

PUBLIC HEARING

IN RE: NEW JERSEY STATE *

BAR ASSOCIATION TASK FORCE *

ON JUDICIAL INDEPENDENCE * JUNE 3, 2014

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SCHULMAN, WIEGMANN & ASSOCIATES

CERTIFIED COURT REPORTERS

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1 T R A N S C R I P T of the stenographic
2 notes of the proceedings in the above-entitled
3 matter as taken by and before LATITISA RUSSELL, CCR
4 #30XI00234100, RPR and Notary Public of the State
5 of New Jersey, held at Seton Hall Law School, Moot
6 Courtroom, One Newark Center, Newark, New Jersey,
7 June 3, 2014 commencing at approximately 4 p.m.

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1 A P P E A R A N C E S:

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3 Honorable Dorothea O.C. Wefing

4 Honorable Maurice J. Gallipoli

5 Raymond M. Brown, Esquire

6 Honorable Barbara Byrd Wecker

7 Justice James H. Coleman, Jr.

8 Barry A. Evenchick, Esquire

9 Honorable Philip S. Carchman

10 Carlos G. Ortiz, Esquire

11 Professor Edward A. Hartnett

12 Mary M. Ace

13 Carole B. Moore

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1 for ideas. We're looking for recommendations to
2 help us. So with those brief remarks, we'll hear
3 first from Judge Yang. If you will come forward.

4 MS. YANG: Good afternoon,
5 distinguished members of the Task Force on Judicial
6 Independence of the New Jersey State Bar
7 Association. Thank you for inviting me to testify
8 before you about this critical issue. I am Sue
9 Yang, a retired New Jersey Worker's Compensation
10 Judge. I speak as a member of the Executive
11 Committee of the National Association of Women
12 Judges and as its projects chair.

13 The preservation of a fair and
14 impartial legal system is the major focus of our
15 NAWJ, the nation's primary professional
16 organization for female jurists in the state,
17 federal and administrative courts in all 50 states.
18 Founded in 1979, the NAWJ counts more than 1,200
19 members.

20 Today, all across the nation, the
21 fairness and impartiality of courts is threatened
22 by powerful special interests seeking to tip the
23 scales of justice in their favor. The success or
24 failure of special interest efforts to weaken the
25 courts rests on their ability to mislead voters or

1 influence the elected officials to do their bidding
2 for them. Like the New Jersey State Bar
3 Association, NAWJ believes it is critical for our
4 democracy to maintain and protect judicial
5 independence. I have read the testimony of the
6 lawyers and retired Judges and Justices who have
7 already testified before you offering suggestions
8 on what might be done to avoid politicizing the
9 courts in New Jersey.

10 Many suggested educating the public on
11 the importance of maintaining judicial
12 independence. The National Association of Women
13 Judges agrees with that sentiment and began
14 developing a public education project last year
15 called Informed Voters-Fair Judges or known as IVP.
16 This project officially launched this year was
17 initiated by Justice Joan Irion of the San Diego,
18 California Appellate Court, who is doing an
19 exceptional job as its chair. IVP is a nonpartisan
20 voter education project developed to increase
21 public awareness about the judicial system, to
22 inform voters that politics and special attacks
23 have no place in the courts and to give voters, in
24 states that vote for Judges, the tools they need to
25 exercise an informed vote in the favor of fair and

1 impartial courts. What sets the Informed Voters
2 Project apart from other fair courts initiatives
3 across the country is that it is the first to be
4 developed and implemented by Judges. I share with
5 you some highlights of what NAWJ has already
6 accomplished in terms of public education and
7 suggests that perhaps NJSBA and NAWJ can partner at
8 the state level to jointly develop some educational
9 programs for the public to the extent permissible
10 under our judicial guidelines.

11 Much valuable information on Informed
12 Voters - Fair Judges can be found on our website:
13 www.NAWJ.org. We are please that the Conference of
14 Chief Justices recently adopted Resolution 10
15 supporting this Informed Voters Project. The
16 public must know and believe that Judges apply the
17 law fairly, free from fear, sympathy, prejudice or
18 pressure from special interests and must also learn
19 how they can help to keep it that way.

20 To that end, IVP has produced a film
21 called "Fair and Free" featuring retired U.S.
22 Supreme Court Justice Sandra Day O'Connor as a
23 centerpiece of our national campaign. The film
24 aims at helping voters understand the importance of
25 protecting courts from political influence and

1 interference. The video can be viewed on our
2 website and we encourage NJSBA to offer a link from
3 your website to ours. This film has received three
4 regional Emmy nominations and the winners will be
5 announced at the Capital Emmys Gala in Silver
6 Spring, Maryland on June 14th, which I look forward
7 to attending. Samples of our other educational
8 programs include a public symposium to be held at
9 the National Constitution Center in Philadelphia,
10 Pennsylvania on June 9th entitled "A Judge's
11 Perspective on Current Threats to a Fair and
12 Impartial Judiciary." C-Span will be covering the
13 program which they plan to air in July and I look
14 forward to attending that event.

15 Our NAWJ.org website also contains
16 educational press releases and fact sheets in both
17 English and Spanish, which can be downloaded by the
18 public to share with friends and family. Topics
19 include: Judicial accountability; Fair and
20 Impartial Courts - Whose Business is it Anyway?;
21 Courts Are Not for Sale; How Should I Judge a
22 Judicial Candidate; Politics and Special Interest
23 Have No Place in Our Courtrooms; What is the Role
24 of Courts; How Do Individual States Select Judges?

25 We are targeting eight states for more

1 intensive efforts during this pilot year of the
2 campaign. Coordinating committees are leading
3 placement of public service announcements,
4 scheduling of community presentations, engagement
5 via social media and fundraising to support all of
6 the campaign activities in Alaska, California,
7 Florida, Iowa, Kansas, Missouri, Tennessee and
8 Washington. Our national project partners include
9 League of Women Voters, Justice at Stake, the
10 Brennan Center for Justice, the Institute for the
11 Advancement of the American Legal System, the
12 National Center for State Courts, the American
13 Judicature Society, the American Constitution
14 Society, the National Constitution Center, the
15 National Asian Pacific American Bar Association,
16 the National Hispanic Bar Association, the American
17 Bar Association Standing Committee on Judicial
18 Independence, the American Bar Association Judicial
19 Division, the Our Courts America Project, the
20 National Bar Association, the American Judges
21 Association and the American Board of Trial
22 Advocates. We have blogs on the NAWJ.org website
23 about what our partners and NAWJ Judges and local
24 chapters are doing for public outreach.

