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# ***Committee Meeting***

of

## **SENATE JUDICIARY COMMITTEE**

*“To consider the nomination of Peter G. Verniero  
to be an Associate Justice of the Supreme Court”  
(Continued from May 5, 1999)*

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

**DATE:** May 6, 1999  
10:00 a.m.

### **MEMBERS OF COMMITTEE PRESENT:**

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



### **ALSO PRESENT:**

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

Laurie Ruffenach  
*Senate Majority  
Committee Aide*

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

*Meeting Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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## TABLE OF CONTENTS

|   | <b><u>Page</u></b> |
|---|--------------------|
| Peter G. Verniero<br>Attorney General<br>New Jersey Department of<br>Law and Public Safety                              | 1                  |
| Assemblyman Joseph Charles Jr.<br>District 31, and<br>Representing<br>New Jersey Legislative<br>Black and Latino Caucus | 51                 |
| Donald McMeans<br>President<br>Renaissance Broadcasting Corporation   | 63                 |
| Rae C. Roeder<br>President<br>Local No. 1033<br>Communications Workers of America                                       | 67                 |
| Charlotte Riggs<br>Private Citizen  | 71                 |
| Bernard DeSantis<br>Private Citizen   | 74                 |
| Carl Bayuk Jr.<br>Private Citizen   | 77                 |
| Charles Garrod<br>Private Citizen   | 79                 |
| John Tomicki<br>Representing<br>League of American Families   | 82                 |

## TABLE OF CONTENTS (continued)

|   | <b><u>Page</u></b> |
|---|--------------------|
| <b>APPENDIX:</b>  |                    |
| Statement plus news articles<br>submitted by<br>Rae C. Roeder   | 1x                 |
| Statement plus attachments<br>submitted by<br>Charlotte Riggs   | 8x                 |
| Remarks<br>submitted by<br>Stephen D. Moore<br>Cape May County Prosecutor                                     | 35x                |
| Testimony<br>submitted by<br>DeForest B. Soaries Jr.<br>Secretary<br>New Jersey Department of State           | 37x                |
| Testimony<br>submitted by<br>Edward Gross<br>Executive Director<br>New Jersey Turnpike Authority              | 41x                |
| Testimony<br>submitted by<br>John P. Sheridan Jr.   | 45x                |
| Letter plus attachments addressed to<br>Senator William L. Gormley<br>from William B. McGuire, Esq.<br>Newark | 50x                |

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued):**

#### **Page**

Testimony  
submitted by  
Joseph P. Miele  
Commissioner  
New Jersey Turnpike Authority

55x

Letter addressed to  
Senator William L. Gormley  
from John L. McGoldrick  
General Counsel  
Bristol-Myers Squibb Company

57x

Letter plus attachments addressed to  
John J. Tumulty, Committee Aide  
from Charles Fairchild  
Hightstown

59x

Testimony  
submitted by  
Ray Kalainikas  
Toms River

63x

lmb: 1-109

**SENATOR WILLIAM L. GORMLEY (Chairman):** General, we agreed last evening this morning's continuation of the testimony of yesterday would focus on the issue of profiling. We discussed, as a minority party, they felt they would need about another hour of questioning on that particular issue.

SENATOR LYNCH: If I could, Senator Gormley, thank you. Yes. I think we've talked about State Police issues generally including profiling--

SENATOR GORMLEY: Yes.

SENATOR LYNCH: --and if I could ask your indulgence to ask a couple of questions, which I thought were asked yesterday but found out that they weren't regarding *Abbott v. Burke*, but very brief.

SENATOR GORMLEY: Fine. Well, here's what we'll do then. We'll start off with a half hour with Senator Lynch. Then, the Republicans would have the opportunity to exercise a half hour. Then, we'll come back with another half hour, if that's okay with you. Okay.

SENATOR LYNCH: That's fine.

SENATOR GORMLEY: Senator Lynch is going to ask a couple of *Abbott v. Burke* questions.

SENATOR LYNCH: I'm going to start with the State Police.

Good morning, Mr. Verniero.

**A T T O R N E Y   G E N E R A L   P E T E R   G.   V E R N I E R O:**  
Good morning.

SENATOR LYNCH: On September 27, at the request of our Senate Minority, the Office of Legislative Services sent a letter to -- April 27, I'm sorry -- sent a letter to Lieutenant Robert Rich (phonetic spelling), Acting

Chief, Human Resources Management Bureau of the New Jersey State Police asking for certain information, some of which we had discussed last week at the profile hearings, including how many State Police promotional lists and individual promotions have been reviewed by Attorney General Verniero since his appointment to that position; how many persons have been promoted to the rank of major during that time; how many filled and vacant major positions did the State Police have. Are you aware of that request?

ATTORNEY GENERAL VERNIERO: Vaguely, not specifically, no.

SENATOR LYNCH: You're aware of the letter being sent--

ATTORNEY GENERAL VERNIERO: I'm aware that there was a request. I'm not certain of the date, Senator.

SENATOR LYNCH: So sometime subsequent to our hearings on profile, this letter was sent. We had this discussion at the profile hearings, didn't we?

ATTORNEY GENERAL VERNIERO: You said September, and our hearing--

SENATOR LYNCH: April 27. I'm sorry.

ATTORNEY GENERAL VERNIERO: That's what confused me. You said September and it was April.

SENATOR LYNCH: A week ago.

ATTORNEY GENERAL VERNIERO: Yes. I now have the letter.  
(indicating letter)

SENATOR LYNCH: Have you seen that letter?

ATTORNEY GENERAL VERNIERO: Yes, I have.

SENATOR LYNCH: Do you have the information?

ATTORNEY GENERAL VERNIERO: I do not. I will try to expedite that for you, Senator.

SENATOR LYNCH: Speaking of information flowing from the State Police, is it true that you ordered a gag order on State Police personnel to any and all contact with the media including Mr. Hagerty, who is the State Police spokesman?

ATTORNEY GENERAL VERNIERO: No.

SENATOR LYNCH: Do you know Lieutenant Cosgrove (phonetic spelling), Public Information Bureau?

ATTORNEY GENERAL VERNIERO: Yes, I do.

SENATOR LYNCH: Recently, he responded to questions from the press. It was alleged that he was subsequently brought down to your Office and met with you or representatives in your Office and Acting Superintendent Fedorko and admonished concerning subsequent contact with the press without your involvement.

ATTORNEY GENERAL VERNIERO: I have not met with Lieutenant Cosgrove for that purpose.

SENATOR LYNCH: I said for anyone acting in your behalf.

ATTORNEY GENERAL VERNIERO: Oh. I don't know what the Acting Superintendent may have said. They have their own press office there. They have their own internal rules as to who can speak to the press and when. I have never spoken to Lieutenant Cosgrove to instruct him or anybody at State Police for a gag order.

SENATOR LYNCH: Did anyone in your Office meet with Superintendent Fedorko and Lieutenant Cosgrove to discuss Lieutenant Cosgrove's communications with the media?

ATTORNEY GENERAL VERNIERO: I don't believe so, Senator. I certainly wasn't at any meeting. And if it occurred for that purpose, I'm not aware of it.

SENATOR LYNCH: Did you ask anyone from your Office to go to such a meeting?

ATTORNEY GENERAL VERNIERO: No.

SENATOR LYNCH: And you were not aware of any meeting taking place?

ATTORNEY GENERAL VERNIERO: As I say, I'm not aware of any specific meeting with Lieutenant Cosgrove. I do know that the Acting Superintendent has his own ideas on the press office and the communication office, and perhaps, he's putting some reforms in and making some changes there. I know that Lieutenant Galloway (phonetic spelling) was recently added to the press office, but I'm not aware of any meeting that was held for the purpose of, as you say, gagging Lieutenant Cosgrove.

SENATOR LYNCH: Speaking of information flow, were you given information concerning the rumored slowdown in the second week of March after the information was apparently leaked to the press concerning statistics?

ATTORNEY GENERAL VERNIERO: I was aware of preliminary figures. I believe they were from one or two barracks. I don't recall exactly



what the figures were. They were preliminary and unverified. I don't recall whether I was sent the document or I was just informed over the telephone.

SENATOR LYNCH: Well, you stated that you had this information by the end of the month, didn't you?

ATTORNEY GENERAL VERNIERO: As I recall, the standard practice of State Police is to gather this information on a monthly basis and normally falling at the end of the month. And I believe that's what either my press office or John Hagerty at the State Police said, that at the end of the month they would make an accounting. And if I'm not mistaken, they did that the first week of April. Soon as the figures came in, they were verified, and then there was a release of information, as I recall.

SENATOR LYNCH: Do you have the April figures?

ATTORNEY GENERAL VERNIERO: I have the figures that were released -- not with me.

SENATOR LYNCH: Can you get them to us by the end of the day?

ATTORNEY GENERAL VERNIERO: Surely. It was a public release. I'm sure we can locate that. I'll have to just get a copy from my press office.

SENATOR LYNCH: Isn't it true, Mr. Verniero, that during this time frame beginning with the second week in March that each trooper had to send up-to-the-minute statistics to Acting Superintendent Fedorko for your perusal?

ATTORNEY GENERAL VERNIERO: Not for my perusal. As I understand it, the Acting Superintendent -- and he and I did speak about this -- he was doing his own internal review of the so-called slowdown.

SENATOR LYNCH: What does up-to-the-minutes stats mean? I mean, day by day, week by week?

ATTORNEY GENERAL VERNIERO: That's your term, Senator. I don't know what that term means. I did not get up-to-the-minute updates or even day-by-day updates. I spoke to Lieutenant Colonel when the issue first emerged. I said, "Mike," in fact, "We've got to get to the bottom of this." He said, "I'm already looking into it." What instructions he gave to the various barracks, I don't know, Senator.

SENATOR LYNCH: If it had not been for the shooting on April 23, 1998 on the Turnpike, would you have launched any investigation into allegations of racial profiling by the State Police?

ATTORNEY GENERAL VERNIERO: Well, that's a hypothetical question because, obviously, the shooting occurred, and as I testified last week, the issue of racial profiling and the allegations that crystallized in my mind at that time in part because of that shooting, and I would say in large part because of that shooting-- There's no way for me to answer what would have happened had that not occurred because it did happen.

SENATOR LYNCH: Along those same lines, you were aware, were you not, that for some two years now then Superintendent Williams was supplying information to the Justice Department in Washington ever since the *Soto* case determination with the knowledge -- with your knowledge and approval?

ATTORNEY GENERAL VERNIERO: I don't know if it was since *Soto* because that occurred in July of 1996. It may have been as far back as then. We have been supplying information at least in excess of two years to the Justice Department, but whether it started rightly -- right at the point of *Soto*, that I don't know.

SENATOR LYNCH: What information were you supplying?

ATTORNEY GENERAL VERNIERO: Information that was requested by the Justice Department and even some information that they had not requested. The requests ranged from standard operating procedures, copies of procedures, and so forth. They asked for some dated information as well, I believe, on a random basis. I don't know exactly what that basis was, as I sit here, and it was a long period of time where data and information was being sent. Much of it did go from the State Police to the Justice Department.

SENATOR LYNCH: Something in the range of two years?

ATTORNEY GENERAL VERNIERO: In excess of two years, I would say, yes.

SENATOR LYNCH: And armed with the verdict in *Soto* and with the interest of the Justice Department, did that trigger in your mind the need for you to do some analysis of what was going on with stops as well as arrests?

ATTORNEY GENERAL VERNIERO: Well, I considered the process by which we were supplying information to be that kind of process. Obviously, neither the Justice Department nor my Office reached any conclusions until a period of time when we each were able to see the information, analyze it, and then make our various conclusions. In my case,

the conclusions were issued in a report on April 20, and I'm still not exactly clear--

SENATOR LYNCH: But you didn't begin that study that's contained in that report on the issue of stops until after February 10, 1999.

ATTORNEY GENERAL VERNIERO: Well, as I indicated yesterday--

SENATOR LYNCH: Is that correct?

ATTORNEY GENERAL VERNIERO: As I indicated yesterday, the data that is used in part and cited in the April 20 report we actually began gathering a year ago.

SENATOR LYNCH: You began gathering some data subsequent to the shooting, but that data was surrounding arrests wasn't it?

ATTORNEY GENERAL VERNIERO: Well, no. It was data coming out of the Cranbury, Moorestown Barracks. I don't know, as I sit here, if it was exclusively on arrests. It may have been other forms of data as well. It may have been stop-and-search data. I'm not sure.

SENATOR LYNCH: But until-- After eight months of the *Star-Ledger* trying to retrieve data from you and that information finally going out somewhere around February 10, 1999, you didn't begin a specific analysis of stops in a region of the state, in this case, the southern end or the central to south on the Turnpike.

ATTORNEY GENERAL VERNIERO: As I say, the allegations of profiling crystallized in my mind around the time of the Turnpike case. That's when we began looking at data in a comprehensive way starting with the two barracks--

SENATOR LYNCH: The point is, you didn't commission this study -- the guts of this study -- until after you knew that you were going to be nominated to the Supreme Court.

ATTORNEY GENERAL VERNIERO: That's not true, Senator.

SENATOR LYNCH: When did you know you were going to be nominated for the Supreme Court? When did you first discuss that with any representative of the executive branch?

ATTORNEY GENERAL VERNIERO: Well, as I indicated yesterday -- I believe I indicated this yesterday -- I spoke to the Governor in a conversation in which we spoke definitively about the Supreme Court. I believe the day before Justice Pollock announced his retirement. It was sometime that week, which would have been--

SENATOR LYNCH: Do you--

ATTORNEY GENERAL VERNIERO: --the week of February 26.

SENATOR LYNCH: And that's the first time you really knew that Justice Pollock was retiring?

ATTORNEY GENERAL VERNIERO: As I said, there were rumors for quite some time, but I think it was Justice Clifford who said Justice Pollock kept that a pretty close secret, and it wasn't official or final until he announced it.

SENATOR LYNCH: Mr. Verniero, you know and we all know there were rumors floating about his not -- that he was going to stand down in our House as early as November of 1998. You must have had the same rumors.

ATTORNEY GENERAL VERNIERO: I heard rumors. I don't remember the time frames of them. The rumors really began to escalate about a week before he announced.

SENATOR LYNCH: And did you talk to Justice Clifford during that time frame -- November, December -- with regard to potential nominations to the court generally?

ATTORNEY GENERAL VERNIERO: I may have. As I indicated yesterday -- I believe you asked me this question -- I don't have a specific recollection of a specific conversation on a specific day.

SENATOR LYNCH: So to the best of your knowledge, the first time you had any real knowledge about your potential candidacy to be nominated to the Supreme Court was a couple of days before the announcement by Justice Pollock.

ATTORNEY GENERAL VERNIERO: I'm saying that's when the Governor formally asked me. I don't take anything for granted in any of these positions. There were rumors. I was aware of the rumors. The decision was made by the Governor presumably at the time she asked me, which was that week. I believe it was on a Wednesday. Justice Pollock announced on a Thursday. I believe I was announced as the nominee that Friday. It was that week.

SENATOR LYNCH: Well, you're intimately involved in the search process for candidates for prosecutor, for judiciary, the Supreme Court, aren't you?

ATTORNEY GENERAL VERNIERO: No. I'm not intimately involved in that.

SENATOR LYNCH: Then, who does the Governor use to your knowledge to give advice in the recruitment or recommendation of nominees to the Supreme Court?

ATTORNEY GENERAL VERNIERO: I would have to refer you to John Farmer. The Chief Counsel presumably--

SENATOR LYNCH: Who did it when you were the Chief Counsel?

ATTORNEY GENERAL VERNIERO: I did it when I was Chief Counsel.

SENATOR LYNCH: Did you call in outside help, retired members of the judiciary, Justice Clifford, people like that?

ATTORNEY GENERAL VERNIERO: On occasion, we would consult with outside judges and other authorities and sources of information. What process the Governor employed in this case, I really wouldn't know, Senator. You'll have to consult with John Farmer.

SENATOR LYNCH: So to the best of your knowledge, you received some information in the last week of February with regard to the clear determination that Justice Pollock was going to resign and that the Governor had some interest in you replacing Justice Pollock.

ATTORNEY GENERAL VERNIERO: Yes. That's when it all became definitive and conclusive.

SENATOR LYNCH: And you have no knowledge of what the search process was by Governor Whitman?

ATTORNEY GENERAL VERNIERO: I presume that either she or John Farmer spoke to sources, judges, perhaps sitting judges -- sitting

justices. You'll have to refer to that to them. Maybe I was the Governor's first choice from the beginning, and she didn't have to employ a wide search. I don't want to speculate as to who she spoke to and or who John Farmer may have spoken to.

SENATOR LYNCH: So the guts of this study that you commissioned in the second week of February was presented to us a week ago, at least the first phase of it. Correct?

ATTORNEY GENERAL VERNIERO: The last time I was present here, yes. April 26 I believe the hearing was.

SENATOR LYNCH: And at the time you had this conference that you described in December, a statewide law enforcement summit on improving police relations with persons of color and on minority recruitment in law enforcement -- at that time, you had no awareness that you were going to be nominated for the Supreme Court?

ATTORNEY GENERAL VERNIERO: No, sir.

