeting? What is the difference? Is there a difference?

SENATOR CARDINALE: Yes, there is, Senator. My concept of what-- It wouldn't have been a secret meeting, and I don't think anyone would have characterized it that way, if it had been a meeting of the joint leadership of the Senate. The reason it was characterized as secret, and the reason I think it caused some interest in the press that the meeting took place, and caused some interest in the public that the meeting took place, is because one expects that if a judicial function is being performed, it is performed in a courtroom, is performed generally during working hours, is performed out in public view.

Now, you and I are probably a little callous to that particular kind of thought, because we function, very often, in caucus meetings, which are outside of public view. We function in political meetings, which are outside of public view. Sometimes those are big mass meetings, and sometimes they are very private meetings. So, we wouldn't characterize them as secret, and there would be no public approbation with respect to such meetings taking place.

But, when the Chief Justice meets with legislative leaders, whether they be of one party or of both parties, and meets under those kinds of circumstances, it raises lots of questions. If it was a legitimate public function that was being performed, it could have been performed out in the open.

SENATOR ORECHIO: Was it a violation of the Open Public Meetings Act?

SENATOR CARDINALE: I am not a lawyer, Senator.

SENATOR ORECHIO: Do you think so?

SENATOR CARDINALE: I don't know.

SENATOR ORECHIO: Well, you talked about circumstances. You were not at the meeting, were you?

SENATOR CARDINALE: I was at the meeting by telephone at the very end, but I was physically not present.

SENATOR ORECHIO: You were not physically present.

SENATOR CARDINALE: I was physically not present.

SENATOR ORECHIO: Do you have secret meetings? Do you invite the press to every meeting you have with legislators, or other members of the Administration?

SENATOR CARDINALE: Every time I have met with the Chief Justice, it has been in a public place.

SENATOR ORECHIO: Forget the Chief Justice -- anybody in the administration of State government? Do you call those secret meetings?

SENATOR CARDINALE: Senator, I just finished saying that you and I function differently than the courts do. We

certainly can go to private meetings. We certainly can do things that the public is not invited to, and no one thinks any the less of us because we do that, because that is part of our function. But, that is not part of the perceived function, by the public, of the Chief Justice of the State of New Jersey.

SENATOR ORECHIO: That is your opinion, Senator Cardinale. You're not always right.

SENATOR CARDINALE: That's very correct, Senator. I am not always right.

SENATOR ORECHIO: Okay. No other questions, Mr. Chairman.

SENATOR ZANE: Anyone else? Senator Van Wagner?

SENATOR VAN WAGNER: Could you just tell me-- The letter you just read-- It was to you, but who was it from?

SENATOR CARDINALE: It was signed by-- It is on Supreme Court stationery, and it is signed by Robert Wilentz.

SENATOR VAN WAGNER: Thank you. I didn't--

SENATOR CARDINALE: I'm sorry. I didn't get that far. I didn't read the closing paragraphs, which were just, you know, not worth reading.

SENATOR ZANE: Any other questions of the witness? (no response) Thank you very much.

Again, hoping not to have much repetition, the next witness-- The name I have here is Dottie Williams.

D O T T I E W I L L I A M S: I have timed this for three minutes.

SENATOR ZANE: Great.

MS. WILLIAMS: I now understand a little better the Executive, the Judicial, and the Legislative Branches, and I am ready to be sworn in and give my name -- Dottie Williams.

SENATOR ZANE: In the absence of Mr. Tumulty, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

MS. WILLIAMS: I do. "Dear Senators:" (witness reads a letter she had written) "While contacting the Governor's office for guidance and interacting with some pertinent areas to me, I keep in mind -- I, just "a citizen" -- a statement made to me via correspondence with Governor Tom Kean, that he is constitually prevented from interfering in the deliberation of the Judicial Branch, and in 1985, I, directed by his office to the Attorney General's office, to the Richard J. Hughes Justice Complex, and also on February 18, 1986, Noel T. McQuire did exactly the same directing. And, having been in the audience of two New Jersey Education Association events -- one in Trenton, New Jersey, and one in Edison, New Jersey -- U.S. Senator Frank Lautenberg spoke dynamically at both. And, because of the sincerity he presented through his speeches, I recently corresponded with the U.S. Senator. He also noted the Legislative Branch is different than the Judicial Branch of the government.

"When I spoke with you briefly, Chairman Edward T. O'Connor, Jr., as you exited from the Senate today" -- this is dated July 17, 1986 -- "after the public hearing to confirm my hearing, the Committee meeting you announced at 10:30 a.m. on Thursday, July 24, 1986, also open to the public you told me.

"Sometimes speaking 'up' or 'out' kind of puts your head in a 'noose.' I just realized this with a judgeship in my county. I thought it would rule the judge out, and he would not be able to rule in my personal behalf. It affected me adversely, I feel. So I hesitate, but I know -- even though the contact with you was spontaneous, Senator O'Connor -- I will feel better as a person for having continued in this writing.

"I hope I am well and can attend the Judicial Committee meeting that you announced on the 24th of July at 10:30 a.m. in the Senate Annex. I would like to read this letter as a form of record. Someone in the 'audience' or 'spectator' area told me the Committee meeting is open to comment. The Senate hearing was a first for me.

"I feel a very helpful contact on February 18, 1986, and another pertinent time for me with Chief Justice Robert N. Wilentz's office; with attorney, direct and indirect, I felt very, very professional, and I am hoping this man who is in this post will be given tenure. The tenure fact I learned when I bumped into a passerby as we talked in the State House after the Senate hearing. He can then continue to manage the Judiciary.

"I have always been well received in the Appellate Court by the entire staff, both by attorneys and staff and Vault I, and actually all floors and all areas. It is a compliment to the selections and the filtering. I did not realize while studying Urban Geography for my M.A., that this urban renewal project of the '60s would actually care and actually provide much health and morale benefits for such a vast number of people and help them to live better totally. Actually, the resources that have been made available to me through the Richard J. Hughes Justice Complex have been very helpful. Because of this, I strongly feel this man -- I never met him personally -- is doing his homework to have this large complex aid me, "just a citizen," as is obvious, as I visit and observe often is being accomplished with others.

"I will be heard in the Appellate Court next week, and hopefully at another future date. I think my name should be used quite discreetly--" I said something about my name being held discreetly, but I noticed that everyone has used his or her name, so it doesn't make any difference, I don't think. "--as I am certain you can understand from this preceding statement. However, because of these contacts, I feel I can speak favorably to this appointment of Chief Justice Robert N. Wilentz.

"Please vote affirmatively. Thank you for the consideration to be heard. With much respect, Dottie Williams"

SENATOR O'CONNOR: Thank you very much.

SENATOR VAN WAGNER: Thank you.

SENATOR O'CONNOR: The next speaker who signed up is Dr. Bal K. Thaper.

MR. TUMULTY: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

D R. B A L K. T H A P E R: I do. At the outset, I want to thank this Committee for allowing me to speak here.

SENATOR ORECHIO: Mr. Chairman, I didn't get his name or who he represents.

SENATOR O'CONNOR: This is Dr. Bal K. Thaper.

SENATOR ORECHIO: Who is he representing, anybody?

SENATOR O'CONNOR: Who do you represent, Dr. Thaper?

DR. THAPER: A little louder, please.

SENATOR O'CONNOR: Are you representing a group, or are you here for yourself?

DR. THAPER: Myself.

SENATOR O'CONNOR: Yourself, okay. Well, then, I would caution you at the outset that, as with the other persons who had a personal grievance as a result of their own litigation, the Committee will not rehash your particular case. What we want you to do is address the qualifications of the Chief Justice.

DR. THAPER: I understand that very well.

SENATOR O'CONNOR: Thank you.

DR. THAPER: I will stick to that. I have heard from the very beginning -- I am here since 10 o'clock -- so many words of praise in favor of the Chief Justice. He may be honest, he may be good, he may be hard working, but he is surrounded by people who are dishonest and thoroughly corrupt. I will give two instances. Right from the beginning, his personal assistant, Park, the clerk of the Supreme Court, Townsend, and the clerk of the Appellate Division, McLaughlin, have committed a big fraud which is unparalleled in the judicial history of the United States of America.

My case was decided long back, and the decision came to me. I am not explaining my own case; I am giving an instance that such things are happening, and nobody is checking. He is surrounded by a ring of people who do not allow any letter to reach him. I wrote several confidential and personal letters to him making everything very clear. I submitted evidence; I made motions; and nothing reached him. His assistants just sign it and send it to me that he doesn't want to do anything.

In this case, I will give two instances of corruption. There are several, but I will give two. First, my case of discrimination was decided by a three-judge panel in my favor. They accepted my appeal. The other party is very powerful. They were represented by the Deputy Attorney General. They played a trick. They suppressed the true opinion, and gave me a bogus opinion, unsigned by anybody.

I called the clerk, and I said, "It is unsigned by anyboy. It should be at least signed by you." He refused to sign it. I said, "When you do not want to sign, the judges don't want to sign, how can you say it is a true opinion? How should I accept it?" After six months of wriggling and wrangling, I wrote to everybody -- to the Administrative Director, Mr. Lipscher, everybody. Ultimately, they were directed to get it signed by a judge.

Then, they forged the signature of Judge King and gave it to me. I went to Judge King's chamber. I talked to the law clerk, and he told me it was a forgery; it was not the real opinion. "The real opinion is with me, and I will give it to you only when Judge King--" Then I wrote to Chief Justice Wilentz, and requested that something should be done. At least Judge King should verify his signature -- whether he signed it or not -- in writing. He sent it to Mr. Townsend -- Clerk Townsend -- who simply said--

I talked to him. I said, "I want a written verification from Judge King whether he signed it or not, whether it is his signature or not." He never did anything, and wrote to me that he had spoken to him. Speaking as--

SENATOR O'CONNOR: Okay. Dr. Thaper--

DR. THAPER: I am giving you instances, sir. This is in relation to that.

SENATOR O'CONNOR: Dr. Thaper--

DR. THAPER: I have nothing against--

SENATOR O'CONNOR: We have heard enough of your own personal experience. We want you to talk--

DR. THAPER: All right, I will not give the other one. I will give only one. So, in this case, Chief Justice Wilentz is very honest, very good. I have no objection to his reappointment. He may be reappointed. But, I have objection to the people who surround him. He should correct them, and he should see that justice is done to everybody in this State. It is not that powerful people should be given justice. Such things are very clear when I give an affidavit that the opinion is bogus. The signatures are bogus. He should do something; he should correct them. I wrote hundreds of letters to everybody through the State, and I never got any reply. I wrote at least 20 letters to Mr. Lipscher, and nothing -- nothing. He doesn't want to even reply. I never got any letter from Justice Wilentz.

So, my point is, he should be asked to have honest people around him. The people who have done this forgery and fraud -- obvious fraud -- should be prosecuted. Action should be taken against them, and justice should be done to me. And, if he can do this thing, he should be reappointed. I have no objection. Personally, I have nothing against him. Under these circumstances, there may be so many people like me, who may be discriminated against, who may be done an injustice by these people who are allowed to continue in their positions and do all of these irregular things.

So, that's all. I don't want to take more time.

SENATOR O'CONNOR: Thank you, Dr. Thaper. Senator Laskin?

SENATOR LASKIN: The only reason I am going to ask a question is because -- bearing in mind that this is the first time I ever heard any of this, and I don't want to prolong it-- But, there has been an allegation made that a crime has been committed, that there was some kind of a forgery, or an opinion that was twisted around or something; that the court issued an opinion that was withheld, and then another opinion was substituted. If that is at all true, or even if it is half true, has something been done to look into that? I am assuming that this took place some time ago.

SENATOR RUSSO: Well, Mr. Chairman -- Senator, I'm sorry to interrupt -- I would think that that portion of the transcript ought to be sent over to the Attorney General's office, and the matter investigated. There is nothing we can do as a Committee in determining that.

DR. THAPER: I don't think the Attorney General will do anything, because the Attorney General knows the people in that. They are partners in that crime. They committed a serious crime. Here is the signature of Judge King. This is the forged signature. (holding up paper) Judge King is there; he is still in active service. It can easily be checked whether he signed it or not, but they don't want to do it. I have been writing for the last--

SENATOR O'CONNOR: Okay. Doctor, respectfully, that doesn't really bear on the Chief Justice's qualifications. Senator Russo suggested that the Committee can follow up and direct the matter to the proper office of the Attorney General, and we will do that.

DR. THAPER: Sir, it bears on his qualifications, but he is surrounded by people who are corrupt, who are dishonest, who are making money by doing all these things. They don't allow anything to reach him.

SENATOR O'CONNOR: Dr. Thaper, thank you very much. We appreciate that, but I think we've got the sense of what you're saying. I think we know what we can do to follow up on the allegations you have made here.

DR. THAPER: Okay, sir. Thank you.

SENATOR O'CONNOR: Chief Justice Wilentz, I notice, has returned to the room. We have completed the list of those who signed up indicating their intent to address the Committee, with the exception of Mr. Tomicki, who indicated that he will wait for further developments with respect to his presentation.

MR. TOMICKI (speaking from audience): Yes-- (Impossible for transcriber to hear Mr. Tomicki's entire statement, as he was nowhere near a microphone.) Are you going to adjourn to another date?

SENATOR O'CONNOR: It has not been determined at this point.

MR. TOMICKI: All right.

SENATOR O'CONNOR: Is the Chief Justice in the room? (no response) Senator Dorsey, do you want to pursue the question regarding the tax records the Chief Justice left the room to obtain?

SENATOR DORSEY: Chief Justice, do you have those returns with you?

CHIEF JUSTICE WILENTZ: No. They ought to be here, I hope, by eight o'clock.

SENATOR DORSEY: Mr. Chairman, based upon that, I would move to the backup position that we then agree to recess to either Monday or Tuesday. You passed out a chart asking everybody for their preference. Frankly, I'm getting tired. I understand Senator Laskin is tired. Our nerves are getting a little bit frayed. I think that would be the fair thing to do, having generally disposed of the public witnesses, except Mr. Tomicki, who I think would be here no matter when we finish.

Can you come back on Tuesday, Chief Justice?

CHIEF JUSTICE WILENTZ: I will come back at the call of the Committee.

SENATOR DORSEY: Fine. Thank you.

SENATOR LYNCH: Mr. Chairman, I respect the fact that we have been here for a long time, but with summer schedules it is difficult to put people back in the same room. I know schedules are going to be difficult tomorrow, Monday, Tuesday, and we're here, and I don't see any reason why we can't continue on this evening for at least two hours or so to finish this hearing. It makes no sense to me to wander around and come back on Monday or Tuesday, and wind up with maybe eight or nine people, instead of 10.

SENATOR O'CONNOR: Except, Senator Lynch, that we do have a request to Legislative Services that is pending. I don't know when we can anticipate receiving that, but I assume it will not be today.

SENATOR LYNCH: Senator Dorsey, was that a motion?

SENATOR DORSEY: I will make a motion -- which I think is not unreasonable -- that we adjourn until Tuesday morning at 10 a.m.

SENATOR RUSSO: Mr. Chairman, that motion is out of order.

SENATOR ZANE: I second it.

SENATOR RUSSO: It is not for the Committee to determine when this Committee meets; it is for the Chairman of the Committee.

SENATOR O'CONNOR: Thank you, Senator Russo.

SENATOR RUSSO: Let me ask, if I may, or suggest something else for the consideration of the Chair. I have a couple of things I would like to go into now before we break, for whatever reason. But, in the event we have to delay, I would suggest that perhaps we could unfrazzle our nerves by taking a break for dinner, and then come back, to see if we can finish up. I do agree we should not just continue to go on for

hours more, because I think we're tired, we're hungry, and I don't think it is productive.

I think rather than do that, Senator Lynch -- with all due respect -- I would rather see us take a break for dinner and then complete it after that. But, in any event, whatever we do, I would like to continue on another line before we perhaps take a recess and discuss -- in private, as we should -- our scheduling.

SENATOR DORSEY: I am perfectly willing to discuss it in private now, if you want. But I am opposed to simply breaking for dinner and coming back and not finishing tonight and going on. Now, it may be up to the Chairman to decide-- I was surprised that the Vice Chairman concurred in the resolution. I suppose your decision can be appealed, Mr. Chairman, but--

SENATOR RUSSO: No, I don't think it can, Senator Dorsey. The scheduling of the Committee is not something that is subject to the appeal of the Committee. It is in the province of the Chairman. Whether I like it, or you like it, it is the Chairman who calls this Committee, and not the Committee.

SENATOR O'CONNOR: Senator Russo, I hope you remember that when I make my decision.

SENATOR RUSSO: I'll try to conveniently forget it.

SENATOR O'CONNOR: For the time being, let's proceed with the question or questions you have, after which we will take a short recess and determine, after discussion, what exactly we will do.

SENATOR RUSSO: Thank you, Mr. Chairman. Chief Justice Wilentz, let me ask you something while we await those tax returns. On those tax returns, do they ask you to state your principal place of residence?

CHIEF JUSTICE WILENTZ: I don't believe so, Senator. I think the tax return simply has a place where you put in your

name and your address. The name is my name, and the address is 166 Water Street, Perth Amboy, New Jersey.

SENATOR RUSSO: To the best of your recollection, that is the address that appears on those tax returns?

CHIEF JUSTICE WILENTZ: You're referring to all tax returns?

SENATOR RUSSO: All tax returns.

CHIEF JUSTICE WILENTZ: New York--

SENATOR RUSSO: New York, New Jersey.

CHIEF JUSTICE WILENTZ: Yes, that is the address; absolutely.

SENATOR RUSSO: I see. Let me ask you this: You have had an opportunity to sit through the testimony subsequent, of course, to your own, and you have heard the questions and comments of the Committee. Mr. Chief Justice, let me ask you this again -- perhaps a little differently, because maybe I didn't make it quite clear the first time. You agreed, when you testified earlier, that in your opinion -- forgetting whether that statute that was referred to applies -- a judge in this State, certainly a Chief Justice, should be a resident of this State.

CHIEF JUSTICE WILENTZ: Yes, I agree.

SENATOR RUSSO: And, of course, it has been your contention throughout the hearing that you are, in fact, a resident of New Jersey. I think-- It is beyond any question, I'm sure, and I hope I don't put-- If I put words in your mouth, I'm sure you will straighten me out quickly. You know there is a legitimate concern raised by the Senators involved, the Committee, and the people of this State, as to whether or not, in fact, you are a resident.

CHIEF JUSTICE WILENTZ: I understand the concern.

SENATOR RUSSO: Doesn't it make sense that, to eliminate any question, in the event you are confirmed and are the highest judicial officer in this State -- and I don't think

anyone questions the fact that your wife's illness means it is much easier -- and we understand that -- for you to be close in New York, with the doctors, and so forth-- But, as soon as that problem has been alleviated -- by that I mean to the point where she doesn't require daily care or hospitalization, even though she may require periodic visits-- As soon as the problem alleviates itself to that extent -- which we would hope would be very soon -- to eliminate any question whatsoever, wouldn't it be better for you to eliminate that question by maintaining a full-time residence in this State, in such a manner as most of the people here do, so that it is beyond any question?

CHIEF JUSTICE WILENTZ: Senator, if my wife's condition changes sufficiently, I would, without any question -- whether you wanted me to, or whether anyone else wanted me to -- I would resume my Perth Amboy residence fully, as I had before. I would stay there all week. I would have my wife visit as she did, two times, three times, but we would maintain an apartment because my three children are in New York and I would want to see them on the weekends.

SENATOR RUSSO: Thank you, Chief Justice.

SENATOR O'CONNOR: Okay. We will now take a five-minute recess.

(RECESS)

AFTER RECESS:

SENATOR O'CONNOR: It is now 7:30 p.m. We have been in session since approximately 10:50 this morning. The Committee is going to adjourn further proceedings until Tuesday morning, in this room, at 11 o'clock. I would like the record

to be clear that the hearing is closed, with the exception of the testimony still to be completed of Chief Justice Wilentz, the testimony of Mr. John Tomicki, representing New Jersey Right to Life, and the receipt by this Committee of an opinion from Legislative Services respecting the issue of residency.

No one else has indicated an intention to address the Committee, and we are, therefore, closing the proceedings other than what I have just stated.

Mr. Tomicki, did you want to be heard?

MR. TOMICKI (still speaking from audience; some parts inaudible): No. I thank you very much for your courtesy, Mr. Chairman. Does the opinion of the Office of Legislative Services-- Will that be available to the public?

SENATOR O'CONNOR: No. That is an opinion that is for the benefit of the Committee.

MR. TOMICKI: That's one question. Number two, when we went to other hearings relative to judges of the Supreme Court, questions and resumes were prepared for the Committee. I ask, in this case, have any documents from the Chief Justice been given to the Committee of that nature?

SENATOR O'CONNOR: Yes, they have.

MR. TOMICKI: Now I am going to ask the Committee if that information can be released for the public

SENATOR O'CONNOR: No, it cannot. It is for the benefit of the Committee's review.

MR. TOMICKI: I understand.

SENATOR O'CONNOR: Okay.

SENATOR DORSEY: Mr. Chairman, I want to thank you. I want to reemphasize the fact that the only persons to be heard on Tuesday will, in fact, be Mr. Tomicki -- the only citizen left who signed up today -- and the completion of the examination of the Chief Justice, who will have his tax returns here at that time.

SENATOR O'CONNOR: That is correct. I would like to note that the absence of Senator Joseph Hirkala from today's proceedings was necessitated by his hospitalization. It is our hope that he will be able to join us next week, assuming he is out of the hospital.

CHIEF JUSTICE WILENTZ: Senator, that's Tuesday, 11 a.m., here?

SENATOR O'CONNOR: In this room, yes, sir.

(MEETING CONCLUDED)

APPENDIX

Mr. Chairman and Members of the Judiciary Committee:

I thank you for the opportunity to make a statement before this distinguished group in support of the confirmation of the reappointment of Chief Justice Robert Wilentz, Justice of our State.

I could address you as a member of the Bar and practicing attorney or as a former Judge of the Superior Court but I prefer to address you as a former Attorney General of the State, whose service of 4 years spanned more than half of the Chief's initial 7 year term.

During that period of time I worked rather closely with the Chief Justice in his capacity as the administrative head of the Judicial Branch of our State Government. In that context, I enjoyed our professional relationship and developed an immense respect for him personally and not just for the office he held. He is a man of prodigious intellect with a tireless capacity for work.

You and the people of our State more readily are familiar with the publicly visible side of the Chief Justice but I would like to portray, briefly for you, a less public side of the man which shows his dedication and significant worth to our State.

In New Jersey, the Chief Justice has a constitutional obligation to be much more than a Judge who sits and hears cases. He is also the administrative head of the Court system and presides over the legal profession. These roles are not necessarily the most publicly visible side of his responsibilities but nevertheless are of equal importance to his duty of presiding over the Supreme Court when it sits and in writing opinions.

On this less visible side, we served together for 4 years as co-chairman of the State Youth Services Commission, an agency established and developed by the Chief Justice because of his abiding interest in the well being of the youth of our State. He spearheaded very positive accomplishments designed to keep countless young people away from the path that would lead them into juvenile delinquency and, perhaps, even worse. He endeavored to steer them rather onto the path that would lead them to becoming worthwhile, useful and productive citizens and was unyielding in his efforts.

Beyond this, my office worked very closely with the Chief Justice in complete support of the Speedy Trial Program which he initiated 6 years ago. In 1980, a defendant accused of crime had to wait somewhere between 12 and 14 months for the disposition of his case. The Chief very

properly recognized that the public was entitled to much more from the criminal justice system for the protection of the public. It is not desirable for many reasons to have an accused defendant, while awaiting trial, to be free on bail mingling with the public for so many months especially when he has a prior criminal record or even to be in jail for so long because he can't make bail. The notion that justice must be swift and sure is as much a deterrent to crime as is vigilant law enforcement. There is nothing swift and sure about a 14-month wait for trial especially when material witnesses suffer loss of memory and the capacity to make key identification. The Chief Justice enlisted the aid of the Attorney General's office, the prosecutors and public defendants throughout the State, kept after all of us on a regular basis so that today the criminal justice system takes five months or less to complete its process. This is a remarkable achievement in our State, the entire credit for which belongs to the Chief Justice.

In another area in which our office worked closely with the Chief Justice, I must again credit him with being the driving force behind a further innovative program designed to enhance our criminal justice system. I refer to the pretrial intervention program which is designed to provide an alternative to prosecution for defendants when such an

alternative can be expected to serve as sufficient sanction to deter criminal conduct. Defendants not charged with a particularly heinous or violent crime, if accepted into the program, can avoid ordinary prosecution by receiving early rehabilitative services when there is an apparent causal connection between the offense charged and the need for rehabilitation. This program has significantly reduced the criminal backlog and at the same time has furnished assurance to the public that the disposition of the case fits both the crime and the personality of the defendant committing the same. Again, without the impetus of the Chief Justice and by the judicious use of the power of his office, the pretrial intervention program would not be the meaningful reality in our State it is.

There are many other programs initiated by the Chief Justice for the purpose of improving the service our Judicial Department delivers to the people of this State. I must make mention of the civil case management program. Our courts run the ever present risk of becoming choked with litigation and suffering a breakdown to the detriment of litigants, their counsel and the public at large. The case management program, already in effect in several key counties, is designed to accomplish the efficient and expeditious movement of cases through the system. Thanks to the perseverance

of the Chief Justice, the program has become an outstanding success.

Now, to those would be detractors of this confirmation process because of the Chief's authorship in 1983 of the Supreme Court's unanimous Mt. Laurel II opinion, I would like to remind them that the innovative Mt. Laurel doctrine requiring municipalities to use their zoning powers to provide for low and moderate income housing was first announced by the Supreme Court of New Jersey in 1975 in the Mt. Laurel I case. It was an opinion written by Justice Hall again for a unanimous court over which Chief Justice Richard Hughes then presided.

The Mt. Laurel II case was a logical extension of Mt. Laurel I and devised a so-called "Builders Remedy" as the method whereby the constitutionally mandated doctrine in Mt. Laurel I could best be accomplished because of the absence of a directive to the courts from the political process, i.e. by a new law agreed to by the legislature and the Governor.

I am confident that this Committee and the Senate at large will regard the Mt. Laurel II case in that proper context. As a matter of fact, following Mt. Laurel II, the Legislature did what it as invited to do by the Supreme Court and enacted the Fair Housing Act. I was privileged

to argue before the Supreme Court this past December in support of the constitutionality of the Fair Housing Act and for the referral of all so-called Mt. Laurel cases then pending in the courts to the Council on Affordable Housing created by the legislature. Again, in an opinion written by the Chief Justice for a unanimous court, the constitutionality of the Fair Housing Act was upheld and all Mt. Laurel cases were referred to the Council, precisely in the manner contemplated by the Legislature.

Like his predecessors before him, the Chief Justice is not an autocrat, he is not an absolute sovereign and he is not the dictator of the court's decision-making power. The Chief Justice must, as he does, share with the six other justices both the credit and the responsibility for the court's decision-making power.

Chief Justice Wilentz has admirably fulfilled his constitutional obligation. We can all be proud of him. He deserves the opportunity to continue on with his responsibilities for the benefit of the people of our State.

Thank you for allowing me the privilege of making this statement.

Irwin I. Kimmelman

IRWIN I. KIMMELMAN

201/643-3876

ACNJ

ASSOCIATION FOR CHILDREN OF NEW JERSEY

17 Academy Street, Suite 709
Newark, New Jersey 07102

DATE: July 24, 1986

TO: Senator Edward O'Connor, Chairman
Members, Senate Judiciary Committee

FROM: Ciro A. Scalera, Executive Director
Cecilia Zalkind, Staff Attorney

RE: Renomination of Chief Justice Wilentz

We are here today on behalf of the Association for Children of New Jersey (ACNJ) to express our strong support for the renomination of Chief Justice Wilentz. ACNJ is a statewide child advocacy organization dedicated to improving public policies for children through research, legislative advocacy and community education.

During his initial term, Chief Justice Wilentz has been a strong advocate for children in terms of his administration of the judicial system in New Jersey. He has promoted at least two major policy thrusts which in our view have reshaped the fundamental perspective of our court system.

