

**COMMITTEE MEETING**  
of  
**SENATE JUDICIARY COMMITTEE**  
(NOMINATIONS)

Held:  
March 1, 1984  
Room 114  
State House Annex  
Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

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

**ALSO PRESENT:**

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

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**SENATOR JOHN A. LYNCH (Chairman):** I am sorry we are late in getting started. I think we have to remind some of our members that we should start on time, Mr. Senate President. I hate to be the one who has to remind everyone of this, because I am usually the one who is late. I sound like some of our assignment judges in this State who, when they practiced law, were guilty of all the things they now tell us lawyers not to do.

We talked last Monday about meeting on March 8 in order to discuss the request by Attorney General Kimmelman to be invited to appear before this Committee with regard to the chemical control controversy. I know so far I have only heard from Senator Gormley about a problem. Does anyone else have a problem with March 8?

**SENATOR ORECHIO:** Mr. Chairman, let's take care of that matter later. We have a lot of important people here today.

**SENATOR LYNCH:** Commissioner Horn, obviously the Senate President wants to make sure you get out of here quickly. So, out of deference to the Executive and not to look askance at the Judiciary, we are going to go with the Executive first. Commissioner Horn, would you come forward, please?

Good morning, Commissioner. (At which time Senator Lynch introduces the members of the Committee to Commissioner Horn)

**COMMISSIONER MICHAEL HORN:** Thank you, Mr. Chairman, Senate President, and members of the Judiciary Committee. I would like to thank you first of all, Senator Lynch, for scheduling my appearance on an expeditious basis. I believe this will help to provide for a smooth transition.

Needless to say, members of the Committee, I am honored that Governor Kean has placed my name in nomination for the office of State Treasurer. Both the Constitution of the State of New Jersey and the statutory law, impose heavy and serious responsibilities on the holder of that office. I have submitted my educational and professional background to the members of this Committee, as well as my experience in State Government. Years ago, I was a member of the General Assembly, and these past two years I have served as Commissioner of Banking. I believe both of these positions have provided me with the background and experience to carry out the duties of State Treasurer.

Thank you, Mr. Chairman, I would be happy to answer any questions the members of the Committee may have.

SENATOR LYNCH: I have a couple of questions, Commissioner. There are a lot of us who kind of hate to see you leave as Commissioner of Banking because not only have we in the Legislature been extremely satisfied with your work product, but so have the people in the industry. With all of the criticism the news media gives to lawyers and the things that lawyers do in this State, I think we ought to pay special tribute to you for a job well done as Commissioner of Banking. I am sure there are a lot of people who do not like to see you leave that position. Maybe within the next couple of months, you will regret that move as well.

COMMISSIONER HORN: Thank you, Mr. Chairman, for those compliments.

SENATOR LYNCH: I do have some questions before Senator Orechio gets to the business of making sure we get this nomination moving.

As you know, there has been a great deal of legislative interest in the Governor's plan to reorganize the Department of the Treasury. In fact, the Assembly and Senate State Government Committees recently held a public hearing on that plan. What is your impression of the plan, and how do you see the reorganization affecting your role as State Treasurer?

COMMISSIONER HORN: I read the plan. I read the letter that was sent to the Senate President, and to the Speaker of the Assembly. I read the Attorney General's opinion, and I discussed it with the State Treasurer. I concur with the conclusions reached in Deputy Treasurer Stringer's letter to the Senate President and the Speaker: The reorganization will provide for an efficient and smoothly-operated Department of the Treasury. The changes are not many, but they are significant.

SENATOR LYNCH: Could you go into more detail and be more specific? As you know, the most controversial aspect of the reorganization plan is the creation of the new Office of Management and Budget, and how that will impact on the budgetary process. What do you

see as the relationship between yourself as Treasurer, Mr. Fasola as Director of OMB, and Mr. Standiford as Director of Budget and Accounting, vis-a-vis budget matters? To put it another way, from the perspective of the Joint Appropriations Committee, who do you see as the Department's principal liaison budget officer?

COMMISSIONER HORN: Well, to start off with, the statute provides that the holder of the Office of Director of the Division of Budget and Accounting, an office which is held by Mr. Standiford, has the statutory responsibility regarding appropriations and presentation of the budget. Nothing in this plan should or could change that.

SENATOR LYNCH: Did you say nothing could?

COMMISSIONER HORN: Could or should.

SENATOR LYNCH: Maybe nothing should.

COMMISSIONER HORN: Okay. I believe in following the State statutes. Mr. Fasola is an administrator of the Office of Management and Budget. Under the plan, he is to act as a coordinator, as someone who reports to the Treasurer, along with Mr. Standiford, on the issues that are occurring in that Division.

Mr. Fasola, just as is the case with Mrs. Felker in the Office of Financial Management, has no statutory duties or authority. The only authority that both of them will have is that which is designated by the Treasurer.

I do think that having the Office of Budget and Accounting, along with other agencies' management services planning, will provide us with a more coordinated and efficient method of preparing budgets, implementing budgets, and planning for the future.

SENATOR LYNCH: Are you satisfied that there will be no usurpation of power by Mr. Fasola's office from either you, as Treasurer, or the Director of Budget and Accounting?

COMMISSIONER HORN: No. I would not allow it. There can only be one Treasurer, and one Deputy Treasurer. I will be Treasurer, upon confirmation, and Mr. Stringer will be Deputy Treasurer. Mr. Fasola, as well as Mrs. Felker, will report to us.

SENATOR LYNCH: We have seen a lot of controversy, particularly during the last 12 months, with regard to the State's

Triple A bond rating, and whether or not particular bond issues, some of which wound up on the ballot last November, would affect the Triple A bond rating. We now have a proposal by the Governor to finance various transportation projects by establishing so-called "moral obligation bonds." We have seen some reports from investment bankers, and even a suggestion by your predecessor, Mr. Biederman, that this funding scheme might impact negatively on the State's bond rating. Do you have any comments or opinions with regard to that subject?

COMMISSIONER HORN: Just two, Senator. The first is that I am not familiar with the details of the program, although I have read the Governor's message with respect to it. But, there is one thing I can state for sure: Both the Governor and myself are absolutely committed to maintaining the State's Triple A bond rating. I would not authorize any actions which would result in a lessening -- or a decrease -- in that rating.

SENATOR LYNCH: So, I take it you will be addressing that subject matter in the not too distant future to ensure that those so-called moral obligation bonds are not going to have a detrimental effect on our Triple A bond rating?

COMMISSIONER HORN: That's correct.

SENATOR LYNCH: All right. There is also a lot of controversy going on with regard to the budget surplus for fiscal '84. As Treasurer, what would you consider to be a prudent and reasonable surplus in a budget of over \$7 billion?

COMMISSIONER HORN: I'm not sure that the size of the surplus should be directly related to the size of the budget. I would suspect that the size of the surplus should be related partially to the size of the budget, and partially to the analysis of future tax revenues and expenditures which are expected to be made in the foreseeable future. So, as a percentage of appropriations or revenues, I could not give you an exact figure. I think each year the surplus ought to be a function of all of those factors, not just the size of the State budget.

SENATOR LYNCH: The size of the surplus, obviously, is always in controversy. It seems that every November through March the



predictions of the surplus coming out of the Treasurer's office from the Administration -- whether it be Democrat or Republican -- is always significantly lower than it turns out to be. Do you think it is good policy to obviously underestimate the surplus? Do you intend to continue with that, or would you be more inclined to come up with an objective analysis of the surplus in order to determine what you feel it is obviously going to be?

We now have a controversy with the budget surplus. Some people are saying the surplus is going to be \$150 million or \$190 million. There are some legislators who are interested in surplus matters and who are relating to it on a day-to-day basis, and they think it is going to be \$300 million, or better. Do you think it does any good for a Treasurer to try to be straightforward on the budget surplus, or is it better to underestimate it?

COMMISSIONER HORN: Well, as Banking Commissioner I have always used a forthright approach with the Legislature as my guide. I intend to carry that out. The Legislature has access to the same monthly revenue reports as the Treasurer does, and I intend to be forthright with respect to the size of the surplus.

SENATOR LYNCH: Maybe I am not asking this as a question, but it seems to me there is a perception on the part of the public and people who work in and through the government, when they hear and read about the predictions regarding the surplus and they know that the figures are consistently underestimated, that the system loses credibility. Do you find that to be true, that the perception of the system is bad?

COMMISSIONER HORN: I would like to believe that members of the public read the estimates of the surplus and take them seriously, but I am not sure that those outside of government are as concerned or interested as those inside government. I would like to believe that they are.

SENATOR LYNCH: There are an awful lot of people out there who are interested in particular types of funding, and who do not find that they are receiving the level of funding necessary for their programs -- whether they are in government service, in the various

social service agencies, or in educational circles. I think they are directly involved with the budget, with its surplus, and with ongoing attempts at trying to obtain supplemental appropriations, and they hear there aren't any dollars; they then consistently find out, at the end of the fiscal year, that there is an inordinate surplus compared to what had been predicted for the previous nine to 12 months.

COMMISSIONER HORN: I understand what you are saying. Yes, I can understand that. I guess that is what makes the job of the Legislature and the Governor's office so difficult. There are a good number of, I will call them special interest groups -- and I am not saying that in a deprecating manner -- who would always like to have a piece of whatever pie is left over. That is what makes decision-making so hard for both the Legislature and the Governor. I guess the answer is, you are correct when you say that if the amount of the surplus turns out to be higher than was estimated, there could be some disappointment on the part of those groups.