SENATOR LYNCH: The last time we talked about this a week ago or so we had a brief discussion about the *Bellaran* case and the promotion of now Captain Franz, and I asked you whether or not there were promotions on your desk knowing that you said that you have to sign off on promotions. Have you looked to see who's in that list?

ATTORNEY GENERAL VERNIERO: I did check to see; although, I believe I said last week that I knew there were promotions on my desk.

SENATOR LYNCH: How many months have those promotions been on your desk?



ATTORNEY GENERAL VERNIERO: I would say several months. I don't know the exact time frame.

SENATOR LYNCH: And your reason for them being maintained on your desk for several months is what?

ATTORNEY GENERAL VERNIERO: We are still in the midst of studying and reforming the promotional process at State Police. That, as you recall, was also announced by me on February 10 as part of the broader review of State Police. We're also in the midst, obviously, of a search for a new superintendent.

SENATOR LYNCH: It's amazing how many things happened in February.

ATTORNEY GENERAL VERNIERO: It was a very active month, yes.

SENATOR LYNCH: I'm sure.

ATTORNEY GENERAL VERNIERO: And depending upon this Committee and the Senate, there may be a change at the Attorney General level as well, and it is my feeling that given all of those factors, this would be an imprudent time to suddenly adopt -- pass on promotions.

SENATOR LYNCH: That was the same time frame when you tried to put the *Soto* appeal on hold. Correct?

ATTORNEY GENERAL VERNIERO: We did ask the Court to adjourn and give us some time to complete the report issued on April 20, so I could better make an informed decision on whether or not to withdraw from *Soto*.

SENATOR LYNCH: And, our course, as you know, this hearing was originally scheduled by the Chairman for March 18.

ATTORNEY GENERAL VERNIERO: I don't think that was ever officially scheduled, Senator. I read the news account that it may be as early as March, but I don't know if that was ever formally scheduled.

SENATOR LYNCH: It must have been another leak.

ATTORNEY GENERAL VERNIERO: I don't know, Senator.

SENATOR GORMLEY: Ann Marie, there you go again.

SENATOR LYNCH: We had a brief discussion in the last week about the *Bellaran* case, in which you have some familiarity with having written some correspondence, and so forth, where there was a finding of racial discrimination, etc., against Sergeant Bellaran. Correct?

ATTORNEY GENERAL VERNIERO: A hostile work environment, yes.

SENATOR LYNCH: Those two counts, discrimination and hostile work environment?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: And to your knowledge, Sergeant Bellaran filed other actions, retaliation and actions, and so forth.

ATTORNEY GENERAL VERNIERO: That is my understanding. I think that might be fairly recent; however, I'm not sure of the exact date of that second action.

SENATOR LYNCH: One of the people who was involved in the allegations by Bellaran was a Michael Silver (phonetic spelling) who you promoted to major on May 5, 1998. Are you aware of that?

ATTORNEY GENERAL VERNIERO: I'm not aware of that. The name is not familiar to me. As I indicated to you last week, the way the promotions normally come to my Office, there's several names on them. They're approved sort of all or nothing, up or down. I do not engage in a specific review of each name. Sometimes a superintendent would single out certain individuals and add additional information. Most times they did not. Now, I will say, this is again one of the reasons why I've ordered a review of the promotional system. I think we--

SENATOR LYNCH: Are you saying that on May the 5th, 1998, you were not concerned about sending the wrong signals by way of a promotional list that would address, to some extent your own words that you've used last week and to some extent this week -- that you had to be careful about rewarding those people who might be involved in discrimination or profiling because it would be culturally significant?

ATTORNEY GENERAL VERNIERO: Of course I'm concerned about that, and I also rely as a manager of a department my size on the judgment of the superintendent and others. And I always assume that they share the same concerns that I have particularly when I express them in the manner and in the strength by which I've expressed those opinions.

SENATOR LYNCH: Have you ever heard the term used that -- in context by troopers that these promotions of people who are involved in discrimination and profiling, etc., affect the mind-set that goes right to the shoulder of the road?

ATTORNEY GENERAL VERNIERO: I've never heard that term mind-set to the shoulder of the road, no. I've not heard that.

SENATOR LYNCH: Sounds relevant does it?

ATTORNEY GENERAL VERNIERO: It's a concern, which is again why I'm pleased that--

SENATOR LYNCH: You didn't have any concern on May the 5th--

ATTORNEY GENERAL VERNIERO: --we ordered a promotional study, and hopefully, these kinds of terms, and so forth, will be revealed, and we'll address those head on.

SENATOR LYNCH: I point out to you that that promotion I referred to on May 5, 1998 was a couple of weeks after the shooting on the Turnpike.

When you, under the process, when someone is promoted to the rank of major or lieutenant colonel, don't you get a resume, and isn't there an interview by your Office?

ATTORNEY GENERAL VERNIERO: I don't believe so. What I get-- Certainly, I don't do the interviews. The paperwork comes over from the Division of State Police. As I say, there's -- it's an up or down approval. I may have to sign separate pieces of paper over to the personnel to get certain names on the payroll depending on salary and rank, but there's no formal interview process that I have employed in my tenure as Attorney General. And perhaps that will be a recommendation once the Review Team comes back in the second phase of the study. But at this point, I don't employ that kind of process.

SENATOR LYNCH: Have you looked at the promotional list that's on your desk?

ATTORNEY GENERAL VERNIERO: I have not, no.

SENATOR LYNCH: You're not aware of a Lee Cartwright, who is also involved in the Bellaran retaliation suit, who is on your desk being promoted to major?

ATTORNEY GENERAL VERNIERO: That name is not familiar to me. As I said, once I made the decision in my mind that the promotions would be put on hold, there was no--

SENATOR LYNCH: They could certainly be put on hold until after you had these hearings. Correct?

ATTORNEY GENERAL VERNIERO: No. As I said, Senator, it was a confluence of factors and circumstances, not least of which was that as part of the PERF Study, the P-E-R-F Study, that I announced in December. There were two phases of that study. The first phase was recruitment reform, and we've accomplished that to better -- to enhance diversity within the State Police, which I feel very strongly about. And the second phase of that was promotions. That was announced in December that that would be a subsequent study. So it really goes back as far as December where I began to have concerns about the promotional process.

SENATOR LYNCH: And so those rumors we heard in November about the vacancy of Justice Pollock had nothing to do with all these activities that have occurred starting in December. They're all coincidence I take it.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: A couple of questions on *Abbott*.

I'm sorry. Back to the other topic for one question. I'm looking at a *Star-Ledger* article that's dated the same date as the promotion I referred

to, to a major, that says that “raising the State’s profiling and intensifying the case, Attorney General Peter Verniero placed the probe of the State Police Turnpike shooting under a State grand jury yesterday removing the matter from county jurisdiction.” You said you wanted broader jurisdiction, as you told us the last time.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: It says that “with the change, you will have a closer supervisory role over an investigation to allegations of racist conduct and civil rights violation by two State Troopers.” That comports, I think, with an article a couple of months ago in the *Bergen Record* that indicated that that also included promotional practices and things like that. Is that true?

ATTORNEY GENERAL VERNIERO: I’m sorry. What also-- There’s no--

SENATOR LYNCH: That your investigation--

ATTORNEY GENERAL VERNIERO: --grand jury investigation that I’m aware of with respect to promotions, if that’s your question, Senator.

SENATOR LYNCH: But this statement in here is coincidental with the grand jury investigation that says, “With the change, you will also have the closer supervisory role over an investigation,” I assume in a broader sense, “into allegations of racist conduct and civil rights violations by these State Troopers.”

ATTORNEY GENERAL VERNIERO: Oh, that-- I believe that newspaper article was referring to the fact that I had appointed a special prosecutor, a special Deputy Attorney General James Jurrow, and by virtue of that designation, then, he would be working as if he were part of the Division

of Criminal Justice, which is a little bit closer to me than if he were working as a county prosecutor.

SENATOR LYNCH: A couple questions on *Abbott*.

Senator Gormley, if you don't mind, if I'm close to the end of my time, why don't we go around the table, and I'll come back to *Abbott*?

SENATOR GORMLEY: You have four more minutes, okay.

What we'll do is we'll go to Senator-- Why don't we go to Senator Martin for-- Then, we'll come back to the final half hour. Okay.

Senator Martin.

SENATOR MARTIN: Thank you.

Good morning.

ATTORNEY GENERAL VERNIERO: Good morning, Senator.

SENATOR MARTIN: I didn't engage too much yesterday. I don't think it's necessary to have repetitive information, so -- and I do think that my colleagues were zealous and certainly exploring much of your background and experience for better or for worse. So I don't want to go over areas that haven't (*sic*) been covered. But one thing I'm interested in and I think it's particularly germane is your political philosophy and analysis, which I don't think has been covered to a great degree.

I've been trying to put together in my mind what -- how Justice Verniero would act and think on cases, and I know that if I asked you a specific case that seemed like a real one, you would probably decline because if it were, in fact, likely to come before the Court, you wouldn't feel it appropriate to pronounce your specific thoughts on some issues. That would be correct?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MARTIN: All right. And I know when we talked prior to today, a few weeks ago, you indicated that there were no legal, I guess-- There was nothing published that you've written that I can draw upon that would help me in my sort of thinking about where you might be as a justice. Is that correct?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MARTIN: So let me talk a little bit or at least discuss with you the four cases which really deal with two issues that you did argue, which you have indicated have been, I think, in many respects the high point of your legal career, which is to have argued before the 3rd Circuit and also the New Jersey Supreme Court.

First one is *Megan*. If you don't know, I have published in this area, so I know something about *Megan* besides being a sponsor. *Megan* was a complicated case. It was successfully defended by you before the 3rd Circuit, and I guess it was 1996.

ATTORNEY GENERAL VERNIERO: The decision came out in 1997. We argued the case in '96, the first case. The second case was just fairly recently released.

SENATOR MARTIN: And up to that time, we had had some concern at least in the Federal courts because District Court Judge Nicholas Politan had ruled in our way, I believe, that there were certain serious questions that he had that dealt with retroactivity that he thought might violate the Constitution, double jeopardy, ex post facto, and areas along that under some case law, which I won't burden you with today. But that was



overcome in the 3rd Circuit, and we now, unless the Supreme Court which declines-- That is the law at least in the 3rd Circuit, and it looks like it's pretty much the law throughout the country. That's where we are.

ATTORNEY GENERAL VERNIERO: I'm aware of no Circuit that has gone the other way.

SENATOR MARTIN: You have taken credit for that, but I want to give you a chance to at least acknowledge that a court -- an appeals court would not base its decision on the strength of the advocacy of counsel. It would largely base its decision on the merits of the case, as they sought. I mean, you're not suggesting to us that the advocacy in and of itself is what led the Court to decide for the State of New Jersey in the cases in *Megan*, correct?

ATTORNEY GENERAL VERNIERO: Oh, of course not. When I was a law clerk, I saw firsthand that a decision of a court, particularly an appellate court, is based on a number of factors: The strength of the argument is one. The structure of the brief is another. The structure and strength of the opposing argument. The status of the law. Obviously, if there's clear direction from a higher court, that many times is dispositive no matter what the quality of the briefs are. There are many factors.

SENATOR MARTIN: Otherwise, the court would be sort of, like, just being a referee at a baiting tournament, in which they -- if it were just measured on the strength of the advocacy in a given case-- The best lawyer wins would be a terrible policy for a Supreme Court. I just want to be clear on this. You, as an inspiring Supreme Court Justice, you're going to be grounded on the issue, not on the strength of the advocacy.

ATTORNEY GENERAL VERNIERO: As I said yesterday in my opening, I will base my decisions on facts and the law before me. And the advocacy becomes part of that in that they present the range of facts in the law. I will say, however, in the Megan's law area, those were cases of first impression. And I think when there isn't a clear precedent on a higher court, it does put a little bit more of a premium on the advocacy and the strength of arguments on both sides.

SENATOR MARTIN: Professor Wefing at Seton Hall, among many others, has written and described the New Jersey Supreme Courts since 1947 Constitution as one which is distinguished or at least characterized by independence and activism. Would you-- I know you talked about being an independent judge or justice, but would you agree that that's a fair characterization of the Court up to this time?

ATTORNEY GENERAL VERNIERO: I agree that its reputation at least in some quarters, perhaps many, is one of activism. I was asked that question actually when I was announced by Governor Whitman whether I would be an activist judge--

SENATOR MARTIN: Well, that's where I was going.

ATTORNEY GENERAL VERNIERO: --and I avoid labels. I really don't like them. I don't think they really tell you much about an individual because many times the most activist person, or you think is an activist, turns out to be not very active and vice versa. I've never put a label on myself, and so I wouldn't do so at the present time. I am aware, however, that the Court is known as an activist court.

SENATOR MARTIN: So if I asked you whether you intended to be a strict constructionist, to use old language, that I think in the days of Nixon was of major concern to some persons either pro or against, you would hesitate to respond to that?

ATTORNEY GENERAL VERNIERO: I would, Senator.

SENATOR MARTIN: In the activism, you wouldn't label yourself as one as either activist or it would depend on the circumstances?

ATTORNEY GENERAL VERNIERO: It would.

SENATOR MARTIN: So you're not helping me--

ATTORNEY GENERAL VERNIERO: As I say, the best I can do is to say that I would decide each case solely on the facts and law before me and using my sound judgment.

SENATOR MARTIN: Let's talk about the other two cases that dealt with *Abbott v. Burke*. I understand some of your pronouncements. You have indicated that in your view you-- The results of the *Abbott* string of cases, which is now up to No. *V* -- in at least *Abbott V* you were successful. And if you think so, maybe you can explain how so.

ATTORNEY GENERAL VERNIERO: I label that a success because, basically, two reasons. One is our primary objective in that case, what we sought as the ultimate outcome of the case, was approval of the Commissioner's program. And that was approved. I think the Court is fairly clear about that. They went a little bit beyond it with respect to preschool for a certain grade -- certain age-group, that was not part of the original proposal, but by and large, they upheld the Commissioner's proposal and declined to accept Judge King's recommendation to go beyond the Commissioner's

program by about \$300 million, I believe. Judge King-- Or 310 million; it was in that range.

The second reason why I labeled that a success is that the Court did not retain jurisdiction, which is also something that we have sought because we felt that the time had come given the 30-year history or the near 30-year history and because we were at 100 percent parity that it was no longer necessary for the Supreme Court to retain jurisdiction over the other two branches. That we have reached that point where the *Abbott* remedy had been satisfied, and the Commissioner's report spoke for itself. And those, basically, were the two things that we had sought. And the way I read *Abbott V*, we accomplished both of those objectives.

SENATOR MARTIN: With respect to the last one, we've received, at least I have, some correspondence from the attorneys who argued *IV* and *V* against you, who take exception to that. I just want to read you--

ATTORNEY GENERAL VERNIERO: Well, *IV* is a different case. Four, I don't think we were successful.

SENATOR MARTIN: Well, on that specific point--

ATTORNEY GENERAL VERNIERO: That was the-- That was the first case. There I think the Court was very clear that CEIFA had not accomplished its constitutional ends in all respects, and they had ordered the remand. And then we ultimately arrived at *Abbott V* where I do think we achieved our goals for the reasons that I expressed.

SENATOR MARTIN: On the second point about the retaining jurisdiction, there's a piece that was quoted in an article where it quotes Justice Handler -- the small portion from the *New York Times*. (indicating) This is

from May 1998. It says, quoting Justice Handler who wrote, as you know, *Megan IV*-- "The Court's"-- He's talking about *Megan*-- He's talking about--

ATTORNEY GENERAL VERNIERO: I'm sorry. *Megan* or *Abbott*?

SENATOR MARTIN: I'm saying, *Abbott*.

ATTORNEY GENERAL VERNIERO: Okay.

SENATOR MARTIN: He was talking about *Abbott V*, but he was the author of *Abbott IV*, as you know. He says the following, "The Court's decision has been decried by some as a withdrawal from the education fray. It's a misnomer on several counts. The educational fray will always be ongoing, and the courts will always be available if there is an impasse." One of the things the Court recognized is that the supplemental programs are now remedial measures. They're not simply recommendations by the Commissioner of Education. The article goes on to note that Justice Handler also made clear that the Court has "secured a comprehensive package of entitlements for the poor students and set up an administrative and judicial framework for intervention if the State doesn't follow through with a remedy." I'm interested in your response. As you know, the Education Law Center has indicated that they will be back in court on a number of issues that are still hanging around in a very real way resulting from *Abbott V*. Do you think Justice Handler is right in his assertion here?

ATTORNEY GENERAL VERNIERO: I recall reading that news clip. I believe he was speaking at his Princeton alumni event, and he gave a speech, and there was a reporter present. I don't think he said anything there in that speech which is inconsistent with the actual opinion. I believe what he was referring, at least this is how I interpreted it, that the *Abbott* remedy had

been accomplished. That the Commissioner's report, although it had been approved by the Court, it was embodied in the Court's decision. So it obviously now takes on the imprimatur of a court judgment, which obviously now needs to be enforced in all respects. But I disagree with the interpretation, if any of my advisories have this interpretation, that what Justice Handler was suggesting was they can go right back to the Supreme Court without first going through the Commissioner through the appellate process. I think that part of the opinion is very clear, and if there are any subsequent lawsuits based on *Abbott V*, they would have to start at the first part of the process prior to going directly to the Supreme Court.

