
Committee Meeting

of

SENATE JUDICIARY COMMITTEE

*“To consider the nomination of Peter G. Verniero
to be an Associate Justice of the Supreme Court”*

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: May 5, 1999
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator William L. Gormley, Chairman
Senator James S. Cafiero, Vice-Chairman
Senator John O. Bennett
Senator Louis F. Kosco
Senator Robert J. Martin
Senator John J. Matheussen
Senator Norman M. Robertson
Senator John A. Girgenti
Senator John A. Lynch
Senator Edward T. O'Connor Jr.
Senator Raymond J. Zane



ALSO PRESENT:

John J. Tumulty
*Office of Legislative Services
Committee Aide*

Laurie Ruffenach
*Senate Majority
Committee Aide*

Emery J. Ungrady Jr.
*Senate Democratic
Committee Aide*

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SENATOR WILLIAM L. GORMLEY (Chairman): The hearing today will be on the nomination of Peter Verniero of Annandale to be an Associate Justice of the Supreme Court.

Mr. Verniero, I would ask you to stand for the oath. (witness complies)

Do you swear or affirm that the testimony you're about to give here today is true, correct, complete to the best of your knowledge, information, and belief?

ATTORNEY GENERAL PETER G. VERNIERO: I do, so help me God.

SENATOR GORMLEY: Thank you.

We ask that you make an opening statement, limiting your time to approximately 15 minutes. And following that we will have two witnesses. Following the two witnesses, we will have the commencement of questioning by the Committee. Following the first round of questioning, we will have testimony of additional witnesses. We will then go to a second round of questioning by the Committee.

General, we would appreciate your comments at this time.

ATTORNEY GENERAL VERNIERO: Thank you, Mr. Chairman and members of the Committee. Good morning.

It is with great respect for the Judiciary that I thank Governor Whitman for her confidence in nominating me to the Supreme Court and that I ask for your consent to my appointment.

There is some personal background information that you might find relevant to my nomination at the outset of this hearing. I graduated with

highest honors and as a member of Phi Beta Cappa from Drew University in 1981. I graduated with honors from Duke University School of Law in 1984 and was admitted into practice that same year. Following law school, my first full-time legal position was as a law clerk to the New Jersey Supreme Court, specifically to Associate Justice Robert Clifford. From there, I worked in two highly respected law firms, Pitney, Hardin, Kipp, and Szuch; and Herold and Haines.

While in government, I have served as the Governor's Chief Counsel, the Chief of Staff, and Attorney General. These are three of the most demanding jobs in the executive branch. As the Governor's Chief Counsel, I reviewed all legislative enactments and executive orders prior to the Governor's approval and signature. I regarded the Counsel's Office as a medium-sized law firm and organized and managed it as such. As Chief Counsel, I also authored a Code of Conduct for the Governor's Office, the first comprehensive ethics code for that Office in over 20 years.

As Attorney General, I have been involved directly with several landmark cases. I personally appeared and argued in defense of Megan's law before the U.S. Court of Appeals for the 3rd Circuit, winning approval of the law in August of 1997. At the time, this was the first decision by any Federal appellate court upholding the Megan's law of any state. Similarly, I appeared before the New Jersey Supreme Court in *Abbott v. Burke*, arguing in favor of the State's urban education plan. The case resulted in the Court's unanimous acceptance of the State's plan in May of 1998, which concluded nearly 30 years of education litigation.

Other areas that the Committee may find relevant: I'm the first Attorney General to promulgate a comprehensive Code of Conduct for county prosecutors -- the Division of Criminal Justice and myself -- that bans all political activities. The Code removes even the slightest perception of political bias on the part of law enforcement.

I personally took part in negotiations with the tobacco industry, which yielded a first-of-its-kind agreement containing historic restrictions on the industry designed to protect children and all consumers from the harmful effects of tobacco-related products. The agreement also allocated \$7.6 billion to New Jersey, the largest civil award in the State's history.

In the area of civil rights, my Office has worked hard in fighting bias crime, and I have spoken at schools delivering a strong message of tolerance to young people. I am pleased that the Antidefamation League and the New Jersey Chapter of the National Conference of Christians and Jews have honored me on separate occasions for my work in eliminating bigotry and bias in New Jersey. And, as discussed in length last week, my Office became the first of any Office to candidly address the issue of racial profiling and to propose rigorous reforms to ensure its complete elimination by State Police.

On all of these issues, I was assisted by the dedicated professionals in my Office and the men and women in law enforcement who serve our state extremely well.

Leading up to these hearings, much has been said of my experience and age. So allow me to address these issues head-on. It is true that I have never tried a case before a jury, but it is also true that many of the State's finest attorneys have never tried a case before a jury. As proof of this fact, at

least two of the seven current justices of the Supreme Court have never tried a case before a jury. It is true that I have spent the last several years in government as opposed to private practice, but it is also true that the majority of my tenure, my years as Chief Counsel and Attorney General have been expressly legal in nature. Considering that a good part of the Supreme Court's time is spent interpreting statutes and addressing government-related issues, my tenure as Chief Counsel and Attorney General make me uniquely qualified to serve as Associate Justice. Perhaps this is why five of the seven justices of the current Court have served in similar executive branch positions.

It is true that at age 40 I would become the youngest State Justice, but it is also true that several justices of the United States Supreme Court have served at about the same age and younger. I hope we never erect artificial barriers such as age to key governmental positions. It is true that I have never been a judge, but it is also true that four of the seven justices of the current Court had no prior judicial experience before ascending to their positions. What I do have and what, frankly, most other lawyers in New Jersey do not have is that unique blend of experience as a Supreme Court law clerk, Chief Counsel, and Attorney General, positions that have exposed me to a complex array of civil, criminal, constitutional, and legislative issues. The very types of issues that come before this court.

As the Committee is aware, I would be replacing Justice Stewart Pollock, a person for whom I have great regard and respect. It may be interesting for the Committee to note that in supporting Justice Pollock's nomination in 1979, the *New Jersey Law Journal* expressed in an editorial, that the Justice's lack of judicial experience should not disqualify him for the

highest court. Justice Pollock was then Governor Burn's Chief Counsel. The editorial went on to say, and I quote, "Experience in other departments of the government is an important attribute of an appointee to the Supreme Court, which is called upon to shape matters of large public policy effecting our state and all branches of government."

Senators, allow me to close by saying, as a justice, I will approach each case with an open mind and decide each case based solely on the law and facts before me. The Supreme Court of New Jersey has rightly earned a reputation for scholarship, integrity, and independence. I will do nothing but enhance this reputation if you see fit to consent to my nomination.

Thank you.

SENATOR GORMLEY: Thank you, General. Would you have a seat, please? (witness complies)

Governor Tom Kean.

Governor Kean, we appreciate your statement at this time.

GOVERNOR THOMAS H. KEAN: Mr. Chairman, members of the Committee, it is my great pleasure to appear before you. I respect you as a Committee, and I respect you individually.

SENATOR GORMLEY: Excuse me, Governor, we need the red light on. (referring to PA microphones)

GOVERNOR KEAN: Am I on now?

SENATOR GORMLEY: You're on now.

GOVERNOR KEAN: I appreciate very much the opportunity to spend a few minutes before you this morning. I respect you not only as a

Committee, but I respect you individually, as friends who've worked together with me for many years.

I've known the nominee for almost 20 years. I knew him first as a young man who was just graduating from college on his way to law school. What impressed me at that point about him was that his whole interest in going on to do and study law was because he wanted to do public service. It wasn't because he wanted to serve in a large law firm or that he wanted to do any of a number of things. It was because he was imbued with the ideas that one way or another, he wanted to serve the public. And of course that's what he did.

I have followed his career since then. I have seen him mature, I've seen him grow, and with each passing year, I've been impressed by that particular progress. I'm impressed with his integrity, he's always been strong; his intelligence, which is exemplified not only by his work, but by his work both in college and at Duke; and by his judgement in a number of occasions.

I have no problem whatsoever in coming before you and telling you that, in my judgement, he is qualified to be a member of the highest court in this state.

Thank you, Mr. Chairman. I'd be glad to answer any questions.

SENATOR GORMLEY: Questions from members of the Committee?

SENATOR ZANE: Governor Kean, I appreciate your comments.

During your administration there was, I believe, two nominees that were not approved by the State Bar, is that not correct, that you still continue to support those nominees?

GOVERNOR KEAN: Yes, there were, I think, more than two, actually. I remember -- I can remember three off the top of my head.

SENATOR ZANE: Okay, all to the bench, Governor?

GOVERNOR KEAN: Yes.

SENATOR ZANE: Okay.

Do you feel that the-- Why, then, do we have a screening committee of lawyers that recommend and nominate two people that sat in your position and that sit in your position today? Why do we have them? Why waste the time?

GOVERNOR KEAN: Well, it's not a waste of time at all. The work of that committee was extremely helpful to me. And there were other occasions when they brought to my mind some facts which led me to withdraw nominations. But they are-- I always considered them advisory. If I had to make a nomination to the Court, I talked to, often retired, Supreme Court Justices. I talked to heads of major law firms and with senior lawyers who were beyond any ambitions themselves. I reached out in a number of ways to try to find the best possible nominees for the Court. I considered the committee advisory in the cases you mentioned.

For instance, one of them, I remember, was Judge Sapp. Judge Sapp was a very able black woman who got caught up, I believe, in the politics of (indiscernible) in Mercer County. I reviewed what the Bar Association had said, and it didn't seem to me to make sense under our qualifications. So I went ahead and nominated her. And the Senate agreed with me and approved. The other two cases were interesting because they may pertain a bit to this one. Both cases, the Bar Association decided that somebody's service in government

was not counted the same way as if they had served in a law firm. In both cases, people had served with honor in this body -- in the Senate of the State of New Jersey and in the United States Congress. And because they did not practice law during that time, the Bar Association said they didn't think they were qualified. In both cases I thought about their objections; decided their service in this body, the New Jersey State Senate, their service in the United States Congress was qualified in a sense and attributed to their overall attributes. Those two cases, again because I consider the Bar Committee advisory, I submitted those nominations to this body, to the New Jersey Senate. In both cases, the New Jersey Senate approved them unanimously. So, in those three cases -- there may have been others, I don't remember, but in those three cases, I accepted, with gratitude, the recommendation of the Bar, but I felt that other factors weighed in effect of their nomination.

SENATOR ZANE: Do you have any personal feelings regarding-- You know-- I think I want to draw a parallel. Thank God you're here. You went through some very serious surgery this year, did you not, within the past year or so?

GOVERNOR KEAN: A few years ago, yes.

SENATOR ZANE: How careful were you in selecting your physician?

GOVERNOR KEAN: I wasn't careful at all because I was taken to the hospital and didn't have any choice. I woke up and thank God I had had a good one. (laughter)

SENATOR ZANE: I would imagine you, as Governor Kean appearing in that hospital -- certainly you had the best and probably the most qualified. Wouldn't you think that's fair to say?

GOVERNOR KEAN: I think-- I hope, very much. I know he was qualified because I'm here and happy to be here.

SENATOR ZANE: You certainly would not have wanted a resident.

GOVERNOR KEAN: I would have wanted-- You always want somebody who is totally qualified to do those things.

SENATOR ZANE: And how do you determine what qualifications are to be a Supreme Court Justice?

GOVERNOR KEAN: Well, let me tell you how I did it because I did it in two different ways for two different nominees.

The first person I nominated-- I had a very strong feeling that it was shameful in a way that in all the years of New Jersey's history, we had not had a woman serve on the Supreme Court of the State of New Jersey. So I went out looking for the best qualified woman. I talked to a number of attorneys, I talked to members of the Bar Association, I talked to people outside the law profession as to who was the most qualified, and it was a pretty unanimous opinion who the most qualified was. And I nominated that woman, and she has served with distinction on the Court ever since.

But the second nominee I did totally differently. I've known Gary Stein for 25 years. We served in the Army together. And he seemed to me, always, the kind of person who had the intelligence -- he was a legal scholar -- the judgement, the integrity to be a superb justice of the Supreme Court.

Now, I did that nomination, in a sense, based on my knowledge of that human being and my judgement as Governor that he would serve this state very well. And I believe he has served this state very well.

So the two-- In a sense, governors use different methodologies to pick members of the Supreme Court. I used different methodologies in those two, but I think those two nominees, picked in different ways, have both served this state very, very well.

SENATOR ZANE: Both approved by the State Bar Association.

GOVERNOR KEAN: Both of those were approved by the State Bar Association. Correct.

SENATOR ZANE: I have no further questions.

Thank you.

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: Thank you, Mr. Chairman.

It is a pleasure to see you, Governor Kean. As a sidelight, I have the ultimate respect for you and your stewardship here as Governor. I have been here, and you're the best Governor I've served under in the vision of your stewardship. Contrary to what most people thought, you were very astute politically. And you understood the inner workings of government and the people associated with government, and you were extremely communicative. And I think everybody here, in those years, felt like a really strong part of the process. And I only wish you were here today, so we didn't have the shutdown. We'd have the court authority on issues like that where there is a lack of communication.

You've known Peter for 20 years. I'm told that in your landslide victory in 1981 that Peter was a driver for the campaign.

GOVERNOR KEAN: Yes, Peter was, at that point -- he came and volunteered--

SENATOR LYNCH: Right.

GOVERNOR KEAN: And early in that primary, I was not the favor of -- very few people were volunteering. And so Peter drove me in that period, until he went away to Duke. He drove me until law school started.

SENATOR LYNCH: So he drove you in the spring and summer of 1981.

GOVERNOR KEAN: That is correct.

SENATOR LYNCH: And how had you come to know him?

GOVERNOR KEAN: I hadn't come to know him before that point.

SENATOR LYNCH: So that was your first contact.

GOVERNOR KEAN: That was my first contact with him, correct.

SENATOR LYNCH: Did you-- Did he stay in contact with you subsequent to -- while he was in Duke Law School?

GOVERNOR KEAN: On and off. Not on a regular basis, but on and off. I'd see him--

SENATOR LYNCH: And then, you know, he had a clerkship with Justice Clifford in the -- from September of 1984 to August of 1985. You were aware of that?

GOVERNOR KEAN: I was aware of that.

SENATOR LYNCH: Had you sent a letter of recommendation in for him?

GOVERNOR KEAN: I don't even remember that, Senator. I may well have.

SENATOR LYNCH: Then, when he finished that clerkship in August of 1995, you were in the midst of a reelection campaign. This time it was a real landslide. Did Mr. Verniero work for your campaign that fall, in September, October, November, to your knowledge?

GOVERNOR KEAN: He didn't work directly in the campaign headquarters. Whether or not he worked directly for the campaign, I don't remember. I hope he supported me.

SENATOR LYNCH: And then you stayed communicative with him--

GOVERNOR KEAN: Yes, we'd see each other.

SENATOR LYNCH: --subsequent years he became the -- on the Courter campaign staff, and then he became Executive Director of the Republican State Committee while you were still Governor?

GOVERNOR KEAN: Yes, I'd see him in that period, on and off.

SENATOR LYNCH: So you had related to him in that capacity, while you were still Governor, when he was Executive Director of the State Republican--

GOVERNOR KEAN: I would see him in those periods.

SENATOR LYNCH: I want to read you a quote from a Governor's Counsel, Farmer, who has been stated as, I believe -- I don't know

whether the nomination is in, but the Governor said she's going to nominate him as Attorney General if this nomination clears.

In speaking before that our State Bar convention last November--

GOVERNOR KEAN: Who's speaking?

SENATOR LYNCH: Mr. Farmer.

GOVERNOR KEAN: Oh, I see.

SENATOR LYNCH: Who was the Governor's Counsel.

GOVERNOR KEAN: Yes.

SENATOR LYNCH: He said that the State Bar's review process is, "The single most important reason New Jersey's Judiciary has such a prominent national reputation." Do you agree with that?

GOVERNOR KEAN: No. I agree it's a very important part of the process, Senator. I would not agree it's the most important reason because I think there are a score of reasons, really, why we've had such a wonderful Court.

SENATOR LYNCH: We've seen -- you've seen -- we've all seen people coming to the Supreme Court in what you might call an alternate route, coming through the executive branch of the government, correct?

GOVERNOR KEAN: Correct.

SENATOR LYNCH: And one of those occurred on your watch, Justice Stein. But Justice Stein had been in a private practice with a very active private practice for over 25 years before you brought him in as the head of your Office of Planning -- Policy Planning, correct?

GOVERNOR KEAN: Correct.

SENATOR LYNCH: And Justice Garibaldi, from your knowledge, had been in the private practice for 15-plus years--

GOVERNOR KEAN: Correct.

SENATOR LYNCH: --had been President of the State Bar, had been involved in a lot of pro bono activity, had been a municipal court judge for a couple of years, and had a very active practice, correct?

GOVERNOR KEAN: That's correct.

SENATOR LYNCH: Governor, thank you very much.

GOVERNOR KEAN: Thank you.

SENATOR GORMLEY: Senator Girgenti has a question.

SENATOR GIRGENTI: Thank you very much, Mr. Chairman.
Governor--

SENATOR GORMLEY: Excuse me. (referring to PA microphone noise)

It's not me, John.

SENATOR GIRGENTI: Thank you.

Governor, the attorneys which you appointed to the Supreme Court, as you've mentioned already, had extensive legal experience. Your appointments to the Court averaged over 20 years of private legal practice and had 17 years or 18 years of public legal experience, from looking at the resumes we were looking at last night, and they were the two that you mentioned you were involved in appointing.

How does General Verniero's experience make him exceptional enough, in your mind, to preclude him from the qualifications you've obviously sought out in your appointees?

GOVERNOR KEAN: When you appoint -- looking for different qualifications in different individuals. What you're really looking for, in my mind, is somebody who will be an outstanding justice. You used the average, but among my many judicial appointees, you will find very variance of that average. Some people have served longer, some people have served less, some people came in by, as I say, through experience in this body and others through public service in other ways.

I thought public service, by the way, was an extraordinarily important qualification. And I believe in public service, but length of time -- time and task in various parts of that area, I didn't think would be the determining factors. This man--

I believe the Attorney General's job is as important as any job in the State of New Jersey. The counselor's job is a very tough job, and I believe he served with distinction in both of those areas.

SENATOR GIRGENTI: Well, the reason we differentiate it from the fact that you appointed Superior Court Judges, but you also had Supreme Court Justices. That is why I stuck to the two that you named to the Court. I was going by your -- the background of the individuals that you appointed -- that you saw fit to put on the Court and, obviously, the background of Mr. Verniero. General Verniero is before us today. And there is a difference in terms of their experience and background. I know your appointments were very good, and they were supported, I think, completely in terms of the Senate. And I just think there is a marked difference in terms of the experience of the individuals -- their background -- between the ones you nominated and the General, who was here before us today, that you are supporting.

GOVERNOR KEAN: Yes, it is a different kind. I understand your point, Senator. It is different kinds of experience though. In a sense, this man has had very good, very high levels of government experience in the legal area.

SENATOR GIRGENTI: Thank you.

SENATOR GORMLEY: Senator O'Connor, and then Senator Lynch.

SENATOR O'CONNOR: Good morning, Governor.

Governor, I believe that all of us have a great deal of respect for the State Bar Review Committee and the work that they do, and I know that I certainly do. And like Senator Lynch, I'm here for 18 years, and I've seen the good work that they've done on numerous occasions. And probably like other members of this Committee and other members of the Senate at the present time, I've had a candidate rejected by the State Bar that was then not nominated for a judgeship, and that is something that, I think, all of us have pretty much dealt with at different times.

I noted that you refer to Judge Sapp and refer to the fact that you thought that she was caught in some type of political crossfire, and therefore, you continued to place her name in nomination. Do you have an opinion as to whether this State Bar Review Committee, in any way, made its decision, which we understand was unfavorable, on a political basis?

GOVERNOR KEAN: No, I have no knowledge whatsoever of what grounds they made their decision on.

SENATOR O'CONNOR: And to your knowledge, is this State Bar Review Committee made up of members of both parties?

GOVERNOR KEAN: They always have been in the past. I assume it is still.

SENATOR O'CONNOR: Thank you very much.

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: I'm sorry, Governor.

Two questions. First, speaking of a former Attorney General, Attorney General under your first term of 1982 to 1986 was Irwin Kimmelman, correct?

GOVERNOR KEAN: No, he was-- Yes, my Attorney General. That's correct.

SENATOR LYNCH: He left after the end of the first term.

GOVERNOR KEAN: That's correct.

SENATOR LYNCH: And you appointed him to the Superior Court.

GOVERNOR KEAN: Yes.

SENATOR LYNCH: And he's now risen to the level of an Appellate Division Judge, correct?

GOVERNOR KEAN: That's correct.

SENATOR LYNCH: And he had had a big private practice before coming into the government?

GOVERNOR KEAN: He--

SENATOR LYNCH: In fact, he--

GOVERNOR KEAN: He was a judge, actually, before coming into--

SENATOR LYNCH: Right. In fact, he handled the recount for you in 1981--

GOVERNOR KEAN: Thank goodness.

SENATOR LYNCH: --in that landslide. (laughter)

Secondly and last, you don't have any particular knowledge of some of the areas of concern that we have involving Mr. Verniero's handling of various matters as Governor's Counsel and as Attorney General, do you?

GOVERNOR KEAN: I have not been involved in any of those matters, Senator.

SENATOR LYNCH: So you can't speak to whether or not he has exercised sound discretion and quality judgement, been even handed and consistent in matters that have been in the public domain?

GOVERNOR KEAN: I have not been intimately involved in any of those issues. I know what I've read in the newspaper. I respect his judgement.

SENATOR LYNCH: Thank you very much.

SENATOR GORMLEY: Senator Matheussen and Senator Zane.

SENATOR MATHEUSSEN: Thank you.

Governor, I have a question for you in relationship to the Bar Association. There are some people, including myself, who take the Bar Association's opinion as being an important factor in making a consideration.

Could you tell us, during the officeholding as governor, what your relationship was with -- prior to the Bar Association and after with the Bar Association and the picks that you made for associate justices in the Supreme

Court or judgeships in which you went against the recommendation of the Bar and how you weighed their factoring into your ultimate decision?

GOVERNOR KEAN: First of all, I had excellent relationships with the Bar Association all through my governorship. I took what they said very seriously. Sometimes their opinion was one that I agreed with, occasionally it was not, but I took them over -- into consideration, and they were very helpful in that regard. My relationship with the Bar Association, when I took their recommendations, was good. And when I didn't take their recommendations it remained good. I had a good relationship with the Bar Association throughout my whole eight years.

SENATOR MATHEUSSEN: And the recommendation that would come from the Bar Association, whether it was positive or negative, was it one which you weighed as being a single factor that-- What was your impression of the Bar Association's recommendation? What did you think they thought of their recommendation? Was it one in which it was an up or down, or was it just one factor that you, as the governor, would have to make a decision on?

GOVERNOR KEAN: It was one of the factors. There were-- Ultimately, I always believed it was my judgement, as governor, as to the qualifications of the men and women who I submitted to you for the judiciary. I took a number of factors into consideration before I submitted that particular name. One of those factors was certainly the recommendation of the Bar Association.

SENATOR MATHEUSSEN: Thank you.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Governor, correct me if I'm wrong with this. The essence of what I got -- that you were referring to with government experience being important -- an important consideration -- and I do think you did say that. Am I not correct?

GOVERNOR KEAN: Yes.

SENATOR ZANE: That would be, then, the positions of Chief Counsel, Chief of Staff, and Attorney General that your referring to, am I correct?

GOVERNOR KEAN: In this case of this nominee?

SENATOR ZANE: In this particular case.

GOVERNOR KEAN: In the cases of my nominations, I take legislative experience often into consideration also.

SENATOR ZANE: Yes, but in this particular case, that is the government experience -- the public experience that your referring to that you feel is valuable.

GOVERNOR KEAN: Correct.

SENATOR ZANE: You're not suggesting that serving as campaign manager for Courter for Congress from 1987 to 1988 is a value for this position, are you?

GOVERNOR KEAN: I would consider it a valuable experience but not necessarily for this position.

SENATOR ZANE: Nor would you consider deputy campaign manager for Courter for Governor in 1989 particularly lending itself to this position, am I correct?

GOVERNOR KEAN: No.

SENATOR ZANE: And in 1989 to 1990, serving as the Republican State Committee Executive Director -- that in itself doesn't lend itself to this position, am I correct?

GOVERNOR KEAN: No, it doesn't.

May I say one thing here?

SENATOR ZANE: Sure.

GOVERNOR KEAN: A number of people become very active in the political process in both parties in order to gain entry into government service. That is one of the best ways in which a number of people become government service -- in government service. So when you enter through that method, that overall experience, I think, is valuable and enables you to be a better government service-- All of us have had experiences in politics. I think my experiences in politics enable me to be better in the jobs that I eventually held afterwards in an administrative basis.

SENATOR ZANE: Governor, let me say this to you. I have said for a long time that you were the best politician that I've ever met. And I mean that in a very good, decent sense.

I'll tell a quick story. You were governor for a very short period of time. You reached out to me, a Democrat. You, Cary Edwards, and I went to lunch at some country club and talked about things that were needed in my district. I thought that was smart, and you certainly got a lot of votes from me as a result of that human aspect of you. And I thought you were an excellent governor.

UNIDENTIFIED SPEAKER FROM PANEL: Who paid for lunch?

SENATOR ZANE: I think Cary Edwards had to pay for lunch.
(laughter)

Governor, that brings me to the three positions you think are essential because that, which I just outlined, covers 1987 through 1994 of the nominee's background, which really basically I think you're saying is that it's great for networking -- to get ahead.

In 1994 to 1995, the nominee served as Chief Counsel to the Governor; 1995 to 1996, Chief of Staff to the Governor. I don't know what -- particularly what months -- whether it's a full two years or not.

Governor, I have been here for quite a while, through quite a few governors, and I have a very distinct impression that those positions are very political -- that those are the people that we talk to when we're looking to have someone from our district or someone that we're asking to be placed on a committee-- Would you not agree that those are really, for the most part, even though those are the titles, that the real true function is as an advisor and sometimes political advisor to the Governor? That's the role.

GOVERNOR KEAN: Not totally the role, Senator. Politics is a very important part of that process, but for instance, the role that you mentioned -- the people who served there in my administration-- There wasn't a major piece of legislation, there wasn't a major nominee that I didn't consult with those people before I was submitting to the Legislature or modifying, in the case of legislation -- some cases before I submitted it. So it is also roles -- roles of great judgement above and beyond politics. Politics is part of the role, but it is not the whole role.

SENATOR ZANE: But the roles are political, nevertheless.

GOVERNOR KEAN: There's a political aspect to the role. You have to understand politics in order to do the role well, but there are a lot of other aspects that lead to those roles also. And the people who served in my administration fulfilled those roles.

SENATOR ZANE: Thank you.

GOVERNOR KEAN: Thank you, Senator.

SENATOR GORMLEY: Final question, Senator Robertson.

SENATOR ROBERTSON: Yes.

Governor, good morning and thank you for coming here today. I wasn't going to ask a question except for the last exchange because it's been my experience that people's involvement in politics is for any number of reasons. It is my experience that members of the Bar Association, who wish to be members of the bench, are involved in politics for any number of reasons, and we've heard talk of two potential reasons: one, and I wrote it down when Senator Zane had said it, networking to get ahead; and another one, from your mouth, which was public service.

From your knowledge of Peter Verniero, especially going back to the time when he was 21 years old, what is your opinion about the reasons that he became politically active, to the extent that you feel you can say?

GOVERNOR KEAN: As I started to say at the beginning of my statement, from the moment I've known Peter Verniero, what impressed me so much is his drive toward public service. The idea that he really wanted to do things for the public for the right reasons. I have never questioned his motivations. This is what he had in him. I think he got it, frankly, from some mentors and professors that he had at a very young age, who imbued in him

the sense that there is nothing better you could do with your life than to serve the public in one way or another. I believe that Peter Verniero's public career has been all aimed, in one way or another, at giving that public service.

SENATOR ROBERTSON: And as someone who has been called upon to suggest people or nominate people for important positions on the bench, including the Supreme Court bench, do you feel that political involvement should be a disqualifying factor?

GOVERNOR KEAN: No, I think there-- One of the greatest Supreme Court Justices at the Federal level is Earl Warren who didn't have much experience before the bench, but was a superb politician and showed it in putting together the *Brown v. Board of Education* and a number of other decisions.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Thank you.

SENATOR GORMLEY: Thank you, Governor.

Justice Clifford.

ROBERT L. CLIFFORD, ESQ.: Am I doing this right, Senator? Do I have the light on? (referring to PA microphone)

SENATOR GORMLEY: You're doing it correctly.

JUDGE CLIFFORD: Mr. Chairman and members of this Committee, I thank you for the opportunity to appear before you and to support enthusiastically the nomination of Peter Verniero as Associate Justice of the New Jersey Supreme Court.

My name is Robert Clifford. I've been a member of the Bar of New Jersey since 1950. I served a clerkship on the New Jersey Supreme Court

with Justice William Wachenfeld. I spent 20 years in private practice trying cases in every county in the State of New Jersey. I served in the cabinet of Governor Cahill in three cabinet positions from 1970 to 1973. And in September of 1973, Governor Cahill appointed me to the Supreme Court where I served until December of 1994. When the Constitution triggered my retirement, I have returned to the private practice of law as a country lawyer in Morristown, New Jersey, with the firm of McElroy, Deutsch, and Mulvaney.

Peter Verniero came to me as a law clerk in September of 1984 and served until August 31, 1985. He came with, as most of the law clerks do I guess, stunning academic credentials, some of which have been recited to you this morning. I had the opportunity to speak with his faculty members at Duke Law School because it was my law school. And at the time I was on the Board of Visitors at the school and hence a chance, that doesn't come with every clerk, to speak with those who knew him in law school.

I had over 52 clerks, and I'm happy to say-- I suppose you can scratch around and find a couple of exceptions, but I think, almost without fail, these young people were not simply up to the job, they were not simply adequate -- they were superb. And Peter Verniero fit well into that mold.

I support his nomination, not the least reason for which is-- I know Peter Verniero, and I know the demands of the job. He has all of the skills that are required for a good lawyer and a good member of the Supreme Court. He is capable of rigid analysis. He analyzes, thinks, and organizes his thoughts well; he knows how to present arguments; but most importantly, he knows how to listen. And, in my chambers at least -- I suppose it varies from chambers to chambers -- there was a lot of interaction between this member of

the Court and this law clerk. I had two that year. The other one was another marvelous lawyer, Jeffrey Campise (phonetic spelling), who is now in Roseland.

Peter wrote, as all clerks do, memos for the entire Court, he assisted in opinion preparation. He would state positions clearly and sometimes so persuasively that, at least on one occasion, he caused me to change my mind. And when he left, it was as apparent to me as it was to Governor Kean that his essential interest was in public service -- was in government. That's where he wanted to go. Other people like to do other things. You knew-- He probably will not be pleased to hear me reveal this, but he became known in the (indiscernible) of law clerks as "the Senator." Take that as a compliment, please. He is known among dozens of young people as "the Senator." He was referred to then and now as "the Senator." That's where his interest lay, and that's where he's going to end up.

I gather that the question has been raised about his lack of experience and his relative youth. I know something about both of those. When I went to the Supreme Court in 1973, I was the only member since the 1947 Constitution to have been appointed without prior judicial experience, unless you count Chief Justice Vanderbilt who, for a year before he became Chief Justice, had been appointed as a common pleas court judge who never wore a robe and never had a courtroom or rules.

I think it is safe to say that others may have shared my intrepidation about walking into a position in which I had had no judicial experience. I had never been in an opinion, I never sat and listened to argument, and I had some qualms of my own. They quickly disappeared. The generation gap, however, did not. I was, at the time, 48 years old. I think then

the only members of that Court who had been appointed at a younger age were Justice Jacobs, at age 47, and Chief Justice Weintraub, at age 48. I was not only the only member under 50, I was the only member under 60. And I produced-- It did not produce any difficulties. I guess what I'm attempting to convey to you is that the difference in age did not, at least as far as this member is concerned, produce any major problems. Sometimes the generation gap revealed itself in sort of funny ways. I can remember one occasion on which a lawyer argued before the Court -- used the expression catch-22. I had six blank faces to my left. "What, what, what is that?" And so I had to straighten out these senior people -- from the courtroom into the conference room to explain what it was.

But aside from things like that, there were no difficulties, nor did the absence of judicial experience, I must suggest, have a negative impact. Indeed, I told Chief Justice Wilentz, Justice Pollock, Justice O'Hern, Justice Garibaldi, and Justice Stein that they had me to thank for opening up these floodgates so that they, too, could be readily accepted without the benefit of any prior judicial experience.

When I went to the Court, Justice Jacobs said that he had to come to the Court with the notion that probably seven Cardozos would be a desirable compilation of the Court. And he said he quickly came to change that view. We saw the benefit of balance, breadth of background, and activity of a different nature in the members of the Court. Justice Jacobs, incidently, whom I very much doubt ever tried a jury case -- as is true, as the Attorney General has pointed out, at least two sitting members of the Court now.

My own view is that government service, public service, government positions are of great value so, of course, is the experience of trying a case so, of course, is sitting as a trial court so, of course, is sitting as an Appellate Division Judge, but I'm suggesting to this Committee, with the utmost respect, that the Attorney General's relative youth and lack of courtroom experience should not be considered as disqualifying.

Let me call to the Committee's attention just one example. The Supreme Court Justice William O. Douglas was appointed by Franklin D. Roosevelt in 1939 at the age of 40. He served 36 years. Justice Douglas, after graduation from Columbia Law School, served two years of what is referred to in his biography as a preliminary (indiscernible) -- left there to teach at Columbia Law School, left Columbia to go to Yakima, Washington, to practice law in a small firm. He found it distasteful. He was unsuccessful at it and gave it up in less than a year and returned to teach at Columbia and then Yale. He was appointed to the (indiscernible) Commission, became Chairman, and at the age of 40, went to the United States Supreme Court. He never tried a case. He never sat as a judge. He had immersed himself in corporate finance. He probably had more influence on the Constitution of the United States than anybody since Kramers (phonetic spelling).

Now, am I suggesting to the Committee that Peter Verniero is another William O. Douglas? No, not yet. We don't know. I hope we will find out. No one has more reverence for our court system than do I. Chief Justice Hughes referred to it as the greatest court system in the English-speaking world. And as you know, Chief Justice Hughes can get away with saying that kind of thing because he (remainder of comment indiscernible)--

I would not, for one minute, appear before this Committee with the kind of remarks I just delivered if I hadn't thought that Attorney General Verniero were not worthy of this position. He is, and I enthusiastically endorse this nomination.

Thank you.

SENATOR GORMLEY: Questions?

Senator Lynch.

SENATOR LYNCH: Justice Clifford, having the privilege of trying a couple of cases when I was cutting my teeth in the 1960s with you, I listened with interest when you said that the Attorney General knows how to listen -- obviously when he was clerking for you. In those days, the word was when Clifford speaks, everybody listens. Now, we--

Your experience in the private sector ran for some 18 years before you wound up going into the Cahill cabinet?

JUDGE CLIFFORD: Twenty years, Senator.

SENATOR LYNCH: Twenty years. And you were with the infamous trial firm of Mead, Gleeson, Hanson, and Pantages, trying cases all over the state?

JUDGE CLIFFORD: I was, sir.

SENATOR LYNCH: And you knew most every trial judge in the State of New Jersey?

JUDGE CLIFFORD: I did. I tried cases with your distinguished father and probably paid him enough money to pay for your legal education.
(laughter)

SENATOR LYNCH: Unfortunately, he was on the same side as you.

Then you went to a firm that you were part of, as partner I assume, Eagen, O'Donnell, and Clifford? Is that what it was?

JUDGE CLIFFORD: Eagen, O'Donnell, Leary, and Clifford. Me and three Irish.

SENATOR LYNCH: And you continued to-- In Morristown?

JUDGE CLIFFORD: Yes, sir.

SENATOR LYNCH: And you continued to try scores and scores of cases with that firm before the campaign of 1969?

JUDGE CLIFFORD: That's correct.

SENATOR LYNCH: And you knew, of course, you had a statewide reputation as a trial lawyer, and you were the first one that I remember that when we used to have (indiscernible) would get up without notes and know who all 12 jurors in the box were by name. And everyone found that quite astounding. But it was part of your entry into the communications skills that you had and continued to develop.

In 1969, you became, after these 20 years of experience in trying hundreds of cases, the head of democrats for Cahill?

JUDGE CLIFFORD: No, sir. Head of Lawyers for Cahill.

SENATOR LYNCH: Lawyers for Cahill.

And then when Governor Cahill got elected in January of 1970, you became the Commissioner of Insurance.

JUDGE CLIFFORD: Commissioner of Banking and Insurance, and within five weeks, mercifully they separated the Departments, and I became Commissioner of Insurance.

SENATOR LYNCH: And the next assignment was with what agency, Institutions and Agencies at that time?

JUDGE CLIFFORD: Commissioner of Institutions and Agencies, yes, sir.

SENATOR LYNCH: So you were there about three and one-half years before you were appointed to the Court.

JUDGE CLIFFORD: Forty-four months.

SENATOR LYNCH: You described, I think, before what some of us can call the alternate route to the Supreme Court, not having been to the bench, going through the executive branch of the government, and winding up on the Court. And you found that to be a good experience, you thought you brought a lot to the Court. And I agree with that. You also brought, however, a world of experience from your days trying cases in the 21 counties in New Jersey, correct?

JUDGE CLIFFORD: I had that experience, yes.

SENATOR LYNCH: Your relationship with Peter Verniero, after he left your clerkship, has continued to be a warm and friendly one?

JUDGE CLIFFORD: It has. We have seen each other, not with any regular frequency, but as I see all my former clerks, a couple times a year -- informal occasions, social occasions.

SENATOR LYNCH: Since Governor Whitman brought Peter Verniero into this administration as Governor's Counsel and then as Attorney

General, did Peter bring you in, subsequent to your retirement, in some de facto capacity to analyze prospective judicial appointments, particularly to the Supreme Court?

JUDGE CLIFFORD: I guess he was, at least, partially responsible for my being part of the-- I think -- started under Governor Byrne when he asked Judge Alexander P. (indiscernible), in his retirement, to assist him with judicial appointments. It never became very institutionalized, but there was, under Governor Whitman, and I'm quite certain under Governor Kean, a small group that Governor's Counsel would consult on occasion in respect to judicial nominees. I was, for a while, part of that committee. It consisted of Judge Wall (phonetic spelling), Justice Schreiber, Attorney General Zazzali, and myself.

SENATOR LYNCH: Now, over the last year, you've become aware that there will be a at least three vacancies on the Supreme Court during the balance of Governor Whitman's term, correct?

JUDGE CLIFFORD: I still consult with my former colleagues, and yes, I became aware of that, both by virtue of the calendar and what I hear.

SENATOR LYNCH: And were you called upon by Mr. Verniero or anyone else in this administration to assist them in seeking prospective nominees to fill those three vacancies?

JUDGE CLIFFORD: Senator, will you permit me to put it that I have been consulted in respect to any suggestions I might have? I have made suggestions.

SENATOR LYNCH: And who consulted you?

JUDGE CLIFFORD: I think, although I don't know that it is in respect to Supreme Court nominees-- I can remember meeting with Harriet Derman. I can remember meeting with her predecessor. I have talked with John Farmer. I have talked, going back sometime, with Attorney General Verniero.

SENATOR LYNCH: Have you not talked to Mr. Verniero in the last year with regard to potential nominees to fill the vacancies that will be arising, Justice Pollock, Justice O'Hern, and Justice Handler?

JUDGE CLIFFORD: Without having any specific recollection of those comments, I'm quite certain I must of had them with him, yes.

SENATOR LYNCH: You must of had.

JUDGE CLIFFORD: Yes.

SENATOR LYNCH: And have you spoken--

JUDGE CLIFFORD: And with Mr. Farmer.

SENATOR LYNCH: Have you spoken to the Governor about your role?

JUDGE CLIFFORD: I've not.

SENATOR LYNCH: To your knowledge, is she aware--

JUDGE CLIFFORD: Can I back up a little?

When Judge Wall was head of this little group, we did meet with Governor Whitman, and I think maybe once when Justice Schreiber was -- we had a chair--

SENATOR LYNCH: I'm not talking about that group, I'm talking about you, individually, being consulted by the Attorney General, by Mr.

Farmer, and others in this administration about your thoughts concerning the filling of these vacancies.

JUDGE CLIFFORD: And what is the question, sir? Have I talked to the Governor about those? Is that it?

SENATOR LYNCH: Individually as opposed to dealing through a committee.

JUDGE CLIFFORD: No. That answer is no.

SENATOR LYNCH: But you have talked individually to Mr. Farmer about that?

JUDGE CLIFFORD: Yes, sir.

SENATOR LYNCH: And you believe you probably talked to Peter Verniero about that?

JUDGE CLIFFORD: Yes, sir.

SENATOR LYNCH: No further questions.

SENATOR GORMLEY: Thank you.

Senator Martin, and then Senator Robertson.

SENATOR MARTIN: Justice Clifford, I, too, have tremendous respect for you, both as a justice and as a country lawyer from Morristown, both before and currently.

Here's what I'm struggling with, with this nomination. I have no problem with what the General's qualifications are. He is-- Basically, in the areas of what you presented, his age, his experience as -- in the Governor's Office in those various capacities, I am interested-- I'm going to try to give you an analogy. If you think it's inappropriate, tell me. But I'm trying to set my own mind -- problem which I think is the critical one is where the Attorney

General's Office is right now, with respect to the problems with the State Police, which I think are very serious and impact rightly or wrongly on the matter of timing and the question of responsibility and leadership.

When you were in Governor Cahill's office, you were Commissioner of Institutions, is that correct?

JUDGE CLIFFORD: Institutions and Agencies, yes, sir.

SENATOR MARTIN: And that would include, at that time, the State prisons?

JUDGE CLIFFORD: It included everything. Yes, it did, sir. It included Corrections, which was not then a separate department -- it was a division within the Department -- and it included welfare, mental health and hospitals, it included mental retardation, it included veterans' affairs, medical assistance, and health services.

SENATOR MARTIN: Well, that's good because it helps me in my analogy. You've had a lot on your plate, but certainly one of the areas would have been the prisons.

JUDGE CLIFFORD: Yes, sir.

SENATOR MARTIN: Let me just run through an analogy -- hypothetical. I'd just like to hear your response.

Suppose, when you were Commissioner, at that time there had been a crisis in one of the prisons, such as East Jersey -- I think at the time was called Rahway State Prison. And there was some issue in which there was an undetermined number of workers there -- prison guards who had committed various abuses on prisoners -- there were some factual basis for that -- at least one successful brought. The chief warden had made some remarks that the

Governor and yourself thought were inappropriate, and you had to -- or had decided to remove that person from office in your capacity as Commissioner in consultation with the Governor. On top of that there was a Federal suit filed on behalf of prisoners dealing with civil rights issues.

If at that time, Governor Cahill had chosen to request that you be nominated to the Supreme -- New Jersey Supreme Court, do you think that that would have been appropriate?

JUDGE CLIFFORD: Are you asking whether--

SENATOR MARTIN: I'm essentially asking a question of timing and leadership at a moment of crisis. And I'm trying to present an analogy, as I said, that I think might be somewhat analogous to the circumstances at hand.

JUDGE CLIFFORD: Well, I pretend no familiarity with the current circumstances, beyond what I read in the daily paper.

SENATOR MARTIN: Well, I'm--

JUDGE CLIFFORD: With the current circumstances.

SENATOR MARTIN: Well, my question doesn't ask you to pretend any familiarity with that. I'm just wondering whether, if those were the facts at that time, would you have felt comfortable in leaving your position as Commissioner to be promoted, as it were, to the Supreme Court under that situation.

JUDGE CLIFFORD: I'm not able to give you a yes or no answer. I'm able to say this. I think it would depend and, in some very considerable measure, on the capability of succession, whether there were, on the scene, people that could, as easily as I, operate, from the Commissioner's perspective, that division. Of course, there is a division chief, and there was then. As a

matter of fact, I appointed Mr. (indiscernible) as Director of the Division of Corrections and Parole.

If the inquiry is, would I feel comfortable leaving a post of great responsibility when it was in crisis and under fire and nobody else could handle it, the answer is no.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Senator Robertson; then Senator Girgenti.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Good morning, Justice.

JUDGE CLIFFORD: Good morning.

SENATOR ROBERTSON: And thank you so very much for gracing us with your presence and input because it's been very valuable to me.

One question that strikes me is that you had been a law secretary to Justice Wachenfeld--

JUDGE CLIFFORD: I was.

SENATOR ROBERTSON: --in much the same way that Mr. Verniero was your law secretary or your clerk at that point.

JUDGE CLIFFORD: Exactly. It was much easier then than it was for him. Yes, same position.

SENATOR ROBERTSON: Speaking for yourself, how valuable an experience was that for you in preparing you for your service on the Supreme Court?