SENATOR LYNCH: It has been reported that the Governor's Pension Study Commission is prepared to make its final report later this month. Apparently, this report will contain recommendations for restructuring the State's pension system, to which several public employee groups have raised some objections already. Could you comment on these recommendations and how you would deal with those groups who are in opposition to the recommendations?

COMMISSIONER HORN: I have read newspaper accounts of the proposed Pension Study Committee report, but I haven't seen the report. I can only tell you that I will read it carefully, and when I do read it in detail, I will make a public statement with respect to my views on it. I am not sure that published reports on a report which has not yet been issued is the proper forum to use in order to analyze the report. I think we will just have to wait until it is issued.

But, rest assured, Senator, that when it is issued, I will report on it.

SENATOR LYNCH: While we have you here Commissioner -- on a more parochial basis -- for several years, leaders from both parties in the Legislature have been attempting to secure the cooperation of the

Executive branch, particularly the Treasurer's office, to implement a plan for the maintenance and historic restoration of the Capitol Complex, especially the Senate and Assembly Chambers. Can we count on your cooperation and support in this regard?

COMMISSIONER HORN: Speaking as someone who served in the Assembly, as long as it is preserved architecturally historical, I would certainly be in support of measures that would make it more comfortable -- and safe and sound, I might say.

SENATOR LYNCH: It would seem that with the predictions on the surplus, the timing may be pretty good for us to get moving on that.

COMMISSIONER HORN: I wouldn't argue with that.

SENATOR LYNCH: Do the members of the Committee have any questions?

SENATOR GORMLEY: I have just one comment. Maybe we can make sure that the ratio of the surplus in the entire budget would be at the same level as New Brunswick's.

SENATOR LYNCH: We would be in serious trouble if that were the case. That is because the State doesn't give us the full funding that most of you people receive. Trenton gets more money for the Justice Complex than we get for 30,000 students and 1,500 buildings.

Are there any further questions?

SENATOR RUSSO: Mr. Chairman?

SENATOR LYNCH: Yes, Senator Russo?

SENATOR RUSSO: I just want to say I think you did a masterful job in covering the issues we talked about, and were concerned about. Those were the questions I would have wanted to ask, but I think you covered them thoroughly, so I have no questions.

SENATOR DORSEY: Mr. Chairman?

SENATOR LYNCH: Senator Dorsey?

SENATOR DORSEY: If there are no other questions, inasmuch as the Commissioner, about-to-be-Treasurer, is from my--

SENATOR ORECHIO: (interrupting) I have a question, Mr. Chairman.

SENATOR LYNCH: Senator Orechio.

SENATOR ORECHIO: Mr. Horn, I have a question regarding the capitalization of lease-hold improvements. Many times, we have situations where the State is a tenant and the landlord makes renovations. The lending rate for the landlord is higher than the prime rate. But, it has been the policy of the Treasurer's office to ignore that, and the interest which is agreed upon and becomes part of the lease is the interest the landlord pays to the bank. Now, with the State being the tenant, and with the high-quality of the loan, it seems to me that the State should be in a position to borrow the money at the prime rate. As a matter of fact, the State could probably, ultimately, make that portion of the payment directly to the bank, in order to ensure the payment on the note.

So, what this would really mean is a change in policy on the part of the Treasurer's office to effect that. What would then happen is, the reduction in the interest and the amortization of that loan for the renovation would certainly inure to the benefit of the State. I was wondering whether or not you would consider that policy?

COMMISSIONER HORN: I was unaware of the issue, Senator. I will be happy to have it looked at and report back to you on it. What you say certainly makes sense, and I will be happy to look into it.

SENATOR ORECHIO: I have a letter that is being sent by counsel to your predecessor; I will pass it on to you.

COMMISSIONER HORN: Thank you, Senator.

SENATOR ORECHIO: I just want to say one other thing. This is not a question, Mr. Chairman and members of the Judiciary Committee. Michael Horn is a graduate of three institutions of learning: Harvard Law School, Princeton University, and Nutley High School. We are certainly very proud of Michael and his accomplishments, and at the proper time -- since you are no longer my property, but are the property of John Dorsey -- I will second the nomination to release your name.

COMMISSIONER HORN: Thank you, Senator. May I also reply by saying that I have been fortunate to know the Senate President since my youth. We used to play in the same softball league. I don't know if the Senator is still good at it. (laughter)

SENATOR LYNCH: Yes. He owned the bat and the ball too I'll bet. It was his league, wasn't it?

COMMISSIONER HORN: He was quite a first baseman in those days.

SENATOR HIRKALA: Mr. Chairman, I knew Senate President Orechio would mention Nutley. Mike Horn was born in Nutley and he graduated from Nutley High School.

I have to defer to Senator John Dorsey today because John Horn presently resides in Morris County. But, most of his success was engendered in Passaic County, where I ran into him at many Republican affairs when I was a Democratic Assemblyman. He was always a gentleman. He has an inherent intelligence and ability that he has displayed as the Commissioner of Banking. They say in the State House that if Michael Horn had been the Commissioner of Banking and Insurance, rather than Banking alone, we might now be out of this mess. It is a pleasure to support his nomination.

SENATOR LYNCH: I hope the news media says the same thing. I also hope they mention the fact that you are a lawyer.

Senator Dorsey, Senator DiFrancesco, welcome to the Committee. I know that Commissioner Horn was waiting with baited breath for your arrival. Do either of you have any comments on this nomination?

SENATOR DiFRANCESCO: Well, one comment is, I am just very happy the Democratic majority decided to start something on time, so I am sorry I was late. (laughter) I had anticipated a short delay, but when I saw Russo and Orechio here together, with the cameras, I knew that was why we started on time.

I have no questions.

SENATOR LYNCH: Did you have a press conference somewhere, or did you announce your candidacy for some office today? (laughter)

SENATOR ORECHIO: Mr. Chairman, I just wanted you to make the Minority Leader aware of the fact that when one makes inflammatory remarks about the leadership of the Democratic majority, he runs the risk of being replaced as a member of this very powerful Committee.

SENATOR DiFRANCESCO: I have been running that risk for two years.

SENATOR LYNCH: Senator Dorsey?

SENATOR DORSEY: Notwithstanding the fact that Mike Horn has gone to all the wrong institutions -- for one, he went to Yale College and Yale Law School -- for all the right reasons I think his nomination by the Governor is an outstanding one. He certainly has done a tremendous job in the position he has held for two years, and I know he will do an outstanding job in this perhaps even more important appointment; therefore, I am pleased to move his nomination.

SENATOR ORECHIO: I'll second the motion.

(Whereupon vote is taken and nomination is released)

SENATOR LYNCH: Thank you for coming in, Commissioner. We will be getting this on the floor on an emergency basis today. Is that correct, Mr. Senate President?

SENATOR ORECHIO: Absolutely.

COMMISSIONER HORN: Thank you very, very much, all of you. I appreciate your confidence.

SENATOR LYNCH: Justice Handler? Good morning, Justice Handler.

(Whereupon Senator Lynch introduces the members of the Committee to Justice Handler)

There was some debate as to whether or not we wanted you to come in today. I think everybody here recognizes that you are certainly an outstanding jurist. You had many qualifications before you went on the bench that we all know about and respect.

Obviously, we have had a lot of controversy over judicial appointments, judicial evaluations, the role of the State Bar, the role of the Executive, the role of the Judiciary Committee, and the role of senatorial courtesy. In that context, you have chaired the Supreme Court's Committee on Judicial Evaluation of Performance. I understand that as a result of this Committee's recommendation, pilot evaluations have already been instituted in several counties -- I think they have been instituted in Monmouth, Middlesex, and Camden.

I wonder if you would report on the progress of these pilot programs, and indicate when a statewide judicial evaluation program can be expected?

**ALAN B. HANDLER:** Mr. Chairman, your information is correct. A pilot program involving assessment of judicial performance has been underway. It was initiated in the summer, and the Committee which has been overseeing this pilot project will shortly be issuing a report. This report will pull together the results of the pilot effort, reach certain conclusions, and make recommendations with respect to its continuation.

The pilot project itself was undertaken within the context of a judicial performance program that had been recommended by the Committee to the Supreme Court. It was approved by the Supreme Court, following an earlier report on such an effort, that was issued in March of 1979.

That report proposed a program of judicial performance improvement, to be initiated by the Judiciary, seeking to achieve several major goals. The primary objective of the Judicial Performance Program was to develop a technique, or a method, of reviewing -- or monitoring -- the performance of judges in the discharge of their everyday duties, which would enable judges themselves to gain, in some reliable way, insight as to how they were performing and to improve, modify, or maintain their levels of performance accordingly.

It was also recognized that in the implementation of a program which would have that as a primary objective, there were other goals that would be suitably met, such as enhancing, within the Judiciary, its ongoing educational efforts, better assisting the Chief Justice and the Supreme Court with respect to the utilization of judges within the Judiciary, and, incidentally, supplementing the efforts of the Advisory Committee on Judicial Conduct, which is concerned primarily -- indeed, it is concerned exclusively with this -- with the discipline of judges. And, incidentally, it would provide information which might, in some instances, be serviceable in the reappointive process.

The pilot project itself is very much an experimental effort. Its focus has been to test out instruments or questionnaires and methods of assessing judicial performance, collecting and capturing that information, and relaying it to the judges so that they may suitably react to the information.

I am prepared to say it will be the conclusion of the Committee that with respect to the discrete goal of the pilot project, we believe this pilot project has been a successful experiment. We think it indicates that it is feasible to assess judicial performance in this fashion, that we can look to the practicing bar as a primary source of knowledgeable and reliable information, that the program can be administered without undue interference with judges in the performance of their regular daily duties, and that it can be undertaken without any serious threat of undermining judicial independence and judicial integrity.

