

1 TASK FORCE ON
2 JUDICIAL INDEPENDENCE
3
4 TRANSCRIPT
5 OF
6 PROCEEDINGS

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1 JUDGE WEFING: Good afternoon. On
2 behalf of the Task Force on Judicial
3 Independence by the State Bar Association, I
4 would like to welcome you all here; and I would
5 like to thank you for the interest that you all
6 have shown in a subject which is so important to
7 our state.

8 The significance of this task
9 force I think is shown by the membership of the
10 individuals who have agreed to serve with us.
11 To my left, Judge Gallipoli, retired judge of
12 the Superior Court, assignment judge in Hudson
13 County.

14 To Judge Gallipoli's left is
15 Justice James Coleman, judge who has served with
16 distinction for many years on all levels of the
17 Court system, including on the Supreme Court of
18 our state.

19 Next to Justice Coleman, sitting
20 is Professor Edward Hartnett, a professor at
21 Seton Hall Law School, who is an expert on,
22 focus on constitutional law.

23 Then we have Carole Moore, a lay
24 member. And we're very grateful to her, giving

25 up her time to this subject. Carole has a

1 background in education, which is one of our
2 particular areas of concern.

3 We then have Barry Evenchick, an
4 attorney who has practiced for many years in
5 this State.

6 And then Mr. Carl Poplar, again,
7 an attorney with many years experience.

8 To my right is Judge Philip
9 Carchman, a retired judge of the Superior Court
10 who served on the Appellate Division with me,
11 also a former assignment judge.

12 I then have Solangel Maldonado,
13 another professor at Seton Hall Law School.

14 And next to Professor Maldonado,
15 looking down, I see Carlos Ortiz, who is a
16 counsel to Goya Foods.

17 And then Mary Ace, a lay member
18 of the board, of the Task Force with experience
19 in social work and counseling.

20 You will notice that there are
21 several empty seats. Because of the busy
22 schedules of the Task Force members, not
23 everybody could be here. But our record -- our
24 proceedings are being recorded; and they will

25 all review the transcripts and, again, your

1 testimony.

2 I think a few remarks are in
3 order before we start to hear from -- from you.

4 History of what has happened
5 recently in our State is well known to all of us
6 in terms of appointments to the Supreme Court,
7 the failure to reappoint sitting members of the
8 court. And because it is something that we all
9 know, it's not something that should be the
10 focus of your remarks today.

11 What we are interested in is
12 hearing from individuals who have ideas on how
13 our system can be improved, what practical
14 things can be done.

15 We're also interested in your
16 ideas as to how the public can be educated on
17 the importance of this issue because I think we
18 are all aware that the public doesn't really
19 understand how important an independent
20 judiciary is to each of them.

21 We circulated a notice that we
22 were going to limit speakers to ten minutes. We
23 do that not because we don't want to hear from
24 you but because of the number of people who do

25 want to speak. And that's in fairness to all.

1 And we encourage you, if you have anything
2 further to say, to send it to us in writing.

3 And so I think with that remark I
4 will hand the matter over to Judge Gallipoli.

5 JUDGE GALLIPOLI: I have been
6 placed in charge of calling the speakers. And
7 the first person to speak will be the President
8 of the New Jersey State Bar Association,
9 Mr. Ralph Lamparello.

10 MR. LAMPARELLO: First of all,
11 good afternoon, Everyone, and greetings.

12 As President of the New Jersey
13 State Bar Association, I want to first extend my
14 gratitude and the appreciation to all the
15 members of this Task Force for dedicating your
16 time and expertise to the issue -- on this issue
17 of critical importance. And I thank you for
18 allowing me to address you today.

19 I also applaud these series of
20 public hearings. While we will listen and learn
21 from each other during these hearings, we also
22 have an opportunity to remind the public of why
23 judicial independence is so important and at the
24 very essence of our democracy.

Some people may not know that

1 while the New Jersey State Bar Association and
2 its Board of Trustees created the Task Force on
3 Judicial Independence, we have had limited
4 contact with its members and with your
5 activities. That limited contact has been
6 purposeful, to ensure the Task Force has
7 complete autonomy and independence, giving it
8 the freedom to explore the issues thoroughly and
9 to craft a path ahead, wherever that may lead.

10 We believe in the strength and
11 integrity of the justice system in the United
12 States, and we know that what we have in New
13 Jersey was once widely viewed as the best
14 judicial system in the country. The New Jersey
15 State Bar Association has spent the past year
16 and more working to preserve the strength and
17 independence of our judiciary.

18 That being said, we are in the
19 midst of a time like no other in the history of
20 our modern State. There is a concerted effort
21 among the executive and legislative branches of
22 government to politicize the judicial branch and
23 subordinate its co-equal status. Judges and
24 justices who have followed the law and the facts

25 of the case to reach an opinion have undergone

1 personal attack time and time again. A
2 constitutional amendment diminishing the
3 compensation of judges was put forth in just six
4 days, on July 30th, 2012, when those in Trenton
5 disagreed with the DePascale versus State
6 decision decided on July 24th, 2012.

7 In order to place that
8 constitutional amendment before the public, a
9 supermajority, three fifths of both Houses of
10 the Legislature, had to act. And act they did.
11 Certainly, in conjunction with one another --
12 with the executive branch, the legislature
13 acted; and the executive branch called the
14 DepPascale decision a case of liberal activist
15 judges running amuck.

16 Today we are at a stalemate over
17 the composition of our Supreme Court. Two seats
18 remain open and one of them approaching four
19 years. For the first time in our State's
20 history two outstanding Supreme Court justices
21 were ousted for political reasons; tenure they
22 deserved was denied. And a third, our Chief
23 Justice, the head of the third branch of
24 government, has precisely 90 days left in his

25 term with no clue as to his reappointment.

1 Since the New Jersey Constitution created our
2 modern judicial system in 1947, no Chief Justice
3 has ever been denied reappointment.

4 The issue of judicial
5 independence is not novel. It was integral to
6 the founding of our nation and our State.
7 Alexander Hamilton addressed this precise issue
8 226 years ago in Federalist Papers 78 and 79.
9 In arguing for the passage of the United States
10 Constitution and independent judiciary, Hamilton
11 said that, "The judiciary is beyond comparison
12 the weakest of the three departments of power.
13 It has neither the sword of the executive, nor
14 the purse of the legislative branch. It may
15 truly be said to have neither force nor will,
16 but merely judgment." That is why Hamilton
17 argued for the complete independence of the
18 courts of justice.

19 The New Jersey State Bar
20 Association and its leadership going forward
21 will remain dedicated to stopping the deliberate
22 attacks against our judiciary, so long as they
23 exist. As lawyers, as judges, as law
24 professors, indeed, as lay people, we have a

25 solemn obligation to correct any deficiencies

1 that we give the judicial branch.

2 I will address with -- with this
3 panel and this -- several issues, including
4 judicial reappointments, judicial compensation
5 and senatorial courtesy with the hope of
6 offering some insight and suggestions for your
7 consideration on how we can move forward.

8 Under Article III of New Jersey
9 Constitution of 1947, the powers of our
10 government are divided among three distinct
11 branches; the executive, legislative and
12 judicial. Under Article VI, the judicial power
13 shall be vested in a Supreme Court. The Supreme
14 Court shall consist of a Chief Justice and six
15 associate justices. In laymen terms, that means
16 the Chief Justice is the head of the judicial
17 branch.

18 Today we are exactly 90 days
19 before June 29th, 2014. That day marks the end
20 of Chief Justice Stuart Rabner's initial
21 seven-year term on the bench. Yet as I stated
22 before, we do not know who, if anyone, will be
23 leading the judicial branch of government.

24 The point we are at today really

25 began on May 3rd, 2010, when for the first time

1 in our State history Governor Chris Christie
2 declined to reappointment -- declined to
3 renominate Associate Justice John E. Wallace for
4 tenure. Just 17 days before the end of Justice
5 Wallace's initial seven-year term the Governor
6 upended judicial independence in our State by
7 saying he wanted to nominate a judge more in his
8 likeness. Close to four years later Justice
9 Wallace's vacancy remains unfilled.

10 Then, on August 12th, 2013, 75
11 days before her initial seven-year term ended,
12 Governor Christie announced his decision not to
13 renominate Associate Justice Helen E. Hoens. He
14 cited no other reason than he did not want to
15 subject her to the animals of the Senate
16 Judiciary Committee.

17 Under Article VI, Section VI,
18 Paragraph 3, the New Jersey Constitution says
19 that a justice of the Supreme Court and a judge
20 of the Superior Court shall serve their initial
21 term until reappointment. Under our
22 Constitution reappointment is presumed. The
23 granting of tenure to a judge was never meant to
24 be a political tool. Rather, it is a means to

25 bolster the independence of the judiciary.

1 Tenure allows judges to make
2 decisions based on the Constitution and the laws
3 of our great State without fear that they will
4 be put out of a job, should a politician view
5 one of those decisions unfavorably.

6 While New Jersey judges are not
7 eligible for tenure until after an initial
8 seven-year term, the principle that guided the
9 framers of the 1947 Constitution was clearly
10 that judges should be reappointed, unless they
11 prove to be unfit for that position.

12 It is time to codify that common
13 sense approach with a constitutional amendment.
14 Judges who are unfit or do not have the proper
15 demeanor should absolutely be prevented from
16 receiving tenure; but those who have proven to
17 be qualified should receive automatic tenure.
18 Because we do not have such assurances today in
19 our courthouses, assignment judges are loathe to
20 ask untenured judges to take on controversial
21 cases. That is just not right.

22 In particular, a Chief Justice
23 who has proven himself or herself to be fit and
24 deserving of the role of the head of judiciary

25 deserves reappointment. An untenured Chief

1 Justice in a state with the strongest Governor's
2 Office in the country creates an inequity that
3 upsets the balance of the three co-equal
4 branches of government.

5 We believe this Task Force should
6 call for a constitutional amendment to Article
7 VI, Paragraph 6, Paragraph 3 -- Section VI,
8 Paragraph 3 to address this defect and ensure
9 that judges shall be reappointed, unless there
10 are demeanor or competency issues.

11 There are other issues.

12 JUDGE GALLIPOLI: Mr. Lamparello,
13 who determines those issues?

14 MR. LAMPARELLO: Those issues --
15 obviously, the Governor would make the first
16 determination. However, we believe that under
17 our -- our judicial interpretation that a court
18 ultimately will make a decision, if there is a
19 political purpose in that reappointment, whether
20 it's not for demeanor, whether it's not for
21 competency. And that's why we think, certainly,
22 you know, the Constitution has to be amended to
23 say there is a presumption and they shall be
24 reappointed.

1 in the area of reappointment. Importantly,
2 justices of the Supreme Court who come to that
3 position from either the trial court or
4 Appellate Division should not lose the tenure
5 they have already earned throughout their
6 careers of serving the people of this State.