First, he is charting a positive and needed course of opening the judicial system up to citizen involvement while at the same time promoting the enhancement and professional development of our new Family Court. This has involved not only support for several court specific citizen volunteer efforts such as Child Placement Review and Volunteers in Probation, but has extended as well to promoting policies of cooperation and affiliation with the major executive agencies, such as the Department of Human Services, whose clients are integrally involved with the courts.

Second, he has made the needs of children and families a priority in terms of their importance in the court system. This has not always been the case in the past when other divisions in the court received the majority of attention and resources. He has established several advisory panels, which include citizen representation, to look at ways of improving court-delivered services. Finally, through his personal involvement in the State Youth Services Commission he has helped to highlight critical problems facing youth, such as substance abuse, and to identify positive approaches needed to combat them.

For these, and many other reasons, we ask this Committee to vote favorably on Chief Justice Wilentz's nomination.

INDEX

1. Letter, dtd. June 2, 1986 from J. R. Connor to Senator Edward T. O'Connor, Chairman, Senate Judiciary Committee

2. Letter, dtd. November 7, 1979, enclosing Memorandum in Opposition to the Appointment of J. R. Connor as Executor of Estate of Mary A. Connor

Brief in Support of Motion for Summary Disposition, filed in Appellate Division of Superior Court of New Jersey, In the Matter of the Estate of Mary A. Connor, Deceased, Docket N° A-1889-79 (Excerpt)

Brief and Appendix for Appellant J. R. Connor (Excerpt)

3. Order, filed September 19, 1980, dismissing appeal, with per curiam Order

4. Brief and Appendix for Appellant J. R. Connor in Supreme Court of New Jersey, Docket N° 17,843 (Excerpt)

5. Petition for Rehearing, Supreme Court of New Jersey (Excerpt)

6. Order Dismissing Appeal, Supreme Court of New Jersey, dated June 3, 1981, filed June 10, 1981

Order dismissing motion to refer the file to the Attorney General "as moot," dated June 9, 1981, filed June 10, 1981

Order denying Motion for Rehearing, dated July 7, 1981, filed July 9, 1981

7. Order of Disbursement- 1st

8. Order of Disbursement- 2nd.

380 Wyoming Avenue
Millburn, New Jersey 07041
2 June, 1986

Senator Edward T. O'Connor
Chairman, Judiciary Committee
1662 Kennedy Boulevard
Jersey City, N. J. 07305

Re: Re-appointment of Chief Justice Robert Wilentz

Dear Senator O'Connor:

I am sending this letter pursuant to my Mailgram of yesterday (mailed to you c/o the Judiciary Committee in Trenton), wherein I asked to appear before the committee and testify against the Wilentz reappointment.

I would first remark, parenthetically, that when the Governor first announced this reappointment, he stated not only his diagreement with the practice of senatorial courtesy but also his opinion that any opposition should be part of the open confirmation process. Let me assure you that it is in the spirit of the Governor's invitation that I am writing this letter.

From what I have read of this matter to date, it appears that the Chief Justice's 1983 Mt. Laurel II opinion forms the basis for most, if not all, of the opposition to his reappointment. I feel, however, that to concentrate on that issue, to the exclusion of any other(s), would be a misfortune, because other matters Wilentz has been involved with - perhaps not so wide in their ramifications - equally merit public investigation, as hereinafter related.

* * * * *

In 1979, the Superior Court of New Jersey (Chancery Division, Essex County) probated the will of my deceased mother, Mary A. Connor, and simultaneously appointed an administrator, refusing to allow me to serve as Executor of her estate, at the request of a particular attorney. I appealed that probate judgment to the Appellate Division of the Superior Court (Estate of Mary A. Connor, Docket N° A-1889-79) and advanced, inter alia, two principal arguments for reversal, the first contending a lack of jurisdiction in the Chancery Division to

probate the will (Argument I) and the second arguing an absence of "legal cause" to allow the court to refuse to permit me to serve as executor (Argument II).

As it developed, these arguments were never disposed of on the merits. Part G of the Appellate Division (Judges Matthews, Ard and Polow) dismissed the appeal, stating in their opinion that:

> "Points one and two raised by appellant have already been adjudicated below and affirmed, and therefore are barred by res judicata."

(See attached).

Senator O'Connor, the doctrine of res judicata could never be applied herein: neither issue (Arguments I and II) had ever previously been raised in a court or adjudicated anywhere. No such judgment of record exists and none has ever been identified by the Appellate Division. The finding is false and fraudulent, per se.

I appealed that decision to the New Jersey Supreme Court (Estate of Mary A. Connor, Docket N° 17,843), claiming a Due Process violation, as well as a substantive violation of my right to appeal to the Appellate Division under R. 2:2-3(a).*

Chief Justice Robert Wilentz then joined in an order dismissing the appeal for "failure to state a substantial constitutional question." (See attached).

Apparently, the Chief Justice is not troubled by serious fraud committed in the Appellate Division and is willing to predicate an order of the New Jersey Supreme Court on such fraud. These decisions were sufficient to totally abrogate my constitutional right to one merits review of the trial court judgment. If this Chief Justice can so casually, and comfortably, rule, then he doesn't belong on the bench because such conduct sends a message to all those who profit by a failure of ethics in high places, as the subsequent history of this matter amply attests.

This short account of only one incident involving Wilentz is necessarily abbreviated, in the interest of time, but I believe

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* Art. VI, §5, ¶2 of the New Jersey Constitution (1947) gives a litigant the right to take appeals to the Appellate Division of the Superior Court of New Jersey. "The New Jersey court system contemplates one appeal as of right to a court of general appellate jurisdiction. . ." Midler v. Heinowitz, 10 N.J. 123 (1952).

it is sufficient to require Wilentz to have to account, in the "open confirmation process," for "another" of his rulings, in addition to Mt. Laurel II.

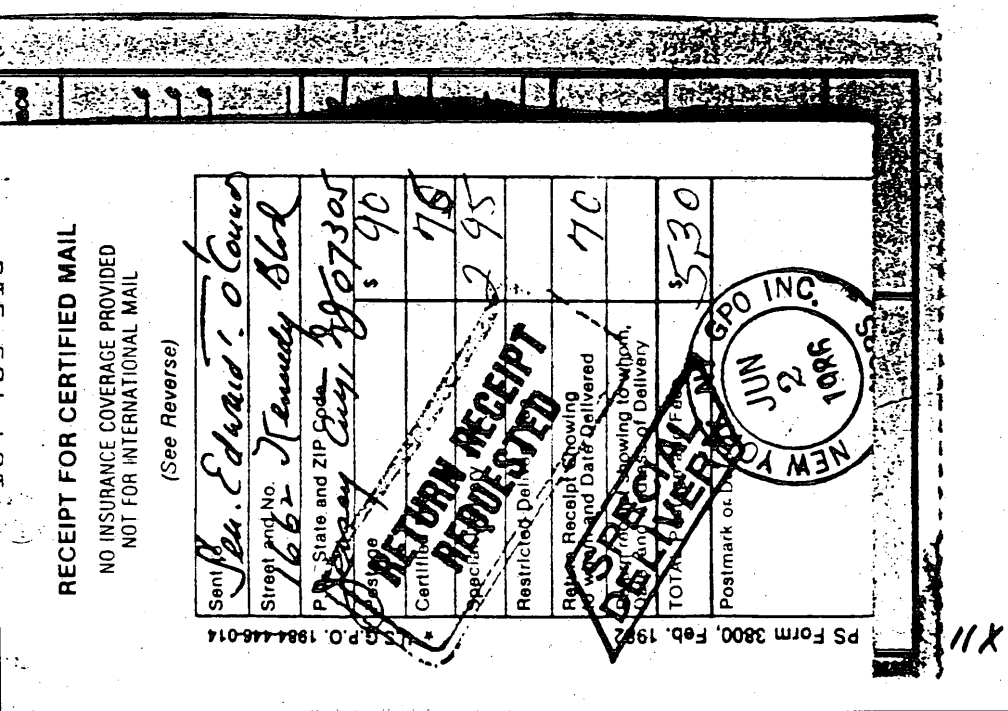
I, therefore, again request to testify against this reappointment before your committee. I am willing to meet with the committee's staff, at any time, to prepare my testimony.

Very truly yours,

John R. Connor

Encl: Brief, A-1889-79, pp. 8-22
AD Order & Opinion, A-1889-79, filed Sept. 19, 1980
SC Orders, #17,843 (2), filed June 10, 1981 & July 9, 1981

cc: Senator John H. Dorsey
Senator Peter P. Garibaldi
Committee Aide John Tumulty



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ROBERT E. LINKIN
LAWRENCE T. NEHER

November 7, 1979

REFER TO FILE NO.

Honorable Geoffrey Gaulkin
318 Hall of Records
Newark, New Jersey

HAND-DELIVERED

Re: In the Matter of the Estate
of Mary A. Connor, Deceased
P-392-77

Dear Judge Gaulkin:

I am enclosing the following:

(1) Original and one copy of a Memorandum of Plaintiff in Opposition to the Appointment of John R. Connor as Executor of the Estate of Mary A. Connor; and

(2) Plaintiff's Answer.

Kindly have someone on your staff file the original and one copy of the Answer and return the extra copy marked "Filed" in the envelope provided.

Respectfully,

HANNOCH,WEISMAN,STERN & BESSER, P.A.

By_____
Irwin P. Burzynski

IPB:da
cc with encls. -
see attached mailing list

12X

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1889-79

Civil Action

On Appeal From
Superior Court of New Jersey
Chancery Division, Essex County

In the Matter of the Estate :

of :

MARY A. CONNOR, Deceased :

Sat Below: Honorable Geoffrey Gaulkin, J.S.C.

BRIEF OF PLAINTIFF-RESPONDENT, HANNOCH, WEISMAN, STERN, BESSER, BERKOWITZ & KINNEY, P.A. IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

HANNOCH, WEISMAN, STERN, BESSER,
BERKOWITZ & KINNEY, P.A.
Plaintiff Pro Se - Respondent
744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

On the Brief:
Irwin P. Burzynski

ARGUMENT

DUE TO THE DISRESPECTFUL AND CONTUMACIOUS CONDUCT OF JOHN R. CONNOR IN THE PROCEEDINGS BELOW, THE DECISION OF THE LOWER COURT SHOULD BE AFFIRMED AND JOHN R. CONNOR SHOULD NOT BE APPOINTED EXECUTOR OF THE ESTATE OF MARY A. CONNOR

The duties of an executor under the laws of the State of New Jersey have been well established.

> "As in all areas of fiduciary administration, a decedent's personal representative is guided by a rule of reason. He must act with the diligence, prudence and caution of a reasonable man, In re Cross' Estate, 117 N.J. Eq. 420 (E. & A. 1935), and in the expenditure of estate funds he must abide by the principle that he primarily acts in the interest of creditors and beneficiaries." Drewen v. Bank of Manhattan Co., 31 N.J. 110, 122-23 (1959).

An executor is a personal representative of the estate. N.J.S.A. 3A:2A-1(q).

Prior to its decision in Drewen, supra, the New Jersey Supreme Court, in In re Sapery, 28 N.J. 599 (1959), stated:

> "One definition of an executor is 'that he is one to whom a testator has given the goods, chattels, and personal estate, for the purpose of paying all his debts; . . . .' (Citation omitted). The purpose of administration is to collect and protect the assets and pay the debts, funeral expenses, and all obligations falling upon the estate, and then to make proper distribution among those entitled to the residue, under the Will or by law, as the cause may be; and to this end the title to the personal property in possession or right of action vests in such personal representative in trust. (Citations omitted). In this regard, the powers and duties of an executor and administrator are much the same." Id. at 601.

See also In re Bayles, 108 N.J. Super. 446, 453 (App. Div. 1970).

It is thus clear that an executor must behave as a resonably prudent person. It is also clear that an executor has a duty to the creditors of the estate to pay the debts of the estate. It is equally clear that a reasonably prudent person would not wait for one and one-half years to probate a will, would not defy court orders to produce a will and the assets of the decedent, and would not require coercive incarceration. Moreover, John R. Connor has certainly not acted in the best

interests of the Estate of Mary A. Connor by his actions which are detrimental to the interests of the creditors as well as the beneficiaries.

Although there is no statute and little case law regarding disqualification of an Executor, the standards for disqualification of an Executor would appear to be identical to those for removal of an Executor. N.J.S.A. 3A:11-4 provides:

> "The court to which a fiduciary is accountable, may remove him from office when:
>
> a. After due notice of an order or judgment of the court so directing, he neglects or refuses, within the time fixed by the court, to file an inventory, render an account or give security or additional security;
>
> b. After due notice of any other order or judgment of the court made under its proper authority, he neglects or refuses to perform or obey the same with the time fixed by the court; or
>
> c. He has embezzled, wasted or misapplied any part of the estate committed to his custody, or has abused the trust and confidence reposed in him; or
>
> d. He (1) has removed from the state or does not reside

> therein and (2) neglects or refuses to proceed with the administration of the estate and perform the duties and trusts devolving upon him; or
>
> e. He is, of unsound mind or mentally incapacitated for the transaction of business; or
>
> f. 1 of 2 or more fiduciaries has neglected or refused to perform his duties or to join with the other fiduciary or fiduciaries in the administration of the estate committed to their care whereby the proper administration and settlement thereof is or may be hindered or prevented."

An executor is also a fiduciary under N.J.S.A. 3A:2A-1(j). The grounds for removal of a fiduciary enunicated in N.J.S.A. 3A:11-4(a) would apply to John R. Connor by analogy inasmuch as he has refused to turnover to the Administrator the assets of the Estate of Mary A. Connor. Appellant has also refused to obey orders of the court, which is a basis for removal under N.J.S.A. 3A:11-4(b). Furthermore, Connor had removed himself from the state so that he could not be taken into custody pursuant to the bench warrants and has continually neglected and refused to proceed with administration of the estate and perform the duties and trusts devolving upon him. N.J.S.A. 3A:11-4(d). See

generally In re Breckwoldt, 22 N.J. 217 (1956); Braman v. Central Hanover Bank Trust Co., 138 N.J. Eq. 165 (Ch. 1946); Holcomb v. Coryell, 12 N.J. Eq. 289 (E. & A. 1875).

If appellant had duly probated his mother's will and had been named executor, his action in these proceedings would have justified his removal as executor under N.J.S.A. 3A:11-4. There is every reason to believe that John R. Connor will continue his present attitude and course of conduct if named executor. Rather than place John R. Connor in a position to further disrupt the judicial process, this court should affirm the lower court's judgment admitting the will of Mary A. Connor to probate and appointing Lucas E. Phillips, Jr., Esq., as Administrator with the Will Annexed of the Estate of Mary A. Connor.

ORIGINAL FILED
AUG 4 1980
ELIZABETH McLAUGHLIN
Clerk

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-1889-79

In the matter of

THE ESTATE

OF

MARY A. CONNOR, DECEASED.

Civil *ACTION*

ON APPEAL FROM

Final Judgment of Chancery Division of Superior Court of New Jersey, Essex County

SAT BELOW

GEOFFREY GAULKIN, J.S.C.

BRIEF AND APPENDIX FOR

APPELLANT IN OPPOSITION TO MOTION FOR SUMMARY DISPOSITION (12 JE-30)

ATTORNEY(S) FOR

JOHN R. CONNOR, Pro se Appellant

380 Wyoming Avenue
Millburn, New Jersey 07041

19X

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III. ARGUMENT.

1

THE DECEMBER 4, 1979 FINAL JUDGMENT PROBATING THE LAST WILL AND TESTAMENT OF MARY A. CONNOR IS NULL AND VOID BECAUSE: THE TRIAL COURT LACKED THE NECESSARY JURISDICTION TO ENTER JUDGMENT; THE ADMINISTRATOR LACKED THE LAWFUL POWER TO APPLY FOR JUDGMENT BECAUSE HIS POWERS WERE SUSPENDED; AND THE PROBATE IS THE RESULT OF UNLAWFUL ACTS ON THE PART OF ADMINISTRATOR GEORGE WARREN, ESQ.

Under New Jersey law, where an appeal from a probate court's appointment of an administrator is properly perfected, jurisdiction of the questions involved terminates with the removal of the cause to the higher tribunal and,

> [I]t is erroneous for the probate court to grant an order affecting the rights of the parties as to the subject matter of the appeal, for the reason that the proceedings before the probate court are stayed * * * [t]he appellant, who has duly complied with the statutory regulations, deprives the probate court of any power over the subject matter during the pendency of the appeal.

Hill's Case, 55 N.J. Eq. (Prerog. Ct. 1897).

The holding in this case is controlling law in the probate courts of New Jersey, in consequence whereof, Appellant's duly-perfected appeals of the trial court's appointment of Mr. George Warren, Esq. as Administrator of the Estate of Mary A. Connor [Estate of Mary A. Connor, Docket No. A-4484-77 (Appellate Division); Docket No. 16,613 (Supreme Court), Petition for Rehearing pending] effectively deprived the trial court of jurisdiction to enter any order or judgment affecting Appellant's rights as executor subsequent to the filing of the first appeal with the Appellate Division on July 5, 1978 (Exhibit "B"), as a result of which all of the trial court's orders and judgment [Order to Show Cause, Bench Warrants and December 4, 1979 Final Judgment (Exhibits "E," "F,"

"G," "H" and "M"] are null and void.

The factual situation in Hill's Case, supra, concerned a November 6, 1896 grant of administration on the estate of intestate Susan Hill by the Orphans Court, which grant was appealed by a Charles C. (one of decedent's sons) to the Prerogative Court. On December 14, 1896, while the appeal was still pending, the lower court discharged the administrators on their own petition and on January 8, 1897 appointed one Zillah Bowers (decedent's daughter) in place of the discharged administrators, which appointment was also appealed by Charles C.

The Prerogative Court held that the "orphans court cannot revoke its decree appointing an administrator while an appeal from such a decree is pending." Id., at 764.

The facts in Hill's Case are virtually indistinguishable from the factual situation in this appeal and, because the December 4, 1979 Judgment (Exhibit "M") discharged one administrator (Warren) and appointed a second (Phillips) while Appellant's appeal of the first administrator's appointment was still pending in the Supreme Court (Exhibit "C"), the trial court's judgment is null and void on jurisdiction grounds, as a result of the holding in Hill's Case, supra, and Mr. Lucas Phillips' appointment as Administrator C. T. A. is void

* * * * * *

The Prerogative Court's holding in Hill's Case governs the within appeal, and with Appellant's July 5, 1978 appeal of the Chancery Court's judgment appointing an administrator (Exhibit "B"), jurisdiction over the issue as to which claimant was to have the

"right" to administer the Estate of Mary A. Connor passed to the appellate court -- as a result of which the lower court could enter no order "affecting the rights of the parties to the subject-matter of the appeal..." Id., at 767.

To quote at length from the court's opinion:

> Appeals, properly so-called, are a continuation of the same case, being only a transfer from one court to another for final trial and judgment. It was a mode of procedure unknown to the common law, and only known in England in the court of chancery and other courts whose mode of proceedings were borrowed from the Roman civil law. Pow.App.Pro.104. From this source came the practice in the ecclesiastical court, which, except as modified by legislature, is the practice of the probate courts in this state. The effect of the appeal is to transfer the cause of action into the appellate tribunal. In respect to the matter appealed from, the transference leaves nothing in the trial court for subsequent action. * * * all jurisdiction of questions involved in litigation, and embraced by the judgment, terminates with the removal of the cause to the appellate tribunal. The loss of jurisdiction is so complete as to require a party to seek relief from any error, except an error in making the record, or in omitting something from the record, to apply to the higher courts. After the cause leaves the lower court, it cannot act upon any question involved in the appeal.
>
> When either party had perfected an appeal from the decision of the probate court, it is erroneous for the probate court to grant an order affecting the rights of the parties as to the subject-matter of the appeal, for the reason that the proceedings before the probate court are stayed.
>
> The appellant, who has duly complied with the statutory regulations, deprives the probate court of any power over the subject-matter during the pendency of the appeal.

Hill's Case, supra. (emphasis added)

Wherefore, because the trial court's orders and judgment issuing subsequent to Appellant's July 5, 1978 appeal of the Administrator's appointment affected Appellant's rights as executor-claimant, the orders, and judgment appealed from, are null and void because the July 5, 1978 appeal (Exhibit "B") stayed the proceedings in the lower court.

* * * * * *

The general rule is that even "General letters cannot * * * issue while an appeal is pending concerning the right to administration or the probate of the will..." 33 C. J. S. §69 Executors and Administrators at 993. (emphasis added)

Under New Jersey law, which is in conformance with the majority rule, the "effect of an appeal from the decree of a probate court is to suspend the operation of the decree appealed from." Brown v. Ryder, 42 N.J. Eq. 358, 7 A. 568 (Prerog. Ct. 1886).

In Brown, the orphans court of Union County, where there was a will contest, appointed an administrator pendente lite on April 4, 1886. Subsequently, on December 7, 1886, the court admitted the will to probate and the executors qualified. The next day, an appeal was taken to the Prerogative Court from the decree probating the will and, in that appeal, the petitioner requested that the administrator pendente lite be permitted to continue to act. The Prerogative Court, in ruling that the administrator pendente lite could act until the appeal was determined, held not only that "[t]he executors therefore have now no power to act. The exercise of their functions is wholly suspended until the appeal shall have

been determined" but also that the appeal suspended the operation of the entire decree appealed from probating the will. Id., at 358. Accord: Davenport v. Davenport, 68 N.J. Eq. 611 (E & A, 1904). In re Norrell, 137 N.J. Eq. 207 (E & A, 1945). State v. Williams, 9 Gil. 128 (Md. Ct. App. 1850).

As with an executor, so with an administrator. "Where an appeal has been taken from the appointment of an administrator, his powers are suspended, and the probate court should appoint a special administrator. Palms v. Wayne, 39 Mich. 302; Arnold v. Sabin, 4 Cush. 46; Crozier v. Goodwin, 1 Lea. 368; see Bloomfield v. Ash, 1 South. 314; Shauffler v. Stoever, 4 Serg.& R.202; Cleveland v. Quilty, 128 Mass. 578." Brown v. Ryder, supra. (emphasis added)

Wherefore, because the lower court lacked jurisdiction to enter any orders affecting Appellant's rights as executor during the pendency of Appellant's appeal of the administrator's appointment, which appeal also operated to suspend the powers of the Administrator, the court's orders and December 4, 1979 Judgment, which probated Mrs. Connor's will, disqualified Appellant as executor, removed the administrator and appointed an Administrator C.T.A., are null and void as a matter of law.

* * * * * *

The December 4, 1979 Judgment admitting the Last Will and Testament of Mary A. Connor to probate should additionally be set aside on the grounds that the probate is the result of an unlawful act.

It is a long-established equitable maxim that "the law will not assist a person to reap the fruits or benefits of an unlawful act." Appell v. Reiner, 81 N.J. Super. 241 (Ch. 1963). Accord: Slater v. Gittleman, 104 N.J. Eq. 172 (E & A 1929). Harriman v. Strahan, 47 Wyo. 208, 33 P.2d 1067 (1934). Stack v. P. G. Garage, Inc., 7 N. J. 118, 121 (1951).

The operative facts of the within case (see Statement of Facts) establish that Administrator Warren -- in spite of the fact that his powers as administrator were legally suspended from the moment of Appellant's appeal of his appointment -- continued to unlawfully exercise the powers of the office by: 1) applying to the Chancery court for a show cause order to compel production of decedent's will and assets (Exhibit "E"); 2) securing an arrest warrant for Appellant's arrest (Exhibit "F"); 3) securing a second arrest warrant (Exhibits "G" and "H"); 4) causing same to be executed on September 23, 1979, resulting in Appellant's unlawful arrest and incarceration; 5) securing the court's order to indefinitely incarcerate Appellant until he turned over said will and assets to the court on September 26, 1979 (Ra 34); and 6) securing the probate of said will by the judgment herein under appeal.

All of these actions were, and are, unlawful per se because this Administrator lacked the legal power to initiate any of them in court when his powers were suspended by operation of Appellant's appeal of his appointment. Brown v. Ryder, supra.

The one, single act of Administrator Warren, primus inter pares, which suffices to void the judgment of probate is this Administrator's

wholesale violation of criminal statutes to gain possession of, and to probate, decedent Mary A. Connor's will.

Administrator Warren violated N.J.S.A. 2C:13-3 False Imprisonment statute when he secured Appellant's arrest under an arrest warrant he knew to be unlawful because the show cause order he obtained (Exhibit "E") specifically prohibited Appellant's arrest if he did not appear at the show cause hearing.

Additionally, Administrator Warren violated N.J.S.A. 2C:20-3 Theft by Unlawful Taking or Disposition, N.J.S.A. 2C:20-4 Theft by Deception and N.J.S.A. 2C:20-5 Theft by Extortion when he unlawfully created the false impression that he had the lawful authority to remove decedent's will and estate assets from Appellant's possession, and extorted same from his control by applying to, and receiving from, the court on September 26, 1979 an order effecting Appellant's indefinite incarceration until such time as Appellant turned over decedent's will and assets, when the Administrator knew he had no lawful authority to do so (Ra 42, 43), particularly since his order to show cause (Exhibit "E," p. 6A) did not require that John R. Connor produce his mother's will at the show cause hearing.

Wherefore, the probate of the Last Will and Testament of Mary A. Connor having resulted from the aforesaid violations of New Jersey criminal statutes, and because the Administrator and the firm of Hannoch, Weisman, Stern & Besser stand to benefit from their unlawful actions in securing the probate of decedent's will, to the extent of over $10,000 (see Statement of Facts), said probate must be set aside by the appellate court under the doctrine enunciated in

Appell v. Reiner, supra, that "the law will not assist a person to reap the benefits of an unlawful act."

The probate of Mrs. Connor's will by Administrator Warren is in excess of the authority granted him under N.J.S.A. 3A:6-8 Acts of Administrator before Notice of Will, because, under the statute, only "lawful acts performed in good faith by an Administrator before notice of such a will shall remain valid." (emphasis added)

Administrator Warren received the requisite "notice" of the existence of Mary A. Connor's Last Will and Testament by letter from Appellant dated June 7, 1978 (Exhibit "A"), in consequence whereof, all actions of the Administrator subsequent to that notice, being unlawful, must be set aside by the appellate court.

- * -

New Jersey State Library

2

THE REFUSAL OF THE TRIAL COURT TO ALLOW APPELLANT TO SERVE AS EXECUTOR OF THE ESTATE OF MARY A. CONNOR CONSTITUTES REVERSIBLE ERROR BECAUSE SAID DECISION, BEING PREDICATED UPON UNSPECIFIED REASONS OF "CONDUCT," IS INSUFFICIENT TO BAR APPELLANT FROM HIS OFFICE AS A MATTER OF LAW.

Respondent Hannoch, Weisman, Stern & Besser's entire argument for appellate affirmance of the trial court's decision refusing to allow Appellant to serve as Executor of his mother's estate is erroneously predicated on legal authorities which are pertinent solely to the removal of a fiduciary who has already qualified, assumed office, and breached some duty. Respondent's citations are irrelevant to a determination of the issue of the circumstances under which a court can lawfully refuse to appoint the testator's nominee as executor, which is the issue in the within appeal, in view of the fact that Appellant never qualified as executor in the first place.

Respondent cites to N.J.S.A. 3A:11-4, which lists the various statutory causes for which a fiduciary can be removed from office (i.e., failure to file an inventory after due notice, refusal to obey an order of the court, embezzlement, etc.), and attempts to argue by analogy to the entirely different issue of when a court can refuse to appoint an executor. (Pb 11 and 12)

There is no need to argue by analogy on this issue. Whether intentional, or simply the result of sloppy legal research, there is ample case law on the subject of when a New Jersey court can refuse to appoint testator's nominee and the standards to be applied by the court in making such a determination -- in consequence

whereof, Respondent's entire argument is without foundation in the pertinent and controlling law.

The general rule in New Jersey is that "[a]n executor is not lightly, or by slight or indirect circumstances, to be precluded from the trust the testator intended to confide in him." In re Maxwell, 3 N.J. Eq. 611 (Prerog. Ct. 1832). The actual causes for which an executor may not be barred from office are multifarious. For example, antagonistic feelings between the executor and the legatees are "not a sufficient reason for excluding [the testator's nominee] from the executorship." Acker's Case, 70 N.J. Eq. 669, 62 A. 556 (Prerog. Ct. 1906). An executor cannot even be barred from office if the testator selected as his representative "an irresponsible, insolvent person." Holcomb v. Coryell, 12 N.J. Eq. 289 (E.&A. 1857). Additionally, an executor will not be barred from office because of his failure to probate a will immediately after the testator's death. Acker's Case, supra. It has also been held in another jurisdiction that an executor was entitled to qualify notwithstanding the fact that "the executor had delayed in qualifying and offered no explanation for [the] delay in the absence of showing express refusal to qualify..." Kuechler et al. v. Rubbathen et al., 266 Ky. 390, 99 S.W.2d 193 (1936).