25 Our website also contains a request for

1 a speaker form that local communities, schools,
2 religious organizations or other groups can fill
3 out and submit to us. Judges have spoken before
4 Rotary Clubs, other civic groups and various local
5 and state bar associations.

6 We are also encouraging our NAWJ state
7 chapters to partner with their state and local bars
8 for local programs. The two co-chairs of the New
9 Jersey Chapter of NAWJ are Superior Court Judges
10 Michelle Hollar-Gregory of Essex County and Estela
11 de la Cruz of Bergen County. They have expressed
12 an interest to partner with NJSBA and the local
13 bars and IVP programs. Please contact them if
14 interested.

15 Thank you for the opportunity to share
16 this information with you.

17 MS. WEFING: Judge Yang, if I can ask
18 you a question? We have heard at our prior hearing
19 anecdotal statements of concerns that some members
20 of the trial court might feel when they come up for
21 reappointment. Can you tell us from your
22 experience on the worker's compensation bench where
23 the worker's compensation Judges might have similar
24 concerns?

25 MS. YANG: Yes, our process is a little

1 bit different in that we get reappointed after
2 three years, like teachers and it used to be pretty
3 routine, unless, you know, something major happened
4 during your first three-year term. But recently,
5 there have been issues, you know, of concern of a
6 political type. So it's also affecting the
7 workers' comp. Judges.

8 MS. WEFING: What happens after the
9 initial three-year term? If you're reappointed, is
10 there tenure?

11 MS. YANG: Yes, you get reappointed and
12 you have tenure until you're 70 and then retirement
13 at 70.

14 MS. WECKER: It's different from the
15 Superior Court and Administrative Judges?

16 MS. YANG: Well, actually, we go
17 through confirmation. The Governor nominates us
18 and we're confirmed by the State Senate.

19 MS. WECKER: It's different in the term
20 provisions in the fact --

21 MS. YANG: Right. Instead of seven,
22 it's three years.

23 MS. WECKER: You have the opportunity
24 for tenure.

25 MS. YANG: Right and I did give copies

1 to all the members.

2 MS. WEFING: Rachit Choksi,
3 representative of the Asian Pacific American
4 Lawyers Association of New Jersey.

5 MR. CHOKSI: Thank you for the
6 opportunity to testify today to provide some
7 perspective and insight as to the importance of an
8 independent and diverse judiciary. I come to you
9 on behalf of the Asian Pacific Lawyers Association,
10 also known as APALA-NJ and as a co-chair of
11 Judicial and Prosecutorial Appointments Committee.
12 In order to make this testimony no longer
13 necessary, I'll shorten Asian Pacific American to
14 APA. I'll focus my testimony today on several
15 points of concern of important to APA and APALA-New
16 Jersey.

17 Politics should never supercede
18 importance of an independent judiciary. An
19 independent judiciary cannot be effective without a
20 diverse judiciary. A Judiciary should reflect the
21 diverse community in which its sits.
22 Unfortunately, the judiciary with the most judicial
23 data seen in the last few years have also attempted
24 to serve diverse constituency, counties such as
25 Hudson, Essex and Middlesex. Judiciary of the

1 county with the largest population is Bergen County
2 does not reflect broad diversity encompassed by the
3 county itself.

4 Now before I go any further, I'll
5 provide some context. According to the 2010
6 census, APA comprised over 8.3 percent of New
7 Jersey, the state with the fourth largest APA
8 population in the country. Most notably the APA
9 population more than doubled in 110 New Jersey
10 municipalities between 2000 and 2010. APA was also
11 the fastest growing minority group during the past
12 decade nationwide.

13 With that context in mind, I make the
14 following points: First, the role politics has
15 played in the nomination confirmation process has
16 placed APA judicial candidates in the crossfire.
17 Of the approximately 400 Superior Court Judges and
18 approximately, 70 recall Judges currently serving,
19 there are only two of APA descent, Judges Bauman
20 and Mohammad. This is not for lack of qualified
21 attorneys of APA descent. Nor is it for lack of
22 any effort on APALA's part to advocate for
23 qualified candidates to the bench.

24 It is a result of the political
25 struggle between the Governor and the Senate.

1 There is an absence of minorities, let alone APA
2 for Supreme Court. The high court that is looked
3 to by others across the nation for its opportunity
4 and willingness to readily tackle many unique
5 issues of first impression and as far as
6 reputation.

7 In the last four years the Governor has
8 nominated two qualified APA candidates, Phil Kwon
9 and Judge Bauman to the Supreme Court. Both
10 candidates have served our state and country.
11 Mr. Kwon's service in the State Attorney General's
12 Office and prior to the that, the U.S. Attorney's
13 Office. Judge Bauman commemorates service in our
14 military and is continuing service as a Judge in
15 Superior Court.

16 The mistreatment these two individuals
17 received was a byproduct of partisan politics.
18 They were treated like political pawns in the
19 nomination process. The treatment they received
20 stood sharp contrast to the Governor's and
21 legislators' professed interest and diversity and
22 was plainly disrespectful to both candidates.

23 Mr. Kwon was subjected to unfair,
24 irrelevant questioning from a panel whose only was
25 interest seeing the confirmation fail for reasons

1 completely unrelated to Mr. Kwon's suitability for
2 the high court and Judge Bauman was left to
3 languish without a confirmation hearing until time
4 ran out.

5 Ironically, Judge Bauman was
6 unanimously confirmed by the Superior Court a few
7 short years ago by some of the same senators on the
8 committee today. It was shameful. Also shameful
9 was the questioning of then Superior Court nominee
10 Judge Mohammed, currently Judge Mohammed, which
11 included a discussion on unfounded histrionics of
12 Islamophobes. If members of the legislative branch
13 of government seek a diverse judiciary, then the
14 judiciary committee members missed the mark badly
15 and although both parties can be accused of
16 partisan politics, the innocent bystanders as is
17 too often the case, are the members of the public
18 and more specifically, the litigants who resort to
19 our courts to seek justice to address their wrongs.