The Committee will also be recommending that the experimental effort be continued with the addition of perhaps one or two more vicinages, and with the addition of more questionnaires or instruments that will be designed to give us an added dimension to what we have already done. I expect that this further experiment will also be reasonably successful, and will provide a basis for the Committee to then recommend to the Supreme Court that a program be implemented on a permanent basis. I would hope that this would take place sometime during the next court term.

SENATOR LYNCH: The State Bar, as I understand it, is entering into, or looking at embarking on, a similar program of evaluation that seems to be an outgrowth of the Judge Pressler incident. Are you aware of that program?

JUDGE HANDLER: I am not certain I understand the specific reference. I am aware that insofar as the State Bar exercises a function in cooperation with the Executive, in terms of screening initial appointments, and reappointments as well, there has been inquiry from the State Bar Committee as to what the judicial efforts have produced, and whether in some fashion their own efforts can be molded accordingly. It may be that sort of thing that the State Bar is interested in.

The State Bar, at an earlier time, expressed concern and interest in mounting a judicial evaluation effort, and the State Bar has basically been cooperating with the Judiciary in their current program.

SENATOR LYNCH: When did your pilot program begin?



JUDGE HANDLER: It actually began in July of 1983. The pilot was closed off in December of 1983, and this report will embrace the results of that three or four-month period.

SENATOR LYNCH: On the same subject of judicial evaluation, it is my understanding your Committee recommended that the results of the Judicial Evaluation Program be made available to the Governor as part of the reappointment process, but this information would be made available to the Senate only at the Governor's discretion -- similar to the State Bar situation and their evaluations.

It seems to me -- and I believe most of my colleagues share the same view -- that the information should automatically be made available to this Committee when a judge is nominated for reappointment. We should not have to receive this information at the sufferance of the Executive branch. I wonder if you care to comment on that?

JUDGE HANDLER: The matter to which you refer, of course, was a recommendation. It was recognized, in propounding that recommendation, that if information concerning judicial performance is indeed reliably garnered and serves the primary purpose for which it was designed -- namely, to genuinely assist judges in enhancing their performances -- and if it can be managed in a way where unreliable, inaccurate, distorted, irresponsible information can be suitably accounted for, it would be basically salutary to the Judiciary and to judges themselves, if the other branches of government could make reasonable use of that information.

With respect to the format of the particular recommendation, I think it simply reflects the perception -- without any final decision having been made -- that ordinarily the Judiciary does not directly interfere with, or intrude upon, the exercise of the authority of the Executive or the Senate with respect to their independent, constitutional powers concerning performance and reappointment.

SENATOR LYNCH: Before I let Senator Russo ask a question, Justice Handler, the question is somehow being circumvented. I take it that your recommendation is that this information be turned over to the Executive and that it not be made available to this Judiciary Committee

unless and until the Executive approves it, and unless you can satisfy yourselves that all the information generated would have some due process type of form before it is turned over to this Committee.

JUDGE HANDLER: I think initially that has been, and is, the current position of the Committee.

SENATOR LYNCH: That has been their position since the Committee was formed last year?

JUDGE HANDLER: The Committee has been in existence somewhat longer than that. The original report made that recommendation. The Committee that was appointed pursuant to that recommendation, as I recall, basically followed it. That is almost an end result of the program. I don't believe the Supreme Court itself has really resolved what action it will take on that particular recommendation.

SENATOR LYNCH: Senator Russo?

SENATOR RUSSO: Justice Handler, with all due respect, I think the position that you have espoused -- or, rather, that the Committee has espoused -- is total nonsense. This information is given to the Executive without restraint, as I understood it.

JUDGE HANDLER: Senator, we are still talking prospectively. The program hasn't developed any information as yet. We are talking hypothetically. If, at some point, that information is able to be developed in the fashion we hope it will be developed in, it will be useful in the reappointive process.

SENATOR RUSSO: Well, you have indicated it will be useful to the Executive. At least prospectively it is the intention that this information will be -- or may be -- given to the Executive, but not to the Senate.

JUDGE HANDLER: The expression of the recommendation is basically in that form.

SENATOR RUSSO: Well, let me suggest, and incorporate in my suggestion to you a request to the Chairman, that this Committee go on record with the Chief Justice, yourself, and the members of the Committee, that if any-- I mean, the Governor makes the appointment, but we have to advise and consent, and our role is, or should be the same. Some say it is less because it is sometimes not handled properly

or thoroughly, but in my judgment, that information should be supplied to this Committee -- not necessarily to the whole Senate, but to this Committee -- which has to pass on these nominations equally with the Executive.

Mr. Chairman, I would hope that, through you as Chairman, this letter would indicate--

SENATOR LYNCH: (interrupting) It has already been done.

SENATOR RUSSO: Okay. Justice Handler, that information should be provided.

Secondly, in order not to be screened-- This is not a due process situation; it is not an adjudication of guilt or innocence. This is a determination as to whether a person is fit to be appointed, or reappointed to the bench. And, we should not receive information after this Committee screens out what they think we should have or should not have. We should receive it all. It should be our judgment to make. We are also capable of deciding what should be discarded as being nonsense and what is of value -- or valid.

Unless abuses result, should this proposal be carried out, that is the way I respectfully suggest it should be handled. I hope this will be given consideration, because the Executive's burden concerning judicial nominations is no more important and no greater than ours is. I just wanted to make my position on that issue very clear.

JUDGE HANDLER: I understand it, and I am sure that those views will be given full weight and full consideration at that point in time when the court must reach a decision as to how to handle that facet of the program, Senator.

SENATOR GORMLEY: Excuse me. I would like to add to the comments Senator Russo just made, and take them one step further. I really think this has to be looked at in terms of the potential for some people to call for an elected judiciary. I do not care for that idea, and I know, Mr. Justice -- I probably don't even have to ask you this -- that you wouldn't care for an elected judiciary either. But, if we are going to say that advise and consent suffices and takes the place of the elected judiciary that other states have, I think the

public has the honest belief that we will be looking at all of the information available regarding the background of the individuals we will be voting on.

I don't think we can look at this in terms of, "Well, we might have an alteration of the review process." I hope you realize that there are people out there who want an elected judiciary. However, those of us who don't want an elected judiciary, and who agree on the major question of not having an elected judiciary, want to be able to say, "We have the most thorough review. We know what is going on before we lend advise and consent to a particular name." That is the overall predicament we are in.

JUDGE HANDLER: I can appreciate that, Senator.

SENATOR DORSEY: I would just say that what Senator Russo and Senator Gormley have just said is a reflection of the thinking of every member on this Committee -- and indeed the entire Senate. We feel we should be treated in an equal manner, as an equal branch of government.

SENATOR LASKIN: Mr. Chairman?

SENATOR LYNCH: Senator Laskin.

SENATOR LASKIN: I normally wouldn't make any comments about this, because I am not so sure it has anything to do with your renomination Judge, but this issue is extremely important and sensitive, from my viewpoint as an attorney and as a freshman member of this Committee. Speaking as an outsider looking in over the years, I think that whether we had a Democratic Governor or a Republican Governor, there really hasn't been as much of an inquiry made by the Judiciary Committee, historically, as there has been by the Governor when naming judges.

So, I concur, to a certain extent, that if this Committee -- and I think it is -- is very serious about its role, and I think it has been very serious about its role for the last few years, it is extremely important that you understand this is not a political thing that is being addressed in a partisan sense. We would really like to be able to do more in evaluating prospective nominees.

I am not so sure that I-- I don't know yet whether I would like to see everything brought out, because then you may get into some

political problems. Somebody may not like someone, bad publicity may come out, and you could do severe damage to a person's reputation. But, I think that has to be worked out. There has to be a means of safeguarding that information. I am very sensitive to a person's reputation being destroyed by allowing information, such as we are talking about, to be brought out in a political or discourteous manner.

So, I just think some serious thought should be given to making the procedure better. And, if giving this Committee more information makes the procedure better and allows us to say we are really going to look into the background of these nominees to make sure they are really the best qualified individuals to be judges, I think that is what this Committee is looking for. I don't think anyone wants to embarrass or humiliate anybody, I just think the Committee would like to have as much information as possible, because this Committee is given the responsibility of advising and consenting these nominations.

SENATOR LYNCH: Does anybody else have any questions?

(no response)

SENATOR RUSSO: Mr. Chairman, I would like move the nomination.

SENATOR ORECHIO: I will second it.

(Whereupon vote is taken and nomination is released)

SENATOR LYNCH: Justice Handler, we thank you for coming in. I am sure your name will be on the agenda this afternoon, through Senator Orechio. We hope that we can continue this dialogue, however, in some other form, possibly in the not too distant future because this is a subject that is extremely sensitive, and it is one that we are very concerned about.

JUDGE HANDLER: Thank you, Mr. Chairman. I can assure you that the dialogue will be continued. I rather suspect that our views on the policy issues are not as divided as this exchange might have indicated.

SENATOR LYNCH: Thank you.

Judge Shelton. Good morning, Judge Shelton.

JUDGE ROBERT C. SHELTON: Good morning, Mr. Chairman.

SENATOR LYNCH: Unfortunately, Senator Dorsey is here for your sponsorship. We know that you are a good Democrat. You have served in the Assembly. It is just unfortunate you have a Republican in your district, Senator Dorsey.

JUDGE SHELTON: I have to respond to that by saying I don't think it is unfortunate that Senator Dorsey is here, nor that he represents the district in which I sit. However, he does not represent the district in which I live.

