

T R A N S C R I P T

of

Proceedings

before

SENATE JUDICIARY COMMITTEE

RE: Reappointment of Judge Martin Bry-Nildsen
Warren County Court

HELD:

April 6, 1978

Room 438

State House Annex

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Martin L. Greenberg (Chairman)

Senator Peter J. McDonough

Senator Barry T. Parker

Senator Steven P. Perskie

Senator Walter N. Sheil

ALSO:

John J. Tumulty, Research Associate

Legislative Services Agency

Aide, Senate Judiciary Committee

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JUDICIAL COMMITTEE

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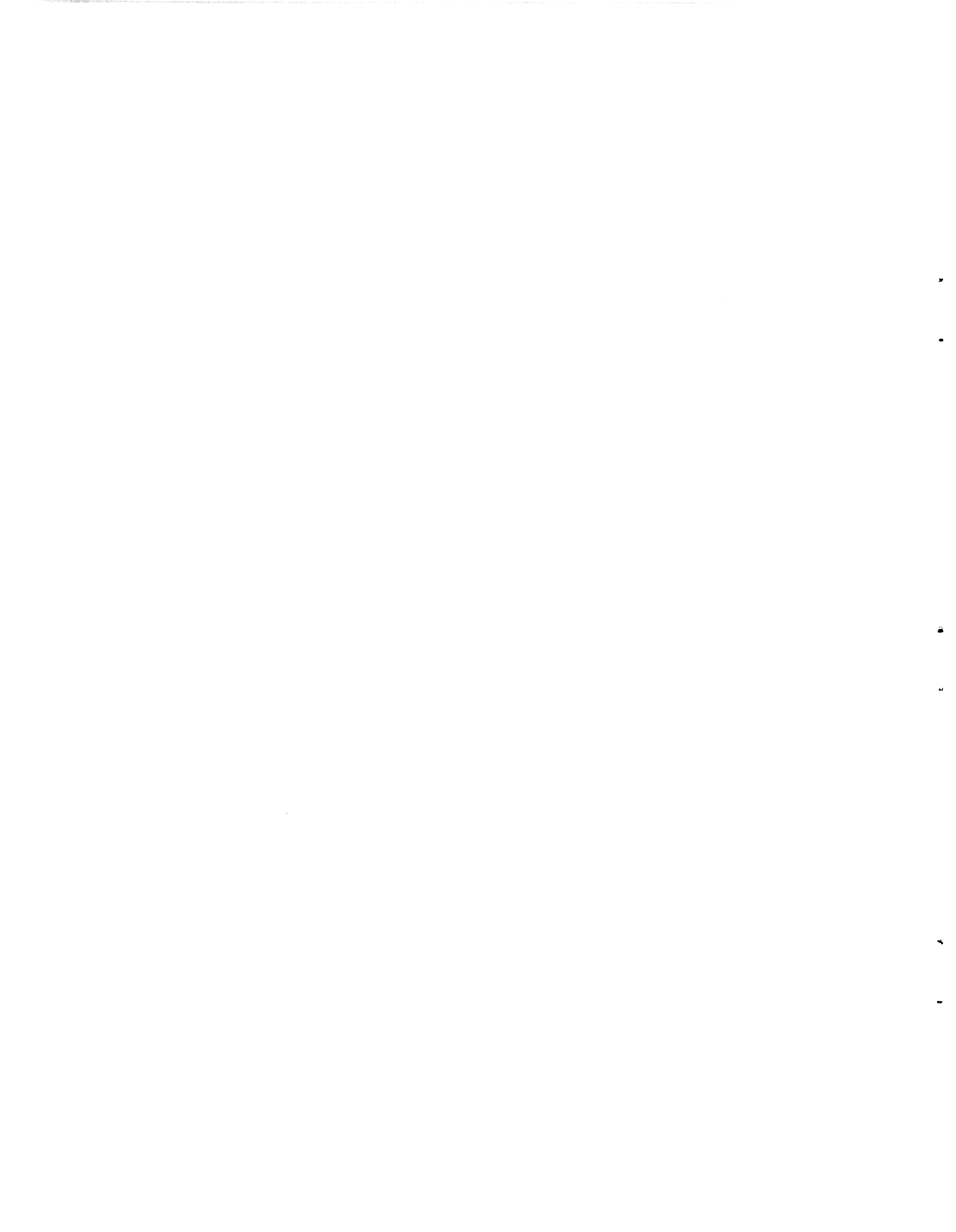
MEMBERS OF COMMITTEE PRESENT:

- Senator Martin L. Greenberg (Chairman)
- Senator Peter J. Johnson
- Senator Harry F. Fisher
- Senator George F. Latta
- Senator Walter H. Bell

Also:
John J. Kennedy, Research Associate
Legislative Service Bureau
New Jersey Judicial Committee

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SENATOR MARTIN L. GREENBERG (Chairman):

The Senate Judiciary Committee will reconvene its consideration of the nomination of Martin Bry-Nildsen to the Warren County Court. This is a continuation of the hearing which was commenced several weeks ago. I initially would like to apologize for the delay. We have had some problems and we, at this moment, do not have a quorum but we will, nevertheless, proceed to take testimony which is, as you can see, being recorded. Hopefully, we will conclude the testimony-taking portion of the hearing today. If a quorum exists, we may then consider disposition of the matter and, if not, we will have the transcript prepared for consideration by the Judiciary Committee when it next meets, which will be soon, so that it can finally vote upon and dispose of the matter presently pending.

First, I would like to ask Mr. Anthony Sciascia, who was a witness at our last meeting and who did not complete his testimony, to resume the witness seat. Mr. Sciascia.

If there is anyone present, while we are waiting for Mr. Sciascia, who has not indicated a desire to testify and if, in fact, that person has a desire to testify and has not so indicated to Mr. Tumulty - who is behind me - please give your name to Mr. Tumulty so that we can have your desires noted.

Mr. Sciascia, when we last left this subject, I had interrupted your testimony and indicated that you would have an opportunity to continue. Have you completed your testimony?

ANTHONY J. SCIASCIA, JR. No, I have not.

SENATOR GREENBERG: Okay, then please go ahead.

MR. SCIASCIA: Would you like me to start from where I left off?

SENATOR GREENBERG: Please. Everything you have said has been recorded and transcribed and the transcripts are presently before the Committee.

I might also indicate, before you commence, that the Committee is in receipt of a number of pieces of correspondence from various groups and individual citizens who have expressed a desire to be heard by way of that correspondence. Those pieces of correspondence have been circulated and are presently in the possession of all members of the Committee and they will be considered by the Committee in its deliberations. Mr. Sciascia.

MR. SCIASCIA: Yes. I also have something to present to the Committee. Since the last time I was here, the Warren County Bar Association met and decided, unanimously, to support Judge Bry-Nildsen's reappointment, therefore blocking any effort that I had to seek counsel to assist me in my presentation.

SENATOR GREENBERG: Have you made an effort to obtain counsel?

MR. SCIASCIA: Yes, I have, not only in Warren County but outside of Warren County and I have not been able to obtain counsel and I attribute that to this blocking - so to speak.

SENATOR GREENBERG: How many attorneys did you seek to represent you? How many instances were there? I don't want names; I just want instances?

MR. SCIASCIA: I would say four or five and then I had other people make contacts for me.

SENATOR GREENBERG: Okay, go ahead.

MR. SCIASCIA: So, in retaliation for their resolution, which they have presented, I would like to present this petition as the feelings of the people - only a small percentage of the people of Warren County - protesting Judge Bry-Nildsen's reappointment. There are some 3,000 signatures there.

SENATOR GREENBERG: I have been handed a series of petitions which reads: "We the undersigned citizens of Warren County in the State of New Jersey hereby petition the New Jersey Senate Judiciary Committee to not confirm the reappointment of Warren County District Judge Martin Bry-Nildsen, Jr. because of the controversial decision he made in a non-jury murder trial of the State versus Stires in October 1977. A State charge of first-degree murder was reduced to involuntary manslaughter by Judge Bry-Nildsen. In a later trial a jury found Stires accomplice Counterman guilty of second-degree murder. These inconsistencies warrant an investigation into the Judge's judicial conduct."

I am in receipt of what you handed me. I do not know how many sheets or how many names there are but they will be marked in evidence and become a part of the transcript in this matter.

MR. SCIASCIA: Thank you.

SENATOR PERSKIE: For the record, Mr. Chairman.

SENATOR GREENBERG: Senator Perskie.

SENATOR PERSKIE: The petition indicates Warren County District Judge. It is my understanding that he has been sitting and is nominated again to sit on the County Court.

SENATOR GREENBERG: That is correct. The exhibit will be marked. Is this the first exhibit?

STENOGRAPHER: Yes. (Received in evidence and marked SJC-1)

SENATOR GREENBERG: Go ahead, Mr. Sciascia.

MR. SCIASCIA: In Judge Bry-Nildsen's closing remarks he stated that what we have here is a classical case of manslaughter and I think this is where we broke off the last time when I asked the Senate Committee to define for me a classical case of manslaughter. I don't think anyone has been able to do that. I have no idea what a classical case of manslaughter is myself.

The entire case boils down to one issue, and that is whether the accused could or could not see what he was shooting at and in his opinion he could not see.

The testimony clearly showed that you could see very clearly at the dam. Deborah Morio stated that when she approached the parked vehicle, the first thing that she observed - that hit her in her face as she approached this vehicle - was an eight-pack of beer sitting on the roof of the car. The headlights picked this eight-pack of beer up.

Just prior to that, when the accused Stires and Counterman drive up the same road, the victims, Anthony Sciascia and Donna Seiss, were in a standing position in front of the parked car and according to testimony Miss Seiss had her back towards the car, facing away from the on-coming headlights, and Anthony Sciascia was facing into the headlights. Anthony Sciascia's height is approximately six feet tall. That would put his face and neck approximately at the same height as the eight-pack of beer, which was sitting on the roof of the car. Those same headlight beams reflected off of his face, his neck, his eyes, and teeth in the same manner they reflected off of that eight-pack of beer and there is no way that anybody driving down that road could have missed those facial features. When you take and shine a light beam on a human face in any darkened area, regardless of how dark it is, those facial features light up like a Christmas tree. Judge Bry-Nildsen overlooked that. He was only concerned about what he thought happened after the car and the

lights passed the victims. He did not say anything about what the lights did to these victims as they approached. Stires had to see those two people. There is no question about whether he saw them or not.

SENATOR GREENBERG: I think we understand your point.

MR. SCIASCIA: This is what Judge Bry-Nildsen is basing his whole case on -- that he did not see them.

I question how can Debbie Morio see the beer bottles and yet neither Stires nor Counterman see the two victims standing there?

The defense attorney's claim that Stires only intended to shoot out windshields was nothing less than ridiculous. Common sense would show that this was a defense tactic to evade the true issue - that is, the accused Stires aimed his gun and first shot Donna Seiss, seriously wounding her, and, second, shooting Anthony Sciascia, killing him. The most significant fact to note about the defense's statement is that no one pellet struck any of the windows. There were only a few that struck the hood of the car.

Judge Bry-Nildsen's verdict of involuntary manslaughter and his dismissal of the three assault charges on Miss Seiss clearly states that had Anthony Sciascia lived, Stanley Stires and Franklin Counterman would have walked out of that court room free men with the possibility of a suspended sentence on a weapons charge.

I have questions. Why did Bradford Dey request a non-jury trial? Why did Judge Martin Bry-Nildsen grant a non-jury trial?

SENATOR GREENBERG: What are you suggesting?

MR. SCIASCIA: I am suggesting that there is a little bit of funny business.

SENATOR GREENBERG: Do you have any evidence of that?

MR. SCIASCIA: No. I have no evidence but I am suggesting that that exists in the minds of my entire family and the other families associated with this.

SENATOR GREENBERG: Mr. Sciascia, I understand your position here. We would like very much to hear you out and we will. I would like, however, for you to confine the testimony not to your mental processes or suspicions but with regard to facts, as you have done up to this point.

MR. SCIASCIA: Okay. This is a fact. Why did Judge Bry-Nildsen wait until after the Counterman trial to sentence Stires -- two full months after he was convicted. It was after the Counterman trial verdict was in.

SENATOR PERSKIE: What is the significance of that?

MR. SCIASCIA: It is very uncommon. Sentence is usually handed down within two to three weeks after the verdict.

SENATOR PERSKIE: In cases where there are more than one person involved in the same indictment? Are you saying that it is that uncommon?

MR. SCIASCIA: I am not too familiar with whether that is true or not.

SENATOR PERSKIE: I would suggest to you that it is not that uncommon in cases where there is more than one defendant on the same charge.

MR. SCIASCIA: Mrs. Stires got on a public radio station and she thanked the judge for his fairness and his lenient sentence on her son when, in fact, the judge's sentence was the very maximum for the verdict that he rendered. So, I question how she could say that his verdict was lenient?

I might also suggest that Mrs. Stires may have known that her son was, in fact, guilty and therefore whatever verdict the judge granted, anything less than second degree murder was certainly going to be lenient.

At the sentencing of Stires, Bry-Nildsen described the trial as "The most trying experience I have ever had in the years I have been on the Bench." He said he was not influenced by sympathy for Stires but reached his verdict by applying principles of the law, following them - quote - "almost reluctantly." He said he was never in doubt that he would impose the maximum penalty if he found Stires guilty.

The most important reason for having this large book of rules governing the courts of New Jersey is that justice is supposed to be served, according to these rules and they are in the interest of justice. A judge should rule in the interest of justice. Rule I:I-2 in the Rules of General Application clearly states that in the interest of justice, certain rules can be relaxed or dispensed with if adherence to it would result in injustice. I am stating that what has happened here was an injustice.

Bry-Nildsen also stated that he was never in doubt that if he found Stires guilty he would impose the maximum sentence and, as I said before, why did he wait until after the Counterman trial? If he was never in doubt from the very beginning, he did not have to wait until after the Counterman trial. He could have sentenced him two days later.

SENATOR GREENBERG: What does the fact that he waited until the date that he did mean to you in terms of your objection to his nomination for reappointment to the Bench?

MR. SCIASCIA: It means to me that I think pressure may have been applied to the judge to wait to sentence Stires.

SENATOR PERSKIE: By whom?

SENATOR GREENBERG: The question is by whom and I assume your answer is speculative in nature? Do you have any evidence?

MR. SCIASCIA: No, I have no evidence, except the fact that a number of letters were sent to -- I'm sorry, I don't have the proper name of the committee they were sent to. They were sent, I think, to the assignment judge or the--

SENATOR GREENBERG: Letters suggesting or indicating what?

MR. SCIASCIA: Letters suggesting that people felt that the judge made a mistake either deliberately or for some other reason and that a committee should be appointed to look into the case.

SENATOR GREENBERG: Mr. Sciascia?

MR. SCIASCIA: Yes?

SENATOR GREENBERG: You will be permitted to continue but let me interrupt you for a second to ask you, so that I and the rest of the Committee know, is there any basis for your opposition to this renomination or reappointment, other than the facts of this case, as you have started to discuss them, and his rulings and conclusions - Judge Bry-Nildsen's rulings and conclusions - and activities in connection with this case? Is there any other reason?

MR. SCIASCIA: Oh, yes. I have been reading--

SENATOR GREENBERG: You say yes?

MR. SCIASCIA: Yes.

SENATOR GREENBERG: Then let me ask you with regard to this case, do you propose to testify with regard to any motivation on behalf of Judge

Bry-Nildsen in his treatment, which you consider to be extremely lenient and erroneous in this case? Do you alledge a motive on his part?

MR. SCIASCIA: I do think that there was a motive but I have no proof of it. I cannot prove it.

SENATOR GREENBERG: All right. Then, is there anything new, other than -- Is there anything beyond what you have already told us about the handling of this case that you would like to tell us and, if so, what is it?

MR. SCIASCIA: No, that is all I have to say.

SENATOR GREENBERG: On this case?

MR. SCIASCIA: Yes.

SENATOR GREENBERG: Okay.

SENATOR PERSKIE: Mr. Chairman, may I ask on --?

SENATOR GREENBERG: On the case?

SENATOR PERSKIE: On the case, yes.

SENATOR GREENBERG: Yes.

SENATOR PERSKIE: Mr. Sciascia, if Judge Bry-Nildsen had found Mr. Stires guilty of second degree murder and imposed a sentence in the State prison of not less than 11 years or more than 16 years, would you have been here?

MR. SCIASCIA: Probably not.

SENATOR GREENBERG: All right. Would you please list for us and describe your other reasons for opposing the Judge's renomination, other than his handling of this case?

MR. SCIASCIA: I think he has handled other cases poorly because of what I read in the papers. I have read case after case, years prior to this, about the decisions that he has handed down in drug cases and other various cases.

SENATOR GREENBERG: All right. I know you are not here with counsel and I am trying to give you every opportunity to say whatever is on your mind in this matter but I would like not to have testimony concerning what you have determined from newspaper articles might be an incorrect ruling in another matter. I would just like facts, if you can give them to us.

MR. SCIASCIA: Okay. I have been told by State Police that he has handled several cases very poorly.

SENATOR GREENBERG: Which State Police?

MR. SCIASCIA: I have to mention their names?

SENATOR GREENBERG: Not if you choose not to.

MR. SCIASCIA: I choose not to.

SENATOR GREENBERG: Okay. In connection with what types of matters?

MR. SCIASCIA: Just about any type you can name, mostly drug.

SENATOR GREENBERG: We have other people present--

MR. SCIASCIA: Mostly drug cases.

SENATOR GREENBERG: I hear you. We have other people present in this room... Is the prosecutor here?

PROSECUTOR: Yes, I am here, Senator.

SENATOR GREENBERG: Thank you. ...who would be in a position to testify concerning those matters directly and I think that is the best evidence. What other reasons, if any, do you have for opposing Judge Bry-Nildsen?

SENATOR PERSKIE: Mr. Chairman, before you leave that point, if I may,

on the question twice you mentioned drug cases. What kind of a problem are you talking about -- with regard to trials, with regard to whether people are found guilty or not guilty, whether they are sentenced this way or that way? What kind of a problem are you talking about?

MR. SCIASCIA: The problem is that the magnitude of some of the drug charges -- like it is not a question of a little boy being found with .5 grams of marijuana. We are talking about some of the cases where people have had pounds of marijuana and pounds of heroin and these things were reduced to suspended sentence or a one thousand dollar fine.

SENATOR GREENBERG: You are talking about lenient handling of serious drug matters?

MR. SCIASCIA: Yes, I am.

SENATOR GREENBERG: All right, we will hear about that when we discuss this matter further with some law enforcement people.

What other reasons, if any, do you have for opposing the nomination?

MR. SCIASCIA: I would say that is about it.

SENATOR GREENBERG: Okay. Are there any questions?

SENATOR McDONOUGH: No.

SENATOR SHEIL: No.

SENATOR PARKER: No.

SENATOR PERSKIE: Are you aware of the fact that with respect to any criminal charges that Judge Bry-Nildsen, or any other county judge, does not have the ultimate power to dismiss any charges or to agree to the dismissal of any charges on his own authority? Are you aware of that?

MR. SCIASCIA: I don't know if I follow the question.

SENATOR PERSKIE: Are you aware of the fact that under our system--?

MR. SCIASCIA: Yes.

SENATOR PERSKIE: When a plea bargain agreement is presented to the judge, which involves the dismissal of any charges, that must ultimately be approved by the assignment judge?

MR. SCIASCIA: No, I am not aware of that.

SENATOR GREENBERG: Are there any further questions? (no questions)
Thank you very much.

Next the Committee would like to hear from Senator Dumont.

SENATOR WAYNE DUMONT: Mr. Chairman, Senator McDonough, Senator Sheil, Senator Perskie, and Senator Parker, I recognize first that neither you, Mr. Chairman, nor anyone on the Committee requested that I testify. This is more a decision on my own part than for any other reason.

I have a responsibility here, I think, to discharge in the course of our work because as we well know the Advise and Consent Clause of the State Constitution requires that the moving of a confirmation be done by the home district Senator. I happen to believe very strongly in the principle of Senatorial Courtesy and I have tried never to abuse it in the 25 years that I have been privileged to serve in this Body.

I know that you will base your decision today on all of the testimony you hear and certainly not on mine alone. I respect all of you. I am proud to serve with you and I also know how fair-minded you are and that you will determine this on the basis of what you believe is the right decision with respect to what you hear today and your review of the record, and so forth.

I think it was in February - approximately two months ago, maybe somewhat less than that - when Governor Byrne's staff member in charge of nominations, and usually the one to contact in the Legislature in that respect, came to me one day when we were in session and said that it was Governor Byrne's decision to renominate Martin Bry-Nildsen as Warren County Court Judge for a second term of five years and would I approve of that. I said, yes, I would.

I think I should review with you, just for a moment, Judge Bry-Nildsen's record as a jurist - and I am not talking about cases he handled but the years he has served.

He has been on the Bench approximately 17 1/2 years altogether. That would make his first appointment by former Governor Robert B. Meyner just prior to his leaving the office of Governor. It would mean that he would have had to be reappointed twice by Governor Richard J. Hughes to a second and third five-year term because he served, as I understand it, 12 1/2 years as judge of the only part-time district court in any county in the State at the time it was finally merged to some degree into the county court system - that is, the county court judge serving, whichever one does the work at the time, as the presiding judge over the district court.

Now, actually, this resulted in legislation, which I sponsored, on behalf of Hunterdon, Sussex, and Warren Counties to have two county court judges in each of the three counties. The reason for this was that it seemed unfair to me that when the political affiliation of the Governorship might change, that a county court judge, who had to give up his practice to take the position, should have to return to try to pick up a practice, if he had - or she had - been doing a competent job as county court judge. So, we have one of each political faith in each of the counties.

As a result of that legislation, when a second county court position was opened up in Warren County and the time came for the appointment, then Governor William Cahill nominated Martin Bry-Nildsen. I have to say to you, as I recall this, he was not the choice at the time of the Warren County Democrat organization. As I recall it, some approach was made to me to get my own viewpoint between him and another attorney who is now deceased, who had served in the Assembly for a number of years and who was the choice of that organization - namely Thomas Swift. While I liked and respected both men, I thought at the time, as far as my viewpoint was concerned - for whatever it was worth - that Martin, by virtue of having served for 12 1/2 years as district court judge, was, therefore, by experience alone, better qualified to assume the judgeship as a full time county court judge.

Frankly, I didn't even remember until the Governor's aide came to me in February that five years had already elapsed since the time of his appointment. I had heard nothing from anybody prior to that time in respect to this particular case - the Stires case - or any other case with respect to Judge Bry-Nildsen's decisions.