Under what circumstances then can a testator's nominee be barred from executorship in New Jersey? The time-honored standard is that enunciated in Holcomb, supra, to wit: "[I]n the absence of fraud, or misconduct, or breach of trust * * * to remove him from office, and defeat the will of the testator, is an exercise of power

not vested in the court, and a violation of the rights of the executor." Id., at 296. (emphasis added)

Additionally, "[T]here must be * * * some act or circumstance * * * at the time of the appointment, which will warrant such interference by a court of equity." Id., at 296. (emphasis added) As recently interpreted by the New Jersey Supreme Court, this specifically means that an executor may lawfully be barred from office "upon a showing that the position was acquired as the result of fraud, misconduct or breach of trust." In re Estate of Margow, 77 N. J. 316, 390 A.2d 591 (1978). (emphasis added)

This being the standard established in New Jersey by which a court can refuse to appoint an executor, the question must then be asked: Whether there is any evidence in the record that Appellant acquired his appointment as executor as a result of either "fraud, misconduct, or a breach of trust"?

The only (unsuccessful) attempt to establish such evidence occurred during cross-examination of testator's attorney, E. Gilman Slingerland, Jr., Esq., on November 14, 1979:

"CROSS-EXAMINATION BY MR. LOMBARDI:

Q Was this prepared in accordance with the instructions given you by Mrs. Connor, or did someone else give you instructions as to how to prepare it?

A Mr. Lombardi, I really don't recall. I know -- my recollection, and I wouldn't swear to it, is that John Connor and his mother both attended my office for the initial will conference, and his mother reappeared for signing the will, but it was obviously at her direction, with her understanding and concurrence in the terms of the will. There is no question about that.

Q You don't recall whether a John R. Connor gave you the information to be put into the will originally, or whether Mrs. Connor did?

A I really couldn't swear to it either way.

MR. LOMBARDI: Nothing further, your Honor." (Transcript: 11/14/79, pp 26-27A)

Had counsel secured an admission from the witness that Appellant had actively participated in drawing up decedent's will, then possibly, (assuming the validity of these proceedings), Appellant could then have been barred from his executorship because the Supreme Court has specifically held that such unlawful activity (i.e., the unauthorized practice of law in violation of N.J.S.A. 2A:170-78 and N.J.S.A. 2A:170-80) was "the type of 'misconduct' expressly referred to by the Holcomb court as one of the three grounds for barring an executor from office." In re Estate of Margow, supra.

Wherefore, because there was no evidence before the trial court that Appellant had acquired his position as executor as a result of "fraud, misconduct or breach of trust," that court had no lawful power to enter the December 4, 1979 judgment barring Appellant from his office.

* * * * * * * *

It is pertinent to this argument to note that the proposed form of judgment barring Appellant from his executorship originally read:

"ORDERED that due to the outrageous and contumacious conduct of John R. Connor in this action, and notwithstanding the designation of John R. Connor as Executor, the Court will appoint someone else to act as fiduciary for the Estate of Mary A. Connor." (Exhibit "M") 31X

Before signing this judgment, the court amended it by crossing out the words "outrageous and contumacious" and inserting "as set forth in the record herein" following the word "action" -- so that Appellant is appealing herein from that part of the judgment that reads:

> "ORDERED that due to the conduct of John R. Connor in this action as set forth in the record herein, and notwithstanding the designation of the testatrix of John R. Connor as Executor, the Court will appoint someone else to act as fiduciary for the Estate of Mary A. Connor." (Exhibit "M") (emphasis added)

Appellant has thus been disqualified from his office for no specific legal cause but for amorphous and unspecified "conduct" which may or may not be unlawful (who is to know?). There is actually no evidence in this record to support Respondent's allegations that: this Appellant was "contumacious" [or ever cited for contempt]; that he moved out-of-state to avoid process; or that he disobeyed a court order -- and Respondent cites to none. Furthermore, Appellant's decision not to proceed with probate was perfectly proper, in accordance with the law cited in Argument 1 herein, while Appellant was appealing Administrator Warren's appointment.

Respondent's argument that "Due to the disrespectful and contumacious conduct of John R. Connor in the proceedings below, the decision of the lower court should be affirmed, etc." (Pb, p. 9) finds no support in the text of the trial court's (amended) judgment herein under appeal. (Exhibit "M" - p. 45A)

The transcript of the September 26, 1979 hearing before the Justice Gaulkin is included in Respondent's Appendix -- however, same was not introduced in evidence by anyone at the November 14, 1979 hearing wherein Appellant was disqualified, the sole exhibits marked into evidence being the will (P-1) and the death certificate (P-2). 32A

The September 26, 1979 hearing specifically resulted from Appellant's arrest on September 23rd on a bench warrant which required Appellant to be taken into custody to "show cause" why he should not be attached for contempt for failing to appear at a hearing he wasn't even required to attend. (Exhibit "H")

The end result of the "possible" contempt hearing was that a contempt proceeding wasn't instituted:

> "MR. ANDRE: Again, your Honor, the only reason we had this hearing today, as I understand it, is that my client was arrested on a bench warrant issued on an Order issued by Judge Dwyer almost a year ago.
>
> He's here today because he has to be brought within a reasonable period of time before a Judge so that a bail application can be made.
>
> THE COURT: It it's a contempt proceeding. We don't have a contempt proceeding, you're going to win on that part of the application.
>
> I'm not going to institute a contempt proceeding." (Transcript: 9/26/78, Ra 37)

The trial court's opinion on November 14, 1979 states that:

> (THE COURT): "With respect to the designation of Mr. Connor as the executor, I am satisfied from my own experience with his file, and with Mr. Connor himself, as evidenced by the transcript of the proceedings when he was arrested, I'm satisfied from all of that that it would be an entirely inappropriate act on my part to name him, or to permit him to serve as the fiduciary of the estate, and I am satisfied that I have authority under the circumstances to appoint another fiduciary, notwithstanding the directions of the testatrix in the will." (Transcript: 11/14/79, p. 36A)

The trial court may be "exercised" over having a trying "experience" with a person who is aware of his legal right to appeal the appointment of an administrator, it may be exercised over the

attendant, but unavoidable, delay in probate, it may be upset at Appellant's rare lapse in utilizing his First Amendment privilege of "free speech" in certain correspondence, it may even be annoyed that Appellant was represented by counseI in court on September 26, 1979 -- however none of these "experiences" is sufficient under the applicable law of this state to bar Appellant from serving as Executor of this estate.

Such a general and vague cause for barring an executor from office constitutes no legal cause at all. Unspecified "conduct" is surely inadequate not only as a matter of law but also as a finding of fact. Had this Appellant been convicted for contempt-of-court, and the contempt sustained on appeal, that "unlawfulness" may have then met the standard enunciated in Margow, supra, excepting the contempt would have had to have been somehow connected with Appellant's acquisition of his position of executor. Absent such a showing, there is no basis in law for sustaining the court's decision to bar Appellant from his office for reason of "conduct * * * as set forth in the record herein." (Exhibit "M")

- * -

A-1889-79

ORDER ON
MOTIONS/PETITIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1889-79
MOTION NO. M-2363-79
BEFORE PART G

IN THE MATTER OF THE ESTATE OF

MARY A. CONNOR, DECEASED

JUDGES: MATTHEWS
ARD
POLOW

FILED
APPELLATE DIVISION
SEP 19 1980
JC
Elizabeth McLaughlin
Clerk

MOVING PAPERS FILED FEBRUARY 6, 1980
ANSWERING PAPERS FILED FEBRUARY 11, 1980 (2), FEBRUARY 20, 1980, AUGUST 4, 19
DATE SUBMITTED TO COURT MARCH 4, 1980 RESUBMITTED SEPTEMBER 12, 1980
DATE ARGUED
DATE DECIDED SEPTEMBER 18, 1980

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION/~~PETITION~~ FOR SUMMARY DISPOSITION.			X

SUPPLEMENTAL:

See opinion attached.

FOR THE COURT:

ROBERT A. MATTHEWS P.J.A.D.

WITNESS, THE HONORABLE ROBERT A. MATTHEWS, PRESIDING JUDGE OF PART G, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, THIS 18 DAY OF SEPTEMBER 1980.

Elizabeth McLaughlin
CLERK OF THE APPELLATE DIVISION

jp

35X

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1889-79
M-2363-79

IN THE MATTER OF THE ESTATE OF

MARY A. CONNOR, Deceased.

Submitted March 4, 1980--resubmitted September 12, 1980 -- Decided September 18, 1980.

Before Judges Matthews, Ard and Polow.

On appeal from the Superior Court, Chancery Division, Essex County.

John R. Connor, appellant pro se.

Hannoch, Weisman, Stern, Besser, Berkowitz & Kinney respondent attorneys (Irwin P. Burzynski, on the letter).

PER CURIAM

Points one and two raised by appellant have already been adjudicated below and affirmed, and therefore are barred by res judicata. Point three is based upon surmise and personal opinion, neither of which would constitute competent proof of the allegation, which, at best, is premature. Point four is frivolous. Transcripts are not "evidence" on appeal.

Appeal dismissed.

A TRUE COPY.

Elizabeth McLaughlin

36X

SUPREME COURT OF NEW JERSEY
DOCKET NO. 17,843

In the matter of

Civil Action

THE ESTATE	:	On Appeal from:
	:	Final Judgment of Appellate Division of
OF	:	Superior Court of New Jersey
	:	Sat Below:
MARY A. CONNOR, DECEASED.	:	MATTHEWS, ARD and POLOW

BRIEF AND APPENDIX FOR APPELLANT

JOHN R. CONNOR, Pro se
380 Wyoming Avenue
Millburn, New Jersey 07041

37X

THE SEPTEMBER 18, 1980 DECISION OF THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY DISMISSING APPELLANT'S APPEAL OF THE TRIAL COURT'S DECEMBER 4, 1979 FINAL JUDGMENT, BEING PREDICATED UPON A FRAUD, MUST BE REVERSED BECAUSE SAID DECISION NOT ONLY SUBSTANTIALLY VIOLATES APPELLANT'S DUE PROCESS RIGHT TO APPELLATE REVIEW OF THE TRIAL COURT'S JUDGMENT UNDER R. 2:2-3(a) BUT ALSO IS VOID UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The September 18, 1980 Appellate Division decision dismissing the within appeal [Estate of Mary A. Connor, Docket No. A-1889-79] is predicated upon a fraud perpetrated by Appellate Justice Robert A. Matthews, P.J.A.D.

To be specific, the Appellate Division has declined to review Appellant's two principal arguments for reversal of the trial court's December 4, 1979 final judgment in this case on His Honor's false and fraudulent representation that:

> "Points one and two raised by Appellant have already been adjudicated below and affirmed, and therefore are barred by res judicata." (App. C, infra, p. 5a)

"Point One" of Appellant's Appellate Division brief argued for the reversal of that part of the trial court's judgment which admitted the Last Will and Testament of Mary A. Connor to probate on the grounds that "[t]he trial court lacked the necessary jurisdiction to enter judgment; the Administrator lacked the lawful power to apply for judgment because his powers were suspended; and the probate is the result of unlawful acts on the part of Administrator George Warren, Esq."

"Point Two" argued for the reversal of that part of the trial court's judgment which had disqualified Appellant from serving as Executor of the Estate of Mary A. Connor on the grounds that: "[s]aid decision, being predicated upon unspecified reasons of 'conduct,' is insufficient to bar Appellant from his office as a matter of law." (See: Appellant's Appellate Division brief, pp. 8-16.)

In contrast to Justice Matthews' false assertion that these two points "have already been adjudicated below and affirmed, and therefore are barred by res judicata," the truth of the matter is that neither issue has ever previously been raised or adjudicated in any other case or judgment or proceeding on appeal and are, in fact, raised for the first time on appeal in the within (dismissed) appeal.

Consequently, the false contention of the Justice Matthews constitutes a fraudulent assertion designed for the sole purpose of avoiding appellate review -- and reversal -- of the December 4, 1979 judgment under appeal; especially necessary in view of the action of the Hannoch firm in submitting a "losing" brief in support of its motion for summary disposition of the sole issue of Appellant's disqualification as executor.

Neither the court nor the Hannoch firm anywhere cites to this "mysterious" judgment which is supposed to have previously adjudicated these issues -- for the simple reason that no such judgment exists.

* * * * * * * *

The doctrine of res judicata serves the purpose of judicial finality. If there is a final, valid judgment by a court of competent jurisdiction it is res judicata as to the parties not only as to all matters litigated and determined but also as to all relevant issues which could have been presented, but were not. (Emphasis added) Donegal Steel Foundry Co. v. Accurate Products Co., 516 F.2d 583 (C. A. 3). Mazzilli v. Accident & Casualty Ins. Co., 26 N.J. 307, 139 A.2d 741, 745 (1958).

As explained by Mr. Justice Frankfurter:

> "The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion * * And if it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties." (Emphasis added)

Angel v. Bullington, 330 U.S. 183 (1947). See also: Commissioner v. Sunnen, 333 U.S. 591 (1948); Jackson v. Irving Trust Co., 311 U.S. 494 (1941); U. S. v. Oppenheimer, 242 U.S. 85, 88 (1916); U. S. v. DeAngelo, 138 F.2d 466, 468 (C. A. 3, 1943).

Is there any other judgment of record in the Estate of Mary A. Connor in which the issues of the validity of the probate of decedent's Last Will and Testament and Appellant's disqualification as executor "could" have been presented? The answer is in the negative, inasmuchas the only other prior judgment of record is the Chancery court's May 25, 1978 appointment of an Administrator

predicated on the trial court's (erroneous) finding of an "intestacy." (App. A, infra, pp. 1-2a)

Appellant's arrest by the Administrator and subsequent disqualification as executor occurred approximately a year and one-half after the Administrator's appointment and therefore could never have been litigated at any earlier time. (See: Appellant's Appellate Division brief, pp. 3-4)

Consequently, the Appellate Division's opinion with respect to Points 1 and 2 "could" not apply to the May 25, 1978 judgment appointing an administrator -- which matter is presently pending before the U. S. Supreme Court on Appellant's Petition for a Writ of Certiorari.

* * * * * * * * *

Accordingly, the Appellate Division's fraudulent disposition of Appellant's appeal of the trial court's judgment probating Mary A. Connor's Last Will and Testament and disqualifying Appellant from serving as Executor violates Appellant's Fourteenth Amendment "due process" rights because said disposition is arbitrary, unfair and not in accordance with "traditional concepts of fair play, substantial justice, and a resolution of the controversy upon the merits." Murphy v. Helena Rubenstein Co., 234 F. Supp. 893, appeal dismissed 355 F.2d 553 (D.C.N.J. 1964). Accord: Urbano v. McCorkle, 334 F. Supp. 161, supplemented 346 F. Supp. 51, affirmed 481 F.2d 1400 (D.C.N.J. 1971); State v. Bryan, 336 A.2d 511, 133 N. J. Super. 369 (App. Div. 1974).

The appellate court's fraudulent disposition of this appeal is "shocking to the universal sense of justice," State v. Laganella, 365 A.2d 224, 144 N.J. Super. 268 (App. Div. 1976). It must be reversed because it substantially violates both Appellant's "due process" rights under the Fourteenth Amendment, and Appellant's right, under R. 2:2-3(a), to a fair and impartial appellate review of the trial court's judgment.

[With respect to Points 3 and 4 of the Appellate Division's opinion, dealing with the issues of the caveat and transcript certification, Appellant relies on the arguments raised in his brief filed in the Appellate Division and in his Petition for Rehearing, included herein as Appendix "D"]

# # # # # #

IV. CONCLUSION.

For the reasons hereinabove set forth, Appellant demands judgment, together with costs, reversing the September 18, 1980 Final Judgment of the Appellate Division, with an Order specifically: revoking the probate of the Last Will and Testament of Mary A. Connor and all orders secured by the Administrator from the Chancery court subsequent to Appellant's July 5, 1978 appeal of his appointment, as requested in Appellant's Appellate Division brief; reversing the disqualification of Appellant as executor of the Estate of Mary A. Connor; and ordering the return of decedent Mary A. Connor's Last Will and Testament, and all estate assets unlawfully seized from Appellant by the Administrator on September 26, 1979, to Appellant's possession so that he may probate said will and qualify as Executor.

Respectfully submitted,

John R. Connor, Pro se

27 December, 1980

John R. Connor, Pro se
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

SUPREME COURT OF NEW JERSEY
DOCKET NO. 17,843

In the matter of

THE ESTATE	:	Civil Action
	:	
OF	:	PETITION FOR REHEARING (R.2:11-6 a)
	:	
MARY A. CONNOR, DECEASED.	:	

TO: Mr. Irwin P. Burzynski, Esq.
HANNOCH, WEISMAN, STERN & BESSER
744 Broad Street
Newark, New Jersey 07102

Information only:

Mr. George Warren, Esq.
112 Nassau Street
Princeton, N. J. 08540

Mr. Lucas Phillips, Esq.
400 Irving Avenue
South Orange, N. J. 07079

Mr. Fred P. Blackwell, Esq.
19129 Roman Way
Gaithersburg, Md. 20760

Mr. John B. O'Neill, Esq.
MILTON, KEANE & BRADY
40 Journal Square
Jersey City, N. J. 07306

Mr. John A. Lombardi, Esq.
441 Springfield Avenue
Summit, N. J. 07901

I, John R. Connor, Pro se, Petitioner in the above-entitled matter, hereby state that the "substantial constitutional question" (R. 2:2-1a) presented in this appeal is as follows:

QUESTION:

> Whether the dismissal of an appeal by the Appellate Division of the Superior Court of New Jersey from a judgment which admitted a will to probate, disqualified Appellant from serving as executor, and appointed an Administrator, C.T.A., where said dismissal was predicated upon the appellate court's decision that said issues were res judicata, when there was neither any prior judgment of record adjudicating said issues nor any claim of res judicata advanced on behalf of either appellant or respondent, constitutes a substantial abridgement of Appellant's right, under R. 2:2-3(a), to an As of Right appellate review of the trial court's judgment, and is, therefore, void under the Due Process Clause of the Fourteenth Amendment?

The New Jersey Supreme Court has held that:

> The New Jersey court system contemplates one appeal as of right to a court of general appellate jurisdiction, and such appeal is usually afforded in the Appellate Division of the Superior Court, and a further appeal to the Supreme Court is allowed only in the exercise of the Supreme Court's discretional power of certificate unless the case comes within one of the limited number of situations for which an appeal to the Supreme Court as of right is expressly allowed by the Const. 1947, Art. VI, §V, par. 1."

Midler v. Heinowitz, 10 N. J. 123, 89 A.2d 458 (1952). (Emphasis added).

The Supreme Court will entertain constitutional issues not raised below not only where the consideration of such a question is "central to a correct resolution of the controversy and justice requires consideration of the question" but also where the (constitutional) question relates to matters of "great public importance." Meeker v. Meeker, 52 N. J. 59, 243 A.2d 801 (1968).

To qualify for an as of right appeal to the New Jersey Supreme Court R. 2:2-1(a) requires that a constitutional question must be "substantial." This requirement has been construed as implicit in the constitutional provision. Tidewater Oil Co. v. Mayor and Council of Cartaret, 44 N. J. 338, 341-342, 209 A.2d 105 (1965). Colacurcio Contracting Corp. v. Weiss, 20 N. J. 258, 262, 119 A.2d 449 (1955).

The Third Circuit Court of Appeals has held that "[a] litigant is entitled to the honest, unbiased judgment of the judges of those courts before whom his case comes, and to a full hearing and full argument in order that the merits of his side of the controversy may be established." Deppe v. General Motors Corp., 131 F.2d 379 (C.C.A.N.J. 1943). Furthermore, the litigant is entitled to his day in court, but is not entitled to relitigate an issue once determined by a valid judgment." City of Trenton v. Lenzner, 103 A.2d 13, 29 N.J. Super. 514, affirmed 109 A.2d 409, 16 N.J. 465, certiorari denied 75 S. Ct. 534, 348 U.S. 972, 99 L. Ed. 757 (1954).

* * * * *

In the within petition, the New Jersey Supreme Court is presented with a fundamental, constitutional question that clearly comes within the abovementioned criteria of "substantiality," due to the fact the grossly arbitrary and unfair manner of disposition of this appeal by the Appellate Division of the Superior Court absolutely nullified this Appellant's constitutional right to one "as of right" appeal of the trial court's December 4, 1979 final

judgment which probated the Last Will and Testament of Mary A. Connor, disqualified Appellant as executor and appointed an Administrator, C. T. A.

The brief originally filed by Respondent Hannoch, Weisman, Stern & Besser with the Appellate Division, in support of its motion for summary judgment, raised only a single issue, and that argued for affirmance of that part of the trial court's judgment which disqualified Appellant as executor. In a reply brief, Appellant not only responded to Respondent Hannoch's disqualification argument (1), but also challenged: the probate of the will (2); the failure of the trial court to honor a caveat Appellant had filed against the probate (2); and the admissability of transcript (3).

Points 2, 3 and 4 were never joined by Respondent Hannoch in a merits (reply) brief, however the Appellate Division proceeded, nonetheless, to decide the motion for summary judgment by dismissing Appellant's appeal after deciding that:

> "Points one and two raised by appellant have already been adjudicated below and affirmed, and therefore are barred by res judicata."
> (See attached judgment)

HOWEVER, THERE IS NO PRIOR JUDGMENT OF RECORD ADJUDICATING POINTS 1 AND 2 OF THIS APPEAL AND THEREFORE THE ISSUES RAISED ARE NOT RES JUDICATA. No such judgment was ever pleaded by either party to the appeal nor was any such judgment specifically identified by the Appellate Division --- for the obvious reason that none exists. CONSEQUENTLY, THESE ISSUES ARE BEING LITIGATED FOR THE FIRST TIME.

Wherefore, because the Appellate Division's arbitrary, unfair and fraudulent manner of disposing of Appellant's appeal by predicating a dismissal on an unpleaded, undocumented and non-existent judgment is so grossly unfair that it constitutes a substantial abridgement of my constitutional, due process right, under R. 2:2-3(a), and the Fourteenth Amendment, to one as of right appellate review of the trial court's December 4, 1979 final judgment.

Certification

I herein certify that the within Petition is submitted in good faith, and not for reasons of delay. I further certify that I have served two copies of the within pleading upon all parties by mailing same, regular mail, to their places of business.

John R. Connor, Pro se

22 June, 1981

17,043

SUPREME COURT OF NEW JERSEY
SEPTEMBER TERM
A-183-80

IN THE MATTER OF THE ESTATE OF

MARY A. CONNOR,

DECEASED.

ORDER DISMISSING APPEAL

This matter having been duly considered by the Court, it is ORDERED that the appeal is hereby dismissed for failure to state a substantial consitutional question as required by R.2:2-1(a).

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 3rd day of June, 1981.

Clerk

FILED
JUN 10

49X

17,843

SUPREME COURT OF NEW JERSEY
M-1152 SEPTEMBER TERM 1980

IN THE MATTER OF
THE ESTATE OF

MARY A. CONNOR,

DECEASED.

ORDER

FILED
SUP
JUN 10
Clerk
D2

This matter having been duly presented to the Court, it is ORDERED that the motion to refer the file to the Attorney General is dismissed as moot.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of June, 1981.

Clerk

50X

17,843

SUPREME COURT OF NEW JERSEY
M-1279 SEPTEMBER TERM 1980

IN THE MATTER OF THE
ESTATE
OF
MARY A. CONNOR,
Deceased.
(John R. Connor-Movant)

O R D E R

This matter having been duly presented to the Court, it is ORDERED that the motion for rehearing is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 7th day of July, 1981.

Stephen W. Townsend
Clerk

FILED
SUPREME COURT
JUL 9 1981

Clerk

Exhibit "B"

RECD, SUPERIOR COURT OF NEW JERSEY
MAR 6 1984
M.V. 8
JOHN M. MAYSON
CLERK

SUPERIOR COURT OF N.J.
DOCKETED
MAR 6 1984
CP-9
JOHN M. MAYSON
CLERK

FILED
FEB 29 1984
J.S.C.

John H. Watson, Jr.
Attorney for Lucas Phillips, Administrator, C.T.A.
98 Prospect Street
East Orange, New Jersey 07017
(201) 674-8717

MAR 29 1984
CLERK

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY
C C-2565-68

In the Matter of:

MARY A. CONNOR, Individually and As Executrix of the Estate of Mary Ellen Flynn,

Plaintiff,

vs.

EDWARD J. FLYNN,

Defendant.

EDWARD FLYNN and BERNICE FLYNN,

Plaintiffs,

vs.

MARY A. CONNOR and THOMAS CONNOR,

Defendants.

DOCKET NO. C-3138-68
C-2565-68

ORDER
to pay out funds on bapa

Paul B. Thompson, J.S.C.

This matter being opened to the Court on November 16, 1983, the Honorable Paul B. Thompson, presiding, by John H. Watson, Jr., Attorney for Lucas Phillips, Administrator, C.T.A., on Petitions for an order establishing Counsel Fees in this matter, and in the

APPENDIX "B"

52X

presence of Lucas Phillips, Administrator, C.T.A., Keane, Brady & Hanlon, Pro se, (Michael B. Holt), Fred Blackwell, Pro se, Hannoch, Weisman, Stern, Besser, Berkowitz and Kinney, Pro se, (Ira M. Levee, Esq.), Belson and Carlin, Pro se, (David H. Soloway, Esq.), and Mr. John Connor, and the Court having considered the report of the Administrator, C.T.A., dated December 21, 1981, and after conducting a plenary hearing on all of said matters, and having considered the argument of Counsel, and for good cause shown, it is on this 29th day of February, ~~1983~~, 1984,

ORDERED AS FOLLOWS:

I. Lucas Phillips, Administrator, C.T.A., is hereby named as a party defendant in substitution of deceased defendant Mary A. Connor.

II. The following Counsel Fees and Disbursements are allowed, together with accumulated interest in the amounts set opposite the legend "Interest Reduced To" and "Accrued Interest Through November 16, 1983", and are to be paid by the Clerk of the Superior Court from the funds on deposit with the said Clerk in the Case of Flynn v. Connor, Docket Nos. C-3138-68 and C-2565-68, consolidated, Superior Court of New Jersey, Chancery Division, Essex County:

(A) Keane, Brady & Hanlon, Esq.

Attorney's Fee		$ 2,050.00
Disbursements		167.92
		2,217.92
Interest		
6% from 05/10/73 - 03/31/75	$ 248.76	
8% from 04/01/75 - 09/13/81	1,154.44	
12% from 09/14/81 - 11/16/83	579.62	
	1,982.22	
Interest Reduced To		1,478.08
		3,696.00

(B) Fred R. Blackwell, Esq.

Attorney's Fee		$12,436.50
Disbursements		183.81
Research Assistant		1,200.00
		13,820.31
Interest		
6% from 05/10/73 - 03/31/75	$ 1,568.57	
8% from 04/01/75 - 09/13/81	7,138.68	
12% from 09/14/81 - 11/16/83	3,604.76	
	12,312.01	
Interest Reduced To		9,176.13
		22,996.44

(C) Hannoch, Weisman, Stern, Besser, Berkowitz & Kinney, P.A.

Attorney's Fee		$10,641.30
Interest		
8% from 10/29/75 - 09/13/81	$ 5,002.87	
12% from 09/14/81 - 11/16/83	2,777.81	
	7,780.68	
Interest Reduced To		5,570.04
		16,211.34

(D) George Warren, Esq.

Attorney's Fee		$ 4,250.00
Disbursements		115.00
		4,365.00
Interest		
8% from 01/19/80 - 09/13/81	$ 576.90	
12% from 09/14/81 - 11/16/83	1,152.36	
Accrued Interest Through November 16, 1983		1,729.26
		6,094.26

(E) Belson and Carlin, Esq.