7 We believe it is always a wise
8 practice to look first to the lower courts, when
9 seeking qualified candidates for the State's
10 highest court. One needs to look no further
11 than the United States Supreme Court Justice
12 William Brennan, who rose to become one of the
13 nations most revered justices only after first
14 serving on the New Jersey trial bench in Hudson
15 County and then the New Jersey Supreme Court.

16 Presently, when our New Jersey
17 Supreme Court justices join the court, they all
18 start the tenure cycle anew, no matter that they
19 have served on the lower courts. Because of
20 this setup, Justice Hoens lost eligibility for
21 her full pension by five months. Her pension
22 was gutted, despite the fact she had served the
23 judiciary for 19 years and seven months between
24 time on the trial court and the Appellate

25 Division benches. Her pension loss amounted to

1 \$68,000 each year. This is unconscionable.

2 Judicial pension guarantees were

3 part of the construct of the 1947 Constitution.

4 Our framers realized that judges were

5 constitutionally prohibited from earning outside

6 income from any source. And, of course, their

7 judicial salary would be less than what they

8 could earn if they had stayed in private

9 practice.

10 The attack on the judicial

11 pension has had a deeply chilling effect on the

12 willingness of the best and the brightest of the

13 legal profession to seek judicial positions.

14 That jeopardizes the justice the citizens of our

15 State deserve.

16 On a related issue, it is

17 important to discuss and this Task Force to

18 examine the matter in which judges are

19 compensated. During end of the recent

20 legislative session significant effort was

21 undertaken to advance a measure to provide a

22 modest pay increase for State judges. While the

23 measure did not make it to a vote, a similar

24 pressure is now making its way through the

25 legislative session.

1 It's been over five years since
2 New Jersey judges received a pay increase. In
3 that time the cost of living has risen, and
4 judges have seen their compensation diminished
5 through the passage of the New Jersey Judicial
6 Salary and Benefits Amendment.

7 Judicial excellence depends on
8 the ability to bring to the bench the very best
9 attorneys who have a rich diversity of
10 professional and life experiences and a deep
11 knowledge of the law. The New Jersey State Bar
12 Association has a long history of supporting
13 judicial salary increases dating back to 1917.

14 Several states around the country
15 approach judicial compensation in more
16 progressive matters -- manners, excuse me,
17 either tying the pay increase to pay increases
18 for other government employees or providing
19 automatic cost of living increases. We urge the
20 Task Force to make recommendations that will
21 secure adequate and reasonable compensation for
22 our judges.

23 Under our Constitution judges
24 shall be retired upon retaining the age of 70

25 years. Simply stated, that provision makes no

1 sense in today's society. To take a jurist with
2 such a breadth of experience and skill and, in
3 the vernacular, put them out to pasture is an
4 insult to our society. Economically why would
5 we want to replace a sitting experienced jurist
6 and pay a pension, only to replace them with an
7 inexperienced jurist with a new array of
8 compensation and benefit obligations?

9 Our Constitution, we believe,
10 should be amended to raise the mandatory
11 retirement age for judges.

12 This brings me to an issue that
13 is unique to the State of New Jersey. It's been
14 called the extra governmental political tool, a
15 cancer on the process and a way to defer
16 competent and honorable candidates from the
17 judicial appointments.

18 Senatorial courtesy, the
19 169-year-old unwritten code that allows state
20 Senators to block appointments, has been
21 attacked over the years by governors,
22 legislative leaders and the New Jersey State Bar
23 Association. Yet it has managed to survive and
24 even thrive.

1 1983, when Judge Silvia Pressler's tenure was up
2 for review. It was at issue in Judge -- 1993
3 when Judge Marianne Espinosa's tenure was up for
4 review. It was at issue in 2007, when the
5 Senate Judiciary Committee considered Stuart
6 Rabner as the Chief Justice to the New Jersey
7 Supreme Court. And it remains at issue today,
8 specifically related to the 22 vacancies on the
9 bench in Essex County and more than 50 vacancies
10 statewide, a record number after a lame duck
11 legislative session.

12 The use of senatorial courtesy to
13 obstruct appointments and the refusal of the
14 Senate to hold a confirmation hearing for
15 judicial candidates is shameful. It has left
16 courthouses around the State struggling in the
17 face of record number of vacancies. The Senate
18 has a constitutional obligation to provide
19 advice and consent on nominees. Candidates
20 deserve better than indefinite limbo, and our
21 citizens deserve courthouses with a full bank of
22 judges to preside over their matters.

23 Forty-four years ago the Trustees
24 of the New Jersey State Bar Association passed a

25 resolution that criticized senatorial courtesies

1 and urged the adoption of a constitutional
2 amendment under Article IX. That resolution
3 urged that an amendment be designed to require
4 all judicial appointments be voted on within a
5 specified period of time by the Senate at a
6 hole -- as a whole. We suggest to you today
7 that this remains an idea worthy of
8 consideration.

9 As I conclude my remarks, allow
10 me to leave you with this. It is the height of
11 irony that in 1947, the same year the New Jersey
12 Constitution was adopted, United States Supreme
13 Court Justice Felix Frankfurter wrote these
14 words in an opinion involving the United States
15 and the United Mine Workers of America. "There
16 can be no free society without law administered
17 through an independent judiciary. If one man
18 can be allowed to determine for himself what is
19 law, every man can. That means first chaos,
20 then tyranny."

21 Thank you for allowing me to
22 speak before you today. And as I said, this
23 Task Force sets its own schedule and its own
24 time frame. So thank you very much.

1 Mr. Lamparello. And let me just say that we
2 allowed you more time than we had allotted to --
3 that we will allot to anyone else, primarily
4 because we are guests in your house. But you
5 certainly -- you certainly said some things that
6 are worthy of consideration. And it was
7 worthwhile for you to set the historical stage,
8 so that it doesn't have to be repeated by others
9 who follow you. So we thank you.

10 MR. LAMPARELLO: Thank you. Thank
11 you.

12 JUDGE GALLIPOLI: And I knew there
13 was no chance that I could jump in and stop you,
14 anyway, despite the fact that my co-chair here
15 kept on writing me notes.

16 MR. LAMPARELLO: Thank you.

17 JUDGE GALLIPOLI: It's okay. The
18 next speaker is someone who -- who I have
19 annoyed over the years God knows how many times;
20 but she has put up with me many, many times.
21 The former Chief Justice of the New Jersey
22 Supreme Court, Deborah Poritz. Chief Justice.

23 CHIEF JUSTICE PORITZ: Thank you.
24 I don't really have prepared marks -- remarks --

25 I have notes -- so you can interrupt me at any

1 time.

2 JUDGE GALLIPOLI: This is so good
3 that I can finally interrupt you.

4 CHIEF JUSTICE PORITZ: I was Chief
5 Justice for not even a year -- March of 1997 --
6 when I gave the Joseph Weintraub lecture at
7 Rutgers Newark Law School. It was titled,
8 "Independence and Integrity, the Soul of the
9 Judiciary." And it was about judicial
10 independence.

11 At that time there was an uproar
12 about a judge's decision in New York on a
13 warrant issue. And there was a great deal of
14 controversy over the response, calls for
15 impeachment of this Federal judge. And the
16 discussion was going on around the country about
17 judicial independence.

18 And I spoke then -- I don't think
19 I will be repeating when I say that I spoke then
20 a little bit about the origins of the
21 negotiation of judicial independence from the
22 Federalist Papers, Alexander Hamilton. And I
23 will speak to something that's slightly
24 different from what he said.

1 that there is no liberty if the power of judging
2 be not separated from the legislative and
3 executive powers. There is no liberty if that
4 separation isn't there. He understood that the
5 complete, quote now, independence of the courts
6 of justice is peculiarly essential in a limited
7 constitution. In a system that sets specific
8 boundaries to the authority of the legislature,
9 there must be a mechanism to prevent the
10 legislature from overstepping those boundaries.
11 In his view only judiciary that can declare
12 legislative acts violative of the Constitution
13 can protect the people from potential excesses
14 of the legislative branch.

15 I heard a lecture at Princeton
16 University. I brought my law clerks with me
17 when I was in office to hear the lecture. It
18 was about -- it was by a well known
19 constitutional scholar. And it was also about
20 independence and the separation of the branches.
21 And one of the things the scholar said was that
22 it's counterintuitive for most Americans to
23 think of the judiciary as a branch that has,
24 what he called, some limited way, an

25 antidemocratic bowl in which it sat.

1 What did he mean? What he said
2 was there are the elected branches of
3 government. We elect the president. We elect
4 the Congress. In New Jersey we elect a Governor
5 and Lieutenant Governor now. We elect the
6 legislature. Judges in New Jersey are
7 appointed. In many states -- most states
8 they're elected. I won't even get into that.

9 But what the scholar was saying
10 was we do this deliberately. Some branch of
11 government has to protect the minority from the
12 majority. Protect the minority from the
13 majority. How else can we achieve that, if we
14 don't have some function in branch of government
15 that will permit that to happen?

16 I want to take off from there to
17 say that that scholar also said something very
18 different. And this is what I think is
19 important for the committee. That it is
20 appalling how little many Americans, many New
21 Jerseyans, I would say, know about their form of
22 government, about how it works, about State
23 government, particularly. And he said we need
24 basic courses -- this is at Princeton

25 University -- to be given at Princeton because

1 you don't know. And he called out students with
2 questions about what they didn't know. It was
3 appalling.

4 I had just recently looked at
5 some ABA surveys that indicated that many people
6 in this country thought the three branches of
7 government were the Federal, state and local
8 government. And others, similar kind of awful,
9 awful mistakes about the way government works in
10 this country.

11 I went up to this man after the
12 lecture; and I said, "Not in college. In high
13 school." There is a project at Rutgers -- it's
14 high school civics -- that uses a civics book
15 that's been developed specifically for the
16 project. It deals only peripherally with state
17 government. It deals mainly with the Federal
18 Government. But many judges in the State have
19 been involved in those -- in that civics course.
20 It's given in any high school in New Jersey that
21 wants to do it.

22 And there are debates. And we
23 often go and judge in those debates. And these
24 young people really get into understanding what

25 government is about, what separation of powers

1 means, what it means to talk about the
2 difference between the way the Federal
3 Governments work and the state governments work,
4 which is getting me to the issue of education.

5 I am so delighted that there is
6 someone on the panel that knows about education.
7 I'm sure all of us have thought about this, even
8 if we're not professional educators. I think
9 it's extraordinarily important for us to couple
10 proposed changes like the ones we heard -- and I
11 understand that, you know, they need to be
12 discussed and perhaps modified, whether they're
13 constitutional changes or ways of doing
14 business, having to do with senatorial courtesy
15 or whatever -- proposed changes with education.