And I believe the quote that refers to the administrative apparatus is Justice Handler's way of referring to -- you start at the Commissioner, you go to the optive, and then you go back up to the Supreme Court. That's how I interpret the quote, and I believe *Abbott V* is fairly clear on that point in terms of the language of the opinion. We may end up litigating it. As I say, there's always a lawsuit to be filed. I acknowledge that, but that is our reading of the opinion and Justice Handler's speech.

SENATOR MARTIN: Well, I understand you correctly, and I'm inclined to agree with you. It seems to suggest that there will just be more potential steps through the process, since instead of being able to go directly to the Supreme Court if advocates suggest there's some constitutional flaw that they would have to start probably at the ALJ level and then move up through the Superior Court.

ATTORNEY GENERAL VERNIERO: That's how I read *Abbott V*, yes.

SENATOR MARTIN: And just so we're clear about this. Since you had indicated that in your view *Abbott V* did stop the immediate intervention, if you will, from the Supreme Court, you're not suggesting that future issues that deal with public education are not something that the Supreme Court should wash its hands of if somebody were to bring it.

ATTORNEY GENERAL VERNIERO: Of course not. The *T* and *E* cause is still present, and there are cases in controversies yet contemplated that could go up the Supreme Court level. I was referring to the specific procedural context of *Abbott V* and the Commissioner's program. But clearly, the court always has jurisdiction in the normal course to settle constitutional issues on any subject, whether it's education or any other subject.

SENATOR MARTIN: If there were such cases, how far would you see yourself recusing yourself up to matters that your Office has heard during your period of service?

ATTORNEY GENERAL VERNIERO: Well, I don't know if it would be every matter heard during the period of my service because we have about 34,000 cases pending and many of those cases I've not reviewed or seen the brief, and so forth, and could probably sit on those cases. Suffice to say, if there was an immediate *Abbott* appeal based on the Commissioner's program, for example, something that was a core issue in *Abbott V*, I would have to recuse myself. But if it were a brand-new educational issue, new set of plaintiffs, different issues, I might be able to sit on the case. It has to be a case-by-case analysis.

SENATOR MARTIN: Thanks.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Good morning, General.

ATTORNEY GENERAL VERNIERO: Good morning, Senator.

SENATOR ZANE: I'll have to make an observation. Yesterday in the half hour session of questions from Senator Lynch, you either "didn't recall, didn't know, wasn't sure, had to look for it, couldn't find it" something in the neighborhood of 25 times. Senator Lynch questioned you for 26 minutes this morning, you have 4 minutes left. You were "unaware" five times, "don't recall" twice, "don't know" four times, "don't remember" once, "not sure, don't believe so, and not familiar," a total of 15 times. I don't want to seem sarcastic, but I can't imagine somebody 40 years old having that much problem remembering something that's happened in their last three years as Attorney General in matters as significant as you were just questioned for. And it really makes me wonder whether or not you were really tending the store, or whether or not you were sitting up late last night and the night before watching the Clinton tapes. Because when I saw the Clinton tapes, and he did things like that, I was absolutely disgusted with him, and I'm quite frankly annoyed with the way you are responding here today. I don't think you are being fair to this Committee. And I can't believe that you know as little about the things that you were being asked about as you are responding. I am really disappointed.

ATTORNEY GENERAL VERNIERO: May I respond to that, Senator?

SENATOR ZANE: If you were in your late 60s and having those kinds of problems, somebody would say, "He's senile and shouldn't be there."

ATTORNEY GENERAL VERNIERO: If I may just respond?



SENATOR ZANE: Sure.

ATTORNEY GENERAL VERNIERO: This is actually a very good example. Senator Lynch's questions are very long in terms of a premise, and he's very, very precise in terms of quoting dates on letters and dates from articles. It just happened again this morning. "Do you recall seeing a September 27 letter on this issue?" And I said, "Well, I honestly don't recall that particular date," and as it turns out the date was April not September. I am trying to be absolutely precise in my answers, and if there's a long lead-in into a question that has multiple facts, I'm not going to sit here and say yes and therefore verify every single fact in a long, leading question. That would be misleading this Committee. So I am answering the questions fully. I am obviously constrained in my certain limitations of privilege and whatnot, and I am being completely candid in my responses and precise. That is what I feel as a duty that I owe to this Committee.

SENATOR ZANE: General, as the chief administrator of the New Jersey State Police, I heard you ask a question about the promotion of a major. How many majors are there in the State Police, General?

ATTORNEY GENERAL VERNIERO: There are about a dozen. And if I could just correct the record, and again this is not my--

SENATOR ZANE: You didn't even remember the name?

SENATOR ZANE: This is not my shirking responsibility. I am the chief administrator of the Department of Law and Public Safety. The Superintendent of State Police is the chief administrator of that Division.

SENATOR ZANE: Can the Superintendent of the State Police make the promotion of one of his men without your signature and your okay?

ATTORNEY GENERAL VERNIERO: No, sir.

SENATOR ZANE: You know what, Harry Truman said a while -- a long time ago, "The buck stops right there." So does the responsibility lie right there.

Do you know whether you've promoted that major--

ATTORNEY GENERAL VERNIERO: Major--

SENATOR ZANE: Whoever it was, General, you tell me.

ATTORNEY GENERAL VERNIERO: Last week it was. The name was Franz, and when I returned back from the Committee, I did check on that, and he was part of the promotional list, as Senator Lynch had indicated. I had no independent recollection of that last week when the question was posed to me.

SENATOR ZANE: I want to make my questions broader. They won't be so specific.

At any time at all since the Federal probe began of racial profiling on the New Jersey Turnpike, have you said, "I was surprised at the extent of the Federal investigation?"

ATTORNEY GENERAL VERNIERO: That I was surprised by the extent?

SENATOR ZANE: That's right.

ATTORNEY GENERAL VERNIERO: Are you referring to a news article or some public statement I've made?

SENATOR ZANE: I'm asking you if you've said it. I'm asking you if a reporter quoted you accurately.

ATTORNEY GENERAL VERNIERO: I would have to see the news article, Senator, to be able to answer that question.

SENATOR ZANE: You don't remember whether-- Well, were you surprised, or were you not?

ATTORNEY GENERAL VERNIERO: I believe what you're referring to is when it was announced that the Justice Department was doing an investigation. I was a bit surprised that they were using that word investigation because I always considered it a review. Investigation to me implies some sort of adversarial relationship. I don't think it really makes much of a difference as we sit here now whether we call it an investigation or a review. The Justice Department was looking at essentially the same issues that we were looking at. We were reaching our conclusions about at the same time and were working in good rapport with the Justice Department. So whether the word is investigation or review, I don't think that matters very much at this point.

SENATOR ZANE: Well, let me ask you this again, framing it the same way. At any time since the announcement of the Federal investigations, if that's what they refer to it as, of racial profiling on the New Jersey Turnpike, did you say that the investigation that your Office would be doing would be more extensive, more comprehensive, more complete, etc., than that of the Federal investigation?

ATTORNEY GENERAL VERNIERO: Yes. I said that because my understanding of the Federal investigation was that it was focusing on mainly the racial profiling issue, but the February 10 review that I had ordered -- in that we really laid the predicate foundation for as early as December -- was on

other things: promotions, the system of discipline, the manner in which complaints are processed at State Police, and training. So it is broader. I believe it's still accurate to say my Office is engaged in a broader review than the Justice Department.

SENATOR ZANE: Tell me what the Justice Department's investigation is then?

ATTORNEY GENERAL VERNIERO: Well, I'm really not at liberty to comment on a pending investigation other than what the Justice Department has already stated in the press, that they are looking at a pattern -- a potential pattern and practice of uneven law enforcement on the part of State Police. They have publicly stated that they believe the April 20 report of my Office can be used as a foundation for an ultimate consent order, which we are now endeavoring to accomplish.

SENATOR ZANE: Do you feel that you know-- Has anyone disclosed to you the full extent of the Federal program?

ATTORNEY GENERAL VERNIERO: I am aware of certain aspects of what they're looking at. I'm just not at liberty to disclose it at this time. Whether I am fully aware, that's hard to say because unless the Justice Department comes forward with an actual detailed report, which they have not done to my knowledge, it's hard for me to answer that question.

SENATOR ZANE: General, I find it a little bit difficult then for you to have said with credibility that your investigation will be more comprehensive unless you know exactly what they're doing.

ATTORNEY GENERAL VERNIERO: Well, in terms of the subject matter, I believe, it is racial profiling and the pattern of practice of

uneven law enforcement because that's essentially what they're mandating under statute. That I am aware of. But whether it's two barracks or three, that's what I interpret your question-- To my knowledge, and the Fed's can prove me wrong on this when they issue their report -- but to my knowledge they are not looking at the manner in which troopers are promoted and some of the other things that my Office is engaged in.

SENATOR ZANE: Do you know the name Eric Holder?

ATTORNEY GENERAL VERNIERO: Yes, of course.

SENATOR ZANE: He's a Deputy U.S. Attorney General.

ATTORNEY GENERAL VERNIERO: He's the Deputy Attorney General.

SENATOR ZANE: Okay. For the United States of America?

ATTORNEY GENERAL VERNIERO: Yes, sir. He is the--

SENATOR ZANE: As opposed to the State of New Jersey?

ATTORNEY GENERAL VERNIERO: He's the No. 2 person in the Justice Department. In Washington, they're organized a little differently. There's one deputy attorney general; whereas, I have a first assistant and many deputy attorney generals.

SENATOR ZANE: How do you respond to his criticism that in 1997, 1998, the -- under your watch, that the information was being requested was very slow in coming and, in essence, that they felt they were being stonewalled by the State of New Jersey, your Office, and the State Police. How do you respond to that?

ATTORNEY GENERAL VERNIERO: I actually spoke directly to the Deputy Attorney General on that point. I was in Washington in March as

part of a National Association of Attorneys General Meeting, and he spoke to our group at the White House. And I went up to him afterward, and we were chatting about New Jersey, and without me even asking, he volunteered the fact that he had seen that quote in the newspaper, and he was very disturbed about it because he thought my Office and New Jersey was cooperating with the Justice Department; and he did not like the impression that was left in the media that there was a lack of cooperation.

SENATOR ZANE: Did he deny saying it?

ATTORNEY GENERAL VERNIERO: Well, I didn't read him back a quote. It was a very congenial conversation. It wasn't adversarial. He said, "You have really been a partner in this," and I don't remember his exact words. I think he said something like, "Yes, I was not real happy. I saw these quotes that left an impression that we're not working together." I think that we are, and I accepted that by Mr. Holder. I then spoke directly to Attorney General Reno on April 20 when I issued the report, and I reiterated to General Reno that we wanted to continue to work as a partner. And she was very pleased about that as well.

SENATOR ZANE: General, if you know, does either the Federal probe or the investigation being done by your Office, if you know -- does it go beyond the State Police, and does it go into your Office, the Office of the Attorney General as well?

ATTORNEY GENERAL VERNIERO: The report -- at least my Office report, I can't speak to the Justice Department -- was not designed to be a review of my Office. I've been saying that for quite some time. It was designed to be a review of the practices and policies of State Police. Now,

there is some tie back, obviously, with respect to promotions. Obviously, a part of the promotional process does include the Attorney General -- the Attorney General review process. So it would not surprise me if, in the next phase of the study, there was some mention of the Attorney General's Office as it relates to these other policies, but it is not an investigation per se of the Attorney General's Office.

SENATOR ZANE: Have you been assured of that by U.S. authorities?

ATTORNEY GENERAL VERNIERO: As I say, I'm not-- My answer that I just gave, Senator, is exclusive to the State investigation.

SENATOR ZANE: Okay.

ATTORNEY GENERAL VERNIERO: I do not believe, based on what I know, that my Office is under investigation by the Justice Department, but I can't swear to it because they normally don't confirm those things -- like I would never confirm it.

SENATOR ZANE: During the three years of your tenure so far as Attorney General, what have you done, what programs have you initiated in not following directives from any Federal direction to increase diversity within the State Police, as far as that goes within your Office?

ATTORNEY GENERAL VERNIERO: We announced in December at the Summit, the Law Enforcement Summit, that we would accept the recommendations of the PERF Consultant Group, and I think this may have been referred to in one of my correspondences, in one of my letters, to the Committee, that we would reform the manner in which we would recruit at State Police. One of the recommendations which is now part of this year's

budget cycle is to, rather than have one class of 100 troopers, we would have two classes of 50 troopers every six months. And the reason that's an important change that will help enhance diversity is that when you wait a full year, you lose many qualified minority candidates and female candidates. Because once they go through the Academy, they are very attractive candidates to other law enforcement agencies. Some may go to the Federal Bureau of Investigation. Some may go to local law enforcement. And it's unfair to ask them to wait a full year until a budget comes in, and so forth, and the consultant recommended, we agreed, it's better to move smaller classes in a shorter time frame. So that was one recommendation.

Another recommendation was that we enhance and enlarge the recruiting unit within State Police, and we've done that. Another recommendation was that we do a better job at outreaching to the minority community, the African-American ministers, the Black Ministers Council. We get the churches more involved to go into the community to a greater extent and solicit names of qualified individuals, and we are doing that. So there were a series of recommendations.

Now, that was all announced in December. That was not too long ago, so it will take some time, but I am confident that we are at least on the right track in terms of enhancing diversity. It will take time, but I think we've put the right steps into motion.

SENATOR ZANE: Is the answer really that during the three years to date nothing has changed?

ATTORNEY GENERAL VERNIERO: No, sir, not at all. I mean, I think that--



SENATOR ZANE: Other than the policy you're talking about now.

ATTORNEY GENERAL VERNIERO: But that's a very big change.

SENATOR ZANE: I understand that.

ATTORNEY GENERAL VERNIERO: I don't think you could just say "other than" and diminish it.

SENATOR ZANE: But what about the people that are--

ATTORNEY GENERAL VERNIERO: It was a significant set of reforms that will take some time to actually develop and to implement.

SENATOR ZANE: Is there a State Police class ongoing right now?

ATTORNEY GENERAL VERNIERO: I believe we're right on the eve of starting a new class, but I'd have to check on that.

SENATOR ZANE: Do you yourself look at that class, the size of the class, and do you have a sense of minority representation within that class?

ATTORNEY GENERAL VERNIERO: I think it's too early to tell.

SENATOR ZANE: What about the last class that went through?

ATTORNEY GENERAL VERNIERO: The last class was a very large class, and I don't have -- this is not on the April 27 letter, but I could get you a breakdown of minority representation on that large class. It was a little disappointing from that perspective.

SENATOR ZANE: How long would that take to get? Is there someone here-- There are troopers here. Is there somebody here -- that you could phone and ask them to bring it back in a few minutes?

ATTORNEY GENERAL VERNIERO: We probably-- If I'm not mistaken, at the time of graduation, we released the names, and it might be as easy as later on today just getting a copy to you.

SENATOR ZANE: Well, later on today this might be over. I'd like to know before it's over. Is anyone here that -- I see troopers here-- Is there someone--

ATTORNEY GENERAL VERNIERO: Well, it wouldn't be--

SENATOR ZANE: --or several assistants here running around all day?

ATTORNEY GENERAL VERNIERO: --to ask a trooper. We will try to have before the Committee vote a list of or at least some basic information on the last class. We will try to get you that, Senator.

SENATOR ZANE: But you say it was a little disappointing.

ATTORNEY GENERAL VERNIERO: It was. From the perspective of diversity.

SENATOR ZANE: I understand.

ATTORNEY GENERAL VERNIERO: I am very proud of every person who graduated--

SENATOR ZANE: I'm sure.

ATTORNEY GENERAL VERNIERO: --male, female, of any racial or ethnic background. It's a very strong class. But that class was sort of the last class to go forward prior to these aggressive reforms, so it's disappointing in that sense, but it is not disappointing in any sense in terms of the quality of the individuals who are graduated from that class.

SENATOR ZANE: Prior to 1992, there was actually a consent order that arose out of Federal litigation many years ago, I believe, that established certain percentages of minorities to be within each class of the State Police because I guess of a prior problem along this same line. Am I correct?

ATTORNEY GENERAL VERNIERO: There was a prior consent decree. I don't know the exact date.

SENATOR ZANE: And isn't it a fact that since 1992, the percentage of minorities graduating or even being part of the class has diminished?

ATTORNEY GENERAL VERNIERO: There have been some diminishment. I think it has leveled off at a certain rate that has been fairly consistent. The interesting thing about that, and this has sort of befuddled a lot of the experts that have looked at this, we're using as I recall the same test that was mandated by that Federal order, and yet, we have not seen what we would have like to have seen in terms of better progress. That was yet another reason I felt I ought to go to an outside consultant to look at the whole manner in which we recruit State Police. And as I say, we announced those reforms in December.

SENATOR ZANE: So the disappointment that you're referring to meaning that the numbers-- I'm not trying to put words in the mouth of what I'm sensing. Your disappointment-- Obviously, it's not with the class itself.

ATTORNEY GENERAL VERNIERO: Right.

SENATOR ZANE: They're good people, we all are proud of them. But your disappointment is that those numbers apparently have dropped and that there has not been an increase in the minority representation.