I think you know well enough that I don't make any kind of a comment based upon obtaining the favor of any judge because of the fact that I very rarely have time to go to court for anybody since I only devote probably 15% of my working time the year around to the practice of law, and I do that only so that we can eat regularly, as a matter of fact.

Secondly, I did not go to this meeting of the Warren County Bar

Association. I deliberately stayed away from it because of the fact that I knew they would have one viewpoint, Mr. Sciascia had another, and other people who have telephoned me or come in to see me or who have written to me have expressed opinions both ways.

Judge Bry-Nildsen, I have found - and I have known him for 30 years I would guess - is fair and honorable and very competent legally. I don't necessarily agree, neither may some of you, with every decision he renders. I have told my constituents many times that I don't expect a single one of them to agree with my votes or my decisions 100% of the time. I would be amazed if they did. Therefore, we have the right, of course, to disagree with each other in this country and it is a great right and we should so express ourselves.

I believe he agonized over this decision and the sentencing connected with it. I would have to think he suffered quite a bit since that time too. And I believe that while I may think that mistakes were made, and you may think that mistakes were made, and some other people may believe that, I would have to classify those mistakes as mistakes of the mind, despite his fine legal ability, rather than mistakes of the heart because his character and his integrity, as far as I am concerned, are above and beyond reproach.

I understand, on the other hand, fully, how Mr. Sciascia feels. As a parent, I probably would feel no differently from the way he does because this was an absolutely senseless killing. Not only was a young man killed, who had just arrived at adulthood, but so was a girl hurt, a girl who may very well be physically hurt for the rest of her life as a result of these senseless acts performed by Stires and Counterman on the night in question.

You know, because of the way I have voted in the past, that I believe we should restore the death penalty in this State for certain crimes of violence and you all know that we don't agree necessarily on that score among the 40 members in the Senate because we just barely passed that legislation which Governor Byrne chose to let die by pocket veto in recent weeks.

You know also that I have very rarely voted for a judge's salary increase, not only while you have been here but before you arrived here because of the fact that I feel very strongly that legislation which you, Mr. Chairman, and I are cosponsoring, should pass, namely that judges should contribute to their pensions, as every other public employee does, and not have the benefit of a non-contributory pension, but contribute at least 5% of their salary to that end.

I am also not unduly influenced by the fact that the Warren County Bar Association unanimously passed a resolution, which they personally delivered to me through a committee, indicating their complete support of Judge Bry-Nildsen for a new term. Because a task force report - a task force on which I have been serving as chairman for almost 3 years, which will be made public officially next Tuesday, April 11th - will make recommendations in respect to public school operations which I know some of the members of the Bar are going to take serious issue with - with some of the recommendations in there concerning the Tort Claims Act, made in an effort to reduce insurance premiums.

So, I am not looking for help from any group or from any person, particularly, but I am simply trying to be fair throughout. I have copies of a petition, which were delivered to me yesterday by Angelo Sciascia, the uncle of the

decendent. Copies of the same petition were delivered to you - the original copies - this afternoon. I know many of these people who have signed these petitions. I know they personally and have great respect for them. I also know that petitions are not too difficult, sometimes, to get signed if the person who is signing hears only one viewpoint, or if that person is sympathetic to those who are circulating the petitions, or if those people do not want to offend anyone who is circulating a petition.

So, I have to take this in the context in which it all falls and simply try to be fair in connection with it. And, I have expressed to you very plainly how I feel about the character and the traits of Judge Bry-Nildsen to the end that I wouldn't perhaps make personal mistakes in this connection. I also checked after I received these petitions yesterday, by telephone, with Judge Robert Muir, who is the Assignment Judge for Warren County, and with Judge Alex Wohl, who used to be the Assignment Judge for Warren County. Both men, I might add, are highly regarded jurists and I don't say that about every judge lightly by any means. I also checked with Chief Justice Richard J. Hughes last night by telephone. Now, we all know that he is not only the Chief Justice of this State but that he served very ably for eight years as Governor of the State. Therefore, he had to make nominations in that capacity as well as to perhaps recommend them to the present Governor for appointment or reappointment.

Judge Bry-Nildsen was given - and these gentlemen, or some of them, at least Judge Muir, will be here today, I am sure, to testify - a completely enthusiastic and supportive send-off. Chief Justice Hughes is not as familiar with his work as an individual judge as would be the Assignment Judges, present and past, of the County. So, Judge Muir and Judge Wohl said that in their opinion he had not only been an extremely fine and competent judge but also had done his work exceptionally well, as a matter of conscientious service and faithful service and with great integrity.

Now, I have heard reports that - and this is strictly hearsay - there have been times when local law enforcement people - State Police or local police - have not been pleased with his decisions on drug cases. I also had two people telephone me to say that they thought he had been extremely severe - unduly severe - on another drug case, in his sentence. So, it simply gets back to the fact that whatever we do in public life, we know we are not going to please everybody and that we have to make decisions based upon the merits of the case and decide what we think is right and responsible.

I believe that is primarily the sum and substance of what I can testify to. If you have any questions, I will be glad to answer them. Again, I commend you because of the thoroughness with which you have conducted this, using with the prerogatives of the Senate Judiciary Committee and also for the openness of the discussions. I know that as a matter of fairness you will decide properly and justly when you come to reach a decision.

SENATOR GREENBERG: Thank you very much, Senator. I would like to state for the record that you have not been invited to attend, although you have been advised of the existence of this hearing and that the easiest thing for you to have done under these circumstances would be not to be here and let this Committee take testimony from those who wish to attend. But, the easy thing is not what you choose to do. As long as I have known you, you have selected to do

the right thing and it is you who are to be congratulated.

One of the reasons for the existence of senatorial courtesy, as I understand it, is because a local home county Senator has an opportunity to be more familiar with the individual nominee than the other Senators who do not live in that county, or community. So, we look to you, as we do to all Senators who reside in the community or county from which a nominee comes, to tell us, in cases such as this, whether or not - in spite of the fact that you obviously are not exercising senatorial courtesy and in face of the fact that you are supporting the nomination - there has come to your attention - and this is the one area where hearsay, in my judgment, becomes relevant - any additional factors which should be brought to the attention of this Committee in connection with the nomination pending before it with regard to ability, integrity, and prior experience of Martin Bry-Nildsen?

SENATOR DUMONT: None that I know of, Mr. Chairman. I have given every opportunity to people, over the last three weeks - it will be three weeks tomorrow-- When we had our last Senate session, March 17th, you informed me that day that the Judiciary Committee was going to delay any reporting out of Judge Bry-Nildsen's name, in order to have further testimony. You said to me then that I could testify or not, as I so decided. I have had nothing to present to you in the way of concrete proof, one way or the other. I can only tell you that one time I appeared as a witness in a case before Judge Bry-Nildsen, which he may not even remember. It involved reckless driving and I thought that the young man involved certainly was guilty of reckless driving, not because he did any damage to me but because of the way he was operating his car on the road. I was there also on the same road. Judge Bry-Nildsen ultimately found him guilty of careless driving, which, of course, as we all know, is less than reckless driving. While I disagreed with his decision, at the same time I recognized his right to make the decision.

I think we should be clear on this fact too: When he determined that Stires was guilty of involuntary manslaughter, he imposed just about the maximum sentence that can be imposed upon anybody for involuntary manslaughter - no greater than ten years. I think he said the sentence will be nine and one-half years. He also imposed another sentence, which in my understanding is correct, to run consecutively and not concurrently for the finding of guilty on the possession of a deadly weapon and that sentence was for two years. So, the sentences imposed by him in respect to Stires and the sentence imposed by Judge Webber of Sussex County - also an extremely fair judge who conducted a jury trial of Counterman and the jury found Counterman guilty of second-degree murder - which ran, I think, from eleven to sixteen years - or something like that - are very much alike.

SENATOR GREENBERG: I am advised that it was four to six on the consecutive.

SENATOR PERSKIE: That's correct, and nine to ten on the--

SENATOR DUMONT: So, that the sentences - the total sum and substance of each sentence - imposed by two different judges - one by a non-jury trial and the other one by a jury trial - were approximately the same.

We can disagree with them but I feel here that a man's character and reputation - as a matter of fact, his very career - is at stake and I can't take that lightly. That is the main reason why I came here to testify today.

SENATOR GREENBERG: Thank you very much. Are there any questions?

SENATOR PERSKIE: Senator, you have been a member of this House almost as long as I have been living and from that perspective--

SENATOR DUMONT: Twenty five years.

SENATOR PERSKIE: That's almost as long. From that perspective, I wonder if you can speak to the me and to the Committee - if not to the public - on the question of the interplay and the proper relationship between the proper ethics for this Committee to consider in terms of the renomination of any sitting member of the Judiciary, on the one hand, and opinion that comes from the general public, from the Bar Association, from any group or series of individuals with regard to it.

What I am really, specifically, interested in is your judgment as to how we should weigh the kind of testimony that we hear and what the proper balance is between the legitimate issues that we should be considering with regard to the renomination of a sitting judge and the question of the popularity or the acceptability, let us say, of actions that he takes to the general public.

SENATOR DUMONT: I think you have to first of all decide this on the basis of facts and not on the basis of emotions. It certainly is easy to feel very strongly for Mr. Sciascia and the entire Sciascia family, for whom I have great respect. I know they suffered a greivous loss. It can never be repaired. But, on the other hand, Judge Bry-Nildsen did not fire the gun. He was not there at the time. He listened to the testimony, to the witnesses, he came to a decision. I may think he is wrong in a couple of aspects of it, such as not, perhaps, having a jury there. But, at the same time, these were his decisions. It is easy to be a Monday morning quarterback.

In all the years that I have known senatorial courtesy, I have tried very carefully never to hurt anybody's reputation by invoking it. And, I believe that only once or twice did I even hold up a nomination for more investigation by me personally, as to that particular individual, and I have never failed to confirm someone, providing the Governor saw fit to make the nomination.

Now, it is a very obvious fact that in all but six of the years I have served in the Senate, there have been Democratic Governors - out of the 25. Therefore, it hasn't been on a partisan basis at all; it is simply the fact that you must be extremely careful when exercising senatorial courtesy. And, I saw one of my colleagues - whose name I won't mention - abuse it, I thought, one time. This bothered me because it should be used with only the greatest respect for the reputation of an individual. I know that you will make your decision based upon the facts and not based upon any emotion that you might feel, one way or the other. And, you know, Steve - as we all had to do here - that 75% or 80% of my constituents were not happy with me when I voted for the income tax, nor were they, probably, with you.

SENATOR PERSKIE: I would make it about 85%.

SENATOR DUMONT: I might be underestimating the percentage. I am sure that many of them are not happy with me because I support the Tocks Island project, which I believe is necessary some day - not in the scope indicated by the Corps of Engineers, but on a reduced basis. But, these are things that we have to make decisions about. Nobody makes us run. If we want to run, we accept the responsibility and make the sacrifices. If we don't, then don't

run.

SENATOR PERSKIE: Thank you.

SENATOR GREENBERG: Thank you very much, Senator.

SENATOR DUMONT: Thank you - all of you.

SENATOR GREENBERG: The next two witnesses will be in the following order and I tell you this so that Judge Muir -- Judge, are you here?

JUDGE MUIR: Yes, I am.

SENATOR GREENBERG: Do you mind very much, I would like to take James Tirrell, the prosecutor, next? Mr. Tirrell. Is it Tyrrell or Tirrell?

J A M E S A. T I R R E L L: It is Tirrell, Judge. Oh, excuse me, Senator. (laughter) I am so used to, everytime I have to come to the podium or the lectern, addressing a judge, that I guess it is an occupational hazard, for which I apologize.

SENATOR GREENBERG: Well--

SENATOR PERSKIE: You shouldn't apologize to the Chairman. He got all excited.

SENATOR GREENBERG: We are sitting in that kind of a room. Are you a full time prosecutor?

MR. TIRRELL: No, I am a part time prosecutor, Senator.

SENATOR GREENBERG: All right, Mr. Prosecutor, you and I have had a telephone conversation in connection with this matter, during which I alerted you to the fact that it was on.

MR. TIRRELL: Yes, we have. That is correct.

SENATOR GREENBERG: And I invited you to come, if you saw fit to do so.

MR. TIRRELL: I thought it was my obligation to come, Senator.

SENATOR GREENBERG: Did you handle this Sciascia matter yourself?

MR. TIRRELL: I handled both the Sciascia -- or, the Stires, excuse me, the Stires and Counterman trials and I, of course, am recorded heretofore as a result of an interview which I had with the Governor's representative who had occasion to come to me at the time Judge Bry-Nildsen's renomination - or reappointment - was being considered. At that time, of course, I wanted to be consistent in my approach to this matter.

SENATOR GREENBERG: Excuse me. Did you handle the prosecutions of those cases?

MR. TIRRELL: Both cases, personally.

SENATOR PERSKIE: Personally?

MR. TIRRELL: Personally.

SENATOR GREENBERG: Okay. Go ahead.

MR. TIRRELL: I informed the Governor's representative that I did not oppose Judge Bry-Nildsen's reappointment. I would like to clarify that point as a basic premise at the outset. I did, however, recommend - it was in the nature of a recommendation - that Judge Bry-Nildsen be placed in the civil tribune.

SENATOR GREENBERG: Why?

MR. TIRRELL: I felt that he was in a position to make a better contribution there. I have known Judge Bry-Nildsen for many years. He is a personal friend of mine. I have no doubt in any way as to his integrity. I would never question that - never did. I thought he was in error in his

decision in the Stires case. I made that a matter of record at the time we tried the Counterman matter because I was constantly confronted - and I can understand why - by defense counsel with the fact that the individual who had fired the shots was convicted as a result of Bry-Nildsen's decision of an act of involuntary manslaughter, therefore, how could one who was operating the vehicle - his brother, Counterman - be chargeable and an aider and abettor of second degree murder.

SENATOR GREENBERG: Where you disagree with a judge in a criminal case concerning a matter such as that, does that disagreement result in a determination in your mind, without any more, that the individual should be transferred to a civil court?

MR. TIRRELL: No, no. This wasn't the basis upon which I arrived arrived at my decision, Senator, and this was not in any way to be considered an ultimatum. It was in the nature of a recommendation. I felt that I had the obligation to speak for the law enforcement community. I also felt that from observations that I had made over the years, insofar as Judge Bry-Nildsen's performance on the Bench is concerned, that I considered him - and I still do - an excellent very, very well qualified civil jurist. I did not feel that his expertise or his inherent abilities reached that plateau in the criminal area and I felt that under the circumstances I was obligated to make the recommendation that he be placed in an area where he could make the greatest contribution to the ends of justice.

SENATOR GREENBERG: Is that opinion drawn on the basis of other experience with Judge Bry-Nildsen, other than the Stires case?

MR. TIRRELL: It is, from the standpoint of information that has been given to me. There has been some discontentment, shall we say, with some of Judge Bry-Nildsen's decisions by members of the State Police, particularly on suppression cases.

SENATOR PERSKIE: Excuse me, Mr. Chairman, if I may. By that, do you mean that the Judge has on occasion ruled in favor of a motion to suppress evidence, which ruling has been met with dissatisfaction from the State Police?

MR. TIRRELL: That is correct. That is correct.

SENATOR PERSKIE: And your office, needless to say, participated in each of those motions?

MR. TIRRELL: Yes.

SENATOR GREENBERG: Have there been appeals taken from those motions?

MR. TIRRELL: From some, Senator, but by and large, I will be quite honest with you, I have made the judgment that the cases were not of sufficient significance to warrant the taking of an appeal. It is rather difficult to appeal where you are dealing with a question of fact, where you are dealing with a situation where the Judge's weighing the demeanor of the witnesses and arriving at his facts and conclusions ultimately are the determinative factor in the case.

These were other considerations that I had at the time when the judgment was made not to take the appeal on leave because, as you know, we must request leave, of course, to appeal on an interlocutory determination.

SENATOR PERSKIE: Have any of those cases, to the best of your knowledge, been followed up in any appropriate fashion by an appeal later

in the course of the trial, or after a trial.

Has your office filed, to the best of your knowledge, any number of appeals at a later stage in the proceedings with reference to grantings of motions to suppress by Judge Bry-Nildsen?

MR. TIRRELL: No, we haven't, Senator. Actually, the determination to defer, or avoid, the appeal in I would say probably 99%, or essentially all, of those cases would have disposed of the case because without the evidence, we were unable to present our case and it would be--

SENATOR PERSKIE: Dismissed as a result.

MR. TIRRELL: Dismissed.

SENATOR PERSKIE: After which, had you chosen to do so, you would not have had to file leave to appeal, you could have appealed, based on the dismissal. I am asking has your office filed any number of appeals based on, among other things, the granting of the motion to suppress by the judge?

MR. TIRRELL: Well, we have taken some appeals, Senator. I don't know that the percentage is - a good many of them, for the reasons I have heretofore given you, have not been pursued.

SENATOR PERSKIE: Okay. And of the appeals that have been filed, are you aware of any cases of the Appellate Division, or the Supreme Court, in your tenure as prosecutor, wherein determinations on motions to suppress by Judge Bry-Nildsen have been suppressed?

MR. TIRRELL: Well, there really haven't been that many appeals taken, Senator. I will be perfectly honest with you. I do know that some of them were not reversed and some of them are still pending. Some of them are still in the process of being--

SENATOR PERSKIE: Adjudicated.

MR. TIRRELL: Adjudicated. There really weren't that many taken.

SENATOR PERSKIE: The ones that you know of that have not been reversed, I gather you mean that his verdict, or his judgments, or his rulings have been affirmed?

MR. TIRRELL: Yes, that's correct. I wouldn't say we have taken that many appeals that we were in a position to get a good cross section.

SENATOR GREENBERG: What position do you take before us today on the question of his renomination?

MR. TIRRELL: As I indicated previously - and I am going to be consistent in that approach - I do not oppose Judge Bry-Nildsen's renomination and I never did, Senator. I simply made a recommendation because I felt that it was my obligation to speak for the law enforcement community and it was not in the nature of an ultimatum by any means. I felt that serious consideration should be given to placement in an area where he could make the greatest contribution to the ends of justice.

SENATOR GREENBERG: Have you recommended that to the assignment judge?

MR. TIRRELL: No, I have not.

SENATOR GREENBERG: You understand, of course, that this Committee is without authority to assign judges to criminal or civil matters and with knowledge of that inability that we have, and with our gratitude for your coming before us to explain what you have done and what your view is and why, I now ask you whether or not you have a position, either affirmatively or

negatively on the question of this Committee's action with regard to confirmation, or the recommendation of confirmation of Judge Bry-Nildsen as a county court judge, without regard to whether he sits on civil or criminal - a matter over which we have no authority.

MR. TIRRELL: I understand that, Senator, and, of course, Judge Bry-Nildsen is presently sitting in the nature of one in the capacity of a criminal assignment judge, which indicates that he, of course, is hearing all of the significant criminal cases, primarily, that are brought before him.

I do not oppose his nomination. I took that position, if you will avail yourself of the record that was submitted to the Governor, when the inquiry was made of me and I will candidly say that that is the first time I have ever voiced a recommendation of any nature. I did not bring this to the assignment judge's attention. I believe I told you that before. I did not bring it to the Administrator of the Court's attention. I felt, however, when I was inquired of, that I had to be candid insofar as my feelings were concerned and if you will review my statement - the position that I took - you will find that I did not in any way question Judge Bry-Nildsen's integrity or his honesty or dispositions he made. I said I felt he made a mistake in the Stires case. I was asked to render an opinion regarding it. And, I also made the recommendation that I previously mentioned and I said on balance I do not oppose his reappointment.

SENATOR GREENBERG: Do you favor it?

MR. TIRRELL: Yes, I do - I certainly do.

SENATOR GREENBERG: All right. Now, Mr. Prosecutor, it is not pleasant, frankly, to ask this question but I think in the discharge of our duty I have to, is your concern with the Judge's sitting as a criminal court judge, or as a criminal assignment judge, based on a philosophical dispute, if any, that he may have with you and other law enforcement people, or on his ability and capacity to handle that aspect of his duty?

MR. TIRRELL: Well, that is a rather difficult question for me to answer, unqualifiedly, Senator, I would simply say that philosophically I don't think that he and I are necessarily on the same plane. I say that in fairness to him. One of the indicia is with regard to sentencings. I feel that some of his sentencings should be a little more severe. This is a subjective thing. I will say that in fairness to Judge Bry-Nildsen. There is no hard and fast rule. We all recognize that. There are disparities and discrepancies insofar as sentencings are concerned.

SENATOR GREENBERG: We are working on that.

MR. TIRRELL: I understand that and I think it is a step in the right direction, personally. But, as I said, I don't know whether that answers your question but I do feel that--

SENATOR GREENBERG: Let me put it more directly.

MR. TIRRELL: Of course, there is another aspect of it, Senator, that is extremely important. We, in our capacity - and I am speaking now as a prosecutor - are, shall we say, by virtue of the dictates of the Supreme Court, which we adhere to, interested in seeing that justice is served. It is not, as they say - to use the principle that has been expounded - our sole responsibility, or our primary responsibility, to convict, but to see that justice is done. However, I must say that I am looking at the picture from an entirely different

perspective than Judge Bry-Nildsen is. I am looking at it from the standpoint of a prosecutor. And, of course, looking at it from that standpoint, we have to have philosophical differences. At least the chances of us having these differences are very great because we are separate and distinct individuals and we think and act independently. I know him well enough to know that. I have had conversations with him regarding sentences, after the sentences have been imposed. So, he knows what my thoughts are in some of the matters.

Again, it is a subjective thing and when you look at it from the side of the spectrum that I view it from, you have to appreciate - and I am sure you do - that I am looking at it somewhat differently than he is. And, of course, differences will arise as a result of this.

SENATOR GREENBERG: In recognition of those differences and the fact that they can be honestly held by both sides, you still would prefer that he not sit on criminal matters, I gather?

MR. TIRRELL: Well, I would prefer that he not sit as the criminal assignment judge, yes.

SENATOR GREENBERG: Isn't there only one criminal judge in the county?

MR. TIRRELL: No, both of our judges sit in criminal matters, Senator.

SENATOR GREENBERG: Simultaneously?

MR. TIRRELL: Yes. Depending upon the calendar at a given time, we have very frequently had two matters going. Very frequently there is a civil matter going and a criminal matter. It depends on the manner in which the calendar is structured at a given time.