20 Now briefly, I'll just address why
21 judiciary diversity is important to APA and
22 APALA-New Jersey specifically. The country and the
23 state boasts a rich, long and continued tradition
24 which people of various racial, gender, religious,
25 disabled and other backgrounds that have

1 contributed significantly to society. In light of
2 this remarkable impact upon the fabric of American
3 life, the branch of government constitutionally
4 committed to meeting our justice for all should
5 probably reflect that mosaic and diversity enables
6 jurists, themselves, to better understand the
7 consequences of the decisions on both the lawyers
8 appearing for them and their client litigants. A
9 diverse judiciary permits them to learn more from
10 others Judges, assist each other in appreciating,
11 understanding and ultimately resolving complicated
12 issues that in some cases may disproportionately
13 affect or affect differently people who are not
14 members of the majority culture.

15 For example, should a witness's
16 credibility be diminished simply because she fails
17 to make eye contact while testifying, a sign of
18 respect in her culture? Judge Mohammed actually
19 brought this up at a Bar Association meeting a few
20 months ago, a sign of respect in her culture.
21 Whether a Judge will be willing to instruct the
22 jury about that culture requisite largely depends
23 on whether he or she will have had exposure to it
24 himself or herself. Will be able to discuss it
25 with a fellow Judge. Diversifying the judiciary

1 helps improve the quality of bench on the justice
2 that it serves.

3 Second, a diverse bench will ensure
4 legitimacy and credibility of the judiciary. As
5 Justice Breyer pointed out in his recent book,
6 "Making Our Democracy Work: A Judge's View," the
7 judicial branch's greatest weakness is lack of any
8 truly practical means of its own to enforce orders
9 of judgement. Accordingly, maintaining public
10 office in those rules is paramount. If those
11 orders and judgments are to be respected and
12 followed. A diverse judiciary that reflects
13 communities, all communities, that serves and
14 instills that confidence and by doing so,
15 safeguards the rights that the public cherishes.

16 While the work of this Task Force is
17 welcomed and most important, I will not be remiss
18 in not stating that the absence of an APA member on
19 this Task Force and on the State Bar Association's
20 JPAC committee is most unfortunate. These glaring
21 omissions need to be recognized and addressed in
22 any report developed by the Task Force. Otherwise,
23 the important members of the Task Force will be
24 tainted by the very thing that it seeks to
25 alleviate, politics in the judiciary appointment

1 process.

2 MS. WEFING: Let me make a comment to
3 that statement and that is, this Task Force has
4 received an expressed interest from wide variety of
5 individuals and groups and it was impossible to
6 accommodate every potential group and it's
7 unfortunate that your organization feels that you
8 might have been slighted, but you were not
9 slighted. It was no way that every individual
10 group could be accommodated because it would be
11 absolutely unworkable with. With that, continue.

12 MR. CHOKSI: Thank you, Judge. I'll
13 end my remarks here. The large and rapidly growing
14 APA population demands and deserves more from its
15 elected officials and the APA lawyers demand and
16 deserve more from the State Bar Association. Thank
17 you.

18 MR. GALLIPOLI: By way of suggestion,
19 what suggestions do you have for us to consider
20 with regard to a diversified judiciary? What
21 concrete suggestions would you care to make?

22 MR. CHOKSI: The points I made in my
23 testimony early on, the diversity and independence
24 are connected. To that extent, something that we
25 would propose is to perhaps placing a time

1 constraint on the State Senate to act upon
2 nominations. For example, requiring the State
3 Senate to act within 120 days of a Superior Court
4 nomination and 180 days of a Supreme Court
5 nomination requiring the Senate to vote up or down
6 on the nominated candidate, so that what happened
7 to Judge Bauman doesn't happen again in the
8 nomination is completely ignored.

9 MR. COLEMAN: Would you make that
10 legislative determination or a constitutional
11 determination and if so, why? Tell us why.

12 MR. CHOKSI: I think I would make that
13 a legislative determination because -- you know
14 what, honestly, the Bar Association hasn't had an
15 opportunity to discuss it to that extent, to the
16 extent that whether we would take the legislative
17 approach or constitutional approach. So I'm not
18 going to speak on behalf of the Bar Association on
19 that specific question. Thank you.

20 MS. WEFING: Thank you. Mr. Kenneth
21 Springer?

22 MR. SPRINGER: Chairman Wefing, Judge
23 Gallipoli and distinguished members of the
24 committee. My name is Ken Springer. I'm a retired
25 Administrative Law Judge. I was one of the first

1 Judges that were appointed in July of 1979 when the
2 office was created 35 years ago and I served as a
3 Judge for 30 years until 2009 when I retired.

4 Before that, I've been in private practice in a
5 small suburban law firm for four years and also, I
6 served as a Deputy Attorney General for four years
7 under Attorney General George Kugel.

8 I'm happy to get this opportunity to
9 speak to you about an issue that's very near and
10 dear to my heart and that's the independence of the
11 Administrative Law Judges. Now, I don't know how
12 familiar you are. I imagine certainly those who
13 sat on the Appellate Division would be very
14 familiar with what Administrative Law Judges do,
15 but essentially they're a centralized office of
16 Judges who hear cases arising from state
17 administrative agencies and it really is a wide and
18 varied caseload. It can run the gamut the from
19 civil rights cases to utility rate cases to
20 doctor's license cases, lemon law cases, welfare
21 cases, education cases, special education cases.
22 It's a big part of our current caseload. It's any
23 area where there is a state administrative agency
24 with very few exceptions.

25 I want to give you a little bit of

1 background as to why the Office of Administrative
2 Law was created because I think it's relevant to
3 your inquiry about judicial independence. It was
4 first advocated in 1954 by Justice Nathan Jacobs in
5 the famous case of Mazza versus Cavicchia, the
6 secret hearing officer's report case and at that
7 time he recommended that New Jersey adopt a
8 procedure that was similar to what the defense did
9 in the Administrative Procedure Act and have an
10 independent corps of Judges to hear cases. Up
11 until the creation of the office, there were 99
12 hearing officers employed under and within the
13 individual agencies and there was a general feeling
14 among the bar that you cannot get a fair shake
15 before the administrative agency, what the agency
16 had was essentially acting as the prosecutor, Judge
17 and jury. So to improve that or to ameliorate that
18 condition, the legislature adopted in 1979 the
19 Office of Administrative Law.