SENATOR DORSEY: That's true. Actually Judge Shelton is from Senator Dumont's district. But, I have to say that I think he has spent the better part of his judicial career in Morris County, which I represent. And, notwithstanding the fact that he served in the Legislature -- in the Assembly -- as a Democrat, he has done an outstanding job as a Superior Court judge in a Republican county.

I didn't realize that he was going to be here today. I was not notified until I arrived. But, I must say he has done an excellent job. He is extremely well thought of by the bench and the bar in Morris County. He is thought to be very bright and articulate, and I am very pleased to move his nomination, unless there are any questions of Judge Shelton.

(no questions)

SENATOR ORECHIO: I second the nomination if there are no questions.

(Whereupon vote is taken and nomination is released)

SENATOR LYNCH: Thank you very much, Judge Shelton.

JUDGE SHELTON: If I might take a moment of your busy time, Mr. Chairman, I want to thank you for asking me here today. It is good to see some old friends that I haven't seen in a long time -- Senator Hirkala, and Senator Russo. Of course, I still see Senator Dorsey once in awhile.

It is a pleasure to be here, rather than hearing domestic relations, which I was assigned to today. Very frankly, I enjoyed the ride down here today; it has been a long time. Thank you.

SENATOR LYNCH: Judge, we would be remiss if you had some remarks that you wanted to make to this Committee concerning matters of

policy or matters of law, as you perceive them. If you have something on your mind, we would certainly welcome giving you the opportunity to express your thoughts and concerns.

JUDGE SHELTON: Well, I think most of you who know me know that I am opinionated, and those of you who are lawyers also know that I must keep those opinions to myself. Thank you very much.

SENATOR LYNCH: Thank you, Judge.

Judge Guerrero? Good morning Judge.

**ARTHUR GUERRERA:** Good morning, Senator.

SENATOR LYNCH: Senator Gormley?

SENATOR GORMLEY: Judge Guerrero has been serving on the bench since 1979. He has an excellent reputation in juvenile domestic relations. He was additionally in Juvenile Domestic Relations Court, and all the members of the judiciary and of the bar hold him in high esteem in Atlantic County. At the appropriate time, I would be proud to move his nomination.

SENATOR LYNCH: Judge, do you have any comments or concerns that you would like to address to this Committee today?

JUDGE GUERRERA: Not at this time.

SENATOR LYNCH: You are sitting now in Family Court?

JUDGE GUERRERA: I am sitting now in the Criminal Division.

SENATOR LYNCH: In the Criminal Division? How long have you been sitting in the Criminal Division?

JUDGE GUERRERA: Since September.

SENATOR LYNCH: And, that is in Atlantic County?

JUDGE GUERRERA: Yes.

SENATOR LYNCH: How many judges are sitting in Criminal Court in Atlantic County?

JUDGE GUERRERA: Three -- with myself four.

SENATOR LASKIN: In Atlantic County all of them must sit in Criminal Court. (laughter)

SENATOR LYNCH: Senator Gormley wants to be the conservator down there.

JUDGE GUERRERA: There are four judges sitting in Criminal Court.

SENATOR GORMLEY: All right, you will be the conservator now; you'll be sorry.

SENATOR LYNCH: Are there any questions from the Committee?  
(no questions)

If not, do I hear a motion?

SENATOR DORSEY: I make the appropriate motion.

SENATOR ORECHIO: I second it.

(Whereupon vote is taken and nomination is released)

SENATOR LYNCH: Thank you very much, Judge.

JUDGE GUERRERA: Thank you.

SENATOR LYNCH: Judge Huber? Judge, Senator Russo is very anxious to accommodate you. Does he appear before you often?

JUDGE WILLIAM H. HUBER: Not any more. (laughter)

SENATOR LYNCH: I am sure you know all of the gentlemen here, but I will introduce them again.

(Whereupon Senator Lynch introduces members of Committee to Judge Huber)

Do you have any comments that you would like to offer here today, Judge?

JUDGE HUBER: No, I don't.

SENATOR HIRKALA: Mr. Chairman?

SENATOR LYNCH: Senator Hirkala?

SENATOR HIRKALA: I would like to ask a personal question. Judge, do you wear glasses?

JUDGE HUBER: Yes, when I read.

SENATOR HIRKALA: Do you have any black-rimmed glasses?

JUDGE HUBER: I wouldn't say they are black, but they are sort of tortoise-shell.

SENATOR HIRKALA: Would you put them on?

JUDGE HUBER: Certainly.

SENATOR HIRKALA: Has anybody ever told you you look like Dick Hughes?

JUDGE HUBER: Yes. (laughter)

SENATOR HIRKALA: Okay.

SENATOR LYNCH: Senator Russo?



SENATOR RUSSO: Thank you, Mr. Chairman. I am going to move this nomination in spite of the fact that Judge Huber -- at least not as of this time -- has not bought any tickets to my victory dinner scheduled for tomorrow night.

UNIDENTIFIED SENATOR: That is against the cannons of ethics.

SENATOR RUSSO: I would like to say a few things on this nomination, because this will give Judge Huber tenure. It is the last opportunity I will have to say anything, so I can get even with him now, while I have the microphone, for a lot of things that have taken place over the years.

Judge Huber first appointed me as his Assistant Prosecutor, in 1961. It was at a rather difficult time in my life, I might add, and it was really a tremendous thing for me. I served as Assistant Prosecutor with Judge Huber until he went on the bench.

Of course, Judge Huber now has a total of 18 years on the bench as a judge, and I guess he served six or seven years before that as Prosecutor. We became, as Judge Huber did with all of his staff, very close friends.

I just want to say two things at this time, just because I feel like saying them and not because they are going to make any difference to his reappointment, which is assured.

Number one, Judge Huber has probably been one of the most dedicated judges that we have ever had in Ocean County, and probably one of the most dedicated judges in the State. As you know, we have had other judges from our County here in the past, and I don't make these comments lightly; I make them sincerely. I haven't always agreed with his decisions, but then there is no judge that any of us will agree with all the time.

Judge Huber has dedicated himself to being the best judge he is capable of being, and he has been capable of being a good one.

Secondly, Bill Huber has probably been one of the finest human beings I have ever known. And, I don't mean to embarrass you, Judge, by saying these things publicly -- but I am going to say them anyway. He is a man that believes strongly in everything he has been connected with, and by that I mean family and religion.

I can remember occasions when I would be traveling and I would miss Mass on Sunday, so I would go on Tuesday -- or something like that -- and there would be Judge Huber. His dedication to his family is the same. He has a whole bunch of children. I have watched them grow up, although I haven't seen them for a number of years now. But, they have are wonderful children, and so is his wife, Betty.

He has just lived the kind of life I wish, really, I could say I have lived, or could live. Hopefully, it hasn't been all that bad, but it hasn't been as good as Judge Huber's. (laughter)

Judge Huber has just lived the kind of a life, both as an individual and as a judge, that I think probably we all ought to try to live. Yet, he did this always with a sense of humor.

We thought he was a "stiff," frankly, at first, until we got away at some dinner somewhere, and we then found out that he had quite a sense of humor. He has just been a good person. I want to say these things for the benefit of the Committee, although I don't think it will affect the nomination, one way or the other.

Bill, I just wanted you to know that I, for one, think I have been just a little bit better in my life because of the years I spent under you, working for you, and learning from you, and I want to thank you for that. The best of luck.

JUDGE HUBER: Thank you, John.

SENATOR LYNCH: Unless there are any other questions, Senator Russo--?

SENATOR ORECHIO: Mr. Chairman, I just have a comment to make. I think Judge Huber ought to know this. John Russo has told me time and time again that he hasn't met anyone in his lifetime who was closer to God than you, number one. Number two, I also want to thank you for your courtesy. I once asked you for a parking space in your court area -- this was at a time when I had to come down into your area -- and I want to thank you publicly for the favor you granted me. And, at the proper time, I will be very happy to second your nomination.

SENATOR LYNCH: Senator DiFrancesco.

SENATOR DiFRANCESCO: I won't go into the lengths I would like to because of the time constrictions, but one thing that John Russo said puzzled me. Are you Catholic, Judge?

JUDGE HUBER: Yes.

SENATOR DiFRANCESCO: I assumed he was, or is, or "whatever."  
(laughter) He said when he missed Mass on Sunday, he would go on Tuesday and you would be there. Perhaps I lost touch with the rules of the Church, but I thought the obligation was a Sunday obligation, and that you couldn't make it up on Tuesday, or Wednesday, or Thursday, or whenever you wanted to. Is that the way he practiced law when he worked for you? (laughter)

JUDGE HUBER: Not precisely, but I must say that I, at one time, fired him from the job. I wrote out the letter of dismissal, and I put it in my desk. As I remember the facts, he was trying a criminal case and he wanted to leave before the case was over because he wanted to go to Florida.

SENATOR ORECHIO: He still has that habit.

JUDGE HUBER: So, luckily, he stayed and the letter was torn up, or maybe I wouldn't be here.

SENATOR HIRKALA: Now he goes on skiing trips.

JUDGE HUBER: That's correct.

SENATOR RUSSO: The Governor complained of a similar situation just about two years ago when I went skiing.

Mr. Chairman, I would like to move the nomination of Judge Huber.

SENATOR ORECHIO: I will second the motion.

(Whereupon vote is taken and nomination is released)

JUDGE HUBER: Thank you very much.

SENATOR LYNCH: Thank you very much, Judge. Congratulations.

JUDGE HUBER: Thank you, gentlemen.

SENATOR LYNCH: Judge Hull.

