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C O M M I T T E E M E E T I N G

before

SENATE JUDICIARY COMMITTEE

Nomination Interview of Judge Richard S. Hyland
to be a Judge of the Superior Court,
to succeed himself for the term prescribed by law

February 17, 1988
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Edward T. O'Connor, Jr., Chairman
Senator Raymond J. Zane, Vice Chairman
Senator Gabriel M. Ambrosio
Senator Richard J. Codey
Senator Carmen Orechio
Senator Donald T. DiFrancesco
Senator John J. Dorsey
Senator William L. Gormley
Senator Lee B. Laskin

ALSO PRESENT:

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

* * * * *

Meeting Recorded and Transcribed by
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New Jersey State Legislature

SENATE JUDICIARY COMMITTEE

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MEMORANDUM

February 10, 1988

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE
FROM: EDWARD T. O'CONNOR, CHAIRMAN
SUBJECT: COMMITTEE MEETING, FEBRUARY 17, 1988

Please address any comments or questions to John J. Tumulty, Committee Aide at (609) 292-5526.

The Senate Judiciary Committee will meet on Wednesday, February 17, 1988 at 10:00 a.m. in Room 424 in the State House Annex, Trenton, New Jersey.

The following nomination will be interviewed:

TO BE A JUDGE OF THE SUPERIOR COURT:

Richard S. Hyland, of Cherry Hill to succeed himself, for the term prescribed by law.

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SENATOR EDWARD T. O'CONNOR, JR. (Chairman): We're going to take testimony today -- only testimony, there will be no vote -- with respect of the nomination of the Honorable Richard S. Hyland to succeed himself as a judge of the Superior Court. So, that you understand why we will not be voting today, we received in the Judiciary Committee the Governor's Notice of his Intention to Nominate Judge Hyland. And there must be procedurally a period of seven days that passes from the day of the Notice of Intention to Nominate until the Senate actually receives the nomination, but the seventh day must coincide with the day on which the Senate is actually in session. So, that as of today, seven days have elapsed since we received the Notice of Intention to Nominate, but the Senate was not in session. The first day that the Senate will be in session is tomorrow. So, that tomorrow is the first day that the Committee technically is able to vote on the nomination.

So, today we will be hearing testimony. We have a list of some 25 people who have indicated their desire to address the Committee. And we'll begin this morning with Judge Hyland. Judge Hyland, if you'll come up to the table, please.

J U D G E R I C H A R D S. H Y L A N D: Mr. Chairman, I have some notes to read, if I could.

SENATOR O'CONNOR: Judge, just as a matter of procedure, so that everyone here understands how we will proceed today, you'll be offered the opportunity to make a statement at this point. The Committee will be offered the opportunity to question you. After your testimony and after the questioning, we will then take testimony from those who are interested in being heard, both for your nomination and against it. After all the witnesses have been heard, we will give you the opportunity to come back and address the Committee again.

JUDGE HYLAND: I appreciate that.

SENATOR O'CONNOR: Judge.

JUDGE HYLAND: Good morning, everyone. My name is

Judge Richard S. Hyland of the Superior Court. I'm here today to present testimony in regard to my renomination.

I have approached this hearing with a great deal of eagerness because it will provide the first opportunity for me to answer publicly the charges that have provided an unfortunate and misguided debate over my reappointment to the Superior Court. I consider myself to be a judge who has dedicated himself to a career on the bench and who, except for the limited personal indiscretions that I will be describing to you shortly, has had, in the view of most, an exemplary record.

I fully expect today to be able to demonstrate to this Committee that I have been the victim of a prolonged campaign of slander and malicious falsehoods started by my former judicial secretary when she was still employed in that capacity. Many of these charges have been recently revived in the media and elsewhere as my reappointment began to receive consideration by the Governor's office. As a sitting judge, I have been completely handicapped by being unable to answer charges until now when my nomination is before this Committee. In the interim, my supporters could only urge that the members of this body and others whose opinions are influential, refrain from prejudging my case.

First, a brief biographical sketch. I was born in Camden, raised in the Parkside section and graduated from Camden High School with high honors. I next graduated from St. Joseph's College, a Jesuit institution, in the upper level of my class and matriculated at the University of Pennsylvania Law School as a scholastic scholarship student. Following my graduation there in 1960 and a period of active duty in the U.S. Army, as part of my New Jersey National Guard service obligation, I began to practice law in Camden with my brother Bill. In 1965, I was elected to the General Assembly, but then found my legislative career abbreviated in a subsequent race for the New Jersey Senate.

I was appointed by the New Jersey Supreme Court to a three-year term on the Camden County Ethics Committee and in the final year of that term served as its Chairman. In 1978, I was appointed to a special ethics commission created by the Camden County government to review conflict of interest and ethical problems of officeholders and other county employees. In 1969, I married Anne M. D'Arcangelo, whose family lived in the Hammonton area, and we are the parents of three children ranging in ages from seven to 17 years.

This is my third appearance before this Committee. In 1978, I was confirmed as a judge of the Camden County District Court. In that capacity I was appointed Presiding Judge and heard, for instance, landlord and tenant matters, small claims, and non-jury cases, as well as performing the administrative duties associated with the operation of the clerk's office.

In 1981, I was appointed to the Superior Court and confirmed by the Senate, and have sat in both the criminal and civil divisions. In criminal, I have tried a broad spectrum of matters ranging from murder cases to municipal court appeals. In civil, I have tried complicated products liability, medical malpractice, tort claims, and damage cases. Now to the matter at hand.

This is a troubling case -- a case that leaves one unsatisfied because no matter what conclusions one reaches, something else seems to conflict with it. How could I be found not guilty of sexual harassment by the Supreme Court's Advisory Committee on Judicial Conduct and the Supreme Court if the Federal Equal Employment Opportunity Commission earlier found there was "reasonable cause" for such a finding? Why should you not believe my former secretary, for what motive does she have to lie or to hurt me?

The explanation is unusual, but truly simple. My former judicial secretary is a disturbed and irrational person. There are such people, fortunately few, as we all

know. There are more precise technical terms for her condition, but I am not learned enough to furnish you with such a professional diagnosis.

This case is impossible to understand unless the fact of her irrationality -- and I believe that is a fact -- is dealt with in an honest and forthright manner. I don't know what had produced this irrationality in what seemed to be a mature and stable person when I hired her as my secretary just a few years ago. All I can say, with the experience and insight of those years now behind me, is for reasons unknown to me and only to herself, she has consistently misrepresented the truth. The sworn testimony of a multitude of witnesses sworn before the ACJC, the Supreme Court's Advisory Committee on Judicial Conduct, has made these misrepresentations and irrationality abundantly clear.

My family and I have paid a price beyond calculation for the sexual indiscretions I committed with her. Those indiscretions were foolish and serious, serious enough to warrant public reprimand in the eyes of many and in particular the Advisory Committee on Judicial Conduct. They led to the charges by her that I had sexually harassed her and fired her in 1983 because she refused my advances. These charges were total fabrications and shown to be so in the Advisory Committee's hearings.

What were these indiscretions for which I was publicly reprimanded by the Supreme Court and how did they come about? On two occasions, once in 1979 and about 18 months later in 1981, I had sexual relations with her. She was about my age and a single parent. These indiscretions were entirely consensual in nature and completely out of the courthouse setting. In addition, perhaps two or three times a year during this limited period of time, we shared explicit reading material in my courthouse office.

And finally, on one occasion I gave her in jest, at

Christmas time, an item of lingerie and on another occasion a trivial sexually oriented trinket. She accepted these novelties in the same spirit that they were given; that is, as a joke and without any objection whatsoever. One of the witnesses who testified at the Advisory Committee's hearings in 1985 stated that she had laughed about this trinket and said she was going to give it to her brother. The cash that you may have read about in some of the newspaper accounts as being given to her wrapped in the lingerie I gave her was instead a separate Christmas gift of \$100 in currency in a conventional envelope together with a Christmas card, following a practice I have observed for many years with my various secretaries.

This is the entire story. Everything else you may have heard is false and malicious. I am not for a moment minimizing what I have done. My actions were foolish and wrong, and most assuredly unfair to my wife and family. And for all of that and its repercussions, I am truly remorseful. But this was not a pattern of conduct on my part. It was a private and mutually acceptable transgression and, having ended by mutual consent almost two years before her employment was terminated for entirely unrelated reasons, would probably have faded away into nothing except for her determination for retribution after she was fired. Moreover, it was the only departure in my almost ten years on the bench from the high standards of judicial performance and demeanor that I have tried to maintain and you have a right to expect.

In attempting to detail why we allowed our professional relationship to change, however briefly into something more personal, I have to go back to a period in the fall in 1979, or slightly more than a year after I employed her.

When I assumed my initial judicial position on the Camden County District Court in 1978, I hired Mrs. McGuckin as my judicial secretary. She had worked briefly in my former law firm, but we knew each other slightly there. However, my

secretary at the firm, to whom I first offered the position, had to reject it because of financial considerations. My duties required her to perform a variety of tasks aside from traditional secretarial work, particularly in dealing with lawyers, litigants, and the general public. At the outset, and for a considerable time thereafter, she performed these assignments well.

Our professional relationship at the outset was a satisfactory one and purely professional in character. Each of us had young children and we were of help to one another in sharing information about their health and other problems. I soon learned that she also had serious financial difficulties, in part because of the alleged failure of her former husband to meet his financial responsibilities -- and there are various court matters about that. Wanting to be helpful, I arranged to have her support problems handled by my nephew -- the case is in another county -- who is also a lawyer and who assisted Mrs. McGuckin in the fall of 1979 without charging for his services.

In 1979 she did something quite unusual which later changed the character of our relationship. She entered my office one day and on her own initiative and without any encouragement on my part, unexpectedly asked if I had heard about two Camden County employees who reportedly had posed for a "swinger" publication. According to Mrs. McGuckin, "Everybody in the courthouse was talking about it." I told her I knew nothing about these people or the magazine and had no interest in it. She raised the matter again the following week and said she could get access to the magazine. Once again, I shut off the conversation. Nonetheless, a week or so later, she entered my office again and said she had the magazine in her possession. At that point, as much to be done with her persistence as anything, I said, "Okay. I'll take a look at it."

If I only had the insight at that time, I would have

realized that for the first time she was displaying to me her compulsive attraction to gossip and, in particular, gossip that was sexually oriented. But these were qualities I became aware of only shortly before I fired her more than four years later and realized to the full extent only when I listened to the highly critical testimony of her co-workers during the 1985 ACJC hearings.

Following an office Christmas party at a local restaurant, she again took the initiative, if I can call it that. Surprised by her aggressiveness, I left that party with her to go to another restaurant, then to an adjoining motel for several hours, in the course of which we first experienced sexual relations together. We had relations once again in 1981, approximately eighteen months after the first such occasion. As before, this was an entirely mutually consensual act. Between those occasions, we also made arrangements to meet for the same purpose in Philadelphia. But each of us independently decided not to keep that engagement and simply failed to appear. It is important for me to state emphatically that none of these intimacies took place in my chambers, although she urged us to do this from time to time. I am mentioning this because some of the newspaper accounts of the last several weeks have suggested to the contrary.

I wasn't very proud to disclose these indiscretions, first to my wife and then to others, including the ACJC. But I was faced before that agency with the incredible charge that I had sexually harassed my secretary and fired her because she had resisted my advances. It was necessary, in my judgment, to detail our intimacies in defending myself.

Moreover, I had reached the conclusion that I owed it to the judicial system and to myself to make a full and frank disclosure as to the true nature of our relationship, and I did so. How can anyone believe that I would have confessed to these embarrassing events merely to extricate myself from the

charge that I had sexually harassed my secretary? This flies in the face of logic and reason. As I have said earlier today, whatever else I might be charged with, lying is simply not part of my character.

The ACJC in its 1985 presentment unfortunately characterized all the reading material we, from time to time, shared or exchanged as "pornographic." This is a term, of course, that the courts and others have had difficulty defining precisely for many years. I can tell you, for example, that one of these so-called pornographic items was a hardback best seller by Helen Gurley Brown called "Having it All." This is a book which has been read by millions of people in this country and can be found in virtually any public library or book store. Helen Gurley Brown, as most people know, is the editor of "Cosmopolitan Magazine." I must also tell you, however, that several of these magazines were not items that you would leave on your coffee table at home where the children might see them; but most of them can be obtained at any local convenience store.

But Mrs. McGuckin was a mature woman of approximately the same age as myself, and what we were engaged in doing, while in retrospect unwise, was, after all, entirely agreeable on both sides. In addition, this was by no means a regular practice. It occurred perhaps two or three times a year, over a two- or three-year period.

Earlier I mentioned the hearings held before the Advisory Committee on Judicial Conduct in 1985. This committee is a distinguished panel of lawyers, retired jurists, and lay members which, as the disciplinary arm of the Supreme Court, reviews complaints against judges, evaluates those complaints following a proper investigation and, where appropriate, holds hearings and makes recommendations to the Supreme Court. The options available to the Advisory Committee, aside from outright dismissal of complaints, include private and public

reprimands, suspensions, and actual removal of judges from office. The Supreme Court can accept, reject, or modify the committee's recommendations.

In my case, following the filing of her complaint against me of sexual harassment and unlawful discharge, the Advisory Committee staff commenced an investigation into those charges by interviewing first myself, as well as a number of other courthouse employees, Mrs. McGuckin, and other relevant witnesses. Following four intensive days of hearings before the ACJC in 1985, it was the considered and unanimous judgment of that agency that I was not guilty of the charge of sexual harassment and unlawful discharge, but deserved a public reprimand for the consensual sexual indiscretions that I disclosed to the committee in the course of defending myself against the harassment charge.

This committee, as I have previously mentioned, could initially have recommended I be suspended until the conclusion of the hearings. It did not do so, in all likelihood being influenced by the exculpatory evidence it realized it had in its own hands and files. Or it could have recommended, following the hearings, that I be removed from the bench. It did not, and I have continued to serve without any conditions since then. Instead, it recommended, after unanimously clearing me of the sexual harassment and unlawful discharge complaints, that I be publicly reprimanded. The public reprimand recommendation carried by the minimum number of votes required for such action under the rules -- namely five. In other words, if one other member of the Advisory Committee had voted for a private reprimand instead of a public one, a private reprimand would have been issued and perhaps none of us, including the media, would be here today for this special hearing.

If there is any doubt in your mind about whether the Advisory Committee reached a proper conclusion, a review of that transcript of those hearings, which I understand you have

been provided with, should put your minds at rest. With each added fact you learn, with every new insight you get, you will become more and more convinced that the charge of sexual harassment, in spite of the earlier "reasonable cause" determination of the EEOC, is unjust, unfounded, and untrue.

How was it, then that the EEOC reached this reasonable cause determination when the Advisory Committee unanimously cleared me of the same charges? Well first of all, the function of the EEOC, Equal Employment Opportunity Commission, in dealing with her complaint -- which was essentially a discrimination complaint in character -- was to determine if there was sufficient evidence to warrant requiring the parties to engage in the statutory conciliation process which, had it failed, would then have caused the agency to issue a right to sue letter. That letter would have permitted the complainant to seek damages and other relief in the United States District Court.

When the EEOC complaint was filed shortly after I terminated Mrs. McGuckin in 1983, it began its usual field investigation. That complaint, incidentally, was directed against me, the Camden County Assignment Judge, I.V. Di Martino, and the Superior Court of New Jersey. Judge Di Martino and the court system were enjoined because of the contention that her civil rights were violated because the courts did not have an adequate system for the processing of discrimination complaints. It is fair to say that the New Jersey court system, and therefore, the State of New Jersey, was the primary target and also the deep pocket of the EEOC proceeding, although my firing of her was the triggering event.

The EEOC field investigation was conducted by an individual with essentially paralegal level training and was, at best, superficial. My lawyer was invited to provide the investigator with the names of potential witnesses on my behalf. As was revealed by disinterested witnesses in the

Advisory Committee hearing, many of paralegal interviews of these individuals were conducted over the telephone. For instance, many of you as lawyers would understand that the co-employees who would have the best ability to test her allegations as to my conduct and the veracity of them, in and around my chambers would be my law clerks. Would you believe that these most critical witnesses were interviewed, not in person, but by telephone, and during which interview the investigator took an adversary position with them? Their negative comments about my former secretary's credibility and stability -- and you will hear from one of my former law clerks today, Ms. Andrea De Angelis, as well as similar statements made by other members of my court staff, such as court attendants -- do not even appear in the EEOC probable cause letter. Fortunately, their verbatim statements in support of me do appear in the ACJC transcript which is available to you.

Some of the witnesses later testified before the ACJC that the EEOC field worker was "one-sided, looking for specific answers, or more interesting in telling" -- more interesting in telling -- "what she thought rather than in asking questions." And we can give you those references in the transcript. There was no provisions for discovery. Two conferences were held the EEOC office in Philadelphia, but a formal transcript was not made. Sworn testimony was not taken. Cross-examination of Mrs. McGuckin by my attorney was not allowed.

Not surprisingly, therefore, the EEOC issued a determination letter on June 21, 1984 in which it concluded on page six that there was, "reasonable cause to believe that the charges are true." Reasonable cause is a term of art, which as lawyers understand, merely means that there is enough evidence for a proceeding to go forward.

My worst fears were realized -- the true nature of our relationship, which I had presumed to be a friendly one until

shortly before her termination, had now been perverted into a nightmare. Since that time, I have read an excerpt from a judicial opinion commenting upon the sexual harassment case, which was similar to my plight. It was noted in that opinion, "that sexual dalliance, however voluntarily engaged in, becomes harassment whenever an employee sees fit, after the fact, to so characterize it."

After receiving the EEOC determination, I was devastated and sought spiritual advice from a longtime friend, Monsignor George Sharkey of Cherry Hill, who had married Anne and myself and baptized our children. I asked him, "How in the world am I ever going to get out of this mess? My marriage and career are in ruin, my reputation and that of my family will eventually be destroyed, and I'm going to lose everything I've ever worked for." He replied without hesitation, "The truth will be your shield." He was right. The truth has gotten me this far, to this moment today before you. And I will continue to use it until the end of this odyssey.

Now, let's talk about the settlement. As you can imagine, I do know something about settling cases. Most cases are settled, and as lawyers on the Committee know, that they are settled for a variety of reasons -- sometimes having little to do with the merits. The only way to effectively settle or try a case successfully, is to be fully prepared as to your own case and fully prepared as to the other side. We accomplished this as lawyers through the process we know as discovery. As I mentioned, we had no right to discovery in regard to my former secretary's case before the EEOC, and really did not know its strengths or weaknesses.

And now I'm going to tell you something extraordinary. We also did not know the weaknesses and more importantly the strengths of my own case because my attorneys were denied access to the extensive investigative material which the ACJC had compiled as part of its original

investigation.

As I understand it, related to me by my counsel at that time, my former secretary's attorney insisted that she could not be interviewed unless her interview and all of the investigative material that the ACJC had compiled be withheld from me until after the EEOC proceedings were terminated. Whatever the reasons were, this arbitrary and unappealable decision made by the ACJC effectively deprived me of my right to counsel since my lawyers did not know all the facts in support of my defense until the ACJC file was turned over to us in October of 1984, several months after the probable cause letter issue. If anyone can contend or suggest that the ACJC bent over backwards to protect me, I can assure you they tilted in the other direction, much to my detriment and to the detriment of the interests of the State of New Jersey.

Of course I was also interesting in avoiding the devastating effect that a two- or three-week trial in the Federal District Court -- perhaps in my birthplace, Camden -- would have had on me and my family's reputation. I have young children. I only ask you to look at the attention this hearing has commanded today from the media to appreciate my legitimate concern about that potential effect.

In any event, with the determination letter now a fact of life, the court system and my attorneys concluded that the Federal case should be settled. This was not an easy or quick judgment. It was honestly evaluated and debated for some period of time. The State paid \$75,000 to the complainant and I paid \$20,000. These payments if understood in relation to the circumstances that then existed, should not be taken as any admission by me of sexual harassment, nor of any conclusion by the State to that effect. From the State's point of view, there had been a finding of reasonable cause, a finding that regardless of its fundamental weakness, might be used in civil litigation for damages. The State had to consider its

potential exposure in the matter, as in any matter where suit is threatened.

The law provided that if successful, she was entitled to both damages and attorney's fees. Damages would have included loss of income, pain, suffering, humiliation, and punitive damages against me. Moreover, no plenary hearing had been held to that point, and at least to someone, she seemed to be a potentially credible witness. From my point of view, a public trial involving the disclosure of my indiscretions and the airing of the maliciously false allegations and sordid behavior, was something I simply did not feel my family or myself could go through.

There is no questions in my mind, but that if the investigative material held in the files of the ACJC until the EEOC proceeding was concluded had been made available to us, it would have thrown the Federal proceeding into a completely different light and would have possibly opened the door to a successful countering of the evidence gathered by them, which was reportedly almost totally favorable to Mrs. McGuckin. If we had that information, at the very least, it would have strengthened our hand in the conciliation negotiations and saved the State and myself a great deal of money.

The conciliation or settlement agreement provided in part, "This conciliation agreement does not constitute an admission by the respondent, Superior Court of New Jersey, Camden County Vicinage, and Richard S. Hyland of any violation of Title VII," which you know pertains to civil rights.

Even broader language was incorporated in the general release signed by Mrs. McGuckin, "I acknowledge and understand that you, the respondents," meaning myself and the State, "deny any liability for the claims and that you contend that there are appropriate defenses to any and all claims" and that, "I understand and agree that the payment made to me hereunder is not an admission of liability" and "is made solely for the

purpose of terminating and concluding all disputed actions..."

Now I have read in the press that there is some concern that the Committee should compare and probe into the respective procedures and results between the EEOC and the ACJC, and I welcome that. In fact, I think that's what you should do. And I'd like to speak on that issue myself for a few minutes.

First of all, both proceedings, the Federal and State have complaints which were filed. At that point there is a tremendous diversion in due process, commonly accepted principles of jurisprudence, and just plain fairness.

For instance, in the Federal proceeding there is no discovery -- no right to know about the other side's case, or to interview witnesses under oath, yourself. There was in the ACJC. In the Federal proceeding there was no testimony under oath. In the ACJC all witnesses were sworn. And most importantly, and as a trial judge I can tell you, the importance of cross-examination. It has let innocent men go free in my presence. There is no cross-examination, no right of confrontation -- constitutionally protected, Federal and statewide. There is and was in the ACJC. And for the first time, Mrs. McGuckin was cross-examined. There is no rules of evidence. There were in the ACJC.

Here's a word we haven't heard much about in any of the newspaper account in regard to this matter -- hearsay. No exclusion of hearsay in the Federal proceedings. As we all know in a court of law and the ACJC, hearsay because of its basic unreliability and the inability of the opponent to cross-examine, is excluded. No verbatim record. I don't know what was said to the EEOC examiner by any witnesses. There is no accountability as to whether she got it straight. There's no way for me to tell whether she reflected any bias in her questioning. That's why we have a verbatim transcript. That's why in every courthouse in this State in every county

there are court reporters taking down what takes place. It's an essential part of any due process consideration. There was in the ACJC, and you have the benefit of it now and can go to it.

There is no opportunity to argue the law or to marshal the facts and briefs in the Federal proceedings, and there were in the ACJC. The fact-finder in the Federal proceeding was a paralegal/field investigator -- a Federal bureaucrat, if you will. Those who passed judgment on me in the State proceedings were a distinguished body of individuals appointed by the Supreme Court, including the chairman, former Justice Mark Sullivan, Professor Walter Murphy of Princeton who is a Guggenheim fellow, a Fulbright scholar, the author of several best sellers, including a book you may know of, "The Vicar of Christ," Dean Russell Fairbanks, former dean of the Rutgers Law School, Lee Wertheim, female member of the bar, active in the League of Women Voters, Robert Boyle who is a former publisher of The Hudson Dispatch, Victor Harwood, a certified trial attorney, and William Morton, a labor leader and civil rights activist. They were the individuals who passed judgment on me.

And again, so important, no appeal in the EEOC determination. I could not appeal that. On my own I sat down and wrote a motion for reconsideration to that agency saying, "Please, have you considered these facts? Have you considered what I understand to be the statements of my former law clerks and my court staff?" I got no response to that. That may be sitting in a file somewhere. Maybe no one ever looked at it. I had a right to appeal to the Supreme Court in the ACJC period. And underlying all of this, what is the purpose of the EEOC? A fine purpose and one that Congress has authorized as entirely worthy of our concern and interest. And it is defined, "discrimination in employment" -- and to eliminate discrimination in employment.

And the primarily focus of that inquiry really was,

did the State of New Jersey have a system in place for the handling of sexual harassment complaints? And in fact, it did not. It was vulnerable -- the judicial system as well as the State.

Now, I'm going to call to your attention, those of you who are employers, I suppose most of you are in one way or another, or you have clients, or employers come to you -- just so you know and you understand a little about the employer's liability in this area-- Thursday, January 7, 1988 article of the New Jersey Law Journal: "Analysis of Sexual Harassment -- Workplace Problems for Employers and Employees." I commend that to you. You will understand that we and some other circles have reached a strict liability standard on the part of the employer. That is the purpose of the EEOC proceedings. But the purpose of the ACJC preceding was to find out the truth. And they did.

Now any judge who has been reprimanded by the Supreme Court must expect to undergo a particularly intensive scrutiny upon reappointment. I had accepted that scrutiny, including the special attention now being given my qualification by this Committee.

Those who know the issues involved in my reappointment only from what they could read in the newspapers have every right to say, "Why should this judge-- Why should this man be reappointed?" My qualifications and my supporters have received little or no mention in those newspapers, television, and electronic accounts. Typically, those who felt I have been a good judge and should be reappointed, have been questioned, have given good statements in support of my nomination, and those comments have rarely seen the light of day. It will be argued by those journalists who are most open to criticism for unbalanced stories that my lawyers or I have been given every opportunity to speak to them. But this is a specious argument given the limitations on my ability to enter the public debate until now.

By self-imposed restrictions and those that are traditional in the consideration of judicial candidates-- I have been a hostage to the canons and the requirements that I not publicly discuss the matter until today. And here I am today to do so.

Now, one last point in regard to the legal proceedings before the EEOC, that has to do with my termination of Mrs. McGuckin. Her duties as a judicial secretary, I think you can understand, were multiple in character. Good judgment and sensitivity to the confidentiality and other special attributes, of course, were essential. Beginning approximately in early 1983, I began to notice a marked deterioration in her work performance. Important record keeping and other office functions were not being done correctly.

Most serious, however, was her disregard of my instructions that a friend of hers, who we knew mutually, who was involved in a divorce proceeding before another judge in the courthouse complex should not be allowed to spend time in our office. This instruction was not only ignored, but worse yet, my secretary allowed this litigant, involved in the Family Court -- the most volatile situation that a court system may have to deal with at times -- allowed her to leave her child there while the mother was occupied in another courtroom. Incomprehensible to me.

Finally, I learned from Judge Barry Weinberg of the Superior Court in Camden County -- I believe February 22, 1983, almost five years ago to this Monday when the Senate meets -- that my secretary had told a local businessman she had just met that she and I engaged in sex in my chambers, which is absolutely untrue. As reported in the ACJC presentment, beginning at page 10, a copy of which has been provided to each of you: "Although complainant" -- that is my secretary -- "denied the validity of each of these asserted justifications, each was supported by the testimony of credible witnesses. The

testimony of a court attendant and of respondent's former law clerk supported respondent's testimony on the subject of her work performance. The testimony of the same two witnesses and that of a second court attendant supported respondent's testimony concerning the matrimonial litigant and her child. And the local businessman testified about the complainant's story of relations in the courthouse." The ACJC found there was no credible testimony refuting my contention that I had fired my secretary for good cause, as would any sane person under the circumstances.

I find it important to say something about my character and the confidence that has been placed in me in a public and professional sense. In 1978 I was selected to serve as a member of the Camden County Ethics Commission, together with distinguished members of the clergy and community, but did resign when I was appointed to the bench. I served as Chairman of the Camden County Bar Ethics Committee under an appointment of the New Jersey Supreme Court. Do these honors suggest a man who does not tell the truth, who does not have a reputation for honesty, and who does not have the respect of members of the community; professional, legal, business, and general public that he has served for many years?

My family has been involved in public life in Camden County and beyond for almost 100 years. Our name has been recognized to be consistent with good government, clean politics, and public service. Within the last four weeks in particular that name has been tarnished -- perhaps irrevocably. To use a more current verb for vilification, our name has been "trashed." As former Secretary Raymond Donovan recently said after his acquittal on corruption charges: "Now where do I go to get my good name back?" Now where do I go to get my good name back, indeed?

All of us have pride in our family reputation and names. Imagine how I felt when I heard in the sworn testimony

of disinterested witnesses in the ACJC proceeding that my secretary for a considerable amount of time had been telling falsehoods like the following to her co-workers and even outsiders about my fellow judges and myself:

That various judges from Camden County were guilty of a wide range of scandalous behavior including infidelity, homosexuality, and bizarre sexual practices. And I'll give you the references in the transcript through my counsel. She had said that Judge Hyland had sex with her in his chambers before going on the bench; that another judge was a bad bed partner because he is impotent; and that she would like to go to bed with still another judge somewhat younger than the others. She said that Judge Hyland and another judge are homosexuals and that the latter had affirmed me -- the latter, an appellate judge -- in a particular case because we were homosexuals -- lovers. Is that incomprehensible in light of everything else she had said about me -- that Judge Hyland was in the Mafia and had done a lot of work for Mafia individuals while in private practice?

The most heartless falsehood of all, I suppose, occurred on the day I fired my secretary. She telephoned my wife, stating she had been terminated because she wouldn't sleep with me, and that I was going to hire a certain individual as my new secretary, and that individual, the two of us, had been meeting at my lake home in Atlantic County; and that my nephew, William F. Hyland, Jr. had been covering up for us.

Now the issue of sexism has been raised by the opposition to my appointment by the Women Against Rape and the National Organization of Women. I can say most positively there has not been the slightest suggestion that I have ever performed my duties in a sexist fashion. And there will be witnesses here to tell you that. Their opposition arose, I believe, from the initial impression that I had indeed been

found guilty of sexual harassment. In fact, I heard a news broadcast just a few weeks ago in which one of the leaders of a women's organization flatly stated that I had pleaded guilty to sexual harassment three years ago. Now you Senators are familiar with this case, of everything that has been said about me. I never pleaded guilty to sexual harassment three years ago, yet this was broadcast every half-hour on the half-hour by the so-called news authority in the Delaware Valley.

And anonymous writers continue to mail the EEOC determination letter, the limited implications of which I have carefully explained to you, to members of the Legislature and other civic leaders. This is most unfair. It only continues to create false impressions of the merits of my reappointment and to provoke additional opposition to it.

These tactics also add to the suffering and anxiety that my family and I have been experiencing for almost five years. Punishment is a requisite of the justice system. This is not the justice of the Ayatollah. But justice of morality dictates that the punishment should fit the crime. My indiscretions have been more than amply punished, I submit. I'm fighting for the retention of my judgeship because my wife and family -- if such a thing is possible -- are even more determined than I, that our name should be cleared through reappointment. In addition, I love my work, believe that I do it well, and am committed to continue servicing the New Jersey Court system, the finest in the country with dedication and integrity.

I want to thank Governor Kean for submitting my name for reappointment. It was a difficult decision for him to make, I'm sure, and I am grateful he has looked beyond the furor stirred up over my nomination in order to permit the Senate to provide me with a full hearing. And I know I'll get one.

I also want to thank Senator Laskin, Senator Rand, and

Senator Dalton, all of whom represent some part of my home county. They could have interposed objections to my name coming before the Committee and were subjected to enormous pressure to do so. I sincerely hope they will feel their decision was an appropriate one by the time these hearings are completed.

My special note of appreciation is extended to my wife, however, who is here at my side today, as she has been throughout all of the painful days that have followed by my being charged with these unspeakable wrongs by my former judicial secretary. My children, my brothers and sisters, nieces and nephews, and my deep reservoir of friends have sustained me throughout all of this and have provided guidance and strength in totally unselfish measure.

Thank you for the courtesy, Mr. Chairman of listening to me. I will attempt to answer any questions you may have and ask to return for a brief response when all the other testimony has been concluded.

SENATOR O'CONNOR: Thank you, Judge. Judge, in talking about the differences between an EEOC hearing and Advisory Committee on Judicial Conduct hearing, with all due respect, I think you missed one of the differences and that is that the Advisory Committee had the opportunity to see and observe the demeanor of witness, whereas the EEOC -- I believe you testified earlier on -- some of the interviews that were relied on were done not even in person.

JUDGE HYLAND: That's true. I don't know how you can determine the veracity of somebody merely by talking to them on the telephone? You should take an opportunity to interview them in person and look them in the eye, and pass judgment. We use that in our charge to the jury when we tell the jury how they should decide the credibility of the witnesses, which is the toughest thing a jury has to do. We say that you observe the demeanor of the witnesses -- the manner in which they

testify. And that's one of the things we give in our standard charge at all trials; civil and criminal.

SENATOR O'CONNOR: Judge, we've all received letters and phone calls, both in opposition to your nomination and against it (sic). And one of the arguments that is made by those who oppose your nomination is that how would you be able to be fair in a case involving, for example, pornography, on having admitted that you shared pornographic -- so be it on a voluntary or consensual basis -- with your secretary? How would you argue that argument?

JUDGE HYLAND: Well, given the state of the law, the First Amendment, whether you agree with it or not, there's rarely any prosecutions for pornography any more. And I've sat in the criminal. I have never had a case such as that, been presented to me. I would think that if it were, and either the prosecutor or the defense counsel thought in light of all of this publicity, that it was inappropriate for me to do so, I would consider that possibility and may recuse myself. I might recuse myself from some type of matters in other areas. You just take that on a case by case basis. I've heard thousands of cases. I suppose I've heard -- I hear over 200 landlord/tenant cases every week -- I've heard probably, maybe, 15,000 cases. I've never had a pornography case.

SENATOR O'CONNOR: What about the argument that is made that in spite of what the charges are and in spite of what it was you say you actually did, that there is a public perception that the public in general has lost faith in your ability to be a judge and to act fairly on matters coming before you? How would you answer that?

JUDGE HYLAND: I would say the true public perception of me is the thousands of litigants, jurors, witnesses, attorneys, and court employees that have gone through my courtroom in the last year. That's the true public perception of me. And I don't think you're going to get much negative

comment of substance from any of those people that I have directly touched.

Now unfortunately, because of distortions in the media, people sometimes get the wrong idea about a given subject. But we don't have trial by press in this country. We don't have trial by bureaucrats in this country, except perhaps to an extent in the EEOC. We have trials in courtrooms, and we have an appointive process which is probably the best in the country. The Governor selects judges from good quality people who are reviewed by our Bar Association, approved all along locally and State; the Governor's office does an extensive study of that candidate, and they certainly did in my case; and after a lot of study, then the nomination is turned over to you gentlemen. And you have an opportunity-- You're the representatives of the public. You are the Senate. You are the deliberative body. You have the right of advice and consent. And you are to be above the clamor at times.

The true perception of me is what I think you will hear from witnesses who have appeared in front of me and I think those who I've touched in my judicial career. I can't say anything more than that. The rest of it has been distorted and is untrue.

SENATOR O'CONNOR: One final question that I have, at least for the time being: I've heard the argument made that you're a judge and basically the Advisory Committee was made up predominately of men, and many of them are lawyers or judges and that there's a network there -- for want of a better term -- and they took care of you as they would take care of one of their own. How would you respond to that?

JUDGE HYLAND: They sure took care of me. I mean, they issued a public reprimand. And under circumstances I know committees in other states, for instance, Pennsylvania, a case much more grievous than mine, involving an open and tortuous relationship between the judge and a court employee, as I recall-- The Supreme Court of that state said that that was

simply private conduct not subject to disciplinary review by the arm of the court. And there's a considerable body of sentiment that you could read that would say that what a judge does on his own hours -- on his own time -- is his own business.

In New Jersey, we don't agree with that. We have a very tough ACJC. If anybody thinks that it's probably not the most rigorous of bodies who disciplines judges, talk to lawyers. You know our Supreme Court's reputation of being very tough on lawyers and our Supreme Court's reputation of being very tough on judges. In fact, recently, in the last year or two, in a case involving a judge in Gloucester County, even our own Supreme Court said, "We think the ACJC is going too far -- that this judge should not be subjected to that type of sanction." Coincidentally, James Gruccio who is here today to talk to you on behalf of lawyers from the South Jersey area that he knows, was the judge's attorney in that case. And he can tell you about whether the ACJC is a soft, male-oriented body.

It's incomprehensible to think that someone like Professor Walter Murphy, a Professor at Princeton, a Guggenheim fellow, a Fulbright scholar, a very successful author of three best seller novels, including the one you may have read, "The Vicar of Christ," basically took a dive for Judge Hyland. That's simply incredible. Do you think Dean Fairbanks of Rutgers Law School is -- is really from academia, not from the legal establishment-- Do you think that he swallowed his sense of integrity and covered up something? I met the man maybe once or twice in my life. Do you think that Justice Sullivan--

I mean, what is the presumption here: If you're a male and a judge, you must not be telling the truth? Are you covering up? You know there's been a lot of problems and a lot of reasons why women's groups feel the way they do, and they should feel that way. I understand that. But that's not this case. And that is not the way the State is moving. Our Supreme Court of any supreme court in the country is known for

affirming women's rights -- is our New Jersey Supreme Court. All you have to do is sit down and read the Baby M decision. Just read that. That language is so eloquent about protecting the rights of women. It set aside that surrogate contract in the interest of protecting women. Our court would be the last of any court system in this country that you could say that about. And those of you who are lawyers know how tough our court is on judges and lawyers.

SENATOR O'CONNOR: Senator Zane.

SENATOR ZANE: Judge Hyland, on your gubernatorial nominee questionnaire that you submitted-- Do you happen to have a copy of it?

JUDGE HYLAND: No, I don't. But I think I can recall what's in there. If it gets down to a question of precise words, I may want to look at it. Yes.

SENATOR ZANE: I'd like to call your particular attention to--

JUDGE HYLAND: I can't hear you, Senator.

SENATOR ZANE: I'd like to call your particular attention to question 27, referring to the admission to the Pennsylvania Hospital in October of 1984. Could you elaborate on that?

JUDGE HYLAND: Yes. After receiving the determination of probable cause in June of 1984-- Bear in mind that I had been charged by my secretary the day after I fired her, with sexual harassment. Those rumors were rampant throughout the courthouse. It was a very difficult time, obviously. As a judge, I can't go running around buttonholing people and saying, "Why are you here?" I have to conduct myself with dignity and continue to try cases, which I did. Those proceedings -- the EEOC proceedings -- went on for about a year until they were concluded. And when the probable cause was issued, frankly I was devastated. I saw, in black and white, the letterhead of the Federal government in the interest of

civil rights -- my record is very clear on it, going back to the Legislature in '66 and '67 -- that I had violated somebody's civil rights; and reading something that was a nightmare. I mean, this is your worst nightmare coming true. It's not true. Fabrications. And the true nature of the relationship just turned upside down.

