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PUBLIC MEETING

before

SENATE JUDICIARY COMMITTEE

Nomination Interview of Stewart G. Pollock
to be Justice of the Supreme Court

June 19, 1986
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

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

ALSO PRESENT:

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

* * * * *

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EDWARD T. O'CONNOR
Chairman
RAYMOND J. ZANE
Vice Chairman
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DONALD T. DIFRANCESCO
JOHN H. DORSEY
WILLIAM L. GORMLEY
LEE B. LASKIN



New Jersey State Legislature

SENATE JUDICIARY COMMITTEE

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M E M O R A N D U M

TO: SENATE JUDICIARY COMMITTEE
FROM: SENATOR EDWARD T. O'CONNOR, CHAIRMAN
DATE: JUNE 16, 1986
RE: SUPPLEMENTAL AGENDA - JUNE 19, 1986

The Senate Judiciary Committee will meet on Thursday, June 19, 1986 at 2:00 PM in Room 424, State House Annex. In addition to those nominations previously announced, the following will be interviewed.

TO BE JUSTICE OF THE SUPREME COURT:

Stewart G. Pollock of Mendham, to succeed himself, for the term prescribed by law.

TO BE JUDGES OF THE SUPERIOR COURT:

Philip M. Freedman of Montclair, to succeed himself, for the term prescribed by law.

Paul Bangiola of Morris Plains, to succeed himself, for the term prescribed by law.

Victor Friedman of Moorestown, to succeed himself, for the term prescribed by law.

TO BE PROSECUTOR OF MERCER COUNTY:

Paul T. Koenig of Pennington, for the term prescribed by law.

The following nominations will be considered.

TO BE A MEMBER OF THE EMERGENCY RESPONSE SYSTEM STUDY COMMISSION:

Howard A. Kirkwood, Jr. of Mount Laurel, for the term prescribed by law.



TO BE A MEMBER OF THE SHELLFISHERIES COUNCIL:

Stephen Potter of New Gretna, to succeed himself, for the term prescribed by law.

TO BE A MEMBER OF THE BANKING ADVISORY BOARD:

James Giacobello of Somerville, to succeed himself, for the term prescribed by law.

TO BE A MEMBER OF THE ADVISORY COUNCIL ON CORRECTIONS:

Eugene W. Stafford, Sr. of Mount Holly, to succeed Donald Bernard, for the term prescribed by law.

TO BE A MEMBER OF THE CUMBERLAND COUNTY BOARD OF TAXATION:

Robert Weber of Greenwich, to succeed himself, for the term prescribed by law.

TO BE A MEMBER OF THE SOUTH JERSEY PORT CORPORATION:

Richard Alaimo of Mt. Holly, to succeed himself, for the term prescribed by law.

TO BE AN ADMINISTRATIVE LAW JUDGE:

Steven L. Lefelt of Highland Park, to succeed himself, for the term prescribed by law.

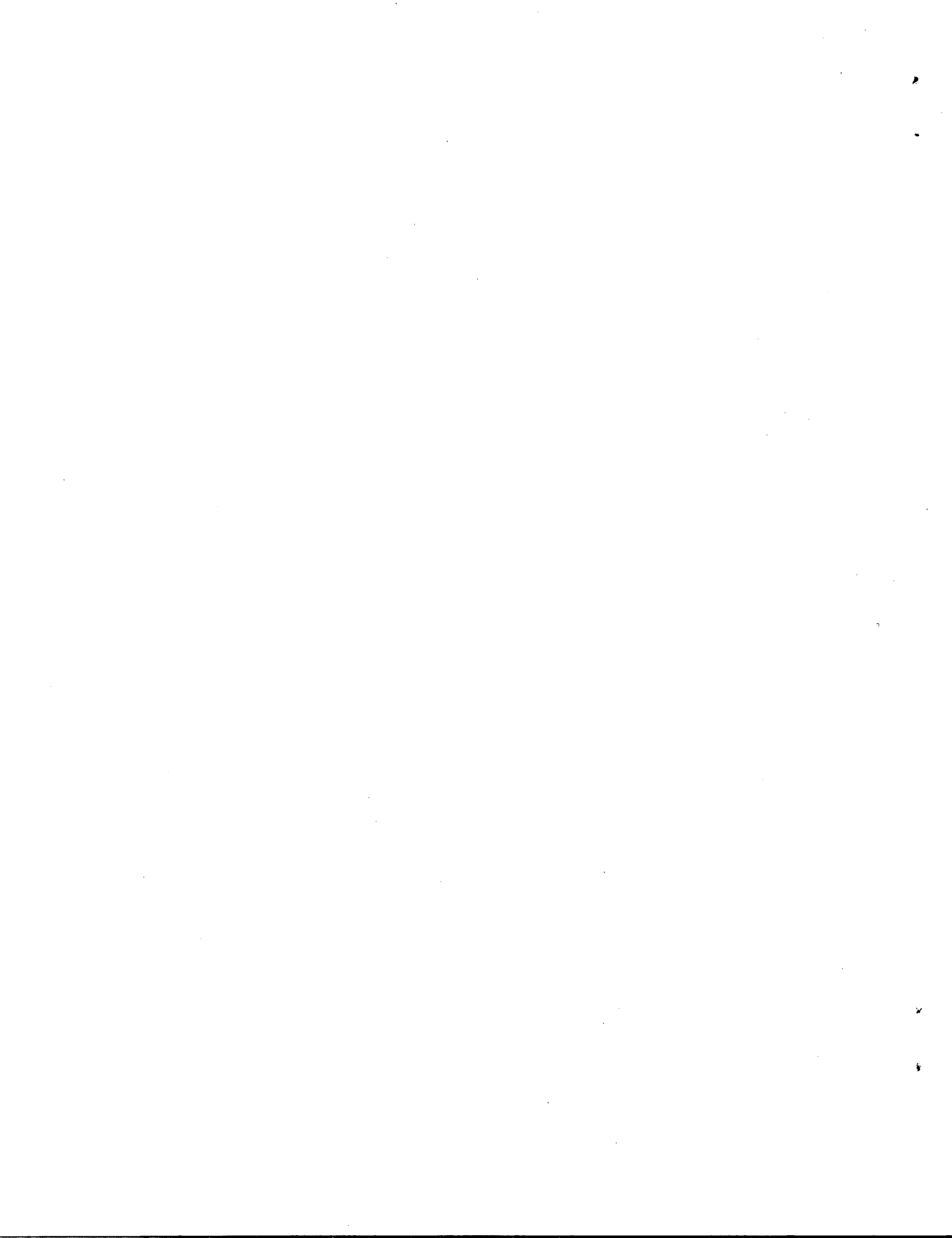


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SENATOR EDWARD T. O'CONNOR (Chairman): The first item of business on today's agenda, and today our Committee will be dealing only with nominations, and not bills. The first item on the agenda is the nomination of Justice Stewart G. Pollock to succeed himself as a Justice of the Supreme Court. Justice Pollock, would you come up please and have a seat at the table? Good afternoon, Justice. As is our custom here, we'll ask the home county Senator, Senator Dorsey, if he would introduce Justice Pollock to the Committee?

SENATOR DORSEY: Justice Pollock, the Chairman, as you see from his nameplate, is Chairman O'Connor from Hudson County. Immediately to his left is the Vice Chairman, Senator Zane, from Salem County. To Senator O'Connor's immediate right is John Tumulty, the ex officio chairman (laughter), to my right is Senator DiFrancesco of Union County, and to our far right is Senator Laskin from Camden County.

By way of introduction, I don't think after all of the newspaper articles we have generated between Justice Pollock and I that it is particularly necessary. Justice Pollock practiced with a firm in Morristown known as Schenck, Price, Smith and King. In 1973 or thereabouts, he became a colleague of Governor Byrne while a Republican. He subsequently was appointed to the Board of Public Utilities by Governor Byrne, served there for a period of time, served on the SCI, and subsequently served as counsel to the Governor, and was ultimately appointed to the Supreme Court seven years ago.

I understand, Mr. Chairman, you wish to differ from our usual format, and that is to give the opportunity to Chief Justice Hughes to speak first in this matter, and then I will have some questions of Justice Pollock.

SENATOR O'CONNOR: Thank you Senator Dorsey. Our usual format is for members of the Committee to ask questions of the nominee, and then invite members of the public to address the Committee. But I understand there are persons with

time constraints today, and to accommodate everyone we will depart from our usual procedure.

I have a list of four persons who have indicated a desire to address the Committee. And I note that former Governor Richard J. Hughes is among those. Governor, I invite you to speak first.

FORMER GOVERNOR R I C H A R D J. H U G H E S: Mr. Chairman, I'm sorry to decline, but can I defer to Senator Bateman? He's under a much stricter schedule than I am. Can you hear him first and then--

SENATOR O'CONNOR: Absolutely. Thank you, Governor. Former Senator Raymond Bateman?

R A Y M O N D H. B A T E M A N: Thank you Senator. I appreciate being put on first. This is probably the first time that Governor Hughes allowed me to get on first. I have a couple of hundred people in my back yard at a picnic, and I would appreciate the opportunity to get back.

Because I have been a member of this Committee, and because at one time I was Chairman of this Senate Judiciary Committee, I appreciate and understand probably better than most people that Senator's take their advice and consent responsibilities seriously. And I want you to know that I'm here because of that; I'm here because a friend -- a very good friend of long standing -- is before you now.

When I was on the Judiciary Committee, and when I was Chairman, I was not a lawyer, and I'm not a lawyer. I could not look at judicial candidates from the same perspective as lawyers can, because I was in no position and I'm still in no position to comment, really, intelligently on legal background. But I used to look at the judicial candidates the same way I looked at legislators. You looked at their competency, their honesty, their judgment, their caring attitudes towards society in general and people in particular, and their convictions. And as I said, I'm here because the

Justice who I've known since mid-1960's fits all of those qualifications in very real ways.

He was a lawyer before he got involved in government; who cared very much about the communities that he lived in. We were involved in a number of activities together. We used to be volunteers in State Republican campaigns together; that's how we really got to know each other. But I know how much he did in Morris County for retarded and handicapped children; I know he was a lawyer who thought very seriously about his community responsibilities. I guess I told Senator Gormley, the last time that he and I were involved in a public campaign together was in the Casinos No Dice campaign -- the one that would have had statewide casinos, the one that preceded the successful campaign. We worked together in that one.

So, the Justice is a friend; the Justice is a person whose judgment I admire and respect; the Justice is the kind of a person that I would like to see on a court because he has such a deep conviction and a deep sense of caring about people and society. So, I just took the opportunity to come and take a few minutes and tell you that this gentleman who I've known for about 25 years is the kind of person that has made our court's reputation a great one nationally and a good one in this State, and the kind of person that I think people who have problems and have to come before a court can come in the knowledge that they're going to get an absolute straight-out fair shake in anything that's before them.