20 I remember Governor Byrne speaking at
21 our opening, the first day of our office when he
22 swore in the Judges and he had experience in the
23 Board of Public Utilities and that is what made him
24 so anxious to develop this reform and I had
25 personally had experience when I was the Deputy

1 Attorney General assigned to Division of Motor
2 Vehicles. We used to humorously call it the guilt
3 machine because the unofficial word was that the
4 hearing officer was supposed to find the motorists
5 guilty of what they were charged with and the case
6 would go up to the director of motor vehicles to
7 either lower their penalty or throw out the penalty
8 altogether and of course, garner all of the
9 appreciation from the litigant.

10 There are many cases that deal with the
11 purpose of the statute. One of them, first and
12 most eloquent was uniformity administrative rules
13 in 1982 and it declared that the purpose of the OAL
14 was to promote uniformity, efficiency, consistency,
15 fairness, competence and most importantly,
16 independence.

17 Now the Bar Association, itself, was
18 very instrumental in bringing about the formation
19 of the Office of Administrative Law and in a Senate
20 committee hearing in 1978 Alan Klinger, who was the
21 chair of the administrative law section of bar at
22 that time expressed what I think is the most
23 important function for OAL and I think most
24 Administrative Law Judges feel this way, which is
25 factfinding. When the case goes to the agency,

1 higher courts, the Judges are perfectly capable of
2 researching what the law is and applying the law
3 and the facts, but they have no idea what the facts
4 in the case is. So you need a fair and partial
5 hearing officer to listen to the facts with an open
6 mind and to make adequate findings, just so lawyers
7 can get a fair shake of bringing appeals before the
8 appellate division if they feel they've been
9 grieved at the administrative level.

10 There are three areas where I think the
11 independence of the Office of Administrative Law
12 have been encroached upon recently. The most
13 important and certainly most relevant to the
14 committee's inquiry is the appointment process.
15 Unlike the workers' comp. court, Administrative Law
16 Judges never receive any tenure. They are
17 appointed for five-year terms and the appointment
18 process is very much like the appointment process
19 of a Superior Court Judge. You have to be
20 nominated by the Governor and you need the advice
21 and the consent of the Senate. You go through a
22 four-way check by the state police and you have a
23 physical exam, medical exam by doctors to make sure
24 that you are physically capable of doing your
25 duties and if you pass those thresholds, you get a

1 one-year initial appointment and at the end of one
2 year, they review your performance. If you have
3 performed satisfactorily, you get the remaining
4 four years of your first five-year appointment and
5 of course, subject to the same vagaries of any
6 judicial appointments such as senatorial courtesy.

7 The problem that has occurred recently
8 and I think it's a weakness in our statute that has
9 been exploited is that ever since January of 2008,
10 there have been no reappointments of any sitting
11 Administrative Law Judges, which means essentially,
12 that the limited protection that Administrative Law
13 Judges get from potential political retaliation is
14 no longer there at all.

15 MR. COLEMAN: Can you tell us, if you
16 know, how many were eligible for reappointment
17 using that same time frame?

18 MR. SPRINGER: I can. I can. Hold on.
19 I submitted a written statement and I think it's in
20 my written statement. Let me just check. I can
21 give you the percentage off the bat. It's 68
22 percent of the current Administrative Law Judges
23 are in holdover status. That includes the director
24 and the Chief Administrative Law Judge. That's a
25 single position. The director is the Chief

1 Administrative Law Judge.

2 MS. WEFING: It's not a situation where
3 they no longer sat, they are continuing to sit?

4 MR. SPRINGER: That's right. I should
5 have made that clear. That's a very salient point.
6 They serve until a successor is appointed. So they
7 continue serving. But the problem as I see it is
8 that without any protection at all, I've talked to
9 someone who is current Administrative Law Judges
10 and they feel intimidated about deciding
11 controversial cases and let me tell you, there are
12 a lot of controversial cases that come before the
13 Office of Administrative Law. Some of the more
14 controversial ones, the OAL, the Judges sit on used
15 to be in the Secretary of State's Office. I think
16 it's now in the Attorney General's Office. It's
17 who gets on the ballot for the primary election and
18 who gets on the ballot for direct, not by the
19 parties themselves, but direct nomination. You can
20 challenge that based upon an allegation that a
21 particular candidate didn't have sufficient number
22 of signatures and you have to go through all the
23 signatures to see if there are a sufficient number
24 or on the basis of lack of residency and it's a lot
25 of esoteric challenges, as well. So essentially,

1 the Judges get to decide at least in the first
2 instance who gets on the ballot.

3 I should add also, I assume most of you
4 know, but the decisions of the OAL of the Judges,
5 they are not final. They are subject to review by
6 the agency head who can adopt, reverse or modify
7 any decision. But as a practical matter, that
8 hasn't been a major problem because usually the
9 agency head will reverse only if he or she feels
10 that there is some important public policy that
11 wasn't adequately taken into consideration or there
12 is insufficient evidence on the record to support
13 the ALJ's findings. Other than that, some three
14 quarters of our cases get automatically adopted by
15 the agency. I don't want to say automatic. They
16 do review them and adopt them without any changes.

17 MR. COLEMAN: How does the lack of the
18 judicial independence impact the ALJ since DOC is
19 not the ultimate decider?

20 MR. SPRINGER: Well, it has to do with
21 the initial factfinding. If you feel that deciding
22 a case in a particular way might affect your
23 chances of continued appointment that's always in
24 the back of your mind and I'm not advocating final
25 decision making. I don't think that's feasible at

1 this time. As a Judge for 30 years, I haven't
2 found any real problem with it because the reversal
3 rate is so low. For three quarters of the cases,
4 what the ALJ decides is the final decision.

5 MR. COLEMAN: I guess I'm trying to
6 find out is what else you're going to recommend
7 that we should do?

8 MR. SPRINGER: I can skip to that right
9 now if you'd like. I do have a suggestion and that
10 is to adopt the same process that was advocated by
11 Justice Gary Stein. I think he wanted actually a
12 constitutional amendment and I would agree it
13 should be a constitutional amendment which says
14 essentially that if a Judge has performed
15 satisfactorily during the five-year term, they will
16 automatically be reappointed presumably for another
17 five-year term unless there is reason to believe
18 that the Judge is unfit.