So, I had a few weeks off, and as long as I was on the bench, I performed very well. But I had a few weeks off. When I came back, I believe in August of '84, I just felt terribly exhausted. And after a couple days of that, I went to Judge Di Martino, my Assignment Judge, and said that I was very concerned -- that I don't want to lose any of my concentration. I don't want any litigant down there to have something happen to him, because I was distracted.

So, I went and sought medical advise. And it was concluded that only way that I could properly get myself together was to not try and do it on a outpatient basis while I was hearing cases, but simply to get away from it all. And I did. I went to Pennsylvania Hospital for approximately three weeks, got myself together, with the help of family and friends, and came back. Originally, I say, just on the District Court cases which I was very familiar and felt very comfortable with, and in a matter of weeks, I was back trying all types of cases, medical malpractice, liability. You name it, I've tried it. And you have letters, if you would look at them, from trial attorneys. So, I picked myself up off the mat -- off the canvas -- and I'm here. And I think my appearance would indicate that I'm perfectly capable, competent physically and mentally, of continuing in my judgeship.

SENATOR ZANE: The treatment of that time was primarily for depression?

JUDGE HYLAND: Depression. I was very depressed. It's something that touches a lot of families. But, fortunately, I got out of it. I'm not depressed now.

SENATOR ZANE: Judge, I've anguished a great deal over these proceedings and what I have read, and I might indicate to you, I may be purging my own soul at that point, but I might indicate to you that I guess I was prejudiced against you from rumor. And I didn't want to feel that way, and went to a considerable extent to find out as much as I could about your former secretary, without violating any confidentiality. I have spoken to some of your former law clerks, and I saw the inconsistency in statements, and I guess the real turning point in my thinking was maybe a rather small item, but having to do with a window in a restaurant, which I understand, and you even said it, but I've been told that the window was some 15 by 20 inches. It was a jalousie window. In order for someone to go out of it, they would have had to remove each individual glass. I think there was a seven foot drop below that.

JUDGE HYLAND: About 11 foot.

SENATOR ZANE: Eleven foot.

JUDGE HYLAND: In high heels.

SENATOR ZANE: And I began to get a different sense for it. And I want you to know that. But bearing all of that in mind, and also thinking in terms of a presidential candidate -- who although not identical, but there are similar circumstances -- we have seen the public's perception, we've watched it in two primaries-- A man who at one time in his political party was on top, and yet, there's a public perception that has changed -- that he doesn't appear to be gaining back the position he formerly held.

JUDGE HYLAND: You're comparing me to Gary Hart's situation.

SENATOR ZANE: And I'm wondering what the public's perception will be at a later date, if Judge Hyland again is returned to the bench? And I think that happens to be the most important thing -- the public perception of the bench.

JUDGE HYLAND: Well, would you like me to comment? I

think we can distinguish that. As we say in law school, let's distinguish that. We're talking about things that I did approximately seven years ago and have not been repeated. They were private. They were not notorious. They were wrong. But, I have no reputation as does, apparently, Senator Hart, as a womanizer. And you will hear from female attorneys here today who will tell you that. And I didn't challenge the press to follow me. And you know when that story broke, there was a lot hand wringing in the press about whether they should have followed or they shouldn't have? And aren't people entitled to their private lives? I haven't seen any of that locally in this area. But, apparently, the editors, wringing their hands nationwide-- Should they have followed Hart? And I think he challenged them. And I think he was arrogant and brazen about it. And that turned people off. I haven't been arrogant and brazen. I'm very sorry for what I did. And I have made a full confession. I have made my confession to my wife seven or eight years ago.

Also, I think somewhere along the way, the statute of limitations must run. I think it runs for everything except murder every six years, or confession of judgments under seal or something. I mean, here I am seven or eight years later talking about this situation. And you will be surprised, Senator, I was gratified to have, when all this broke with the reprimand and everything, people with the highest moral character come forward to me and say, "You know, we understand. We all make mistakes. Gee, I hope nobody ever looks that closely in my closet." That's the way people feel about this for the most part. People are much more understanding than you would ever have realized. And having been touched by that, I'm very much aware of that. People are better than you might think; they do not rush to judgment on matters of personal affairs like this as we might suspect.

SENATOR ZANE: I have no other questions.

SENATOR O'CONNOR: Senator Codey?

SENATOR CODEY: Judge, you mentioned in your testimony about on two or three occasions a year, I just want to clear that up, did you mean having sexual relations?

JUDGE HYLAND: No.

SENATOR CODEY: What was that in reference to?

JUDGE HYLAND: No. There had been so much written about pornography -- that we shared pornography. I was talking about two or three times a year over a two- to three-year period, that we looked at this material after hours. Not on public time; day before a vacation, end of day stuff, Friday afternoon stuff, when you want to unwind a bit. Not relations, Senator. The relations were twice, in '79 and '81; outside of the courthouse.

SENATOR CODEY: Okay. And in regards to the pornographic material, who initiated it?

JUDGE HYLAND: It was really initiated by her. When she came to me sometime before we had relations for the first time. She really persisted in wanting to show me this swingers magazine, which if you don't know, I determine it has listings of people who want to exchange ideas and get together for sexual matters, and pictures of them in various poses and things like that. She just brought it in. I really wasn't expecting it and was very surprised by it. She initiated it.

SENATOR CODEY: So, the first time any of this material was shared was at her urging, and she had brought the material into your chambers?

JUDGE HYLAND: Yes.

SENATOR CODEY: Okay. Judge, you had mentioned regarding to the public reprimand that it was only one vote more than was needed for public reprimand. My understanding of the vote was five to two. So, it would indicate to me that there was more than a simple majority needed for the public--

JUDGE HYLAND: No question about that.

SENATOR CODEY: The vote was in fact five to two, but that the rules of that body states that it has to be more than four?

JUDGE HYLAND: Yes.

SENATOR CODEY: I just want to clear that up.

JUDGE HYLAND: Professor Murphy and Dean Fairbanks who are not part of, I guess the judges' stuff, voted for their private-- Well, the suggestion by some of the women's groups that they were all judges and so forth and they were ones who were lenient on me.

SENATOR CODEY: And those two individuals you mentioned are laymen?

JUDGE HYLAND: Yeah. I would say Dean Fairbanks is a member of academia and Professor Murphy obviously is a member of academia and is a very well-known writer. And they were the two votes for private reprimand.

SENATOR CODEY: But all lawyers?

JUDGE HYLAND: No. Well, Dean Fairbanks, obviously. He's the Dean of the Law School. He's a lawyer. Professor Murphy, I don't whether he's a lawyer or not. Gee, I know I've been talking about him so much and maybe I'm not doing it accurately, but he's a Professor at Princeton, a McCormick Professor I think it is. He's a Guggenheim fellow, Fulbright scholar, and the author of several best selling novels. Where that puts him in the establishment, I don't know.

SENATOR CODEY: Judge, let's go back to the time that you fired your secretary. What lead you to the firing? In other words, had her job performance all of a sudden dropped off for no apparent reason, or was it the fact that you had found out that she was a gossip and in fact was fanning your name around in regard to having sexual relations with you?

JUDGE HYLAND: Yes, that was the primary thing, but it was all interrelated. Apparently she--

SENATOR CODEY: What was the primary reason? The fact that she was gossiping?

JUDGE HYLAND: The primary reason was that on February 22, 1983 -- I think that's the date -- Judge Weinberg called me at home, it was a legal holiday, we had a big snowstorm, and said, "Get in early tomorrow morning. I want to talk to you about something." I went into his chambers and he told me that my secretary was telling -- and he didn't say at that time, I had an idea who it was -- was telling somebody that we had sex in chambers. And after I picked myself up off the floor, I decided, "Well, what are we going to do about it?" I was going to immediately go out and fire her. Well, that doesn't make too much sense, because if you fire her because of that, then she's going to say that's why you fired her, and it's going to be all over. I realized at that time that her judgment was just totally gone.

But I had the experience with this matrimonial litigant just a few weeks before that, which was very disturbing. And she did seem to be under a great deal of pressure, and her work had not been as good as it had been. When she first came to work with me, her work was fine. But that wasn't the fact; that her skills had deteriorated. That wasn't the primary reason.

SENATOR CODEY: But her firing seemed to coincide with her, to your knowledge--

JUDGE HYLAND: Maybe something was going on in her life that caused all these things to happen at the same time. I don't know. I never sat down and discussed it with her. When you hear your secretary is telling tales like, and you have a position of responsibility -- I suppose the EEOC said I should have brought her in and counseled her at that time. Let's talk about the real world. That's not just what you would have done. I had no idea that she was spreading stories about sexual harassment about me. She had been for a couple of years.

SENATOR CODEY: Judge, had you not received a phone call and had this conference with the fellow jurist, would you have fired her when you did?

JUDGE HYLAND: No. I think eventually I would have, because she was obviously undergoing some situation. She was not performing properly. The matter with the matrimonial litigants concerned me very much. I gave her explicit orders, at least for the time being, not to associate with that litigant.

If you've ever seen people involved in matrimonial matters -- and I have not handled family law matters, but I know from limited experience in private practice and the comments and problems the judges in the Family Court tell me about -- if one side is very involved in the proceeding, and I think the other side has an edge with a judge or something, you've got a terrible appearance of impropriety. It's a very volatile situation.

And I didn't want a litigant to stop off at my chambers before going to her hearing and leave her daughter for my secretary to babysit. That's simply incredible.

SENATOR CODEY: Judge, before the meeting with your colleague, had you spoken to her about her job performance?

JUDGE HYLAND: I had said very little because she obviously was very upset about something. And I'm not a person who brings somebody in and rem them out. I try to make subtle suggestions, frankly. If somebody seems to be having some problems, I'd say, "Well, why don't you do that again?" or something to that effect. I did say-- I really can't recall any detailed things I say to her. But I think she would have known that some things were not quite going right. I did tell her very clearly that she was not to associate with this litigant. No doubt about that -- very strong language. And that's borne out of the testimony of the ACJC by other employees.

SENATOR CODEY: Judge, was she fired because of her gossiping or job performance or a combination of both?

JUDGE HYLAND: A combination of all of them. But the primary thing was that she was telling total strangers outside the court that we were engaging in sexual relations, when we were not, in the chambers. And for anybody to say that about a judge or a businessman or whatever, when it's not true, it's simply outrageous. I can't explain any more than that.

SENATOR CODEY: And you had never known anything about her personality that would lead her to gossip about beforehand?

JUDGE HYLAND: Not that way. Normally, if you have done something like I what I did with a 45-year-old consenting woman, I guess you assume they're not going to talk about it to anybody on the outside. We had not done anything in chambers. I was just flabbergasted to think anybody would say that, particularly as it turned out, as far as that story was told, not to be true.

SENATOR CODEY: Judge, what would you say in response to someone who would say that once you've had sexual relations with her, your ability to judge her performance was gone?

JUDGE HYLAND: I would say that's not realistic. That's untrue. Why would that be? I don't understand that. To judge her performance? No, absolutely not.

SENATOR CODEY: That you were not longer in a position to judge her performance.

JUDGE HYLAND: No. I fired her. If there's any suggestion there that anybody had a thumb on me, that's wrong. I fired her.

SENATOR CODEY: Right. But you don't think that you compromised your position to judge her ability to work?

JUDGE HYLAND: Absolutely not.

SENATOR CODEY: Judge, at any time did you ever suggest or imply to your secretary that her job was predicated

on her having any personal involvement with you?

JUDGE HYLAND: Absolutely not. Sexual harassment became illegal officially in 1964. Sexual harassment is immoral. It stems back to the days of people working in sweatshops, to the Hollywood casting couch. I've never sexually harassed an employee who's ever worked for me. It's the wrong thing to do. I would not have-- According to her story, I engaged, of course, in illegal conduct, aside from immoral, for a period of two to three years. And you won't find anybody else in the courthouse who ever saw it. I don't think that you're going to be hearing from any responsible person that I had a reputation for being that kind of guy. And it's a total fabrication. And I would not do that to a female employee, ever. I did not, and did not do it in this case. I can't tell you any more honestly than that, Senator.

SENATOR CODEY: Thank you very much.

SENATOR O'CONNOR: Senator Dorsey?

SENATOR DORSEY: Judge Hyland, after the issuance of the letter of probable cause by the EEOC, I take it that you entered into a stipulation settlement sometime after the letter of probable cause was issued. Is that correct?

JUDGE HYLAND: That's correct. The State and myself did. Yes.

SENATOR DORSEY: And I assume that you -- whether it was initiated by the State or initiated by yourself -- you too signed the stipulation of settlement.

JUDGE HYLAND: That's right.

SENATOR DORSEY: Do we have a copy of that stipulation settlement?

JUDGE HYLAND: We can make that available to you. Certainly. The conciliation agreement -- yes.

SENATOR DORSEY: Was it the stipulation settlement?

JUDGE HYLAND: Yes. It's called a conciliation agreement. It's signed by the parties of the litigation.

SENATOR DORSEY: And do we have a copy of that?

JUDGE HYLAND: I don't know whether the Chairman does. I can supply you with one.

SENATOR DORSEY: I'd like a copy before you leave today, if that's possible.

JUDGE HYLAND: All right. My counsel will see that you get that, Senator.

SENATOR DORSEY: You know by entering into that settlement or conciliation agreement, you essentially deprived yourself of what could have eventually occurred if the case had continued by way of an adversary trial with a jury. Did you not?

JUDGE HYLAND: Oh, no. That settlement specifically denied liability on my part and under court rules, would not have been admissible as probable evidence in the trial.

SENATOR DORSEY: No. That's not my question. I assume that part of the terms of the stipulation settlement was that that ended all litigation on the part of your secretary in connection with this issue.

JUDGE HYLAND: That's correct.

SENATOR DORSEY: Now assume for a moment that the stipulation settlement had not been entered into, as I understand the memorandum issued by your attorney, Mr. Satz. Had that had not been done, there eventually might have occurred a trial of all of the issues raised by your secretary.

JUDGE HYLAND: That's right.

SENATOR DORSEY: And that trial would have been in the Federal District Court, as I understand it.

JUDGE HYLAND: That's correct.

SENATOR DORSEY: And therefore by signing the stipulation settlement, and agreeing to it. You in essence terminated any opportunity you might have had in trial -- in public -- in the normal adversary sense. Is that not so?

JUDGE HYLAND: No. I didn't feel I had done that,

because I had the companion hearing before the ACJC which was to commence after the Federal proceedings were terminated. And I did have the opportunity, therefore to present the truth and all of the facts in an adversary proceeding. That was the ACJC.

SENATOR DORSEY: Okay. I understand what you said, but you also terminated the litigation that was before the EEOC. So, it would not evolve into a trial by you signing that particular settlement agreement. Now, under that settlement agreement, is your secretary forbidden from speaking at these proceedings here today? Is there any restraint upon her in terms of discussing or pursuing any of the issues that she had created at that time?

JUDGE HYLAND: It wasn't contemplated. I really don't know. I'd have to look at it, Senator. And I don't want to be premature in responding to that. I have never considered it. You should note that that agreement specifically provided -- very unusual; and I just reviewed it the other day, but not in detail -- a separate section. You'll see that in paragraph eight, I think -- typed in -- the insistence of the court system that it was not to be confidential.

SENATOR DORSEY: Well, fine. We haven't received it. I don't know why we don't have it?

JUDGE HYLAND: Well, we'll get it to you. But normally EEOC proceedings under Federal statutes of the conciliation process, are confidential. In my case the court, to make sure that there was no question here-- All right, Mr. Satz has it, Senator. (referring to requested information)

SENATOR DORSEY: All right. I'll read that later and come back to that issue. You hired your secretary as your judicial secretary in what year -- 1978 or 1979?

JUDGE HYLAND: 1978, when I went on the bench. Yes.

SENATOR DORSEY: And she was your employee until you discharged her in 1983.

JUDGE HYLAND: 1983. That's correct.

SENATOR DORSEY: And today, you began by describing her -- and this is a paraphrase rather than verbatim -- as an emotionally disturbed individual. Well, when Judge Hyland, did you first begin to make that type of observation as to her character, or as to her abilities?

JUDGE HYLAND: I would say, early January of '83.

SENATOR DORSEY: Essentially, then for a period of over five years and during the period of time that you had sexual relations with her, you did not consider her to be emotionally disturbed in any way?

JUDGE HYLAND: Well, let's say this. There were times when she would confide to me her problems, or she appeared to have problems. She was a single parent. She told me that she had medical problems with her children. She had financial difficulties; there's no question about that. And those things by themselves might make an employee not come in some days, or get upset about something, or what have you. For the most part it seemed she kept that under control. I knew she was upset about some matters involving her former husband; I knew she was upset about matters involving her children. But, you know, if you have somebody that you deemed -- and for the most part, I deemed her to be a good employee -- you ride along with them for that period of time. If somebody seems to be going through a personal crisis and they've otherwise been a good employee, you stick with them.

SENATOR DORSEY: But, so far as you were concerned, until January of 1983 there was nothing that indicated to you -- which you now seem to be quite firm about -- that she was an emotionally disturbed individual?

JUDGE HYLAND: Well, I've said here today that I've concluded that she was a disturbed individual.

SENATOR DORSEY: Now, that conclusion, does it relate back to the time of the initial hiring of her, or is it something that occurred shortly before you made that

observation in January of 1983?

JUDGE HYLAND: That conclusion would have to be about January/February, in particular the later part of February of '83. Yes. She had problems. She was upset from time to time. But I didn't view it as a disabling matter.

SENATOR DORSEY: Judge Hyland, you have in the concluding portion of your remarks this morning, expressed great admiration for the institution of the New Jersey judiciary.

JUDGE HYLAND: Correct.

SENATOR DORSEY: And while I can clearly understand that you need, for emotional and psychological reasons, to have a victory of sorts in these proceedings, have you given any consideration, and if you have, what is your conclusion as to how your reappointment to the judiciary will reflect, in public opinion as to the quality of the judiciary in this State -- particularly considering the fact if all of your errors and omissions -- and your counsel has described it as temptations of the flesh -- will be reflected in terms of the credibility of that institution?

JUDGE HYLAND: Well, the best way I can answer that, Senator, is that in December of 1985, a public reprimand issued by our court-- If the court felt that that affected my credibility as a judge, ability to do the job, then they either would have not issued a public reprimand and called me in and said, "Why don't you resign?" or they would have instituted removal proceedings. I had served competently, and I think in the mind of the public, without qualification and reservation, well as a Superior Court judge, after the reprimand issued by the disciplinary arm of the court at that time. If anyone on the court or anyone in the public felt that that impaired my ability to serve as a judge, it was not brought to my attention. And in fact, I don't think that was a feeling at the time. What we see today, is basically, in my view,

controversy stirred up by the media.

SENATOR DORSEY: Well, let's leave that aside.

JUDGE HYLAND: Well, all right. But all I can say to you, Senator, is that I went through the system, and the system responded with a reprimand. There was no suggestion that I do anything else except continue my term. And I made the decision that I would like to be reappointed. Not as a battle. I wasn't expecting any battle. But, I think I served well. I was a good judge. And I'd like it to continue.

SENATOR DORSEY: Judge, essentially what you've said is that the system had not yet or has not yet determined that you should be removed from the system. And that's the only thing that has occurred. My question to you is, have you as an individual, or as a person, given any thought that perhaps you should withdraw your name or resign in light of what your reappointment to the bench would mean in light of all of these circumstances which have occurred, whether they have occurred because of what you did, or what your secretary did, or what the media has done?

JUDGE HYLAND: No. Senator, I've thought about that and I'm sorry for all of this controversy, and maybe the embarrassment it has brought to the court system. But in all honesty, I think for me to do that would be a defeat for the reappointment process. I have cleared, as far as I know, Senator, the local Camden County Bar Association who met with me and spent hours on my case -- that they wouldn't in the normal case. I went before the State Bar Association. I made myself available for their review. I went through a very intensive examination and investigation by the Governor's office. I underwent a physical examination. In my case, I underwent a psychological evaluation, which I made myself available for and cooperated with 100 percent.

And I'm here today as part of the reappointment process of which you have an intricate part to play. You have

the right, under our State constitution, to give advice and consent. And I have come this far through the process, admittedly perhaps, with some bumps and bruises, but the process has worked so far. And I know you said to put the media aside, but I frankly can't put the media aside. Because we have to decide-- I think the issue may be a larger than Judge Hyland in Camden County.

SENATOR DORSEY: I agree with that.

JUDGE HYLAND: Okay.

SENATOR DORSEY: And I don't mean to put the media aside, because the media is essentially--

JUDGE HYLAND: Are they going to decide who the judges are going to be? That's a question I might pose to you, gentlemen.

SENATOR DORSEY: You know, you really seem to miss the point of the question. I did not raise a question that you have not passed a psychological exam, you have not been persuasive in terms of having the Governor renominate you. Essentially the Governor says he will abide by whatever the outcome is without interfering or attempting to be persuasive in the matter. I was really trying to find out whether you had any feeling as to what effect your reappointment would have, not on you, but on the institution of which you are a part. And I take it from your answer, and I don't want to prolong it, that you really don't have any feeling because you don't respond along those lines.

JUDGE HYLAND: Well, all I can say, Senator is this: That if I were reappointed, I would continue to do a good job on the Superior Court. And what I do everyday, from the moment the courthouse door is open, until I go off the bench, is to do a good competent job -- one of honesty. And that creates a public perception. There's nothing more satisfying to a judge than to have a litigant drop you a little note -- and I had a litigant call the other day who was involved in a very

controversial trial -- and say, "I lost, but I was treated fairly. I feel I got a fair shake in front of Judge Hyland." A litigant is not concerned about what headline he might read about something that happened seven or eight years ago.

The only way I could respond to you, is if you were a litigant and you're going in front of a man or a woman who may have some impact on your life or a matter of concern to you, you want somebody who is going to be impartial and be fair, be scholarly if required, and do the job. That's the public perception in my view. I can't add anything further to that.

SENATOR DORSEY: Judge Hyland, in the settlement with EEOC and with your secretary, the total payment that was made to her was what -- \$95,000?

JUDGE HYLAND: Ninety-five thousand dollars.

SENATOR DORSEY: And of which you paid \$20,000.

JUDGE HYLAND: That's correct.

SENATOR DORSEY: And the State of New Jersey, the taxpayers, paid \$75,000. Do you find yourself comfortable with the fact that the State of New Jersey or the taxpayers of this State paid \$75,000 in a settlement that was triggered -- and I use the language contained, I think, in your own attorney's statement -- triggered by your action and that of your secretary?

JUDGE HYLAND: Well, I've been embarrassed about that. I've had a lot of guilt about that, Senator.

SENATOR DORSEY: Well, have you been embarrassed enough to try and pay it back to the State of New Jersey?

JUDGE HYLAND: No. That hasn't been suggested to me. And frankly, I couldn't do it.

SENATOR DORSEY: You could not do it?

JUDGE HYLAND: Financially? Well, Senator, I haven't been asked to do that. Let me say this. I was the triggering event, but let's be very frank about it. The State judicial

system did not have a system of grievance procedure in place when this happened. They were vulnerable to a damage claim in a Federal Court proceeding, because they had not responded under the Civil Rights Act properly to her complaint whether it was meritorious or not. If in fact--

SENATOR DORSEY: We'll never know that, because you settled.

JUDGE HYLAND: Well, people settle cases for a lot of reasons, Senator.

SENATOR DORSEY: I'm not saying you didn't have the right to settle, I'm saying that you not only settled, but we will never ever know, in the true sense, the truth of those allegations. But you settled with \$75,000 of money raised from the taxpayers of the State of New Jersey.

JUDGE HYLAND: Senator, I'll also tell you this. We've had reference in these proceedings from Senator Zane about the fact of my hospitalization. And at that time, that's when we would have had to deal with whether I was going to be able to properly defend myself because it all rested on me, on those issues. And I'm sorry that that happened to me physically, but there's nothing I could have done about that. And it did happen. And lots of times you might have a very good case, and all of sudden, your witness is not available -- they would be out of the country or whatever. And that has a bearing on how that case is handled.

I want to say one other point about the State's involvement here. As I said, this was a quest to find discrimination. Obviously, they thought that the State's grievance procedure was ineffective, and EEOC wanted to do something about that. That's their charge. And I would suggest to you, that they couldn't do anything about this unless they found there was probable cause in regard to my harassment.

SENATOR DORSEY: I take it from your answer, you were

confident, and you were comfortable with the fact essentially the State of New Jersey, and its taxpayers, \$75,000 to settle this case. Under all the other circumstances.

JUDGE HYLAND: Senator, I'm not comfortable with that.

SENATOR DORSEY: But you haven't been so uncomfortable as to attempt to make restitution of that.

JUDGE HYLAND: No, I have not.

SENATOR DORSEY: Nothing further.

SENATOR O'CONNOR: Senator Ambrosio?

SENATOR AMBROSIO: Thank you. Judge Hyland, speaking on behalf of myself and I'm sure the other members of the Committee share my sentiments, it's not easy when you have to sit in judgment of another person, and probably no one in this room understands that problem more than you do as a judge having to do that as part of your job. One of the troubling aspects of this reappointment that I have is really an issue that was raised by Senator Orechio; and that is the standard that we are to apply in coming to our judgment as to whether to recommend to the full Senate your reappointment. And that is, is it the same standard that we apply to an initial appointment? Is there a different standard on reappointment? Is it the same standard that the Supreme Court applies in disciplining a judge? Would you care to comment on how you see the role that we are performing here in terms of the standard that we should apply to you?

JUDGE HYLAND: All I can say is that you have the power of advice and consent. And we have, you know, some historical documents to tell us what that is, whether we find that in "The Federalist Papers" or what have you. And I would really have not sat in your seat and decided about what standard one feels that one should apply under in these circumstances. I very honestly would say, I have not given that distinction any real thought as to whether it should be different on the renomination or the initial nomination.

SENATOR AMBROSIO: Well, let me pose the question a little differently. In all the documents that I've received and I've read them all. I'm going to read to you the most troubling wording that I've come across and ask you to comment on that. And it's in the ACJC's report and findings on page 11. Now, I'm going to read a part of the document that I'd like you to address:

"The committee finds by the standard of clear and convincing evidence that by engaging in such conduct, respondent has violated Canon 1 of the Code of Judicial Conduct, which requires a judge to maintain high standards of conduct so that the integrity and independence of the judiciary may be preserved, and Canon 2A, which requires a judge to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The committee takes particular note of the commentary of the later Canon, which provides in pertinent part:

"A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

"The committee also finds that respondent's conduct constitutes misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute and that such conduct warrants a public reprimand."

Now, that language is very troubling to me, because the Supreme Court adopted this language by the public reprimand and has, in effect, said that all of the things that we've been talking about this morning are in fact true; that you have brought into question the integrity and impartiality of the judiciary, etc. Now, if they've made that determination, and we now are faced with that as a fact, that weighs heavily on the question as to whether or not we should reappoint someone

who has been already been found guilty of this kind of conduct. Would you give a comment on that?

JUDGE HYLAND: Yes, Senator, I will. Having said all that -- some might argue that that was overly broad -- but putting that aside, having said all that, they all said, "Continue as a Superior Court judge for the balance of your term." They said, "You're perfectly capable of doing the job." They said that, "There may be some public perception here of impropriety, but you can sit and try cases and sit in judgment of people." And they have let me do that for the last two years. And there's nothing that's happened in those last two years, Senator, that would suggest to you that my conduct has been anything but exemplary.

And the judicial disciplinary arm and the court have said, "You've made a mistake and we're going to tell everybody about it. But you can continue as a judge. You can sit in judgment, you can swear people in, you can make calls involving credibility of people, you can sentence people, you can violate their probation; you can do all of that, Judge Hyland for the next two years." Now if they were that concerned about it, they could have instituted removal proceedings, or they could have suspended me. And they did not. And that's all I can say about it. That's the group that we look to under our constitution in the narrow sense to discipline judges. And I was disciplined.

SENATOR AMBROSIO: If you were an attorney sitting before -- looking for your first appointment, rather than reappointment, and your conduct or your law office-- You had been subjected to the same charges and gone before the Ethics Committee and been found reprimanded as an attorney, not as a judge--

JUDGE HYLAND: Excuse me. Reprimanded as an attorney for--

SENATOR AMBROSIO: Publicly reprimanded.

JUDGE HYLAND: For private consensual acts?

SENATOR AMBROSIO: No. No, for violations of one of the Canons of Professional Conduct, and publicly reprimanded; not identical to this--

JUDGE HYLAND: All right. You said I'm an attorney and in the course of my professional activities, there has been a public reprimand. Regardless of what it was. Okay.

SENATOR AMBROSIO: --for some activity similar to this that relates to the conduct of attorneys, whether it be sexual harassment, or one of the canons that holds the legal profession up to ridicule. You know the canons that I've referring to.

JUDGE HYLAND: Well, I think we have to talk about it. If you want to make an analogy, you have to say that as an attorney, if I was charged with sexual harassment and that was determined not to be true, I would not have been reprimanded, I believe as an attorney, for having two private consensual sex relationships with a secretary, I don't think any reprimand would have ever been issued for such conduct.

Now if you're talking in the abstract that an attorney did receive a reprimand for something, what effect did that have on the appointment to the bench, I think that the people in charge of the nomination would have to look at that in the context of his entire career and evaluate it: how long ago was it, was it a repetitive situation, was it a situation that, maybe was understandable, or whatever. If you're going to say that anybody who ever received a reprimand for whatever it is, whether in the Army or whatever, is irrevocably barred from further service, then it's not a reprimand, it's a suspension. Or a true impediment to all of us.

SENATOR AMBROSIO: You don't see a difference between an initial appointment of the judge and a reappointment and holding those two acts as different than a removal--

JUDGE HYLAND: Yeah. I think, certainly, to have

privately had consensual relations with my secretary as a judge as opposed to having done it as a lawyer, because I was reappointed-- Yes, certainly. There's a difference there. I would agree with you on that. Does that answer your question?

SENATOR AMBROSIO: Let me just go one step further, because I'm not sure as I read the ACJC report that the consensual sexual relations is what they base their reprimand on. I think it had more to do, in my judgment, with the activities within the courthouse.

JUDGE HYLAND: Well, that's part of it too.

SENATOR AMBROSIO: And I think one of the questions I had to ask you was this exchanging of pornographic material. Was that done within the confines of your judicial chambers?

JUDGE HYLAND: Yes, I'm going to take some quarrel "all pornographic." It was not all pornographic by any definition. I don't think Helen Gurley Brown's book is pornographic, maybe somebody else does. But let's talk about what it was. Yes, it did take place in chambers, after hours and so forth, but it was in chambers, and it was wrong to do.

SENATOR AMBROSIO: Was the rest of the staff aware of this?

JUDGE HYLAND: No. Unless she told them something that I wouldn't know-- Of course I would have no knowledge of it. I assume it was something that was confidential. And would anybody talk about that on the outside?

SENATOR AMBROSIO: I don't think it's the function of this Committee to retry the case of sexual harassment. And I don't intend to really get into that at all, but I do have one or two questions dealing with your relationship with your secretary and how you dealt with her. Did you ever formally discipline her?

JUDGE HYLAND: About what?

SENATOR AMBROSIO: About her activities before you discharged her.

JUDGE HYLAND: You're going to have to tell me what activities?

SENATOR AMBROSIO: Well, you eventually reached a point when you made a judgment that she was no longer performing her duties satisfactorily and you discharged her.

JUDGE HYLAND: I specifically told her in regard of the litigant that she was not to do that, in the strongest language. I gave her plenty of notice on at least two occasions. And the fact that it was continuing was extremely upsetting to me.

Let me tell you the context of which I had before me on that afternoon when the litigant's child came in my chambers. A very heavy suppression motion involving evidences from the Pagans Motorcycle Gang -- and I had in my courtroom several members of that motorcycle gang in their regalia -- and they were coming out to hear a very critical area of suppression of evidence that had been seized from them. This was right after one of our State troopers had been killed -- shot in our area. And there was a great deal of animosity towards that group. It was thought that they were involved in it. And I'm prepared to go out and hear that suppression motion, honestly, and I walk out to my anteroom and I see the child of this litigant sitting in my chambers. It was mind boggling.

And I made it very clear that this was an outrageous situation and that I was very unhappy about it and that she was never to do anything like that again. That was very strong, because I had to deal with a very weighty matter out there and I didn't want to have this nonsense going on.

SENATOR AMBROSIO: By the way, Judge, are there any procedures for formally evaluating your staff? Do you prepare job--

JUDGE HYLAND: No. Not that I know of. And Senator, I think that I should say this. As far as anybody on the Judge's staff, they have to have good judgment. And if they

don't have good judgment-- They can be the best typist in the world, and they can take the best shorthand. But, if they don't know how to handle litigants, if they don't how to handle the public, if they put the Judge in an embarrassing position-- That comes first. And good judgment is a cardinal requirement of your law clerk and of your secretary. And when that goes, that's it. You have to make a change.

SENATOR AMBROSIO: When you noticed that the secretary was demonstrating some erratic behavior, did you in any way suggest counseling to her or attempt to counsel her yourself?

JUDGE HYLAND: Yeah. I've told her that I thought she ought to see her doctor on several occasions. And she got involved in-- And I don't want to get into it. This is an individual in her mid-forties. And she was obviously undergoing some situations that she talked to me about, and I told her she ought to get to her doctor about. I don't have to draw any pictures.

SENATOR AMBROSIO: Thank you, Judge.

SENATOR O'CONNOR: Senator Orechio?

SENATOR ORECHIO: Judge, what's your perception of the reappointment procedure with respect to the view of judges who've served and come before us for their tenure? What should we be evaluating with respect to this renomination?

JUDGE HYLAND: Mine, or in general, Senator?

SENATOR ORECHIO: In general.

JUDGE HYLAND: I think you should look at the judge's record as a judge, and you do that by getting input under the compact. As you are all aware, the compact was entered into between the Governor's office and the State Bar Association, back in '69, I believe. And each judge, for renomination, undergoes a thorough scrutiny by the local bar, by the State bar, undergoes a four-way State Police check, and undergoes an independent investigation by the Governor's office all with a view towards how he has behaved as a judge during his term in

office. In my case, it's very proper, and you should, and they all did, consider my reprimand and the circumstances leading to it. So, the entire record should be reviewed.

SENATOR ORECHIO: Is it also a theory as well as practice that one of the key elements that's looked at is whether or not a judge exercised judicial temperament in the performance of his duties, and secondly, whether or not he's competent as well, or whether or not the decisions he's rendered are looked upon with credit toward our judicial system?

JUDGE HYLAND: That's very important. Temperament and how you conduct yourself and how people feel about the process after they leave the court and have a result that's favorable or unfavorable is extremely important.

SENATOR ORECHIO: Have you ever been cited or criticized even in the most, let's say, unimportant ways for any act in the court as it relates to judicial temperament?

JUDGE HYLAND: Have I been?

SENATOR ORECHIO: Yeah. Have you ever been criticized informally?

JUDGE HYLAND: No one had brought that to my attention. When you're in the District Court and you do a lot of pro se work, which I did, for two-and-a-half to three years, you'll occasionally get a letter from somebody who doesn't feel they were treated properly. And you get letters from time to time about that. And when that happened, I thought about it. I feel pretty comfortable, I think, in saying that my temperament was good. I think if you were to look at all of my qualities, that you would find -- I suppose I rank higher in the field of temperament than a lot of others, perhaps. I have good judicial temperament. I keep my temper. I'm patient, I'm fair, and I listen. I think a lot of people will tell you that.

SENATOR ORECHIO: You indicated in your previous testimony that you handle a lot of landlord/tenant cases. I can recall several years ago--

JUDGE HYLAND: I'm doing that again. We rotate assignments in Camden. And no, I haven't done it for a few years. In the last six to nine months, I've been doing landlord/tenant matters on Fridays.

SENATOR ORECHIO: How are you generally regarded by both landlord and tenant groups with respect to how you handle cases?

JUDGE HYLAND: Well, Senator, you don't get a lot of feedback in this business. You know, people don't come up afterwards and pat you on the back or punch you in the nose. So, it's sometimes hard to get an evaluation of how you are perceived. I would say that I'm perceived well. We have Legal Services in front of me every Friday representing the poor, they get a fair hearing, they are represented by competent counsel under our system. On the other hand, I listen to the landlords. There's a lot of pro se landlords. You know, everybody thinks that the tenants are the ones without the lawyer. A lot of times there are poor landlords. And they've got problems too. They've got mortgage payments to make and they've got concerns like that, and somebody's not paying the rent. So, you can't tilt one way or the other. You're fair; you listen to both sides.

SENATOR ORECHIO: The reason why I asked that is that several years ago, we had a judge in North Jersey denied a reappointment because of his handling of those kinds of cases. I just wondered whether or not during your career you had been cited by either group either way -- either in a laudatory way or in a critical way?

JUDGE HYLAND: I would say, Senator, that if I know anything, it's been laudatory. That's a tough court. Every Friday I have over 200 cases. I have people coming in from very bad circumstances. If you think you have a lot of problems some days, come down to my court in Camden and sit in landlord/tenant, and you'll get a perspective on a lot of things.

SENATOR ORECHIO: I just have one final question. It's somewhat relevant to Senator Ambrosio's question before. In your opinion, if you had been in a situation where you were reappointed, and these acts of indiscretion had occurred, do you think that the Supreme Court's Advisory Committee's conclusion of the matter would have been any different?

JUDGE HYLAND: I'm sorry. I didn't follow that Senator.

SENATOR O'CONNOR: For example, you already had tenure--

JUDGE HYLAND: Yes.

SENATOR ORECHIO: --and these actions of indiscretion occurred, would the ACJC's conclusions or final opinion have been any different?

JUDGE HYLAND: I don't think so. I haven't thought about that, Senator. I wouldn't think so.

SENATOR ORECHIO: No other questions.

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

SENATOR DiFRANCESCO: I wanted to just ask you a question as follow-up to Senator Ambrosio's and Senator Codey's questions regarding the employee/employer relationship -- in other words, the firing of your secretary. When you had this conversation with the Assignment Judge with regard to what she allegedly told someone else, the Assignment Judge--

JUDGE HYLAND: No. Let me just correct you. It wasn't the Assignment Judge, it was Judge Weinberg.

SENATOR DiFRANCESCO: I don't know who Judge Weinberg is. It was not even the Assignment Judge, it was another judge, who said that somebody told him that she told him such and such. Did you make any attempt from that point on to find her a position somewhere in the courthouse with some other judge, for example?