16 And I think the education now has
17 to be at every level; in the schools, in the
18 universities, in our State and among the adults,
19 the adult population of the state. And I think
20 it is incumbent on the Bar and on the education
21 community that is interested in -- in education
22 as a particular form of -- of, first of all, the
23 profession and then reaching people and then
24 preparing people for citizenship that this is a

25 must.

1 I've had the occasion since I've
2 retired to work with community groups through a
3 board that I sit on, and I see community groups
4 going out into the community. Call it community
5 organizing, if you will. But educating people.
6 These are the problems. These are the things we
7 care about, whether they're environmental groups
8 or they're groups that are interested in
9 changing the way government does business,
10 education. We need to do something like that.
11 We need to organize in a way that will be
12 effective and that will reach communities so
13 that people can understand what they're losing.
14 We need people to understand how
15 it relates to their daily lives, what it means
16 for judges to be independent, to decide issues
17 based on the -- the understanding of the law and
18 the facts of individual cases and what it means
19 to people in New Jersey when judges do that and
20 what it means to people in New Jersey when
21 judges are looking over their shoulders and
22 wondering during the first seven years whether
23 or not they'll be able to get tenure or even
24 later worrying that there will be calls for

25 impeachment or, you know, that they will see

1 censure and anger at their decisions.

2 In every case at least one party
3 is disappointed. Think about that. Every judge
4 knows every decision at least one party is
5 disappointed. Judges cannot defend themselves.

6 In this Weintraub lecture I spoke
7 about our Code of Ethics. Our Code of Ethics
8 and the Constitution limits judges'
9 participation in politics, limits constitutional
10 ability to earn any money whatsoever outside of
11 the judicial salary. Did those people who voted
12 on the constitutional amendment that had to do
13 with pensions and judges' salaries understand
14 that? I doubt it. I doubt it. People need to
15 understand what it means to be a judge, what
16 judges give up for this calling.

17 Judges, the judiciary, can
18 enforce judgments. Judges live by their
19 integrity, by their adherence to the law.
20 People have to respect the courts, or we won't
21 find -- judgments won't be enforced. The only
22 way we can do that, I think, is through
23 education.

24 So I'm urging you, as a

25 committee -- and I'll close now, urging you as a

1 committee, whatever recommendations you make,
2 those -- that's wonderful. We need to change
3 things. We need to push for constitutional
4 amendments for statutes, for ways of making the
5 system work back -- moving back toward an
6 independent judiciary but also education and
7 maybe primarily because we can't make political
8 changes happen unless we reach people and
9 explain to them the value of what they're
10 losing. I do not think people understand the
11 value of what they're losing.

12 I will tell you, as one final
13 remark, I believed in our court system. I was
14 so proud to be the Chief Justice in this court
15 system that around the country was looked to as
16 one of the finest, if not the finest, in the
17 country.

18 I would go to meetings of Chief
19 Justices; and they would say to me, Your court
20 is remarkable. Your court system is remarkable.
21 And I was so proud. And I had no sense, truly
22 no -- you think at that point in my life I would
23 be more sophisticated. I had no sense of how
24 easy it could be to lose that, how quickly we

25 could lose that. We need to hold on to what's

1 important and dear. We need to preserve the
2 best that we have. Thank you.

3 JUDGE WEFING: Thank you.

4 JUDGE GALLIPOLI: Thank you. We
5 will next hear from Judge Linda Feinberg, former
6 assignment judge in Mercer County.

7 JUDGE FEINBERG: Good afternoon.

8 First I want to thank the members of the Task
9 Force for the opportunity to appear this
10 afternoon.

11 When you complete the public
12 hearings, I'm hopeful that the collective
13 experiences of the judges, the lawyers and
14 members of the public who participated, along
15 with your independent research will reinforce
16 the important role of an independent judiciary
17 and a representative democracy.

18 The Declaration of Independence
19 in 1776 cited King George III because he made
20 colonial judges dependent on his will alone for
21 their tenure and compensation. This system
22 created a fundamental principle that judges
23 would likely make decisions not in favor of the
24 people but in favor of the King.

1 independence at the Federal level was written
2 into Article III of the U.S. Constitution. And
3 it was decided clearly that we would appoint,
4 rather than elect, judges. And we would give
5 them lifetime tenure to separate them and to
6 insulate them from any political pressure.
7 Insulating judges from political influence
8 advances independence.

9 I was admitted to the Bar in
10 1974. I started my career as a labor lawyer. I
11 left the U.S. Army in 1975, was appointed as an
12 assistant prosecutor in Mercer County. And with
13 other jobs thereafter I became a member of the
14 judiciary in 1985. I was appointed first to the
15 municipal bench. By 1989, four years later, I
16 sat in three municipal courts.

17 I understood as a judge that I
18 was accountable for each decision I made. I
19 also understood that members of the public had
20 the inherent right to criticize the decision
21 that I would make. In 1985 through 1989 not
22 once did a municipal court judge, did a member
23 of the administration, a member of town council
24 or other person attempt in any way to influence

25 me. Nor did any member of the administration or

1 member of the town council or anyone else engage
2 in unwarranted personal attacks against me or my
3 colleagues.

4 On January 24th, 1992 I became a
5 judge in the Superior Court. And in 1997 I was
6 appointed as the assignment judge, a position I
7 held until March of 2012. In 1999 I was granted
8 tenure. My tenure hearing, like most judges in
9 1999, was uneventful. In 1999 I did not recall
10 any judge who was personally attacked by a
11 member of the executive or legislative branch.
12 And through the many years as a judge and
13 through most of my tenure as an assignment judge
14 I can continue to be proud of the system that
15 represented the independence of the judiciary
16 and fostered mutual respect for the three
17 branches of government.

18 However, approximately two years
19 before the end of my judicial career, in March
20 of 2002, I became deeply concerned, like all of
21 us, about unwarranted personal attacks against
22 judges and the decision by the Governor in May
23 of 2010 not to reappointment Justice Wallace.

24 I don't want to focus on personal

25 matters, but on October 17th of 2011 I rendered

1 a decision in a case that raised an issue of
2 whether requiring judges to contribute to health
3 and retirement benefits violated the State
4 Constitution. I knew that my decision either
5 way would probably be unpopular. And while I
6 expected disagreement and criticism, I did not
7 expect personal attacks. But that is what
8 happened.

9 Unfortunately, these comments
10 transformed a legal issue and an important legal
11 issue into a political one. Personal attacks by
12 elected officials against judges undermine the
13 integrity of the process, the judiciary and
14 justice to members of the public. Personal
15 attacks on judges diminish all of us. And while
16 these attacks were alarming to me, my decision,
17 fortunately, had been made to retire months
18 before the first article appeared. That is not
19 true of judges today and particularly the young
20 judges who are starting their judicial careers.

21 The chair, the ADA, Standing
22 Committee on Judicial Independence, in his
23 message to the Bar stated, and I quote, Our
24 time-tested adherence to the rule of law and our

25 system of justice is the envy of the world.

1 Importantly, all citizens, regardless of who
2 they are or what they represent, have the right
3 to a fair and impartial hearing. And it is
4 often the role of our courts to protect the
5 unpopular or the minority. Public trust and
6 confidence in our courts will only be preserved
7 for as long as we stay the course. And I say we
8 must stay this course, indeed.

9 As Justice Poritz mentioned,
10 judges are generally precluded by ethics rules
11 and codes of conduct from engaging in the sort
12 of political quick response lashing that might
13 help neutralizing the parties' attacks on their
14 independence. So mostly, as sitting judges, we
15 sit and stand by. Today I think all of us are
16 in trouble by continued personal attacks.

17 And unfortunately, the judiciary
18 is the least understood branch of government.
19 My husband wrote me a note a few minutes ago and
20 said we should go on-line, should be a course in
21 new judge and we present hypotheticals and
22 difficult cases that people have to deal with
23 and understand that when you really sit down and
24 you look at it, it's not so easy. People say

25 it's easy; they make a decision. They don't

1 understand. We have no infrastructure, no
2 educational system to inform the public. They
3 will become our greatest ally. But it is up to
4 us to push forward and to develop whatever
5 materials or courses. We have an amazing
6 infrastructure on-line that possibly we could
7 use.

8 Importantly, the independence of
9 each judge safeguards every person in the
10 community to make sure that their case is
11 decided solely, exclusively on the facts and the
12 law and that there is no outside influence.
13 Because what we do as judges every day, we are
14 the decision-makers. There is no profession
15 that I know of that makes more decisions than we
16 do. That is what we do for a living. And while
17 other persons privately, in industry, in
18 government make decisions, we make decisions
19 every day. And they're all different kinds of
20 decisions; and they affect all different kinds
21 of people, people who have popular opinions and
22 unpopular opinions, people who are in the
23 majority and people who are in the minority.

24 Judicial independence enables

25 judges to protect individual rights. I served

1 as the assignment judge for 16 years. And when
2 I drafted the assignment order, I considered a
3 number of things; the needs of the vicinages,
4 three judges had left, retired or were ill. The
5 length of time that a judge had served in
6 particular part, the interest of that judge in
7 wanting to transfer to another division.

8 And I always thought about but
9 never gave it much thought was whether the judge
10 had tenure and, if not, when that judge would be
11 eligible for tenure. But that changed. That
12 changed in 2010, and it's changed for the
13 foreseeable future. Today in the climate of
14 unwarranted personal attacks, judicial
15 assignments and the distribution of high-profile
16 and/or politically charged cases must be
17 carefully evaluated.

18 Judges today are faced with the
19 challenge of not only deciding cases but at the
20 same time potentially jeopardizing their
21 careers. There is no room for failure,
22 compromise.

23 Sitting in my office now, as a
24 retired judge, I listen to judges, young and

25 old, when they return from court to share

1 experiences. While the conversation generally
2 begins with how did it go, more often than not
3 the conversation turns to, without exception,
4 whether the judge was prepared, whether the
5 judge treated the lawyers and the witnesses with
6 respect and whether the process was fair.

7 Certainly criticism is a
8 predictable consequence of decision-making, but
9 we must take action in whatever way we can to
10 bring the branches of government together,
11 despite our differences and our different roles,
12 in some type of forum to make sure that there is
13 mutual respect for all three branches. And I
14 shared with you what I fear the most, is that
15 good judges committed to doing a good job will
16 be subject to unwarranted attacks on their
17 integrity and intelligence and in the end they
18 will not be reappointed or even perhaps worse,
19 they will elect voluntarily to leave.

20 As a judiciary and a bar we must
21 unite together in making sure good judges stay
22 on the bench, that unwarranted personal attacks
23 are challenged in every stage and that an
24 independent judiciary survives.