SENATOR GREENBERG: You say you would prefer that he not be the assignment judge but doesn't the sentencing aspect of a trial judge -- isn't that what you are really complaining about? Perhaps I shouldn't use the word "complain." Perhaps I should use the words "take issue with." Isn't that the function that is performed by Judge Bry-Nildsen to which you most strenuously object?

MR. TIRRELL: Senator, I wouldn't relegate it to that, solely. I would say this: My comments, I would hope, are on a constructive vein. They are not, by any means, to be considered as destructive.

SENATOR GREENBERG: Absolutely.

MR. TIRRELL: Solely because of the position in which I find myself. I am trying to convey my impressions. Certainly, I differ insofar as some of the determinations that he has made. This is understandable too. Of course, the Stires case is one of them.

SENATOR GREENBERG: All right. It is not really your function to make our decision and I don't mean to imply that I am looking for your help in that regard. I do appreciate the fact that you have come and I know how difficult it is to say many of the things that you have said, because I know, from what you have told us, that you feel yourself as a friend of the Judge, someone who has known him for a long time, and in many areas have no disputes whatsoever.

MR. TIRRELL: And I respect him, Senator, as an individual. I certainly do.

SENATOR GREENBERG: All right. This is an unfortunate but necessary procedure and, frankly, I, for one, am greatly appreciative of your offer to come and to tell us what you have. Now I would like to see if there are any questions

from the other Senators.

SENATOR PERSKIE: Mr. Prosecutor, there are two points that I am interested in, with reference to the Stires case - the Stires and Counterman cases. Where they indicted jointly? Was it one indictment?

MR. TIRRELL: My recollection, Senator, is that we moved to have them tried separately. They may have been indicted jointly but--

SENATOR PERSKIE: I am going to come to that in a minute. Were they charged initially with the same offenses, whether it be in the same indictment or in separate ones?

MR. TIRRELL: One as an aider and abettor and the other as the principal.

SENATOR PERSKIE: All right, but with substantively the same offenses?

MR. TIRRELL: Essentially the same, if not the same.

SENATOR PERSKIE: Other than perhaps the possession of the weapon?

MR. TIRRELL: That's correct and one the transfer of the weapon.

SENATOR PERSKIE: Okay. Then you say your office moved to have them tried separately, or the defense did?

MR. TIRRELL: We moved to try them separately because of exclusionary rules and statements that were admissible as to one that would not be admissible as to both if they were tried jointly, at one and the same time.

SENATOR PERSKIE: So that it was your motion before the court to sever the trial?

MR. TIRRELL: That is correct.

SENATOR PERSKIE: Do you recall whether or not the defendants objected to that motion?

MR. TIRRELL: I don't recall. I didn't handle that motion. It was something that we thought we had a right to do under the rules. It was not a decision of magnitude. In effect, it had to be made.

SENATOR PERSKIE: Do you recall whether it was contested?

MR. TIRRELL: I can't tell you that - whether or not the public defender objected. I do know the motion was granted. I didn't handle the calendar that particular day.

SENATOR PERSKIE: All right. Now, with respect to the motion to sever the trials and with respect to the application for a non-jury trial in the Stires case, procedurally, which came first?

MR. TIRRELL: The motion to sever the indictment.

SENATOR PERSKIE: All right. So that after the defendants were severed - or the trials were severed - and separately pending, then you received a motion from the defendant's attorney - Stires attorney - with reference to the application for a non-jury trial, is that correct?

MR. TIRRELL: That's correct.

SENATOR PERSKIE: Did your office take a position on that motion?

MR. TIRRELL: We had no right to object under the rules and I so indicated to the court at the time, since under the rule - the applicable rule - the only time the prosecutor or the State may take a position is in capital cause. At that particular time, I indicated that I would try the case with or without a jury. If I had the option, I would have preferred a

jury.

SENATOR PERSKIE: Why?

MR. TIRRELL: Well, I have a preference for a jury, Senator. I have great faith in the jury system and I always have. I think that you, on balance, get a better reading; you get, shall we say, a cross section of your county and your community that is reflected in that judgment.

SENATOR PERSKIE: Okay. So that when the application for Stires came for a non-jury trial, your office took no position with respect to the application?

MR. TIRRELL: We were not in a position to. I have no standing. In effect, if I had objected to it, it would have been a lesson in futility, in effect, under the rules.

SENATOR PERSKIE: I would refer your attention to Rule 1:8-1, Paragraph A, which reads in its entirety as follows: Criminal actions required to be tried by a jury shall be so tried unless the defendant, in writing and with the approval of the court, after notice to the prosecuting attorney and his opportunity to be heard, waives a jury trial, but in trials punishable by death, a jury may not be waived unless the prosecutor has elected to waive the death penalty pursuant to the rules.

MR. TIRRELL: That was the rule under which we were functioning at the time. I am familiar with it and I agree with it.

SENATOR PERSKIE: All right. We all know that the second clause, at the moment and for the time being, at the time of this trial was not applicable by reason of the fact that there are no crimes punishable by death in New Jersey.

MR. TIRRELL: That's right.

SENATOR PERSKIE: So, we are really dealing with the first sentence which says that the defendant may, with the approval of the court, after notice to the prosecuting and his opportunity to be heard, waives a jury trial. Is it your understanding then that that phraseology does not give you the right to appear before the court and object to such a waiver?

MR. TIRRELL: It gives you the right perhaps to object but your objection has no substance whatsoever because of the applicable rule that immediately follows it that relegates our ability - or our position - insofar as objections are concerned to capital causes, which is the - shall we say - bellweather insofar as the State's position is concerned.

SENATOR PERSKIE: Are you suggesting--

MR. TIRRELL: I am suggesting, and I am saying very definitely, that I had no option, or election, to exercise with regard to whether or not that matter went to trial with or without a jury.

SENATOR PERSKIE: Well, I don't really guess under this particular forum it is appropriate to engage in a real dialogue about that.

SENATOR GREENBERG: I agree with you, Senator.

SENATOR PERSKIE: Suffice it to say I don't read the rule that way. I guess we are really looking at what was in your mind at the time. But, for the record, I don't understand that to be the rule. I understand the import of that paragraph to be that the prosecutor has the right to object to the court and to set forth his reasons and that the court then makes a decision after having given the prosecutor that right to be heard and after weighing,

presumably, what the prosecutor has to say, subject to the fact that if, in fact, we had capital cases - which we don't - as long as the prosecutor doesn't waive the capital element, that you can't do it.

SENATOR GREENBERG: Well, Senator--

MR. TIRRELL: I respectfully disagree, Senator, with your construction of that particular rule.

SENATOR PERSKIE: That is not central to the rule.

SENATOR PARKER: On the point, if I can interject, I read that there is some indication that the Judge has - this is interpreted to indicate - the final discretion.

SENATOR GREENBERG: The facts before us, Senator, at this point are as follows: Judge Bry-Nildsen has testified that his opinion, at the time, was that he had no choice but to accept a request for a non-jury trial.

SENATOR PERSKIE: An opinion which he has since changed.

SENATOR GREENBERG: What we are interested in is what his opinion was at the time. The prosecutor has now indicated that his opinion at the time - and it is still his present opinion - is that any objection would have been meaningless.

MR. TIRRELL: That's correct, Senator.

SENATOR PERSKIE: All right, may I end? It has been indicated this morning that there was a period of time between the Stires and the Counterman trials during which time Stires was not sentenced, is that correct?

MR. TIRRELL: That's correct.

SENATOR PERSKIE: Stires was not sentenced until after the Counterman trial?

MR. TIRRELL: That's correct.

SENATOR PERSKIE: Was Stires a witness in the Counterman trial?

MR. TIRRELL: Stires was presented on a preliminary hearing. Judge Webber, of course, has been--

SENATOR PERSKIE: A preliminary hearing?

MR. TIRRELL: On the matter of the voluntariness of his brother's confession.

SENATOR PERSKIE: Counterman's confession?

MR. TIRRELL: Yes, out of the presence of the jury.

SENATOR PERSKIE: And did he testify?

MR. TIRRELL: Yes, he was heard and his testimony has been transcribed; it is available.

SENATOR PERSKIE: Was he presented by the defense or by the State?

MR. TIRRELL: He was presented by the defendant but he was not brought forth before the jury.

SENATOR PERSKIE: No. He did not testify than at the trial of the court?

MR. TIRRELL: He did not.

SENATOR PERSKIE: Do you know whether the State made any applications to the court with reference to the timing of the sentence of Stires?

MR. TIRRELL: I don't find, Senator, the timing with regard to the sentence of Stires to be significant.

SENATOR PERSKIE: I don't either. I just want to know whether the State made any application--

MR. TIRRELL: In all due respect to Mr. Sciascia, with the familiarity that I have with our court processes and sentences, this is not an inordinate period of time with the pre-sentence investigations and things of that sort that had to be obtained.

SENATOR PERSKIE: Within your experience, where there is more than one individual who is tried -- or charged, rather - with the same offenses arising out of the same transactions, is it a common experience to defer sentencing until the dispositions of both are reached?

MR. TIRRELL: That is not unusual by any means. We have, for example, a matter which is pending presently that comes to mind where the sentencing of a witness who turned State's evidence has been deferred until such time as the main hearing, at which that particular witness was to testify, was concluded.

Of course, I would say this - getting back to what we were talking about, with or without a jury and I say this in fairness to defense counsel in the Stires case - I would not have tried him without a jury -- that is, on the other side.

SENATOR PERSKIE: You wouldn't have made the application?

MR. TIRRELL: On the other side, that is correct.

SENATOR PERSKIE: Thank you, Mr. Chairman, I have nothing further.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: No. I just wanted to comment on the rules. Was it your understanding at the time, under that rule, that the court had no discretion when the defendant requested--?

MR. TIRRELL: That was not my understanding, no. And, it still is not my understanding. It was a matter of discretion that Judge Bry-Nildsen had at the time, which he could have exercised either way, depending on how he so found.

SENATOR PARKER: Are there cases that interpret that section?

MR. TIRRELL: I think that that is explicit.

SENATOR PARKER: In the approval? In the word approval? In the word requiring approval?

MR. TIRRELL: That's correct.

SENATOR PARKER: But there are no cases interpreting that?

MR. TIRRELL: Well, none that I am aware of, Senator.

SENATOR GREENBERG: Is there anything further? (no response)

Thank you very much for coming.

MR. TIRRELL: Thank you, Senator, I appreciate it.

SENATOR GREENBERG: Judge Muir. Judge, you and I spoke on the phone, also. I advised the Judge of the pendency of the matter and indicated to him that we would welcome his testimony, if he saw fit to come, but that we were not requesting it. The judge indicated that he desired to come, and he is here.

Before I ask you a couple of questions, do you have a statement of some sort that you would like to deliver or read?

J U D G E R O B E R T M U I R, J R.: Well, there were several aspects that I wanted to deal with. My purpose in coming here, my primary purpose, is to express a statement from the Chief Justice that he has given me in writing - and I have copies for each member of the Committee - that I would like to read.

The second purpose that I came for was to express my opinion with respect to Judge Bry-Nildsen's qualifications and to pass along to you

the comments that I have received from three of four of my predecessors. The one of my predecessors that I did not contact is now sitting in the Governor's chair, so I did not think that I should try to call him.

The third point or third purpose is to clarify some of the things that you have heard, some of the questions that have been asked. I think, in the order of their priorities, the statement is the most significant. If it meets your pleasure, I would like to hand you copies of the statement which the Chief Justice has given me, and then I would like to read that statement in, and then pass to the other two purposes that I have, or however you choose to proceed.

SENATOR GREENBERG: That is fine. We have the statement. Would you like to read it? I frankly think most people in the room don't know what it contains, so we ought to make it a public document.

JUDGE MUIR: All right, fine, with the understanding, of course, that the Chief has designated me to read this, and I am carrying out his words.

"The Judiciary Committee may be considering today, in its constitutional responsibility to advise and consent to judicial appointments, complaints with regard to a specific judicial decision, or to strict management of a criminal court calendar by a judge to implement the 'speedy trial' concept recommended by the Governor and supported, obviously, by the public. The following statement is not to interfere with that constitutional responsibility in the slightest degree. It is general in nature, on behalf of the administration of justice under the New Jersey Constitution.

"It would be a violation of the constitutional doctrine of separation of powers for either the Governor or the Legislature to interfere with the internal administration of the courts, which responsibility the Constitution places in unmistakable language in the Chief Justice and the Supreme Court. This includes the assignment of judicial manpower as between civil and criminal, equity or juvenile justice or domestic relations causes, for instance, as well as the assignment of judges as between county 'A' or county 'B' and so forth, depending on litigation backlogs. That flexibility and unilateral responsibility is essential to every element of the administration of justice, such as calendar control, 'speedy trial' procedures in the case of violent crime, and the like. To use the executive power to reappoint a sitting judge or not, or the legislative power to confirm a judge or not, in order to exert such indirect interference would be unconstitutional, a direct affront to the people, and destroy the independence and integrity of the judiciary.

"If a part of the Executive Branch, such as a prosecutor, or an individual member of the public has a complaint about a judge, such as the course of his decisions or prejudices, or his management of the court calendar, these complaints should be addressed to the court system in the person of the Assignment Judge and thence to the Chief Justice. No state in this country has more access to the Chief Justice and the Assignment Judges than does New Jersey. The Chief Justice and the Assignment Judges frequently meet to consider these problems and 'keep the house of the law in order,' which is their direct constitutional responsibility.

"If the Senate should permit political terrorization of a judge, they will be sending out a message to all judges that they can no longer be objective, fearless and independent in their judgments, in fulfilling

their oath of judicial office. They will be dealing a fatal blow to the independence and decency of the New Jersey court system. Of course this is not intended, since the other branches of government have as much stake as does the Judicial branch in preserving the independence and integrity of judges.

"This does not mean that judges are above the law, or that they may act as tyrants, or be derelict in their duty without accountability. Our Court reprimands and sometimes removes judges for such causes. That is our job, by force of the New Jersey Constitution. There is a parallel legislative power also, under the Constitution, that is to say the power of impeachment.

"One of the principal reasons for the American Revolution was the independence of the judiciary, to free it from domination by the British Crown. I hope we do not need to learn this lesson again 200 years later.

"I am not suggesting that the appointment power of the Governor or the 'advise and consent' function of the Senate are not important, or that their exercise should be casual or routine. The careful use of these constitutional powers is of supreme importance, going directly to the heart of government. And where gross judicial incompetence or misconduct is not dealt with, by some mischance, by elaborate machinery of scrutiny by the Supreme Court, its Advisory Committee on Judicial Conduct, or the statutory plan of removal, of course these matters should be dealt with constitutionally by the Governor and Legislature. Please note that the removal proceedings provided by statute may be invoked, not only by the Supreme Court but by the Governor or by either House of the Legislature. The statutory causes for removal are very broad, including misconduct in office, willful neglect of duty, or other conduct evidencing unfitness for judicial office, or for incompetence." The citation is omitted.

"But judges should be beyond the reach of private jealousies, political pressures and political clamor, so that they can do their judicial duty fearlessly, honestly and independently. That is the kind of decent, non-political and honest court system created by the people of New Jersey in 1947, and I do not believe the people want it to be weakened. If we take that route, we might as well begin electing Justices of the Peace, as in 1844, a corrupt and disgraceful system which made 'Jersey Justice' a laughingstock throughout America. I do not think the people of New Jersey want us to take that path, and I do not believe you wish that either.

"I thank the Judiciary Committee for permitting me to deliver this statement through the courtesy of Judge Muir, and will be available to appear and answer questions if the Committee requires."

In the inverse order that I named them, then, with respect to the remaining two points, I would like to deal with some of the things that have been raised here today - one by the parent of the victim or the relative of the victim. The trial of Mr. Stires was concluded October 18th. He was sentenced on December 16th. The normal operating procedure in Morris County--- I am sorry, in Warren County, as it is in Morris and the other Counties that I am responsible for, is that a pre-sentence investigation Probation Department Report takes at least six to eight weeks.

SENATOR GREENBERG: Judge, I think the Judiciary Committee is familiar with that fact.

JUDGE MUIR: Okay, fine. The second thing is, in response to Senator Perskie's question, I asked for copies of the indictment. Mr. Counterman and Mr. Stires were indicted separately. They are two separate and distinct indictments.

SENATOR PERSKIE: If I may, Mr. Chairman. Were the charges substantively the same?

JUDGE MUIR: No, Mr. Counterman was charged with aiding and abetting. I am looking at the first count. Mr. Stires was charged with murder. I am looking at them quickly, but it seems to me that murder one and murder two--- Yes, he aided and abetted. Mr. Counterman is charged with aiding and abetting all the substantive charges that Mr. Stires was charged with.

SENATOR PERSKIE: By operation of laws, therefore charged as a principal.

JUDGE MUIR: By operation charged as a principal, yes.

SENATOR MC DONOUGH: Excuse me, how long was it before the second man was sentenced?

JUDGE MUIR: The second man was sentenced in January. He was sentenced on January 27, 1978.

SENATOR MC DONOUGH: When was the trial concluded?

JUDGE MUIR: The trial was concluded on December 14th, two days before.

SENATOR MC DONOUGH: That did not take as long to do a---

JUDGE MUIR: Well, let me explain to you why. One reason is, all of the research that the Probation Officer had to do for the background would be cut down with respect to the second as it would be to the first, because he had done a lot of the research in the Stires case. Just for your understanding, because of the letters that were written to Judge Bry-Nildsen he disqualified himself in the Counterman trial, and because the only other Judge sitting in Warren County had also disqualified himself, a visiting judge had to be brought in from Sussex County. So there was a delay.

SENATOR PERSKIE: What letters?

JUDGE MUIR: Pardon me?

SENATOR PERSKIE: What letters? Letters received after the Stires trial?

JUDGE MUIR: Yes, after the Stires trial. I received, and I think the Administrative Offices, if you put them collectively together, maybe twenty-five or thirty letters protesting. They basically said the same thing, erroneous decision, with respect to the decision.

SENATOR PERSKIE: Did Judge Bry-Nildsen disqualify himself on his own motion?

JUDGE MUIR: He did it on his own motion, yes. He called me and asked me what I thought he should do, and that he wanted to disqualify himself, and I said that disqualification was a personal matter, and that if he chose to disqualify himself, I would honor the disqualification and have another judge assigned. And he did that. Judge Weber came down from Sussex.

Now, the third thing that I would like to deal with is Judge - and I think probably the most important, as far as the Committee is concerned - Bry-Nildsen's qualifications. In my capacity, and in any Assignment Judge's capacity, for supervision or administration of justice in a county, he comes to get to know

very well the competency and the capabilities of the Judges that work in the county. I took the liberty of calling three of four of my predecessors. One of those is Alexander Wohl who is now retired, and who stated to me that I had his permission to express to you that he felt that Judge Bry-Nildsen was an extremely competent Judge of the highest integrity and ability.

The other two Judges were Judge Ard who is now in the Appellate Division. Judge Ard's words were, "He is a bright star in the Judiciary." He felt that Judge Bry-Nildsen was extremely competent. Judge Antell who served for a shorter period of time as an Assignment Judge indicated to me that in the time that he was there, he had felt that Judge Bry-Nildsen was very conscientious and very capable.

My own opinion is this: This is a very conscientious, very capable and very competent Judge. He is a very dedicated jurist. When I first came to the Assignment Judge's job in the area, one of the difficulties that I found in Warren was the movement of the criminal calendar. The Constitution guarantees all defendants a speedy trial, as you know, and there is emphasis on that fact. It was my opinion, with all respect to the Prosecutor, the Prosecutor was not prepared to move cases quickly enough, and as a result of that, I asked the Chief Justice if he would assign Judge Bry-Nildsen to the criminal calendar. In doing so I set certain parameters, certain requirements, with respect to cases that had to be ready. I felt that it was inappropriate for a defendant who could not make bail to sit in the Warren County Jail for up to four months. And I felt that it was inappropriate for cases to be six and seven months old, in a small county, from the time of the indictment.

Judge Bry-Nildsen carried out this responsibility very conscientiously and very capably. I have never once had a complaint about the carrying out of this duty. In addition to that, I had asked him to perform services that require night work. We have in Warren County a situation where some municipalities do not have Municipal Courts. As a result, the District Court takes all the traffic and municipal court violations. This puts a heavy burden on the County Court Judges, and it puts a heavy load. Route 80 goes through Warren County, and there are two communities up there where State Troopers give out tickets on Route 80. These two communities did not have Municipal Courts. As a result of Judge Bry-Nildsen going out, I believe it was, seven or eight nights, he has been able to persuade two of those municipalities to establish or join into municipal courts.

Now, I can understand, and I have a great deal of sympathy for the Sciascia's. I just hope that they can understand that Judge Bry-Nildsen can't decide - a Judge cannot decide - a case on the basis of sympathy. He has to be impartial; he has to be unbiased; he has to accept the evidence and apply it to the law and reach a result. He has to do that free of any sympathy or emotional reaction. I know they are discouraged or dissatisfied with the decision of the Judge, but I think in light of the seventeen years of service that he has given, and I am sure you will hear from others, but from what the Assignment Judges have to say, he deserves reappointment. I thank you for the opportunity to be here.

SENATOR GREENBERG: Judge, thank you for coming. Do you have any comment that you wish to make with regard to the observations of the Prosecutor?

JUDGE MUIR: Insofar as the fact that he should be assigned---

SENATOR PARKER: Mr. Chairman, with due respect, I don't think the Prosecutor---

SENATOR GREENBERG: Let me rephrase the question. What I want to know, as the Assignment Judge, if you desire to tell us, have you run into any problems in connection with the functioning of Judge Bry-Nildsen in connection with his duties as a Judge when he was handling the criminal calendar?

JUDGE MUIR: No, sir, I have not.

SENATOR GREENBERG: Have you ever had any discussion concerning those duties with the Prosecutor or any of his assistants?

JUDGE MUIR: No, Senator, I have not.

SENATOR GREENBERG: The Prosecutor has indicated - and frankly it causes me some concern - that there is some dispute or disagreement with regard to philosophy- and I suspect that this exists in many, if not most counties - in connection with the handling of criminal matters and perhaps their disposition as well. We have heard some allusion to State Police matters and narcotics matters, and I assume there may be additional testimony. I don't know. But while you are here, let me ask you, first, with regard to assignments in the County, Judge Bry-Nildsen, as I understand it, if he were to be confirmed, would continue to function sometimes as sitting in civil matters and sometimes sitting in criminal matters; is that correct?

JUDGE MUIR: Well, at the present he would remain under the assignment that the Chief Justice has given him with my recommendation, and he would remain handling criminal matters.