19 Now this dovetails very well into our
20 existing statutory scheme, Judge Coleman, because
21 there is a very rigorous review process in the very
22 beginning of the Judge's appointment where the
23 office looks at the quality, not who you decided
24 for, but the quality of your decision is, but how
25 well written it is, how well-reasoned it is and of

1 course, whether you cited appropriate authority or
2 cited something that's been reversed or overruled
3 and they also look at your productivity. They keep
4 all kinds of statistics on productivity which is a
5 little difficult to do because you can have a
6 utility rate case that took four months to try or
7 you can have welfare cases where you get 12 or more
8 per day and you have to try to estimate, you know,
9 equalize those. So you're comparing apples to
10 oranges, but they do that and they also send out
11 questionnaires, both to litigants and the attorneys
12 and they review those questionnaires and if they
13 are consistent criticisms, an outcry here or there
14 doesn't mean anything, but if they are consistent,
15 similar criticisms, then that Judge is rated more
16 lowly, not acceptable and even under the current
17 system, that could affect his reappointment and I
18 think should affect his reappointment.

19 Let me touch on these other two points
20 relatively quickly. They are less germane to your
21 inquiry, but I think they relate to the
22 independence of the Administrative Law Judges at
23 least insofar as future Judges are concerned
24 because they relate to the quality of appointees
25 and who will seek to become an Administrative Law

1 Judge in the future.

2 Currently, there are 42 Judges, but
3 four of them are going to be leaving in the next
4 six or seven months. So that by January 15th,
5 there will be 38. So the Judge, we need to
6 replenish of the ranks of the OAL and there is a
7 statute which grants Administrative Law Judges 85
8 percent of the salary of Superior Court Judges.
9 That's after four years. In the beginning you get
10 a lesser amount. It's a sliding scale, but after
11 you've been there for four years, you're entitled
12 85 percent of the judicial salary, which is I think
13 -- which is what the workers' comp. Judges get
14 also. But unlike the workers' comp, the OAL Judges
15 hasn't been funded since 2009. So for the last
16 five years it's been no increase in salary and
17 worse yet, new Judges who came in at the time of
18 the change were promised \$123,000 in salary, but
19 they are making only \$117,500 and all other Judges
20 have been frozen at their existing salary. So a
21 Judge with seven years experience makes \$123,512
22 and a Judge with eight years experience makes
23 \$128,512 compared to a fourth year workers' comp.
24 Judge who's earning \$140,250.

25 So I mean in the third nail in the

1 coffin is that in July of 2007 new Judges were
2 taken out of the pension system. They were given a
3 much less-defined contribution plan, which is
4 similar to a 401K. This was done for all state
5 employees who had to be appointed by the Governor
6 and with the advice and consent of the Senate. So
7 this is very good for cabinet officers because most
8 of them don't stay very long. They come in. They
9 do their public service and then go back into the
10 private sector. So they never vest in the pension
11 system. They would have never really gotten a
12 pension anyway. They probably would have been
13 entitled to the return of their contributions when
14 they left.

15 But Judges who plan to make this career
16 no longer have a pension and I can cite one example
17 of what I think was a very unfair application of
18 this. We had, I guess it was back in around 2008,
19 2009, we had a really good Judge who came aboard
20 who had excellent experience in writing. She was a
21 Federal District Court Judge and also, she had come
22 from the Attorney General's Office. So she had
23 experience in the areas that the Office of
24 Administrative Law needed, more arcane and esoteric
25 areas, such as, she had done a lot of environmental

1 protection law and she knew that very well. She
2 was promised that full salary, but given the lesser
3 salary and has been at that salary for five years
4 and -- she hadn't been promised a pension. She was
5 in the pension system because she had been a Deputy
6 Attorney General for a more than ten years. So her
7 pension had vested as a Deputy Attorney General,
8 but she's not allowed to tack on her time as an
9 Administrative Law Judge because from 2007 on, no
10 new Judges were entitled to be in the pension
11 system. She didn't lose her pension, but she
12 didn't continue to stay in the pension system.

13 As far as the other two suggestions I
14 have, one would be to fully fund them, what's
15 already in the statute. I mean, it's important not
16 only for just basic fairness, but the statute says
17 the Judges are entitled to that salary and they are
18 not receiving it because you can promise something
19 in the statute, but if you attach a rider to the
20 appropriations bill that says, notwithstanding any
21 other provision of the law, we don't fund this
22 particular item, then there is no money, so you
23 don't get it. Of course, I think although this is
24 more controversial because it's up for grabs right
25 now. But I think if you're going to have a pension

1 system, I think the Judges should return to the
2 same pension system that all other Judges get. Not
3 the judicial system, but the public employee
4 retirement system.

5 But if I leave you with anything, my
6 greatest concern is the holdover Judges and how
7 they really should be reappointed unless they've
8 been proven to be unfit. They shouldn't be subject
9 to the vagaries of politics and they certainly
10 shouldn't be left out to dry so that any time
11 someone is disappointed with their decision, they
12 can contact their political leader and the Judge
13 would be terminated because they have no job
14 security whatsoever. Any questions?

15 MR. HARTNETT: Under the Justice Stein
16 proposal, 68 percent of our Administrative Law
17 Judges would have a right of action to sue to be
18 reappointed; is that right?

19 MR. SPRINGER: Maybe, I should be more
20 familiar with this. Is that what Justice Stein's
21 provision is, that if you don't get it, you can
22 sue? I guess it would be then.

23 MR. HARTNETT: I don't think anybody
24 has articulated that, but nobody has explained why
25 it wouldn't be.

1 MR. SPRINGER: I think it would be. I
2 think so and I'm very familiar with teacher tenure
3 laws because a lot of times we handled those cases.
4 Teachers who did not receive tenure could sue, but
5 they didn't have the right to sue for very much.
6 They can sue if they were not reappointed for a
7 violation of their civil rights. You know, if it
8 was an Asian person, they weren't reappointed
9 because someone didn't want an Asian Judge, that
10 would obviously be actionable. A woman who felt
11 she was discriminated against, she can sue. It
12 doesn't have to be any reason for your
13 non-reappointment as a teacher in tenure year,
14 unless the teacher asks for it and then they have
15 to give you a reason and here, I think they should
16 have to give you a reason why a Judge isn't
17 reappointed. Given our very well-operating
18 evaluation system, I think it would be relatively
19 easy to show if the Judge hadn't been performing up
20 to par because we've don't have the statistics to
21 show that. So I would anticipate the floodgates of
22 litigation, but to directly answer your question, I
23 think they should have the right to sue.

24 MS. WECKER: I have a question about
25 statistics. I don't know if you have these

1 available.

2 MR. SPRINGER: I can get some. Not all
3 some. What statistics do you want?

4 MS. WECKER: Since 2008 there has not
5 been no sitting ALJ that should be reappointed. Do
6 you have some statistics on -- generally, I'm
7 trying to figure out could there be other reasons.