JUDGE HYLAND: Well, why would I want to force that

situation on another judge? If she was saying that about me, which is totally untrue--

SENATOR DiFRANCESCO: At that point, correct me if I'm wrong, but her work did not lead you to the conclusion that she should be fired -- her legal secretarial skills.

JUDGE HYLAND: I haven't said that, Senator. I said that her skills were deteriorating, that when Judge Weinberg told me of this incident--

SENATOR DiFRANCESCO: You were ready to fire her, you said before.

JUDGE HYLAND: Yes. I said I would have to say, "I'm firing you because you're spreading scandalous and false tales about me and you can't work for me any more." I said that that's what I'm going to do. Judge Weinberg said, "Well, if you tell her that and you tell her that's why you fired her, then she's going to tell everybody that's why you fired her, which is going to compound the felony." So, he counseled me out of that, and suggested maybe there would be an opportunity for her somewhere else and she could be moved into that. And I gave a lot of thought to where that could be. I certainly was not going to call up another judge up and say, "Gee, if you're looking for a secretary, I've got a good secretary for you."

SENATOR DiFRANCESCO: Well, did you attempt to find her any kind of other type of employment, or did you talk to anybody about it? I mean, did you do anything like that?

JUDGE HYLAND: I made some inquiries, I don't recall where they were, where there might be a position somewhere else in county government or something like that. But I had really mixed feelings about doing that, Senator. If in fact she said these stories, which were not true -- and I was satisfied she had said them -- then why would Judge Weinberg make that up or not tell me--

SENATOR DiFRANCESCO: Did you immediately speak to her about these stories?

JUDGE HYLAND: No, I did not. She would deny them, obviously.

SENATOR DiFRANCESCO: Did she tell it to Judge Weinberg?

JUDGE HYLAND: Pardon me?

SENATOR DiFRANCESCO: Did she say this directly to Judge Weinberg?

JUDGE HYLAND: No. She said it to someone that he knew, and they testified at the ACJC hearing.

SENATOR DiFRANCESCO: Some local businessman, right?

JUDGE HYLAND: That's correct. It's all there in the--

SENATOR DiFRANCESCO: Did you speak to the local businessman about it?

JUDGE HYLAND: Did I?

SENATOR DiFRANCESCO: Yeah.

JUDGE HYLAND: No. I didn't know who it was at the time. He simply said that a source that he felt was considered reliable told him such and such. And he didn't reveal to me at that time who it was. When he told me that, I had no reason to doubt what he said or seek an independent determination of my own. And he wouldn't have called me in like that and been so serious if it wasn't serious business. And I had real moral reservations, Senator, about trying to put her in another position of responsibility, for the fact that if she had said that about me, she could say it about somebody else perhaps.

SENATOR DiFRANCESCO: Well, that doesn't necessarily affect her work.

JUDGE HYLAND: Yeah, but it affects her boss' reputation. I mean--

SENATOR DiFRANCESCO: You answered my question.

JUDGE HYLAND: All right.

SENATOR O'CONNOR: Senator Zane.

SENATOR ZANE: Judge Hyland, when you were discussing the conversation that you had with Judge Weinberg, the fact

that you weren't able to take decisive action at that point, did that arise out of your concern because of the prior acts?

JUDGE HYLAND: Not at all. I was ready to bite that bullet at any time.

SENATOR ZANE: Is that right?

JUDGE HYLAND: Yes.

SENATOR ZANE: Don't you feel that, in effect, that compromised your position as an employer, not necessarily as a judge?

JUDGE HYLAND: I'm ready to deal with that at anytime, Senator. I'm looking you right in the eye and telling you that's the truth.

SENATOR ZANE: Unless I misheard you, you just responded to Senator DiFrancesco that you had not attempted to find her another job within the judicial system?

JUDGE HYLAND: No, I had not attempted to find her another job within the judicial system. Absolutely not. I thought there might be a job in private industry, or whatever.

SENATOR ZANE: Didn't you testify before the judiciary's committee that you, in fact, had spoken to Judge Di Martino about the possibility of finding her another job in the judicial system?

JUDGE HYLAND: That's after I fired her. I thought I was talking with Senator DiFrancesco about before I fired her -- two different time frames there.

SENATOR ZANE: Judge, I believe that you testified a few moments ago to Senator Ambrosio that the sharing of "pornographic" material did, in fact, take place within the courthouse?

JUDGE HYLAND: Yes.

SENATOR ZANE: You testified before the judiciary's committee that this had happened on at least 10 occasions.

JUDGE HYLAND: Over a period of two or three years.

SENATOR ZANE: And you're saying that all of this took place after hours?

JUDGE HYLAND: Yes.

SENATOR ZANE: None of it took place during the normal working hours?

JUDGE HYLAND: No.

SENATOR ZANE: Did you also testify before the committee that -- not here today, the judicial committee -- that the gifts that you, in fact, had given to her, that you saw it as a humorous gesture?

JUDGE HYLAND: Yes. That's correct.

SENATOR ZANE: Could you explain that. How is that humorous?

JUDGE HYLAND: Well, as far as the lingerie, she had come into my office shortly before with a catalog. I don't know anything about it, but it was called, I understand, a Spiegel's catalog which contains sales of lingerie of an exotic nature, apparently. And she said, "Look at this," and, "I like this," and so forth and so on. And, "I'd like to get one of these" and that kind of thing. So, she's the one who indicated to me that, in fact, that's something that she found desirable and attractive. I never raised the subject. She brought in a catalog, and I believe to the best of my recollection, it was a catalog that my law clerk had brought in. And Miss De Angelis is going to talk later. She can corroborate with this or not. I'm trying to remember it. It's a catalog that Miss De Angelis had with her, showed it to Rosalie in the course of just talking about things. And then Rosalie McGuckin brought that in to me that day or several days later and showed me a number of items in there that she thought were very nice.

SENATOR ZANE: The reference to the humorous gesture, that was not about the lingerie.

JUDGE HYLAND: That's correct.

SENATOR ZANE: Not a gift?

JUDGE HYLAND: Well, both of them -- of that nature.

SENATOR ZANE: How did you acquire those items?

JUDGE HYLAND: I bought them in a store.

SENATOR ZANE: What about the other particular item.
The gift in the black box.

JUDGE HYLAND: I bought that in a store that sells
them, Senator.

SENATOR ZANE: In New Jersey, your Honor?

JUDGE HYLAND: I really don't care. Probably in
Pennsylvania.

SENATOR ZANE: You went to Pennsylvania to buy them?

JUDGE HYLAND: Not to buy them. No. I probably went
over to-- As I recall, I went over to get some theater tickets
or something like that and walked by a place and thought I give
her something she'd get a laugh out of.

SENATOR ZANE: What about the magazines? Where did
you acquire those?

JUDGE HYLAND: Some of them at a Wawa. A couple were
raw stuff. Not most of them, but a couple were.

SENATOR ZANE: Were the items requested by her?

JUDGE HYLAND: Yes. On some occasions, yes.
Otherwise, implicitly, Senator.

SENATOR ZANE: Why are you putting yourself through
his today?

JUDGE HYLAND: Well, I want to be renominated,
Senator. And my name has been abused. The truth has been
abused. It's about time it came out. I've had this on my back
for five years now and never had an opportunity to tell the
truth. And I'm telling the truth.

SENATOR ZANE: I know we've all asked you this in one
form or another, but you say your name has been abused and I
understand what you are saying, but in your opinion has the
judiciary of this State also been abused and damaged by your
conduct?

JUDGE HYLAND: I think it's been unfairly abused. I think the judiciary did what it should have done. It was public about it. I mean, let me just review a few things here.

The settlement of \$95,000 -- that could have been kept confidential under Federal law. That was revealed by our court system of its initiative. The reprimand I received was public. That was the court system, and the court system lived with that. And the newspaper's reaction to that reprimand, Senator, was -- in the Philadelphia Inquirer -- a story on page 7 one column below the fold. That was the only story in the Philadelphia Inquirer about my reprimand in December or November of '85. In regard to my reappointment when nothing has happened since-- Nothing has happened. I haven't done anything further and I've been a good judge, I'm now up to about 15 articles in the Philadelphia Inquirer on the same facts. Is it my fault? Am I the one who brought this on the judiciary by giving the judiciary a black eye? I don't think so. I think you as Senators have to listen to criticism, but fair and responsible criticism. And it was in the press two years ago. Nobody made a big deal about it, frankly.

And there was one editorial that I know of in my local paper that was innocuous and called the incident mere peccadillos. And I can get you a copy of that editorial. And the Courier-Post in December of '85, about four days after the reprimand came in, called it mere peccadillos and how lucky we were to have such a great judiciary in this State as compared to what was going on in Pennsylvania which you and I both know about. That's the way it was viewed by the public then. What's happened since then, frankly, has been stirred up.

I don't believe that representatives of women's groups were sitting with a tickler file waiting for my renomination to come up so they could call the media and say, "Oh, this is terrible about this judge." That's not the way this happened. We all know that. We know why we have all this press here

today. It's been stirred up. It's about sex. Sex sells a lot of things.

SENATOR O'CONNOR: We are now going to recess for lunch. We have an extensive witness list for this afternoon, and we will begin at 1:15 sharply.

(RECESS)

AFTER RECESS:

SENATOR O'CONNOR: The meeting will resume. Is Senator Ammond here? (negative response) She was here. Linda Bowker, President of N.O.W.? (negative response) All right, we'll begin with Senator Cardinale.

Senator, before you begin, just a general announcement by way of housekeeping. We are having a record made of the proceedings today. And in addition to that, as we proceed now we will endeavor to divide those speaking on an alternating basis -- those in favor, those opposed. We are not putting any limitations at this point upon the testimony. We would like you to try to be concise in your comments. If the comments get to be repetitive on either side, we will then begin to restrict the time of the testimony. Senator?

S E N A T O R G E R A L D C A R D I N A L E: Thank you, Mr. Chairman. Distinguished colleagues, I have no illusions that my appearance here will result in changing the preordained results of this meeting, whether those results are up or down. However, I believe my constituents would want me to be here and to do what I can to focus this issue on the points which I and many others believe to be important.

We received in my district office several materials relating to this nomination, among which were copies of a

letter to Senator Russo dated February 11, and to Senator O'Connor dated February 8, 1988. Both of those were from Mr. Satz, Judge Hyland's attorney, and are very similar to the Judge's initial testimony. We also received a presentment by the Supreme Court Advisory Committee on Judicial Conduct dated September 25, 1985. I presume that these materials were distributed to all Senators.

From a different source, I received the determination by the EEOC, Philadelphia district office dealing with this matter. I have asked that my staff make this Federal report available to anyone who may not have received this document. And I would suggest that this Committee make that document available to all of the Senators.

SENATOR O'CONNOR: Is that the determination letter that you are referring to?

SENATOR CARDINALE: The determination letter from the EEOC. It did not come in the regular packet. And I don't understand why? I understand it is-- It has been furnished to the Committee, but it was not furnished in our regular packet of information on this matter.

Now the contrast between the findings of the EEOC and the Advisory Committee confirms to me a conclusion that there is a need for a better system of judicial accountability than the system now in place. The EEOC is a Federal agency. It is not beholden to our State courts. It is not subject to their control. The Advisory Committee on Judicial Conduct is appointed by our State courts and reports to our State courts on matters of interest to our State courts.

If ever our courts should become corrupt, how could such a system be counted on to protect the public? Given that the public in New Jersey does not enjoy the right to remove corrupt State judges directly, as does the public in California and Missouri, and many other states I might add, we must rely on either the court itself, the Governor's office or the Senate.

We have the direct statement of Chief Justice Wilentz that a sitting judge should never be denied reappointment. Given the historical record of the both the Governor's office and the Senate itself which has never denied reappointment to a sitting judge, who is there to protect the public interest?

The case before you today illustrates very well the protective attitudes of our system toward its own. Judge Hyland was accused. A formal determination was made by the EEOC. Again, that is an agency of the Federal government not under control of our State judicial authorities and having different procedures than our State judiciary. A public trial was avoided, but it was avoided only by the payment of \$95,000 to the complainant.

A public trial, if it were held -- and Senator Dorsey's remarks on this point, I think, are most appropriate-- A public trial would have brought out all of the facts and made legal determinations as to those facts. We don't have the benefit of such a determination. Certainly if a public trial had been held, there might have been an eyebrow raised the next time our courts congratulated themselves for being "nationally recognized."

A public trial-- Okay, it was averted. \$95,000 is not a great deal of money when it's compared to the hundreds of millions we spend on our courts. But to a secretary of limited financial resources and considerable financial responsibilities, it obviously in this case, was too large of an amount to turn down. No public trial was held.

However, the Federal EEOC's determination received some notice. It raised serious questions. The New Jersey Supreme Court trotted out its Advisory Committee. That group called less than half -- read the determination -- called less than half the number of witnesses called by the Federal investigation. They defined the secretary as not credible, and Judge Hyland as most credible.

It should not escape anyone's attention that many of the witnesses called by the Advisory Committee were court employees whose jobs depend on the good will of their superiors. The kind, of course, of pressure a court employee must feel when being questioned by the court itself in such circumstances, is difficult to imagine. Yet, however one tries to ignore the testimony, however one tries to color it with characterizations of credibility, there is collaboration of several important facts about Judge Hyland's behavior.

We should not be surprised that a judge-appointed panel of elitists, like the Advisory Committee, would think Judge Hyland more credible than a secretary. This panel of elitists did their job. They voted only to reprimand the Judge. They gave him a slap on the wrist. Certainly that is not comparable punishment to the job loss suffered by his secretary at his hands. He said himself that when a secretary in a court system shows such poor judgment, he thought it was appropriate for her to be fired. But the court treated him very differently than he treated his secretary.

Nowhere, however, is the Advisory Committee able to camouflage two incriminating facts with respect to Hyland's behavior. The record nowhere reveals any disciplinary warnings, any attempt to correct or express reservations about the secretary's performance prior to her firing. I'm referring to the record. I'm not referring to his statements made here today.

She was abruptly fired after having filed a complaint with the EEOC. And if you can consult the EEOC's report you will see that they establish a time frame of when the various things happen. And they clearly conclude that she was fired on the same day, but subsequent to the court becoming aware that a complaint had been filed.

Secondly, nothing turned up by the Advisory Committee can cloud the fact that \$95,000 was paid for no other reason

than to avoid a public trial, which might have clarified the issues in this case -- a trial by jury; not a trial by fellow lawyers and judges. If there was indeed nothing for the system to hide, why pay these monies, most of which were public funds?

Now, Mr. Satz in his letter to Senator O'Connor, and Judge Hyland here today in his testimony, attempts to explain away the \$95,000 as paid because of exposure resulting from a technical deficiency in the court's procedural methods for handling complaints. What hogwash.

If one reads the presentment, Mr. Satz's contention on that point evaporates. The presentment is specific. It indicts Judge Hyland and possibly even the Assignment Judge, not for procedural lapses, but for specific failures to follow appropriate procedures of conduct already in place.

This case is a classic example of the good old boy network protecting itself. It illustrates quite clearly the need for a better system of accountability. The people of California, Missouri, and some 30 other states have systems where the public has input on judicial retention. New Jersey residents have only at this point in this nomination, this Senate Committee.

What effect will this renomination have on women everywhere, who so often must look to our courts for protection? How can they feel safe if the courts, if we Senators, ignore Judge Hyland's obvious insensitivity toward the dignity of a female employee? If we condone his attitude toward pornography, which is the ultimate degradation and exploitation of females in our society, what does that say about us?

We Senators -- you Senators who sit on this Committee -- have an opportunity to break with our historically earned reputation as a rubber stamp. Let Judge Hyland be the first judge ever to be voted down by this Committee. Let women feel that we are sensitive to, and will protect them. You have it in your hands to send a very important message.

In this matter, yes, there was no adversary legal proceedings to make a legally, final determination. But, there is the matter of public perception to consider. It is probably more important than any legal determination. Let us remember in our deliberations, that Judge Hyland's secretary is not on trial here. Our duty is to focus our attention on Judge Hyland and what he did and the implications those deeds have on his capacity to serve and on the perceptions, the clear message, his reappointment will send to the public. If Hyland is confirmed, you will reinforce the public's belief that there is a different set of rules for the rich and powerful than for those who are not lucky enough to be elitists.

Everyone knows who Hyland is and what his connections are. Everyone knows the specific acts which he has admitted. Whichever report one chooses to believe, Judge Hyland admits to behavior which any reasonable person would find abhorrent. How, with these admissions before us, how can we avoid coming to the conclusion that he is unfit for life tenure as a judge?

Do we want to take a chance on giving tenure to a questionable judge? We have no further opportunity to review Hyland if he is approved. There are, in fact, plenty of qualified persons in every county beating down our doors to become judges. The public interest -- and that's what should most concern us -- the public interest demands we sift out questionable characters and only confirm those who are like Caesar's wife, above reproach.

I suggest you take Satz's letter and throw it in the garbage where it belongs. And I suggest you file this nomination in the same place. Thank you, Mr. Chairman.

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

SENATOR AMBROSIO: Yes. Senator Cardinale, I just have one question about your statement. I was rather startled to hear your first sentence. I would like you to explain what

you mean by that, "I have no illusions that my appearance here will result in changing the preordained"? I may be naive, but I know that this Committee is grappling with this issue and everybody is going to vote their conscience on it, and I haven't any idea what you're talking about on any preordained order.

SENATOR CARDINALE: Well, Senator, you're rather new to the Senate. You're one of our newer Senators. And so I can't fault you for not being aware that never before, whether the nomination was for a judge or the nomination was for any other kind of office, has this Committee ever rejected a nominee who appeared before it. Judge Hyland has appeared before this Committee, and in my mind, it is preordained because it is historically correct, that people who appear here are approved.

SENATOR AMBROSIO: That's not what "preordained" means to me. Maybe there's precedent that you're going to try to buck, but preordained means somebody gave us orders. And that demeans this Committee to suggest that. And maybe I'm new here, but I understand what's going on here and we're all going to vote our conscience on this issue.

SENATOR CARDINALE: Senator, I hope everyone always vote their conscience on every issue. However, I have explained what I meant by preordained. It is my meaning. I'm sorry if you don't like my meaning, but it is what I mean by preordained. If you would prefer to use the word "precedent," well, certainly you can use that word.

SENATOR AMBROSIO: Thank you.

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

SENATOR CODEY: Senator Cardinale, let me also take umbrage with that statement. As a new member of this Committee, but yet as one who appeared before this Committee only in the last year in opposition to someone who was going on the bench, and who you've served with on many committees for a long time in the Legislature, I deeply resent that remark. I feel my vote is never preordained. And I take my vote here and

any other vote very seriously and give it a lot thought. And this is one which will be one of the harder votes I have to make, but I will make it and will make it sometime after I hear as much as I can.

SENATOR CARDINALE: Senator, I would comment to you as I did to Senator Ambrosio. If you take umbrage with the use of the language, I have explained what that language means to me. I don't think anyone can take issue with the fact, that people who appear before this Committee are approved. And that is historically correct.

Now the focus of my testimony was not intended to be on the first word. The focus on my testimony is in the bulk of the testimony; not in the opening sentence. So often before committees, we have a system that obfuscates by changing focus. I have seen it before this Committee on more than one occasion. We get lost in little minutiae and we obfuscate the major issue.

I think we ought to bring our focus back. What did Hyland do? Is it ever right for a judge -- and I think you asked the question yourself -- is it ever right for a judge to engage in this kind of a relationship, even a consensual relationship, with a secretary? It does compromise the office. I, for one, believe that should never be allowed to occur, and I think that's the main issue in this case; not the issue of the use of words "perception" or "precedent."

SENATOR CODEY: That goes beyond my question. Furthermore, your testimony is ripe with "everyone knows who Hyland is," -- what his connections are. So, you continued that line of thought not only in your opening sentence, but later on on page eight as well.

SENATOR CARDINALE: Well, if you would like an explanation of why that line is in there, I'll tell you why that line is in there.

SENATOR CODEY: No. I really have no desire.

SENATOR CARDINALE: And I will tell you because you've asked the question. You've opened it. That line is in there because yesterday I received phone calls from people who are members of my party, very favorable to the thought that Hyland should be reappointed. Hyland obviously has connections that reach into both political parties and he obviously has strong enough connections for someone to call me. Now, I think possibly if someone has called me, I may, in fact, be the only one of the 40 Senators who has been called by someone in an attempt to influence my judgment. If I am the only one, that is true-- You know whether or not you're getting such calls. But the fact of the matter is that people who are appointed initially or reappointed to the judiciary often have very highly placed and very powerful connections in State government. One needs only to look at the roster of who has become judges. And we all know that to be a fact. To state anything else, is to make a mockery, really, of our whole system and all of our proceedings.

SENATOR O'CONNOR: Senator Gormley?

SENATOR GORMLEY: What does "elitist" mean? I remember Hitler would use words like that to get people infuriated. What do you mean by elitist, Gerry? By throwing out the buzzword "elitist" -- what does that mean?

SENATOR CARDINALE: What do I mean "elitist"? Elitists are people, perhaps like you and me, who have achieved a degree of recognition, a degree of stature, a degree of position, that is different from the degree of status and position of the common person. Now, in this specific sense in which it is used in my statement, we are dealing with our normal procedures of trial by jury -- trial by jury that's picked out of a panel of people, people from all walks of life, as opposed to what I hear related today.

The Judge was very eager to say to this group, and no one challenged it -- maybe someone did challenge it; I'll

take that back. I think I heard someone cast a little doubt on it, but it certainly wasn't a big point -- He said he was cleared of these charges. He was cleared of these charges because he went before a committee of the court. That committee of the court, I would define as elitist; not drawn from a panel taken off voter registration lists somewhere. He was tried, but he was tried under very different circumstances than he would have been tried had the \$95,000 not been paid, and had he, in fact, been tried the way everyone is tried who is charged with offenses -- going before a jury of common people.

SENATOR GORMLEY: So, there's nothing wrong in your definition with the word "elitist"?

SENATOR CARDINALE: I think it is wrong to be tried by a group-- I think it is wrong for an attorney or a judge to be tried by a group that is composed primarily of attorneys and judges, because that is not the general run of our population. That is a very special group. And I would term that group elitist. If the word offends you, perhaps, you know--

SENATOR GORMLEY: Well, you know, it's a buzzword, Gerry and you carefully placed it there and repeated it three times, and I think everybody ought to know what you mean by elitist.

SENATOR CARDINALE: Well, I think I described it, and I think I've described it very well. And anyone who would think that that committee is not composed of elitists, you know, would just really have a very different view of language than I do. I think it's an apt word to describe that committee.

SENATOR GORMLEY: And also when you mentioned other states, you're calling for elected judiciary.

SENATOR CARDINALE: No. That is a very often misstated position. That is very often attributed to me. And I don't believe an elected judiciary. But I do believe that we should, instead of this proceeding, put Judge Hyland's name on

the ballot in Camden County for a retention election and let the people of Camden County in this specific instance, in instances of judges of this level, say yes or no, that he should be continued in office or not be continued in office. That is essentially the final step in the Missouri plan. After a whole review of a panel of, perhaps that panel would be elitist, but making their record available to the public. I have not called for an elected judiciary. Don't saddle me with that one, Bill.

SENATOR GORMLEY: Well, you can call it by any name you want to. It sounds like an election as to whether a person is going to be a judge or not.

SENATOR CARDINALE: There are elections which are contested elections which you have in Pennsylvania for instance, and I'm sure you are familiar with those, you have them in New York, but this election is a different one. It's the kind that you just had in California. The people of California did not say, Rose Bird or John Smith. They said Rose Bird can continue in office or Rose Bird cannot continue in office and when the people of California voted for Rose Bird to be removed from office, then the Governor appointed someone else to that position, who later, after that person establishes a record, will be subject to the same kind of public affirmation that Rose Bird failed. In such states, for your information, very seldom are judges ever thrown out of office. But I believe that the record clearly shows that judges in those states behave in a different manner. They don't break new ground. Rose Bird was an exception. They don't break new ground. They don't attempt to take the lawmaking into their own hands.

SENATOR GORMLEY: You're talking of influencing judicial decisions and ethics. You're confused. Isn't one ethics and one decisions?

SENATOR O'CONNOR: Senators, most respectfully, I think we're getting into a philosophical debate here. We're

here for a limited purpose--

SENATOR GORMLEY: Well, that was the nature of the testimony.

SENATOR O'CONNOR: --and I'd like to direct this back to our purpose here today. Any further questions? Any other comments by members of the Committee? (negative response) All right. Thank you, Senator.

SENATOR CARDINALE: Thank you very much, Chairman.

SENATOR O'CONNOR: The next witness we'll hear from is Judge William Lipkin.

J U D G E W I L L I A M L I P K I N: Senators, thank you very much for permitting me to appear here today, on behalf of Judge Hyland. I shall introduce myself first. My name is William Lipkin. I have served on the Federal bench for over 37 years, having retired in 1984 on the Bankruptcy Court. In addition to having served in the judiciary, I take great pride in having participated in many public affairs and functions. I've always agreed with the opinion that man does not live by bread alone. I have been the President of the Camden County Bar Association. I've served in all of the offices. As a matter of fact, I'm still Treasurer of the Camden County Bar Trust Foundation. I am Past President of the Jewish Federation of Southern New Jersey, an organization consisting of thousands of residents of South Jersey doing charitable work. I've also served as the Commander of the Jewish War Veterans of the State of New Jersey quite a few years ago. I've served on the United Way as a Trustee.

The reason I mention this is I'm mindful of the fact that the public must be served, and you are mindful of what reactions you receive from the public in serving in those positions. I know that quite a bit of opposition to Judge Hyland has been caused by organizations who I do not take issue with -- the women's groups, N.O.W., and the Organization Against Rape. And they have a right to take that position. But I feel that under the circumstances, having read the resume

given to me and which was presented today by Judge Hyland as to the two hearings, I felt that condemnation by the EEOC was not a thorough one. And I rather like the action taken by the committee appointed by the Supreme Court who screened the activity or rather the accusation.

I take exception to the statement made by Senator Cardinale today condemning the group appointed by the Supreme Court. They are all honorable men -- men who are dedicated. And I am certain they are not influenced by a buddy/buddy relationship which was indicated by the Senator. I think in reading the report, it is a factual report -- a report that I would be able to accept.

I note also that if the Supreme Court were to receive the report, could have disregarded that report -- a court composed of seven honorable men who are zealous of the duties which are the duty of attorneys and they could have disrobed, as I understand, Judge Hyland. Instead, they merely carried out the reprimand that was recommended.

I didn't prepare any written remarks, because I felt I wanted to talk from my own heart as to what I know about Judge Hyland. I've known Judge Hyland over the years. He appeared before me numerous times when I was on the bench before he became a judge. And since that time, I've had occasion to be with him, to have lunch with him, speak with him.. I know him, I know his family, and I know he is an honorable man. True, he committed an act of indiscretion. He has paid the price for that. Since the time the reprimand has taken place, he has performed his duties in an exemplary manner.

I trust that this Committee, the Senate Judiciary Committee, would not be swayed by the accusations it that will have affected him in his judicial duties. The purpose of a judge will be served by Judge Hyland in an admirable way. I know that he will carry out the duties for which he has been assigned in an excellent way.

The Supreme Court, if it had desired to punish him and had frowned upon what he did, as I indicated, they would have taken away his right to sit as a judge. Judge Hyland is here for a judicial reappointment. I had occasion to see one of the individuals who I anticipate will be opposed to the reappointment with a slogan on their chest which read, "Judicial Integrity." And that is what we're here for today, to appoint a man who has judicial integrity -- integrity when he goes on that bench, will judge in accordance with the facts, that individuals will not mean anything to him, and that he will weigh the evidence. That is going to be the function of Judge Hyland. What he did on two occasions several years ago should have no bearing upon judicial integrity. The two words that these individuals feel are necessary for his appointment-- And he will have judicial integrity and he does have judicial integrity.

I have spoken to some of my colleagues on the bench and I've spoken to many attorneys who have the highest regard for his abilities. They've always found him to be a fair and just judge. In the years that he has been on the bench, if he had been doing anything judicially improper, you may rest assured, that the same media that has been writing on him today would have written the articles and castigated him and censured him for anything that would not partake of a judicial inquiry or judicial conduct.

I'd like to think of Judge Hyland as a man who falls within the definition of the needs set forth in our Bible -- that you should do justice. And you may rest assured that he will walk humbly with his God. And knowing Judge Hyland, I know that if you gentlemen would see fit to recommend his reappointment, that Judge Hyland will do justice and you may rest assured he will walk humbly with his God. Thank you very much.

SENATOR O'CONNOR: Thank you Judge Lipkin. Are there any questions from the Committee? (negative response) Thank

you very much. The next witness is former State Senator, Alene Ammond.

A L E N E A M M O N D: Hello. Am I supposed to give my name, address, and serial number?

SENATOR O'CONNOR: You could give your name.

MS. AMMOND: My name is Alene Ammond, former State Senator until 1978, Democrat, Camden County, Cherry Hill, 103 Willow Way. I come here with a heavy heart. I have known the Hylands for years and I always had respect for them, and I have a great deal of compassion for Judge Hyland under these conditions. However, there are some things that are so outstandingly in the public interest, that one must express a point of view that is not necessarily going to be expressed by the individuals involved in the matter themselves, namely Judge Hyland.

It seems here that we're kind of being dragged into a legal tumble of semanticss into the kind of thing you would plea bargain a case. But one thing is becoming clear here, and that is Eve is eternally blamed for the downfall of society and Adam never had the fortitude to say no.

These hearings bring to light a sort of seamy side of one judge's moral behavior. Richard has admitted to giving pornographic literature, magazines, and objects to his judicial secretary over a period of time leading to the sexual harassment charge. As such, you all know the history; he was censured by the State Supreme Court for a pattern of conduct, it says in here, "that merited censure due to lack of sufficient respect for his judicial position."

And as you well know now the Federal EEOC issued its own version of these proceedings. And in their opinion, said that the secretary probably was sexually harassed and dismissed without sufficient cause. And I think his testimony here really doesn't hold up as far as dismissing her for cause, because he never set up the pattern of judging her behavior and

setting up a record as any employer would do in private industry. His defense is conspicuously transparent and meant to discredit the secretary in question. He does admit that he did indeed give her pornographic objects, etc., that were to be used in his office or elsewhere. By claiming they were, "having an affair," he attempts to divert the issue and dilute her charge. Almost everything he said here is irrelevant.

And by the way, I do believe that five years ago, he would not-- I think in the era that we are in today in presidential politics with Gary Hart having the press follow him and getting caught "having an affair" has kind of made it okay to say, "I am having an affair." Well, in honesty it's his private opinion and it's his private life to have an affair, but not with a judicial secretary and not with pornographic objects behind the courtroom in the chambers. So, if we value the state of our own judicial standards in New Jersey at all, we cannot allow this proceeding to result in Judge Hyland's reappointment to the bench.

And this is only-- I'm not questioning his ability as an attorney or his ability as a judge in and of itself. To me, at that point, that's irrelevant. What's relevant is what he did and what happened. This hearing is not simply examining an issue solely of interest to women. The issue is to whether Hyland should be reappointed to a permanent term as judge is a matter of interest to the general public; a serious judicial matter and something with very far-reaching effects at many levels far into the future. This is not, as he pretends, a private affair. It's really a public matter. It is the beginning of a new ideology which arrogantly submits that judicial candidates now be judged by standards completely indifferent to the highest value of ethics, proper judicial behavior, honesty, and yes, emotional stability.

His lapses into conduct described both in the Supreme Court reprimand and the EEOC report really can be described as

judicially shabby, sleazy, and maybe even emotionally confused. The fact that he still sees, really, little wrong with what he did, aside from saying he was sorry for having the affair, should provide this distinguished panel -- and I have great respect for all of you here -- with an even greater obligation to the judiciary and to the public to reject such an appointment. To me this is a transparent excuse -- the affair.

His continued defense-- By the way, the defense is disputed by the secretary. Never anywhere does she admit to having an affair. The EEOC believed her. Someone else must have believed her, because the secretary wasn't awarded \$95,000 for nothing. And did the taxpayer get stuck with the \$75,000 bill to pay for his seriously flawed personal behavior? Now one of the Senators did ask a important question before. He said, "Do you feel badly about this?" And the Judge said, "Yes I do." "Badly enough to pay it back?" He's says, "Well, I hadn't thought about that." Well, if anything, he should show that he's sorry, and I say this with tongue in cheek, and pay reparations to the public, perhaps one dollar to the 75,000 people in Cherry Hill would at least indicate that he knew that he did something seriously wrong.

We cannot separate his personal behavior from his judicial. After all, he is a judge, the gift giving took place in chambers, he was purchasing these sleazy pornographic objects, and if that doesn't constitute sexual harassment, please tell me what does? If a man ever gave me anything, I can tell you I would be quite upset.

Does he not realize also, or care -- and this is a very important judicial point to someone who is in the judiciary -- to think that the things that go on in our society-- Does he not care that his support by virtue of his purposes, in itself, exposes an imbalanced judgment and a preoccupation with such objects? He is supporting, by purchases, a billion dollar porn industry. When the idea of women as inherently inferior, as property, as a sexual plaything of men dominates the working atmosphere of men in

powerful positions, then it's time to question this person's capability to act professionally at all times without of loss of self-control at some future date.

By making the focus of his behavior a deterrence to reappointment, we will definitely avoid repercussions of behavior of others in the future. We will be putting on notice, all those in the judiciary, all government people, all male employers everywhere in New Jersey, even in private industry, that we look upon such behavior as improper, disrespectful, and illegal.

Unfortunately, the public doesn't have a lot to say. The former Senator-- And I noticed the Senator here questioned the word, "elitist." The truth is, in one way we are. I'm a former Senator. I know how to come up here and testify. I know what's going on. The average person, first of all, can't even take the time off away from his job to come up and do this. So, in our State the public doesn't have a lot to say about who is appointed. So, you really have a great burden on your shoulders.

Do not be confused with his defense and do not be over lobbied by the good old boy network, which may be operating behind the scenes to convince you to reappoint him; you owe him allegiance. You owe allegiance to the public and not to any former officials, former attorney generals, to friendships, or anything else. Your allegiance is to the public and nobody else. He should retire to private practice and get on with his life. Thank you.

SENATOR O'CONNOR: Thank you. Are there are any question from the members of the Committee? (no response)

MS. AMMOND: Excuse me.

SENATOR O'CONNOR: There are no questions from the members of the Committee. Thank you very much.

MS. AMMOND: Thank you.

SENATOR O'CONNOR: We will next hear from the Reverend Tyrone Gillian.

R E V E R E N D T Y R O N E G I L L I A N: My name is Tyrone Gillian. I'm a pastor in Camden, New Jersey. And I have known Richie Hyland for a number of years. I have observed his professional behavior. I've seen him in a social atmosphere. I'm well-aware of his background as an attorney, as a decent human being, and as a judge in our court system. I'm also a father of three children, one of which is a girl. So, I am profoundly cognizant of the women's movement, having a wife at home who is a educator, and I do know what this means when cases like this appear in our public. However, I think that every man and woman ought to have a chance to repent.

And I was just saying to someone today, it's ironic that these hearings are held on Ash Wednesday, which is the beginning of the repentance season. What Richie did, certainly, was an act of indiscretion, but there's none of you who are sitting here, as judge of his behavior, who haven't at one time or another, committed an act of indiscretion.

My theology tells me that there are no big or little sins; that sin is sin. He's also entitled to a period of grace, an unmerited favor. There's old statement by Carlyle, "The truth passed against the ground will rise again." None of us really know what happened in the relationship, which is uncommon for the young lady is not able to appear to give her side of the testimony, and certainly, you have some written documents that I'm not privy to.

But I think it would behoove you to look at what his record is, and what he has done in the two years since this case came up. I'm concerned that the Supreme Court did not fire him, since they had the power to do so. And I'm glad that he was judged by his peers. I think that is one of the hardest things to do, is to face your peer group when problems arise with your behavior. I think that this body ought to recommend to the full Senate that he does go back. If there are some injustices, it might be the injustices that the procedures

within the court system allow one to judge his employees' behavior or their work habits. I think that's something that has not been addressed fully and is not the case here.

We have done a lot to this young man, to his family, to his wife, and his children. They will have to live with this for the rest of their lives. Having young people, I know they all have seen the papers, because in our area it has almost been in the paper every week; our Sunday papers and our daily papers. No matter what you do, he will never be able to live that down. There will always be the doubt of suspension on the part of his family. We are to forgive. We can't play God. It has been advanced to you, give him an opportunity. The Governor has made the suggestion that he be reappointed and has left it to each of you. I think it would behoove you to move in that vein. That's the end of my statement.

SENATOR O'CONNOR: Thank you, Reverend. Senator Codey?

SENATOR CODEY: Reverend, do you find this matter in any way sexist?

REV. GILLIAN: I find it unfair.

SENATOR CODEY: But not sexist?

REV. GILLIAN: I would hope not.

SENATOR CODEY: Thank you, Reverend.

SENATOR O'CONNOR: Any other questions? (negative response) Thank you Reverend Gillian. The next witness is Linda Bowker, State President of the National Organization of Women of New Jersey.

L I N D A B. B O W K E R: Mr. Chairman and members of the Judiciary Committee, I thank you for this opportunity to speak to you today. My name is Linda Bowker, I am the President of the National Organization of Women of New Jersey, which has members in all 21 counties of New Jersey. I appear before you today to oppose the reappointment of Superior Court Judge Richard Hyland. Judge Hyland's conduct, ethics, and judgment make him unsuitable for reappointment.

He admits to buying sexually explicit gifts for his secretary and to sharing pornographic materials with his secretary in his chambers. Considering his position of power over an employee, this conduct is outrageous. The fact that this man is a judge only escalates the degree of power an employee would believe her harasser had over her. His position as a judge magnifies his atrocious behavior and lack of ethics. Judge Hyland obviously does not have good enough judgment to control his behavior. How can the citizens of New Jersey be expected to entrust him with the authority to sit in judgment of others?

I am particularly disgusted by his attempts to blame the victim. One does not have to be a lawyer to recognize the strategy of trying to obviate his guilt by pointing an accusing finger at his victim. Just as the little boy with his hand in the cookie jar will try to say he did it because his sister told him to do it, Judge Hyland has tried to blame his secretary. Judge Hyland is supposedly an adult responsible for his actions. He should not be permitted to side-track attention to his improper conduct by blaming someone else. I have heard Judge Hyland blame his secretary, the State of New Jersey, the bureaucratic EEOC, and the media. I submit to you, the blame lies with Judge Hyland.

Judges must be above reproach. There should not ever be an appearance of impropriety, especially in this time of moral lapse on the part of many public officials. The standards of ethics must remain high. At a minimum, Judge Hyland did not avoid the appearance of impropriety.