I thank you for the opportunity.

SENATOR O'CONNOR: Thank you, Senator. The next person in to address the-- Are there any questions? Does anybody wish to question Senator Bateman on his statement? (negative response) Thank you, Senator.

MR. BATEMAN: Is that it?

SENATOR O'CONNOR: That's it. Go enjoy your picnic. The next speaker then would be former Governor Richard J. Hughes. Governor?

GOVERNOR HUGHES: Thank you Mr. Chairman and member of the Judiciary Committee. My last experience with the Judiciary Committee was when I was appointed to be Chief Justice by Governor Cahill. And I appeared sort of intimidated, and it was all very pleasant, except that Senator Kelly from Hudson -- I was wearing a very ugly mustache at that time -- and Senator Kelly said, "Governor, I know your ability, I want to support your nomination, but I don't care for that mustache a bit." I said, "Senator Kelly, neither does my wife, but I'm not going to do anything about it." But he voted for me anyhow.

I appreciate this opportunity to testify on behalf of the renomination of Supreme Court Justice Stewart Pollock. I'm honored to support that good renomination. He has always seemed to me the ideal, the quintessential judge. Scholarly, industrious, the soul of integrity, with a most attractive style of humility, but in it standing very tall in his honest opinions, unafraid, as all Americans must be.

A great Republican Governor, the late Al Driscoll, once explained to me the pattern of a good judge. He had appointed me, sight unseen in 1948 to be the last common pleas judge in New Jersey under the old 1844 court system. I was sworn in two days before the September 15, 1948 which was the operative date of the Judicial Article of the 1947 Constitution. I served nine years under Chief Justice Arthur Vanderbilt, the architect of our modern court system. In 1952, I was flattered to receive a call from Governor Driscoll, asking me to see him in his office. He greeted me and then he said this, "I'm getting good reports about your work, and I'm thinking to appoint you to the Superior Court. But first I want you to promise me that you will always be absolutely independent. Don't care a snap of your fingers what Governor Driscoll might want you to decide, or Chief Justice Vanderbilt, or the Senate, or the Chamber of Commerce, or anyone else. Decide on the law, and the facts, and the Constitution, 50-50,

right down the middle. And you will be the kind of judge any governor would be proud to appoint." Such a thrilling message which by coincidence in my later years as Governor, I was able to pass on to probably a hundred judges I appointed.

And this is the kind of judge Stewart Pollock is, and always will be. The kind of judge, Mr. Chairman that Americans always wanted, from the revolution where they challenged the British Crown in the Declaration of our Independence, saying he has made the colonial judges dependent on his will alone for the tenure of their office and for their salaries; to the popular President Franklin D. Roosevelt who was severely chastised in 1938 after he had tried to pack the Supreme Court in 1937; and in 1947 when the people of New Jersey adopted our present Constitution by an unprecedented 3 1/2 to 1 majority statewide, its centerpiece being an independent judicial system, free of political or other pressure.

Mr. Chairman, I hope you will permit me to digress just a second to commend and thank Senator Dorsey for his decision to permit this Committee to consider this nomination today, reserving the right of any Senator to contest it openly on the floor which of course is the American way of debating important issues.

If you decide to recommend the nomination of Justice Pollock to the full Senate, you will at once be providing the people of New Jersey with a most splendid judge, at the same time helping to preserve a judicial system acknowledged by all authorities to be the best in the nation. The preservation of that system is important to me. I followed a good man, Pete Garven -- unfortunately, a very ill man -- and he had succeeded Chief Justice Joe Weintraub, who followed the great Arthur Vanderbilt. I did my very best to hand over to my successor, Chief Justice Wilentz, a court intact in its integrity, its scholarship, its zeal for service to the people. I have the most personal and serious interest in that court system

remaining the best in the nation. And I think you Senators want that too.

My thanks very much, Mr. Chairman, for your courtesy and that of the Committee.

SENATOR O'CONNOR: Thank you, Governor. Are there any questions by members of the Committee?

SENATOR LASKIN: Mr. Chairman, I don't have a question, but I don't want to let this opportunity go by without saying hello to a man I respected more than just about anybody in politics. When I was a freshman Assemblyman, this gentleman was the Governor from the opposite party, and I happen to love him, as I think most people do, and I just wanted him to know that I haven't forgotten him.

GOVERNOR HUGHES: Thank you very much, Senator Laskin.

SENATOR O'CONNOR: Senator Russo?

SENATOR RUSSO: I just want to say that I'm glad that Governor Hughes didn't start off today by telling us the story about his cat. (laughter)

GOVERNOR HUGHES: I can go back to it if you want. (laughter)

SENATOR O'CONNOR: Thank you, Governor.

GOVERNOR HUGHES: Thank you very much, Mr. Chairman, and Senators.

SENATOR O'CONNOR: Justice Pollock, I should tell you that we have now been joined by, if you haven't noticed, Senate President John Russo of Ocean County, and Senate President Pro Tem Carmen Orechio of Essex County, and we are about to be joined by Senator Richard Van Wagner of Monmouth County.

The next speaker is Mr. John Tomicki, Vice President of the New Jersey Right to Life Committee.

J O H N T O M I C K I: (Witness, who is speaking from audience, indicates he does not wish to make a comment before Justice Pollock speaks.)

SENATOR O'CONNOR: All right. Well then, the next speaker will be the honorable Arthur S. Lane.

FORMER JUSTICE ARTHUR S. LANE: Mr. Chairman, gentleman--

SENATOR O'CONNOR: Judge Lane, before you begin, I'll just add that we've now also been joined by Senator Bill Gormley of Atlantic County.

JUDGE LANE: I am here to speak in favor of the confirmation of Justice Pollock. I had the honor and pleasure of serving with him as a Commissioner on the SCI for a period of roughly two years, and I know him to be a man of integrity, I know him to be a man of real ability, and a most remarkably fine sense of fair play. From my 40 years as an attorney, and my experience of 12 years on the bench, I am of the opinion that we could not have a finer man on the high court of this State than Justice Pollock. And I would sincerely hope that his confirmation is effected quickly.

Thank you, sir.

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

Justice, if you'll have a seat back in the main seat, we'll now open the discussion up by any members of the Committee. Senator Dorsey?

SENATOR DORSEY: Mr. Pollock, I want to ask you a number of questions here today. I'll try not to be prolonged, and my intent is not to engage in long debate with you, and perhaps we can go through it quickly.

Justice O'Hern wrote recently, "To declare a statute unconstitutional is a judicial power to be delicately exercised. Legislative acts should not be declared void unless its repugnancey to the Constitution is clear beyond a reasonable doubt." Do you generally subscribe to that principle of statutory construction and analysis by the Court?

JUSTICE STEWART G. POLLOCK: I would think so. There's clearly a burden to establish the unconstitutionality of an act of the Legislature. Yes, sir.

SENATOR DORSEY: When Justice O'Hern wrote that statement which I think is a good statement, in the case of Right To Choose vs. Byrne, a case in which you will recall that you issued the majority opinion, do you not?

JUSTICE POLLOCK: I recall the majority opinion, and I recall Justice O'Hern's words, yes.

SENATOR DORSEY: And in that opinion, you invalidated a particular act of the Legislature, namely N.J.S.A. 30:40d-6.1, did you not?

JUSTICE POLLOCK: Well, we said it had a Constitutional defect, and then we construed it in such a way as to save the statute.

SENATOR DORSEY: And you essentially did not permit the legislative act which sought to limit the utilization of Medicaid payments for certain abortions to stand, is that not correct?

JUSTICE POLLOCK: The essence of the holding was that the statute, which prohibited the use of Medicaid funds except when necessary to save the life of the mother, we construed that statute to read where it was necessary to save the life or the health of the mother.

SENATOR DORSEY: And Justice O'Hern in that case went on to say that the United States Supreme Court, faced with the precise issue presented in that case to the New Jersey Supreme Court ruled in a different manner and in essence did not construe the equal protection clause in the same manner that you did. Is that correct?

JUSTICE POLLOCK: Justice O'Hern had an accurate statement of the law insofar as the equal protection under the Federal Constitution is concerned.

SENATOR DORSEY: And you interpreted the equal protection clause in the State Constitution, which is basically the same as that in the Federal Constitution, differently in that case in order to reach the decision which you rendered. Is that not so?

JUSTICE POLLOCK: Well, the clause, Article 1, paragraph 1 of the State Constitution, which was the predicate for our decision, reads differently from the Federal clause and we looked to that clause, which is our, as you know, guarantee of fundamental rights, and also to the common law of New Jersey, and we found within the Constitution and within the prior decisions of the Court notions of people protection and of privacy that accorded greater protection to the individual than the United States Supreme Court had found within the Federal equal protection clause.

SENATOR DORSEY: Yes. Let's turn to the case of the State vs. Dyal -- D-Y-A-L -- another case in which you wrote a decision. As I understand the case, there was a specific statute which held that certain material, certain evidence in that case, was privileged as being doctor-patient privileged material. Do you recall the case?

JUSTICE POLLOCK: I recall the case, yes.

SENATOR DORSEY: And in your decision, you acknowledged that the Legislature had adopted a statute which made that material privileged, and you acknowledged the fact that the Legislature had, in various ways, considered revising that privilege, modifying the existing statute, but the Legislature had not at the time of your decision changed the statute. Correct?

JUSTICE POLLOCK: Yeah. That was not only a statute that was involved, but it was a rule of evidence also. It's one of those circumstances where the Court and the Legislature act cooperatively. So you--

SENATOR DORSEY: But at that point in time, the Legislature had not changed its statute creating the privilege, had it?

JUSTICE POLLOCK: That is correct.

SENATOR DORSEY: And you, in essence, struck down that privilege and interpreted it differently than it had previously existed. Is that not so?

JUSTICE POLLOCK: Well, we construed the privilege so that -- I think, if I recall that case correctly, it involved a blood sample of a man charged with drunken driving, and we said under certain conditions the evidence of that could be made available. That's my recollection of the opinion.

SENATOR DORSEY: My recollection of the opinion is the Legislature had not changed it, but you saw fit to change it before the Legislature acted, notwithstanding that it was an ongoing issue in the Legislature. Is that not so?

JUSTICE POLLOCK: Well, yeah there were bills pending on that. Some of them were quite consistent with the decision.

SENATOR DORSEY: But it had never become law.

JUSTICE POLLOCK: Not as of that time. No, that's correct.

SENATOR DORSEY: You accelerated the process?

JUSTICE POLLOCK: Pardon?

SENATOR DORSEY: You accelerated the process.

JUSTICE POLLOCK: Well, we felt we had an obligation to construe the rule of evidence which was also incorporated in the statute in a way, really, that we thought made sense. Yes.

SENATOR DORSEY: Before we get into Mt. Laurel II, there was another case in which you rendered -- and I'm frankly surprised it didn't get more attention at the time -- a rather significant opinion. The name of it is the matter of "Egg Harbor Associates Bayshore Center, 94:NJ-358," dealing with the CAFRA legislation. Are you familiar with that?