JUDGE CLIFFORD: It wasn't critical, but for me it was a great job, and it was very valuable. You learn, at the (indiscernible) level, how the

court system works and how the Supreme Court works and the personalities and the interaction and simply the handling of major issues, how they're addressed, how the Court goes about achieving a decision. If the public of the State of New Jersey knew how much time the members of the Court spend in resolving the matters before them, they'd be thrilled. They'd know they're getting their money's worth. When I was there, we were profligate with time. So by the time the case was decided, it was simply rung out. There wasn't anything left. And I found, as a clerk, and I very much hope that all of my clerks found because I included them in the process, that this was a wonderful educational experience.

SENATOR ROBERTSON: And you included Mr. Verniero in that process?

JUDGE CLIFFORD: Indeed. Oh, sure.

SENATOR ROBERTSON: And your service in the cabinet-- You served in two or three different departments, especially the one that you had talked about, Institutions and Agencies, which has a very broad responsibility. How valuable did you find your service in the Governor's cabinet to be in preparing you for your tenure as a Supreme Court Justice?

JUDGE CLIFFORD: Well, again for me, very valuable. It might not be for somebody else who knew the ins and outs of the city of Trenton. I didn't know how to get here. I came out of the woods, and I found myself, I'm not kidding about this, a country lawyer sitting in the Governor's cabinet. I didn't know how to get to the city of Trenton. I didn't know any of these people. This was all accident. Everybody else knew everybody else. I didn't know anybody. And the service in the cabinet, with wonderful people, was, for

me, an eye-opener. And it was most valuable, indeed, to learn how the government works, what goes on in this city.

SENATOR ROBERTSON: And the insights that you received, both as to the Supreme Court and as to the workings of the government, were those the sort of insights you might have gotten simply as a practitioner of law back in Morris County at the time?

JUDGE CLIFFORD: I don't think I would have.

SENATOR ROBERTSON: Now, absent judicial experience -- or prior judicial experience, what are the important, I don't want to say qualifications, but the important elements of a person's character or intellect that would help prepare them for the Court?

JUDGE CLIFFORD: Senator, the only way I can answer that, I think, is with the obvious ones. The sense of, first, unimpeachable integrity. The Attorney General-- Nobody, I think, questions this candidate's integrity. If they do, they are mistaken. Honesty, industry, smarts, a knowledge of the law, knowledge of how the law works, a knowledge of what the function of the law is -- all of these things good students of the law and people with natural abilities and natural skills come by.

SENATOR ROBERTSON: And finally, Justice, when you were asked to do so, did you offer these observations to the State Bar Association Review Committee?

JUDGE CLIFFORD: Two members of the Review Committee consulted me prior to the Attorney General's appearance before the Committee. This, I gather, is a common process. They, being aware of the fact that he had served as my law clerk-- I spent 45 minutes or an hour with one

member in a meeting in my office. I spent 20 minutes on the phone with another member at a later date.

SENATOR ROBERTSON: Thank you.

Thank you, Mr. Chairman.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Thank you very much, Mr. Chairman.

Justice, good morning.

JUDGE CLIFFORD: Good morning, Senator.

SENATOR GIRGENTI: I just have a couple of questions. One is a follow-up of what Senator Lynch was talking about earlier. What professional dealings have you had with General Verniero in the past 15 years, or has it been basically on a social basis?

JUDGE CLIFFORD: I don't think I've had any professional dealings with him. My office has had professional dealings with him, and I steered clear of them. That is, I steered clear because I thought it inappropriate for a retired member of the Court to be doing business with a cabinet officer on an informal basis.

SENATOR GIRGENTI: Do you see him socially?

JUDGE CLIFFORD: Yes, sir.

SENATOR GIRGENTI: And he is a friend, he meets with you periodically, as do probably most of the clerks that clerked for you?

JUDGE CLIFFORD: I think that puts it correctly, yes.

SENATOR GIRGENTI: All right.

I understand your argument that prior judicial experience is not a necessary prerequisite to sit on the Supreme Court. However, in your

opinion, this past several years, you feel his legal -- these scholarly skills which are required by an effective justice, such as this practice of scholarly legal writing, researching, etc.-- How do you feel these skills may have been sharpened during his tenure in the Governor's Office and his other political offices?

JUDGE CLIFFORD: They must have been sharpened and honed for him successfully to have appeared as he did before the Supreme Court of New Jersey. They must have been sharpened and honed for him to appear successfully as he did before the 3rd Circuit Court of Appeals. They must have been sharpened and honed for him to have achieved the results in the tobacco settlement. I think that the experience must have made him a better lawyer.

SENATOR GIRGENTI: Thank you.

SENATOR GORMLEY: Senator O'Connor.

SENATOR O'CONNOR: Thank you, Mr. Chairman.

Justice Clifford, I'm curious about your participation on this informal group that advised the Governor and the Governor's Counsel with respect to judicial appointments. Was there ever any interrelationships between this informal group and the State Bar Review Committee?

JUDGE CLIFFORD: Senator, not of which I am aware, no.

SENATOR O'CONNOR: Were there ever any instances when the State Bar Review Committee rejected the nominee that your group gave different advice to either the Governor or the Governor's Counsel?

JUDGE CLIFFORD: I don't think so. I'm uncertain about it. I have no recollection of that ever having occurred.

SENATOR O'CONNOR: And the last question, if I may. The vacancy that Mr. Verniero is being nominated for is one that comes due on September 1, I believe.

JUDGE CLIFFORD: Yes, sir.

SENATOR O'CONNOR: One of the criticisms that has been brought to our attention is the fact that we seem to be rushing to judgement on this, it now being May the 5th. Given your experience on the bench and also the role that you played in this informal group, what is your opinion as to the timing of this and we are moving on it at the present time?

JUDGE CLIFFORD: I haven't thought about it. I suppose there is some sense of urgency because the Court will very shortly go into-- What are we in May now? I guess it is near the end of the arguments probably, and the Court will recess in likely the end of June and won't be back until September 1, and so I suppose there is something to be said for having things in order when the new session commences immediately after Labor Day.

SENATOR O'CONNOR: Well, in your experience--

JUDGE CLIFFORD: Well, I was thinking aloud. I suspect that there is some value in lead time, which doesn't directly answer your question, but some need for lead time so that this process can play itself out to be delivered before the vacancy occurs. It is not the worst thing in the world to have vacancies on the Supreme Court. Judge Concord (phonetic spelling), the presiding judge for administration in the Appellate Division sat as a temporary Supreme Court Justice for almost two years.

SENATOR O'CONNOR: Would it be fair to say then that if this confirmation did not occur, even by the end of June, that there would not be any detriment to the operation of the Court or the transition?

JUDGE CLIFFORD: I think it would be awkward, but it would not be calamitous.

SENATOR O'CONNOR: Thank you.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Justice Clifford, I got confused by your last comment. You indicated, I think, that the Court would -- after June the Court would not be back until September.

JUDGE CLIFFORD: That's about right, end of June until September 1.

SENATOR ZANE: Isn't that really giving it a-- I think you want to correct that. I certainly don't want the people of the State to have the impression that you have a three-month vacation.

JUDGE CLIFFORD: Oh my, no. Nor do I.

SENATOR ZANE: Therefore, there are things to do, and somebody could get out from in it between that period of time.

JUDGE CLIFFORD: There were years, Senator Zane, when I must confess, I had one week's vacation because I was catching up on opinions. That is what you do when the Court is not in session and you're not hearing arguments and you're not in conference.

SENATOR ZANE: Justice Clifford, you indicated that you spoke to -- I think you said -- two members, or maybe you just said member and I,

in my head heard plural, of the Bar -- Judicial and Prosecutorial Bar Review Committee, did you not?

JUDGE CLIFFORD: I did.

SENATOR ZANE: Could you tell us how those conversations came about?

JUDGE CLIFFORD: Sure. I think it is the conventional approach that -- I'm speculating a little on this -- the Bar Committee, if I understand the way it works, assigns some members to interview people who have special knowledge of the nominee. I was interviewed by a member of the Committee who came to my office. And as I indicated, I spent about an hour with her. I never met her before, and she asked urgent questions, many of them such as the members of this Committee are asking today. And I responded fully and completely candidly and gave her my impression of the nominee. That was some weeks before the Committee first met.

SENATOR ZANE: So that would take us back to when, Justice, early April?

JUDGE CLIFFORD: Yes, or late March. It was before the Committee met. I'm pausing because I'm trying to place when the second one took place. And I think that, too, was immediately before the Committee met.

SENATOR ZANE: I am really enjoying asking you questions and making you dig for the answers, you know that? (laughter)

JUDGE CLIFFORD: You find me, Senator, much more at a loss for words than I ever found you. (laughter)

SENATOR ZANE: Justice, I do believe you indicated that you spoke to one member, is that correct?

JUDGE CLIFFORD: I did, sir.

SENATOR ZANE: What were the circumstances of the other conversation or conversations?

JUDGE CLIFFORD: There was one conversation and a member of the-- I'm a little hesitant to identify these people because--

SENATOR ZANE: I'm not asking you to identify these people.

JUDGE CLIFFORD: --I don't know how much of this stuff is confidential.

SENATOR ZANE: That's why it surprises me a little bit when you said you spoke to two. I just needed to understand why.

JUDGE CLIFFORD: Because he called me up and had some pointed inquiry; although, it was much the same territory that I thought I had covered with the first member to whom I had spoken.

SENATOR ZANE: I think that anyone who ever appeared before you would certainly have a very strong feeling that you have the upmost respect for the law, for the system. And I think it just flows forward -- you can see it here today -- with you, how much the law means to you. And I think that implicit within that also probably means that you have a great comradery with lawyers and a great respect for lawyers that you feel are good lawyers. You're certainly entitled to that opinion. Would that be a fair assumption to make of an analysis of you?

JUDGE CLIFFORD: I would like to think that also.

SENATOR ZANE: The State Bar Review Committee-- I would imagine that on at least two occasions you appeared there, is that correct, with regards to the Supreme Court?

JUDGE CLIFFORD: I dont know that I would have went back on renomination.

SENATOR ZANE: Okay.

JUDGE CLIFFORD: I think--

SENATOR ZANE: I do remember -- Governor Kean would remember -- we did it -- Chief Justice Wilentz.

JUDGE CLIFFORD: You mean on his reappointment?

SENATOR ZANE: Yes.

JUDGE CLIFFORD: Yes, indeed.

SENATOR ZANE: I find it highly unusual-- I can imagine you didn't reappear, but nevertheless -- certainly before our Committee, I know that you would have.

JUDGE CLIFFORD: Five times.

SENATOR ZANE: Tell me your feelings about the function of the Judicial and Prosecutorial Bar Review Committee made up of representatives of each county and obviously I think a few more -- bringing the total membership to 24 or 25. Was it something you took seriously?

JUDGE CLIFFORD: You mean when I appeared before them?

SENATOR ZANE: Yes.

JUDGE CLIFFORD: Indeed I did. I remember it. To this day I remember the time of day, the people with whom I went over. Incidentally, it was before my nomination had been announced. I'm left with the impression that the nominees used to appear before the Bar Committee before the Governor went public with a name. It seems to me there is some obvious virtues and benefits to that.

My recollection may be wrong. I'll tell you why I think so, because Piere Garven (phonetic spelling), George Kugler, and I all went the same day. George Kugler's name never went in. The Bar Committee, I very much suspect, had no problem whatsoever with Attorney General Kugler. Attorney General Kugler didn't want to go on the court, but he went through the Committee. The Committee gave him a pass. He said, "No, not for me," and his name never went in.

SENATOR ZANE: Do you have respect for that Committee?

JUDGE CLIFFORD: I do, indeed. It is-- It has historically been viewed as the premier -- I think this is safe to say -- the premier committee in the State Bar Association.

SENATOR ZANE: And to the best of your knowledge, made up of the finest lawyers in this state?

JUDGE CLIFFORD: It was when I was familiar with it. Yes, sir.

SENATOR ZANE: You would have no reason to believe it is not made up of the same type of individuals today?

JUDGE CLIFFORD: I would have no reason to believe that. I don't know who they are.

SENATOR ZANE: Understood.

JUDGE CLIFFORD: Except for the ones that talked to me, and I know who the Chair is.

SENATOR ZANE: Do you feel that they are in a better position to judge the qualifications collectively in this encounter -- secret proceeding that transpires than probably anyone else or any other group -- the qualifications of someone for the bench to be a prosecutor?

And I would also suggest to you that I really think, I don't know this, that what they're looking for are minimal qualifications for the particular position. Would you not agree with that?

JUDGE CLIFFORD: Senator, because as you will detect readily, I'm going to hedge a little bit on that. I'm hedging because I would feel a lot more comfortable in giving you a categorical answer, first, if I knew the members of this Committee, but traditionally they have been premier lawyers, and, secondly, what kind of inquiry they made of the candidate. And I don't know that, and there is no reason I should know that. One of the dismaying things about this process, in this instance, to me is the breach of confidentiality which has been a hallmark of the operation of that Committee since the day it was formed.

I can't remember a breach. I cannot remember a breach. When I was with Governor Cahill's Office and those brown envelopes went out for the four-way checks, we had our fingers crossed, this better not get out kind of thing. And it never did. I can't remember an instance in which it ever did, and I'm--

SENATOR ZANE: Do you think that there is--

JUDGE CLIFFORD: --distressed that it is in the public now.

SENATOR ZANE: Okay.

Do you think that there is violation being done to that system, that reliance, that integrity, the credence that can be placed upon the collective wisdom of those people by virtue of moving a nominee who has not cleared that Committee?

JUDGE CLIFFORD: I'm pausing because I'm uncertain of the thrust of the question.

SENATOR ZANE: I'm sorry.

JUDGE CLIFFORD: I'm uncertain of the thrust of the question. Do you mean are we going to do violence to the process if you skip the Committee? Is that the idea?

SENATOR ZANE: Or-- No, no, no, not if we skip it. Are we going to do violence to the system if, in fact, we have the Committee system but ignore it, such as we are doing with this nominee, if the reports are accurate that we've received?

JUDGE CLIFFORD: I don't know that you'd be ignoring it. I don't think you would be doing violence to the system in your operation of your legislative function, which is not the function of the State Bar Committee.

SENATOR ZANE: Justice Clifford, do you have any sense or feeling that this nominee, as a result of what is happening considering the Bar -- as well as the sense that it's going to happen anyhow -- that the Supreme Court of this State, which has probably the finest reputation in the nation, is now going to be looked upon as being politicized?

JUDGE CLIFFORD: I think there is that risk.

SENATOR ZANE: There is that risk?

JUDGE CLIFFORD: I think so.

SENATOR ZANE: Justice, do you, as a very distinguished justice of that Supreme Court that I just mentioned, have a little bit of a twist in your gut, as a former member, that that truly August body will not be the same as this process is followed? On a personal level, Justice.

JUDGE CLIFFORD: No, I don't have it in quite those dramatic terms.

SENATOR ZANE: What do you have?

JUDGE CLIFFORD: Because I think the strength of the institution is such and it is going to survive whatever happens when this process is weighed out, candor obliges me to acknowledge that I am dismayed to witness this process.

SENATOR ZANE: Thank you very much.

SENATOR GORMLEY: Senator Kosco.

SENATOR KOSCO: Thank you, Mr. Chairman.

I just want to go back a moment to what Senator Martin -- was using the hypothetical situation, and I believe your answer was no. You would not leave that position if you were involved in a major crisis in your department.

JUDGE CLIFFORD: I hope, Senator, I surrounded it with enough caveat to leave myself escape hatches there. If push came to shove and the world would fall apart if I don't stay there and do that, Senator, I'll do it.

SENATOR KOSCO: If we take that hypothetical case back and try to apply it as we're really talking about it today-- If the situation Senator Martin described to you in the prisons was a situation that began some 20 years ago and was finally brought to your attention and you addressed it and made numerous recommendations and believed that you had attempted to solve those problems, would your answer have been different?

JUDGE CLIFFORD: Yes.

SENATOR KOSCO: Thank you.

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: Justice Clifford, you raised an issue of the response (indiscernible) questions-- You volunteered, I believe, that you found it strange that the Bar Committee was reviewing this nomination subsequent to the nomination being put in. And historically, it has been your experience that that process would take place prior to the nomination, correct?

JUDGE CLIFFORD: I thought it was, Senator. I had no sense of certainty about it, but that's my recollection of the way it worked.

SENATOR LYNCH: And you're absolutely correct. And therein lies the problem.

JUDGE CLIFFORD: Although, I don't think it worked that way with Supreme Court Justices.

SENATOR LYNCH: Let me ask you this. You knew, did you not, before January 1, 1999 that Justice Pollock was going to retire during the course of this year?

JUDGE CLIFFORD: Can you tell me when he made his announcement?

SENATOR LYNCH: He made his announcement on February 25.

JUDGE CLIFFORD: Well, I had heard a rumor to that effect.

SENATOR LYNCH: You knew--

JUDGE CLIFFORD: Senator, he was about as close to the vest with that piece of news as anybody you'll ever see. I sat next to him at the Bar -- Essex County Bar Association meeting for an hour and one-half in New York City, like, three days before he made his announcement -- not a peep, not a word.

SENATOR LYNCH: But there are some things -- there are some signs, whether he is speaking or not, that tell you that he is going to be retiring, aren't there?

JUDGE CLIFFORD: There are signs, but -- such as, did he hire law clerks or no?

SENATOR LYNCH: Correct.

JUDGE CLIFFORD: But I wasn't familiar with that. I didn't know.

SENATOR LYNCH: Others appeared to--

JUDGE CLIFFORD: And besides, some people don't hire law clerks until-- Chief Justice Hughes hired law clerks about three days before the session started.

SENATOR LYNCH: Yes, but Justice Pollock didn't work that way.

How about-- At any time subsequent to November of 1999 -- 1998 and prior to February 25, 1999, did anyone from this administration, Mr. Verniero, Mr. Farmer or others, discuss with you the vacancy that was about to occur with Justice Pollock?

JUDGE CLIFFORD: Senator, are you going to permit me to invoke the privilege of not answering based on confidential information?

SENATOR LYNCH: I certainly will.

What is fascinating here is that you put your finger on the problem in why this Bar Committee has been put into the public domain because the nomination was made one day after the Justice Pollock nomination -- or retirement announcement was made. And the Bar Committee was then

scheduled, for the first time, some time in March. And that, of course, instantaneously put that Bar Committee under public scrutiny, correct?

JUDGE CLIFFORD: Yes, I guess so. It not had occurred to me, but as you described, it sounds rational.

SENATOR LYNCH: Do you find it surprising that you had not been consulted on this nomination and the Governor nominated Mr. Verniero one day after the Pollock announcement?

JUDGE CLIFFORD: Well, no, I don't find it surprising that I was not consulted on any nominations. All kinds of nominations go through that I don't know about.

SENATOR LYNCH: No further questions.

SENATOR GORMLEY: Thank you, Justice.

JUDGE CLIFFORD: Thank you, members of the Committee.

SENATOR GORMLEY: We'll go back to witnesses following the first round of questioning. We'll ask the nominee to come forward again. In each round of questioning, each Senator will be allotted 30 minutes -- the first round of questioning will be allotted 30 minutes, and if they choose to have another Senator of either political party ask questions to fill out that 30-minute time frame, that will be allowed.

The first questions come from Senator Matheussen.

SENATOR MARTIN: Thank you, Mr. Chairman.

General, you and I, a little over a year and one-half ago, were chosen to sit on a Death Penalty Review Committee of -- which was chaired by another person, but we both equally shared in listening to testimony, visiting the State Prison at Trenton, and a number of other issues. One of the issues

that arose from that hearing was concerning itself on the whole process of proportionality. Not too long ago, the Chief Justice of our Supreme Court made a decision not necessarily to rule on proportionality, but rather to hand it to another judge to make a decision. This morning I read in the newspaper that the judge has, in fact, made some decisions. It will now go back to the Supreme Court for further argument by attorneys on both sides of the issue. But interestingly enough, at least in this morning's accounting of that experience, it's been said that the judge who was reviewing it felt as though proportionality should be an issue that would be best left to the courts and it's not an issue that should be resolved by the Legislature or the executive branch.

Now, obviously, you are a member of the executive branch and you did have some play in the Death Penalty Review Committee, and you, in fact, made some suggestions and even made some votes with regard to where that Committee would take its round of suggestions on what to do with issues.

Comments at all, if any of you have, on proportionality as well as your role in the Death Penalty Review Committee.

ATTORNEY GENERAL VERNIERO: Well, I think the Death Penalty Review Committee served a very important function because it allowed the public and other experts in the field, victims, and so forth, to come forward and describe their feelings on particular changes that might be made to the death penalty statute, which had not been changed in any significant way for some time.

In terms of proportionality review matter, since that is a pending matter, Senator, I'm somewhat limited in what I can say. I certainly reiterate everything I've said to date. I believe proportionality review could be reformed

so long as we do it in such a way as not to diminish the important rights of defendants, so long as there were other components in the process that could fairly evaluate whether there was bias or prejudice in the system. Obviously, we never want to do away with any evaluation of those kinds of issues. My position on proportionality review, and I believe this was the Commission's recommendation, was that we could make changes without diminishing defendants' rights, and I certainly agree with that.

SENATOR MATHEUSSEN: Not to put words in your mouth, Mr. General, it wasn't even in your recommendation that perhaps the most expeditious and most efficient way to do that was through, perhaps, a constitutional amendment.

ATTORNEY GENERAL VERNIERO: I don't know if we went so far as to debate a constitutional amendment. I thought, certainly, a constitutional amendment could provide the adequate safeguards to both the defendants, the accused, and the State's interest -- the public interest. I don't recall if we went that far to suggest that in the report. We may have.

SENATOR MATHEUSSEN: The issue of the tobacco settlement-- This State, as a result of your Office's work with regard to the settlement that's been made, not just with New Jersey, but other states involved as well-- Will significant dollars come to the State of New Jersey? The exact amount, General, and how that's to be spread out, please.

ATTORNEY GENERAL VERNIERO: The approximate amount is \$7.6 billion in New Jersey's case. That ranked us within the top 10, as I recall, of any of the states in the country. I was very pleased with that amount. The way the Attorneys General divided up the work in that case, since it was

a national settlement-- I was assigned to the allocation committee and played a role in the ultimate formula that resulted in New Jersey's share. So I thought we received more than our fair share, and I was personally satisfied with that result.

The tobacco case is really a historic case in terms of jurisprudence in this country. We have never before seen a case like that, and I doubt whether we will see it again in the near future. That was a case where you had to bring all of your lawyering skills to bear because there was no form book, there was no precedent to draw from. You couldn't just take it off the shelf and copy it. We had to sculpt and craft some very refined legal arguments, my colleagues and I, with the help of outside counsel, and I believe we did that, and I believe we did it very successfully.

SENATOR MATHEUSSEN: In your opening statement, General, you chose to, I think in your words, confront several issues head-on--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: --with regard to criticisms that may be out there regarding your nomination to be a justice of the Supreme Court. One of the issues that came about in questioning the two witnesses who just appeared before this Committee, both Governor Kean and Justice Clifford, dealt with the issue of the Bar Association's review of your nomination. I know that it's probably not the most pleasant thing that you have to face, but certainly it is a question that needs to be reviewed by this Committee and will have to be weighed very heavily by any member who is voting on it.

Your impression, your remarks, and how it ties into what was both said by Governor Kean and Justice Clifford.

ATTORNEY GENERAL VERNIERO: Well, I would agree, generally, to what has been said by Justice Clifford and Governor Kean. Of course, they each have a different perspective, as I do. I assume that any governor would consider it a part of the process but certainly not of the sole process. I think you have to take each case on a case-by-case basis.

When I was Counsel to the Governor, the Bar review became more important, I believe, in the case of Superior Court Judges because in many cases, a governor is not familiar with the Superior Court Judge. There are over 400 Superior Court Judges. Many times recommendations come from various counties, and a governor, particularly a governor who is not a lawyer, would, I think, put extra attention to the Bar review particularly when they are evaluating someone who is not at all familiar with the governor.

In the case of a Supreme Court nominee, I believe modern history will confirm that most governors have been very familiar with the nominees of the court that they have appointed and familiar, for many different reasons either because they served in the cabinet with that governor or they served as a colleague in some other function, or in my case I served both in the Governor's cabinet, and I was her attorney. So presumably, she has a firsthand knowledge of my legal ability upon which to make a recommendation. So in some cases, you would rely less on the Bar evaluation than you would in others.

SENATOR MATHEUSSEN: Your personal reaction to the Bar Association's lack of support in this particular case.

ATTORNEY GENERAL VERNIERO: I'm disappointed, as I think any lawyer would be. I feel I'm very qualified for this position. I, like

Justice Clifford, although not quite obviously to his extent since he's already served the Court -- but I have the greatest respect for this Court, and I would not want to serve on this Court if I, in any way, diminished its standing or stature. I do not believe that will be the case if I am confirmed.

SENATOR MATHEUSSEN: General, one of the issues that I've gained some interest in over the last year has to deal with drug courts -- drug courts that have been established not in every county throughout the state, but only in very few. There are some critics that I've heard from personally who say that drug courts are nothing but a way of being soft on criminals, that it gives them an extra opportunity that perhaps they shouldn't have. And there are others who are very supportive of drug courts who say quite the opposite -- that many people who are involved in drug-related crimes are involved in a situation where drugs are really taking over their lives, and they need that extra degree of help. The most familiar one that I have a relationship with is the drug courts in Camden County. There is some discussion of expanding their role. Your involvement -- what is it, and what are your feelings about the critics, as well as the proponents, of the drug courts?

ATTORNEY GENERAL VERNIERO: I'm in the latter category. I'm a proponent of drug courts and a strong proponent. I believe that for a certain category of offender, particularly a nonviolent offender, a drug court can be the difference between continuing in a cycle of crime or breaking the cycle of crime. I've heard that criticism that perhaps it is not tough on crime, that it's perhaps too soft on crime. I disagree with that. I think it is the toughest position of all. It is certainly the most beneficial position from the victims perspective if you can prevent a future crime from being committed.

And when we treat a drug offender successfully, as can be the case in the drug court, we are greatly diminishing the recidivism rate and therefore reducing the number of victims we may have in future crimes.

I think that's about as tough on crime as you can be. I'm very pleased of our role in my Office in administering the pilot program or helping to administer the pilot program. I have personally spoken at drug court graduations because I think it's important to give a rehabilitated offender the encouragement and moral support that's required for a second chance. And I'm very pleased that the results, so far, have been very good in New Jersey.

SENATOR MATHEUSSEN: So I guess it would be fair to say that you would encourage the expansion of the pilot programs into other counties?

ATTORNEY GENERAL VERNIERO: I would.

SENATOR MATHEUSSEN: Perhaps a very devastating personal issue to many people in the State of New Jersey has been the downfall of HIP health insurance and the demise of that coming with the buyout by PHP. Your role as Attorney General in the Attorney General's Office has been -- some say it has been significant, if not should have been significant. Others say that there was less of a role in the Attorney General's Office and more with other members of the cabinet or other members in State government.

Without asking specific questions, I'd like to give you an opportunity to confront those critics right now because there are literally many thousands of people who are in a serious situation with regard to health insurance, and perhaps this State will be in a position of having to bail some of those dollars lost -- bail them out. So what-- Please shed some light on this.

ATTORNEY GENERAL VERNIERO: Let me just give you an overview, if I may. Three departments of the State played a role in connection with the approval of the ultimate transaction that you speak of, my Office, the Department of Banking and Insurance, and the Department of Health and Senior Services. The two latter offices, Insurance and Health, play a very defined statutory and regulatory function. I would consider them the primary, if not the exclusive, regulators in connection with that transaction. My Office's role is less defined, and by virtue of that, I believe it was less in terms of the overall importance because my Office was not the primary regulator in connection with that transaction. It was important nonetheless. The Attorney General's Office plays a role in what is known as the Charitable Trust Doctrine.

And in connection with HIP, we looked at essentially two questions, whether the Charitable Trust purpose of HIP would continue or be diminished in any way and whether the value of the assets being transferred in that case were diminished or were not fair market value. Those essentially were the two issues that we looked at consistent with our obligation. Because as I said, there is no statute or regulation that says in my case you must look at these various issues. These are the general issues that we would look at in the Charitable Trust area. And in both answers, we found the answer was yes, that the Charitable Trust would continue, essentially, and the assets were fair. So based on that analysis, we declined to assert our jurisdiction any further, which I believe was appropriate.

SENATOR MATHEUSSEN: Isn't it true though that there are assistant attorney generals serving both in the Department of Insurance and

Department of Health and Senior Services and that they would have had some contact with the other issues that were more prominent in their role of this review?

ATTORNEY GENERAL VERNIERO: Well, my Office advises all the departments of the State. The assistant attorney generals, actually, I believe still reside in the departments but serve the other client agencies. But there is a distinction, Senator, to be made between furnishing legal advice and making policy decisions. There is a great misnomer about the Attorney General that because my Office serves as counsel to the various departments of State, that somehow I play a role as a surrogate policy maker in those various offices. That's not the case. What my Office will do, normally, is to advise a cabinet officer as to the range of permissible options and decisions. But ultimately, the decisions and policy-making choices are the choices of those particular cabinet officers.

In the case of HIP, I'm sure my Office gave legal advice, but I am also certain that in terms of any breaches or violations on the part of any cabinet officers there is none that I'm aware of. In other words, they followed the regulations and the laws as we understood them to be, but ultimately the department heads had to make choices in those other departments.

SENATOR MATHEUSSEN: So then those decisions by the departments would have been decisions of policy as opposed to decisions of law?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: There is also now the question of outside review of the HIP-PHP transfer. And if I'm wrong, please tell me so,

if I'm not, then please explain. Why oppose outside review as opposed to internal review by the State of New Jersey of the transaction? And I believe there is, right now, a call for that outside review.

ATTORNEY GENERAL VERNIERO: Well, my understanding is that there is a call for the present Commissioner of Banking and Insurance to recuse herself in her function of evaluating certain aspects of the transaction and to replace her with some outside independent party. And the Insurance Commissioner felt, and we argued in court, that that was not appropriate, that there was no legal reason, based on conflict of interest or any other basis, to disqualify Insurance Commissioner LaVecchia from her function as the rehabilitator or now the liquidator of HIP. And the court agreed with us. Essentially, the court said that the plaintiff in that case did not make the appropriate showing of an appropriate conflict.

I have confidence and faith in my colleagues in the cabinet, particularly when I am unaware of any violation of any statute or regulation. I think they ought to be able to discharge their appropriate function without court intervention.

SENATOR MATHEUSSEN: In that particular case, if I could draw a parallel, your client would be the Commissioner?

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR MATHEUSSEN: And is it not ultimately up to your client to make the decision as to whether or not to accept or reject the condition of having to recuse herself?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: And so no matter what advice you would give, it would ultimately be your responsibility then to argue your client's position in court?

ATTORNEY GENERAL VERNIERO: Well, that, of course, assumes that our arguments would be nonfrivolous and made in good faith.

SENATOR MATHEUSSEN: Obviously they were not nonfrivolous. The court found in your favor.

ATTORNEY GENERAL VERNIERO: That is correct, yes.

SENATOR MATHEUSSEN: But again it would be a policy decision on the part of your client to move ahead with that issue as opposed to legal question.

ATTORNEY GENERAL VERNIERO: Well, it is a determination that she made that certainly she was in a better position, perhaps, than anyone to make the appropriate evaluation without an outside party intervention. And that is what we argued, and that's essentially what the court agreed.

SENATOR MATHEUSSEN: This will be more-- I'll leave the policy alone, that is not the issue of our hearing today. Perhaps we'll have another opportunity to go further with that on the Health Committee because I certainly think this is an issue that we need to explore further in this state.

The issue of profiling -- perhaps of all the issues that have come up in the last several months with regard to or being part of this nomination process-- And I'd like to make just an observation. Both Governor Kean and Justice Clifford had indicated that this is a -- or could result in a process which would be looked at as being politicized. Is it not true, in your opinion, that all appointments are, to some degree or another, politicized?

ATTORNEY GENERAL VERNIERO: Well--

SENATOR MATHEUSSEN: Isn't that, by virtue, the nature of this process? And it doesn't have to be, necessarily, in a partisan way, one in which we just make decisions based on our parties politics, but one which becomes politicized to some degree or another.

ATTORNEY GENERAL VERNIERO: In the sense that the political branches, with a small *p* are concerned, yes. I agree with that.

SENATOR MATHEUSSEN: Moving beyond that then, the issue of profiling-- This is an issue that gives me special interest only because the underlying case of *Soto* took place in the district from which I come from and represent, at least that's the quote of jurisdiction.

Your critics have said that the issue of profiling is one which to some degree should perhaps be a benchmark for you not being moved to the Supreme Court, based entirely on the fact that perhaps you did too little too late. To how do you respond?

ATTORNEY GENERAL VERNIERO: Actually, I see it slightly different. I see it as a benchmark but in the positive respect. My Office produced a landmark report that's never been produced in New Jersey and I venture to say nowhere else in the country. That can be used as a blueprint for finally getting to the bottom of these allegations. And now I believe they're more than mere allegations. I think we've shown them to be fact in certain cases. And more importantly, they can serve as a blueprint for reform in this area. It is a remarkable report. As I said, and as I may have mentioned last week, I was so convinced that the report was of national significance that I personally telephoned Attorney General Reno the morning we released it

because I felt it would be so helpful to her because she has acknowledged that the problem itself may be national. I am very proud of that report. I'm not proud, certainly, of some of the things that we found, but I'm convinced that it is a solid report, it's candid and constructive in scope, and I consider that an accomplishment, not a point to be criticized for.

SENATOR MATHEUSSEN: The time period from which you took office as Attorney General to the time period that this report was issued-- And I think some -- again going back to the beginning -- to late part of the criticism-- Why that time period to get to the point of where you are, which you announced just two weeks ago with regard to the ultimate decision that profiling was taking place and that you were taking proactive steps? Why that amount of time, some two years -- two and one-half years?

ATTORNEY GENERAL VERNIERO: Well, the underlying data that was used to support the report we had actually begun collecting a year ago, thereabouts, as a result of the Turnpike incident that occurred in April of last year. So the report itself, although it may have been written in a period of weeks, some of the data behind it had taken quite some time to gather, collect, and analyze.

I think it's incumbent on anyone in my position, as the chief law enforcement officer, whenever taking the kind of dramatic action we took in that report, to have solid evidence, a solid record, and a firm basis in doing so, and that takes some time. And that report, all 112 pages of it -- or however many pages -- over 100 pages, provided the firm record that I felt was necessary in order to properly advise the decisions that had to be made whether or not to withdraw from the *Soto* case and whether or not to put in

these firm reforms. So it takes time. I needed a solid record, I felt, behind me before I would ever make those kinds of recommendations.

SENATOR MATHEUSSEN: Staying with the issue of profiling. Next to making certain, as the chief law enforcement officer of the State of New Jersey-- Next to making certain that all people are treated equally under the law, and the whole issue of profiling certainly lends itself to that, making sure people of color, people of age, people of whatever discriminatory method could possibly be used-- Next to that issue, I find it extremely important that we also lend support and give credibility to our State Police -- the men and women who serve in our State Police. How, if in any way, does your report help to go about -- and I think helping to reestablish the morale in the State Police because I've taken the time to talk to individual State Police officers-- How does it go about making sure that there is training so that we can avoid what your Office has found with regard to the issue of profiling so that all men and women of this state and those who travel through it will be treated without regard to profiling?

ATTORNEY GENERAL VERNIERO: Well, that is one of the strongest recommendations we have in the report -- is in terms of revising the standard operating procedures to make crystal clear what the law is and what the constitutional limits are for searches and seizures in this state, plus enhance training at the trooper level.

I think another very important recommendation that will enhance the credibility of the State Police and therefore elevate morale at the Division is the early warning system that we recommend, where we will regularly publish data and information and also design a system where if there are

problems at the individual trooper level, they will be brought to the supervisor's attention sooner, faster, in a easier format so that changes could be made or troopers can be additionally trained or, if there is any willful misconduct, certainly troopers would be disciplined, and so forth. I think that early warning system will go a long way in enhancing confidence in the Division and therefore in turn enhance morale.

SENATOR MATHEUSSEN: One final issue, if I could, Mr. Chairman, and that is the issue of school violence. We recently just witnessed a national calamity in Colorado. I think we're all under agreement that it could happen anywhere. I reached out to your Office last week on the issue of searches in schools as well as school violence, and I found it to be very informative -- the information that was forwarded back to me. And quite frankly, I didn't know where to reach out. And you were one of several places that I reached out to, including talking to my local superintendents and including talking to several local school board members.

What can you tell us that the Attorney General's Office has done with regard to both searches -- the information that you provided to me -- and the youth violence that seems to be somewhat prevalent in at least some schools?

ATTORNEY GENERAL VERNIERO: I am fortunate in having served and still serve as the National Chairman of a task force on school violence -- youth violence and school safety. This was a committee appointed by the president of the National Association of Attorneys General. As a result of that work, I've been exposed to different strategies throughout the country

and have actually contributed some of New Jersey's strategies to my colleagues in the other states.

One of the major products of my Office in the last two years has been the school search manual, which is about 270 pages in length and was the first of its kind encyclopedia -- a how-to reference guide for school administrators in conducting lawful searches. One of the best things that we could do to keep school safe is to take as many preventative measures as possible before an act of violence occurs, and a constitutional search -- a lawful search is one way of preventing that. When we issued this encyclopedia, it was so novel that it became one of the top five resources in the country on the Web site of the National School Boards Association. So we've done a lot in this area.

Notwithstanding that, there is no guarantee of safety anywhere in terms of an absolute guarantee. Fortunately, New Jersey has been spared the worst cases of violence as we've seen in other states, but it can happen here. And one of the things that I often say in speeches, particularly to educators, is that we can't sit on our laurels. We have to always remain vigilant and safe.

SENATOR MATHEUSSEN: Thank you, Mr. Chairman. No further questions.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Thank you, Mr. Chairman.

ATTORNEY GENERAL VERNIERO: Good afternoon, Senator.

SENATOR ZANE: I just need a point of clarification. My understanding was that the Chairperson from the Bar Committee was going to be the third witness prior to Mr. Verniero being questioned again.

SENATOR GORMLEY: And we got a notice she was delayed in traffic. She's just arrived. We're going to finish your questioning. After your questioning, we're going to take a very abbreviated break, and then I will call her right after that break.

SENATOR ZANE: If it's-- I have questions that I think will spin off from what I hear from the Bar Chairman. I frankly would prefer hearing from her before I ask my questions of Mr. Verniero. That's not to say I don't have other questions, but I frankly would prefer that if you could.

SENATOR GORMLEY: Well, what I'd like to do is-- We can have your questions now. There will be ample opportunity-- First of all, you will be able to question her when she's up. So it is not as though she is just going to make a statement. Obviously, all the members will be able to question her at that time. And then there will be follow-up questions -- and you'll have follow-up questions beyond that. So I'd-- We'd appreciate your questions at this time.

SENATOR ZANE: All right, so what you are assuring me is that after she has testified and we have questioned her--

SENATOR GORMLEY: You're going to be able to question--

SENATOR ZANE: --we will have an opportunity to question--

SENATOR GORMLEY: You will question him again, yes.

SENATOR ZANE: Okay, that's fine.

General, as you know, much has been said about your youth, and also the question -- questions have been raised regarding your experience. Let me take you then directly to your judicial questionnaire and ask you about the private practice experience, which I think you indicated, began in 1990 and --

I'm sorry, it began in 1985 through 1987. Do you recall what month it was in 1985 that you began with Pitney, Hardin, and Kipp?

ATTORNEY GENERAL VERNIERO: I do not. It would have been shortly after the end of the term of the Supreme Court, so I would speculate it was about September. The Court normally ends in August. I think it was somewhere in mid-August where the new clerks come in and the old clerks leave.

SENATOR ZANE: So then from September of 1985 until when, if you recall, in 1987 were you in private practice?

ATTORNEY GENERAL VERNIERO: I don't recall the exact month, Senator.

SENATOR ZANE: It indicates here-- And I'll tell you why I'm asking you that. It indicates here that you were the campaign manager for Courter for Congress in 1987. And it also indicates that you were in private practice in 1987. Were you doing both simultaneously?

ATTORNEY GENERAL VERNIERO: No, there would have been a switch-over point somewhere in the year.

SENATOR ZANE: Then I would like an approximate breakdown-- Would it be fair to say-- Were you with Congressman Courter-- I don't know whether he had a primary or not. Did he have a primary that year?

ATTORNEY GENERAL VERNIERO: I don't believe that he did.

SENATOR ZANE: Were you with him then at the time of the primary, which would be June of 1987?

ATTORNEY GENERAL VERNIERO: I would have to try to find that out for you, Senator, and I will try to find that out. I just don't recall.

Wherever possible, I try to put specific months. For example, when I was Chief Counsel to the Governor, I noted, rather than 1994 to 1995, I said January of 1994 and February of 1995 to make it very clear that that was about a year. Just my guess, and this is speculation, if I put 1985 to 1987, it was a substantial time in 1987; otherwise, I believe I would have noted it. If it were just one or two months, I probably would have noted that in 1987, just based on the manner in which I filled out the rest of the questionnaire.

SENATOR ZANE: But clearly by the time of the general election-- I guess you really wouldn't have had a-- Was this a special election? Why were you a campaign manager in 1987? Congressmen run on even years, don't they?

ATTORNEY GENERAL VERNIERO: They do, but it would not be unusual in preparing for a reelection year to bring someone in, which may explain the time frame. It may have been late in 1987. That was speculation on my part.

SENATOR ZANE: I guess that was a paid position, is that correct?

ATTORNEY GENERAL VERNIERO: Oh, yes.

SENATOR ZANE: And you remained the employee of Congressman Courter through 1989 up until July of 1989, is that correct?

ATTORNEY GENERAL VERNIERO: Through the primary of 1989, and then I was transferred to the Republican State Committee from July of 1989 to the, as I say on my resume, January of 1990.

SENATOR ZANE: I was going to ask Senator Gormely, who won that primary. Was it Courter?

SENATOR GORMLEY: That's not germane. That's a very painful question.

SENATOR ZANE: But I know -- you have such a good nature, that's why I knew I could do it with you.

SENATOR GORMLEY: Well, thank you Senator.

Mr. Edwards-- We could ask all of us. We've all done it at one time or another.

SENATOR ZANE: He has not testified yet, but I'll get there.

You indicate that during 1985 to 1987, which appears to me to be, probably, a little shy of two years or thereabouts -- you say you've prepared a wide range of corporate documents for business transactions and conducted general corporate practice. How many man law firm was this -- man and woman?

ATTORNEY GENERAL VERNIERO: Well, at the time, I want to say 80 or 90, but that is speculation. It's since grown. It's one of the largest law firms in the state. It was at the time, and it is now.

SENATOR ZANE: And you came with no experience of the practice of law at that point, correct, other than the Supreme Court?

ATTORNEY GENERAL VERNIERO: Other than my clerkship, that is correct.

SENATOR ZANE: And would it be fair to say that a firm that size--

ATTORNEY GENERAL VERNIERO: With one caveat. As I recall, and I didn't list this on the resume because it was very short term, I was a summer associate at Pitney, Hardin, which is not unusual for big law firms

to hire you for the summer in between your second and third year of law school. So I had that additional time, but not as a member of the Bar.

SENATOR ZANE: I would imagine again at an entry level?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: So of the 80, that would put you to the bottom.

ATTORNEY GENERAL VERNIERO: Toward the bottom, yes.

SENATOR ZANE: Did you-- Following year, were there new associates hired?

ATTORNEY GENERAL VERNIERO: Pardon me?

SENATOR ZANE: The following year, were there new associates hired?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: And that's what got you off the bottom.

ATTORNEY GENERAL VERNIERO: Yes. They would hire, as I recall -- could be as many as a dozen associates at a time. With the bigger firms, that's not unusual.

SENATOR ZANE: Give us an idea of the experience that you acquired during that two-year period of time.

ATTORNEY GENERAL VERNIERO: It was a general corporate practice, drafting bylaws, certificates of incorporation, filing those documents with the appropriate agencies. In the case of Pitney, Hardin, because they had a very large corporate practice, a very sophisticated practice, I worked on certain SCC filings where I would assist the partner in charge or the senior associate in those kinds of issues.

SENATOR ZANE: Would you say, for the most part, your experience there really was to get your feet wet in the private practice?

ATTORNEY GENERAL VERNIERO: I don't know if it was getting my feet wet. Certainly, I was a new lawyer at the time and was assigned cases appropriate to my experience level. I had come to the firm with the advantage of being a law clerk, particularly the law clerk for the Supreme Court. Those are fairly rare, as I indicated in my opening. So that gave me a little bit of a leg up in terms of experience.

SENATOR ZANE: Is this law firm the Governor's law firm, if you happen to know, privately?

ATTORNEY GENERAL VERNIERO: Not to my knowledge.

SENATOR ZANE: Or her father?

ATTORNEY GENERAL VERNIERO: Not to my knowledge.

SENATOR ZANE: And then you left in 1987, and you did not return to the practice of law until 1990, correct?

ATTORNEY GENERAL VERNIERO: Nineteen-- That is correct.

SENATOR ZANE: While you were an associate between 1985 and 1987, did you appear in court?