SENATOR GREENBERG: I hasten to add that that is not something over which we have any authority, but I merely would like to know what in fact will occur in the county in the future?

JUDGE MUIR: My practice is to ask the Chief Justice to rotate the assignments periodically so that one Judge is not doing the same thing day in and day out for his entire judicial career or for whatever time he serves in the particular county. We attempt to rotate them, but when you have just two Judges in the county, you are rather restricted in your rotations. I assume some day within the reasonably near future there will be a rotation. But it will not be for at least one or two more years. Judge Bry-Nildsen will continue to handle the criminal calendar.

SENATOR GREENBERG: Have you had any complaints with regard to Judge Bry-Nildsen's handling of a criminal matter from anyone in law enforcement?

JUDGE MUIR: No, I have not.

SENATOR GREENBERG: Or from anyone in the Prosecutor's Office who handles matters before him?

JUDGE MUIR: No, I have not.

SENATOR GREENBERG: Questions?

SENATOR SHEIL: Just one quick question. Have you had any criticism of the Judge prior to this case?

JUDGE MUIR: No, I have not, and neither have any of my predecessors, because I asked that specific question of them - except Governor Byrne.

SENATOR GREENBERG: Whom you have not asked.

JUDGE MUIR: Whom I have not asked.

SENATOR PERSKIE: Judge, do you know directly of any information as to the incidence of non-jury trials in Warren County specifically or in your vicinage in general?

JUDGE MUIR: No, I don't. Periodically there is a non-jury trial, normally in a criminal case of lesser magnitude than this.

SENATOR PERSKIE: Do you know, do you have any feel for whether there have been any number, any volume of such applications in Warren as distinguished from any of your other counties?

JUDGE MUIR: No, I do not.

SENATOR PERSKIE: Do you know of any other cases in your experience--- How long, incidentally, have you sat as the Assignment Judge?

JUDGE MUIR: I have been the Assignment Judge since 1976. I have been a Judge since 1971.

SENATOR PERSKIE: In that immediate area?

JUDGE MUIR: In that immediate area.

SENATOR PERSKIE: Are you aware of any other cases that were - criminal cases that is - tried by application on a non-jury basis where there has been a concern expressed about it, anything in this nature?

JUDGE MUIR: Well, the most recent one that we had in Morris County, one of the Superior Court Judges sat non-jury in a public bribe case trial. He found the defendant guilty, and he has since granted a new trial on some undiscovered evidence. There were some problems of disclosure. But other than that case, the pattern is consistent. If it is a lesser type --- If the magnitude of the crime is lesser, you will have periodically an application for a non-jury trial. As a result - without being a pedant - of Judge Bry-Nildsen's difficulty here I had my law clerk research the law and there is a case where Chief Justice Warren said you have a Constitutional right to have a jury trial, but you don't have a Constitutional right to go non-jury. And he gave all the reasons for it. I very frankly as a result of this suggested that the Judges in the exercise of their discretion give due consideration to that case.

SENATOR PERSKIE: You have then had a conference with the Judges in your vicintage with reference to the application of Rule 1:81 and its meaning with respect to the exercise or the extent of the available exercise of a Judge's discretion.

JUDGE MUIR: I have written them a memorandum in which I pointed out the rule, and I pointed out Chief Justice Warren's opinion on the constitutionality of a non-jury trial.

SENATOR PERSKIE: Have you circulated that memorandum to the various prosecutors in your vicintage as well?

JUDGE MUIR: No, I have not.

SENATOR PARKER: Just on that point, did you come to the conclusion from a review and your research that it is now discretionary with the Judge to do that, or mandatory?

JUDGE MUIR: I think it is directed to his sound discretion as to whether or not he should try a case non-jury. All Chief Justice Warren was saying was there is no constitutional right to say to the Judge, you must try me non-jury.

SENATOR PERSKIE: And in the exercise of that sound discretion, has it been your recommendation to the Judges in your vicintage that they at least give consideration to the position of the State through the Prosecutor?

JUDGE MUIR: I think I used the word due consideration, yes.

SENATOR PERSKIE: So that a Prosecutor, for example, who

wished to - for whatever reason - oppose the application of a defense attorney for a non-jury trial would be expected in your vicintage to have the Court take due consideration of his position.

JUDGE MUIR: Yes. I would expect a Prosecutor to come in. I don't know what happened, and I am not criticizing.

SENATOR PERSKIE: No, and I am not either. I think I ought to make that clear. I just want to make sure that I understand what your position in your vicintage is as far as Judge Bry-Nildsen is concerned with regard to the question of the proper application of that particular rule.

SENATOR PARKER: Prior to your research and determination to write the memorandum setting forth this position as you interpret it, had there been any instructions one way or the other to the Judges in your vicintage?

JUDGE MUIR: No, there had not been - at least as far as I could find on memoranda that dated back to Judge Alexander Wohl, and he came there in 1965, and I believe he was the first one who started circulating memoranda to the Judges. I won't guarantee that, though, because the files are repleat with letters and notes.

SENATOR GREENBERG: If any portion of that concept is relevant or subject matter is relevant. It is, of course, what was in place at the time of the decision in the incident case, and while we are all interested in the proper administration of justice and what has happened since then, I don't think it is particularly relevant to the issue.

Are there any other questions? Thank you very, very much. This Committee is going to take a ten minute recess. We will be back.

(Whereupon a recess was taken.)

AFTER RECESS:

SENATOR GREENBERG: I have a list of names and I am going to go down the list and call the witnesses who desire to testify. I would only request that the testimony be kept as brief as possible, consistent with our time limitations, and also that there be an effort made not to be repetitious, please.

We have some people here who are appearing in an individual capacity, and others who are here in a representative capacity. So I would like to take the representatives first, and it is our intention and objective to conclude this matter today with regard, at least, to the testimony portion of our hearing. Is Mr. Seybolt here? This is Harry K. Seybolt, Warren County Trustee for the State Bar Association.

H A R R Y K. S E Y B O L T: Senator, just to be clear, I have no authority to speak for the State Bar Association.

SENATOR GREENBERG: You are here in what capacity?

MR. SEYBOLT: I am a Trustee of the State Bar from Warren County. I am here in an individual capacity.

SENATOR GREENBERG: Well, since you are sitting in the chair, let's take your testimony.

MR. SEYBOLT: All right. The State Bar Association, the Board of Trustees have not met and would not really meet to discuss this controversy. The State Bar Association, as you are well aware, has a Committee which reviews appointments, submits their reports to the Governor, and I as an individual Trustee have no access to that report.

SENATOR GREENBERG: I understand. You are testifying as an individual.

MR. SEYBOLT: That is correct.

SENATOR GREENBERG: Go ahead.

MR. SEYBOLT: I have known Judge Bry-Nildsen since 1965. One thing that I don't think has been mentioned was that during his twelve years in the District Court Judge Bry-Nildsen was assigned to sit in many different counties. He sat, I think, from my own personal knowledge, in most of the counties of North Jersey. My first appearance before him, he was sitting in Somerset County. I moved to Warren County in '65 and have known Judge Bry-Nildsen since that time, and the most impressive thing about Judge Bry-Nildsen has always been his competence and his integrity. Since knowing him personally since moving to the County, I have found that Judge Bry-Nildsen himself holds that integrity above everything else, from what I can view. And my impression is that there would never be anything to come in the way of a fair and honest determination of any case that I have ever seen him decide. In the cases where I have appeared before him, his competence - which will be testified to by Assignment Judges today - has always been above reproach. I feel, and I urge the Senate to consider the fact, that one case in a seventeen year career cannot be a criteria of a Judge's ability. From my observation of appearing before him in other counties, as well as in Warren County, his ability is above reproach and his integrity is above reproach. I will defer to others who are here in a representative capacity.

SENATOR GREENBERG: Thank you very much. Any questions? Thank you. Is there an individual present representing the Warren County Bar Association?

J A M E S B R O S C I O U S: I am. Senator Greenberg and Senators, I have been asked by the Warren County Bar Association to appear before you to express

very briefly our views concerning Judge Bry-Nildsen. In the meeting which we had several weeks ago, there were three main criteria that we discussed, and they are contained in our resolution which we forwarded to you. The first deals primarily with integrity, the second with judicial or legal ability, and the third with judicial temperament.

With respect to the question of integrity, and listening to the witnesses that have preceeded me, I don't think there is any question but that Judge Bry-Nildsen's integrity, his honesty, and his overall conduct in office has been anything but exemplary. He is a Judge of whom we as members of the Bar and the Bar Association can be proud.

With respect to legal ability, he does his homework. He is prepared, be it on a motion day, be it on the return day of an order to show cause. He has read the papers; he has had the research done; he understands the issues, and he deals with the issues.

Finally, with respect to judicial temperament which I as a trial lawyer feel is a very important factor in the office of a judgeship, Judge Bry-Nildsen, if he has a fault as a judge, his fault is that he will listen to the testimony sometimes oblivious of the time of day. He will listen to the lawyers. He will listen to the litigants. He will permit each side to fully explore his or her side of the case. He will permit the litigants to present their case, and when the case is over, he will then rule on the case, and many, many, times a win or lose or draw, I have left the courtroom and had a litigant say to me, "Well, at least we got a fair trial." To me, that is the highest accolade that can be paid to a judge.

This comes, as I say, not just from people who have won cases, but from people who have lost cases. Whether it is in a criminal case, or a civil case, at least we got a fair trial. Gentlemen, as far as I am concerned as a trial lawyer, that is what it is all about, a fair trial.

I would like now to leave my capacity as a representative of the Bar Association and address very briefly the question of the Judge's competence to hear criminal and/or civil cases. I don't care what the case is, Judge Bry-Nildsen's conduct in a case is the same, whether it is civil or criminal or whatever. He listens to the case. He analyzes the issues, and he rules. I have lost motions to suppress in front of the man, and I have won motions to suppress and I can't say - I have one on appeal right now that I lost - that he hasn't analyzed the issues or that his abilities have not been properly directed to the issues. So, I strongly, both as an individual and in my capacity on behalf of the Bar Association, request that you confirm his reappointment. Thank you.

SENATOR GREENBERG: Thank you. Any questions?

SENATOR PERSKIE: I just wondered whether --- This is the same question I asked the Prosecutor. I just wonder whether you are aware of any, in your practice - specifically, the question was raised in some context about motions to suppress in drug cases - such determinations by the Judge that have been reversed by the Appellate Division?

MR. BROSCIOUS: No, sir, I am not.

SENATOR PERSKIE: Thank you.

SENATOR GREENBERG: Thank you. Is there any other individual present who wishes to testify in a representative capacity?

E L I N O R M U L L I G A N: I am Elinor Mulligan, an attorney from Warren County, and I am a member of the Warren County Judicial Appointments Committee. It is Chaired by Mr. De Masi. It is a small Committee. There are only three of us. I am here in that capacity as well as my own individual capacity, just as Mr. Broschious spoke to you.

I was admitted to the Bar eight years ago, and have maintained offices in Warren County for the last five and a half years. In this period of time I have appeared many, many times before Judge Bry-Nildsen, to whom I am not related and with whom I and my family have no social relationship.

I am here in support of his reappointment in the two capacities I outlined a moment ago. In my appearances before the Judge, he has unfailingly displayed integrity, close familiarity with the law, and courage in applying it, a capacity for detached and wise deliberation, and untiring courtesy and patience with counsel, litigants and witnesses.

Now, it happens that not all, but the majority, of the cases which have brought me before this Judge have been matrimonial matters where emotionalism and trying conduct by the litigants has often predominated. There a Judge's strength in maintaining common courtesy are especially tested. Judge Bry-Nildsen has never failed the test. In fact, his ability to reach out and impress and even comfort the litigants on both sides exceeds that of any other Judge I have been before. Although I have sometimes been disappointed at the size of his counsel fee awards - in fact if my support of him were measured solely by the size of awards, I would not be here - I have never been remotely tempted to appeal any decision of the Judge.

Indeed, in regard to his Appellate record, I am informed by court personnel that in all of his seventeen years on the bench - which includes his part-time service as District Court Judge - he has been reversed only twice, once while sitting on the County District Court, and once in the last five years while sitting on the County Court. This later reversal pertained to an erroneous disallowance of some expert testimony.

Although it is possible for a Prosecutor to appeal most motion decisions, it is not permissible for a Prosecutor to appeal the verdict or sentence of a criminal defendant. Thus, it might be said that the void of an Appellate record of the Judge in this respect implies no endorsement of his judicial wisdom in this regard, but it flies in the face of logic to suggest that the same Judge who has an impeccable Appellate record would have - were an Appellate record possible - numerous reversals obtained by the Prosecutor on the criminal side respecting verdict and sentence.

Now, it fully appears that the hesitancy in renominating this Judge is due to criticism leveled by disgruntled litigants and relatives of crime victims who attack the wisdom of his judicial decisions. Opposition is not being heard here from any segment of the Bar or Bench, yet the Bar and the Bench are the only reliable sources of opinion of the caliber of a Judge. The very emotionalism which our judicial system is supposed to suppress is now seeking to control judicial selection. If Judge Bry-Nildsen is ousted by this kind of pressure, no Judge in the State would ever be free of worry that his rendering an unpopular decision might not unfrock him. Now reappointing this Judge would be unfair, even scandalous, treatment of him, a result you should not want. Even worse, should he not be reappointed, judicial courage, which is probably

the single most urgent criterion in the judiciary, would receive a terrible blow.

SENATOR GREENBERG: Thank you, Miss Mulligan. I would just like to make several observations initially. There has been no delay in his renomination. The delay is in the confirmation process.

Secondly, speaking for myself, I think that the public is entitled to render opinions with regard to its observations of a sitting Judge or a prospective Judge, and I think that those observations should be heard and weighed by this Committee.

MS. MULLIGAN: They certainly should be. They are admissible evidence, but I think entitled to lesser weight than the opinions from the Bench and the Bar.

SENATOR GREENBERG: I am not sure that I agree with you, but I welcome your remarks. Any other questions or observations?

SENATOR SHEIL: Did I hear you say that you feel that the only ones qualified to judge would be the Judiciary and the Bar?

MS. MULLIGAN: The Bar and the Bench are the most reliable sources of opinion.

SENATOR SHEIL: You said "only."

MS. MULLIGAN: No, the most, by far the most.

SENATOR SHEIL: Don't you think it would be a breath of fresh air to have people other than those in the field - attorneys and members of the Judiciary - to be in on the evaluation?

MS. MULLIGAN: They are being in on it, Senator. They are being heard here. But you have to weigh the quality of the opinion---

SENATOR SHEIL: I mean in general, not just in cases where there is a big controversy like this. I understood you to say that it was your feeling --- I thought you said only members of the bar and the Judiciary should be those qualified to judge him.

MS. MULLIGAN: No, I said that they would be the most reliable sources of opinion, and to that I hold.

SENATOR PERSKIE: If I may, you are a member of or the Chairman---

SENATOR GREENBERG: Member of.

SENATOR PERSKIE: A member of the Judicial Appointments Committee.

MS. MULLIGAN: Yes.

SENATOR PERSKIE: And in that capacity, and following up with the Senators questions, when you sit as a member of the Committee either with respect to a prospective Judge or a sitting Judge for reappointment, you are looking at several characteristics, are you not?

MS. MULLIGAN: Yes.

SENATOR PERSKIE: You are looking, among other things, at a measure of a person's integrity, reputation for uprightness in the community, capacity for intelligence and demeanor, and even-mindedness and even-temperedness and all of those characteristics, are you not?

MS. MULLIGAN: Yes.

SENATOR PERSKIE: And with respect to the question that appears to be here on the relative capacity of lay people to make determinations as opposed to members of the Bench and the Bar, what I think I understand you to

mean - and I am just really trying to get it clarified - is that members of the Bench and Bar have a greater opportunity to measure some of those characteristics as they relate to the discharge of somebody's judicial duties. With respect to considerations of integrity, temperance and the like, the sort of human characteristics that individuals have, that is a more general type of observation; wouldn't you agree with that?

MS. MULLIGAN: Yes. I do. As you said, the Bench and the Bar are closer and have a superior vantage point, especially, I stress, the Appellate Division.

SENATOR PERSKIE: Okay, so that for example, when we are sitting here as members of this Committee, wouldn't you agree that we really ought to listen to everybody, particularly insofar as they have something to say of any substantial nature with respect to the integrity and with respect to the temper of an individual, with respect to considerations of legal ability, capacity to discharge some of the judicial functions insofar as that is measured by whatever it is measured by, that we probably ought to give some more specific weight to the Bench and Bar.

MS. MULLIGAN: Correct, and that is all it boils down to. Hear everyone, but you should weigh differently the opinions of those informed and those uninformed, those emotional and those unemotional. That is what our judicial system is all about.

SENATOR PERSKIE: Thank you, Mr. Chairman.

SENATOR GREENBERG: Thank you very much. Can I have your name, please.

J O S E P H D E M A S I: My name is Joseph De Masi, and I come here in two capacities, one as Chairman of the Judicial Selection Committee of Warren County and the other in an individual capacity.

SENATOR GREENBERG: Well, Mr. De Masi, I would prefer that we only take testimony from one individual representing a group, rather than two. But since you are here, we will hear you. I am really discussing this for the future. I understood that Ms. Mulligan is a member of your Committee and has testified on behalf of your Committee. Is there anything you would like to add to that testimony as a Committee member?

MR. DE MASI: Just one thing. In going over the form that was sent by the Governor, the Committee gave Judge Bry-Nildsen an excellent, which is the top mark that he could get in all departments with subsections thereunder, and he got excellent in every department. That was turned over to the Governor.

Now, I would like to say this on behalf of Judge Bry-Nildsen. I believe that I have tried as many cases before him as any lawyer in Warren County. I have been practicing for twenty-nine years. I have to say this about Judge Bry-Nildsen, he is a learned man. He has judicial temperment. He is a stickler for getting down to the facts of the case, and if the lawyer misses it, he takes over and does the interrogation. He wants to get down to the facts.

The other thing about him is that when he announces a decision, it is not just you won and you lost, et cetera, he buttresses it with cases. He has more cases at his fingertips than any Judge that I have been before. I have to say this about his work habits, I have left that courtroom as late as seven o'clock trying cases. Many times I have left at six-thirty and the court

reporters have to ask him for a break, because he just continues right on with the cases. Half of the time he eats lunch in chambers so he can review the facts. He doesn't go out to have lunch. He is a hard working Judge, and I have to say that he is a learned Judge. He has judicial temperament. He treats everybody alike. I never see him mimic anybody or laugh at anybody. He has a terrific courtroom demeanor, and, you know, I am not going to brown nose and try to compare him with the present Judges, but I am going to say that he is in the rank of Judge Kingfield and Judge Wohl and Judge Broderick. He is in that caliber, which to me are top caliber judges that I have ever practiced before.

SENATOR GREENBERG: You always get into trouble when you start to mention names.

MR. DE MASI: These are retired Judges. I said I wasn't going to mention--- (Laughter) I would mention Judge Muir.

SENATOR PERSKIE: You didn't say anything about Judge Greenberg, either. (Laughter)

MR. DE MASI: The other part that I feel bad about too is that I represent Sciascia in the civil action under the violent crimes act. I feel bad about what he is going through, the torture and anything such as that. Hey, I am here to tell it as it is. If he still feels that he wants me to represent him with reference to the case, I will, but---

SENATOR GREENBERG: I would prefer not to hear that.

MR. DE MASI: Well, I feel bad about what he is going through. There is no doubt about that.

SENATOR GREENBERG: Thank you very much. Can I have your name, please?

R O B E R T E. F R E D E R I C K: Robert E. Frederick. I am representing the Warren County Bar. I believe you have the resolution of the Warren County Bar Association.

SENATOR GREENBERG: Yes, we do.

MR. FREDERICK: I have been an attorney in Warren County actively practicing since 1941. I think this is the only thing that the attorneys of Warren County ever agreed upon unanimously, to support Judge Bry-Nildsen, and I think he deserves this.

Now, I am not going to repeat what has been said. I first knew Martin--- Well, I will give you a little bit of my background, so---

SENATOR GREENBERG: Some of it I know.

MR. FREDERICK: You do. Well, I was the Prosecutor before the present Prosecutor for ten years and five months, Deputy Attorney General for five and a half years; I was in the Assembly for four terms, and I was also Municipal Judge of Phillipsburg for two and a half years. So, I first became acquainted with Martin Bry-Nildsen when we were both students in Rutgers Law School. Just a little personal experience would show you the type of man he was. We had a student in the school who was blind who came from Phillipsburg and in those days we didn't have automobiles. This was back in the late 1930's. Martin Bry-Nildsen took care of this boy every day to see that he had transportation from Phillipsburg to Newark and back. And not only that, he read to him, read all the cases. I can see that some of you gentlemen are lawyers and you know what that

is in addition to preparing your own work for law school to read for someone else. This is just an aside to show the high type of man that I think he is.

I have tried many cases before him. I am acquainted with his work in court. I think he is a man of the greatest intellectual capacity. As has been said here, he is well prepared in his cases. He is humane, and I think this is a characteristic. He is courteous to the lawyers and to the witnesses. I think this is something we need in our courts, and we don't have in some instances. He gives everyone a chance to be heard. He does not stint any time. As has been said, lots of times as a convenience to the lawyers and the witnesses, so they don't have to come back the next day- he is not one of these judges where the four o'clock whistle blows - he asks the attorneys and the witnesses if they want to finish the case, and if they do, he will continue, regardless of the time, for a reasonable length of time, according to their wishes.

I don't think that a man that has had a splendid career should have something like this as an impediment to his reappointment as a Judge. I think he deserves reappointment. I think his record shows that he had been an excellent Judge. The attorneys can concur in this estimate of him, and on behalf of the Warren County Bar, and as an individual, I respectfully request that his nomination be approved.

SENATOR GREENBERG: Was that action taken at a Warren County Bar Association regularly scheduled meeting?

MR. FREDERICK: It was a special meeting called for that purpose.

SENATOR PERSKIE: Did you have a resolution?

MR. FREDERICK: Yes, sir.

SENATOR PERSKIE: How was the vote taken.

SENATOR GREENBERG: I think he said it was a voice vote, did you not?

MR. FREDERICK: It was taken by a show of hands.

SENATOR GREENBERG: What kind of a turnout did you have?

MR. FREDERICK: I don't know the exact membership. I know we had thirty some members present. I would say probably a majority of the Bar were present.

SENATOR GREENBERG: Any questions?

SENATOR SHEIL: Well, was it for the purpose of endorsing him, or just what to do on it?