Judge Huber, your name will be on the floor this afternoon for confirmation also. Some of the judges choose, when they are going to be confirmed on an emergency basis, to stay on. If you should desire to, we would love to have you; but, if not, we understand.

JUDGE HUBER: I think I better be getting back, but thanks just the same.

SENATOR LYNCH: Okay. Good morning, Judge Hull.

**JUDGE VINCENT HULL:** Good morning, Mr. Chairman.

SENATOR LYNCH: Senator Hirkala is here to welcome you aboard.

SENATOR HIRKALA: Mr. Chairman, members of the Committee, I have known Judge Hull for a long time. He has had an illustrious and distinguished career as a lawyer, Deputy Attorney General, and Assistant Prosecutor. Since he ascended to the bench in Passaic County, he has done a marvelous job. He has received plaudits from the community and the county. The present assignment judge thinks very highly of his work on the bench, and I am honored and proud to support and move his nomination at the proper time.

I just want to tell the Committee that Judge Hull's father was a member of the New Jersey State Senate. He had a distinguished career in law, and in the Senate. We are very proud of Judge Hull in Passaic County.

SENATOR LYNCH: Judge, do you have any comments that you are prepared to make today? Or, do you have any suggestions you would like to make to this Committee about legislative matters that are concerned with the areas of your involvement and expertise?

JUDGE HULL: Not at the present time, Mr. Chairman -- unless the Committee members have some questions for me.

SENATOR LYNCH: It has been rumored that trial judges are kept as much in the dark by the Supreme Court as is the Judiciary. Is that true?

JUDGE HULL: No comment. (laughter)

SENATOR LYNCH: You wouldn't want to talk for a few minutes about the Administrative Office of the Courts?

JUDGE HULL: If we go into executive session.

SENATOR LYNCH: Does anybody else have any questions?

SENATOR HIRKALA: I move the nomination, Mr. Chairman.

SENATOR ORECHIO: I'll second it.

(Whereupon vote is taken and nomination is released)

JUDGE HULL: Thank you, Senators.

SENATOR LYNCH: Thank you, Judge.

Judge Romei? Senator Hirkala is having a big day here, Judge. He thinks he is back on the campaign trail.

Senator Hirkala?

SENATOR HIRKALA: Yes. Judge Romei came before us previously. He has also had a very distinguished career as an attorney. I looked through my resume, John, and Judge Romei, in answering a question said: "I do believe that I possess the necessary qualities of temperament, intellectual ability, character, diligence, judgment and experience." I want to talk about that intellectual ability. He is known as the intellectual judge in Passaic County, and he is that. He has also done a tremendous job. There isn't a judge in Passaic County who doesn't marvel at Judge Romei's performance on the bench.

Once again, I am honored and pleased to support and move this nomination.

ADOLPH ROMEI: Thank you very much, Senator.

SENATOR LYNCH: Judge, do you have any comments that you wish to offer here this morning?

JUDGE ROMEI: No, I cannot offer any comments.

SENATOR LYNCH: You don't want to talk about the Supreme Court edicts or the Administrative Office of the Courts either?

JUDGE ROMEI: No, I cannot.

SENATOR LYNCH: Thou shalt not?

JUDGE ROMEI: I can not.

SENATOR GORMLEY: John, if you get an answer to that question from anyone up here today, you will have the entire statewide press corps in here in about a second.

SENATOR LYNCH: Senator Hirkala?

SENATOR HIRKALA: I move the nomination.

SENATOR ORECHIO: I'll second it.

(Whereupon vote is taken and nomination is released)

SENATOR LYNCH: Judge, this will also be handled on an emergency basis this afternoon. Thank you very much for coming down.

JUDGE ROMEI: Thank you, Senator.

SENATOR LYNCH: Frank Piscatella -- another Bergen County stalwart.

SENATOR HIRKALA: That's my district.

SENATOR LYNCH: I haven't looked at the contributions. Did you contribute to Senator Hirkala's campaign this past year?

**FRANK PISCATELLA:** No. I did in other ways that were not monetary.

**SENATOR HIRKALA:** Mr. Chairman, I would like to point out to you that he did not contribute to my opponent either, which is a big plus.

**SENATOR LYNCH:** Senator Hirkala?

**SENATOR HIRKALA:** Mr. Chairman, I met Frank Piscatella about ten years ago. He has done so much community service, that people in the community tell me about his wonderful acts of philanthropy towards those who need help.

I have talked to many lawyers who have asked me to please help this nominee get through the Judiciary Committee. He has aspired to be a judge for years, and his nomination is finally before us. I have spoken to members of the Judiciary in Bergen County who feel he has all the qualifications, temperament, and ability. They expect great things from Frank Piscatella, and I am certain -- I feel confident -- that he will repay their confidence by being an outstanding judge.

**SENATOR LYNCH:** What has your practice consisted of? What have been your fields of endeavor?

**MR. PISCATELLA:** Borough zoning; planning; board of education; board of health; assistant county counsel; and Bergen Pines, which was a real learning process. I think over the years I have done many things in my lifetime -- maybe not great; they will never go down in history -- that give me the qualifications to do whatever you people decide upon here this morning.

**SENATOR LYNCH:** Are there any other questions from the members of the Committee?

**SENATOR GORMLEY:** I was going to raise some questions. I know of his association with a certain John Paoletta, but I won't bring that up. (laughter)

**SENATOR HIRKALA:** Mr. Chairman, I move the nomination.

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

(Whereupon vote is taken and nomination is released)

**SENATOR LYNCH:** Senator Paoletta, if you want to make some comments, please feel free to -- in defense of yourself, or otherwise.

MR. PAOLELLA: I wish to offer my sincerest best wishes to Frank Piscatella. I am very happy to see him move up to the bench, and I do appreciate the help he has given me in the past. It was never given in the spirit of partisanship. I think Senator Hirkala understands that. Frank has truly been a generous man, and it is about time he is being repaid.

MR. PISCATELLA: Thank you very much.

SENATOR LYNCH: Thank you for coming down, Judge.

MR. PISCATELLA: I had a 10,000 word seminar that I wanted to read, but I guess nobody wants to hear it.

SENATOR LYNCH: Senator Gormley handles all of those; just send it to his office.

SENATOR LYNCH: Valerie Hance Armstrong of Brigantine.

SENATOR ORECHIO: John, why don't you make an announcement that all nominations considered will be treated on an emergency basis today.

SENATOR LYNCH: Yes. All the nominations that are on the agenda today will be treated as an emergency this afternoon and will be moved.

Good morning, Valerie.

**VALERIE HANCE ARMSTRONG:** Good morning.

SENATOR LYNCH: Do you want to take a seat and relax?

Someone has advised me that we have a subcommittee that handles more personal interviews, and they will be conducted immediately after this public session. They will be held in the office in the rear, and Senator DiFrancesco will be in charge of that subcommittee.

MS. HANCE ARMSTRONG: I thought that was Senator Gormley.  
(laughter)

SENATOR LYNCH: He had to defer to the Minority Leader. What time is that interview, Don -- twelve o'clock?

SENATOR DiFRANCESCO: Right after the meeting.

SENATOR LYNCH: Do you want to tell us about your background; your practice of law; how long you have been there; what you have been concentrating on; and why you want to be an Administrative Law Judge?

MS. HANCE ARMSTRONG: I have been practicing law in Atlantic County for a little over seven years. My practice has been intensely a matrimonial practice. I would like to add that if one can survive seven years as a matrimonial attorney, he or she can survive almost anything.

I have had some other interesting experiences in connection with my law practice. I have been sitting as a member of the Atlantic County Matrimonial Early Settlement Panel, which I am proud to say is one of the most successful Matrimonial Settlement Panels in the State.

I have also been participating in voluntary mediation, through the Community Justice Program in Atlantic County.

My legal experience has gone beyond matrimonial as well. I was recently appointed as the City Solicitor for Brigantine, and I have had some experience in wills, estate administration, zoning, planning, real estate transactions, and so on.

I am interested in this position because I have spent seven years as a litigator, and as an advocate. I find that I really like conflict resolution better than advocating, and I think I can be effective in that kind of a position.

SENATOR LYNCH: Senator Gormley? I'm sorry; I bypassed you.

SENATOR GORMLEY: I would just like to state that Valerie's appointment received excellent recommendations from all the members of the bar and the members of the judiciary. There will be a chamber in Atlantic County which will service the region, not just Atlantic County, and we are looking forward to the appointment. This is a first in the history of Atlantic County. We have never had a female Municipal Court judge in Atlantic County before. So, this is a historic moment for the county, to have Valerie appointed, approved by the Judiciary Committee, and assume this position.

SENATOR LYNCH: I understand it is also very significant that residents of South Jersey are being appointed Administrative Law Judges, because there seems to be some disparity along those lines.

SENATOR GORMLEY: A significant disparity.

SENATOR LYNCH: That's good -- not the disparity; the correction. Does anybody else have any questions?

Senator Gormley, do you have a motion?



SENATOR GORMLEY: I make the appropriate motion.

SENATOR ORECHIO: I'll second it.

SENATOR LYNCH: Motion is seconded by Senator Orechio.

(Whereupon vote is taken and nomination is released)

MS. HANCE ARMSTRONG: Thank you very much.

SENATOR LYNCH: Nancy Schaenen. Good morning.

NANCY SCHAENEN: Good morning.

SENATOR LYNCH: Ms. Schaenen has been nominated to be a member of the State Board of Education. We welcome you here this morning.

Senator Orechio has assured us that this got onto the agenda by way of a supplemental. I guess that means good things.