Attorney's Fee		$ 875.00
Disbursements		12.20
		887.20
Interest		
6% from 11/04/74 - 03/31/75	$ 21.58	
8% from 04/01/75 - 09/13/81	453.13	
12% from 09/14/81 - 11/16/83	231.60	
	706.31	
Interest Reduced To		112.80
		1,000.00

III. Interest on the said Counsel Fees and Disbursements shall continue to accrue at the applicable statutory rate from November 17, 1983 until the date on which said Fees and Disbursements are paid in accord with this Order.

IV. The said Clerk of the Superior Court shall pay the sum of $5,500 to Lucas Phillips, C.T.A. for his services in this matter as Administrator and for the services in this matter of his Attorney, John H. Watson, Jr., Esq.

V. If said funds on deposit with the Clerk of the Superior Court are insufficient to pay all of the aforecited Counsel Fees and Disbursements, and interest thereon, any part of said Fees and Disbursements, and interest thereon, remaining unpaid after exhaustion of said funds shall be paid by the Estate of Mary A. Connor.

VI. If any monies remain in such funds on deposit with the Clerk of the Superior Court after payment of the aforecited Counsel Fees and Disbursements, and interest thereon, said monies shall be paid to the Administrator, C.T.A., of the Estate of Mary A. Connor.

Paul B. Thompson

Paul B. Thompson, J.S.C.

Dated:

FILED
AUG 5 - 1985
PAUL B. THOMPSON
J. S. C.

Fred Blackwell, Pro se
19129 Roman Way
Gaithersburg, Maryland 20879
(301) 977-5000

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
ESSEX COUNTY

In the Matter of:

MARY A. CONNOR, Individually and As Executrix of the Estate of Mary Ellen Flynn,

Plaintiff,

vs.

EDWARD J. FLYNN,

Defendant.

EDWARD FLYNN and BERNICE FLYNN,

Plaintiffs,

vs.

MARY A. CONNOR and THOMAS CONNOR,

Defendants.

DOCKET NO. C-3138-83
C-2565-84

ORDER

Paul B. Thompson, J.S.C.

This matter being opened to the Court on August 2, 1985, the Honorable Paul B. Thompson, presiding, by Fred Blackwell, Pro se, the Movant on a Motion for an order requiring the sum of $1,016.96 of accrued interest under this Court's prior Order of February 29, 1984, to be paid to the Movant from the balance of

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the monies from the funds previously on deposit with the Clerk of the Superior Court in the Case of Flynn v. Connor, Docket Nos. C-3138-68 and C-2565-68, consolidated, Superior Court of New Jersey, Chancery Division, Essex County, which balance in the sum of approximately $8,500.00 is now held in a trust account by John H. Watson, Jr., Attorney for Lucas Phillips, Administrator, c.t.a. of the Estate of Mary A. Connor,

and having considered the Movant's affidavit in support of his motion, which reflects that Paragraph III of this Court's Order of February 29, 1984, provided that interest on the Counsel Fees and Disbursements awarded in such Order would continue to accrue from November 17, 1983, until the date of payment of such award. and which further reflects that this Court's said Order has been affirmed by the Appellate Division's Opinion and Order of May 30, 1985,

and having considered the argument of Movant, and for good cause shown, it is on this 5th day of August, 1985,

ORDERED AS FOLLOWS:

The Movant shall be paid from the funds held in the aforecited trust account by John H. Watson, Jr., the sum of $1,016.96 which represents interest which continued to accrue under Paragraph III of this Court's Order of February 29, 1984,

on the sum awarded the Movant for an attorney's fee and expenses, from November 17, 1983 to the date of payment of said award on June 28, 1984.

Paul B. Thompson

Paul B. Thompson, J.S.C.

Dated:

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ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

July 22, 1986

Hon. Edward O'Connor, Chairman
Senate Judiciary Committee
State House Annex
Trenton, NJ

Re: Renomination of Chief Justice Wilentz - Complaints of John R. Connor

Dear Senator O'Connor:

This is in response to the Committee's request for background information on John R. Connor, who apparently has advised the Committee of his displeasure with the renomination of Chief Justice Wilentz.

Our files indicate that Mr. Connor has appeared pro se in a number of litigated matters summarized briefly as follows:

a. In re the Estate of Mary A. Connor

A probate case involving the estate of John R. Connor's mother, decided in 1979 by Superior Court Judge Geoffrey Gaulkin (Chancery Division, Essex County). Despite Connor's objections, Judge Gaulkin admitted the will of Mary A. Connor to probate and also refused to appoint Connor as executor of the estate.

Connor appealed the decision of Judge Gaulkin on grounds that a) the trial court lacked jurisdiction, b) the estate administrator acted unlawfully, c) there was no basis for the court's failure to appoint Connor as executor.

On September 18, 1980, the Appellate Division dismissed Connor's appeal on a motion for summary disposition. The Supreme Court subsequently refused to consider a further appeal brought by Connor. Connor later complained to the Governor's office that the Appellate Division's decision was fraudulent because it was based on an inaccurate interpretation of prior proceedings. The Governor referred the letter to this office. The allegations were investigated and found to be without substance.

b. John R. Connor v. Albert Besser, et al

This matter arose out of the estate case discussed above. Connor's main contention was that an opposing attorney conspired with Appellate Division Judges Robert Matthews, John Ard and Bertram Polow to "unlawfully" dismiss the appeal in the Connor estate case. The complaint was dismissed on a motion for summary disposition.

Connor subsequently filed a motion for reconsideration and another motion seeking the disqualification of Appellate Division Judge John Ard. Both were denied.

Connor also accused the Appellate Division Clerk's office of failing to properly list his motions. This charge was investigated by my office and found to be without substance. We found that the Clerk handled the motions according to established procedure.

c. John R. Connor v. R.G. Sachs, et al

A wrongful death action brought in Superior Court by Connor against the physicians and hospital that treated his mother. The complaint was dismissed by order of Judge Harry B. Osborne (Law Division - Union County) on February 10, 1984, on grounds that Connor lacked standing to sue.

Connor thereafter filed a complaint with the Advisory Committee on Judicial Conduct alleging that a Superior Court judge "attempted" to hear a motion in the case, despite having recused himself twice previously. The Committee dismissed Connor's complaint following an investigation.

d. Mary A. Connor v. Edward J. Flynn

A Chancery Division case involving the estate of a Mary Ellen Flynn, of which John R. Connor was a beneficiary. Connor, in 1984 filed a motion seeking a stay of an order directing the disbursement of some $50,000 from the estate. The motion was denied. Connor appealed; however, the Appellate Division affirmed the determination of the lower court.

At one point, Connor contacted the Essex County Prosecutor, and alleged that a document was missing from the Surrogate's file on the case. The Prosecutor concluded that the alleged document never existed and no further action was taken.

Connor then filed a complaint with the Advisory Committee on Judicial Conduct against the Chancery Division judge who heard the case. He alleged that the judge told him that argument on Connor's motion would be postponed, but that the

motion was heard anyway, though Connor did not appear. The Committee investigated, and dismissed the complaint.

I hope that this information will be of assistance to the Committee.

Yours very truly,

Robert D. Lipscher

Robert D. Lipscher

/al
cc: Members, Senate Judiciary Committee

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS

CN-037
TRENTON, NEW JERSEY 08625

July 22, 1986

John Tumulty, Esq.
Senate Judiciary Committee
State House Annex
Trenton, NJ

Re: Virgil Popescu

Dear Mr. Tumulty:

In response to your inquiry concerning Virgil Popescu, please find attached:

a. Notice of Claim dated March 12, 1983 filed pursuant to the Tort Claims Act, which names the Superior Court of New Jersey, and Judges David Lucas, Sylvia Pressler, Herman Michels, and Theodore Trautwein as potential defendants. Also attached are Appellate Division opinions in two underlying matters which apparently gave rise to Popescu's tort claim: Popescu v. Midland Ross, et al an action brought by Popescu against his former employer for work related injuries, and State v. Popescu a contempt proceeding brought against Popescu for his conduct during a workers compensation hearing, which concerned the same work related injuries which resulted in the Midland - Ross suit.

b. Notice of Claim, dated November 14, 1983 filed pursuant to the Tort Claims Act, which names the Superior Court of New Jersey and Judge Thomas Leahy as potential defendants.

c. Notice of Claim, filed pursuant to the Tort Claims Act, which names the various judges, the Attorney General, staff of the Supreme Court Clerk and others, as potential defendants.

Our records indicate that although these notices of claim were served, no court actions have been instituted.

I hope this information will be of assistance to you.

Very truly yours,

Charles J. Hollenbeck

Charles J. Hollenbeck

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MAR 14 1983

Virgil Popescu, Pro Se
124 Clifton Street
Somerset,N.J.,08873
(201)846-5860.

March 12th.,1983.

NOTICE OF CLAIM

IN ACCORDANCE WITH NEW JERSEY TORT CLAIMS ACT.(Title 59:1 & sub.)

TO : STATE OF NEW JERSEY
State Capitol
Trenton,New Jersey,08625

SUPERIOR COURT OF NEW JERSEY
Somerset County,Court House
Somerville,New Jersey,08876

JUDGE DAVID G. LUCAS
Superior Court of New Jersey
Somerset County, Court House
Somerville,New Jersey,08876

SUPERIOR COURT OF NEW JERSEY
Appellate Division
State House Annex,CN 006
Trenton,New Jersey,08625

JUDGES: PRESSLER, MICHELS & TRAUTWEIN
Superior Court of New Jersey
Appellate Division
State House Annex,CN 006
Trenton,New Jersey,08625.

PLEASE TAKE NOTICE that a Law Suit will be filed against you, in the U.S. District Court, by me Virgil Popescu, residing at 124 Clifton Street, Somerset,New Jersey, o8873 for the following reasons :

1. You deprived me of my Constitutional Rights,guaranteed to me by the U.S. Constitution . You denied my Rights of Freedom

(a.)

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of Speech, Jury Trial and Equal Protection of the Law, by dismissing my Law Suit filed against my former employer Midland Ross C Nicholas D'Alessandro, Carl Frauenpreiss, Eugene Diminick and William Holden.

2. You violated the Law of the State of New Jersey, whic is giving me the right to sue the Employer and the Four individu Defendants for Intentional Injuries.

3. Your actions were done in a dishonest, unfair, unjust, illegal, unconstitutional, wrongfull, conspiratory and malicious manner.

4. As a result of your negative actions, I am deprived of adequate Medical Treatment and Financial Support. I am sufferi agravations to the present ilness, and high levels of Mental Stre and Depression.

5. Your negative actions , are acting directly against me, but obviously they are against the Society and General Public, therefore you should RESIGN immediately, or the State of New Jersey should REMOVE you for the benefit of the General Public and for its protection. The People of the State of New Jersey , are entitled to have REAL JUDGES and not Lucas, Pressler Michels and Trautwein. THE TYRANNY OF JUDGES SHOULD BE ENDED !

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THE DESCRIPTION OF THE NEGATIVE ACTIONS OF THE JUDGES AND THEIR OCCURENCE.

A - PROCEDURAL HISTORY.

1. During the Month of May 1978, I was the subject of Intentional Injuries, committed by my employer Midland Ross Co. and their managerial team of Nick D'Alessandro, Carl Fraunpreiss, Eugene Diminick and William Holden.
On May 7th. 1979, I filed a Law Suit, appearing Pro Se, for Intentional Injuries, against Midland Ross Co. On May 1980, Attorney Thomas Shamy was hired and he filed an Ammendment to the Original Complaint and added the Four Individuals as Defendants.

2.On November 25th. 1981, Judge David G. Lucas, signed an Order dismissing the Complaint against the Employer Midland Ross Co. and allowing the Suit against the Four Individual Defendants.

3.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 Four Individual Defendants.

4. On January 31st.1983, a Final Order was signed by Judge David G. Lucas, Dismissing the Complaint and Amended Complaint as against all Defendants.

B - COMMENT CONCERNING THE PROCEDURAL HISTORY.

1. A LAW SUIT WAS FILED FOR INTENTIONAL INJURIES.

Originally my Law Suit was filed for the yaers of harrassment and discrimination in Employment, which caused to me serious mental stress and for physical injuries caused to me in a premeditated and intentional manner by the Employer and his Management.
The physical injuries occured during the month of May 1978.
Subsequently to the injuries, the Employer's Insurance Carrier, Fireman's Fund Insurance Co., started voluntarly to send to me Disability Checks.
On September 1978, the Insurance Co., stopped my treatment with the Doctor selected by the Employer, refused to authorise hospitalization as requested by the Doctor and stopped the payments of the Disability Checks. Due to this facts I hired an attorney, who filed a Motion with the Worker's Compensation Court, for Continui of the Temporary Disability Benefits and Medical Treatment.

Before this Motion was decided by the Workers Comp. Court, I file a Law Suit against the Employer, in the Superior Court, for Intentional Injuries and notified the Employer and the Worker's Comp. Court (on May 16th,m1979.)
On December 1979, Judge Fred H. Kumpf of the Workers Comp. Court in Somerville,N.J., reached his Decision and Ordered the Continui of the Treatment and some back pay.
He denied Treatment for the Neck Injury, and allowed Treatment only for the Back Injury. On May 1981, I abandoned the Worker's Compensation Case. The case at no time was AWARDED !

2. THE TRIAL OF THE SUPERIOR COURT CASE.

On October 5th.,1981, the Law Suit, filed for Intentional Injuries in the Superior Court was scheduled for Trial in Somerville,before Judge David G. Lucas.

Defendants' attorneys filed a Motion for Summary Judgment, on the grounds that I recived an Award from the Worker's Compensation Court (false statement) and that is giving immunity to the Employer

Judge Lucas Dismissed the Case against the Employer in a dishonest manner. At no time I recived an Award from the Worker's Compensation Court. Even if I received an Award the Law of the State of New Jersey, is allowing me to sue the Employer for "Intentional Wrong" (see N.J.S.A. 34:15-8). Further the Law is giving a remedy against the double recovery (Reimbursement of the Insurance Co.) The Corrupt Decision of Judge Lucas, was not supported by any Law. He tried "ironically" to find similarity between my case and another case entitled Seltzer vs, Isaacson,147 N.J. Super. Besides Judge Lucas is not a MONKEY who imitates another monkey and try to tell us that that is the Law. If Seltzer accepted the Decision of a Corrupt Judge that is her problem not mine. The example of another case, does not make the Law, and apparently Judge Lucas tried to make the Law not to interpret the Law, as his duty is.

Any way it is not my intention here, to fully analize the corrupt Decision taken by Judge Lucas, I will do so in the future if a Law Suit will be filed in the Federal Court.

Judge Lucas's Decision was Appealed and CrossAppealed.

3. THE APPEAL IN THE APPELLATE DIVISION.

On November 21st., 1982, an Oral Argument was heard at the Appellate Division in Morristown, New Jersey, before Judges Pressler, Michels and Trautwein.

Due to the fact that I had a previous experience at the Appella Divsion, and knew that Judges Pressler and Brody are dishonest persons, I sent a Court Observer at this Appeal. I had a hunch that these c- -upt Judges are going to make me a looser again, and told so, my attorney Thomas Shamy. However Shamy,Esq. was very confident of winning the case, on the grounds that the Law of the State of New Jersey is clearly on our side.

During the Oral Argument, Defendants' attorneys raised the same old defense which they had from the begining, that the fact tha I received an Award from the Worker's Compensation is giving immunity to the Employer.

The Argument of my Attorney Thomas J. Shamy was clear, strong a just, that the Worker's Compensation Law in the State of New Je is permiting a Common Law Suit for "Intentional Wrong".

On December 17th,1982, a letter was received from the Appellate Division in which they requested the following :

> "The Court requests that counsel file supplemental brie on the above captioned matter as to whether or not the allegations made by petitioner against respondent cons tuting cause of action with particular reference to th testimony of the appellant during the Worker's Compensa tion proceedings describing the alleged conduct consti tes an "intentional wrong" as intended by N.J.S.A.34:1
>
> Parties to comment in this regard on the relevance of

Bryan v. 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:

Honorable Sylvia B. Pressler
Court House
Hackensack,N.J.07601

Honorable Theodore Trautwei
Court House
Hackensack,N.J.,07601

My attorney Thomas Shamy complied strictly with the Instructions of the Appellate Division's letter and filed his Brief in the light of "Bryan v. Jeffers". This case was 100% in our favor, snice 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 , premeditated injuries caused to me. At no time I accused them of "gross negligence". 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 my attorney Thomas 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.

On January 6th.1983, Shamy Esq. mailed the Supplemental Brief, which was received and filed by the Appellate Division on January 7th.1983.

4 - THE DISMISSAL OF THE CASE.

On Janaury 20th.1983, the Appellate Division Judges Pressler, Michels and Trautwein affirmed the Decision Concerning the Employer Midland Ross Co. and reversed the Decision concerning the Four Individual Defendants. Finally my Law Suit for Intentional Injuries was dismissed entirely, and probably these corrupt Judg believed that is going to be the End of it.

An Investigation was done immediately and was revealed that in fact Judge Pressler put pressure on my attorney to file the Brie immediately, although the last date was Jnaury 10th. and he had 5 more days, but in the other hand Judge Pressler allowed the Defendants' attorney to file his Brief only on January 12th,1983 instead of January 10th,1983.

Legally my Appeal was unopposed since the Defendants' 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 Jers we were dealing with Pressler's Law.

It was obvious that Judge Pressler gave the opportunity to the Defendant's attorney to study my attorney's Brief before filed hi and have the opportunity to speculate the weaker points of my attorney's brief.

Since my attorney's Brief complied 100% with the instructions given by the Appellate Division, 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 brand new ridiculous defense which was fully appreciated by the Judges Pressler, Michels and Trautwein in reaching their Decission. At the present time I am firmly convinced that the Defendant's attorney Brief was done, under the instructions and control of Judge Sylvia B. Pressler.

The question raised here is why Judge Pressler would be interested to destroy my case , and by doing this to destroy me ?
<u>The Answer is only one : Judge Pressler dislike and hates me.</u>
At the Worker's Compensation Court I made several allegations that the Court is a Organized Crime Place, where the Judges, some of the attorneys, some of the doctors, in perfect agreement with each other are robbing the rights of the disabled workers. I requested Investgations from the State Agencies, also I wanted to press charges against Judge Fred H. Kumpf for Official Misconduct but my requests were denied. Later I pressed charges against Susan Bischoff of Fireman's Fund and against Doctors Flicker, O'Sullivan and Miller for Perjury. They were never prosecuted due to the fact that the Assistant Prosecutor Michael Rosemberg from Somerville was Dr. Flicker's Son-in-law, and his wife was Deputy Attorney General. Besides Dr. Flicker is No. 1 Starr Expert Witness in the State Prosecutions.
Another factor was that their attorney Robert Golden was in fact during the years in the past Assistant Prosecutor in Somerset County, and his former partner Stephen Chiampi was the Prosecutor. Dr. Miller was represnted by the State Senator William Hamilton.

According with all these presented facts is obvious why these criminals were never prosecuted.

Attorney Robert N. Golden , was the attorney representing the Employer Midland Ross at the Workers Compensation, and at his request the Compensation Judge Fred H. Kumpf pressed charges of Contempt against me.

Attorney Robert Golden and attorney Paul Graham who was represen the Employer in the Superior Court Suit, organized the Prosecuti against me for Contempt and participated directly in prosecuting me. Finally with the help of Judge Diana of the Superior Court i Somerville they obtained a conviction of 30 days against me.

On August 30,1982, I argued my Appeal, in the Contempt matter, before Judges Pressler and Brody at the Court House in Morristow Employer's attorney Paul E. Graham was there with the Prosecutio team.

At one point Judge Pressler asked me if all the other participan 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 ne heard of you and I didn't investigate your background, but if yo affirm the conviction, then I have no doubt that you are a corru also. Honestly ! (In the Contempt charges my defense was the Tru But I was never allowed to present the truth to the Courts, they saidthat the truth is not a Defense in Contempt !!!!)

Well Mrs. Pressler si a tough woman, with a high position in the Administration of this State, and she didn't expect to hear that from me. She believed probably that, I was a coward type, looking to get sympathy from a higher judge, but she had all wrong, becau: I always tell the truth, this is my nature, and I am proud of myself. I better dye in fight as a brave than to live defeated as a slave.

Apparently and unfortunately for me, Mrs. Pressler is a vendetta person and sh- found the opportunity to punish me for my honesty by dismissing my Superior Court Law Suit entirely.

I have no doubt of the fact that Mrs. Pressler believes, that in the State of New Jersey, a Judge is "GOD" or Least next to God, but in the same time I have no doubt that I will bring her down to the ground's reality, when I have her in Trial at the U.S. District Court.

Unfortunately Judges Michels and Trautwein fully supported Judge Pressler in her vendetta against me.

5 - THE FINAL ORDER OF DISMISSAL.

On January 31st.,1983, a Final Order was signed by Judge Lucas dismissing the Complaint and Amended Complaint as against all Defendants.

At the present time I am still disabled, in desperately need of serious and aqequate medical treatment and financial support. Due to my Election to sue the Employer and the Four Individual Defendants, I am not receiving the Worker's Compensation Benefits and barred from reopening the Claim.

I wonder if Judges Lucas, Pressler, Michels and Trautwein care about the fact that due to their negative actions I was trown in the Middle of the Road.

COMMENT IN THE LIGHT OF U.S. CONSTITUTION.

1. My Constitutional Right , guarateed by the First Amendment of the U.S. Constitution has been violated. I elected not to pursue with the Worker's Compensation Avenue, from where I received benefits started voluntarly by the Insurance Co. and where the case was never Awarded.

I Elected to pursue with my Civil Action Suit filed in the Superio Court of New Jersey, against the Employer for Intentional Injurie Also I elected to pursue with the Amended Complaint filed against the Four Individuals for the same Intentional Injuries.

My Constitutional Right of Freedom of Speech, meaning Election of Remediaes, was obviously denied by the Four Judges.

2. My Constitutional Right guaranteed by the Seventh Amendment, has been violated by the Judges Lucas, Pressler, Michels and Trautwein, by denying me the right of Jury Trial, since the value in controversy exceed Twenty Dollars.

Ironically the Appellate Division Judges stated as follows in thair Decision :

> " We further note that an employee need not perform an improperly assigned task. Clearly, he has a panoply of resourses when such an assigment is given to him other than simply submmitting to the risk of probable injury".

Apparently these Judges are not aware, or just ignored the Federa Labor Law, which states as Follows:

> "Ordinarly, you do not have the right to walk off the jo because of potentially unsafe workplace 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.

The examples given are self-expalnatory.

3. My Constitutional Right guaranteed by the Fourteenth Amendment, Section 1, has been violated by the Judges Lucas, Pressler, Michels and Trautwein, by denying to me the Equal Protection of the Law.

In the State of New Jersey, as well as in all the other States of U.S. of America, the cases of Intentional Injuries were allowed to go to the Jury Trial in the Common Law Suits. However there exist a few cases which were not allowed in the Common Law Suit, but they were wrong, and if they were accepted by the Plaintiffs there is only one explanation : Corrupt Judges and Corrupt Lawyers exist in other places also. But that does not mean that I am

going to accept it, just because other people did so.
In my particular case, Judges Lucas, Pressler, Michels and Trautwein denied my right to be equally protected by the Law. Instead they chosed to protect the Employer and the Four Individuals Defendants, who commited a crime and who are fully encouraged by these Judges to commit further crimes, on the grounds that the Worker's Compensation Law is giving them Immunity.

> " Worker's Compensation was not set up to cover Intentional Injuries by the Employers, 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, in the State of New Jersey, Judges Lucas,Pressler, Michels and Trautwein, apparently forgot that the Courts System was created to protect the Society and not the criminals, as they did in my particular case.
Also , appparently they forgot that who is protecting a Criminal becomes a Criminal himself.

The New Jersey Worker's Compensation Law, clearrly is giving me the right to sue the Employer and the Four Individual Defendants for"Intentional Wrong" (N.J.S.A. 34:15-8).

The New Jersey Constitution is not preventing me from filing this Law Suit, against the Employer and the Four Individuals Defendan

THE LIABILITY OF THE STATE OF NEW JERSEY.

After Judge David Lucas reached his Decision Initially I filed Complaints against him with Supreme Court of New Jersey, and the Complaint was dismissed.
Also I filed Complaints with the State Investigations Commission and with Governor Thomas Kean. I never heard from them. By their silence they simply agreed with the Decision of Judge Lucas.

CONCLUSION OF THE FACTS PRESENTED.

The above named Defendants, acting deliberately and intentionally, jointly and individually, in a conspiratory manner committed all the facts shown above.

These incidents, caused severe damages to my health by increasing the mentall stress and physical pain. Definetly they caused serious agravations to the existent ilness.
Also these negative incidents, deprived me of my Constitutional Rights. At the present time I am in a serious need of medical treatment and financial support, and there is no hope under this circumstances to recover from the present illness.

The above presented facts are not just an isolate case of corruption, and tirany of the Judges. According to the Federal Statistics, the State of New Jersey, is known as having the highest level on both matters.
I will not give up until JUSTICE IS DONE. WHAT IS ENOUGH IS ENOUGH!

I am aware of that is not easy to fight the most corrupt system in the entire country, but when the matter is brought at the Federal Level,the corruption has very little chances of survival

PLEASE TAKE NOTICE that according to the New Jersey Tort Claims Act, you have 6 months to investgate and settle the Claim made against you.

If you fail to settle the Claim within 6 months, a Law Suit will be filed against you in the U.S. District Court, for Compensatory and Punitive Dmages in the amount of $20,000,000.oo (Twenty Milli

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.

I hereby certify that the Original of this Notice of Claim was mailed by C.M.R.R.R.No.P 236 355 977, to the State of New Jers and Copies of this Notice of Cliam were sent to all the other parties as follows:

1. Superior Court of New Jersey,Somerset County,Somerville,N.J. by C.M.R.R.R. No. P 236 355 978.
2. Superior Court of New Jersey,Appellate Division, State House Annex, Trenton,N.J. by C.M.R.R.R. No. P ~~236 355 987~~ 465 028 987
3. Judge David G. Lucas, Superior Court of N.J,Somerset County, Somerville,N.J., by Ordinary Mail.
4. Judges Pressler, Michels,and Tarutwein, Superior Court of N.J. Appellate Division,Trenton,N.J., by Ordinary Mail.

Dated: March 12th.1983.

/s/ Virgil Popescu
Virgil Popescu, Pro Se.

80X

APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1967-81-T1

VIRGIL POPESCU,

Plaintiff-Appellant-
Cross-Respondent,

v.

MIDLAND-ROSS CO.,
NICHOLAS D'ALESSANDRO,
CARL FRAUENPREISS,
EUGENE DIMINICK, and
WILLIAM HOLDEN,

Defendants-Respondents-
Cross-Appellants.

Argued November 23, 1982 - Decided JAN 20 1983

Before Judges Michels, Pressler and Trautwein.

On appeal from the Superior Court, Law Division, Somerset County.

Thomas J. Shamy argued the cause for the plaintiff-appellant (Teneralli, Shami & Ryan, attorneys).

Virgil Popescu filed a supplemental pro se brief.

Clyde A. Szuch argued the cause for the defendants-respondents (Pitney, Hardin, Kipp & Szuch, attorneys; Mr. Szuch and Paul E. Graham on the brief).

PER CURIAM

Plaintiff Virgil Popescu brought this action against his former employer, defendant Midland-Ross Co. and his former co-employees, the individual defendants, pursuant to the 1961 amendment of N.J.S.A.

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34:15-8, which preserves the common law right of action by an employee whose work-connected injury is caused by a co-employee's "intentional wrong." Defendants moved for summary judgment dismissing the complaint. The motion was granted as to the claim made against the employer and plaintiff appeals from that portion of the order. The motion was denied as to the claim made against the co-employees and those defendants cross-appeal from that portion of the order.

It is undisputed that plaintiff commenced his employment with Midland-Ross in February 1974 as an assembler of heavy machinery. It appears that from time to time plaintiff had various verbal encounters with his supervisors and was finally discharged in August 1977. The discharge was the subject of a grievance procedure pursuant to the applicable collective bargaining agreement and ultimately culminated in an arbitration award restoring plaintiff to his employment to which he in fact returned on May 8, 1978.