I leave it to the Task Force to

1 determine how best to address the issue. Number
2 one, education. Suffice it to say we must
3 educate the public. They need to know what we
4 do. On -- May 5th is Law Day, and many of us
5 are participating in Law Day. And what is our
6 role? We want to teach students, middle school
7 and high school, about what we do as judges.
8 And each year -- we need to go to PTA meetings.
9 We need to educate at local libraries. We need
10 to tell and make -- maybe make that citizen
11 judge for the day. Give somebody -- a person a
12 fact pattern where it's difficult to resolve.
13 We need to show them by example, not just by
14 conversation. And, finally, elected officials
15 must understand that while honest and thoughtful
16 disagreement with a judge's decision is
17 acceptable, warranted -- unwarranted personal
18 attacks will not be tolerated.

19 I agree with what Ralph said to
20 all of you, and I do believe that there should
21 be a presumption of reappointment by doing that
22 and making it clear that that is the acceptable
23 mode of operation. We need to be allies of the
24 judiciary. We need to educate the public. And

25 at the end we need to maintain the integrity of

1 what our judges do as decision-makers and to

2 maintain and enforce independent judiciary.

3 Thank you.

4 PROFESSOR HARTNETT: In your

5 experience as assignment judge, how long does it

6 take to determine whether a newly appointed

7 Superior Court judge has the talent, work ethic

8 and temperament to be a good judge?

9 JUDGE FEINBERG: That -- that's a

10 great -- that's a great question. I mean, it

11 probably takes a year for a judge to really get

12 used to being a judge and not just a lawyer.

13 Every year that a judge is on the bench they

14 gain tremendous experience, and it's a

15 continuous learning process. A continuous

16 learning process.

17 You can generally tell after a

18 year or so whether someone has the temperament,

19 commitment, the dedication. Most of them do.

20 Almost all of the ones that I had the

21 opportunity to work with all fit into that

22 category. I don't know if I've anticipated your

23 question.

24 PROFESSOR HARTNETT: If I'm

25 hearing you right, generally within a year or

1 so?

2 JUDGE FEINBERG: Two or three I
3 would think. But you get better as you go. I
4 mean, you really do.

5 And -- and the notion of
6 increasing retirement age makes perfectly good
7 sense for those judges that want to continue.

8 The experience is just you get
9 better as you go. It's like anything else; it
10 improves -- like a fine wine, it improves with
11 age.

12 Any more questions? Thank you.

13 JUDGE WEFING: Thank you.

14 JUDGE GALLIPOLI: Chief.

15 CHIEF JUSTICE PORITZ: Maybe this
16 is out of order, and I'll make it very short.

17 But there is a system that the judiciary has in
18 place for evaluating judges and for reviewing
19 the way they handle themselves in court and so
20 forth and for mentoring and teaching judges.

21 There is -- they even start with what we call
22 Baby Judge School. So -- and this system
23 continues through the first few years, not just
24 the single year.

1 not disagreeing with Judge Feinberg. I think a
2 year is probably often enough, but I will
3 recount meeting Justice Souter at dinner when I
4 was first on the Court. And there was a new
5 Chief Justice in Vermont; and the two of us
6 said, How long does it take to learn these new
7 positions? They're hard. And Justice Souter
8 said three years. Three years on the Court.

9 And I looked up in my chambers
10 one day; and I said, I can do this job. So
11 maybe that's a good answer.

12 JUDGE GALLIPOLI: Thank you.

13 Clara Licata. We need you to
14 speak into the microphone too.

15 MS. LICATA: My name is Clara
16 Licata. I am a solo practitioner in Glen Rock,
17 in Bergen County. And thank you for giving me
18 the opportunity to speak today.

19 My practice involves both trial
20 and Appellate Court, but I really view myself as
21 an appellate attorney. That's the greater
22 concentration of my work. I have had numerous
23 appearances before the Appellate Division, one
24 appearance before the Supreme Court; and I'm

25 awaiting argument date on another.

1 Justice Poritz commented before
2 on New Jersey's reputation as being the finest
3 judiciary in the nation. When I was first out
4 of law school I was an assistant DA in Appeals
5 Bureau in Manhattan DA's Office. So I routinely
6 appeared in New York, New York Appellate
7 Division, First --

8 JUDGE COLEMAN: The audience can't
9 hear you.

10 MS. LICATA: I'm sorry. I
11 routinely appeared before the Appellate
12 Division, First Department and even before the
13 New York Court of Appeals. And I will say that
14 New Jersey system is far more outstanding than
15 New York's. The quality of the judiciary is
16 greater. I recall arguing and, more often than
17 I would like, seeing Appellate Division judges
18 asleep. I have never encountered that in New
19 Jersey.

20 In New York you would get one
21 paragraph per curiam affirming. Here we get
22 opinions. They are not always published, but we
23 get opinions from judges that take the time to
24 review the record and vet the issues.

That being said, because of the

1 nature of my practice, I viewed the events of
2 the past couple of years somewhat with horror.
3 I read the Task Force's definition of judicial
4 independence. And the paragraph that speaks to
5 me, in particular, is the ultimate authority of
6 the judiciary rests upon the confidence of our
7 citizens that their controversies and disputes,
8 no matter their nature, will be decided by a
9 judge who will decide such matters in accordance
10 with the law and the evidence without any fear
11 of political, professional or economic
12 retaliation.

13 It would be naive to say that
14 judges do not or should not bring their open
15 value systems or politics to the bench.
16 Attorneys also have those systems. But an
17 attorney can decline representation in a
18 particular case that offends his value systems
19 or politics. Judges don't have that because
20 they have to decide the case in accordance with
21 the law. So the judge should not have to worry,
22 deciding a case, in that such or his body of
23 work will displease the current Governor,
24 leading to him not being reappointed.

So in the coming year, bearing in

1 mind the Task Force request to try and offer
2 some constructive suggestions, I did a little
3 research. And there are many systems whereby
4 judges rise to the bench in their particular
5 areas. We have our system. We have a system
6 which is kind of recognized as a cooperative
7 system with an executive assisted by
8 legislature. That is how judges accede to the
9 bench.

10 But there are systems where
11 judges are elected. There are a system where
12 judges are selected through judicial council.
13 In our system, it's considered as a moderate
14 approach with some ability to -- with judges
15 less likely as -- act as agents of the system
16 because it must have legislative support. But
17 as exemplified by our current crisis, this
18 system could be subject to abuse, when the
19 current term expires, leading to deadline
20 vacancies on the bench.

21 I believe this Task Force should
22 explore all methods of selection of judges. I
23 mean, as long as we're here, everything should
24 be looked at. And obviously, there are some

25 that have more merit than others; but I think

1 the Task Force should look at whether by
2 election, appointment by the Legislature,
3 appointment by other judges, appointment through
4 judicial council or executive.

5 I think the major problem with
6 our current system is the term limit. I think,
7 as Mr. Lamparello said before, the
8 constitutional amendment would be needed to
9 change this; but I think that lifetime
10 appointment subject only to resignation or
11 removal for impeachable grounds would ensure the
12 independence of the judiciary. Federal
13 judiciary and particular the U.S. Supreme Court
14 is filled with example of judges who surprised
15 the President who appointed them and the public
16 in general with the independence of their
17 decisions unexpectedly. And that is an
18 independence that lifetime appointment permits.

19 Alternatively, in my readings I
20 came across the concept of appointment through a
21 judicial council. And I think that merits some
22 looking at. Judicial councils are bodies that
23 are designed to insulate the functions of
24 appointment, promotion and discipline of judges

25 from parties and political process and while

1 ensuring some level of accountability.

2 In one piece that I read they say
3 that they lie somewhere -- judicial councils lie
4 somewhere between polar extremes of letting
5 judges manage their own affairs and alternative
6 of complete political control of appointments,
7 promotion and discipline.

8 Of course, to be explored is how
9 do you get appointed to judicial council, what
10 is the composition of the council?

11 I think these are things that the
12 Task Force could look at. But I'm -- in
13 conclusion, I'm very pleased that there is a
14 Task Force that is looking at these things. I
15 look forward to hearing your recommendations.
16 And I thank you again for the opportunity to
17 speak.

18 JUDGE GALLIPOLI: Thank you.

19 JUDGE WEFING: Thank you.

20 JUDGE GALLIPOLI: The next speaker
21 would be Thomas Quinn, the president of the
22 Essex County Bar Association.

23 Again, just speak into the
24 microphone and keep your voice up, please.

MR. QUINN: I will try to do that.

1 Can everyone hear me?

2 I do want to -- on behalf of the
3 Essex County Bar Association, I do want to thank
4 this committee for its time and effort. And
5 this is a critical time for this. In Essex
6 County, it is the prime example of that.

7 When I was sworn in as the
8 president nearly a year ago, it was the end of
9 April 2013. In my remarks to the people who
10 attended I talked about the crisis that faces
11 Essex County. At the time we were down to -- I
12 believe the number was 19 judges. And in my
13 remarks -- and I have them here today -- I
14 pointed out that when we had last made a city
15 judge in Essex County, which was January 2010, I
16 pointed out that that was the same month that
17 the New York Jets won the AFC championship. And
18 I noted that that seems like a long time ago.
19 I'm sure it does to Jets fans, but it is a long
20 time ago for us. And it is really for the
21 residents of Essex County. And that's what has
22 me most concerned.

23 And it's important for this
24 committee to translate the issue, what seems

25 like a judicial lawyer issue, into a public

1 issue because it really is a public issue. It
2 can't be just about the lawyers or the judges
3 because we'll fail in what we try to accomplish.
4 Number of remarks have already been made about
5 the importance of educating the public on this
6 issue.

7 And so in June of 2010 Essex
8 County had a backlog of 900 post-indictment
9 criminal matters. And I pointed out in my
10 speech that as of March of 2013 that was 1,200.
11 It is now over 1,700. We've really -- my length
12 as the Bar president, I have probably caused a
13 train wreck. We have really deteriorated
14 remarkably badly in the criminal area and family
15 area. Those are the two areas that impact John
16 Q. Public.

17 In the criminal area not only you
18 have defendants waiting to be reached; but, you
19 know, criminal -- obviously, crimes impact
20 victims; and they impact witnesses. And you are
21 delaying, you know, having them -- make them
22 live the process longer.

23 And in the family sector I --
24 when I was sworn in, I was talking about the

25 percentage increase in -- in the backlog of

1 dissolution cases, and I said it's about
2 800 percent. We have gone off the charts. It's
3 thousands of percent now, and we have now -- it
4 was just announced today that the three FM
5 judges that are sitting, Judge Cifelli,
6 Kessler -- so you will now be spending two days
7 of every third week of non-dissolution cases.
8 It is going to further deteriorate the process.

9 What is happening, in simply
10 trying to get a divorce, people are well enough
11 off, they hire a private judge. They are going
12 to get divorced. They can do it outside the
13 system. They can afford to hire someone to take
14 care of this from -- make a decision.