8 MR. SPRINGER: I mean, this is
9 anecdotal, but this has never happened before as
10 long as I was there. Sometimes it's a delay, but
11 delays are usually caused frankly by Senators who
12 were negotiating with the administration. It's
13 something they wanted and they just wouldn't
14 signoff on a Judge. I think that is almost
15 routinely they were reappointed.

16 The one exception in the 30 years I was
17 there, during the Kean administration, when
18 Governor Byrne left the office, he appointed at the
19 very last minute an AL Judge and they were all from
20 when political party and when Governor Kean came
21 in, he did reappoint them. I think he felt the
22 Administrative Law Judges had been stacked in one
23 party's favor. So I knew that as favorable towards
24 independency of the OAL because I think we're much
25 better off to be equally representative of both

1 political parties. I think our decisions have more
2 of a clout, more of an aura of impartiality, rather
3 than just being political hatchet jobs all from the
4 same party.

5 I can try to find out, but my guess is
6 that if this has never happened before since before
7 2008 and no one is reappointed.

8 MR. COLEMAN: Can you give me a
9 response as a counterargument, I can see people
10 arguing that the ALJs are treated differently,
11 number one because they are not constitutional
12 officers and number two, because although they are
13 holdover they still are allowed to continue as
14 Judges unlike a Superior Court Judge.

15 MR. SPRINGER: Right. Their seven-year
16 term expires and they are not reappointed, they
17 don't have tenure, they are out. Well, that's kind
18 of, I think why this has not been given as much
19 urgency because Judges do stay on until they are
20 successor. If they are not constitutional Judges,
21 they don't have constitutional protections, but I
22 think that they are an important element of the
23 entire judicial process because in order to have --
24 in order for the courts to decide cases fairly,
25 they have to have a good record below that has been

1 fairly prepared and if they don't that will affect
2 the ability of the appellate division to rule on
3 all administrative cases.

4 MS. WECKER: It would seem to me that
5 on the subject that Justice Coleman raised, the
6 threat to the independence of the ALJ is greater in
7 the holdover system than in the Superior Court.
8 Superior Court, if you're not reappointed, the
9 pressure comes in the last couple of years before
10 your seven-year term ends, there is over the
11 holdover Judges --

12 MR. SPRINGER: You're dangling in the
13 wind until you're reappointed, which hasn't
14 happened yet or they decide to support you in some
15 way. I think you're right.

16 MR. BROWN: I feel everybody else in
17 the room may know the answer to this question, but
18 me. Has been there a policy rationale advanced
19 from anyone from the political arena since 2008.

20 MR. SPRINGER: No, not that I am aware
21 of. I think it just happened. Certainly, there
22 has been no statement that the administration has
23 been dissatisfied with the Judges and I know that
24 all the Judges that have not been reappointed, all
25 but one of them got a favorable recommendation from

1 our office. One of the particular Judges did not
2 get a favorable recommendation and that may have
3 been the --

4 MR. BROWN: It happened because of a
5 change in the structure?

6 MR. SPRINGER: To me, it seemed like a
7 change in structure. To me, it's a unforeseen
8 weakness. They didn't want to give the Judges
9 tenure. That was hotly debated at the time. Our
10 first two Administrative Law Judges did not want
11 tenure. He was against tenure. I guess they
12 compromised by saying, we'll give them some limited
13 job security, but not like the workers' comp, we're
14 not going to give them tenure. We'll give them
15 five-year terms and as I said, that has worked well
16 for almost 30 years and then all of a sudden it has
17 not been working well.

18 MR. ORTIZ: Would you or someone who
19 you know be able to provide us with more
20 statistical data on the 29 or so currently serving
21 ALJs of how long they've been in holdover status,
22 how many years they've been serving?

23 MR. SPRINGER: Yes, I can.

24 MR. ORTIZ: And if you know that
25 information now?

1 MR. SPRINGER: I don't know that
2 information off the top of my head, but I can
3 easily get it because I returned part time to the
4 OAL for one or two cases and I go in frequently and
5 I'll be in later this week and I can get that. Who
6 shall I send it to?

7 MR. GALLIPOLI: Kate Cascarelli.

8 MR. SPRINGER: I have her e-mail.
9 Thank you.

10 MS. WEFING: Jeanne LoCicero?

11 MS. LoCICERO: Thank you, honorable
12 Task Force members for the opportunity to testify
13 before you today. I'm Jeanne LoCicero and the
14 Deputy Legal Director of the American Civil
15 Liberties Union of New Jersey. For more than 50
16 years, the ACLU of New Jersey has worked to protect
17 and expand civil rights and civil liberties
18 throughout the state and our work has taken us to
19 every corner of the state, every county and we've
20 brought our concerns to every level of government,
21 including school boards, public utilities,
22 municipalities, counties, state agencies, the
23 legislature and also the Governor's office. We use
24 a wide range of advocacy tools to push the state to
25 respect the individual rights promised to all of us

1 in our state and federal constitutions and this is
2 the work that informs our deep concern with the
3 preservation of a truly independent judiciary in
4 New Jersey.

5 Much of our work is focused on holding
6 government entities accountable for overstepping
7 their statutory and constitutional limits. We turn
8 to New Jersey's courts when a civil rights or civil
9 liberties violation occurs and we weigh in as a
10 friend of the court when critical constitutional
11 issues are at stake. The ACLU and other civil
12 rights advocates rely on the judiciary to serve as
13 an independent arbiter for our fellow Jerseyans who
14 have suffered harm. Our courts play an
15 indispensable role in safeguarding the rights of
16 minorities against the will of the majority.

17 The ACLU sometimes takes positions or
18 represents people who are not politically popular.
19 Sometimes we may call for a remedy that requires
20 the government to expend resources to right a wrong
21 and this sometimes means that the judiciary orders
22 the political branches to reallocate their budgets
23 to meet their constitutional obligations.
24 Regardless of the expense or the degree of
25 political support, our goal is to ensure that

1 fundamental rights, equal protection principles and
2 due process guarantees are available to everyone
3 here. That means, poor people, undocumented
4 immigrants, religious minorities, people charged
5 with or convicted of crimes and local gadflies.