Upon his return to work plaintiff was given the assignment of assembling heavy machinery by himself, a physically difficult and demanding task. It further appears that he complained to his foreman about this assignment, claiming that it was work which had always been done by a two-man team, and it appears that various of his co-employees who were sympathetic to his plight spoke up in his behalf. Plaintiff's supervisors did not respond, however, to these requests and plaintiff continued to perform the work. Plaintiff claims that three days later, on May 11, he sustained a back injury as the result of the extraordinary and inappropriate effort he was required to

expend in performing his work duties. It appears, however, that defendant did continue to work despite the injury for several weeks after which his symptoms became so exacerbated that he was unable to function in his employment at all. He has not worked since. He thereafter filed a petition in the Workers' Compensation Court and was ultimately successful in obtaining an order directing his employer to pay him temporary disability benefits and his medical expenses. He voluntarily withdrew the petition, however, prior to disposition of his claim for permanent disability.

The gravamen of this action is that the orthopedic injuries which plaintiff sustained on March 11, 1978, were caused by the defendant's intentional wrong. The alleged wrong was his assignment to strenuous physical labor by his supervisors who intended thereby to cause him physical injury or to cause him to voluntarily terminate his employment. The trial judge regarded the action against the employer itself precluded by the doctrine of election of remedies in view of plaintiff's prosecution, albeit not to conclusion, of his workers' compensation remedy. See Seltzer v. Isaacson, 147 N.J. Super. 308 (App. Div. 1977) overruled other grounds Lyon v. Barrett, 89 N.J. 294 (1982). He permitted it, however, to proceed against the defendant co-employees on the "intentional wrong" provision of N.J.S.A. 34:15-8.

The threshold issue before us in respect of both the employer and the co-employees, as we see it, is whether or not plaintiff's allegations against defendants would, if proved, constitute an intentional wrong within statutory intendment. We conclude

that the conduct of defendants here complained of is not encompassed by the statutory category of intentional wrongs and hence that this action must be dismissed.

This court first considered the scope of intentional wrongs as encompassed by N.J.S.A. 34:15-8 in Bryan, et al. v. Jeffers, et al., 103 N.J. Super. 522, 523-524 (App. Div. 1968), certif. den. 53 N.J. 581 (1969). We there noted that

> Our discussion of the background against which the cited provision of the Workmen's Compensation Law was adopted by amendment in 1961 (L. 1961, c. 2) in Miller v. Muscarelle, 67 N.J. Super. 305, 321 (App. Div. 1961), certification denied 36 N.J. 140 (1961), demonstrates there was a strong legislative reaction against the previous practice of workmen suing fellow employees, even those in supervisory capacities, after recovery of compensation against the common employer. It was there pointed out that in practical effect such actions often subject the employer itself to an indirect burden of liability to the injured employee beyond that scheduled by the workmen's compensation act. Ibid. The policy objective sought by the 1961 amendment would not be attained if the exception for "intentional wrong" were construed to leave open a loophole for such actions against fellow employees in the guise of claims for "gross negligence." We think the Legislature intended the words "intentional wrong," in this context, to have their commonly understood signification of deliberate intention. Compare 2 Larson, Workmen's Compensation Law, § 69.20, pp. 161-62, dealing with employer-misconduct statutes, where willful intent to cause injury is held to require a showing of deliberate intention rather than gross negligence.

Although the matter has not been considered by our courts in this context since our opinion in Bryan, et al. v. Jeffers, et al., supra, our holding therein has been recently construed by the United States District Court for the District of New Jersey in Copeland v. Johns-

Manville Products Corp., 492 F.Supp. 498 (D.N.J. 1980). The court there held on the basis of Bryan that an employer's intentional, malicious and willful failure to take precautionary steps to protect an employee from a known and imminent peril does not constitute an intentional wrong within the statutory contemplation. Both of these holdings are, moreover, in accord with the views expressed by the leading commentator in this area of law. See 2 Larson, Workmen's Compensation Law (1982 Rev.) § 68.13 at 13-8 to 13-9, 13-22, 13-25 to 13-26. Larson has this to say:

> Since the legal justification for the common-law action is the nonaccidental character of the injury from the defendant employer's standpoint, the common-law liability of the employer cannot, under the almost unanimous rule, be stretched to include accidental injuries caused by the gross, wanton, wilful, deliberate, intentional, reckless, culpable, or malicious negligence, breach of statute, or other misconduct of the employer, short of genuine intentional injury * * *
>
> * * * Even if the alleged conduct goes beyond aggravated negligence, and includes such elements as knowingly permitting a hazardous work condition to exist, knowingly ordering claimant to perform an extremely dangerous job, wilfully failing to furnish a safe place to work, or even willfully and unlawfully violating a safety statute, this still falls short of the kind of actual intention to injure that robs the injury of accidental character. [Footnotes omitted] [Emphasis added]

Other jurisdictions are in accord in holding that an employee's injuries are nevertheless accidental and exclusively remedial pursuant to Workers' Compensation laws even if they are caused by a work assignment wilfully and intentionally given by the employer with knowledge of its probable injurious consequences. See, e.g., Southern Wire and Iron, Inc. v. Fowler, 217 Ga. 727, 124 S.E.2d 738

(Ga. Sup. Ct. 1962); Winterroth v. Meats, Inc., 10 Wash. App. 7, 516 P.2d 522 (Ct. App. 1973); McCray v. Davis H. Elliott Company, 419 S.W.2d 542 (Ky. Ct. App. 1967). See also cases collected in Annotation "Workmen's Compensation Act - Wilful Conduct," 96 A.L.R.3d 1064 (1980).

It is plain that a common-law tort action for intentional wrong based on the giving of a work assignment would contravene the paramount legislative scheme of the exclusivity of the Workers' Compensation remedy and the consequent narrow construction accorded the intentional wrong category. We further note that an employee need not perform an improperly assigned task. Clearly, he has a panoply of recourses when such an assignment is given to him other than simply submitting to the risk of probable injury. Moreover, we are satisfied that the recognition of such a cause of action would induce a routine pursuit of a remedial route which the Legislature never intented.

The summary judgment dismissing the complaint against the employer is affirmed. The summary judgment denying dismissal of the complaint against the remaining defendants is reversed and the matter is remanded to the trial court for entry of a judgment dismissing the complaint.

A TRUE COPY

Elizabeth McLaughlin

Clerk

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-69-81-T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VIRGIL POPESCU,

Defendant-Appellant.

Argued August 30, 1982 - Decided SEP 13 1982

Before Judges Pressler and Brody.

On appeal from the Superior Court, Law Division, Somerset County.

Virgil Popescu, appellant, argued the cause pro se.

Catherine A. Foddai, Deputy Attorney General, argued the cause for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney).

PER CURIAM

Appellant Virgil Popescu appeals from his conviction by the Superior Court, Law Division, of a charge of contempt.

The contempt proceeding was initiated at the behest of Judge Fred H. Kumpf, a judge of compensation, to whom appellant's claim petition had been assigned for disposition. Judge Kumpf cited appellant for contempt because of various acts of alleged contumacious

conduct committed by him during the course of compensation hearings presided over by the judge on May 16, June 6, and October 10, 1979, and May 7, 1980 and, subsequently, in a letter written by appellant to the judge. The essence of the contumacious conduct was appellant's repeated accusations that the judge was a criminal and a fake, that he was corrupt, and that his court was a place of organized crime. Appellant had made similar accusations against others, including a previously assigned judge of compensation, his employer's carrier and its attorney, and respondent's examining doctors. Similar accusations were thereafter made against the Division of Criminal Justice and others.

Following his understanding of the import of Wright v. Plaza Ford, 164 N.J. Super. 203 (App. Div. 1978), and recognizing his lack of authority to punish a contempt in facie curiae, Judge Kumpf, by letter detailing the contumacious conduct, requested the Mercer County Assignment Judge to initiate a summary contempt proceeding. The matter proceeded in accordance with R. 1:10-2, an appropriate order to show cause was entered by Judge Diana, and the prosecution was referred to and thereafter handled by the Division of Criminal Justice. A hearing was held on June 11, 1981, at which defendant opted to represent himself. Judge Diana, upon conclusion of the hearing, found the contempt charges to have been sustained, adjudicated appellant guilty of contempt and sentenced him to a 30-day jail term.

Our review of the record persuades us that the contumacious conduct and its disruptive effect on the proceedings was

overwhelmingly proved. Indeed, appellant did not and now does not deny the conduct but rather seeks to justify it on the basis that his accusations against both Judge Kumpf and all of the others he has similarly accused are true. We are further satisfied from our review of the record that the proceedings below were procedurally correct. In brief, appellant was not, as he claims, entitled to trial by jury in view of the nature of the proceedings and the consequent character of this contempt as a petty offense. See In re Ruth M. Buehrer et al., 50 N.J. 501 (1967). Nor was there any defect in service of process nor any indication that the prosecution by the Division of Criminal Justice was either malicious or discriminatory. Nor does the First Amendment right of free speech accord, as appellant claims, a license to a litigant to disrupt proceedings and accuse the presiding judge of criminal conduct.

The foregoing notwithstanding, this matter is troublesome to us as it was to Judge Diana, who, we are constrained to note in view of the accusations against him which appellant makes to us, tried this case with a high degree of skill, sensitivity and patience. Our concern derives from our perception that appellant genuinely believes in the truth of his accusations despite the fact that they are not supported by anything objective in the record and are in fact contradicted by every objective indicia. The suggestion is, therefore, unavoidable that appellant may have an idee fixe which does not rest upon an objective or commonly perceived reality.

That in turn suggests the possible existence of a psychiatric proble which might support a capacity defense to the charge as well as the appropriateness of a disposition alternative to incarceration. The judicial dilemma results from appellant's refusal to comply with Judge Diana's directive to submit to a psychiatric examination as part of the presentence procedure and his subsequent rejection of our suggestion that such a submission might well serve his interests. He insists his mind is sound. Thus, without a psychiatri evaluation, we have no alternative but to affirm the adjudication and the sentence. Our de novo review of the record persuades us that the contempt was committed and that its repeated and aggravated nature warrants the sentence imposed.

In respect of the sentence, however, we feel constrained, as a matter of fundamental fairness, to offer defendant the opportunity to reconsider a psychiatric evaluation. In our view, should he be willing to do so now, it would be appropriate for the sentence to be reconsidered in light of the report thereof, and we would not foreclose appellant from seeking collateral relief from the adjudication based on appropriate indications in the report. We, therefore, remand to the trial judge with the direction that he conduct a proceeding for the purpose of offering appellant this opportunity. Should appellant accept this opportunity, the trial judge may enter such implementing orders as may be appropriate, shall reconsider the sentence based on the evaluation report and may entertain such further relevant applications as appellant may

wish to make. In the event defendant rejects that opportunity, he shall commence serving the sentence imposed upon him forthwith.

The conviction is affirmed and the matter remanded for further proceedings consistent herewith. We do not retain jurisdiction.

A TRUE COPY

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RECEIVED

Nov 15 4 27 PM 1983
SOMERSET COUNTY
L.R. OLSON, CLERK

CERTIFIED MAIL RETURN RECEIPT REQUESTED.

VIRGIL POPESCU
124 Clifton Street
Somerset, New Jersey, 08873
(201)846-5860.

November 14, 1983.

TO :

MR. LAWRENCE OLSON, Clerk.
Somerset County
Administration Building
Somerville, New Jersey, 08876

Mr. Wilfred P. Diana, Judge
Superior Court of New Jersey
Somerville, New Jersey, 08876

Mr. William J. Wintermute, Sr.
Assigment Clerk
Superior Court of New Jersey
Somerville, New Jersey, 08876

Mr. B. Thomas Leahy, Judge
Superior Court of New Jersey
Somerville, New Jersey, 08876

RE: VIRGIL POPESCU VS. SUPERIOR COURT OF NEW JERSEY
SOMERSET COUNTY and
B. THOMAS LEAHY, Judge.

GENTLEMEN:

Enclosed herewith, please find Notice of Claim to Public Entity, Pursuant to R.S. 59:8, with reference to the above entitled matter.

According to the Law, you have 6 moths to investigate and settle the claim. If you fail to settle the Claim, within 6 months, a Law Suit will be filed in the Federal Court.

Virgil Popescu

VIRGIL POPESCU, Claimant.

92X

b.

NOTICE OF CLAIM TO PUBLIC ENTITY

PURSUANT TO R.S. 59:8

1 - NAME AND ADDRESS OF CLAIMANT :

Virgil Popescu
124 Clifton Street
Somerset,N.J.,08873
(201)846-5860.

2 - ADDRESS TO WHICH CORRESPONDENCE BE SENT:

124 Clifton Street
Somerset,New Jersey,08873

3 - DATE AND PLACE OF OCCURENCE GIVING RISE TO CLAIM :

Virgil Popescu was the Plaintiff, Pro Se in a matter entitled Popescu vs. Franklin Township et als.,Docket No L-51145-81. The Trial of this matter took place before Judge B. Thomas Leahy, from October 3,1983, to October 19,1983, at the Court House in Somerville, New Jersey.

During the Trial Judge Leahy committed the following malicious intentional,incompetent and/or negligent acts :

1- Violated Plaintiff's Constitutional Rights.

2- Violated Plaintiff's Civil Rights.

3- Made inflammatory statements to the Plaintiff

4- Conducted the entire Trial in a malicious and dishonest manner.

5- Instigated Illegal acts against the Plaintiff.

6- Intimidated the Plaintiff by excessive number of Court Guards.

7- Made threats against the Plaintiff.

8- Dismissed large portions of the Complaint, without any legal justification.

9- Instructed the Jury in a false and illegal manner

10- The entire Trial was a MASACRE OF JUSTICE.

4 - GENERAL DESCRIPTION OF INJURY AND LOSS INCURRED:

As a result of said incidents, Virgil Popescu sustained serious emotional distress, and was unable to recover Compensatory & Punitive Damges against the Defendants.

5 - NAME OF PUBLIC ENTITY AND EMPLOYEE CAUSING INJURY:

Superior Court of New Jersey, Somerset County and Judge B. Thomas Leahy.

6 - AMOUNT CLAIMED :

$2,000,000.oo (Two Millions and no $^{oo}/_{oo}$) together with prospective Cost of Suit and interest is claimed for Personal Injuries and for losses of the previous suit, where Judge B.Thomas Leahy presided.

DATED: NOVEMBER 14,1983.

/s/ Virgil Popescu

Virgil Popescu, Claimant.

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RECEIVED

AUG 20 1985

CHAMBERS OF
CHIEF JUSTICE

Virgil Popescu,Pro Se.
124 Clifton Street
Somerset,New Jersey,08873
(201)846-5860

August 14,1985.

TO :

1. THOMAS H. KEAN — C.M.R.R.R.No. 024 498 167
   GOVERNOR
   State House
   Trenton,New Jersey,08650

2. ROBERT N. WILENTZ — C.M.R.R.R.No. P 024 498 168
   Chief Justice
   Supreme Court of N.J.
   Hughes Justice Complex
   Trenton,New Jersey,08625

3. IRWIN KIMMELMAN — C.M.R.R.R. No. P 024 498 169
   Attorney General
   Hughes Justice Complex
   Trenton,New Jersey,08625

4. JUDGE WILFRED P. DIANA — C.M.R.R.R.No. P024 498 170
   SUPERIOR COURT OF NEW JERSEY
   SOMERSET COUNTY COURT HOUSE
   SOMERVILLE,N.J.,08876

5. DAVID SORENSEN — C.M.R.R.R.No.P 024 498 171
   Executive Director
   MARLBORO PSYCHIATRIC HOSPITAL
   Marlboro,New Jersey,07746

6. FRED H. KUMPF, Judge. — C.M.R.R.R.No.P 024 498 172
   Worker's Compensation Court
   73 East High Street
   Somerville,New Jersey,08876

7. SUPERIOR COURT OF N.J. — C.M.R.R.R.No. P 024 498 173
   Appellate Division
   Hughes Justice Complex
   Trenton,N.J.,08625

8. NORRIS, McLAUGHLIN & MARCUS,ESQS. C.M.R.R.R.No. 024 498 174
   1081 Route 22
   Somerville,New Jersey,08876

9. LAWRENCE L. OLSON, Clerk.
   Somerset County
   Administration Building
   Somerville,New Jersey,08876

- continuation on The next page -

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C.

10. WILLIAM J. WINTERMUTE,Sr.
Assigment Clerk
Superior Court of New Jersey
Somerset County
Somerville,New Jersey,08876.

11. JOHN M. MAYSON,Clerk.
Superior Court of New Jersey
Hughes Justice Complex
Trenton,New Jersey,08625

GENTLEMEN :

Enclosed herewith, please find Notice of Claim to Public Entity, Pursuant to R.S. 59:8.

Please take Notice that according to the Law, you have 6 months to investigate and settle the claim. If you fail to settle the claim with the time prescribed by the Law, immediately a Law Suit will be filed against you, in the Federal Court.

Virgil Popescu

VIRGIL POPESCU,Claimant.

96K

NOTICE OF CLAIM TO PUBLIC ENTITY

PURSUANT TO R.S. 59:8.

1. NAME AND ADDRESS OF THE CLAIMANT :

Virgil Popescu
124 Clifton Street
Somerset,New Jersey,08873
(201)846-5860

2. ADDRESS TO WHICH CORRESPONDENCE BE SENT :

124 Clifton Street
Somerset,New Jersey,08873

3. DATE AND PLACE OF OCCURENCE GIVING RICE TO CLAIM :

Claimant Virgil Popescu is the victim of a corrupt Judicial System and a Conspiracy, which for several years are violating his Constitutional and Civil Rights, is harrassing him and causing physical and emotional injuries to him, by acting maliciously, intentionally, incompetently and/or negligently.

The events occured as follows :

A. During the month of January 1981, Claimant Virgil Popescu was falsely accused of Contempt of Court, by Judge Fred H. Kumpf from the Worker's Compensation in Somerville, because the Claimant exposed to the public the corruption of the Court which was in fact a place of organized crimes.

B. During the months of June and July 1981, the Claimant was maliciously and falsely prosecuted by the Attorney General's office and the Conspiracy. The Trial was held in the Superior Court of New Jersey, before Judge Wilfred P. Diana who violated Cliamant's Constitutional and Civil Rights and unlawfully convicted him to 30 days in Jail.

C. As a result of the conviction an appeal was filed with the Appellate Division of the Superior Court. During the appeal, the Court and Judges Pressler and Brody violated Claimant's Constitutional and Civil Rights and affirmed the 30 days conviction, on September 13,1982.

D. On September 20,1982 an Appeal was filed with the Supreme Court of New Jersey.

E. Attorney General's office engaged in unlawfull and harrassing actions in order to have Claimant's appeal dismissed. The Clerks of the Supreme Court fully conspired with the Attorney General's office and violated Claimant's Constitutional and Civil Rights.

F. On September 2,1983, Deputy Clerk of the Supreme Court, David Lampen, violated Claimant's Constitutional and Civil Rights and entered in a conspiracy with Cynthia Jacob,Esq., of the Law Firm of " Norris, McLaughlin & Marcus". David Lampen instructed Jacob,Esq. to file papers with the Supreme Court in which she accused the Claimant of Insanity and Mental Incompetence. As a result of her papers the Supreme Court through Chief Justice Wilentz and Clerk Thonsend, send the case back to the Trial Court in order to have the Claimant declared legally insane and mentally incompetent.

G. The attorney General's Office joined the Conspiracy and filed the final Motion to have the Claimant committed at the Marlboro Psychiatric Hosipital for 30 days or more. During the legal proceedings Claimant's Constitutional and Civil Rights were fully violated by Judge Wilfred P. Diana, who arrested the Claimant and send him to Marlboro Psychiatric Hospital. The Conspiracy provided the Hospital with secret,incriminating documents in order to succed and have the Claimant declared legally insane and mentally incompetent.

H. On May 9th.,1985 the Claimant was incarcerated at the maximum security section of the Marlboro Psychiatric Hospital. During the incarceration the Claimant was physically and mentally abused by the employees of the Hospital as well as by the mental patients. The Hospital Employees gossly violated Claimant's Constitutional and Civil Rights and deprived him of the needed medical treatment in order to cure and relief his pain resulted from previous back and neck injuries. They entered false records in Claimant's medical file and falsely accused him of mental diseases. Claimant's safety, welfare and life were serioulsy threatened by Dr. Carlos Lopez, who was mentally, physically and professionally very incompetent. The Hospital was fully aware of the incapacity of Dr. Lopez but did not nothing to stop him from acting like the famous Nazi Joseph Mengele. Dr. Lopez was a real danger for the other patients also, who were forcely medicated with dangerous drugs, which created brain desorders and criminal behaviour.

I. Acting calmly, inteligently but desperately, the Claimant succeded to bring Dr. Lopez to a very irrational situation in which Dr. Lopez was acting uncontroled and crazy. Further he had a nervous and physical break down and was taken to the intensive care unit at the Freehold Hospital, where several days later died.

However on May 20,1985 the Claimant was released from Marlboro, and several days later he retruned with a Subpoena to inspect the file and records concerning his incarceration.
The Claimant was allowed to inspect and copy the medical file, but he was not allowed to inspect the Legal File, which in fact were the secret,incriminating documents, submitted by the Conspiracy to the Hospital.

Further the Claimant made arequest to Judge Diana to issue an Order compelling the discovery, The request was denied.

J. On June 19,1985, Marlboro Psychiatric Hospital through their employees (Binkowski,Farrell, LoPresty and Nebel) issued two medical reports which contain false allegations as to Claimant's physical and mental conditions.

K. At the present time , The Conspiracy, The Supreme Court of New Jersey, The Superior Court of New Jersey, The Attorney General's Office and The Marlboro Psychiatric Hospital are concentrating their forces in order to have the Claimant destroyed, which could be his incarceration at the Prison, where the Claimant can be silently and secretely killed and then accused of suicide.

L. Governor Thomas H. Kean was made aware of this situation since the time he was just a Candidate for Governor, and further he was informed of all the incidents which occured, as in fact he requested from the Claimant in a letter, and promised to do Justice if elected.
As a result of his promise, the Claimant mad campain for him. The Claimant spoke to all his friend and showed them the letter of Thomas Kean. Further he spoke to the public in shopping centers and anywhere he could, and he begged everyone to vothe for Thomas Kean. As a result of Claimant's efforts Kean won the election by 1700 votes, and from that day he never honored his contract with the Claimant, but contrary he joined the Conspiracy and allowed them to destroy the Claimant.

M. Claimant's Constitutional and Civil Rights were and are grossly violated by a group of corrupt individuals who are conspiring and acting under the collor of Laws, in order to destroy the Claimant.
Their actions are exactly identical with those committed in the past by the Nazis and at the present time by the Communists, in order to eliminate their opposition or their criticisers.

4. GENERAL DESCRIPTION OF INJURY AND LOSS INCURRED :

As a result of said incidents, Claimant Virgil Popescu sustained physical & emotional injuries, agravations to previous physical injuries, damages to his reputation, deprivation of Constitutio nal and Civil Rights.

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5. NAME OF PUBLIC ENTITY AND EMPLOYEE CAUSING INJURY :

A. State of New Jersey and Governor Thomas H. Kean.

B. Supreme Court of New Jersey,Chief Justice Robert Wilentz, Clerk Stephen Townsend,Deputy Clerk David Lampen.

C. Attorney General's Office, Irwin Kimmelman,Florence Hughes, Catherine Fodai and John Fahy.

D. Superior Court of New Jersey Somerset County and Judge Wilfred P. Diana.

E. Marlboro Psychiatric Hospital,Dr. David Sorensen,Dr.Norbert Binkowsky, Greg Roberts,Dr.Carlos Lopez,Brian Lynch,Cathy Hopkins,Eugene Meramble, Dr.Quijan, Dr. Pat Farrell,Dr.Remo, Dr. Califatto,Dr.Lopresty,Dr.Nebel,Joel Elzer,P.Coll and others as may be discovered.

F. Worker's Compensation Court ,Somerville,New Jersey and Judge Fred H. Kumpf.

G. NORRIS,McLaughlin & Marcus,Esqs. ,Cynthia Jacob and Patric Collins.

H. Superior Court of New Jersey,Appellate Division and Judges Pressler and Brody.

6. AMOUNT CLAIMED:

$100,000,000.oo (One Hundred Millions Dollars and no/oo.) together with prospective Cost of Suit and interest is claimed for personal injuries.

Dated: August 14,1985.

Virgil Popescu

VIRGIL POPESCU, Claimant.

100X

SUPREME COURT OF NEW JERSEY

ROBERT N. WILENTZ
CHIEF JUSTICE

313 STATE STREET
PERTH AMBOY, NEW JERSEY 088

CONFIDENTIAL

September 16, 1983

Honorable Gerald Cardinale
Senator, 39th District
350 Madison Avenue
Cresskill, New Jersey 07626

Dear Senator:

This letter supplements my letter of September 15th concerning your request for information about any work done by the Administrative Office of the Courts to "dig out some information on Gerald Cardinale." I have completed my inquiry and have turned up only one additional bit of information which may help explain the call that you got. One of the two cases that I had heard about in which you were a litigant before Judge Pressler, and on which I had requested information, was apparently difficult to locate. Judge Pressler apparently remembered the part of the Appellate Division before which the case was argued on appeal (she had been the trial judge) and asked the then Presiding Judge of that part to see if he could locate the case. All Judge Pressler could remember was that you were a named defendant (individually); she could not recall the names of other defendants. The Appellate Division Judge kept his records in a way that would enable him to identify a case only if he had the name either of the plaintiff or of the first named defendant. He was unable to locate the case. Judge Pressler therefore called the Clerk of the Appellate Division, described the problem and was advised by the Clerk that their computer system would be able to locate a case in which someone was a defendant, even if not the first named defendant. I assume that the Clerk of the Appellate Division thereafter told someone to search for a case in which you were a defendant -- not any case in which you were a defendant, but a case in which your company was sued for various items and you were sued as well. The search was made, and the case located.

101X

If you want any further inquiry to be made about this, Senator, please advise and I shall. I do believe, however, that the foregoing, along with my prior letter, includes all of the work that was done on this matter either by the Administrative Office of the Courts or the various Clerks' Offices.

This will also acknowledge receipt of the tapes of your meeting with the Justices and Judge Pressler. Thank you for the prompt delivery and the offer to be of help in the event we have any problem with sound reproduction.

Very truly yours,

Robert N. Wilentz

STARLEDGER 9/25/83

Senator seeks to open debate on 'courtesy'

Sen. Gerald Cardinale (R-Bergen) yesterday urged the president of the state Senate to conduct an open hearing tomorrow when the critical issue of senatorial courtesy is scheduled for debate in Trenton.

Cardinale, who trying to block the reappointment of Judge Sylvia Pressler of the Appellate Division of Superior Court by exercising the custom, said he has asked Senate President Carmen Orechio (D-Essex) to have the session "completely open to public

The Bergen Republican said his action was "in concurrence" with the request filed by the New Jersey Press Association, the Associated Press of New Jersey Managing Editors and several newspapers. "We senators have nothing to hide from the people," Cardinale said. "In fact, on a matter which has aroused such intense public discussion and interest, it is imperative that these proceedings which lead to a decision be in public."

He added, "Any other course can only lead to wild speculation which will destroy public confidence in government."

Gov. Thomas Kean, who is opposed to senatorial courtesy, has also urged the Senate to open tomorrow's session to the public.

Meanwhile, Vincent J. Apruzzese, president of the 13,000-member New Jersey State Bar Association, said he has sent a telegram to each of the state's 40 senators—including Cardinale—urging their support for Pressler's reappointment.

"Your warm support for a vote by the Senate on the reappointment of Judge Sylvia Pressler will be deeply appreciated," Apruzzese said.

In another development yesterday, Sen. Sylvia Hordower, president of the Organization of Women for Legal Awareness, said members of her 10-year-old organization were reversing their stand and backing Cardinale's effort to block Pressler's reappointment. She said that although her group opposes senatorial courtesy, "perhaps Sen. Cardinale's allegations about the New Jersey judiciary have some basis and there should be public hearings on the matter."

Hordower said the organization has "several thousand members" and its purpose is to "educate people as to their legal rights, mainly in the areas of marriage and divorce."

Senate to weigh merits

(From preceding page)

ther appeal by the state Supreme Court was denied.