JUSTICE POLLOCK: Yes.

SENATOR DORSEY: And it's my understanding of your decision in that case, that you found that CAFRA legislation was not only environmentally oriented in terms of what the DEP could or could not do or should or should not do, but that the DEP had, if not an obligation, the authority under CAFRA to impose Mt. Laurel kinds of considerations and obligations in the issuance of permits on the basis of the CAFRA legislation. Is that not so?

JUSTICE POLLOCK: That's-- I think that's generally correct, yeah.

SENATOR DORSEY: And the CAFRA legislation was adopted in 1973, long before we had heard of either Mt. Laurel I or specifically Mt. Laurel II, is that not so?

JUSTICE POLLOCK: It was two years before the original decision, yes.

SENATOR DORSEY: Two years before Mt. Laurel I.

JUSTICE POLLOCK: The original Mt. Laurel decision.

SENATOR DORSEY: And ten years before the Mt. Laurel II decision, in which we specifically talk about Mt. Laurel II obligations.

Justice Schreiber, in his opinion, said in connection with your opinion, "Certain well-established principles govern this analysis. First" -- statutory analysis -- "the authority of an administrative agency is limited to those powers expressly granted to it by the Legislature, including those reasonably necessary to effectuate the specific delegation. The grant of authority is to be construed to enable the agency to accomplish its statutory responsibility." And he also said that as far as he was concerned, the CAFRA legislation was purely environmental in its orientation. And I take it from your decision you disagree with that.

JUSTICE POLLOCK: Well, the Court did, and I wrote the opinion for the Court.

SENATOR DORSEY: Well, let's not get-- You wrote the opinion, and in the opinion you disagreed with that.

JUSTICE POLLOCK: Yes. We read the statute and the regulations differently.

SENATOR DORSEY: And in the legislation that dealt with CAFRA there's no question there was no specific reference in it to any Mt. Laurel obligation, was there?

JUSTICE POLLOCK: There was not a specific reference for Mt. Laurel obligation in CAFRA, but as you know, you try to read statutes and regulations in a way so that they do make sense. You try to make them consistent with the spirit with which they were enacted.

SENATOR DORSEY: Well, even if we assume that your phrase is correct, how do you then read into CAFRA, adopted 10 years before Mt. Laurel II, authorization to the DEP from this Legislature to infer Mt. Laurel obligations?

JUSTICE POLLOCK: I don't recall the precise words of the opinion. As you say, it has not attracted much attention since it was written. My recollection is that we found--

SENATOR DORSEY: Yeah, that's fortunate for you, but-- You want the opinion?

JUSTICE POLLOCK: No, it's perfectly all right. My recollection is that we found within the wording of the statute, and within the regulation, an intent that was consistent with the general propositions that underlie Mt. Laurel.

SENATOR DORSEY: Well, maybe there's something wrong with me, but I really would appreciate your telling me-- I mean, I can understand how one can infer. If the Legislature were to adopt a CAFRA piece of legislation today you could say that they obviously had in mind the Mt. Laurel decision and the Mt. Laurel obligation. But how can one reasonably read that obligation and that authority into the DEP from a statute that was adopted 10 years before Mt. Laurel II obligation was created by the Court?

JUSTICE POLLOCK: The best answer I can give you Senator is that the problem which was addressed in the original Mt. Laurel decision existed before the decision came out. And the legislative enactment we read to be broad enough to encompass addressing that problem.

SENATOR DORSEY: In other words, then I am to be given to understand by you that if there were lower court decisions involving any issue that predated the adoption of a piece of legislation by this Legislature delegating certain powers to the DEP, or the Department of Health, etc. that the Court could properly -- and you would; forget the Court -- that you would properly be prepared to read into that legislative act a knowledge of the part of the Legislature of those issues that may have been decided at a lower court level?

JUSTICE POLLOCK: I think you have to take on a case by case basis, Senator.

SENATOR DORSEY: Well, in this particular case there obviously had been no Supreme Court decision creating Mt. Laurel II obligations at the time that the legislation which you construed, and implied or found that that authority was implied in that legislation existed.

JUSTICE POLLOCK: (word inaudible) curious, has the statute been amended since the decision?

SENATOR DORSEY: I don't know.

JUSTICE POLLOCK: Because that may be some indication--

SENATOR DORSEY: I don't think so.

JUSTICE POLLOCK: That may be some indication--

SENATOR DORSEY: I don't think so. The decision came and-- What would that indicate? That would not indicate what could have been reasonably foreseen on the minds of the Legislature when it adopted CAFRA in 1973, would it, Justice?

JUSTICE POLLOCK: I think what it could indicate is the compatibility of our construction of the statute with at least the present Legislature.

SENATOR DORSEY: Well, that would be confirmation after you had created the right that the Legislature had not previously created, would it not?

JUSTICE POLLOCK: But it could always be changed by the Legislature.

SENATOR DORSEY: Well, we understand that. We're not into the issue of whether the Legislature has the right to change, alter, or amend its acts. The issue here is the Court which you are party, and in which you rendered this decision, changing the acts of the Legislature before the Legislature deems it's appropriate to change those acts.

JUSTICE POLLOCK: What's the question?

SENATOR DORSEY: The question is, that in light of the fact that there could have been no Mt. Laurel obligation created or the Legislature had thought of a Mt. Laurel II obligation at the time that it adopted CAFRA, how does one reasonably then read Mt. Laurel II into CAFRA?

JUSTICE POLLOCK: I think we're going over, if I may, the same ground. But I would commend to you, if I may, most respectfully, and to the members of the Committee, is perhaps a reading of the opinion at the conclusion of the hearing.

SENATOR DORSEY: Well, I've read the opinion, and the most that I can get out of your answer, and I won't go on it any further because you don't seem to be answering it directly, is that you imply that because there was Mt. Laurel type litigation going on at the time that CAFRA was adopted, but we both agree that the Supreme Court had not rendered either Mt. Laurel I or Mt. Laurel II at the time CAFRA was adopted in 1973, that the Court appropriately read into the CAFRA legislation a Mt. Laurel II obligation.

JUSTICE POLLOCK: We so construed the statute.

SENATOR DORSEY: I-- One other case, and then we'll turn to another subject. In the case of in re: Upper Freehold School District--

JUSTICE POLLOCK: That was another one that didn't get much attention.

SENATOR DORSEY: We had a situation in which the voters in that community had been asked to vote on two occasions on whether or not a certain bond issue which would provide money for a certain improvement would or would not pass. And it was rejected by those voters on each and every occasion -- on the two occasions. And in your decision, you in essence overruled what had been the decision of the voters and the taxpayers of that district by upholding a decision made by the Commissioner of Education that the district should issue bonds in that connection. Is that not so?

JUSTICE POLLOCK: We found the Commissioner had the power. That's correct.

SENATOR DORSEY: So that, in essence, the decision of the voters in connection with that issue that may or may not been appropriate -- was appropriate from their standpoint, since they confirmed it on a second occasion -- in this process between the Court and Departments of the Executive, simply gets overridden and changed as a result of your decision.

JUSTICE POLLOCK: You know, if I recall that decision correctly, that involved the school system that had the school that had the leaky roofs, that literally formed lakes in the school when it rained, and the school was virtually non-functional. And my recollection is--

SENATOR DORSEY: Excuse me, I don't recall that there's anything in the case that said the school was non-functional.

JUSTICE POLLOCK: Well, I knew there were classrooms that could not be used, and students, I believe were being moved to other facilities for the purpose of education. Not the kind of education that we normally contemplate for our children. And--

SENATOR DORSEY: If that's so, it wasn't in your opinion.

JUSTICE POLLOCK: My recollection is it's in the facts, but you have it before you, and the opinion certainly speaks for itself. My recollection is that the conclusion was that the youngsters in that school district were not getting a thorough and efficient education, and that the voters were, by not approving the expenditure to repair the school, depriving the youngsters of that town of that education. And the Commissioner, if my recollection serves me correctly, ruled that they've got to have a functional school. You've got to fix the school up. And we sustained that decision.

SENATOR DORSEY: Mr. Pollock, what years did you serve as Governor Byrne's counsel?

JUSTICE POLLOCK: Started in February of '78 and went through until June 28 of '79.

SENATOR DORSEY: And when you were Governor's counsel, did you consider either of the Executive Orders -- I think -- 35 and 37 which were issued by Governor Byrne in 1976?

JUSTICE POLLOCK: They were issued before I went there. We didn't have them before us.

SENATOR DORSEY: And did you review or otherwise in any way deal with Senator Greenberg's bill, which I think the number in 1979 was S-535, which dealt with the issue of housing at that time?

JUSTICE POLLOCK: I recall the bill. I recall it. But, as you know, it never went anywhere.

SENATOR DORSEY: It went through the Senate.

JUSTICE POLLOCK: It was never--

SENATOR DORSEY: It failed in the Assembly.

JUSTICE POLLOCK: It did pass the Senate?

SENATOR DORSEY: Yes.

JUSTICE POLLOCK: Your recollection is better than mine.

SENATOR DORSEY: And, your answer is the bill went nowhere. That's your recollection. I'll accept that. That bill, similar to Mt. Laurel II would have provided for certain

quotas in terms of low and moderate income housing. Correct?

JUSTICE POLLOCK: You're taxing my memory beyond the point where I can recall correctly.

SENATOR DORSEY: Now, you concurred in perhaps the most major decision of this Supreme Court, Mt. Laurel II, and of course, I'm interested to see former Senator Bateman here today supporting you, because he wrote scathing letters to the editor criticizing the effects of Mt. Laurel II on his particular community -- I think it's Branchburg in Somerset County. But is it not correct to say that in Mt. Laurel II you found an obligation, a right, that had never previously been found by any other state supreme court in the United States?

JUSTICE POLLOCK: That's not correct.

SENATOR DORSEY: That's not. Which other state has created the same rights?

JUSTICE POLLOCK: Most respectfully, the point at which I wish to correct your statement is that the right had been found by the prior Court in 1975. That was a decision that made the -- found in the State Constitution an obligation on the part of municipalities not to exclude.

SENATOR DORSEY: Excuse me. I wasn't speaking about the New Jersey Supreme Court, I was speaking in reference to other supreme courts across the country.

JUSTICE POLLOCK: No, but your question was originally formulated in the part, you know when I stated that it's not correct, the part which I was addressing was when you said the Court in 197-- What did you say, 1981 did you say?

SENATOR DORSEY: '83. Mt. Laurel II was February of '83.

JUSTICE POLLOCK: '83. So that's the difference is that the right had been declared in 1975. Now the interesting thing was in Mt. Laurel II, we had -- which was argued right in this courtroom -- we had I can't tell you how many parties, how many amicus curiae, and not one person, not one party, not one

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amicus, asked the Court to rescind the basic Mt. Laurel doctrine.