I urge you to keep the judicial standards high in New Jersey. Do not reward Judge Hyland with a reappointment. The eyes of New Jersey are upon you. Thank you.

SENATOR O'CONNOR: Are there any questions? (negative response) Thank you, Ms. Bowker.

MS. BOWKER: Thank you.

SENATOR O'CONNOR: The next witness is Ms. Andrea De Angelis.

A N D R E A D e A N G E L I S, E S Q.: Good afternoon members of the Committee. My name is Andrea De Angelis. You heard my name earlier from Judge Hyland. I graduated from Rutgers Camden Law School in May of 1981. And during the first year following graduation from law school -- that was September 1981 until August of 1982 -- I was the law clerk to Judge Hyland during the year before Rosalie McGuckin was fired. Presently, I'm in private practice in Cape May County.

I'm here today, not to stand on a soap box, but merely to offer to the Committee some of my own observations, to tell you some of the things I saw and heard during the year I was clerking for Judge Hyland. Hopefully, I'll be able to assist the Committee in making its decisions, perhaps to offer some insight and some background into what occurred. I'm sure that this Committee is completely committed to evaluating this situation independently of all that has already come before, which includes obviously, the two proceedings, the ACJC, and EEOC, along with what appears to be rather intense media and public pressure.

I'd like to just say something briefly about the EEOC hearings, because I was one of the persons who was interviewed by one of their investigators. I had a telephone call in my office one day -- this was at the first law firm in which I was employed following my clerkship -- from a woman who identified herself as an investigator from the EEOC. We had a conversation which lasted probably 25 to 30 minutes, and I would say 75% of the time we spent talking, she told me what she thought about Judge Hyland. She told me that she thought any man who would have purchased this kind of stuff, was scum. She told me that any man who would do this sort of thing-- She would ask me a question along the lines of, "Did he ever make any advances upon you?" I would reply, "No." And

she would continue on in the vein of how rotten a man he must be.

I don't know how the balance of the investigation was conducted. All I can tell you is my own personal experience. But if the type of interviews which were conducted with other witnesses which made up the findings of the EEOC-- If mine was any indication, I don't believe there was much in the way of neutral fact-finding going on. And the fact that we do not have a record from that body, I think bespeaks that.

I truly do not know the extent to which this Committee plans to reconsider the points that have already been litigated. I don't know whether you consider the whole question of alleged sexual harassment or wrongful firing to be water under the bridge or whether it's something that you're going to be delving back into. If you are going to be looking into those areas, I just wish to offer you basically examples of things that I observed during my clerkship. I'm only offering my own experience and impressions that I gained. And I think that the opinion that I gathered -- and it took me a long time and it was hard for me to learn it, because frankly, the woman was treacherous -- is that I'm not the least bit surprised that she initiated whatever contact occurred. I would not put any stock whatsoever, as the ACJC did not, in any claims by her that she was ever sexually harassed. I'm merely going to give you a few examples of things that I recall.

First, when I entered my clerkship, Mrs. McGuckin commenced immediately, warning me that the Judge would constantly be making advances to me. And never once did anything in the least bit improper or unprofessional ever occur in Judge Hyland's treatment of me. He was always, to use a probably taboo word because it's so old-fashioned-- He was completely a gentleman and always completely professional.

Mrs. McGuckin persisted over the course to the year asking me, "Is the Judge not making advances to you? Come on,

tell me what he was really doing in there with you. Come on, you can tell me." And I always replied that there had been none, and there had never been any improper behavior by the Judge.

Even after I told her that, I found out only many months later, she told all of the other court personnel that the Judge was constantly making advances on me. She even told some of the court personnel that Mrs. Hyland had hired a detective to follow the Judge and me around. None of which, of course, was true. Another example that comes into my mind is about halfway through my clerkship when I returned home from work one day on a Friday afternoon, I was preparing to leave for the weekend to visit my sister, and the phone rang and it was Mrs. McGuckin. She told me that the Judge was either going to fire me on Monday morning, or he was spending the weekend trying to decide whether to fire me, and it had something to do with the use of the county telephones. Naturally, I got in as early as I could to try to speak with the Judge on Monday morning. Mrs. McGuckin had not arrived yet. And I went in and said to the Judge, "Rosalie tells me there's some kind of a problem. I didn't know there was any problem. I'm sure whatever it is, we can iron it out. What's going on?" And he frankly looked at me cross-eyed. He had not any plans to fire me. He didn't even know what I was talking about. She had made this up.

Mrs. McGuckin had a habit of talking around the courthouse about other people. She always talked about the Judge to me, to anyone who would listen, to other legal secretaries about his work habits, about the fact that she didn't think he was on the bench long enough, she would talk -- just generally gossiping about people. But what made it more sly was the fact that she would then immediately begin attributing her own statements to third persons; so that she would come back from lunch and say to me, "Judge Di Martino's

secretary said at lunch that Judge Hyland isn't working hard enough and he's not on the bench long enough, and I think it's awful that Judge Di Martino's secretary would say that." And it happened time and time and time again when she tried to play people off against each other. It frankly took many months for me, probably almost all the way through my clerkship, to realize what was going on.

Mrs. McGuckin flirted very openly with men who came into the Judge's office, be they attorneys, be they investigators from State agencies who had to deliver paperwork or whatever; she frequently made comments of a sexual nature to me; she made comments to me regarding another judge in Camden County as she would not mind having his slippers under her bed; and based on the sort of comments she made to me, the way she dressed, the way she carried herself, and the way she seemed to crave male attention, I frankly have no trouble at all believing that she's the one who initiated the relationship, such as it was.

I'll give you just one more quick example, and it's something that I learned about after my clerkship had ended. I learned that Mrs. McGuckin was telling people that I had been a terrific help to her during the EEOC proceedings, that I had come forward and testified personally in front of the EEOC, that I had come forward with items of physical evidence that I'd been saving all this time to help her. And I can tell the Committee, as I think I did earlier, I never even appeared at the EEOC hearing. I didn't testify at all. I was interviewed over the telephone once and I had no physical evidence that I ever kept.

In short, my experience with Mrs. McGuckin, which once again I can say that I really learned the long and hard way, was that on many occasions she was not at all truthful and she was not to be trusted and it took a long time to figure that out. I really resent the statement made by the last witness to

the effect that this poor victim is being questioned. Mrs. McGuckin was a victim of nothing. I think everyone who knew Mrs. McGuckin for long enough, became her victim. And I'm not saying that to be overly dramatic. I frankly wish I wasn't even here today, but I think it's something that needs to be said.

I'd also like to comment on one article that I read in one of the local papers. One of the local women's groups was making a complaint that the ACJC had painted the secretary as some kind of a nut. I can only tell the Committee that in my opinion that was not a painting; that was for real. I hope the Committee will consider my observations. I think in the last -- going on seven years now that I've been practicing, I have appeared in court on various matters in eight or ten southern counties. And we, frankly, do have an excellent judiciary here. We have judges who think and we have judges who aren't taking a hundred bucks from the roofers for a Christmas present and thinking nothing of it. And that sort of thing has gone on for years and years.

I can tell you that in the year that I spent in Judge Hyland's chambers, I observed him very closely, I observed his conduct on the bench, and his conduct in chambers and never on one occasion did he act the least bit sexist toward any female litigant or attorney; never did he make a friendly or a fatherly sort of comment that all of us who are young female attorneys get far too frequently; never once, even in chambers was there any sort of joking or locker room type of things -- always absolutely neutral.

And while we have an excellent judiciary in this State, and the kind of conduct exhibited by Judge Hyland is not at all unusual, frankly it's not universal. And I think when we have a judge who is like that -- we have a judge who did something I certainly don't condone, but I think it was a personal private mistake. I think you'll hear from other

people, probably who will tell you about the way he is as a judge. I just think that he deserves another chance and I thank you for your attention.

SENATOR O'CONNOR: Thank you. You were a law clerk for a year?

MS. DeANGELIS: Yes.

SENATOR O'CONNOR: That's the usual term of a judicial law clerk?

MS. DeANGELIS: That's right.

SENATOR O'CONNOR: In your experience as a law clerk during that year and in your experience as an attorney since that time, how important would you say the relationship of confidentiality which exists between a judge and his personal staff is? Is that an important consideration?

MS. DeANGELIS: I don't know what you mean by the relationship of confidentiality? If you mean that things happening in chambers are not supposed to go out of chambers and that a law clerk should not announce to any attorney or any litigant how the judge is inclined in the matter, then obviously it's of paramount importance.

SENATOR O'CONNOR: And yet the other members traditionally of a judge's staff, other than the law clerk are who -- secretary, court clerk?

MS. DeANGELIS: Once again, I'm not so sure I understand what the Senator's question is about confidentiality, but I would think that what is occurring in chambers and on the job is not to be discussed outside of chambers.

SENATOR O'CONNOR: Well, the point in my asking that is that there has been some issue raised earlier today over the fact that there was not a record kept with respect to the whole disciplinary procedure involved respecting the secretary here and that she should have been subjected to perhaps some progressive discipline; a warning and maybe a written warning

or whatever would be the natural progression leading up to a termination. And I'm just wondering what your perception is as to how important it is that a judge can rely on his own personal staff, in particular his secretary and his law secretary?

MS. DeANGELIS: I think it's essential, and frankly I don't believe that once it came out what she had been saying about him, I don't believe she deserved another chance. Frankly, I knew that-- She had not been saying-- She never said to me that, "We had sex in chambers," or anything. But she said enough things about his performance on the bench and frankly I wish I had brought them to the Judge's attention before I left. I didn't, and I'm remorseful about that. It might have just brought the whole thing up quicker than it did. But she should have not been allowed to continue. She had a big mouth and she didn't know when to shut it, and she didn't tell the truth.

SENATOR O'CONNOR: All right. Senator Ambrosio?

SENATOR AMBROSIO: Yeah. Ms. De Angelis, I'd like to focus, if I might, not on the conduct of the secretary, but on the conduct of the Judge, because that's the question that we're here to deal with.

MS. DeANGELIS: Certainly.

SENATOR AMBROSIO: And I think it's kind of irrelevant what her conduct was. But you were there for a one-year period?

MS. DeANGELIS: Yes.

SENATOR AMBROSIO: Were you aware at the time that you were there that the Judge was having an affair with her?

MS. DeANGELIS: No.

SENATOR AMBROSIO: You are aware that the Judge has admitted during that period--

MS. DeANGELIS: Certainly. What I understand is that he admits to two periods when they met and had sexual relations both of which were before the time my clerkship started. And

that during the time of my clerkship, he gave her certain gifts and in fact she showed me one of those gifts.

SENATOR AMBROSIO: And one of those gifts was the pornographic underwear or something?

MS. DeANGELIS: Yes. I don't know. I mean, she showed me a box with some underwear in it.

SENATOR AMBROSIO: And did you think that was appropriate for the Judge to be giving her that?

MS. DeANGELIS: No, but it's hard to explain it knowing now that the Judge has admitted doing it. But, it wouldn't have surprised me if she had gone out and bought it herself.

SENATOR AMBROSIO: But she didn't, and the Judge did give it to her.

MS. DeANGELIS: Apparently she did not, and I didn't know that at the time.

SENATOR AMBROSIO: Were you aware of the pornographic magazines that were being exchanged?

MS. DeANGELIS: No. The only thing I can tell you is that she said to me on one occasion, "He tried to show me a magazine," and she had a big canvas bag or something with her. And I can swear she told me this when she had just walked in first thing in the morning. She brought the bag in with her and in the canvas bag was a brown paper bag and she pulls this brown paper bag up part way and says, "He tried to show me this," but she was taking it out of her own bag.

SENATOR AMBROSIO: And you didn't believe that he did that?

MS. DeANGELIS: No.

SENATOR AMBROSIO: Did you believe that he did that at any time?

MS. DeANGELIS: I believe it once that he said that he did it. I can't believe that anyone would admit to the things that he's admitted to if it wasn't the truth and if he wasn't just trying to get everything out.

SENATOR AMBROSIO: But this was going on while you were there and you were not aware of it.

MS. DeANGELIS: That's right. I never actually saw anything which would be considered a pornographic magazine. All I saw was a brown paper bag once.

SENATOR AMBROSIO: Did Ms. McGuckin ever complain to you about the Judge's advances?

MS. DeANGELIS: Yes. But she also often said to me in the same breath, "and I know he's doing the same thing to you."

SENATOR AMBROSIO: You've never really discussed any of this with the Judge. Is that right?

MS. DeANGELIS: No. I wish I had, but I didn't. I spent about three quarters of my clerkship, the first three quarters of it, almost in a catatonic state. I couldn't talk about her to anybody, because she had me wrapped around her fingers. She was a person who just got you trusting her and trusting what she said.

And I've had 20 years of education. Maybe it's because it was my first job out of school -- but God knows I had plenty of jobs since I was 16 -- But for some reason, I simply couldn't talk about what she was doing, and once I realized that she was lying all the time, I only had a couple of months left in my clerkship, and my feeling was just let me get this thing the hell over with -- pardon my expression -- and get out of here.

SENATOR AMBROSIO: According to the Judge's testimony both at the ACJC hearing and before our Committee, he had relations with Ms. McGuckin in 1979 and in July of 1981, and this was immediately a month before you came to work there. Is that right?

MS. DeANGELIS: I came to work there at the beginning of September 1981.

SENATOR AMBROSIO: Now, it's fair to say that at that time Ms. McGuckin could have been under the impression that she was still having an affair with the Governor -- with the Governor-- (laughter)

MS. DeANGELIS: I wouldn't wish it on the Governor.

UNIDENTIFIED MEMBER OF THE COMMITTEE: There goes the V.P. (laughter)

SENATOR AMBROSIO: I assume that will be stricken from the record.

UNIDENTIFIED MEMBER OF THE COMMITTEE: No way.

SENATOR AMBROSIO: (continuing) --with the Judge at the time that you got there. Is that right?

MS. DeANGELIS: I don't know what she was thinking. I really don't. I really don't know what she was thinking.

SENATOR AMBROSIO: We'll defer to the Governor when he gets here. (laughter) Thank you.

SENATOR O'CONNOR: Senator Codey.

SENATOR CODEY: I wonder if the Governor is still a V.P. aspirant? (laughter) You mentioned this incident where the secretary called you on a Friday and told you that you may be fired or the Judge was thinking of firing you because of illegal use of some kind of phones or something like that. Is that correct?

MS. DeANGELIS: Well, something like that. She had a thing about the county phones. And a previous law clerk apparently had been fired for misusing the county phones.

SENATOR CODEY: All right. You then go off to the Judge that Monday morning, relay that conversation to him, and he tells you that that is--

MS. DeANGELIS: He basically said to me that there was no problem.

SENATOR CODEY: He said to you that she was lying. Is that correct?

MS. DeANGELIS: Well, what he said to me was, I think, "I'm sorry. I don't know why you're so upset, but there is no problem." And I said, "I don't understand why Rosalie told me that, then."

SENATOR CODEY: Did you then confront her.

MS. DeANGELIS: Yes. I did.

SENATOR CODEY: What was her response?

MS. DeANGELIS: She was furious that I spoke to the Judge -- because I went in and spoke to the Judge before she got there.

SENATOR CODEY: So, as far as you know did she then have a conversation with the Judge at some point in time regarding your conversation with her?

MS. DeANGELIS: I have no idea.

SENATOR CODEY: She never brought up the subject matter again?

MS. DeANGELIS: If she ever did, I frankly do not remember it. But I don't know what transpired after that. I just remembered her flying off the handle -- that I would have the nerve to talk to the Judge about it without her knowing.

SENATOR CODEY: Did her conduct towards you thereafter change?

MS. DeANGELIS: I think it was bad enough already, frankly. I don't think it ever got any worse than that.

SENATOR CODEY: Okay. Tell me, after realizing that that story was a fabrication on her part, relating that to the Judge, were you surprised that he did not take any action in regards to her, as far as you know and as far as he testified here today that he hadn't previously taken any action or had any conversation with her in regard to her performance, especially when she would concoct such an incredible story against one of his employees?

MS. DeANGELIS: I don't whether he ever said anything to her about it or not.

SENATOR CODEY: As far as you know, he took no disciplinary action against her as a result of the story she told you?

MS. DeANGELIS: I just don't know what happened. I really don't.

SENATOR CODEY: Okay. And I would venture to say that you feel strongly that this matter is in no way anti-feminist or should be viewed that way as in some cases it's being presented?

MS. DeANGELIS: I know that if it were a Gary Hart situation, where apparently there's been a pattern of conduct for years and years and years that might bespeak just from a long observation what a person's character would be like. And we all know that he denied it initially, and he kept denying it and finally he had to admit it because they followed him around long enough till they found out what the truth was, and he had to admit it.

But I think once this thing came out, Judge Hyland immediately admitted it. It appears to have been very isolated. And it's a long time ago. And he's been doing nothing but giving good service ever since. I know that since I've appeared as an witness for him, I've never appeared in front of him for that reason. But, you know, if I heard about a judge who had had an affair with his secretary or whoever but became a subject to some kind of hearings and it happened seven years ago or something, or eight years ago now, but that was the only time it occurred, and he appears to be a good judge--

I would have no problem whatsoever practicing in front of that judge. I wouldn't consider that I wouldn't get a fair shake in front of that judge as long as I know that he's a judge -- which I think Judge Hyland is from having watched him -- who doesn't go out on the bench and shoot from the hip. He always does his homework. He knows what the matters are about when he goes out on the bench. He treats everybody fairly. And that's the most that you can ask from a judge. And something that happened as an isolated incident seven or eight years ago or whatever, just has no place in my mind in that setting.

SENATOR CODEY: Thank you very much.

MS. DeANGELIS: Thank you.

SENATOR CODEY: Senator Zane?

SENATOR ZANE: Yeah. Just one question. You mentioned Judge Hyland's character and your opinion of it. Since the admissions that he has made, has your opinion of his character in any way been diminished?

MS. DeANGELIS: Well, I certainly wasn't happy to hear it. And I don't condone it at all.

SENATOR ZANE: Well, I don't think that's answering the question. Has your opinion of his character been diminished?

MS. DeANGELIS: My opinion is that he made a mistake. And I guess everybody is entitled to a mistake.

SENATOR ZANE: I still don't think you're answering it. Is that the only answer you're going to give?

MS. DeANGELIS: I think I have answered it. I do not feel that he is any less of a person of good character. I really don't.

SENATOR ZANE: Okay. Thank you.

SENATOR O'CONNOR: Ms. De Angelis, if you had a client that you were representing in a case involving pornography and this client was appearing in the matter and at the trial was a judge who had admitted, as in this instance, to giving pornographic materials to his secretary, as the attorney representing that client, would you feel confident representing the client before that judge or would you feel compelled to have the judge recuse himself?

MS. DeANGELIS: If I knew about it and I knew what the situation was, and I felt that somehow the judge's own experience might be harmful to the views of my own client -- I don't know which client I have in the setting you've given me -- I think what I would do would be to bring it up in chambers with the other attorney present and ask the judge whether he felt there was any reason why he couldn't listen to it fairly.

I know this particular judge. If it were another judge who I knew well enough and he really said that he thought he could hear it fairly, then I don't believe I would ask him to recuse himself.

SENATOR O'CONNOR: I take it that you answered that if a case came up before this particular judge, you'd have no hesitation in having the case heard by him?

MS. DeANGELIS: I would never be appearing before him anyway, but no, I don't believe I would.

SENATOR O'CONNOR: All right. Are there any other questions by the Committee? (negative response) Thank you very much.

MS. DeANGELIS: Thank you.

SENATOR CODEY: Next witness is Mr. Ralph Hayman.

R A L P H H A Y M A N: Senator O'Connor, members of the Judiciary Committee, I'm here today as a private citizen of the State of New Jersey. On your list of witnesses there is no organization that I represent, but I would like to give you just a short resume. I am a founding President of the AARP chapter in Burlington City, New Jersey. I do not speak for them. I'm also am a former officer and a member of the Burlington County Citizens Advisory Committee to the bar. I speak for myself solely. I do want to emphasize that.

You gentlemen seem interested in the public perception. I just want to ask you three questions and that is all I have to offer in this situation. We have a situation of morals here, I believe. And I believe that the strong American moral principle should prevail. This is definitely a situation where the matter of lining up six witnesses for and against, I think, is not the issue at hand. I realize you have to elicit information, but I think the main thing here are the morals.

I have three questions I wish to submit to the Committee. Why has the Attorney General of this State failed to file criminal charges of official misconduct in office for

this jurist for using his office for personal gain as has been done to persons of lesser political influence? Why not Judge Hyland?

That's the first question. The second question I have is who authorized -- and what act of the State Legislature, as required by statute and under the State constitution -- the \$75,000 for the citizens of New Jersey to pay for Judge Hyland's fling into adultery and pornography? Or has our esteemed judiciary been legislating and bypassing our constitution yet another time?

A major concern -- the Court's Advisory Committee allegedly learned in the law and supposedly endowed with moral fiber, shunned themselves to condone, support, and excuse Judge Hyland's conduct; a group who accepted this adulterous behavior in the office of a political courthouse; a set group choosing to castigate and denigrate the woman who had the courage to expose the conduct and shenanigans. Who are these individuals? The citizens should know.

I ask this Committee to answer these questions publicly and answer why the Attorney General or judiciary branch has not acted against Judge Hyland? That is all I have to say, gentlemen. I'll try to answer any questions; if I can be of any help in answering them.

SENATOR O'CONNOR: Are there any questions from the Committee? (negative response) Apparently there are none. Thank you Mr. Hayman. The next witness is Ms. Leslie Dicker.

L E S L I E B. D I C K E R, E S Q.: My name is Leslie Dicker. I'm an attorney in Camden County. I'm an assistant prosecutor for the Camden County prosecutor's office. I am presently assigned to the child abuse unit and I've been working for the prosecutor's office since September of 1981.

As part of my duties in the prosecutor's office during the January term of 1983 which started in January of 1983 and extended until about April or May of 1983, I was assigned to

cover Judge Hyland's courtroom. The way the system works in Camden County, two assistant prosecutors who are on the trial teams are assigned to handle most of the cases which are assigned to each judge sitting on the criminal list. Myself and my partner appeared in front of Judge Hyland during that time period on almost a daily basis.

I'm here as a fact witness. Many of the people who we've heard from today who testified before you in opposition weren't there in the courtroom on the 12th floor and had no idea what went on. Judge Hyland treated me courteously and respectfully on all occasions. Now, I know there are many female attorneys who are practicing today who have been practicing law for years before I was admitted to the bar. But even when I started practicing in the prosecutor's office, there weren't very many female attorneys. And I can only tell you this, the judge never made me feel like a "female assistant prosecutor." I was an assistant prosecutor; no more and no less.

I found him to be extremely knowledgeable and extremely competent and extremely prepared on all of the cases and all of the legal issues which arose in his courtroom. He clearly cared to do an excellent job. He researched the law, and when there were issues that came up, if he didn't have the answers, he took the time to look them up before he made his decision, so that, in my opinion, his decisions were judicially sound.

I want to tell you that I'm here speaking on my own behalf today. I'm not representing my office. I'm here on my own behalf because of the fact that I appeared before the Judge on a daily basis and was very impressed by his abilities as a judge, and I thought that I should tell you that.

Andrea De Angelis testified earlier today and she indicated that the Judge's former secretary had related an incident to a person concerning erotic underwear. I was the

person who the secretary had related the incident to. I interacted with the Judge's staff on a daily basis as well as the Judge because by necessity they were outside of his chambers. I would tell the secretary I was there and I was ready for the day's list and she would tell the Judge that I was there. The same happened with his law clerk who was a different law clerk; not Ms. De Angelis.

After Ms. McGuckin had been fired I ran into her in a store shopping in August 1984. I had not followed any of the hearings. I really did not know what was going on. She started telling me that she had secured new employment and she started telling me about hearings that had been conducted and that Andrea De Angelis had basically won the hearing for her by producing this erotic underwear that the Judge had given to Ms. McGuckin.

All I can tell you is that I tried many cases in front of the Judge that term that I was assigned to him. I worked very, very hard. I think he's an excellent judge. And I ask you to reappoint him.

SENATOR O'CONNOR: Thank you. Are there any questions? Senator Ambrosio?

SENATOR AMBROSIO: Can I ask you what do you think the significant of that encounter in 1984 concerning this erotic underwear and how should this Committee accept that testimony? For what purpose?

MS. DICKER: I mentioned that incident because Ms. De Angelis testified, and I did not know this on the day with I spoke with Ms. McGuckin that, in fact, Ms. De Angelis had not appeared at the hearing and had not produced any underwear of any sort. I mentioned that to you in terms of evaluating the credibility of Ms. McGuckin, and that's the only reason why I related that incident to you today.

SENATOR O'CONNOR: Senator Codey.

SENATOR CODEY: At any time did you ever have a discussion with Mrs. McGuckin that was sexual in nature and that she initiated?

MS. DICKER: I don't recall that she did. I remember she told me that one of my investigators, by "my" I mean the office's investigator, was extremely handsome. He was a witness in one of the cases I was trying before the court. Other than that, I don't recall anything offhand. And then again, this is five years later.

SENATOR CODEY: Okay, thank you.

SENATOR O'CONNOR: Any other questions? (negative response) Thank you very much.

MS. DICKER: Thank you.

SENATOR O'CONNOR: The next witness is Portia Perry-Dempsey, Executive Director of the New Jersey Chapter of the National Political Congress of Black Women.

UNIDENTIFIED MEMBER OF AUDIENCE: She's not present.

SENATOR CODEY: Okay. Next witness is Brenda Hollway of the Camden County Commission on Women.

B R E N D A H O L L W A Y: Good afternoon, Senators. My name is Brenda Hollway and I'm the Chairperson of the Camden County Commission on Women. I'm an elected official in Camden County and serve as a member of the borough council in the Borough of Somerdale. Additionally for the past 10 years, I've been a member of the Camden County Democrat Committee, and I'm the municipal chair, representing Somerdale delegation.

I served for six years as a State legislative aide to Assemblyman Francis Gorman of the Fifth District, and for three years I served as President of the Camden County Federation of Democratic Women. I'm a member of the national, State, and local chapters of the National Organization of Women.

I'm appearing before you today to express the Commission's opposition to Governor Kean's nomination to the Senate of Richard S. Hyland for judicial reappointment to

the Superior Court in the County of Camden. Since the State of New Jersey does not elect judges like Pennsylvania, and judges are appointed by the Governor with the approval of the Senate, as elected State legislators, you represent the public. You are our vote.

Senator Lee Laskin of the Sixth Legislative District is the only member who served on this Committee whose constituency will be affected by your decision, possibly for many years to come. Therefore Senators, I would ask you to be absolutely, positively certain that the judges that you approve to serve Camden County are above reproach and that they hold a high regard for the integrity of their office and the code of judicial conduct.

Although Senator Dalton, Rand, Laskin, and Costa have opted not to impose Senatorial Courtesy regarding this appointment, Senator Dan Dalton and Senator Catherine Costa of the Fourth and Seventh Legislative Districts have publicly opposed the reappointment of Richard S. Hyland. I would like to commend them both for their courage and dedicated commitment to the integrity of the judiciary of Camden County.

On January 25, 1988 the Camden County Commission on Women voted to oppose the reappointment of Richard S. Hyland to the Superior Court in the County of Camden, not on the grounds that he may have violated the law which he has sworn to uphold by allegedly sexually harassing his secretary, for that was never proven, even though an out of court settlement for \$95,000 was awarded. Nor did the Commission make its evaluation on the basis of Judge Hyland's admission to being a confessed adulterer.

Since the Equal Employment Opportunity Commission report was not available to the Commission, that report was not considered either. It is my understanding that the Senate Judiciary Committee has received all the relevant material necessary to conduct and evaluate Judge Hyland's fitness for reappointment.

However, the Camden County Commission on Women based its evaluation of the reappointment of Richard S. Hyland solely upon the Supreme Court of New Jersey Advisory Committee on Judicial Conduct, docket number 83.25. A particular concern to the Commission was the fact that Judge Hyland violated Canon Law 1 and Canon Law 2A of the Code of Judicial Conduct which, in part, requires a judge to maintain high standards of conduct so that the integrity and independence of the judiciary may be preserved.

And in accordance with the Supreme Court Advisory Committee report on page 17, at the very least this indiscretion -- if that's what you want to call it -- "gives the appearance that the judicial office has been compromised." Additionally on page 16 of the Supreme Court Advisory Committee report, the Committee stated, "the respondent pattern" -- and I repeat, pattern -- "of conduct merits censure because it shows him to be lacking the sufficient respect for the dignity of his judicial position or the sound judgment that is a major requirement for one who holds judicial office." And again on page 18 the Committee stated, "the misconduct in this case lies in the lack of discretion and sound judgment manifested by his course of conduct."

For these reasons, Senators, I have come before you to ask you not to approve the nomination of Richard S. Hyland to the Superior Court in the County of Camden. At the very least, the people of Camden County deserve a Superior Court judge who exercises sound judgment, respects the integrity of his office, and conducts himself accordingly. It is my sincere hope that you will give the citizens of Camden County the same consideration you would afford your own constituency.

In conclusion, I would like to thank Chairman O'Connor and the entire Senate Judiciary Committee for your time and attention and consideration of this presentation. Thank you.

SENATOR O'CONNOR: Thank you. Are there any questions from the Committee? Senator Ambrosio.

SENATOR AMBROSIO: Is your objection to the Judge based solely on the incident that was a subject of his disciplinary action by the Supreme Court and not on any of his judicial performance?

MS. HOLLWAY: Absolutely. The position of the Commission is basically-- Because he was publicly reprimanded for misconduct in office and that he showed lack of good judgment was how we made our evaluation.

SENATOR AMBROSIO: Thank you.

SENATOR O'CONNOR: Thank you, Ms. Hollway. The next witness we'll hear from is former State Senator Thomas Connery.

T H O M A S F. C O N N E R Y, J R., E S Q.: Good afternoon. Mr. Chairman and members of the Committee, I know that you have a difficult task to perform. I would like to perhaps quote from a recent statement that my Senator made that was published a few days ago. And it impressed me very much.

SENATOR LASKIN: Who is that, Senator Connery? I'm very curious as to who your Senator has to be.

MR. CONNERY: It's Senator Zane. I live in Gloucester County, but I practice law, and our law office is in Camden County. I've practiced law in most of the counties in South Jersey for a number of years.

SENATOR O'CONNOR: Excuse me, Senator. I now know why Senator Zane has been prodding me to make sure you're the next witness called. (laughter)

MR. CONNERY: Well, maybe the Senator does owe me a favor because I believe that history records that I was the first Democrat to have been elected in Gloucester County in the history of that county. (laughter) Senator Zane is the second Democrat. (laughter)

But getting back to the Senator's quote, he said, "This is a real world we live in." And he said, "The pressures," and this is in connection with this matter, "The pressures are real -- that they will be assessed, but in the end this Committee will do the right thing." And I firmly believe that.

I've been asked just to read a letter that I wrote to Governor Kean about three or four weeks ago. And although I am a member of the opposite party, I have a feeling that maybe he read it. I would also like to apologize for the first paragraph in the letter, because it sounds like I'm blowing my own horn and submitting a resume for some public position or office. But the letter was dated January 27, 1988: "Dear Governor Kean, I am the senior partner in the Brown and Connery law firm and have been a practicing trial lawyer in the Camden, South Jersey area for over forty years. I'm a certified civil trial lawyer -- New Jersey Supreme Court, a member of the International Academy of Trial Lawyers, and a fellow of the American College of Trial Lawyers.

"Two of my former law clerks and later law partners served in your cabinet and Governor Cahill's cabinet. I can remember when Camden County had only one County Judge and one part-time Circuit Court Judge. So, I've had the opportunity to see many judges come and go over the years. Some were excellent, possessing the qualities that lawyers and litigants look for on the bench; fairness, partiality, integrity, and knowledge of the law.

"Others unfortunately did not measure up to these standards. Judge Hyland belongs in the first category. And I can emphatically state that my opinion represents the consensus in my office which is a litigation firm. I truly believe that it would be an outrageous miscarriage of justice to deny Judge Hyland reappointment because of an incident that occurred many years ago and which has been distorted and blown out of proportion in a few newspapers.

"As a former legislator, I appreciate the pressure you are under in considering this reappointment. But I am also aware of your reputation for fairness and justice which I am sure will prevail in this instance. Respectfully yours."

Now I don't believe necessarily that my letter persuaded Governor Kean to send Judge Hyland's reappointment over to the Senate. But I do believe that many thousands of letters like this did reach his attention. And really, that's all I have to say.

SENATOR O'CONNOR: Thank you, Senator. Are there any questions? Senator Ambrosio?

SENATOR AMBROSIO: Senator, if I might, we could assume for moment that Judge Hyland's conduct on the bench has been exemplary -- and as a judge there is no question that his tenure in office has been a successful one -- and we just focus on the reasons for his disciplinary action by the Supreme Court. Assume for the moment that that has an impact on the public, and the public has not raised a question concerning the competency of Judge Hyland to sit on the bench with this cloud over his head. Do you think that in any way would influence your decision? I'm asking you to separate your opinion of him as a judge from the public's perception that maybe what he did is something that we should use to disqualify him from sitting on the bench. Can you address that difference?

MR. CONNERY: Maybe in two ways. If I felt for one moment that Judge Hyland had dismissed or fired his secretary for rejecting his advances, I would not be here. The facts today essentially are the same facts that were made known back in 1985. And since that time in the two or three years that that have elapsed, I have not heard one whisper or one rumor of any kind that Judge Hyland is sexist or has a gender bias. And certainly over the past several years, hundreds, many hundreds of litigants, jurors, witnesses, and women lawyers have appeared before him without any criticism of his conduct. And

I firmly believe that that will continue in the future when he is reappointed, and that this mistake that he made will be forgotten.

SENATOR AMBROSIO: Thank you.

SENATOR O'CONNOR: Any other questions? (negative response) Thank you very much, Senator. The next witness is Ms. Joan McKenna representing Women Against Rape.

J O A N M c K E N N A: Senator O'Connor and members of the Senate Judiciary Committee, good afternoon.

My name is Joan McKenna. I'm the Executive Director of Women Against Rape, an organization I founded in October 1973. I founded this group to assist victims of sexual assault and provide a rape prevention program in the tricounty area -- that's Camden, Burlington, and Gloucester. This group functioned from my home for seven years on a 24-hour basis seven days a week, and we responded to hot line emergency calls to the Contact hot lines in the three county area.

In 1980 we received our first funding, and since our inception, we have had literally thousands of individual as members or our agency. We have assisted thousands of victims and their families, and we've provided crime prevention program for hundreds of thousands of individuals. These individuals in the crime prevention program would go from a range of two or two-and-a-half all the way up to the senior citizens.

In January 1980 when we received our first funding from the Camden County Freeholder Board, we had hoped that in a short time we could accomplish a great deal and there would be no further need for our services. Unfortunately the need continues to increase.

I'm here today representing WAR's board of directors, or volunteers, and clients from a tricounty area who are absolutely appalled at the possibility that Judge Richard Hyland could be appointed as a 10-year judge. Normally, I would feel privileged and honored to come before this

distinguished Committee. Today, that privilege is tarnished by the subject matter that I'm compelled to discuss with you to express our opposition to Judge Hyland's reappointment.

I became familiar with this particular case. In April 1983, when I received an anonymous letter, a copy of which was also sent to the Courier-Post, our newspaper in Camden County, telling about Judge Hyland's harassment of his secretary, I was successful in tracking down the name of the secretary. I was able to contact her and have been providing counseling and assistance to her on and off since that time back in 1983.

I also discovered who the letter writer was and have since spoken to her. She apologized for not signing her name at the time. And she introduced me to several other county employees and they said it was fear of their jobs that they would not at that time identify themselves. And I have sworn to keep their names from being exposed to the public for advising me of what they felt was a despicable situation in our Camden County courthouse.

My client alleged sexual harassment over a period of time as well as the giving of gifts to her which she found personally offensive: one, a crotchless pair of panties stuffed with money and a dangling whistle; one a pair of Ben Wa Balls, and incidentally I'd never heard of that particular item nor had I seen them prior to this situation; and a book entitled, "Having it All" with sexual chapters marked off with money clipped to the top of the page with a paper clip. These gifts were given to my client at various times, Christmas, Secretary's Day, and so forth.

I've had numerous calls over the last few weeks from county employees. In particular, gentlemen, last night my phone rang during the evening hours, it rang during the night, and my first call this morning was at a quarter to seven from a secretary in the judiciary of the Camden County courthouse saying that this is only the tip of the iceberg. I'm not

prepared to make any other comments because I don't know any to tell you except that our people in Camden County are frightened, they are intimidated, and they're waiting to see how this situation is handled.

I have been a Democrat all my life. I've been involved with the Democratic Party for 31 years. I've been a district leader, a committeewoman, a State committeewoman; but it doesn't matter. And I admire the Democratic women who sit behind me today who've had the courage to say if our party made a mistake and nominated somebody who we feel is no longer fit to sit, we have the courage to stand up and say that it must cease. It must stop now.

I also at this time would credit Senator Daniel Dalton for coming forth in making his views known, and our Freeholder Director, Rob Andrews, Freeholder Director of the Camden County Freeholder Board, as well as an attorney. The fear -- and this is not my remarks but I must tell you that I have never known the fear or heard of fear like I have heard since we began the situation several weeks ago.

I sat and listened to some of the clerks and attorneys who have been before you today. And what's happening to my client who is not here to defend herself, I can't respond to comments except, the things that I have discussed with her and heard from her is nothing like what you are hearing. You're not hearing that gifts were flung back at the giver. You're not hearing that she cried and ran down the hall and told other people including other judges. You're hearing things that cannot be reputed by my client because she can't be here. And those of you who are attorneys -- and I understand most of you are -- that once an agreement is signed, then apparently there can be no discussion on some of these comments later. And there's a legal term that was used. Presently, it slips my mind. I apologize. My client can't be here. She really doesn't have a choice.

But as I said to you -- the fear. My phone is ringing both in the Woman Against Rape office and at home and on my answering machine telling me that he shouldn't sit on the bench. These are lawyers, the are secretaries from the courthouse, and people in the community. And when I ask them "Can we use your name? Will you testify?" They're saying, "I can't." Their jobs, their husband's job, or something, stops them. And that's a scary situation that any of us should ever have to deal with that we have to be frightened to come and sit before you, a New Jersey Senator before any another group.

My client has been sexually harassed, according to her, wrongfully dismissed from her position -- and I say wrongfully, gentlemen, because there have never been any complaints about her work, no written memos, nothing of record. She suffered a great deal of trauma then and is suffering a great deal today.