MR. FREDERICK: It was for the purpose of taking action. Anybody could express their opinions one way or the other. It wasn't for the specific purpose of---

SENATOR SHEIL: Were there any negative expressions?

MR. FREDERICK: No, there were no negative expressions.

SENATOR GREENBERG: I think what Senator Sheil had in mind was the purpose of the meeting and who called it.

MR. FREDERICK: The President of the Bar Association called it.

SENATOR GREENBERG: Specifically to deal with the Bry-Nildsen matter.

MR. FREDERICK: That's right, yes.

SENATOR GREENBERG: Thank you very much. It was a pleasure. Is there anyone else present in a representative capacity? If not, I will start to call the list of individuals whose names I have before me.

Max Seiss, Jr.

M A X S E I S S, J R.: I feel a little out of place because I am not a lawyer. Everyone sounded so impressive with their statements.

I am the father of Donna Seiss, the victim in the Stires murder. I would like to express my opinions. I see that the Senate Committee does not want to hear any facts that the Judge did not consider in his trial. I have sixteen facts here that I would like to mention that I feel he failed to recognize in his decision.

SENATOR GREENBERG: As a result of his alleged failure to recognize those facts which you want to read, what is your conclusion?

MR. SEISS: That he should not be reappointed to the Warren County Bar.

SENATOR GREENBERG: Is that opinion based on any matters other than the case that you are talking about?

MR. SEISS: Well, during--- I would probably say one case.

SENATOR GREENBERG: In other words, you are referring to two cases in which his actions in your opinion justify his non-reconfirmation. Is that correct?

MR. SEISS: Well, I would like to speak also and mention the comments I heard from the people who signed my petition.

SENATOR GREENBERG: Yes, you are going to be given an opportunity. I just want to get an idea of the subject matter of what you want to testify about.

MR. SEISS: Well, the sixteen examples are things that--- I was at the trial except for the first two days, and I think that the Judge failed to recognize these facts in his decision.

SENATOR GREENBERG: Let me ask you a question. Let's assume you are correct and let's assume that he was in error with regard to his factual findings and his legal conclusions in that case, and perhaps also the other case to which you make reference which I don't know about at this moment - based upon what you have heard today, and the fact that he has been sitting for the number of years that he has, and he has tried the number of cases he has, do you feel that his actions in one or two cases should determine his future career on the bench?

MR. SEISS: I will be honest. I don't think so. But I would like to comment on that.

SENATOR GREENBERG: Please do.

MR. SEISS: Can I go to the petitions? This will all lead into---

SENATOR GREENBERG: I am interested in the answer to the last question. You say you don't think it should be dispositive or determinative of what we do here.

MR. SEISS: This one case, I don't think, is the only reason a person should be knocked off the bench. It is really not fair. I feel there was a wrong decision here, and based on my feelings toward some of the other decisions I have read in the paper, and the comments I got from the people who signed these petitions, I know it is hearsay, but there is not one person who signed these petitions that I presented. I have seventy-two ---

SENATOR GREENBERG: So what you are saying is your testimony in opposition to his confirmation is not really based upon the one or two cases, but---

MR. SEISS: Not 100%, right. I don't have specifics. Just the

one I have specifics. But I would like to comment on one other.

SENATOR GREENBERG: Go ahead.

MR. SEISS: I know it sounds like a waste of time, and I cannot communicate or present myself---

SENATOR GREENBERG: That is what we are here for today.

MR. SEISS: Well, there was a comment made that the public doesn't know, so I feel I shouldn't even start it. But I feel obligated, because I went around and got these petitions and the people---

SENATOR GREENBERG: I don't agree with the comment that the public doesn't know or shouldn't be heard. In fact, it is the impact upon the public, I think, that is most important, and that is what this Committee, I think, is interested in, as well as the views of the Bench and the Bar. Go ahead.

MR. SEISS: These sixteen things that I have, I don't know whether this is the right place to bring it up. All right---

SENATOR GREENBERG: I will leave that up to you. You are welcome to read them.

MR. SEISS: All right, I will read them, and then if you have any questions, you can ask me. I am shook up here a little bit. Okay, there was a photograph of the pellets that struck the station wagon. I am sure you don't know what I am getting at when I say this---

SENATOR GREENBERG: I have an idea.

MR. SEISS: I mean--- All right, the Judge based the decision on the fact that these fellows did not intend to shoot, because he felt they didn't intend to do it. Okay.

SENATOR GREENBERG: Yes.

MR. SEISS: Now, this photograph definitely shows the angle of shot. He didn't take that into consideration. No way. I will argue that with anybody.

All right, he ignored the fact that Donna could identify the color of the car in the dark with no headlights on; she had no lights to see the color car, and she told the State Police she saw the color, but yet he didn't believe that these guys saw Donna standing there, right. He ignored the fact that Donna was able to distinguish hair lengths at some distance in the dark with no lights on, okay.

He ignored the fact that Debbie Mario, a witness, saw this eight pack of beer. You heard that before. He ignored the fact that Donna said that the Counterman car was going slow. He based his decision of twenty-five miles an hour, and that was only on Stires' comment of what he thought the speed was of the car, and supposedly he was drunk, but he knew the speed of the car.

He ignored the drawing Stires made for the State Police depicting the location of Donna and Anthony. Stires couldn't have made such a drawing if he didn't see them before he shot them. No way, because he was behind the station wagon. He came no where near the two kids, so he wouldn't have known there was a fellow laying on the ground if he didn't see him before he shot.

He ignored the fact that Stires admitted in his police statement that he hit the man. That was in the Stires trial. I am not going back to Counterman. This has nothing to do with what I am saying here.

SENATOR GREENBERG: Fine.

MR. SEISS: And Counterman's comment was, "No, you didn't; they are lying." How did Stires know he hit a man, unless he actually saw Anthony before he shot him. Stires didn't go close to the shooting to see anyone. And he didn't; he stayed back. Counterman came up to the victims.

He ignored the fact that Stires didn't know which way the Sciascia car was facing. Stires said he wanted to shoot windshields. If you could see the drawing that Stires made for the State Police, he had the car facing the opposite direction. He didn't have it facing the way he was going to shoot a windshield. He supposedly shot the back of the car, where the two victims were standing.

He ignored the fact that Stires and Counterman --- If intending to shoot windshields--- It was a big Pontiac. He didn't shoot any windshields. No windows were hit. Okay. He just hit the two victims. Two shots, two people drop.

SENATOR GREENBERG: Mr. Sciascia has indicated that.

MR. SEISS: Okay. He ignored the fact that it wasn't necessary to get guns to break a windshield. He could have used a rock. Why did they need three guns?

He ignored the fact that after the shooting, Counterman stopped the car, walked back to the victims and Stires stood back from the Sciascia station wagon several feet, not close enough to see Anthony. Why did Stires get close to see what he shot? There was no one standing around outside the car.

He ignored the fact that Stires went to hide the guns in the woods. Why would he hide the guns if he didn't shoot anybody? He ignored the fact that Stires and Counterman left the Dam after the fight with the other boys. They went to their grandmother's home to get guns. It took one hour. In my opinion, this was a premeditated act.

He ignored the fact that Stires and Counterman weren't afraid to encounter approximately ten boys, but after the fatal shooting, why was Stires so afraid to approach the Sciascia station wagon?

He ignored the fact that Stires and Counterman, while driving their car, their eyes adjusted to the dark, with only their car lights on, Stires had a bird's eye view of the two victims, as Stires was perched out the window over the roof of the car when he shot.

That is the end of the statement there.

SENATOR PERSKIE: Mr. Seiss, you have read the sixteen facts that you indicate the Judge ignored. You are a parent. I don't know what you do for a living, but I am sure that whatever it is, it involves a decision making process. In your life time you have had the opportunity to make many decisions. Some of those decisions were tough; were they not, in the sense that you have been able to perceive substantial arguments in both directions, whatever the given issue, whether you are allowing your child to do this, or whether you are determining you are going to do that, or whatever. The fact that you would ultimately make a decision that might be a 51/49 or a 60 to 40 decision one way or the other, wouldn't necessarily mean that you were ignoring the minority judgement as much as it was you were taking it into account; would it?

In other words, what I am getting at is, why do you use the word ignoring. I understand that you have indicated that you are saying that the Judge's decision appears to be inconsistent with the sixteen statements that you make. And I accept that.

MR. SEISS: These are facts. I didn't make these statements up.

SENATOR PERSKIE: All right, sixteen facts. I don't know, not being at the trial, and I understand that you were, whether there were six, sixteen or thirty-two or forty-eight other facts that might substantiate the Judge's determination. What I am asking you is, what is the basis for your statement that his decision ignored these facts, rather than his decision by whatever reason outweighed these facts? Do you have any reason to believe that he didn't listen or he didn't hear or didn't pay any attention to these facts?

MR. SEISS: Yes, because if he would have, he would have rendered a different decision.

SENATOR PERSKIE: Okay, so that what you are saying, then, is that the basis for your conclusion that he ignored them is that you, hearing the same facts, would have reached a different conclusion.

MR. SEISS: Right.

SENATOR PERSKIE: Okay, and the conclusion in question, I take it, is as to whether the totality of all of the facts constituted - for purposes of the law - second degree murder on the one hand, or manslaughter on the other; is that correct?

MR. SEISS: Yes.

SENATOR PERSKIE: And that is the decision basically that is at issue here, as far as the Judge's conduct was concerned?

MR. SEISS: Can I comment on that?

SENATOR PERSKIE: Well, answer my question first, and then I have a follow-up and then certainly you can comment.

MR. SEISS: I will tell you, I didn't really understand that question.

SENATOR PERSKIE: Let me try it again. And I am not trying in any sense to do other than to elaborate on--- Let me ask you a question that I asked Mr. Sciascia. If the Judge had determined this case to be second degree murder, and had imposed a sentence as a result of all of the charges of a minimum of eleven years and a maximum of sixteen years in the State Prison, would you have been here?

MR. SEISS: Yes, because I don't think this was a fair decision.

SENATOR PERSKIE: Okay, I understand that you don't think this decision was a fair decision. What I am saying to you is, if he had decided it as constituting second degree murder, and imposed that sentence, what would your judgement have been as to that decision?

MR. SEISS: Well, involuntary manslaughter carries a sentence of up to fifteen or sixteen years. This is with the weapons charge, right, fifteen or sixteen years---

SENATOR PERSKIE: I believe the manslaughter is a maximum of ten.

MR. SEISS: Well, all right, can I speak in terms of the total sentence, so I can---

SENATOR PERSKIE: Yes, but I am not asking you about that specifically. I am saying, what is the gravamen, in other words, of what your disagreement is? I understood your position to be that this should have been a second degree murder conviction rather than involuntary manslaughter. And what I am saying to you is, if the Judge had made that determination, if he had listened to the same facts that you did, and reached the same conclusion you reached, and found second

degree murder and sentenced him to eleven to sixteen, what would have been your reaction to that in terms of whether or not it was a fair trial and a just verdict?

MR. SEISS: I would have thought it wasn't fair.

SENATOR PERSKIE: Why?

MR. SEISS: Because the way it stands now, these fellows committed murder. They wounded my daughter, and it is hard for me---

SENATOR PERSKIE: Certainly, certainly. Let me ask you this, Mr. Seiss: Other than this sequence, the Stires trial and the Counterman trial, and whatever proceedings were incident to them, have you had - through whatever your business or profession is - occasion to be involved with the criminal justice system directly before as a victim or as a witness or as a participant in trials or any other ---

MR. SEISS: I was a part-time patrolman in Alpha for five and a half years, and there is one case that I would like to bring out, other than this case, where I didn't think the Judge was fair.

SENATOR PERSKIE: Is this the case you referred to the Chairman before?

MR. SEISS: Yes. During this trial there was a break. They had a---

SENATOR GREENBERG: What was the name of the case?

MR. SEISS: I am sorry, I can't recall the case. Maybe the Prosecutor could tell you.

SENATOR GREENBERG: Give me a year.

MR. SEISS: It happened during this trial.

SENATOR PERSKIE: During the Stires trial?

MR. SEISS: Yes. I sat in the courtroom and the lawyers brought the defendant in. He shot at a State Trooper. And I heard Judge Bry-Nildsen chew out the State Trooper for going to the trunk of the car. Of course, you don't want to hear the details of the case, but I thought he is too lenient with these criminals. I feel there is too many of them running around, and to chew out the State Police and not let them do their job, they are not going to do their job; they are not going to really have an interest in their job if they can't put these people away. By having a lenient Judge, it is not right. The people in Warren County are not being represented the way they should be. There is supposed to be liberty and justice for all. There is not justice for all, because we didn't receive justice for the damage that was done to our families.

SENATOR GREENBERG: What was the injustice in your case?

MR. SEISS: Well, I don't think first degree murder was warranted in this case. I said right along throughout the trial I didn't think he would get first degree murder - second degree with a maximum. Of course, the maximum, thirty-five years, he would be out in seven. So you might say, "Well, what is the difference if they are out in seven years or they are out in three years?" Well, I guess there isn't an awful lot of difference. There may be a little more satisfaction that these birds won't be out.

SENATOR PERSKIE: Do you consider that justice was done as you define it in the Counterman trial?

MR. SEISS: Yes, definitely.

SENATOR PERSKIE: What was Counterman sentenced to?

MR. SEISS: The same sentence, but he got second degree murder. He was only aiding and abetting. He didn't do it. You see, he didn't do the shooting. He drove the car. Stires did the shooting.

SENATOR GREENBERG: All right. You have told us about the two cases now. Is there another reason or reasons for your opposition to the Judge's appointment?

MR. SEISS: All right, I would like to make a comment about these petitions. The first comment Senator Perskie made was about the judges--- It is about a District Judge, and you said he was not a District Judge; is that what your comment was?

SENATOR PERSKIE: My understanding was that he has served for the last five years not as a District Judge but as a County Judge.

MR. SEISS: Okay, I would like to comment on that. These are the same petitions you have, just copies.

SENATOR GREENBERG: If you are going to explain why it says District Court Judge instead of---

MR. SEISS: No, no, I am not talking about that. What I want to say is I have seventy-two names I personally received. Okay. People read this. I don't think there is a person in Warren County who knows the difference between the District Court Judge and a Warren County Judge. They are not concerned about this. They saw the name.

SENATOR GREENBERG: I agree with you.

SENATOR PERSKIE: I agree with you also. I was just simply straightening it out for the record when the petitions were first presented. I don't really think it has a lot of significance one way or the other.

MR. SEISS: All right, I would like to say something about these petitions again. I work--- I think this is very important and it speaks for the way the people in Warren County feel. Maybe it is not fair to hear me say this, but---

SENATOR GREENBERG: Say it, please.

MR. SEISS: I know it is very easy to go out and get signatures - just as Senator Dumont said. I agree with him. But myself personally, I contacted fifty people that I work with who work in Warren County. I went to each person and I said, "Look, I have a petition here" - and I will swear on the bible that I said this - "and I don't intend for any one of you people to sign this petition if you do not agree with what it says. I don't want you to sign it because it is me and you know me." And every one of them--- Well, let's not say every one of them. Fifty people, and I had two people refuse out of fifty.

One person who refused said, "No." And somebody else said, "Do you know why?" And they said he can't write. I asked another person and asked him if he would sign it and he said, "No. I don't know anything about the case." You can't hate a person for that. He didn't sign it because I asked him. He didn't sign it because he didn't know anything about it. You can't hate him for that.

This is in my plant where I work, the Excell Corporation in Belvidere, New Jersey. Now, I know a few of the fellows in the plant next door. It is Dumont, former Celanese. So, while I was waiting for my ride, I stopped a couple of them by name. I said, "Will you sign this petition? I know you heard about this on the radio and so on. Will you sign the petition?" He said, "Well, I don't think I should. Judge Bry-Nildsen was good to me." Out of seventy-two people, the only one, he is the only one that said Judge Bry-Nildsen was good to him. And I can't hate him for that. I don't dislike him for it. But it really tells

you something. I had no one else tell me that. Okay. I had people come up to me and say, "Look, I want to sign that petition. We need a different Judge up there." This is the reason I got up, because I thought, like, I am in the wrong Church sitting here listening to these attorneys talk. But I felt I had a sort of duty, to these people who signed and had these comments, to make the point, whether it is going to help or not. I kind of doubt it because--- Well, I have a comment on that too.

I want to comment about the judicial system in Warren County, as far as the way this went.

SENATOR GREENBERG: Will you relate this to Judge Bry-Nildsen?

MR. SEISS: Well---

SENATOR GREENBERG: Because that is really the only thing we can vote on here.

MR. SEISS: It is really short. It is about Judge Bry-Nildsen. I am a citizen of Warren County with no arrest record whatsoever. I did have faith in our judicial system, but lost faith, and so did thousands of other people. We all lost faith in Judge Bry-Nildsen's ability to judge in our courts. You can bet that if we elected our Judges, the citizens of Warren County would not elect Judge Bry-Nildsen. That is my opinion.

It is my opinion that Judge Bry-Nildsen is too lenient to criminals. I said this before. I personally visited the shooting site where this shooting took place--- I realize I am jumping around, but I am a little nervous.

SENATOR GREENBERG: No problem.

MR. SEISS: I say there is no way these fellows did not see the kids standing in front of the car, no way. I would like to know how Judge Bry-Nildsen could drop first degree murder to involuntary manslaughter and completely drop the charges against my daughter. Was Donna assaulted or not?

SENATOR GREENBERG: Involving your daughter.

MR. SEISS: Right. Had Anthony Sciascia lived or been seriously injured, would that have meant Judge Bry-Nildsen would have left Stires free of any charge except a weapons charge? Does this also mean that the few months Stires has served is enough punishment for his not having any concern or consideration for human life?

SENATOR PERSKIE: Excuse me, what does that mean, Mr. Seiss? I understood that Stires had been sentenced to eleven to sixteen years in the State penitentiary.

MR. SEISS: What I am saying is, Stires was not sentenced for any assault on my daughter.

SENATOR GREENBERG: No, the Senator was referring to your statement concerning a few months.

SENATOR PERSKIE: I don't understand where that comes from.

SENATOR SHEIL: Like he was out already or something.

MR. SEISS: Well, here is what I am saying. I am saying that if Anthony would have lived---

SENATOR PERSKIE: Oh, I see.

MR. SEISS: Would he have dropped those charges of assault on both of them, he would have been jailed for five months.

SENATOR PERSKIE: What is Stires charged with in reference to your daughter?

MR. SEISS: He was charged with assault with a deadly weapon, but they were dropped.

SENATOR PERSKIE: At what stage of the proceeding? Do you know?

MR. SEISS: I---

SENATOR PERSKIE: At the same time he rendered a judgement on the other?

MR. SEISS: I would say so. And in the hearing that followed, the Counterman hearing, they didn't mention Donna. She wasn't there. But she was. I was advised to contact our Prosecutor about an appeal of this case. The Prosecutor said there cannot be an appeal. I don't know if this is correct or not. The Prosecutor told me that this was the most incredible decision he has experienced in his twenty years as a lawyer. He said it was a miscarriage of justice and he could never forget this case.

I sincerely hope that this Judiciary Committee is not swayed by the Warren County Bar Association's fraternity brothers' --- I think you know what I mean.

SENATOR GREENBERG: I do.

MR. SEISS:--- support for Judge Bry-Nildsen, for I cannot believe all the lawyers in Warren County support Judge Bry-Nildsen. In closing, I would like to thank the Judiciary Committee for allowing me this time to express my opinion. I certainly hope that this hearing will bring us a more desirable court in Belvidere. Thank you.

SENATOR GREENBERG: Thank you very much. Just one second, please. For your information, the Committee will not be swayed by any fraternity position or by the position held by any witness, unless the position held by the witness in some way bears upon the credibility of his testimony, and that is why I wanted you to go on and continue to testify as you have, and if you have nothing further to add to it, I will see if there are any questions.

MR. SEISS: Could I ask a question? I wasn't at the last hearing, and I understand Judge Bry-Nildsen was asked a question about Stanley Stires' previous record, and he said there wasn't any, or there was none.

SENATOR GREENBERG: I cannot respond only because I don't remember, but it is in this transcript.

MR. SEISS: But I understand this is a fact. Okay. I would like to make a comment on that.

SENATOR GREENBERG: Without regard to what Judge Bry-Nildsen may or may not have said, what is your position or point?

MR. SEISS: My point is that he has a record that long, and he made it sound like Stires had no record. I have an article here--- I didn't bring it down for this reason, believe me, I was just looking through my daughter's book, and there are articles from the paper. There is one incident in there--- Right after this murder, he was taken to court and he was found guilty of drunken driving. There were a bunch of different charges. Judge Bry-Nildsen found him guilty, and he said he didn't know anything about it. I have the article right here, if you would like to see it.

SENATOR GREENBERG: What I would like you to do is submit it, and I would like it to become part of the record in this case. Can you do that?

MR. SEISS: I will find it.

SENATOR GREENBERG: Any questions?

SENATOR SHEIL: Just a comment. I think when you first started to testify you said that being a member of the public, you felt a little differently than all the attorneys here. But that is the whole purpose of Senator Greenberg, our Chairman, calling the meeting and allowing the public to be heard. We expect to have a full hearing on it. It is obvious by your presence here today that this is being done.

MR. SEISS: It is obvious also that the one attorney who was here said she didn't think our opinion counted, so I thought it was my duty to say little things I can say.

SENATOR GREENBERG: Okay. Well, we are not going to characterize what people have said. As long as you have your say, that is what counts. We will weigh all testimony in this case.

In answer to your question, Senator Hamilton asked the following question of Judge Bry-Nildsen at the hearing on March 17, 1978: "Did this defendant have any prior record?" The answer by Judge Bry-Nildsen, "Not to my knowledge."

MR. SEISS: That is wrong.

SENATOR PERSKIE: What is the source of your information that he did?

MR. SEISS: I have an article. My daughter has a scrap book with all these articles on this case---

SENATOR GREENBERG: Submit the article, please.

SENATOR SHEIL: And all the members of the Judiciary Committee are not members of the bar, so that may put you at ease, too.

MR. SEISS: I was hoping they weren't. Based on what we were faced with here today, we didn't have a chance.

SENATOR PERSKIE: Well, Mr. Seiss, and Senator, there are some members of the bar who consider themselves on and off this Committee as capable of making the kinds of determinations with reference to these issues that in fairness and justice should be made notwithstanding membership in the fraternity of the bar. I consider myself among them, and Senator Greenberg and the other members of this Committee who are. I recognize and I agree with Senator Greenberg's comments with reference to the intention of this Committee not to take into account the fraternity aspect of things and to take each witness on his or her own merits. But I will not acknowledge that the mere membership in the bar disqualifies any member of this Committee or any member of the Legislature from the capacity to make a fair and an honest determination. I think that should be clearly indicated.