SENATOR DORSEY: That wasn't my question. In Mt. Laurel II you did very specific things, which we don't have to reiterate in its entirety. Is there any other state supreme court in the United States which either did the same thing either prior to or subsequent to Mt. Laurel II?

JUSTICE POLLOCK: Not to my knowledge.

SENATOR DORSEY: In Mt. Laurel II, one of the most interesting aspects of it is the section that deals with the so-called builders' remedy and the subsequent utilization of builders remedy in terms of the litigation which followed Mt. Laurel II. And I trust that you're familiar with the builders' remedy?

JUSTICE POLLOCK: I'm familiar with that part of the opinion.

SENATOR DORSEY: Are you familiar with the fact that it has subsequently been implemented by providing that a builder, for instance, will get to build four market units if he builds one low and moderate income unit on a higher density than otherwise would be permitted?

JUSTICE POLLOCK: I'm familiar with it the way anyone who reads newspapers is familiar with it. Now, we never had an appeal.

SENATOR DORSEY: I understand. I understand that, but are you familiar with the general workings which I've just laid out for you?

JUSTICE POLLOCK: I have a general familiarity with it, yes.

SENATOR DORSEY: Were you familiar with it when in essence you endorsed the builders' remedy in that decision?

JUSTICE POLLOCK: Well--

SENATOR DORSEY: I mean, did you have some concept as to how it would be carried out? Did you have some concept as

to what you had set in motion in terms of a weapon against municipalities?

JUSTICE POLLOCK: What I am familiar with is that part of the opinion which provides for a builders' remedy, that part of the opinion which contemplates that, for instance, that the portion of low and moderate income housing could be 20%. But at no point was that part of the opinion to be taken in isolation from the other parts of the opinion; the parts that say that development should go forward in an environmentally sound manner, should be phased in, and should be no more than a fair share.

SENATOR DORSEY: I understand that. We're not focusing-- We have to take piece by piece of the opinion. I'm really interested as to whether or not, when in essence you voted for the builders' remedy -- which is probably the most odious part of that opinion in terms of most of us that have had to deal with it either in the Legislature or at the municipal level -- you had a concept of what it meant; of what it would do when it was implemented. Namely that builders would be given a higher density than they otherwise would have, that they be given the right to build four market units and then presumably subsidize one low and moderate income unit as the trade-off.

JUSTICE POLLOCK: I think that concept is in the opinion. But I think it would be terribly unfair to separate it out from the rest of the opinion.

SENATOR DORSEY: I haven't tried to separate it out. I just wanted to know whether you understand it. Do you understand that in the builders' remedy, when it is implemented either by way of a decision or by way of a settlement, and a builder now gets to build 15 units per acre where, perhaps in Mendham he'd get to build 2 per acre. For every four market units he builds he builds one low and moderate income unit. Are you familiar with that?

JUSTICE POLLOCK: Yes.

SENATOR DORSEY: All right. And in that context, do not the purchasers of the market units subsidize the purchasers of the low and moderate income units?

JUSTICE POLLOCK: That could happen.

SENATOR DORSEY: And therefore, in essence, we have somewhat of a transfer of wealth based upon that type of situation, don't we?

JUSTICE POLLOCK: That could happen.

SENATOR DORSEY: Do you recognize that in connection with these low and moderate income units, if in fact they are built as a result of a judgment issued against a municipality, that since their value is set, and their sales price is set at an artificially low level, that they must be assessed accordingly, and subsequently all the other taxpayers in the municipality are involved in a situation where they will constantly be subsidizing those particular units in the future?

JUSTICE POLLOCK: I think the Court had that in mind, and I think I did too. Yes.

SENATOR DORSEY: In other words, you agree with that concept? That's appropriate for carrying out your ultimate purpose of providing the so-called affordable housing opportunities?

JUSTICE POLLOCK: I think that was a possibility. I think the Court and I think I understood that. Yes. Yes.

SENATOR DORSEY: And today it's a reality, and you still endorse it. You don't back away from the concept?

JUSTICE POLLOCK: As I say, I don't know how it's working out on the ground. The cases never came before us.

SENATOR DORSEY: Well, would you take my representation that that is in fact the way it works out, either hypothetically, or take my representation? But that in fact is the way it works out. And I think you can understand it; the low and moderate income units are sold at an

artificially low price, they therefore must be assessed accordingly because there are restrictions placed upon their resale. And as a result of that are not the other taxpayers in a municipality called upon to subsidize what otherwise would be the low and moderate income units' fair share in terms of taxes?

JUSTICE POLLOCK: I can see how that would work, yes.

SENATOR DORSEY: Good. Now you see how it works. Do you still approve of that methodology?

JUSTICE POLLOCK: We certainly approved of it at the time. There's been a significant change, however, and the change is the act of the Legislature and the creation of the Affordable Fair Housing Council. So that, at the time yes, at the time yes, I approved it. But whether or not that's necessary now remains to be seen. We have a brand new game with a new set of rules.

SENATOR DORSEY: All right. But, of course you understand that even under the Fair Housing Act, there is not a continuing moratorium as to the builders' remedy.

JUSTICE POLLOCK: That's-- Well, there could be remands to the courts, yes.

SENATOR DORSEY: The bill itself, the law itself did not provide a continuous moratorium on the builders' remedy. You understand that?

JUSTICE POLLOCK: Yes, I do.

SENATOR DORSEY: Do you subscribe at this time, as I think you must do, in the initial decision to the concept, that municipalities have an obligation to utilize their financial resources whether they be through capital ordinances or bonding ordinances, to in essence, provide the infrastructure for the so-called low and moderate income units?

JUSTICE POLLOCK: Well, I don't think the opinion went that far.

SENATOR DORSEY: All right. If you say the opinion did not go that far, do you subscribe to that theory, that a

municipality does in fact have an obligation to utilize its bonding power to provide infrastructure?

JUSTICE POLLOCK: Senator, I, with all due respect, we may get some of these cases again.

SENATOR DORSEY: All right.

JUSTICE POLLOCK: And I don't want to speculate about issues that might come before us.

SENATOR DORSEY: All right. But it's your recollection of the opinion today that it does not go so far as to require municipalities to lend their bonding capabilities to providing infrastructure at their cost?

JUSTICE POLLOCK: I'd want to check the opinion, which I don't have here. But that's consistent -- that's my impression of it, yes.

SENATOR DORSEY: Let me ask you another question. Some of the supporters of the Court, while acknowledging that the Mt. Laurel II decision was in fact an extreme decision in terms of creating an obligation, or as you would say, continuing an obligation, further defining an obligation, making certain that the obligation is carried out, that it was an act by the Court to force the Legislature, almost in a sense of negotiations, into taking certain actions. Do you agree with that characterization of the act of the Court?

JUSTICE POLLOCK: Senator, I think if you read, as I know you have, all the decisions in Mt. Laurel, in the original decision to the two separate opinions in that decision, to Mt. Laurel II, you will see not so much an effort by the Court to force the Legislature, but a request by the Court for the Legislature to act. The opinions are just larded with the recognition by the Court that it is that branch least well-suited to address the question.

SENATOR DORSEY: I know. But that doesn't answer my question. There's no question that there are those statements in both opinions over and over again.

Would one correctly characterize that as an attempt by the Legislature (sic) to negotiate with the Legislature, since you simply didn't make a request. You may have made a request over and over again, but then took extremely forceful, if not effective action to accomplish a particular goal.

JUSTICE POLLOCK: Well, I-- You want to call it forcing, I want to call it requesting. The opinion, I think, speaks for itself.

SENATOR DORSEY: I know the opinion speaks for itself. Now I want you to characterize something that other people have said about the effect of the opinion.

JUSTICE POLLOCK: I'm going to respectfully decline to do that. I think--

SENATOR DORSEY: You can't do that.

JUSTICE POLLOCK: I think it would be not productive for me to be characterizing what others have said about an opinion, when I think the basic position and the more appropriate position, if you'll permit me, is to say the opinion rests on itself.

SENATOR DORSEY: Have you at all familiarized yourself with the judgment which was entered against the Township of Denville, as a result of subsequent litigation involving Mt. laurel II?

JUSTICE POLLOCK: I have only a general recollection of it; no specific recollection.

SENATOR DORSEY: Do you have any particular feeling as to the appropriateness of a judgment which, utilizing the builders' remedy, would have required the Township to Denville to provide zoning at a very high density, far beyond what their ordinance provided at the time of the judgment, which in essence, at a five-year period, if it were carried out over a five-year period, would literally have doubled the residential units in that municipality?

JUSTICE POLLOCK: We, of course, did not review that judgment, and you're going to have to help me. That matter, I think, is before the Affordable Housing Council, isn't it?

SENATOR DORSEY: I understand that. I understand that you didn't pass upon it. I'm asking whether you have any reaction to it as to whether it is appropriate, do you feel good about it, you feel bad about it, or you don't care about it?

JUSTICE POLLOCK: I think what would be inappropriate is for me to comment on a matter that might conceivably come back before the Court.

SENATOR DORSEY: I find that difficult, because that judgment can never come back to the Court, because of the intersessional Legislature to produce the Affordable Housing Council under the Fair Housing Act. So that judgment never comes back to your Court.

JUSTICE POLLOCK: No, but I think the case-- I think, if I understood you correctly a matter of moments ago, the Denville matter is still pending, and that matter conceivably could come back to the Court. So I--

SENATOR DORSEY: But not the judgment which I refer to.

JUSTICE POLLOCK: Perhaps not the judgment, but I think it would be indiscreet to comment on something that's still in litigation, if you will.

SENATOR DORSEY: Well, let me have you comment on one final thing. You have undoubtedly read in the course of considering your nomination -- and I have said this -- that my office received many many calls and communications, very few requesting that your nomination be approved. And on a ratio, perhaps of 10 to 1 that your nomination be opposed. And, yesterday before coming here, I happened to pick up a letter written to me by a councilman from the Borough of Seaside Park whom I've never met and I'm sure that you have never met, and therefore there's no way that it was written on either of our

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behests. I think he might even be a constituent of Senator Russo in the family resort town of Seaside Park.

"Dear Senator Dorsey: Thank you for your courageous opposition to the reappointment of Justice Pollock. Justice Pollock's appointment to the State Supreme Court will further erode the liberties of all those that live in New Jersey. His appointment can only signal the establishment of judicial tyranny and the decay of the legislative process of law within the State."

Do you want to comment on that?

JUSTICE POLLOCK: Senator, I think it would be counterproductive for me to comment on a letter that's written by a citizen. A citizen has the right to write that letter. I can only tell you this, that I disagree, so I guess to some extent I do want to comment upon it.

SENATOR DORSEY: Well, I think you have to make up your mind, Judge, comment or not.

JUSTICE POLLOCK: I think you're probably right. I think you're probably right. I think I'll not comment on it.