The EEOC, recognizing her pain and the injustices she endured, found sufficient cause to rule in her favor, granting her a \$95,000 monetary settlement; \$20,000 coming from Judge Hyland and \$75,000 in taxpayer dollars. Incidentally, gentlemen -- and listen to this please -- the amount paid to my client was nearly 40% of the total among of money allocated in the State of New Jersey for rape crisis centers under the Department of Health. There is no money for our victims in this State. And if we can squander \$95,000 saying that somebody shouldn't have had it, didn't deserve to get it, then we need to address how we spend our money. Maybe that's one of the reasons there isn't any money for rape crisis groups in the State of New Jersey.

SENATOR O'CONNOR: Excuse me. That's a subject for another day though. We're here concerned with the credentials of Judge Hyland.

MS. McKENNA: Thank you, sir. How can the State give Judge Hyland tenure when he has cost the taxpayers this

enormous amount of money? If the Judge were innocent, why was the money paid?

He told the Judiciary Review Committee, to the best of my understanding, that he shared pornographic materials with his secretary in his chambers. Therefore, by his own admission he's violated the standards for judicial conduct. According to the judicial code, a judge must avoid all impropriety and appearance of impropriety. Surely sharing pornographic materials more than hints at impropriety. How can such a judge later decide a case involving pornography?

It has been said that his conduct in his personal life does not affect his judicial abilities. However, his actions were not private. Most of the incidents of harassment occurred in chambers and was perpetrated on a State employee, one of his, during working hours. I've also heard it said that yes, he made a mistake, but it happened a long time ago. The harassment alleged to the secretary's complaint, and I believe that the Equal Employment Opportunity Commission hearing occurred between 1980 and 1983 -- hardly a long time ago-- Recently the United States Senate rejected two nominees for the U.S. Supreme Court for incidents that occurred in the 1970s. New Jersey should expect no less of its judicial appointees.

Some of Judge Hyland's supporters have tried to laugh this off as poor judgment, the perverted sexual pleasures of one of the good old boys. But the joke is on the taxpayer, and we do not think it's a bit funny. There's nothing comical about taxpayers' dollars paying off a suit involving crotchless panties stuffed with whistles and cash.

In 1985 the State Supreme Court reprimand Judge Hyland for violating the Judicial Code of Ethics and for misconduct in office. Never in the history of the State of New Jersey has a judge been reappointed after being publicly reprimanded. I urge, implore you, gentlemen, let's start now.

I would like to add most emphatically at this point, although the Judge claimed to have had sexual intercourse with my client on two separate occasions, I believe one in '79 and one in '81, my client emphatically denies that she ever, ever had sexual intercourse with him. Now when I've discussed this with other people, they thought that it's a lot easier to plead to indiscretion than to defend yourself against a crime, regardless of how minor. It's a violation of the law to sexually harass someone. My client repudates that she ever had sexual intercourse with Judge Hyland.

As I had said, my phones have been ringing off the hook both at home and in the WAR office. I think, gentlemen, this goes beyond the one appointment for one judgeship or the one client. We're talking about casting serious doubts on the judiciary. And frankly, we can't afford to have the judiciary any more tarnished than it already is.

I am here frankly, because of my personal and moral obligation to the State of New Jersey. My husband took me here with three babies 31, almost 32 years ago. He was a school teacher and a law student. We were here less than a year and Mr. McKenna took off in the middle of the night. The pressure was too intense and he left. It was this State that gave me money to feed my three sons, to pay our rent, and I've never, never stop being grateful. I became active in politics because it was a way to do things. I started the first day care center -- McGuire Project -- 29 or 30 years ago. I was the first 12th Ward Boys Club President. Mr. Laskin's old ward in Camden City. I've worked for the retarded, for prison reform, and I started Woman Against Rape many years ago.

I feel very strongly-- I'm not a lifetime resident of New Jersey. I've been here 32 years, but it's my State. It's where I raised my children. It's where my four grandchildren are being raised. And I'm tired of the slurs and the smirks. It's a great State. There's something for everyone. If you don't find it, you're not looking. I feel strongly about it.

And I implore you people. I know you care about it or you wouldn't be sitting where you're sitting today. Thousands of people think you're special and that's why you sit. And I think you have to take a long hard look.

There's a lot of us who have taken a day off from work. Most of them have taken vacation time -- paid their way up here. We're not attorneys. We don't want to be judges. We want you to look at something we see as very very serious. And when I spoke with Governor Kean four years when he issued a proclamation for Rape Prevention Month, I told him, and you all saw it in the copy of my letter, that we've made great progress for rape victims here in the State of New Jersey both in our hospitals and our police departments. But the judiciary has a long way to go. We have a lot of insensitive things going on on the bench. He agreed with me. But I need to tell you now that was four years ago and there have been little, if any, changes made. And if you permit this to go on, you're giving the go-ahead for the kind of things that can happen. If you don't respect your home, and you don't respect your family, and you don't respect your job, how are you are going to respect my client when she comes before you?

And as far as judging my client, I don't see her as unstable. And I'm not so sure a lot of women wouldn't be after what she's been through. And if, in fact, she was unstable, twice the shame on anyone who would take advantage. Most of my clients, many of them, are uneducated, they're deprived, they come from poor sections, they're single women, a lot of retarded people, a lot of passive women. And it's our responsibility -- yours and mind -- that we know better and we're stronger, and we've been gifted with certain talents. We've an obligation to take care of them. I could sit here forever. I can't tell you how much I want you to show yourself and show everybody that's watching New Jersey that you really cannot reappoint Mr. Hyland as a tenured judge.

I have some items here. And you've all heard the expression, "Beauty is in the eyes of the beholder." And so is obscenity. And it took us several hours yesterday to track down objects similar to the ones my client alleged received from Mr. Hyland. I'm uncomfortable with it. I've never seen some of the objects. And I'm not going to expose Mr. Hyland's family who obviously had a great deal of pain; the same as my client, and members of the group waiting to testify. But I want you to know that in this case is a velvet box holding Ben Wa Balls. Some people have never heard of them, never seen them. I want you to see the kind of a gift that was given to my client. There's a pair of crotchless bikinis with a whistle and money attached. And there's a book in here with chapters that are marked with money paper clipped to the top. And one of the chapters is "How to Munch Your Way to the Top." And other chapters that are slime, "How to Get Down on a Man," -- the filthiest reading I've ever seen. Those are similar items. They are not the items, because those were thrown back when they were given.

And I'm just sorry this has been just a one-sided thing. It's been very, very painful to watch people walk up here and hear comments that my client would refute if she could be here. Her name has been plastered all over the front page of our local newspaper that has never ever in 15 years printed the name of a client. And yet for the last two days it's been on the front page. That woman had me on the phone last night crying and is begging to die.

So on one hand you see somebody wanting to be elevated for life, and another hand you have his former secretary who just wants to be left in peace to die. There's a lot of pain and you have to look beyond politics and you have to search your soul. Adultery is a sin against God. And to violate your oath is a sin against the seat you hold. If you do one or both, you certainly shouldn't sit where you are today.

I will leave these here if you like, Senator O'Connor. If anybody is interested and have never seen these objects and might have a better idea of how my client felt -- I'm not going to show them to you because I'm uncomfortable and I'm not going to subject you to any discomfort -- but they're here if anybody would like to know what they are. Thank you.

SENATOR O'CONNOR: Thank you very much. Are there any questions? Ms. McKenna, could you respond to a question, please, from Senator Zane?

SENATOR ZANE: Ms. McKenna, isn't the restriction--

MS. McKENNA: I can't hear you. Can you speak up please?

SENATOR ZANE: Yes. Isn't the restriction that you referred to in regard to your client and the settlement, doesn't the restriction limit further litigation and isn't that the extent of the restriction? It really doesn't--

MS. McKENNA: It was my understanding that there was a decision made that there would be no retaliation from either side. I think my client has been advise by legal counsel for her to make a comment that would jeopardize Mr. Hyland -- that she would be violating an agreement. And I'm kind of piecing this together. She's awfully frightened. You know, she'll start talking and then she'll just stop. So, I just deal with the counseling aspect and we try to stay away from the other.

SENATOR ZANE: Thank you.

SENATOR ORECHIO: Senator O'Connor, I have a question.

SENATOR O'CONNOR: Senator Orechio.

SENATOR ORECHIO: Where is your client now, Ms. McKenna?

MS. McKENNA: She's working.

SENATOR ORECHIO: Are you still counseling her?

MS. McKENNA: Yes.

SENATOR ORECHIO: Does she live in New Jersey?

MS. McKENNA: Yes. She has a marvelous position. She's in charge of legal secretaries-- There's a term for it. She's more than a legal secretary. She's not a paralegal. An legal examiner. She has an excellent position with a very large firm. I hope she still has it after the two days in the paper. You know, most law firms have to go before judges and they're not going to feel very comfortable having a young woman in their employ who's smeared all over the paper.

SENATOR ORECHIO: If Judge Hyland lied and said he wasn't intimate with your client, would you on the basis of what you have in your bag or this so-called pornographic literature in the exchange, would that be cause enough to deny him another term?

MS. McKENNA: Somebody else might look in this bag and tell you no. I'm telling you I see it as filth. Tell me this. Would you or any of you want me-- You know, it would be a great shock for me to pull it out. And you don't want to see it. Let me tell you, Senator.

SENATOR ORECHIO: I don't think we have to. The question is this--

MS. McKENNA: Senator, let me say this to you, when I said to a member of this Committee, and I'm not going to say which one of you it was, when I said to one of you Senators, how do you feel about what I'm telling you, his answer was, "If it were given to my daughter, I'd punch him right in the mouth." Now that was said to me by one of the Senators on this Committee.

SENATOR ORECHIO: The questions is whether or not you characterize the material as pornographic, whether it's adult, or if it spells, in any case, obscene material? What I'm saying to you is based on that evidence, would that be grounds to deny him a term and tenure? That's my question to you?

MS. McKENNA: I think so.

SENATOR ORECHIO: You think so?

MS. McKENNA: I think anyone who would indulge in this kind of thing-- Yes, I think so. That's why I'm willing to leave it here and let you decide for yourself. I think so. And anybody I've discussed it with thinks so also. They weren't hard to find, gentlemen. I had three people on the phone for several hours tracking them down.

SENATOR ORECHIO: Of course you also recognize that we're not sitting to canonize Judge Hyland.

MS. McKENNA: I would hope not.

SENATOR ORECHIO: However, we also, I think, acknowledge that we're living in an imperfect society--

MS. McKENNA: I know.

SENATOR ORECHIO: --and when mistakes are made, are people entitled to have another chance?

MS. McKENNA: I respect that. I hear what you're saying. My feeling, Senator, this is warped. My feeling.

SENATOR O'CONNOR: Thank you very much. Any other questions, Senator Orechio?

SENATOR ORECHIO: I was just going to say that everybody has a different degree of sense of humor.

MS. McKENNA: Sure. Absolutely. Draw your own.

SENATOR O'CONNOR: The next witness we'll hear from, if he's here, former State Senator Barry Parker?

UNIDENTIFIED MEMBER OF AUDIENCE: He's not here.

SENATOR O'CONNOR: Okay. Next witness then is Mr. William Reifsteck.

W I L L I A M E. R E I F S T E C K, E S Q.: Mr. Chairman, members of the Committee, my name is William Reifsteck. I'm a lawyer. I practice in Camden County and I've lived in Camden Count--

SENATOR ORECHIO: Can you speak up? We can't hear you.

Mrs. REIFSTECK: Yes. My name is William Reifsteck. I'm a lawyer and I practice law in Camden County and have done so since 1959. I appreciate the opportunity to share with you

three observations which I hope will be of some assistance in helping you arrive at the performance of your function.

The first observation is that I think an undue emphasis, and certain of the media have changed the focus of the issue from the qualifications of Judge Hyland for reappointment, to the political ramifications and the potential possibilities of making this forum and this hearing not to truly consider the qualifications of Judge Hyland for reappointment, but to make some form of political statement. I don't believe that should be or is the function of this Committee at the present time.

My second observation is one that I feel is the necessity that every proceeding have a finality to it -- a proceeding whether it's before a court, an administrative agency, or a committee. Once the decision is rendered and all appeals if any that are permitted have been exhausted, that decision ought to be given finality. Otherwise we can never move forward. We're constantly stuck in the quagmire of continuing to review and rehash the issues and the facts of the prior proceeding.

I believe the testimony here earlier concerning the Committee that has reviewed all of the facts and the issues. It's composed of an incredibly fine quality and competent group. That committee after reaching its findings, conclusions, and facts, submitted its recommendations to the Supreme Court; a court which, although fair, is not bashful in rendering its sanctions. That court didn't find that Judge Hyland was incapable or unqualified to continue to serve and perform his functions as a judge. It did issue and perform a public reprimand.

I think that those proceedings, whether that's the proceedings before the EEOC or the proceedings before the Advisory Committee on Judicial Conduct, ought to be given a status of finality at this time and the focus moved onto what I

consider the third observation and that is what are the qualifications and what should be measured in connections, with the determination of the right of Judge Hyland to receive renomination? I presume that the Committee is aware and familiar with the "Manual for Judicial and Prosecutor Appointments," Committee members, that is submitted and used by the various local/county bar associations and the State Bar Association on the reevaluation.

I particularly refer to Schedule E which sets forth many guidelines. I don't intend to go through with all of the various items listed in those guidelines, but I particularly find that from prior reference and probably from subsequent reference that the one guideline that deals with a judge should uphold the integrity of the judiciary, and that a judge should avoid impropriety and the appearance of impropriety, is going to be raised time and time again during the course of these proceedings today and probably, in your minds, on again and off again until you arrive at your decision.

Fortunately, there's commentary beneath those guidelines. And the commentary deals with the concerns about the integrity of the court and the improprieties and the avoidance of the appearance of improprieties. The commentary basically deals with the conduct of a judge during the course of his judicial proceedings. None of the comments -- although I'm sure that I don't intend to imply that it would never go beyond the performance of the judge's judicial functions-- The primary focus of these commentaries is to avoid the appearance of conflict of interest, fairness, and bias as it deals with the conduct in his judicial performance.

Other guidelines include the understanding the law, his ability to communicate effectively, and I could go on and on with this punctual of being a good manager. I would like to mention that during the course the nine-and-a-half years that Judge Hyland has been on the bench, and I think it's been

reiterated here today, his performance has been free of any suggestion or implication that he is less than sensitive to any and all minorities. He has not shown any bias. He's been known to be prompt, fair, and efficient in his decisions.

I 'd like to point out again that in connection with the industriousness of Judge Hyland, trial judges, as most you know, don't get any bonuses if they take the time on the weekends and evenings to write opinions. It's something that a judge does when he feels that he has issues before him that can be of benefit to both the bar and the judiciary in the future. Judge Hyland has written-- I don't know the number of them because as you all know, out of the number that you might write, only a few of a trial judge's opinions are ever published.

But the published opinions -- and I have three of them that I have citations to and I had the pleasure of reading -- I find that they are well written. They contain cites and they're important decisions. They run the gamut of the law in that one of the decisions deals with the statutory construction, another decision deals with an issue of the Uniform Commercial Code, and a third case deals with the esoteric area of due process and the jurisdiction of a New Jersey court to deal with matter involving a non-resident defendant.

I mention this because I think it is evident of Judge Hyland's dedication, and his dedication during the nine-and-a-half years that he served on the bench. I think it's unfortunate that he's had the incident that he's been involved with. I don't believe that that incident in and of itself should be used as a means for denying a judge who has shown he's been competent and able, and a judge who I believe has exhibited the fact of judicial talent. It's a talent that I don't think we should waste, and I hope that you would consider his renomination. Thank you.

SENATOR O'CONNOR: Thank you, Mr. Reifsteck. Are there any questions? (negative response) Next witness -- I'll ask again. Is Portia Perry-Demsey here? (negative response) The next witness then is Noonie Burke, President of the Camden County Federation of Democratic Women.

N O O N I E B U R K E: Thank you, Senators, and thank you for the opportunity to speak this afternoon. Before I start, I would like to give you a little background on the organization which I am representing. We are an organization of many women that come from very diverse backgrounds. Many of the members come from different walks of life. They are union members, local elected officials, teachers, homemakers, and mothers. They belong to many diverse organizations such as the Camden County Commission on Women, the Democratic National Committee, the NAACP, the National Political Congress of Black Women, the National Organization of Women, the New Jersey Education Association, the New Jersey Bar Association, the Pennsylvania Bar Association, and Right to Life for the Diocese of Camden.

I personally am a graduate of Villa Maria Academy in Malvern, Pennsylvania; and Rutgers University in Camden. And I received my master's degree in elementary education from Glassboro State College.

I know that a lot of things that I am about to say have already been said and I hope you will excuse me for reiterating them. On behalf of the membership of the Camden County Chapter of the New Jersey Federation of Democratic Women, I want to tell you, the members of the Senate Judiciary Committee, that we are appalled that this mockery of the New Jersey judicial system has been allowed to come this far.

As citizens, we find it reprehensible that our Governor, who has espoused an inclusive policy of women in government, has allowed this travesty to take place. Governor Kean has said that he neither supports nor disapproves this nomination and has passed the buck to you, Senators. In our

opinion, the Governor has shirked his duty and has made a mockery of this system that has been cited as a model of the judiciary at its best by broadcasters and newspapers across the river in Pennsylvania. Shame on Governor Kean for allowing this nomination to become a political football, particularly in light of his statement attesting to his, "misgivings and very serious doubts regarding this nomination."

As citizens of this great State we deserve and expect this body to provide us with the very best. Just looking around this room today, I see jurists and attorneys not testifying or testifying on behalf of Judge Hyland that would present a better option for Camden County. The Supreme Court in its report held that Judge Hyland violated the Code of Judicial Conduct. And like Senator Ambrosio, this is the part that bothers me the most. He violated Canons 1 and 2A which requires a judge to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

In essence, this report confirms that both personal and private life must reflect the common sense, good judgment, and respect for the individual which are the quintessence of judicial temperament. Judge Hyland himself acknowledged his giving of sexually oriented items and his reviewing of pornographic materials in his judicial chambers. This is a disgrace. Judge Hyland, in our opinion, lacked common sense, good judgment, and respect for the individual involved, and the system that he had sworn to uphold. This was a clear indication of his lack of judicial temperament.

Also, the EEOC found Judge Hyland, as we all know, blameworthy to the tune of \$95,000, with \$25,000 (sic) being paid by him and the remaining \$75,000 paid by the State coffers -- you and I -- paying for his flirtations and indiscretions. This is unacceptable. Both of these reports should have been enough, for they have certainly caused a shroud of distrust and uncertainty to surround the courthouse.

In light of what has transpired at the Federal level, with the nomination and subsequent withdrawal of Anthony (sic) Ginsburg to the Supreme Court, it is important to scrutinize all judicial nominees. Ginsburg's indiscretions took place long before he donned his black robe of justice, and he was deemed unfit in the public eye.

On a personal level, as a parent and a teacher of three young children, I find myself hard-pressed to explain to them that a system that I love and cherish so much can condone, yes, Senators, even reward, the use of pornography, unethical behavior, and judicial misconduct with a lifetime appointment to the bench. Senators, children learn what they live. The guidelines we set for our children should be reflected in the decisions we make ourselves in daily life. On behalf of all parents and children, I urge you to reject the use of pornography, unethical behavior, and judicial misconduct, and not recommend Judge Hyland for reappointment.

Finally, as a representative Democrat, I want you to know, Senators, that no member of my organization asked any Senators from Camden County to exercise or invoke Senatorial Courtesy. And if somebody was going to do it, I think it would have been us. We are Democratic women.

Finally, I urge you to act on this matter in a bipartisan matter, putting aside personal feelings and ignoring any pressures that may have been exerted by influential outsiders, and consider us, the ordinary constituents. We urge you to follow the lead of the Democratic Senator from Camden County, Senator Dan Dalton, who to us has been a profile in courage, and reject the nomination of Judge Hyland to the State Superior Court. I thank you for your time and consideration.

SENATOR O'CONNOR: Are there any questions? Senator Codey.

SENATOR CODEY: You made a point of stating that the Governor has "passed the buck." I just want to tell you that

Judge Hyland is Governor Kean's nominee. He cannot pass the buck. He has made a positive rule and a positive statement by submitting him as his nominee. I don't care what anybody else said of the Governor or whatever editorials-- He is his nominee. He's not passing the buck. We're advising and consenting on his nominee.

MS. BURKE: Okay. Senator, I just would say that in light of his serious misgivings, I can't understand why he allowed it to come this far? Okay. I mean, if you had serious doubts of a judicial appointment and serious misgivings, I hope that in good conscience you would not be able to make that appointment or make that recommendation. I have faith in this body and I have faith in the Senators of this State, or I would not be here today.

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

SENATOR GORMLEY: I think in the original book, "Profile in Courage," none of those Senators were reelected. I don't think that move was intended with that type of risk. I just wanted to note the book.

MS. BURKE: Yes, Senator. But is reelection our ultimate goal in life?

SENATOR GORMLEY: I'm just citing the book. President Kennedy's book. A good Democrat.

SENATOR O'CONNOR: Thank you very much. The next witness is Monsignor Salvatore Adamo.

JUDGE HYLAND: (speaks from audience) He's not here. He wrote me a letter. Perhaps later he-- (inaudible)

SENATOR O'CONNOR: Thank you. The next witness is Therese M. Keely.

T H E R E S E M. K E E L Y, E S Q.: Good afternoon, Senators. My name is Therese Keely and I am an attorney. I live in Haddonfield and my office is in Cherry Hill. I first met Judge Hyland during 1981 when I was a judicial clerk for

another Superior Court judge in Camden County. During my clerkship, I shared an apartment with Judge Hyland's law clerk, Andrea De Angelis. Because of my friendship with Andrea, I had the opportunity to meet with Judge Hyland and got to know him better than the other judges.

After my clerkship, I was an associate at a law firm in Cherry Hill for two years. While associated with that firm, I regularly appeared in Superior Court in Camden County, primarily for civil motions, settlement conferences, and similar matters. I appeared before Judge Hyland a number of times.

On those occasions, I observed Judge Hyland's judicial demeanor and decision making. I witness Judge Hyland's treatment of me as well as his treatment of other attorneys. In my opinion, Judge Hyland is a very competent judge who treats lawyers, whether male or female in a fair and even-handed manner. During my appearances, he has always been courteous and polite to attorneys. I've never known him to demonstrate any bias or prejudice against women. And in my experience he has treated all lawyers, male and female, alike.

On those occasions when I have spoken to Judge Hyland informally, either as a friend of Andrea's or at bar functions and similar events, I've never detected any bias or prejudice against women. As a lawyer who has appeared before, observed, and spoken with Judge Hyland, both on and off the bench, I believe that I have an informed view of Judge Hyland's qualifications for reappointment, including his treatment of women. I firmly believe that he is well-qualified, that he is well-qualified to be reappointed, and I recommend that you do so. Thank you.

SENATOR O'CONNOR: Are there any questions? (negative response) Thank you very much.

MS. KEELY: Thank you very much.

SENATOR O'CONNOR: The next witness is Judith Palombi of the Coalition for Judicial Integrity.

UNIDENTIFIED MEMBER OF AUDIENCE: Senator, Ms. Palombi stepped out for a second. She'll be back in a moment.

SENATOR O'CONNOR: All right. We'll call her again. The next witness is--

UNIDENTIFIED MEMBER OF AUDIENCE: She's here, Senator.

J U D I T H P A L O M B I: Mr. Chairman, members of the Senate Judiciary Committee, I thank you for the opportunity to be here before you this afternoon. It's been a long day for all of us. You've heard a lot of testimony, some of it repetitious and I ask you to bear with me one more time because some statements need repetition.

First, if I may identify myself, my name is Judith Palombi and I'm representing the Coalition for Judicial Integrity, which was formed, quite frankly, in opposition to Mr. Hyland's appointment. In terms of background, I'm a former member of the League of Women Voters. I was a South Jersey Coordinator for the League of Women Voters which did TV shows with WPVI which were public affairs. I also was a member of the Tri-County League of Women Voters organization as well as a former member of the National Organization for Women, the Alice Paul Chapter, in Burlington County where I reside.

I'm also the founder and former board of director of Network which is a family resource center in Medford, New Jersey. Additionally, I was a member of the Pinelands Coalition, which might score me some points as I look around, in support of the Pinelands legislation in 1980. I also was the first woman Democrat elected in Medford Township and to this date I've been the only woman Democrat, and I may be in the future for years to come.

The purpose of bringing up my background as an elected official as well as Director of Public Safety in Medford Township, is that I was elected in 1976, a date that rings a bell in most of our minds in terms of the Watergate. I was elected on an ethical platform of ethical government, of

honesty, and of integrity. And if we recall the hearings and all the distress in terms of our government and suspicion of all branches of government at the highest level--

I recall one model, one role, particularly that we all looked up to -- was a breath of fresh air in terms of integrity and honesty beyond any reproach, and that was Judge Sirica. As I sit here today in asking that we not appoint Judge Hyland -- reappoint him to the bench -- it is not an easy decision for an individual to make, for a citizen to make, to come and sit before a Senate Judiciary Committee of elected officials. Having been an elected official though, I feel that it is particularly important that we not negate in our considerations the public good and welfare. I would like to reiterate a couple of points in terms of the testimony.

What we have heard today is that Judge Hyland is an exemplary and exceptional jurist. It strikes me that based upon those statements and that testimony, all the more reason to be concerned about reappointing someone of those credentials that did, in fact, by his own knowledge engage in a situation that has cast a shadow over the judiciary; not just Camden County, but the State judiciary.

We cannot equally ignore the fact that in Philadelphia there is again a taint in the judiciary with editorial statements both public and private asking that Pennsylvania, in fact, adopt the system that we now have in approving the judges of our State. I ask what compelling circumstance situation or argument can be put forth that the Governor would renominate someone who has a blemish on his record? Are we, in fact, saying that there are no other credible attorneys or jurists who can be appointed to the court to fill this position or there can be no question if, in fact, prior and after the alleged -- it is not alleged -- the admitted encounter with Judge Hyland and his secretary, are we to believe that there is not a question as to his impartiality and as to his integrity

particularly after today, not 1985, if, in fact, we have a judge of exceptional credentials who knowingly entered into a situation in a relationship that could bring about what he is experiencing here today, what the judiciary is experiencing here today? I think, that question must be addressed.

In terms of a low profile, since 1985 I would suspect if I were a judge publicly reprimanded for misconduct, I would indeed have a low profile. I think that we must give consideration to the public perception. I think it would be difficult for any human being, no matter how credible, no matter how honest, no matter how impeccable, to be able to render impartial decisions, based upon the testimony and the coalition and the opposition to this appointment.

I'd like to read from the Supreme Court, the Advisory Committee. Mr. Ambrosio and others -- Senator Ambrosio -- have read from it. But there were a couple of items that I know that you have read. If you would bear with me I would like to read these statements.

SENATOR O'CONNOR: In view of the hour, do you think you could just direct us to what sections they are?

MS. PALOMBI: Page 17. The respondent-- It's two sentences, Senator. Thank you. I've been sitting here to testify as well. I know the hour is late and all.

SENATOR O'CONNOR: Yes. And there are probably about eight behind you that are still waiting.

MS. PALOMBI: Okay. "What the respondent continues to ignore is the fact that the complainant was his judicial secretary. He was her supervisor and she had to expect that he would deal with her in a professional matter. She was his confidential assistant and he had a right to expect her to perform her duties in a professional manner." And the rest, I will permit you to read, in terms of time.

In closing, from page 18 of the same document, and I'm not referring to the EEOC report, "The misconduct in this case

lies in the lack of discretion and sound judgment manifested by the respondent's course of conduct."

If in any of your minds there's a question as to the facts, the reports, the EEOC report, as well as the Supreme Court Advisory Committee, then I don't know how in good conscience if any question remains as to the credibility, that the Senate could recommend that a judge be given a lifelong tenure. And again I ask in the scale of justice that you have a judge who has been publicly reprimanded, whose impartiality and integrity has been questioned by the court, the Supreme Court Advisory Committee as well as by the public. And over here you have qualified capable attorneys, male and female, that can serve the State well without blemish and without casting a shadow among our judiciary appointments. Thank you for your time and consideration.

SENATOR O'CONNOR: Okay. My one comment with respect to that last point that you made is that over here the people who are qualified and would not cast any blemish are not people that we're considering at this point. And as Senator Codey pointed out earlier, we have only one nomination before us, that's the Governor's appointment of Judge Hyland. So, we're not considering all of these other people today. We have to limit ourselves to that nomination.

MS. PALOMBI: With all due respect, I do understand that, but I don't think that we should be lead to believe that you have no choice but to recommend his appointment. May I ask a--

SENATOR O'CONNOR: Nor did I indicate that to you.

MS. PALOMBI: May I ask a parliamentary question? In terms of the Senators that are not present today, in order that they should be able to vote, will they be required to read the transcript of all testimony?

SENATOR O'CONNOR: No, they will not.

MS. PALOMBI: And they will be permitted to vote?

SENATOR O'CONNOR: Yes.

MS. PALOMBI: Thank you.

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

SENATOR ORECHIO: Mr. Chairman, I have a question.

SENATOR O'CONNOR: Senator Orehio. Excuse me, Ms. Palombi, we have a question. (referring to Ms. Palombi as she leaves the witness table)

MS. PALOMBI: Oh, I'm sorry.

SENATOR ORECHIO: It's not of Ms. Palombi. I just have a general question.

SENATOR O'CONNOR: Oh, I'm sorry. I misunderstood.

SENATOR ORECHIO: It's having to do with the Advisory Committee. My question is how long has that group actually been on the panel? Has it been the same group? How many decisions have they rendered and so forth? Do you have any background on that? Are they just a panel for this particular one -- this particular group in this particular case?

SENATOR O'CONNOR: It's my understanding, Senator, that the Advisory Commission is an ad hoc commission that is empaneled for a particular purpose.

SENATOR ORECHIO: And it's ongoing with no term?

SENATOR O'CONNOR: Correct. The next witness is Louse Donaldson.

L O U I S E D I R E N Z O D O N A L D S O N, E S Q.: Good afternoon, Senators. Thank you for this opportunity. I have some prepared remarks and I think I might just skip over those because I want to address some of the things that I heard some of the other witnesses testify to or state here today.

First, I want to introduce myself. I'm an attorney in Camden County, I've been practicing in Camden County since 1979. I am acquainted with Judge Hyland only as a lawyer and as a judge on the bench. I am not personally acquainted with him. However, I have had the opportunity in the years that I've practice to appear before him on numerous occasions, both

while he was sitting in the civil court and in the criminal court. So, I've had the opportunity on a firsthand basis to see Judge Hyland, as you might say, in action.

And I'd like to talk to you about that very briefly. I find as an attorney, I'm offended by people who've come here today and say his record is not important, because as an attorney, I feel that that's of utmost importance and I feel that that is what the Committee should look at.

I think it's very important for the Committee to speak to women and have women appear before them who have appeared before Judge Hyland as an attorney because we're the ones who see him on a day-to-day basis and as he performs, and we're the ones who can judge what his behavior is like on the bench, because I believe that the incident that occurred was unfortunate, but I don't think that it reflects on his ability to be a judge.

I've appeared before him and I've seen him both informally in chambers when we're at conferences and while he's on the bench. I've found that personally, I was always treated with courtesy and as a professional. I never felt like I was a "woman attorney." I don't feel I should be. I feel I happen to be an attorney who also happens to be a woman. And that's the way I want to be treated and that's the way I always felt I was treated by Judge Hyland. On the bench, I have never seen him treat any woman either as an attorney or as an litigant with anything but the utmost respect. I find that he always treated all of us as attorneys who were professionals, that he expected us to be prepared for our case, that he expected us to have knowledge of our case, and that we were to uphold those standards. And we did, because he felt that that was the way a court should be run, and that's the way he ran his court.

The incident occurred and most of what went on during the period of time that I was appearing before him, I never saw this incident reflected in his judicial behavior. And I think

that's very important. He was not found guilty of sexual harassment, but having participated in a consensual relationship; and I think that's a very different thing than sexual harassment.

I find that for women today to come before you and make this a sexist argument or a feminist argument is incorrect, because it's not. It's a determination of whether or not the Judge, for what he did, should not be reappointed. But it's not a feminist issue, I don't believe, because a feminist issue would be if we could look at his record and say that the judge behaved in a certain manner on the bench and that was reflected by his behavior, and it's not. He is not anti feminist in any way. And he's always treated all of us with great respect.

I'd like to address some of the things that we've heard today. I find that a problem that seems to come up is with Mrs. McGuckin's behavior, I knew her too, and I knew her not as a friend but as an acquaintance that I made in the court, as we make lots of acquaintance in the courthouse. Her behavior was not something that it was so bizarre that all of a sudden we looked at her and said, "Gee, there's something wrong." It was the sort of thing that became a cumulative type of effect on all of us. And we all began realizing after a long period of time and certainly after the hearings, that there was something wrong and that we had recognized it, but it took us a long time.

None of us find somebody and talks to them and become friendly with them and as an acquaintance immediately think that they're lying to us. It only comes after a long period of time. And I think that's what happened to everybody here; that we got to know her and found out the type of person that she is.

Ms. McKenna said that she is not here to testify, but she was before the Committee for the Supreme Court to testify, and they found her not to be credible. They found the other

witnesses more credible than she was. I also find a problem with Ms. McKenna saying that there are all these women attorneys and court personnel who say to her, "I don't want to come in there, but I feel strongly that he should not be appointed," or they have problems with it; because when I talked to other women attorneys and women in the courthouse, I haven't come across one woman attorney yet who has appeared before Judge Hyland and who has said that they don't feel he should be reappointed. They all say the same thing; that they've been treated with respect and fairly and that they'd like to see him reappointed. I think mostly all of these women would come to the Senate and say that to you if they had the opportunity. I'm just glad I did have the opportunity.

I'd like to address something that Ms. Hollway stated about the Camden County Commission on Women because I did appear before them and said that I thought that Judge Hyland should be reappointed -- and that is that we had the opportunity to appear and testify and that was Ms. Keely and another person who testified on Judge Hyland's behalf and also Ms. Bowker from N.O.W. who also appeared at the same time.

However, I was disappointed in the outcome of that Commission's hearing because they had a secret ballot where they did not openly vote. And I would have liked to have known who it was that was voting for or against Judge Hyland because I felt that possibly they may have had some questions that could have been answered regarding what happened.

As I said before, I am here not because I am a member of the old boy system. I am a woman attorney who happens to practice in Camden County and happens to appear before Judge Hyland. There are good judges and better judges, and unfortunately, we still have some judges that I wouldn't consider good judges. And I consider Judge Hyland an excellent judge, and I feel that I was always always treated fairly and so were my clients, whether they were male or female. I'd like

to thank you for this opportunity and I can answer any questions any of you might have.

SENATOR O'CONNOR: Thank you. Any questions from the Committee? (negative response)

MS. DONALDSON: Thank you.

The next witness is Ms. Madeline Koszyk, the former Mayor of Cinnaminson.

M A D E L I N E K O S Z Y K: Mr. Chairman, gentlemen, thank you very much. My name is Madeline Koszyk. I'm a retirement consultant. I'm a certified management consultant and I've been so certified by the Institute of Management Consultants. My credentials are I am a member of the SBA Newark Region II Advisory Board, the Rutgers Advisory Board for Small Business, the New Jersey Coalition of Small Business, I was a delegate to the White House for Small Business, I'm a board member of the Burlington County Chamber of Commerce, a board member of the Mental Health of Southwest New Jersey, a board member of Morris Hall which is the Diocesan nursing home of Trenton, I am President of the Alumni Association of Burlington County College and I am the former Mayor of Cinnaminson. The good part of that is that I was the first woman there and I was a Democrat. The bad news was the Republicans didn't like it.

I would purposely draw your attention to the fact that I have eliminated the women's group that I am professionally involved with and let me tell you why. I came here not knowing this gentleman. And what I heard as I came in the room was that the women was waiting to come out to get him. I suggest to you gentlemen, I don't know anybody here that's willing to do that. I've been in business seven years. I've worked this morning. At five minutes to twelve, I left my employment, and I've been sitting here, much like you gentlemen waiting to hear something. I don't like that assertion. I really don't.

I come as a public official and a business person. When we assume this posture of a public official, we know that

we're scrutinized, we're judged, we're evaluated, and we're expected to be above reproach. We know this goes with the territory and we accept it and we remain or we reject it and we leave. I don't think I have to remind any of you gentlemen who just went through a bitter election for some of you, that your constituents inquire about your personal and private lives. You are always on stage, and surely a judge is cognizant of this fact.

Another factor required for judgeship is impartiality. Are we truly to expect that any human being that has been through this process will continue to be impartial? And I don't speak from an attorney's point of view. I speak from a point of view that, suppose I was to go before a judge, I'm a layperson, whether it be business, personal or otherwise. I've never met the judge, but this business keeps haunting me about how he thinks women are coming out to get him. I have a great problem with it. As you can see, I've mentioned it twice, so I must have.

I'm aware as sure as I sit here, and Ms. McKenna made reference to it, we're all going to pay a price for testifying against a judge. It'll be subtle. I had a occasion to go through a situation at lunch the other day. I feel like I'm back to 10 years ago. What did I work for? What did I strive for? I think it's all gone down the tubes. This is not a man/woman situation. It deals with the integrity of a judge. I truly feel sorry for the Judge's family. I don't know him and I don't know his family. But I would like you, as Ms. McKenna said, to look at the people who are not here: Who is not here? They've all mustered their forces. But who isn't here? Why aren't the clerks of Camden County here? Why aren't other judges here? Why aren't other people here? I venture to say you as attorneys are certainly not going to put out an opinion about this. You have to be very careful; and on top of that, you want to be elected next term. I fault you not for that, gentlemen. I truly do not.

I'm truly concerned about the people who have been stifled. I've never met, to my knowledge, this woman. I now know her name is Mrs. McGuckin. But my God, would I like to hear her side of the story. I truly would. And you have not heard it. I'll tell you truly, truly that I have great trepidation of going before a judge, because as a human being, I don't know if he could be impartial. I truly do not. I don't want to go into character assassination, but I believe we should uphold the integrity of the judicial system. It's what I ran for public office for; it's what I project to my family who are the most important people in my life; and I suspect each one of you, especially those of you who are the attorneys, want to protect the integrity of the judicial system, too. And I ask you to bear that in mind when you make your decision. Thank you very much.

SENATOR O'CONNOR: Thank you. Any questions?
(negative response) Thank you.

MS. KOSZYK: Thank you.

SENATOR O'CONNOR: The next witness is Mr. Frank Lario, the Past President of the Camden County Bar Association.