SENATOR SHEIL: I don't think anyone wanted to get that feeling across.

SENATOR GREENBERG: Gentlemen. This just compels them sometimes to talk a little too much, I think. (Laughter) Now, if you are through, we are through with our questions. (SJC-2 received and marked for identification.)

SENATOR SHEIL: If the hat fits, then let people wear it.

SENATOR GREENBERG: Thank you very much. Charles Stachnik, is he present?

MR. STACHNIK: Mr. Chairman, it doesn't make any difference, but I would like to go on later, because I might be quite a while.

SENATOR GREENBERG: I am not sure we are going to reach you, sir. If you prefer to wait, I will try to get back. Mr. Biggs, please

C H A R L E S B I G G S: My name is Charles Biggs. I live in Washington Township, Warren County. I am here to say a few words in support of the reappointment of Judge Bry-Nildsen. I have known Judge Bry for almost 10 years. I knew him first as a member of our church. For a time I was Treasurer of the church and I can speak directly of his generous support of the church's activities. If the church had some project going that needed help, he would give. Or, sometimes if he saw something that needed doing; he would give particularly to that. New front steps to the church building is an example. Generally, he preferred that his gift would be anonymous.

I have also known Judge Bry from the time when he was attorney for the regional school board, of which I am a member. In addition to being attorney for the board, he was also negotiator for the board in its negotiations with the Teacher's Association. I was a member of the board's negotiating committee and I always found Judge Bry to be fair in his outlook. Often, he counseled the board away from a position that might be attractive on first look, but which would not be fair to both sides in the long run.

Also, I have had the pleasure of knowing Judge Bry as a friend. He is one of the finest people I know, or have ever known. I know of no one with higher personal standards of morality or integrity. In our community he is held in the highest esteem. To my knowledge, no one stands higher.

Judge Bry may have made an unpopular decision. It seems to me that judges occasionally have to do this. It is not up to them to prove the case for the prosecutor. If a judge starts taking these kinds of actions in deciding a case, I fear that our legal system would be in grave danger. Even further, I fear for the effect on justice if judges are worried about the popularity of their decisions. If a judge has to be concerned about his job in his deliberations and reaching a decision, I hate to think what would happen to justice.

I think that Judge Bry has proven himself as a judge to have the highest qualifications. His personal integrity is unquestionable. I urge that you agree to his reappointment.

SENATOR GREENBERG: Thank you very much. Are there any questions? (no questions) Thank you, sir.

I would like to read into the record the substance of the article which was handed to us by Mr. Seiss, which indicates that the conviction to which reference was made was for drunken driving. Is that correct?

MR. SEISS: It wasn't only--

SENATOR GREENBERG: Is this the article?

MR. SEISS: Yes.

SENATOR PERSKIE: There is a reference in there also that there are other charges, but there is no reference that suggests that the defendant, Stires, has a criminal record.

SENATOR GREENBERG: Yes. In any event, the record will speak for itself and this will be marked as part of the record.

Mr. Dixon. Is he present? (no response) John Dixon. (no response)

Arthur Alexander. You are an attorney, sir?

A R T H U R A L E X A N D E R: Yes, sir. Mr. Chairman, Senators, my office is in Washington, New Jersey and I have known Martin Bry-Nildsen for over one quarter of a century. We were diagonally across the street from each other, practically. We have handled innumerable real state matters and to question

his integrity is a waste of time; it is beyond question.

Everything that this man has done, he has touched it with excellence - as a school board representative, as a borough council attorney, as a lawyer practicing general practice of law. He is a lawyer's lawyer in so many ways and not only do younger lawyers go to him for advice, but older lawyers also. He is one of the brightest men I have ever known.

Unfortunately, we are both very busy, so we didn't have as much time to talk as I would have liked to but his breadth and depth of learning far exceeds any man that I know and I have been around smart people.

This man can sit with distinction on the highest Bench of this land, from the United States Supreme Court down to the district court. He is an outstanding jurist.

While I was waiting for Harry Seybolt to conduct some work in the trustee's office, there was on the wall there in the Association's building a judge's code of ethics and one of the things it said was to be neither swayed by partisan demands, public clamor, or considerations of personal popularity, nor with apprehension of unjust criticism.

Knowing Martin Bry-Nildsen, I know the anguish that he must have felt to make this decision. I know it wasn't easy. And, I would assume he also saw that it would be an unpopular decision. Yet, he had the judicial courage that our judges should have. He has always had that type of courage. Martin has a physical injury going back to football days and I know that many days in his life he is in pain. I have never once heard that man complain. In fact, he has one of the greatest sense of humors.

With all the things that have been said, you must think this is a goody-goody man. This is a real man and he is judicial stock. Not to confirm him, would be a loss not only for Warren County but to the State of New Jersey.

SENATOR GREENBERG: Thank you, sir.

Robert Wade. (not present) Gerald B. Hanifan.

G E R A L D B. H A N I F A N: Senator Greenberg, Senator Perskie, I am an attorney. I am not a member of the Warren County Bar. I am a member of an adjacent county. I practice irregularly, but regularly in front of Judge Bry-Nildsen. I am what you would call a trial attorney and I have practiced as such, as public defender and non-public defender for about 10 years now. I have been in front of many judges, both through Essex County and through Camden County, trying many types of cases. I have been knocked around pretty much, as any trial attorney has, and I have been handled and not handled by judges, depending on their quality.

I don't think you should misconstrue a gentleness of word or quiet nature or gentlemanliness for weakness. I have been well handled by Judge Bry-Nildsen on several occasions. I have won some of those suppression motions that these people are complaining about and I have also lost some of the suppression motions that they cheer about. I have always found that he has followed the law and I have never won a suppression motion in front of that man unless I have won it on the State's evidence, not my own. I have tried many cases in front of this man and I find his knowledge of the law exceptional.

As a trial attorney, I can spend a lot of time on a particular case and I can delve into the facts and the circumstances very heavily. I can also

acquire the law, and the knowledge of the law, on a specific point. I could give you one example. I cited a case from 1793 -- State versus Wilson. It is in I - New Jersey. He came back the next day with a 1669 case out of Old Bailey to top me on that one. (laughter)

Gentlemen, I use that as an example because I very rarely get judges that will do that to me. I can handle and be handled and I have been handled by this judge and I know his quality and I feel very strongly - and I am not a member of the Warren County Bar - that he is of the highest quality. I have had many decisions adverse to me but at least I had the feeling that he understood why he was doing what he was doing and that he thought it out well.

I always think of what Harry Truman said, he said he always slept well after any decision because he gave it a lot of thought and after that, the hell with it. Well, I have that feeling about this man, gentlemen. I have a feeling that he knows what he is doing and that he makes decisions based on what is presented to him and not the emotions of the time or the place. I think that is very important because as you know, the defense and the State both have jobs to do before the court and it is his job to determine true facts and to present the law to the jury the best he can.

This time I have no comment about the case that these unfortunate people were involved in but I know, from past experience with this man in the criminal end of the law, that he has always given the highest degree of consideration on both sides and made his decisions accordingly. I know he has done well with juries and he has handled counsel very well. I think he is a credit to the Bench and I would like to see him remain. Thank you.

SENATOR GREENBERG: Thank you.

SENATOR PERSKIE: Mr. Chairman, just one question. You mentioned that you had made several motions to suppress before the judge, which had been granted.

MR. HANIFAN: Yes, sir.

SENATOR PERSKIE: Were those decisions by him ever the subject of any appeal to the Appellate Division, directly or indirectly, relating to the merits of that decision?

MR. HANIFAN: No, sir.

SENATOR PERSKIE: Thank you.

Anne Steed.

A N N E S T E E D: My name is Anne Steed and I am not here in connection with the Sciascia case. I would like to speak for myself and Herbert Saunders who, because of a stroke a few years ago, is hesitant with his speech and has difficulty in presenting himself.

Mr. Saunders was involved in a civil manner before Bry-Nildsen. It was a divorce proceeding. And we are here because we question the quality of justice we received.

The first thing I would like to ask is what Mr. Saunders' lawyer asked about four weeks ago: Who is Minerva Navatto? She called up Mr. Saunders' lawyer: "What was he trying to do to her niece? Why wasn't the divorce case settled?" This was about a week prior to the final settlement. All I know about this is that Minerva Navatto is a Surrogate in Hunterdeon. Why she became actively involved is it's her niece. How long she has been involved, what the degree of her involvement is -- it smells. I do not like the fact that a Surrogate from another county is actively involved trying to pressure or muscle.

SENATOR PERSKIE: Pressure what? I'm sorry.

MS. STEED: Calling up the lawyer.

SENATOR GREENBERG: Can you please help us. We are trying to understand what it is you are saying. Will you tell us the involvement of the judge in this case?

MS. STEED: All right. We are very unhappy.

SENATOR PERSKIE: Who is "we", if I may?

MS. STEED: Mr. Saunders.

SENATOR GREENBERG: You are speaking on behalf of your friend, Mr. Saunders?

MS. STEED: Mr. Saunders, mainly. I am involved in this also.

SENATOR PERSKIE: Are you a party to the action of some sort?

MS. STEED: Yes, I had adultery evidence that Mr. Saunders was to use.

As I said, the quality of justice in Mr. Bry-Nildsen -- now that covers a few more things than Mr. Bry-Nildsen's decision. Mr. Saunders' lawyer is here, Boyd Harbour. And I feel that Boyd gave bad advice which eventually put Mr. Saunders in a position ---

SENATOR GREENBERG: I'm sorry. I'm going to interrupt you. The hearing has to do with the renomination of Judge Bry-Nildsen.

MS. STEED: Right.

SENATOR GREENBERG: I don't want to take any testimony today with regard to any other matter which may involve bad advice or good advice by an attorney in a case that has nothing to do with what we are talking about. The case may be relevant and, if it is, please confine your remarks to Judge Bry-Nildsen and the case. Please do not tell us about other people who may have had other conversations with third parties.

MS. STEED: Okay. I feel that the Judge showed prejudice.

SENATOR GREENBERG: In which case, please?

MS. STEED: Against Mr. Saunders. Because if all the facts were presented and the roles were reversed - social issues considered - one party would have gotten everything plus support. Now you don't want to know the details of all that is involved.

SENATOR GREENBERG: Is the matter completed and concluded?

MS. STEED: Now it is.

SENATOR GREENBERG: Has an appeal been taken from the determination?

MS. STEED: No.

SENATOR GREENBERG: By either party?

MS. STEED: No. Mr. Saunders is wiped out to the point that he could not afford a lawyer.

SENATOR GREENBERG: We are not equipped to review each and every decision rendered by a judge in the course of his judicial history.

MS. STEED: But we are here because you said we could speak about our feelings as to how competent he is.

SENATOR GREENBERG: Yes, you are.

MS. STEED: Just as the lawyers felt it was important how hard-working he was, the two days we spent in the Hourt House were a mockery. The time elements were ridiculous.

SENATOR GREENBERG: What do you mean by that?

MS. STEED: It hardly justified their salary. You didn't start at ten. You knocked off at twelve. You were told to be back at one. At 2:30, you were told to come back the next day and then it didn't start at ten again.

SENATOR GREENBERG: In any event, you had a hearing.

MS. STEED: Yes.

SENATOR GREENBERG: And the matter was heard by the court - Judge Bry-Nildsen, in this instance.

MS. STEED: Right.

SENATOR GREENBERG: People were given an opportunity to testify?

MS. STEED: Not -- with bad advice though.

SENATOR PERSKIE: Not the judge's bad advice.

SENATOR GREENBERG: The judge was not involved though. Is that right?

MS. STEED: Yes, but I feel that that has influenced all the lawyers who are here speaking in his behalf. I mean, it is human nature to unite to such an unlikely quantity in their own behalf.

SENATOR GREENBERG: That is certainly a factor which the Committee will consider when it considers the source of the testimony. But with regard to your testimony, which is all I am interested in at the moment, I gather what you are saying is that there was a decision with which you do not agree rendered in the case.

MS. STEED: Right - a harsh decision.

SENATOR GREENBERG: All right. Do you have any fault or complaint to make with regard to the demeanor of the court or the treatment of the court during the course of the trial?

MS. STEED: Yes. The whole attitude and the whole atmosphere in my own divorce and this one were: The lawyers do not want to hear the facts. The judge does not want to hear the facts. It is a divorce mill. We want to make as many people happy and solve this as quickly as possible and justice is not done.

SENATOR GREENBERG: Did you say that Mr. Saunders' attorney is present?

MS. STEED: Yes.

SENATOR GREENBERG: What is his name?

MS. STEED: Boyd Harbourt.

SENATOR GREENBERG: Mr. Harbourt, are you here?

MR. BOYD HARBOURT: Yes, I am, Senator.

SENATOR GREENBERG: Do you intend to be a witness?

MR. HARBOURT: I did not, but ---

SENATOR GREENBERG: I am not calling you. I just want to know whether you

wish to testify?

MR. HARBOURT: I wish to testify, not in defense of myself, but in defense of Judge Bry-Nildsen.

SENATOR GREENBERG: You are not being charged with anything.

MR. HARBOURT: Only in order to explain what Mrs. Steed has said to you and perhaps put it into perspective.

SENATOR GREENBERG: I do not wish to get involved in a reproduction of a trial before the Judge. We do not have the capacity to do that. The witnesses are not present. I don't have the prior testimony; and, frankly, it is not our function.

MR. HARBOURT: I understand that, Senator. But I would like to testify in response to what Mrs. Steed has said.

SENATOR GREENBERG: Your name, please.

MR. HARBOURT: Harbourt, H a r b o u r t - first name, Boyd, B-o-y-d.

SENATOR GREENBERG: Okay. Mrs. Steed, do you have anything further to add?

MS. STEED: Yes. I wish to say the social issues here are that -- I mean, a person has to have something left in life. And if you do not have your health, if you are not capable of getting a mortgage, if you can't pass an insurance physical, you certainly are never capable of holding a good job because you can't pass a physical. To wipe a person out that may be on relief in six months is a consideration that the court should take also. There are many social issues to this.

SENATOR GREENBERG: Thank you, Mrs. Steed.

Philip Bowers.

P H I L I P J. B O W E R S: I am going to read a telegram which I sent to you, in order to be brief.

SENATOR GREENBERG: Mr. Bowers, you are a resident of ---

MR. BOWERS: I am a resident of Allamuchy in Warren County. I am the retired President of Panther Valley and I am not here representing Panther Valley, but I am here as an individual.

SENATOR GREENBERG: Mr. Bowers, I am going to ask you whether or not in an effort to save time you wouldn't agree with the following suggestion: We have a copy of the telegram.

MR. BOWERS: Very good.

SENATOR GREENBERG: All the Senators who will be considering this will have it. Suffice it to say that you are supportive of the Judge's reappointment, based on his contribution to Panther Valley Association and ---

MR. BOWERS: Definitely - and the township.

SENATOR GREENBERG: --- and the township. And that would be considered by the Committee.

SENATOR PERSKIE: Can we have the Chairman instruct that it be put in the record.

SENATOR GREENBERG: Will you please mark it.

(Received in evidence and marked SJC-3.)

SENATOR GREENBERG: Thank you, sir.

Alfred Walmsley.

A L F R E D W A L M S L E Y: Mr. Chairman, I am an elected official for Allamuchy Township. I have resided in Warren County for about five years now since I retired.

SENATOR PERSKIE: Excuse me. Are you a member of the governing body, sir?

MR. WALMSLEY: Allamuchy Township.

SENATOR PERSKIE: A Township Committeeman?

MR. WALMSLEY: Right. There are three of us. I have lived in Warren County for five years and I have served on the Township for four.

I am not an engineer and I am not an attorney. I am just retired because I got too old.

What I wanted to bring up today is: Judge Bry-Nildsen came over to us about a year ago and suggested because of all the cases coming up in Belvidere happening in Allamuchy - there were 1200 of them in 1976 - that we should form our own court. This meeting we had, he did it on his own time. He came over one evening. We had dinner together and talked about the whole thing. He gave up an evening to do this. He has been back since and we are in the process of setting up a Municipal Court. We hope to get it in operation by July 1st.

I just wanted to say --- I am not qualified as to his background because I have only been a resident for five years - but this man has done so much good for us. He has been very helpful and we appreciate it. We highly recommend that he be reinstated.

SENATOR GREENBERG: And I appreciate your coming.

MR. WALMSLEY: Thank you very much. Do you mind if I go home? I have a committee meeting at seven o'clock.

SENATOR GREENBERG: In case anybody has any question about it, we don't mind if anyone goes home. (Laughter)

Mrs. Marleah Dixon.

M A R L E A H M. D I X O N: The very first thing I wanted to say - I have been sitting here listening to all the lawyers and judges and Senators and it seems to me that they are all in support of Judge Bry-Nildsen. But I would like the Committee to listen to me because I am one small person in the public.

I met many citizens this last week because I was one who was also out gathering signatures for petitions. I don't wish to be disrespectful to Senator Dumont, but I got the expressed feeling that the petitions were not very worthy - they weren't worth very much. But I would like to tell you something. When I would go up and talk to a person, I spent at least 20 minutes explaining why I wanted their signature on the petition and I made sure they understood thoroughly what they were signing.

SENATOR GREENBERG: Please be assured that the petitions will be given full weight and consideration by the Committee. Now I would like you to tell us your own impression of Judge Bry-Nildsen.

MRS. DIXON: I have prepared a written statement and I would like to read it please.

My husband first appeared before Judge Bry-Nildsen May 28, 1975, seeking what he thought to be a reduction in alimony payments. My husband was unaware until the time of this hearing that he was not properly represented by counsel, since his attorney was totally unprepared for the case. Instead of having the alimony payments reduced, they were increased.

Immediately following this hearing, an ethics complaint was filed against the attorney. During the ethics hearing, it was established that this attorney had been indeed negligent in handling my husband's case. However, because of legal technicalities, the charges were labelled "not clear and convincing."

During the next several months, we made many trips to different officials in an attempt to prove our case. One of the persons I visited was Senator Wayne Dumont.

SENATOR PERSKIE: Was this a case against the lawyer?

MRS. DIXON: It is building right up. It's only a paragraph or so more of this.

SENATOR PERSKIE: I am just asking for clarity here.

MRS. DIXON: Yes, it is.

SENATOR PERSKIE: This regards your complaint against the lawyer?

MRS. DIXON: Right. I visited Senator Wayne Dumont and I am sure he believed me because he called Senator Thomas Dunn in Elizabeth, in my presence, to check on the characters of Police Officers that had testified against my husband at the hearings. Senator Dunn had informed Senator Dumont the Police Officers were indeed bad apples since one had been suspended from the force because of burglary charges.

We tried in vain to have the rulings on the ethic hearings changed, but all we really got was advice to go back to court again, this time asking to have the alimony payments terminated altogether. We had no money to hire an attorney. We were over \$7,000 in debt and our trust in the legal profession was very minute. We did, however, have a lot of respect for Mr. Albert Thorp, a local attorney in Hackettstown who believe in us. He, in turn, recommended we go to see Mr. William Albrecht, an attorney in Belvidere. After conferring with Mr. Albrecht, both he and Mr. Thorp convinced Mr. William Edleston of the Warren County Legal Aid to take our case as they truly felt we had been victimized by the courts.

When we first met with Mr. Edleston in July 1976, we requested that our case be heard before a different judge, as we felt Judge Bry-Nildsen was biased in the case. We were told, however, once a case was presented to a judge, it was his case and, therefore, we would have to go before him for his decision.

If I may at this time, I would like to read a paragraph from our complaint to the Ethics Committee in regard to Martin Bry-Nildsen.

SENATOR PERSKIE: Excuse me just for a minute. You lost me somewhere along the line. As I understand what you have said, your husband had a matrimonial action which came up, I presume, before Judge Bry-Nildsen.

MRS. DIXON: Right.

SENATOR PERSKIE: And your husband's attorney was unprepared and as a result a disposition was rendered by the judge which, to say the least, was unsatisfactory from your point of view.

MRS. DIXON: Yes.

SENATOR PERSKIE: And you thereafter pursued a complaint, an ethics complaint, against the attorney.

MRS. DIXON: Right.

SENATOR PERSKIE: Now you are back later on another application by your husband ---

MRS. DIXON: Right, to go back into court.

SENATOR PERSKIE: --- to go back into court. And you have just indicated something about an ethics complaint against Judge Bry-Nildsen.

MRS. DIXON: Well, what I wanted to do at this point -- I had made the statement here ---

SENATOR PERSKIE: Did you file an ethics complaint against the Judge or

the lawyer?

MRS. DIXON: No, no.

SENATOR PERSKIE: Just the lawyer.

MRS. DIXON: The lawyer - right.

SENATOR PERSKIE: So when you went back into the court the second time and you were told that you would be before Judge Bry-Nildsen, your statement just indicated that you felt, I think you said, that he was prejudiced.

MRS. DIXON: Yes, and that is what I wanted to read from the ethics complaint that we had sent in where we had stated that Bry-Nildsen had been biased in the case in some of the remarks that he had made on the first hearing and that was our reason for not wanting him to be there on the second ----

SENATOR GREENBERG: You are reading from a complaint with regard to an attorney; that is, against an attorney?

MRS. DIXON: Yes.

SENATOR GREENBERG: Please don't do that. Just tell us and we will be happy to hear what your complaint about Judge Bry-Nildsen is.

MRS. DIXON: All right. My husband thought he was going into court that day and instead he states that he was made to feel like the lowest scum on earth. He was insulted and humiliated by Judge Martin Bry-Nildsen. He had smirked first at Mr. Meeker - this was his ex-wife's attorney - and then at my husband. He made a combination of comments and a combination of looks and tone of voice and you could see that his mind was already made up.

When my husband tried to explain to him that he had no money and that he had to borrow money to meet the demands of the court, his answer was, "borrow some more." Those were the words from the actual ---

SENATOR GREENBERG: Were you present?

MRS. DIXON: At the ethics hearings?

SENATOR GREENBERG: No, at the trial in court.

MRS. DIXON: Not the first one, no.

SENATOR GREENBERG: Were you present at the time when what you have just described occurred?

MRS. DIXON: No, this was written by my husband.

SENATOR GREENBERG: Go ahead, please.

MRS. DIXON: Okay. Mr. Edleston spent many long hours going over the huge volume of material we had supplied him with. In the preparation of our case, he said it was the longest and the most complex affidavit he had ever prepared. After many postponements due to my husband's ex-wife's attorney, a hearing was set for October 25th, 1976.