ATTORNEY GENERAL VERNIERO: Not in the corporate department, no. There was a separate litigation department at Pitney, Hardin where all the court appearances would be made through that department.

SENATOR ZANE: So in those two years, you did not appear in court.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR ZANE: Did you ever conduct depositions?

ATTORNEY GENERAL VERNIERO: No, that would not be the normal assignment for someone in the corporate department.

SENATOR ZANE: Did you ever appear on a motion?

ATTORNEY GENERAL VERNIERO: Again these are aspects of litigation that would be handled by the litigators in the litigation department.

SENATOR ZANE: In 1990 through 1993, you worked for a law firm of Herold and Haines, am I correct?

ATTORNEY GENERAL VERNIERO: 1990 to 1993, that is correct.

SENATOR ZANE: What I see here, based upon your resume, is that you were the Executive Director of the New Jersey Republican State Committee from July of 1989 until January 1990. I guess then the employment at Herold and Haines would have begun in January or February thereabouts of 1990.

ATTORNEY GENERAL VERNIERO: Yes, I believe it was January. Let's see if I have that on my other resume.

SENATOR ZANE: You don't have a specific date, but it indicated that you left the--

ATTORNEY GENERAL VERNIERO: Yes, I left the executive director position in January of 1990 and shortly thereafter began at Herold and Haines. Early in the year of 1990.

SENATOR ZANE: And you were there until June of 1993?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR ZANE: So two and one-half years there.

Your resume indicates that you were in private practice, which included civil litigation. Were you in court with the civil litigation?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: You also indicated that you had experience before Federal, State, and municipal agencies in addition to commercial and election law.

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR ZANE: That's the experience.

Did you try cases with or without a jury between either the fate -- excuse me, either the Federal or State courts that you say you appeared in?

ATTORNEY GENERAL VERNIERO: No, I had one case that, as I recall, settled on the eve of trial, but--

SENATOR ZANE: So the answer is no.

ATTORNEY GENERAL VERNIERO: None in Superior Court, no.

SENATOR ZANE: What about Federal court?

ATTORNEY GENERAL VERNIERO: No.

SENATOR ZANE: So no court.

ATTORNEY GENERAL VERNIERO: No actual trials in Superior or Federal Court. My trials were conducted before the administrative law judges in the state.

SENATOR ZANE: Do you feel that the positions of Chief Counsel to a governor and Chief of Staff in the real world-- I'm not a new kid around here, I've seen your predecessors and dealt with them. Wouldn't you say that they're really political positions?

ATTORNEY GENERAL VERNIERO: No, I think, as Governor Kean, I think, articulated, there are political aspects to them in the sense that they're part of the political discourse and the political -- legislative process, but particularly in the manner in which I conducted the Counsel's Office. I consider that a law firm -- a medium-sized law firm with one client, obviously, the Governor. And I managed it as a law firm. We had a particular system for deadlines; we had regular staff meetings, as one would have at a law firm; we made sure we had a proper filing system; we stressed professional ethics--

SENATOR ZANE: Sir, in all do respect, is that your representation of what a law firm--

ATTORNEY GENERAL VERNIERO: I'm sorry.

SENATOR ZANE: Is that your representation of what a law firm -- experience that is kin to a law firm?

ATTORNEY GENERAL VERNIERO: I try to manage the Counsel's Office as a law firm. Obviously, there is not identical analogies.

SENATOR ZANE: But that's the experience you're offering to suggest that it's operated as a law firm.

ATTORNEY GENERAL VERNIERO: I try to manage it as a law firm. Obviously, we didn't go to trial in the Counsel's Office because under our system, the Attorney General is the chief litigator, even for the governor. So when I say I managed it like a law firm, I'm referring to the ethical responsibilities that I impose on the deputy assistant counsel. Their work product was always legal in nature. And it was managed like a law firm.

SENATOR ZANE: In the position of Chief Counsel to the Governor, what percentage would you suggest was political, what percentage would you say would be this law firm that you're comparing it to?

ATTORNEY GENERAL VERNIERO: There's really no way for me to make a percentage, Senator. As I believe Governor Kean rightly summarized, there are political aspects to how a bill becomes a law.

SENATOR ZANE: You're relying on Governor Kean, but Governor Kean was not there when you were chief of staff or chief counsel, am I correct?

ATTORNEY GENERAL VERNIERO: No, I'm saying I agree--

SENATOR ZANE: Okay.

ATTORNEY GENERAL VERNIERO: --with his testimony and make it my own that there were political components to the legislative process, and certainly that would be part of the Counsel's Office process. But we never forgot, in the Counsel's Office, that at the end of the day we were attorneys -- we were lawyers, and we were giving legal advice to our client.

SENATOR ZANE: Chief of Staff -- would you say that's a political position?

ATTORNEY GENERAL VERNIERO: That is more administrative, certainly, than legal. And there are political aspects to that position again in the small *p* sense of political. But it would be difficult for me to break that down in terms of a percentage.

SENATOR ZANE: Clearly, you were a political operative for the Governor, were you not?

ATTORNEY GENERAL VERNIERO: Actually, I was not. I was hired--

SENATOR ZANE: You say you were not?

ATTORNEY GENERAL VERNIERO: I was not a political operative I was the Governor's campaign lawyer. Now, maybe that is defined as a political operative. If that's your definition, I certainly accept it. But I was the in-house counsel.

SENATOR ZANE: Let me focus on what I'm really trying to ask. You were involved in the appointment process for the Governor at one point in time, were you not?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: Okay.

Did you ever suggest-- From time to time there are Senators, county chairmen, whatever they might be, that suggest somebody for the bench that you really, inside know, "Well, wait a minute. What can we do? We've got to do something. This is an intellectual person and an important person to us. Let's send them over to the State Bar. We know that they'll get knocked down." Are you going to suggest that never happened?

ATTORNEY GENERAL VERNIERO: I don't recall specific cases where I intentionally sent someone to the State Bar knowing that that person would be knocked down. Now, maybe that happened in effect, but I don't recall, as I sit here, specific names of persons where I intentionally asked for that to happen or wanted that to happen.

In terms of consulting with county chairmen and Senators, and so forth, of course we consulted with many different persons. We tried to have

a broad source of information to enlarge the talent pool using many different sources. But I don't think that turned me into a political operative because I may have consulted with a Senator or county chairman with respect to a judicial nomination.

SENATOR ZANE: And I'm not suggesting that you have, but you certainly don't believe that any politics played a part in the decision of the State Bar who reportedly voted unfavorably on your nomination for this position, do you?

ATTORNEY GENERAL VERNIERO: I don't--

SENATOR ZANE: You're not suggesting-- And I have not heard that you have, but I just want to make it clear. You're not suggesting that there is any politics in the decision of the State Bar Committee in rejecting or allegedly rejecting your nomination in this position, am I correct?

ATTORNEY GENERAL VERNIERO: I can't express an opinion one way or the other because I do not know what the Bar based their opinion on.

SENATOR ZANE: So you feel that there is a possibility or you just don't know?

ATTORNEY GENERAL VERNIERO: I don't know. It is done in secret. And until we hear the rationale of the Committee, I think none of us knows.

SENATOR ZANE: How long did your session last with the Bar?

ATTORNEY GENERAL VERNIERO: My personal interview was about two and one-half hours.

SENATOR ZANE: Is that the first time or the second time you appeared?

ATTORNEY GENERAL VERNIERO: I did not appear a second time.

SENATOR ZANE: Okay. When you appeared-- Did you appear yesterday?

ATTORNEY GENERAL VERNIERO: I did not.

SENATOR ZANE: Okay. Representatives were sent there on your behalf?

ATTORNEY GENERAL VERNIERO: To my knowledge, no one appeared.

SENATOR ZANE: Okay. Can you give us some sense of what you had to say to the Bar, which obviously wasn't accepted by them, as to why you should be a justice of the Supreme Court in this state?

ATTORNEY GENERAL VERNIERO: Well, the Bar asked many questions, and some of them were highly specific, and I gave, what I thought were, relevant, full answers. It was not as structured as this setting. I made no opening statement. I submitted a questionnaire similar to the one that this Committee utilizes. Essentially, it was a question-and-answer period.

SENATOR ZANE: General, when we spoke a week ago about the issue of profiling, you and I got into a little bit of a discussion about responsibility, and I'm not going to get back to that. I would say, before I ask you this question, that it obviously didn't begin on your watch, but it is obvious that it did exist on your watch. And I guess, unfortunately, if it were some prior attorney general when this became public, they probably would be

getting more blame and more criticism than those prior attorney generals who would have a degree of responsibility probably similar to yours.

How do we respond because this has happened-- How do we respond to black people. Not necessarily from organized groups, black people that just say that they're concerned about this nomination because it is so important to them that they not have ill feelings about members of the Supreme Court of this state. But they feel that, rightly or wrongly, you have some culpability in what has transpired during your watch but obviously began before it. How do you suggest we respond to that -- to those people that indicate they have that kind of a concern?

ATTORNEY GENERAL VERNIERO: I would say the fairest response would be to look to the whole record, look to the whole person, look to all the things that either I or my Office may have done, whether it is in the area of enhancing diversity within State government and within the Department, whether it is my work in the bias crime area, whether it is my work at trying to enhance diversity within the State Police specifically, my work as the host of an unprecedented Law Enforcement Summit held last year, where we, for the first time in this state, really spoke openly and directly and candidly about the issue of race in law enforcement.

I would hope that anyone judging this nomination would look at all facts in the entire record before making a decision.

SENATOR ZANE: General, on October 3, 1994, you were Chief Counselor for the Governor, correct?

ATTORNEY GENERAL VERNIERO: That sounds right.

SENATOR ZANE: And on October 3, 1994, the Senate of this state approved the nomination of Prosecutor John Kaye to be the Monmouth County prosecutor, is that correct?

ATTORNEY GENERAL VERNIERO: I don't have an independent recollection of the date.

SENATOR ZANE: I have a document.

ATTORNEY GENERAL VERNIERO: I accept your representation.

SENATOR ZANE: And four days prior to that, a court determined that Mr. Kaye had been involved in sexual discrimination within his office. When did you have knowledge that there had been a Federal decision determining that there was a responsibility -- a judgement against, if you will -- as a result of that conduct? When did you know it the first time?

ATTORNEY GENERAL VERNIERO: I don't recall exactly when I may have learned that. I recall that it became an incident at the time because I believe it was Senator Lynch who believed that the Governor's Office had intentionally concealed this information -- or that I did, and I recall at the time it was essentially public information at the time the Senate voted. So there was certainly no attempt by me to conceal anything. I also recall -- and I'd really have to go back myself and check whatever files -- I'm not sure I even have these files, I think they're in the Counsel's Office -- that the issue may have come up, in an indirect way, at Prosecutor Kaye's confirmation hearing itself, where there might have been some reference to it. So aside from what was in the newspaper, I don't recall the exact time I found out about it.

SENATOR ZANE: General, with all due respect, I think that it was on this Committee then -- never happened.

ATTORNEY GENERAL VERNIERO: I thought there was some reference to it in his questionnaire. He may have-- There may have been someone who may have referred to it in testimony themselves. I don't recall the specifics. It was some time ago.

SENATOR ZANE: Based upon what you said about believing it was in the public germane at the time that we voted, I'm gathering from that that you are acknowledging that you probably knew it before we voted -- you did.

ATTORNEY GENERAL VERNIERO: I think it is safe to assume I had constructive knowledge if it was in the newspaper. Whether I had actual knowledge, I really can't recall.

SENATOR ZANE: Did you ever communicate that to Senator DiFrancesco or Senator Gormely?

ATTORNEY GENERAL VERNIERO: I do not recall doing that, no.

SENATOR ZANE: Did you and the Governor discuss it before the confirmation?

ATTORNEY GENERAL VERNIERO: I don't recall. I recall that we discussed it after it became an issue. I don't recall if we discussed it prior to that.

SENATOR ZANE: Was there any suggestion that "we'll just let this sit and see what the Senate does" between you and the Governor?

ATTORNEY GENERAL VERNIERO: No.

SENATOR ZANE: You have indicated, and I've read it in some press clippings, that you are cooperating with the U.S. Justice Department in the investigation regarding the profiling on the New Jersey Turnpike.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR ZANE: Is that accurate?

ATTORNEY GENERAL VERNIERO: Well, we're cooperating with the Justice Department's overall investigation of the State Police.

SENATOR ZANE: But up until five weeks ago, you were saying it didn't exist, by virtue of the appeal that was filed, correct?

ATTORNEY GENERAL VERNIERO: What didn't exist, Senator? I don't understand your question.

SENATOR ZANE: Profiling -- profiling.

ATTORNEY GENERAL VERNIERO: No, we weren't saying that. At least I was not saying that personally. We were defending an action in the State Police on behalf of State Police that had started prior to my becoming Attorney General. And as I indicated last week at this Committee, the whole issue of profiling became crystallized and uppermost in my mind at around the time of the Turnpike incident of last year. And I think it is fair to say, particularly since we relied, in part, on this data that we gathered last year, that I had been looking at racial profiling for at least the last year.

SENATOR ZANE: But nevertheless, the appeal was to turn over the decision of Judge Francis of Gloucester County, that in fact racial profiling existed, am I correct?

ATTORNEY GENERAL VERNIERO: Well, we kept the appeal, yes. And we withdrew from the appeal at a time when I felt I had sufficient

information to make an informed judgement that we ought to withdraw from the appeal. The deadline in *Soto* was such that at the time we filed our motion with the Court to ask the Court for additional time for us to finish our report -- if I'm not mistaken, that was the first opportunity we had post-Turnpike incident. In other words, it was the first opportunity we had to file a brief or say anything with respect to whether we should continue the appeal within the confines of an actual court schedule. That explains the timing, and that also explains why the April 20 report concentrated more on the two southern barracks because those were the barracks at issue in the *Soto* case.

SENATOR ZANE: So we just established that you were aware of a Federal investigation. How far back were you aware of the Federal investigation, the U.S. Justice Department's investigation of profiling?

ATTORNEY GENERAL VERNIERO: It's been at least two years, maybe longer. I don't know the exact date that they began. I'm not sure that they informed us of the exact date. You know, this -- the unit down in the Justice Department, under the Federal statute, open up a file or begin a review in many jurisdictions. The review may mature into an actual investigation. I really can't be precise. That's really a question that the Justice Department would be able answer as to when they actually began, and so forth. They certainly began requesting information over the last two years and maybe even a little bit longer than that. And we furnished information in accordance with their request.

SENATOR ZANE: One last question.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: Could you just give us a quick synopsis of what that cooperation is that you gave to the Justice Department?

ATTORNEY GENERAL VERNIERO: Basically, it was responses to information requests that the Justice Department would make either to my Office or to State Police.

SENATOR ZANE: In another matter that I think is somewhat akin to the Kaye matter that we just talked about-- The Senate confirmed Gil Medina as Commissioner of the Department of Commerce on January 31, 1994. Again at that time I think you were Chief Counsel, am I correct?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR ZANE: He was not sworn in until March 30, 1994. Do you happen to know why the delay?

ATTORNEY GENERAL VERNIERO: My recollection is that he was, and this is not unusual, sworn in privately right after his confirmation, and then he had a public swearing in. And I believe, if you check the Secretary of State's Office, there will be an oath on file that indicates he was sworn in -- this is my recollection now -- very soon after he was confirmed by this body.

SENATOR ZANE: But he was confirmed on March 30.

ATTORNEY GENERAL VERNIERO: Confirmed? No, he was confirmed prior to that, as I recall.

SENATOR ZANE: I'm sorry. Confirmed on the 31, sworn in on March 30. Well, March the 14, then Attorney General Poritz memorialized the terms of a settlement that indicated that she had had conversations with you beforehand regarding that matter. And I believe that you subsequently denied being party to any of those conversations. Is that correct?

ATTORNEY GENERAL VERNIERO: What I said-- I believe in my response to one of Senator Lynch's questions was that I did not have any conversations with Commissioner Medina until after the matter had closed. And that is accurate.

SENATOR ZANE: When did you first become aware that there were allegations of improper sexual advances in the Medina matter?

ATTORNEY GENERAL VERNIERO: I don't recall the exact time. It was, as I recall, prior to the formal action that the Attorney General took in terms of opening up whatever investigation she undertook.

SENATOR ZANE: Was it subsequent to the confirmation or prior to the confirmation?

ATTORNEY GENERAL VERNIERO: It was-- If I'm not mistaken, the complaint of activity occurred after the confirmation, so it would have been after the confirmation. And again, if I'm not mistaken, it was after he was sworn in, not in the public ceremony -- but as I recall, he was sworn in privately, which is not unusual.

Rather than put a Commissioner in an acting capacity, if the Commissioner has gone through full confirmation, many times we will just swear that person in privately, and then there would be a public ceremony. That, for example, happened with the Secretary of State -- the current Secretary of State. He was sworn in privately right after his confirmation, and then a month later, or so, we had a more ceremonial public swearing in. That's not uncommon.

SENATOR ZANE: In the profiling, there were two troopers that had been indicted. Is there an ongoing investigation that involves those troopers as targets in the shooting?

ATTORNEY GENERAL VERNIERO: I am greatly restrained in what I may say--

SENATOR ZANE: I respect that.

ATTORNEY GENERAL VERNIERO: --on that point, Senator.

SENATOR ZANE: Are there other troopers that are currently under investigation for fraudulently completing reports consistent with the changes that were made to tickets or statistics or whatever as the other two officers?

ATTORNEY GENERAL VERNIERO: As I have already said publicly, there are at least 10 troopers whose actions, we believe, warrant review by my Office. And that review is underway.

SENATOR ZANE: What action have you taken against those troopers? Any at this point?

ATTORNEY GENERAL VERNIERO: None, because there have been no firm conclusions reached.

SENATOR ZANE: Have they been noticed that they're--

ATTORNEY GENERAL VERNIERO: That I honestly don't know.

SENATOR ZANE: One last issue.

SENATOR GORMLEY: Excuse me. If we could-- Before we get to another issue-- We've completed 30 minutes of testimony.

SENATOR ZANE: Can I just ask one question on VK?

SENATOR GORMLEY: Sure, go ahead.

SENATOR ZANE: General, in the VK matter, the chiropractors with -- I'm trying to find my paperwork -- but millions of dollars as I recall-- They were suspected of billing \$52 million of fraudulent claims. In fact, I think those were numbers that were actually (indiscernible) by you when you appeared before the Legislative Oversight Committee, am I correct?

ATTORNEY GENERAL VERNIERO: That sounds about right.

SENATOR ZANE: And they lost their license for a period of two or three years through a State agency that regulates them. And they were ordered to pay a fine of \$750,000. That's correct?

ATTORNEY GENERAL VERNIERO: That is my general recollection, yes.

SENATOR ZANE: Why was there not a recommendation for criminal prosecution by you?

ATTORNEY GENERAL VERNIERO: Well, at the time-- If I'm not mistaken, that occurred shortly in my tenure, and the case had begun under the prior Attorney General, and there was a recommendation made under the prior Attorney General, that I also supported, leading up to the civil settlement that given the nature of our statute at the time, that it was a difficult, if not impossible, case to make criminally. So what we tried to do was essentially the next best thing. We disgorged the chiropracting -- chiropractor enterprise of \$40 million of those \$52 million that you referenced. Those were bills that had not yet been paid. We disgorged them of that profit.

SENATOR ZANE: So they got \$12 million.

ATTORNEY GENERAL VERNIERO: Yes. We disgorged them of that profit. We fined them, as you said, close to \$1 million, and we took away their license for an extended period of time. I've since issued a report, and the Legislature has since favorably responded to the recommendations in that report. So now we have the laws greatly enhanced in New Jersey, where we can -- if that case were repeated again, we would be able to revoke their licenses on a permanent basis, we would be able to prosecute them criminally with a fair chance of success that did not exist back before the law was amended--

SENATOR GORMLEY: Two seconds.

ATTORNEY GENERAL VERNIERO: --and that statute, in fact, is now used in -- as a model in other states.

So I feel very strongly we should not repeat that kind of outcome; although, as I said then and I say again now, given the facts, given the circumstances, and most especially, given the state of the law that existed at that time, that was the best outcome that we were able to achieve.

SENATOR ZANE: I have nothing further.

SENATOR GORMLEY: Thank you.

For the record, Attorney Generals Edwards, Zazzali, and Del Tufo wanted me to note, for the record, their support for the nominee.

We'll be back in exactly one-half hour. At that time we will take the testimony of Karol Corbin Walker. And then we will resume the questioning of the nominee.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: An invitation was extended by myself, as Chairman, to the Chairperson, Judicial and Prosecutorial Committee of the State Bar, to appear today. We appreciate the acceptance of that invitation.

And I'd like now to call Karol Corbin Walker, and I would ask for you to make whatever comments you feel appropriate under the Compact regarding the nominee.

KAROL CORBIN WALKER, ESQ.: Thank you, Senator Gormley.

Is my mike on? (referring to PA microphone)

SENATOR GORMLEY: You need a red light.

MS. CORBIN WALKER: Now I have the red light.

SENATOR GORMLEY: Great.

MS. CORBIN WALKER: Thank you, Senator Gormley and the other Senators here today, for giving the State Bar Association an opportunity to speak before you. I am here as the Chair of the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee.

Our Committee is the only nonpartisan, nonpolitical, objective, independent part of the judicial process in this state. We exist by virtue of a 1969 Compact that was entered into with the Bar Association and Governor Hughes. Prior to 1969, the Bar Association was involved in the judicial process in New Jersey, however, on an informal basis. It was formalized in 1969.

Under the Compact, we are required to review, evaluate, investigate, and interview potential candidates for the judiciary and prosecutorial appointments in this state. Under the Compact, everything we do is subject to strict confidentiality. Our determination as to whether a candidate is qualified or not qualified is only given to the Governor or the Governor's designee. There is only one instance in which we are permitted, under the Compact, to speak publicly, and even in that instance, which arises today, it's limited. We are limited to present our findings and the reasons therefore. I am not, by my presence here today, by any way waiving the strict confidentiality by which I am bound under the Compact. I will not reveal confidences or disclose any type of confidential information; however, I will give to you, Senators, the reasoning and the findings that we have and the determination that we made that Attorney General Verniero is not qualified to sit on the Supreme Court of this state.

Our Committee consists of 25 individuals. Each of the 21 counties in this state is represented. In addition to that, we have a South Jersey Chair, a North Jersey Chair, the President of the Bar Association, as well as myself, serve on that Committee. Committee members are selected by the President of the State Bar Association to three-year terms, limited to two. They have staggered terms.

Our process commences, generally, when we receive a questionnaire from the Governor's Office that requires us to evaluate, investigate, and interview a candidate. Our investigations are fair, impartial, objective, thorough, and very wide searching.

With respect to General Verniero, this nomination came about differently. We generally receive the questionnaire before the person is nominated or the mention of a nomination. Here we received it afterwards, so it was already in the press that he would be nominated for that position. And that's important for me to state for the record.

When we received this questionnaire, as like all questionnaires, it was given to each of our 25 members. As Chair, I appoint a primary investigator or investigators, depending on the case. Within this past year, I have had several investigations where there were several individuals that were primarily responsible for the investigation. In addition, each of the members of our Committee is always encouraged, and very often they do so -- conduct their own independent investigation, since we span the entire state and in particular for this nominee, it was important for everyone to conduct and engage in their own due diligence with respect to contacting practicing attorneys, judges, and other individual's in this state. Our entire investigation consisted of discussions with individuals, and they amounted to over 200 individuals: judges, former employers, former colleagues. The investigation goes beyond the information that is given to us by the candidate.

Under the Compact, we are required to adhere to certain criteria when we determine whether a person is qualified or not, as well as guidelines. In the case of a Supreme Court Justice, there is an additional requirement, and I'll get to that momentarily. The requirements by which we must determine whether a person is qualified or not, and by which General Verniero was measured, are as follows: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility,

and public service. The criteria that Attorney General Verniero failed in is the one for professional experience. Our investigation, evaluation, and interview of Attorney General Verniero demonstrated that he lacked the necessary professional experience to pass the qualified determination.

When I say professional experience, I'll tell you what I'm talking about. He lacked the experience that comes with the day-to-day practice of law. He demonstrated an inability to have an appreciation of the practical day-to-day practice of law. When he was in private practice, he gave us the names of several judges before whom he appeared that would have an assessment of his legal ability. There were only a handful of judges, and I will not disclose their names to you because it's confidential, but I can assure you and tell you that we did contact all of those judges. Many of those judges, for one, didn't recall him or, two, did not have an assessment of his legal ability. Only one judge who is now a former judge recalled that the General appeared before him. We also contacted the General's then adversary, who is now a sitting Superior Court Judge and recalled that the General presented a well-written brief, presented good oral argument, and that was it.

We also determined that in the category of professional experience, our guidelines tell us that in the case of a Supreme Court Justice additional professional experience such as scholarly research and the development of legal concepts is desirable. Here it was wanting. We didn't find it.

Based on our thorough, fair, extensive, and wide-ranging investigation, evaluation, and interview of Attorney General Verniero, we determined he lacked the experience and the judgment that only the depth and

breadth of which comes with experience, which he did not have, and therefore, he did not meet the eight criteria by which we are required to determine a person's qualifications.

It's also important for me to state that over the past three years our Committee has evaluated, investigated, and interviewed over 100 individuals for judicial appointments. Out of those 100 individuals, approximately 20 of them were determined not qualified. None of the names of those individuals have ever been disclosed because of the Compact we have with respect to confidentiality. It would be a disservice to those individuals if the public ever knew that they were deemed unqualified because it would destroy their reputations, so therefore the public does not know that.

That's my opening statement and my address with respect to what we did and how we did it, and I'm open to questions now.

SENATOR GORMLEY: Senator Bennett.

SENATOR BENNETT: Thank you, Mr. Chairman.

Thank you for appearing here today.

On the actual background that you gave us -- I'd like to just dwell on that for a moment, if I could. You talked about-- The Compact was formally entered into with Governor Hughes back in 1969 and has been renewed each year, or each administration, I think, has renewed that Compact with the Bar Association. Is that basically correct to your understanding?

MS. CORBIN WALKER: What I would say is that it was originally entered into with former Governor Hughes, and it has been honored by every sitting governor since Governor Hughes. Our determination has only not been followed, I believe, in three prior instances.

Now, under the Compact though, there is a provision-- I want to make sure everyone, and particularly the citizens of this state, understand there is a provision which, of course, allows the governor to appoint whomever he or she wishes, and in this case Governor Whitman wishes, with the advice and consent of the Senate. The Compact is only binding upon us with respect to the confidentiality, but it in no way precludes a presentation of a person's name despite our determination of not qualified.

SENATOR BENNETT: We're kind of bound by the Constitution of the State of New Jersey and not an agreement between two parties. We're bound by that Constitution that gives this body the advice and consent, and not obviously your body the advice and consent. I was just trying to find the determination as to that Compact is between the executive branch of government and the Bar Association. It's not a party-- The legislative branch of government is not a party to that Compact is my understanding.

MS. CORBIN WALKER: Correct. That is correct.

SENATOR BENNETT: Now, does that Compact itself establish the guidelines, or have the guidelines been devised over time?

MS. CORBIN WALKER: The Compact itself references the type of criteria that should be employed, and over time they have been developed. We abide by a manual that was drafted and promulgated, or issued, in 1986, and in that manual, it sets forth the age criteria that I've just articulated, as well as several other guidelines.

SENATOR BENNETT: Who developed those guidelines?

MS. CORBIN WALKER: Well, in the manual, which I'm sure maybe some of you have already seen-- I'm sure because it's -- you have a copy

of it. In the manual, which as you can see I don't have in front of me-- I'm doing everything from my memory here.

SENATOR BENNETT: I don't have the manual in front of me--

MS. CORBIN WALKER: Okay.

SENATOR BENNETT: --so I would like it to the best of your ability to tell me what I asked was, if you could.

MS. CORBIN WALKER: Oh, I will. I plan to do that.

In the manual, in the first page, there's a letter, and it was from the then President of the State Bar Association, Mr. Schromador (phonetic spelling), saying, "Enclosed is the criteria and the guidelines, and the first, I believe, State Bar Chair of this Committee, James C. Pitney, from the firm of Pitney, Hardin, was involved with the drafting and formulation of the guidelines and the role that the Bar would play." I hope that answers your question.

SENATOR BENNETT: Were the guidelines then incorporated into a new document with the administration?

MS. CORBIN WALKER: The guidelines flowed from the original Compact that was dated in 1969.

SENATOR BENNETT: Can you give us those eight guidelines again?

MS. CORBIN WALKER: The ones I just articulated?

SENATOR BENNETT: Yes.

MS. CORBIN WALKER: Absolutely.

The first one is integrity. The second is legal knowledge and ability. The third one is professional experience. The fourth one is judicial

temperament. The fifth one is diligence. The sixth one is health. The seventh one is financial responsibility, and the eighth one is public service.

SENATOR BENNETT: Now, do you have a process under the guidelines that you weigh any of them?

MS. CORBIN WALKER: In the guidelines, it tells you that depending -- and I just want to make sure I paraphrase this properly. In the guidelines, they say that these are eight criteria. None of them should be -- how can I put it to make sure I'm not -- misrepresent what they say? There are eight guidelines. Out of the guidelines, each of the criteria are equally as important as the others. And if one is wanting, if that is paramount to the Committee, then that one is sufficient to deem someone unqualified, as it was in the case of Attorney General Verniero.

SENATOR BENNETT: So it's a judgment call that's made based on those guidelines.

MS. CORBIN WALKER: I wouldn't say it was a judgment call. I would say it's more of a practice that has been employed by the Committee for the past 30 years that they look at the eight criteria, and if they determine one is wanting that they can deny a person and come out with a determination that they're not qualified.

SENATOR BENNETT: The guidelines were done in '86 to implement from the '69. The guidelines come in '86, though, don't they? Isn't that what you told me?

MS. CORBIN WALKER: Well, in the Compact itself, the Compact came from Governor Hughes, and it's a document that sets forth many of the things that are in the guidelines. It's just that the guidelines,

make it more -- how can you put it? -- like, it's more of a breakdown where you have eight categories. All the information that we set forth in the guidelines is in the Compact. It's just that it's now more refined.

SENATOR BENNETT: Does the document that the Compact that was entered into in '69 contain these eight--

MS. CORBIN WALKER: Criteria?

SENATOR BENNETT: These criteria, yes.

MS. CORBIN WALKER: The criteria that I have just articulated are set forth in the guidelines. They may not be set forth--

SENATOR BENNETT: No. In the Compact, the original Compact.

MS. CORBIN WALKER: I'm sorry. I'm sorry. They are set forth -- I stand corrected -- in the Compact. They may not be one, two, three, four, five, six, seven, eight, but these are the criteria by which, under the Compact, we are required to judge an individual.

SENATOR BENNETT: And where in the Compact is there any reference to confidentiality?

MS. CORBIN WALKER: In the letter from Governor Hughes, there's a statement in there, as well as our guidelines, that everything we do is strictly confidential because it's between the State Bar Association and the executive branch.

SENATOR BENNETT: Okay. Do you have a privilege as attorneys representing someone on that then? Is that the statutory authority that gives you that confidentiality?

MS. CORBIN WALKER: I do not believe there's a statutory authority whereby there is a privilege such as attorney-client or prepenitent type of privilege with respect to what we do. However, the Compact enables us to exist, and under the Compact, by us existing, we have adhered and continue to adhere to the confidentiality contained therein.

SENATOR BENNETT: How does that preclude the Legislature from asking you specific questions with respect to your process or who you talked to or on the information you gained? What claim of confidentiality do you have to protect you when we're not a party to that Compact?

MS. CORBIN WALKER: I don't have a claim. The only thing I have is my commitment not to breach it. So you can ask me the question, but I will not respond to specifics. Under the Compact, we are only permitted to speak in one instance. That one instance only allows us to give you our findings and our reasons for the determination of not qualified.

SENATOR BENNETT: Two weeks ago, there was a meeting at the Bar Association, and as a result of that meetings there was a decision made to defer action. I believe that's the case.

MS. CORBIN WALKER: If you're talking about an alleged leak that--

SENATOR BENNETT: Why don't--

Mr. Chairman, could I just have--

SENATOR GORMLEY: Excuse me. Excuse me.

SENATOR BENNETT: Could I have my questions answered?

SENATOR GORMLEY: Excuse me. I think she's--

SENATOR BENNETT: I haven't talked a thing about an alleged leak yet.

MS. CORBIN WALKER: I'm trying to respond.

SENATOR BENNETT: I haven't mentioned an alleged leak. I asked about a question. That's all I asked.

SENATOR GORMLEY: Why don't you rephrase the question, and I'm sure she'll try to answer the question.

MS. CORBIN WALKER: Thank you, Senator Gormley.

SENATOR BENNETT: Two weeks ago there was a meeting of the Bar Association of this Committee that you chair. Is that correct?

MS. CORBIN WALKER: I have to answer in this way. Under the Compact, I cannot confirm or deny when our Committee meets. And that's why I referenced a news report because that way I can address it, and that's where I was going. So if you'd like me to answer, I can answer it from that vantage point.

SENATOR BENNETT: So you can't answer me a direct question as to whether or not you participated in that meeting of this Committee two weeks ago? You can't answer that because that's confidential?

MS. CORBIN WALKER: Absolutely.

SENATOR BENNETT: Okay. Perfect. Now, as a result of certain news reports, there was a meeting that occurred?

MS. CORBIN WALKER: As a result as was reported in the papers, a meeting occurred.

SENATOR BENNETT: Right. Where would the reporters get that information?

MS. CORBIN WALKER: Okay. Now, I have no idea where reporters got that information; however, based on -- and that's where I was trying to address -- alleged leaks from our Committee, which have not been confirmed at all, we have asked publicly that if anyone had information that confirmed an alleged leak from our Committee, it would be addressed. To date, no such information has been forthcoming. So I cannot tell you where a reporter got that information, and I would submit that the perfect person to ask that information of would be the reporter himself or herself because I have absolutely no idea as to how they acquired that information.

SENATOR BENNETT: Well, Ms. Walker, and that may be your perfect opinion, but my perfect opinion is that I'm asking the Chairperson of the Committee that has testified that she has and her Committee has a confidentiality. Out of that confidentiality, I assume continue to the meeting that there was a determination made as to -- that resulted in finding the Attorney General not qualified on professional experience. Since there's been a finding that there was at some point in time a subsequent meeting for that to occur.

MS. CORBIN WALKER: I'm sorry. Could you state your question again? I'm not sure what you're asking me.

SENATOR BENNETT: There was a second meeting. We had one alleged in the newspapers, but by virtue of you appearing here today, there was a meeting that occurred to result in you coming here.

MS. CORBIN WALKER: Correct.

SENATOR BENNETT: And last night at about 7:00, three reporters called my house telling me that they knew the result of that hearing.

Again, now, this is the second meeting of the Bar. Could you give me any indication as to how they would know what breach -- how that breach of confidentiality occurred last night?

MS. CORBIN WALKER: The only thing I can tell you is that yesterday we did make a determination that Attorney General Verniero was not qualified. I then contacted the Governor's Counsel and communicated our result at approximately 1:15. We then continued our regular course of business until 5:00 or 6:00, as I recall, so that information had already been communicated to the Governor's Office at 1:15.

SENATOR BENNETT: Are you implying that--

MS. CORBIN WALKER: No.

SENATOR BENNETT: --Governor's Office released that information?

MS. CORBIN WALKER: I am not-- May I finish my statement?

SENATOR GORMLEY: Excuse me. Excuse me.

Senator Bennett, please, I-- Let her finish this question.

Go ahead and finish, please.

MS. CORBIN WALKER: Thank you, Senator Gormley.

We communicated that information to the Governor's Office at approximately 1:15. During the day, many people on our Committee had received messages from reporters, including myself, as to what's going on, do you have a determination? There were reporters outside of where we were meeting. How they acquired that information, I do not know. But I can tell you-- And I have the full confidence of everyone on that Committee because the people on that Committee are selected based on their stature in this legal

community as well as their unmistakable integrity. And each and every one of them is aware of our strict confidentiality.

Now, for a reporter to call you and say that “I know the result”-- I have been called by reporters who have tried to bait me. I am sure that all of you, Senators, have been called by reporters who tried to bait you.

So, Senator Bennett, it could have been a bait. If it wasn't, I have no idea where the information came from.

SENATOR BENNETT: By virtue of the fact that you're appearing here today giving this testimony, it wasn't a bait. It was very factual as to what occurred.

MS. CORBIN WALKER: Not necessarily.

SENATOR BENNETT: Well, I mean, you're not here because you approved him are you?

MS. CORBIN WALKER: No. I am here because, under the Compact, it expressly gives us the right to appear to tell the Senators our findings and our reasoning for those findings. When we find a candidate not qualified that the Governor still intends to nominate -- we have not been before this Committee the past three years when we determined that the 20 other individuals were not qualified. So the fact that we determined the Attorney General to be not qualified is in and of itself not indicative of my presence, our nonpresence for the past other 19 examples.

SENATOR BENNETT: That's correct. I understand that.

MS. CORBIN WALKER: Okay.

SENATOR BENNETT: But I think it's disappointing that the confidentiality had to be breached not once, but twice. And I don't think--

MS. CORBIN WALKER: Well--

SENATOR BENNETT: Excuse me. I'm not finished.

MS. CORBIN WALKER: I'm sorry.

SENATOR BENNETT: Maybe you can let me finish.

SENATOR GORMLEY: Wait. Wait. Listen.

SENATOR LYNCH: That's totally improper. There's been no statement in the record that any confidentiality was breached. If you go through the process of how this works out, it would be clear of where the information flows from, how it gets in the public domain, and why.

SENATOR GORMLEY: Let me ask you a question.

Excuse me for one second, Senator Bennett.

You're bound by confidentiality, and we respect that, and that is the tradition--

MS. CORBIN WALKER: Yes.

SENATOR GORMLEY: --of the Compact. If the Governor's Office said to you in terms of -- or said to the members of the Committee-- If they were to say to you that we waive the confidentiality, could the Bar Association in terms of -- or would they consider a mutual waiver from both sides in terms of the deliberations or certain information that was sought? I'm not saying that you can say that for sure because you'd have to poll the members, you'd have to talk to the Bar Association, but obviously you would want and have to have a waiver from the Governor's Office as I see it because this is a pact of confidentiality between you and the Governor's Office. Is that correct?

MS. CORBIN WALKER: Well, I would think the waiver really should be on our side.

SENATOR GORMLEY: Okay.

MS. CORBIN WALKER: Because we are bound by it. But I don't believe it would be appropriate for us to even consider it because, when we undertake our investigations, they're undertaken with the express statement to everyone with whom we speak that what you are telling us is in strict confidence, your identity will never be revealed--

SENATOR GORMLEY: Okay.

MS. CORBIN WALKER: --and that enables us to have a free flow and candid exchange of discussions that we have with the individuals. So if it was something that was, I guess I would say, a pre -- like a precondition before the investigation started, we would send out a public release and say, with respect to Attorney General Verniero, we would like to conduct our investigation; however, the information may be revealed publicly. Then that would be a different story. But this one was conducted with the expressed statement that everything that everyone told us would be bound by strict confidentiality.

SENATOR GORMLEY: Okay. If in the case of the recommendation from the county -- because I assume there is a review done on the county level or recommendation coming from the county Bar?

MS. CORBIN WALKER: Correct.

SENATOR GORMLEY: Okay. Now, in terms of that recommendation, and I think just as you are making public this recommendation and going over the reasons why, would the possibility exist

that the recommendation made by the county, and the rationale is poor, without breaching the confidentiality of who they talked to, would there be a potential that the Committee and the State Bar would say that that doesn't breach the individual confidentiality of individuals and that individual recommendation is something that if the Governor were to waive it and you were to say and you were to agree that at least that recommendation and the reason for that recommendation that that could be made public?

MS. CORBIN WALKER: No. Because under the Compact, the only one who could speak when there's a finding of not qualified is the State Bar Association through its Chair, and that's why I'm here.

SENATOR GORMLEY: All I'm saying is, if we have a situation where there is a recommendation of a county Bar-- Believe me, we-- Individual interviews have been done and confidentiality has been pledged. You are correct. I am not talking about that. But just as you are coming forth with a recommendation, so too, there was a recommendation or report from the county of some sort to the State Bar. In terms of that recommendation, in terms of that report, if the individual confidentiality provided to individuals who gave information in that report that that could be protected and the Governor had no objection and that confidentiality was a violated of individuals, it would seem that making that recommendation public and the rationale for that and to compare that to the State Bar review would not strike me as being unfair or violating the individual confidentiality. And you are, believe me I'm reiterating this, you're absolutely correct in that, would you have a problem with that? I realize you're bound. You can't say it, but do you

think it's something the State Bar should, or could, consider in this case? That's all.

MS. CORBIN WALKER: No. Because under the Compact, the only entity that could reveal the finding and the reason therefore is only the State Bar Association. As part of our evaluation process, we do receive a recommendation from the county, which is considered. We also receive an ethics report, attorney advisory report. In the case of a judge, we would receive the AC/JC reports, which would be advisory committee or judicial committee. All of these reports are considered in our deliberation, but we do not come out, nor could those entities come out under the Compact to give you their recommendations.

SENATOR GORMLEY: I understand that. And I'm saying under the Compact, if there was a modification of the Compact and the Governor's Office is a part of that, all I'm saying is that in terms of the report issued by the county-- And I realize you're bound right now, you can't say that. I'm not asking you to say that. But what I'm talking about is, if in a manner of reporting, as you are doing in this case, you're not naming names, as you should and you're not going beyond the criteria, I think it might be helpful or something to consider that if -- that the county report would be, I think, of some interest in terms of the review that was done on the local level for that individual. But I understand what you're saying, under the Compact you can't say it. However, I think if you look at confidentiality that might be something that if there was a mutual agreement between the Governor's Office and the State Bar that recommendation would not be an unreasonable one. That's my point, okay.

SENATOR BENNETT: Mr. Chairman?

SENATOR GORMLEY: Yes.

SENATOR BENNETT: If the witness that's appearing here is sworn and under oath, can I have a ruling as to whether or not, we, as a body, are bound by law to not ask questions with respect to this confidentiality?

SENATOR GORMLEY: We obviously are not bound. Listen, as Chairman of the Committee, I reserve the right that if someone is going so far afield for or I don't consider it germane, I am vested with that responsibility. I think over the years people have known I would not want to exercise that. You would want to provide people latitude. If the witness is answering that it is in confidence and that's her interpretation, whether we agree or disagree with that, I think we would have to respect that answer.

SENATOR BENNETT: Okay. I, with all due respect, would disagree with the ruling of the Chair. I'm not going to challenge it. I believe that the confidentiality is, in fact, one between-- That it's part of a compact. I frankly believe that what the County Bar Association's recommendation was to the State Bar is relevant. I think I should be able to ask that, and I think the witness should have to give us an answer to that.

SENATOR LYNCH: I might point out for the record that this morning Justice Clifford asked that we not delve into some what he believed to be confidential communications he had with this administration or representatives in this administration regarding nominations, and we honored that.

SENATOR ZANE: As did General Verniero, when I asked him several questions regarding troopers. And clearly, there is no law that precludes him from answering that question.

SENATOR BENNETT: There certainly is. With all due respect, there's pending action taking place right now.

SENATOR ZANE: Tell me the law, Senator, that says that he can't answer that question. There is none. If he chooses not to answer it, that's his business. There's no law that precludes him.

SENATOR ROBERTSON: Mr. Chairman.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Maybe it would be helpful, and then maybe I have an incomplete record, but I have a copy of the Compact that was put into place in August 1 of 1969. I don't know if there are other-- There maybe guidelines that have been promulgated--

MS. CORBIN WALKER: That's not the Compact, if you're talking about two pages.

SENATOR ROBERTSON: Yes.

MS. CORBIN WALKER: No. The Compact is not two pages. I think, on the top there, it may say relevant parts or excerpts or something from the Compact.

SENATOR ROBERTSON: It just has an in re here: "In re proposed appointments and reappointments of the judicial system of the State of New Jersey." Is there a copy of the Compact? And by that I distinguish that by the way, Mr. Chairman, from any guidelines or rules that you have adopted in-house to govern your own functions. But as between yourself and

the executive, there's only two sentences that refer to confidentiality. And the thing that we're most concerned, what I would think is: Confidentiality for folks who said what?

SENATOR GORMLEY: Yes.

SENATOR ROBERTSON: And I think that that's appropriate. But for instance, Paragraph 5 says, "All members of the State and County Bar Association Committees involved in this procedure are committed to keep absolutely confidential the names of all candidates submitted to them, since strict confidentiality is particularly important in view of the fact that reputations are involved." It goes on to say, No. 6, "The Committee's Report to the Governor shall also be kept confidential except that the Committee shall be free to communicate to the appropriate committee of the New Jersey Senate" -- and by that I do respectfully disagree with the notion that's it's public to this Committee evidentially according to the Compact -- "Free to communicate to the appropriate committee of the New Jersey Senate its position with respect to the candidate nominated by the Governor where the Committee's recommendation was not qualified."