F R A N K M. L A R I O, J R., E S Q.: Mr. Chairman, Senator O'Connor; Mr. Vice Chairman, Senator Zane; and members of the Judiciary Committee, I'm a practicing attorney for 25 years in Camden County, involved in general practice, including trial practice. I am the Past President of the Camden County Bar Association and I'm also a municipal judge, having served for 18 years in the Borough of Audubon Park, 18 years in the Borough of Magnolia, and 12 years in the Borough of Bellmawr. I was appointed by the New Jersey Supreme Court to the Character Committee and served on the Character and Fitness Committee for Camden County. Later, the Committee then became the District Four Ethics Committee, wherein I have reviewed the character of applicants for the bar from our seven county area consisting of Camden, Gloucester, Salem, Cape May, Atlantic, Cumberland, and Burlington.

I was the judicial clerk to Justice Vincent Haneman, our Associate Justice of the New Jersey Supreme Court. I only raise that because Senator O'Connor, in answer to a question that you earlier asked, I believe that the integrity of the law clerk as well as the support staff of any judge or justice is of paramount importance. And the confidence that the judge must place in his support staff is something that he must depend upon, rely upon, and cannot in any way have any distrust where it would hurt him. So, it is very, very important that there be that integrity between his support staff and the judge himself.

The purpose of my appearance, however, is of course, in support of Judge Hyland. Camden County needs good judges and, Senators, Judge Hyland is a good judge. But more important than that, my reason for being here is that the former Assignment Judge of both Camden County and Gloucester County, Judge Charles Rizzi is presently retired and on vacation in Stuart, Florida. With Judge Hyland's permission, as well as permission of his counsel, Mr. Satz, he's requested that I appear today and read to you the letter that he addressed to Governor Kean. I've also submitted to you, Mr. Chairman, a letter that I wrote. But of more importance, of course, is the letter of Judge Rizzi. I've been asked by Judge Rizzi to read the letter to you for the record. It's dated January 27, 1988 and it's addressed to Honorable Tom Kean regarding the reappointment of Judge Richard S. Hyland.

"Dear Governor Kean: I am a retired judge of the Superior Court of New Jersey, having retired on October 1, 1980. I was first appointed to the bench in 1961 by Governor Meyner, reappointed by Governor Hughes in 1966, appointed to the Superior Court by Governor Cahill in 1970, and in 1972 Chief Justice Weintraub designated me Assignment Judge for Camden and Gloucester Counties. I served in that capacity until my retirement.

"Judge Richard S. Hyland of Camden will shortly complete his term as Superior Court Judge and I am informed he is now under consideration for reappointment to that office. I write this letter in support of his reappointment.

"In 1978, Judge Hyland was appointed to the Camden District Court by Governor Byrne and I swore him into office. He was designated Presiding Judge of the District Court on my recommendation, and in that office he presided over not only District Court cases but Superior Court cases, as well. Judge Hyland was a prodigious worker, highly competent, and always energetic and dependable. He possessed an outstanding knowledge of the law and was capable of handling all phases of litigation. Since my retirement I have returned to the bench at Camden on recall and I have observed the judicial work of Judge Hyland.

"I have been aware of the accusations made against him by his former secretary, which charges were dismissed by the Supreme Court in judicial ethics proceedings brought against him. I also am aware that a civil claim brought by his former secretary was settled by the payment of sums by him and by the State through the Administrative Office. However, Judge Hyland is such a highly talented judge that, in my view, his value to the bench should override any negative considerations that might be drawn from the alleged incident involving his former secretary.

"I respectfully urge, Your Excellency, to reappoint Judge Hyland to the office of Judge of the Superior Court. Sincerely and Respectfully, I am, Charles A. Rizzi." I respectfully request that his letter be considered among the other evidence before this Committee. Thank you.

SENATOR O'CONNOR: Are there any question? (negative response) Thank you, Mr. Lario.

MR. LARIO: Thank you.

SENATOR O'CONNOR: The next witness is Rosemary Jackson of the Camden Urban Women's Center.

R O S E M A R Y J A C K S O N: Good afternoon.

SENATOR O'CONNOR: Good afternoon.

MS. JACKSON: My name is Rosemary Jackson. I'm the Executive Director of the Camden Urban Women's Center and President and CEO of the National Congress of Neighborhood Women in New York City. I'm here representing women from South Jersey and some other groups that have called; and this has been one of our concerns -- what is happening here today.

I don't know Judge Hyland, nor do I know Mrs. McGuckin personally or otherwise, aside from what I've been reading in the paper and hearing from other groups and individuals who have called me and asked for support.

Why did I come? Really, after listening to everybody -- most of testimony today -- I'm a little disturbed; not so much with the scenario of a judge and his secretary, but the fact that it's such a travesty of justice. It's such a waste of time that we're sitting here today spilling out about people's lives and the character assassination that is going on when in fact, all of this could have been settled before now.

The people who have come in to testify today did not appoint Judge Hyland. So, we're doing someone's job today and I'm not getting paid for it. So, that really disturbs me. The other thing is, why go through this exercise in futility if everybody knows that a deal was made, someone was paid, they cannot talk today or even represent themselves? Why are we going through this? And why is it that that person couldn't be here? So, I think everybody should have just gone home.

This court system -- the system itself needs some work done on it. Not the people; the system and those who help make it go. Those who appointed Judge Hyland know they have a duty. When they find out that a judge is doing some illegal or unethical-- It shouldn't have even gone this far. And the thing about it is aside from all the things that he admitted

doing and other things that have happened, these are the things that really concern me -- that someone would get paid that much money in the first place when there are agencies, people needing money, funds, and hurting for all kinds of reasons; but we have to take the time to come and clean up somebody else's mess.

The other thing is that we look at testimony from prominently, lawyers. The court system is a male dominated, male oriented system. You can look at the cases of Mary Beth Whitehead, the rape in Boston, and this today -- the way that they oppress women in this system. And even those who are in the system still play the old boys' network. Yes they do. Why? Because they are intimidated and threatened on the job. Those are the kind of women who call us and say, "Yes, these things go on, but we're not going to go out there and say that it's happening," because they're too intimidated. And it's a hell of a position to be in where someone is also a judge or a supervisor and they can say today you have a job; tomorrow you're poor -- you may be homeless. That's a hell of a condition to work under for anyone.

But yet I read in the paper that the Judge gets a break to go to the hospital for all this pressure. What about all the pressure that this woman had to go through working under those conditions? Nobody made him do it. I don't care how much somebody seduces you or initiates anything with you, you still, as an individual, are responsible and accountable for your own actions. So, you can't come up here and say, "Well, she came on to me." Come on, that's a bunch of crap. I've read this man has the best records in litigation, in superior legal knowledge, and in judicial acumen, and then you ask him, "What did you do?" "Well, she came on to me." Come on, gentlemen. Now you know that's a crock. If you're so brilliant and so strong, then you have to be the same way in your personal life. And yes, what you do personally affects

you professionally. And it is a carry-over. I would have questions about it, but I also would have questions about, "How come this was perpetuated so long, from '79 all the way up to now?" This has been going around and round and round -- because someone didn't want to touch it and now it's up to us to help make this decision for someone who already knows the way this is going to go. So, sometimes I have the feeling that this has been an exercise in futility.

I don't know how you separate out personal from professional on the job, but I do know this; once you take a code of ethics, you're bound by that. And you should not violate that. It's almost like having a client and you tell all of their business to everyone and in the same token, telling them that you're helping them. I don't understand how someone who can do this can get away with it for so long?

The other thing is that on one hand your judicial committee says that there was a serious lack of judgment. It's so contradictory to this other record that talks about this superior acumen -- so much so, that you warrant him with a public reprimand. So great was that. Why are we here today? If you gave him one and some other judicial committee gave him one, why do you need us now at this point to register our complaints or our disagreement?

I think the system is perpetuating that thing and perhaps that a better look at it needs to be taken. No one knows the effects of sexual harassment or someone playing with your life and death by saying either you're going to give it up or you won't have it. No one knows the long-term effects of sexual harassment or even a boss promulgating that kind of thing to you -- offering you that, because every day that you come to work, you're going to be under the fear that they're going to ask something that you will not submit to and there goes your job. And who knows how many women are involved in it because of the very reason that they could be homeless tomorrow? I think that's a horrifying situation to be in.

Also, I just wanted to say that I think that this man probably is one of the better jurists that has been in this system. The problem is, can you afford to allow him to stay? One thing, if he had a problem as an alcoholic, would you then cover up for him? If he was a junkie, would you say that it does not affect his decisions in the courtroom? But it's okay to be a sex junkie and it doesn't impact on anything that he does in the courtroom. I mean, all day long there's been so many contradictions. You know, a pimp may use a Cadillac in the street, a judge uses his chambers in the same token; or a minister using his pulpit for the same difference. There's no difference. How can you set yourself up above the law? And I know if someone walked in that courtroom today, if they came in with a fraction of the things that was named that this person did, they wouldn't even be listened to. You would have them underneath the jail. So, it also reeks of classism. Everything I've heard about this woman is so negative, and yet you say you don't know her. How could you make that statement? Here's a little greenhorn law clerk and somebody who's paid by the same system that pays him -- of course they're going to say that. Do you think they would say something contrary and lose their job? Let's be real. Nobody's going to jeopardize their job or an opportunity to move up in this system.

So, I want to say also that just remember that with all the things that are going on in this State today, we need some positive role models. We don't need role models for our youth to say, "Yeah, it's okay to go to Harvard, graduate from the best schools, and you can do all the crime that you want and no one will accuse you, because you will know everybody." And that's the whole key -- boasting that they're our buddies, they're our friends' sons. I mean everybody here was somebody important to this man. No one here who are Ph.D.s, lawyers and attorneys was for this woman. Does that make her any less reputable than this judge? And what are you saying? That it's okay -- crime does truly pay from the bottom to the top?

It's nice that he was screened by his peers of impeccable taste. It's wonderful. I wish that people, citizens of this State can be judged by their peers in the same token, but they're not. Here's a woman whose records say that she too, was an excellent secretary. There's no documentation saying that she had any poor performance. And in five years I couldn't imagine someone so brilliant keeping someone so stupid on hand.

Gentlemen, my anger is not so much-- At first I came because I thought this judge was-- Well, I really want to say something about him. The best thing I could say for this judge is probably that maybe he does deserve a chance, but also he needs to question whether he wants to even be back in the system with you, because if you throw him out there to be with the wolves, if you didn't help him when he needed it or pulled his coattail to say, "Look, this may come back to haunt you," then you weren't doing your job as his peers.

SENATOR O'CONNOR: Any questions? (negative response)
Thank you. Senator Parker? Former Senator Barry Parker.

B A R R Y T. P A R K E R, E S Q.: Mr. Chairman, John, fellow Senators, I'm here today to testify, I guess basically, on behalf of not only myself, but my firm. First of all, I served with Dick in the Legislature as I believe Senator Laskin may have at that time. He's shaking his head, no. I don't see any of the others. But, I can tell you he was an outstanding legislator. Being in one of the larger trial firms in South Jersey, the reputation that he has as a judge, not only in Camden County, among the trial bar -- and I hesitate to call myself a trial lawyer, but we have approximately 20 to 25 attorneys who do nothing but practice in the various courts in South Jersey and Central Jersey each day.

And I can tell you in discussing this with all, not all, but with most of the members of my firm and the associates who have appeared before him, some of them, as long as six

weeks at a time on a particular trial, a malpractice trial; that he is considered if not the best, one of the two best judges in Camden County.

And I think that most of those who have testified and are practicing attorneys and who have active trial practices, will probably tell you the same thing, because I have -- since I was asked to appear -- talked to some of the other attorneys throughout South Jersey, and I know that that is a general consensus.

So, in considering these things, what his personal life is, it's certainly his prerogative, the same as anyone else's personal life, and that is an issue that I think you all will have to wrestle with. But as far as his ability, capability, and dedication as a member of the judiciary, I think it has been excellent. And I really don't have anything further to say. If you have any questions, I will be glad to respond.

SENATOR O'CONNOR: Senator Ambrosio.

SENATOR AMBROSIO: Senator, I've been sitting here as everyone has, since 10:00 this morning, and I can almost now predict what each witness is going to say as they come up. Those supporting Judge Hyland are going to talk about his qualifications and his career as a jurist, and I really have no reason to doubt that whatsoever. And those opposing Judge Hyland are going to say that that's only half of Judge Hyland; there's a secret life of Judge Hyland that you must consider, because those two can't be separated. And I seem to be hearing you saying that he is such a distinguished jurist that we should overlook some of those things. Or are you simply saying you don't want to comment on that other portion of his life?

MR. PARKER: Well, quite frankly I have never been involved personally with him in his personal life. I have been at functions where he and his family have been. But he is not a personal friend that I would necessarily go to his house and

visit with and go out to dinner with. My connection with him has been strictly professional, both political and judicial.

SENATOR AMBROSIO: So, all the activities that have been admitted by him concerning his indiscretions and the conduct with his staff, you have no knowledge of, obviously. And that wouldn't in any way alter your judgment as to his competency to sit on the bench?

MR. PARKER: Well, we can all cast stones.

SENATOR AMBROSIO: We're not talking about casting stones. We're talking about admitted conduct.

MR. PARKER: Well, I haven't read the transcript. I haven't been privy to the transcript, although I understand that the hearings have been taken, that transcripts have been made of the judiciary or the Supreme Court Ethics Committee findings. And I think you're bound by those findings. As to what you read out of those findings, and what you feel is someone's personal conduct and what it should be, whether it meets your standards or not, is a purely subjective thing that you yourself have to evaluate.

And I'm not going to say here to the Senators or to the public that all of us don't have our private life and aren't entitled to it. And that's a whole separate issue, and the liberals say you can't do this and the conservatives say they want you to bury your soul and go to church every Sunday and do this and that. And that's your personal prerogative. How you judge him on that based upon what you read and what you have heard and what is the actual testimony before you is something else, and I am not privy to that.

I've been here, in and out, three times today. I had other business and things I had to attend to. The only reason I had to come back-- But, I've had think everybody -- and I haven't heard any of the other testimony -- but I think everybody, including the women who are here and the others who are testifying against him, are entitled to their private lives.

And if you tried to take their private life and pry into it, they would say, "No, you cannot." And I think he's entitled to the same understanding and the same consideration. And you have to judge that against your own standards.

SENATOR AMBROSIO: Thank you.

SENATOR O'CONNOR: Any other questions? (negative response) Thank you, Senator.

MR. PARKER: Thank you very much.

SENATOR O'CONNOR: The next witness is Reverend Daniel Schieber.

R E V E R E N D D A N I E L S C H I E B E R: Thank you, Mr. Chairman. My name is Daniel Schieber. I'm pastor of the Calvary Baptist Church, in West Collingswood Heights. I've been a resident of West Collingswood Heights which is part of Haddon Township and also Camden County for more than 25 years, and likewise for that period time, pastor of the same church.

I would like, with your permission, to make several comments, both reading part of it, and speaking extemporaneously. I'll not belabor you with a lot of doubletalk, Chinese rhetoric, or gobbledegook. I will present myself as my heart dictates me to do so.

I'm here as a private citizen and the administer of the gospel of my Lord and Savior, Jesus Christ. I do not represent any group or organization, though I believe my views are held by many of the people of this great State. I seek no personal gain or recognition. My sole purpose in being here is to give the sincere feelings of my heart in this most serious manner.

I learned many years ago, gentlemen, that it is a wise thing to keep your ears tuned to the voice of the people. The substance of my opposition to Judge Hyland is not legal, but rather moral. And upon his own admission of sexual impropriety, I would like to give to you the voice of the people, not only of my constituency, but of the area in which I have lived for those many years.

I say, frankly, gentlemen, that if my ear is attuned correctly to their voice, they are saying that because of the actions of Judge Hyland and the potential effect that it could have or is now having upon the credibility and integrity of the judicial system-- They should be heard. I know nothing of Mr. Hyland other than what I have read in the paper, and information that I have gaunted from sources made available here today, and letters that I have seen relating to this case. I would disagree with Mr. Parker, and say that no one of us as a public servant can divorce our personal life from our public life. Ultimately, we are held accountable to the people and in the final analysis, gentlemen, we shall be held accountable by God.

The voice of the people tells me that because on the basis of his own admission of sexual impropriety and the fact that a great shadow of doubt has been cast upon the judicial system, that it would be in the best interests of the people of the State of New Jersey and particularly the County of Camden -- that Mr. Hyland not be reappointed.

Maybe I can sum up my feelings in the following: What happens to the principles of honor, justice, integrity, and morality, if this Committee sends the nomination to the floor of the Senate, and that body grants Judge Hyland tenure? If this happens, I then believe, the good people of New Jersey will be justified in charging you with compromise and hypocrisy. Honor, justice, integrity, morality transcends the realm of politics, friendships, and deals. I cannot, however, bring myself to believe that this astute Committee will render such a decision after heartfelt consideration -- just you alone with you conscience and with your God.

God did not create woman to be a mere morsel to satisfy the lustful appetite of man, but to be a mother and the chaste keeper of children in the home. Honor, justice, integrity, morality. The choice is yours, gentlemen.

I have spoken from my heart. The will of the people of my area and I ask you. I urge, I challenge you do not crucify the honor and purity of our womanhood upon the cruel cross of political expediency. Thank you.

SENATOR O'CONNOR: Any questions? (negative response)
Thank you, Reverend Schieber. The next witness is James Gruccio.

J A M E S J. G R U C C I O, E S Q.: Good afternoon Mr. Chairman and members of the Committee. My name is James Gruccio. I'm a member of the firm of Gruccio, Pepper, Giovinazzi, and DeSanto, and a board certified trial attorney by the Supreme Court of this State. And I appear today primarily to discuss the actions or inactions and the constituency involved in the Supreme Court Committee, better known as the ACJC, the Advisory Committee on Judicial Conduct, and its impact on this case.

But, I feel compelled by virtue by having heard what I heard today by various members to try to put the focus of this hearing in perspective and see what the issue is, because, I think that we have run amuck and we have gone into areas that, if we pursue them, we cannot retreat from. Because if we will listen to the admonitions of the good Reverend, then we must -- and this Committee must -- make moral judgments about judges appearing before it. I don't know whether you're prepared to do that. But if you are, then I suggest to you that it is indeed a difficult task, because we must state the proposition first.

Is the proposition that any lawyer or judge who fornicates or commits adultery must not be a member of the bench? Is that the proposition? If that's the proposition, I suggest to you that you should amend the State's statute that enables the enactment of the rule that gives rise to the Advisory Committee, because every time that they decide that they are going to reprimand an individual, then you must somehow remove them from office. Because you can't have one

set of rules for incumbent judges and another set of rules for potential judges, who have not been judges yet, and another set of rules for judges who have been judges but hope to continue by virtue of getting tenure.

So, if you're going to start imposing moral judgments, then I guess we have to start talking about moral judgments. And I don't think that that's what we're here about, because if you listen to the Roman Catholic theology and they're going to impose moral judgment on somebody's behavior, then any man who has entered into a valid illicit marriage can never ever have sex with anyone -- a second wife, a third wife, or anyone else.

And if you're going to listen to Jewish theology, they're going to tell you that unless you remember to get-- After you get a civil divorce, the same is true. And if you're going to listen to some other theology, then they are going to tell you that it's perfectly valid and licit to enter into seven or eight different marriages and those marriages and the acts pursuant to those marriages are perfectly valid and they are not adultery, as might be interpreted under Jewish law or as might be interpreted under the Roman Catholic tenets.

So, all I say to you is be careful when you start down a path of making moral judgments that I thought were reserved for God, because I don't know how you get back. I don't know whether you ask all of the Assemblymen to resign if they've every fornicated or adulterated? I don't know whether you ask all of the members of the Senate, and the Governor, and the potential candidates for Governor to do so? I think, you're headed down the wrong path.

I think the issue is -- and it was stated distinctly by someone who testified against Judge Hyland, it seems to me; I think her name was Hollway, the Camden County Commission on Women -- she said that they rejected Judge Hyland for reappointment because he committed an act which indicated a lack of discretion and sound judgment in that incident. I don't condone what Judge Hyland did. I think it's wrong.

I'm not going to pass moral judgment on that. That's for God at some later date. I'm not going to pass a personal judgment on that because that's for his family and his wife and others associated with him. I think you have to get in focus what you're doing. And what we're doing is making a judgment about an incident. And if this Committee, in its infinite wisdom, decides to make that judgment and establishes the premise that if a judge commits adultery or acts in accordance with those facts that you found in the record, he should be removed from office, then the natural outgrowth of that is that you must ask everyone who appears before this Committee whether they've ever done the same thing. Because you can't make fish out of fowl because it's been publicly disclosed, and something else out of something else because it has not been publicly disclosed.

Now my primary purpose is to address the Committee. I'm no expert. I'm a trial attorney, and I guess I fall under the category that some physicians use when they say, "If you see one, then do one, then you can teach one, and you become an expert." Well, I handled the only case where a Superior Court judge was publicly reprimanded by the Advisory Committee, but where the Supreme Court found that they overstepped their bounds, in their zealous assiduous pursuit of the judge, they overstepped their bounds and they reversed the committee. It's the first time the Supreme Court, to my knowledge has ever done that. So, I guess that makes me an expert, because I don't know of anybody who has done it.

But as I hear, as Assemblyman (sic) Cardinale said, that this Committee is elitist, or that it is geared to a particular bent, it raised my hackles because I appeared before that committee and I wrote a letter to the Supreme Court complaining about the committee and its prejudice in reverse, because not only are they the prosecutors of judges, but they are the hearing officers of judges. And if Mr. Cardinale would

have pursued the reasoning of why the rule called for the appointment of retired judges and lawyers and four members of the laity, so to speak, he would have realized that the reason for that is that you have a judicial body, as well as a fact-finding body. You don't have a jury of your peers and a judge sitting to determine the law. That committee does both. So, by its very essence, it has to have the component to determine both the law and the facts. And that's why you need a Committee with judges and lawyers and elitists.

And parenthetically, when I was a poor Italian Catholic and couldn't afford anything, we were discriminated against, and I guess because you get an education and you go to school and you accomplish something, you're discriminated against because you're an elitist by that definition. But it offends me because that committee is not an elitist group. They are doggedly determined. They go overboard to make sure that they pursue the judge in a fashion like you've never seen before. So, if anything, rather than being a member of the old boys' club, or an elitist group, they are an ardent, strident, assiduous group of individuals who pursue judges relentlessly.

And if there are two identifiable groups, then, in the 25 years that I've been practicing I've come across, that have no constitutional rights, one is resident aliens; they don't fall under the Constitution because they are not citizens. So, they're not entitled to it, right? And the other identifiable group are Superior Court judges. And the answer to the question that was posed here, "Where are all the judges in favor of Judge Hyland?" the answer is they can't come here, because I asked to have in my case some of the Superior Court judges come, and the answer was, "They can't." They have to get permission from the Chief Justice, who is ultimately going to hear the case. So, they can't be here in his defense. Let's set the record straight as far as the committee is concerned. That committee's report -- you can rely upon. And you can rely upon that they did their homework and some.

The question really is, and the gut question is whether or not you gentlemen are going to stand up to all of the political rhetoric and all the phone calls -- and I suspect that for every phone call that you got pro, and you got con -- and you're going to make a judgment that's correct. Now it's easy to realize what Mr. Cardinale has done by impaling you on the horns of the proverbial dilemma, because what he says to you is, "Have you stop beating your wife, yet?" Because he says to you, "If you don't vote this guy down, then you're a member of the old boys' club and you've been reached somehow. If you vote him down, then he wins because he opposed him and put out a press release against him.

So, it's a win/win situation. But you've got to stand up to that kind of conduct and rhetoric and decide what is going to prevail. And I'm not here to tell you should approve the renomination of Judge Hyland. I don't know the answer to that. All I know is, you'd better be sure that you know what you're doing when you say, "This is going to be the proposition -- no judge or elected official should be permitted to make a mistake." And we're equating public reprimand with removal from office, because that's what you're doing. You're telling that Committee that-- I'm sorry, is it Senator or Assemblyman?

SENATOR O'CONNOR: Senator.

MR. GRUCCIO: --Senator Cardinale is so concerned about it, you're telling that Committee that, "We have delegated responsibility to you of such magnitude, that if you vote for public reprimand of a judge, it's tantamount to removal," because that's the premise. Now, I don't think what Judge Hyland did was right, and you've heard a lot of people say that it's not right. But I believe in the women who had the stickers on. I believe in the integrity of the judicial system. And you have to keep that integrity intact from all attacks, one of which is to say to judges, "You must be perfect." Now if you're going to say that all judges must be

perfect, and all legislators and governors and Assemblymen must be perfect, then I rest my case. Because all we'll do is require perfection. If you're going to say that everybody is human and we make mistakes and we have all have proverbial skeletons in our closets, then the only judgment that it seems to me, if I were sitting in one of those chairs, that I would make is, is this matter sufficiently harmful and egregious, that it should rise to the level where we should say this kind of a mistake is inexcusable? And if you do that, then the natural outgrowth of that is that you must say that to all judges and all elected officials -- the Harts and the Bakkers, and everyone else whose name has been bantered about connected with sexual misconduct.

But, I caution you to not go down the road of making moral judgments, as I said in my opening remarks, because that's an irretrievable road that you can never come back from. And we're all going to wax eloquently about how many angels can dance on a head of a pin, trying to determine what the appropriate moral standard is to apply. And as a Catholic, perhaps I have one, and as a Jew, perhaps, someone has another one, and as an atheist, somebody has another moral statement.

So, I don't think that you can equate morality with good judicial performance. I think what you need to look at is how many times has he been reversed? How many motions, how many thousands and thousands of motions has he decided without a complaint to the Ethics Committee? How many thousands of cases has he tried? How many hundreds and thousands of lawyers have appeared before him without a complaint? I think these are the kinds of things that you have to look at. Thank you.

SENATOR O'CONNOR: Thank you. Senator Orechio.

SENATOR ORECHIO: Mr. Gruccio, your comments were somewhat interesting. I guess what you're saying in effect, maybe the gubernatorial questionnaire ought to include a

question for prospective judicial candidates, "Have you ever had any extramarital affairs?" If the answer is yes, you're eliminated from consideration. Or additionally, if a sitting judge or lawyer is involved in a divorce, in somewhat of a messy divorce, and maybe allegations made by the ex-wife that he had relations with his secretary or whatever, and if the court digs deep enough and they come up with that information, if the judge is sitting, do we then say that the judge is removed; or if he's not sitting once he's considered for judgeship, do we say that he's not qualified to be a judge? Is that an extension of the same thing?

MR. GRUCCIO: It's an extension, and I will even go further, because once you go down that line, as I mentioned, then your opinion and mine could differ about whether a second or third marriage is even adulterous. I mean, you can have a Roman Catholic theologian here telling you that anyone in the second or third, if their first marriage was valid and licit, is guilty of adultery by living in that relationship. So, I mean, you can't make those kinds of moral judgments. If you make a judgment against Judge Hyland, so be it. But, don't make it on the basis of infinite morality and perfection. Make it on the basis that whatever you think he did rises to such a level that it's inexcusable and we're never going to permit that kind of conduct of anyone in public office. That's all I'm saying. Just paint everybody with the same brush. Because I agree with these women.

The one thing that I caution you about is that you don't have the facts before you. You don't have witnesses before you. You don't have cross-examination. You're given an unfair task because you're given the challenge to make a decision without the facts, without the benefit of cross-examination. With a little bit of hearsay here and a little bit of who said, I said, she said, we said, I saw, you saw; and nothing is credible, because it doesn't stand the test of being under oath, and subject to cross-examination.

SENATOR O'CONNOR: Excuse me, Mr. Gruccio, on that point, we have the determination letter of the EEOC and we have the presentment and the complete transcript from the Committee on Judicial Conduct.

MR. GRUCCIO: If you want to look at it in that regard, then what you have to say is the rights to the party arose as a result of this incident. And this young woman had rights. She had a right to file a grievance and to get paid money and to ask for reinstatement and she got those rights addressed in the EEOC, and she got them addressed in the forum where there was no cross-examination, no testimony under oath, and reportedly a biased investigation. So, she had her quantum of rights, legal rights addressed, and she got paid money in that forum.

If you want to say that we want to punish a judge for engaging in that kind of conduct, then you gentlemen, or some people like you, previously, passed State laws called enabling acts that gave rise to the Supreme Court rules, under which he was punished. So, you have those two forums for already acting on this matter. That's why I say to you that your only out is to say to the Advisory Committee on Judicial Ethics, "If you ever publicly reprimand a judge, he's done," because you're equating public reprimand with dismissal. Now, you can call it non-renewal, but for man who gave up his practice five years ago, went on the bench, went into a pension system, in effect retired from the practice, it's the same thing as dismissal. That's what I'm saying to you.

SENATOR O'CONNOR: Right, and what I'm saying is that we do have the benefit, in the sense of live testimony; not live testimony, but the testimony of witnesses, who were under oath and who were subject to cross-examination.

MR. GRUCCIO: That's why I said the issue was placed in focus by Ms. Hollway when she said that the Camden County Commission on Women voted against Judge Hyland's reappointment

because of the findings of that committee. Now if you're going to go along with that proposition, case close. If you're going to say that Judge Hyland's admission and the finding of that committee, which is the only finding under oath, is what should be obtained, then it's case closed. If all you say is whatever that committee appointed by the Supreme Court decides, we're in effect going to go along with it. And it's a done deal because that's what the Camden County Commission on Women said. And all I'm saying, too, is if you go down that road and make that judgment, just realize where you're going.

SENATOR O'CONNOR: Senator Codey.

SENATOR CODEY: Mr. Gruccio, if I'd come in here and listened to your testimony not knowing anything about this case, I would assume from what you said that this was a simple matter of Judge Hyland maybe having met someone in a bar and walked across the street to a motel on two occasions and that was all there was to this case. That's hardly the case, though, as you know, sir. This is a judge who compromised the judiciary, who had sexual relations with his secretary whom he hired and has the right to hire and fire, and in addition gave pornographic gifts to her while in his chambers. It goes far, far beyond any sense of whether or not this Committee or the Senate should or should not allow Judge Hyland to be put onto the bench for life because of a simple adultery case. And I cannot let you--

MR. GRUCCIO: No. I think you're missing the point, respectfully, Senator.

SENATOR CODEY: Well, I'm not missing any point.

MR. GRUCCIO: I think you're missing the point.

SENATOR CODEY: Well, I disagree with you.

MR. GRUCCIO: All right then, I would like to restate the issue.

SENATOR CODEY: That was the point that you were trying to make. And it goes far beyond that.

MR. GRUCCIO: I'd like to restate the issue. First of all, if you have found--

SENATOR CODEY: I know the issue. I don't need to have you restate it at all.

MR. GRUCCIO: I'd like to respond then. If you have found as a matter of fact that what these accusers say is correct, then--

SENATOR CODEY: No, I stated the facts of the case are undisputed by the Judge Hyland.

MR. GRUCCIO: And the facts of this case that are undisputed, I assume, are those that were related by Judge Hyland.

SENATOR CODEY: That's correct.

MR. GRUCCIO: Okay. And if you're comfortable with those facts, that's what I said to the Chairman. If you're comfortable with those facts and saying that when someone engages in this kind of conduct, it is irretrievable, unforgivable, and we're going to say that you can't be a judge, then it's case closed. I agree with you. All I'm saying to you is then you must go down the road, and you must say if it's not two sex acts, but one sex act, and it's still with a judicial secretary, is that okay? Well, how about if it's not my judicial secretary, but somebody else's judicial secretary, is that okay? So, once you start down that road, it's very very difficult to stop, because, you see-- Reduce it to absurdity. You can take this thing and reduce it to absurdity once you start making moral judgments like that.

SENATOR O'CONNOR: Senator Ambrosio.

SENATOR AMBROSIO: Mr. Gruccio, if we eliminate moral judgments in our deliberations, let me suggest some other judgments that we might have to consider in making a determination. Would we be on sound grounds to make a judgment that Judge Hyland should not be reappointed if we find that he's guilty of misconduct in office?

MR. GRUCCIO: Well, first of all--

SENATOR AMBROSIO: Just simply yes or no? If we make a finding that Judge Hyland is guilty of misconduct in office, can we reasonably deny him of reappointment?

MR. GRUCCIO: It depends on the misconduct.

SENATOR AMBROSIO: Misconduct in office. You're saying that there are grades in misconduct?

MR. GRUCCIO: Of course.

SENATOR AMBROSIO: Well, let's go one step further.

MR. GRUCCIO: One of the letters that I wrote to the Supreme Court was challenging that--

SENATOR AMBROSIO: Just a minute. I listened to your soliloquy, just listen to mine. Okay?

MR. GRUCCIO: Okay.

SENATOR AMBROSIO: Let's assume that we find that Judge Hyland's conduct is prejudicial to the administration of justice and brings the judicial office into disrepute. If we make those findings-- Now, I'm not saying that we're going to, but would those be grounds to deny the appointment if we find that that took place?

MR. GRUCCIO: All right. You have to read the words carefully that you just read, because my answer is yes to the words that you just read--

SENATOR AMBROSIO: Now, let me just go one step--

MR. GRUCCIO: --and they are speaking in the future. The words that you use speak to the present and in the future, not to the past.

SENATOR AMBROSIO: Let me just say this, you pointed out that the Advisory Committee on Judicial Conduct was the only hearing where there was testimony under oath.

MR. GRUCCIO: That's right.

SENATOR AMBROSIO: And the findings that I'm talking about -- they made them. Those are not our findings; they made them.

MR. GRUCCIO: That's correct.

SENATOR AMBROSIO: Those findings are really part of the record of Judge Hyland.

MR. GRUCCIO: No question about it.

SENATOR AMBROSIO: And what we have to decide as Senators is whether or not that record justifies reappointment. Now I asked this question earlier to Judge Hyland, and I'm going to ask it of you. Should we apply different standards for someone being appointed for the first time than someone that's going to get life tenure?

MR. GRUCCIO: Well, in my judgment you should, but in a different manner, and let me explain to you why.

SENATOR AMBROSIO: Please, I don't want long-winded answers. But what I'd like to do--

MR. GRUCCIO: I'm trying to answer directly. I can only answer.

SENATOR AMBROSIO: And your answer is, they'll give--

MR. GRUCCIO: My answer is that when you come here or if I came before this Committee and asked to be a judge and I had an established practice, and you'd said, "No, Jimmy, you can't for this reason," I'd go back to my practice, my life is not disturbed, and everything is confidential. That's different than a sitting judge who has to stand the rigors of this kind of examination who has given up his practice, gone into a pension system, and has taken a track of judicial appointment.

SENATOR AMBROSIO: For a term. For a term, which is expiring.

MR. GRUCCIO: Certainly.

SENATOR AMBROSIO: Which is expiring. No one has a vested right to reappointment. And don't you think that we have a duty to examine that judge's tenure over his initial term and make a judgment as to whether he should get another appointment?

MR. GRUCCIO: No, question about it. I think you do. That's the nature of this proceeding. Absolutely.

SENATOR AMBROSIO: Thank you.

SENATOR O'CONNOR: Any other questions? (negative response) Thank you.

MR. GRUCCIO: Thank you.

SENATOR O'CONNOR: The next witness is Tina LoSasso, Commission Against Gross Employment Standards. It is now five o'clock and the Committee is going to deviate somewhat. We'd like to ask that everyone be as concise as possible and only offer something new if you could -- something we haven't heard yet.

T I N A L o S A S S O: My name is Tina LoSasso. I'm a Cherry Hill Resident and spokesperson for CAGES, Community Against Gross Employment Standards. Senator O'Connor and members of the Judiciary Committee, normally I would feel privileged to appear in front of this distinguished Committee. Today, I'm afraid, I cannot say that. New Jersey is at its lowest point, not just for women, but for thinking taxpayers if its elected officials believe that the ramifications of this reappointment would not send out a horrible message to our citizens. Ironically, this message would be delivered to an electorate that now believes that we as New Jerseyans have developed a new pride and yes, even our own identity. It would be a low blow to residents who have been told that we have the best legislators and judges, and that we're no longer the joke between Philly and New York.

How could we hold our heads up when we see judges from the Pennsylvania system which we've been told is both more corrupt and more easily influenced by political donations going to jail for \$300 while we see our legislators and Governor were approving \$75,000 of our money to pay off a claim by a fired female employee? \$75,000 is not a small sum. Nor is it a token payment, nor is it a nuisance claim. This woman was paid

almost five years of her wages or three years of wages for you, Senators. As for the budget being approved, I've spoken with a legislator who recalls very specifically questioning the approval of the settlement and being told that it was part of a settlement agreement where Judge Hyland would not be seeking reappointment. If you asked, Senators, were you told the same thing?

While the media has been focusing its attention on the facts of the sexual actions of this case, few Senators as part of the process should know that some of us also understand the process itself. The offensive and easily explosive nature of this entire controversy is such that many of us have had to learn more about the process, as well as how it works or how it's supposed to work.

We've also seen the pleasant trappings we've been shown, the nice platitudes, the flowing press releases, and the words that ring out like, "The freedom to have the full Senate hear the matter, rather than to be brought by one individual." It sounds like "liberty and justice for all," but reads like a bad comic book story written by male politicians laughing off his poor judgment, the perverted sexual pleasures of one of the good old boys.

This time we're reading between the lines and the joke is on us taxpayers. We do not think it's the least bit funny. There's nothing comical about the taxpayers' dollars paying off a suit involving crotchless panties stuffed with a whistle and cash. Did Mr. Sheridan not go from Governor Kean's cabinet to Judge Hyland's law firm? Did we not read that Mr. Cole was in the Attorney General's offices when the settlement was reached? Did we not hear Mr. Cole delivering the words of freedom for the Governor? The difference is that now we also question the system and found that sometimes the wires seemed to be well connected in advance of obtaining the electrical permit.

Governor Kean should be reminded that Judge Bullock, (phonetic spelling) who lives very close to Judge Hyland was never given a chance to defend himself against the innuendos and attack upon him by local chiefs who thought they were losing too many cases. The Governor's memory should be refreshed that there was a sitting judge, and a good one, who was refused a hearing. Are we to be left with the impression that memories are convenient when it comes to cronies versus employees? Are we to be left with the impression that a few police chiefs, with officers, that could not carry their burden of proof, as required by law, can do without law itself -- and millions of men and women cannot do--

I was very disappointed that Governor Kean did submit Judge Hyland's name for reappointment. I was also disappointed that our Camden County Senators did not utilized the Senatorial Courtesy to stop the nomination. However, I was glad that Senator Dalton did voice his opposition to Judge Hyland's reappointment. Please believe that we understand by acting before February 23, you're voting for tenure for life.

Please ask yourselves whether you'd like to be a rape victim, having to face a defense attorney's cross-examination with Judge Hyland by your side. Would you feel that you were receiving a fair hearing, if you appear before Judge Hyland on a sexual harassment matter? Should the Assignment Judge be asked to pick and choose a trial based upon the various judges' past conduct? Do you really believe that this would be a good precedent?