SENATOR DORSEY: No, go ahead and comment.

JUSTICE POLLOCK: I think it's probably inappropriate for me to be--

SENATOR DORSEY: All right, one final question, then, since we haven't been very good in eliciting responses. Do you at all recognize that because of the actions of the Court, whether it is in Mt. Laurel II, whether it has to do with the host liability, that because of what most people, or many people -- including lawyers and judges -- consider to be very radical decisions, that enormous animosity has built up not only to your Supreme Court, but to the Judiciary generally? And do you have any reflections on that fact?

JUSTICE POLLOCK: Yes, I do. It's this. I think a court should, to some extent, be sensitive to public opinion. A court can't be a political weather vein blowing this way and

that. But a court must, I think, remain sensitive to the, if you will, long swells of the public opinion. In this regard, you may be interested to know that just last week I had a letter from Justice -- now Chief Justice designate Rehnquist, who gave a speech on precisely this point at Boston University earlier this spring. And in that speech, now reduced to an article for publication, Justice Rehnquist says that courts must remain -- I'm not so sure he goes so far as saying must -- that courts do remain sensitive to public opinion. He said, otherwise, if they don't they then come on a court with only those notions of public opinion that they held at the time of their initial appointment. And, although we-- And he refers at some length to the illustration of the Steel Seizure cases.

So, I think that the answer to your question is yes, yes a court must recognize that a rule of law, whether it's one that it promulgates or one that someone else promulgates, will be sustained over time only if it is supported in a general sense by consensus by public opinion.

SENATOR DORSEY: Thank you. Thank you, Mr. Chairman.

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

SENATOR RUSSO: I have some.

SENATOR O'CONNOR: Senator Russo.

SENATOR RUSSO: Justice Pollock, I couldn't help but think it's kind of interesting that, in this particular room, where I had occasions in the past to stand down there in the same place and be peppered with some difficult questions by members of the Supreme Court that I have a chance today to do the same in return.

JUSTICE POLLOCK: It's more fun when you're up there.

SENATOR RUSSO: I guess it is. (laughter) I might say initially, that I'm going to ask you some questions about a couple of the cases that Senator Dorsey spoke to you about, and without in any way being critical of any other Senator's right

to vote on a nomination depending on a justice's opinions, I have a different view. But I certainly respect any other view, namely that I don't believe it's my function to pass on the qualifications of a judge or justice, dependent upon whether I agree with his opinions. Because there are many of yours, I'm sure if I went through them all, and some that I'm aware of now, that I don't agree with. But I always remember what Justice Gaetano (phonetic spelling) used to tell me when I clerked for the Supreme Court, he used to point to the library and say, "In every one of those cases, half the lawyers thought the Court was right, and the other half thought they were wrong."

But, I'd like to take the opportunity that I have though, even though I'm sure in my own mind that it doesn't go to my vote on the qualifications of a nominee, to talk about one of those decisions in particular. One in which I absolutely am in total agreement with Senator Dorsey, that the Court's opinion, in my judgment -- and please don't tell the other six members -- was outrageous. And that's the CAFRA Mt. Laurel housing type of approach. And I'm concerned with a couple of things that you said. You pointed out the fact that the statute -- or, the Court decision, hasn't since been undone by the Legislature as a basis or justification for the Court's decision. And Justice Pollock, I just would like to suggest to you that that is absolutely, absolutely incorrect. Your decision was either correct or not at the time it was made. We don't make it correct by what we do or don't do after.

JUSTICE POLLOCK: I agree with what you're saying. I guess the thrust of what I was trying to say, and perhaps I said it inarticulately, was that since the decision, there has been an opportunity to address the Court decision. I intended to go not beyond that.

SENATOR RUSSO: The fact of the matter is there's legislation pending right now in committee today, I think -- it may have been released -- that would do just that. And,

anticipating a possible second aberrational decision by the Court, an amendment to include the Pinelands Commission as well. But the point -- the thing I'd like to ask, again, to carry a little further what Senator Dorsey said, is, was it ever -- Well, or I've got to be careful here; because deliberations of the Court I know are privileged, but did it ever at least in your mind -- did you ever consider the question of whether at the time in the Legislature -- and it was before certainly my time here -- when they passed CAFRA, ever even gave the remotest consideration to CAFRA being in any way inclusive of low-income housing?

JUSTICE POLLOCK: Senator, the best answer I can give you after the responses to Senator Dorsey, is to respectfully refer you to the opinion. I just don't recall because of the details of it, that clearly at this point.

SENATOR RUSSO: All right. Let me then suggest to you, for whatever it's worth, that when the Legislature passed CAFRA that it knew, not thought, it knew it was dealing with an environmental program, and never gave any consideration whatsoever to low income housing in passing that law. And assuming that's right, I do find it very difficult to understand how the Court, and in my judgment as Chief Justice and Governor Hughes said, and I agree with him, "the greatest Supreme Court in any State in the country," maybe even including the Federal one, too, I don't know--

SENATOR DORSEY: Will you say that after the most recent appointment takes the position?

SENATOR RUSSO: --could, in any way, amplify something to include low-income housing, when it had to know the Legislature never even dreamed of that issue being in any way related at the time it passed the act. And I find that difficult to comprehend.

JUSTICE POLLOCK: I can do no more than refer you to the decision, Senator.

SENATOR RUSSO: Okay. Now, I think you also said, and it's along the same lines, that you felt it was consistent with the spirit within which that law was enacted. Am I correct?

JUSTICE POLLOCK: Yes, yes.

SENATOR RUSSO: What was there in the spirit of that law at that time that made you think that the Legislature would have, had it even thought about it, ever included low-income housing in CAFRA?

JUSTICE POLLOCK: My recollection is that -- and again, I believe this is in the opinion -- that the statute, the wording of the statute -- reflects a concern that would extend not just to flora and fauna, but to people as well. And hence, would carry forward that concern. Again, I'm relying on a recollection of an opinion that was written several years ago, extends to the need to provide for the people in the area.

SENATOR RUSSO: But isn't that really a strained interpretation of a legislative mandate?

JUSTICE POLLOCK: Senator, all I can tell you is at the time I wrote the decision, I and the Court did not believe so.

SENATOR RUSSO: Well, I won't carry it any further, except to say that I respectfully, very strongly, disagree with you and the Court. I think probably it's that kind of approach that creates the problem that, you know, that is here and present today. It would seem to me that if the Legislature passes a law, that law ought to be interpreted, and we oughtn't go beyond that, certainly into a category that isn't even mentioned in the bill. I mean, people as you say, as compared to flora and fauna.

In my judgment, although I wasn't here either, all that Legislature was talking about was flora and fauna, as you put it, and not people; that came 10 years later.

In any event, I would just like to refer to now the letter that Senator Dorsey read part of, or all of, whatever,

from one of my constituents. The name of that constituent is Dr. Moranti, isn't it, Senator?

SENATOR DORSEY: He didn't say doctor, he said Councilman Ralph--

SENATOR RUSSO: Yeah, he's a councilman and he's a doctor.

SENATOR DORSEY: Richard A. Moranti.

SENATOR RUSSO: Right. And to point out, he didn't write to me -- or at least I don't remember that -- but he called me, and it was a long discussion. Dr. Moranti is very active in Mr. Tomicki's group, the Right to Life group. A group that I might say, parenthetically, I have a lot of respect for and have always received support from. And frankly, my views are overall consistent with theirs. But Dr. Moranti was much stronger even on the phone than he was in that letter, with the viewpoint that your renomination and that of the Chief Justice, and a few other people is going to destroy this world. And I pointed out to Dr. Moranti, that although there are many opinions of yours, as any Judge or Justice that I wouldn't agree with -- I don't think anyone would -- nevertheless, I felt that an independent judiciary is paramount to anything else, and I absolutely, as I think you pointed out, respected his right to feel as he did. He pointed out to me that he was sure I knew that this would mean he and his group would actively work to defeat me and so forth, and I just raised the question about whether or not it made sense to lose someone that at least supported them on most issues, but tried to point out, and I think that we all have gotten some similar letters, that he has a right to disagree, as we have with him. And as they and we have with you, without reflecting in any way your right to be independent.

I don't agree with some of those Right to Life decisions, I can tell you frankly. But to me, that has nothing at all to do -- although I'm holding back on any comment as to

how I'll vote until we hear all the testimony -- anything at all to do with the qualifications of a Justice of the Supreme Court or judge of any court. I certainly think a governor, as the President just did, has the right to appoint people of his own philosophy, but I don't think a U.S. Senator or a State Senator has the right to say to a judge that if I don't agree with your opinion -- and incidentally, I emphasize it again, this is only my view without being critical of anyone else -- that that's reason to hold back confirmation.

So, Dr. Moranti has been very vocal in his position, as has the Right to Life group, and anyone who wants to question their right to do so will find me defending their right to do so very strongly, although I may not agree with them.

JUSTICE POLLOCK: You know, I think, as my neutral reaction to that letter reflected, the judge in me said, "yes, he has a right to express himself." One of the reasons we wear robes I think is to constantly remind ourselves of the restraints upon us. And it's because of that restraint that I think I, with all due respect to him, I must decline to respond to his letter. I think it would be inappropriate for me as a sitting judge.

SENATOR RUSSO: I agree with you. That's all for now, Mr. Chairman.

SENATOR O'CONNOR: Thank you Senator Russo. Are there other questions by the Committee? (negative response) No other questions by the Committee. All right, at this time then I invite Mr. John Tomicki, Vice President of the New Jersey Right to Life Committee to address the Committee.

JUSTICE POLLOCK: Should I retire to the back of the room Senator, or where?

SENATOR O'CONNOR: All right, wherever you're more comfortable, Justice.

MR. TOMICKI: Good afternoon, members of the Committee

and Senators. In reference to your comment before, Senator Russo, it is not my organization. I just happen to be the Vice President of a statewide organization of over 30,000 families, and we do, of course, have a great deal of concern relative to this nomination that's before the Committee.

We heard the statement made that what we're looking for is an independent judiciary. Independent, as defined in the dictionary, says, "not subject to control by others." Independent in what sense? Independent in the political sense? Of course. But independent as the Justice himself said that he talked about restraint. But what is an independent judiciary? What are the questions that are before this Committee? There are four cornerstones to the issue before you today: The purpose of advice and consent; the duty of the Senator to inquire; the erosion of rights by judicial activism; and the commonlaw tradition versus judicial verbacide.

I take the term judicial verbacide from a series of talks by former United States Senator Sam Ervin, a great defender and understander of Constitutional rights. He gave them at Louisiana State University in the Senator Humphrey lecture series on October 22, 1980. He used and coined the term "judicial verbacide," recalling it from Dr. Oliver Wendell Holmes in his book "Autocrat of the Breakfast Table" where he said, "Life and language are alike sacred. Homocide and verbacide, that is: violent treatment of a word with fatal results with fatal results to its legitimate meaning which is its life are alike forbidden."