Only once has a judge awaiting reappointment been removed from the bench because of the senatorial courtesy privilege of a single senator representing the judge's home county. That was in 1974, when former Sen. Joseph McGahn of Atlantic County refused to yield against Augustine A. Repetto, who had been a judge for eight years.

Earlier this year, Cardinale invoked senatorial courtesy against the reappointment of Appellate Division Judge James J. Petrella, and it wasn't until the final day the Senate could confirm him, before he would be removed from the bench, that Cardinale yielded on his block of Petrella.

He has vowed, however, not to yield on Pressler.

103X

July 17, 1986

Dear Senators (Judicial Committee):

While contacting the Governor's (N.J.) office for guidance and interacting with some pertinent areas to me - I keep in mind - I just "a citizen" a statement made to me via correspondence with Governor Tom Kean, that he is constitually prevented from interfering in the deliberation of the Judicial Branch and in 1985 - I directed by his office to the Attorney General's Office - to the R.J.H.J.C. and also 2/18/86 - Noël T. McQuire did exactly the same directing - and having been in the audience of two New Jersey Education Association Events - one, Trenton, New Jersey, one, Edison, New Jersey - U.S. Senator Frank Lautenberg spoke dynamically at both and because of the sincerity he presented through his speeches - I recently corresponded with the U.S. Senator. He also noted the Legislative Branch is different than the Judicial Branch of the Government.

When I spoke with you briefly, Chairman, Edward T. O'Connor, Jr., as you exited from the Senate today, after the public hearing - to confirm my hearing the committee meeting you announced at 10:30 A.M. on Thursday, July 24, 1986, also open to the public you told me.

Sometimes speaking "up" or "out" kind of puts your head in a "noose" - I just realized this with a judgeship in my county - I thought it would rule the judge out - he would not be able to rule in my personal behalf - it affected me adversely, I feel - so I hesitate, but I know - even though the contact with you was spontaneous (Senator O'Connor) - I will feel better as a person for having continued in this writing.

I hope I am well and can attend the Judicial Committee Meeting that you announced on the 24th of July at 10:30 A.M. in the Senate (Annex) and I would like to read this letter as a form of record - someone in the "audience" or "spectator" area told me the committee meeting is open to comment? The Senate Hearing was a first for me.

I feel a very helpful contact on February 18, 1986 and another pertinent time for me with Chief Justice Robert N. Wilentze's office - with attorney (direct and indirect) - I felt very, very professional and I am hoping this man who is in this post will be given tenure (the tenure fact, I learned when I bumped into a "passerby" as we talked in the State House after the Senate Hearing) - he can then continue to manage the Judiciary.

I have always been well received in the Appellate Court by the entire staff both by attorneys and staff and Vault I and actually all floors and all areas - it is a compliment to the selections and the filtering (I did not realize while studying Urban Geography-M.A.) this Urban Renewal Project of the 60's would actually care and actually provide much Health and Morale benefits for such a vast number of people and help them live better totally - actually the resources that have been made available to me through Richard J. Hughes Justice Complex have been very helpful, because of this I strongly feel this man (I never met personally) is doing his homework to have this large complex aid me "just a citizen" as is obviously (as I visit and observe often is being accomplished with others).

I will be heard in the Appellate Court next week - and hopefully at another future date, I think my name should be used quite discretly as I am certain you can understand from this preceding statement - however, because of these contacts, I feel I can speak favorably to this appointment of Chief Justice Robert N. Wilentze.

Please vote affirmatively,
Thank you for the consideration to be heard.
With much respect,
Dottie Williams
Dottie Williams

TO SEATE JUDICIARY COMMITTEE.

UNBELIEVEABLE FRAUD AND COVER-UP IN CHIEF JUSTICE'S PERSONAL OFFICE:

1. The N.J. Supreme Court Clerk covered the forgery and fraud of the Clerk and administrator of Appellate Division [Please refer to my enclosed affidavit EXH-
2. Chief Justice's personal asistant Parks withheld my several confidential and personal letters to Chief Justice Weintz and assumed powers of the Chief Justice to deny my emergency motion of June 9, 1986. [Refer to EXHIBIT-B]
3. Chief Justice took no action to-date on my personal letter to him sent at his residential address [EXHIBIT-C]

I respectfully request this Committee to request Chief Justice to correct this injustice.

Bal Thaper.

July 24, 1986. 106X Dr. BAL K. THAPER

A F F I D A V I T

STATE OF NEW JERSEY)
COUNTY OF MERCER)

I, Bal K. Thaper, of full age after being duly sworn depose and say that:

(1) The Per Curiam opinion provided to me by the clekr of the appellate division is unauthorized by the panel of Judges Bishoff, King and Pollow Who issued a different opinion accepting my appeal.No A51-80

(2) The true opinion of the court was suppressed by the clerk to favor the state defendats who had no defense. The clerk then replaced it with the bogus unsigned and contrary-to-record Per Curiam opinion.

(3) I established on the basis of the following facts that the Per Curiam opinion provided to me is indeed bogus and unauthorized by the panel of judges:

(a) Judge Kings law clark told me after checking the record that Per Curiam opinion was NEVER issued by the court and therefore she had no record of that bogus opinion.

(b) She also told me that real opinion of the panel does exist in the record, but she will give me a copy of the same only if judge King orders.

(c) I sent letters to judge King to provide the true opinion, but got no response fron him.

(d) Clerk McLaughlin later provided me the letter date 2-3-1986 which had judge King's forged signature. Judge King's law clerk confirmed that the signature was indeed forged.

(e) Administrator Musewicz of the Appellate Division later provided me the same Per Curiam attested opinion falsely claiming that judge King attested this opinion in his presence.

(f) Mr. Musewicz's claim is FALSE and made to make me accept the bogus opinion as true.

(4) In response to my latter to N,J.Chief Justice Wilentz, Supreme Court clerk Townsend agreed:

(a) to get the Written verification of judge King's signature from judge King himself and

(b) to issue his decision after such Written verification.

(5) He could not get such written verification from Judge King.

(6) He, however, made the inaccurate statement that judge King's signatures on the opinion are not forged.

(7) Clerk Townsend's statement is FALSE as Judge King's signatures on the Per Curiam opinion are indeed forged.

(8) The above statements arc true.

BAL K. THAPER

Sworn and Subscribed to before me this day of May, 1986
State of New Jersey
County of Mercer

Sworn and subscribed to before me
this 19 day of May 19 86
Sharon L Celmer
SHARON L CELMER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 18, 1991

EXHIBIT-A.

107X

CONFIDENTIAL AND PERSONAL

CERTIFIED MAIL NO. P 419 820 668

Apt.14C,333 West State Street
Trenton, N.J.08618

June 27,1986

Mr. Michal Park
Aministrative Assistant
to the Chief Justice
Perth Amboy N.J.08861

RE: Tnaper v. N.J.Deptt. of Ed.
Supreme Court doc.no.20,104
App.Divi.Doc.No.A 51-80T1

Dear Mr. Park:

I am absolutely shocked to read your letter of June 19,1986. This letter clearly shows the following facts:

(1) You improperly acquired the powers of the Chief Justice to deny my unopposed motion which clearly established the fraud of clerk Townsend.

(2) You have made obviously false statements willfully in this letter to save clerk Townsend from prosecution. Your statement that there is nothing bogus about the two orders is obviously false, because the clerk has NO authority to sign the orders on benalf of the court. He can only attest true copies of the orders signed by tne chief Justice who only has the authority to sign on hebalf of the court. In the two orders the witnesses are the cnief Justice and Wilentz and justice Chifford, but surprosingly the orders are signed by the clerk.

(3) You have no autnority to reject my properly filed motion. Only the cnief justice himself or the full court can do this after full consideration of the merits.

(4) Although clerk Townsend has nothing in tne record to snow that the two orders denying my petitions are genuine orders of tne court, you have falsely stated that this is the standard format for such orders of the court. This is obviously wrong. Tne standard format is that

EXHIBIT B.
108X

such orders are signed by the chief justice and attested by the clerk.

(5) You did not present my confidential and personal letters to the Chief Justice to save clerk Townsend from prosecution and that is why chief justice did not take any action on those letters.

(6) By my two earlier letters to the chief justice, I requested him to order judge King to release the true opinion of the court from his chamber, as his signatures are clearly forged on the bogus opinion. I am sure that the chief justice would have granted this very simple request if you had not withheld my two personal and confidential letters from him.

(7) You are fully determined to cover-up all the illegal acts of clerk Townsend somehow.

The above facts lead to the unmistakable conclusion that you have done me great wrongs and it is necessary for you to rectify the same forthwith. I, therefore, demand that:

1. You withdraw your unauthorized letter of June 19,1986 and present my unopposed motion of June 9,1986 to the Chief Justice for decision.
2. You present all my confidential and personal letters to the Chief Justice for his decision regarding
   (a) Clerk Townsend's misconduct,
   (b) Ordering judge King to release the true opinion of the panel.
3. Allow me to see the Chief Justice in this connection.

PLEASE TAKE NOTICE that if you do not rectify the wrongs done to me by clerk Townsend in one week, I shall have to bring this matter to the attention of the full Supreme Court, the Attorney General of the United States and the U.S.Attorney for necessary action. However I shall have no reason to do this if the chief justice Wilentz orders judge King to release the true opinion of the panel of the Appellate Division.

Very truly yours,

A K Thapar

Trenton, New Jersey
July 16,1986

Hon. Robert N. Wilentz
Chief Justice of New Jersey
168 Water Street
Perth Ambby N.J. 08860

Re: ILLEGAL ACTS OF CLERK TOWNSEND

Dear Chief Justice Wilentz:

Very respectfully I bring to Your Honor's attention that Administrative Assistant Park did not present my several confidential and personal letters to Your Honor and that is why the fraudulent acts done by clerk Townsend still remain uncorrected and the injustice done to me is still present.

Not to speak of withholding such confidential and personal letters from Your Honor, Mr. Park even went to the extreme limit of improp ly assuming judicial powers of the chief Justice to deny my UNOPPOSED EMERGENCY motion made before Your Honor on June 9,1986. It is obvious that Mr. Park is determined to cover-up Mr. Townsend's illegal acts somehow.

As Your Honor is universally known and respected as a very fair just, kind and compassionate chief Justice who has sympathy for the helple victims of fraud and injustice, I am sure that Your Honor will order Mr. Park to present to Your Honor my unopposed emergency motion of June 9,1986 and other confidential letters and correct the injustice done to me by clerk Townsend. Inenclose a copy of my recent letter to Mr. Park.

Respectfully submitted,

(BAL K. THAPER)
Petitioner-Pro.Se.

Enclosures = 2

EXHIBIT-C.

CITIZENS
FOR A RESPONSIBLE
JUDICIAL LEADERSHIP
P.O. Box 659
Ship Bottom, New Jersey 08008
Telephone (609) 492-3691

July 23, 1986

Honorable Members of the
New Jersey Senate Judiciary Committee
State House Annex
Trenton, New Jersey 08625

RE: Hearing on the renomination of Robert N. Wilentz
as chief justice of the Supreme Court of New Jersey

Dear Senators:

We submit the enclosed for your consideration as testimony with regard to the committee's investigation regarding the reappointment of Robert N. Wilentz as chief justice of the Supreme Court of the State of New Jersey.

We submit the enclosed in support of our contention that Chief Justice Wilentz has and will continue to violate the constitution of the State of New Jersey, which it is his prime function to defend.

Although controvertial landmark changes have been implemented throughout virtually every area of judicial function, we focus on two specific areas of concern:

1. THE DELIBERATE DEVASTATION OF A WORKING CONSTITUTIONAL FUNCTION OF THE STATE OF NEW JERSEY BY THE CHIEF JUSTICE THROUGH THE ADMINISTRATIVE OFFICE OF THE COURTS.

2. THE ONGOING IMPLEMENTATION OF THE RECOMMENDATIONS OF THE EFFICIENCY COMMITTEE WHICH CALL FOR THE ELIMINATION OF THE COUNTY CLERK FROM ACTIVE PARTICIPATION IN THE NEW JERSEY COURT SYSTEM.

We ask that the contents be treated as confidential until appropriate releases are obtained from the herein named individuals.

Respectfully yours,
Citizens for a Responsible
Judicial Leadership
by:

William M. Goyden

111X

William M. Goyden
51 W. Sand Dune Lane
Peahala Park, N.J. 08008
(609) 492-7322

In the matter of the reappointment of Robert N. Wilentz as chief justice of the Supreme Court of New Jersey

TESTIMONY

I, William M. Goyden, certify that the following testimony is true:

1. I have been a career employee in the Office of the Clerk of the Superior Court of New Jersey for the past twenty five years prior to my retirement as of October 1, 1984.

2. I served the Clerk of the Superior Court of New Jersey as Supervisor of Records for a period of seven years and at the time of my retirement also served as County Liaison Officer for the Clerk of the Superior Court.

3. My retirement was prompted by certain conditions prevailing in the Superior Court Clerk's Office which I felt compromised my employment commitment to uphold the constitution of the State of New Jersey.

4. The above-mentioned conditions resulted from the Administrtive Office of the Courts' covert actions to discredit the existing functions of the Office of the Clerk of the Superior Court of New Jersey.

5. These covert actions by the Administrative Office of the Courts consisted of:

a. A massive layoff of personnel amounting to forty seven positions in October of 1982, twenty of which were consentrated in my area of responsibility.

b. Failure to fill an additional twenty five vacant positions which further reduced the staff of the Clerk's Office.

c. Failure to upgrade the Computer Assisted Micrographics Information System to a level that could any way handle the massive workload of the Law Division.

112X

6. The above-mentioned covert actions taken by the A O C resulted in backlogs of more that six months on priority pleadings and up to a year or more on non-priority papers. This represented a total breakdown of the functioning of the Office of the CLerk of the Superior Court, a bona fide constitutional function of the State of New Jersey.

7. This deliberate and unlawful devastation of a working constitutional function of the State of New Jersey was obviously the result of the Chief Justice, through the Administrative Office of the Courts' desire to discredit the working constitutional function in order to justify a radical change in operations, to local filing, a much more costly and less efficient method of processing legal documents.

8. At no time did the Clerk of the Superior Court or the Administrative Office of the Courts relieve me of my responsibilities to insure the continuation of the existing constitutional function. Since I was deprived of the necessary resources to fullfill my obligations as Supervisor of Records, it was necessary for me to prepare and submit clear, concise and accurate statistical reports on work status, personnel requirements and future resulting effects of continued restriction of vital necessities.

9. The submission of these clear, concise and accurate reports were received with a less than enthusiastic response by the newly appointed Clerk of the Superior Court and ultimately lead to the introduction of unsatisfactory remarks in my performance rating, which heretofore was considered outstanding.

10. Grievance procedures were initiated by me to remove said unsatisfactory remarks from my employment record and although indisputable argument was presented, the A O C systematically denied each step of grievance up to the final step of grievance, a formal hearing of the issues. At this point I was compelled to retain legal counsel at a cost of one thousand dollars. Prior to convening the formal hearing, however, the A O C approached my legal counsel and asked that I agree to a dismissal of the grievance upon removal of the said unsatisfactory remarks from my rating.

This is a classic example of the intimidation and duress imparted on the employees of the judiciary under this administration.

11. The above-mentioned tactics utilized by the A O C to secure my silence and submission to their efforts to close down the existing function adversely affected my health and forced me to submit my application for retirement at great financial loss.

Complete documentation of these accusations will be made available upon request of this committee.

12. On January 30, 1985, the Star Ledger published my letter to the editor wherein the covert activities of the A O C in devastating the constitutional function were made public. Immediately thereafter, The A O C began a token effort to supplement the staff of the Clerk's Office and temporarily suspended implementation of local filing.

Attached hereto is a copy of said letter to the editor as well as a copy of a news article which corroborates my allegations that the A O C has acted similarly in virtually every area of judicial function.

13. These prevailing conditions generated by the A O C also prompted the resignation of my wife in March of 1985. My wife was also a career employee in the Clerk's Office and served as Supervisor of Data Entry.

14. As a result of the A O C's covert activities to unconstitutionally devastate the operations of the Clerk's Office, my wife and I have been forced to leave our career positions and livelihood. Our annual income has been reduced from nearly sixty thousand dollars to sixteen thousand dollars, which constitutes poverty level for a family of four.

In light of this type of economic devastation, it is easily understood why more concerned public employees do not voluntarily come forward with their testimony against this judicial administrati...

15. Included herein are my recommendations for further investigation by the Senate Judiciary Committee, submitted to support this testtimony.

It is asked that the names of the individuals provided be considered confidential.

William M. Goyden 7/22/86

EVIDENCE IN SUPPORT OF POINTS OF TESTIMONY

It is recommended that the following documents be obtained from the Administrative Office of the Courts and the Office of the Clerk of the Superior Court. If, however, these documents can not be obtained from these offices, I will supply upon your request.

EFFICIENCY COMMITTEE PRELIMINARY REPORT AND FINAL REPORT DATED 6/26/81 AND PRESENTED TO THE CHIEF JUSTICE IN APRIL OF 1982.

A review of these reports shows that a change in operations of the Superior Court Clerk's Office from the present central filing system to local filing is strongly recommended. In addition, this committee strongly recommends that the county clerk of each county be eliminated from active participation in the judicial function.

It is interesting to note that these recommendations are made in order to eliminate duplication of effort which had already been eliminated by the implementation of CAMIS (Computer Assisted Micrographic Information System) by W. Lewis Bambrick, then Clerk of the Superior Court.

It should also be noted that the said Efficiency Committee recommendations have already begun to be implemented administratively by the Chief Justice through the Administrative Office of the Courts.

The county clerks, sheriffs and surrogates of this state, as duly elected officials, represent the only vestage of public influence in the administration of the New Jersey court system and their function is clearly established by the constitution of the State of New Jersey.

Since the judicial functions of the county officers are constitutional provisions, the Judicial, Legislative and Executive sectors of government are not empowered to administratively change procedures to limit or circumvent the participation of these officers in court function.

The Court's intrusion into the operations of the county officers are evidenced by the voluminous court litigation and proclamations of objection initiated by these officers. Further information on these formal objections may be obtained from the County Officers Association.

The formal objections of the county officers, however, have not deterred the continuation of the Court's efforts in this area and it seems apparent that the county officers are condescending to accept whatever role the Court is willing to give them, thus ending all vestiges of public influence in the New Jersey court system.

COUNTY CLERK'S MINORITY REPORT PRESENTED OCTOBER, 1981.

This report was prepared by the County Clerks and presented in opposition the the Efficiency Committee Report.

CLERK'S OFFICE MEMORANDUM IN RESPONSE TO EFFICIENCY COMMITTEE'S PRELIMINARY REPORT DATED 4/7/81.

Review of this correspondence indicates that the Efficiency Committee's findings were based on outmoded and incorrect information.

This memo also indicates that the problem of duplication of effort had already been addressed and solved. It advised the committee that CAMIS (Computer Assisted Micrographic Information System) had already been approved and funded by the A O C and that the system was already in operation. This system eliminated all duplication of effort and in fact released hundreds of county personnel from all time consumming manual effort in maintaining dockets and indicies. It also eliminated the need for manual effort to maintain the original case file in the Clerk's Office in Trenton.

It is interesting to note that this memorandum was never acknowledged or replied to by the Efficiency Committee.

COST ANALYSIS BY CLERK'S OFFICE
REGARDING PERSONNEL AND EQUIPMENT
NECESSARY FOR IMPLEMENTATION OF
LOCAL FILING DATED 1/22/82.

This analysis indicates a dramatic increase in personnel and equipment requirements in initiating a change to local filing. It did not, however, address the problem of increased office space necessary to accomodate the increased staff.

Considering the fact that at least eighty percent of individual county offices were already overcrowded, implementation of local filing would require the construction or leasing of new facilities to house the operation.

The estimated additional cost to taxpayers for implementation of local filing amounts to well over three hundred million dollars.

This seems to be money poorly spent when you consider that at very best, the resulting efficiency of the new system could only be expected to be marginally acceptable.

It is also interesting to note that it would be necessary to retain virtually the entire staff of the present function in order to coordinate and assist the twenty one individual offices of the Clerk, thus providing little, if any, cost savings in closing down the central operation.

The question now surfaces as to how to secure the additional funding necessary for implementation of the new local filing system. The Legislature would hardly provide hundreds of millions of dollars in increased spending without adequate justification.

It was therefore necessary to show that the existing central filing system was totally inadequate and incapable of providing the necessary supportive efforts to maintain court operations.

Steps were taken by the A O C to devastate the existing constitutional function. Their success in devastating this function is evident by the present condition of the Clerk's Office. The entire operation is lying dead in the water. Processing of certain documents have been completely discontinued, backlogs continue to exist, delays in servicing the Court are commonplace and only the very basic procedures are now even attempted. It is beyond the capabilities of this office to even process top priority documents on a timely basis. Judges frequently must resort to utilizing lawyer's office copies of pleadings so that they may move the case.

The total operation as it now exists is indeed in need of tremendous overhaul and the desired results have been realized by the Administrative Office of the Courts.

In addition to the above-mentioned evidence, there also exists correspondence from the Chief Justice to W. Lewis Bambrick, then Clerk of the Superior Court, received in August of 1982.

In this correspondence, the Chief Justice commends Mr. Bambrick's efforts to implement local filing.

In his response to the Chief Justice, Mr. Bambrick advises that he did not advocate local filing and in fact was concerned that local filing raised serious constitutional questions.

It is interesting to note that Mr. Bambrick retired his position approximately one year after he responded to the Chief Justice, much sooner than he anticipated.

In announcing his plans to retire to the supervisors of the Clerk's Office, he stated: " its alright to be a hero but not a dead hero " indicating that he had put up a good fight, was losing and did not want to jeopardize his health.

It is urged that the following be invited to testify before the Senate Judiciary Committee in this matter:

Mr. James Smith
State of New Jersey
Division of Management and Budget (Department of the Taxation)
(609) 292-8917

Mr. Smith was employed by the A O C and conducted a local filing study for the A O C in the summer of 1983. His conclusions and findings were negative with regard to the change to local filing.

Off the record he informed me that at the time of the layoff of forty seven positions in the Clerk's Office, in October of 1982, he was employed by the Judiciary Budget Committee. He stated that the layoff was entirely the decision of the director and that much less severe options were open to him with regard to the budget crisis.

118X

He stated that it was extraordinary that the director chose this type of budget reduction and even more extraordinary that he concentrated this reduction of staff in one particular area, leaving other less important areas unscathed and in some cases actually upgraded the staff.

Mr. Smith fell out of favor shortly after he submitted his report on local filing and eventually resigned his position with the A O C .

Mr. W. Lewis Bambrick
Clerk of the Superior Court retired
14 Seven Oaks Lane
Trenton, New Jersey 08628
(609) 882-2608

Retired Clerk of the Superior Court. Has intimate knowledge of all aspects of the efforts of the A O C to localize operations. He presently continues to act part time as a consultant to the A O C in other areas. May be reluctant to testify publicly.

Mr. Robert C. Wagner
Deputy Clerk of the Superior Court
Richard J. Hughes Justice Complex
Trenton, New Jersey
(609) 292-6564

Presently employed as Deputy Clerk in the Superior Court Clerk's Office. Has intimate knowledge of the efforts of the A O C to localize operations. Would almost certainly be reluctant to testify publicly.

For obvious reasons, I ask that any references made to particular individuals be treated strictly confidential unless release is authorized by those individuals.

As for myself, confidentiality is not necessary. The Chief Justice is well aware of my position and I have already entailed the economic degradation that others would understandably wish to avoid.

Water group seeks to preserve indispensab

death of a patient. The first step must be to overturn by legislation the court decision which makes food and water extraordinary treatment. Let doctors and the family make

Judicial experiment

DEAR EDITOR:

A recent letter from a retired employe of the Superior Court Clerk's Office criticized a planned experiment in which Superior Court pleadings will be filed directly in the counties rather than in Trenton.

The direct filing experiment is based on a recommendation of the Supreme Court's Committee on Efficiency, which was made up of top corporate executives who analyzed the operation of the court system and made several suggestions for change. The experiment will be carefully evaluated for effectiveness in meeting the goal of this Office and the entire state court system; that is to provide New Jersey citizens with a fair and efficient judicial system.

John M. Mayson, Clerk,
Superior Court of New Jersey,
Trenton

3/4/85

Aiding cerebral palsy victims

But modern civilization with its pipes, petrochemicals, storage tanks

see that happen to the Buried Valley Aquifer and the Upper Rockaway Un-

ty Municipal Utilities Authority, both water purveyors.

Top court incompetency

DEAR EDITOR:

The recent letter of Sen. Gerald Cardinale is the first indication that any of our state representatives are aware of a supreme court which has seized legislative powers far beyond the powers granted in the New Jersey Constitution —and the threat such seizure poses to our personal liberties. Clearly the Mt. Laurel 1 and 2 decisions went far beyond the court's authority.

Even so, the same court appears to be rewriting our criminal laws to suit its own vision of the world. We have the recent award of $3 million to a criminal for injuries experienced during a criminal activity.

At the same time, there appears to be a determination on the part of the same court to negate the death penalty prescribed by the State Legislature. In the past three years, this court has amassed 18 cold-blooded killers with no indication that they will be duly processed. Certainly the caliber of justices sitting in Trenton needs to be upgraded. We need men in such key positions who understand the law, will interpret and enforce the laws—and leave legislation to the State Legislature. Hopefully, Chief Justice Robert Wilentz will see his career ended NOW.

Ralph K. Turp,
Forked River

4/6/86

READERS' FORUM

Court administration comes under fire

DEAR EDITOR:

Your article regarding the plans of the county bar associations' splinter group to protest new court rules was most interesting.

The members of the bar of this state certainly have much to be concerned about.

As the recently retired supervisor of records of the Superior Court Clerk's Office, I have first-hand knowledge of the alarming state of emergency that prevails in the New Jersey judiciary—a state of emergency directly brought about by the new thinking of the present administration of the courts.

In each of the many articles published concerning the opposition to this new thinking, the chief justice invariably refers to his goal to move cases more quickly and seemingly believes that any steps taken to achieve this goal, within or outside of the law, are proper for the good of his cause. In the case of the proposed localizing of the functions of the Superior Court Clerk's Office, the chief justice and the administrative director believe that it is entirely proper for their administration to unlawfully devastate a working constitutional function so as to insure that the transition to local filing would ensue at an additional cost to taxpayers of hundreds of millions of dollars.

The unlawful devastation of the present constitutional function was accomplished by a staff reduction of 47 positions, due to a purported economic emergency. It is interesting to note, however, that the Administrative Office of the Courts experienced an unprecedented period of growth during this same period. The AOC then refused to compensate for over 25 vacant positions which further effectively reduced the staff of the clerk's office. To further ensure the demise of the central filing system, the AOC refused to upgrade the computer-assisted micrographic information system to a level that could any way handle the massive workload of the law division.

The result of the efforts of the AOC in this area has been backlogs of up to six months on priority pleadings and longer for non-priority papers. This represents a total breakdown of the processing of legal documents which comprise the record necessary for the court to dispose of cases.

To quote from a recent letter to Robert Lipscher, administrative director, a Superior Court assignment judge states:

"Over the past few months, we have been experiencing difficulty in obtaining filed pleadings timely from the clerk of the Superior Court.

"This has become an acute problem and the delay in receiving some of these pleadings is affecting the integrity of my calendar call and statistical reporting."

The failure of the functioning of the clerk's office as provided for by the constitution of the state of New Jersey, slows the process of disposing of cases and is directly opposite to the chief justice's so-called aim to move cases more quickly.

The proposed local filing system inherently increases the power of the AOC which is also the obvious result of the countless additional changes in the court system now being implemented.

It is apparent that this administration is much more inclined to make history and to amass power than to maintain the intended role of the court in monitoring and insuring that historical events conform to the constitution.

It is extremely distressing to witness the present administration of the judiciary's apparent disregard for the constitution of the state of New Jersey, when the administration's intended prime function is to guarantee its continuation.

William M. Goyden,
Supervisor of Records (retired),
Superior Court Clerk's Office,
Long Beach

120X 1/30/85

CURRENTS

Court Administrators Charge Change Is a Bad Thing For State's Legal System

"If it works, don't fix it."
--Modern Proverb

The N.J. District Court Association is charging that "radical changes" being proposed in the state's court system will not only reduce the system's overall effectiveness, but will become a tax burden to state residents.