6 For example, well, before the
7 widespread public support for LGBT rights in New
8 Jersey, the ACLU began seeking legal protections
9 for gay and lesbian families in court. Around that
10 same time, we challenged restrictions on the rights
11 of pregnant minors to access abortion services. We
12 have represented students with undocumented parents
13 challenging barriers to state financial aid and we
14 represented women prisoners challenging the
15 conditions of their confinement. We've worked on
16 the rights of organizations that we vehemently
17 disagree with, such as the KKK to march in New
18 Jersey and we fought for the rights of sex
19 offenders who live in towns that have created
20 buffer zones aimed at banishing them. We have
21 filed numerous amicus briefs, many urging for
22 stronger constitutional protections for criminal
23 defendants. These cases and many of the others on
24 our docket involve people who lack political power
25 or popular support. Yet, our democracy demands

1 that they too have the same opportunity to be heard
2 and have their rights vindicated.

3 Regardless of the criticism that our
4 clients or our cases may provoke from the public or
5 the political resistance to change that the ranks
6 of the legislative or executive branches we have,
7 it is imperative that Judges be able to decide
8 these cases free from political influence. New
9 Jerseyans cannot tolerate a system in which Judges
10 are worrying about their job security, that it
11 might be tied to the outcome of the case.

12 To safeguard the integrity of our
13 judicial system, the ACLU of New Jersey supports
14 efforts to ensure that the tenure of a Judge or
15 Justice is not tied to the decisions he or she has
16 issued. To that end, we support the state
17 constitutional amendment endorsed by the State Bar
18 Association that would amend Article VI, Section
19 VI, Paragraph 3 to make sure that a lack of fitness
20 and not judicial philosophy should be the sole
21 consideration for reappointment of a Judge or
22 Justice.

23 Although this proposed constitutional
24 amendment would still rely on the good faith of the
25 legislative and executive branches to respect the

1 framers' intent, the language would represent a
2 significant step forward by formalizing the
3 decades-long practice of reappointing members of
4 the judiciary, who as Governor Kean put it when he
5 reappointed Chief Justice Wilentz, "have served
6 well and served honorably."

7 The promises of Article 1, Paragraph 1,
8 can only be guaranteed with an independent
9 judiciary. When the majority oversteps or lacks
10 the political will to do the right thing, the
11 judiciary is the last resort for the vindication of
12 our most fundamental civil rights and liberties. I
13 thank you again for the opportunity to appear here
14 today and for your work on this important issue.

15 MS. WECKER: I've heard a number of
16 people and organizations support the idea of
17 constitutional amendment first publicly. Have you
18 any concern in light of your experience protecting
19 minorities against the majority and protecting
20 unpopular positions about the potential for solving
21 the problem with something that requires a popular
22 vote? Are you at all afraid of raising a
23 constitutional amendment as the approached?

24 MS. LoCICERO: When we were considering
25 the issue, I can't say that was a concern of our's.

1 So that bringing it to the people would be an
2 issue.

3 MR. HARTNETT: If I heard you right,
4 you suggested the amendment wouldn't depend on the
5 good faith of the Governor and the Senate. This is
6 the first in all the discussions that might be a
7 nonjusticiable, political question. Is that your
8 view as you read the proposed amendment?

9 MS. LoCICERO: I'm not sure we read it
10 to be nonjusticiable, but we thought practically
11 speaking that it might not -- a Judge who is not
12 reappointed might not take the opportunity to avail
13 themselves of making it justiciable.

14 MR. HARTNETT: You agree it would be if
15 a Judge wanted to adjudicate it?

16 MS. LoCICERO: I don't see a reason why
17 it would not be. Obviously, there are separation
18 concerns. We didn't do a lot of -- we didn't look
19 to other jurisdictions or you know, do
20 comprehensive research on the justiciability issue,
21 but mainly we only thought about it in the
22 practical realities of whether it would, a
23 candidate or nominee would bring themselves, avail
24 themselves of the opportunity.

25 MS. WEFING: Mr. Thomas Prol?

1 MR. PROL: Good afternoon, members of
2 the Task Force. Thank you very much for your time
3 today. I'm Thomas Prol, President of State Bar and
4 I want to begin my remarks by congratulating you
5 because I think a large measure of the reappointing
6 Chief Justice Rabner goes to the work you're doing
7 just by the presence this Task Force has and
8 notwithstanding the Governor's comments. I won't
9 repeat those, but I think you all know what affect
10 this conversation has on the larger affect on
11 judicial independence. Thank you.

12 I also want to renew my commitment as
13 an officer of the State Bar and hopefully that the
14 18,000 members of the State Bar honor me sending me
15 to the presidency to renew my commitment to this
16 issue and making sure that this receives its due
17 light in court, as well.

18 A few things here are more critical to
19 successive democracy than this issue. I stand
20 before you humbled by the knowledge that I am the
21 first openly gay officer of the State Bar and as a
22 leader of the LGBT community, I owe my success and
23 personal and professional happiness to a free and
24 independent judiciary. I won't extend my comments
25 dissecting the history of equal protection and how

1 it intertwined with my people, but just to
2 understand how vital this is for me, not just as a
3 lawyer, but as a citizen and many people like me.

4 I beg you to consider that important
5 issue as you discharge your duties. I'm going to
6 remark on three issues today that I think are
7 important. Of course, the State Bar has quite a
8 few positions out there. My remarks aren't
9 intended to deviate from those. If they do, they
10 are my own and not the State Bar's, but I think we
11 are in accordance.

12 The first issue would be the
13 reappointment process. The second would be a
14 Senatorial courtesy and third would be
15 compensation. The first one reference State Bar's
16 positions on the number of other issues, including
17 our support of Justice Yang's proposed
18 constitutional amendment. I'm not going to belabor
19 that, except to reiterate our unanimous support of
20 the Bar. So I'll continue on with my three points,
21 the first being Senatorial courtesy.

22 Under Article 6, Section 6, Paragraph
23 3, New Jersey Constitution says, the Justices of
24 the Supreme Court and the Judges of the Superior
25 Court shall hold their offices for initial terms of

1 seven years and upon reappointment. Under our
2 constitution reappointment is presumed. The
3 granting of tenure to a Judge was never meant to be
4 a political tool, rather meant to bolster the
5 independence of the judiciary. Tenure allows
6 Judges to make decisions based on the constitution
7 and the laws of our great state without fear that
8 they will be put out of a job should a politician
9 view one of those decisions unfavorably.