Says Harlan Stone: "The purpose for the advice and consent is not to be a rubber stamp for the governor." You have the duty to uphold the Constitution of both the United States and the State of New Jersey. The Governor appoints and the Senate is to confirm only those judicial candidates who seem likely to interpret the Constitution and laws according to their natural meaning, as intended by the Legislature. And I

Handwritten note: I recall seeing [unclear] [unclear]

enjoyed Senator Russo's question relative to what was intended by the Legislature. As Supreme Court Justice Benjamin Cardozo said, "Judges are not commissioned to make and unmake rules at pleasure in accordance with changing views of expediency or wisdom." And that, "It would put an end to the reign of law."

No less than Chief Justice Marshall, in Givens vs. Ogden, declared: "As men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said."

Those of us who criticize State or Federal Supreme Court decisions -- and many of you have -- are many times condemned as being disrespectful or unpatriotic. Judicial decisions merit respect only when they are respectable. And a decision that flouts the Constitution is not respectable. Justice Felix Frankfurter so rightly declared, "Judges as persons, or courts as institutions are entitled to no greater immunity from criticism than other persons or institutions. Judges must be kept mindful of their limitations, and their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

Chief Justice Stone stated: "Where the court deals as ours do with great public questions, the only protection against unwise decisions and even judicial usurpation, is careful scrutiny of their action, and fearless comment upon it."

The legal maxim is "Quis Custodia ipso custodes" -- "who will guard the guardians?" That is the job that falls upon your shoulders today. What yardstick will you use? Professor Charles Black (phonetic spelling) in the "Yale Law Journal of 19-- (exact year inaudible) stated: "In a world that knows that a man's social philosophy states his judicial behavior, that philosophy is a factor in a man's fitness. If

it is a philosophy the Senator thinks will make a judge whose service on the bench will hurt the country, then the Senator can do right only by treating this judgment of his, unencumbered by deference to the President" or in this case, the Governor, "as a satisfactory basis in itself for a negative vote."

Recently the United States Judiciary Committee refused to pass on to the full Senate of the United States a nominee who was accused of making a racist remark, and wrongfully prosecuting a voter fraud case. Senator Biden of Delaware said, "The Committee is not prepared to compromise; is not prepared to give the benefit of the doubt when there is reason to doubt." So there is a precedent that has been set recently within our judicial circles, that if you have a doubt, if you have a concern that something will hurt the State in a judge's decision, you have the right, the duty, and the obligation not to forward that nomination onto the full Senate. I was happy to hear Justice Pollock mention the new Chief Justice designate, because he stated in a "Harvard Law Review" article of October 8, 1959 as follows: "The Supreme Court in interpreting the Constitution is the highest authority in the land. And it is no accident that the provisions of the Constitution which had been most productive of judicial law making, the due process clause, and equal protection laws clauses, are about the vaguest and most general of any in the instrument. Given this state of things, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process? The only way for the Senate to learn of these views is to inquire of men on their way to the Supreme Court something of their views on these questions."

We have seen in our lifetime, the phrase "judicial oligarchy" moved from a political metaphor to an historical fact. Remember the title "Juris Doctor" does not necessarily mean junior deity. Has this nominee been a strict

constructionist or a judicial activist? Does he interpret or has he legislated from the high court of this State? The debate as to an independent judiciary has gone on in our past. In a debate of 1787, George Mason of Virginia stated, "The power of construing laws would enable the Supreme Court of the United States to substitute its own pleasure for the law of the land." And that, "the errors and usurpations of the Supreme Court could be uncontrollable and harmful." Alexander Hamilton rejected these arguments and called the danger of judiciary encroachments a phantom. In my opinion, Hamilton's phantom has now become an exceedingly live ghost.

We have had more warnings from the past. Thomas Jefferson: "You seem to consider the judges as the ultimate arbiters of all Constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. The Constitution has erected no such tribunal."

"The candid citizen," says Abraham Lincoln, "must confess that if the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by the decisions of the Supreme Court, the people will have ceased to become their own rulers." Alexis deTocqueville, in his monumental study and writings, 1835 - 1840, said as follows: "The President" -- or in this case, the Chief Executive -- "who exercises a limited power may err without causing great mischief in the state. Congress" -- or in this case, the Legislature -- "may decide and miss without destroying the state, because the electoral body in which the Congress originated may cause it to retract its decision by changing its members. But if the Supreme Court is ever composed of imprudent or bad men, the Union may be plunged into anarchy or civil war." How prophetic that statement was, because within 20 years of that, the Supreme Court of the United States, by also a 7 - 2 decision would decide that a

black man was a non-person, the property of the owner, to buy, sell, or kill. Slavery was legal, and abolitionists were warned not to impose their morality on others.

To even the casual observer of our society, the following remarks ring true. James Appity, Associate Editor of "U.S. News and World Report" has commented as follows: "Despite growing unease among the public and legal experts, judges are reaching into areas once considered the exclusive preserve of legislators, public administrators, and the family. The courts today, under the present system of arbitrary absolutes, have the power over every facet of our lives, even of our life and death itself. Has there been erosion of our common law tradition? No one doubts that English Common Law and "Blackstone Commentaries" were not merely a statement of the study of law for most lawyers and jurists, but they constituted at the founding of our country all of our law."

Article 22 of our Constitution, adopted July 2, 1776, (sic) stated as follows: "That the common law of England as heretofore practiced in this colony shall still remain in force." By 1775, more copies of "Blackstone's Commentaries" were sold in America than in all of England. Blackstone expressed his pre-suppositional base for law as follows: "The doctrines thus delivered we call the reveal or divine law, and they are to be found only in the Holy Scriptures. On these two foundations, the law of nature and the law of revelation, depend all human laws. That is to say, no human laws should be suffered to contradict these.

"Man considered as a creature," he went on, "must necessarily be subject to the law of his creator, for he is entirely a dependent being, and consequently, as man depends absolutely upon his maker for everything, it is necessary that he should in all points conform to his maker's will."

Blackstone's view, and in the eyes of those who founded the United States, every right of law comes from God,

and the very words rights, laws, freedoms, and so on are meaningless without their divine origin.

These principles were again set forth in our Declaration of Independence, and you're all familiar with the words: "...separate and equal station to which the laws of nature and nature's God entitle them..." "We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness."

Let us apply these historical facts and principles to the advice and consent you must give today to the Governor and to the full Senate. In Kelly vs. Bernell, a decision in which Judge Pollock concurred, we find the following words. "When an organization takes no position relative to the result of the case, we're looking for that judicial imperative we find words. While our decisional law had imposed such a liability on licensees, common law liability had been extended to a social host only where a guest was a minor." In most cases the justice of imposing a duty is based on public policy. When the court determines that a duty exists and a liability extended, while the imposition of a duty here would go beyond prior decisions, the Appellate Division moved our decision of law one step further. The liability we impose here, I think, sets forth the concept that a judicial imperative was followed in that case. Many times a court, in attempting to write a law -- but they say that they themselves go beyond the constitution and they legislate. The courts erode their foundation by expanding into the apparent void of an inactive Legislature. No more apparent establishment of this concept of court trying to right a wrong they see in the Mt. Laurel cases. Time does not permit for me to go into the Mt. Laurel; you've already done that adequately, in my opinion, yourselves.

The New Jersey Right to Life Committee finds three cases most egregious. The first one, which I even have difficulty pronouncing, because I'm having trouble with a little glass of water. I'll go out and get it myself, if I have to, but the time is late. If I could have some water?

SENATOR ZANE: If you promise to be brief, I'll go get it for you.

SENATOR O'CONNOR: May I ask, Mr. Tomicki, unless my eyes fail me, it looks like you've got about another 10 or so pages to read. Is that--

MR. TOMICKI: No, I do not. I have another two pages to read. I'm probably at this time, Senator, about 80% finished. I was trying to set forth, I believe, the basis on which you must make the determination. And now I wish to set forth the three cases which we are most concerned with in the character and nature of the court.

Proponent Bi-proponent vs. Cillo (phonetic spelling), the decision by Judge Pollock. Judge Pollock, in that case, allowed a wrongful life claim. Have we come to the point in our society where a court is going to decide who has the right to live and who has the right to die? Judge Pollock stated in that case, he said, "Our decision is consistent with recent decisions of the Supreme Courts in California and Washington related to the infant birth defects may be recovered by a wrongful life suit." Justice Schreiber set forth, I believe, eloquent words in his dissent. He believed that again, abortion is not allowed by law, despite what any Supreme Court Justice says. To do so, to allow it to happen, puts us back in the same mentality of the Dred Scott decision. And this situation of allowing litigation to go forward on a wrongful life that-- How do you determine between life and nonlife? It was just, as far as we're concerned, ludicrous and a legally insane decision.

In the matter of Clara Conroy, in which Justice Pollock concurred, the judicial imperative in relation to concern for the dying was extended in this case to describe food and water as medical treatment. The Appellate Division had concluded that the withholding of Mrs. Conroy's (two words inaudible) would be tantamount to killing her. The Court took judicial notice -- the Supreme Court -- of the fact that recent surveys had suggested that a majority of practicing doctors now approve of passive euthanasia, and believe it is being practiced by members of the profession. Now, according to the Clara Conroy test, we have numerous tests; objective, limited objective, subjective tests, to determine if food and water will be withdrawn. The next thing you will see is that temperature will be considered medical treatment. How do I say so? Because I did a debate with A. J. Levinson, Executive Director of the Concerned for the Dying on NBC television, and I said would you consider temperature medical treatment? And she said, "Yes, it is." In other words, taking the temperature from 70 down to 30 degrees to freeze the person to death, would that be medical treatment? She said, "Yes, I had not thought of that."

How can we go to food and water becoming medical treatment in this society? It's something that our organization has a great deal of difficulty understanding.

To the last case, which was also brought up by Senator Dorsey, Right to Choose vs. Byrne. The taxpayers in this State, despite our Constitution which says that no tax may be imposed upon any of its citizens contrary to their conscience or what they have voluntarily engaged them to perform, must now pay for the Medicaid funding of abortions. I heard Justice Pollock before thought that he said that he based his decision based upon the common law and Article 1 Section 1 of the New Jersey Constitution. As I read the New Jersey Constitution Article 1 Section 1 I find that it was adopted in that language

in 1844, and nowhere do I believe in the State of New Jersey nor in this country at that time was abortion, except to save and preserve the life of the mother, was it legal. Nowhere. So, how do we find the logic that extended from language taken from an 1844 Constitution?

The 1970 California Medical Association statement relative to the abortion mentality that has begun to persist in this country in the change in the medical ethic, concluded in their editorial by saying, "It is suggested that this schizophrenic sort of subtrafuge using different words, changing away from child to product of conception, is necessary because while a new ethic is being accepted, the old one has not yet been rejected."