ATTORNEY GENERAL VERNIERO: I would like to see a greater diversity at State Police. Candidly, I'd like to see it throughout law enforcement, not just at State Police, but at the municipal police level.

SENATOR ZANE: Let me just-- Another along those lines. Within the list of promotions, as I gather from Senator Lynch's questions, there are nominees for promotions that are sitting on your desk that have not been signed at the present time, but nevertheless being considered. Is that correct?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: Okay. My understanding is there are 150 people on that list approximately?

ATTORNEY GENERAL VERNIERO: I don't know that to be a fact. I'll stipulate to it for the purpose of your question.

SENATOR ZANE: Okay. Do you know what the percentage of that list is that are minorities?

ATTORNEY GENERAL VERNIERO: I don't. As I say, I haven't analyzed that list because it's essentially on hold for all the reasons that I described to Senator Lynch.

SENATOR ZANE: That list is probably a public document isn't it?

ATTORNEY GENERAL VERNIERO: I'm not sure it is. It could be a personnel record. I'd have to look into that. At this stage, prior to it being approved, I'm not sure it's a public document.

SENATOR ZANE: Could we, at the same time that other information is being brought back before this Committee ends, have someone let us know, of that approximately 150 individuals, what the percentage is that are minorities?

ATTORNEY GENERAL VERNIERO: I don't know if that's fair to the persons on the list because--

SENATOR ZANE: I don't want their names.

ATTORNEY GENERAL VERNIERO: No. I understand that. But once you put out percentages and you start categorizing individuals, the list begins to take on an identity, and I mean, again with all due candor, I would have to think about whether that's appropriate. It's an unapproved draft document that's, obviously, a personnel document. And I have absolutely no problem issuing to this Committee all the various breakdowns we have with respect to existing personnel, existing classes or recent classes; but on a list that's essentially an unapproved document, I would have trouble giving that to you, Senator, with all due respect.

SENATOR ZANE: It would strike me as if it would say legions about what's going on internally as well.

ATTORNEY GENERAL VERNIERO: Well, it really wouldn't because again--

SENATOR ZANE: How do you know?

ATTORNEY GENERAL VERNIERO: --as you point out in your question, the list is several months old. That list is prior to the promotional reforms that we put in place. So if your purpose is to look at that list to see if the reforms we put in place in December are working, the list is not relevant for that purpose because it's a pre-December list. So if anything, it would probably, and this is just a guess on my part, reflect the same general percentages that we've seen in the last several batches of promotions. But I don't think you can draw any reasonable conclusion based on the success of our reforms based on that promotion. Also, the reforms announced in December were reforms of recruitment. We haven't announced the promotional reforms yet.

SENATOR ZANE: But you have individuals -- names of individuals on your desk that-- I can assure you, I do not want any of the names. I guess it's a matter of putting your money where your mouth is. If, in fact, something is being done, it will be reflected there because my understanding is that within the State Police, promotions are not done by tests, they're not done by competitiveness. There's only one test, and that's initially to get in. And from then on, it's recommendations, etc., etc. Am I correct?

ATTORNEY GENERAL VERNIERO: With all due respect, no, the premise of your question is not correct.

SENATOR ZANE: There are tests?

ATTORNEY GENERAL VERNIERO: No. No. The premise of your question was, if we just look at this draft list, we'll see if your money is

where your mouth is. That's not correct because we have not finalized the promotion reform at State Police.

SENATOR ZANE: General--

ATTORNEY GENERAL VERNIERO: So that this old list will not reflect the direction we're heading. So it's really not a germane or valid indicia of where I hope the State Police is headed with respect to greater diversity within promotions.

SENATOR ZANE: Tell me why I shouldn't sense that you don't want to give it to me, especially since I'm willing to sacrifice without a single name. Tell me why I shouldn't feel that you're afraid of what it would reveal and that's why you won't give it to me and--

ATTORNEY GENERAL VERNIERO: No. I'm not afraid of what it will reveal--

SENATOR ZANE: Then, show me.

ATTORNEY GENERAL VERNIERO: --but it will not reveal anything that I believe you're asking in terms of relevant information.

SENATOR ZANE: Yes. I think it will. I think it will show where we've been for the last three years. I think it will show what policies came down from the top.

ATTORNEY GENERAL VERNIERO: Senator, I'm willing to--

SENATOR ZANE: And I hope to God that those policies that it shows served you well.

ATTORNEY GENERAL VERNIERO: Senator, I'm willing to stipulate that it will reflect the same basic number as the prior promotions because the prior promotions and this latest batch were selected using the same

basic process. I'm willing to stipulate that, but in terms of whether it will reflect where I believe the State Police is heading in the next phase of reform, they will not reflect that.

SENATOR ZANE: I will renew my request, and I guess you'll renew your insistence on not giving in to that. That leads me to my conclusion, which I think you just substantiated.

ATTORNEY GENERAL VERNIERO: We have a respectful disagreement on that, Senator.

SENATOR ZANE: Well, you said it's going to reflect what's been going on before so--

ATTORNEY GENERAL VERNIERO: Oh, I stand by that statement.

SENATOR ZANE: Yes. And we agree and acknowledge and you have, too, that change needs to be done.

ATTORNEY GENERAL VERNIERO: Yes. Absolutely.

SENATOR ZANE: So it means that nothing has been done.

ATTORNEY GENERAL VERNIERO: That's where I would disagree.

SENATOR ZANE: Well, that list would show it, wouldn't it?

Since your last appearance when we discussed profiling, I asked you at that time if you had any sense of potential litigation arising out of the profiling and the incidents that, obviously, have taken place. I think I also asked whether or not there was an ad hoc entity created within the Attorney General's Office to assess any potential impact to the State as a result of



possible civil rights suits. Has anything happened since we talked the last time about a week or so ago?

ATTORNEY GENERAL VERNIERO: I don't know if it's happened within the last week, but it had been happening since April 20 and shortly before where a unit or a personnel was in the Division of Criminal Justice -- was in conversations with the various county prosecutors to take an inventory to try to get a better picture of what the impact would be in this area.

SENATOR ZANE: Do you have a sense of it which you can tell us about?

ATTORNEY GENERAL VERNIERO: The only sense I have is it may be less of an impact than originally thought because we will still strive to have every case individually analyzed. We will ask for individual judicial determinations. We're not prepared to just give blanket waivers or anything of that sort. There may be groups of them, but I think it's probably less than what's being anticipated but still a significant number.

SENATOR ZANE: Is there a sense of new trials being ordered as a result of that in criminal matters?

ATTORNEY GENERAL VERNIERO: I don't have that sense as of yet, no.

SENATOR ZANE: Lastly, are you in a position to, as the Attorney General, recommend a superintendent from within the New Jersey State Police?

ATTORNEY GENERAL VERNIERO: As I indicated -- I believe that you asked a similar question last week.

SENATOR ZANE: No. I asked you if the new superintendent was coming from Indiana last time.

ATTORNEY GENERAL VERNIERO: Yes, but I think in response to that question I said that the mandate of the Committee that the Governor assembled is a broad mandate. It includes reviewing individuals from within State Police and from without. We have not taken anyone off the table merely because they're in or out. We're very open-minded at the Committee level, so it's quite possible the next superintendent will come from within the State Police.

SENATOR ZANE: So the superintendent of the State Police is currently on hold -- the appointment.

ATTORNEY GENERAL VERNIERO: It's not so much on hold. The search is in progress.

SENATOR ZANE: Do you have individuals without specificity from within the New Jersey State Police that you would be inclined to recommend?

ATTORNEY GENERAL VERNIERO: Well, now you're getting to sort of a deliberative decision that I've yet to make. I am open-minded and I have said this to promoting from within the State Police. I am also open-minded in assessing the qualifications of someone from outside of the State Police.

SENATOR ZANE: Thank you.

SENATOR GORMLEY: Senator Lynch, final five minutes.

SENATOR LYNCH: Just a couple minutes.

Even though my esteemed colleague, Senator Martin, has gone down this road, I have to ask one question about Megan's law because in the last several weeks former Attorney General and now Chief Justice Poritz had finger-pointed her on several different issues. In dealing with Megan's law, in defense of the Megan's law, the early phases of that litigation, including the development of the central arguments, and defense of the law were handled by your predecessor. Correct?

ATTORNEY GENERAL VERNIERO: She argued the *Doe v. Poritz*, which was the main case in the State Supreme Court.

SENATOR LYNCH: It was not until July 10, more than a year and a half after the legal challenges began, that you became the Attorney General.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: As Attorney General, you have the responsibility to see that the rulings of the Supreme Court are enforced.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: You've been asked on several occasions in the last year to respond to inquiries on the State's position on preschool in the *Abbott* districts. To date, you have not responded?

ATTORNEY GENERAL VERNIERO: Inquiries from whom, Senator? We've gotten inquiries, obviously, from our client agencies, and so forth. Are you referring to a specific inquiry?

SENATOR LYNCH: Have you had inquiries with regard to the implementation here of the preschool?

ATTORNEY GENERAL VERNIERO: Mr. Sciarra has written me on-- I don't want to say several occasions. He's written at least twice with respect to certain budget language and with respect to whether the preschool implementation was consistent with the Supreme Court's order.

SENATOR LYNCH: In that role of your responsibility to see to it that the rulings of the Supreme Court are enforced, do you believe that you've fulfilled your constitutional responsibility here, or do you need to render an opinion or you at work researching to render an opinion?

ATTORNEY GENERAL VERNIERO: The most recent letter of Mr. Sciarra I don't know where that is in terms of formulating a response at the staff level. I am satisfied based on what I know of the implementation at the Department. I see no glaring violation that I could speak of today within the budget process. I'm sure my Office in the normal course will advise either the Governor's Office or sometimes we advise the legislative staff whether we think the--

SENATOR LYNCH: When was the original inquiry--

ATTORNEY GENERAL VERNIERO: --budget language is appropriate.

SENATOR LYNCH: When did Mr. Sciarra originally ask you to opine on the issue?

ATTORNEY GENERAL VERNIERO: I don't recall with certainty what that date was.

SENATOR LYNCH: Six months ago, a year ago?

ATTORNEY GENERAL VERNIERO: Mr. Sciarra, sometimes he speaks to me through the press, sometimes he writes letters. I don't know the exact time frame.

SENATOR LYNCH: Well, how about in writing, how about a letter? When did he first communicate to you?

ATTORNEY GENERAL VERNIERO: I don't recall the first date of that. If you have a letter that could refresh my recollection, I'll be glad to review it.

SENATOR LYNCH: Senator Gormley, if you would grant me some indulgence, I would like to make a brief anecdotal statement to the Attorney General before I finish.

SENATOR GORMLEY: Go ahead.

SENATOR LYNCH: Mr. Verniero, some of the spin doctors out there-- There are all too many spin doctors today who try to portray some of us here in this process as being partisans. I can tell my colleagues and you, and I think that they know, that in my 17 years here that I've never been partisan on a judicial nomination. As a matter of fact, I've never been partisan on education reform and issues like that. We all have our days of partisanship. I am a real fan of the 1948 Constitution in the State of New Jersey, separation in powers and the independence of the judiciary and the confidence in the judiciary. That's my concern.

And a personal anecdote, which I don't like to get into, but I think it's relevant here today. I went to law school at Georgetown. I was on the board of editors at a law journal. I published. I edited notes and articles written by jurists and lawyers, finished at the top 10 of my class, went out and

tried over 50 lawsuits when I was in the active practice on a day-to-day basis between 1964 and 1982, had over 50 jury trials, maybe 300 nonjury trials including municipal court, argued cases in the Supreme Court and in the Appellate Division, and as God as my judge, I don't feel qualified to be on the New Jersey Supreme Court. That's my feelings about the Court.

And over and above that, of course, as government service, I've mayored New Brunswick for 12 years and in this Senate for 18 years as Majority Leader, Chairman of the Judiciary Committee, Senate President, and Minority Leader. I don't feel I have qualifications to be on the Supreme Court.

Last minute advice. I think you should lead by example. I think you should take responsibility, don't always find an excuse to blame someone else. We all make mistakes.

SENATOR GORMLEY: That will conclude the questioning.

I'd like to thank all the members of the Committee. I think it was a very open, slightly heated but very open process, and I want to thank both parties.

What I'm going to do now-- I'm going to read a list of witnesses who wanted to testify who just wanted me to express their support for the nominee. We will take a 10-minute break after I read that list. The next witness immediately after that will be Assemblyman Charles, and then we'll go through the balance of those who would like to testify.

ATTORNEY GENERAL VERNIERO: Mr. Chairman, before I'm excused, allow me to thank you personally for the fairness by which you have handled these proceedings.

Thank you, Senators.

SENATOR GORMLEY: Those individuals who wish to express their support -- I expressed the support of the former Attorney Generals yesterday -- Herb Tate, Board of Public Utilities; Maureen Kanka, victims' rights advocate; Buster Soaries, Secretary of State; Joel Kobert and William McGuire, former heads of the State Bar Association; John Sheridan, former Commissioner of Transportation; Ray Bateman, former State Senator and Chair, New Jersey Sports and Exposition Authority; John McGoldrick, Vice President and General Counsel, Bristol-Myers Squibb; Charles Marciani (phonetic spelling), former President and State AFL-CIO; Ed Gross, attorney and Executive Director, New Jersey Turnpike Authority; J. P. Miele, attorney and Chairperson, Partnership for a Drug Free New Jersey; Stephen Moore, President, New Jersey Prosecutors Association; Mel Gelade, the head of the Department of Labor; and Angelo Genova, a private practicing attorney.

We will now take a 10-minute break, and then Assemblyman Charles will testify.

**(RECESS)**

**AFTER RECESS:**

SENATOR GORMLEY: Okay. Assemblywoman Watson Coleman, Assemblyman Jones, Assemblyman Charles.

Assemblyman Charles.

**ASSEMBLYMAN JOSEPH CHARLES JR.:** Yes. Thank you, Mr. Chairman, distinguished members of the Judiciary Committee.

Good morning.

**SENATOR GORMLEY:** Is your red light on? (referring to PA microphone)

**ASSEMBLYMAN CHARLES:** Now it is. Now it is.

**SENATOR GORMLEY:** Okay.

**ASSEMBLYMAN CHARLES:** I'll start again, Mr. Chairman.

**SENATOR GORMLEY:** Okay. Repeat distinguished, we really appreciate it. We need that. (laughter)

**ASSEMBLYMAN CHARLES:** I must repeat your distinction. Yes, I know that. (laughter)

Good morning.

Before I begin, let me just introduce other members of the Caucus who are here with me this morning. Seated to my right is Assemblywoman Bonnie Watson Coleman. To my left is Assemblyman LeRoy Jones.

The Legislative Black and Latino Caucus takes very seriously this responsibility of testifying before this body on the nomination of Attorney General Peter Verniero to the New Jersey Supreme Court. Mr. Verniero's performance in the Office of Attorney General has been an inherent part of the Caucus's public hearings and research into allegations of racial profiling by the New Jersey State Police. We proclaimed at the beginning of our process that our principal purposes were twofold: number one, to put a human face on the problem so that the public might better comprehend the odiousness of the problem and how it degrades both the victims and our constitutional ideals.



Our second objective was to determine appropriate legislative responses to what our process uncovered.

The Constitutions and laws of the United States and of the State of New Jersey guarantee all citizens the right to equal protection under the law, due process, and freedom from unreasonable searches and seizures. The Attorney General in the State of New Jersey is the chief law enforcement officer of this state. He is duly sworn and obligated to protect and enforce these guarantees. It is the position of the Black and Latino Caucus that Attorney General Peter Verniero has failed by his actions and inactions to vigorously safeguard the civil rights of minority citizens.

The Black and Latino Caucus is gravely concerned by a pattern of response by Mr. Verniero that seems steered more by convenience and politics than by principle and commitment. It is our finding that Mr. Verniero's admissions and solutions come now only in the face of no longer deniable truths that racial profiling does exist and that unconstitutional racial discrimination is systemic in the State Police Division, which he supervises. This finding is actually backed up by the very evidence that General Verniero represents in his own defense, that is, the Interim Report on Racial Profiling. Mr. Verniero calls this report a blueprint. We view the report as a byproduct of converging circumstances that left the Attorney General no option but to finally concede that racial profiling is indeed real, not imagined.

At the very beginning of our inquiry into racial profiling, the Caucus emphasized that there would be three pivotal questions concerning Attorney General Verniero: What did he know, when did he know it, and what did he do about it? We are deeply troubled when we try to answer these

questions as we review the court record of racial profiling and the discriminatory employment practices in the State Police. We are also deeply troubled when we try to answer these questions as we examine his record of institutional stonewalling in the face of attempts by Federal authorities, news organizations, and public advocacy groups seeking to ascertain the truth of the situation.

We are further deeply troubled when we try to answer these questions in the wake of the Interim Report. We continue to be deeply troubled when we try to answer these questions in the wake of new events during the past two weeks concerning hotel search and privacy invasions.

Our concerns began with *State v. Soto*. As you know, that case involved the consolidation of 19 motions to suppress that were brought by 19 individual minority defendants. In this case, Judge Robert E. Francis found as a fact that the State Police were pulling over black motorists along the southern most stretch of the Turnpike solely on the basis of their race. This was an extraordinary case, a landmark case. It was a case where Fourth Amendment search and seizure claims were vindicated not upon Fourth Amendment grounds, but upon 14th Amendment equal protection and due process grounds.