During this period of waiting, on September 27, 1976, I wrote to Chief Justice Richard Hughes, begging him to intervene, as we knew that Judge Martin Bry-Nildsen was biased in our case. We were advised that he could not intervene. I also have that letter.

SENATOR GREENBERG: It is not necessary.

MRS. DIXON: On October 25th, 1976, the case was heard again by Judge Martin Bry-Nildsen. With full knowledge that I had a minor child to support and that we were deeply in debt because of these alimony payments, he chose to add my salary to my husband's and, therefore, continue the alimony payments when it was, in fact,

brought out in testimony that my husband's ex-wife had in excess of \$15,000 cash reserve, no minor children and had travelled extensively to Europe, Bermuda, California, and, at times, taking other members of her family along at her expense and also unrelated guests. When my husband and I left the courtroom that day, we had made up our minds we would pay no longer. We knew the consequences and we were willing to face them. We had told the truth all through the ordeals we had gone through and we had tried to go through every proper channel - and now the next move would be our decision.

On January 18, 1977, I wrote a letter to Judge Martin Bry-Nildsen, challenging his decision. I have that letter here also.

SENATOR GREENBERG: Is that after the decision?

MRS. DIXON: Yes. Would you like me to read the letter? I challenged his decision.

SENATOR GREENBERG: If you have a copy of it, I will take it.

MRS. DIXON: I would like to read one excerpt from it if I may.

SENATOR GREENBERG: Go right ahead.

MRS. DIXON: I am talking about my minor child, my daughter. (Reading)
"I, too, must work, so that we may enjoy the privilege of eating. I am the sole support of my daughter. She is totally dependent on me for her support. Yet you, sir, felt it proper to take my pay and deprive my daughter of proper support, and give it to a woman who is financially independent and perfectly capable of supporting herself, a woman who is hell-bent on destroying my husband, my daughter and me. I am insulted by this action on your part, as I am legally and morally responsible for my daughter's support, but I am in no way, I repeat, no way responsible either legally or morally for my husband's ex-wife's support.

"Now I wait for my home and my life to be destroyed by the law for the good of the people. My husband will be branded a criminal, not fit for society, since we have no money to waste on appeals.

"Soon a summons will be issued for my husband, and you, sir, will find him in contempt of court, yet it is I who am in contempt. Yes, I hold contempt for you for degrading a man you don't even know. My husband is the most gentle, honest, loving person I know, and you look down on him like dirt. If I irritate the court, it is because the court has irritated me! All one has to do today is read the newspapers, it is full of articles of thousands of men in New Jersey alone who are being ripped in our courts by these outrageous alimony demands. . .

"I see a very glum picture before me. Soon my husband will lose his job because of this, or else he will go to jail. When this happens, I will be forced to quit my job and go on welfare, as there will be no one to take care of my daughter, since I work shift work and could not afford someone to take care of her and still maintain a home.

"Now you see why I say to you, when you pass judgment on my husband, I want you to explain this to my daughter, what a horrible criminal her step-father is and why her home is being destroyed. Make sure to tell her how you felt it was much more important for my husband's ex-wife to go to Europe, Bermuda, California, and to enjoy all these luxuries for therapy than it is for my daughter to be fed and clothed properly.

"Make sure you tell her how important it is to be honest and truthful, and what happens when you are.

"Make sure you tell her how great the courts are and how they really work, like allowing murderers, thieves, rapists, dope pushers, etc., to be set free, and how policemen and lawyers can lie under oath, change legal documents, and get away with it. Yes, sir, you explain to her how our wonderful system of justice works. And, most of all, make sure you tell her how to cope with the jeers of the children her age when they call her step-father a jailbird, or make fun of her for being on welfare.

"As I said, the day my husband has to appear before you again, my daughter and I will be there by his side. You felt so righteous in your judgment of him then. I want you to explain it to her, or will you cop out and let another judge face her, or maybe, better yet, save face and not allow us in the courtroom?"

SENATOR GREENBERG: Is there a response to that letter?

MRS. DIXON: I had no response at all, sir. I sent a certified copy of the letter to the Court House, and I also sent a certified copy to his home.

SENATOR GREENBERG: Okay. No response.

MRS. DIXON: No response.

We received written notification that on February 14th, 1977, my husband would be placed under arrest and sent to jail. We had, as I had stated earlier, contacted the news media and Mr. Steve Hindey of the Associated Press was covering the story.

SENATOR GREENBERG: Mrs. Dixon, there undoubtedly is a time and place for what you are doing. But unless you can relate it to the actions of Judge Bry-Nildsen and have a specific statement to make - and I will sit here and listen to it --- With regard to Judge Bry-Nildsen, the facts that resulted from his decision, while I am sympathetic, I don't think are particularly suited or relevant to what we are here attempting to do.

MRS. DIXON: All right. How about -- we were advised in the first week in February by our attorney, Mr. Edleston, that Judge Paul Aaroe would be the presiding judge and not Judge Bry-Nildsen, although we had been told many times previously that ---

SENATOR GREENBERG: Why do you oppose his reappointment?

MRS. DIXON: Pardon?

SENATOR GREENBERG: Do you oppose his reappointment?

MRS. DIXON: I certainly do.

SENATOR GREENBERG: Why?

MRS. DIXON: Because he intended to take from my minor child and give to a woman that was totally financially capable of supporting herself.

SENATOR GREENBERG: Okay. I understand.

SENATOR PERSKIE: What finally happened?

MRS. DIXON: We put extreme pressure on. My husband's place of employment gave the whole legal staff in his behalf because his employer did not like the decision at all. As I said, the news media had been contacted. The news media did not like the idea that a judge would allow support ---

SENATOR PERSKIE: What finally happened, Mrs. Dixon?

MRS. DIXON: Four days before the hearing, my husband's ex-wife got frightened from everything that was going on and she signed a waiver not to ask for any more alimony.

SENATOR GREENBERG: And that's the current status?

MRS. DIXON: Yes.

SENATOR GREENBERG: Do you have anything else?

MRS. DIXON: No.

SENATOR GREENBERG: Thank you very much.

(Letters to Chief Justice Hughes and Judge Bry-Nildsen, submitted by Mrs. Dixon, received in evidence and marked SJC-4.)

SENATOR GREENBERG: Richard Fifield.

R I C H A R D F I F I E L D: Mr. Chairman and members of the Committee: I appear before you as an attorney, living and practicing in Warren Court. For the past five and a half years, I have been an attorney basically engaged in trial practice in Warren County and in other counties and have had an opportunity to appear in front of many judges on many different types of cases, both civil and criminal, in and out of Warren County.

It has been my privilege many times to appear in front of Judge Bry-Nildsen. But whether I have won or I have lost, I have always felt when I have gotten out of his court I have had a fair hearing and I have had a decision that is based upon the law. In fact, I would go so far as to say Judge Bry-Nildsen is one of the finest judges I have ever had the privilege of appearing in front of.

As I understand the purpose of this Committee hearing, it is not to retry the case of State versus Stires, review that case, or to retry or review any other specific case; but rather you are sitting here, as I understand it, to determine the fitness of Judge Bry-Nildsen to continue to serve the people of Warren County and the State of New Jersey in his capacity as Judge of the Warren County Court.

In passing on that, as I am sure the Committee is well aware, it is the judge's duty to follow the law wherever it leads, whether you like where it is going or not, not to get convictions if it is a criminal case, not to reach a specific decision. But the first and paramount duty is to dispassionately, objectively follow the law, not public opinion, not personal prejudice, not personal predilection. No person's career should be determined on the basis of one case or on the basis of public opinion, but rather on the total picture of the man's service, his ability, his integrity, his honor.

Judge Bry-Nildsen, as I said, is one of the finest judges I have ever appeared in front of. He has the respect and admiration of every attorney in Warren County. The Bar Association meeting was called by telephone - there was not even time for a written communication - on a Thursday afternoon before Easter vacation at the Court House, an inconvenient place and inconvenient time for many people. Still, some 30 or 35 attorneys turned out to pass on this. This is the measure of the man. I had been in court that entire day and some attorneys came back specifically to be at that meeting after having finished their cases. That also I think is the measure of the man.

If we take the measure of this man in his entire career, I don't think there is any doubt but that he should be returned to the bench and given an opportunity to continue his service.

I would point out merely in passing that terms such as crime and murder are technical terms and they should not be bandied about lightly or without understanding. And I would hope - and I feel confident - that this Committee will pass judgment on Judge Bry-Nildsen's career, not on the basis of personal predilection or public opinion or the opinion of those who have personally been involved in litigation, but on the basis of his entire career, his intellect, his integrity, his ability and his honor.

I thank you for giving me the courtesy and the privilege of appearing here

today.

SENATOR GREENBERG: Thank you.

Is Clark Bowers present?

C L A R K C. B O W E R S: Senator Greenberg and Senator Perskie, I am a retired attorney - 50 some years. I was formerly a County Judge and a District Court Judge. Probably no one here can speak more of Judge Bry-Nildsen than I.

We were partners for 25 years even before he became a judge. But I'd better say, first, that Judge Bry-Nildsen married my daughter. She has been dead some 20 years. He has remarried and his wife is a very lovely girl.

SENATOR PERSKIE: Excuse me. You mean, he was married to your daughter?

MR. BOWERS: He married my daughter. Since, my daughter died and he has remarried a nice second wife.

Well, Judge Bry-Nildsen, when he first courted my daughter, was attending Princeton and intended to be a minister. Well, I didn't think too much of their salaries at that time and I induced him to turn to the law - and he did turn to it and worked himself through law school while he was married. He took care of this blind boy that you heard about a while ago. Well, Judge Bry-Nildsen later became my partner and we practiced law some 25 years and then he was urged to become a-- Maybe the request was to be nominated as a judge. I urged that he do it and he wasn't too interested in it but I knew that he was a good man and he would do a good job and I urged him to do it. It wasn't for money, for in modesty I would say that we were making more than judges made at that time. So, he took the judgeship at a lesser salary than he was making under the firm name of Bowers and Bry-Nildsen in Washington, New Jersey. We had a nice practice.

Well, as I say, no one can speak about Judge Bry-Nildsen better than I. He is an honest, honest man, I will tell you, gentlemen - honest as the corps is. He would not stoop to any small acts in any way at all and I will vouch for that. Thank you, gentlemen.

SENATOR GREENBERG: Thank you.

SENATOR PERSKIE: Judge, can you indicate for our record when you served in the Bench yourself?

MR. BOWERS: I served during the war. Governor Moore was my classmate in law school and he appointed me to district court judgeship. Later, Governor Edison appointed me to the county judgeship and that was during the war, from '43 to '48. I held over - funny, you can't hold over now - about eight months while the Republicans were in. However, then I practiced law.

SENATOR GREENBERG: Thank you, Judge.

SENATOR PERSKIE: Thank you very much, Judge.

MR. BOWERS: Thank you, gentlemen, it is an honor to appear before you.

SENATOR GREENBERG: It is a pleasure to have you.

Mr. Harbourt.

B O Y D H A R B O U R T: Senator Greenberg, gentlemen, I don't intend to be long. I will be very brief. I think what Mrs. Steed has said here does require some answering. There was a suggestion that in some way Minerva Navatto was involved, that is the Surrogate of Hunterdon County was involved in some sort of chicanery and I gather that that was supposed to have influenced Judge Bry-Nildsen's decision in the Saunders case. I agree with one thing

Mrs. Steed said and that is that Mr. Saunders got some extremely poor advice, but I feel he got it before he hit my office. When he came into my office, he came in with a note from another lawyer who was leaving--

SENATOR GREENBERG: Excuse me.

MR. HARBOURT: I think this is important, Senator.

SENATOR GREENBERG: Excuse me. Who are you talking about now?

MR. HARBOURT: Mr. Saunders.

SENATOR GREENBERG: It is not necessary for you to respond and, frankly, from this Committee's point of view, I do not wish to get involved in testimony as to who gave what advice to a client in connection with a case before the Judge.

MR. HARBOURT: I understand that, Senator, but I think it is important because I think this case is illustrative of the type of case that you are hearing about here. Mr. Saunders came to my office. He was presented with a case, Saunders versus Saunders, which we are all familiar with and which cropped up shortly after the Divorce Reform Act. That was a case where Mr. Saunders received the - the first Mr. Saunders - house and roughly a two-year marriage; he was a sick old man and he married a younger gal. The court saw fit to give him the house. This is the backdrop of Mr. Saunders' case.

Now, Mr. Saunders the second walks into my office--

SENATOR PERSKIE: No relation, I presume?

MR. HARBOURT: No relation to number one -- and says, I have a, roughly, 30-year marriage; I had a stroke in 1960 and I have been working since, roughly, 1961 to date. My wife works somewhere -- it doesn't make any difference -- and the lawyer told me Saunders versus Saunders is applicable - same name, same set of facts. It is not the same set of facts. Mr. Saunders well knows the reason why no doctor was - this Mr. Saunders - produced at his hearing. He is, and was, perfectly capable of speaking for himself. He was perfectly capable of testifying at the hearing.

The matter was litigated. Judge Bry-Nildsen did sit, in one of his 4:30 - 4:45 nights. He did finish it up for Mr. Saunders and Mrs. Saunders. He did take into consideration the fact that Mr. Saunders was holding a bank account for a close relative. That was not part of the property settlement agreement - or the order of property settlement. He did take into consideration the fact that Mr. Saunders owned the real property before the marriage - the lots on which the subsequent marital home was built. He divided and backed out the lot from the house - the value of the house. He wrote a five to seven page opinion in the case.

SENATOR PERSKIE: On the property distribution?

MR. HARBOURT: Dividing the property.

SENATOR PERSKIE: Equitable distribution?

MR. HARBOURT: Equitable distribution.

SENATOR PERSKIE: For the record, Mr. Harbourt, you participated in that case in what capacity?

MR. HARBOURT: I was the attorney for Mr. Saunders.

SENATOR PERSKIE: Mr. Saunders?

MR. HARBOURT: Yes. I also represented Mrs. Steed, who had no complaints about her case. In fact, she brought Mr. Saunders in.

Now, you know, Judge Bry-Nildsen went to the lengths of writing this opinion. After it was written and sent out to the lawyers, he and I were talking one day and he indicated to me that it was a tough decision because of the fact that he did feel Mr. Saunders had some physical problem but that he was able to work and it was a tough decision just because of the fact that he felt compassion for Mr. Saunders. Yet, he followed the law and he did render a decision. I explained that decision to Mr. Saunders and I think Mr. Saunders' complaint is that he didn't get the same treatment as the first Mr. Saunders got. But, the factual case is completely different.

The rest of what I have to say in an individual capacity, Senator, I have said to you in a letter.

SENATOR GREENBERG: We have it.

MR. HARBOURT: And I would hope, and strongly urge as a lawyer, that Judge Bry-Nildsen be reappointed.

SENATOR GREENBERG: Thank you very much.

Mr. Bodenstein.

F R E D B O D E N S T E I N: Senators, my name is Fred Bodenstein. I am a former officer of the New Jersey State Police. I have put in 33 years. Most of my life has been in Warren County. I have also worked out of the prosecutor's office. As a matter of fact, I am one of the first ones ever assigned to a prosecutor's office.

SENATOR PERSKIE: First one what, sir?

MR. BODENSTEIN: As an assistant investigator while a member of the State Police.

SENATOR PERSKIE: I see.

MR. BODENSTEIN: I have known Judge Bry-Nildsen for a number of years. I have appeared before him in the District court. I have always found him to be fair and square. Sure, some of us troopers talk about judges. But, sometimes we are wrong because we always think everything should be our way.

But, I have also been a bondsman. I have bailed the bad ones out and I have found that he has been fair and square on both sides. All I can say is, from my observation, being in the court - in and out - hearing the rumbles around the court house, that he has been very fair and square. Nothing has been talked about as being illegal - as some people say with nothing to back it up.

Now, my second thing is, the Senator brought out about senatorial courtesy. I am one that is against that. I think the time should be changed.

SENATOR GREENBERG: I really don't want to get into that area.

MR. BODENSTEIN: Okay.

SENATOR PERSKIE: Can we have a debate on it? (laughter)

SENATOR GREENBERG: Later.

MR. BODENSTEIN: Also, Judge Muir brought out about the backlog of cases. That has occurred in Warren County and I am in favor of a full time prosecutor. I thank you for your attention.

SENATOR GREENBERG: Mr. Bodenstein, I have a question for you. When did you retire?

MR. BODENSTEIN: I retired about 14 years ago.

SENATOR GREENBERG: Are there any questions? (no questions) Thank you.

MR. BODENSTEIN: Thank you for giving me the time.

SENATOR GREENBERG: Does anybody else want to testify in this matter, other than Mr. Stachnik? We do not have your name, sir.

MR. CHASE: Well, I gave my name.

SENATOR GREENBERG: Will you give it to me.

MR. CHASE: It is Barry Chase.

SENATOR GREENBERG: Have a seat.

B A R R Y C H A S E: Senator Greenberg, Senator Sheil, Senator Perskie, my name is Barry Chase. I am an attorney at law in Newton, Sussex County, New Jersey. I have practiced there since 1962 and have had occasion to try many cases before Judge Bry-Nildsen while he was a part time district court judge in Sussex County and while he was a part time district court judge in Warren County and while he was on the county court bench in Warren County. I have had occasion during that 16-odd year period of practice to try cases in most counties in the northern tier of this State and to try thousands and thousands of cases during that period of time.

My practice is confined primarily to litigation involving the trial practice before the judges of this State and, to some degree, the appellate practice. I am a prosecutor in many municipalities in Sussex County and I had an opportunity to appear in court extensively. There is no need to be repetitious relative to the comments that have already been made about Judge Bry-Nildsen. I can describe him, perhaps, in a single word and that word in my view is impeccable. I believe, as a man, he is impeccable. As a jurist, he is impeccable. As a lawyer, he is impeccable. If I were to be a party to litigation, whether as an accused or as a complainant, whether as a plaintiff or as a defendant, if I had my choice of the forum that I could select, mindful that my case would be treated fairly and reasonably, I would select Warren County, if Judge Bry-Nildsen were to be there.

Decisions are often very difficult to make. Decisions are very often fraught with controversy. As a matter of fact, when men of high standard and quality and men of caliber assume positions of controversy they do, themselves, create controversy. That is, in fact, the position of a county court judge - one of controversy. He is a person who must withstand public criticism, public abuse, and perhaps a lack of popularity.

I have tried many cases before Judge Bry-Nildsen and in the course of his rendering a decision I know that he deals significantly with his opulence. But, in every case without fail he applies the facts, as he perceives them, to the law, as he understands it to be - a law which he understands intellectually and capably. I have very often lost cases before Judge Bry-Nildsen but in every instance I was convinced - and am convinced today - that he dealt with my controversy fairly and purely.

When someone of great stature is called upon to make a decision, it is very often most difficult to make the decision and I recall, quite clearly, somewhere in some mysterious place it is written that King Solomon decided to cut the baby in half. Thank you.

SENATOR GREENBERG: Thank you.

C H A R L E S S T A C H N I K: Mr. Chairman, and Senator Perskie, and Senator Sheil. First I want to say, if I talk a little bit loud in here it is because, number one, I am the President of the Stachnik Lumber and Wrecking Company. We run a demolition operation, and scrap process and this and that, and we run equipment, bulldozers and like that, and I am used to talking loud.

SENATOR GREENBERG: We can hear you right now.

MR. STACHNIK: I am not accustomed to being in a quiet atmosphere, a prestigious atmosphere like this. If I get too loud, I don't want to sound belligerent. Let me know; cut me down; you can't hurt my feelings; you can't insult me; this I guarantee you.

SENATOR GREENBERG: I would like to tell you at the outset that it is now five-thirty approximately, and I would like you to try to be as brief as you can, and try not to repeat whatever has been said that you might want to say again.

MR. STACHNIK: Mr. Chairman, when I say Mr. Chairman, I want it understood in there that I am referring to the Committee. Now, if I get out of line, please stop me.

First of all, in the last hearing very shortly in there Bry-Nildsen said he knew of me, or just about knew me or so forth. Well, I knew Judge Bry-Nildsen, or knew of him, for better than twenty years, and knew him real good in there for the last fourteen or fifteen. Now, I have had cases before, and in my complaint, I want it known for the record that I am the person that was directly responsible in there, because I sent the complaint down to Chairman Greenberg down there, and I appreciate the fact in there--- I had my doubts as to whether we would have this meeting in there, but I sort of thought we would have it. I want to go down---

SENATOR PERSKIE: You said we would or would not?

MR. STACHNIK: We would have it.

SENATOR GREENBERG: Do you have any doubts now?

MR. STACHNIK: No, sir. First of all---

SENATOR GREENBERG: I want to know whether or not you oppose his nomination?

MR. STACHNIK: Yes, I do, very---

SENATOR GREENBERG: And now I want to know why.

MR. STACHNIK: Mainly because I found out over the years that he is prejudiced and biased. I will have to add the word very.

SENATOR PERSKIE: Add the word what?

MR. STACHNIK: Very biased and very prejudiced.

SENATOR GREENBERG: Against whom?

MR. STACHNIK: I would say to people who appear before him in court, and especially a layman.

SENATOR GREENBERG: Did you have any personal involvement or have you had any personal involvement with the Judge?

MR. STACHNIK: None whatsoever, outside of legal---

SENATOR GREENBERG: In litigation.

MR. STACHNIK: Not personally, no, only through defense of different lawsuits, but never nothing against him personally. I have no animosity towards him.

SENATOR GREENBERG: You have appeared before the Judge? You have had cases before the Judge where you were a defendant?

MR. STACHNIK: Where I was a defendant.

SENATOR GREENBERG: What was the nature of the cases?

MR. STACHNIK: Well, there are several of them there. One was a case in there where an attorney---

SENATOR GREENBERG: Just tell me the nature, first, what kinds of cases?

MR. STACHNIK: Well, a civil suit.

SENATOR GREENBERG: People were suing you for money damages?

MR. STACHNIK: That's right.

SENATOR GREENBERG: How many such occasions in the last five years or ten years - I think you used the number twenty - have you appeared before the Judge as a defendant in a civil case?

MR. STACHNIK: Three.

SENATOR GREENBERG: Was there a jury sitting in each of those cases?

MR. STACHNIK: None of them.

SENATOR GREENBERG: Did he rule against you in all three cases?

MR. STACHNIK: Yes.

SENATOR GREENBERG: Were you represented by an Attorney? Were appeals taken in any of those cases?