I don't see anything in my copy of the Compact that indicates that the procedures of the Committee themselves are beyond the inquiry of this panel. Now, that doesn't mean that you don't have the right to refuse to answer. But frankly for this, Senator, that will tend to go to the weight to which I give to the recommendations that are made.

SENATOR GORMLEY: I didn't say that. Obviously, you can ask about--

SENATOR ROBERTSON: No. No. You didn't say it, but I believe the witness did.

SENATOR GORMLEY: No, I didn't say-- You can ask about the procedures. What I'm trying to do is to hone the issue down. One of the issues that I see is there was a recommendation from the county-- The head of the Committee has just testified that under her interpretation of the Compact in strict confidentiality, she's--

SENATOR ROBERTSON: The point is where-- The important distinction that I'm trying to draw, Mr. Chairman, is that that there's a distinction between the Compact, between a governmental entity, mainly the Governor's Office--

SENATOR GORMLEY: Yes.

SENATOR ROBERTSON: --with us tacitly agreeing, and rules and promulgations that they may have themselves as to how they should conduct themselves--

SENATOR GORMLEY: Yes.

SENATOR ROBERTSON: --which I understand and that's something that's necessary. But if we're trying to decide what weight to give an opinion--

SENATOR GORMLEY: Yes.

SENATOR ROBERTSON: --questions of the very sort that you're asking are extremely germane and, in fact, cannot be avoided, with all due respect it seems to me, by simply saying the Compact prohibits it. The Compact, as I see it, does not prohibit it.

Your own guidelines may prohibit it, and you may choose not to answer, and that's a different question.

But, please, let us not say that the Compact -- that some sort of agreement between the State and this entity prohibits them from commenting on germane items.

SENATOR MARTIN: Senator Gormley.

SENATOR GORMLEY: Yes.

SENATOR MARTIN: Just for my own edification, could we get-- There seems to be some dispute as to whether the two-page document that Senator Robertson has is the -- embodies the confidentiality aspects or whether there's more to it than that. I don't know. I have neither his two-page document or what appears that Ms. Walker seems to have, I mean, I guess, the full Compact. Is there some dispute about what the-- I'd like to know what the Compact says with respect to confidentiality, and if Norm's right, if Senator Robertson's right about if that's the limits, it changes the questioning that we would be able to pursue.

So maybe, if I may, Ms. Walker, do you have some reason to think that the explanation that Senator Robertson has presented is not complete as far as confidentiality?

MS. CORBIN WALKER: I'm not sure of what Senator Robertson had, but if it came out of this (indicating) and it said August 1, 1969, New Jersey State Bar Association, it talks about the proposed, it talks about the relationship, and it's dated August 1, 1969-- When I talk about the Compact, this is a refinement of the letter that was issued by Governor Hughes, which is a letter that may consist of 13/14 pages. It's a very extensive document.

When I say Compact, that's what I'm talking about as the Compact. This is a refinement of some of the issues that are in there.

SENATOR MARTIN: Well, my question is even more narrow than I think some of the others. And that is, Senator Robertson read what he believes to be -- is the gist of the confidentiality. Is that your understanding, or is there something beyond what he has articulated?

MS. CORBIN WALKER: Okay. Beyond that, and I'm looking through, and it's in the Manual for Judicial and Prosecutorial Appointments Committee, on Page 3 of 3, which is Schedule C, where we talk about the mechanics of the process, there is a statement there where it talks about our final recommendation is only given to the Governor, except in a condition of not qualified. Then, the Governor puts the nominee up-- It says that "we reserve our right to appear and testify before the Senate Judiciary Committee as to its findings and the reasons." I am here today to do that. No one had asked me-- I cannot give specific names, but if you're asking me what we did, how we did it, I'm here to tell you that. I have not said I'm not going to tell you that, but the way the question was phrased was phrased in the way which would make me try to identify a confidence, and that I can't do.

SENATOR MARTIN: I think the narrow question that was presented-- I think Senator Bennett wanted to know, and Senator Gormley, whether there was something in the Compact that prevented the information that was provided as a subpart of your investigation. That being, the individual county -- I think it's Hunterdon County -- would ordinarily submit a recommendation. Because the General lives in Hunterdon County, whether

there's something in the Compact itself that precludes some inquiry about that particular area.

MS. CORBIN WALKER: When you look at--

SENATOR MARTIN: Senator Matheussen refers to No. 4, at least of this letter.

MS. CORBIN WALKER: Right. And if you look at No. 6, it says, "The Committee's report to the Governor," the Committee to which they're referencing is the State Bar Association's Committee, okay, "Shall be kept confidential except--" That is the only thing that is released. Nothing else is released. When you look at this, it says the Committee in Paragraph 4 and Paragraph 5 -- that the County Committee would be involved, the State Committee would be involved, but the only recommendation -- and that's in No. 6 -- that leaves out Committee is the State Bar, and that's right there.

SENATOR ROBERTSON: Mr. Chairman, the question is, and I'll take it we'll have a very narrow question-- So we understand one of the questions on the floor, what was the recommendation of the County Bar Committee? Now, I don't see anything in the Compact that goes to the confidentiality of your procedures. I understand why you might want to keep it confidential, but if that's the case, cite that reason, please, at least for this Senator. Cite that reason, please, and I can weigh that in. If it's a Compact, I feel more of an obligation, even though we're not a party to it necessarily to observe it, but the fact of the matter is many things have been put off to the Compact. Is that a question that you feel you can't answer?

MS. CORBIN WALKER: No. It's not a question that I feel I can't answer. It's a question that, when you look at Paragraph 6, precludes me

from answering because it says that the Committee's report to the Governor shall also be kept confidential.

SENATOR ROBERTSON: That's--

MS. CORBIN WALKER: Okay. And everything our Committee does is confidential. Our investigation, everything we do, everything we consider is confidential, except we are free to disclose what we did to the Senate Judiciary Committee. Well, part and parcel of our process is getting a county report, as well as the other reports to which I referenced earlier. All of that information I am not at liberty to tell you what was in the ethics report, what was in the Attorney Advisory Committee Report, what was in the county report. I cannot tell you that. I can only tell you what our recommendation was and the finding for that.

SENATOR ROBERTSON: And you feel you can't tell us what the county's recommendation was?

MS. CORBIN WALKER: That's right. That's precisely right.

SENATOR ROBERTSON: Because your own procedures preclude it?

MS. CORBIN WALKER: And this statement in No. 6 talks about the only thing that we can make public is what we made to the Governor.

SENATOR ROBERTSON: Well, that's not exactly what it says. It says the Committee's report to the Governor shall be kept confidential. I take it then that the county's recommendation was included in that report to the Governor?

MS. CORBIN WALKER: No, the county's recommendation to the Committee was part and parcel of the consideration for our final

recommendation. Because under the Compact, we only say qualified or not qualified to the Governor's Office.

SENATOR ROBERTSON: I understand that. The point is that the county's recommendation was not, in fact, a part of the Governor's report -- a report to the Governor rather.

MS. CORBIN WALKER: No. It was part of our investigation--

SENATOR ROBERTSON: All right. Fine.

MS. CORBIN WALKER: --which is confidential.

SENATOR ROBERTSON: So then, when we go to confidentiality, it says that the Committee's report to the Governor shall be kept confidential, not whatever was said to you, but whatever was said to the Governor. And then it goes on to free you -- by you I mean your Committee -- to give testimony and make its position known. What you're doing today, it seems to me, is you're making your position known without adequately explaining the way in which you arrived at your conclusion, and running the risk in doing so--

SENATOR LYNCH: Senator Gormley. Senator Gormley. We're getting into argumentative. The fact of the matter is that if this is a red herring designed to distract away from--

SENATOR ROBERTSON: Well, Mr. Chairman, if I have the floor-- With all due respect, if I have the floor, I'd appreciate the opportunity to--

SENATOR LYNCH: --the testimony regarding what this Committee did and what they reviewed.

SENATOR GORMLEY: Wait. Wait.

Senator Lynch, if you can make your point, then we'll go back to Senator Robertson. Senator Lynch first.

SENATOR LYNCH: This witness, who's already articulated what the Bar Committee went through -- types of interviews and all the data that they've received, and so forth -- has stated that case. Now, the question is being posed as if they're trying to avoid giving certain information when the witness is simply saying that under the terms of the Compact that she can't.

SENATOR GORMLEY: Okay. Excuse me.

Now Senator Robertson.

SENATOR ROBERTSON: Yes. That is--

SENATOR LYNCH: The fact is we're so far afield from the relevant issue, namely, whether this Committee made an objective determination based upon the information that they received.

SENATOR GORMLEY: Thank you.

Senator Robertson.

SENATOR ROBERTSON: The weight that I will give the recommendation that is made here by the Bar Committee will in part be determined by the procedures that were used in order to arrive at that conclusion. One of the risks that are run by saying that the Compact doesn't allow me to say-- It appears as though, when I'm reading the Compact, and it appears to say something exactly the opposite or certainly doesn't support that conclusion -- it makes me worry about whether or not important and germane questions that are being asked are being avoided by hiding behind a Compact that doesn't make those provisions.

If the witness wants to say, and I would understand it -- if the witness wants to say, "I'm sorry, Senators, but our procedures won't let me do it. Our procedures say that we have to keep confidential anything we say between and among ourselves," then at least I understand and I can put it in, but when the witness says it's within the Compact and I can't see it, and I at least brought a copy of mine, I get a little concerned because we have to weigh the voracity of all testimony that comes before us.

MS. CORBIN WALKER: Senator Robertson, if you look at Paragraph 5, it says that "all members of the State and County Bar Association Committees involved in this process are committed to keep absolutely confidential the names of all candidates submitted to them."

SENATOR ROBERTSON: Correct.

MS. CORBIN WALKER: This paragraph has been interpreted by County and the State Bar Association that not just the names, but everything we do is kept strictly confidential. So with all due respect, I would disagree with the assessment that in the Compact it doesn't state that that's confidential. Because although it says individuals names will be kept confidential, we interpret that, as well as the counties, that nothing we do can be disclosed. Now--

SENATOR ROBERTSON: And I understand that that may be--

SENATOR GORMLEY: If I may now. I raised a particular point regarding the county recommendation. I raised that point because it would be a recommendation somewhat similar to what the State Bar is doing. I sought to find out if there could be a procedure to get that recommendation because, as has been articulated by the witness, when you have interviewed people on

the basis of confidentiality, that it would be absolutely improper, and I don't think anybody is suggesting that that we would want to have people interviewed on the basis of confidentiality and then naming names and whatever.

All that I was suggesting was that as you are making a recommendation, so to the same recommendation that was made by the County Bar would also be made available, it would again respect the confidentiality that you've outlined. Now, you've said that the interpretation that the Committee, not just yourself but the Committee -- that they have ascribed to the pact that has been reached precludes you from saying anything about any input that went in. And it would be-- Although we can have differences of opinion about that, we would just be going back and forth over certain ground that's already been covered. However, for members who have a concern about not enough information, feeling that it isn't -- it isn't something that they are a party to, that obviously weighs on the amount of credibility you would give to that particular recommendation. And that's how I would suggest that members handle that.

If you have a situation where you don't feel that there is enough information that is being provided -- and this particular case you don't, and I can understand that, because I know what this Committee is like-- If we were just to be given, "Well, here is the recommendation, that's what we are--" We are a deliberative body, we ask questions on both sides. And you can weigh that as you should weigh that confidentiality, but it is something that I respect the witness's concern for it. I do think the county recommendation could be

made public without affecting individuals who have been -- who have given testimony, who have provided information to the county.

However, what I'd like to do now is--

SENATOR LYNCH: Have you asked the Governor and the Governor's Counsel about their opinion regarding that?

SENATOR GORMLEY: About what?

SENATOR LYNCH: I mean this is a Compact with the executive. You are talking one side is someone who feels that they are not at liberty to go forward. Have you asked the Governor or the Governor's Counsel how they feel about that and whether that's part of this Compact and the restrictions?

SENATOR GORMLEY: Have I done a thorough review of the--

SENATOR LYNCH: No, I didn't ask you that.

SENATOR GORMLEY: Well, it sounded like that, I'm sorry.

SENATOR LYNCH: This witness seems to be under some sort of attack for trying to maintain confidentiality because of a Compact with the executive, not with this branch of government.

SENATOR GORMLEY: Good point.

SENATOR LYNCH: And so you are having a one-sided conversation. The Compact is between the Bar--

SENATOR GORMLEY: John.

SENATOR LYNCH: --and the executive.

SENATOR GORMLEY: If I may, Senator Lynch. I think as you know I pointed out earlier, I said if the Governor's Office waives the confidentiality -- and there was a mutual agreement between the State Bar and the Governor's Office -- in this particular case, if they mutually agree, could we

then have -- because I don't want to get into the confidentiality of witnesses -- but could we then at least have the county's recommendation. Knowing that the witness can't answer that at this point, in that she can't unilaterally make that decision because she is a member of a committee, she is a member of the State Bar, and they we would have their consent with the Governor's Office also saying the same thing. All I was saying--

SENATOR LYNCH: Are you suggesting that the Governor is not at liberty to tell you what the County Bar did?

MS. CORBIN WALKER: Senator Gormley.

SENATOR GORMLEY: No--

Did you notify the Governor's Office of what the County Bar did?

MS. CORBIN WALKER: No.

Senator Gormley, I just wanted to point out that in the Compact in Paragraph 4, and it is important to state -- that there is information in this Compact that the practice has not adhered to for the past 30 years. In Paragraph 4, it states that in this report to the Governor the Committee shall recommend a candidate for appointment to the judicial system as exceptionally well qualified, well qualified, qualified, and not qualified. And it shall indicate its disapproval or approval of a candidate for reappointment. That practice-- That part has never been practiced. We've only determined whether a person is qualified or not qualified. I cannot sit here today to tell you when that occurred.

Also in there it says it shall, meaning the Committee, advise the Governor of the County Bar Associations Committee's recommendations if different from that of the State Bar Committee. That practice has never been

adhered to. I don't know when it was changed, how it was changed, or why it was changed because, when we communicate our determination to the Governor, we only say whether a person is qualified or not qualified. We never ever disclose the County Committee's report.

SENATOR GORMLEY: Well, would you now disclose it to the Governor's Office, and then we can ask the Governor's Office at least if we can hear that?

SENATOR ROBERTSON: Why shouldn't the witness disclose it to us?

SENATOR ZANE: Senator Gormley, why don't you just ask the Chairman of the Hunterdon County -- or the President of the Hunterdon County Bar Association to come before us and ask him your question and see what his response is?

SENATOR GORMLEY: Fine.

Would the State Bar say to the Hunterdon County Bar they are bound by the Compact and can't? In other words, would you say to the Hunterdon County representative that would be violative of the Compact and they can't-- I'm just--

SENATOR ROBERTSON: The frustrating thing, Mr. Chairman, is why are we negotiating with the witness over the testimony that she is going to give? I understand everyone's sensibilities, but I'm looking at a two-page Compact that's pretty plain in its language. We hear now, on second or third go around, that sometimes it's followed, sometimes it's not followed. We have someone asking very pertinent questions as to the procedures and whether or not that resulted in a leak coming out of there, which is really adverse to the

expressed components of this Compact, and we find out that we can't even get an answer to that.

And I'm not talking about-- I'm not talking about the ultimate conclusion which was communicated to the Governor's Office. I'm talking about the first time around when sensibly everybody in the room was involved with the State Bar Association.

SENATOR LYNCH: I beg to differ with your statement, however, that sometimes they do and sometimes they don't do that. That's not what this witness said at all. She indicated clearly that prior to her assuming this role on this committee that that had been changed. I suggest to you, you go talk to the Governor's Office to get the history of when it was changed and why before you come in here starting to be argumentative with a witness who is simply trying--

SENATOR ROBERTSON: I'm not being-- I'm addressing my--

SENATOR LYNCH: --to honor what she believes to be the Compact.

SENATOR BENNETT: John, you know it hasn't changed. You know it hasn't changed in all cases. You know it hasn't changed in all cases. You know that the County Bar recommendation is known to the Governor's Office, as well as the State Bar recommendations are known.

SENATOR LYNCH: Are you suggesting that the Governor doesn't know about the recommendation here?

SENATOR BENNETT: I don't know in this case, but you know in all cases--

SENATOR LYNCH: Are you suggesting that there aren't people on this Committee who know what that is?

SENATOR BENNETT: You just made a statement that it's in all cases, and I'm suggesting to you that you can't make a blanket statement in all cases.

SENATOR LYNCH: Wait a minute. Are you suggesting that you don't know? Are you suggesting that the Chairman of this Committee doesn't know?

SENATOR BENNETT: What, you are going to go faster than me?

SENATOR GORMLEY: Excuse me, stop, stop.

I don't think we are going to get much out of this dialogue at this point. I think that's an understatement. I think what the Committee members should do -- and I can understand the frustration that a Committee member would have on either side of the aisle if either side just heard, "Well, that's a recommendation," and you would like to know more.

However, at this particular point, I would like to move on in terms of are there any other questions for the witness. I don't think this would be productive or produce any further answers than have been produced. I think both sides are very clear in their disagreement on this issue. I don't think we have to go any further with that.

If there are any other questions, realizing that many of the questions will be addressed with the confidentiality, but also realizing that gives -- that obviously affects the weight with which you give the recommendation. I understand that.

Senator Bennett.

SENATOR BENNETT: I believe that you stated that you wanted to make a point that you received General Verniero's questionnaire after the nomination had already been made. And I know that's true, by the way. But that's what you said, correct?

MS. CORBIN WALKER: Correct.

SENATOR BENNETT: And that was an unusual practice.

MS. CORBIN WALKER: Correct.

SENATOR BENNETT: Were you chairman of the Committee or a member of the Committee when Chief Justice Poritz's nomination was submitted to the Bar for review?

MS. CORBIN WALKER: No, I was not.

SENATOR BENNETT: Okay.

Would it surprise you to find that the nomination there was made first and then submitted to the Bar?

MS. CORBIN WALKER: No, it would not.

SENATOR BENNETT: Okay.

So that perhaps the practice for justices may be different than from the Superior Court?

SENATOR LYNCH: During this administration.

MS. CORBIN WALKER: I am not sure because I am not privy to all of the other chief justice--

SENATOR BENNETT: I didn't interrupt you, but I will.

MS. CORBIN WALKER: I could not agree with that because I am not sure of the practice of all the other Chief Justices, when they were appointed to the branch.

SENATOR BENNETT: I apologize. I didn't just mean chief justice, I meant justices of the Court. I apologize.

MS. CORBIN WALKER: Well, my answer would be the same because I'm not privy to what the process was when the other justices to the Supreme Court were appointed.

SENATOR BENNETT: But you had stated that it was generally done that nominations were done before it gets to you -- I mean after they get to you. And I'm just wondering do you know, in fact, what it is for justices, or the only justice that you've had an occasion to receive the questionnaire on is, in fact, the General's nomination?

MS. CORBIN WALKER: That's correct.

SENATOR BENNETT: Okay.

With respect to the specific guideline that you feel is what led to the decision of the Bar. I believe that was the professional experience guideline of the eight, that's the one you focused on. Is that--

MS. CORBIN WALKER: The professional experience, correct.

SENATOR BENNETT: Correct.

Okay, and then you cited some of the different reasons, and I believe that you talked about the lack of experience because of the day-to-day -- lack of the day-to-day practice of law.

MS. CORBIN WALKER: Yes.

SENATOR BENNETT: And is that guideline, as far as-- Is that, the day-to-day practice of law -- is that something that is generally used on the 80 individuals that you have approved? Would it be safe to say that those 80 all had a greater day-to-day practice of law experience than the one that is in front of you recently?

MS. CORBIN WALKER: I would say yes. The individuals that we have approved have had an active practice, have had the day-to-day practice in the law for a substantial period of time, none of which the Attorney General has.

SENATOR BENNETT: Okay.

Now-- And then you cited the examples specifically dealing with the Attorney General, and I don't know if you spoke about any of the arguments or any of the appearances done since he has been Attorney General. Did you? And if you did, I apologize.

MS. CORBIN WALKER: No I didn't. I will speak to it if you want me to.

SENATOR BENNETT: Well--

MS. CORBIN WALKER: We did consider the General's position since 1994, you know, Chief Counsel, Staff, and as Attorney General, which was in July of 1996. However, we firmly believe that the experience, including the administrative experience, that the General has obtained by being Attorney General, arguing two cases, the *Abbott* and *Megan* law cases, before the Supreme Court and the Circuit Court four times but the same two cases, was insufficient to overcome his severe lack of experience as a practicing attorney.

SENATOR BENNETT: But when the first time through you said he had only appeared in front of one judge and you only talked to that one judge, I believe--

MS. CORBIN WALKER: I said when he was in private practice. That's what I said.

SENATOR BENNETT: And you didn't even mention the Attorney General's cases, and now we at least have-- Those were considered and--

MS. CORBIN WALKER: Yes.

SENATOR BENNETT: --you found that that was insufficient.

MS. CORBIN WALKER: To overcome his severe lack of experience as a practicing attorney.

SENATOR BENNETT: Okay, is there going to be any steps done? You told me that the last time there were press reports with respect to breach of confidentiality, certain steps-- When the press reported certain issues with respect to the actions of the Bar Committee, certain inquiries were made by two members of the Bar Committee as to how that breach could occur. Do you know of any steps that you as chairperson or members or the President of the Bar may take with respect to any of the more recent breaches -- with respect to all you have to do is read today's Newark *Star-Ledger* or any newspaper in the state to know that there was a breach of something?

MS. CORBIN WALKER: Not-- I'm sorry.

SENATOR BENNETT: Is there any affirmative steps going to be done with respect to that?

SENATOR ZANE: Senator Bennett, where was the breach?

MS. CORBIN WALKER: You know what, I'm glad you said that. I have a copy in my briefcase, back there, of the *Philadelphia Inquirer*, and it says, the caption, "State Bar silent." It talks about that they tried to contact me and almost all the individuals in our Committee, and they were not able to determine the results -- *Asbury Park Press* today. So your assessment that every paper in this area says that there was a breach I submit is inaccurate.

I also submit that we have not been given any proof that there was a leak. If someone gives us information that there was a leak, we will act on it swiftly. When the original one came out that there was an alleged leak, no one to date has given our Committee any specifics with respect to that breach -- with respect to that alleged breach. It's been innuendos, it's been rumors, it's been supposition, but no one has come forward to us despite our request for that. So I don't agree that there was a leak when there are several other newspapers who--

SENATOR BENNETT: So you are not going to look into it? Is that what--

MS. CORBIN WALKER: No, I'm not saying that.

SENATOR BENNETT: Well, that's my question. That was my question. Are you going to look into that? Are you going to look into what occasioned those headlines as you did two weeks ago? I asked that question, and I haven't gotten an answer.

SENATOR LYNCH: I suggest you look at the other party to this Compact for the source of the information.

SENATOR BENNETT: I didn't interrupt you, Mr. Lynch. Senator Lynch, I didn't interrupt you.

Mr. Chairman, please.

SENATOR GORMLEY: Senator Lynch will be next with questions.

Go ahead.

MS. CORBIN WALKER: Senator Bennett, although we believe in the integrity of our Committee, when we read the reports of an alleged leak before, of course, we were concerned about it. Today you are telling me now about some other alleged leaks that I'm not aware of, and I just learned of them with you because the papers that I read today said that they were unable to acquire any information from our committee. So, of course, we are going to take that information very seriously and address it.

However, it is very important for everyone to understand that when you are dealing with an issue that's based on rumors, that has been substantiated, it's a concern and we'll address it. But still my answer is that no one has brought any information to us that confirmed that a leak occurred from our committee.

SENATOR BENNETT: If, in fact -- and I do not know this, but if, in fact, a vote was taken at a meeting two weeks ago, which is called a straw poll, and the numbers that were in the *Bar Journal* matched that of the straw poll, one would have to suggest that one at that meeting must have given those numbers to the *Bar Journal* to be able to report that. And if there was not such a poll taken with those exact numbers and that never occurred, then perhaps that would be appropriate to be able to say no such vote took place. I have never seen a denial to this day by anybody at the Bar Association to say that that did not occur.

MS. CORBIN WALKER: Well, I can tell you this much. Since you--

SENATOR BENNETT: Did it occur?

MS. CORBIN WALKER: Since you raised the numbers--

SENATOR GORMLEY: Excuse me, let her answer the question.

SENATOR BENNETT: I'm sorry, you're right.

MS. CORBIN WALKER: Since you raised the numbers, I can tell you that the numbers that appeared in the paper were not accurate.

SENATOR BENNETT: Did a vote take place?

SENATOR ZANE: Obviously, if she just said the numbers--

SENATOR ROBERTSON: Mr. Chairman, please.

SENATOR BENNETT: I think I have, in fairness to ask that question. Did a vote take place?

MS. CORBIN WALKER: Well, I just said that the numbers you occurred -- that you saw in the paper--

SENATOR BENNETT: Right.

MS. CORBIN WALKER: --were not accurate.

SENATOR BENNETT: So there was a vote that took place?

MS. CORBIN WALKER: Yes.

SENATOR BENNETT: Okay.

SENATOR GORMLEY: Senator Lynch, do you have any questions?

SENATOR LYNCH: Just for purposes of clarification. A newspaper reports on either April the 13th or April the 14th where these

rumors were floated and that was significantly more than two weeks ago. Are you at liberty to talk about the leaks of your -- yesterday's deliberations?

MS. CORBIN WALKER: Well, Senator Lynch--

SENATOR LYNCH: What time did you go, for instance, or what time did everybody leave? And did any of your members leave the room?

MS. CORBIN WALKER: No.

I left the room-- Well, I shouldn't say anyone left the room. We started very early in the morning yesterday. I purposely made sure that I communicated our determination while we had business left to do to make sure that we could continue our business.

SENATOR LYNCH: And so--

MS. CORBIN WALKER: The-- Go ahead, I'm sorry.

SENATOR LYNCH: Go ahead, I'm sorry.

MS. CORBIN WALKER: So the suggestion of a leak from yesterday's meeting-- I have not seen the reports to which Senator Bennett is referencing. I mean, everyone knew yesterday, after I had called and I spoke with -- here that they knew I would be appearing. You don't have to be a rocket scientist to assume that if the State Bar is appearing, they know -- the papers already know our procedure that we can only appear if our recommendation is different than what the Governor -- if our recommendation is one that the Governor is not going to accept we would appear. So I would submit that the information that was contained in the papers could have come from several sources if someone knew I was appearing today.

SENATOR LYNCH: And you communicated this vote, or at least your disposition, somewhere around 1:15 yesterday.

MS. CORBIN WALKER: Approximately 1:15.

SENATOR LYNCH: And you remained and your members remained there--

MS. CORBIN WALKER: Yes.

SENATOR LYNCH: --until at least 5:00 or somewhere you said.

MS. CORBIN WALKER: Approximately around about that time.

SENATOR LYNCH: Other than the communication that you made, were you aware of any other communications made by the members of the Committee yesterday?

MS. CORBIN WALKER: About me appearing?

SENATOR LYNCH: No, no. Did anyone from outside of the committee room communicate inside the Committee yesterday?

MS. CORBIN WALKER: I'm sorry, I don't understand your question. Just say it again.

SENATOR LYNCH: Did the Committee receive any communications during the course of the day yesterday?

MS. CORBIN WALKER: Oh, yes. I mean there are people who called their offices, and they had messages from news reporters, from television stations saying, "What's the vote? What's going on? Are you appearing?" And I was, quite frankly, told by reporters that "I understand that you are going to be appearing tomorrow."

SENATOR LYNCH: For purposes of the record, can I ask what time this witness's name was added to the list yesterday?

SENATOR GORMLEY: We were keeping a-- As you know, we notified the Bar Committee that-- Excuse me. We notified the Bar Committee

that we wanted them to be available to testify, and we were holding a spot open.

MS. CORBIN WALKER: Right.

SENATOR GORMLEY: We were holding a spot open.

SENATOR LYNCH: Are you saying that prior to 5:00, you had no awareness that the Bar had rejected?

SENATOR GORMLEY: We were holding the spot open. That's what we were doing because I didn't have a formal notification. I had no formal notification.

SENATOR LYNCH: No formal notification, okay.

SENATOR GORMLEY: Thank you.

SENATOR LYNCH: You indicated that you had seven or eight criteria--

MS. CORBIN WALKER: Right.

SENATOR LYNCH: --in the basic Compact. And for purposes of a justice on the Supreme Court, there were additional criteria. And I think he said scholarly research--

MS. CORBIN WALKER: Yes, and section--

SENATOR LYNCH: --and development of legal concepts.

MS. CORBIN WALKER: Correct.

SENATOR LYNCH: Can you describe what that means, what those issues are about?

MS. CORBIN WALKER: Well, it's important that when you look in this professional experience section, it talks about not having trial experiences, not dispositive, which is true. Because an attorney is able to

acquire legal knowledge, the practice of law, but have an understanding of what goes on in the courtroom without actually trying a case. So our guidelines tell us that we should look at an active practice, a successful law teacher, writers, successful corporate and public interest attorneys, and the guidelines understand that for Supreme Court Justice where you are involved with policy making, you are the last resort in this state to which the citizens are able to present their case, that they understand the importance of scholarly research and the development and expression of legal concepts.

So the guidelines say that's especially desirable for a Supreme Court Justice to have that because policies are set at that level, because it is the court of last resort. So they are talking about someone who has had extensive research analysis and development of legal concepts to which we would apply in our law.

SENATOR LYNCH: You indicated, I think in questioning by Senator Bennett, that a previous meeting, there had been some vote.

MS. CORBIN WALKER: Yes.

SENATOR LYNCH: And that's in and around the time where I see these newspaper articles, April 13th or April 14th.

MS. CORBIN WALKER: Correct.

SENATOR LYNCH: Would the executive that day -- the first meeting -- know that there had been a vote?

MS. CORBIN WALKER: Well, on the first day, the executive knew-- It was communicated to the executive branch that we carried our determination of Attorney General Verniero. When we communicate that we carry a person, it's for a variety of reasons. Sometimes it's because we have to

call in the County Committee. And we call in the County Committee for a couple of reasons, to get additional information or it's because we haven't gotten to a person. But it's generally when we are required to call in a County Committee.

SENATOR LYNCH: And so one would assume this time it was because of your guidelines and regulations that you were going to the second step, which was calling in a County Committee.

MS. CORBIN WALKER: Correct.

SENATOR LYNCH: Which meant, I assume, that the State Bar Committee had not approved the applicant.

MS. CORBIN WALKER: We weren't able to approve that applicant at that meeting, and we needed the County Committee in, correct.

SENATOR LYNCH: Citing-- I'm not suggesting that this is what happened, but this obviously could be one of the things that happened. On Section *G* of the mechanics of the present process, Page 3, second sentence of Paragraph *G*, "If the County Committee approves the candidate, the chair of the County Committee or another designate abided the chair shall be afforded the opportunity to appear and comment before a contrary recommendation is made by the State Committee." That contrary recommendation being made to the executive, correct?

MS. CORBIN WALKER: Excuse me, the last part you -- I didn't understand. I understand it's that section.

SENATOR LYNCH: When it says-- When that section closes or that sentence closes with "that opportunity shall be had with the representative of the host County Committee."

MS. CORBIN WALKER: Yes.

SENATOR LYNCH: And it says before a contrary recommendation is made by the State Committee. That means a contrary recommendation is made by the State Committee to the executive.

MS. CORBIN WALKER: Correct.

SENATOR LYNCH: So if that's what had occurred, for instance -- I'm not asking you if it did occur -- but if that's what occurred on the 13th or 14th of April, then the executive would have understood the significance of that day.

MS. CORBIN WALKER: Yes.

SENATOR LYNCH: No further questions.

SENATOR GORMLEY: Senator Zane. One question and that will be it for this witness.

Senator Zane.

SENATOR ZANE: There was a vote on the 13th or the 14th to which the numbers which were recorded, as alluded to by Senator Bennett, you indicated that those numbers were not correct.

MS. CORBIN WALKER: Correct.

SENATOR ZANE: And I gather that there would either be a vote or a reaffirmation of that prior vote that took place yesterday.

MS. CORBIN WALKER: Correct.

SENATOR ZANE: Is it safe to assume that whatever that vote was on the 13th or 14th, the vote was still the same or essentially still the same, allowing maybe for some absences or something like that yesterday, without disclosing a number?

MS. CORBIN WALKER: Well, I think that's fair to assume. And I just wanted to add to that perhaps Senator Bennett's comments about leaks in the paper. I've read, I guess -- and the *Star-Ledger* did say that there was a close vote or something that was taken last night. And I don't know if that's the reference to what you were referring about. I just recall seeing that because that was in the *Star-Ledger's* report -- *Star-Ledger's* article, that there was a close vote, and I would like to publicly state that that is terribly inaccurate. The vote was not close.

SENATOR ZANE: Thank you.

MS. CORBIN WALKER: Senator Gormley, may I just have a closing remark?

SENATOR GORMLEY: What we are going to do is, I have Senator Robertson has two more questions, and then have you make the closing remarks.

SENATOR ROBERTSON: Thank you, Mr. Chairman. I have a line of questioning.

With reference to your -- the eight criteria that are used in evaluating a candidate, you indicated that the one there was a problem with was professional experience, correct?

MS. CORBIN WALKER: Correct.

SENATOR ROBERTSON: With respect to integrity did you find a problem with respect to integrity?

MS. CORBIN WALKER: No, it's fair to say that we did not find a problem with the Attorney General being bright, articulate, having integrity

because we don't dispute that. Our problem lies within the fact that he doesn't have experience.

SENATOR ROBERTSON: Believe me, you made that point abundantly clear. That's one of the reasons I'm inquiring as to other things that you may have been discussing.

MS. CORBIN WALKER: Okay.

SENATOR ROBERTSON: Now, did you find him highly qualified with respect to integrity, qualified, or don't you grade those?

MS. CORBIN WALKER: We don't grade those.

SENATOR ROBERTSON: Okay.

MS. CORBIN WALKER: We only say the person is qualified or not. We use these factors to consider the information to determine whether a person would pass that qualification.

SENATOR ROBERTSON: Okay.

And so it's fair to say, just so that it's in the record, that with respect to integrity, with respect to legal knowledge and ability, with respect to judicial temperament, with respect to diligence, with respect to health, with respect to financial responsibility, and with respect to public service you did not find him unqualified in those regards, is that correct?

MS. CORBIN WALKER: I wouldn't say we didn't find him unqualified. I focused on professional experience because that was the lack of experience.

SENATOR ROBERTSON: I--

MS. CORBIN WALKER: I have to answer you if you went through that way, and I want to be fair to the process and to you as well, so

you have an understanding as to what we did. When you look at public service, and this is participation in public service and pro bono activities, it was determined that the General did not have any pro bono activities.

SENATOR ROBERTSON: Have you ever been a public employee?

MS. CORBIN WALKER: Excuse me.

No, no, it says public service and then pro bono. He had no pro bono activities. However, we didn't believe that the fact that he didn't have any pro bono activities that that was sufficient to say that he didn't meet that criteria.

SENATOR ROBERTSON: And other than that caveat--

MS. CORBIN WALKER: No, for that one-- Yes, he met that criteria.

SENATOR ROBERTSON: Okay.

MS. CORBIN WALKER: But I wanted to make sure that based on your statement when you said he satisfied it, I wanted you to know that we considered the pro bono activities that he didn't have as far as that.

SENATOR ROBERTSON: I understand that.

MS. CORBIN WALKER: Okay, financial responsibilities I agree. Health, I agree. Diligence, I agree that based on our determination with respect to-- Where it says here a candidate should be diligent, punctual, and possessing effective management skills, the Attorney General did tell us, you know, he has an office, he treats it like a law firm, the different things he did. So we didn't have a problem with that. Judicial temperament, there was no indication based on our thorough and fair investigation that he didn't posses

that. With respect to legal knowledge and ability-- When you talk about the General's legal background as far as the law school he went to, he worked in the field for private practice for a few years, then his public service. He had information with respect to substantive law and all. However, when you talk about professional experience and the judgment that one acquires based on that experience he didn't have. But based on the substantive area--

Now, also, in this category it talks about rules of evidence and some of the other things here. Some of those can also be incorporated into professional experience when you talk about day-to-day practice. But overall, we believe that he had legal knowledge and ability, but not the judgment that would go along with having the experience.

SENATOR ROBERTSON: When you reviewed in detail the transcripts of the Megan's law argument, what conclusions did you draw from that?

MS. CORBIN WALKER: We did not review in detail the transcripts of the Megan's law argument.

SENATOR ROBERTSON: Did you--

MS. CORBIN WALKER: What we did is, we discussed the case with the General, we spoke to several individuals who were familiar with the process who provided us an assessment of the General's -- what the General did at the hearings.

SENATOR ROBERTSON: Okay, is that the same with *Abbott vs. Burke*?

MS. CORBIN WALKER: With *Abbott vs. Burke*, we discussed it with the General, we discussed it again with people who are familiar with what

occurred at the hearings, as well as other parties who were involved with the process. We did not read the transcripts from the Supreme Court or the Circuit Courts in connection with that.

SENATOR ROBERTSON: I'm talking about the argument transcript.

MS. CORBIN WALKER: I'm talking about the argument transcripts as well. Because we were able, through the General, to get an assessment that he prepared very well for those hearings. He reviewed the briefs, he knew the issues and the arguments, and there was no question in our mind that on those two cases -- and those two cases are the ones that we are talking about -- we did not have a concern with respect to his legal knowledge or ability. However, the problem was that it was limited as far as our ability to assess his judgment in areas other than those two cases that he actually argued.

SENATOR ROBERTSON: With respect to professional experience, wouldn't you say it's important for any candidate to have -- I believe this is what you are saying -- to have substantive experience in the practice of law in order to sit on the bench, not just simply have passed the bar exam and been a lawyer or worked in some corporate capacity, but in a nonlegal capacity?

MS. CORBIN WALKER: Correct, I would agree with that.

SENATOR ROBERTSON: Now, there are instances, and there are many, where judges come before this panel and come before the Governor who may have a fairly one-dimensional background: career public defenders, career prosecutors. Everyone knows they will be sent in to family court. They

may never have set foot in family court. They may have never argued a motion in family court. They may have never tried a case with a judge sitting as some kind -- in trying cases -- with jury sitting. Could you distinguish for me why that is different than someone whose experience may not be with law firms to the degree that you would like to see them, but in fact has had substantive experience in difficult legal issues in the public sector?

MS. CORBIN WALKER: Sure, Senator Robertson. A prosecutor and a public defender are intimately familiar with the courtroom procedures. Whether they are trying a criminal case or a civil case, they understand what proofs are necessary, what goes on. They are intimately familiar with the court process. So taking one of those individuals and putting them into the family court would not be a disadvantage because the substantive area of the law is something that they would acquire. But what they would be very difficult to acquire is an understanding of how the process works. Because the process works the same whether you are in civil court, criminal court, or family court. So they would have that type of experience that we believe is intimately necessary for someone to sit on our Supreme Court.

SENATOR ROBERTSON: And have you ever responded favorably and recommended candidates who had no courtroom experience?

MS. CORBIN WALKER: Yes. I shouldn't say no courtroom experience. What we have done -- and I want to say it for here because it says trial experience. We have recommended individuals that may have not had -- here is says substantial trial experience. And I think that's fair to say. However, those individuals did have an understanding of what went on in the courtroom. They may have second chaired a trial, they asked questions, they

did a cross-examination, they argued motions, they engaged in extensive litigation, discovery, interrogatories, depositions, they presented oral arguments to courts on a regular basis, but they were not lead counsel. They could have been second chairing it. They have had a bench trial, but they understood and had an understanding of what happens in that courtroom when you present evidence or, if you fail, as a plaintiff, to present all of the evidence that is necessary before you close, and there is a motion from the defense to dismiss the case. They had an understanding that there are variable things that you could do. They had an understanding of the court system in general.

SENATOR ROBERTSON: And I take it, when you are talking about Appellate Courts, an intimate knowledge of the appellate process is similarly useful.

MS. CORBIN WALKER: Having a knowledge of the Appellate Court-- Oh, you mean in this instance here we are talking about?

SENATOR ROBERTSON: I mean generally and obviously this instance seems to suggest.

MS. CORBIN WALKER: Yes, generally I would say, yes. However, there are many individuals who have limited Appellate Division experience, but they are aware of how cases are appealed, and they are aware of what happens from the appellate level that goes to the Supreme Court level, but having appellate experience is something that we consider.

SENATOR ROBERTSON: Well, I mean with all due respect, I mean we have folders out there that talk about how a bill becomes a law, and people know that, but it's a lot different being a member of the Legislature or

working on the staff of a legislator. Similarly, working on the staff of the Supreme Court Justice would be a valuable professional experience.

MS. CORBIN WALKER: But different than being a Justice yourself.

SENATOR ROBERTSON: Oh, I hope so. Absolutely.

In your discussions with various people, and you said there were more than 200 of them or approximately 200 of them I believe. I take it those witnesses or interviews are nonsworn, or are they?

MS. CORBIN WALKER: No, they are nonsworn. You advise the individual-- They are nonsworn.

SENATOR ROBERTSON: And when you reached out with respect to professional experience you found a number of people who -- you said judges -- that didn't recall or didn't seem to be familiar with the candidate. Did you run into folks who had serious criticisms?

MS. CORBIN WALKER: Well, what we ran into--

SENATOR ROBERTSON: Among those who you asked about his experience.

MS. CORBIN WALKER: No, what we ran into is that they had absolutely no knowledge.

SENATOR ROBERTSON: Okay.

MS. CORBIN WALKER: So it was difficult to assess that--

SENATOR ROBERTSON: Okay.

MS. CORBIN WALKER: --because they didn't recall it.

SENATOR ROBERTSON: But to answer my question, did you run into people who had serious criticisms?

MS. CORBIN WALKER: Well, I can say that some of the information -- and I'm thinking of one case where we did find an adversary when he was in private practice, and this is what I'm talking about private practice. There was information that the General -- the General's lack of experience was exhibited in a courtroom setting. I'm trying to give you the information without revealing confidences, and this adversary believed that it was due to his inexperience that he did not understand what was actually going on.

SENATOR ROBERTSON: And this was the time frame when he was in private practice--

MS. CORBIN WATSON: Correct.

SENATOR ROBERTSON: --many years ago.

MS. CORBIN WATSON: Correct, private practice.

SENATOR ROBERTSON: Okay, many years ago when he was, in fact, less experienced.

MS. CORBIN WATSON: Right. And in where he is now, it's different, though. And I can give you--

SENATOR ROBERTSON: And it is different.

The question is-- When you had mentioned the guidelines for assessing professional experience, you talked about the active practice of law, being a law professor. Could you tell me that again because I think you were referring to something? Or were you?

MS. CORBIN WATSON: Oh, well, in the guidelines there is a sentence when you talk about -- and that's-- I think you have a copy of it in front of you, too. Schedule *D*, Page 2 of 5, where it says, "A private

practitioner who has developed an active practice as a successful law teacher and a writer or successful corporate government or public interest attorney all may have experience which will contribute to successful judicial performance. This says they may have it, it doesn't say they absolutely do have it.

SENATOR ROBERTSON: Oh, no. Right. Well, you had cut it off before. It said government before, and I think that's important to understand, too, because for a while there I was getting a little concerned that what you were looking for was folks like yourself who are -- or folks who may be more like the 25 people who are making this judgement and that their experience is somewhat similar to theirs.

MS. CORBIN WATSON: No, we have approved, as sitting judges, people who are in government service. We have done that because they had a working knowledge and they practiced the day to day of being an attorney. They had a knowledge of the system and what would happen and would occur. So I want the record to be clear that we have approved government attorneys and people who are in public service.

SENATOR ROBERTSON: And with respect to the first leak that occurred-- The meeting that was referred to in the newspapers-- Were there people present outside of your Committee and its staff?

MS. CORBIN WATSON: Not to my knowledge, no.

SENATOR ROBERTSON: Okay. And were the press reports, while I realize you had already indicated that the exact numbers were not correct-- Were the press reports substantially accurate as to a straw poll being taken and what the general results of the straw poll were?

MS. CORBIN WATSON: Well, the terminology of a straw poll, I would say, is not accurate. I would also say, and as I said, that the numbers were not accurate.

SENATOR ROBERTSON: Which indicates that there were numbers of some kind. Is that what you mean to say?

MS. CORBIN WATSON: Yes.

SENATOR ROBERTSON: Oh, okay. And regardless of whether you call it a straw poll or you call it numbers, there was some review or vote. Not necessarily-- It doesn't even have to be a vote. It could be, "How does everybody feel?" But the press reports were substantially accurate.

MS. CORBIN WATSON: No, I did not say they were substantially accurate.

SENATOR ROBERTSON: Oh, would you say they were substantially inaccurate?

MS. CORBIN WATSON: Yes.

SENATOR ROBERTSON: Oh, okay. In what respect?

MS. CORBIN WATSON: Well, first of all, when you talk about the press reports, what you said is that the press report -- I believe may have been the one in the *Star-Ledger*. Is that the one you are referring to?

SENATOR ROBERTSON: Well, pick one. Go ahead.