Further, it was a case in which the judge excoriated the State Police hierarchy. Surely the Attorney General as chief law enforcement officer of the State of New Jersey, as head of the Division of State Police, as head of the Division of Law knew or should have known about Judge Francis's extraordinary finding. Surely the Attorney General as chief law enforcement of the State of New Jersey, sworn and obligated to protect the civil rights of all

citizens, should have been alarmed and alerted by the pointed language used by Judge Francis in his ruling.

Let me quote some of that language. “The statistical disparities and standard deviations revealed are indeed stark. The discretion devolved upon general road troopers to stop any car they want as long as Title 39 is used evinces a selection process that is susceptible of abuse. The utter failure of the State Police hierarchy to monitor and control the crackdown process like DITU or investigate the many claims of institutional discrimination manifests its indifference if not acceptance.” Let me repeat those words, “the utter failure of the State Police hierarchy to monitor and control -- or investigate the many claims of institutional discrimination manifests its indifference if not acceptance.” We the Caucus find that Judge Francis’s words can be fairly used in characterizing how Attorney General Verniero approached his responsibility in addressing discriminatory practices by the State Police over the past three years.

We recognize that Mr. Verniero was not responsible for the trial in the *Soto* case or the filing of the notice of appeal of Judge Francis’s decision, but he is and was the Attorney General who filed the Appellate response and who doggedly pursued the appeal in the face of almost incontrovertible evidence of racial profiling abuses. This fact speaks volumes in the context of our three questions: What did he know, when did he know it, and what did he do about it?

General Verniero also knew the statistical record in the *Soto* case. During our hearings, the hearings that our Caucus conducted over the last two months, we heard from Dr. John Lamberth, who is Chairman of the

Psychology Department at Temple University, one of the experts who testified in the *Soto* case. Dr. Lamberth offered irrefutable and compelling statistical evidence that proved the rights of black motorists were violated through the stop-and-arrest patterns employed by State Police. He documented that. He documented that between Exits 7A and 1 blacks accounted for approximately 35 percent of the stops and 73 percent of the arrests of State Troopers. Between Exits 3 and 1, blacks accounted for 46 percent of the stops and 73 percent of the arrested. Lamberth also found that black motorists traveling between Exits 3 and 1 accounted for only 15 percent of the actual number of traffic violations.

The traffic survey that was central to the defense was perhaps the most thorough documentation of the contention that the police regularly pulled over black drivers because police considered them to be involved in the drug trade. This overwhelming statistical proof of racial profiling was there on the record when Attorney General Verniero plowed ahead with the appeal.

*Bellarán v. Division of State Police* is also instructive on the questions of what did he know, when did he know it, and what did he do about it. Vincent Bellaran is a State Police Sergeant who sued the agency claiming he was subjected to “disparate treatment and a hostile work environment because of his race.” A Federal District Court found as a fact that Mr. Bellaran’s civil rights had been violated.

The Court’s remarks in that case support Senator Bryant’s recent testimony before this Committee on his racial profiling hearing that -- when he stated, “You can’t fix the external problems of the State Police, that is racial profiling, without fixing the internal practices that reinforce it. That is

discrimination in hiring and promotion.” In *Bellaran*, the Court wrote, “We hold that plaintiff has established liability against defendant on both asserted grounds of recovery, that of racial discrimination against him personally, and that of a racially hostile work environment as affecting him. The relief which plaintiff seeks includes damages for losses during his period of suspension, losses attributable to defendant’s alleged failure to promote plaintiff in a nondiscriminatory manner, and pain and suffering arising from the racist actions of senior officers and the racially hostile work environment.”

Like *Soto*, the abuses that led to a court finding predate Mr. Verniero’s tenure as Attorney General, but the ruling in *Bellaran*’s Federal case came while he was serving as this State’s chief law enforcement officer. It came in March of 1998. The question is, what did he do about it? While a significance of these events apparently eluded the Attorney General, they were not overlooked by the United States Department of Justice. In December of 1996, the Justice Department requested information from the State Police on a series of civil rights allegations. The agency’s response to this inquiry by the Justice Department was tantamount to stonewalling. The records show it took this agency over a year until March of 1998, from December of ’96 to March of 1998, to begin releasing information to the Federal civil rights investigators.

It took longer for Mr. Verniero to even acknowledge the existence of a Federal probe. In February of 1999 soon after independent voices demanded an outside, or Federal, investigation of racial profiling in New Jersey, the General and Governor denounced the need for such a probe saying the State can police itself. Just a few days later, however, the news media

reported independently that the Federal investigators have been probing discriminatory practice in the State Police since 1996.

In April of 1998, the tempest of racial profiling boiled over when State Troopers opened fire on four minority occupants of a van on the New Jersey Turnpike in Mercer County. After this incident, Mr. Verniero professes that the issue of racial profiling began to “crystallize” for the first time in his mind.

The Superior Court case that found the de facto existence of racial profiling wasn’t enough to crystallize this issue in the mind of Mr. Verniero. A Federal court finding of a racially hostile workplace wasn’t enough to crystallize this issue in the Attorney General’s mind. It took the bloodshed of three innocent, unarmed youngsters bound for basketball camp in North Carolina to convince the Attorney General that there might be a problem. Why did it take so long for the problem to crystallize in his mind? How could he not know, for example, that there was a history of problems in the State Police or that the State entered into a consent decree with the Federal Justice Department in 1975 to increase minority representation within the ranks of the State Police or that the consent decree had been dissolved in October of 1992?

The *Soto* decision cited a systemic problem. The Justice Department inquiry pointed to a racial profiling as a pattern and practice. That’s a systemic problem. Thirteen troopers who recently sought the right to testify about problems in the State Police say there is a systemic problem. Three former troopers who are part of a lawsuit filed by the NAACP say there

is a systemic problem. The witnesses who came to testify at our hearings said there is a systemic problem.

While Mr. Verniero now says the episodes of discrimination involving State Troopers began to crystallize as a problem around the time of the Turnpike shooting, his actions in the wake of that confrontation indicate otherwise. Why did his agency spend eight months resisting attempts by major news organizations to obtain basic information about arrest statistics compiled by the State Police? Why didn't the request itself raise Mr. Verniero's consciousness about growing public concern over racial profiling? When those statistics added to the mounting evidence of a problem, why did he maintain a position of denying the existence of racial profiling? Why were troopers who were the basis of many cases that resulted in findings against the State not disciplined? If a problem had crystallized in Mr. Verniero's mind, why did it take until February of 1999 before State investigations launched into racial profiling? Why were minority motorists exposed to another 10 months of intimidation, abuse, discrimination, and civil rights violations? Why was a racially hostile environment on the highways allowed to continue unaddressed and unabated?

Again we ask, what did the Attorney General do about the situation? It seems that all the Attorney General has done about it is to issue the Interim Report. Even in acknowledging in this report that racial profiling is real and not imagined, the Attorney General has again understated the depth, the breadth, and the perniciousness of this problem. In the face of overwhelming evidence from other sources that racial profiling is systemic, the

Attorney General in this report maintains that the abuses are limited to a few road troopers.

The remedies outlined in this report, while described as unprecedented and historic by the General, are seen differently by others. The Justice Department characterizes them only as a “starting point.” James Fyfe, a Temple University Criminal Justice expert, doesn’t even go that far. Mystified, he said, and I quote, “It seems to me that the State’s plan for eliminating discrimination is inadequate and bound to fail. It consists largely of recommendations of new policies, procedures, and training. These are smoke and mirrors -- paper remedies that have little effect on what troopers do on the side of the road at 3:00 in the morning.”

Within the last two weeks following the release of the Interim Report, there have been revelations about another State Police program involving violations of civil rights and liberties. That is the hotel/motel program. This State Police-sponsored program involves the profiling of Hispanic hotel guests. Did not the Attorney General know about this program? Issues of equal protection, due process, unlawful searches and seizures aside, wasn’t the Attorney General concerned about the potential for abuse in an operation that allowed indiscriminate examinations of hotel guest logs and post-stay warrantless visits to rooms of guests? How is it the Attorney General reconciled the existence of such a program with his duties as Attorney General to safeguard the civil rights and liberties of our citizenry? This recent revelation of the hotel/motel program and the need to fully explore and understand what and who this involved is yet another reason for pause.



A profound and awesome question is presented. If denial and procrastination were the hallmarks of General Verniero's approach to protecting and enforcing the civil rights laws, what would be his approach in interpreting those civil rights laws? In considering this question, the Caucus cannot forget or ignore the faces of the victims, teachers, social workers, ministers, correction officers, grandmothers, children, dentists, homemakers.

A 52-year-old woman from New York State wept as she recounted how she was pulled over by State Troopers along the Garden State Highway on January 4, 1996. She spoke of being spat at, cursed at, and sprayed with mace in a stop that she attributed to racial profiling. She was vindicated in a criminal court of law when the charges that were filed against her were thrown out by a jury within less than an hour. She was vindicated in a civil rights lawsuit which she subsequently instituted against this State in the end of 1998, which resulted in a settlement in 1999. However, despite all of that, she received no apology for the pain, the humiliation, the degradation, and the life-altering experience to which she was subjected. To add insult to injury, the offending troopers have faced no disciplinary action whatsoever. The case of Ms. Cobbs and the others remind us that the Constitution is too sacred, our freedoms too precious, our civil rights are too hard fought to entrust them to just any aspirant to the New Jersey Supreme Court. We are constrained by Mr. Verniero's record on civil rights to respectfully oppose his nomination to the New Jersey Supreme Court.

Thank you, Mr. Chairman.

SENATOR GORMLEY: Thank you.

Questions from members of the Committee?

ASSEMBLYMAN CHARLES: Thank you, Mr. Chairman, and members of the Committee.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Assemblyman Charles, there was testimony in the *Soto* case that really impressed me, and I think really focused on everything. Are you familiar with the testimony of former Superintendent Clinton Pagano in that particular case?

ASSEMBLYMAN CHARLES: Somewhat.

SENATOR ZANE: Would you know what I'm referring to or alluding to, and if you do, would you tell us, if not I'll--

ASSEMBLYMAN CHARLES: Direct me to the particular point that you're speaking of.

SENATOR ZANE: He made a point about how the drug problem in this state was major, and in essence -- I'm really paraphrasing, but in essence it said something to the effect that the problem was so major that-- I think, in essence, maybe a little softer than it's going to come out, but this was what was said. That maybe the civil rights of some people have, in fact, been violated. And I know and respect Clinton Pagano, but at the same token, I was disappointed when I saw that because it just -- to me -- it says something about focus of the wrong kind.

ASSEMBLYMAN CHARLES: I recall that part of the case. What I recall most importantly about that was that Judge Francis had a specific response to the position that was taken by or the statements that were made by Judge (*sic*) Pagano. I don't have the opinion in front of me, but Judge Francis pondered that and I think gave a lot of significance in his ruling to

that. Because he ended his decision with a quote from the great United States Justice Brandeis, when Justice Brandeis said in the *Almond* (phonetic spelling) case -- I think Professor Martin, over there, knows about the case -- where he said that the protection or the infringements against liberties are subjected to -- I'm paraphrasing -- a greater evil when they are pursued by people of good intentions. The threat is greater to our ideals of equality and the people protection when those threats are taken by people who have good intentions, as opposed to those who are of evil-mindedness, so that whether the intrusions are based upon what some people consider valuable reasons, like the obviously important fight against drug trafficking, still there's not justification in our Constitution to allow such infringements.

SENATOR GORMLEY: Any other questions? (no response)

Thank you very much for your testimony.

What we're going to do now is go to the balance of the list. People will be allotted five minutes to testify. Following the completion of the list, we'll take a very short break, and then we will take a vote.

First witness John Tomicki, League of American Families. (no response)

Next, Donald McMeans, Renaissance Broadcasting Corporation.

**D O N A L D M c M E A N S:** Mr. Chairman--

SENATOR GORMLEY: Is your red light on? (referring to PA microphone)

MR. McMEANS: Not yet. Okay.

SENATOR GORMLEY: Okay. Great.

MR. McMEANS: My name is Donald McMeans, the President of Renaissance Broadcasting Corporation. I'm here today to tell you about an experience that we've had with the New Jersey Attorney General's Office and activities that have taken place over the last 10 months that have been rather shocking and dismaying.

First and foremost, I'd like to give you a quick background that Renaissance Broadcasting Corporation was established to provide the first commercial television station that would service all of southern New Jersey. It was also a television station that had qualified for ABC Network affiliation, and we were working to establish the first television market in the State of New Jersey. That land was leased to us in 1980 by the New Jersey Department of Environmental Protection in the Wharton State Forest. This lease was in accord with statutes enacted by the New Jersey Legislature in 1955. However, what took place is that once it was ascertained that Renaissance Broadcasting Corporation was primarily African-American owned, a station devoted to all of the people of the State of New Jersey, certain events took place.

The New Jersey Attorney General's Office suppressed information that revealed that the Wharton State Forest was State-owned and regulated. They pretended that the Township of Waterford could regulate the Wharton State Forest. The Township of Waterford claimed that the Wharton State Forest was zoned for residential use only.

SENATOR GORMLEY: What year was this?

MR. McMEANS: This began in 1980.

SENATOR GORMLEY: Okay.

MR. McMEANS: That what we had to do was to conduct research on our own sometime in 1986, and I'm sort of moving fast because there's a lot to--

SENATOR GORMLEY: I appreciate that, and you can understand we would try to be fair -- to be as fair as possible on this circumstance.

MR. McMEANS: Yes. Yes. I understand.

That what happened is that through this action that shortly after the State leased land to us, a committee met together in Waterford that included some members of the State Senate, some members of the General Assembly, and representatives, and they devised a plan to prevent Renaissance from owning and operating this corporation. That plan involved the utilization of the courts and through sham litigation to impair our ability to complete the second phase of our financing -- the take-out phase of our financing. That litigation involved claims that there were corn snakes on the site that the State had leased to us. Another aspect was that there were endangered trees, but the most lasting one was that the Township of Waterford could regulate the Wharton State Forest.

That this activity was utilized along with a boycott by local cable companies to carry our signal that forced the corporation into an insolvent position. That once this happened, we filed for to reorganize under Chapter 11. I'm going to move very fast and tell you that ultimately this resulted in the theft of the television station in which it was sold by a receiver during proceedings to determine whether or not the Wharton State Forest, the preservation area of the Wharton State Forest, had been zoned for residential

use only. We subsequently discovered the original enabling statute that authorized the purchase of the Wharton State Forest, that was L-1955, Chapter 219. And in that Act they authorized the purchase of the Wharton State Forest, and they authorized its use for public utility towers. But because the original Act was associated with a bond issue for water supply purposes and the initial bond issue failed, three years later a supplementary Act was enacted. This was after the forest had already been purchased. In that Act they made a reference to the Wharton State Forest generally, by the term groundwaters in the South Jersey coastal plain.

Everyone in the Department pretended that they did not know where that was. We recently discovered an administrative report that was issued on May 14, 1918 by, at that time, the Department of Conservation and Economic Development and a follow-up report by DEP in 1978 that identified the Wharton State Forest as being a major representative of the interior portion of the coastal plain.

SENATOR GORMLEY: You have about 30 seconds.

MR. McMEANS: I have 30 seconds. All right.

For the last 10 months, Senator Diane Allen had sent a letter to the Attorney General requesting that the Attorney General investigate to see what role the State of New Jersey had played in this activity. We were told by the Attorney General's Office that they were advised by their superiors that they could not address the fundamental issue in this matter, which was whether the State of New Jersey owned and regulated the Wharton State Forest. That issue alone would resolve the case, since every case in New Jersey since 1829 has said that municipalities have no authority to regulate State

owned and regulated property. But in all of that time, Senator Allen has not been able to receive one single response. And this information that-- We have forwarded all the information to the Attorney General's Office, and we have yet to receive a single response on that fundamental issue, an issue so fundamental that no one can challenge it. This is an issue that was not publicized, and the fact that it was not publicized, no one has ever addressed it to this day.

SENATOR GORMLEY: Well, if I may-- And thank you for honing down on the particular issue. I'd be more than happy as Chairman of the Committee to check with Senator Allen about the responsiveness of this correspondence. I know if she's trying to do that, she would be active in those pursuits, and I'd be more than happy to make an inquiry in addition to that. I can't go into the particular reasons why or why not there hasn't been a response, but I'd be more than happy to check it.

MR. McMEANS: That's very fine.

SENATOR GORMLEY: Thank you.

Next witness is Rae Roeder.

**RAE C. ROEDER:** I'd like to thank you for the opportunity to come before you today to lay before you a series a questions that we would like to at least have you query before moving ahead on this nomination for Attorney General Peter Verniero.

You have in the packages, that everyone should have, three things. One, on the left-hand side, you have an article in the Newark *Star-Ledger* dated May 7, 1998, and on the right-hand side you have two articles, one from the *Trentonian* and another from the *Trenton Times*, dealing with a news conference

held by CWA Local 1033 on behalf of Frank Farrell, a Public Defender, working for the State of New Jersey.