Also, this is not the time or the date or the place to debate in full context the abortion issue. By the way, this is the first time that I've ever had the Senate wait on me, and I thank you very much for it.

SENATOR DORSEY: Yes, that's the (inaudible)--

SENATOR LASKIN: Well, he's hoping that you'll appreciate his good will so much that you'll conclude shortly.

SENATOR ZANE: That was a good (inaudible)--

MR. TOMICKI: I'm sorry if I'm burdening some of the Senators, but when we see a situation where the Supreme Court of the United States have said that they have found this right to terminate life in the utero. In the prenumber of the Ninth Amendment, which is applicable to the states through the Fourteenth Amendment, which was adopted, and the Fourteenth Amendment being adopted at a point in time where nowhere in this country was abortion legal. We find great difficulty in understanding that legal logic. And when I find judges in my State concurring with that logic, I have great difficulty sharing their beliefs, and I feel it is my obligation and duty to bring it to the attention of the Senate who must advise and consent it to the Governor.

I've tried to set before you the fact that common law really does control us. Blackstone's commentaries are as valid today as they were before. Can it be that we've come to the state that you will allow a judge to be reaffirmed who will oppose the decisions relative to the right to life? Who will say that food and water become medical treatment in our society? That a child-- And it's replete in many of the decisions; we will see the word child, child, child, and they'll slip over to the word fetus. Which is it? Is it a child or is it a fetus? Our organization sees a tremendous parallel to not only the issue of slavery in the Dred Scott decision, which was a 7 - 2 decision, but we see also a tremendous parallel to what occurred to what was termed the Nazi Holocaust. Most people do not realize that one of the crimes against humanity that Nazi doctors and Adolf Eichmann were executed for was that of the crime of abortion. Not forced abortions, but the crime of abortions, and forcing them on, and pushing them on those of the eastern people. Untermensch -- subhuman. Those are my people; Polish people, Hungarians, Estonians, Latvians. Isn't it amazing that we have moved to the state in time where we have to get into that problem of describing who in our society is untermensch?

So our organization has a problem with the situation. We believe that a handicapped child in-utero deserves the right to life, and should have the full protection of law. A mentally incompetent senior citizen should not be denied food and water. And, a preborn likewise should be given the full protection of the court.

In the Dred Scott case, the Court said those who supported it were wrong, and they declared a black a non-person. In (inaudible) the Court said the judges who support it are wrong when they declared a preborn child was a non-person. Albert Schweitzer sums up as follows: "If a man loses reverence for any part of life, he will lose reverence

for all of life." Mother Theresa calls abortion the "greatest destroyer of priests today." If a mother can kill her own child, what is left before I will be able to kill you and you will be able to kill me?

Sam Ervin, in closing his lecture series, stated, "A justice who twists the words of the Constitution awry under the guise of interpreting it to substitute his personal notion for a Constitutional precept is contemptuous of intellectual integrity. His act in so doing is as inexcusable as that of the witness who commits perjury after taking an oath."

A majority of you Senators do believe and do support the Right to Life position. It is difficult to sometimes match the man that lay before you seeking reconfirmation and that particular issue. Sir Thomas More set the yardstick before you, when he said, "When a public official subverts his private conscience to his public duty, then he leads his nation on a short route to chaos." President Reagan in his book "Abortion on the Conscience of a Nation" closes his essay by saying that, "There is no right more important to a society than the right to life." And although we of the Right to Life movement begin to see a change occurring in the Supreme Court of the United States with the recent 5 - 4 decision -- some will say that the issue is now moving in our direction -- that's not the question before this body. The question before this body is have any of the decisions of Justice Pollock hurt this State? We believe that they have, and we believe that he should not be reconfirmed. Thank you.

SENATOR O'CONNOR: Thank you, Mr. Tomicki. Are there any questions of Mr. Tomicki by the Committee? (negative response) Thanks again, Mr. Tomicki. We've heard from the four persons who have indicated a desire to address the Committee. Are there any other members of the public that would like to address the Committee? There are none. What's your pleasure, gentlemen?

SENATOR ORECHIO: May I just make an observation, Mr. Chairman?

SENATOR O'CONNOR: Senator Orechio?

SENATOR ORECHIO: First of all I was impressed that we had men of the stature of former Senator Ray Bateman, former Chief Justice and Governor Hughes, and Judge Lane coming before this Committee to urge the approval of Justice Pollock for a life term on the New Jersey Supreme Court.

It seems to me whenever a judge renders a decision, whether or not it be a decision made on a municipal court level, right up to the U.S. Supreme Court, that some people are gratified by the decision, and some people are disappointed by the decision. I think that's par for the course. I think what we're really determining this afternoon is whether or not this nominee has served in a competent manner, and whether or not he has served with integrity, not compromised himself, and whether or not he meets the standards of judicial temperament as we expect all members of the judiciary to reflect while they serve, especially on the all pro, I guess, of the judicial, actually.

But I might also add that I have not been happy with many decisions made by this Court. I wasn't happy with Mt. Laurel. But basically our function here-- And that's the reason why we have seven justices, by the way, because there's room for disagreement. And basically if they meet the high standards of the Court, and our Court being one of the finest in the 50 states, I basically think that's what our job is, to review their credentials.

I'm also impressed when a very dear friend, who served greatly as Governor and Chief Justice, who also might be considered the pillar of the Catholic Church, since he's been very active in the Catholic Church -- and despite the decision made and despite the contrary position made by the Right to Life group, Chief Justice and Governor Hughes continues to support the nomination of Justice Pollock.

And I would just like to add -- or concluding, rather -- that I think overall he's been an excellent Justice, and I'd be happy to support him.

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

SENATOR DORSEY: Thank you, Mr. Chairman. The confirmation of a Supreme Court Justice is a very important act. It is one in which the Justice, if confirmed -- particularly in Justice Pollock's case, who's 53 years old, and will have 17 years to serve -- will long outlast those who confirm him. And in the controversy that has surrounded this matter, I have in no way and do not in any way raise any question as to Justice Pollock's integrity, his ethics, his judicial temperament, or his general competency and intellectual powers. To me that is not at stake, and I'm certain neither Governor Byrne nor Governor Kean would have nominated him or renominated him if that in fact was the case.

But I think there is a basic institutional problem that now focuses on Justice Pollock because he is here and perhaps is really a problem of this particular Supreme Court. For whatever reason it may be, it seems to me -- and I am not alone in this analysis -- that this Court has followed a social agenda far in advance of that of the Legislature, and indeed, the Legislature, representing the elected people of this State. If that were not so, and because it is so, that is why public is outraged and there is such animosity today towards the Court and towards the Judiciary in which in fact we consider things that we would never have considered even a few years ago. A very serious effort on the part of the Governor and myself to restrict the power of the Court in terms of Mt. Laurel. As a matter of fact, across the State last year in connection with that particular decision, there were non-binding questions placed on the ballots in many counties as to whether or not there should be a restriction placed on the

power of the Court, and those questions passed in every municipality in every county where they approved by overwhelming votes.

My vote is based upon fact. It is not simply a question of saying, as Senator Orechio has said, that everybody wins or loses in any particular decision. That's my thought; not really the issue. The issue here is that we have a delicate balance between three branches of government. It's the Legislature which is to create the law; the Legislature which is to be the focal point for creating the policies of this State. And what we have had, in what perhaps those of you who are here who have seen from just a few decisions -- and not a total of 65 that staff has now read for me in connection with Justice Pollock's six years on the Court -- that this Court has gotten out of line. And in some way, that must be addressed.

As a matter of fact from the Judge's own statements here today, there almost seems to be, in connection with the CAFRA case, a recognition that what was done in that decision was certainly totally out of step with what the Legislature had done, and a whole system in CAFRA that the Legislature had created. And somehow I think, as a Senator, that having acknowledged the importance of an independent Judiciary by waving Senatorial courtesy which Senator Russo and Senator O'Connor were so kind to confirm the power that I had, and having signed off on Justice Pollock in order to permit his nomination to proceed, I must however vote no, because of the feelings that I've expressed to you in connection with manner in which that Court -- and indeed, Justice Pollock is part of that Court -- has conducted itself. Thank you.

SENATOR O'CONNOR: Senator Russo?

SENATOR RUSSO: Thank you, Mr. Chairman. The first thing I think that should be said -- and speaking just for a moment, Mr. Chairman, in my capacity as the President of the Senate, I want to say that I'm extremely proud of the Senate

today, and this Committee, for a system operating the way it should operate. And I have nothing but praise and commendation for Senator Dorsey, though my vote will be contrary to his, because Senator Dorsey was up-front with this matter from the beginning, he disagreed on some of these major issues, and he felt in his conscience it called upon him to oppose this nomination. But he could have done it in a manner that I don't think would have reflected favorably upon the Senate, by simply blocking the appointment. Instead, he signed off on the nomination, so that this matter could come before this Committee for an open hearing, as it has. And the hearing was conducted by not only the Chairman, but by the particular Senator who most was concerned, Senator Dorsey, in an intelligent and polite and proper manner.

And I think that's the way the system should work. And Senator Dorsey, in my judgment, should be commended for having it work the way it should have. And I can only hope that on any other nomination of this type that that's the way the Senate would proceed. So, though a vote that I will cast will be different in the bottom line to that of Senator Dorsey, I think he deserves our thanks in the Senate. Maybe we shouldn't say that; maybe every Senator should be expected to do it right. But he certainly did, and he ought to be commended for that, and I do.

I just want to make a comment about Mr. Tomicki's testimony, and that of the Right to Life organization. I've always thought, and still do think that it's a great organization. No matter what they do in my next campaign, I'll still think so. Because they have a point of view that I generally am sympathetic with, and I think they have an obligation to make that point of view known. And it was done eloquently today through Mr. Tomicki. It's unfortunate that on too many issues individuals don't proceed in the intelligent and proper matter -- that was done today. But we just have so

darn much one-issue people in our society today that don't give any credibility to a different viewpoint other than their own. I think the Right to Life group, in fighting for what they believe in, and in opposing this nomination has acted properly and has done a service to the community, and has done what they believe in.

I said earlier, and I'll just briefly reiterate now, I vote for the nomination, aside from the fact that I think as an individual, and as a human being, that Justice Pollock is one of the finest people that I've ever met. He's just a decent, intelligent, and yet humble man. And I think overall has been a great Justice of the Court so far.

That doesn't mean that I can't quarrel an opinion of two, or a dozen or two, or whatever. And I think I made that position known. But you know, some asked me, while this matter was pending, how I would feel if the death penalty which I sponsored and is now under consideration by the Court, were declared unconstitutional before this hearing, and Justice Pollock voted to declare it unconstitutional? And I answer that, and send a message now, if it need be to the Chief Justice who's coming before us: I couldn't care less. If they vote on that bill that I'm so interested in, or Mt. Laurel as Senator Dorsey's interested in, if they're voting as they think they should, if they are truly independent members of the Judiciary and vote their conscience and their heart what they believe in, that's all I've got a right to ask. It'll never make any difference to me, if I sit up here, what they or any other judge decides or rules on any issue that I have any interest in, directly, indirectly, or otherwise.