MS. CORBIN WATSON: No, no, you pick one because I'm trying to respond to what you wanted to ask, and I don't want to respond in the abstract.

SENATOR ROBERTSON: What I was concerned about was the fact that you said -- talked about unsubstantiated rumors on one hand--

MS. CORBIN WATSON: Right.

SENATOR ROBERTSON: --but were declining to comment on the other. And then you did wind up commenting that there had been some sort of sense of the body taken but that the numbers were not accurate. But were the reports accurate as to what that sense of the body was?

MS. CORBIN WATSON: No, the numbers were not accurate. They were not.

SENATOR ROBERTSON: And one other question.

You had indicated before, when we went around a few times on the local Bar Review Committee-- Paragraph 4 of the Compact does say, as you pointed out, "It shall advise the Governor of the County Bar Association Committee's recommendation if different from that of the State Bar Association Committee." In this case, did your Committee act in a manner consistent with that requirement?

MS. CORBIN WATSON: I can tell you that the State Bar Association Committee does not act consistent with that requirement, and I think it's important to understand and to find out when it was changed and why it was changed. But the only thing we tell the Governor, for as long as I can recall, is that whether a person is qualified or not qualified.

SENATOR ROBERTSON: And I appreciate that lesson, but the question is, in this case, did you act in a manner consistent with that language in what reports -- to be the Compact?

MS. CORBIN WATSON: Consistent with our practice, we only told the Governor that Attorney General Verniero was not qualified in this instance.

SENATOR ROBERTSON: All right. But it says here, "It shall advise the Governor." In one case you advise her, and another case you don't have to advise her. Again, did you act consistent with that sentence in this case?

MS. CORBIN WATSON: In this case, we acted consistent with our practice, which is to only tell the Governor whether a person is qualified or not. So in response to your answer, no.

SENATOR ROBERTSON: No. Okay.

I have no further questions.

SENATOR GORMLEY: Senator Girgenti and Senator O'Connor, and that will be it for the -- that will be it for questions for this witness.

SENATOR GIRGENTI: Thank you, Mr. Chairman.

Ms. Walker, just a few clarifications, just as I'm sitting here listening. Number one, you mentioned the eight areas of criteria that you do use. And are all given equal weight in terms of how do we -- are people judged -- is there a tally taken in each area or-- How do they come about singling out the different areas in terms of if someone is determined to be unqualified? For instance in temperament or whatever. How does that come about?

MS. CORBIN WATSON: It depends on the gravity of the weakness in that area -- to determine whether or not it would be a dispositive.

SENATOR GIRGENTI: Is there a poll taken among the members, and we find a problem in this area, and then it becomes the topic of discussion?

MS. CORBIN WATSON: Yes, there is discussion on the area -- on the issue.

SENATOR GIRGENTI: Now, you were saying that for instance, in this situation -- in this particular case, it was the professional experience, as you mentioned, that was the shortcoming in terms of the overall picture with General Verniero.

MS. CORBIN WATSON: Right. When we say professional experience, that includes the judgement that would go along with having experience.

SENATOR GIRGENTI: Now, when you weigh-- Is there a difference given to a Supreme Court Justice as opposed to a Superior Court Justice that would even give a greater impact in this type of a case because of the fact that it's the higher body?

MS. CORBIN WATSON: The only difference is that, as set forth in our guidelines -- that talks about the candidate having the scholarly research and development in expression of legal concepts, which would be especially desirable. Other than that, no.

SENATOR GIRGENTI: I don't know if this is a fair question to ask you, but you can react to it. In your experience-- Now, you've been there how long as Chairman of this Committee?

MS. CORBIN WATSON: As Chairwoman--

SENATOR GIRGENTI: Chairwoman.

MS. CORBIN WATSON: --approximately a year.

SENATOR GIRGENTI: A year. But you've been on the Committee prior to that?

MS. CORBIN WATSON: I have not been on that Committee, but I have been on similar committees where we would evaluate potential judicial candidates.

SENATOR GIRGENTI: Would you say that candidates for a Superior Court judgeship have been knocked down probably with even maybe as good experience or greater experience than was -- that the General has in this particular case?

MS. CORBIN WATSON: I'm trying to-- I'm thinking your question through. Your question is whether we have determined that someone was not qualified--

SENATOR GIRGENTI: Right.

MS. CORBIN WATSON: --that had the same experience as the General?

SENATOR GIRGENTI: Right. And for a Superior Court judgeship in that area.

MS. CORBIN WATSON: Well, I think it's very difficult to answer to that question because the other individuals, at least during my term, didn't have the same experience. I mean, they had different types of experience where they had been practicing in the practice of law -- actually practicing 15, 20, 25 years or what have you. So it is difficult for me to answer that question in the abstract.

SENATOR GIRGENTI: Now, again there were two votes taken on this. There was a prior vote that was mentioned at a meeting earlier and then another vote. Is it fair to say that-- Can you give the numbers in terms of the vote? We've been hinting around it. Is it something you can divulge?

MS. CORBIN WATSON: Senator, with respect to the final recommendation, that in the *Star-Ledger* I read today said it was a close vote-- I said earlier that it was not. It was misleading. It is not accurate. If you ask me what the final vote was, because that's the vote we're dealing with because that's the vote -- not the vote, but the recommendation we gave the Governor--

SENATOR GIRGENTI: Right.

MS. CORBIN WATSON: I will give you those numbers because, in this instance, based on that report-- I will tell you.

SENATOR GIRGENTI: All right. I would like-- If you could divulge it, I'd appreciate it.

MS. CORBIN WATSON: The vote was 17 against Attorney General Verniero, 6 for, and 1 abstention.

Our Committee consists of 25 individuals, 24 were present.

SENATOR GIRGENTI: Thank you very much.

MS. CORBIN WATSON: You're welcome.

SENATOR GORMLEY: Senator O'Connor.

SENATOR O'CONNOR: Ms. Walker, I'd like to ask you just a few questions about the composition of the State Bar Committee. I gather that this is a group that is made up of practitioners.

MS. CORBIN WATSON: Correct.

SENATOR O'CONNOR: How do you go about getting on this Committee again? You're appointed?

MS. CORBIN WATSON: You are appointed by the President of the State Bar Association. And every president of the State Bar Association has also served on that Committee. And the people are selected based on their

stature in the legal community and their unmistakable integrity, people who are familiar with the judicial system.

SENATOR O'CONNOR: Does your nomination to the State Committee, in any way, come from recommendations from the County Committee?

MS. CORBIN WATSON: There is sometimes, generally, input from the county as to who would go on the State Committee, but that is between the county and the then State Bar President who makes the appointments.

SENATOR O'CONNOR: Okay. Now, the members of the Committee then are practitioners, but do they come from various types of practice? By that I mean-- They're not all trial lawyers, are they?

MS. CORBIN WATSON: Various types of practice. I mean, they're people who concentrate on family law, commercial litigation, some transactional, some banking, some criminal, some civil. I mean, you have a broad base of substantive legal areas that are covered by our Committee.

SENATOR O'CONNOR: Is there any typical average number of years of experience of the members?

MS. CORBIN WATSON: It varies. I would say experience ranges from 13 years through 35 years of experience.

SENATOR O'CONNOR: And the Committee, I gather, is made up of men and women?

MS. CORBIN WATSON: Correct.

SENATOR O'CONNOR: And is there any attempt on the part of the State Bar to make sure that the Committee is representative of the political parties?

MS. CORBIN WATSON: No, we do not take into consideration, for appointment to that Committee, anyone's political persuasion. Politics are not involved in our Committee. We look at an individual to determine their qualifications. I don't know the political persuasion of the other parties on the Committee because it is irrelevant. That is not something that we discuss. It never has ever become an issue in any deliberation in which I was involved. And it is my understanding that it has never played a role in any appointment -- excuse me, in any determination that our Committee has made.

SENATOR O'CONNOR: You're practicing in North Jersey, correct?

MS. CORBIN WATSON: Correct. Well, when I say-- I'm a partner with John and Wayne in Newark, New Jersey. However, my practice takes me throughout the state to the Circuit Courts, to the Federal courts, as well as courts in others states.

SENATOR O'CONNOR: Okay. How many members are in your law firm?

MS. CORBIN WATSON: We are approximately 60 attorneys. We have offices in Newark, Park Avenue -- well, off of Park Avenue, in New York City, as well as Rochester. We're approximately 60.

SENATOR O'CONNOR: Okay. I didn't mean to give you an opening for a plug for the firm.

MS. CORBIN WATSON: A little plug for our business.

SENATOR O'CONNOR: You're a trial attorney, primarily?

MS. CORBIN WATSON: Yes, I am a partner in one of our departments there, yes.

SENATOR O'CONNOR: Just finally, if I may. You talked about assigning investigators to take part in this. And they actually do, I gather, some of the spade work, questioning out, talking to the people. Do they, then, prepare some type of summary for the members of the Committee?

MS. CORBIN WATSON: They generally prepare a summary for themselves that is orally communicated to the Committee. That is the general procedure.

SENATOR O'CONNOR: That happens, I gather, in advance of the interview with the nominee.

MS. CORBIN WATSON: Yes, before we actually interview a nominee, we discuss that at that meeting before the nominee comes in. We discuss the county report, the ethics, the attorney advertising report. And at that point, then the investigator will give their report. And then anyone else that also conducted due diligence or had input or information that they wanted to share with us -- would also be discussed before the nominee would appear -- or the candidate would appear.

SENATOR O'CONNOR: Now, Attorney General Verniero, during his presentation this morning, said the hearing was about two and one-half hours long, and it was essentially questions and answers. Is that correct?

MS. CORBIN WATSON: I believe that is accurate, yes.

SENATOR O'CONNOR: So he doesn't make an opening, and he doesn't make a closing.

MS. CORBIN WATSON: No, we allow the individual to give us as much information as they want. In Attorney General Verniero's situation, we did ask him questions, but in that context, he was able to give presentations and discussions on many of his cases, which he did. And when we are concluded, we always offer individuals to tell us anything else they believe might be helpful -- to submit, even after our deliberations that day, any additional information, and we did receive a substantial amount of information from Attorney General Verniero and others on his behalf with respect to our determination, which we did consider before our final deliberation last night -- or yesterday afternoon. I don't want to mess up the record here.

SENATOR O'CONNOR: The questions that are conducted, are they done by yourself, as the Chair, or by individual members?

MS. CORBIN WATSON: The way we proceed is that I, as Chair, will ask the first series of questions. After I complete my questions, then everyone else on the Committee has an opportunity to. And they generally do ask the candidate questions.

SENATOR O'CONNOR: All right. Thank you very much.

Just one final question. Is there any indication given to the nominee at the time that there is some level of satisfaction or dissatisfaction with the responses?

MS. CORBIN WATSON: We do not expressly state that, but I would suspect that one can deduce it based on the type of questioning -- the manner in which the person is asking the question and whether that person believed they were satisfied. Because in Attorney General Verniero's situation, there were a couple of exchanges where there were some members who kept

pressing him for answers. Saying, "Well, maybe that's not what I'm saying -- you went back and forth." So you might be able to assess from that that the person wasn't -- didn't accept your answer or things of that nature.

SENATOR O'CONNOR: Thank you.

MS. CORBIN WATSON: Now is my time to give my little closing -- very short closing statement? Please.

SENATOR GORMLEY: I'd like to ask a question.

MS. CORBIN WATSON: Sure.

SENATOR GORMLEY: To your knowledge, and if you don't know the answer I understand-- To your knowledge, has the head of your Committee or President of the State Bar, prior to the disclosure of 10 minutes ago, ever disclosed a vote, formally?

MS. CORBIN WATSON: I'm sorry, I didn't hear -- I don't understand your question.

SENATOR GORMLEY: Has a vote total ever formally been disclosed by the head of a Bar Committee or by the President of the State Bar? I know you disclosed the vote. I was just curious if it ever happened.

MS. CORBIN WATSON: I do not believe that the Bar President has disclosed a vote because the Bar President does not speak on behalf of the Committee. I speak on behalf of the Committee. And what has happened in the past 30 years-- I cannot tell you whether any other Chair has disclosed it. However, as the Chair--

And in response to reports that this Committee leaked something and -- based on the news account that the vote was close, and I said it wasn't close. I disclosed the numbers to keep the numbers straight.

SENATOR GORMLEY: So the--

John, I'm not trying to be argumentative, but you have to understand standard here--

SENATOR LYNCH: What are you looking at me for?

SENATOR GORMLEY: Oh, well, we're looking at you, John.

It would-- And please address this. And I don't mean this to be argumentative. It would seem that to address a -- which wasn't much of a positive rumor in terms of a vote, you'd give out the vote. Wouldn't you just-- I mean, I was defending the confidentiality earlier. Wouldn't you just stick to the confidentiality instead of putting out the vote total to be consistent with what you said on every other question?

MS. CORBIN WATSON: I was consistent with what I said on every other question when I said that the vote was not close. We had a vote-- And based on specific questions as to, "Well, what was the vote," the final vote is what was the determining factor in this case.

SENATOR GORMLEY: But I wouldn't cross the line and say to you, "Well, tell me the 17 people," because of the confidentiality. And I wouldn't do that.

MS. CORBIN WATSON: And I wouldn't tell you the 17 people because of the confidentiality and because I don't know who the 17 people were.

SENATOR GORMLEY: But what has occurred is that you provided that number instead of just the recommendation, up or down, qualified, not qualified. And what you do to the individual who is the subject of that confidential review-- Now there is a formal-- Yes, there were rumors,

and I'm not pointing the fingers one side or the other. And, if anything, I think from the tenor earlier, I was, I think, very balanced in saying -- especially in terms of the individuals and the information--

It just strikes me, to release the vote total and then say, "Now everything else is confidential"-- There has to be some balance. Whether people were for or against the nominee, and they have the perfect right to be that way -- but in a process like this, where confidentiality is claimed, then to give out the number, it causes me a problem because I then can't ask, "Who were the 17 people, and why?" That's all. I just-- And if you can-- Maybe you can present why or-- Maybe there is a precedent. I didn't know of one. Senator Lynch pointed out, possibly in the *Sandman* (phonetic spelling) case -- and I would accept that. It just seems-- You're claiming confidentiality and then to give out the vote total-- I would have assumed you would have said, "No, that's in confidence also. We can't talk about anything."

Now, I'm not trying to-- And as I said, I'm not trying to be argumentative, and I appreciated the prior claims of confidentiality, and I respected them. That seemed to be inconsistent.

MS. CORBIN WATSON: Senator Gormley, I do not believe it was not inconsistent. And if someone would like to ask me further lines of questioning with respect to the section of the guidelines that Senator Lynch questioned me on, with respect to why a Committee -- County Committee would be called in, it's there.

SENATOR GORMLEY: I'm not-- Those are the rules that are set forth. And you indicated to me that the current practice, in terms of County Committee votes, in confidence-- I could-- We could go back and forth on

that a bit because that is not disclosing individual interviews. I'm just saying to you that it strikes me.

MS. CORBIN WATSON: Right.

SENATOR GORMLEY: If you have this veil of confidentiality, and the veil of confidentiality is there to protect both the nominee, and it is there to protect people who are interviewed -- the veil has to be consistent. But to disclose a faceless vote beyond what is required under the Compact strikes me as being out of balance with the other calls for confidentiality.

MS. CORBIN WATSON: Now, there's other information that I can disclose, but no one has asked me a question with respect to the county. With respect to certain things from the county report-- If you asked me if I could give you--

SENATOR GORMLEY: Excuse me. I'm not-- In other words, I've asked those questions-- I was just making a comment and saying that in terms of the consistency and confidentiality-- I'm not asking more than that. I'm just saying that in terms of disclosing the vote, it struck me as inconsistent, and as I said-- You heard what I said earlier about the confidentiality. I was agreeing with you on most of those instances.

MS. CORBIN WATSON: Right. And I believe--

SENATOR GORMLEY: It just strikes me to send that number out beyond qualified or unqualified strikes me as being inconsistent. And I just wanted to make that comment.

SENATOR LYNCH: Senator Gormley, because the credibility has been raised here of this process and because there are significant questions raised about credibility issues here, I can envision, as all of you can in this

room, somebody standing up on the floor and saying, “What difference does it make if the vote at the County Bar was 13 to 12, and is that going to be dispositive of whether or not we should consider this nominee?” The fact of the matter is that the level of the vote is significant. It is significant to this process. It’s significant since the questions were raised, and obviously somebody leaked to the press that it was a close vote. And certainly that didn’t come from within here. So that was all brought into play. I think the witness’s characterization in setting forth the vote straightens out the record on a whole lot of things.

SENATOR GORMLEY: Well, John, I appreciate the tenor. I was reflecting on the fact that we give out a vote total, and this is based on qualified or unqualified. And that is the nature of the Compact as it has been presented.

MS. CORBIN WATSON: Right.

SENATOR GORMLEY: To go beyond that and to go to the vote total strikes me as going beyond the confidentiality in the Compact. I mean, that’s my interpretation. And I think you’ve heard-- In fact, I probably gaveled a little more on your side, John. And I appreciate your comments earlier about the confidentiality of the witness, and I respect that. I’m saying, to release the vote total, to me -- we can go back and forth on all the interpretations of this -- goes further than is required and puts a further face on it, but a further face on it without the information to back it up in terms of who or what were the circumstances behind those votes. That is commentary by me. I appreciate your not having objected and interrupted me, but I do feel that way. All I’m saying is that I want it to be consistent on confidentiality.

SENATOR LYNCH: I think you ought to publish “Gormley on Compacts” and then give your critique. I don’t see where it’s germane here.

MS. CORBIN WATSON: Senator Gormley--

SENATOR GORMLEY: Well, John, I think that-- I think it is a reflection that I have as I will hopefully -- hopefully you’ll find that I would give difference to yours.

We’d appreciate your final comments or comments about what you said.

SENATOR GIRGENTI: Just as a matter of fact, I asked for that information because of the fact that it has been -- so many different fingers have handed it around. I wanted accurate information from the person that could tell me. That is the reason we asked her.

SENATOR GORMLEY: And, John, I appreciate your question. And I would have appreciated it, had she said, “That goes beyond the boundaries of the Compact.” That’s all. I appreciate your asking it, and I appreciate the curiosity of the members on either side.

I would appreciate your final comments.

MS. CORBIN WATSON: Okay, Senator Gormley.

When you expressed the concern about a faceless number, the-- I have presented today the majority opinion, which is the final recommendation. And the majority opinion is that Attorney General Verniero lacked the experience that only -- the experience of a day-to-day practice. There is other information that I will be willing to share with the Committee with respect to the things that we considered from the county report. I just said I would not tell you the final county recommendation. No one has asked

me, "What did the County Committee's report consist of? What did they--" -- not what they said, but give you a gist of the whole understanding and our exchange with them. I'm willing to give that to you. No one has asked me that question. The question that has expressly been stated -- "What did the county say?" There is a provision in our guidelines that Senator Lynch referenced. And in response to that, we had discussions with the county. I'd be willing to do that.

But since this is my opportunity now to close, there is no other questions, I will close.

SENATOR GORMLEY: Thank you very much. We'll take a five-minute break.

MS. CORBIN WATSON: I will close. I'm going to close. I didn't close.

SENATOR GORMLEY: I apologize.

MS. CORBIN WATSON: I said I will. I'm about to close. I'm about to close now.

SENATOR GORMLEY: I apologize. I didn't mean it.

MS. CORBIN WATSON: The State Bar Association Judicial and Prosecutorial Appointments Committee had participated in this procedure for over 30 years. In the last three years, we have interviewed over 100 applicants. Out of those 100, 20 of those applicants have been determined not qualified, and they have not been appointed to the bench. The same confidence that the Senators had in our determinations, based on those investigations and evaluations, we ask and we submit that it should be the same here.

No one questioned why we decided that someone was qualified or why we decided those other 20 individuals, over the past few years, were not qualified. It was accepted that the members on the State Bar Association's Committee had the experience to know how to evaluate and investigate these candidates when we do.

We submit that our procedure has worked, and the citizens of New Jersey have benefited from our nonpartisan, nonpolitical, independent, objective participation in the process. And we have determined that Attorney General Verniero is not qualified to sit on the Supreme Court of our wonderful State of New Jersey.

Thank you for giving me this opportunity.

SENATOR GORMLEY: Five-minute break.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: General, is the red light on? (referring to PA microphone)

ATTORNEY GENERAL VERNIERO: Yes, Senator.

SENATOR GORMLEY: Resume with questioning -- first round. Senator Bennet.

SENATOR BENNETT: Thank you, Mr. Chairman.

General, recognizing that -- probably a tough act to follow as to the last questioning -- the other side of the aisle has asked me to tone down, so I'm going to be a gentler and kinder questioner now.

With respect to bias crimes, which I believe is an issue that you've certainly been involved in, in your Office, and certainly I've had an occasion to do some work with you on that, I would like to get your opinion as to how your Office has addressed itself to some of these types of crimes and maybe some suggestions that you might have that we could even go to a greater degree to deal with the bias crimes in the State of New Jersey.

ATTORNEY GENERAL VERNIERO: We have, in my Office, a unit called the Office of Bias Crime and Community Relations. It's specifically part of the Division of Criminal Justice. The Office has many missions to it. We assist in the investigation and prosecution of crimes after they occur, but as importantly, we try to go into communities throughout the state to preach a message of tolerance to -- we go into schools. And I've personally done this -- where I've gone into schools and spoken directly to young people to talk to them about why bias crime is such a serious offense, that a bias crime is really a crime against the entire community, and it tears at the fabric of a community. This has been my message consistently throughout the state.

New Jersey's Office-- My Office in this regard has been recognized nationally by the United States Department of Justice as a model state for the reporting of bias crimes. Every year you often see statistics published and many times you see that the percentage of bias crime in New Jersey is higher than in several other states. And I often get asked, "Well, why is that?" One of the reasons is that we do a better job at reporting bias crime. It is an

underreported crime in the country. And the reason we put a premium on reporting is because of my philosophy that you can't solve a crime, you can't protect victims of crime unless they're reported. So we put a premium on reporting, a premium on prosecution, and in a proactive way we put a premium on public education to prevent bias crimes from occurring.

SENATOR BENNETT: Do you see, in the future, something even greater that should be -- a greater role that should be played with respect to that by the Office of the Attorney General?

ATTORNEY GENERAL VERNIERO: Well, we can always enhance our efforts. I think that goes without saying. We've-- In many cases we've gone into now counties and either superceeded counties or made them joint investigations. What I find is when the State Attorney General's Office gets involved with any particular investigation, it helps the local authorities, it elevates the importance of the case. We've done more of that in the bias crime area under my tenure. We probably could do a little bit more of that in the future.

In terms of legislation, our bias crime statute is actually quite updated. It includes several different standards, gender, race, handicap. It's considered, I think, one of the most updated or modern statutes. I would have to think as to whether we would need even additional revisions.

SENATOR BENNETT: Just one other question at this point in time.

I don't know when you first testified as to whether or not you did the introductions, but the young woman that is with you today-- Could you just introduce her to the panel, so we get an opportunity to--

ATTORNEY GENERAL VERNIERO: Yes. That's my wife, Lisa.

SENATOR BENNETT: I know who it is.

Thank you very much.

I have nothing further. I yield the balance of my time to you, Mr. Chairman.

SENATOR GORMLEY: Well, thank you.

We'll move on to Senator Lynch.

SENATOR LYNCH: Just as an aside with regard to the statement you said earlier, I think, about Commissioner Medina having been sworn in privately and that that process happened quickly. You're quite sure of that?

ATTORNEY GENERAL VERNIERO: Yes, and I had an opportunity at lunch just to make sure my recollection was accurate. There was an oath filed with the Secretary of State on February 1, 1994. And I have a copy for the Committee.

SENATOR LYNCH: And the title is?

ATTORNEY GENERAL VERNIERO: Oath of Allegiance and Oath of Office.

SENATOR LYNCH: In what capacity -- what office?

ATTORNEY GENERAL VERNIERO: Commissioner of the Department of Commerce and Economic Development.

SENATOR LYNCH: Not acting?

ATTORNEY GENERAL VERNIERO: That's correct, Senator.

SENATOR LYNCH: To your knowledge, the current Acting Commissioner of Health has been on board for a couple of months now.

ATTORNEY GENERAL VERNIERO: I assume so. I have not kept track of that, Senator.

SENATOR LYNCH: You don't know of any reason why that hasn't been heard, do you?

ATTORNEY GENERAL VERNIERO: I do not.

SENATOR LYNCH: With regard to your knowledge of what-- Were you here when Justice Clifford testified?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: Did you talk to Justice Clifford between December 1 and February 24, 1999 with regard to the potential of your being a nominee to fill the vacancy that is about to be created with Justice Pollock?

ATTORNEY GENERAL VERNIERO: I may have, Senator. I don't have a specific recollection of a particular conversation. The rumor of Justice Pollock's resignation was sort of out there with varying degrees. I can't swear to it, but I may have.

SENATOR LYNCH: But you knew some time before January 1 that Justice Pollock was going to retire.

ATTORNEY GENERAL VERNIERO: I had heard the rumor. I did not know for sure, though, prior to that time.

SENATOR LYNCH: When did you first have a discussion with any representative of the Governor's Office being the nominee?

ATTORNEY GENERAL VERNIERO: Well, again I wouldn't be able to pinpoint it. The Governor herself spoke to me directly sometime that week -- the week of his announcement.

SENATOR LYNCH: So if he announced it on the 24th -- was it? -- 25th, you were spoken to by someone in the Governor's Office prior to that?

ATTORNEY GENERAL VERNIERO: Yes, prior to that, yes.

SENATOR LYNCH: So you had some forewarning for sure that he was submitting a formal resignation.

ATTORNEY GENERAL VERNIERO: I don't know when he spoke directly to Governor Whitman. I believe the first newspaper report had occurred sometime that week or the week before. That's when the rumors were intensified. I don't know precisely when the Governor was informed by Justice Pollock.

SENATOR LYNCH: Mr. Verniero, I'd like to go down the line of questioning about the -- what might be the most important issues revolving around qualifications for this position as Associate Justice of the Supreme Court. And we've had some discussion about those today.

Is it safe to say from your standpoint that some of the issues that are called into play in terms of the qualifications that you look for would be mature judgemental skills, ability to exercise sound discretion, evenhandedness, consistency, avoiding conflicts of interest or the appearance of a conflict of interest?

ATTORNEY GENERAL VERNIERO: I would agree with those. Actually, I was thinking, hearing the testimony of the Chairwoman, given the month I've had, I was surprised I passed the health requirement. But I would agree with your assessment.

SENATOR LYNCH: I want to ask you a series of questions about the events that occurred on your watch -- the Governor's Counsel Office as well

as the Attorney General's Office because, as you know, we don't have a whole lot of information about what you actually did in the private sector. And as you pointed out, you've gotten a lot of experience in the public domain in those two positions, correct?

ATTORNEY GENERAL VERNIERO: Yes, I have.

SENATOR LYNCH: So you rely in great measure in terms of your experience and qualifications on the service you've had in the public domain.

ATTORNEY GENERAL VERNIERO: Not to the exclusion of my private practice, but that's certainly an important part of my background, yes.

SENATOR LYNCH: Going back to the private practice for a minute.

In 1981, you finished--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: And you were part of the Kean campaign, in some fashion, as a volunteer before you went to Duke Law School?

ATTORNEY GENERAL VERNIERO: I was his driver, yes.

SENATOR LYNCH: And when you--

ATTORNEY GENERAL VERNIERO: I think he may have been mistaken in terms of my being a volunteer. I volunteered, and then at some point I did get paid, as I recall, during that summer.

SENATOR LYNCH: But you started Duke by September of 1981, right?

ATTORNEY GENERAL VERNIERO: To my recollection, Duke may have started in August of that year. But yes, I left the campaign because

I did not want my education to be interrupted. Once I received my acceptance at Duke, which was my first choice as I recall, I decided that I had to leave the campaign.

SENATOR LYNCH: Did you publish at Duke in any material for the law journal or any other journals that Duke might have?

ATTORNEY GENERAL VERNIERO: No, I did not.

SENATOR LYNCH: Were you a member of the board of editors of the law journal?

ATTORNEY GENERAL VERNIERO: No, I was active in the moot court competitions but not the law journal.

SENATOR LYNCH: And you suggest that you had -- you graduated with honors. What does that mean?

ATTORNEY GENERAL VERNIERO: That was a notation that was part of my transcript. I can't recall whether that was listed in the graduation program, it may have. That was a termination that-- I believe it was a vote of the faculty.

SENATOR LYNCH: Do you know what your class rank was?

ATTORNEY GENERAL VERNIERO: I do not.

SENATOR LYNCH: That's not public information?

ATTORNEY GENERAL VERNIERO: I don't know if it is. I don't what it is.

SENATOR LYNCH: And so you get out of Duke and you wind up in the clerkship with Justice Clifford from September of 1984 until August of 1985?

ATTORNEY GENERAL VERNIERO: Again it may have been August to August, but that is correct. It was a year.

SENATOR LYNCH: And when did you first interview Justice Clifford?

ATTORNEY GENERAL VERNIERO: Boy, that's taxing my memory. It certainly was sometime before-- It may have been the summer before. If I'm not mistaken, Supreme Court Justices, at least Justice Clifford, may have interviewed clerks a year prior. That's my recollection, Senator.

SENATOR LYNCH: In your submittal to Justice Clifford, did you have letters of recommendation from Tom Kean or Jim Courter?

ATTORNEY GENERAL VERNIERO: I don't recall Tom Kean. I may have -- Jim Courter. I don't remember.

SENATOR LYNCH: So you get out of Duke in the spring of-- I'm sorry. You finished your clerkship sometime in the summer of 1985.

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR LYNCH: And did you work the Kean campaign that year in the fall?

ATTORNEY GENERAL VERNIERO: No, not in a full-time position.

SENATOR LYNCH: Did you work it at all?

ATTORNEY GENERAL VERNIERO: I don't recall. I may have volunteered. But no, I was in school and practice at the time.

SENATOR LYNCH: You started with Pitney sometime around about September.

ATTORNEY GENERAL VERNIERO: That's my recollection.

SENATOR LYNCH: And the-- When did you leave Pitney? How long were you there, 12 months, 15 months, 18 months?

ATTORNEY GENERAL VERNIERO: No, it was from 1985 to 1987. And in response to Senator Zane's question, I don't recall the exact time in 1987. And my recollection is that it was either mid or late 1987 I left Pitney.

SENATOR LYNCH: You went from Pitney-- You went there somewhere around 1985. And somewhere in 1987 you hooked on with the Courter campaign committee.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: And you don't know what time--

ATTORNEY GENERAL VERNIERO: In 1987, that is correct.

SENATOR LYNCH: And you don't know what time of year that was?

ATTORNEY GENERAL VERNIERO: I don't. I don't recall.

SENATOR LYNCH: And you remained with Courter's campaign committee through 1988?

ATTORNEY GENERAL VERNIERO: It was a congressional election. It was 1987 to 1988. Then Jim Courter had decided to run for governor, and I was part of his primary election staff in 1989. He won the primary. And then I became the executive director for the general election cycle.

SENATOR LYNCH: But you knew when you went to work for Courter's campaign in 1987 that he was getting ready to run for governor in 1989.

ATTORNEY GENERAL VERNIERO: I don't recall if he had made a decision at that point. He was a rumored candidate as I recall.

SENATOR LYNCH: What was your role in the Courter gubernatorial campaign?

ATTORNEY GENERAL VERNIERO: I was the deputy campaign director as I recall, and I worked extensively in the area of compliance -- satisfaction of the State election laws, filing of various election reports. In a gubernatorial election, as you know, it is publically funded--

SENATOR LYNCH: Sure.

ATTORNEY GENERAL VERNIERO: --and there are vast volumes of regulations, percise reporting, and so forth.

SENATOR LYNCH: Had you done the same thing for the Federal campaign under the Federal Election Reporting in 1988, for instance?

ATTORNEY GENERAL VERNIERO: No, I don't recall doing that for his congressional race.

SENATOR LYNCH: Did you do now Governor Whitman's compliance in 1990 in her race for U.S. Senate?

ATTORNEY GENERAL VERNIERO: As an attorney at Herold and Haines, I represented candidate Whitman in some post-Federal election filings. I do not recall working on her regular reportings.

SENATOR LYNCH: Were you involved in any way other than that in the campaign of 1990 -- Governor Whitman for U.S. Senate?

ATTORNEY GENERAL VERNIERO: No, in 1990, I was full-time at Herold and Haines, and the work that I did for the Whitman for Senate campaign, as I recall, was some post-Federal election filings.

SENATOR LYNCH: Herold and Haines is in Hunterdon County. They've had a long relationship with the Todd family and Governor Whitman?

ATTORNEY GENERAL VERNIERO: It's actually in Somerset County, and I'd like to again invoke the privacy of the firm. I don't know if they would appreciate me disclosing their clients, Senator. I worked for Mrs. Whitman as an attorney there. I'm able to disclose that. And beyond that, I don't think I should go into client files or client names.

SENATOR LYNCH: Getting back to the skills -- skills required for an Associate Justice of the Supreme Court. I'd like to ask you a series of questions, and I'll be upfront. And as we go down the road -- I know we're into rounds, but I wanted to tell you-- The subject matters I wanted to get into in determining whether or not, in the public capacity, since we weren't able to retrieve any of the records, as you know, you showed signs of satisfying those qualifications and the management of handling these cases, whether you showed the right disposition, discretion, and even handedness in the avoidance of at least the appearance of a conflict.

In those cases, those matters are the Daidone case, which is a RICO settlement by the Attorney General's Office that I'm not even sure is in the public domain yet; although there was some press statement by you in your Office a few weeks back on a Friday; the *Michael Francis* case; the (indiscernible); your role in the *Haytaian* and *Davis* cases; your handling of the Director of Gaming Enforcement, Frank Catania, with all the publicity that surrounded that; to the infamous chiropractor settlement that Senator Zane got into; and the Prosecutor Bissell removal, or lack thereof, and other interactions with county prosecutors; your personal knowledge and oversight

of the State Police, including promotions; and your role in tobacco, specifically and generally.

The first case I want to go into is the Daidone matter. And let me preface these remarks by -- or these questions by saying to you that certain members of your family had, at one point or another, worked for Daidone. And I don't have this-- All I have is the highest praise through all I hear about your father and his character, and so forth, and so on, and his qualifications in his trade/profession. And so I want to make sure that as I go down that road that there is no (indiscernible) that I'm suggesting that any member of your family is involved in any capacity related to the subject at hand, but rather, it is an area where I think there is a serious question as to what you knew when you knew it and when you absented yourself or built a Chinese wall around you.

If I could refresh your recollection or maybe you don't know any of the parts-- Apparently, back in 1993, before Federal Judge Greenberg, there was a trial involving the Lucchese crime family. There was a witness by the name of Accetturo who fingered Al D'Arco as the acting head of the Lucchese crime family. And as part of that testimony in that case, there were several companies that were identified as involved strongly with the Lucchese crime family. And one of those companies was Daidone Electric. My understanding is that your father worked there for some 23 years from 1973 to 1993, is that correct?

ATTORNEY GENERAL VERNIERO: I don't know the exact dates. He was, in the beginning, a member of the union, and he would go to the union hall and the union would assign him to various jobs. They assigned

him to various jobs at Daidone, and at some point he became a regular employee. I don't recall exactly when that time frame was.

SENATOR LYNCH: Did he indicate he wasn't simply an electrician or a foreman, he actually became a superintendent, which means he oversaw four, five, six jobs at a time, correct?

ATTORNEY GENERAL VERNIERO: He was supervisor on different jobs. I cannot recall those jobs, Senator.

SENATOR LYNCH: And so his employment with Daidone was consistent for a number of years, if not 23 years.

ATTORNEY GENERAL VERNIERO: A number of years. I just don't have the exact time.

SENATOR LYNCH: Did other members of your family work for Daidone?

ATTORNEY GENERAL VERNIERO: I don't know. I've seen a press report that an uncle may have. I think that's true. He's long deceased so--

SENATOR LYNCH: Any other relatives like cousins--

ATTORNEY GENERAL VERNIERO: Not that I--

SENATOR LYNCH: --members of your immediate family?

ATTORNEY GENERAL VERNIERO: Not that I'm aware of, but it could be.

SENATOR LYNCH: It's purely coincidental that your father retired in 1993 around the same time of this trial and while Governor Whitman's running for office.

ATTORNEY GENERAL VERNIERO: As far as I know. He had been looking forward to retirement for a while, and he retired just around the time of the birth of his first granddaughter. And I think he wanted to spend some time with Jennifer.

SENATOR LYNCH: He was probably 60 years old around the time -- maybe 59 or 60?

ATTORNEY GENERAL VERNIERO: He may have been a little over 60. He's been retired for six years.

SENATOR LYNCH: And at that time in 1993, what was your role in the Whitman campaign?

ATTORNEY GENERAL VERNIERO: In 1993, I was the-- As I indicated to Senator Zane, I was the in-house lawyer.

SENATOR LYNCH: And did you have any other title in the campaign of 1993?

ATTORNEY GENERAL VERNIERO: No, it was campaign counsel, if I recall.

SENATOR LYNCH: What were your duties and responsibilities?

ATTORNEY GENERAL VERNIERO: I was -- legal counsel I guess was the title. I was in charge of compliance and legal operations for the general election campaign.

SENATOR LYNCH: In July of 1996, you wind up as Attorney General? Was it July?

ATTORNEY GENERAL VERNIERO: July of 1996, yes.

SENATOR LYNCH: And as you pointed out in your memorandums, there is an enormous number of employees in sections in the

Attorney General's Office. But to your knowledge-- Strike that. When you came to that Office as Attorney General, were you given briefings on organized crime cases that were being reviewed, investigated, presented to grand juries, or prosecuted on the civil side?

ATTORNEY GENERAL VERNIERO: I don't recall a specific briefing on the Accetturo, if that is your question. I don't recall that.

SENATOR LYNCH: Did you know, in 1996, that there was this investigation of the Lucchese crime family and these numbers of companies that had been identified in that trial including Daidone?

ATTORNEY GENERAL VERNIERO: I don't recall knowing that, no. The first time I recall becoming aware of that -- and First Assistant Paul Zoubek, who I believe is here, Mr. Chairman, and could probably give you a more precise statement because he was the one that advised me.

SENATOR LYNCH: I'm concerned about what you knew.

ATTORNEY GENERAL VERNIERO: I understand.

SENATOR LYNCH: And not what Mr. Zoubek knew.

ATTORNEY GENERAL VERNIERO: No, I understand that, but he could verify what I'm saying.

SENATOR LYNCH: When did you bring Mr. Zoubek into the -- into your operation.

ATTORNEY GENERAL VERNIERO: He has been CJ Director at least for a year if I'm not mistaken.

SENATOR LYNCH: Prior to that, what was he?

ATTORNEY GENERAL VERNIERO: He was on my Senior Executive Staff.

SENATOR LYNCH: Title?

ATTORNEY GENERAL VERNIERO: Assistant Attorney General.

SENATOR LYNCH: And when did he come to the New Jersey Attorney General's Office?

ATTORNEY GENERAL VERNIERO: I think he's been here for--

ASSISTANT ATTORNEY GENERAL ZOUBEK: July 21, 1997.

ATTORNEY GENERAL VERNIERO: July 21, 1997.

SENATOR LYNCH: Prior to that he had been with the U.S. Attorney's Office?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: And was he over-- As you now know, was he overseeing this Lucchese crime family investigation?

ATTORNEY GENERAL VERNIERO: I don't know if he was personally overseeing. Just as I have many employees and matters under my charge, the Division of Criminal Justice has many. I don't know whether he was personally overseeing it.

SENATOR LYNCH: You have never asked it?

ATTORNEY GENERAL VERNIERO: No, I've been recused from this matter. I've never talked to him about it other than to recuse myself.

SENATOR LYNCH: Well, from the newspaper account, you recused yourself somewhere around 1998. Is that accurate?

ATTORNEY GENERAL VERNIERO: I'll accept your representation.

SENATOR LYNCH: No, it's your representation because you're the one who spoke to the *Star-Ledger*.

ATTORNEY GENERAL VERNIERO: That sounds right, yes.

SENATOR LYNCH: How did you learn, in November of 1998, of the pending investigation that involved Daidone?

ATTORNEY GENERAL VERNIERO: As I recall, Director Zoubek came into my Office and asked me who Peter J. Verniero was, and I told him it was my father, if this was the same person. And he said, "Had he ever worked at Daidone Electric?" I said yes. He said, "Well, I think then we ought to set up a formal recusal." And I said fine, and we did.

SENATOR LYNCH: When you discovered this, allegedly in November of 1998, did you examine the file to determine how long this matter had been pending in the Attorney General's Office, what its history was, what time frame it covered?

ATTORNEY GENERAL VERNIERO: No, because after I spoke to Director Zoubek, I completely recused myself. And I would not have thought of then reviewing that -- could have, in my--

SENATOR LYNCH: Wasn't it important to know what the subject matter time was for this investigation since your father left in 1993? This is 1998. It could have been 1994, 1995, 1996, 1997, correct?

ATTORNEY GENERAL VERNIERO: I don't understand your question.

SENATOR LYNCH: When you recused yourself it was because of the fact that from a perception standpoint, it would be a problem because your father had worked there for a number of years, having retired in 1993. If the activity being reviewed by the Attorney General's Office occurred

between 1994 and 1998, there wouldn't be any conflict, would there? Or appearance of conflict I should say.

ATTORNEY GENERAL VERNIERO: Well, arguably there was no conflict even at the time I recused myself. But in consultation with Director Zoubek, we both agreed that I ought to, out of an abundance of caution, recuse myself.

SENATOR LYNCH: Isn't it--

ATTORNEY GENERAL VERNIERO: May I finish, Senator?

Once I made that decision, I would not have thought of, then, going back and reviewing files or inspecting documents. Once a formal recusal was put in place, I did not discuss the case or the respective files.

SENATOR LYNCH: Are you telling me that Mr. Zoubek didn't tell you the subject matter, what the time frame of the investigation was, and what the status of the investigation was?

ATTORNEY GENERAL VERNIERO: I don't recall him telling me anything about the time frame. I recall him saying, as he said publicly, that my father was not a subject or a target of any investigation. And beyond that, we didn't discuss the case.

SENATOR LYNCH: Did you learn from him that that case had been a criminal investigation until the summer of 1998 and then was converted into a civil RICO action?

ATTORNEY GENERAL VERNIERO: Actually, no. I don't recall him giving me even that much background. He came in, he said that my father's name was on a payroll account that had gone unnoticed, and he asked me who he was, and I said who he was, and he said, "Well, we probably ought

to recuse.” And I said, “Absolutely, we should recuse,” even though arguably I didn’t have to recuse. And that was it. It was about a 10- or 15-minute conversation, as I recall. And from that point forward, the then First Assistant David Hespe had whatever conversations and made whatever decisions had to be made with respect to that case.

SENATOR LYNCH: Did you tell the *Star-Ledger* that this case had been settled?

ATTORNEY GENERAL VERNIERO: No, I did not.

SENATOR LYNCH: --which appears in that article--

ATTORNEY GENERAL VERNIERO: I believe Mr. Zoubek may have interviewed with the reporters. I do not recall mentioning any settlement.

SENATOR LYNCH: Did you review the reports?

ATTORNEY GENERAL VERNIERO: I did because the reporters came--

SENATOR LYNCH: So do you know whether the case was settled or not?

ATTORNEY GENERAL VERNIERO: I believe it was settled. It was in the newspaper article as settled.

SENATOR LYNCH: You’re the one that spoke to the newspaper. Is it settled or isn’t it?

ATTORNEY GENERAL VERNIERO: I don’t know.

SENATOR LYNCH: You don’t know/you don’t care?

ATTORNEY GENERAL VERNIERO: Well, I care to the extent that it is an important case. I’ve never reviewed any settlement agreement.

SENATOR LYNCH: How important--

ATTORNEY GENERAL VERNIERO: I don't know if the case has been formally settled. I'm recused, Senator.

SENATOR LYNCH: How important a case is it?

ATTORNEY GENERAL VERNIERO: I assume it is an important case just from what I've read in the newspapers.

SENATOR LYNCH: Would you believe that it's the first civil RICO forfeiture case in the history of New Jersey--

ATTORNEY GENERAL VERNIERO: I don't know that to be the case, it may be.

SENATOR LYNCH: --that it's reported to be for \$2.2 million, and that Daidone pays some percentage of that?

ATTORNEY GENERAL VERNIERO: I don't know any of the details, Senator.

SENATOR LYNCH: Does it concern you, since you don't think you have a real conflict-- Does it concern you what the terms of that settlement might be?

ATTORNEY GENERAL VERNIERO: No, because I'm recused. So whatever terms Director Zoubek or First Assistant Hesse resolved, I have confidence in their judgement. I assume that's an appropriate settlement. That is an assumption on my part.

SENATOR LYNCH: If this case was converted from a criminal investigation in the summer of 1998 and then settled without a formal complaint having been filed -- without discovery for \$2-plus million, with Daidone paying some portion of that-- Don't you think that's a significant case in perspective of your Office?