I just have some general questions. Commissioner Cooperman has proposed an alternative route to the traditional teacher education program as a method for teacher certification. That alternative route calls for a bachelors degree, plus a special test, plus a one-year internship. What is your position on Commissioner Cooperman's proposal in this regard?

MS. SCHAENEN: Well, from what I have read in the newspaper, and having read the report, I feel that this is an avenue for capable people to use in order to come into the teaching field. I feel one of the things that will be looked at carefully is the training which will take place for two or three weeks -- or for however long -- in the summer, before they come into teaching. What a teacher should know before they go into the classroom, will be a recommendation that will be made next week by a committee. I think that is a very important element, but basically I feel this is a very good and realistic alternative.

SENATOR LYNCH: Commissioner Cooperman has also proposed that bilingual students be required to pass the graduate test in English as a requirement for a diploma. Many people in the Hispanic community feel this is too stringent a requirement, while others in the educational field do not feel the Commissioner's proposal goes far enough. Do you have any comments with regard to that situation?

MS. SCHAELEN: Well, I came down the week they held the hearings, and so I heard many of those concerns expressed, and I think some of them are valid.

I believe, in order to maintain the integrity of a diploma, we must have high standards. I am not sure about the order in which the testing is done. That was one of the concerns some of the people had. Whether one has to pass the English test before he or she can take the basic skills test is an area that has to be discussed.

This afternoon I hope to get an update on the discussion that continued regarding this program after I left the hearing.

SENATOR LYNCH: So, although you have an open mind on the subject matter, you have some significant concerns also?

MS. SCHAELEN: I think there probably will be, and there should be, changes made in the proposal that was first submitted.

SENATOR LYNCH: It is obviously a difficult area to get into. It has its problems, no matter which way we go. But, somebody has to address it positively, once and for all.

MS. SCHAELEN: Yes.

SENATOR LYNCH: The Department of Education is reported to be instituting new initiatives with regard to urban education. Assistant Commissioner Lewis -- I think it is -- is addressing those initiatives on a pilot basis. What do you feel can be done to improve the quality of education in our urban areas?

MS. SCHAELEN: Well, this is an area, since I come from a suburban district. That I do not know that much about. I feel it is extremely important because we have so many children in the State who come from urban areas. I feel that those districts have to be monitored very carefully to make sure they are living up to the standards that are expected throughout the whole State. I feel that finances and time should be spent on those districts.

I am not sure, however, about what should be done specifically.

SENATOR LYNCH: Another aspect of education which has been drawing attention on both the State and national levels is violence and the lack of discipline in our schools. What do you think can be done

to combat these problems, or do you think that the publicity we receive in some of our urban districts demonstrates more smoke than there really is?

MS. SCHAEENEN: Well, again, from what I have read, and also from what I have heard from teachers in some of these districts, I feel that the discipline problem is not as serious now as it may have been five years ago.

I have always felt that serious discipline problems should be taken out of the classroom and handled in some alternative way, because it is not fair to those children in the classroom who want to learn. I would like to see more of that done. However, declining enrollment, and classes that may not be as large, should help to alleviate that problem.

SENATOR LYNCH: It is also difficult, in terms of the economics today, to create an alternate school, isn't it?

MS. SCHAEENEN: Yes, it is, but I think something can be done within a school. You can take children out of a classroom, and keep them in that school, but keep them separate.

SENATOR LYNCH: How about the attendance figures? It would appear that the attendance problem is more significant today than the discipline problem. Do you have any comments with regard to that?

MS. SCHAEENEN: Certainly, in the urban districts this appears to be true. I think this is one of the areas the committee will address. Children can't learn if they are not in school, obviously.

SENATOR LYNCH: This is a loaded question and you don't have to come to a conclusion concerning it today if you do not want to; but, if you have an opinion on it we would like to hear that opinion. Governor Kean has proposed a starting salary for teachers of \$18,500. Where do you think the money should come from in order to pay for this proposal?

MS. SCHAEENEN: Well, I don't know. It will have to come from the local districts, I would guess, ultimately.

SENATOR LYNCH: Does that mean from our property taxpayers?

MS. SCHAEENEN: I think that will have to be revised.

SENATOR LYNCH: What town do you live in?

MS. SCHAEENEN: Madison.

SENATOR LYNCH: And what is your tax rate there, do you know?

MS. SCHAELEN: I should know, but I don't.

SENATOR LYNCH: Are there any questions from the members of the Committee?

Actually, Senator Russo suggested -- on your question number 14 -- that possibly you may be able to fund that program. (laughter)

SENATOR VAN WAGNER: Good morning, Mr. Chairman.

SENATOR LYNCH: Good morning, Senator. How are you.

SENATOR VAN WAGNER: I am sorry for my late arrival.

In addressing a question raised by the Chairman earlier, you indicated that you saw Commissioner Cooperman's proposed plan, which is to be used in order for a person to qualify to enter the classroom as a possibility. Is that generally your view of the program -- as an alternative, rather than "the" method to be used?

MS. SCHAELEN: Oh, yes. I think the prime route for teachers will still be through teacher's colleges. That is where the majority of teachers will come from. But, I feel this is a viable alternative.

SENATOR VAN WAGNER: I posed this question, because I noticed in your resume you have had broad experience as a board member in Madison, having served as President of the Board for five years.

MS. SCHAELEN: Yes.

SENATOR VAN WAGNER: I think you would have to acknowledge that it is really difficult to define -- by Committee or otherwise -- what qualifications someone should have before he or she enters a classroom.

MS. SCHAELEN: Yes.

SENATOR VAN WAGNER: I just want to be sure you were open-minded about whatever process might be recommended.

MS. SCHAELEN: Oh, yes.

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

SENATOR LYNCH: Are there any other questions? Do I hear a motion?

SENATOR DiFRANCESCO: I move the nomination.

SENATOR ORECHIO: I'll second the motion.

SENATOR LYNCH: It has been moved by Senator DiFrancesco and seconded by Senator Orechio.

(Whereupon vote is taken and nomination is released)

SENATOR LYNCH: Thank you very much for coming.

MS. SCHAELEN: Thank you.

SENATOR LYNCH: Do I hear a motion with regard to the balance of the nominations that were in the original notice of February 24, and the supplemental notice of February 29?

SENATOR LASKIN: Mr. Chairman, may I ask a question?

SENATOR LYNCH: Yes, Senator Laskin.

SENATOR LASKIN: I reviewed all the questionnaires of the potential nominees, and I have observed that one of the questionnaires has a question in it that is not fully answered. Now, does that mean that if there is not a complete answer to the question, the person is disqualified from consideration?

SENATOR LYNCH: That is one where there is an "R" or a "D" after their name.

SENATOR LASKIN: I think this one has a "D".

SENATOR LYNCH: A "D"?

SENATOR LASKIN: That means he is not qualified?

SENATOR LYNCH: Are you referring to one of the judicial nominations?

SENATOR LASKIN: No.

SENATOR LYNCH: One of the alternates?

SENATOR LASKIN: No, this concerns a real estate commission -- question number 15.

SENATOR LYNCH: That is a reappointment.

SENATOR ORECHIO: He is a Republican, by the way.

SENATOR LYNCH: His brother was in the Senate, so he has some kind of courtesy. It is a reappointment.

SENATOR LASKIN: I noticed a familiar name on the questionnaire, and it hadn't been answered; so, I just assumed that maybe there was a problem.

SENATOR LYNCH: Oh, you mean by way of the amount? I can assure you it wasn't that significant.

SENATOR ORECHIO: I guess we thought he assumed we had the information, Mr. Chairman, since it is a reappointment.

SENATOR LYNCH: Obviously, we recognized his talent.

Do I hear a motion with regard to the balance of the nominees?

SENATOR ORECHIO: I move they be released.

SENATOR VAN WAGNER: I second the motion.

SENATOR LYNCH: Moved by Senator Orechio, seconded by Senator VanWagner.

(Whereupon vote is taken and nominations are released)

SENATOR LYNCH: Senator Russo has been waiting with baited breath to get to S-950, which is a bill he has introduced. It attempts to clarify several procedural aspects of the Capital Punishment Statute. Senator Russo, would you care to explain that to us?

SENATOR RUSSO: Thank you, Mr. Chairman. I have been waiting because the Senate President has some kind of ceremonial function we have to attend. So, I wanted to be here to at least move this bill.

This amends the death penalty. This bill makes six changes in the Death Penalty Law. You have a statement in front of you.

I think the first two are procedural in any event, and do not have any effect, but the next three--

SENATOR LASKIN: John, how would a situation arise such as the one in number one?

SENATOR RUSSO: Increasing the number of preemptory challenges?

SENATOR LASKIN: Procedurally, what could happen that would cause this to occur? You are in the midst of the trial, how would this come up?

SENATOR RUSSO: I really can't tell you, but apparently this came up as a result of hearings we held during the last session with the people who participated in the trial process: the prosecutors, the public defenders, and judges. I forget exactly what the motivation behind it was.

SENATOR LASKIN: In other words, one of the lawyers on either side would say, "Your Honor, I request additional challenges."

SENATOR RUSSO: And, in the court's discretion, he would have to make his point.

Let me say this about the bill. This bill, basically, can be fairly characterized as one that -- the word is "liberalized" -- makes the Death Penalty Statute less severe. In other words, theoretically, it would apply to less people than it would if we didn't amend it.

Now, I had an extensive meeting with the prosecutors -- and the prosecutor from Mercer County is here today -- and they basically made their pitch on these amendments. I will tell you what I told them, very frankly. Logically, I couldn't quarrel with their position. But, conceptually, my concern is that the death penalty will remain in New Jersey as a law, in my judgment, as long as the people of the State feel that it hasn't been abused, and that it hasn't been overused.