Okay. First of all, I would like to draw your attention to the left-hand side of the page. I realize I have four and a half, five minutes, and I'd like to keep it succinct and accurate, since I cannot present a whole, big, long, accurate piece of information to you. On the left-hand side of the page, you have the article in the Newark *Star-Ledger* dated 7, 1998, and I call your attention to the first three paragraphs of the particular article. When the story broke about the shooting on the Turnpike, the newspaper reporter contacted the two attorneys from the Mercer County Public Defender's Office.

I will start out by saying that Frank Farrell is represented by CWA and is a shop steward and representative of CWA Local 1033 so that you understand why I am here.

Both lawyers say the State Attorney General's Office has long been aware of the accusations against Trooper Hogan, though no judge has ever found Hogan guilty of profiling. Mercer County Public Defender Frank Farrell said that he monitored Hogan's traffic stops since 1996 when the Public Defender's Office got a court order, and I believe the judge in that matter was Rosemary Williams (phonetic spelling), to obtain Hogan's patrol records. The records weren't helpful because the traffic tickets do not include the race of the motorists.

Farrell said that he had cases involving Hogan on several occasions, including one pending in which he alleged racial profiling by Hogan. He said he often handled cases that involved troopers. Then if you go down to the next paragraph, which is a direct quote, "He's always stood out. He's the only



one I had bad feelings about,” said Farrell. “He was a maverick. He had a storm trooper quality, very arrogant, and he liked to play semantic games on the stand.” And then the additional lawyer that talked about this was Robin K. Lord. Frank Farrell talked about this on his own time, after work -- was contacted by the newspapers.

Immediately, the next day, at Frank Farrell’s home, knocking on his glass window was an investigator from, we understand, the Public Defender’s Office. Our question and query to you still is and is involved in the case is, who sent the investigator to knock on the window of Frank Farrell? And he opened his door at his home, and he was delivered a five-day suspension without an opportunity to speak on his own behalf, without anything. And that suspension was to be served that Monday morning immediately following any comment that he made to the Newark *Star-Ledger*.

For one entire year CWA has represented Frank Farrell in this particular matter and this particular case. We’ve continued to query the Public Defender’s Office, as well as to try to find out who above the Public Defender’s Office, namely, what was the involvement of the Attorney General’s Office, in relation to the continued discipline and harassment of Frank Farrell. We waited, and then on April 20 we held a news conference. The news conference results are reported on the two articles that you have on the right-hand side of the page.

We thought, perhaps, this would at least bring folks to the table, and we would have an opportunity to find out what really happened in this matter and why the attempted silence of a Public Defender who spoke out for what -- and responded to questions on his own time? What we have instead

is more harassment. Immediately when the news conference was over -- the next day, Frank Farrell was called into the Office of the Public Defender -- and continued -- with the Public Defender's Office waving the news article that you see on your right-hand side in front of him and informing both myself and the representative attorney for CWA that they were anticipating further discipline against Frank Farrell for daring to speak out as a public worker.

And after we determined that there was no further need for the conversation with them and asked Frank to not answer the questions being proposed to him because those questions could have been proposed to him in terms of interrogatories since he was being represented by an attorney.

SENATOR GORMLEY: You have 30 seconds.

MS. ROEDER: Yes.

In addition, Frank Farrell received a letter this past week from the Public Defender's Office indicating that on April 20 he caused "harassment to fellow workers." And April 20, I would remind you, the entire day he was present at the public hearing and with me, so he hardly can be accused of harassing fellow workers by testifying at a hearing.

My final words are to you to query, and I would ask you to do this, to please -- to query the Attorney General what is his involvement in this, and why all of a sudden is there so much harassment to a State worker to silence that State worker when that person has enough courage to speak out? And finally, who do we harm when we silence Frank Farrell? We harm the public when a public worker fails to step forward and take on his public duty. And I would like to ask you why has this case not been settled? Why now that the Attorney General admits that there may be racial profiling do we now

continue to double the harassment against an individual who I'm proud to say is a member and also a public servant of the public of the State of New Jersey. I hope that you will ask those questions and try to get to the bottom of those answers because this case is proceeding rather rapidly.

Thank you.

SENATOR GORMLEY: Thank you.

The next witness is Robert Harris. (no response)

Charlotte Riggs.

**C H A R L O T T E   R I G G S:** Senator Gormley, members of the Committee--

SENATOR GORMLEY: Excuse me, make sure the red light is on, please. (referring to PA microphone)

MS. RIGGS: Senator Gormley, members of the Committee, my name is Charlotte Riggs. As a citizen of New Jersey whose civil rights have been violated by the Attorney General's Office, I appear before this Committee to protest the nomination of Attorney General Peter Verniero to become an Associate Justice of the New Jersey Supreme Court. The civil rights matters include denying me the services of New Jersey Consumer Affairs regarding documented heating oil and testing laboratory complaints, denying me access to the Deputy Attorney General, who according to the Public Advocate was very interested in the heating oil legislation resulting from my experience, especially since there is no home heating oil legislation in New Jersey, and ignoring the abuse I encountered in my contacts with the criminal justice senior investigator in these matters.

As you know, I previously opposed Mr. Verniero's nomination to become Attorney General on the basis of my contacts with him at the time he was Governor Whitman's Chief Counsel and then Chief of Staff. It was my position that if Mr. Verniero had at that time advised Governor Whitman that I was being denied the services of New Jersey Consumer Affairs in my heating oil and testing laboratory complaints, as the official responsible for the functioning of the executive branch, she could have ensured that I received the services of that agency. Mr. Verniero never did that. He also chose not to respond to my statement objecting to his nomination to become Attorney General. I know that the citizens of New Jersey would agree that a lone citizen should not have to confront the oil industry. Yet, in being denied the services of Consumer Affairs, I have been unable to confront those who caused me considerable harm, including the loss of an outstanding property.

Further, if the Attorney General's Office was not willing to address these complaints with the abundant documentation that I and my fuel dealer's attorney presented regarding ARCO, then the message is clear: New Jersey Consumer Affairs will never address oil industry complaints. I know the people of New Jersey join me in rejecting that message. There was obvious probable cause for action by Consumer Affairs at the time of my heating oil problem regarding a small segment of the heating oil industry. A delegation of fuel dealers protested the quality of the home heating oil to Jim Florio, but according to the Public Advocate official, that protest of fuel dealers was reported to no one. Then there was the statement of an oil industry expert that if he had received my complaint, there would have been an investigation. There was also the internal oil company information I gave to Jim Florio and

Senator Bradley predicting hardships on the public, which information was ignored.

Attorney General Verniero, a Supreme Court nominee, chose to ignore that documentation as well. He chose to accept the statement of a criminal justice investigator, who was not my main contact, that there were no claims that could be prosecuted by the State. There are those who disagree with Attorney General Verniero. Assistant Attorney General Debra Stone described it as a fraud and environment matter. Then Assignment Judge Philip Carchman, who has my documented complaints, states he can understand my frustration in being unable to resolve these complaints. A past New Jersey Bar Association President describes it as a Consumer Affairs matter. A public advocate official stated Consumer Affairs can provide legal representation in matters of statewide importance. Then there is the letter from you, Senator Gormley, stating you could not help me because the Committee is not a criminal investigative agency. I never asked that it be a criminal matter, Senator, as regards government officials. Everyone knows of the intimidating behavior of the oil industry at that time. And also from you, Senator Lynch, when your law firm associate stated that I would have to appear before several State agencies. How does one do that, Senator, without the help of the New Jersey Office of Consumer Protection or without legal representation?

SENATOR GORMLEY: Excuse me. Senator Lynch isn't here. Okay.

MS. RIGGS: I'm sorry.

SENATOR GORMLEY: And I don't know what you're starting to infer, but this is about Attorney General Verniero. Senator Lynch isn't in the room. All right.

You have 60 seconds.

MS. RIGGS: I'm sorry. I was not able to hear what you're saying.

SENATOR GORMLEY: You have 60 seconds.

MS. RIGGS: All right.

Regarding my traumatic experience with Criminal Justice Senior Investigator Joseph Trapp, my main contact at the Attorney General's Office, if Attorney General Verniero had the sense of fairness that the people of New Jersey have every right to expect from a Supreme Court nominee, he would have taken the time to review my situation and learn of the wrongdoing in my experience with Senior Investigator Trapp, who engaged in abusive toying of this defenseless citizen. Mr. Verniero did not do so.

In this regard, I have come to learn that Senior Investigator Trapp was never the appropriate contact for me regarding my oil industry complaints; although by his actions, he led me to believe that he was. I have learned that Senior Investigator Trapp is, in fact, Chief of the Records and Identification Section at New Jersey Criminal Justice, hardly a person to deal with oil industry complaints but apparently bolstering Senator Lynch's press release claims that State investigators are being used for blatant political purposes. There is little doubt in my mind that this unwelcome oil industry whistle-blower was the one being investigated by Mr. Trapp.

SENATOR GORMLEY: Your time's up.

Thank you.

The next witness will be Bernard DeSantis.

Is your red light on? (referring to PA microphone)

**B E R N A R D   D e S A N T I S:** Yes, it is.

On the night of July 11, 1993, I was at a casino. I made a \$15 bet, and there was a dispute over it. When I took my money back, walked away from the table, 20 minutes later I was approached by four security personnel who informed me they had a tape of the disputed bet upstairs. I accompanied them upstairs. Without warning, I was attacked by the four men -- injured permanently.

I was turned over to a State Trooper by the name of Frank Mirowski (phonetic spelling) who proceeded to take my statement. The first thing I informed him of was my desire to press charges against the four men. He wrote this down, then, proceeded to ask me questions -- filled two pages. At the time the statement was completed, a witness walked into the room. In front of this witness, the detective asked me to sign this statement. I did. Now, when I got the discovery, there was no statement, no document signed by myself. The officer had deliberately destroyed that statement.

Now, I turned all this information over to the Attorney General at the time, Poritz. I received no answer from her. Then in June of '96, I was able to take interrogatories from the officer, from the eye witness, and from myself. The officer stated he never took a statement from me, I never signed anything, and I never told him about an assault. The eye witness swore on two different occasions that he had seen the statement, heard it referred to as a statement, and had seen me sign it. I turned all this information over to

Verniero's Office. Verniero never responded. On three occasions -- I have receipts here -- all this information was turned over to him.

I have a letter here from the Governor in which she purports to turn this case over to the Attorney General. No response. An Assemblyman who read all the details here turned this case over to Verniero's Office. No response. To date, I have not received any response from the Attorney General's Office. Now, there are only two possible scenarios here. Either the officer committed a crime, destroyed evidence, and perjured himself on two occasions, or he violated my Miranda rights -- only two possible scenarios. If anybody can come up with another scenario, I would love to hear it.

Now, so far, he has failed to respond, will not give me any satisfaction. He talks of bias. There's plenty of bias here. What I would like to know is, does he plan on investigating this case?

SENATOR GORMLEY: We continue to hear your testimony.

MR. DeSANTIS: That's it.

SENATOR GORMLEY: Okay. Thank you.

MR. DeSANTIS: Well, I'd like to protest the way you handle this thing. You give people back here who lavish praise on him unlimited time. You give us five minutes.

SENATOR GORMLEY: I don't think so.

MR. DeSANTIS: Oh, yes, I know so. I've been here for two days.

SENATOR GORMLEY: Well, we disagree. Thank you for your testimony.

Carl Bayuk Jr.



SENATOR MARTIN: Mr. Chairman, while this witness is coming up to testify. I think I can speak for other members of the Committee. I'm certainly speaking for myself. I've never seen a more open hearing where you've allowed people to address us in any number of ways. We can't simply have an unlimited time schedule for everyone to speak as long as they want, but I think in terms of fairness to both proponents and adversaries of this nomination to say that this hasn't been fair, I think, given the manner which we have to go forward with government, this is about as fair as it can be. I commend you for it. So I just want you to know it publicly.

SENATOR GORMLEY: Thank you. Thank you very much.

Mr. Bayuk.

**C A R L B A Y U K J R.:** My name is Carl Bayuk Jr. I've been a lifelong resident of the State of New Jersey. I grew up in New Jersey, Somerset and Hunterdon County, my entire life, graduated from Rutgers University with a degree in history. I'm a graduate of the National Westminster Bank Management Training Program and Pharmaceutical Sales Marketing Program.

I'm here today to comment on police brutality issues that have been ignored by the Attorney General's Office for a very long time. I am here to present -- to talk about profiling, the use of very severe torture by State Police officers and local police officers, and also the use of prosecutorial misconduct and perjury of prosecutors before judges and police officers perjuring themselves before judges in municipal court and superior court in New Jersey.

I'll be very brief because I know your time is very valuable, and my remarks are based on the five-year experience and a five-year study of a poison

that has leached into American law enforcement in this country, and New Jersey has not been immune from the bug. In all fairness to the Attorney General, no one man can make the change or stop the cancer that has permeated American law enforcement and New Jersey law enforcement, and I want to make that point clear.

I have here two examples of police reports that were written and sworn to and testified in court by police officers as evidence that profiling exists and that fraudulent reporting exists. This fraudulent reporting is designed to cover up the human and civil rights violations by police officers, and I would like to just show you real briefly or give to the Committee to review later these reports. And, basically, what actually happened and what the police officers wrote-- This is not observations based just solely on my subjective opinion. This is eye witnesses to this type of very severe conduct.

SENATOR GORMLEY: Our Committee Aide, John Tumulty, will take those. (referring to witness's testimony)

MR. BAYUK: And I would like to give these, too. I also would like to give you a letter written by Officer Joseph Trapp -- written just recently -- perjuring himself to members of your House and Senate regarding issues related to this matter. I met with Mr. Trapp five years ago regarding police harassment on the local level and gave him a list of references of who I was and where I worked, and that type of thing. He was very callus, and not only was callus, but apparently he told me I was being profiled and/or alluded to that. From there, it has just been one situation -- has been a systematic almost process that I have been subjected to, and my family.

The letter that you have-- It's impossible for Officer Trapp not to have known who I was, since I had to know for a fact that he has been very involved in the case that was prosecuted towards me. I was acquitted and the case is dismissed, but yet the police conduct an harassment, and the abuse of their powers has been very serious.

In closing, I just want to say that even though I'm not-- You're the best judge of whether the Attorney General is qualified to sit on the Supreme Court, but many of the issues that he's been -- many of the issues regarding profiling, fraudulent police reporting, police harassment, and other issues that he has been accused of ignoring, I have to tell you, that because the problem is so widespread on the municipal level, the local level, and State level and even in some cases Federal level, that no one man-- It is impossible for all but one man to stop it because it is a standard and a practice of police to do this to human beings in the United States. And we don't like to hear that kind of thing because the kind of things they do happen in Chile and in Africa, and not one man can stop that. The only real people that can stop it is the Senators and the Assemblyman and Congressmen. You're really the bulwark of freedom and the preservation of civil and human rights.

Thank you very much for the opportunity.

SENATOR GORMLEY: Thank you.

The next name is Frank Krudys (phonetic spelling). Excuse me if I'm not pronouncing it correctly. (no response)

Charles Garrod.

**CHARLES GARROD:** Five minutes?

SENATOR GORMLEY: Yes.

MR. GARROD: My name is Charles Garrod. It's spelled G-A-R-R-O-D. I live in Piscataway, the county of Middlesex. I'm here to express my opinions and concerns on the appointment.

In Monday's *Star-Ledger*, there was a comprehensive article concerning this nomination with a photo of each of you, and there was an indication of how you all were going to vote. I was wondering after listening to Ms. Walker's testimony whether there was a leak. Little joke.

I'm here as a layman, not as a lawyer, although not that I don't have some experience. I was the State's first Municipal Court Administrator in 1973. Some say that's the bottom of the judicial food chain, but I say it's the foundation. I also served as the first layman on the Supreme Court Rules Committee. My comments today should not be construed as a criticism of Peter Verniero, the man and the husband. I know him to be a decent and moral man. He probably was an excellent Chief of Staff and Governor's Counsel.

When I listened and read about Governor Whitman's talk about the nomination of General Verniero, his comprehensive inexperience and exposure to major legal challenges, I read, "I want to take care of my political friend." I had some personal experience with Peter Verniero when he was wearing political clothes. Always a decent, good campaign guy.

When I hear from the Governor and President of the Senate that General Verniero meets the minimum qualifications for the position of New Jersey Supreme Court Justice, I personally felt rankled. Are we the citizens of the state expected to have one of the most important positions filled by a person that minimally meets the qualifications of the position? And how is it

that he can point out that two sitting justices have never argued a case before a jury, that some of these were not even previous judges? Does a lack of judicial experience or comprehensive trial experience legitimize this nominee's minimum qualifications? Do these lacks now define what a minimum acceptable experience for a Supreme Court Justice is? And so, what will the next lack be, and will that be acceptable?

General Verniero stated that a lack of trial experience or judicial experience should not be a barrier to the job. And the only way I could see you get on-the-job experience is on the job. The government has a way of hiring people without experience and then paying and having taxpayers pay for the training. If judicial experience is not important as a foundation, then why would we ever want to consider hiring anybody who was a judge?