On behalf of the people of New Jersey who've now developed a positive image, please do not rush to judgment on this matter. I ask you to stop this reappointment. At the very least, do not allow this to be reported out of Committee until after February 23, as we do now understand both the system and the messages that can send. I thank you for your time and your consideration.

SENATOR O'CONNOR: Thank you. Are there any question?
(negative response) The next witness is Golden Sunkett.
Golden "Sunny" Sunkett, as Senator Codey reminds me, the
consummate Seton Hall University basketball fan.

G O L D E N L. S U N K E T T, J R., E S Q.: I should
say good evening by now. Mr. Chairman O'Connor, Vice Chairman
Zane, and members of the Senate Committee, I can only say to
you after this long day that I've been a practicing attorney
for over 16 years and I have tried at least 20 to 22 cases, I
guess, in front of Judge Hyland.

I've appeared before him -- settlement conferences,
I've tried criminal matters and civil matters before him, and I
can tell you, gentlemen that he is one of the finest judges
that I've ever had the opportunity to appear before. I've
heard the testimony as you gentlemen have. I won't go into all
of that, but I would like to echo the testimony of the members
of the trial board that have appeared before you, that have
testified as to the competence of Judge Hyland. I find he's
very, very bright. When you appear before him, you know that
you're going to get a very, very fair judge. And as a trial
lawyer, that's what we look for.

So, I can tell you that I would like to see him
confirmed. If you have any questions, I'd be very happy to
answer them.

SENATOR O'CONNOR: Thank you. Are there any
questions? (negative response) It appears there are none. The
next witness is, Cass Wadsworth, from the AARP of Bellmawr, New
Jersey.

C A S S W A D S W O R T H: Good afternoon, gentlemen. It
was morning when I came. My name is Cass Wadsworth of
Bellmawr, Camden County. In 1972, I was the founding President
of Bellmawr Chapter 2231 of American Association of Retired
Persons, AARP. Present membership is about 375 retirees, ages
55 to 89, with a number of chapters in New Jersey, and 23
million members nationwide.

Our motto is, "To serve and not to be served as volunteers in our community." And we've really had that impact. Men and women are equally horrified, appalled, and shocked that the sexual misconduct of Superior Court Judge Richard S. Hyland seems to be condoned by his peers.

Facts are already on the public record. He was publicly reprimanded, and assessed \$20,000 of his money and \$75,000 of taxpayers' money. This is no teenage experiment. He's now 52 years of age. We expect moral integrity from our judges, not impropriety, but actions that could be held up for public scrutiny. Be a role model for the children.

Judge Hyland has a wife and three children, but his former secretary will forever be an invisible partner in his home, and after all of this exposure, in public too. Certainly, not enviable.

Senior citizens do not condone such judicial behavior, but consider it demeaning, demoralizing, and certainly not in the public trust. Judge Hyland, by his own admission, has disgraced his robes, and may we suggest his immediate removal from the bench.

Under no circumstances should he be confirmed for a lifetime appointment. Judge Hyland will discover that his encounter with his secretary will be his Chappaquidick which the public will not soon forget. Thank you for listening.

SENATOR O'CONNOR: Thank you. Are there any questions? (negative response) Thank you very much. The last witness that we have is Karen Spinner of the Coalition Against Sexual Offenses.

K A R E N S P I N N E R: Good afternoon, Senators. Thank you very much for the opportunity to be able to speak before you. My name is Karen Spinner and I representing the Coalition Against Sexual Assault. We're asking you to reject the renomination of Judge Hyland. Judges need to be role models. They are the final arbiters of our laws and they must be above

reproach. Those who come before the bench have a right to expect that the judges that will judge them have not been guilty of offenses or misconduct.

The behavior of Judge Hyland, as much as he regrets it, has damaged the court. Our restrictions on the judges are very severe. Whenever you look at court employees, they are not allowed to participate in certain activities, serve on nonprofit boards, be involved in many of the things that are good for the community. We hold them to a much higher standard than the ordinary citizen. We must look at this and this behavior that Judge Hyland has admitted, and I ask you not to reappoint this man for life tenure. His own conduct dismisses him from this position. Thank you.

SENATOR O'CONNOR: Thank you very much. Any questions? Senator Zane.

SENATOR ZANE: A number of witnesses that have appeared have stated that he should not be reappointed for life tenure, which means a second term, as such. Are you suggesting anything else with that comment?

MS. SPINNER: No. I'm not suggesting anything else. I don't think-- If this were his first appointment, I would be opposed to it as well. I don't think it's appropriate behavior for a judge.

SENATOR ZANE: To this Committee, that could mean several things. A second appointment would be in fact, a life appointment at this point. If, in fact, there's a break in that flow -- and I guess the magic date is February 23, if I'm correct -- if, in fact, there's not a reappointment by February 23 or an appointment after that, several years from now there would be a further review. Are you suggesting that that would be-- Not that this is going to control the Committee, I just want a clarification on what a number of you have said. And I'll ask you to speak for yourself. Are you suggesting in your opinion, that that's acceptable?

MS. SPINNER: No. It's not acceptable.

SENATOR ZANE: Okay. Thanks.

SENATOR O'CONNOR: Thank you very much.

MS. SPINNER: Thank you.

SENATOR O'CONNOR: We're now at that point in the proceedings, and we are going to continue, although we've been sitting continuously since 1:15. We will afford Judge Hyland the opportunity to make a final statement to the Committee. I'm sorry, Mr. Satz? (Mr. Satz requests a recess) We'll take a five minute recess.

(R E C E S S)

AFTER RECESS:

SENATOR O'CONNOR: The meeting will come to order again. And we will now afford Judge Hyland the opportunity to make a closing statement to the Committee.

JUDGE HYLAND: Mr. Chairman and Senators, I have very good news for you. I'm going to be very brief. It's been a long day, and just a couple of points I'm going to cover, then I'll close. First of all, I want to clarify some facts.

There was a suggestion -- in fact, the implication appears that my secretary was fired because she went to Judge Di Martino with complaints of sexual harassment and that there was a letter of termination after that. What actually happened was that I concluded on the particular day in question, I hadn't planned to fire her that day, and I can't recall exactly what day it was-- I did say I don't think we can just continue any further in this matter, and that would give her some time to find another position.

It was the next day that she went to Judge Di Martino and made the complaints of sexual harassment, which I'd never heard about before. And obviously, he called me in. She

then continued to talk all through the courthouse about what I had done, and she dramatized these fabrications. She was still my secretary. I was still trying to have the phone calls answered, I was still trying to have her do work in my judicial capacity. And after four days or so of that situation, when she would be on the phone or attempting to spread more of the stories, I finally concluded that I couldn't, in fairness to myself and the system, allow her to continue.

And it was approximately a week after the verbal termination in my office, that a letter was typed. So, that was a misconception, and I want to clarify that. She did, in fact, go to Judge Di Martino, and the letter of termination was later, but not because of that.

The second point I want to clarify is that there are some suggestion that when the settlement was paid, that there was an understanding that I would not seek reappointment, that there was some kind of deal cut. That's absolutely untrue. That's a canard. If that was true, I wouldn't be here today. I would have gracefully, and on my own terms, bowed out some time ago and not put myself, my family, or this Committee through all of this.

In good faith, I felt that given an opportunity to continue in my term, I would work as a good judge and hope that if my name was resubmitted for nomination, that I would be given a fair hearing by the bar associations, by the Governor's office, and if it got to the Committee, eventually to the Committee. And I trusted and abided in the good faith and reasonableness of the people involved in the appointment process.

It's been suggested that why would I put myself through this? Obviously, I wouldn't, because I think the system has been a pretty good system. I'm confident that the system does work, and it's important that sitting judges be reconfirmed -- if in fact, they are entitled to that. And that

was your ultimate decision, and I'm not going to suggest anything further about it at this point. But there were no deals cut, no understandings. I'm here as a free agent for your analysis.

I also want to suggest that there has been some talk about, "Well, how could you subject your wife to this?" That's a little sexist, in some ways. She's an independent agency, and she wanted this. She wanted an opportunity for me to finally tell my story. She's been with me all through this; sitting by me. To suggest that I fabricated some kind of defense to save myself from the sexual harassment charges, is just so incredible. My wife is a very private person. But, she's been very fair to me about this and said that, "If this is what you want, I'm behind you 100 percent." So, I want to put any notion that I have done something improper in terms of our relationship and used her in some way to fabricate tales of these indiscretions-- And you can imagine every time she goes to a Seven Eleven or the supermarket with all the headlines that we've heard, what that must mean to her. And you know that that can't be true.

In conclusion I want to thank you very much. I think the process has worked very well so far, and every opportunity I've had before bar associations, the Governor's office, and this Committee, I've had a fair chance. I've had an opportunity here today for the first time, because of the patience of you gentlemen, to explain my side of the story, and I want you to know that I'm forever thankful for that because it's the first chance I've really ever had. I'm not going to prolong this any further. I want to express my deep appreciation of myself and my family for what you have endured, your patience, your questions, which were good. And thank you very much.

SENATOR O'CONNOR: Thank you, Judge. Are there any questions? (negative response) I would like to thank everyone

who came today and testified. Thank you, not only for your testimony, but for the orderliness with which you addressed the Committee; and for those of you who didn't address the Committee -- there were no disruptions or anything in the courtroom, and I want to thank you all. And thank you for sitting through the full day of the hearing. The Committee will now adjourn and we will resume this particular matter tomorrow at 10:00 a.m. along with the other business that's on the Committee's agenda. Thank you very much.

(MEETING CONCLUDED)

APPENDIX

In the Matter of

RICHARD S. HYLAND,

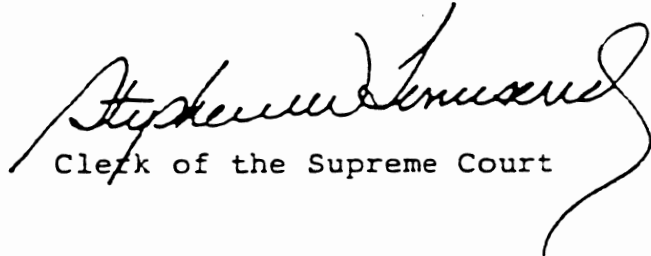
O R D E R

Judge of the Superior Court.

The Advisory Committee on Judicial Conduct having filed a presentment recommending that Superior Court Judge RICHARD S. HYLAND be publicly reprimanded, and he by his attorney having waived oral argument, and good cause appearing;

It is ORDERED that JUDGE RICHARD S. HYLAND is hereby reprimanded, substantially for the reasons expressed in the presentment of the Advisory Committee on Judicial Conduct.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice,
at Trenton, this 6th day of December, 1985.


Clerk of the Supreme Court

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS



CN 037
TRENTON, NEW JERSEY 08627

FOR RELEASE: NOVEMBER 18, 1985

CONTACT: EARL JOSEPHSON (609-292-9580)

The Supreme Court has released a presentment of the Advisory Committee on Judicial Conduct (ACJC) against Superior court Judge Richard S. Hyland, and also released his statement concerning the matter.

The ACJC recommends the imposition of public discipline, but its findings and recommendations have not been adopted or approved in any way by the Court, which has not yet considered the matter on the merits.

Regardless of the Court's ultimate disposition of the matter, the Court's general policy is to make public at the same time any action of the ACJC that recommends public discipline of a judge, together with the judge's response.

The Advisory Committee consists of two retired Justices of the Supreme Court, four members of the Bar, and three public members. They are: Hon. Mark A. Sullivan, Hon. Sidney M. Schreiber, Russell M. Fairbanks, Esq., Victor C. Harwood, III, Esq., George Kugler, Jr., Esq., Lee Hilles Wertheim, Esq., Mr. Robert L. Boyle, Mr. William M. Morton, and Professor Walter F. Murphy. Justice Schreiber and Attorney Kugler did not participate in the hearing or decision of Judge Hyland's matter.

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STATEMENT OF JUDGE RICHARD S. HYLAND

I am pleased that the Advisory Committee on Judicial Conduct has cleared me of the false charges of sexual harassment and unlawful discharge filed against me by my former judicial secretary. In order to present a truthful defense against these charges, I felt obliged to reveal indiscretions of a consensual character which are now long past and with which I was not originally charged. These indiscretions are matters of deep personal regret on my part, and I am grateful for the understanding of my wife and family throughout this trying period.

With the false charges against me now disproved, I intend to continue the performance of my judicial responsibilities with the same dedication I trust I have always displayed in the past.

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SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON JUDICIAL CONDUCT
DOCKET NO. ACJC 83-25

IN THE MATTER OF
JUDGE RICHARD S. HYLAND

PRESENTMENT
RECOMMENDING PUBLIC REPRIMAND

I. INTRODUCTION

This matter is before the Advisory Committee on Judicial Conduct upon a Complaint alleging that the Honorable Richard S. Hyland, J.S.C. (hereinafter "Respondent") gave pornographic literature and sexually oriented gifts to his judicial secretary (hereinafter "Complainant"), sexually harassed her, and subsequently discharged her when she continued to reject his advances. The Committee also has before it a Motion for Disposition of Charges, filed on behalf of Respondent, which is hereby denied except as otherwise set forth in this Presentment.

This matter was opened before the Committee upon receipt of a letter of complaint dated April 11, 1983 from Complainant to the assignment judge of the vicinage in which Respondent sat. In that letter, which the assignment judge transmitted to the Committee's staff by his letter dated April 2, 1983, Complainant stated that she was making a formal complaint that Respondent had "sexually harassed" her and had discharged her from her position as his judicial secretary because she "refused to give in to his desires and wishes." In a certified statement

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dated April 17, 1983, addressed to the assignment judge, Respondent denied Complainant's allegations of sexual harassment and averred that he had discharged Complainant because her work performance had deteriorated and because he had lost confidence in her judgment after she had refused to follow his instructions concerning a litigant's visits to his offices and after another judge reported to him that she had been making comments of a sexual nature regarding Respondent and other judges. The assignment judge forwarded Respondent's certification to the Committee by letter dated April 18, 1983.

During the following months, the Committee's staff conducted interviews of 38 persons, including Complainant and Respondent. Although those interviews yielded no direct evidence in support of Complainant's allegations of sexual harassment and wrongful discharge, other than Complainant's own statements, it became clear from the interviews that Complainant had complained of sexual harassment by the judge to her acquaintances and co-workers as early as three years prior to her discharge. The Committee decided to file a formal complaint against Respondent in order to take testimony under oath. That complaint, however, was not issued because there was pending a proceeding before the federal Equal Employment Opportunity Commission (E.E.O.C.) as a result of a Charge of Discrimination that Complainant had filed under Title VII of the Civil Rights Act of 1964. Since the

issues before the Committee were identical with issues before the E.E.O.C. and since the E.E.O.C. was conducting an independent investigation of Complainant's allegations, this matter was held in abeyance. Subsequently, the Committee was advised that the E.E.O.C. inquiry had been completed and that the matter in that forum was likely to be resolved within a matter of months. Thereupon, the Committee directed that a formal complaint be filed and served upon Respondent.

The formal complaint was filed on August 3, 1984, and served upon Respondent's attorney by letter of the same date. Count I of the complaint alleged that Respondent had engaged in a pattern of making sexual advances to Complainant, which she rejected, and of making offensive sexual comments to her, and had given her sexually oriented materials which she found to be offensive. Count II of the complaint alleged that Respondent discharged Complainant from her position as his judicial secretary because she had rejected his sexual advances. Respondent's Answer was filed on November 13, 1984, after the Committee had adjourned a scheduled hearing date at the request of Respondent's attorney and had also authorized the late filing of the Answer. In it, Respondent specifically denied the allegations of the complaint, except that he admitted to having given certain gifts to Complainant and to having exchanged sexually explicit material with her. Respondent stated in his Answer that Complainant had never indicated to him that she found the gifts to be offensive. He further stated that it was Complainant

who had initiated the practice of exchanging and discussing sexually explicit material and that he had gone along with that practice because of her urgings.

After an additional adjournment of a scheduled hearing, this time at the request of Complainant's attorney, a formal hearing was held beginning on January 18, 1985 and continued on March 13, March 14, and March 15, 1985. During the four days of formal hearings, the Committee took testimony under oath from Complainant and from Respondent, as well as from sixteen other witnesses. At the conclusion of the formal hearing, Respondent's attorney requested and obtained the Committee's leave to file a post-hearing motion and brief. The motion and accompanying brief were filed with the Committee on June 5, 1985.

II. FINDINGS OF FACT

Complainant's testimony consumed the first day and one-half of the Committee's hearing. She testified that in early 1980, approximately a year and one-half after she became his judicial secretary, Respondent called her into his chambers for dictation, closed the door, told her that he found her very attractive and invited her to look at some pornographic literature with him. According to Complainant she was shocked, refused to look at such "trash," and left the room. 1Tr. 25-9 to 26-4¹. Complainant testified that Respondent repeated such conduct on three or four occasions and that she then threatened to inform his wife. 1Tr. 26-5 to 19. In addition, Complainant testified that after September 1980, Respondent invited her several times to meet him at the Holiday Inn to engage in sexual activities but that she refused to discuss the subject with him. 1Tr. 29-13 to 31-8. The remainder of Complainant's lengthy testimony dealt with other alleged improprieties by Respondent but will not be further summarized herein because of the Committee's findings as to her credibility and reliability as a witness. It must be pointed out, however, that at no time did Complainant testify or allege that there had been actual sexual contact between Respondent and her. Indeed, she specifically denied that any such contact had ever occurred. 5Tr. 113-8 to 11; 2Tr. 6-18 to 22.

1. "1 Tr." refers to the transcript of the hearing held on January 18, 1985; "2 Tr." to the transcript of the March 13 session; "3 Tr." to the March 14 session; "4 Tr." to the morning session on March 15; and "5 Tr." to the afternoon session on March 15.

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Several witnesses testified before the Committee that Complainant had stated, as early as 1980, that Respondent was making sexual advances toward her and was trying to get her to look at pornographic magazines. See, e.g., 2Tr. 119-2 to 126-11; 2Tr. 134-1 to 135-5; 2Tr. 143-12 to 144-20; 4Tr. 8-24 to 9-14; 4Tr. 56-14 to 58-3. Of course, such testimony does not prove that the events actually occurred.

Taking into account Complainant's demeanor during the formal hearing and the inconsistencies in her testimony, as well as certain contradictions between her testimony and that of other, more credible, witnesses, the Committee finds her not to be a reliable witness. Therefore, the Committee rejects Complainant's allegations that Respondent sexually harassed her and finds that the charge of sexual harassment set forth in Count I of the complaint has not been proven.

On the subject of Complainant's credibility and reliability, the Committee notes by way of example testimony concerning three events.

First, according to Complainant, she had lunch with Respondent at a restaurant in the Ancora area and left the restaurant through the window of a restroom after Respondent told her that he had arranged a "threesome" for later that afternoon involving the two of them and another judge. Supposedly, Respondent went to the restaurant in Complainant's car, and was left stranded without a means of getting back to his own car. 1Tr. 50-7 to 55-21. Respondent vehemently denied that any such

incident took place. Originally, Complainant had testified that the restaurant was the same one at which she and Respondent had lunch on another occasion with a court reporter. 1Tr. 38-21 to 39-4. On cross examination, complainant denied that the restaurant was the Rare Bird restaurant, which had restroom windows through which it would be impossible to exit. 2Tr. 91-10 to 103-19. Subsequently, she testified that she was not sure whether the restaurant at which she supposedly stranded Respondent was the same one at which the court reporter had lunched with them. 2Tr. 110-6 to 111-15. The court reporter later testified that the Rare Bird was the only restaurant in the area that she had been to with Complainant and Respondent. 4Tr. 6-7 to 8-13. The court reporter also testified that she had stayed after lunch with Respondent and Complainant because Complainant had asked her to help her avoid Respondent. After Complainant made no move to leave, the reporter finally left. 4Tr. 9-20 to 10-3. According to Complainant, however, the court reporter stayed with them after lunch was finished even though Respondent had told her to leave. 1Tr.50-1 to 6.

A bizarre incident was related by a court employee, whom the Committee finds to be a credible and reliable witness. She and Complainant went to a restaurant-nightclub together, and she introduced Complainant to a man whom she had known for a long time, and who bought a drink for the two of them. 4Tr. 45-9 to 46-11. Shortly after leaving them, the man collapsed, and Complainant, who had not met him before

that night, went over to him and cried asking him not to do that to her. 4Tr. 46-12 to 25. Before the ambulance even arrived, the court employee saw Complainant "necking" in the corner with another man whom she had not previously met. 4Tr. 47-7 to 16.

The same court employee testified that on another occasion, as she and Complainant were returning from a nightclub in Philadelphia, Complainant announced her intention to buy "some dirty magazines" that very night. 4Tr. 44-12 to 16. The following day, Complainant confirmed to her that she had actually bought such a magazine. 4Tr. 44-24 to 45-8.

Another incident was related by an assistant prosecutor who testified that Complainant approached her at a department store in August 1984 and commenced telling her that she had prevailed against Respondent at the E.E.O.C. hearing and that Respondent consequently had to pay money to her. As related, Complainant told her that a major factor behind this success was that Respondent's former law clerk had delivered to the hearing's investigators for use as evidence a sexually related item that Respondent had tried to give to Complainant as a gift. 3Tr. 198-13 to 201-7. The assistant prosecutor later told her trial partner about this conversation. 3Tr. 201-8 to 14. As it happened, the trial partner was dating the former law clerk in question and relayed this information along to her. 3Tr. 181-13 to 182-1. The former law clerk, however, testified before the Committee that she had seen the item when

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Complainant showed it to her during the Christmas season in 1981 but that she never saw it thereafter and, further, that she had provided no evidence of any kind for the hearing. 3Tr. 163-20 to 164-15; 171-22 to 172-6; 182-4 to 6.

The most surprising testimony at the hearing came from Respondent who testified that he engaged in sexual relations with Complainant in December 1979, at her invitation (2Tr. 170-9 to 172-7), and again in July 1981 (2Tr. 199-6 to 201-2). He also testified that in March 1981 the two of them planned to have sexual relations and that he booked a room in a Holiday Inn in Philadelphia, but that both of them later backed out of the arrangement. ² 2Tr. 181-17 to 185-12. In addition he admitted to reviewing and exchanging sexually explicit material with Complainant at her request and to giving her two sexually oriented gifts. 2Tr. 162-20 to 164-9, 177-13 to 181-16; 3Tr. 15-5 to 15, 24-21 to 25; 5Tr. 80-11 to 19, 92-18 to 22, 106-19 to 25.

As indicated above in this Presentment, the Committee finds Complainant to be an unreliable witness. Since there were no witnesses to the alleged acts of sexual harassment, the testimony of Complainant

²When questioned as to why he had not informed the Committee's staff of his sexual liaisons with Complainant during his interview, Respondent testified that he had been asked if he had "propositioned" her, which he did not consider that he had done. He testified that he was not asked at the interview if he had sexual relations with her and that he would have admitted as much had he been asked that question. 5Tr. 96-7 to 98-17; 2Tr. 173-3 to 174-3.

is central to this charge. Therefore, the Committee does not find that the charge of sexual harassment has been proven. As to the charge that Respondent dismissed Complainant for refusing to give in to his advances, the Committee finds that Respondent's testimony that he fired her because he had lost confidence in her ability and her judgment is supported by substantial evidence in the record and that there is no credible evidence to the contrary.

Respondent testified that he lost confidence in Complainant as his secretary as a result of her deteriorating work performance (3Tr. 55-19 to 62-19; 3Tr. 77-18 to 78-20), her disregard of his instructions concerning a woman who was a litigant in a matrimonial matter before another judge and who not only visited Complainant in the office but even left her child there to be minded by Complainant (3Tr. 43-15, to 55-18; 3Tr. 80-13 to 81-9), and a report by another judge to the effect that Complainant had falsely told a local businessman that she and Respondent had engaged in sexual acts in his chambers (3Tr. 72-2 to 76-20). Although Complainant denied the validity of each of these asserted justifications, each was supported by the testimony of credible witnesses. The testimony of a court attendant and of Respondent's former law clerk supported Respondent's testimony on the subject of Complainant's work performance. 3Tr. 232-25 to 233-18; 5Tr. 13-22 to 14-24. The testimony of the same two witnesses and of a second court attendant supported Respondent's testimony concerning the matrimonial

litigant and her child. 3Tr. 231-19 to 232-24; 4Tr. 80-14 to 81-11; 5Tr. 22-17 to 24-7. And the local businessman testified about Complainant's story of relations in the courthouse. 5Tr. 4-21 to 6-9.

Accordingly, the Committee cannot find by the standard of clear and convincing evidence that the charge of wrongful dismissal has been proven.

However, the Committee finds Respondent to be a credible witness and accepts his testimony that he had sexual relations with Complainant on two occasions, arranged for but backed out of a third occasion, and presented sexually related gifts to Complainant in his chambers, as well as exchanging and reviewing sexually explicit material with her in chambers.

The Committee finds by the standard of clear and convincing evidence that by engaging in such conduct, Respondent has violated Canon 1 of the Code of Judicial Conduct, which requires a judge to maintain high standards of conduct so that the integrity and independence of the judiciary may be preserved, and Canon 2A, which requires a judge to conduct himself at all times in a manner that

promotes public confidence in the integrity and impartiality of the judiciary. The Committee takes particular note of the Commentary to the latter Canon, which provides in pertinent part:

A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Commentary, Canon 2, Code of Judicial Conduct.

The Committee also finds that Respondent's conduct constitutes misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute (R. 2:15-7(a) (1) and (6)) and that such conduct warrants a public reprimand.

III. RECOMMENDATION

By his own admission Respondent engaged in sexual intimacies with Complainant on two occasions, made all necessary arrangements to do so on a third occasion but subsequently changed his mind at the last minute, reviewed pornographic and "adult" magazines with Complainant in his office, and gave as gifts to Complainant, in his office, pornographic literature and two sexually oriented items. The Committee finds that this course of conduct brings the judicial office into disrepute and recommends that a public reprimand be administered to Respondent.

In the brief in support of his Motion for Disposition of Charges, Respondent contends that public discipline is inappropriate in this matter because the intimacies between Respondent and Complainant took place "only twice" in a "non-judicial setting" and constituted "a private matter between two consenting adults" (Brief at 48). Respondent further points out that his admitted conduct cannot be considered criminal in nature inasmuch as there are no statutory proscriptions, such as fornication or adultery statutes, concerning that conduct. Respondent also suggests that the Committee look to this Court's decision in State v. Saunders, 75 N.J. 200 (1977) (invalidating N.J.S. 2A:110-1, the old fornication statute) and conclude that Respondent's actions are

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constitutionally protected under the right of privacy (Brief at 49-50). In support of this proposition, Respondent cites In re Dalessandro, 397 A.2d 743 (Pa. 1979), in which the Supreme Court of Pennsylvania held that an intimate relationship between a married judge and a woman married to another man did not constitute a basis for public discipline of the judge because the relationship violated no law and had no connection with the judge's official conduct as a judge. 397 A.2d at 756-759. The Committee rejects Respondent's contentions for several reasons.

To begin with, Dalessandro is inapposite because it was decided under Pennsylvania law, which differs greatly from the law of New Jersey. Prior to Dalessandro, the Pennsylvania Supreme Court had held judicial disciplinary proceedings to be quasi-criminal. In re Dandridge, 337 A.2d 885, 888 (Pa. 1975); In re Dalessandro, 397 A.2d at 758. Therefore, the Dalessandro court was concerned about issues of due process in the criminal context. Since the Pennsylvania constitution specified the grounds for all discipline of judges (Art.5, §18(d)), the court construed the relevant provisions narrowly in reaching the conclusion that conduct not connected with the judge's official capacity could not be the basis for discipline unless such conduct were prohibited by law. 397 A.2d at 756-758. Under the law of New Jersey, however, judicial proceedings are regulatory rather than penal. In re Coruzzi, 95 N.J. 557, 577 (1984). This fact, coupled with this Court's broad authority over the judiciary

under the New Jersey Constitution, as opposed to the Pennsylvania court's narrow and specifically enumerated powers, renders the reasoning in Dalessandro irrelevant to the present matter. Furthermore, the Dalessandro court noted that it was only one of two tribunals capable of making decisions concerning the conduct of a judge, the other "tribunal" being the electors of the state since Pennsylvania judges are elected rather than appointed, and stated that the voting public would properly judge the conduct in question. 397 A.2d at 757-758. Of course, such a consideration is not relevant in New Jersey, where judges are not elected.

As Respondent recognizes (Brief at 49-50), this Court's disciplinary power extends to private as well as public and professional conduct by attorneys, and a fortiori by judges. In re Mattera, 34 N.J. 259, 264-265 (1961). As a creature of the Court, the Committee must logically have the derivative authority to examine conduct by a judge which, although perhaps done in private, reflects adversely upon the judiciary or upon that judge's discretion and judgment. In the present matter, the Committee considers Respondent's pattern of behavior, as admitted by him at the hearings before the Committee, to demonstrate such a serious lack of judgment as to warrant public reprimand.

Respondent admittedly exchanged and reviewed sexually explicit material with Complainant in his office. It was in that same office that he gave her the aforementioned sexually oriented gifts. It goes

without saying that such activities have absolutely no place in a judicial office. If the dignity of the judiciary is a goal to be pursued and a value to be preserved, as the Committee believes, then Respondent's pattern of conduct merits censure because it shows him to lack either sufficient respect for the dignity of his judicial position or the sound judgment that is a major requirement for one who holds judicial office. It is irrelevant that Respondent showed neither magazines nor gifts to anyone other than Complainant. Likewise, it is irrelevant that Complainant was the one who brought these items to the attention of others. Simply put, Respondent should not have done what he did, and every judge in this state should have more respect for the judicial position than to engage in like conduct.

As to his sexual intimacies with Complainant, Respondent emphasizes that they occurred out of the courthouse during off duty hours and were consented to by Complainant, who was actually the initiator of the sexual relationship. Having accepted as true all admissions made by Respondent, the Committee finds that by the very act of entering into a sexual relationship with Complainant Respondent is guilty of judicial misconduct.

The fact that the intimacies did not take place in the courthouse is irrelevant in the mind of the Committee (although the misconduct

would be seriously aggravated had they taken place there). What is relevant and what Respondent continues to ignore is the fact that Complainant was his judicial secretary. He was her supervisor, and she had the right to expect that he would deal with her in a professional manner. She was his confidential assistant, and he had the right to expect her to perform her duties in a professional manner. By entering into a sexual relationship with her, no matter who may have initiated the relationship, Respondent placed himself in a untenable position in two ways. First, he permitted a situation to exist in which Complainant might herself think, or lead others to think, that she would be able to exert influence over a judge because of their intimate relationship. It goes without saying that such a situation cannot be tolerated because it leads, at the very least, to an appearance that the judicial office has been compromised. Second, the willingness of an employee to enter into such a relationship with a supervisor must always be suspect because of the power that the supervisor has with regard to the employee. The Committee does not reject Respondent's statement that Complainant initiated the first sexual encounter and participated willingly in the second. The Committee does, however, note that employees are frequently anxious to please their supervisors out of concern for their employment. The Committee also notes that a third sexual encounter was planned but that Complainant later chose not to go through with it.

In fact, Respondent's relationship with Complainant has been the source of embarrassment to the judiciary because the evidence presented to the Committee showed that rumors concerning his conduct, both true and

distorted, have been circulating in and around the Camden County courthouse for some time. That fact, however, is not the basis for the Committee's findings of misconduct. The misconduct in this case lies in the lack of discretion and sound judgment manifested by Respondent's course of conduct.

Respondent's Motion for Disposition of Charges is denied to the extent that it is inconsistent with this Presentment and granted to the extent that it is so consistent.

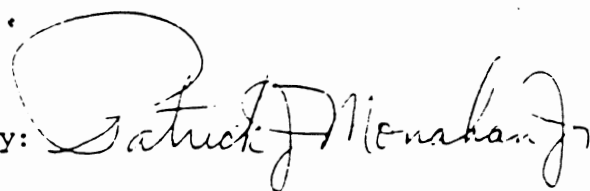
The Advisory Committee on Judicial Conduct respectfully recommends that the Court administer a public reprimand to Judge Richard S. Hyland.

Neither the Honorable Sidney M. Schreiber nor George F. Kugler, Jr., Esq. participated in the Committee's consideration or decision of this matter.

Walter F. Murphy and Russell N. Fairbanks, Esq. dissent from the Committee's decision and would prefer a private letter of admonition to Respondent.

Respectfully submitted,

THE ADVISORY COMMITTEE ON JUDICIAL CONDUCT

DATED: September 25, 1985 By: 
Patrick J. Monahan, Jr., Counsel

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ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS



CHIEF CLERK
TRENTON, NEW JERSEY 08646

FOR RELEASE: Friday, November 30, 1984

Contact: Cathy Arnone 609-292-9580

The Supreme Court's Advisory Committee on Judicial Conduct (ACJC) is investigating a misconduct complaint against Superior Court Judge Richard S. Hyland, filed by a former judicial secretary.

Ordinarily, matters before the ACJC are confidential until the Committee completes its consideration of the matter and makes a recommendation to the Supreme Court, which has disciplinary authority over judges. However, a similar complaint alleging sexual harassment under Title VII of the Civil Rights Acts was filed with the Equal Employment Opportunity Commission (EEOC) at about the same time (Spring, 1983) by the former judicial secretary. That complaint has been amicably settled by the parties through the agency's conciliation process. The Court determined that the public had a right to know that a complaint is pending before the ACJC in view of the execution of a conciliation agreement to which the Judge and the Judiciary are parties, and the payment of public funds, which have been approved by the Supreme Court and the Attorney General's Office.

Under the terms of the conciliation agreement, which does not constitute any admission by the Judge of any violation of law, the former judicial secretary will receive \$20,000 from the Judge and \$75,000 from the State, on behalf of the Judiciary, as his employer, for back pay, future loss of income, legal fees and other claims. The Judge has denied, and continues to deny, any wrongdoing. The Judiciary was represented by the Attorney General's Office and

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separate counsel was provided for the Judge in the EEOC matter. The conciliation agreement, including the State payment of \$75,000, was recommended by the Attorney General's Office in the best interests of the State to avoid lengthy litigation and the potential for further recovery in excess of the conciliation amount. The agreement has the full approval of the EEOC, and terminates proceedings before that agency.

Proceedings before the ACJC are continuing and will not in any way be prejudiced by the EEOC conciliation agreement. There will be no further comment by the Court concerning these proceedings at this time.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PHILADELPHIA DISTRICT OFFICE
1421 CHERRY STREET, 6TH FLOOR
PHILADELPHIA, PENNSYLVANIA 19102

Charge Number: 031-83-2433

Charging Party

v.

Superior Court of New Jersey
Camden County Division
Camden County Courthouse
Camden, New Jersey 08101

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination as to the merits of the subject charge.

Respondent, the Camden County Division of the Superior Court of New Jersey, is an employer within the meaning of Section 701(b) of Title VII and the timeliness, deferral and all other jurisdictional requirements have been met.

Charging Party, a female, alleges that Respondent violated Title VII of the Civil Rights Act of 1964, as amended, by sexually harassing and subsequently discharging her in retaliation for her not submitting to the sexual advances of her immediate supervisor, Judge of the Superior Court (JSC) and for filing a complaint protesting the alleged discriminatory behavior.

Respondent denies the allegations and contends that Charging Party was discharged because of her unsatisfactory work performance and due to her exercise of poor judgment. Respondent denies all remaining allegations.

It is undisputed that Charging Party was hired as a Judicial Secretary on August 28, 1978 for the JSC and that she was terminated on April 11, 1983 to become effective April 25, 1983.

Since early 1980, Charging Party alleges that the JSC, her immediate supervisor subjected her to offensive working conditions with a continuing pattern of sexual harassment while in his employ. Charging Party asserts that the JSC would make suggestive remarks to her, frequently telling her that "a good secretary knows how to take care of all the judge's needs." Also, the JSC

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New Jersey State Library

Re: v. Superior Court of
New Jersey, Camden County Division,
Charge No. 031-83-2433.

brought into the office pornographic magazines which he allegedly gave her to read, suggesting that they contained helpful hints that would be beneficial to her well being. The JSC denies initiating this kind of behavior; rather, he stated that the reason he gave Charging Party these magazines was because she had on previous occasions expressed an interest in reading such material. He contends that in the Fall of 1979, Charging Party showed him a Swinger Magazine of court employees posing in the nude. On another occasion, Charging Party allegedly brought in an issue of a Forum Magazine for him to see, which he returned to her several weeks later.

Charging Party also contends that she was the only secretary called in by the JSC's office to take dictation who came out without having taken any dictation. She asserted that she repeatedly refused the JSC's request for sexual favors and would ask other court personnel to be present in order to avoid being alone with him. Charging Party alleges that on one occasion, the JSC suggested that they go to his summer house.

At a Christmas Party in December of 1981, Charging Party stated that the JSC presented her with a sexually revealing female undergarment with money in the crotch which she found personally offensive. Although her female co-workers advised her to keep it as evidence when she showed it to them, she nevertheless returned the gift to him. However, the record shows that JSC admitted giving Charging Party this gift. JSC avers that this was given because Charging Party stated that she enjoyed wearing that type of undergarment.

In April 1982, Charging Party received flowers and a card for Secretary's Day from the JSC. However, at the end of the day, the JSC gave her a black box with gold Ben Wa balls and a magazine on how to use them at home or even in the office.

In 1982, for JSC's birthday on December 14th, Charging Party ordered a strawberry shortcake for him to celebrate his birthday with his co-workers. He allegedly suggested that she spread the cake over his body and eat it off him. Evidence in the record shows that the JSC subsequently gave Charging Party a Christmas card in which he wrote a sentence saying, "Sorry about the cake." He contends that he never made any suggestion to Charging Party concerning how the cake would be eaten, that he did not have time to celebrate his birthday with his staff and the note in the card was an expression of disappointment for not being able to share with Charging Party and the staff their remembrance of his birthday.

During a Christmas party in December 1982, Charging Party went downstairs to xerox some important papers. Witness testimony revealed that she told Charging

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Re: v. Superior Court of
New Jersey, Camden County Division,
Charge No. 031-83-2433.

Party that the JSC had sent everyone home. Although Charging Party requested the witness to accompany her upstairs so that she would not have to be alone with the JSC, the witness stated that she had to leave. When Charging Party returned to her office, the JSC presented her with a Christmas gift in the form of a book, entitled Having It All by Helen Gurley Brown. He told her he had marked certain important pages which he advised her to read attentively. Money was also attached to the marked pages and whose titles were sexually suggestive. Testimony revealed that the suggestive behavior on the part of the JSC was not limited to her work place, but extended into Charging Party's private home life with calls and visits to her home during off duty hours.