In my judgment, no matter what we say with regard to these changes, a subject such as, for example, Biegenwald -- with the facts that were presented at the Monmouth County trial -- is going to get the death penalty. And, on the other extreme, one who should not get the death penalty will not be executed anyway.

What I am trying to avoid is, I think the way to end capital punishment in New Jersey is to have somebody receive the death sentence, be executed, and not have all concerned clearly convinced he deserved it. I see that as a danger of losing this form of punishment altogether.

So, the position I took with the prosecutors was not so much that they were wrong, but conceptually I thought we ought to go this route. The Attorney General's office was also present at that meeting, and I might say their cooperation was excellent. I think they have no difficulty living with the changes. Of course, they have their position, and the prosecutor will make it known to you today.

But, I think liberalizing the statute that is now in effect, you might say, will err in favor of the accused, and that is something we better do, rather than take a chance on an abuse. Don't forget, anyone who doesn't get death, still gets life with a mandatory 30 years.

SENATOR LYNCH: Senator Zane.

SENATOR ZANE: Mr. Chairman, I would like to ask Senator Russo a question, through you. John, the provision in number two raised a question in my mind. To the best of my knowledge, no one has been executed in this State, as yet. I somehow had the impression that there would be a considerable time period -- and I don't mean six months, or eight months, or a year -- between the time of determination of guilt or innocence -- or guilt in a particular case -- and the final determination is made for death or life. This second provision seems to suggest that the same jury that heard the case and made the determination will also be charged with the responsibility of determining whether or not the individual will be executed.

Maybe I missed something at the time we passed this, but I didn't think that was the case.

SENATOR RUSSO: The trial goes right on.

SENATOR ZANE: It does?

SENATOR RUSSO: If the verdict is given on a Friday, the sentencing part starts on Monday, subject to the court.

SENATOR ZANE: Well then, the mitigating factors, etc. -- is someone only going to have 48 hours to develop them?

SENATOR RUSSO: What happens is-- That is a question that has been raised. It has been a source of concern, because basically you have to prepare your case on the death penalty phase of it when you are not even sure the person is going to be found guilty.

The other alternative would be, forget about that part of it; let's see if he is found guilty; and, then start making a decision on the trial maybe three, four, five, or six months down the road.

It has generally been thought that is not the way to go, because now you will have a new jury, evidence that is not fresh in people's minds, and so forth. Most of what is said at the trial regarding guilt or innocence is part of the death penalty phase anyway. So, it generally does go right on, subject to the discretion of the court. And, it is working rather well so far.

SENATOR ZANE: Could I ask one more question? Let's assume that an individual has committed two prior murders in the State -- or whatever -- he is out of prison, he commits another murder, and then he



pleads guilty. What do we have then? Is that person who pleads guilty exempt from execution? Because that would be a very clever move on his part.

SENATOR RUSSO: No.

SENATOR ZANE: Where do we stand then as far as the jury is concerned?

SENATOR RUSSO: As far as the jury is concerned?

SENATOR ZANE: Yes, in making the determination as to whether or not the individual should be executed.

SENATOR RUSSO: He pleads guilty. There is then a trial--

SENATOR ZANE: Imagine walking into court, if you had stolen a car, for example, and you plead guilty.

SENATOR RUSSO: Right.

SENATOR ZANE: You are going to enter your plea of guilty and you are going to find yourself, six weeks later, going back to court for sentencing in a situation such as that.

SENATOR RUSSO: Right.

SENATOR ZANE: In entering a plea of guilty to murder, when is this individual going to receive his sentence?

SENATOR RUSSO: They are going to set up a trial -- and Mr. Prosecutor, correct me if I am wrong -- on the sentencing phase and a jury is then going to determine only the question of punishment -- whether he should get the death penalty or not. But, they can't bargain away anymore. Prosecutors don't have discretion anymore. There is no plea bargaining in a death penalty case as there used to be, because of the Supreme Court decision on that issue.

SENATOR LYNCH: Senator Laskin, did you have something to add?

SENATOR LASKIN: Now I am confused, John, because there are some cases where a judge has the discretion not to continue with the same jury who found the defendant guilty. He can set up a sentencing jury some time later, impaneled just for that reason. How would the alternate jury section have anything to do with that, if anything at all? It may have nothing to do with it.

SENATOR RUSSO: I don't think it does. The provision giving the judge that discretion was something we put in by amendment, I think, to the bill -- or subsequent to that -- because there could be a situation where, for whatever reason, the court could not proceed with the trial. Say an attorney took ill and we bound the court to that same jury. Now, maybe his illness lasts six months or a year. It would put a burden on the system to require the same jury. So, that is why we put in the provision that at the discretion of the court -- I think we said "for good cause shown" -- we can have a new jury.

Otherwise, what we are telling them is, "You go ahead with the same jury, unless there is some reason not to." And if there is a reason not to, we gave them the right to go with a different jury.

SENATOR LYNCH: We have the distinguished prosecutor from Mercer County with us today. Mr. Karchman, would you like to make some remarks?

PHILIP KARCHMAN: Yes, good afternoon, gentlemen. I would like to thank the Committee for the opportunity to be heard this afternoon. I am actually pinch-hitting for Prosecutor Fusco of Atlantic County, who is the Chairman of the County Prosecutor Association's Capital Punishment Committee. He was unable to attend the hearing today, and he has requested that I appear in his place.

I would like to initially indicate that we have had an opportunity to review the proposed amendments. We have had the good fortune to meet with the Chairman, as well as Senator Russo, the sponsor of the amendments. Both Senators sat and listened to us, and expressed, very frankly, their opinions on our position. We want it understood that the remarks I am about to deliver -- I believe you have a copy in front of you; it is Prosecutor Fusco's letter to Senator Russo -- in no way indicate our overall opposition to the amendments. We support a number of the amendments, but I thought, in the interest of time, I would limit the remarks this morning to just those areas where we disagree with the proposal.

Several aspects of S-950 significantly decrease the likelihood of the death sentence. Taken in combination, these changes greatly reduce that probability. The proposed amendments clearly exceed, in our view, constitutionally-mandated concepts.

The Association opposes the amendment to N.J.S.A. 2C:11-3c.(3), which for the first time, would introduce a statutory standard to the aggravating/mitigating factor-weighting process. In applying the reasonable doubt standard to this process, rather than having a preponderance of a clear and convincing standard, the proposed legislation burdens the prosecution with removing reasonable doubt, both in establishing the existence of an aggravating factor, and in making a convincing argument that aggravating factors outweigh all mitigating factors.

The Association submits that a more appropriate standard would require that aggravating factors clearly and convincingly outweigh all mitigating factors, and that the high standard of the bill be neither constitutionally required, nor desirable.

The Association also opposes the addition of N.J.S.A. 2C:11-3f to the statute. By including this amendment, the Legislature specifically requires the judiciary to instruct all sentencing juries to imprison a defendant to not less than 30 years, if not sentenced to death. The Association submits that this provision clearly exceeds any constitutional requirement, and that the instruction would tend to deflect the sentencing jury from the weighing process which defines its role.

The Association proposes an amendment to N.J.S.A. 2C:11-3c.(4a), the prior murder conviction aggravating factor. So amended, this factor would provide, "The defendant has previously been convicted of murder on any occasion at any time, or has previously been convicted on at least two separate occasions of aggravated assault, robbery, aggravated sexual assault, aggravated arson, burglary, or kidnapping, involving the infliction by his own conduct of serious bodily injury, and committing, at different times, when he was at least 18-years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within 10 years of the date of the murder for which defendant is being sentenced."

It is submitted that as amended, this factor would more properly delimit the class of violent recidivists who should qualify for the death sentence.

We also are in opposition -- and, this is not included in the remarks which have been distributed to you -- to 2C:11-3, which presently exists in the statute and requires proportionality review. Under the recent United States Supreme Court case of Pulley vs. Harris, which was decided in January of this year by the United States Supreme Court, proportionality review is no longer constitutionally required by the Federal Constitution, and we feel it should be eliminated from the statute.

SENATOR RUSSO: Excuse me, Prosecutor. There is a separate bill before us on that. That is not the subject of this bill today.

MR. KARCHMAN: Fine, thank you. In closing, the prosecutors, together with the Attorney General, are responsible for implementing the Death Penalty Law, and are most directly affected by its provisions.

That is all that I have by way of prepared remarks. I am prepared to respond to any questions that the Committee may have. I would like to introduce Mark Cronin on my left, who is a Deputy Attorney General with the Division of Criminal Justice in the Office of the Attorney General, who together with Deputy Attorney General Deborah Stone -- who is in the committee room -- is assigned to deal with issues involving the death penalty. He will join me in response to any questions the Committee may have.

SENATOR LYNCH: Thank you very much. When you mention discussing the Supreme Court opinion, we rely upon Senator Russo for all analyses of Supreme Court opinions.

Mr. Cronin, good afternoon.

**MARK CRONIN:** Good afternoon. We don't have anything to supplement Prosecutor Karchman's remarks, except to say that we understand there have been some amendments to the bill, which would clear up some technical things.

In reviewing the bill yesterday, we discovered what we believe to be a typographical error. We're working from the old version, S-3419, but I understand that the error will exist in S-950 too. It is on Page 5, Section 5, Line 141. The subheading of that section should be "E," but it is typed as "C."

SENATOR LYNCH: No, it has been corrected.

MR. CRONIN: That has been corrected?