And I'll comment on minimum qualifications. How many of you up there were ever subjected, yourself or a loved one, to a medical condition where the surgeon had the minimum qualifications? And how many would send your children to a school or college where they brag about all the teachers and professors having met the minimum qualifications? I think not. I think that the New Jersey judicial selection process is not designed in seeking the best legal minds in New Jersey for this position, and therefore, you're not raising the bar of excellence. I don't know if you're lowering the bar, but I think it's shaky. Can we the people now expect that all future Supreme Court Justices will eventually morph our State's Supreme Court into one gray, minimally acceptable body? I hope not.

And my statements, of course, represent my opinion, and I expect that this decision will be political today and not intellectual and certainly not

in the best interest of the people in the State of New Jersey. And government does not have in its vocabulary or in its resolve to fill critical positions with the most qualified and the most experienced people available, and probably it's a sad commentary factor.

Thank you.

SENATOR GORMLEY: Thank you.

John Tomicki. Is he here? Here he is.

John.

**JOHN TOMICKI:** Thank you, Mr. Chairman.

Let me first say personally as I told the Attorney General a moment ago, our organization has been weighing this issue for several weeks on whether we would take a position or not, as I expressed to him personally that this is done because of our beliefs in the judicial system. It has nothing to do with him personally, who I've always found in my dealings with him over the years to be kind, courteous, responsive. And I think we've all seen that in the media that he is also known for wearing a white shirt, as I'm always known for wearing a blue shirt and a hat, which is now off. Because we hear as part of a process-- Thank God, we have a country where, when we have differences as we view government, you're not taken out and shot. And I think it's wonderful that our country now is receiving people who are coming from a nation that is torn apart by their particular differences.

Benjamin Franklin stated at a time we established our Constitution that we were given a republic if we could keep it. From time to time, individually myself on behalf of this organization and other organizations, I have testified for and in support of and not in support of

certain judicial nominees always starting out with the phrase “Who guards the custodians?” That’s the process that you’re going through now, looking at a nominee to put up forward by the Governor, to say, is this person the person that should sit on the bench that should view our laws as whether or not they are constitutional or not? Benjamin Rush one of the signers of the Declaration said that “our form of government was created so that each citizen must jealously guard the liberties.”

What finally moved us to take a position was the general statement as reported in the *Bergen Record*, and so that I get it correct I’d like to read it exactly. “The Supreme Court of New Jersey is known for its national reputation, for scholarship integrity, and always doing the right thing.” There’s a whole host of decisions where our organization says it has not done the right thing. We believe in many of the Court’s decisions. They have micromanaged. It splits on both sides of the ideological aisle, whether you want to go to *Abbott v. Burke*; *Kelly v. Woonell* (phonetic spelling), where our former chief justice in effect says, “Here we write new law”; *Right to Choose v. Burne*, where taxpayers are forced in New Jersey to pay for convenience of abortions; *Robinson v. Cahill*, which dealt with mandated sex education; some of the death penalty decisions. The Court has been criticized by other jurisprudential leaders as being involved in micromanagement.

I understand the Attorney General is testifying that he believes in the separation of powers. Well, I’m sure he does, and I’m sure all of us do. But what concerns me when you say you believe in the separation of powers and, also, support and say that the decisions made by the Court are right, I don’t think any one of you sitting on the Committee has said, “But of all the

decisions you have made in life, each one of them has been right.” And thank God that, in fact, there is multiple counsel. There’s a member of this Committee-- It will have to go before the entire-- I would assume you will release the nomination before the entire Senate for it to work its will and as we go through the process.

Thomas Jefferson urged us to consider the following, that “we should not consider the judges as the ultimate arbiters of all constitutional questions, a very dangerous doctrine indeed and one that would place us under the deposition of an anarchy. The Constitution erected no such tribunal.” And that’s where I have felt that many times our Supreme Court, when we go through the Nancy Ellen Jobes (phonetic spelling) case wherein the lawyer representing the person who wanted to withdraw her food and water said, in effect, they wanted the Court to right a decision before the Legislature had an opportunity to act-- This is what concerns us. This is why we believe at this time -- as much as I personally like the individual, as much as I may say we have a good relationship and it troubles my heart because this has become almost to me personal, but I have to just come before you on behalf of our organization and say this candidate, as we did with Chief Justice Poritz, we said, not this candidate and not at this time.

And I thank you for giving us the time, and I hope I didn’t go beyond the three minutes.

SENATOR GORMLEY: No, you didn’t.

Thank you very much. Thank you.

The next witness Rory Moore. (no response)



Linda Auxer. Excuse me if I didn't pronounce that correctly. (no response)

John Tumulty will pronounce the next name. (laughter)

MR. TUMULTY: Foitios Padazopulos. (no response)

SENATOR GORMLEY: That was excellent, John.

MR. TUMULTY: Thank you.

SENATOR GORMLEY: Ray Kalainikas. (no response)

Charles Fairchild. (no response)

That will conclude this portion of the hearing.

We'll take a half hour of break and come down for the vote.

**(RECESS)**

**AFTER RECESS:**

SENATOR GORMLEY: At this time, I would move the nomination of Peter Verniero of Annandale to be an Associate Justice of the Supreme Court.

Do I have a second?

SENATOR KOSCO: Second.

SENATOR GORMLEY: What we'll do-- We'll run through the Senators.

SENATOR ZANE: Senator Gormley, can I be heard?

SENATOR GORMLEY: Sure.

SENATOR ZANE: There was information that I asked for that I believe the General himself promised me I would have before we vote. I don't have that information yet, and I'd like to have it before we proceed further.

SENATOR GORMLEY: I don't recall that specific promise that we're going to try to get you the information. They're going to get you the information, but I didn't say I would delay the vote for that information.

SENATOR ZANE: I know you didn't. The Attorney General indicated that he would have it to me here this afternoon before the vote. It's not here.

SENATOR GORMLEY: Well, he said he'd get the information today. I'm going to call for the vote now.

SENATOR ZANE: Why don't we ask the Attorney General what he said rather than you suggesting what he said?

SENATOR GORMLEY: No. No. I made a motion, and it's been seconded.

SENATOR ZANE: Well, I'll make a motion we table it--

SENATOR GORMLEY: Well, okay, if you want to go through--

SENATOR ZANE: --until I have the information that I was promised.

SENATOR LYNCH: I second the motion.

SENATOR GORMLEY: Okay. A no vote is against the motion to table.

Take a roll call.

MR. TUMULTY: Senator Gormley.

SENATOR GORMLEY: No.

MR. TUMULTY: Senator Cafiero.

SENATOR CAFIERO: No.

MR. TUMULTY: Senator Bennett.

SENATOR BENNETT: No.

MR. TUMULTY: Senator Kosco.

SENATOR KOSCO: No.

MR. TUMULTY: Senator Martin.

SENATOR MARTIN: Abstain.

MR. TUMULTY: Senator Matheussen.

SENATOR MATHEUSSEN: No.

MR. TUMULTY: Senator Robertson.

SENATOR ROBERTSON: No.

MR. TUMULTY: Senator Girgenti.

SENATOR GIRGENTI: Yes.

MR. TUMULTY: Senator Lynch.

SENATOR LYNCH: Yes.

MR. TUMULTY: Senator O'Connor.

SENATOR O'CONNOR: Yes.

MR. TUMULTY: Senator Zane.

SENATOR ZANE: Yes.

MR. TUMULTY: Motion fails.

SENATOR GORMLEY: Moved and seconded.

MR. TUMULTY: The motion starting with Senator Cafiero.

SENATOR CAFIERO: Yes.

SENATOR MARTIN: Can I ask--

SENATOR GORMLEY: Yes.

SENATOR MARTIN: --when we're going to be allowed to--

SENATOR GORMLEY: Yes. Make comment before. We had said that.

MR. TUMULTY: Senator Bennett.

SENATOR BENNETT: Yes, with a brief remark before I vote.

I've been here for the last two days and heard a great deal of testimony. I believe in most cases genuine and sincere questions being raised by both sides of the aisle to the nominee -- many people who not only testified, but others in their estate that came in order to testify today -- both today and yesterday, both in favor and in opposition to the nominee.

I find the most troubling aspect of this is the polarization that is being caused in our state, and I would like to think that it's a polarization on issues, as opposed to a polarization because of partisan reasons. I'm not sure that's the case, and that's my personal feeling. I certainly think that the questions that have been raised with respect to the nominee on -- from the other side of the aisle and my colleagues have been done so in an appropriate manner. I am troubled more than anything else with respect to the testimony that was presented by the Bar Association.

I'm a member of the New Jersey Bar for 26 years. I've had the occasion to sit on this Committee now for some 10 years and have been a member of this Legislature for 20 years. I believe that during that course of time, I have seen many pieces of legislation come through as well as many people that have come to this Committee to go their route to be a judicial nominee or to be-- In fact, this will be now the third justice that I've had an

opportunity to personally participate in the process. And never have I seen nor heard of any breach in all that time by any Bar Association with respect to the activities of that Bar Association.

It is not only troubling to me that this time there was one breach, but in my opinion, there were two breaches to say that, and further that it goes in a different direction is just not realistic to have the representative of the State Bar Association have the inclination to come and answer certain questions and then claim confidentiality on others and then reveal a vote is not only troubling. It's disturbing. And unfortunately, I think a very negative impact on the Bar. It questions whether the attitude and the opinion that the Bar put forward in their opening comments that they are nonpartisan and nonpolitical are, in fact, correct or, in fact, in this nomination was this nominee treated differently than other nominees and was this nominee treated in a partisan manner because of the background of having several partisan positions.

I'm comfortable with the 20 years and more that I've been on the Bar and the 10 years that I've sat on this Committee and the judicial nominations that I've reviewed that frankly I have a greater ability to review the qualifications than an individual that has sat on a Committee for six months and made references to 100 nominees in 3 years of which she personally could not have participated since she was not a member of that Committee.

We've had the opportunity to review, and I believe we have a constitutional duty to do advice and consent. And I don't take that lightly. I take that very seriously. I'm comfortable that I've listened to the issues that

have been raised, but that the nominee, Peter Verniero, has, in fact, met in my opinion what is necessary to be a member of the Justice of the Supreme Court. And it is without hesitation that I am willing to cast a vote, affirmative, for his nomination.

MR. TUMULTY: Senator Kosco.

SENATOR KOSCO: Rather than repeat what Senator Bennett just said-- He mentioned all the things that I was going to mention, so I will just cast a very strong yes.

MR. TUMULTY: Senator Martin.

SENATOR MARTIN: Thank you.

I am satisfied that we now have a -- if not a full record, Senator Zane, something pretty close to it.

Let me begin. It will take a minute or two and not that long, Senator Gormley.

I, like Senator Bennett, view our role as being an important one. Article 6, Section 6 talks about the Senate and the Governor making a nomination and appointment with the advice and consent of the Senate. It's interesting it doesn't talk about when the advice and consent should occur, but certainly the practice has been that we do so after the nomination, at least with respect to Supreme Court Justices.

That advice and consent, I think, means more than being a rubber stamp, being a team player, or just going along. I think it requires a real role. I think that's especially so with respect to the Supreme Court nominations because, let's face it, the Supreme Court will be -- makes law in the State of New Jersey, very important law. And in this case, we're talking about a

nomination that could expand -- occur over maybe seven administrations for as much as 30 years.

So with that understanding of this advice and consent, let me explain my vote. On Monday, I'm going to vote not in favor for this nomination, which means I'll be voting against. It doesn't mean it doesn't respect the candidate. I do. I think he's hardworking, honest, and well-intentioned. I have some concerns about his appointment to the Supreme Court. I think that there are limitations on his experience, especially with respect to not really understanding exactly how he'll be able to rule on issues that I think are important. If there were more experience, I could draw upon that. I don't have that, and that is a concern. I have some concerns about judgment, primarily that judgment that was exercised during the almost three years that he has been the Attorney General. I don't think he's racially biased in any way, but I do think there was steps that at least should have been taken earlier, I believe, given the gravity of the situation with respect to some of the issues that have surfaced.

Thirdly, with respect to the Bar Association, I have said all along that I respect and would have some concern about where the Bar came down on this. My colleagues have voiced criticism about the Bar, and I have some concerns. I think the Compact, frankly -- this is for another day, but I think the Compact should be reconsidered in terms of how it's structured, who is appointed. Maybe their experience should be looked at if it's-- But the Compact has been taken seriously and pretty much followed for almost 30 years since 1969 and has been followed by this administration. We relied on it, essentially. I think, it served us well as far as screening good candidates. I

see the biggest problem with the Bar Association is that there is a confidence level among lawyers. Lawyers are the players in the legal system, and I think it's fair to say that there's some degree of skepticism about whether this appointment would be highly qualified among lawyers. And I think that that's unfortunate and will not serve to enhance the Supreme Court, at least at this time.

I note that Mr. Verniero said that he would believe that his appointment would do nothing other than enhance the Supreme Court. I don't see that happening, at least in the immediate stages. So as I said, I don't think that Mr. Verniero should be elevated, if that's the word, to the Supreme Court at this time.

On the other hand, I am prepared to vote to release this nomination today, and let me tell you why. I'll just take a moment, but there's a history. I was appointed to the Senate in August of 1993. At that time, there was a special meeting of the Senate. The only agenda item was to have me sworn in. There was another matter at hand and that one was-- I think it was Senator Lynch who had moved at the time to have a nominee removed from the Senate Judiciary Committee -- that was Judge Maryann Espinosa Murphy (phonetic spelling) -- to have her go before the full Senate. So it happened on the day I was sworn in. It was of particular interest to me, since then Judge Murphy lived in my District and it became an issue for me. I was also named in a lawsuit about a month later as a defendant for being a member of the Senate and particularly having just been appointed to the Judiciary Committee.



The long and short of that is I've been paying a fair amount of attention to advice and consent and what our roles should be from the day I was sworn into the Senate, if for no other reason I was an defendant. And this matter actually did go before the New Jersey Supreme Court in a split decision. The Senate was upheld at the time, but there were some questions about -- when we talk about the Senate, who should make the advice and consent? And I, in thinking about that, am convinced that when the Constitution uses the word advice and consent, it does mean the Senate as a collective whole. I don't think it's appropriate for this Committee to be able to make a decision after a governor has put forward a nomination that's come to this Committee that we would be able to hold that and not have it go to the Senate to act on as a whole.

So I can support this nomination being released to the full Senate. It is my understanding that it will be voted on, on Monday. And as I said before, not for personal reasons, but for reasons that have come up during the scope of these hearings, I will not vote for the candidate at that time, but I vote yes for release of the nomination.

Thank you.

MR. TUMULTY: Senator Matheussen.

SENATOR MATHEUSSEN: Thank you.

First, let me just say briefly I know that the motion is nondebatable, but I feel it deserves an explanation, and my explanation is by way of thanking you, Senator Gormley, as Chairman of this Committee. I have sat through three nominations for Supreme Court Justices. I have sat through many nominations for Superior Court Judge, only one that I can

remember was, perhaps, participation wise as full as this hearing. And quite frankly, the way that this entire process has been conducted -- I do not recall more public participation, more hours of opportunity for questions, and very fair and impartial rulings from the Chair than I have at this particular hearing. So I want to congratulate you and compliment you on that.

And that by way of explanation is the reason why I voted against the motion to table for further time. I think we've had more than ample time to query this -- using a word of someone else -- nominee and certainly those who had come to testify both for and against his nomination. The nominee is also to be complimented on the fact that he has spent literally hours and hours on the stand. That is not by any stretch of the imagination an easy exercise for anyone to go through, whether you're being given questions that you're comfortable with or questions that you would consider to be cross-examination. His skills, I think, were to be complimented here at this hearing for the last two days as well as his stamina.

I have kept-- Because I truly believe that that is what is correct for me, whether or not other people have done it differently, I have kept the door open, so to speak, during this entire process because I felt as though due process requires that. I have felt as though that I should give any nominee the opportunity, as well as witnesses the opportunity, to present themselves and let the facts fall where they may in making my consideration for what I consider to be probably one of the most important aspects of my responsibility as a State Senator.

I strongly believe in the Constitution's requirement that the Senate give advice and consent, and I also think that there is a difference in

what some people interpret that to be. I interpret the advice and consent section of the Constitution to be one not who I would choose to be, perhaps, the nominee, but rather give advice and consent to the person under the Constitution who has that right, and that is the governor of this state.

So I am somewhat concerned, and I also want all of us here today and, perhaps, with the debate that may ensue on Monday that we make sure we very carefully defend the position that we take on our vote. Because I think, quite frankly, there is enough cynicism out there already against the politics of our State and against the politics of government in general. And although it plays a very important role in what we all do and how the nominee and every nominee that's come before him got to this position, partisan politics should not play such a role. And so I think we need to be careful to guard against that, to hope finally curb the cynicism that may be out there. Not end it -- I don't have that much wishful thinking -- but perhaps curb it.

Having said that, I also fully believe that particularly with this kind of a nomination that the full Senate needs to give its advice and consent. I, too, will vote in favor of moving the nominee today; however, I will not be bound by that vote on Monday. I have not finished my deliberative process. I take it seriously, and I will certainly ponder it heavily from now until Monday.

I move the nomination.

MR. TUMULTY: Senator Robertson.

SENATOR ROBERTSON: Thank you, and with your indulgence, Mr. Chairman.

I have known Peter Verniero for more than a decade. So many of the qualities that have been discussed with respect to his character were qualities that I observed as well: his earnestness, his intellectual ability, his hard work, his work ethic. These are all going to be important factors in having someone on the Supreme Court that can do the Court justice as well as doing the people in the State of New Jersey justice.