10 While New Jersey Judges are not
11 eligible for tenure until after their initial
12 seven-year term, the principle finding of the 1947
13 constitution will clear a Judges should be
14 reappointed unless they are deemed unfit for
15 service and I think a lot of that has been lost in
16 the process of what's been going on in recent
17 months. It's time to codify that common sense
18 approach with the constitutional amendment. Judges
19 who are unfit and do not have proper demeanor
20 should absolutely be prevented from receiving
21 tenure. But those who are proven to be qualified
22 should have automatic tenure. Because we do not
23 have assurances today, our courthouse assignment
24 Judges are known to ask untenured Judges to take on
25 controversial cases and that is not right.

1 Next, I'll turn my remarks to
2 gentlemen's State Bar's position that, in fact, I
3 should be done away with and I think it's unique to
4 New Jersey. It's not in any statutory or
5 constitutional authority, but it remains protected
6 under that the judiciary will not meddle in
7 politics. It's been called a political tool and
8 also cancer on the process and it's a way to deter
9 competent and honorable candidates from judicial
10 appointments. It's 169-year old unwritten code, no
11 basis in law, no basis in constitution and I think
12 now is the time for us to examine ways for that to
13 be undone. It doesn't appear that the politicians
14 are willing to take that on and I think a
15 recommendation from this Task Force in that vein
16 would be helpful. It's affected Judges all the way
17 back to Judge Silvia Pressler and Marianne Espinosa
18 and it continues on to this day as it remains now
19 and barring, of course, I understand there is
20 appointments in the work in Essex County and
21 others, but we can see the conversation that goes
22 on in light of those it is unhealthy, unwelcome in
23 a democracy of our caliber.

24 Forty-four years ago, the trustees of
25 the State Bar passed a resolution that criticized

1 Senatorial courtesy and urged the adoption of the
2 constitution amendment under our Article 9. That
3 is an amendment designed all judicial appointments
4 voted on a specific period of time by the Senate as
5 a whole. I suggest that to you today as a matter
6 that would be very important for recommendation to
7 address.

8 Lastly, I'll talk about judicial
9 independence, pensions and pay and I think very few
10 things affects a person's ability to be independent
11 on the issue to, quote, unquote pull their purse
12 strings. We are well aware, obviously, that Judges
13 can't have outside employment or compensation. So
14 notwithstanding the recent constitutional
15 amendment, I think that the legislature,
16 unfortunately, has latched onto its unique ability
17 to control the compensation of Judges and create a
18 unique way with the amendment. So I think that's
19 something that I think some words of guidance from
20 this Task Force would be very helpful and I think
21 that would be appropriate.

22 Our framers realize that Judges are
23 constitutionally prohibited from earning outside
24 income from any other source and their judicial
25 salary should frozen, they should be stayed. The

1 attack on judicial independence has a deep chilling
2 affect on the role of our best and brightest of the
3 legal profession to seek judicial positions. That
4 jeopardizes the justice of our citizens of this
5 state.

6 In closing, what I'll note is that the
7 New Jersey judiciary is highly-regarded around the
8 country and I implore you to consider in your
9 judiciary duties the affect that your
10 determinations, your recommendations, will have on
11 restoring the luster of that as in this state and
12 around the country. I also want to tell you
13 personally I look forward to acting on those
14 recommendations, whatever they may be. I know they
15 will be wise and I know they will be well-thought
16 out and you'll have the support of the State Bar
17 pushing that following particularly with my
18 involvement. So thank you for your time today.

19 MR. EVENCHICK: As far as your
20 awareness, has the State Bar ever advanced any
21 specific suggestion as to how to end the evil
22 Senatorial courtesy?

23 MR. PROL: I don't think they've
24 advanced a specific method to do that. I know when
25 I think one of the roles that the New Jersey Bar

1 has assumed this sort of parent in the room with a
2 lot issues of late and I think we're coming into
3 our own with things like that. But I do think that
4 one of the obstructive issues here is the fact that
5 there is nobody there to be a decider. We are now
6 in a quagmire. One says one thing and one says
7 another and I would submit essentially we discussed
8 the option of whether notwithstanding the idea that
9 that's a nonjusticiable question, but it may be
10 time for someone to step in and call that question.

11 MR. HARTNETT: I'll ask my standard
12 question. I take it given your last comment, you
13 would view the Stein proposal as justiciable?

14 MR. PROL: Absolutely. I mean,
15 somebody's got to make a decision here and when we
16 have two warring parties and you know, politics
17 aren't all bad, but the situation where politics
18 being what they have and they have impacted the
19 judiciary the way they have, there has to be a
20 breaking point and dipping point and I think we
21 maybe need to reevaluate what the role of the
22 judiciary is in that situation.

23 MR. HARTNETT: One more question. I
24 heard it said by a number of witnesses here about
25 the attention of the framers of the 45 question. I

1 haven't seen any evidence of that intent. I've got
2 it. I'd like to see it because my reading of those
3 proceedings to take one example, Nathan Jacobs said
4 any trial period gives the opportunity to reappoint
5 for reasons wholly and apart for merit if there is
6 contrary evidence. I'd love to see it.

7 MR. PROL: I understand the original
8 content arguments in the framers' mindsets. That's
9 not always something that's guided me in my
10 evaluation of constitutional principles. It's akin
11 somewhat sometimes to the idea that it's always
12 been done that way, so it should continue. We all
13 know that to be one of the worst premises of a
14 continuing pattern of behavior.

15 I remember back in 2005 I was on
16 Mr. Brown's program dual process discussing
17 marriage equality and we talked about that whole
18 living breathing document of the constitution and
19 talked about, well, if you look at the intent back
20 then and yadda, yadda and it was said if I hear one
21 more person talking about the living breathing
22 document, I'm going to pull my hair out. You know,
23 you can probably understand where someone in my
24 position of someone having grown up as a member of
25 the LGBT community which having advocated under a

1 breathing type of analysis under equal protection,
2 that informs my perspective on a lot of things.

3 MR. HARTNETT: I certainly understand
4 the living constitution argument here, but that's
5 not the argument that's been presented to us so
6 far.

7 MR. PROL: Thank you for your time.

8 MS. WEFING: Is there anybody else that
9 wishes to be heard? I thank you all for your
10 attendance, for those who spoke, for those to
11 listened.

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C E R T I F I C A T E

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I, LATITISA RUSSELL, a Certified Court Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the stenographic notes of the deposition of said witness who was first duly sworn by me, on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel in this case, nor am I financially interested in this case.

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