15 But, you know, average middle
16 class people cannot do that. Certainly the poor
17 people can't do that. And that has become a
18 real problem. You know, it is a real
19 deterioration and, it's impacting the people.

20 How do we bring that to the
21 public? You're looking for some solutions, and
22 I wish I -- you know, listen, I have had a year
23 at this. I -- I wish I had come up with some
24 better ones.

We certainly need to go out and

1 educate the public. The State Bar Association
2 has terrific materials that help do that, where
3 you can go speak to public groups in grammar
4 schools, things like that.

5 We're considering -- as a State
6 we're now considering mandatory pro bono for
7 people just coming out of law school. What
8 better place to send young people to start
9 educating people. You know, put them in a
10 classroom. Let them learn -- learn to teach
11 because isn't that what we do a lawyers? Our
12 job is to teach. It's to teach our clients. It
13 is to teach those hearing the case of what it's
14 about. Do we want to at least consider maybe
15 that's some of their hours that they can do?
16 There is a lot of hours out there for them.
17 That's at least something that ought to be taken
18 into account. But we -- we clearly need to
19 reach out to the public along those lines.

20 I had -- in Essex County, the
21 problem that has caused our shortage, which is
22 now at -- I said it was 20, 22. I had 21, soon
23 to be 22 with retirement. But the numbers don't
24 matter. Certainly, senatorial courtesy has been

25 at the root of our problem. And I have

1 certainly tried to speak with the State Senators
2 and others to try to address those issues. I
3 thought at times that I had broken large
4 apples -- not I had; I would only be kidding
5 myself. But large apples were going to be
6 broken, only to find out that they had not been.

7 But senatorial courtesy is
8 definitely a problem. It is the antithesis of
9 open government. We pride ourselves in this
10 State on an Open Public Records Act. We have
11 any number of ways that we try to do everything
12 out in the public from the municipal level up to
13 the highest level that we can so that we have
14 a -- you know, the transparency is a magic word
15 nowadays. Everything should be transparent.
16 But it's the antithesis of transparency.

17 I mean, give people -- you know,
18 it's supposed to be advice and consent. There
19 should be a time limit involved. And, you know,
20 Mr. Lamparello -- Ralph Lamparello pointed out I
21 think some 44 years ago a resolution was passed
22 by the State Bar recommending just that. That
23 certainly is a matter to consider.

24 But some of the other thoughts

25 that I, members of the Essex County Bar

1 Association have, I certainly think that
2 retirement age should be looked at. I think it
3 does not make a great deal of sense in today's
4 world to have a mandatory age of 70. You know,
5 I noted recently that, you know, we now have
6 things like Super Lawyers and these -- these
7 rating organizations about who are the best
8 lawyers in the State. And I thought it was kind
9 of ironic that the -- I think it was Paul Rowe
10 and -- and Mike Griffinger who got number one
11 and number two, and they are both north of 75.
12 Obviously -- and they're both very, you know --
13 listen, they're class people. But there is
14 plenty of room for lawyers north of 70. There
15 should be plenty of room for judges north of 70.

16 And the other thing I think that
17 ought to be looked at is whether we should
18 change -- we should re-look at having to deal
19 with judicial answers. Shouldn't perhaps we
20 allow someone from the judiciary, Chief Justice,
21 to be able to speak to certain issues? It's
22 always been said, you know, judges can't
23 criticize or, you know, speak out in the public
24 on -- on certain items. Perhaps we ought to be

25 looking at that a little bit hotter -- harder,

1 in a world where there is so much media and
2 press and the internet nowadays where we need to
3 have a voice, and perhaps take some of the reins
4 off of them and have a stronger voice. So I
5 think that that's also something that this
6 committee ought to consider, as well.

7 Professor, you asked a question
8 about, you know, how long are judges -- and I
9 know that within Bar Association this is always
10 been an issue. Each county bar association has
11 a system where they would start reviewing
12 sitting judges, you know, right from the very
13 beginning, try to get feedback from our members
14 and -- and be able to -- on periodic basis, with
15 the blessing of the assignment judge, they will
16 sit down with them and say, Listen, these are
17 some of the things we are hearing from our
18 members. These are ways maybe you can improve.

19 It helps to -- people don't
20 sometimes realize they have a temperament
21 problem. People don't realize that they make
22 flippant remarks. But those remarks can offend
23 certain groups. And I -- you know, I believe
24 that process belongs as part of that. But we

25 have always strived internally as lawyers and as

1 judiciary to make sure that we are putting
2 judges on the right path because they do an
3 important job. We get that. But maybe we have
4 to involve the public there too so that they
5 have a voice again. And maybe that's the role.

6 And lastly, the -- one other
7 thing, my last remark, was, you know, we looked
8 at the issue of seven years; and it's lifetime
9 tenure. And I know, just being a member -- you
10 know, being a taxpayer and hearing about
11 teachers, everyone starts worrying about
12 lifetime tenure. Do they still have it? Does
13 the -- you know, the fire -- to continue.

14 Maybe we go to, you know, every
15 ten years. You know, seven and then ten; but at
16 least they're accountable, where, you know, if
17 there was a presumption after seven that they
18 wouldn't be reappointed except for certain set
19 criteria, then you did that, you know, ten-year
20 anniversary thereafter or some other
21 anniversary, that would be something that would
22 be looked at. For good judges that is never
23 going to matter because as long as the criteria
24 is there and as long as they can't be made to

25 play political football, they'll get

1 reappointed. But it will give the public the
2 sense they are not up in an ivy tower and just
3 beholden to people who have got lifetime tenure.

4 And with that, I -- hopefully I'm
5 less than ten minutes, so I don't get yelled at
6 by Judge Gallipoli.

7 JUDGE GALLIPOLI: I don't know if
8 it was less than ten minutes, but I thank you
9 nonetheless on behalf of the entire Task Force.
10 Thank you.

11 MR. QUINN: Thank you.

12 JUDGE GALLIPOLI: Roy McGeady.
13 Judge McGeady.

14 JUDGE McGEADY: Good afternoon.
15 My name is Roy McGeady. I am a presiding judge
16 for Bergen County municipal courts. I also had
17 the honor of being chair of Supreme Court of
18 Municipal Practice Committee. However, I'm here
19 on my own volition. I don't have the imprimatur
20 of any conference or committee on which I serve.

21 As you analyze this very
22 important issue of reappointment and tenure and
23 judicial independence, I'm here to ask you to
24 not forget us, the 350 municipal court judges in

25 the State of New Jersey. We're appointed by the

1 local governing body for a three-year period.

2 And after that three-year period we come up for

3 reappointment, and hopefully we're reappointed.

4 And when did you read that we have tenure that

5 ensures us judicial independence? Never. Every

6 three years that reappointment comes up.

7 How does that affect our judicial

8 independence? Fifty percent of the revenues

9 that come from our Court go directly into the

10 municipal treasury. Overseen by the governing

11 body that appointments us and pays us our

12 salary. We are the second-largest revenue

13 generator in the municipality, second only to

14 real estate taxes. The governing bodies are not

15 shy about telling us they're watching what we're

16 bringing in. Just have to look at New Jersey

17 Law Journal two months ago, January 13, 2014, an

18 article by Mary Pat Gallagher, entitled,

19 "Pressure on Municipal Judge as Revenue Sources

20 in the Spotlight."

21 Municipal court judges are not

22 supposed to be revenue collectors for the towns

23 that hire them and pay their salaries, even

24 though local governance rely on the money they

25 bring in. The story of councilman's e-mail

1 urging his colleagues to choose one lawyer over
2 another as the judge, in part because of how it
3 might impact borough finances. They actually
4 sent a borough attorney to talk to the incumbent
5 judge about the revenues that he was generating
6 as compared to his predecessor.

7 A quote of the councilman's
8 e-mail to the mayor and the other council person
9 is as follows: This borough has just lost
10 thousands of dollars in expected revenue from
11 not appointing the right person for the same
12 position.

13 Go fast forward two months later,
14 another article in the New Jersey Law Journal,
15 March 10, 2014, by Alan Payrouton, an attorney.
16 Mr. Payrouton is concerned about municipal court
17 judges' independence and the process of which
18 they're appointed. This is a quote from his
19 article: The ultimate effect of having our
20 municipal court judges depend upon local
21 politics is that they lack independence.
22 Ultimately their careers as judges completely
23 depend upon pleasing local politicians in terms
24 of revenue-raising and supporting local law

25 enforcement efforts and initiatives.

1 Mayor Stom, a public defender --

2 I could only hope I wasn't the inspiration for
3 his article.

4 Let me tell you a personal
5 experience I just had two weeks ago in Bergen
6 County. Bergen County prosecutor learned that
7 in a particular municipality none of the police
8 officers were properly certified to administer
9 radar speed detection. The prosecutor did the
10 right thing, superseded the municipal
11 prosecutor, filed a motion in local municipal
12 court asking that court to set aside 1,200
13 convictions of speeding for radar. He then
14 asked the prosecutor to dismiss those 1,200 --
15 the judge, rather. Then he asked the judge to
16 order the governing body to reimburse \$280,000
17 to those 1,200 speeders.

18 I was given a copy of that
19 motion, because I'm a presiding judge, as a
20 courtesy. I called the local municipal judge,
21 and I said, Are you really ready -- able to make
22 this decision on this motion? Are you ready to
23 order your governing body that employs you to
24 pay back \$280,000? I told him that if he felt

25 uncomfortable, he could send it in to me because

1 I didn't have the power of that governing body
2 overseeing me. He chose to do that. I decided
3 the motion. I granted it. And as we speak,
4 \$280,000 is being reimbursed.

5 It wasn't long ago that municipal
6 court judges were paid salaries out of the
7 revenues that they generate. Thank heavens that
8 process has been stopped now. But we're only
9 one step removed from that right now. But
10 revenues that we generate in our court go to the
11 governing body's treasury. And those governing
12 bodies have the point of power over us, and they
13 pay our salaries.

14 JUDGE GALLIPOLI: I don't want to
15 interrupt you, but I guess the question is:
16 What's your suggestion with regard to giving the
17 municipal court judges more independence than
18 presumably they presently have under the current
19 system?

20 JUDGE McGEADY: Judge Gallipoli,
21 if you would bear with me one moment, I will
22 give you that.

23 JUDGE GALLIPOLI: Sure.

24 JUDGE McGEADY: Thank you. Some

25 might minimize the importance of judicial

1 independence in municipal court. After all, we
2 don't decide serious cases. We don't send
3 people off to jail for decades. We don't award
4 millions of dollars in damages. That's all
5 true. But we deal with 6 million people a year.
6 That's how many cases come through our court,
7 six million a year.