ATTORNEY GENERAL VERNIERO: It sounds like a significant case. I have no way of judging the terms of the agreement because I don't have that information.

SENATOR LYNCH: And if this arose out of the Lucchese crime family case and any criminal investigation were undertaken, ultimately being converted into a civil RICO without any suit being filed and no discovery and a settlement was effectuated, would it be surprising to you, under those circumstances, that part of the agreement would be that they -- Daidone was not debarred from bidding on State contracts or any authorities of the State?

ATTORNEY GENERAL VERNIERO: I don't know if that's the case because I've never read the agreement.

SENATOR LYNCH: What is RICO?

ATTORNEY GENERAL VERNIERO: It is a civil statute that deals with conspiracies among entities and persons.

SENATOR LYNCH: What kinds of entities?

ATTORNEY GENERAL VERNIERO: Corporate entities.

SENATOR LYNCH: It's a racketeering statute, isn't it?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: And so that if there was a settlement here, there would have had to been an admission that they were implicit in racketeering, is that right?

ATTORNEY GENERAL VERNIERO: Presumably, but I've never seen the agreement, so I can't say for sure.

SENATOR LYNCH: And you've heard nothing since your discovery through Mr. Zoubek in November of 1998?

ATTORNEY GENERAL VERNIERO: I have not read a single document. I have not heard any document even summarized.

SENATOR LYNCH: And in preparation for this hearing, it wasn't of some interest to you to see what the terms of the settlement might be?

ATTORNEY GENERAL VERNIERO: I never asked.

SENATOR LYNCH: Aren't there policy decisions here, forgetting the fact that there may be some appearance of a conflict in terms of what action this State should be taking and demanding in the settlement of the civil RICO action -- the first one in its history where there is a forfeiture-- Aren't there some serious policy considerations as to what restrictions would be placed on that company?

ATTORNEY GENERAL VERNIERO: Those policy considerations, if any, and judgements were made by the Acting Attorney General, who was my First Assistant once I was recused, and Director Zoubek--

SENATOR LYNCH: Prior to your being recused, you had no information either?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: Even though this was a substantial investigation?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: So to the best of your knowledge, from July of 1996 to November of 1998, no one in your Office had ever spoken to you about the Lucchese crime family investigation and the potential involvement of Daidone?

ATTORNEY GENERAL VERNIERO: To the best of my knowledge, that is correct.

SENATOR LYNCH: When you spoke to Mr. Zoubek back in November of 1998, did he present you with a summary of the case?

ATTORNEY GENERAL VERNIERO: No, he did not.

SENATOR LYNCH: So you just blocked it out as a potential for an involvement. Without reference to time frames, you simply blocked it out, weren't interested in looking at it, recused yourself from this investigation, you know none of the details, and you know nothing about what happened with the settlement. Is that your testimony?

ATTORNEY GENERAL VERNIERO: My testimony is that once I became aware that Daidone Electric was involved in any matter under Director Zoubek's charge and responsibility, I recused myself out of an abundance of caution, even though my father was retired at that time.

And my definition of recusal -- others may have different definitions, but when I recuse myself from a case, it's complete. I don't look back, I don't have second thoughts, I don't go back and perhaps read documents out of curiosity. It was a formal recusal, and it stayed a formal recusal, and that formal recusal is in place even to this--

SENATOR LYNCH: And that's November of 1998. But you're telling us today--

ATTORNEY GENERAL VERNIERO: I just want to be clear so the record is clear. I believe it was November of 1998. I'm suggesting that Director Zoubek is here, and he may have actually made a note of the recusal and may give the exact time frame.

SENATOR LYNCH: And from July of 1996 to November of 1998, no one in your Office ever gave you a briefing on mob-related activity cases that your Office was investigating or presenting to grand juries or filing civil RICOs on?

ATTORNEY GENERAL VERNIERO: Oh, it may have, but you asked me whether the briefings specified the possible involvement of Daidone. And I do not recall ever being briefed on any matter that would have involved Daidone until Director Zoubek came into my Office in November of 1998.

SENATOR LYNCH: Were you ever briefed on the Lucchese crime family investigation prior to November of 1998?

ATTORNEY GENERAL VERNIERO: I recall having a general briefing about crime families in general in New Jersey, the various terms of art, the various prosecutions in the past. To my recollection, I was never briefed on any matter involving Daidone Electric.

SENATOR LYNCH: How about when this case broke and was on trial for weeks and weeks and weeks before Judge Greenberg in 1993 and the media was replete with stories about the various contractors that were involved in the Lucchese crime family analysis and Daidone's name appeared in the public domain over and over and over again? You were unaware of that in 1993?

ATTORNEY GENERAL VERNIERO: I don't recall that, no, Senator.

SENATOR LYNCH: You never had a discussion with your father about it?

ATTORNEY GENERAL VERNIERO: I never have, no.

SENATOR GORMLEY: You have half a minute.

SENATOR LYNCH: I'm breaking into a new subject matter.

SENATOR GORMLEY: Okay, thank you.

ATTORNEY GENERAL VERNIERO: Other than-- The discussion with my father -- other than when the newspaper article appeared in the *Star-Ledger*.

SENATOR LYNCH: But nothing in--

ATTORNEY GENERAL VERNIERO: Nothing in--

SENATOR LYNCH: Nothing in 1993--

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: --when this was all over the newspaper.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: No further questions.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Good afternoon, General.

ATTORNEY GENERAL VERNIERO: Good afternoon.

SENATOR ROBERTSON: First of all, I noticed from you judicial questionnaire that last Friday was your birthday.

ATTORNEY GENERAL VERNIERO: It was.

SENATOR ROBERTSON: Happy birthday.

ATTORNEY GENERAL VERNIERO: Thank you.

SENATOR ROBERTSON: The first question is to find out whether or not over the weekend you have acquired a great deal of seasoning and wisdom as a result of having past your 40th birthday.

ATTORNEY GENERAL VERNIERO: Let's say I've aged quite a bit in the last few days. (laughter)

SENATOR ROBERTSON: That's a fair response.

One area that I had some concern about-- The New Jersey Supreme Court has always been known as an activist court. One of the areas that has come up in recent years has involved questions of separation of powers, separation of powers between the judiciary and the policy makers, and separations of powers between the executive and legislative branches.

Now, I realize that you have had to take an advocacy position with respect to this in your role as Attorney General or as Counsel to the Governor. But I'm asking you now, in your role as a nominee for the Supreme Court, to give us your thinking with respect to the separations in power.

ATTORNEY GENERAL VERNIERO: Well, I obviously believe in separation of powers. It's in the Constitution; it's expressed under our State Constitution. There is a separation of powers clause, which is not present in the Federal Constitution, I don't believe.

In terms of activist and nonactivist label, I have always avoided those labels because I don't think they really tell you anything at the end of the day. You have many judges who are thought of to be activists who turn out to be not so activist and vice versa. I believe a judge of the Supreme Court must decide each case solely on the facts and the law but obviously have a robust respect for separation of powers. I think that's appropriate.

SENATOR ROBERTSON: As between the judiciary and the policy makers?

ATTORNEY GENERAL VERNIERO: As between all three branches. These are three coequal branches -- coordinate branches, and that ought to be respected. But separation of powers-- And I know Justice Handler has written many cases on this -- many opinions. Separation of powers does not mean that one branch can't help the other or complement the other. You don't have to have hermetically sealed branches, but you should always respect the prerogatives of the various coordinate branches and abide by those limitations.

SENATOR ROBERTSON: And with respect to your law firm experience-- In private practice you worked with or participated in two firms: one which is a very large firm, which was the Pitney firm, and the other one, Herold and Haines -- was approximately how many attorneys there?

ATTORNEY GENERAL VERNIERO: That was in the 20-person range.

SENATOR ROBERTSON: So it is more of a medium size.

ATTORNEY GENERAL VERNIERO: Medium size, yes.

SENATOR ROBERTSON: And was it your experience that the type of work that you might be doing was different as between large firms and small firms?

ATTORNEY GENERAL VERNIERO: Yes, the large firms tend to be very compartmentalized, so if you're in the corporate area, you do only corporate work. If you're in the litigation area, you do only litigation work. Herold and Haines, and I suspect this is typical of smaller firms, they're not as compartmentalized, which is why I did some corporate commercial work and some litigation work at Herold and Haines.

SENATOR ROBERTSON: Now, I had posed the question before, to the representative of the Bar, about candidates for judicial appointments that come before our Committee, many of whom might have had a career that's somewhat one-dimensional in the sense that they were career prosecutors or career public defenders or career private practitioners specializing a certain area. With respect to the breadth of your experience-- You had experience in corporate law?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ROBERTSON: Commercial litigation?

ATTORNEY GENERAL VERNIERO: That's correct, yes.

SENATOR ROBERTSON: Transactions?

ATTORNEY GENERAL VERNIERO: Transactional work, municipal land use, real estate, and election law.

SENATOR ROBERTSON: And criminal law? Not as a private practitioner--

ATTORNEY GENERAL VERNIERO: That's right. Well, as Attorney General, it is much broader than that. It's criminal law, it's civil law, it's charitable trust areas, as you've heard. It's just a broad range of responsibilities as Attorney General.

SENATOR ROBERTSON: And what areas of law were you exposed to as Counsel to the Governor?

ATTORNEY GENERAL VERNIERO: That was-- Oh, Counsel to the Governor? Those were the legislative enactments, which is on any various subject.

In response to an earlier question by Senator Zane, when I indicated that I treated the Counsel's Office as a law firm -- as a medium-size law firm, I made sure, as I was hiring attorneys, that we had at least one attorney on staff who knew criminal law, one attorney on staff who practiced civil law. I tried to make sure that there was a variety of expertise represented in the Counsel's Office because I knew that the Legislature would pass enactments dealing with a whole range of subjects.

SENATOR ROBERTSON: In the interest of time, Mr. Chairman, I have no further questions at this time.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Thank you very much, Mr. Chairman.

ATTORNEY GENERAL VERNIERO: Good afternoon, Senator.

SENATOR GIRGENTI: Good evening, almost, right.

ATTORNEY GENERAL VERNIERO: Yes, well, we're getting there.

SENATOR GIRGENTI: General, one of the primary functions that we've been told of the Supreme Court is to oversee attorney discipline. Seeing as your experience in the daily practice of law has been termed limited, from where would you draw the necessary insight when making the decision of how and when to discipline an attorney?

ATTORNEY GENERAL VERNIERO: Well, obviously one source would be my own work in drafting the two codes of conducts that I referred to in my opening. As the Chief Counsel, I've offered the first comprehensive code of ethics for the Governor's Office in 20 years and was also the ethics officer -- a formal ethics officer for the Governor's Office.

As Attorney General, I was the first Attorney General to adopt a comprehensive code of conduct for the county prosecutors, which I applied to myself. And it is in both the promulgation and enforcement of those two codes-- I think that's analogous, maybe not perfectly analogous, to the supervision of the Bar in general. That would be one of my responsibilities as an associate justice.

SENATOR GIRGENTI: Isn't it the responsibility of the Supreme Court to promulgate rules of evidence in procedure, and what is your experience with the rules evidence and with the criminal rules on procedure?

ATTORNEY GENERAL VERNIERO: Well, we just had a very recent example where the Supreme Court had promulgated a rule dealing with the so-called Tender Years Doctrine, which is a hearsay rule -- hearsay exception to one of the rules of evidence. My Office was very active, and I personally appeared, I believe before this Committee, to testify against the Court or against the Court rule.

As Chief Counsel, I recall working on the priest penitent rule, which was rule of evidence. As I recall, the Governor had issued a conditional veto of that legislation, and obviously I was, as I indicated -- the outset -- very instrumental in my role as counsel in drafting that language. So I certainly have been exposed to the rules of evidence in that fashion.

SENATOR GIRGENTI: When you served as the Chief Counsel to the Governor, what type of day-to-day legal work did you perform?

ATTORNEY GENERAL VERNIERO: Executive orders, that's first and foremost, legal document and executive order. The language must be precise and clear and must accomplish the intent of the Governor. With

respect to legislative enactments that I reviewed or conditional veto language that I drafted, obviously, that requires very precise drafting and a knowledge of the law and an appreciation of the law.

With respect to my role as the overseer of the appointments process, with respect to judicial and prosecutorial appointments, that too, is a legal function where I was on the opposite end of the table asking these kinds of questions of prospective judicial candidates.

SENATOR GIRGENTI: Did you review complaints, answers, and motions?

ATTORNEY GENERAL VERNIERO: That would not normally go through the Counsel's Office. That would normally go through the Attorney General's Office. I may have, as counsel, reviewed any complaints in which the Governor may have been named personally or in her official capacity if the attorney general had submitted them to me for my information or review. But I can't say that on a regular basis, as the counsel, I engaged in that kind of review because that is normally the function of the attorney general.

SENATOR GIRGENTI: In 1997 and 1998, the Supreme Court reviewed approximately five capital murder cases. These cases typically covered highly complex legal issues, as you know. Nearly every case focused on the (indiscernible) jury instructions.

If you have never participated in a jury trial, how do you believe that you have required the requisite insight into analyzing this type of case?

ATTORNEY GENERAL VERNIERO: Well, because as I said at the outset, I would decide any case -- that case or any case based on the law, the facts, the presentation on both sides, the quality of the briefs, and oral

argument. Those are the kinds of issues that a judge would look at. Simply because I did not engage in a personal form of practice or personal issue that might be before the court, does not mean that I could not fairly judge a resolution of any dispute regarding that issue.

SENATOR GIRGENTI: You have to bear in mind that these cases in which a person's life is at stake, we put a great deal of emphasis on the experience of the attorneys which the State assigns to defend these cases. If the State assigns an attorney to defend a person being tried for capital murder, at least one of the attorneys assigned, generally, has to have experience in trying capital murder cases. Why would this same qualification not be relevant to those who review these cases?

ATTORNEY GENERAL VERNIERO: Well, I think if we have that as an absolute requirement, we would bar many talented people from ever becoming a Supreme Court Justice. As I noted in the outset, at least two of the current members of the Court have never tried a case before a jury, and yet I've never heard it said that they are unable to sit fairly in a capital case. I don't think we would ever want to erect that kind of artificial barrier.

SENATOR GIRGENTI: In the one major medical malpractice case reviewed by the Court in 1997-1998, the Court had to decide whether there was sufficient evidence to sustain a jury verdict. What will you draw from, in your experience, to assist you in analyzing a case such as this?

ATTORNEY GENERAL VERNIERO: Well, obviously, as Attorney General, I have had the experience and the opportunity of judging many of the appellate cases and reviewing many briefs that have spoken to the quality of evidence. I saw that as a law clerk as well. Again I revert back to an

earlier answer. I would decide that case as I would any other, based on the quality of the arguments before me, the factual record, the state of the law, and any particular circumstances that might be relevant.

SENATOR GIRGENTI: You cited in your background that three of the years in which you were engaged in private practice of law were with the firm Pitney, Hardin, Kipp, and Szuch. Would it be correct to say that while you were an associate there that you were not responsible for the direction of a case, but instead performed research and writing assignments for a senior associate or partner?

ATTORNEY GENERAL VERNIERO: Well, that certainly was a good part of that, research and writing, but I do believe I had some of my own cases in terms of in corporations where I interacted directly with clients, and so forth.

SENATOR GIRGENTI: While you were there, did you ever appear in court?

ATTORNEY GENERAL VERNIERO: No, as I said earlier, Senator, in the Pitney firm, and this is not unlike many large firms-- If one is in the corporate department, you would not normally go into a trial situation. That would be referred to the litigation department.

SENATOR GIRGENTI: You cite as your primary litigation experience cases which you argued as Attorney General on behalf of the State of New Jersey. Is that correct?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR GIRGENTI: And could you expand on that in terms of--

ATTORNEY GENERAL VERNIERO: Well, the four major cases that I referred to in my opening are the two cases in the Megan's law area, before the United States Court of Appeals, and the two cases in the education field, *Abbott vs. Burke*, before the New Jersey Supreme Court.

SENATOR GIRGENTI: Supreme Court candidates should have experience in scholarly research, development, and expression of legal concepts. Justice Clifford, who was here earlier, indicated that your legal ability must have been sharpened by your experience in the Governor's Office, as evidenced by the cases you argued as Attorney General. Did you research and write the briefs for WP versus Verniero or Paul P. versus Verniero or the Megan's law cases?

ATTORNEY GENERAL VERNIERO: I worked substantially on those briefs, but others did as well. But in the case of both the two *Abbott* briefs and the two Megan's law briefs, I substantially contributed to those briefs.

SENATOR GIRGENTI: So you had an involvement with them.

ATTORNEY GENERAL VERNIERO: Yes, oh yes. And involvement not only in terms of how the briefs were written, but how to structure the arguments. I didn't do the independent research. Obviously I relied on others to research the cases, but even on occasion, I have been seen to be in the library at the Justice Complex reviewing a case myself off the shelf if I felt that was important. But I did substantially contribute to those briefs.

SENATOR GIRGENTI: Now, just some questions related to racial profiling that we discussed last week in other controversies.

A Supreme Court Justice should be of undisputed integrity. What again -- and not to be redundant, but what responsibility do you admit for the mishandling of the issue of racial profiling in the *Soto* suit?

ATTORNEY GENERAL VERNIERO: As I said last week, I have ultimate responsibility for every action that is taken in my Department, and specifically on the racial profiling issue, I feel I discharged my responsibility at all appropriate times.

SENATOR GIRGENTI: I understand that you inherited the *Soto* case from the previous attorney general; however, you continued to pursue the case with vigor, from my understanding, considering the severity of the allegations involved. Did you not think it would be in the best interest of the people of New Jersey to conduct an investigation into the matter before pursuing the case any further?

ATTORNEY GENERAL VERNIERO: Well, as I indicated last week, the decision to appeal that case had recently been made. Perhaps if it had -- that decision had been made sometime earlier, I might have done things differently, but it had just been made a few months earlier, if not a few weeks earlier. And given that circumstance, no I did not believe I should have second-guessed the prior attorney general. It was not until, as I said last week, the Turnpike incident in April of 1998 where the issues and allegations of racial profiling crystallized in my mind. And at that point forward, I took very aggressive steps, I believe, at all the appropriate times.

SENATOR GIRGENTI: Well, you see, General, the feeling is that when I became a political imperative for you, your Office was able to form an

investigation and conclude it within a matter of weeks. Why did you not pursue the matter sooner? That is the problem.

ATTORNEY GENERAL VERNIERO: Well, as I -- and maybe I'm being unartful-- As I indicated last week, and I believe earlier, the data that was included in the report recently issued was gathered -- we had begun that process almost a year ago. And at that point in time, if I'm not mistaken -- and I'd have to check the calendar -- there was no "political" climate back then. That was a year ago. We had begun working in earnest and gathering information and data out of the two barracks, Cranbury and Morristown, which ultimately allowed us to write the report on April 20.

SENATOR GIRGENTI: But the appeal was not dropped until a couple of weeks ago.

ATTORNEY GENERAL VERNIERO: It was not because I felt it important for making such a significant decision that I be fully informed and have the background of that racial profiling report. I wanted that as a firm basis to form my decision.

SENATOR GIRGENTI: You stated that upon taking office, you had no information -- was suggested -- that attention needed to be focused upon any particular aspect of practice or problem with the Division of State Police at the last hearing and that it was the April 23, 1998 shooting, as you said, which forced these issues to begin, quoting you, "crystallize" in your mind.

Wasn't the mere existence of a suit as serious as the *Soto* case, the particulars of which you undoubtedly -- or were undoubtedly brought to your attention, regardless of the number of matters pending in your Department,

not enough of a red flag that this was an issue that needed full-time attention that it has been given in the past several weeks?

ATTORNEY GENERAL VERNIERO: Well, when I came into office in July of 1996, I did become aware of the *Soto* case. I had conversations with the various deputies who were in charge of that case, and I was satisfied, based on those discussions, that the appeal was appropriate, that there were a number of potential court errors found in the lower court such that the State should maintain the appeal. As I say, Senator, it was not until sometime later where I began to rethink that for the reasons that I've previously stated.

SENATOR GIRGENTI: But the perception is that there are a group of people out there that were being discriminated against, and now, because of the idea that you are up for a Supreme Court Justice, now they're getting their due or justice is being resolved and you've taken the time to work on this, when this issue has been there for a number of years and as late as the shooting a year ago. The feeling is that nothing really happened until your nomination went up for Supreme Court Justice.

ATTORNEY GENERAL VERNIERO: I'm aware that some have that feeling, and perhaps if there's that perception, Senator, I think it is so unfortunate because it's simply not true. We began looking in earnest at these issues a year ago, and beyond that, as I indicated, we had a law enforcement summit in December of last year because I was so troubled and so concerned about the opinion surveys that I was seeing in which persons of color -- minority citizens distrusted police almost in an inverse proportion to majority citizens -- nonminorities who trusted police. And it became very apparent to me that we had a great divide in New Jersey, and that was very troubling to

me, as chief law enforcement officer, so I convened an unprecedented summit in December where we had 600 civil rights education and law enforcement officers, so we could tackle this issue head-on. So there were things that I was doing long before the April 20 report.

SENATOR GIRGENTI: Again the problem when you have a group of people that have, for years, complained of this problem and it's been disregarded-- Now, it took the advent of your nomination to really get something done about it within a short period of time -- when his report came out, which was comprehensive, and the recommendations, many of them are very good-- But the point is that it took this nomination to motivate you is the feeling that I have from people that I'm talking to. And that-- It seems like everything is politically expedient.

ATTORNEY GENERAL VERNIERO: If that's your feeling, Senator, I'm sorry you have it because it's simply not the case. I can understand the perception, I acknowledge that, but I'm here to say that that is not the case in reality.

SENATOR GIRGENTI: The media, and other interested organizations, seem to have little difficulty finding statistics which would lend validity to the accusations of racial profiling. Statistics such as arrest records, stop and search records. I'm still interested in the percentages of minority troopers and minority troopers in supervisory positions, which you promised at last week's hearing. I have not yet received that. It's still not been forwarded to me.

In light of the *Soto* case, did your Office review any of these statistics while appealing the *Soto* decision? And have you yet?

ATTORNEY GENERAL VERNIERO: We are continuing to conduct audits of the various barracks. Whether that touches the exact same statistics or not, I'm not sure. I'm not doing the specific audits. But the investigations are continuing. We're now going into the second phase of that investigation and review. As to the minority representation, I will see to it that we forward that to you. I apologize for not getting that to you sooner.

SENATOR GIRGENTI: The Committee is still waiting for a number of documents from your Office regarding the sale of HIP and other matters. I understand that a lawsuit is pending regarding release of documents. As a result, our ability to effectively discuss the discretion in which you exercise these matters is severely limited. And in my opinion, this hearing should have been postponed until the issue is resolved.

Regardless, why is it that after you conducted an extensive review of the HIP transaction, that you failed to notice the precarious financial position of PHP?

ATTORNEY GENERAL VERNIERO: Well, as I indicated earlier, the role of the Attorney General's Office in that case was limited to resolving essentially two questions, whether the charitable trust purpose involved in the work of HIP would continue and, secondly, whether the value of the assets or the value of the consideration being paid for the assets was fair. And in both cases, we believe the answer was yes. It would not have been a normal line of inquiry for my Office to, particularly on a cash transaction, look behind the transaction to see about the wherewithal of the purchaser. It was a cash transaction, the assets were being sold for a fair price, and the essential entity of the HIP entity was continuing, so there was no diminution of the charitable

purpose. It would have been left for the other two departments to get involved with that kind of substantive area and to discharge whatever discretionary function they had, but that was not part of the Attorney General's review.

SENATOR GIRGENTI: So your Office was not responsible for the review?

ATTORNEY GENERAL VERNIERO: We were not engaged in any review of the purchaser, which is not unusual, is what I'm suggesting.

SENATOR GIRGENTI: Clearly, when all the information -- we can only, unfortunately, assume that was supplied to your Office regarding PHP-- This important aspect shouldn't have gone unnoticed.

ATTORNEY GENERAL VERNIERO: I don't know if I understand your question, Senator.

SENATOR GIRGENTI: Well, the point is that this happened under your watch. You were there. We have heard about the problems that they've had in terms of money. One company sold out to another company. You didn't know about all this during the time it was going on?

ATTORNEY GENERAL VERNIERO: No, I was aware of the basic review that my Office was engaged in, in terms of resolving the two questions that I spoke of earlier. I was not aware of the financial condition of the purchaser.

SENATOR GIRGENTI: So you, until after the fact, did not know of the financial problems that were involved here, and that wasn't part of your review?

ATTORNEY GENERAL VERNIERO: I had no knowledge of it at that point, no, Senator.

SENATOR GIRGENTI: All right, just a few more questions.
Going back to your professional experience.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR GIRGENTI: You have considerable experience in the political area as has been pointed out from different individuals, having served as a congressional campaign manager, an executive director to the republican party -- political party, and a legal counsel for an election committee. At what point in your life did you distinguish that your career would focus on the practice of law rather than politics?

ATTORNEY GENERAL VERNIERO: Well, it actually goes back to high school where I was torn between becoming a doctor or going to law school. After high school biology, I was convinced beyond any doubt that I was destined to be a lawyer.

SENATOR GIRGENTI: Would it be accurate to say that prior to having argued Megan's law and *Abbott vs. Burke* that you were not admitted to the U.S. Supreme Court -- U.S. Court of Appeals, and that not until 12 years after being admitted to practice law you decided to seek an admission in these courts?

ATTORNEY GENERAL VERNIERO: I believe the time frame is accurate. And that's not unusual. It's very rare, actually, for even a seasoned litigator to appear either in the Court of Appeals or the State Supreme Court. There was no occasion for me to be admitted to those Bars while in private practice. As soon as I became Attorney General, I thought it was prudent if cases got to that level that I ought to be admitted into those two Bars. And I went through the application and was so admitted.

SENATOR GIRGENTI: Can I suggest that you didn't decide to do that until you had to argue Megan's law? Is that probably the reason for it?

ATTORNEY GENERAL VERNIERO: I may have had that in the back of my mind, but I really don't recall if there is any one case that compelled me to gain admission. I knew as soon as I became Attorney General that I was the type of person that would be a little bit hands on when it came to lawyering cases. I think it's important for the Attorney General to set morale and to work as hard as the deputies that work under him or her. And I believe right from the beginning I knew that I would argue important cases. I just felt that was important and was something that I wanted to do as an attorney and as an Attorney General. So part of that would have required that I be admitted to those two Bars.

SENATOR GIRGENTI: Why did you leave Pitney Hardin?

ATTORNEY GENERAL VERNIERO: I left Pitney Hardin to work for Jim Courter's campaign. That was the main reason.

SENATOR GIRGENTI: Why did you leave Herold and Haines?

ATTORNEY GENERAL VERNIERO: I left Herold and Haines because my work as the Whitman counsel-- I had started that when I was actually at Herold and Haines. In the beginning of that relationship, I was still at Herold and Haines, and the People for Whitman Committee was a client of the firm. But the work had gotten so voluminous because the regulations are such in a publicly funded campaign where you really need to put almost full-time effort on a compliance. And I was spending so much time with that one particular client, it just made sense for me to actually leave Herold and Haines

completely and work in-house at the People for Whitman campaign. I may have, although I don't recall specifically-- It may have been a leave of absence situation that then matured into an actual resignation once the Governor won her election.

SENATOR GIRGENTI: Well, you know, when you look at that it looks like you've left, throughout your career, two law firms to go into a political campaign. Do you feel that these career moves are consistent with someone who is focused on a legal career, or was this someone that was involved in politics?

ATTORNEY GENERAL VERNIERO: Well, I think it is reflective of someone who was involved in politics and had an earnest yearning for public service. And my family is not very wealthy. I did not grow up knowing a lot of politicians. My parents did not have contacts, as is the case in some instances. So for me, my entry into public service was through political campaigns. And specifically, I had a fondness for Jim Courter and for Christie Whitman. I thought they were honorable persons and they were worthy candidates, and I decided I wanted to support them.

SENATOR GIRGENTI: All right, just let me summarize--
You have never tried a jury case.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR GIRGENTI: You have no judicial experience.

ATTORNEY GENERAL VERNIERO: I have no prior judicial experience, that is correct.

SENATOR GIRGENTI: And you have only five years of experience in private practice.

ATTORNEY GENERAL VERNIERO: That is about right, yes.

SENATOR GIRGENTI: Well, you claim that your age and the lack of these experiences should not disqualify you from the Court. Tell me, General, am I correct to say that the only substantial qualification that you have for the position is your two and one-half years as Attorney General?

ATTORNEY GENERAL VERNIERO: No, I would respectfully disagree with that. I think you have to be broader in the menu of qualities and characteristics that are important for an associate justice. It is not just the time logged in the courtroom. If that were the case, Justice Garibaldi would not be on the Court today because she, essentially, was a tax lawyer and never tried a jury case.

I think you have to look at the breath of experience, the quality of the individual, and especially the integrity of the individual, the ability of someone to think and write clearly, to be fair. I mean, there are a number of things that you should look at. Time in the courtroom is perhaps one factor but not to the exclusion of others.

SENATOR GIRGENTI: What is your reaction to the Bar vote in terms of your-- Your problem, basically, is your professional experience.

ATTORNEY GENERAL VERNIERO: As I said, I'm disappointed, as any lawyer would be. I heard some things today I've never heard before. I heard about the case of an adversary of mine that said that I was unprepared. It is very hard for me to defend myself against that because I don't know the adversary, I don't know the case. So I have to accept it, but I would not weigh that very highly, frankly, because I'm in no position to refute it.

I believe that I'm qualified for this position for the various reasons that I've stated throughout these proceedings. I'm disappointed that the Bar thinks otherwise. That's a reality that I have to accept, and it is certainly a factor that this Committee must weigh.

SENATOR GIRGENTI: No more questions.

Thank you.

SENATOR GORMLEY: Senator Cafiero yielded his time to the Chair.

Senator O'Connor.

SENATOR O'CONNOR: General, I just have a few questions.

ATTORNEY GENERAL VERNIERO: Yes, sir.

SENATOR O'CONNOR: You were the Chief Counsel for about 15 months, I believe?

ATTORNEY GENERAL VERNIERO: That's sounds about right. January 1994 to February 1995. And I was Chief Counsel to the Governor-elect from December 1993 to January 1994.

SENATOR O'CONNOR: And in that capacity-- You've already told us that one of the things you did was you reviewed legislative enactments, and that's something you consider to be legal in nature.

ATTORNEY GENERAL VERNIERO: It is.

SENATOR O'CONNOR: Was one of the other things that you did judicial and prosecutorial appointments?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR O'CONNOR: Would it be fair to say that you had an assistant counsel that did the interviewing of potential nominees for prosecutor positions or judgeships?

ATTORNEY GENERAL VERNIERO: Yes, and that at some stage in the process I would normally engage in the interview as well.

SENATOR O'CONNOR: Okay.

Were the kinds of things that you and your assistant counsel for judicial and prosecutorial appointments-- Were the criteria essentially the same as those eight factors that the State Bar told us that they rely on?

ATTORNEY GENERAL VERNIERO: I don't know if we relied on them in quite that way, but they are essentially similar to the kinds of things that we would look for in a judicial candidate.

SENATOR O'CONNOR: And during the 15 months or so that you were there, you did, I would assume, both judicial and prosecutorial appointments.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR O'CONNOR: And during that time, would it be fair to say that some of the people that passed your muster then went on to the State Bar and were rejected?

ATTORNEY GENERAL VERNIERO: I don't have a specific recollection of particular names. I believe that it is fair to say in that time frame there must have been some. I think that's a valid assumption, I just can't give specific testimony to it.

SENATOR O'CONNOR: Okay, but the number that Ms. Walker gave us earlier today was over a three-year period -- the last three years -- they

nominate that they interviewed over 100 people, and 20 people were rejected. So roughly 20 percent of the people that go before that State Bar Review Committee get rejected. So would it be fair to say that that was probably something that also occurred during the 15 months that you were Chief Counsel?

ATTORNEY GENERAL VERNIERO: That's a probable assumption, but again I can't be specific on that. I'm willing to stipulate to that.

SENATOR O'CONNOR: The process that you went through -- the interview -- you told us it was about two and one-half hours of questions and answers. Did you think it was fair at the time that you were going through it?

ATTORNEY GENERAL VERNIERO: Honestly, I did not.

SENATOR O'CONNOR: You did not?

ATTORNEY GENERAL VERNIERO: No, sir.

SENATOR O'CONNOR: Was there-- Can you elaborate on that? Were you not afforded the opportunity to respond to individual questions or-- Why would you conclude that was not fair?

ATTORNEY GENERAL VERNIERO: I thought the questions had only marginal germaneness to my qualities and the qualifications to be a Supreme Court Justice. I was surprised at the number of questioners that were reading off of newspaper articles. In fact, some Senators were quoted back to me in that process. "How do you respond to the fact that Senator so-and-so has said this today in the paper?" I just thought that was a bit unusual for a Bar Committee to be reading off of news clips essentially repeating questions

that had been posed to me in my budget hearings and repeating questions that were best kept for a legislative body. But I accepted it. I did not object to it, and I don't mean to give the impression that I did. I submitted to all questions, and I gave what I thought were full and complete answers.

SENATOR O'CONNOR: Did you have any sense, as you left the interview, that it went well or it didn't go well?

ATTORNEY GENERAL VERNIERO: I had a sense it did not go well.

SENATOR O'CONNOR: And the Chair of the Committee testified before that you were given an opportunity, after the hearing, to submit additional materials.

ATTORNEY GENERAL VERNIERO: Yes, I was.

SENATOR O'CONNOR: And you did submit additional materials?

ATTORNEY GENERAL VERNIERO: I did.

SENATOR O'CONNOR: I have no other questions.

SENATOR GORMLEY: Okay.

The balance of your time, Senator O'Connor--

SENATOR O'CONNOR: The balance of my time I yield to Senator Lynch or Senator Zane.

SENATOR ZANE: I'll give my time to Lynch when it's time to--

SENATOR GORMLEY: Fine, okay, good. It's coming up soon.

SENATOR LYNCH: Just to go back through some of the chronology and some of the things you said while heading towards the job of Governor's Counsel for Governor Whitman. When you were intimately

involved with the Courter for Governor campaign, I seem to recall seeing something coming from you and your interview that if you had anticipated that if Courter wanted, you would be Governor's Counsel.

ATTORNEY GENERAL VERNIERO: I never anticipated that or said that to any reporter. I've seen that since being nominated. I don't ever recall saying that to the press.

SENATOR LYNCH: You saw it in the press?

ATTORNEY GENERAL VERNIERO: Yes, I saw that recently in an article.

SENATOR LYNCH: Did you ever consider running for political office?

ATTORNEY GENERAL VERNIERO: Once I considered running for freeholder of Hunterdon County. At the time it was a three-person board and there as a movement or a thought of expanding it to a five-person board. The board was not expanded and I never considered it further.

SENATOR LYNCH: Did you ever-- Have you ever consulted, in 1997 or 1998, with political consultants in Washington about a potential future candidacy of Peter Verniero?

ATTORNEY GENERAL VERNIERO: No, I have not.

SENATOR LYNCH: Getting back to the stated purpose of my line of questioning having to do with those issues involving judgement, exercise, discretion, evenhandedness, avoiding conflicts and the appearance of conflicts, I'd like to go down a line of questioning with regard to Michael Francis.

Was Michael Francis involved with you in any capacity in the campaigns for Jim Courter in 1987, 1988, 1989?

ATTORNEY GENERAL VERNIERO: He may have. He was a fund-raiser, I believe, at that time, and it is quite possible that he raised money for Congressman Courter.

SENATOR LYNCH: He didn't chair the finance committee of Jim Courter?

ATTORNEY GENERAL VERNIERO: In the gubernatorial election, he may have. I don't have a recollection of that.

SENATOR LYNCH: When did you first know Michael Francis?

ATTORNEY GENERAL VERNIERO: When did I first know him or meet him?

SENATOR LYNCH: When did you first meet him?

ATTORNEY GENERAL VERNIERO: My guess is that it was sometime during the Courter campaign, but I can't tell you, Senator, as I sit here, in what capacity.

SENATOR LYNCH: Which Courter campaign?

ATTORNEY GENERAL VERNIERO: I'm going to take a guess that it was the governor's race, but it could have been in the congressional race.

SENATOR LYNCH: Subsequent to the-- And that was the first time you remember any contact with Michael Francis?

ATTORNEY GENERAL VERNIERO: That is the first time I recall.

SENATOR LYNCH: Did you know who he was, what he did for a living, what his relationships were at that point in time?

ATTORNEY GENERAL VERNIERO: No, I don't have a recollection of that, no.

SENATOR LYNCH: Subsequent to the Courter defeat in November of 1989, did you continue to have some relationship with Michael Francis?

ATTORNEY GENERAL VERNIERO: No, we've never had a social relationship or anything of that sort.

SENATOR LYNCH: Was he involved in the Governor Whitman -- now Governor Whitman's quest for the U.S. Senate in 1990?

ATTORNEY GENERAL VERNIERO: He may have been, but as I said to an earlier question, I was not that involved in the Whitman for Senate race. I handled some matters with respect to the Federal Election Committee. I can't swear to it. He may have been involved.

SENATOR LYNCH: Well, the matters for the Federal Election Committee are significant, aren't they? I mean, there's a lot of work involved.

ATTORNEY GENERAL VERNIERO: Oh, yes.

SENATOR LYNCH: And subsequent to the November 1990 Whitman marginal loss to Bill Bradley, did you have a relationship with Michael Francis in a political capacity or a fund-raising capacity for Christie Whitman for Governor?

ATTORNEY GENERAL VERNIERO: Well, he was the finance chair, as I recall, for the people for Whitman campaign. I was the compliance officer.

SENATOR LYNCH: But that was in 1993. I'm talking about post-November 1990 when Governor Whitman was talked about positively

about being the next gubernatorial candidate of the Republican party and became very visible around the state and did all kinds of stops, and so forth. Was there an active operation within the Whitman--

ATTORNEY GENERAL VERNIERO: Oh, there may have been--

SENATOR LYNCH: --preexploratory campaign, and was Michael Francis a part of it?

ATTORNEY GENERAL VERNIERO: There may have been, I don't know about that. I was in private practice at that time. I recall that Governor Whitman started a political action committee. I may have done some legal work in setting up the committee. I was the, I believe at the time, chairman of the Election Law Committee of the State Bar Association. I don't know whether she had -- to what extent there was an active office of the governor at that point.

SENATOR LYNCH: Were you aware of a strong relationship between Michael Francis and the Whitman's at that point in time?

ATTORNEY GENERAL VERNIERO: At that point--

SENATOR LYNCH: Between 1991 and 1992.

ATTORNEY GENERAL VERNIERO: At that point in time I was not aware of a strong relationship.

SENATOR LYNCH: When did you first become aware of that relationship?

ATTORNEY GENERAL VERNIERO: The first time that I actually saw any kind of relationship that was significant would have been in the People for Whitman Committee.

SENATOR LYNCH: And when would that be?

ATTORNEY GENERAL VERNIERO: In 1993.

SENATOR LYNCH: And what was Michael Francis's capacity at that time?

ATTORNEY GENERAL VERNIERO: At that time, as I recall, he was the Finance Chair. I don't know whether that was the exact title, but he was a major fund-raiser.

SENATOR LYNCH: And your title was Legal Counsel?

ATTORNEY GENERAL VERNIERO: I was Legal Counsel.

SENATOR LYNCH: Nothing else?

ATTORNEY GENERAL VERNIERO: Sometimes people referred to me as the Compliance Officer. I don't recall a specific title.

SENATOR LYNCH: And did you interact with Michael Francis significantly in 1993?

ATTORNEY GENERAL VERNIERO: We had occasional interaction to the extent that I would have a question with a particular check that might have come in. As I indicated earlier--

SENATOR LYNCH: Didn't you participate in the Finance Committee meetings?

ATTORNEY GENERAL VERNIERO: I rarely sat in on those meetings because they were on a different level. If Mr. Francis or anyone on the Finance Committee had an election law question, I would be invited to attend the meeting, or I would give advice over the phone.

SENATOR LYNCH: Well, compliance, as you described earlier, is a very difficult tedious process when you're talking about a gubernatorial election with public financing and alike.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: And isn't it important that the people who are raising money are aware of all limitations and idiosyncracies of this law?

ATTORNEY GENERAL VERNIERO: Yes, and what we did in the Whitman campaign was at the outset of the campaign. I took your question to mean significant regular involvement. At the outset of the campaign, we prepared very clear guidelines and standards. I reviewed those with everyone on the campaign, not just Mr. Francis, the campaign manager and even the candidate, and I may have prepared some memorandum in that regard. And once I was satisfied, as the Compliance Officer, that everyone in the campaign was familiar with the rules, knew what the guidelines were, then my real work was at the campaign office itself to make sure that the checks were logged in properly, to make sure that we have all the paperwork and the backup materials.

The basic guidelines of the contribution limits, and so forth, are fairly basic. It doesn't take a lot of effort to educate someone as to those basic guidelines. What takes effort and what is very significant is the time you spend preparing those reports. I mean, there were days, Senator, where we would not leave the campaign office until midnight. And Mr. Francis was out either raising money or at other functions. He was not in the office working side by side with me as I prepared these very labor-intensive tedious reports.

SENATOR LYNCH: I take it that you're saying that through November of 1993 you didn't have any significant relationship with Michael Francis.

ATTORNEY GENERAL VERNIERO: I had contact with him, certainly, but it was not a relationship in the social sense or any significant sense.

SENATOR LYNCH: In post-election 1993, you -- Governor Whitman advised that you were going to be the new Governor's Counsel sometime in November of 1993, correct?

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR LYNCH: And in that capacity, all be it that it is not stated in the law, but traditionally the then Attorney General or Acting Attorney General Fred DeVesa was responsible for vetting you, doing the four-way on you to ensure that you could begin to take over the process and transition of doing background checks on nominees -- potential nominees of the Whitman administration.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: And you received that -- completion of that background check sometime before the end of November of 1993?

ATTORNEY GENERAL VERNIERO: When you say background check, are you referring--

SENATOR LYNCH: Of you.

ATTORNEY GENERAL VERNIERO: I don't understand your question, I'm sorry.

SENATOR LYNCH: I assume that there had to be a four-way on you by DeVesa.

ATTORNEY GENERAL VERNIERO: There was a four-way check done on me at the outset of the administration. I would not have received that, of course. That, I believe, went to the Chief of Staff, Judy Shaw.

SENATOR LYNCH: And you began-- You then took over the process of vetting people who are potential nominees in the Whitman administration.

ATTORNEY GENERAL VERNIERO: When you say vetting nominees--

SENATOR LYNCH: Well, were you responsible for taking over the four-way process between the time that you were made special Deputy Attorney General in November of 1993? Weren't you responsible for the four-way process in transition until now Chief Justice Poritz became the--

ATTORNEY GENERAL VERNIERO: Yes, I was the liaison between the Attorney General's Office and the Governor-elect or the Governor, both as counsel-elect and as counsel.

SENATOR LYNCH: The specific responsibilities set forth-- I mean, the reason for you becoming a Deputy Attorney General -- special Deputy Attorney General was so that you could--

ATTORNEY GENERAL VERNIERO: So I could have access to the confidential material, that is correct.

SENATOR LYNCH: I'm looking at a letter from then Acting Attorney General, Fred DeVesa, with the November 1993 date that says that "you are hereby appointed a special deputy attorney general for the purpose of ordering, supervising, and reviewing any confidential character

investigations of the prospective gubernatorial appointees of the honorable Christine Todd Whitman.” Do you remember that?

ATTORNEY GENERAL VERNIERO: I remember that, yes.

SENATOR LYNCH: So you had that breadth of responsibility.

ATTORNEY GENERAL VERNIERO: Well, I would take issue with the word supervise. That implies that I supervised State Police as they conducted the four-ways. That was not the case. I supervised it in the sense that I had to ensure that the appropriate paperwork that would begin a four-way was proper and that the then Attorney General DeVesa got the formal paperwork, and so forth. I did not supervise State Police in their conduct.

SENATOR LYNCH: Did you interview Michael Francis prior to this nomination to be the Chairman of the Sports Authority?

ATTORNEY GENERAL VERNIERO: I don't recall that I did. That would have been the Chief of Staff designee.

SENATOR LYNCH: That would have been what?

ATTORNEY GENERAL VERNIERO: If I'm not mistaken, that would have been the Chief of Staff designee, Judy Shaw.

SENATOR LYNCH: Judy Shaw.

Did you-- Do you know when you were authorized or assumed the responsibility for beginning the background check on Michael Francis?

ATTORNEY GENERAL VERNIERO: I'm not at liberty to comment on anyone's four-way, Senator, and I would consider us going right up into that area that I'm just not able to comment on.

SENATOR LYNCH: Are you suggesting here today that you can't tell us whether or not you were involved in the four-way process?

ATTORNEY GENERAL VERNIERO: I said I was involved with all the four-way processes.

SENATOR LYNCH: On Michael Francis?

ATTORNEY GENERAL VERNIERO: Well, to the extent that he had a four-way, I would have been involved in it. But you're asking me now some very specific questions about dates and when did they begin, and so forth, and out of an abundance of caution, I must respect the confidentiality of the four-way process.