The association says the long-standing practice of delivering summonses in person is being scrapped in favor of what the administrator of courts has deemed a more "efficient" mail system.

"But it's change for the sake of change," insists association President Richard Feldman. "A study made by a 1982 task force resulted in all task force members agreeing the system we currently have is an ideal arrangement."

Task force members, Feldman adds, included judges from the federal to local levels, attorneys, certified public accountants, court clerks and well-known independent consultants.

Under the current system, 160 court officers known as "process servers" personally deliver summonses to the homes of defendants. The servers are non-salaried and must provide their own cars, offices, stationery, telephones and staffs. The only remuneration the servers receive are statutory fees for each summons served.

"Taxpayers are paying nothing right now. The servers don't cost the state or taxpayers a thing. They receive no income, pension or health benefits. The only people paying for their [the process server's] services are people who are actually using the court. Which is as it should be," Feldman says.

The Administrative Office of the Courts has other ideas, however. They believe that service of process by mail "will increase efficiency." A pilot program deemed successful in Passaic County is offered as evidence.

Feldman disagrees vehemently with the assertion that the program was a success.

"First of all, the court's return address was not even on the envelope. If there was a return address at all, it was the court clerk's home address. People were deluded into accepting the summonses," he says.

Another problem he foresees is individuals tossing away important legal documents either because they don't want to accept them or they mistake them for junk mail.

"Receiving something in the mail simply does not have the same impact as does having an officer come to your door," Feldman asserts. "Personal service lets the defendant know that the summons in his hand is a very important legal document."

Feldman goes on to say in a written statement that a court officer can immediately explain the consequences of actions such as ignoring or throwing the document away. Such exchanges between defendants and Court Officers occur on a daily basis, he adds, noting that "person-to-person contact at this crucial stage in litigation protects the rights of both plaintiff and defendant."

"The scenario likely to result from service of process by mail will make a mockery of the due process notice requirement," he says succinctly.

Feldman says it has been stated that defendants may correct the effects of an unreceived or destroyed document by filing a motion to vacate the default judgement.

"This will not increase court efficiency; it will clog the courts with thousands of such motions to vacate once defendants realize how easily a claim of non-service can delay payment of a judgement," he says.

Personal service keeps such motions to a minimum since court officers may testify that a defendant was in fact personally served.

In addition to decreasing overall effectiveness, Feldman says the new system will eventually force costs, currently covered by process servers onto "the backs of the tax-paying public."

"The new system will require new court employees in 21 courts. These new civil service positions mandate certain salaries plus benefits that add another 30 percent to the base pay. These employees will be able to exert pressure in the future to gain increases in salaries and benefits which have not been considered by the administrator of courts. The present system, which uses the full-time non-salaried court officers is just not susceptible to those kind of influences," he explains.

Feldman says a more sensible, feasible approach to the plan is an alternative one dubbed the "mail and mail" plan. The system incorporates the best features of personal and mail service. Once a court officer has personally confirmed the defendant is the occupant of the premises, he attaches the summons to the door and then mails a copy of it to the defendant. Adoption of this procedure would cost the court nothing, says Feldman, and should be seriously considered if efficiency is the courts' goal.

Feldman, however, says he's not exactly sure what the courts' goal is.

"It seems they don't feel they're a big enough bureaucracy," he says. "Can you think of a governmental agency which hasn't expanded itself within the last 10 to 15 years?"

Feldman admits that the association's concern is "self-serving" to some extent. Changing to the proposed system would immediately result in the loss of jobs for some 1,500 people.

Foremost among the affected employees would, of course, be the process servers themselves. Because they work on what is essentially a commission basis, Feldman explains, they are motivated to do their jobs promptly and efficiently. That same promptness and efficiency could not be guaranteed under the new system.

Further, he adds, the new system would inevitably result in a tax increase for New Jerseyans who are "already paying enough taxes."

And finally, the proposed new system totally ignores the findings and recommendations of the judges, attorneys, court clerks, accountants, process servers and independent consultants whose 1982 task force study concluded the changes would be absolutely no improvement to the current system.

"What's even worse," bristles Feldman, "is the decisions are being made through a 'modern management technique' by people who have never worked directly within the court system."

He adds the decision may be "politically motivated" but he would be "foolish" to go into detail on that point at this time.

"We [the association] have been told it [the change] is inevitable. We've been told, 'Don't fight it,'" he says.

Feldman says dissatisfied taxpayers should make a point of writing to state senators and local freeholders and assemblymen on what he says is "absolutely" a case of trying to fix something that already works.

"We have mailed copies of a statement we've [the association] prepared to our state senators and all freeholders and assemblymen, so they'll be informed," he says.

Putting his money where his mouth is, Feldman says these officials can expect to receive a second copy of the statement--hand-delivered.

Crack Down to Prevent Crack Ups

Cornelius Hogenbirk

AMERICA'S ROLLING JUNK HEAP: The state Division of Motor Vehicles is cracking down on cars which are in need of tune ups, even if they carry valid inspection stickers. Since September 1982, the division has been working with local police departments to conduct spot checks on cars, similar to checks at inspection stations. The roadblocks are conducted randomly in every county, and were set up in Bernegat last week. "We have been inspecting between 75,000 and 80,000 cars each year," said H. Arthur Smith, a public information officer for the division. Of that, the rejection rate is more than 70 percent, compared to only a 49 percent failure rating for inspection at stations. "We're obviously looking for the wrecks, the cars that drive by with smashed headlights, missing windshields and those exuding smoke. We're not going to stop a 1985 Cadillac," he said. Cars that fail are given 30 days to have repairs completed. "In extreme cases, we only give them 48 hours for the repairs. If the car is bad enough, we will impound it on the spot," he noted. Since the program began, Smith reports that half a dozen stolen cars have been recovered, and that some drivers have been arrested for carrying concealed weapons and dangerous substances. Local police have also arrested a number of people for driving while intoxicated.

SUPREME COURT OF NEW JERSEY

ROBERT N. WILENTZ
CHIEF JUSTICE

313 STATE STREET
PERTH AMBOY, NEW JERSEY 08861

July 18, 1986

Honorable Carmen A. Orechio
Senator, District 30
800 Bloomfield Avenue
Nutley, New Jersey 07110

Re: Renomination of Chief Justice

Dear Senator Orechio:

The enclosed document is submitted in connection with the forthcoming public hearing before the Senate Judiciary Committee on the renomination of Chief Justice Wilentz. I was advised by Mr. Tumulty that the advance submission of this kind of material to members of the Committee was appropriate. The document describes some of the administrative work of the court system from 1979 to 1986.

Respectfully,

Michael L. Park
Special Assistant to
the Chief Justice

cc: Honorable Edward T. O'Connor
Chairman, Senate Judiciary Committee

122K

CHIEF JUSTICE: 1979-1986, Non-judicial Responsibilities

What follows is a summary of changes in the Judiciary from 1979-1986. As the administrative head of the courts, the Chief Justice is ultimately responsible and accountable for these matters. He was in fact involved, and often deeply involved, in many of them. Some of his responsibilities were shared with the Court, but even then, the Chief Justice was regarded as primarily responsible. Implementation in all cases involved, in addition to the Chief Justice, the Administrative Director and the AOC at the state level, and the Assignment Judges (and all other judges) and support staff at the vicinage level. The ideas, suggestions, initiatives, and innovations came from many sources besides the Chief Justice, including members of the Court, Assignment Judges (and other judges), the Bar, and especially from the Administrative Director and the AOC.

The necessarily brief description of some of the items may not sufficiently reflect their importance, or the effort expended on them. One item, I.A(3)(d), on page 11, notes: "Reduced the practice of ordering the Freeholders to provide unbudgeted funds to the courts in favor of using the regular budget process; established a means for Freeholders to appeal to special panel from trial court budget orders."

The first part of that item refers to an agreement that was reached between the Judiciary and representatives of the counties both for a new method of judicial budgeting that took into account the fiscal problems of the counties -- especially their need to plan in advance, and at the same time gave greater protection to the judicial budget. The latter part of that item refers to the work of a committee chaired by Justice Schreiber whose function was to determine a method of resolving impasses between the Judiciary and the counties in financial matters other than the former unilateral judicial order. Both aspects of that item required substantial work on the part of many people.

On page 13, section I.A(4)(f), part of the item is "[w]orked with the Department of Corrections to help relieve jail and prison overcrowding ...." That work included a County Jail Overcrowding Study which, among other things, led to assuring frequent and regular bail review, and making the 10 percent cash bail option available statewide.

On page 11, section I.A(3)(c), there is reference to the "directive on court budgets that made the Assignment Judges accountable for the economic operations of the vicinage" and to the training of "Assignment Judges and the TCAs in effective budget management." There had previously been no single judicial budget at the vicinage level; the numerous budgets that existed within vicinages and

throughout the State lacked almost any uniformity. Cost comparisons were impossible to make. It took a long time and great effort to unify the budget in each vicinage and to devise a statewide uniform format. The execution of that change required substantial training for Assignment Judges and TCAs. Those familiar with this matter regard the change as dramatic. It will have substantial long-term impact in making the Judiciary fully accountable.

On page 17, section I.B(11), part of the item reads "[w]orked with the municipal courts to improve the management of DWI (driving while intoxicated) cases and thus to reduce the backlog of such cases ...." What was involved was an intensive analysis of the then-existing backlog of DWI cases (drunken driving), the design of various management devices to reduce that backlog, and the creation of a reporting system that would track the progress of each municipal court on a regular basis. The goal was to achieve disposition of all DWI cases within sixty days of the filing of a complaint. Progress has been substantial, but so was the effort.

On page 14, section I.A(4)(i), reference is made to the State Youth Services Commission. That Commission was created as a result of initiatives within the Judiciary. It has improved communications between agencies and departments at the state level with responsibilities for children, and

has done so in an institutional setting that is certain to have long-term results. It has been meeting for almost five years, approximately six times a year (on the average), with practically every meeting chaired by the Chief Justice.

While the description on pages 19-20, section III.A, is longer than most items, it cannot possibly convey the importance of the substantial change in the structure of the attorney disciplinary system, or its results. In addition to the work of the Sullivan Committee, the Supreme Court and Chief Justice were involved for over a year in efforts to work out the best system. The resulting structure has almost eliminated the most serious problem of the former system, backlog and delay. When combined with the underlying substantive content (the stringent RPCs, invariable disbarment on misappropriation, most effective random audit program, one of the few bounced check programs, and, generally, the imposition of strong disciplinary sanctions), the system promises to be one of the best, and one of the strictest, in the nation.

Finally, on page 12, section I.A(3)(k), the item states: "Brought computerization to the Judiciary after extensive master plan development; acquired mainframe and established Data Center." In terms of the long-term efficiency of the Judiciary, no other development could be more important. An extended stalemate, resulting from

strong differences of opinion, between the Executive and the Judiciary, was resolved and with the support of the other branches, the judicial system has been able to proceed with an ambitious plan for statewide computerization. The amount of work has been enormous, including systems revisions, form revisions, training of personnel, and recruitment of staff.

Similarly, the importance of the Judicial Conferences referred to on page 25, section V.B(1), cannot be sufficiently described in this summary. The Speedy Trial Conference has resulted in a statewide speedy trial system that has cut the median disposition time of criminal matters in half. The Conference on Efficiency in the Operation of the Courts, chaired by Robert Van Fossan, preceded by the unprecedented appointment of a blue ribbon commission headed by outstanding New Jersey business leaders to study the court system, has affected, and in many cases radically altered, both the structure and organization of the Judiciary and support personnel. It was responsible, in whole or in part, for many of the items of change listed under "General Administration and Case Management."

The Conference on Probation Services, chaired by Justice Clifford, has resulted in significant changes in probation, changes that are still being implemented, changes that will result in better service to both the Judiciary and the community. The Conference on the Family Court, chaired

by Justice O'Hern, discharged the awesome responsibility of determining the appropriate changes, in structure, organization, jurisdiction, and others, needed to effectuate the court mergers involved and the substantive intent of the Legislature. The Conference on Civil Case Management and Procedures, chaired by Justice Schreiber, resulted in the development of proposals that would substantially change the processing of cases, and the responsibilities of both Bar and Bench in that effort. Those far-reaching proposals are now the subject of a pilot project in Bergen County and, to the extent they are successful, they will be implemented throughout the State.

The Conference on Municipal Court Improvement, chaired by Justice Clifford, took a comprehensive look at the municipal courts for the first time on a statewide basis to determine how they could be improved. The far-reaching recommendations of that commission will significantly affect the operations of those courts, making them more efficient and more responsive to the needs or our citizens. A pilot project is underway to test the concept of the Presiding Judge, along with a testing of some of those recommendations. These proposals promise to effect the most substantial change in the municipal court system since 1948.

And, finally, this year's Speedy Trial Conference, co-chaired by Judge Sidney Reiss and the Chief Justice,

devoted to further improving the speedy trial system, has resulted in recommendations that should complete the task of perfecting that system.

Each of these Judicial Conferences was preceded by committee work, usually started a year before the conference; that work ultimately involved hundreds of people (judges, lawyers and the public) and culminated in reports that were the result of careful research and an extensive exchange of views. The conferences themselves, attended by every group with any interest in the matter, were designed to assure exposure of the proposals to the critical analysis of those who were most knowledgeable about the matter as well as those who might be most affected by it, and each conference was followed by actions to implement the resulting recommendations. The format of the judicial conference effort, both in terms of the work that went before the conference, the conference itself, and the implementing work that followed, may perhaps constitute as much of an achievement as the substance of the conferences themselves.

I. General Administration and Case Management

For six years in a row (1980-1985) the court system cleared the calendar, i.e., in each of those years

the number of cases it disposed of was greater than the number of cases filed. The accomplishment is unprecedented, both in New Jersey and in the nation where the uniform trend had seen, year after year, a constant increase in pending cases. Instead, in New Jersey, active pending cases were reduced by 25.2 percent, and the number of cases within that active pending inventory that are older than the time goals for their disposition was reduced by 33.8 percent. This was achieved despite the fact that there was a substantial increase in filings, including an increase of 37.3 percent in the most intensive categories of cases in terms of time and resources. That 37.3 percent increase is two-and-one-half times greater than the increase in the number of judges. In the general civil calendar, the amount of time it would take in 1979 to dispose of the entire inventory (if no cases were added) was 16.8 months; in 1985 that time period was cut down to 10.5 months. The median time for disposition of a criminal case was cut in half.

During this period, the judiciary worked harder than ever. It was led by a corps of Assignment Judges of the very highest quality, who are entitled to a great deal of credit for these accomplishments. All but one were appointed by the Chief Justice.

A. General Administration

1. Organization of the Courts

a. Reorganized the trial courts into four manageable divisions (Civil, Criminal, Family, General Equity.

b. Oversaw the consolidation of the County District Courts into Superior Court.

c. Implemented the Family Court through the merger of the Juvenile & Domestic Relations Courts and the Matrimonial Part of the Chancery Division of Superior Court as directed by constitutional amendment and statute. This was the focus of the 1983 Judicial Conference.

d. Supervised the establishment of the Tax Court as an integral element of the judicial system.

e. Initiated the long overdue improvement and modernization of the municipal courts; this was the focus of the 1985 Judicial Conference (Task Force on the Improvement of Municipal Courts).

f. Clarified the relationship and defined boundaries between judicial administration and the court operations functions of the County Freeholders, Clerks and Sheriffs in a manner that clearly described the respective functions of each and, by agreement, allowed greater case management control by Assignment Judges over court support personnel.

g. Reorganized the AOC so as to emphasize its service role and to provide greater assistance to court operations, particularly at the trial court level.

h. Reorganized the Appellate Division into seven four-judge parts; adopted a team approach to case processing in the Clerk's office; instead of cases being handled in assembly-line fashion,

individuals are now responsible for all operations relating to a case; established the position of Appellate Division Administrator to bring professional management to the Appellate Division.

2. Administration of the Trial Courts

a. As a result of the work of the Committee on Efficiency, upgraded trial court management by introducing a coherent management system with a clearly defined executive component (the Assignment Judge and the Trial Court Administrator ("TCA") as a team); management structure completed through a Presiding Judge and a Case Manager in charge of each trial division (Civil, Criminal, Family, General Equity), all reporting and responsible to Assignment Judge and TCA.

b. Expanded the role and responsibility of the Assignment Judge as the vicinage-level delegate of the Chief Justice in terms of judicial management and administration; incorporated efficiency and economy of operations as an important goal of the court system.

c. Upgraded the role and responsibilities of the TCA as the professional manager of judicial support operations at the vicinage level.

d. Introduced the use of professional case managers to run divisional support operations.

e. Merged many small court support units into unified divisions under common leadership, making the divisions both more responsive to judicial direction and more efficient in terms of time and resources; eliminated some middle management positions and placed those employees in operational roles. Some of the small support units that were merged are: in the Criminal Division: pretrial intervention, treatment alternatives to stree crime (TASC), bail, assignment clerk, records and motion clerks, presentence investigation, minute clerks; in the Family Division: juvenile intake, domestic relations intake, matrimonial intake, predisposition reports and custody investigations

(probation), records personnel from county clerk's office, child placement review unit, coordinators for juvenile conference committee and volunteers in probation.

f. Brought the probation department in each vicinage under sound management; focused probation's function on the supervision of probationers rather than on the multitude of pretrial tasks that had been dissipating its energy.

g. Increased the number of vicinages (from twelve to fifteen) so that each was more manageable.

h. Established a new institution -- the Conference of Presiding Judges, each chaired by an Assignment Judge -- that unifies the divisions on a statewide basis while maintaining the individuality of each vicinage.

3. Implementation of Businesslike Operations

a. Made economic and efficient management of the courts a priority concern.

b. Instituted a "cost center" approach to budget management and control at the state level.

c. Promulgated a directive on court budgets that made the Assignment Judges accountable for the economic operations of the vicinage and the proper management of court funds; trained the Assignment Judges and the TCAs in effective budget management.

d. Reduced the practice of ordering the Freeholders to provide unbudgeted funds to the courts in favor of using the regular budget process; established a means for Freeholders to appeal to special panel from trial court budget orders.

e. Required funds (total now is approximately $219 million) held by Surrogates in trust for minors to be managed on an intermingled

basis in order to increase the interest earned for the benefit of the minors. Typical arrangement was for each minor to have account, usually small, and almost always in local bank. By requiring intermingling of funds, Assignment Judges were able to negotiate significantly higher interest rates for the benefit of the minors, and by requiring that all banks throughout the State be allowed, in effect, to bid, the very best return to minors' funds was made possible.

f. Returned more than $15 million in excess interest earned on Superior Court Trust Funds to the rightful owners of those funds (or to the Treasury if not claimed by the owners); required the Trust Fund to credit interest from date of deposit to date of withdrawal.

g. Established the Court-Held Funds Committee to review and make recommendations with regard to the financial practices involving funds held or received by the various court entities (those funds in 1983 totalled approximately $330 million). Work not yet completed.

h. Professionalized the labor relations unit within the Judiciary to conduct collective bargaining with unions representing court employees.

i. Met state-level EEO general goals; required each vicinage to prepare its own EEO plan.

j. Emphasized staff education and training through consolidation of training units and enhanced training programs.

k. Brought computerization to the Judiciary after extensive master plan development; acquired mainframe and established Data Center.

l. Enhanced employee productivity through office automation, computerization, electronic mail, advanced microfilming.

m. Introduced effective management controls to minimize employment of substitute ("per diem")

court reporters; annual expenditure was reduced from $670,000 in 1980 to $380,000 in 1985.

n. Continued and expanded the sound recording program to control court reporting costs and improve the product.

o. Established better controls of jury costs through more efficient procedures.

p. Achieved better workforce utilization through such management strategies as job enrichment (by giving personnel responsibility for additional tasks as part of a team responsible for a group of cases from beginning to end) and matrix management (a system of managing and coordinating as one unit court support personnel from different offices).

4. Relationships with Other Branches and Agencies

a. Created a legislative liaison position.

b. Worked with both the Executive and Legislative Branches in the development and implementation of the Community Service Program; see section VI.B(3) at 29 below.

c. Clarified the role of the Judiciary Public Information Officer as the spokesperson for the entire Judiciary, thus ensuring prompt and reliable responses to inquiries from the media and the public.

d. Established a County/Judiciary Liaison Committee to resolve problems between courts and the counties.

e. Developed the Automated Child Support Enforcement System (ACSES) jointly with the Division of Public Welfare and the Office of Telecommunications and Information Systems (OTIS).

f. Worked with the Department of Corrections to help relieve jail and prison overcrowding; initiated development of automated inmate tracking

system to permit jail and court officials to maintain control of pretrial detention population, the first such program in the nation to accomplish this on a statewide basis.

g. Participated in the design and development of a child support enforcement structure in Essex County that recently received national recognition.

h. Worked with both the Executive and the Legislative Branches in the development and implementation of the Intensive Supervision Program (ISP); see section VI.A(3) at 28 below.

i. In conjunction with the Attorney General established the State Youth Services Commission and, with the help of the Commissioner of the Department of Human Services, twenty County Youth Services Commissions and twenty-eight Municipal Youth Services Commissions. The work of the commissions involves all the Executive Departments with youth-serving responsibilities in an attempt to coordinate delinquency prevention efforts.

j. Developed and implemented PROMIS/GAVEL in cooperation with the Division of Criminal Justice; system is now in place in fifteen counties. Effectiveness of implementation greatly increased when Criminal Division established with case manager position.

k. Worked closely with the Division of Criminal Justice, the Public Defender, and the County Prosecutors in developing and implementing speedy trial reforms.

l. Engaged in several joint efforts with the Department of Health to attack substance abuse and alcoholism, e.g., (a) Juvenile Alcoholism Initiative, (b) Certified Alcoholism Counselor Program, (c) Probation Substance Abuse Conference, and (d) Mercer County Substance Abuse Program.

m. Provided resources and data to the statutorily created Juvenile Delinquency Disposition Commission and Criminal Disposition Commission, for which we also provided staff. The AOC revised its entire juvenile reporting system

in order to provide the information needed by the Juvenile Delinquency Disposition Commission.

5. Bench-Bar Relationships

a. Expanded bench-bar communication at both the vicinage level (e.g., local committees) and the state level. There are presently at least sixty bar committees that meet with the judiciary at the vicinage level.

b. Began joint planning between bench and bar, e.g., Strategic Planning Seminar, Burlington County compact.

c. Involved the bar in major policy development initiatives in the areas affecting it. Bar's dissatisfaction with previous extent of involvement is being addressed.

6. Responsiveness to Legislative Initiatives

a. Graves Act -- Issued and strictly enforced directive regarding mandatory minimum sentences; effect was to prohibit any plea bargain that might weaken deterrent aspect of Act.

b. Violent Crimes Compensation Board (VCCB) -- Improved rates of imposition and collection in both Superior Court and municipal courts (from 1981 -- the first full year of VCCB availability -- to 1985, the VCCB collections in Superior Court increased from $225,639 to $848,493, and in municipal courts from $232,702 to $1,723,215). See also section V.E(2) at 27 below.

c. Family Court Legislation -- Integrated Crisis Intervention Units (CIUs) with court operations; worked closely with the Juvenile Delinquency Disposition Commission; expanded diversion programs.

d. Child Support Enforcement -- Increased collections from $90 million in 1979 to $200 million in 1986, as well as reduced backlog and

delay in child support cases, all despite declining federal reimbursement rate; adopted child support guidelines; developed child support hearing officer program to assist Family Division judges in handling the burgeoning child support calendar (adopted R.5:25-3 in 1985 in response to federal legislation and regulations); the hearing officer program has reduced waiting periods by twenty days and increased collections by $8 million.

e. Automobile Arbitration -- see section II.B(3) at 18 below.

f. Prevention of Domestic Violence -- Developed special procedures and conducted training sessions on this enactment, including training for judges to sensitize the bench concerning the criminality of domestic violence.

g. Supervised Visitation -- Implemented the legislation, including promulgation of procedures and arranging for sites.

h. Driving While Intoxicated (DWI) -- AOC is administering the Alcohol Education, Rehabilitation and Enforcement Fund created by statute and distributing the monies from it.

B. Case Management

1. Developed and implemented a philosophy of case management stressing individual and early attention to each case, elimination of wasted time and effort of litigants, witnesses and lawyers, quality of justice, and economy. Implemented through such devices as innovative and expanded intake functions (e.g., CJP in criminal, Family Intake Units), additional and improved diversion programs (CIUs in Family, TASC and PTI in criminal), fewer calendar calls in civil; use of individual calendars in complex civil cases. Redesigned the case management systems accordingly.

2. Developed a more professional support system -- based on teams -- to replace the inefficient and outmoded fragmented assembly line process.

3. Undertook a major effort to develop a breakthrough system of "differentiated case management"(DCM) in civil; this was the topic of the 1984 Judicial Conference (based on the report of the Schreiber Committee); DCM now being pilot tested in Bergen County.

4. Established a Speedy Trial Program both statewide and at the county level, a program that is regarded by the federal government as a model program. Initiated major unifying management structure reforms in criminal flowing from Speedy Trial, the Committee on Efficiency and the Management Structure Committee, including reduction in unnecessary middle management positions, consolidation of previously fragmented functions and responsibilities, de-bureaucratization of the process, creation of leadership positions (criminal presiding judge and criminal case manager) in each vicinage. Implementation still in process.

5. Strengthened the courts' relationship to the family and the community in the Family Divison through major structural revision.

6. Accorded Prevention of Domestic Violence cases special attention and priority hearing.

7. Improved the management information available to court managers through revising the weekly reporting forms and the monthly reports, as well as better planning; improved the ability to make projections of the need for judges statewide and in particular vicinages.

8. Developed a Child Support Hearing Officer Program; see section I.A(6)(d) at 15-16 above.

9. Developed management procedures allowing the Tax Court to exercise control over the progress of its cases during the pretrial phase.

10. Established, on a pilot basis, Vicinage Municipal Court Presiding Judges having vicinage-wide administrative responsibilities.

11. Worked with the municipal courts to improve the management of DWI cases and thus to reduce the backlog of such cases; developed an automated case management system for traffic violations.

II. Alternative Dispute Resolutions Programs (ADR)

A. Garibaldi Committee

1. Created the Committee on Complementary Dispute Resolution Programs (chaired by Justice Garibaldi) to convert a fragmented, ad hoc series of ADR initiatives into a coherent framework of programs complementary to traditional pretrial and trial procedures. The Court is in the process of distributing to applicant programs a legislative appropriation to fund the expansion and development of ADR approaches.

B. Particular ADR Programs

1. Civil Appeals Settlement Program (CASP) -- Began operation in 1981; utilizes a retired Supreme Court justice and two retired Appellate Division judges to settle appeals in appropriate civil cases. The Chief Justice has also empowered CASP judges to issue procedural orders as well. Over 40 percent of the cases selected for CASP settle at or after the case conference, thus saving significant Appellate Division judge time.

2. Comprehensive Justice Center -- Established the fourth "multi-door court" in the nation; has recently begun operation in Burlington County on a pilot basis, incorporating in one location unified intake and a variety of ADR mechanisms.

3. Automobile Arbitration -- In accordance with legislative mandate, the Judiciary has implemented this program; statewide rules were adopted effective January 1, 1985. During the first year of operation, the program disposed of over 14,000 auto negligence cases by settlement or arbitration award, without the need for a judicial hearing.

4. Law Clerk Mediation -- All counties now offer programs for the mediation of certain Special Civil Part cases by law clerks trained in mediation techniques (this program had its roots in Union County in 1980).

5. Early Settlement Panels (Matrimonial) -- Through the cooperation of the Judiciary and the Bar, nineteen counties have established Early Settlement Panel programs; the panels use volunteer attorneys to mediate contested economic issues in dissolution cases after filing but before the issues reach a judge.

6. Custody/Visitation Mediation -- Most counties have some form of custody/visitation mediation program or are developing one (with the cost borne either by the county or the parties, depending on the program); a study is presently under way ("the Hahneman Study") to determine which type of custody mediation program works best.

7. Municipal Court ADR Programs -- Increased the use of community dispute resolution programs at the municipal court level, e.g., Citizen Panels, Community Dispute Resolution Projects.