MR. STACHNIK: In one. In one case, appeal could not be taken. That was a motion for a summary judgement.

SENATOR GREENBERG: And is the basis for your objection to the Judge the experience that you had appearing before him as a defendant in those cases?

MR. STACHNIK: Yes.

SENATOR GREENBERG: What happened on the appeal?

MR. STACHNIK: One appeal in there I was being sued by another attorney for \$292.50 I believe it was. Now, after we made an appeal--- I had problems getting my attorney---

SENATOR GREENBERG: What happened on the appeal, Mr. Stachnik?

MR. STACHNIK: Dismissed for lack of prosecution.

SENATOR GREENBERG: Okay. We are not, we are not, going to re-try those cases today. I want you to tell us, please, why you think the Judge should not be reappointed without re-trying the cases, okay?

MR. STACHNIK: Fine. First of all, Mr. Chairman, it is my understanding that before this Committee, this hearing here, that all information is absolutely privileged. Am I correct?

SENATOR GREENBERG: The question has been asked whether all information is absolutely privileged.

MR. STACHNIK: All testimony given before this Committee is absolutely privileged.

SENATOR GREENBERG: That is not correct. That would be correct if you were subpoenaed to testify here. You are testifying voluntarily, and will be held and can be held accountable for what you say should anyone see fit to do so. In other words, there is no immunity, if that is what your question is, with regard to anything that you might say here today.

MR. STACHNIK: I asked that question not because I am going to tell an untruth, but just the reverse. That is the reason why.

SENATOR GREENBERG: Please, will you tell me or this Committee the

basis of your objection to the renomination of Judge Bry-Nildsen.

MR. STACHNIK: Back in 1969 we had a court hearing before Bry-Nildsen where I had Leonard Williams from Trenton, New Jersey, as my attorney, and I was being sued by another attorney for \$292.50, and we said we didn't owe him anything.

We went into court, and our answer to the complaint was in there that he was paid by check---

SENATOR GREENBERG: You see, unless Judge Bry-Nildsen comes into the picture, the facts of the case are irrelevant to us. Some place else you had an opportunity to pursue that. Tell me why you oppose Judge Bry-Nildsen's renomination based upon what he did in that case.

MR. STACHNIK: Because in these court cases, Mr. Chairman, he has been prejudiced and biased against me in there every time that I appear before him.

SENATOR GREENBERG: What evidence or testimony or indication of that prejudice or bias do you have for us other than the fact that you lost?

MR. STACHNIK: I have transcripts of the motion, and I have the cancelled checks and so forth, which in laws--- You people know about this. I am not an attorney. I am a demolition contractor. This constitutes in the court some satisfaction. Now, we lost the case, and all the evidence is in the testimony. It can't be rebutted in there.

SENATOR GREENBERG: Let me see if I understand it. Are you saying that you should have won the case?

MR. STACHNIK: Absolutely.

SENATOR GREENBERG: And that because you lost the case you conclude that Judge Bry-Nildsen is prejudiced?

MR. STACHNIK: No, sir.

SENATOR GREENBERG: Well, then please tell us for what reason you conclude that he was prejudiced against you.

MR. STACHNIK: The reason why he was prejudiced against me, Mr. Chairman, was, I don't know why, but I know that we had---

SENATOR GREENBERG: I am not asking you why he was prejudiced against you. I am asking you why do you believe he was prejudiced against you other than the fact that you lost the case.

MR. STACHNIK: Now, I get what you are getting at. Most --- The reason there--- Every time I went before him, I went before him with an attorney in there, and my attorney has told me in there, "I just don't understand what is the matter up there in Warren County that they are like that. We should have never lost that case." Here is a perfect example when a court isn't satisfactory. Here is the cancelled check. We had a bona fide dispute and everything else. I sent him a check, and he crosses it out there, and goes ahead and cashes it.

SENATOR GREENBERG: Okay, so the reason then that you believe he was prejudiced is because your attorney indicated that you should not have lost the case.

MR. STACHNIK: Exactly.

SENATOR GREENBERG: Any other reason?

MR. STACHNIK: Yes, plus the fact that he was an attorney. He was part-time District Court Judge at that time, and Warren Herrigel was the part-time

Judge in the Hunterdon Municipal Court, and two attorneys in there, right, isn't going to let a layman come before them in there when an attorney is suing me for an amount. This is what my attorney told me, and if we followed that--- We took that complaint to the Appellate Division here in Trenton, but we dropped it there because we decided - when I say we, the Board of Directors of the Wrecking Company didn't feel in there that it was good to spend \$1500, which they wanted for an appeal in there---

SENATOR GREENBERG: You are perfectly free to proceed with your appeal or not, and that is not related to what we are doing here. You are not going to get relief for the three cases before this Committee. Obviously, we don't have the ability to do that. There is another time and another place.

MR. STACHNIK: I didn't expect that. My complaint stated that he was prejudiced and biased.

SENATOR GREENBERG: And I am asking you the reason. And you have told me you have lost the cases and there were attorneys who told you that you should not have lost those cases. Is there any other reason that you have for concluding that he was prejudiced or biased?

MR. STACHNIK: In other cases, yes. In the other case---

SENATOR GREENBERG: Without regard to the facts of the matter, did he treat you in a prejudiced or biased way? Were his actions prejudicial or biased toward you, and if so, can you tell us why you believe that? Why do you believe that is so other than the fact that you lost the case?

MR. STACHNIK: Well, the case before this--- Stop me if I am getting off the track. In the case before this, in fact, it was the very first case that Boyd Harbourt - and he testified in here today - heard before Bry-Nildsen, when Bry-Nildsen welcomed him to the Borough back in 1965, and Bry-Nildsen told me---

SENATOR GREENBERG: Okay, I am going to do something that I haven't done yet, and that is to say that I don't want to hear any more of this type testimony, and I think I have given you every opportunity. I will continue to give you every opportunity to tell us why he should not be reappointed on the basis of facts or opinions which are supported by facts, but I am not going to re-litigate the three cases.

MR. STACHNIK: Okay, very good. Can I have these submitted into evidence, Mr. Greenberg?

SENATOR GREENBERG: Yes.

MR. STACHNIK: All right, thank you.

SENATOR GREENBERG: I figure if you won one out of three you might not be here.

MR. STACHNIK: No, no, no, that is not it.

SENATOR GREENBERG: Well, I am serious about that. If you have some evidence of prejudice or bias on the part of Judge Bry-Nildsen, I want to hear it. We have been here for five hours, and I don't want to hear it on the basis of the fact that you lost the case, because there is always a loser and there is always a winner. And he has had hundreds of cases.

MR. STACHNIK: Yes, I understand.

SENATOR GREENBERG: If there is something wrong, I want to know what it is.

MR. STACHNIK: What is wrong, Mr. Chairman, is in these transcripts, where in another case--- Are you going to stop me?

SENATOR GREENBERG: I am not going to stop you. Go ahead.

MR. STACHNIK: In another case, I had an attorney from South River. I was being sued in a liquor law liability case involving the Roseberry Liquor Store in Phillipsburg, New Jersey, for \$100,000. All the testimony in the transcripts that came out there, the alcoholic beverages was bought at a store other than my store - the Parkway Liquor Store. I own and operate the Roseberry Liquor Store. After all the testimony was taken in depositions here, my attorney, who I am sure you gentlemen know, Harry Burton from South River, New Jersey - I think he is the President of the Middlesex Bar Association - made the proper legal move before the Superior Court of Warren County for a motion for summary judgement. He appeared at the hearing in Morristown, New Jersey---

SENATOR PERSKIE: Who did?

MR. STACHNIK: My attorney, Harry Burton, and after the hearing it was not successful. You know, all the information--- Everybody testified they bought it in another liquor store. He just couldn't understand it. I have a letter that I would like to introduce there.

SENATOR GREENBERG: Other than the fact that you don't understand it or your attorney didn't understand it, do you have any evidence to present to us that the Judge was prejudiced or biased against you? Do you understand my question?

MR. STACHNIK: Only the fact, Mr. Chairman, that Bry-Nildsen well knows me, and he well knows the name Charles Stachnik. When we went in there, he did not grant us the motion for a summary judgement because he was prejudicial against me, and ignorant of the fact of the law.

SENATOR PERSKIE: What did he say, or what did he do besides denying the motion for summary judgement that leads you to the conclusion that he was biased and prejudiced against you? Did he address any remarks to you?

MR. STACHNIK: I would not appear at that trial.

SENATOR PERSKIE: Did he address any remarks to your attorney about you? Did he make any reference in his decision on the motion for summary judgement that related to you?

MR. STACHNIK: Not per se.

SENATOR PERSKIE: Did he make any reference in his decision on the motion for summary judgement as it related to you?

MR. STACHNIK: Not per se.

SENATOR PERSKIE: What gives you reason to believe that he was biased or prejudiced to you other than the fact that he ruled, as you would have it, the wrong way on the motion?

MR. STACHNIK: Only for the simple reasons, Senator Perskie, that whenever I went before Bry-Nildsen with a case and with an attorney, I lost the case.

SENATOR PERSKIE: Mr. Stachnik, let me explain clearly what I think the Chairman is saying, and what I know I am saying. If there is any evidence that this man conducted his judicial activities in a biased or a prejudiced fashion towards any person, we would want to know that because it would bear dramatically on the way he would vote whether to put him back on that bench or not, but the fact that he ruled a certain way on a given case - whether it is a motion to suppress or a motion for summary judgement, or whether that check constitutes

a payment of satisfaction, or any of those things don't count, because we are not going to sit here and put ourselves in the position that he might have been in ten years ago under legal facts there. What we want to know is whether anything that he did or that he said to you or about you in any way gives you reason to believe that he was biased or prejudiced other than the fact that he didn't rule the right way, as you call it, on the case? Am I making myself clear?

MR. STACHNIK: Very clear. Since then I decided there that I would not appear before Bry-Nildsen under any circumstances-which I haven't. Now, I have to point out in there, Mr. Chairman, that I am in the wrecking business. I run a liquor store. I have an apartment to lease out and so forth in there, and I do get in conflicts once in a while, not very often, because I try to keep out of the courts, but I do get in conflicts in there, but I would not go before Bry-Nildsen again.

Now, in answer to your question there, since then I--- When a complaint came against me for maybe an unpaid bill or something there like that, I ask for the disqualification of Bry-Nildsen.

SENATOR PERSKIE: Does he grant it?

MR. STACHNIK: I don't hear nothing, but Paul Aaroe the other senior Judge sits there. Now, in the last year, there was two cases, now, I am too busy to go in there and be my own attorney, but on times I have tried to get an attorney before Warren County court, I couldn't get an attorney in there. In this here case I was being sued for \$100,000. I approached three attorneys in one county there like that, and nothing doing.

SENATOR PERSKIE: Mr. Stachnik, have you been in the courts since without going before Judge Bry-Nildsen?

MR. STACHNIK: Yes, I have. And when I go before another Judge there, they rule in my favor, and they rule in my favor as a layman, Senator Perskie. Now, if that doesn't point out to me in there that he doesn't like the way I comb my hair, or he don't like the name Charles, I can't help it. If I am getting out of line---

SENATOR PERSKIE: I just want to make it clear that I understand you to be saying that the basis for your conclusion that he is biased and prejudiced lies in the fact that you went before this Judge three times, and lost three cases and you have since been before the courts in front of other Judges since then, and you have not lost, and that is the basis for your conclusion that he is biased and prejudiced against you; am I fairly stating your position?

MR. STACHNIK: More or less, sir, yes.

SENATOR PERSKIE: I would rather it be more than less. If it is less, I want to know about it.

MR. STACHNIK: I would say yes.

SENATOR PERSKIE: Okay, thank you very much.

SENATOR GREENBERG: Mr. Stachnik, do you want to leave those transcripts with the young ladies and they will mark them for the record.

(SJC-5 received and marked for identification.)

That concludes the testimony of witnesses who have indicated a desire to appear here today, with the exception of Judge Bry-Nildsen himself. His testimony was interrupted at our last meeting, and I indicated to him

he would have an opportunity to return to the witness chair. Judge, do you wish to make any further statement?

MARTIN BRY-NILDSEN: Yes, I have a comment to make. Regarding Mr. Stachnik's observations, I recall one case in which Mr. Stachnik was a party defendant, and now Judge Warren Herrigel was the plaintiff. The suit involved some legal fees. There was an appeal and it was affirmed. The case which he refers to as a summary judgement motion, I have no recollection of Mr. Stachnik's participation in this. As he says, he wasn't there. It was undoubtedly one where the affidavits indicated some factual issue reserving the matter for trial. I don't have any knowledge of what the follow-up was on that particular case. I had no knowledge of any other appearance by Mr. Stachnik before me. I do recall his indicating to Judge Aaroe or to someone that he preferred that someone else hear the case, and I said I would be very glad to disqualify myself. That was years ago.

SENATOR PERSKIE: Judge, all I wanted to know on that, are you aware of any specific applications to disqualify yourself in any specific trials or cases?

JUDGE BRY-NILDSEN: No, no, not any specific ones. But if a client indicates some preference, or indicates some dissatisfaction of any kind, it is the policy between Judge Aaroe and my office to switch back and forth if there is any indication of any personal association or any dissatisfaction of any kind.

SENATOR PERSKIE: Expressed through the attorney.

JUDGE BRY-NILDSEN: Through the attorney, of course. It is routine. Then, of course, if there is any relationship or knowledge or anything of any significance.

Now, the lady who testified regarding the matrimonial difficulties, I don't recall specifically except that she appeared --- She didn't appear, but the man appeared with incompetent counsel and he presented an application for a reduction of payments under an agreement for alimony. His evidence indicated a substantial increase in income on his part. The motion was dismissed. There was a follow-up on that, which I have no knowledge of, involving ethics proceedings in another county, and so forth. Later on, as I understand it, that case was resolved by the counsel by settlement as indicated.

Was there any other small matter that was brought up? If not, I then want to turn to the Stires case. The Stires case, as you know, was tried separately from the Counterman case. Counterman and Stires were half brothers. They were involved--- I briefly described to you the circumstances in the last session. The Stires case was tried first. There was an application made by defense counsel requesting the trial without a jury. Notice was given to the Prosecutor under the rules. My understanding of that notice was that, of course, it called for a response from the Prosecutor indicating whether or not he had any objection to the granting of the request. He did not object. We proceeded through an elaborate voir dire for the purpose of ascertaining whether or not I - assuming I would try the case - would know any of the witnesses that may be presented and so forth, just as though it had been a jury case.

We also had a very elaborate voluntariness hearing with respect to the admissibility of a statement allegedly made by the defendant Stires for the police. I ruled in favor of its admission after a lengthy bit of testimony. That statement plus the evidence given by the young lady, Miss Seiss,

and one other young lady who came later, and the evidence given by the police of the photographs and the spots where they found the remains of the shot, shell, cartridge, or whatever the term is, and so forth, the measurement of the road, and some photographs consisted of the evidence.

There was evidence, as I indicated earlier, that there --- and the ballistics expert gave testimony of his opinion of distances of discharge from the point of impact of the shells --- were two shells discharged in quick succession from this vehicle, the first one of which struck the Seiss girl in the hip area and the balance of the pattern struck the vehicle about on the nose of the hood of - as I call it being old fashioned - the front part of the car. You could see plainly from the photographs that that was there. It was lined up with the windshield.

The second shot was caught entirely by the Sciascia boy. There was no way to know whether that would have struck the windshield or not, but it was in rapid succession. As you know, the test for the burden for the State in a second degree murder case, or any murder case, is to first establish evidence beyond a reasonable doubt that there was a murder. There are two basic categories of that: One of them is if you can show evidence of a deliberate intent to kill or deliberate intent to do serious bodily injury to a person. The other is that the evidence must demonstrate beyond a reasonable doubt that the facts were such that the person should have known and would be chargeable with absolute notice beyond a reasonable doubt that he would strike or kill the individual.

The State, of course, in addition to that has the burden of establishing that it was not manslaughter. That is part of the State's obligation and the proof of the case. What was presented was that, the evidence. As I explained earlier, the photographs, the garments, the portions of the garments, the darkness, the dark colors, all of these elements together left me with an unreconstructed scene to the point where I could not determine whether or not those facts were such, beyond a reasonable doubt, as to charge this young man with the knowledge that would make him guilty of second degree murder. And leaving me with that balance there, the decision was made on the evidence in favor of manslaughter.

Now, that was an honest, fully weighed, fairly considered soul searching review of the evidence in that nine day case. Whether others agree or whether they don't, I can't answer. It was my honest opinion from evidence that I heard in that case. I had that one statement that came in from the Stires boy. Now, much is made of the statement that was admitted in the other case. That statement did contain evidence concerning the illumination of the scene and the fact that the Counterman could see driving the vehicle.

SENATOR PERSKIE: Excuse me, that is a statement of Counterman.

JUDGE BRY-NILDSEN: Counterman's statement, which, of course, was not admissible in the case which I heard and which was admissible in the Counterman case.

I have the highest regard for the Prosecutor and all others, and I certainly have the deepest sympathy and respect the sensitivities of the parents of these people. But what I was confronted with was the evidence that I heard in my case. Had I had that Counterman statement in my case, my problem would have been solved. It would easily have been second degree because I would

have had that problem solved. I could have attributed to him what I would have considered sufficient knowledge from the facts themselves to attribute responsibility to him. The circumstances which I had before me simply did not reach in my judgement. As I said, I announced reluctantly, because I certainly had a very low image of the Stires boy from his act, and, as I say, I impressed the maximum penalty on him because I considered what he did to be a wanton act.

SENATOR GREENBERG: Is that why you imposed consecutive sentences?

JUDGE BRY-NILDSEN: Yes, sir, and I also explained why I made it consecutive as to the gun charge. In that instance, as we all know, the so-called gun law, the 2A-150, 151 is not a popular law to enforce in many instances, because there are innocent people, innocent in the sense that they don't really know about our law, and they come in from another State, pass through, and they are apprehended in possession of a weapon. Of course, it is a high misdemeanor. As I think, it was given to a Judge in Somerville. He wrote his opinion, and it went through the Appellate Division and even to the Supreme Court, but they took it up on certiorari, and I believe it was Justice Jacobs who said, "We just can't let sportmanship take the place of the law. We must find people responsible for the law and hold them accountable."

In that case, I felt that was the very purpose of that particular legislation. The requirement of a permit in the gun law was to prohibit its use by people who were irresponsible and reckless in their use, and that this is a demonstration of a case where it should be a high sentence as the statute provides, and hence that high one and the fact that it was consecutive I considered it an independent violation in that sense. That is the reason I made it consecutive.

But, gentlemen, as you say, I have paid the price in terms of sweat since this because of the criticism. But I listened earnestly and hard and decided that case honestly based on the evidence and the law that I researched carefully, and it was my honest conclusion, based, as I say, on the fact that I just could not, from the circumstances that were reconstructed from that evidence in my case, charge that man with second degree murder. Therefore, I found him guilty of the lesser.

SENATOR GREENBERG: Thank you, Judge. Senator Sheil, do you have any questions?

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Senator Perskie.

SENATOR PERSKIE: Just one. Judge, if members of the Senate determine to confirm the Governor's nomination and you go back on the bench and the same type situation presents itself in terms of your being called upon to make that kind of a judgement, ---

JUDGE BRY-NILDSEN: The jury or not?

SENATOR PERSKIE: No--- Well---

JUDGE BRY-NILDSEN: Never.

SENATOR PERSKIE: Okay, let me ask that first.

JUDGE BRY-NILDSEN: I would never do that, for the very reason that I have experienced. As honest as my decision was, here I sit. There is no insulation. There is no immunity, if you will, that a jury could afford to the Court. It is not available in this situation. I would never do it again.

Judge Muir, following our conference, did as he indicated he did, he published a bulletin in our jurisdiction, in our bailiwick, suggesting that it not be done except in extreme cases.

SENATOR GREENBERG: There are times when justice requires that it be handled in that fashion.

JUDGE BRY-NILDSEN: Sure, but I would certainly this time counsel with the Assignment Judge and possibly go further.

SENATOR PERSKIE: Okay, that wasn't exactly the question I was going to ask. I don't even know now if your answer to this question gives me any room to ask the other, but I will ask you anyway. If you found yourself back on the bench and in a non-jury trial, faced with the same fact patterns that you have described here, can I ask you what kind of approach or what kind of decision you would reach?

JUDGE BRY-NILDSEN: If it were this case, sir?

SENATOR PERSKIE: Yes, sir.

JUDGE BRY-NILDSEN: On the very same evidence?

SENATOR PERSKIE: Yes, sir.

JUDGE BRY-NILDSEN: It would be the same.

SENATOR PERSKIE: That's all I wanted to know.

JUDGE BRY-NILDSEN: And I say that honestly and with all due respect, I was the one that had to spend the nine days writing down and listening attentively and watching every move that every witness made, and believe me, I realized my responsibility. I realized not only that here was a boy that was facing possibly a life sentence or a long sentence, or some sentence on the one side, but I was very well aware that somebody was killed, a young man. I saw his picture. I saw those horrible pictures that were presented into evidence. I saw the pictures of that young lady, and a very attractive young lady, I might add, and the bruises that she will carry with her, just fortunately in a place that is not conspicuous. But, at any rate, they are with her. I certainly was aware of that. And, as I say, my image of Mr. Stires was very, very small indeed. But I can't decide a case based on sympathy for one side or the other, or because I develop an almost detestation for one of the parties, which in fact one couldn't have anything much more than some detestation for someone who would commit an act as irresponsible as that was. But, still, we are obliged in our oath to follow the law. For years every single case that I try is an important case to the people who are sitting there, even though it be a traffic case, and when they say that I have been sharp with someone or cut them off, I don't say, sir, that in seventeen years on the bench I have never cut off a witness, but it has never been intentional, and it is probably only done because there has been too much repetition, and by necessity I had to try to shorten the matter. But always with an explanation.

But there is one thing that I try to do, not only to be courteous to people, but to explain why I do things, so that they do understand, particularly where they do not have counsel. If there is any question you have, gentlemen, I would be more than happy to answer it.

SENATOR GREENBERG: No, I think we have finished questioning. I appreciate your returning today. I would like to announce now that these proceedings before the Judiciary Committee in connection with the renomination of Judge Martin Bry-Nildsen are concluded. The transcript will be prepared

and presented to the members of the Committee, those who were present today, and those who were not present today, and my expectation and intention is for the Committee to convene on April 17th - which is the next day that the Senate is in session - and we will vote, and that will be a public session just as this has been. I thank you very much.

(Whereupon hearing was concluded.)

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