8 We're often told that we are the
9 face of the judiciary, that we're the course
10 that people see. Doesn't a course of that
11 magnitude deserve the same independence the
12 other levels of the judiciary deserve? I think
13 so.

14 To answer Judge Gallipoli's
15 question, what is the -- the first easy answer
16 is as long as that reappointment power is
17 reposed in the governing body, you will never,
18 ever have an independent municipal judiciary.
19 It has to be removed.

20 One option, have the initial
21 appointment by the governing body and have the
22 reappointment by the Governor. There is
23 precedent for that. In Bergen County we have a
24 Central Municipal Court. We have a bi-state

25 agency, Palisades Park Municipal Court. We have

1 Pascack Joint Municipal Court. And by statute
2 all of those judges are appointed by the
3 Governor. My option -- that's frankly the
4 option that Mr. Payrouton favors.

5 My preference would be as
6 follows: I say allow the initial appointment by
7 the governing body, and I say repose the
8 reappointment with the assignment judge. That
9 may sound radical. Traditionally it comes from
10 the executive branches with advice and consent
11 of the Legislature. But we don't have any
12 constitutional mandate on how municipal judges
13 are appointed. The Constitution creates
14 municipal judges but gives control over it to
15 the Legislature.

16 I don't think it's outlandish for
17 the appointment judge, who is in the best
18 position to know who the judges are that are
19 doing their jobs, should -- should not have that
20 power. And there is precedent for that. Ever
21 since the Thurber case in the Supreme Court the
22 Chapter 1 rules have been expanded greatly to
23 allow the assignment judge to have a hiring --
24 or greater -- greater input into the hiring and

25 termination process of certain judiciary

1 employees, the court administrator and deputy
2 court administrators. It's not a quantum leap
3 to go to the judges. Could be done by statute.

4 Let me conclude with one personal
5 experience. I sit in a court -- in a courthouse
6 in Hackensack that we refer to as the Vicinage
7 2, judge -- in the court. I sit there because I
8 am a presiding judge. I serve as presiding
9 judge at the pleasure of the Chief Justice and
10 my assignment judge, Judge Doyne. Judge Doyne
11 assigns me specially selected cases to be heard
12 in that court. They come from the 70 municipal
13 courts of Bergen County. None of those
14 governing bodies have any kind of appointed
15 power over me. They are usually high-profile
16 cases, where a politician or public figure has
17 gotten himself in trouble.

18 The judicial independence that I
19 feel sitting in that court is greatly disparate
20 to the independence I feel sitting in a regular
21 municipal court with a governing body looking
22 over my shoulder. Thank you.

23 JUDGE GALLIPOLI: Gerald Salerno.

24 MR. SALERNO: Judge Gallipoli,

25 members of the Task Force, thank you. My name

1 is Gerald Salerno. I am a member of the
2 Hackensack law firm of Aronsohn, Weiner, Salerno
3 & Bremer. I have been practicing law in Bergen
4 County for 28 years, and I currently sit as the
5 president of the Bergen County Bar Association.
6 I would like to thank you all for the
7 opportunity to appear here today, thanking each
8 and every one of you for the tremendous service
9 you are providing not only to the legal
10 community but, more importantly, to the
11 citizenry of the State of New Jersey.

12 I understand the purpose of these
13 hearings is to seek recommendations from members
14 of the public on how the judicial
15 appointment/reappointment process can be
16 improved. And having heard several rather
17 prominent members already make some of those
18 recommendations, dare I say some of my thunder
19 was stolen. But I feel good in that many of the
20 things I've heard already are things that I and
21 members of my association all perceive to be
22 critical and important to the concept of
23 judicial independence.

24 This concept of judicial

25 independence, as I'm sure you all know, is the

1 single most important aspect of our system and
2 the functioning of our democracy. And in our
3 State, as we've heard, we've seen some rather
4 recent examples of how it's failed due to
5 political reasons. And the effect -- and we've
6 heard some of those effect -- the effects of
7 interference, particularly on the Supreme Court
8 level and how that trickles down to the trial
9 court judges who are not yet tenured and the
10 dangerous effect that it can have.

11 I heard President Lamparello
12 recount instances and I personally can recount
13 instances, having spoken late with my assignment
14 judge, where judges, trial court judges who
15 don't have tenure, are fearful of taking on
16 matters of any potential controversy, any
17 potential political significance; and they --
18 they've requested that they not be assigned
19 those tasks.

20 I can also speak of recent
21 incidences in our vicinage where we had two very
22 qualified, very hard-working presiding judges
23 who were facing tenure who had worked hard, who
24 had given up their practices, who spent seven

25 years toiling under the idea that if they worked

1 hard, if they made decisions based on the rule
2 of law and if they did what they were qualified
3 to do, they would be reappointed, yet when the
4 time came for reappointment, they literally had
5 to sweat it out, in one instance, until the last
6 day before their appointment would lapse. And
7 those types of issues, particularly related to
8 the reappointment process, as we've heard, are
9 not the kind of things that existed in the past.

10 So I've heard some of the
11 recommendations made, and I would echo some of
12 them and amplify them. You have all already
13 recognized that one of the most critical and
14 important recommendations that need to be
15 followed through seems to be the education of
16 the public, how to make the public more aware of
17 what's going on with respect to the judicial
18 nomination/renomination process and particularly
19 the issue of interference in the judicial
20 reappointment process.

21 And we've heard that citizens
22 truly don't appreciate the magnitude of this
23 issue unless and until they're involved in a
24 judicial experience and they actually experience

25 some of the effects. For example, when you have

1 a client who has a matter and they can't
2 understand why it takes two, three, four years,
3 in some instances, to resolve a matter and you
4 need to explain to them what goes on, what the
5 concept of senatorial courtesy is about, why
6 there is a backlog, why there are 21 vacancies
7 in Essex County, why we're facing vacancies in
8 Bergen County and how that -- that concept
9 affects them.

10 To that end, in Bergen County,
11 one of the things we've tried to do is we've
12 tried to convene forums involving the public.
13 We are scheduling to have one such scheduled in
14 May, where The Bergen Record is going to act as
15 the moderator. We are going to have
16 Legislature -- legislators appear and actually
17 give their -- their point of view on the process
18 and how it works. And we also have several
19 well-qualified jurists who are going to appear
20 at that panel.

21 So the education aspect remains
22 critical with respect to the whole issue.

23 One of the other issues I think
24 is very important in the nomination/renomination

25 process is the involvement of the local bar

1 associations and the State Bar Association. We,
2 as local bar associations, have the ability
3 to -- to firsthand assess the candidates. We
4 know these people. We've been in the trenches
5 with them. They practice with us. We not only
6 spend time in court with them, but in many
7 instances we spend time out of court with them.
8 And we have a good feeling and good idea what
9 their temperament is, what their judicial
10 ability is, what kind of work ethic they have.
11 We have a firsthand observation of that, and we
12 have a familiarity with them.

13 And the county bar association's
14 role in recent years under the recent
15 administration has been significantly curtailed.
16 Much to the credit of our State Bar Association,
17 they have attempted to reinvolve the county bar
18 association in that process. But I would submit
19 to you that that remains an important aspect,
20 that we need to have the ability to firsthand
21 assess and share our assessments with the people
22 who are evaluating these individuals for
23 appointment.

24 And essential to that whole

25 system working is the importance of our

1 associations appointing people who are qualified
2 to these committees who -- who don't have their
3 own political agendas.

4 Oftentimes we see candidates come
5 before us where particular Senator has attempted
6 to fill a particular vacancy and rather than
7 initially investigating the candidate through
8 the local people who know that candidate, they
9 wait until it's very late in the process and
10 then are oftentimes disappointed or somewhat
11 angered to find out the candidate may not be as
12 qualified as they once perceived.

13 Hand in hand with that process,
14 in making the process effective is the
15 importance of the Senators giving us time to
16 properly evaluate these candidates. Far too
17 often we're presented with slates of candidates,
18 six or seven candidates, who are told they are
19 going to be evaluated in the next week or two.

20 To allow the stay -- to allow the
21 county bar associations to properly vet these
22 candidates, we need time to be able to go
23 through and to make phone calls, to reach out to
24 people, to get firsthand information about these

25 individuals.

1 I sat on the county committee,
2 and my partner sat on the State Bar JPAC
3 Committee. And the past several years there
4 have often been slates presented of six, seven,
5 eight candidates with very little time to vet
6 them. So I would encourage you to look at that
7 recommendation and make that recommendation.

8 Finally, we've heard numerous
9 times and people have come here before me have
10 talked about the process needed to be --
11 reappointment in particular needed to be based
12 upon merit and evaluation of the candidate's
13 performance. The judge's evaluation results
14 should be shared and presented and considered.
15 There should be narrowly drawn, strict criteria
16 as to when a judge should not be reappointed.

17 If I have one message to deliver
18 to you today, it would be that we depend on the
19 independence of judges to decide cases based
20 upon the law, free from the fear of retribution;
21 and our system for appointment and reappointment
22 should guarantee that to our citizens.

23 In conclusion, I would just like
24 to thank you for the opportunity to appear

25 before you and wish you God speed in your

1 mission. Thank you.

2 JUDGE GALLIPOLI: Thank you.

3 JUDGE WEFING: Thank you. Thank
4 you.

5 JUDGE GALLIPOLI: Are you okay?

6 Are you sure? Okay.

7 I meant comfort-wise, not is she

8 okay. The court reporter.

9 Judge Camp. I should say for the

10 purpose of the record that I had to -- I tried

11 to have him thrown out at the beginning before

12 we started, but he persisted in wanting to

13 speak.

14 JUDGE CAMP: You want your wish?

15 I'll grant it right now.

16 JUDGE GALLIPOLI: Yes, Judge Camp.

17 JUDGE CAMP: Thank you for giving

18 me the opportunity to address you today.

19 Although I am presently of counsel to Lum,

20 Drasco & Positan, I am appearing today to give

21 you my viewpoint as a retired Superior Court

22 judge.

23 We deal throughout life with

24 perceptions. I will give you my perception of

25 the importance of an independent judiciary from

1 the point of viewpoint of the public and,

2 second, from that of a judge.

3 I suggested it is a statistical
4 certainty that 50 percent, one half, of all
5 litigants who have their case decided by a judge
6 are at best disappointed because they lost. But
7 in reality, they're dissatisfied, frustrated and
8 angry. Eventually most ultimately recognize
9 that the judge made the best decision he or she
10 could by applying the law to the facts. And
11 they accept and respect the decision.

12 The predicate of doing so,
13 however, is the perception that the judge based
14 his or her decision on the law, independent from
15 outside influences and totally free from
16 self-interest. By "self-interest" I mean for
17 non-tenured judges that fear that the decision
18 may directly or indirectly affect that judge's
19 own career or that years later at the
20 reconfirmation hearing the Legislature is going
21 to challenge, criticize and may vote against
22 granting tenure solely on how a single case was
23 decided.