III. Regulation of the Practice of Law

A. Disciplinary Enforcement

1. Restructured System -- Pursuant to the 1982 recommendations of its Committee on Attorney Disciplinary Structure (Sullivan Committee), the Supreme Court (a) in 1983 created an independent Office of Attorney Ethics (OAE) under the direct supervision of the Court to administer the prosecutorial function of the disciplinary system, and (b) made the Disciplinary Review Board (DRB) a separate entity with solely judicial responsibilities, operating in much the same manner as the Appellate Division.

2. Random Audit Compliance Program -- This program was started in 1981 and is now the largest in the nation (five full-time auditors). The program's goals are to (1) educate attorneys as to proper accounting methods, (2) help attorneys avoid misusing trust funds, and (3) detect misappropriations.

3. Trust Overdraft Notification Program -- The Court implemented this OAE-developed program by which

OAE is notified by the bank should an attorney trust account be overdrawn.

4. Rules of Professional Conduct -- Appointed the "Debevoise Committee" to review the ABA Model Rules of Professional Conduct, which committee issued its report in 1983; in 1984 New Jersey became the first state to adopt those new rules. As indicated by the Debevoise Committee, the primary positive aspect of the RPCs lies not in their effect on the attorney disciplinary system, but in the fact that they provide more clear and more detailed guidelines for attorney conduct. RPCs adopted by Court significantly stricter than ABA's recommendation in various respects. For example, ABA's model RPCs express a preference for written agreements between lawyer and and client setting forth the basis or rate of the fee to be charged; the RPC adopted by the Supreme Court requires written agreements. Even before the RPCs were adopted the Supreme Court required written agreements for legal services in all dissolution matters.

B. Advisory Committee on Professional Ethics (ACPE)

1. In 1982 the Supreme Court increased the membership of the ACPE to eighteen, adding three public members.

C. Clients' Security Fund (CSF)

1. In 1982 the Supreme Court added one public member to the six-member governing board of trustees.

2. Work of this committee increased substantially for the years 1980-1985. The number of claims on which payment was made increased by 34 percent over the prior six-year period, and total amount paid and total amount recovered also increased.

D. Attorney Advertising

1. In 1984 the Court adopted rule amendments permitting certain advertising by attorneys (in response to the 1983 report of the Committee on Attorney Advertising).

E. Trial Attorney Certification (TAC)

1. Created the TAC Board in 1979 (it became fully operational in 1980). As of June 1, 1986, the Court had certified 633 attorneys as Civil Trial Attorneys and 206 as Criminal Trial Attorneys (41 attorneys hold both certifications).

F. Bar Admission

1. Effective in 1982, the Court revised the examination and grading process, after the 1981 report of the ad hoc Committee to Evaluate Bar Admissions (the "Jacobs Committee").

2. Skills and Methods Course -- Pursuant to the recommendations of the Advisory Committee on Bar Admissions (ACBA), the Court has approved certain changes to this course; other recommended changes remain pending.

G. Committee on the Unauthorized Practice of Law (UPLC)

1. In 1982, the Supreme Court increased the size of the UPLC to 23 by adding two public members.

2. Since 1979 the UPLC has disposed of 237 matters.

IV. Judges

A. Quality of Life

1. Replaced the former rigid vacation schedule with a flexible vacation policy.

2. Improved courthouse security through the work of the Committee on Court Security and the development of vicinage security plans.

3. Addressed the health and well-being of the judges through attention to personal safety (e.g., response to threats to judges), improved chambers' arrangements (particularly for Appellate Division judges -- Springfield and Hackensack), Judicial College courses and other courses on stress management and health concerns.

B. Judicial Integrity

1. Maintained strict standards of judicial integrity through a vigilant and dedicated Advisory Committee on Judicial Conduct (ACJC).

2. Through the Committee on Extrajudicial Activities ("Seidman Committee"), developed the first proposals in the nation for a comprehensive set of criteria to implement those provisions of the Code of Judicial Conduct relating to a judge's non-judicial activities.

C. Professional Performance

1. Developed and tested a Judicial Performance Program that continues to serve as the national model for such programs; permanent statewide implementation is pending.

2. Expanded educational and training opportunities for judges, including (a) management training for Assignment Judges, (b) an enriched New Jersey Judicial College and Municipal Court Judicial

Conference, (c) expanded out-of-state educational opportunities, (d) development of an ongoing systematic educational program for municipal court judges at the vicinage level, and (e) Family Division retreat for all Family Division judges and key staff. New Jersey's judicial education program is seen by other state systems as a model program.

3. Developed a broadened judicial self-improvement program, featuring an expanded audio and video cassette library, availability of videotaping of the judge on the bench for his or her self-review and critique.

D. Judicial Accountability

1. Revised the judges weekly reports to make reporting easier and more significant (e.g., reducing emphasis on bench time, recognizing that many judicial functions are conducted off the bench).

2. Instituted reporting of (a) "closed hearings" and "sealed records" (see section V.F(2) at 27 below), (b) attorney sanctions, and (c) judges' involvement in litigation.

E. Judicial Productivity

1. Equipped the judges with better tools to enhance their productive capacity, e.g., improved case management, case management training for judges, better trained staff, improved caseflow data, greater resources.

V. General Public Concerns

A. Accessibility

1. Court Schedules -- In 1982, implemented a full calendar year schedule, thus keeping the courts open

during the summer and Easter week. Some courts also now provide night small claims and child support (Family Division) sessions to accommodate people who work during the day.

2. Small Claims Reforms -- In 1981-82, the Court allowed the relaxation of the Rules of Evidence in small claims cases; uniform plain language forms were developed.

3. Reduction of Legal Costs -- Wasted attorney time has been reduced through motions reform (disposition on the papers submitted without oral argument), use of telephones for oral argument of motions, and use of videotaped depositions. A more economic litigation process has been fostered through alternative dispute resolution programs (e.g., automobile arbitration, Special Civil Part mediation, custody mediation), individual calendar management in complex cases, attorney settlement programs, and improved pretrial management of cases. In the pilot development stage (the Bergen civil differentiated case management pilot project) are trial date certain, elimination of unnecessary calendar calls, simplification of legal procedures, a change in the theory of calendaring from oldest-case-first to moving each case as ready, closer coordination with attorneys in setting schedules, and the use of scheduling orders.

4. Availability of Attorneys -- the Court has taken a number of steps to enhance the availability of legal services, e.g., rules permitting limited attorney advertising, Trial Attorney Certification program.

5. Linguistic Minorities -- In 1985 the Court received the report of its Task Force on Interpreter and Translation Services, which it had appointed to address the problems of court access encountered by linguistic minorities. As recommended by the Task Force, the AOC has created a unit charged with providing administrative and resource services in this important area; has developed a code of ethics for interpreters and published it for comment; has established a process to translate various court forms into Spanish; has provided court interpreter scholarships for an intensive summer program at Montclair State College. Major recommendations, which

probably will require legislative action, including funding, not yet implemented.

B. Greater Involvement of Public

1. Judicial Conferences -- Beginning in 1980 the Court revised the Conference format so as to focus attention on a single topic of critical interest to the bench, the bar, the public and others (1980, Speedy Trial Program; 1981, Efficiency in the Operation of the Courts; 1982, Probation Services; 1983, Family Court; 1984, Civil Case Management Procedures; 1985, Municipal Court Improvement; 1986, Speedy Trial Revisted). One of the keys to the success of the Conference has been the broad spectrum of knowledgeable and concerned persons, in addition to lawyers and judges, involved in the process.

2. Appointment of Lay Members to Committees -- Beginning in 1980 the Court has appointed lay members to standing committees and to ad hoc committees.

3. Advisory Board for Probation -- the Court created this citizen board to serve as its independent adviser on matters relating to probation.

4. Public Hearings -- the Court has held public hearings on proposed rule revisions.

C. Equal Justice

1. Task Force on Women in the Courts -- in 1982 the Court became the first in the nation to appoint such a committee to investigate gender bias in the judicial branch and develop educational programs to eliminate any such bias. The Task Force has served as a national model. Its work is ongoing.

2. Linguistic Minorities -- See section V.A(5) at 24-25 above.

3. Task Force on Minority Concerns -- the Chief Justice appointed this Task Force in January 1986 to undertake a critical examination of the concerns of minorities as to their treatment in and by the courts

and to propose solutions within the Judiciary's power to effect. The work of this Task Force is ongoing.

4. Equal Employment Opportunity (EEO) Programs -- Developed Model EEO/AA Vicinage Plan Guidelines to assist the vicinages in the development of vicinage plans; developed a full-day affirmative action training session for all judiciary employees; increased the number of minority law clerks apointed (from 5.6 percent in 1984-85 to 11.6 percent in 1985-86).

5. Bail Alternatives -- in 1981-82, instituted statewide the 10 percent cash bail program (this was a recommendation of the 1981 County Jail Overcrowding Study).

D. Jurors

1. Terms of Service -- Reduced the average term of juror service from 8.5 days in 1980 to 2.8 days in 1985; reduced terms of service in all counties to a maximum of one week and introduced one day/one trial programs in many.

2. Improved Conditions of Service -- Including production of standardized juror orientation film; one-step summoning procedures; call-in system; provision of nonsmoking areas, parking, and diversions such as games and magazines in the waiting room.

3. Jury Management -- Improved jury management procedures; provided training for jury clerks; gathered and reported data not previously available to the jury managers; provided monthly jury utilization reports; computerized most county selection and processing procedures.

4. Jury Lists -- Expanded the lists by integrating the voter registration lists with Division of Motor Vehicles' lists.

E. Victims/Witnesses

1. Special Problems -- The Court has addressed or is addressing the special problems victims and

witnesses encounter by virtue of language barriers, race or class differences and gender bias through various task forces. Additionally, each vicinage works with the prosecutor's victim/witness coordinator to provide necessary service and information to victims and witnesses; some counties have established separate waiting areas. Provide victims the opportunity for input into presentence investigation reports.

2. Restitution and VCCB -- In court year 1985 probation departments collected $4,348,781 in restitution compared to $1.5 million in 1979. Have also improved the VCCB imposition and collection rates (e.g., municipal court VCCB imposition rate has increased from 81.7 percent in 1981 to 98.6 percent in 1985). See also section I.A(6)(b) at 15 above.

F. Openness

1. Cameras in the Courts -- In 1980 the Supreme Court adopted guidelines permitting such coverage of court proceedings; in 1984 that was extended to all municipal courts as well (albeit on a continuing experimental basis).

2. Closed Hearing Report -- In 1982 instituted a process for regular reporting by the Assignment Judges of any closed proceedings or sealed records other than those pursuant to statute or rule.

3. Public Information -- Designated public information coordinators in each vicinge to assist the Assignment Judges with media inquiries.

VI. Probation

A. General

1. Redefined Role -- The Court has acted on recommendations of the Committee on Efficiency and the 1982 Judicial Conference on Probation to improve the probation system through the adoption of a mission statement, development of long- and short-term goals

and objectives, focusing on provision of supervisory services, establishing a uniform definition of probation officers' functions, and enhancing relations with private agencies, volunteers and the community. Provided statewide direction for probation, eliminating the sense of demoralization and lack of purpose.

2. Case Management Procedures -- Developed case classification procedures to allow for a weighted workload system in local probation departments and to ensure concentration of probation resources toward those individuals representing the greatest risk to the community.

3. Intensive Supervision Program (ISP) -- This is the most structured such program in the nation, one that has been termed "encouraging" by the National Institute of Justice. It was a recommendation made by the 1982 Judicial Conference and enacted and funded by the Legislature in 1983. As of the beginning of June 1986, 364 individuals were under ISP supervision. Once the caseload reaches 400, the estimated per annum cost per case should be approximately $6,000, compared to the $15,000 to $23,000 per capita annual cost to keep one person incarcerated (plus subsequent parole costs). Also, Essex County has implemented a local ISP program with the Supreme Court's approval.

4. Juvenile Units -- Established juvenile unit at the state level and coordinated activities statewide, assisting in the development of increased programs, e.g., substance abuse, recreation, employment and job readiness, high school equivalency and special tutorial, parenting skills, shoplifting prevention, etc.

B. Public Involvement

1. State Advisory Board for Probation -- As noted above, the Court created this citizen board to advise it on probation matters. County-level probation advisory boards have also been established in some counties.

2. Community probation supervision, which involves teams of citizens in the direct provision of

supervision services, is being tested in several counties.

3. Community Service -- Begun in 1982, the number of individuals (offenders) involved has increased from 2,500 that year to 17,029 enrolled as of February 28, 1986. In 1985 offenders performed a total of 1.1 million hours of community service for local government agencies and private nonprofit organizations (at minimum wage rates that would be valued at $4.2 million). Program recognized as national leader.

C. Meeting Client Needs

1. In 1983 the Court created the Vicinage Chief Probation Officer position, as recommended by the Management Structure Committee and the 1982 Judicial Conference. This facilitates more coherent planning, resource development, and program implementation, as well as greater accountability.

2. State Youth Services Commission -- see section I.A(4)(i) at 14.

3. Juvenile Probation Task Force -- In 1984 the AOC formed this Task Force of representatives from all local juvenile probation divisions to help improve the quality and quantity of probation services for juveniles as required in Family Division Implementation Plans; last year the Task Force was expanded to include representatives of other state agencies and shifted its focus to making recommendations to strenghten and improve juvenile probation services on a statewide and local basis.

D. Child Support Enforcement

1. Separate AOC Unit -- In 1980 the AOC organized a separate unit to handle this area, resulting in improved administration of child support services. Collections for the most recent federal fiscal year exceeded $203 million for 226,000 cases.

2. New Programs Developed and Implemented:

a. Tax Refund Offset -- Program allows offset against federal and state income tax refunds; for tax year 1985 this initiative will produce more than $15 million.

b. Child Support Hearing Officer Program -- see section I.A(6)(d) at 15-16 above.

c. Income Withholding -- Enabling legislation enacted in 1985; since then 20,000 income withholding orders for child support have been issued by the courts.

d. Child Support Guidelines -- Adopted by the Court in May 1986.

e. Uniform Reciprocal Enforcement Support Act (URESA) -- Implemented a registry to expedite the handling of these matters.

f. Automated Child Support Enforcement System (ACSES) -- see section I.A(4)(e) at 13 above.

10 Malden Court
Bergenfield, N.J. 07621
July 17, 1986

Senator Edward O'Connor, Chairman
Judiciary Committee
State House Annex
CN 068
Trenton, N.J. 08625

Dear Senator O'Connor:

In recent years, our N.J. Supreme Court has usurped the role of the legislature. One example of their "writing laws," instead of interpreting them, was their mandate that our state must pay for Medicaid abortions. Please do not support the re-appointment of Chief Justice Robert Wilentz. We need better judges on our Supreme Court.

Please let me know of your stand on this appointment.

Very truly yours,

Marie G. Orlando

Marie G. Orlando

153X

Robert L Salvatori
34 Cedar Ln
Closter NJ 07624

July 12, 1986

N. J. Senator Edward O'Connor
Senate Judiciary Committee
State House Annex CN 068
Trenton, N. J. 08625

Dear Senator:

This is to urge you to vote against the confirmation of Robert Wilentz as judge of the N. J. Supreme Court. He is solidly pro-abortion and, under his tutelage, the Court tends to impose its beliefs in an effort to reject all legislation which favors pro-life.

Sincerely,

R. Salvatori

154X

July 13, 1986

Senator Edward O'Connor

Dear Sir,

At the suggestion of Senator Feldman, I am writing you to request you thwart the re-appointment of Justice Robert Wilentz

I do not believe he represents the thinking of a majority of the voters of Bergen Co. on the abortion issue

Sincerely,
Anne M. Billings

MRS A. M. BILLINGS
56 MAPLEWOOD AVE.
BOGOTA, N.J.
07603

VINCENT CAPOBIANCO
149 ARGYLE PLACE
KEARNY, NEW JERSEY 07032

July 2, 1986

Honorable Edward O'Connor
Chairman-Senate Judiciary Committee
Room 281
State House Annex
Trenton, New Jersey CN068 08625

Dear Senator O'Connor:

Attached is copy of letter I sent to Senator Garibaldi as a follow up on previous correspondence.

Rather than sending a copy of the letter to each Committee member I am sending you my views which I trust you will bring to the attention of the full Judiciary Committee.

Thank you for your courtesy in this matter.

Sincerely,

Vincent Capobianco

VC:ek
Attachs.

156X

VINCENT CAPOBIANCO
149 ARGYLE PLACE
KEARNY, NEW JERSEY 07032

July 2, 1986

Honorable Peter P. Garibaldi
256 Route #1
Edison, New Jersey 08817

Dear Senator Garibaldi:

Reference is made to my letter of February 27th., last concerning the re-appointment of Chief Justice Robert Wilentz.

Rumors have recently surfaced that may be or may not be true that Mr. Wilentz is not a bona fide resident of the State of New Jersey. It has been alleged that the Chief Justice is chauffeur driven every day to his residence in New York City.

I believe the Committee should intensively investigate this rumor and, in fact if true, the Chief Justice has perpetrated a fraud of the most blatant kind on the residences of the State of New Jersey and does not merit re-appointment to a new term.

It is acknowledged that Mr. Wilentz and members of his law firm wield great power in all sections of this State, but that should not dissuade you and your colleagues in taking a statesman like position and using the mandate under the New Jersey Constitution to exercise Senatorial Courtesy and block the re-appointment. This is not an issue where political expedience should govern.

Let us hope that you and your colleagues will rise to the occasion and not exercise double standards in this very critical re-appointment.

I might add that these statements have been voiced by numerous business associates, community leaders, officers of various fraternal and community organizations and responsible people I have spoken to.

The question is one, I believe, of serious public morality.

Sincerely,

Vincent Capobianco

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)EPARTMENTS AND OFFICERS

ny other terms and conditions not

7.

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n is hereby directed to issue and
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to this act. Any rules and regula-
ereunder may be revised, repealed
s the Civil Service Commission may
ıd regulations issued and promul-
vith the Secretary of State.

References

C.J.S. Officers and Public Employees §§ 98, 110, 128, 135.
C.J.S. Public Administrative Law and Procedure §§ 87, 91.

sistent herewith are hereby super-

agraph, sentence or other part of
ınal or invalid, such judgment shall
he remainder of this act, but shall
e section, subsection, paragraph,
directly involved in the controver-
have been rendered.

References

ARTICLE 2. APPOINTMENT, QUALIFICATIONS, ETC., OF OFFICERS AND EMPLOYEES IN GENERAL

Cross References

Civil service, appointments and promotions, see Const. Art. 7, § 1, ¶ 2.
Discrimination by reason of sex or marital status prohibited, see § 10:1–1.
Oath of allegiance, see § 41:1–3.
Oath of office, see Const. Art. 7, § 1, ¶ 1.
Tenure of office of state employees, volunteer firemen with exemption certificates, see §§ 40A:14–60, 40A:14–64.
Witnesses, duty of public employee to appear and testify, see § 2A:81–17.2al et seq.

Library References

Officers and Public Employees ⇐8 et seq., 18 et seq.
States ⇐46 et seq.

C.J.S. Officers and Public Employees §§ 15, 16, 36.
C.J.S. States §§ 61, 80, 84, 102.

52:14–7. State officers must reside in state; transfer, etc., of office; penalty; engineering skill; ouster from office

Except as otherwise provided by law, every person holding an office in this State, under the authority thereof, shall reside in this State and execute such office.

If any person holding any such office shall attempt to let, farm out or transfer such office or any part thereof to any person, he shall forfeit the sum of fifteen hundred dollars ($1,500.00), to be recovered with costs by any person who shall sue for the same, one-half to the prosecutor and the other half to the treasurer for the use of the State.

No person shall be appointed to or hold any office in this State who has not the requisite qualifications for personally performing the duties of such office in cases where scientific engineering skill is necessary to the performance of the duties thereof.

Any person holding or attempting to hold an office in violation of this section shall be considered as illegally holding or attempting to hold the same, and the Superior Court may, in a proceeding in lieu of prerogative writ, give judgment of ouster against such person, at the relation of any officer of the State.

Amended by L.1953, c. 49, p. 853, § 3.

Historical Note

Source: Rev.1877, p. 743, § 1, Amended by Rev.1877, p. 745, § 7 [C.S. p. 3783, § 1].

The 1953 amendment rewrote the last part of the last paragraph which formerly read:

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"The supreme court may give judgment of ouster against such person upon information proceeded upon in such manner as is usual in cases of information in nature of quo warranto, at the relation of any officer of the state"

Administrative Code References

Rules for agency rulemaking, see N.J.A.C. 1:30–1.1 et seq.

Cross References

Actions in lieu of prerogative writs, see Rule 4:69.

Library References

Penalties ⇐1 et seq.
States ⇐48, 52, 75.
C.J.S. Penalties § 1.

C.J.S. States §§ 61, 83, 91, 93, 94, 96, 98 to 102, 134 to 136.

Notes of Decisions

In general 1
Residence 2

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1. In general

A position is analogous to an office, in that the duties that pertain to it are permanent and certain, but it differs from an office, in that its duties may be nongovernmental, and not assigned to it by any public law of the state. Brodman v. Rade, 2 N.J.Misc. 364, 127 A. 249 (1925).

An office is a place in a governmental system created or recognized by the law of this state which, either directly or by delegated authority, assigns to the incumbent thereof continuous performance of certain permanent public duties. Id.

An employment differs from both an office and a position, in that its duties, which are non-governmental, are neither certain nor permanent. Id.

2. Residence

Public interest is advanced by requiring public employees to reside within political unit providing their pay. Kennedy v. City of Newark, 29 N.J. 178, 148 A.2d 473 (1959).

Action taken by Legislature in requiring certain state, county and municipal officers and employees and employees in police and fire departments to be residents of employing unit was wholly consistent with thesis that area not covered by legislation should be left to local determination upon principle of home rule and, notwithstanding contention that Legislature had differentiated between office and employment, and that it had thereby evinced legislative policy that continued residence should not be required of other public servants, ordinance requiring municipal employees to reside in city as condition for continued employment could not be held to conflict with legislative policy. Id.

52:14–8. Appointment of certain officers by legislature in joint meeting

All officers who, before and at the time when the present constitution of the state went into effect, were directed to be appointed by the council and general assembly in joint meeting, and whose appointment is not otherwise specifically provided for by the present constitution, may be appointed by the senate and general assembly in joint meeting.

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Historical Note

Source: Rev.1877, p. 745, § 8 [C.S. p. 3771, § 7].

Library Referenc

States ⇐46.
C.J.S. States §§ 61, 80, 84, 102.

52:14–9. Election to office by joint to qualify within two m

If any person elected to any office Assembly in joint meeting shall negle such office within two months after b by any member of the Senate or Gene in which said officer resides, or by the said election shall thenceforth be void

Amended by L.1953, c. 49, p. 854, § 4.

Historical N

Source: Rev.1877, p. 903, § 20 [C.S. p. 3771, § 20].

Library Refer

States ⇐46 et seq.
C.J.S. States §§ 61, 80, 84, 102.

52:14–10. Methods of resigning fr

Whenever a state officer holding a of the joint meeting of the legislatu ing, he shall present such resignati during the sitting of the legislature All other state officers desirous resignations, in writing, to the go shall be filed in the office of the secr made in any other way or pretend

[1] Functions, powers and duties transferred by secretary of state.

Historical

Source: Rev.1877, p. 744, § 3 [C.S. p. 3784, § 3].

Chief justice's credit history is private info not for public

By HERB JACKSON
and TOM HESTER
Home News Trenton Bureau

Sen. Peter P. Garibaldi, R-Middlesex, may have violated the privacy rights of state Supreme Court Chief Justice Robert N. Wilentz by misusing information about Wilentz's credit history.

One federal official said yesterday the incident "raises serious questions" about the legality of Garibaldi's actions, and a credit-rating company attorney said obtaining credit records for improper reasons is a criminal violation.

Garibaldi said he did not obtain the information personally but was morally obligated to release it because it supports his contention that Wilentz is not a New Jersey resident.

'Handed to me'

"I didn't seek this information, it was handed to me," said Garibaldi, who revealed that he holds two reports on Wilentz prepared by Trans Union Credit Co. of Chicago. One was provided by a "concerned New Jersey resident" who works at Brooks Brothers clothing store, he said. He provided The Home News with a copy of the other report but would not say how it was obtained.

A Trans Union attorney said the report was issued to Credit Bureau of Port Chester, a Westchester County, N.Y., private credit service. Company officials could not be reached for comment last night.

Garibaldi said both reports raise questions about Wilentz's residency, the main issue the senator contends makes Wilentz unqualified for another term as chief justice. The Senate Judiciary Committee is meeting today and is likely to approve Wilentz's renomination, which would give him tenure as head of the state's highest court.

Garibaldi said yesterday he does not expect to testify at the hearing but will attend. He said Sen. John Dorsey, R-Morris, a committee member, has promised to make sure his questions are asked.

"It depends on what I hear and see. If I'm not satisfied, I may ask to be heard as a witness," Garibaldi said.

Wilentz's official residence is a Water Street, Perth Amboy, apartment, but Garibaldi said the justice receives credit bills at an Upper East Side co-op in Manhattan. The Port Chester report, dated June 27,

See CREDIT, Page A20

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CREDIT

Continued from Page A1

lists his address as East 79th Street and the Water Street apartment as a prior address. It shows he has charge accounts in Manhattan stores such as Altman's, Bloomingdale's, Bonwit Teller, Brooks Brothers, Lord & Taylor, Macy's and Saks Fifth Avenue.

Wilentz is a registered voter in Perth Amboy and also owns a home in Deal. Amy Wilentz, 31, the justice's daughter, was a registered voter at the Manhattan address from 1972 through 1978, city records show. Wilentz never voted in the city while he owned the co-op, elections officials attest.

State law requires that government officials reside in the state, but it is unclear how the law defines "reside" and whether judges are "officials." Garibaldi has asked, through the media, that the state Supreme Court appoint an attorney to determine whether Wilentz is violating the law. He said he may ask Senate Minority Leader S. Thomas Gagliano, R-Monmouth, to provide a lawyer from the Republican staff if the court does not act.

At a Trenton press conference Tuesday, Garibaldi said credit information "can be obtained by anyone over the telephone," but he conceded yesterday it could only be obtained through a credit company subscriber. He defended making the information public, however, even if it violated the law.

"I would be violating a greater moral law if I didn't bring it to someone's attention, especially my constituents," he said. "They have a genuine concern and belief that here was an individual who was sitting as chief justice in the state of New Jersey and that this individual is breaking the law" on residency.

Oscar Marquis, general counsel for Trans Union, said the company only provides credit information to subscribers, who agree to use only for legal purposes. The subscribers sign contracts saying they will abide by the federal Fair Credit Reporting Act, which allows distribution to retailers considering granting credit and to insurance companies or businesses making background checks for positions where the employee will handle money. Non-subscribers can only obtain the information if

y have a court order, Marquis
i.

Grand juries can't get credit
ords with a subpoena. They have
ave an order signed by a judge,"
rquis said. He said if a person ob-
ed the records solely to provide
n to Garibaldi, that person could
subject to imprisonment or fine.

Obtaining the information under
e pretenses is a criminal viola-
," he said. When Trans Union
ns of someone using the informa-
improperly, "we cut them off,"
said, unless it is a major sub-
iber, such as Sears, where they
that the offending employee be
d. He said he will discuss investi-
ing the Wilentz issue with corpo-
e executives.

n official with the Federal Trade
nmission, which monitors credit laws, said Garibaldi's use of information obtained for other purposes "raises very serious questions."

"I'm not sure the senator had a permissable purpose for obtaining the information," said Salvatore Sangiorgi, a public information officer for the FTC. He said Brooks Brothers may have legally obtained the record if it was a Trans Union subscriber but could not have turned it over to Garibaldi.

Brooks Brothers officials did not have an immediate comment on the situation.

According to Garibaldi, the report obtained through Brooks Brothers starts with Wilentz opening an account in February 1964 and listing his address as Marine Place, Deal; later that year, the address changed to West 23rd Street, Manhattan, and again the same year to West 24th Street; in November, 1965, to 151 High St., Perth Amboy; and in 1983 changed to East 79th Street, Manhattan.

Garibaldi said the report never shows a Water Street, Perth Amboy address. He says Wilentz switched back to Perth Amboy in November 1965 and was elected to the state Assembly in 1966.

"This may have constituted a violation of law. In order to run for the Legislature, you must be a resident of the state for one year," he said.

Wilentz has remained silent during the two months Garibaldi has questioned his qualifications.

Home News staff writer Neil Reisner contributed to this story.