An example of this type of action occurred when he informed Charging Party that he had called her home, that her children were out, that he would bring the trays from the party and they could have a quiet drink. Being fearful of being alone with the JSC, Charging Party arranged for a friend and neighbors to be at her home before he arrived. Testimony of witness revealed that the JSC visit was quite lengthy, that he had brought the trays and also the book Charging Party had refused to accept earlier that evening at the office.

In his defense, the JSC has implied that Charging Party was the initiator of this sexual behavior. However, in contrast, witness testimony revealed that they had indeed seen the various sexual type gifts allegedly given to Charging Party by the JSC. Other witnesses testified that for some time they were aware that Charging Party had been asked for sexual favors from the JSC and that they had actually seen Charging Party's agitation at the times these gifts were given as well as observing the stress and strain Charging Party was experiencing during working hours.

The JSC stated that he discharged Charging Party because she exercised "poor judgment" when she allowed a friend, who was an acquaintance of his family, to spend time in his chambers while she was involved in a custody hearing. He also asserted that Charging Party neglected her duties as a secretary when she failed to inform him that this same friend was holding personal mail of his instead of forwarding it to his new home address. There is no evidence to support the allegation that Charging Party used poor judgment in these instances. Additionally, the JSC believed Charging Party was circulating lascivious remarks about him as well as spreading stories of her having illicit relations with a peer Judge.

For some time, prior to her discharge, the JSC was aware of her family and economic problems. It could be inferred that he used these problems as an

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Re: v. Superior Court of
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opportunity to make sexual advances to her. Yet, in spite of these problems, she always performed her work efficiently and he never complained to her that it was interfering with her performance. However, at the time of her discharge, he used these same problems as evidence of a source of embarrassment to him and to claim that it hindered her from performing her work in a responsible and productive manner.

In addition, the JSC contends she was also discharged because in the last several months of her employment, Charging Party's work performance deteriorated. The JSC has failed to provide any work product of Charging Party's to substantiate that claim. Witness testimony corroborates Charging Party's statement that in spite of the stressful and harassing conditions of her employment, she nevertheless continued to perform her duties in an efficient manner. Also, credible witness testimony has revealed that they had actually seen examples of her work, had seen her perform various duties as a judicial secretary and at various times used her services in emergencies. Her work is described by witnesses as excellent, exceptional and well organized. The record also shows that she was judged to dress and act in a most professional manner at all times and was always willing to volunteer to help where needed.

Witness testimony, including the Assignment Judge of the Superior Court (AJSC), did indeed see the bruise on Charging Party's arm, but could not actually say that it was inflicted in the manner Charging Party alleges.

The record does not reveal any guidance, counselling or disciplinary warnings concerning her performance prior to Charging Party's discharge. We must therefore conclude that the JSC's reason for terminating Charging Party was pre-textual in nature and absent any credible evidence to the contrary, we must credit her allegations.

Re: v. Superior Court of
New Jersey, Camden County Division,
Charge No. 031-83-2433.

Based on the above, there is reasonable cause to believe that Charging Party was discriminated against by the JSC, her immediate supervisor, in violation of Title VII because as a female she is a member of a protected class, she was subject to unwelcomed sexual harassment, but for the fact of her sex, she would not have been the object of harassment, and the harassment affected condition or privilege of employment. There is also reasonable cause to believe that Charging Party was discharged orally on March 30, 1983 for not submitting to her supervisory Judge's advances.

The Charging Party also alleges that she was discharged by JSC with approval of the AJSC for seeking legal redress against JSC for his sexual harassment against her. Evidence of retaliation was shown by the events leading up to the manner in which she was officially discharged on April 11, 1983, after she formally filed a complaint against her supervisory Judge on April 11, 1983.

It is undisputed that Charging Party went to the JSC's superior, the AJSC on March 31, 1983 and told him that she was being terminated because of poor work skills, but that she believed it was really because she refused to submit to her supervisory Judge's sexual demands. Charging Party also informed him of several vacancies which she would like to apply for and requested him to transfer her. He informed her that he did not have the authority to transfer her and that hiring and firing is done by the individual judge. After he spoke to her supervisory Judge about the matter, he advised her she would be kept on until she could find another job. He also told her if she wanted to file a formal complaint, he would send it to the Ethics Committee. While the AJSC was on vacation, the JSC informed Administration that she would be kept on until she found a job. However, soon after these arrangements were made, the JSC decided that it would not work out for her to stay on. Fearing immediate dismissal, she filed a formal complaint against the JSC, presenting it to the AJSC on his return from vacation on April 11, 1983. The AJSC immediately informed JSC on April 11, 1983 about the formal complaint being made against him. The same day at 4:30 p.m., the JSC told Charging Party to "get out."

Although the AJSC asserted that he had no authority to keep her from being fired, the record shows she was not officially dismissed on March 31, 1983, as was the expressed desire of the JSC, because the AJSC advised postponement of the dismissal action. The AJSC did not prevent her official dismissal on April 11, 1983 after she filed her formal complaint on April 11, 1983. The AJSC contends that the firing of a judicial secretary by her JSC is not mandated by the courts, but left to the JSC's judicial discretion. The decision of retaining her or postponing her dismissal is indeed not an official judicial act, but an administrative personnel decision.

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Re: | v. Superior Court of
New Jersey, Camden County Division,
Charge No. 031-83-2433.

Based on testimony from numerous witnesses, other Respondent Officials were aware that Charging Party had been having problems with the supervisory Judge for some time. Witness testimony also shows that Charging Party had great difficulty in getting any of the JSC's peers or administration officials to pay attention to her complaints and no appropriate corrective action was taken. The evidence shows that indeed several secretaries were transferred to other judicial positions and that these transfers were authorized by the AJSC.

The record shows in conclusion that the AJSC's position is one of authority when related to administrative personnel matters. The AJSC not only failed to take prompt and appropriate corrective action when advised of the alleged sexual harassment imposed on Charging Party by the JSC, but the action taken can fairly be construed as condoning and ratifying the alleged conduct.

Having found that the Court, which is an employer within the meaning of 42 U.S.C. 2000e(b) was exercising its inherent administrative power when it discharged Charging Party, we conclude that the Court is not shrouded with judicial immunity in this instance. We find that there is reasonable cause to believe that the Court, through their agents, the JSC and the AJSC, violated Title VII of the Civil Rights Act of 1964 by discharging Charging Party because she objected to an unlawful employment practice imposed upon her by the JSC when she filed a complaint protesting this alleged discriminatory behavior.

Having determined that there is reasonable cause to believe that the charges are true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of these matters. A "Notice of Conciliation Process" is enclosed for your information. A representative of this office will be in contact with each party in the near future to begin the conciliation process.

On Behalf of the Commission:

June 21, 1984
Date

Thomas P. Hadfield
Thomas P. Hadfield, Acting
District Director

Enclosures (2)

1. Notice of Conciliation Process
2. EEOC Form 153

cc: John J. Leonard, Esquire
Gerald M. Eisenstat, Esquire
David M. Satz, Jr., Esquire

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Record
02/8/88

Kean passes the buck

Call it buck-passing — classic buck-passing. Governor Kean last week announced that he had "serious doubts" about reappointing to a lifetime term a state Superior Court judge who has been reprimanded for official misconduct. So what did Mr. Kean do? He passed the issue over to the Senate. He said he will not urge reappointment but will respect any decision that the Senate makes.

The judge in question is Richard S. Hyland of Camden County. Judge Hyland several years ago was charged with sexual harassment by his former secretary. According to the secretary, Mr. Hyland fired her because she spurned his advances. Mr. Hyland has said he shared pornographic material with the secretary, gave her sexually oriented items in his chambers, and had sexual relations with her twice.

The federal Equal Employment Opportunity Commission (EEOC) presided over an agreement in which the secretary got a \$95,000 settlement — \$20,000 from Judge Hyland and \$75,000 from the state. In 1985, the state Supreme Court officially reprimanded Judge Hyland.

"It was a very, very tough one. . . . It was a very difficult choice," Mr. Kean said as he submitted Judge Hyland's name for Senate confir-

mation. The governor said Mr. Hyland deserved a fair hearing.

We disagree. The decision is easy. Mr. Hyland, the brother of former state Attorney General William Hyland, has had two fair hearings, one federal, one state. The real offense here is not the sexual misbehavior but Mr. Hyland's exploitation of an employee. That action, which both the Supreme Court and the EEOC found existed, is inexcusable in a judge, even one with Judge Hyland's excellent record on the bench. It calls for decisive action by the governor. If Judge Hyland had been found discriminating against a minority employee, the governor would have had little difficulty in refusing him reappointment.

The governor's deference to the Senate is also surprising. Mr. Kean has steadfastly and properly criticized the tradition of senatorial courtesy, in which a single senator can blackball a political foe. The governor is currently struggling to get Senate confirmation for several county prosecutors. While battling senatorial courtesy in the cases of the prosecutors, he seems to be inviting it in the case of Judge Hyland. Mr. Kean has an unpleasant duty to reject Judge Hyland for reappointment. He should do his own dirty work.

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Senate should reject Hyland

New Jersey need only look across the Delaware to remind itself how important it is to place men and women of the highest competence and integrity on the bench. Pennsylvania, which elects its judges, has failed miserably. New Jersey has done better. Its judges are appointed and required to adhere to strict standards.

In his initial term as a Superior Court judge in Camden County, Richard S. Hyland of Cherry Hill failed to meet those standards and was publicly reprimanded by the state Supreme Court as a result. Yesterday Gov. Kean re-appointed the 52-year-old judge, an appointment that would give him tenure. The Senate should refuse to confirm it.

New Jersey could do worse than to return Judge Hyland to the bench. He committed no crime, has served commendably for the most part and has the advantage of experience over whomever might replace him. Yet as his lapse in judgment and respect for his office indicates, the state can also do better. And that is the key. Judge Hyland holds no deed to his seat. He had his chance, knowing full well what was required, and flubbed it. Compassion might dictate giving an individual a second chance. With judges, the need to maintain high standards and public confidence dictates otherwise.

In 1983, Judge Hyland's secretary accused him of making repeated sexual overtures, then firing her when she continued to rebuff them. The state Supreme Court committee that investigated the charges found them to be unsubstantiated and the woman who made them to be an unreliable witness.

In the course of defending himself, however, Judge Hyland admitted to sexual relations with the woman outside his office, and to giving her sexually-oriented gifts and perusing pornographic materials with her within his chambers. On the basis of those admissions, the committee reprimanded the judge, concluding that he lacked "either sufficient respect for the dignity of his judicial position or the sound judgment that is a major requirement for one who holds judicial office."

As a jurist, Judge Hyland had to be aware of that canon of the judicial code that states:

A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

As a man accustomed to leadership — as an attorney, a state legislator and a judge — he must have been aware of the peculiar power an employer exercises over an employee, and of the employer's responsibility not to abuse it.

In ignoring both the canon and his responsibility as an employer, Judge Hyland did not relinquish his right to practice law or ask forgiveness or get on with his life. He did, however, forfeit his claim to re-appointment to the bench.

Jersey judge should find exit

Camden County Superior Court Judge Richard S. Hyland can save himself, the governor and the state Senate considerable political grief if he would retire early. The day his current term expires, Feb. 23, would be soon enough.

The New Jersey Supreme Court has set admirably high standards of conduct for sitting judges, standards that Judge Hyland was unable to meet.

The court's committee on judicial conduct decided in 1985 that Mr. Hyland deserved an official reprimand when the judge conceded that while in his chambers he presented sexually related gifts to his secretary, and exchanged and reviewed sexually explicit materials with her. The committee thought that this was "conduct prejudicial to the administration of justice that brings judicial office into disrepute."

The secretary charged that the judge had fired her when she refused his sexual advances, and filed charges of sexual harassment. The federal Equal Employment Opportunity Commission eventually negotiated an

agreement that led to a \$95,000 settlement for the secretary, \$75,000 of which was paid by the taxpayers.

The Supreme Court's judicial conduct committee did not find the episode enough reason to dismiss Judge Hyland, and allowed him to complete his term. But he is now seeking reappointment to another seven-year term that would allow the judge, who is now 52, to remain on the bench until the retirement age of 70. In so doing, Mr. Hyland has forced the judicial and political establishment to weigh his record of conduct against the credentials of a long line of judicial candidates whose reputations are not comparably clouded.

It would be unfortunate if Gov. Kean were to submit his name for nomination. If the governor does make that mistake, the state Senate should thoroughly examine the Supreme Court's reasoning in reprimanding Mr. Hyland before voting on his nomination.

Surely, there is a better way for Judge Hyland to go.

Phil. Inquirer

1-29-88

LARIO AND NARDI

COUNSELLORS AT LAW

200 HADDON AVENUE

POST OFFICE BOX 87

HADDONFIELD, NEW JERSEY 08033-2389

FRANK M. LARIO, JR.

JOSEPH M. NARDI, JR.

ROBERT A. GLEANER*

MARC A. LARIO**

AREA CODE 609

795-4540

OUR FILE NO.

*ALSO MEMBER OF PA. BAR

**ALSO MEMBER OF PA. BAR & FLA. BAR

January 20, 1988

Honorable Thomas H. Kean
Governor of the State of New Jersey
State House
Trenton, New Jersey 08625

Re: Honorable Richard S. Hyland
Judge of the Superior Court

Dear Governor Kean:

I am writing to you as an attorney who has known Judge Richard S. Hyland for over thirty years. I have practiced law as a contemporary of Richard Hyland, and I have appeared before him as Judge of the Camden County District Court, Presiding Judge of the Camden County District Court, and now as Judge of the Superior Court.

I am a former President of the Camden County Bar Association and I have had judicial experience as a Municipal Court Judge of three municipalities (Audubon Park, Bellmawr, and Magnolia), and in two of these municipalities I have been the Judge for more than eighteen years.

It has been of great concern that the credentials of Judge Hyland have been lost in the shuffle of the news media that seem to be concerned with the private life of a man with no regard to his talents as a judicial officer of the State.

COPY

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LARIO AND NARDI

Page Two
Honorable Thomas H. Kean

January 20, 1988
Governor of the State of New Jersey

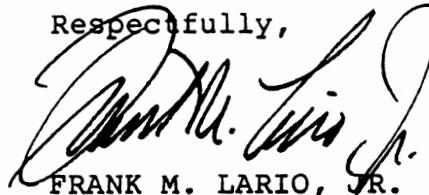
I had the benefit of a Clerkship with our New Jersey Supreme Court serving as the Law Secretary to Honorable Vincent S. Haneman. Justice Haneman was one of the most influential men in my life. In the course of my service to him, I observed and learned from his keen understanding and analysis of the conflicts between a person as a private citizen and his position as an officer and servant of the public. I learned that a person's contribution to the position to which he is appointed and the understanding, integrity, sincerity, compassion and temperment with which he upholds his position should always be in the forefront of the characteristics that must be considered in continuing that person in the position which he holds. Judge Hyland, in all of my personal experience, has maintained the characteristics of an exceptionally qualified Judge. He has served well his court and the citizens of this vicinage since his appointment in 1978. Prior to his appointment he served in the New Jersey Assembly. He also served as Chairman of the Camden County Ethics Committee and as a member of the Camden County Ethics Commission. He represented the Township of Cherry Hill as its Solicitor.

I am sure that you are aware of the public accomplishments of his brother, William F. Hyland, Esquire.

I respectfully request that you consider Judge Hyland as qualified for reappointment to the New Jersey Superior Court. Without him, our vicinage would lose a true, dedicated judicial servant whose legal ability and integrity have well served the attorneys and citizens who have appeared before him. Please do not permit public innuendo to guide the reappointment process. The innuendos that have been encouraged by the newspaper of a neighboring state (which has no real competition) packs emotion into its reporting so that many times the true state of facts are overcome and shadowed.

I respectfully urge you to reappoint Judge Hyland as Judge of the Superior Court of New Jersey. Thank you.

Respectfully,



FRANK M. LARIO, JR.

FML,JR:pn

COPY

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Charles A. Rizzi
500 Clinton Avenue
Haddonfield, NJ 08033
January 27, 1988

Honorable Tom Kean
Governor of the State of New Jersey
State House
Trenton, NJ 08625

In re Reappointment of Judge Richard S. Hyland

Dear Governor Kean:

I am a retired Judge of the Superior Court of New Jersey, having retired on October 1, 1980. I was first appointed to the Bench in 1961 by Governor Meynor, reappointed by Governor Hughes in 1966, appointed to the Superior Court by Governor Cahill in 1970, and in 1972 Chief Justice Weintraub designated me Assignment Judge for Camden and Gloucester Counties. I served in that capacity until my retirement.

Judge Richard S. Hyland of Camden will shortly complete his term as Superior Court Judge and I am informed he is now under consideration for reappointment to that office. I write this letter in support of his reappointment.

In 1978 Judge Hyland was appointed to the Camden District Court by Governor Byrne and I swore him into office. He was designated Presiding Judge of the District Court on my recommendation, and in that office he presided over not only District Court cases but Superior Court cases as well. Judge Hyland was a prodigious worker, highly competent and always energetic and dependable. He possessed an outstanding knowledge of the law and was capable of handling all phases of litigation. Since my retirement I have returned to the Bench at Camden on recall and I have observed the judicial work of Judge Hyland.

I have been aware of the accusations made against him by his former secretary which charges were dismissed by the Supreme Court in judicial ethics proceedings brought against him. I also am aware that a civil claim brought by his former secretary was settled by the payment of sums by him and by the State through the Administrative Office. However, Judge Hyland is such a highly talented judge that, in my view, his value to the Bench

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FEB 1 1988

LARIO, NARDI & GLEANER

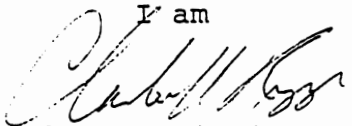
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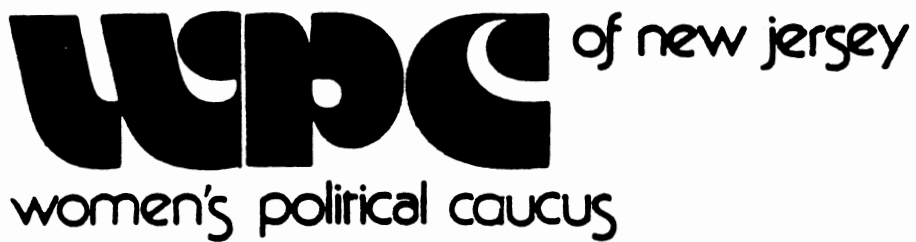
To: Honorable Tom Kean
January 27, 1988
Page: 2

should override any negative considerations that might be drawn from the alleged incident involving his former secretary.

I respectfully urge Your Excellency to reappoint Judge Hyland to the office of Judge of the Superior Court.

Sincerely and Respectfully,

I am

Charles A. Rizzi



February 12, 1988
24 Dempsey Avenue,
Princeton, NJ 08540

To: Judiciary Committee, New Jersey Senate

The Women's Political Caucus of New Jersey opposes the renomination and confirmation of Judge Richard S. Hyland to the Superior Court.

During the December celebration of the Fortieth Anniversary of the New Jersey Constitution, this state was credited with having a superior judicial system as the result of reforms leading to a significant improvement in the quality of judicial appointments.

Reappointment of a judge who has been reprimanded for judicial misconduct by the state Supreme Court, for actions which are degrading to women, is to continue a flawed judge in a position where the citizens of New Jersey are entitled to find superior quality.

Sincerely,

Patricia N. Cherry
President

37x

Patricia Hissem
44 Stephen Drive
Glendora, New Jersey 08029

Honorable Edward T. O'Connor, Jr.
Chairman, Senate Judiciary Committee
Room 236 - State House
Trenton, New Jersey 08625

February 10, 1988

Dear Senator O'Connor,

I am employed as an official court reporter for the State of New Jersey; and I work at the Camden County Hall of Justice. I am writing to express my opinion with regard to the reappointment of the Honorable Richard S. Myland, J.S.C.

At different times in the past several years, I have been assigned to Judge Myland. I believe he is a fair and conscientious judge who holds his position on the bench in the highest regard. This is evidenced by the dignity he brings with him to the bench, in spite of any personal embarrassment he may feel due to the recent publicity, much of which unfortunately has been on the level of scandal-sheet journalism.

He has always treated me with courtesy and respect. And I know he treats other members of his staff and his co-workers in the same way.

I think it would be a miscarriage of justice if he is not reappointed. He has already paid in many ways for his mistake. If his conduct was in violation of judicial ethics, I don't think it was the type of violation that would have an effect on his judicial responsibilities, nor should it warrant his removal from the bench.

As to the various women's groups in opposition to his reappointment, I think if they heard more than one-sided allegations, they would find Ms. McGuckin less than credible, and would put this incident in its proper perspective.

Since I work in court every day, I can't help analogizing this situation to the aggravating and mitigating factors that a judge must compare when sentencing an individual. When you evaluate the aggravating and mitigating circumstances, I think the seriousness of Judge Myland's breach is far outweighed by his value to the Judiciary, and the public, private, and monetary restitution that he has made.

Sincerely,

Patricia Hissem

cc: Honorable Walter Rand
Honorable Daniel J. Dalton
Honorable Lee B. Laskin

38x



THE ASSEMBLY
STATE OF NEW JERSEY
TRENTON

WALTER M.D. KERN, JR.
ASSEMBLYMAN 40TH DISTRICT
BERGEN-PASSAIC COUNTIES
171 EAST RIDGEWOOD AVENUE
RIDGEWOOD, NJ 07450
201-444-6000

COMMITTEES
CHAIRMAN
~~XXXXXXXX~~

February 16, 1988

Hon. Edward T. O'Connor, Chairman
Senate Judiciary Committee
1662 Kennedy Blvd.
Jersey City, NJ 07305

Dear Senator:

I note that, despite the controversy surrounding him, Governor Kean has nominated the Hon. Richard F. Hyland for another term as a Superior Court Judge.

Reappointments of outstanding jurors are few and far between, and from my over twenty-five years experience in the practice of law, I believe that Judge Hyland falls into the category of outstanding juror.

He is an excellent jurist, conversant in the law, and understanding the positions of contending parties. It would be a grave disservice to the State of New Jersey to deny his reappointment for reasons that have nothing to do with his performance on the bench. Our citizenry would be the loser.

I hope that your committee will recommend confirmation of Judge Hyland's nomination for another term in the Superior Court.

Sincerely,



Walter M. D. Kern, Jr.

WMDK/vbn

cc: Senate Judiciary Committee members;

Hon. Raymond J. Zane	Hon. John Dorsey
Hon. Gabriel M. Ambrosio	Hon. William Gormley
Hon. Richard J. Codey	Hon. Lee Laskin
Hon. John A. Lynch	John Tumulty, Committee Aide
Hon. Carmen Orechio	
Hon. Richard Van Wagner	
Hon Donald DiFrancesco	

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LOUIS H. MIRON
MARY FRAN FARLEY
ROBERT B. NUSSBAUM

* CERTIFIED CIVIL AND CRIMINAL
TRIAL ATTORNEY
* CERTIFIED CIVIL TRIAL ATTORNEY

February 11, 1988

VIA FEDERAL EXPRESS

Hon. John F. Russo
President, New Jersey Senate
917 North Main Street
Toms River, New Jersey 08753

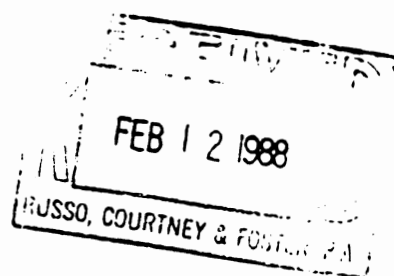
Dear Senator Russo:

As you are aware, Judge Richard S. Hyland has been nominated by Governor Kean for reappointment as a Superior Court Judge. The Senate Judiciary Committee has scheduled hearings on his reappointment to commence on Wednesday, February 17, 1988.

Prior to, and since the time of his nomination, certain women's organizations, prompted by newspapers circulating in Camden County, have issued statements urging rejection of Judge Hyland. These statements are based largely on gross misconceptions of the truth of what has taken place in the Federal and the State proceedings in which Judge Hyland was involved.

Until the time of his nomination, Judge Hyland personally, and I, as his attorney, to the greatest degree possible, have refrained from answering those charges in public because it would have been premature and improper to interfere with the nomination and confirmation process; the appropriate forum is the Judiciary Committee hearing. For that reason, I have only recently sent a letter to members of the Judiciary Committee addressing the specific issues which have been raised and have refuted the emotional allegations that have been made.

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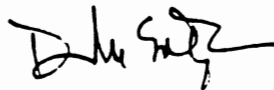


Hon. John F. Russo
February 11, 1988
Page 2

In view of the continued media questions that have been directed to the members of the Judiciary Committee and the Senate generally, some of which have produced responses which appear to have been made without knowledge of the procedural and substantive facts which were involved in the Federal Equal Employment Opportunity Commission and State Advisory Committee on Judicial Conduct proceedings, I feel impelled, as a matter of fundamental fairness, to distribute to the entire Senate body the letter dated February 8, 1988 sent to the individual members of the Judiciary Committee.

I know you will want to have all of the essential facts before you as this important issue is addressed.

Respectfully,



DAVID M. SATZ, JR.

DMS/sa
w/encls.
cc: Members of the Senate (w/encls.)

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February 8, 1988

Hon. Edward J. O'Connor, Jr.
1662 Kennedy Boulevard
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Dear Senator,

Recent newspaper articles about my client, Superior Court Judge Richard S. Hyland of Camden County, make it imperative that the Senate of New Jersey and the general public be provided without further delay with the correct facts pertinent to his reappointment which is scheduled to be reviewed by the New Jersey Senate Judiciary Committee on February 17th. This reappointment has been clouded by a disciplinary matter in which Judge Hyland was involved in 1985.

While he was awaiting action by the Governor's office on his renomination, Judge Hyland felt unable as a sitting judge to speak out in his own behalf to set the record straight. Even now, pending consideration of his renomination by the Senate Judiciary Committee, it would be inappropriate for him to make a public statement. This has

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given his detractors an unfortunate advantage. Regrettably, some newspapers have even taken editorial positions before all of the facts were before them. This is not the way our system should work. Judge Hyland is entitled to the same kind of justice his duties call upon him to administer daily to those who appear in his Court. This letter is an effort to get the important facts into your hands for your earnest consideration. I am confident you will deal fairly with Judge Hyland's future.

Some opponents of Hyland's reappointment contend that a sexist issue is involved, which most assuredly is not true. Judge Hyland does not deserve this criticism. There is absolutely nothing in his record to suggest such a charge. He has in fact had an exemplary history on the Bench since his appointment in 1978, except for the disciplinary matter to which I have just referred and which I will shortly address. He eventually was publicly reprimanded in 1985 by the Supreme Court upon recommendation of its Advisory Committee on Judicial Conduct for the events in question, which occurred more than seven years ago.

It is important to remember that in New Jersey, which

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has a nationally recognized court system, the Supreme Court has the power to discipline judges and lawyers in a variety of ways and does not hesitate to use that power. If the Advisory Committee and the Supreme Court felt that he should not continue upon the Bench following the conclusion of that case, they unquestionably would have suspended or removed him. Neither action was taken.

Interestingly, none of the groups or individuals now opposing Hyland's reappointment called for his suspension or removal at the time the Advisory Committee and the Supreme Court released the Presentment and issued the public reprimand in 1985. It also is significant that the State and county bar associations have recommended to the Governor that he be reappointed, as have a host of retired jurists, lawyers and others who are familiar with his credentials. Among Hyland's supporters are a number of distinguished women practitioners who are in disagreement with the position taken by certain women's organizations and leaders in the Camden County area.

It is important, first of all, to recognize there were two separate agencies involved in the review of his case.

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The first to act, in point of time, was the Federal Equal Employment Opportunity Commission ("EEOC"). His former judicial secretary filed a Charge of Discrimination in that agency on May 11, 1983 against the Superior Court of New Jersey, the Camden County Assignment Judge, and Judge Hyland. That proceeding was settled in 1984 with a \$95,000 payment to the complainant. I will shortly explain the basis for this settlement and why it is not truly related to the issues before you. Needless to say, the settlement has been the basis for much confusion and, perhaps, for some of the prejudgment of Judge Hyland's case.

The second agency involved was the Supreme Court's Advisory Committee on Judicial Conduct, a nine-person board of retired judges, practicing attorneys and distinguished lay representatives. It has the duty to review complaints against judges and, where appropriate, hears sworn testimony and other evidence about those complaints. It has the power to recommend disciplinary action against judges, including their suspension or removal. The Committee's action is then reviewed and either carried out or modified by the Supreme Court. In Judge Hyland's case, the Committee pursuant to

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Supreme Court Rules deferred taking action until the EEOC proceeding had taken place. Thereafter, the Advisory Committee, following a four day hearing, unanimously cleared him of the charges that he had sexually harassed his secretary and that she was fired for refusing to give in to his advances. These were essentially the same charges which the EEOC earlier, following a superficial inquiry and series of conferences rather than hearings, found should be pursued, unless settled.

After unanimously clearing him of all of his former secretary's charges, the Advisory Committee nonetheless found Judge Hyland guilty of judicial misconduct because, in the course of defending himself against the harassment and firing charges, Hyland felt obliged to disclose that on two occasions, in 1979 and 1981, he had sexual relations with his secretary outside of the judicial setting and on a totally consensual basis. He also disclosed that he had occasionally shared with her in his office sexually explicit materials, including magazines and trinkets, once again without any objection on her part. For this conduct Judge Hyland was publicly reprimanded by the Supreme Court upon a 5 to 2

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recommendation of the Advisory Committee (with two abstentions). This was the minimum number of votes needed for a public reprimand.

These regrettable events, for which Judge Hyland has expressed his deep remorse, have assumed a major significance in connection with his proposed reappointment to the Bench. Much of the opposition to his appointment has been expressed by women's organizations or their leaders, who look upon Judge Hyland's former secretary as a victim of sexual harassment and exploitation.

Women's organizations and their leaders have an important role to play in our society as we attempt to adjust outmoded attitudes and practices and to redress wrongs. But these organizations and leaders have a duty to be fair. And in this case a fair reading of the Presentment of the Supreme Court's Advisory Committee, before which Judge Hyland's former secretary testified and was free to present witnesses, clearly reveals that she was not telling the truth about Judge Hyland and, indeed, about herself. Rather than being a victim of sexism, she has instead exploited her womanhood and victimized others - the New Jersey court system, Judge

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Hyland, his family, and Truth itself.

The Advisory Committee's Presentment to the Supreme Court dated September 25, 1985, a copy of which is enclosed, was made public at that time. The Committee found the complainant "not to be a reliable witness". This is a polite term for saying she was not telling the truth. The Advisory Committee stated (at p.6):

"(T)he Committee rejects Complainant's allegations that Respondent sexually harassed her and finds that the charge of sexual harassment set forth in Count 1 of the complaint has not been proven."

The Advisory Committee's Presentment also cleared Judge Hyland of the charge that he had fired his secretary because she had refused to given in to his advances, stating (at p.10) that there was substantial evidence in support of his contention that he had lost confidence in her ability and judgment in a job-performance sense and that there was "no credible evidence to the contrary".

The Advisory Committee (at pp.6-9) then cited four incidents involving the complainant which illustrated her lack of believability and, in two instances, bizarre conduct on her part. These revelations were drawn from the sworn

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testimony of more than a dozen disinterested male and female co-workers or other witnesses. They provided a powerful and uncomplimentary insight into her character and showed the complainant to be a seriously troubled person, with a compulsive penchant for gossip, intrigue and falsehoods. Reference is made to the attached Presentment rather than detailing these incidents herein.

Your attention is also called to the testimony contained in the Advisory Committee hearing record of independent witnesses who revealed that they had heard the complainant, during various times of her employment in the court house, make certain outrageous charges or statements about Judge Hyland and other members of the judiciary. The transcript of this hearing record has been made available to Mr. Tumulty of the Judiciary Committee staff. In particular, see Volumes II TR 107-11, III TR 190-9, III TR 218-2, III TR 224-6, III TR 230-18, IV TR 66-23, IV TR 70-21, IV TR 89-20, V TR 3-25, V TR 5-15, V TR 5-22, V TR 34-23.

The findings by the Advisory Committee that Hyland was not guilty of the harassment and unlawful firing charges raise a natural question about the earlier proceeding before

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the Federal Equal Employment Opportunity Commission (EEOC). As I have indicated, this proceeding commenced with the filing of a discrimination complaint by Judge Hyland's secretary shortly after her firing in April 1983. The respondents are the New Jersey court system and several of its judicial officers, including Hyland. Unlike the proceeding before the Advisory Committee, the EEOC complaint, in addition to charging Judge Hyland with sexual harassment and discrimination, contended the State judicial system did not have an adequate procedure for dealing with grievances of this type, whether or not ultimately shown to be well-founded, and that the handling of this particular complaint violated the complainant's civil rights. The primary target of that proceeding from the standpoint of the EEOC undoubtedly was the State system itself, although the firing by Judge Hyland was the triggering event.

The EEOC inquiry was initiated. The field investigation was conducted by an individual with essentially para-legal level training and was at best superficial. Many potential witnesses were contacted by the field investigator only by telephone, or not at all. Some of these witnesses later

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testified before the Advisory Committee that the EEOC field worker was "one-sided", "looking for specific answers" or more interested in telling what she thought than in asking questions. There were no provisions for discovery.¹ Two "conferences" were held at the EEOC in Philadelphia but a formal transcript was not made. Sworn testimony was not permitted. Cross-examination of the complainant by Judge Hyland's attorney was not allowed. Not surprisingly, therefore, the EEOC issued a Determination Letter on June 21, 1984 in which it concluded there were "probable cause" for the charges of sexual harassment and unlawful termination of employment. The parties were directed to proceed with the Federal statutory "conciliation" procedures. If conciliation failed, the complainant would receive a "right to sue" letter permitting a public trial to be held in the United States

¹ In order to defend Judge Hyland in the EEOC proceedings, unsuccessful efforts were made by his attorneys to have access to the Advisory Committee staff investigative interviews which had been conducted in 1983. Their request was denied. Consequently, this important information was not available during the EEOC proceeding. The interviews, which were eventually made available in October 1984 after the EEOC Determination Letter was issued and after the Advisory Committee filed its charges, were indispensable to the Judge in preparing his State case.

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District Court.

The EEOC's Determination Letter recites a number of the scandalous and unsubstantiated charges levied by his former secretary against Judge Hyland in her EEOC complaint. None of these charges received a final hearing there. Every one of these charges subsequently pressed in the Advisory Committee hearings was disproved.

The EEOC's Determination Letter clearly raised the risk that, after a costly and unpredictable trial, the State's procedures for processing and adjusting employment grievances of a discrimination character would be found deficient and substantial damages would be allowed to the complainant.

Judge Hyland was also faced with substantial financial exposure in the form of possible compensatory as well as punitive damages. The evaluation of his defense to the EEOC charges, as noted previously, was handicapped by the denial to him of the investigative materials developed by the staff of the Advisory Committee on Judicial Conduct. The potential for a large verdict against him following a stressful and sordid public trial before a jury that might be swayed by the emotions of the issues involved simply dictated that a money

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settlement, if it could be achieved at an acceptable level, was in everybody's interest.

For all these reasons, settlement seemed imperative. The parties ultimately agreed that a payment of \$95,000 would be made to the complainant in settlement of all claims.² The judicial system agreed to take certain steps in supplementation of its grievance practices and procedures. The conciliation agreement expressly stated that the settlement was not to be construed as an admission of guilt by any of the respondents.

The misconduct for which Judge Hyland has been reprimanded is the only lapse in his judicial career. He also has served with distinction as an Assemblyman and Special Deputy Attorney General. His proposed reappointment has received the overwhelming support of the State and county bar associations, retired jurists and others familiar with his work.

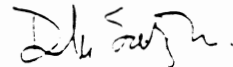
² Participating in the negotiations for the various parties were: Michael R. Cole, Esq., then First Assistant Attorney General, for the State of New Jersey; Justin P. Walder, Esq., for the Supreme Court of New Jersey and the Administrative Office of the Courts; and Gerald M. Eisenstat, Esq., for Judge Hyland.

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Judge Hyland is not the first, nor the last, individual in high public office to succumb to the temptations of the flesh. He offers no excuse for what he has done, however, and can only assure the Senate and the general public of his resolve to serve the judicial system and the public faithfully and energetically for the balance of his judicial career as he has done throughout his entire public career but for this unfortunate incident.

Respectfully,



DAVID M. SATZ, JR.

DMS/sa
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cc: Senate Judiciary Committee Members

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February 9, 1988

The Honorable Edward T. O'Connor, Jr.
Chairman of Senate Judiciary Committee
State House - Room 236
Trenton, New Jersey 08625

RE: RICHARD S. HYLAND - CONFIRMATION HEARING

Dear Senator O'Connor:

I write to urge the support of your Committee for the
reappointment of Hon. Richard S. Hyland as a Judge of the
Superior Court.

I have known Judge Hyland for about 25 years. I have found him at
all times to be of sound judgment and absolute integrity. Though
I have appeared in his court on only a few occasions, there can
be no question that he is qualified by ability, education and
experience to serve in his present position.

His only problem, as I see it, is that his **respect for the truth**
led him to **voluntarily** disclose a sexual liaison with his
secretary. While this is obviously an indiscretion, particularly
since some things are said to have taken place in chambers, it is
important that your Committee see the issue for what it is: is a
sexual liaison with one's secretary sufficient to disqualify an
otherwise qualified individual from any office, whether judicial,
legislative or executive? If members of the Senate can, with a
straight face, answer that question in the affirmative, then so be
it. If not, then Judge Hyland should be confirmed.

Please do not be led astray by any ludicrous claims of women's
groups, the press or political enemies that this is a sexual
harassment case. Frankly, if I thought for one moment that the
Judge's secretary was fired because she resisted sexual advances,
I would not be writing this letter. She has been exposed,
following due investigation in the proper forum, as an unreliable

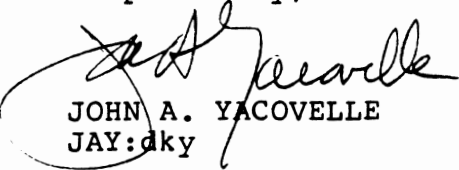
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individual upon whose word no decision should rest. Efforts in the press and by women's groups to resurrect her credibility and, with it, her "cause", are doomed to fail because she simply is not worthy of their support.

The real issue, obviously, is a sticky one in some quarters. It is best met head-on and not obfuscated by any cry of "women's rights". It is to what extent a relationship evidently gone sour should impact upon an otherwise unblemished career of legal and public service. I submit to you that the embarrassment visited upon Judge Hyland and his family by this entire affair far exceeds his offense. I urge your Committee to recommend confirmation.

Respectfully,



JOHN A. YACOVELLE
JAY:dky

cc: Senator Daniel J. Dalton

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