And I think that's what Justice Pollock has done and will do. Call his shot as he sees it. And we're not always going to agree with it. But if he does only that, then in my judgment, he'll do what he's expected to do as a member of the Judiciary. And as long as our society is divided on

philosophical issues, such as right to life, Mt. Laurel, and so forth, we'll never find anyone that will disagree or agree with us on all issues, and if we use that yardstick, we'd never have any Supreme Court -- some would say that might not be so bad -- we'd never have any Judiciary, but by the same token we'd never have any legislators either.

So, I think so long as we all do what we believe is right, though others will disagree, that's all we have a right to ask. I think Justice Pollock has done that and will do it, and for that reason my vote will be in the affirmative.

SENATOR O'CONNOR: All right. We have a motion-- Does anyone else wish to address? Senator Laskin?

SENATOR LASKIN: Mr. Chairman, I normally wouldn't discuss anything when it comes to judicial nominees. I just keep my thoughts to myself. But I come from South Jersey, which is across the river from Philadelphia. And the Judiciary system in the State of Pennsylvania may be the most corrupt and inept system in the United States. And I say that knowing full well the implications. They run for office to be judge in Pennsylvania, and they collect campaign funds, they make promises to the voters and to the political parties, and they are totally beholden to political organizations. The system is the worst in the world; not only in the United States.

And so, coming from South Jersey as I do and seeing how it really shouldn't be, in Pennsylvania, I am so elated and excited about our system in this State -- and I don't normally speak in this manner -- I'm so proud of how this Judiciary Committee worked today. We had a full-franked discussion of issues; we had people who were for, who were against. Whether we agree or disagree with anyone's point of view really isn't the point. This is the place where the system works, where you air your concerns, where you bring it out into the open for a full discussion. And whether we agree or disagree with someone, the system's operative. We come here and we say what's on our mind.

Governor Hughes is sitting out in that audience, and I told you how much respect I have for him. I could just as easily say he's the biggest bum I ever met. Because, when I was in the Assembly as a young kid, he was the Governor. And I had a bill that meant everything in the world to me -- it was the creation of the South Jersey Port Corporation. It was the biggest deal in my life at the time, and he vetoed the bill. I should hate him. But the system worked. Because, fortunately, the Legislature was made up of very intelligent people, and we overruled the veto. (laughter) But the system worked. And the Governor, though much older than me, and I had no influence at the time, I'd say I was 26/27 years old -- he treated me with all the respect and dignity that he would treat somebody twice my age. And the system worked.

And the system's working today. And whether I agree with an opinion of Justice Pollock or Justice anybody, really isn't the point. The point is that we are all here in an open forum conducting ourselves in a manner that makes all of us proud. This Judiciary Committee just operates in an exemplary way, and allows for a full and frank discussion of every issue that comes before it. And so, I just think that whatever happens with the (inaudible) with Justice Pollock, is a vote of which we can all be proud.

SENATOR O'CONNOR: Thank you Senator Laskin. Senator Gormley?

SENATOR GORMLEY: First of all, I would especially like to compliment Senator Dorsey. It's very easy when you're asking questions of that nature to make use of the buzz word. Whether they be liberal, whether they be conservative, whether they be extreme to the left or the right, when you're dealing with an issue or issues of this nature, it is very easy to play to the masses or play to the prejudices of individuals by striking home with certain phraseology that would not do credit to this Committee. He did not go for that easy temptation.

He's to be complimented for that, and complimented for opening the process and going by the Constitution, going by the what the laws of this State -- advice and consent -- the system. I also would like to make a couple of comments and observations about the nominee. If he were in 1857 on the Supreme Court with Justice Taney, the vote would have been 6 - 3, and not 7 - 2. If there had been, quote, "an activist" of this nature at that time, then maybe the conflagration of three or four years later might have been averted in this country.

You have, oftentimes, courts that will sit back. And I'm not talking activism or people who try to write statutes and are going beyond what they should be doing and going into the area of the Legislature, but courts that are afraid to take the appropriate action, and have the appropriate courage of the Judiciary. I can't say that I agree with everything the Court says; that's not human nature. I don't agree with everything the Legislature does, or everything the Governor happens to do. But I know this, that if you look to problems that we have in the State - the many problems that we have -- you're not going to have unanimity on everything. The best you can do is have highly qualified individuals to deal with them who are not interfered with, as Lee pointed out, by an election process and by the pressures of politics. Quite honestly, the Court is there when cumulatively we cannot withstand the heat at the polls. That's reality, and that's why there is a balance of power. Because political considerations are taken in by the Legislature, by the Governor, but there must be a body that can withstand the tumult of the public, so that on occasion what might not be a popular view can be espoused.

So, I will vote for the nominee. I think he's done an excellent job. He's a fine person. I don't agree with everything, but if I agreed with everything, I'd worried about it. And I again want to sincerely--

SENATOR LASKIN: So would I.

SENATOR GORMLEY: So would I. You wanted to run for office in Pennsylvania for judge, and I'm going to spring it on everybody, so-- (laughter) I want to get you-- All right, I'll raise the money for you; just move over the river. (laughter) But, again-- Dorsey will be the campaign manager. We've got -- the whole crew will back you.

But seriously, I do want to again compliment Senator Dorsey. This is the way the system is to work; it is to be open, and it couldn't have been more open or more fair. And it is a day not only for Justice Pollock to be proud, but also for Senator Dorsey to be proud.

SENATOR O'CONNOR: Thank you, Senator Gormley. And, in the interest of getting to the point, Senator Van Wagner, Senator Zane and I are waving our right to make a statement. Senator DiFrancesco?

SENATOR DiFRANCESCO: Why do you always do this to me? (laughter)

SENATOR VAN WAGNER: Because you're third from the right. (laughter)

SENATOR DiFRANCESCO: Does Senator Russo tell you to do this? Is it okay?

SENATOR O'CONNOR: Certainly.

SENATOR DiFRANCESCO: I'm generally very brief. You know I'm really not long-winded. I've served with Senator Dorsey for quite a few years. As an Assemblyman we were both elected in 1975 for the '76 session. So, I know him quite well, know his philosophy, know his positions, and we're good friends. And I respect his position, and I admire him for the method by which he has set forth his objections.

I will not vote with him today; I'm going to vote for the nomination. I see no reason why I should not. The Governor has chosen to nominate Justice Pollock. I don't know Justice Pollock very well. As an Assemblyman I knew him when

he was Governor's counsel; he certainly dressed a lot better than Harold Hodes... But, he was courteous to me, and he was helpful to me whenever I needed help, and generally speaking I saw no reason why I would be upset with him or any of the decisions that he made.

As a Supreme Court Justice, it's been pointed out today that he has been involved in a number of decisions, many of which, perhaps, that were pointed out I would disagree with. But that's not as I perceive my vote here today; my role. Two people had made reference -- I guess Carmen made reference to -- he said, I guess the words he used were -- some people are gratified with decisions of the courts, and some, of course, are not gratified. And Senator Russo indicated that he was told that half the lawyers who argued the cases in those books would be unhappy, the other half would be happy with the decisions.

But I would just like to, before I close, point out one thing to Justice Pollock. And it has nothing to do with half the lawyers being happy and half unhappy, or half the people being happy or half unhappy. The Mt. Laurel II decision. Now, I was elected by a constituency, and I have to sincerely say to you that, well, I recognize that no judge is right 100% of the time, or believes he's probably right 100% of the time. There's a lot of votes that I've made that I'd like to have back. And no court can be right 100% of the time. But that decision has really brought chaos to this State, in my opinion, and tremendous burdens on municipalities. And I would feel remiss if I didn't mention this. Because, I think the implementation of that decision has been horrendous. And I feel strongly about it, and if I didn't, I wouldn't be mentioning this. And those of you that know me, know that to be true.

So, I feel compelled that I had to mention that to you, so that at least, from my personal standpoint you know how

I felt about a particular decision that had nothing to do with half the lawyers. I mean, there aren't too many people that are happy about the implementation of that decision, and there aren't too many people that benefit from the implementation of that decision. And I was greatly concerned. And I've heard it from thousands of people who have been greatly concerned about that.

So, I leave you with that, but I feel confident and proud to be able to cast a vote, yes, for this nomination.

SENATOR O'CONNOR: Thank you, Senator DiFrancesco. We had earlier a motion by Senator Orechio, seconded by Senator Van Wagner.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: Before I vote yes, I just want to say that I have great respect for Senator Dorsey, great respect for his integrity, and in my opinion he is one of the most conscientious and erudite of all the Senators here. And I have a great respect for what he did in not attempting to hold up this nomination, and to have the matter aired out today. And certainly, I'm proud of the Committee and the manner in which this hearing was conducted today.

Also to say that, while I respect the Right to Life movement, and in fact am a member of the Right to Life movement, I disagree with its position on this nominee, and I would not think that disagreement with what Justice Pollock did in the cases of the Right to Life representative mentioned, would be a basis for not confirming him, he otherwise, in my opinion, having impeccable credentials. I vote yes.

MR. TUMULTY: Senator Zane?

SENATOR ZANE: Yes.

MR. TUMULTY: Senator Lynch asked to be recorded in the affirmative. Senator Orechio?

SENATOR ORECHIO: Yes.

MR. TUMULTY: Senator Russo?

SENATOR RUSSO: Yes.

MR. TUMULTY: Senator Van Wagner?

SENATOR VAN WAGNER: Yes. If I might, Mr. Chairman, I'd just like to briefly underscore the remarks made by the Chairman. As a non-lawyer, particularly, on the Committee, I think this is one of the most enlightening experiences I've had. I appreciate the fact that Senator Dorsey did what he did, and then engaged in the dialogue that he engaged in, because he gave me an opportunity to watch a process which I believe is perhaps one of the most important processes that we have here in the Legislature. And that's the ability for all of us, public and legislators, and interested parties, to make known their feelings as Senator Laskin pointed out. And, certainly it's been a great experience for me. And I congratulate you for conducting this forum in the manner that you conducted it.

I'd just like to say that, in my experience in my contact with Justice Pollock, which was primarily in his role as Counsel to the Governor, I found, in my dealings with him, his judgment to be sound, his perception of the law to be keen, his sense of fair play to be always in place, and I would vote aye.

MR. TUMULTY: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MR. TUMULTY: Senator Dorsey?

SENATOR DORSEY: No.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: Yes.

MR. TUMULTY: Senator Laskin?

SENATOR LASKIN: Yes.

MR. TUMULTY: The nomination is released.

SENATOR O'CONNOR: Congratulations, Justice.

(NOMINATION INTERVIEW CONCLUDED)