24 In reality it would be naive to

25 suggest that the judge would not at least

1 consider the personal consequences of how the
2 case is decided. Fortunately, I submit that the
3 vast majority of judges would ultimately do the
4 right thing and decide the case on its merits.

5 However, once the perception by
6 the litigant, who is the public, that these
7 outside pressures influence the judge's
8 decision, respect for the judge is lost and the
9 entire judicial system is undermined.

10 From a judge's perception, based
11 on my personal experience -- and I suggest that
12 the vast majority of my former colleagues --
13 that the most difficult thing the judge has to
14 do is decide a case. After the testimony,
15 evidence and summations are submitted, after
16 your law clerk's memo and the relevant cases are
17 read, you sit there alone, knowing that what you
18 do and what you decide will have a permanent
19 impact on someone's life and have -- and you
20 have to make the call.

21 Oftentimes my sentiments were for
22 the losing side but were constrained by the oath
23 I took to base my decision on the law as it was
24 and not as I thought it should be.

Fortunately, I served in an era

1 where during my initial seven years before
2 obtaining tenure I never considered for one
3 instant whether my decision would threaten my
4 career. Under the climate -- current climate
5 such is not the case.

6 How could a truly independent
7 judiciary be restored? Realistically, cannot be
8 done overnight. I agree with Barry Evenchick's
9 expressed view that it may take the
10 constitutional amendment. To get such an
11 amendment passed the public must be educated.
12 To accomplish this I feel that it begins today
13 with this Task Force -- Task Force as a start in
14 the right direction. I feel that it will take
15 using all resources available, from public
16 speaking at schools, public forums, TV talk
17 shows and, yes, the judiciary assuming a public
18 role, press releases, et cetera, to impress upon
19 the public the importance of an independent
20 judiciary.

21 Finally, I want to share with you
22 my fear on what the effect of the current
23 climate will have on the future makeup of the
24 judiciary. When I was appointed in 1992, there

25 was a balance on the bench of judges from both

1 the public and private sector. I was fortunate
2 enough to have a successful practice and with my
3 wife made a serious financial decision. We
4 realized that once on the bench, one's practice
5 is finished.

6 As I stated previously, I never
7 considered the possibility of not getting
8 tenured seven years later as a factor in my
9 decision. If this were 1992, the real
10 possibility that through no fault of my own I
11 would not be reappointed would without a doubt
12 have precluded my decision of going on the
13 bench.

14 I see a danger that experienced
15 successful attorneys from the private practice
16 cannot afford to take the financial risk because
17 of the possibility of non-reappointment. As a
18 result, the balance of the public and private
19 sectors that existed in 1992 will be gone. I
20 feel that balance is absolutely necessary to
21 main the best -- to maintain the best judiciary
22 possible.

23 Thank you for your time.

24 JUDGE GALLIPOLI: Thank you.

1 MR. RAIMON: Raimon.

2 JUDGE GALLIPOLI: Sorry?

3 MR. RAIMON: Raimon. Good

4 afternoon. And thank you for allowing me to

5 speak before the panel. My name is Arthur

6 Raimon. I am with the law firm of Morgan,

7 Melhuish & Abrutyn in Livingston, New Jersey.

8 And I am here as a representative of the New

9 Jersey Creditors Bar Association.

10 First let me state that I believe

11 that the comments made by the President of the

12 State bar would be supported by my organization.

13 There does need to be these reforms made. And

14 the reforms proposed, I think, should be

15 established. However, I think that we've been

16 talking about the criticism that's been leveled

17 at the judges. And just as cases are not

18 supposed to be tried in the press, neither

19 should the appointment process or reappointment

20 process. That is the function of the

21 Legislature.

22 Now, we have all seen the

23 articles in the Law Journal that say who has

24 been nominated for a judicial post. And the

25 problem with that is there is no follow-up with

1 that. And by that I mean there should be some
2 announcement made by the Legislature. And
3 obviously this may be a recommendation for this
4 panel to the Legislature that the day and time
5 of hearings on the appointment process or the
6 reappointment process should be published, in
7 order to give members of the public, whoever
8 they may be, for or against, the opportunity to
9 appear before that Senate Judiciary Committee
10 and give their comments.

11 There has to be an openness in
12 the system. If somebody wants to make a comment
13 opposing a particular appointment or
14 reappointment, that is their right. They should
15 have the opportunity to do so, but in the proper
16 forum. And that proper forum at this point in
17 our system of government is the Legislature.

18 It should also be the same thing
19 for the reappointment process. So that someone
20 who has a -- let me put it this way -- a
21 particular gripe against a particular judge, has
22 the opportunity to present that position. The
23 openness --

24 JUDGE COLEMAN: I'm a little

25 concerned because I've been involved in that

1 process.

2 MR. RAIMON: Yeah.

3 JUDGE COLEMAN: And it was always

4 my impression and experience that that is

5 ongoing. If a member of the public wishes to

6 appear at the Senate confirmation hearing --

7 MR. RAIMON: Yes.

8 JUDGE COLEMAN: -- or before the

9 full Senate to express some concern he or she

10 has, you can do it. And it's happening to my

11 knowledge.

12 MR. RAIMON: Well, you're

13 absolutely right; but I don't think I have ever

14 seen a notice published in the Law Journal that

15 has said on such and such a day we are going to

16 have a hearing on the appointment or

17 reappointment of a judge. I don't -- never seen

18 that. You -- somebody would have to do their

19 own research, you know, with the Legislature to

20 find out when that hearing is going to be.

21 All I'm saying is that there

22 should be some openness and give somebody the

23 opportunity to present their views, good or bad,

24 on the particular judge because I think the

25 openness would allow a better procedure in this

1 situation, if there is an open forum for doing
2 so. It's just giving notice. That would be the
3 opportunity -- that would be the province of the
4 Legislature.

5 I particularly think that would
6 be a good idea if someone wants -- and we know
7 that there are people there who will gripe
8 against a particular judge because of a
9 particular case. We've heard that before today,
10 this afternoon. But again, the openness should
11 be a part of the process.

12 I agree that there have been too
13 much derogatory criticism of judges. The
14 Creditors Bar wants good judges on the bench.
15 We want consistency in their rulings as to the
16 law, as to the rules. We want the judges and
17 those nominees to follow those procedures.

18 Personally, I spent 20 years on
19 the Special Civil Part Practice Committee, the
20 last few years, since 2008, on the Civil
21 Practice Committee. To me, the rules are
22 everything. And I think that we need to ensure
23 that there is an open discussion as to any
24 nominee or renomination. And I want to thank

25 this council for allowing me to speak today.

1 JUDGE WEFING: Thank you.

2 JUDGE GALLIPOLI: Thank you.

3 Mr. Saadeh.

4 MR. SAADEH: Good afternoon, good
5 evening to this panel. I am Rajeh Saadeh. I am
6 from the Law Office of Rajeh Saadeh. It's in
7 Somerset, about three miles from this building.

8 I am here today on behalf of the
9 New Jersey Muslim Lawyers Association. And I'm
10 also the Somerset County representative of the
11 Young Lawyers Division of the New Jersey State
12 Bar Association.

13 We're here today talking about an
14 issue that affects all of us from the lay people
15 on this panel to the lawyers in this building to
16 the judges past, present and future. And I'm
17 not going to repeat many of the things that have
18 been repeated -- that have been said, rather,
19 today already.

20 If this Task Force is geared
21 towards fixing -- and I use "fixing" in
22 quotes -- the system that we have to appoint
23 judges, then my -- I submit that that goal is
24 impossible to reach. Our system is not broken.

25 There is no system of appointing judges

1 involving human beings that will be perfect.

2 Our goal is to tweak the system; it is to

3 improve the system. And the issue that we

4 really have to improve is the politics that

5 involve the appointments of our judges and

6 justices.

7 Of course, you cannot insulate

8 politics from the appointment process all

9 together. And a martyr, the first martyr -- I

10 use "martyr" again in quotes -- of this system

11 that needs to be tweaked, that needs to be

12 fine-tuned has been Justice Wallace. But also

13 Justice Hoens is an indirect victim, as least

14 compared to Justice Wallace. And even Justice

15 Patterson, her delay in being appointed to the

16 bench is inexcusable, given the situation that

17 involves our Governor and certain Senators. She

18 is more than qualified and should have taken --

19 been considered, rather, for appointment

20 immediately upon her nomination.

21 JUDGE GALLIPOLI: And what would

22 your suggestions be with regard to tweaking the

23 system as it presently exists?

24 MR. SAADEH: Absolutely. Thank

25 you. Our -- my -- my solution, rather, would be

1 what Justice -- I believe Judge Feinberg
2 suggested initially was there to be a
3 presumption in favor of reappointment. However,
4 I also believe that there should be factors that
5 the panel should take into account, factors
6 regarding the judge's performance in the first
7 seven years. And those factors I leave to the
8 panel to discern, if they would like to consider
9 them.

10 But in addition, I believe that
11 the Bar Association, both what we call the "big
12 Bar," the New Jersey State Bar Association, and
13 the various other county bar associations, the
14 other special interest organizations, practice
15 committees, so on and so forth, I believe we
16 must take a large role in educating the public.
17 We, the lawyers, should be tasked with being the
18 mouthpieces for the good judges and the good
19 justices who cannot defend themselves in the
20 public.

21 And the education can be the
22 course of traditional formats, the newspapers,
23 press releases; but they could also be via the
24 modern formats, where much of the disparagement,

25 much of the personal attacks that go against our

1 judges are levied. And judges are going to make
2 mistakes. This is what the Appellate Division
3 is for. This is what our State Supreme Court is
4 for, in part, and our Federal Court is for. But
5 there is -- there should be no reason why we,
6 the attorneys, we, the Bar Associations should
7 be silent. Not with mistakes, but we should not
8 be silent with respect to personal attacks and
9 when politics get involved to infiltrate the
10 decisions of good judges. Thank you.

11 JUDGE GALLIPOLI: Thank you.

12 Mr. Etish.

13 MR. ETISH: Good evening, Members,
14 Judge Gallipoli, others here, certainly Justice
15 Coleman, brother from the south, Mr. Poplar,
16 Justice -- Judge Carchman, who served for many
17 years.

18 I'm troubled by a lot of what I
19 have heard today. I defer to a lot of the
20 history that has been presented, certainly, by
21 President Lamparello, with regard to what the
22 Constitution connection was both in 1787, now in
23 1947 in New Jersey.

24 But what troubles me is the

25 involvement I have had -- and I don't want to be

1 historically repetitive, but it doesn't start in
2 2010 with Justice Wallace. And his name keeps
3 continually being rung through the river,
4 through the mud every time there is a situation
5 like Justice Hoens or someone else is a victim.
6 It really started the year before, when I was
7 State Bar President. I was also State Bar
8 President when Justice Wallace was denied
9 reappointment.