SENATOR LYNCH: And at the time that that process began during transition or the early part of 1994 regarding Michael Francis, you had no more significant a relationship than that which you've already described?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: Did you attend meetings with the Governor, at which Michael Francis was present to talk about the Sports Authority during transition?

ATTORNEY GENERAL VERNIERO: I can't swear that I was never in such a meeting. I have no independent recollection that I was.

SENATOR LYNCH: Did you have any duties and responsibilities or oversight regarding the Sports Authority during transition?

ATTORNEY GENERAL VERNIERO: Not to my recollection. I mean, we tried in transition, as is my recollection, to essentially divide the work in the same manner in which we divided the work when we ultimately moved into the Governor's Office. And the counsel, at least under my tenure, was traditionally involved in judicial and prosecutorial appointments and as the legislative liaison. The Sports Authority cabinet -- subcabinet -- they would

have come under the jurisdiction of Chief of Staff Shaw, and that would have been true in the transition as well. We also had--

SENATOR LYNCH: You knew before the end of November of 1993 that Governor Whitman was intending to make Michael Francis the Chairman of the Sports Authority.

ATTORNEY GENERAL VERNIERO: I'm sure I knew at some point. I can't tell you when that point was.

SENATOR LYNCH: What was your opinion of Michael Francis at that time, about his character?

ATTORNEY GENERAL VERNIERO: I don't know if I had an opinion, and certainly if I expressed one to the Governor, that would be confidential.

SENATOR LYNCH: After the Michael Francis investigation broke-- When was that, do you recall?

ATTORNEY GENERAL VERNIERO: I recall it being shortly after I became Attorney General or just during that transition time frame.

SENATOR LYNCH: And from the record--

ATTORNEY GENERAL VERNIERO: When you said broke, I assumed you meant when it was first disclosed in the newspaper.

SENATOR LYNCH: And from the second -- from the dismissal of (indiscernible) counts of the indictment that just was -- had within the last two or three months-- It appears that a rebackground -- re vetting of Michael Francis was authorized sometime shortly before you went to the Attorney General's Office, correct?

ATTORNEY GENERAL VERNIERO: That is my understanding, yes.

SENATOR LYNCH: And were you aware of that?

ATTORNEY GENERAL VERNIERO: I may have been, yes.

SENATOR LYNCH: Were you in discussion with representatives in the Attorney General's Office about what was taking place?

ATTORNEY GENERAL VERNIERO: I don't recall any specific discussions. I may have had them, and if I did, I would consider those part of the investigation and therefore confidential, Senator.

SENATOR LYNCH: Did you know about wiretaps that had occurred during that time frame and that Michael Francis's name maybe appeared or he appeared on some of those wiretaps?

ATTORNEY GENERAL VERNIERO: I would consider that confidential, particularly since we do have a pending criminal matter that touches upon those issues.

SENATOR LYNCH: Once this rebackground check was completed sometime in 1996, and you're now Attorney General in July 1996, did you assume responsibility and oversight on the Francis investigation?

ATTORNEY GENERAL VERNIERO: Well, to the extent it was part of my Office, I had ultimate responsibility and oversight. Yes. I did not have personal oversight. It remained at the Division of Criminal Justice. My recollection is that the same professionals that handled the case before I became Attorney General remained on the case. I made no conscious changes of any of those professions. It was basically the same team.

SENATOR LYNCH: Are you saying you weren't briefed when you became the Attorney General on what was taking place during the investigation?

ATTORNEY GENERAL VERNIERO: Oh, I was briefed, certainly.

SENATOR LYNCH: And did you offer any advice at that point in time as to how this should proceed, where the investigation should go, whether Francis should be broken out from the Rizzo investigation for purposes of presentation of a grand jury? Did you have any part in any of that?

ATTORNEY GENERAL VERNIERO: I'm not at liberty to discuss that, Senator.

SENATOR LYNCH: Who ordered the second four-way?

ATTORNEY GENERAL VERNIERO: That is a matter of public record in our briefs, so I am able to disclose that that was Attorney General Poritz.

SENATOR LYNCH: And doesn't that activity usually initiate from the Governor's Office?

ATTORNEY GENERAL VERNIERO: Again I'm not at liberty to go into the four-way process, Senator, beyond what I've done.

SENATOR LYNCH: You're saying it isn't, in most instances -- forgetting Francis for the moment -- that the four-way process is initiated from the Governor's Office.

ATTORNEY GENERAL VERNIERO: The four-way process is by and large initiated by the Governor's Office because the four-way process by and large is there to service the Governor's Office, but it also services other

departments. We do four-way investigations on inspectors and others in Casino Control Commission, regulators. So the process is triggered by a number of different sources, the Governor's Office being one of them.

SENATOR LYNCH: You're now in the Attorney General's Office, it's post July of 1996, this investigation is ongoing with regard to Michael Francis, you have some familiarity with some of the parts of it. Didn't any red lights go on that said to Peter Verniero that "Michael Francis and I had capacities in the Courter campaign and the Whitman campaign. He's the Chairman of the Sports Authority. I should recuse myself and build a Chinese wall here, so there is not, at the very least, a perception of a conflict"?

ATTORNEY GENERAL VERNIERO: No, I didn't see that as a conflict because the professionals who were working on the case-- I had confidence in them. It was a case that was there before I got there. And I'm really not at liberty to talk about strategies that may have been in place, and so forth. I did not feel that it warranted a recusal.

SENATOR LYNCH: Who was the Deputy Attorney General that was in charge of that case back when you assumed your role of Attorney General?

ATTORNEY GENERAL VERNIERO: I don't know who the deputy in charge of the case-- It certainly came under Terry Farley who is the Director of Criminal Justice, and Michael Bozza, who is now deceased. A number of attorneys, as I recall, worked on that case. Jack Fahey (phonetic spelling), Robert Codey (phonetic spelling)-- Ed Niece is now working on the case -- or did. Now I believe he's -- since he's the Insurance Prosecutor--

SENATOR LYNCH: How about Dave Grodey (phonetic spelling)?

ATTORNEY GENERAL VERNIERO: I believe he worked on that case, yes.

SENATOR LYNCH: From the time you were there until today?

ATTORNEY GENERAL VERNIERO: I don't know the exact time frame. If Dave had worked on it prior to my being there, he would have stayed on it because, as I said, I made no conscious changes in the prosecution.

SENATOR LYNCH: Is he still involved in this case?

ATTORNEY GENERAL VERNIERO: I don't know, he may be.

SENATOR LYNCH: Did you ever have a conversation with him about the parts of the investigation and how it would proceed?

ATTORNEY GENERAL VERNIERO: I'm not at liberty to discuss that, Senator?

SENATOR LYNCH: Were you ever advised by any Deputy Attorney General, including Dave, that you had a potential conflict of interest?

ATTORNEY GENERAL VERNIERO: I don't recall being advised on that.

SENATOR LYNCH: I'm having trouble understanding the relationship here with Daidone and how you don't seem to know everything about certain cases and a case of that magnitude you know nothing about until the latter part of 1998. Do you have any reason why that might be so?

ATTORNEY GENERAL VERNIERO: I don't understand your question, Senator.

SENATOR LYNCH: Well, it seems like a case of such high profile that, of necessity, you would had to have known something about it. If not in 1993, certainly when you got to the Attorney General's Office of December of 1997.

ATTORNEY GENERAL VERNIERO: Summer of 1996.

As I discussed earlier, the -- I may have been briefed generally on some organized crime aspects that touched on that case. I was, to my recollection, never briefed on anything involving Daidone specifically until First Assistant Zoubek came to my Office.

Every Attorney General focuses on different cases, different types of cases. When I came into Office, I initially became very focused on the Megan's law cases because, as I was coming in, they were in litigation, they were under challenge in several courts. I focused a great deal of my time on those cases, to the exclusion of others. And I just don't recall--

SENATOR LYNCH: You weren't getting day-to-day reports during that time frame regarding the Michael Francis case?

ATTORNEY GENERAL VERNIERO: Day-to-day reports?

SENATOR LYNCH: Yes.

ATTORNEY GENERAL VERNIERO: At what time frame, Senator?

SENATOR LYNCH: Immediately after you assumed the responsibility of Attorney General up until the time of the indictment.

ATTORNEY GENERAL VERNIERO: Day-to-day reports, no, sir. The only time I could recall--

SENATOR LYNCH: How about week to week?

ATTORNEY GENERAL VERNIERO: The only time I could recall getting day-to-day reports on any case is, if a case was actively on trial, then I would get day-to-day reports. Week-to-week reports, that is possible, but I can't say for sure.

SENATOR LYNCH: And at no time during the course of that investigation by the Attorney General's Office regarding the Michael Francis matter, Rizzo, and so forth-- At no time did you see the potential for the appearance of conflict up through and including the time of the first indictment?

ATTORNEY GENERAL VERNIERO: Well, I thought about the conflict because you yourself raised it in the press at the time. And I satisfied myself that there was no conflict.

SENATOR LYNCH: And how about when the original indictment was dismissed and there was a--

ATTORNEY GENERAL VERNIERO: A superceeding indictment.

SENATOR LYNCH: A superceeding indictment. Did you consider at that time-- Did you play a role in that superceeding indictment, in the crafting of it, or discussions with the Deputy Attorney General who was managing the case as to the direction it was going to proceed?

ATTORNEY GENERAL VERNIERO: Again I'm not at liberty to go into that level of detail on a pending criminal case, I'm sorry.

SENATOR LYNCH: And you felt nothing at that time about the potential appearance of a conflict?

ATTORNEY GENERAL VERNIERO: I was satisfied that there was not a conflict.

SENATOR LYNCH: I said the appearance of a conflict.

ATTORNEY GENERAL VERNIERO: If I may--

SENATOR ROBERTSON: Mr. Chairman, with all do respect, I'm having a little trouble picking up the response because the--

ATTORNEY GENERAL VERNIERO: If I may elaborate-- One of the reasons why I was satisfied there was no conflict in that case is-- I was concerned that if there was standard of conflict applied in that case, it might also be applied in many other cases. That could, in essence, greatly hamper the Attorney General's Office because, as you know, I wear many hats, and the courts have recognized this. In fact, I think there is the cited Supreme Court case that has Senator Gormley's name in the caption where--

SENATOR GORMLEY: You don't have to volunteer that information.

ATTORNEY GENERAL VERNIERO: --the Court has said that the Attorney General has many hats. And there are actually potential conflicts in many areas.

SENATOR LYNCH: But--

ATTORNEY GENERAL VERNIERO: If I may finish, Senator.

But we have to have faith and confidence in the integrity of those holding this office.

Let me give you an example. I am a colleague, a coequal, in the Governor's cabinet. I interact with the Governor's cabinet on many occasions. It is a significant, professional relationship. I sit in on cabinet meetings, I advise them civilly through the Division of Law, and yet at any given point in time, if there is an allegation of wrong doing on the part of a cabinet officer,

an Attorney General, nor anyone, would not think twice about looking into that.

SENATOR LYNCH: Now you're getting into--

ATTORNEY GENERAL VERNIERO: Now that doesn't--

SENATOR LYNCH: --relevant territory.

ATTORNEY GENERAL VERNIERO: No, no, that doesn't mean that there is a conflict because I happen to know or have known a cabinet officer.

SENATOR LYNCH: You're missing the point about the appearance of a conflict. It has not to do with you being the Attorney General. You wound up being the Attorney General -- that's a fact to be considered in all of this. It has to do with your previous relationships with these people as Governor Counsel where you're all part of the same team. And you're representing the Governor. As the Attorney General, you're representing the people of the State of New Jersey, not the Governor, correct? So that if you had any significant relationship with a cabinet member as Governor's Counsel, Chief of Staff, what have you and there's an investigation brewing in the Attorney General's Office after you get there, you're telling me that it would be bad precedent for you to recuse yourself and avoid the perception of a conflict?

ATTORNEY GENERAL VERNIERO: I'm suggesting that's one factor that you have to consider when you're making a recusal. It is my testimony, Senator, and we may have a respectful disagreement on this, that I did not perceive a conflict.

And so the record is clear, it is my belief, and I believe the statutes are clear on this, that the Attorney General is both the public's lawyer and does represent the Governor and, indeed, all public officials in the executive branch when cases require that.

SENATOR LYNCH: Well, you had significant confidence in Mr. Zoubek and the other deputies that were involved in this Francis-Rizzo investigation.

ATTORNEY GENERAL VERNIERO: I have significant confidence in Director Zoubek and all of his work.

SENATOR LYNCH: Why would it be a problem for the Attorney General, given your history with Michael Francis and the relationships that you had or at least the appearance of relationships-- Why would it be a problem for you to recuse yourself?

ATTORNEY GENERAL VERNIERO: Well, you didn't ask me whether it was a problem. I mean, recusal can be a fairly simple matter. You asked me whether it was warranted.

SENATOR LYNCH: Well, from standpoint of policy-- You indicated before, from a policy standpoint, it would be a bad precedent to do that.

ATTORNEY GENERAL VERNIERO: Well, it would be a precedent that might reflect some other issues. It's like a recusal as a judge or a justice. You have to recuse yourself when that is necessary and appropriate. But the other side of the coin is that you have a job to do, you have a professional responsibility. You can't abrogate that responsibility unless that clearly must be done.

SENATOR LYNCH: But there was some responsibility in the Michael Francis case other than being privy to reports that are coming through, and so forth. You weren't controlling the investigation on a day-to-day basis, were you?

ATTORNEY GENERAL VERNIERO: No, I was not.

SENATOR LYNCH: Did you control, to any extent, the points that were made in terms of the first indictment?

ATTORNEY GENERAL VERNIERO: I'm not at liberty to discuss that, Senator.

SENATOR LYNCH: Control is the operative word here in terms of the real conflict, isn't it?

ATTORNEY GENERAL VERNIERO: There are many elements of a conflict, real and perceived. Control is one.

SENATOR LYNCH: Define a conflict that you would have -- or give me some examples of the appearance of a conflict which is, as you know, also a prerequisite of sound discretion by a prosecutor or an attorney general.

ATTORNEY GENERAL VERNIERO: Well, in the personal field, you raised an issue where a relative might be part of a company, albeit, several years ago, that is a personal conflict. I think that's a much clearer case. And in my case, I thought that, out of an abundance of caution, should be automatic in the Daidone case.

In terms of an appearance, that turns always on the facts and circumstances of each particular case.

SENATOR LYNCH: Did you know that Daidone, incidentally, was given a major contract by the Port Authority in 1996 while under criminal

investigation by your Office on the E-Z Pass implementation for the tunnels and bridges?

ATTORNEY GENERAL VERNIERO: I did not know that because, as I testified, I did not know that they were part of any investigation until Director Zoubek pointed that out to me.

SENATOR LYNCH: Thank you, Senator Gormley.

SENATOR GORMLEY: Thank you.

We will take a five-minute break, and then we'll start the second cycle of questioning. And it will lead off-- We've had members yield their time. It will start off with Senator Zane.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: Sorry for any inconvenience that might have been caused. We're going to continue-- We're going to start with the next cycle of questioning for the General. I'm sorry for inconvenience for witnesses, people have been -- I apologize -- inconvenienced both pro and con. We would work on-- We will have a time tomorrow for the witnesses. We will have some witnesses, initially, tomorrow at 10:00 a.m. when we start. But for the balance of the this evening, we will be focusing on question of the Attorney General.

And the first witness-- Other members have yielded their time, so the first witness for the second cycle will be Senator Zane.

ATTORNEY GENERAL VERNIERO: Mr. Chairman, if I may, do you have a sense of the schedule for this evening?

SENATOR GORMLEY: We will take a break in approximately one hour.

ATTORNEY GENERAL VERNIERO: That will be dinner break?

SENATOR GORMLEY: That will be a dinner break for one hour, and then we'll come back after a very brief dinner break of a half-hour or 45 minutes and then continue questioning.

ATTORNEY GENERAL VERNIERO: Thank you.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: General, Senator O'Connor was asking you about your appearance before the Committee.

ATTORNEY GENERAL VERNIERO: The Bar Committee, Senator?

SENATOR ZANE: Yes.

And he was asking you what your feelings were about it. And you indicated that you did not feel that it went well.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR ZANE: I understand it was approximately four and one-half hours -- someone here said that today.

ATTORNEY GENERAL VERNIERO: I said that, yes.

SENATOR ZANE: Why didn't you feel that it went well?

ATTORNEY GENERAL VERNIERO: That was based on my impression given the tenor of the questions and the tone of the questions as well as the substance of the questions. As I indicated to Senator O'Connor, I

thought many of the questions were inappropriate and not germane to my nomination.

SENATOR ZANE: The procedure, does it begin with you making a statement?

ATTORNEY GENERAL VERNIERO: As I recall, the Chair may have asked me some preliminary questions or asked if I had a statement. I don't recall exactly. I think she asked a very general question in the beginning, and then it went to a fairly rigorous line of questions.

SENATOR ZANE: Give us-- Since you've opened this up-- It indicated that--

SENATOR ROBERTSON: (indiscernible)

SENATOR ZANE: Yes, Senator Robertson, I feel that he did open up with the questions-- (remainder of comment indiscernible) It was he who said that they read newspapers and questioned comments that we had made.

You don't want us to have any impression that for the entire two and one-half hours that's all they did, do you?

ATTORNEY GENERAL VERNIERO: No, that's not all they did, but that was a good part of that.

SENATOR ZANE: How much time do you think was spent asking you questions, quoting various Senators, and asking for your reaction out of the two and one-half hours?

ATTORNEY GENERAL VERNIERO: I wasn't keeping track, Senator.

SENATOR ZANE: I understand you weren't.

ATTORNEY GENERAL VERNIERO: Out of the two and one-half hours, I would say, generally, a third of the time was spend on subject matters that I thought were germane for that particular committee, and maybe two-thirds were not germane from that particular committee. Don't hold me to that. It may be 50-50. If I actually had a transcript-- You're not allowed to take notes, you're not allowed to record it, so this is all based on memory over a two and one-half hour time frame.

SENATOR ZANE: That's not exactly--

SENATOR MARTIN: Senator Zane, could you just explain something? I'm not clear-- When you said reading newspapers, were you eluding to the fact they weren't paying attention or they were reading clips about Mr. Verniero and asking him to respond. I don't know what your question was.

SENATOR ZANE: Maybe you were out of the room at the time. The General said, in response to a question, that he didn't feel that it went very well. I think he indicated that he was disappointed with the way it was handled. That's the impression I got. And that they spent a considerable amount of time reading from quotes, asking him about what various Senators had said, and what was his reaction to it and comments about.

And what I'm gathering is that you're saying approximately two-thirds of the time was spent on, I'm going to say, job-specific -- qualification-specific types of questions. Is that fair for what you just said, estimating roughly?

ATTORNEY GENERAL VERNIERO: As I say, the time frame may be two-thirds, it might be slightly different. And the questions in that

category, I felt, were questions that would be better served coming from a legislative body. I did not expect the body of the Bar to be asking those kinds of questions about public policy issues. As I indicated earlier, one of the questions was very specific. I was asked to restate answers that I had given before one of the budget committees. I just did not expect that from this particular committee. I would expect it from a legislative committee. I did not anticipate that from the Bar Committee. That's what I mean when I say I was disappointed.

SENATOR ZANE: And in that disappointment -- that one-third of the time that you roughly estimated -- that is questions about comments that you made before a budget committee?

ATTORNEY GENERAL VERNIERO: No, it was two-thirds. It was over-- As I recall, it was half or over half of the time -- was spent on these questions that I did not think were germane to that body. And then the rest of the time was more appropriate questions about -- some of the similar questions you asked about my practice and what I did at Herold and Haines and Pitney, Hardin, and so forth.

SENATOR ZANE: So anywhere from one-half to two-thirds of the time they were quizzing you about things that were out in the public, I guess, appearing in the newspaper, comments that you made before a legislative body and budget committee, etc. Is that correct?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR ZANE: So then roughly, allowing latitude, one-third to half of the time was spent on, I'm going to say, job-specific type questions for which you were there for.

ATTORNEY GENERAL VERNIERO: That is an accurate depiction as I recall, yes.

SENATOR ZANE: So you then, probably, had somewhere in the neighborhood of an hour or a little more than an hour of questioning about you, who you are, what makes you tic, your qualifications.

ATTORNEY GENERAL VERNIERO: Forty-five minutes to an hour. That's my recollection.

SENATOR ZANE: Did you feel that that period of time -- those questions during that period of time -- that they were fair?

ATTORNEY GENERAL VERNIERO: Yes, I do.

SENATOR ZANE: Can you give us an idea of the types of questions that you were asked during that period of time that you think is fair, in light of the fact that you already told us about the portion of the time that you felt was not fair?

ATTORNEY GENERAL VERNIERO: Similar questions to the ones that you asked -- the nature of my practice. I was asked for the names of particular judges that I appeared before, presumably so they could contact those judges. I was asked general questions of philosophy. I was asked why I wanted to become a Supreme Court Justice. I was asked in terms of the administration of the Bar-- Those were very appropriate. I thought they were fair -- rigorous, but fair, and I responded to them.

SENATOR ZANE: When you, I'm assuming, responded to-- You said that they were similar to the questions you were asked here about your experience, your not having had a trial, etc., etc. Those kinds of questions. Is that correct?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: Did you get a reaction from the Bar, or did they just ask you if you would answer, much as you did today?

ATTORNEY GENERAL VERNIERO: No.

SENATOR ZANE: No reactions?

ATTORNEY GENERAL VERNIERO: The only reaction you could discern in some of the questions -- a certain tone that might have been negative, but you get no formal feedback in the course of the questions.

SENATOR ZANE: Dealing with roughly 24 lawyers, if I understand the arithmetic-- Dealing with 24 lawyers, do you -- for roughly an hour to maybe an hour and 15 minutes-- It almost sounds like softball to me if that's all you got grilled about your background.

ATTORNEY GENERAL VERNIERO: It didn't feel like softball to me, Senator.

SENATOR ZANE: If the rest had to do with things that had nothing to do with it -- nothing to do with your qualifications-- I mean, your qualifications took the hour to an hour and one-half and that was it.

ATTORNEY GENERAL VERNIERO: Well, I didn't say that it had nothing to do with qualifications, I said I thought that the line of questions, and they were many, were not germane to that particular body as I understood the mandate of that Committee.

Now, it's quite possible I've misunderstood, all these years, the mandate of the Bar Committee. That is possible, but I did not expect a rigorous line of questions regarding a host of public policy issues, and I certainly did not expect to be responding to Senators' questions as reported in

newspapers or editorials, and so forth. But as I say, it was their prerogative to ask those questions. I answered them. I didn't object to them. And I felt it was quite rigorous. I say that not as a complaint, I'm just stating my feeling and belief.

SENATOR ZANE: Did you demonstrate your disappointment?

ATTORNEY GENERAL VERNIERO: I did not, no.

SENATOR ZANE: Okay.

In light of your resume, and it was really presented for consideration, it seems like a lot of those questions, even into the second -- the other aspect that you felt-- (remainder of comment indiscernible)

ATTORNEY GENERAL VERNIERO: I've given you my belief and my thoughts; obviously they thought differently.

SENATOR ZANE: Mr. Chairman, I give the balance of my time to Senator Lynch.

SENATOR GORMLEY: Fine.

SENATOR LYNCH: Mr. Verniero, getting back to the same line of questioning regarding your judgmental skills, exercise of sound discretion, evenhandedness, avoiding the appearance of conflict, and so forth-- I just want to finish up the last line with one question -- two questions.

Would you give me your definition of what you define as a conflict of interest for an attorney general and the appearance of a conflict of interest?

ATTORNEY GENERAL VERNIERO: Well, obviously an actual conflict would be something that would involve a member of the family or some other relative. If I had worked on a case in private practice that somehow came back to the law firm--

SENATOR LYNCH: You're giving me examples, I want to see a definition. Do you have a definition?

ATTORNEY GENERAL VERNIERO: I can't give you a dictionary definition. It is to avoid-- A conflict is something that should bar a lawyer or a judge from acting on a particular case where there is a risk or an actual -- that is perceived or real in ability to render a fair judgement.

SENATOR LYNCH: I'm having a little difficulty understanding the distinction that you draw between the Daidone matter where, without you knowing anything about what occurred in 1993, without hearing anything about it until November of 1998, without even knowing even the subject years of the investigation, with your father having retired sometime in 1993-- How do you distinguish that immediate recusal from your failure to recuse -- to avoid the perception of a conflict in the Michael Francis case?

ATTORNEY GENERAL VERNIERO: Well, the bright line in that case was that it was a relative.

SENATOR LYNCH: So if it's not a relative-- Regardless of the relationship you have, it doesn't mean anything in terms of the public's perception of a potential conflict?

ATTORNEY GENERAL VERNIERO: No, I could perceive a conflict if it were a personal friend, a groomsman, someone that I saw socially on a regular basis, a club member, or something of that sort, but that was not the case with respect to Mr. Francis.

SENATOR LYNCH: Let me continue on with the same lines on the issues involved -- the character issues and the quality issues that you look for in a Supreme Court Justice.

I want to get into the same area of conflict as well as the evenhandedness in your handling of or relationship with the *Haytaian* case and the *Davis* case. At the time that you became the Attorney General, was there an existing lawsuit against Chuck Haytaian?

ATTORNEY GENERAL VERNIERO: I believe so, yes.

SENATOR LYNCH: And had you been aware of that while you were the Governor's Counsel?

ATTORNEY GENERAL VERNIERO: I may have been Chief of Staff. I would have to check the date on the pleadings. That was a fairly well known litigation at the time, and I'm sure I became aware of it at some point.

SENATOR LYNCH: And you were familiar with the discovery to some extent -- or lack thereof-- I don't think there ever was a real discovery -- immediate attention that attorney Mullen had ultimately been recused of or the court ordered him out of the case because he offered some pro bono services to the Legislature in previous years?

ATTORNEY GENERAL VERNIERO: I was aware of that element. I can't recall exactly when I became aware of that element.

SENATOR LYNCH: So what was your relationship, prior to your going into the Attorney General's Office, with Chuck Haytaian?

ATTORNEY GENERAL VERNIERO: I would see Chairman Haytaian. He was the head of the Republican party, and I was the Chief of Staff of the Governor. We would meet on occasion and see each other at particular events.

SENATOR LYNCH: What was his role, titlewise if any, in campaign -- Governor Whitman's campaign of 1993?

ATTORNEY GENERAL VERNIERO: I don't know that, Senator. He was, as I recall, the Speaker of the Assembly at the time. Whether he had a formal campaign role, I do not recall.

SENATOR LYNCH: And he continued on as Speaker of the Assembly in 1994-1995, correct?

ATTORNEY GENERAL VERNIERO: That is my--

SENATOR LYNCH: And in those years, 1994-1995, you were Governor's Counsel or Chief of Staff?

ATTORNEY GENERAL VERNIERO: Well, there was a changeover point, if I could just refer myself to my own resume. I was Chief Counsel from January 1994 to February 1995. I was Chief of Staff from February 1995 to July of 1996.

SENATOR LYNCH: Okay, so in those two capacities, during those two years when Mr. Haytaian was the Speaker, 1994 and 1995, you had interaction with him on a day-to-day basis?

ATTORNEY GENERAL VERNIERO: I don't know if it was day to day. Certainly, as Chief Counsel, vis á vis the Assembly Speaker, I would have had contact with him. I don't know if it was day to day. There were days, obviously, when he was not in session, not in Trenton. I can't say it was day to day.

SENATOR LYNCH: When you came to the Governor's-- I'm sorry. When you went to the Attorney General's Office in the middle of 1996 and you were aware of this ongoing litigation, didn't you see that as a source of an appearance of a conflict for you to be involved in that matter and the need for you to recuse yourself and build a Chinese wall?

ATTORNEY GENERAL VERNIERO: I did not know more than, presumably, the former Attorney General saw a conflict.

SENATOR LYNCH: Former Attorney General Poritz?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: You keep-- She was not the Chief of Staff or the Governor's Counsel interacting with legislative leadership on a day-to-day basis, nor, to my knowledge, was she in any way part of the campaign of 1993 of Whitman for Governor. Is that correct?

ATTORNEY GENERAL VERNIERO: I don't know if she had any relationship in the campaign; she may have. But again in the case of the Haytaian matter, I think it's important to note that the Attorney General, by law, must represent all State employees within certain limited exceptions.

SENATOR LYNCH: Not you, personally?

ATTORNEY GENERAL VERNIERO: No, of course not, the Office.

SENATOR LYNCH: So didn't you see the need when you arrived there, knowing of this litigation and knowing of your relationship in the past-- Didn't you see a need for you to recuse yourself to ensure that there was not the perception of a conflict?

ATTORNEY GENERAL VERNIERO: I did. And in that case, we had an outside counsel who was representing the State's interest. And Mr. Haytaian had his own counsel, Mr. Sampson, representing his interest. So my Office was not representing Mr. Haytaian, per se; we were representing the State. And there is no conflict in my representing the State in any litigation, unless a bright-line test -- would have been if a relative were involved, but that

was not the case. We had the State being represented by the Attorney General's Office and outside counsel there; Mr. Haytaian was represented by his own counsel.

SENATOR LYNCH: Being paid for by the State.

ATTORNEY GENERAL VERNIERO: Under State law, that's required in that case, yes.

SENATOR LYNCH: Which you oversaw.

ATTORNEY GENERAL VERNIERO: Oh, yes. But all the litigation decisions, and so forth, presumably, were made between Mr. Sampson and Mr. Haytaian.

SENATOR LYNCH: Now, sometime in the spring of 1997, the Superior Court Judge handling that matter in Mercer County scheduled a case management conference or a settlement conference, correct?

ATTORNEY GENERAL VERNIERO: I can't verify that.

SENATOR LYNCH: You don't remember?

ATTORNEY GENERAL VERNIERO: I don't remember the exact date of a particular scheduled conference.

SENATOR LYNCH: How about in that time frame?

ATTORNEY GENERAL VERNIERO: Well, you're asking me very specific questions, Senator. You're asking me for specific answers, and I can't give you the specific date of that particular scheduled conference.

SENATOR LYNCH: At some point in time did you become aware of the Superior Court Judge having a case management or a settlement conference in the Mercer County Courthouse?

ATTORNEY GENERAL VERNIERO: I may have. I don't have an independent recollection of that as I sit here.

SENATOR LYNCH: Were you contacted by any of the attorneys in that case during or immediately subsequent to or the next few days after that conference, if you recall, about an offer of settlement made by the plaintiff's attorney?

ATTORNEY GENERAL VERNIERO: I may have, but I don't have an independent recollection. I recall speaking to the Director of the Division of Law at that time who brought a settlement proposal to my attention. And I recall speaking to (indiscernible). I don't recall specific dates or times of when that may have occurred.

SENATOR LYNCH: Who was the Director of the Division of Law then?

ATTORNEY GENERAL VERNIERO: At that time, I believe it was Jaynee LaVecchia, and she or her Deputy, Jeffrey Miller, would have brought a settlement to my attention.

SENATOR LYNCH: And do you know of-- Can you recall what that settlement demand was?

ATTORNEY GENERAL VERNIERO: I do not recall what the exact terms were.

SENATOR LYNCH: Did you give them instructions?

ATTORNEY GENERAL VERNIERO: Oh, I'm sure I must have because there are certain settlement authorities by my subordinates, and I don't recall the exact breakdown. But once you get to a higher level, you need the Attorney General's approval. I certainly signed off on the final settlement

as recommended by outside counsel and our own in-house people. I don't recall the settlement negotiations and what an opening offer may have been and what we arrived at. I just don't recall that.

SENATOR LYNCH: But you do recall, do you not, that you were somewhat surprised at the demand, which was apparently rather low for that stage of the proceedings, prior to any discovery, and that you saw it as an opportunity to try to settle the matter?

ATTORNEY GENERAL VERNIERO: I don't know if I was surprised. I thought it was an appropriate settlement, given the fact that--

SENATOR LYNCH: No, I'm talking about the demand at that conference, not the ultimate settlement.

ATTORNEY GENERAL VERNIERO: As I say, Senator, I just don't have an independent recollection of that conference. I don't think I attended that conference.

SENATOR LYNCH: Do you recall a discussion with the -- any of the attorneys in that case about how this case was going to be settled?

ATTORNEY GENERAL VERNIERO: I don't understand your question. What do you mean how it was going to be settled?

SENATOR LYNCH: What the terms of the settlement were going to be, who was going to be left in the lawsuit at the time the case was settled.

ATTORNEY GENERAL VERNIERO: Before I signed off on the settlement, I was briefed, generally, as to what the terms were.

SENATOR LYNCH: And one of the terms was that the case against Haytaian would be dismissed, correct?

ATTORNEY GENERAL VERNIERO: I believe that's correct, yes.

SENATOR LYNCH: That was your idea.

ATTORNEY GENERAL VERNIERO: I don't remember who's idea that was.

SENATOR LYNCH: And once the case was dismissed against Haytaian, the only remaining defendant was the State of New Jersey, correct?

ATTORNEY GENERAL VERNIERO: That would have been correct, yes.

SENATOR LYNCH: And at that point in time, the State-- At the time that the Haytaian matter was dismissed by the plaintiff's attorney, it was their understanding, and yours, that the case was all ready to be settled by the State paying \$175,000 or \$185,000, correct?

ATTORNEY GENERAL VERNIERO: You're asking me to testify as to what some other party's understanding was in that case, and I just can't do that. I don't know what they understood to be the case. I approached that case from the perspective of what's good for the taxpayer, should this be settled at this amount under terms that I thought were favorable to the State. I don't have a precise recollection of how the documents were drafted and when they were filed, and so forth. If you have something that could refresh my recollection, I'd be glad to review it.

SENATOR LYNCH: You do recall that a stipulation of dismissal without prejudice was filed by the plaintiff's attorney prior to the case formally being settled?

ATTORNEY GENERAL VERNIERO: I believe there was a difference of about two or three days, don't hold me to that, but that's my recollection.

SENATOR LYNCH: Well, try to attempt to get the record on that.

And you ultimately authorized the amount of the settlement?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: And the payment of counsel fees?

ATTORNEY GENERAL VERNIERO: Well, payment of counsel fees would be more or less automatic. I mean, they had been paid throughout the litigation. I can't say I specifically--

SENATOR LYNCH: They being who?

ATTORNEY GENERAL VERNIERO: Pardon me?

SENATOR LYNCH: They being who that was paid?

ATTORNEY GENERAL VERNIERO: Our outside counsel, Ms. Allitto (phonetic spelling), and Mr. Sampson. I don't recall specifically signing off on individual invoices. I would not normally do that.

SENATOR LYNCH: In that case, there had not been any discovery yet taken because the counsel involved for the defense was able to move Mr. Mullen out of the case, and they delayed discovery for quite some time, is that not correct?

ATTORNEY GENERAL VERNIERO: I don't know the reason, per se, why there was no discovery, but I think you're correct. There was no discovery as I recall.

SENATOR LYNCH: And at the time this case was settled, the prior-- Immediately prior to the case being settled, there was some orders of the court of discovery proceeding.

ATTORNEY GENERAL VERNIERO: My recollection is that it was moving to a fairly active stage of discovery or litigation.

SENATOR LYNCH: Which would have required deposition that's under oath and alike.

ATTORNEY GENERAL VERNIERO: Presumably, yes.

SENATOR LYNCH: So that case gets settled, for good or bad reasons, I'm not here to, certainly, speak on that. The matter attracts a lot of attention because that sort of settled smack in the middle of campaign 1997, correct?

ATTORNEY GENERAL VERNIERO: There were those, yourself among them, who believed that that was a point of criticism, and you (indiscernible) at the time. And I explained fully my reasons for settling the case. And if I had to do it all over again, with the same case, with those facts at that amount, I would do it again, whether it was in a campaign year or not. That did not play a part in my decision.

SENATOR LYNCH: Let me get into the other matter.

Put that case on the wall, and then put next to it the *Davis* case, which you also were involved in in the same type of capacity, correct?

ATTORNEY GENERAL VERNIERO: As the Attorney General, yes.

SENATOR LYNCH: Did the fact that you took a lot of hits, for lack of a better term, on the Haytaian settlement influence your decision as to whether or not to settle the *Davis* case or to proceed with trial?

ATTORNEY GENERAL VERNIERO: No.

SENATOR LYNCH: And why didn't the *Davis* case, where the State will ultimately be spending something -- at least \$3.5 million-- Why didn't the financial issue in the *Davis* case become paramount as it did in the *Haytaian* case?

ATTORNEY GENERAL VERNIERO: Well, one reason was, as I said, in the *Haytaian* case, we had a very willing plaintiff who wanted to settle the case. I'm not sure, sitting here, what the settlement posture was or is with respect to the *Davis* case. Let me just, for the purpose of the Committee, note that this is still a pending case, so I'm somewhat limited in what I can say.

When I became Attorney General, the *Davis* case had already gone passed discovery, had gone passed interrogatories. And you have to make a judgement as Attorney General. I mean, do you settle the case and when you settle it. It's a little easier settling a case, like in the case of Mr. Haytaian, before depositions and before discovery because the State hasn't expended as many resources. There's not as much time or money invested in a case.

When I became Attorney General, the *Carley* (phonetic spelling) case was well underway. There was a lot of time invested in it. If I'm not mistaken, it was very deep into discovery. And so under those circumstances, sometimes you make the judgement that it's better to try the case. We've gone this far, let's try the case. There's no per se standard. It's all a case by case.

And also, I rely on the judgement of these fine deputies who are closest to this case. In the Haytaian matter, as I said at the time and reiterate now, there was a very strong recommendation from both outside counsel and in-house that the case settle. And I accept that and accept full responsibility

for settling the case. I would do it again if the case were here today under those circumstances.

With respect to the *Carley* case, it's a pending case. We have filed our notice of appeal because we believe that we still should be litigating that case given, what we perceive to be, court error in that case. And we're fighting there as much for legal principle as much as anything else. Those circumstances just weren't present in the *Haytaian* case.

SENATOR LYNCH: Speaking of legal principle, how much money has the State laid out to date on attorneys fees and other things?

ATTORNEY GENERAL VERNIERO: In that case, quite a lot. I don't have the amount.

SENATOR LYNCH: In the matter of millions?

ATTORNEY GENERAL VERNIERO: I believe so.

SENATOR LYNCH: And those meters are still running, aren't they, now that you appealed?

ATTORNEY GENERAL VERNIERO: I'm not sure that they are. If I'm not mistaken, we've now excused our outside counsel, and we are handling the matter completely in-house. I do not believe there are any outside counsel fees.

SENATOR LYNCH: How much was the jury verdict?

ATTORNEY GENERAL VERNIERO: If I'm not mistaken, it was \$350,000.

SENATOR LYNCH: And you're into this, now, for many millions of dollars?

ATTORNEY GENERAL VERNIERO: I don't know if it's many. I believe it's at least six or seven figures, yes.

SENATOR LYNCH: Don't you see, from the public perspective, the public that you represent, how they would see a real appearance of a conflict when you lay those two cases in front of you?

ATTORNEY GENERAL VERNIERO: I don't. I don't perceive any conflict at all in the *Carley* case. As I say, by the time I became Attorney General, it was well underway, there was no reason for me to recuse myself from that case.

In terms of the settlement of the *Haytaian* case, as I've said fully at the time, I believe there were good and appropriate reasons to settle that case under those terms which I felt were favorable to the State.

One of my jobs as Attorney General is to decide cases on a case-by-case basis based on good advice, based on information I have. The judgements or the ultimate decisions are not always the same. It depends on the case.

SENATOR LYNCH: Are you responsible, in the *Carley* case, assuming the verdict is sustained, for the counsel fees of the plaintiff?

ATTORNEY GENERAL VERNIERO: That's an open question. There are certain counsel fees. If I'm not mistaken, we're contesting that now.

SENATOR LYNCH: But the plaintiff's lawyers are still working on this matter. In theory, they would be -- those expenses of their time and resources would be reimbursable from the State.

ATTORNEY GENERAL VERNIERO: In theory, yes. But there is a very important legal principle at stake in the *Carley* case. And it is whether the State is able to cut off liability whenever there is an offer of a job change,

which there was in that case. The plaintiff was offered a different position of comparable title and salary, and it is our position in that case that from that point forward, and we believe case law supports this, the State should no longer be liable, then, for lost wages. The court in that case disallowed that argument and, in essence, held the State liable even after that cutoff point.

Now, I have to tell you that is a very important legal principle. And in my judgement, others may disagree, is worth fighting for because it would apply not only in that case, but the many other cases that are either pending or--

SENATOR LYNCH: I suggest to you they're wrong, that the decision of the trial court will not be binding on you in other cases. But if the Appellate Division finds in their favor, then you've got a real problem. In the meantime, meters are running all over the place. The State's out \$3 million or \$4 million, and for the sake of a \$300,000 payment you could end it, not risk bad precedent in the Appellate Division, etc.

ATTORNEY GENERAL VERNIERO: That is your--

SENATOR LYNCH: Is that not true?

ATTORNEY GENERAL VERNIERO: That is your judgement, Senator. My judgement, particularly since this is a Mercer County case, it would have precedential value in Mercer County where most State employees are venued. And there could be other cases filed with this same judge of the same vicinage where there could be precedential value. So--

SENATOR LYNCH: When has anybody used a trial court decision as precedent against the State of New Jersey without it going up on appeal?

ATTORNEY GENERAL VERNIERO: It could happen, Senator. And I didn't want to take the risk that it couldn't happen.

SENATOR LYNCH: You run the risk that if the Appellate Division sustains, then you have a real principle law enunciated that you're going to have to deal with.

ATTORNEY GENERAL VERNIERO: There is that risk.

SENATOR LYNCH: Thank you.

SENATOR GORMLEY: Senator Bennett is next up. He--

SENATOR BENNETT: I'm yielding my time to Senator Robertson.

SENATOR GORMLEY: Senator Robertson for a couple of questions, and then we have Senator Lynch.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Just a couple of questions, General. Senator Zane inquired before, with respect to the Bar review interview that you had-- And one thing that I wanted to share with the Committee that struck me about that because one of the things that I was, at least in concept, concerned about was the nature of their questioning of you, having heard from so many Senators writing anecdotal information with respect to their own experiences with Bar committees and how far afield they may or may not get. I was concerned and interested as to the types of questions that were (indiscernible). In fact, after lunch, today, I sort of cornered you in the hallway, and I asked you a very specific question. I asked what sorts of questions did they ask you which may not have been germane or involve questions of policy. And I realize, obviously,

the difference between what you can say as a witness versus what you can say in the hallway. But what was your response to me at that time?

ATTORNEY GENERAL VERNIERO: Well, I was uncertain, and candidly, I'm still uncertain as to what is confidential or not in this process. I must admit I'm a little confused based on the testimony of the Chair.

SENATOR ROBERTSON: And in fact, you declined to say.

ATTORNEY GENERAL VERNIERO: I did, out of an abundance of caution. It is unclear, under the Compact, whether the nominee is bound to confidentiality. I just thought, out of an abundance of caution, I should be circumspect. I'm really not clear myself as to what is confidential anymore as part of that process.

SENATOR ROBERTSON: I did want to share that with the Committee because I thought that did speak very well of you.

Now, as a witness, however, and still having the same concerns -- and you have already testified to the fact, after being questioned by Senator Zane, about the two-thirds, one-third, or how much you might have been asked. Could you give me an example of the sort of policy question that you might have been asked? I'm not going to ask you to give them all, but give us an example of what you're talking about.

ATTORNEY GENERAL VERNIERO: Again trying to keep the proceedings confidential, there were questions that related to certain elements that had a budgetary impact, either on my Department or the State. And I was asked, specifically, to repeat answers. I was asked questions that were asked of me during one of my budget hearings before the Senate.

SENATOR ROBERTSON: With respect to how much money was being spent on this or that?

ATTORNEY GENERAL VERNIERO: With respect to certain actions that my Office had taken or not taken and what the budgetary impact might have been and whether I had conducted myself in my official capacity in an appropriate way. And I just, as I said, was surprised by the question. I did not expect it; I did not think it was germane particularly from this particular committee. It was very germane for a budget committee, it's rather germane here, although, maybe not even here because of the budgetary impact. And I was surprised by it. And there were other types of questions like that.

SENATOR ROBERTSON: And I don't imagine you would have any knowledge or information that would inform you as to the extent to which these extraneous matters may have colored their judgement prior to a vote.

ATTORNEY GENERAL VERNIERO: I have no way of knowing that.

SENATOR ROBERTSON: I have no other questions, Mr. Chairman.

SENATOR GORMLEY: Senator Lynch.

ATTORNEY GENERAL VERNIERO: Mr. Chairman, is there a way of closing that curtain, or is that part of the process as well? It would fit in.

SENATOR GORMLEY: We could have you stand, too.

SENATOR MARTIN: To say you have no sense of humor -- that's the fifth joke I've heard you tell today, Mr. Verniero. They're getting better, too.

ATTORNEY GENERAL VERNIERO: Thank you.

SENATOR GORMLEY: That was the first joke.

SENATOR LYNCH: Again along the same line, I'd like to get into the Commissioner Medina matter.