SENATOR LYNCH: Right. While we have you here, do you have any response to the discussion we had at the last meeting regarding the wiretap laws? Is the Attorney General going to submit a written evaluation and recommendation, or is that question now mute?

MR. CRONIN: We are preparing a letter to the Committee dealing with the necessity for those amendments. We are limiting ourselves to that bill.

I would like to point out that my research has indicated that the Commission, which Senator Russo referred to, is no longer active.

SENATOR RUSSO: At whose direction?

MR. CRONIN: The Chief Justice, I believe, felt it was inappropriate for him to be involved in reviewing these statutes.

SENATOR LYNCH: There are no other alternatives to that? I'm sorry, we're on the wrong subject anyhow.

Are there any other questions?

SENATOR RUSSO: Mr. Chairman, if there are not, I will move the bill at this time.

SENATOR LYNCH: Senator Laskin?

SENATOR LASKIN: I have one question, and I guess Senator Russo could explain it, but maybe as a practicing prosecutor, you could give me your opinion. There is a change which I really don't understand. Maybe it just needs to be explained to me. While the defendant has the burden of producing evidence of existence -- it is on the third paragraph of our notes -- I would like to know what that means.

SENATOR VAN WAGNER: I was going to ask that, but I thought it was a stupid question.

SENATOR LASKIN: It could be stupid, but I'm allowed to ask stupid questions. I do it all the time. What does it mean?

SENATOR VAN WAGNER: I just want to get to the section that mentions the difference between the existence versus the establishment -- Number 3 -- of mitigating factors.

SENATOR DORSEY: You have to read it. It states that, "While the defendant has the burden of producing evidence of the existence of any factors, which would mitigate against the imposition--

SENATOR VAN WAGENER: (interrupting) He would have no burden.

SENATOR DORSEY: (continuing) "The defendant would have no burden with regard to the establishment of those mitigating factors."

SENATOR VAN WAGNER: I don't know what means.

SENATOR LASKIN: If you'll look at Line 61 on Page 3--

SENATOR DORSEY: (interrupting) It is your bill.

SENATOR LASKIN: It is 61 through 67 -- that additional sentence--

SENATOR LYNCH: (interrupting) There is no compulsion that he would have to do anything.

SENATOR LASKIN: Oh, I see.

SENATOR VAN WAGNER: Can I ask an educational question? Does the law differentiate between the word "existence" and "establishment" in terms of the procedure in a trial?

MR. KARCHMAN: No, the language regarding establishment is amendatory. It does not exist in the present law. There is no definition, Senator, in response to your question.

SENATOR LASKIN: I still don't get--

SENATOR DORSEY: (interrupting) Wait a minute, Lee.

SENATOR LASKIN: They are not answering me.

SENATOR DORSEY: Lee, wait a minute. The answer is up here. Do you want to give him the answer, John?

MR. TUMULTY: What I think the amendment is trying to say is, there is a list of aggravating and mitigating factors. The defendant only has to introduce evidence. He doesn't have to establish a beyond a-- There are different standards in law regarding beyond a reasonable doubt. All he has to do is submit the evidence; he doesn't have any burden with regard to establishing it against a standard. If the jury chooses to believe that and say it outweighs whatever the prosecution--

SENATOR VAN WAGNER: That is all he is required to do?

MR. TUMULTY: That is all he is required to do.

SENATOR LYNCH: Are there any other questions?

SENATOR LASKIN: John, seriously, as far as the exact language is concerned, I'm having a problem. You may have a lot of lawyers who have problems with this right down the line.

On Page 3, Line 61 through 67--

SENATOR RUSSO: (interrupting) Yes, go ahead, Lee.

SENATOR LASKIN: The existing language: "The defendant shall have the burden of producing evidence of the existence of any mitigating factors," -- I understand that; that is what we do -- "but shall not have a burden with regard to the establishment of a mitigating factor"-- I just think it is ambiguous. What does it really mean?

SENATOR LYNCH: It just means he has the burden to present, if he wishes, any testimony concerning a mitigating factor. But, it doesn't give him the burden of establishing--

SENATOR DORSEY: (interrupting) -- before the jury can consider it. That is what you mean to say.

SENATOR RUSSO: Right. He can throw it out, so to speak, and let it lay on the table. He doesn't have to establish it.

SENATOR LYNCH: What it translates into, in the charge to the jury, is that the burden is not going to be placed on the defendant to establish those mitigating factors by a preponderance of the evidence beyond a reasonable doubt -- whatever the standard happens to be. That removes the obligation, and it removes that portion of the charge.

MR. KARCHMAN: In present practice, for the information of the Committee, the defendants are, in the penalty phase of the proceedings, bringing in an extraordinary amount of material and information about childhood backgrounds, and so forth and so on.

I agree with Senator Lynch's interpretation -- that the judge will charge the jury in the negative -- that the defendant does not have the burden of establishing, by any standard -- be it preponderance, clear, convincing, beyond a reasonable -- any of the mitigating factors.

SENATOR LASKIN: So, as far as you're concerned, that is okay.

MR. KARCHMAN: Well, we have inferentially opposed that because of the--

SENATOR VAN WAGNER: (interrupting) Number 5.

MR. KARCHMAN: Well, 11:3c.3 sets up the statutory standard for the aggravating factors having to outweigh the mitigating factors beyond a reasonable doubt.

SENATOR VAN WAGNER: That was Number 5 on the sheet. I just want to ask, and this is only for my information, either of the three Johns: Does this section that Senator Laskin referred to, concerning the establishment of mitigating factors-- Can I assume that one cannot read the whole amendment without reading into the next line -- Line 68 -- concerning the admission of evidence, and what the defendant may do, notwithstanding the rules governing the admission of evidence?

MR. KARCHMAN: If I may suggest, the only language which might clarify that is if, in addition to the word "burden," we use the term "the burden of persuasion of establishing". That is a term of art, which presumably would be understood by the judiciary in fashioning the chart.

SENATOR ZANE: Mr. Chairman?

SENATOR LYNCH: Senator Zane?

SENATOR ZANE: John, isn't there a problem with Number 5, the standard -- about having a standard of reasonable doubt? Why must it not just outweigh?

SENATOR RUSSO: Oh okay, yes, sure.

SENATOR ZANE: You know, you put in the standard of "outweigh beyond a reasonable doubt." Why not use just "outweigh?"

SENATOR RUSSO: Okay, that is because-- My feeling is that I want to make this bill as totally fair as I can to the defendant, both for constitutional or court challenge, and also because I don't ever want to see anyone executed who shouldn't have been executed. By changing that burden and making it "beyond a reasonable doubt," I put a greater burden on the State.

If someone slips through the cracks and only gets 30 years minimum, life imprisonment, I can live with that. The concern that someone may slip through the cracks the other way, and gets executed -- and, you or I or anyone else who had anything to do with this feel he shouldn't have been executed-- I don't think the severe murderer,



whom I was aiming at in this legislation in the beginning, is going to slip through the cracks with or without that language. That was the reason, Ray, for putting it in that way.

SENATOR ZANE: It just strikes me that that almost builds up an obstacle that would be very, very, very difficult to surmount.

SENATOR RUSSO: Well, you know, I would rather look back five years from now and say, "You know, it is not a tough enough law," and then change it, than to look back five years from now and say, "Gee, people got executed, and I don't think should have," and then have to change it the other way.

SENATOR LYNCH: Do I hear a motion on the bill, with the amendments that are attached and have been agreed upon?

(Whereupon role is taken, Senator Laskin votes to release, but with reservation, and bill is released)

SENATOR LASKIN: Well, I'll vote to release it, but when it comes on the floor, I may take a different viewpoint.

SENATOR DORSEY: That is permissible.

SENATOR LYNCH: Definitely. You are always up front, Lee. We all know that.

We have two bills on-- Well, Senator DiFrancesco, by agreement with Senator Russo, after some discussion sponsored Bill S-477, which permits verbal statements by crime victims at sentencing, and the person found guilty of committing the crime-- This the bill that Senator DiFrancesco stole from you, Senator Russo.

SENATOR RUSSO: Well, don't move it. Don't move it if that is the one, Mr. Chairman.

SENATOR LYNCH: Does anyone from the public have any comments with regard to Senator DiFrancesco's bill?

SENATOR DiFRANCESCO: I'll hold the bill.

SENATOR RUSSO: He wants to hold the bill.

SENATOR LYNCH: Are you here to speak favorably on this bill?

MR. CRONIN: We would like to offer some amendments, but if the bill--

SENATOR LYNCH: (interrupting) Didn't you offer them to Senator DiFrancesco beforehand?

MR. CRONIN: No, we didn't have an opportunity to clear them with the Governor's Office until this morning.

SENATOR LYNCH: What do you want to do?

SENATOR DiFRANCESCO: Hold the bill.

SENATOR LYNCH: Hold the bill. We'll hold the bill until the next session.

S-819, sponsored by Senator Orechio, provides that restitution shall be ordered, as a general rule, for offenses involving theft or insurance fraud. Is anyone here to address that issue? (no response) Do I hear a motion with regard to that bill?

SENATOR DORSEY: I'll move it.

SENATOR VAN WAGNER: I'll second it.

SENATOR LYNCH: It is moved by Senator Dorsey, and seconded by Senator VanWagner.

(Whereupon a vote is taken and the bill is released)

SENATOR LYNCH: We are in sync for Thursday, March 8 at 10 o'clock in the morning, to hear Attorney General Kimmelman advise and inform us on the Chemical Control investigation and controversy. We will not be in session that day. I suspect that will probably last about two hours.

(MEETING CONCLUDED)