I should mention that even as I sit here today I have other concerns about the administration of justice, which are in some ways related. This nomination having come to us when it did this early in the year had a tendency to remind me of what is becoming a deepening problem in my own county with the administration of justice. Even as I'm being asked to vote on a vacancy that will not occur for another four months, there are a number of vacancies in my county that have been left unattended, not that folks haven't been working on them, not that I haven't been working on them with my colleague, Senator Girgenti; and we've know each other and respected each other for many years and have a very good working relationship.

It is important, I think, for everyone in this body and in the executive branch to understand very clearly that the administration of justice in New Jersey goes far beyond the fate of a single nominee to the high court. When it comes to completing four-way checks, when it comes to submitting names to the Bar Association for review, when it comes to doing all the spade work that is necessary including all of the preliminary, middle, and final political work that is necessary to evaluate candidates, that's something that has to be treated with utmost seriousness.

There are those in my county who have suggested that I should abstain at this time. I can't do that simply because other work hasn't been done, but I think it's important to realize that if we are to do justice at all, we can't have people waiting for justice in their home counties while we put the pedal to the metal for candidates that we know so well.

Having made that notation, however, let me say that I've watched the Attorney General over the past few days, over the past weeks, and months. I have been impressed by his intellect. I listened with an open mind to what was going to be the report of the Bar Association -- and I have been at the Bar myself for 20 years plus -- and I did keep an open mind with respect to that; and frankly, I was disappointed by the presentation. There were things that I needed to know so that I could give adequate weight to the input that was being given, but questions were not answered or were evaded. I tried in vain to get that information, but even with the information I was given, it became clear to me that I didn't find as sort of smoking gun to underline the sort of conclusion that was being made by those particular 25 people. And I myself have contacted a number of people throughout the state, so I have to weigh that in the balance.

I was particularly struck by Justice Clifford's testimony yesterday, someone who has known and worked very carefully and closely and intimately with the candidate and was able to comment on just the very qualities that were going to be important in a Supreme Court Justice.

Now, I've been a practicing lawyer for 20 years. I know what it's like in the day-to-day practice of law. I have not argued a multibillion dollar case before the New Jersey Supreme Court. I have not argued a case that

involves national implications before the 3rd Circuit United States Court of Appeals. I have not been a member of a staff of a Justice of the Supreme Court, which struck me about some of the debate that I heard with respect to experience. Those who are opposing the nomination seem to point to an absence of length but really didn't give adequate attention to breadth of experience. And with this particular candidate, surely, it struck me that what is maybe lacking in length statistically is more than made up for in breadth.

I know candidates for various levels of courts have been brought on who've had a career that's fairly one dimensional. And I don't say that in a disparaging way because I think anyone who goes forward, especially in public service, should be commended. But I know judges who have been career public defenders never set foot in a civil court. I know people who have been career prosecutors with the same talents being shown. I am confident and comfortable with the fact that this candidate has what it takes to do a good job on the Supreme Court. I think he has because of his governmental experience and frankly because of his political experience a breadth of knowledge about many other areas of life and law that we don't find in other candidates whose tenure in the same practice might be longer than is our candidate's. So I think that it is important that he will bring to the Court from his government experience a respect, and I hope a healthy respect, for the separation of powers.

All too often the work of this Committee from the short time that I've served on it or the work of the Senate has not been paid, in my opinion, the adequate, the grave respect that is necessary in order to get the best product out of the Legislature. I say that from folks who've served as witnesses to folks we work with every day, some in the executive department; and it is

something that, I think, we as an institution perennially have to stand up and insist upon.

But be that as it may, Mr. Chairman, it is my pleasure to vote yes to release the nomination.

MR. TUMULTY: Senator Girgenti.

SENATOR GIRGENTI: Mr. Chairman, colleagues, General Verniero: I want to first state that I believe that General Verniero's a good person. He is also a loyal government servant and has political talent way beyond his years. He is well educated and well spoken.

I'm a nonattorney member of this Committee. As a lay member, I look at this nomination a bit differently than my attorney friends. I have to rely not upon any formal legal education, but rather upon my life experience. Experience is very important to me. When you hire a doctor, a lawyer, an auto mechanic, or even a babysitter to watch your children, you ask them about their experience. You need to know their actual ability to perform because you have to feel comfortable in placing your trust in them. You have a confidence level which must be met. Looking at the history of New Jersey's Supreme Court, experience is a critical consideration.

Take the nomination of Justice Harry Heher. He did not even attend law school, but became a member of the Bar through self-teaching, then called reading. But because he had 25 years of private legal practice, he was placed on the Supreme Court. I look at members on this Committee -- no offense to my colleagues -- but we have all been in the political arena for a very long time. We have lived a day-to-day life of the public servant. Our years make us wise. Our experience and political life is what all 11 of us bring into

this committee room today. It is our experience that has earned the trust of our colleagues in making this initial evaluation of General Verniero. It is our peers, our fellow Senators, telling us that they think we have the skills to get the job done. We do not leave that up to the public to decide. We leave that up to our peers.

When we, as Senators, select a Senate President or Minority Leader, we do so based upon that person's experience as assessed by us his peers. General Verniero was evaluated by his peers in the legal community. They found him to be unqualified by a significant margin of the member of the Bar Committee. Yet some of us are choosing to ignore this. We think we know better than his peers. Some of us are upset because there has been a breach in the Committee's confidentiality. That breach, although condemnable, does not automatically create legal ability for General Verniero to sit on the Supreme Court.

People in the legal community tell me that New Jersey is the envy of other states in the union when it comes to selection of their judiciary. Because, although politics is involved, the selection process is not based upon pure politics. They point to the critical and singular nonpolitical component in the otherwise political process, specifically the extensive peer review conducted by the Bar and the more importantly the Compact with the Governor that makes the review meaningful. We have now resorted to partisan politics to negate accepted procedures which were designed to protect against political abuse and make the system valid. This is all very shameful.

I am voting against this nomination not because I am a Democrat and General Verniero is a Republican. I'm voting against it because in my



judgment he does not possess the requisite legal experience at this stage in his life to serve on the Supreme Court.

I've been told by his peers and I believe this assessment is fair and unbiased. Do I think General Verniero is on his way to the level of legal experience that is required of a Supreme Court Justice? Yes, I do, but he is not there yet. I vote no.

MR. TUMULTY: Senator Lynch.

SENATOR LYNCH: Thank you.

I'm somewhat troubled by what is happening here today. As I said earlier, I have great faith in the 1948 Constitution and its clear intent to maintain separation of powers and an independent and competent judiciary. Over the years, some of us-- We've all had our times when we thought something about the State Bar Review Committee and whether that process was fair depending upon what was happening on an individual case-by-case basis. But over the years up until this administration, no nominee for a Supreme Court Judgeship had ever been placed into nomination before the Bar review. For some reason, this administration has chosen to do that, which creates the dilemma.

In this case, it's become very clear to me in reading the Compact and listening to the testimony of the Chair of that Committee yesterday that on April 13 or April 14, 1999, that Committee met and clearly did not vote affirmatively on the qualifications of the nominee. That evening or sometime that day, there was a leak. I don't have to tell you-- I think everybody in this room knows how that happened. That leak had to come from the executive branch of this government, who knew at the end of that day that the nominee

hadn't passed. They created a straw man and some of the press were complicit in that so that the State Bar could become the whipping boy and somehow their credibility could be destroyed so that this nomination could move forward.

It's interesting to note, and I quoted it before, but it's worth quoting again, that the Governor's Counsel six short months ago said the Bar Review's process is, "The single most important reason New Jersey's judiciary has such a prominent national reputation." Then Tuesday of this week, that Bar Committee met again. And when you read the Compact language that we were able to read yesterday, it's clear that what happened was that the host county Bar was able to come in and restate the case in behalf of the nominee.

As the Chair stated yesterday, they finished their proceedings and voted at 1:15. They stayed there until 5:00. Most of you people here on this Committee know that the information on what happened was out before 5:00. The credibility here is obvious. This Chair, this witness yesterday, was compelling -- her testimony not only on the qualifications, but on the integrity of the process. And I find it very, very troubling that we in our quest to somehow get this nomination approved have created a straw man, have tried to destroy the integrity of this process with the Bar, and we're going out of our way to use that as a reason to circumvent this Committee, when so many of your people who've you had tried to get nominated have been blocked by that Committee and you've honored it.

With regard to the substance of the nomination, as I said before, the report of the Bar through a very, very credible witness was obvious. The nominee lacks the requisite background and experience in order to make

competent judgments, which I think is evidenced in some measure by his actions on -- as Governor's Counsel and as Attorney General where he was clearly not able to avoid the appearance of a conflict of interest, or his just judgment was not consistent on a case-by-case basis or evenhanded. And then, it reflected precisely what the Chair described: There wasn't enough experience to hone those judgmental skills to make this a worthy nominee for the Supreme Court.

And of course the witness, the Chair, described additional qualifications that they looked for in a nominee for the Supreme Court. Clearly, those weren't met in this instance. So I'm going to vote no on the motion.

MR. TUMULTY: Senator O'Connor.

SENATOR O'CONNOR: Thank you, Mr. Chairman, and colleagues. General Verniero and members of the public, thank you all for your attention over the last two days. I think it's very important that we reflect and continue to reflect on the fact that this is a nomination to the Supreme Court of the State of New Jersey, our court of last resort.

And as Senator Matheussen has said, this is not as if we're making the nomination, but rather giving our advice and consent. So we're not deciding who would be the person that we would nominate for this position from the many talented attorneys and judges for that matter in this state, but rather we're deciding whether we will advise and consent on the Governor's choice, essentially saying, whether or not that person is qualified and has the character and fitness to serve.

In Mr. Verniero's case, I think the importance of our decision is magnified by the fact that he will potentially serve as many as 30 years if confirmed. And this is not an easy decision. I also share Senator Matheussen's sense that it's almost a duty that we owe to the public to keep an open mind for as long as we can. And so it was that I was at least reported in the papers to have been an undecided vote. I thought that we owed it to the people who came here for the last two days and took time out of their busy schedules to tell us why we should either vote for or against the nominee -- that I was an undecided vote. And it's not an easy decision.

Mr. Verniero has had three very high profile positions in the Whitman administration which give him an experience from the public sector a perspective which would be very difficult to match. That experience and Mr. Verniero's performance in his roles has been the subject of extensive questioning and comments over the last two days.

What I'm struck by in this whole process is the collective judgment of the State Bar Association, a nonpartisan, nonpolitical, volunteer group of experienced attorneys with an average experience of some 13 years who have passed on hundreds of judicial and prosecutorial candidates. Their rejection of General Verniero was overwhelming. Unless we attribute some intent to kill his nomination on their part, I don't see how we can ignore their conclusion.

I don't suggest that we permit the State Bar Association to usurp our duty to advice and consent, our constitutional duty, but certainly we must consider seriously the decision of this body.

General Verniero testified yesterday that he thought that the Bar Association was unfair to him. He thought that the questions were unfair and

that there was an undue emphasis on his governmental and political experience. I would suggest that that's a conclusion on his part that I can't understand, inasmuch as so much of what he holds forth as his qualifications for this high office is that very governmental experience. It just doesn't make sense to me that the Bar Association would not have delved into his actions as Attorney General and as Counsel to the Governor.

This is a hard vote for me because I've had a good relationship with General Verniero, and I believe that he is an honorable man, but based on my respect for the Supreme Court and for the men and women who serve in that Court and for the process that we've followed for 30 years that I feel compelled to vote no.

MR. TUMULTY: Senator Zane.

SENATOR ZANE: Sometimes when I'm in church on Sunday and the priest has a lousy sermon and I'm sitting there in the congregation, I wish I could get up and walk out -- maybe come back and catch a different priest with a better sermon, but I can't, so you're going to have to bear with me. My thoughts are a little bit scattered with this.

Initially, I'd like to say that despite the fact I didn't agree with the last ruling, Senator Gormley, I do think you ran a very fair hearing and gave everyone ample opportunity to question. And frankly, that's the way it should be. And being a traditionalist, I hope that that is a tradition that is established well in the future for successors of yours as well.

SENATOR GORMLEY: Thank you.

SENATOR ZANE: Our form of government is really rather unique when you think about it. There are three distinct branches of

government, the legislative, the executive, and the judicial. And our Constitution -- the way it works -- really the judicial is created by the other two bodies, the executive nominates and, in particular, the Senate confirms, thereby, both the Legislature and the executive branch being participants.

That branch of government, the judiciary, is so powerful. Four of them can do what it takes not just 21 of us, but 21 of us and 41 members of the Assembly to do. They make law. They also make us do things. I need only point to some of the educational decisions. Decisions over the last numbers of years pertaining to funding where they have given us mandates, and we've responded to them. Parenthetically, I would say that I don't think that we treat ourselves as an equal branch of government. And I think we should. I think we should do far more than we do because those other two branches of government are no more important than we are.

Let me tell you a couple of things that concern me about the vote to come. Not today, we can count. It's already been released, but the vote on Monday. None of our votes should be in exchange for anything. None of our votes should be bartered or traded. They should be pure. They should be honest, and they should be intellectual. And I will salute and support everyone that votes in that fashion, but I will condemn publicly if I can anyone that violates that vote in creating this third branch of government or, should I say, supplementing this third branch of government.

Much has been said about the Bar Association. And it's interesting, and Senator Lynch put it so well. We're now making them the scapegoat. In this case, kill the messenger if you want, but don't lose sight of the message. The message that was brought here -- 23 or 24 lawyers across this

state that served and have served well -- and the message was overwhelming: Peter Verniero's unqualified for the position to be an Associate Justice of the Supreme Court by nearly a three-to-one vote, not once, but after reconsideration, twice.

Sometime yesterday, I asked the General to help me out with responding to some people from my district that have raised some questions. And I indicated that they were black people and that they were concerned because of tying the Commissioner to profiling. And I said yesterday, and I'll say it again, profiling did not come about under Peter Verniero. It's obviously happened for a long period of time, but it did exist under his watch. And today, rightfully or wrongfully, there's an association being made by people with Peter Verniero and profiling. And his answer to me was, as I recall, don't judge the man. Judge what I do or what I have done.

And today I stumbled into some questions in the last round of questioning, and I asked the General about what has happened within the State Police, which is directly under him, since 1992? What is the mix, if you will? And there's been a change. There would probably be a greater argument today for discrimination than there was then because nothing has been done since 1992. And that's the answer. That's the answer that I have to take back to those black people. Those are the results.

Today I asked to have something delivered here which would have demonstrated that, I believe, and it wasn't delivered. I don't know why it wasn't. But diversity is something that we must understand in this state, and it's something that he, as the Attorney General, had an obligation to do something about, and it shouldn't have taken profiling in this state to have put

that first and foremost in his mind, whether you're an American Indian, whether you're black, whether you're Oriental, white, whatever. We are a melting pot, and people in high office have got to understand and regard that and respect that. And in this administration of the Attorney General's Office, nothing has changed, and that is under his watch. So to those black people who spoke to me, that's what I'm going to tell them. That I asked you questions, that I gave ample opportunity for someone to give an answer, and the answer is you were better off in 1992 than you are today.

I don't want to say I came here open-minded. I didn't think it was a good nominee from the very beginning. And I think Peter is a fine man, but I don't think he's material for the Supreme Court. And with that, I am not supporting the release of this nominee to the full Senate.

MR. TUMULTY: Senator Gormley.

SENATOR GORMLEY: I want to thank every member of the Committee, my own party, the loyal opposition. I think this was a very open process. It became heated from time to time, and, yes, it will be a split vote. But I think once we get through some of the political rhetoric, I think you see some of the very best of what New Jersey's about. You see people debating a nominee. You see issues being brought to the forefront. And I think even though, as I said, it's heated, I think we windup a better state.

The nominee has been the subject of a large amount of questioning over the last two days. I think he's handled it very well and been very honest. It has been indicated even by those who might not totally agree with the nomination and oppose it that he is intelligent. He is hardworking. Some have supported his character. I think he has all those aspects. I think it's



important to note that even if people are voting against him, and I would refer to Senator Lynch, I truly respect his feel for the State. He and his father before him have a tradition of caring much about this Constitution, and I believe that. On our side of the aisle, you have a group of people who care just as much as Senator Zane does, as we all do, about profiling.

Profiling is not just a Peter Verniero issue. That it's not meant that he shouldn't do something as AG, Senator Zane. You're right. But I think it's something for all of us to be concerned about. You can't take any one person and say it's their responsibility. I should have read that *Soto* opinion sooner. I regret that I didn't.

Yes, it will be a close vote today. And I think, and hopefully on Monday, that the nominee will be approved. He has all the requisite qualities to serve. Do I think there's some maturing? I do. I think he's had a lot in the last two or three days. But if you look at our Constitution, if you look at the tradition of this state and those who have been nominated before, although he might not have the number of years served, I think the intensity of the responsibilities that he's had, I think the microscope that he's been put under, and I think his requisite qualities weigh in favor of that nomination.

So thank you to the members of the Committee. Thank you to those who testified. And I vote yes.

MR. TUMULTY: The nomination is released.

**(MEETING CONCLUDED)**