From our earlier discussion, Commissioner Medina had been confirmed by the Senate as Commissioner of Commerce at the end of January of 1994, correct?

ATTORNEY GENERAL VERNIERO: I believe that's correct.

SENATOR LYNCH: And at that time, you were Governor's Counsel?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: And at some point between -- and you've just told us earlier about how he was sworn in privately some days later, correct?

ATTORNEY GENERAL VERNIERO: Yes, I believe he was sworn in privately on February 1. I turned the documentation over to your counsel, so I do not have it in front of me.

SENATOR LYNCH: February 7.

ATTORNEY GENERAL VERNIERO: February 7-- Whatever is on the documentation.

SENATOR LYNCH: Sometime shortly thereafter or in that same time frame did you become aware of a -- Commissioner was accused by a reporter assigned to cover the Department of Commerce in making improper sexual advances?

ATTORNEY GENERAL VERNIERO: Well, it would have been sometime thereafter because, if I'm not mistaken, the complaint of meeting or misconduct did not occur until sometime after.

SENATOR LYNCH: I missed that, what did you say?

ATTORNEY GENERAL VERNIERO: I'm sorry.

What was the date of the swearing-in?

SENATOR GORMLEY: February 1.

ATTORNEY GENERAL VERNIERO: February 1.

If I'm not mistaken, the complaint of conduct did not occur until after February 1, so in response to your question, it would have been sometime thereafter that I would have learned of the complaint.

SENATOR LYNCH: Generally how long thereafter?

ATTORNEY GENERAL VERNIERO: That I don't recall. As I say, my recollection is initially the Chief of Staff because this pertained to a cabinet officer. I believe she was the first to learn of the complaint, and then she dealt with the Attorney General, and then I became aware at some point.

SENATOR LYNCH: How soon after the Chief of Staff learned did you learn, a minute, a half-hour, an hour?

ATTORNEY GENERAL VERNIERO: I don't know, Senator.

SENATOR LYNCH: Did you become personally involved, then, in reviewing what was taking place and what might have occurred and whether this created a problem for the Governor, the administration, or what have you?

ATTORNEY GENERAL VERNIERO: My recollection is that the substance of the investigation. Was conducted by the then Attorney General. Certainly, as Counsel, I did not engage in any kind of investigation.

SENATOR LYNCH: To your knowledge, when you first learned about this, what was it alleged that Medina did?

ATTORNEY GENERAL VERNIERO: I'm not a liberty to discuss that because that is part of the confidential file.

SENATOR LYNCH: What confidential file?

ATTORNEY GENERAL VERNIERO: That is referenced in your letter and in my response to your letter.

SENATOR LYNCH: Do you know what's in that confidential file?

ATTORNEY GENERAL VERNIERO: I know parts of it, yes.

SENATOR LYNCH: And that file is contained in the Division of Criminal Justice, correct?

ATTORNEY GENERAL VERNIERO: It is.

SENATOR LYNCH: So the investigation, technically, was being run through the Division of Criminal Justice.

ATTORNEY GENERAL VERNIERO: Well, as I indicated in my letter to Senator Gormley, which is in response to your question, Senator, the Attorney General at the time assigned assistant attorney generals from the Division of Criminal Justice to investigate the matter. And at its conclusion, the file remained in the hands of the Division of Criminal Justice. And to my knowledge, it is still there.

SENATOR LYNCH: So if it was in the Division of Criminal Justice, it started out as some kind of criminal investigation.

ATTORNEY GENERAL VERNIERO: I believe, as I indicated in my letter to Senator Gormely, given the lack of specificity as to whether the

alleged misconduct was criminal in nature, then Attorney General Poritz assigned the matter for review by an assistant attorney general from the Division of Criminal Justice.

SENATOR LYNCH: Did you consult with Attorney General Poritz at that time, as Governor's Counsel, this being a cabinet official?

ATTORNEY GENERAL VERNIERO: I may have been aware that she had opened up an investigation, I don't recall any extended conversations with her. And I certainly, as I indicated in my letter to Senator Gormley, did not speak to Commissioner Medina until the matter had been concluded.

SENATOR LYNCH: When was the matter concluded?

ATTORNEY GENERAL VERNIERO: That would be part of the file. I don't know.

SENATOR LYNCH: How was it concluded?

ATTORNEY GENERAL VERNIERO: Again I'm not at liberty to disclose that.

SENATOR LYNCH: And you had no input into its resolution and conclusion.

ATTORNEY GENERAL VERNIERO: When you say input, I'm sure I was aware of a conclusion, but it was handled, substantially, within the Department of Law and Public Safety.

SENATOR LYNCH: Substantially meaning they were responsible for this investigation. That doesn't mean that you were involved on a day-to-day basis in determining what course of action was going to be followed because you're dealing with the Governor's cabinet member.

ATTORNEY GENERAL VERNIERO: I did not-- If your question is, did I suggest an outcome, the answer is no.

SENATOR LYNCH: In your letter to Senator Gormley dated April 23, 1999, in response to my letter to Senator DiFrancesco on March 11, 1999, you indicated that you never met with Medina during this time frame--

ATTORNEY GENERAL VERNIERO: That is my recollection, yes.

SENATOR LYNCH: --to discuss this.

ATTORNEY GENERAL VERNIERO: To discuss this case. I may have met with him in just the normal course of doing business in the Governor's Office. I did not meet with him specifically on this case until after it was concluded.

SENATOR LYNCH: And you have no specific recollection of when it was concluded?

ATTORNEY GENERAL VERNIERO: I do not.

SENATOR LYNCH: And in your letter you state that "this matter was handled almost exclusively by the Department of Law and Public Safety and not by me as Chief Counsel. I never met with Mr. Medina to discuss this matter until after it was concluded."

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: You've seen the letters that went out in the public domain through some manner of means back in 1997 having to do with the action taken by then Attorney General Poritz?

ATTORNEY GENERAL VERNIERO: I've seen those press accounts, yes.

SENATOR LYNCH: You've never seen the letters?

ATTORNEY GENERAL VERNIERO: I have-- Well, again you're getting into what may be in the file and what I may have seen in the file, and I'm not at liberty to disclose that, Senator.

SENATOR LYNCH: Well, let me refer to what reports to be a letter of March 14, 1994, from Deborah T. Poritz, Attorney General, addressed to the firm of Dechert, Price, and Rhoads which says that "this letter will confirm the conversation we had at our meeting on March 11, about your allegations of inappropriate offensive, physical, and verbal sexual advances by Commissioner Medina. Assistant Attorney General Bozza and Stone and I informed you, Mr. Roberts and Mr. Ingbinder (phonetic spelling), that our investigation substantiated your allegations.

"As a result of our findings and our discussions with you, the following actions have been or will be taken:

"One, a written reprimand has been signed by the Governor and delivered to Commissioner Medina. A copy of this reprimand has been placed in a confidential file in the Division of Criminal Justice.

"Two, the Chief Counsel to the Governor and I will meet with Commissioner Medina to discuss his conduct and the State policy against sexual harassment in the workplace.

"Three, Commissioner Medina will participate in counseling as directed by me.

"And, four, the Commissioner has been instructed in writing that any reprisal against you or your newspaper would constitute an additional

violation of the State policy against sexual harassment in the workplace and will not be tolerated.

“Five, the Commissioner will be required to designate another official within his Department for you to contact for news and information so that you may continue to report on business in New Jersey.

“Six, a copy of this letter will be place in the confidential file at the Division of Criminal Justice.

These steps are being taken to ensure that this unacceptable conduct by the Commissioner does not recur.”

Do you recall ever seeing that letter?

ATTORNEY GENERAL VERNIERO: Again I have to go back and say to the extent that that and any other correspondents are in a confidential file -- I'm not at liberty to verify it's contents. I will say, for the record, that I did meet with Mr. Medina afterward -- after the case was concluded. And that is what I've stated to Senator Gormley.

SENATOR LYNCH: When did you consider the case-- What action made this case concluded, a conference with the lawyers? Any course of action?

ATTORNEY GENERAL VERNIERO: I do not know, Senator, because I didn't handle that case.

SENATOR LYNCH: The letter of April 4, 1994 -- State of New Jersey, Department of Law and Public Safety, signed by Debra Stone, Assistant Attorney General:

“This letter will confirm the telephone conversation we had on April 4, 1994 regarding a new contact person in Commissioner Medina's

Department. The new contact person will be Assistant Commissioner Alan Steinberg. If any problems develop with this arrangement, let me know.

“As the Attorney General promised you, she and the Governor’s Counsel have met with the Commissioner to discuss this matter. The seriousness of the problem was impressed upon him in no uncertain terms.

“As a follow-up to that meeting, a counseling secession, held with Director Molhill (phonetic spelling), Commissioner Medina, and myself has been scheduled for next week. The Commissioner, on his own, has also arranged for his personal officer to have a training secession for his staff and himself in the near future.”

Do you recall ever seeing that letter?

ATTORNEY GENERAL VERNIERO: As I said, Senator, to the extent that letter is in a confidential file, I’m not at liberty to verify any of the contents of that letter other than to say, as a matter of fact as forthrightly disclosed by me in my letter to Senator Gormely, I did meet with Commissioner Medina to discuss this matter after it was concluded.

SENATOR LYNCH: So this April 4, 1994 memo to the attorneys for the alleged victim was an error, and you and the Attorney General had not personally met with Mr. Medina up until that point?

ATTORNEY GENERAL VERNIERO: Senator, I’m just not at liberty to discuss that letter.

And just so the Committee is clear on this, the confidentiality of, indeed, every document in this file was upheld just two days ago by the Court. And it was very clear in a clearly worded decision--

SENATOR LYNCH: We didn't have standing to request those documents, and we fell into the category of a member of the general public. And since we didn't have the authorization of the full Senate, that would be the end of it. Don't you think this is akin to blocking all this information, it's akin to you taking the Fifth Amendment?

ATTORNEY GENERAL VERNIERO: No, Senator, it's akin to my discharging my ethical responsibilities in maintaining confidences particularly when upheld in that regard by the Court. The Court says, at length, that the plaintiff in this case, Senator Codey, on your behalf and others, is not entitled to the documents for various reasons. I think the judge lists four reasons in her opinion.

SENATOR LYNCH: Let me ask you again in another way.

Is it your recollection, today-- I'm sorry, strike that.

Are you saying to us here today that you did not meet with Medina prior to April 4?

ATTORNEY GENERAL VERNIERO: I'm saying I did not meet with Commissioner Medina to discuss this matter until after it was concluded.

SENATOR LYNCH: What is your definition of concluded?

ATTORNEY GENERAL VERNIERO: When it was determined that the meeting between myself and the Attorney General should take place.

Now, in terms of--

SENATOR LYNCH: So as far as you're concerned, when this letter was written, the matter was already concluded--

ATTORNEY GENERAL VERNIERO: Well, in terms--

SENATOR LYNCH: --even though one of the terms was, apparently, that you and the Attorney General meet with Medina and set up these procedures.

ATTORNEY GENERAL VERNIERO: The use of the word the matter -- this matter is in the context of my response to Senator Gormley. In terms of what may have been particular remedies in that case-- I don't have dates to that. No, I didn't determine that to be the conclusion of the matter. The conclusion of the matter, for purposes of my response to Senator Gormley, was when the Attorney General thought it was appropriate -- the conclusion of the investigation. And when a resolution had been made that the matter had been concluded for purposes of my meeting with Commissioner Medina. That is different than all aspects of the remedies being concluded. There is a difference there. And if I was unartful, I correct the record.

SENATOR LYNCH: So you were not aware of the day-to-day investigation that was going on prior to this so-called resolution or conclusion. But you were aware that it became resolved with an understanding of what would happen to satisfy the employer as well as the alleged victim.

ATTORNEY GENERAL VERNIERO: I was aware of the general resolution, but I cannot confirm what those terms are. And if I were to discuss that letter, you would be forcing me into a position of disclosing what I believe, and what the Court has clearly said, is confidential material.

SENATOR GORMLEY: What we'll do is we will take a break now.

Senator Lynch has 16 minutes in this particular cycle he is in.
We have a half-hour break.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: You talked earlier about the tobacco settlement and that you felt that New Jersey got more than its fair share. Most of that was done by a formula, correct?

ATTORNEY GENERAL VERNIERO: Much of it was by formula, but there were some discretionary matters as well.

SENATOR LYNCH: Because the most arduous issue had already been disposed of before this all began, mainly that the plaintiff, in these cases the State -- in paying out Medicaid or Medicare funds, whichever it was when-- It was Medicaid, I assume.

ATTORNEY GENERAL VERNIERO: It was actually a number of factors.

SENATOR LYNCH: They didn't have to prove, on a case-by-case basis, the (indiscernible) relationship. They did it by a structural analysis. And that was the background of how this case got right for settlement, no?

ATTORNEY GENERAL VERNIERO: That was one of the theories in the strength of our case that ultimately the industry accepted.

SENATOR LYNCH: In these class action suits that were already pending, it was clear, at least in some decisions, that that theory was going to be accepted.

ATTORNEY GENERAL VERNIERO: Well, I don't know if it was clear in all jurisdictions. There were some cases -- I believe it was the state of Indiana -- where the judge had thrown out the entire state's case. In New Jersey, we had better success, I'm happy to report, in not only maintaining our suit, but maintaining the main components that consisted of that theory in our case, in Middlesex County.

SENATOR LYNCH: The question I ask -- I don't think (indiscernible) the answer. Most of the money that the State alleges the tobacco industry is responsible to reimburse them on is money that the State spends on medical expenses relative to Medicaid.

ATTORNEY GENERAL VERNIERO: That's part of it in New Jersey.

SENATOR LYNCH: What are the other parts?

ATTORNEY GENERAL VERNIERO: In New Jersey, our theories of recovery were based more on -- not just on Medicaid, it was based on consumer protection and based on civil RICO, and I believe we had antitrust in there as well.

SENATOR LYNCH: Yeah, but in terms of the monies that were spent by the State, that was put into this formula-- They were Medicaid monies, not health benefit monies for employees of the State, not health and welfare funds for the unions, strictly the State and its payment under Medicaid, as well as the threat of other litigation against them, having not to do with a particular health-care program.

ATTORNEY GENERAL VERNIERO: I don't think I understand the question, Senator. When you say monies were put in from the State, I don't understand. Who's putting what money where?

SENATOR LYNCH: No, no, when the State pays the medical bills for those people who qualify for Medicaid--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: --those are the funds that are primarily involved in the settlement as opposed to your employee health funds.

ATTORNEY GENERAL VERNIERO: No, we've never characterized the settlement, and we are very careful about that because there's the Federal recoupment issue which was uppermost in our minds. We made it very clear in our pleadings and in the settlement documents that this was not just Medicaid recovery, this was Medicaid, plus consumer protection, plus a number of other--

SENATOR LYNCH: I don't know what consumer protection means here. In what context was consumer protection used?

ATTORNEY GENERAL VERNIERO: It was essentially a consumer fraud element that consumers in New Jersey -- and I believe this was contained in the pleadings of other states -- was given misinformation or insufficient information. That's a violation in a civil sense, and there's a dollar penalty that attaches, and that was part of it as well. So it was not just Medicaid.

SENATOR LYNCH: Did the terms of this settlement prohibit, in any way, union and other health and welfare funds from proceeding under the same theory?

ATTORNEY GENERAL VERNIERO: I'd have to check the master settlement agreement to respond to that.

SENATOR LYNCH: You were involved in that as Governor's Counsel or Chief of Staff in the (indiscernible) Tort Reform of 1995.

ATTORNEY GENERAL VERNIERO: I was Chief Counsel.

SENATOR LYNCH: In 1994 or 1995?

ATTORNEY GENERAL VERNIERO: I believe it was 1995. I'd have to check the date myself.

SENATOR LYNCH: By then, were you Chief of Staff?

ATTORNEY GENERAL VERNIERO: No, I was Chief Counsel, so whatever the time frame is-- I can just consult with my own resume?

It was as Chief Counsel, I'm certain of that.

SENATOR LYNCH: And my recollection of the portrayal, at least in the media and maybe some things I read from you, was that you had convened as sort of an ad hoc group to work on this.

ATTORNEY GENERAL VERNIERO: We convened a series of roundtables, and we invited representatives of the Bar, legislators.

SENATOR LYNCH: Who is we?

ATTORNEY GENERAL VERNIERO: My Office -- the Counselor's Office.

SENATOR LYNCH: You convened.

ATTORNEY GENERAL VERNIERO: Yes, I convened but with the help of my staff. And I want to give credit where credit is due.

SENATOR LYNCH: And those people who were represented at these roundtable discussions represented various interest groups that were concerned about tort liability and other issues?

ATTORNEY GENERAL VERNIERO: Various constituencies. As I recall, there were members of the Plaintiffs Bar, members of the Defense Bar, legislators who had an interest in this area. If I'm not mistaken, various consumer advocate groups were represented. We had a number of meetings. As a result of those meetings, my Office, myself, and others worked on the report. We issued a report to the Governor and to the Legislature which recommended a series of reforms, many of which were enacted into law as I recall.

SENATOR LYNCH: And one of those issues that was enacted into law and that you support -- and your Committee -- and as a matter of fact that you aggressively persuaded to get 21 votes was the cap on punitive damages.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: And that was the No. 1 priority of the tobacco industry, wasn't it, in that context?

ATTORNEY GENERAL VERNIERO: I can't recall if that was the No. 1 issue. As I say, there were many parties to the table, and I can't recall with specificity whether the industry -- that was their No. 1 priority or where that ranked on anyone's priority list. It was very important to the Governor and to my Office, and we recommended it, and I was pleased that we were able to persuade the Legislature.

SENATOR LYNCH: Why was it important to you and to the Governor to put a cap on punitive damages?

ATTORNEY GENERAL VERNIERO: The feeling at that time was that New Jersey was becoming too much of a litigious state, that we were seeing lawsuits -- it was a little bit out of control in the state. It was having a spill-over effect in terms of the judicial process, the dockets were very crowded.

SENATOR LYNCH: Do you have any analysis-- Did you have an analysis at that time as to how many punitive damage awards would be had in New Jersey in any one year?

ATTORNEY GENERAL VERNIERO: Oh, my recollection was that there was data presented to us as part of the roundtables. I can't recite it to you off the top of my head.

SENATOR LYNCH: As a percentage of the caseload in the civil courts in this state, those were a punitive -- verdict is rendered is negligible, isn't it?

ATTORNEY GENERAL VERNIERO: Probably as a percentage of all lawsuits, it's probably a small percentage. But keep in mind that that was part of a package of reform. It was not just one particular bill. There was the cap on punitive damages, and there were other elements.

SENATOR LYNCH: Who was lobbying for that cap on punitive damages in a serious way other than the tobacco industry?

ATTORNEY GENERAL VERNIERO: As I said, Senator, I don't recall specifically who may have been lobbying for which provisions and which bills.

SENATOR LYNCH: Were lobbyists for the tobacco industry on your ad hoc Committee?

ATTORNEY GENERAL VERNIERO: It would not surprise me if they were. We invited the various constituency groups. They were entitled to send whoever they wanted. Some sent counsel. I would say that it's a pretty good assumption that some sent lobbyists.

SENATOR LYNCH: I want to ask you a few questions about the Prosecutor Bissell scenario.

When you became Governor's Counsel in transition, did you have discussions with representatives of the transition team and the Governor -- and/or the Governor with regard to the status of Prosecutor Nick Bissell of Somerset County?

ATTORNEY GENERAL VERNIERO: I don't recall, specifically, that subject in transition. Are you referring to meetings that I may have had with outgoing Counsel, Scott Weiner, during the transitions?

SENATOR LYNCH: No, I was referring specifically to meetings that you had with Governor Whitman and Chief of Staff and others on your prospective staff as to the status of the Somerset County Prosecutor, Nick Bissell.

ATTORNEY GENERAL VERNIERO: Oh, internal.

SENATOR LYNCH: Internally.

ATTORNEY GENERAL VERNIERO: We may have. I don't have an independent recollection.

SENATOR LYNCH: You recall, do you not, that Prosecutor Bissell's term of office had -- term of appointment had expired somewhere in the early summer of 1993?

ATTORNEY GENERAL VERNIERO: As I recall, he was a holdover -- in holdover status by the time we took over office.

SENATOR LYNCH: And because if the previous Governor was advised that anyone -- any nomination seeking to replace him would be blocked because of the timeliness of it.

ATTORNEY GENERAL VERNIERO: I don't know if Governor Florio was advised of that, Senator.

SENATOR LYNCH: So you become Governor's Counsel-- Do you become aware of significant issues related to the character and fitness of Nick Bissell?

ATTORNEY GENERAL VERNIERO: As I recall, we looked at the whole list of prosecutors to see who might have been in holdover status, who may have been up for appointment just as a way of budgeting out time and making sure we were timely.

I don't recall a specific briefing that might have centered on Prosecutor Bissell. I assume if there are any discussions on that, I would have been briefed or at least consulted the file. I just don't have a specific recollection of that.

SENATOR LYNCH: Did you order a four-way on that?

ATTORNEY GENERAL VERNIERO: I am not at liberty to discuss four-ways, Senator, when they're ordered or who may have ordered them, and so forth.

SENATOR LYNCH: Suffice it to say that Prosecutor Bissell remained in that office in Somerset County as a holdover without any other name having proceeded into the nomination process until sometime in the third or fourth quarter of 1996.

ATTORNEY GENERAL VERNIERO: I'll have to trust your dates on that.

SENATOR LYNCH: Well, do you know when he was indicted?

ATTORNEY GENERAL VERNIERO: I do not have that date in front of me, no.

SENATOR LYNCH: And during that time, do you recall that there was a great deal of publicity about the Federal U.S. Attorney's Office and that the FBI conducted a raid on the Bissell home under a search and seizure order?

ATTORNEY GENERAL VERNIERO: I recall some publicity, yes.

SENATOR LYNCH: And that was sometime in the second half of 1994?

ATTORNEY GENERAL VERNIERO: It's possible, I can't swear to it.

SENATOR LYNCH: And as Governor's Counsel, did that give you some cause for concern?

ATTORNEY GENERAL VERNIERO: Any time we read a newspaper article about a sitting prosecutor, it causes you concern.

SENATOR LYNCH: Did you discuss this matter with the Attorney General or anyone in the Attorney General's Office to determine what was really going on?

ATTORNEY GENERAL VERNIERO: Again I'm not at liberty to disclose what may have been pending in the Attorney General's Office.

SENATOR LYNCH: Why don't you give me your thoughts as to why, given the obvious history that we know and the publicity associated therewith, that there was not another name injected into the appointment process to replace Mr. Bissell in Somerset County?

ATTORNEY GENERAL VERNIERO: Well, I can just say in general, and this is not related to Mr. Bissell, but it's in general with respect to all prosecutors-- It is, sometimes, a very time-consuming process to identify an acceptable candidate that the Governor is comfortable with that goes through the process, receives the appropriate senatorial sign-off. That is not something that can happen overnight. The record certainly is--

SENATOR LYNCH: But that process didn't begin until after the indictment. And he was forced to stand down a year and one-half later -- over a year and one-half later -- two years. I'm sorry, two and one-half years later.

ATTORNEY GENERAL VERNIERO: As I say, I'm not at liberty to discuss when that process may have begun, but the record is clear that Mr. Bissell was not renominated by the Governor.

SENATOR LYNCH: Yes, but you put an acting-- You put a deputy attorney general in his place the day after -- within a week after he was nominated.

ATTORNEY GENERAL VERNIERO: That was not me, Senator. That would have been the Attorney General before me.

SENATOR LYNCH: When was that?

ATTORNEY GENERAL VERNIERO: It was prior to my becoming Attorney General, I believe. I could be wrong on that, but I believe it was Attorney General Poritz who appointed Melanie Campbell. I'll check the record and correct that if I'm mistaken.

SENATOR LYNCH: Did you ever have a conversation with Governor Whitman between January 16 or whenever her inauguration was in 1994 and the time that Nick Bissell was indicted about his holdover status and the need to remove this symbol because of all the media attention and some of the investigations that even had been done by the State?

ATTORNEY GENERAL VERNIERO: I'm sure I had conversations with the Governor about Prosecutor Bissell. I'm not at liberty to disclose the content of those discussions.

SENATOR LYNCH: Why? Why? What's privileged about those discussions?

ATTORNEY GENERAL VERNIERO: Because I feel that in that case I was the Governor's Counsel, she was my client, and those conversations should have a certain privilege to them. And I want to respect that on behalf of the Governor.

SENATOR LYNCH: Don't you think now, as Attorney General, that it was a black mark on the law enforcement community of the state with all of that material going out in the public domain about this ongoing investigation of Bissell by the U.S. Attorney's Office and the FBI?

ATTORNEY GENERAL VERNIERO: I don't think that, per se, was a black mark on the State. I think the whole Bissell tragedy was very

unfortunate for New Jersey. I think it was an egregious case, but fortunately it's a rare case. We've not seen a case of that sort since Nick Bissell.

SENATOR LYNCH: We saw so many examples laid out in the media and in the indictment that occurred subsequent to January 16, 1994 while Bissell was in a holdover status as prosecutor, did we not?

ATTORNEY GENERAL VERNIERO: As I said, there was the negative press that was certainly of concern.

SENATOR LYNCH: But the indictment, when it came down, disclosed all of these allegations about ongoing activity in the Prosecutor's Office post-inauguration of Governor Whitman.

ATTORNEY GENERAL VERNIERO: I acknowledge that, Senator. I just-- I guess I'm not understanding what your question is, sir.

SENATOR LYNCH: My line of questioning, I think, is very simple. Why didn't you and the Governor, during that time frame, cause his removal?

ATTORNEY GENERAL VERNIERO: As I said, I'm not at liberty to discuss what may have been in process at that time. I will say that I have spent a great deal of my time, as the Attorney General, enhancing the supervisory role of my Office as it applies to all county prosecutors. I eluded to that at the outset with the promulgation of a comprehensive code of conduct. We now have, and this is the first time we have this, a disclosure reporting system that prosecutors must disclose their assets and the value of assets. I have issued detailed forfeiture guidelines that are now in force. I have started an enhanced system of random audits where we have audited various prosecutors.

SENATOR LYNCH: Is this responsive to a question?

ATTORNEY GENERAL VERNIERO: Well, it is. I believe that the basis of your question is what have I done to supervise county prosecutors.

SENATOR LYNCH: Let me go back to where you were.

You said that you're privileged because you were Counsel to the Governor. And yet, in February of 1995, you became Chief of Staff and were no longer Counsel to the Governor. What's the privilege?

ATTORNEY GENERAL VERNIERO: You asked me at the time--

SENATOR LYNCH: What's the privilege? What privilege remains once you become Chief of Staff?

ATTORNEY GENERAL VERNIERO: All right, I'm going to answer that question if I may.

I interpreted your first question to mean conversations I may have had as Counsel with respect to the appointment or nonappointment of Prosecutor Bissell. As Counsel, there is the attorney-client privilege.

As Chief of Staff, I would not have normally focused on the prosecutors. That is the function of the Chief Counsel. So it would have been my successor in that position if there were any Nick Bissell issues that needed to be resolved or discussed with the Governor. While I was Chief of Staff, I wouldn't have resolved them. That would have been the Counsel.

SENATOR LYNCH: If this search and seizure from the U.S. Attorney's Office and the FBI occurred while you were the Chief of Staff, and I suggest to you that it was, that that's when the search and seizure occurred and received so much notoriety.

As Chief of Staff, didn't you suggest to Governor Whitman that you should be -- the Governor's Office should be taking some action here to get him out of that office?

ATTORNEY GENERAL VERNIERO: As I say, I don't recall that as Chief of Staff. As Counsel, I may have discussed with her various stages of the status of Bissell nomination.

Also, just so the record is clear, and I don't mean this to evolve into a legal discussion about the various privileges, but there is also, aside from the attorney-client privilege, there is the deliberative process in New Jersey which does apply even to nonlawyers, cabinet officers, and alike.

I'm not asserting that privilege, Senator, just so the record is clear because you asked me an open-ended question. What else other than--

SENATOR LYNCH: So are you telling me then that--

ATTORNEY GENERAL VERNIERO: If I may just finish just so the record is clear. You asked me an open-ended question, besides the attorney-client privilege, what other privilege is there. There is also the deliberative process privilege. And I just wanted the record to be clear on that.

SENATOR LYNCH: Are you suggesting that you're hiding behind a privilege when I ask you that if this search and seizure occurred while you were the Chief of Staff, which in fact it did, that you-- Did you have conversations with the Governor and advise her about the need to replace him?

ATTORNEY GENERAL VERNIERO: As I said, I don't recall a specific conversation on that while I was Chief of Staff. I might have. I just don't have a recollection of it as I sit here.

SENATOR LYNCH: Do you think that cries out for action?

ATTORNEY GENERAL VERNIERO: Well, as the newspapers described, there was action taken at the Federal level. I don't know, as I say, and if I did, I would not be at liberty to disclose what action the State criminal law authorities might have been contemplating at the same time. We are--

SENATOR LYNCH: But you had the fox in the hen house, and you had the power -- and the Governor -- to remove him almost immediately.

ATTORNEY GENERAL VERNIERO: Well, Senator, we are innocent until proven guilty. I don't know what investigation may have been pending at the Division of Criminal Justice at that time. I was certainly not privy to it if there was something. And as far as my role in selecting prosecutors, as Chief of Staff, that was a limited role. That was mainly the function of the Counsel.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: I yield my time to Senator Lynch.

SENATOR LYNCH: Why don't you give me a break?

SENATOR GORMLEY: All right.

SENATOR LYNCH: Just want to close with a couple of questions about one of the issues that I talk about in my premise, and that is the HIP-PHP sale.

In the matter, somewhere along -- around October of 1997, immediately prior to the election, your Office and the Department of Insurance and the Department of Health signed off on the asset sale from HIP to PHP, correct?

ATTORNEY GENERAL VERNIERO: That's correct.

SENATOR LYNCH: And you found your role in that to be limited because it was considered to be an asset sale as opposed to what?

ATTORNEY GENERAL VERNIERO: As opposed to a complete sale.

SENATOR LYNCH: What's your definition of a complete sale?

ATTORNEY GENERAL VERNIERO: My definition would have been, and is, a sale of all assets, the identity, the entity ceases to exist, a total and complete sale.

SENATOR LYNCH: Are you suggesting where 92 percent of the revenue is turned over to the buyer that there is not a real sale?

ATTORNEY GENERAL VERNIERO: Under-- That's just one element of the transaction. When you looked at the transaction as a whole, we saw remaining assets, we saw the corporate purpose continuing, the corporate (indiscernible) was continuing, I believe the corporate headquarters were continuing. You can't just look at one particular element or component. We had to take a broader view, and do take a broader view, in fairness to all sides of the transaction.

SENATOR LYNCH: Essentially, the State accepted HIP's representation as to the limited nature of this transaction, correct?

ATTORNEY GENERAL VERNIERO: We accepted all parties representations, which is not unusual -- accept the representations that are contained in official documents or applications. And we, obviously, arrived at our own legal judgement -- our independent legal judgement. And it was our judgement based on the two questions that we were asked to resolve: is there a charitable purpose that is continuing, and is the value of the assets fair? We

believe the answer to both of those questions was yes. And given that, our jurisdiction, in essence, ended.

SENATOR LYNCH: You knew, of course, that HIP New Jersey, by that point in time, was in significant straights.

ATTORNEY GENERAL VERNIERO: I don't know if we knew that -- if I knew that per se. When you say this point in time, what point in time are you referring to, Senator?

SENATOR LYNCH: September or October of 1997.

ATTORNEY GENERAL VERNIERO: I don't have the file in front of me. It may have been that there were some financial problems which is why they were searching for a buyer. That's an assumption.

SENATOR LYNCH: There may have been financial problems?

ATTORNEY GENERAL VERNIERO: I believe that's-- Again I don't have the file in front of me, but I believe that was one of the reasons they were searching for a buyer.

SENATOR LYNCH: Was part of the terms of the asset sale-- A lot of the funds that were put up were going to pay existing bills, correct?

ATTORNEY GENERAL VERNIERO: I don't have the agreement in front of me, so I can't answer that question.

SENATOR LYNCH: Maybe I'll try to refresh your recollection on something. The HIP Vice President General Counsel, Fred Title (phonetic spelling), in the September 15, 1997 letter to Deputy Attorney General Mark Simon, provided HIP's justification for the interpretation of the transaction:

“The assets being conveyed do not represent a significant or substantial portion of HIP’s total assets. HIP will receive \$72.6 million in exchange for the transfer of fixed assets worth approximately \$128 million.”

Do you recall that?

ATTORNEY GENERAL VERNIERO: If I may see the letter, I may have a recollection of it.

I don’t recall seeing this letter at the time because I didn’t handle that level of detail in the review, but I certainly have read and understand what’s in this letter as you now present it to me.

SENATOR LYNCH: That letter suggests, does it not, that some regulator (indiscernible) the issue of whether the transaction involved a substantial portion of HIP’s assets?

ATTORNEY GENERAL VERNIERO: That’s a fair assumption that there questions going back and forth between Counsel and my Office. And this may have been in response to some of those questions.

The letter opens up, “Thank you for the opportunity to explain why,” so there is a reasonable assumption that there were some questions being asked of my Office, and this was the response.

SENATOR LYNCH: And with 92 percent of HIP’s largest asset, its premium revenue going to PHP as part of this transaction, you didn’t view this as a sale of a significant portion of HIP’s assets?

ATTORNEY GENERAL VERNIERO: I don’t think I put a label on what portion. You asked me the difference between a complete sale versus a noncomplete sale or a sale of assets. This was not a complete sale under the definition and the conclusions and assumptions that we were operating under

at the time. So we were able to determine and we believe, at that time, it was the correct legal conclusion that based on all the circumstances, this was not a complete sale.

I don't think this letter is inconsistent with that conclusion.

SENATOR LYNCH: Let me refer you to a October 28, 1997 approval letter signed by then Commissioner Randall and then Chief of Staff John Coller (phonetic spelling) which specifically states, "The proposed transaction involves the sale of 62 percent of HIP's admitted assets, which qualifies as substantially all of HIP's assets. The asset purchase agreement, therefore, involves a change in controlling ownership interest."

Do you recall seeing that?

ATTORNEY GENERAL VERNIERO: As I say, I don't recall seeing it at the time because I was not involved in that level of detail. I obviously see it now, and I've read it. My understanding of this letter, as I read it here, is that and I don't have the NJAC regs here to verify this, but under the regulatory function of the Departments of Banking and Insurance, and Health and Senior Services-- They had to make a determination, and I think, in particular, this was Health and Senior Services -- had to make a determination whether there was a need for any sort of amendment to their certificate of authority. And based on their definition and the assumptions they were operating under for the purposes of that particular regulation, they had determined that there was a significant sale of assets, as this letter describes. That is not--

SENATOR LYNCH: And it references the regulations that trigger a consideration of the financial condition of the acquiring entity.

ATTORNEY GENERAL VERNIERO: Yes, but as I indicate--

SENATOR LYNCH: And what did you do then?

ATTORNEY GENERAL VERNIERO: As I indicated in my earlier testimony, there are no such regulations that the Department of Law and Public Safety operates under in the charitable trust area.

SENATOR LYNCH: But you staffed-- Your Office staffs the Department of Health and the Department of Insurance.

ATTORNEY GENERAL VERNIERO: We dispense legal device, we don't staff the office.

SENATOR LYNCH: Right, you can dispense legal advice.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: And armed with that opinion, specifically referencing the regulation that triggers the consideration of the financial condition of the acquiring party, didn't you think it was necessary to see what the condition of that acquiring party was?

ATTORNEY GENERAL VERNIERO: That was not a function that my Office would normally play in the discharge of the charitable trust doctrine. What we would have done in this or any other case is to describe what the legal obligations were, or if were asked a question from those client agencies, we would advise them as to the range of policy choices. And this letter to me is a memorialization of a determination that was made by Commissioner's Randall and Fishman as described in this letter.

SENATOR LYNCH: Aren't you responsible to determine that the Department satisfy all the regulations?

ATTORNEY GENERAL VERNIERO: I'm responsible, generally, to ensure that all the laws are faithfully executed.

SENATOR LYNCH: Well, here you have some specifically stated that triggers the oversight of the financial condition of the purchaser, and yet the only thing in the record that appears to be relevant to that issue is an analysis done by a firm representing HIP, Wasserstein and whatever it is. That, in effect, states that the financial condition is okay but then disclaims that that could be used for any other purpose other than the client. Certainly, you didn't rely upon that, did you?

ATTORNEY GENERAL VERNIERO: We relied on the Wasserstein letter as a determination as to whether or not the fair market value of the assets was, in fact, a fair market value. I believe the price paid was in excess of \$72 million. The legal conclusions were our own. We didn't rely on Wasserstein for the legal conclusions.

I think it's important to state for the record that in all of the discussion and debate I've heard about the HIP matter, no one had come forward to say that the Wasserstein opinion was wrong, i.e. that the value of the assets were not, in fact, \$72,000 -- excuse me \$73 million. And that's what we were trying to assure ourselves because that is one of the primary purposes of the Attorney General review, to ensure that the charitable assets -- the charitable trust is maintained.

So, if we were satisfied, and as I say no one today has contradicted this, that the \$73 million was fair market value, then we were appropriately discharging our function--

SENATOR LYNCH: How is anyone going to make that determination unless they're brought in and paid to make that type of analysis? You knew, at this time, that Wasserstein was going to get a commission out of this sale if it was approved. Speaking of conflicts--

ATTORNEY GENERAL VERNIERO: Well, this was part of a bid process, as I understand it--

SENATOR LYNCH: Answer the question. Did you know that Wasserstein was going to get a commission out of this sale if it occurred?

ATTORNEY GENERAL VERNIERO: I don't know if I knew that, per se. I assume that since they were retained -- or not me, my Office, I would assume that's a fair assumption if they were retained by the HIP board that there was some sort of consideration between the HIP board and their consultant. But that doesn't change the fiduciary obligation of the Wasserstein firm. It doesn't matter who pays your bill. When you issue an opinion on your firm letterhead, whether you're a law firm or whether you're a finance house, your reputation is on the line, your license is on the line, and it better be a correct opinion, particularly when you're submitting it to the Attorney General's Office.

SENATOR LYNCH: I suggest to you that you're wrong, that if you read the language of the Wasserstein-Perella opinion on the financial condition, it says that "it is understood that this letter is solely for the benefit and use of the board of directors of the company in its consideration of the transaction contemplated by the agreement and the health agreement and may not be relied upon by any other person or used for any other purpose or

reproduced, quoted, or referred to at any time or in any matter or for any purpose without our prior written consent.

“This letter does not constitute a recommendation to any person with respect to whether or not to approve the agreement and health agreement and should not be relied upon by any person as such.”

Did you read that letter?

ATTORNEY GENERAL VERNIERO: I did not read it at the time, I’ve heard you recite it, and I read it since this issue became an issue in the press.

SENATOR LYNCH: But you’re quoted as saying that you relied upon Wasserstein.

ATTORNEY GENERAL VERNIERO: My Office relied upon the evaluation contained in this letter.

SENATOR LYNCH: Not you, your Office.

ATTORNEY GENERAL VERNIERO: Yes, and I ultimately approved it.

SENATOR LYNCH: Now, this was a few weeks in front of the election of 1997, and you were aware that there was some threat and shutdown of some of the HIP facilities, weren’t you?

ATTORNEY GENERAL VERNIERO: I believe that might have been in the press. I can’t say I had independent recollection of that.

SENATOR LYNCH: No further questions.

SENATOR GORMLEY: Senator Lynch. (laughter)

We have approximately one hour of questioning left that will be on profiling of the State Police. We will convene tomorrow at 10:00 a.m. It

will be a mix-- Let's say the questioning will run about an hour and one-half, and there will be testimony taken from witnesses. Assemblyman Charles will be the first witness, and other witnesses will be allotted a period of time to make their statements. I would approximate that we'll be getting to a vote around 12:30 p.m. to 1:00 p.m.

SENATOR MATHEUSSEN: Mr. Chairman?

SENATOR GORMLEY: Yes.

SENATOR MATHEUSSEN: If I may-- The General will be back tomorrow for further questions?

SENATOR GORMLEY: Yes.

SENATOR MATHEUSSEN: We precluded with regard to the HIP-PHP matter from--

SENATOR GORMLEY: I'll tell you what I'd like to do. Why don't you do whatever questions you'd like to ask about HIP right now so that we can limit the questioning tomorrow-- I'm not trying to limit-- I think everybody knows we haven't been trying to limit--

SENATOR MATHEUSSEN: Limit the subject.

SENATOR GORMLEY: --the subject matter, so we can just do profiling tomorrow.

SENATOR ZANE: Senator Gormley, are there members of the public scheduled to testify tomorrow, or not?

SENATOR GORMLEY: Yes, there will be some.

SENATOR ZANE: Any idea of how many that you know of now, approximately? Are you talking 10, 5?

SENATOR MARTIN: Are you asking the number of witnesses?

SENATOR ZANE: Yes.

SENATOR MARTIN: That was my question?

Do we have a list of witnesses?

SENATOR GORMLEY: We would set a time, approximately four or five minutes, to make their statements.

SENATOR ZANE: Can we hear who they are? If you got 10, you can read them quick. As long as it took you to grin, you could have read them.

SENATOR GORMLEY: Okay, why don't we do the HIP questions right now.

SENATOR ZANE: Can you read the names?

SENATOR GORMLEY: We're going to go ahead with the HIP questions. You can come over and look at the names. We're going to look at the HIP. And I'd like to see you for a second, Senator Zane.

SENATOR ZANE: Come on over.

SENATOR GORMLEY: Senator Matheussen.

SENATOR MATHEUSSEN: General, this is a follow-up to the questions that were generated by Senator Lynch.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: As I understand it, the firm that brought these two parties -- they have been paid a commission, is that correct?

ATTORNEY GENERAL VERNIERO: That is my understanding, but I don't have precise information on that.

SENATOR MATHEUSSEN: Do you know if that is to be the standard of how these arrangements are drawn, that they're paid a commission,

or is that something that you know nothing about, or is that something that is unusual in a practice?

ATTORNEY GENERAL VERNIERO: It doesn't strike me as being unusual. The fact that a board of directors would retain a consultant, particularly one as noted as the Wasserstein firm to render an evaluation of assets, and that we would rely on that -- that is not unusual in my judgement.

SENATOR MATHEUSSEN: Do you have any independent knowledge or knowledge that was provided to you in the Office that would have given you some indication as to the financial status, or lack thereof, of HIP at the time this agreement began to be discussed with PHP and the firm that eventually put it together? Do you know what HIP's financial condition was at the time?

ATTORNEY GENERAL VERNIERO: As I sit here, I do not know. It is possible that somewhere in the files in my Office there is some financial information on that.

SENATOR MATHEUSSEN: Do you have any recollection at all as to whether it was a positive or negative implication with regard to their financial status? Was there anything that indicated that HIP may have been in trouble at the time?

ATTORNEY GENERAL VERNIERO: My assumption is that there were some problems, which is why they were trying to commence the sale. But I don't have, as I say, independent precise information on that, Senator.

SENATOR MATHEUSSEN: Would that have, perhaps, accelerated the timeliness of the review conducted by the Department of Banking and Insurance if, in fact, HIP were financially in trouble?

ATTORNEY GENERAL VERNIERO: It may have. It certainly would have, I would think, accelerated the various requests for approvals by the various parties. If there was a financial urgency to it, that would not be unreasonable or improper under those circumstances, in my judgement.

SENATOR MATHEUSSEN: Specifically, would that have been judged by the Department of Banking and Insurance, or would it have been judged by the Attorney General's Office?

ATTORNEY GENERAL VERNIERO: That would have been judged by the Banking and Insurance Department if there were any licenses that had to be issued or any official action from a policy perspective. It is possible that my Office would have recognized that as a timing issue as well. It may or may not have happened in this case. As I say, the threshold determinations were made at the staff level, and then I approved them.

SENATOR MATHEUSSEN: What, if any, role would you have played in that regard?

ATTORNEY GENERAL VERNIERO: In the HIP matter as a whole, the role that I played was-- I was briefed as to the overall framework of the transaction, these various components that I have spoken about. There were recommendations made as to the legal conclusions that these assets were part of a sale, but not a complete sale, and that the charitable purpose was continued. And I agreed with those legal conclusions.

SENATOR MATHEUSSEN: Do you know if there were any other ready and available buyers out there other than PHP?

ATTORNEY GENERAL VERNIERO: As I sit here, I don't know. My assumption is that because this was part of the bid process that this was the best buyer out there. That's just an assumption. I don't know if that's actually the case.

SENATOR MATHEUSSEN: So you don't know if it was the best buyer or the exclusive buyer?

ATTORNEY GENERAL VERNIERO: As I sit here, no. I don't know that, Senator.

SENATOR MATHEUSSEN: I have no further questions.

Thank you.

SENATOR GORMLEY: Thank you.

Tomorrow at 10:00 a.m.

ATTORNEY GENERAL VERNIERO: Thank you, Mr. Chairman.

Thank you, Senators.

(HEARING CONCLUDED)