10 Justice Barry Albin, some of you
11 may not know. And some of you may not know
12 Justice Albin was the last sitting member of our
13 Supreme Court who was reappointed got tenure
14 appointment. Just coincidental, that's right
15 before the full power of our Governor Christie
16 that that happened.

17 But Justice Albin was taken to
18 the Senate Judiciary Committee, where a lot of
19 people came to his defense, including the Bar
20 Association. And there was a -- an attack, both
21 me and justice Alvin, by one of the senior
22 members of the Senate Judiciary Committee who
23 was present, sent from Bergen County -- I think
24 we all know who that person might be -- who kept

25 using the term "judicial activist." And he

1 regarded that term. And the way he talked about
2 that term, it questioned -- and questioned
3 others was such that it was a vulgarity.

4 Somehow any decision that the
5 Supreme Court had involved itself in in the
6 seven years before Justice Albin was being
7 considered for reappointment was -- it didn't --
8 anything -- whether he authored decision -- in
9 fact, all the cases he questioned me about,
10 Justice Albin had never authored decisions.

11 Similar situation happened with
12 review of Justice Wallace's career, which was
13 unblemished, as far as I'm concerned, starting
14 from municipal court to trial court to Appellate
15 Division and then through seven distinguished
16 years on the New Jersey Supreme Court.

17 But these are the kinds of things
18 that we've allowed to happen. We, as lawyers,
19 we, as citizens, they are different apart; but
20 they're exactly what -- there was a quote, I
21 think by Judge Feinberg or perhaps Chief Justice
22 Poritz, with regard to what Alexander Hamilton
23 had to say in the Federalist Papers and what
24 they did in 1787 when they were forming the

25 Constitution and how they created lifetime for

1 Federal judges.

2 One of the things that has not
3 been said today -- and I am disappointed in
4 Justice -- Judge Gallipoli, you didn't comment
5 on Alex Hamilton's life ended in Hudson County,
6 Weehawken, as I recall. He was gunned down in
7 a -- actually here in the State of New Jersey.

8 JUDGE GALLIPOLI: Should Hudson
9 County be proud of that fact?

10 MR. ETISH: Well, no, but I think
11 it's -- I think if we are going to talk about
12 historical perspective, I think it's interesting
13 to note just a side comment.

14 But seriously, I think that we
15 have been tortured for the last five or six
16 years, particularly things have dramatically
17 changed. There were unpopular decisions where
18 trial court judges knock down the other counties
19 I was involved in over the years, whether I
20 defended them or I hailed them as good
21 evaluation. But what's happened at the higher
22 levels and ones that are most absolutely public
23 are the reappointments and the tenure
24 appointments to the -- to the Supreme Court.

1 judges privately at Camden and Gloucester and
2 Salem County say to me, I'm having a hard time,
3 you know, rendering decisions in tough cases.
4 Assignment judges that have said to me, I don't
5 want to have some of these cases because the
6 controversial cases I have to look in the
7 rearview mirror. I'm concerned that I won't get
8 tenure. If they're appointed a tenure position,
9 they can almost do whatever they want within
10 reason. They can be, you know, according to our
11 Constitution, the kind of judge that decides the
12 law on the facts, applies it to precedent and
13 makes -- makes good decisions. The young
14 judges, younger judges that have been on the
15 court for less than seven years don't have that
16 luxury anymore.

17 So what do I say, you know, are
18 we going to do about that? I think there are,
19 you know, a couple matters of -- I have heard
20 this issue of education is really key. To sit
21 here today and looking up at Judge Carchman, I'm
22 reminded of the imminent power and resources
23 that the administrative office of the courts
24 have.

1 Associations and other volunteer groups and
2 educational institutions, if Director Grant and
3 direct -- and former Director Carchman and
4 others like that could be involved in creating a
5 core structure to go into the elementary
6 schools, not just the high schools, the junior
7 high schools and the senior high schools, with
8 real sitting judges, retired judges that are
9 called back on recall or just are retired and/or
10 Bar Association members, trustees, directors,
11 officers, to show the populous what -- you know,
12 what it really means to be an independent judge,
13 what the value of the same is.

14 Some of my most treasured moments
15 of a lawyer, when I went back right after law
16 school, to Camden High School, saw something
17 called the George Escon Project, which was just
18 teaching the local high school students what the
19 system was all about. Yeah, they only wanted to
20 know what search and seizure was and what
21 happens if they got arrested, what should they
22 do. But you apply the rule of law argument and
23 lessons, and they listened. Whether it made any
24 difference -- but I think you need to start

25 earlier. I think you need to start in fifth and

1 sixth grade and go into junior high school.

2 We all seen these silly shows
3 where people went -- Jay Leno went into the
4 street. Who is your State Senator -- U.S.
5 Senator? Who is your congressman? And they
6 have not a clue. Civics has been -- they have
7 been taken -- the interest has been taken away
8 from them. So I think education, as -- as
9 evidenced and discussed by Chief Justice Poritz
10 and others, is preeminent.

11 I think the other issue that I
12 would like to talk to is the issue of the
13 constitutional amendment. And I am going to
14 defer to Professor Hartnett and others who are
15 constitutional scholars, but it is time to
16 reinstitute a -- maybe not as dramatic as
17 that -- an amendment because right now the
18 system is out of control.

19 Justice Hoens, Justice Wallace
20 almost to Justice Albin, are really repugnant.
21 They are repugnant to me, as a lawyer, as a
22 former Bar officer and as a citizen of the State
23 of New Jersey. We must stop that.

24 How do we stop it? What it's

25 going to -- you know, under our State

1 Constitution we can make amendments to the
2 rules. Obviously, they have to be voted upon.
3 And that's going to be difficult to get because
4 a lot -- a lot of the particular politicians
5 want to have the power they still have. You
6 know, getting rid of Senator -- judicial --
7 courtesy has been a discussion for years and
8 years. All the years I sat, both local bar
9 association as president and then coming into
10 this State Bar Association, it was always the
11 topic of some question, how do we get rid of
12 judicial courtesy?

13 Essex County has 22 judges. They
14 are missing -- used to have 30. Because there
15 were deals trying to be formed. It's a horrible
16 situation that needs to be worked on. I don't
17 know how easy it is going to be to accomplish.

18 But that's really -- those are
19 the issues that I would hope that this committee
20 continues -- this Task Force continues to look
21 into.

22 I think the issue of potentially
23 offering lifetime judicial appointment in the
24 State Court is a solution that bears -- that

25 might bear fruit. I mean, we have a situation

1 that's in the Federal Court. There are far
2 fewer Federal judges in the State than there
3 are -- there is something like 350, 360 judges
4 in the State of New Jersey. Are they as capable
5 as the 20 or 25 Federal judges that we have in
6 the State? I think they are every bit as
7 competent. Are they vetted in the same kind of
8 way? Probably not but, you know, probably so.

9 I think the only way you're going
10 to prevent this particular situation with regard
11 to Appellate Division and Supreme Court justices
12 is to get that initial appointment and lifetime
13 tenured appointment. You can't have them come
14 up 11 years, if we are going to have the
15 Legislature branch do the -- or the Governor
16 through the executive branch come in and throw a
17 monkey wrench in the process. You really need
18 to work on that.

19 I would be happy to talk further
20 or ask any of the committee's questions, but I
21 think everything I've planned to say has been
22 said already. And I defer to the committee.

23 JUDGE GALLIPOLI: I also have your
24 written comments.

25

MR. ETISH: Yes, you do.

1 JUDGE GALLIPOLI: Thank you.

2 We are going to call -- the next
3 speaker is John Robertson, II on behalf of
4 Morris County Bar Association. Could I just --
5 could I just suggest strongly --

6 MR. ROBERTSON: Yes.

7 JUDGE GALLIPOLI: -- that what we
8 need are suggestions and recommendations, just
9 in fairness to those who follow. We've got a
10 number of speakers still to go. And that's it.
11 And I didn't mean to do this just to you.

12 MR. ROBERTSON: It's okay.

13 JUDGE GALLIPOLI: I should
14 apologize to those people who I previously
15 insulted, I guess, by mispronouncing their last
16 names.

17 Go ahead.

18 MR. ROBERTSON: Judge Gallipoli,
19 you have actually anticipated a comment that I
20 was going to make myself.

21 I'm John Robertson. I am here as
22 the president --

23 JUDGE COLEMAN: I think the
24 audience --

1 speak into that microphone.

2 MR. ROBERTSON: I appreciate very
3 much your comments. You anticipated the comment
4 that I was going to make.

5 I am John Robertson. I am the
6 current president of Morris County Bar
7 Association. I come today to speak not just as
8 for myself as a practicing lawyer but as a voice
9 for our association.

10 I am also the father of three
11 young children. One of the great innovations
12 since I was a young man is something that they
13 would refer to as the "mercy rule" in baseball.
14 Late innings and you're down by 15 runs, the
15 game is over. I am going to invoke mercy rule
16 on myself and spare you and everyone else the
17 spectacle of my repeating everything that has
18 already come before us.

19 I have nothing to add that's
20 significantly different than the suggestions
21 that have already been made. I come really to
22 voice solidarity, to thank the New Jersey State
23 Bar Association for taking the lead on a very
24 important issue, to thank you all for spending

25 your time and your talent on this important

1 issue.

2 Sitting here I am struck by
3 something that's been mentioned by a couple of
4 people who preceded me, which is that I actually
5 think we are off to a very good start. The
6 importance in educating the public, I think,
7 starts here. And as I was sitting there I
8 jotted down what I think is kind of close to a
9 great quote from Churchill that I like, which
10 is: We are not at the end or even the beginning
11 of the end, but perhaps we are at the end of the
12 beginning. So I think we have made a very nice
13 start. I thank you all very much.

14 I have one point that I would
15 make, and that is an interesting thing that
16 occur -- at least it was interesting to me. I
17 have several specific instances up in our area
18 that I considered calling to the attention of
19 the Task Force. It occurred to me that I didn't
20 want to do that for fear of jeopardizing the
21 poor individuals who are the subject of these
22 specific instances I would be calling your
23 attention to. And it occurred to me doesn't
24 that succinctly summarize the problem that we

25 have? My fear of raising their name and their

1 specific incidence raised to me the concern that
2 I would be jeopardizing their career.

3 So I will conclude with that. I

4 had prepared remarks. I have submitted them.

5 They are nothing more than much of what the Task

6 Force has already heard. Thank you very much.

7 JUDGE GALLIPOLI: Thank you,

8 Mr. Robertson.

9 I may be mispronouncing the name

10 again. For that I apologize. Brian Cige. Did

11 I say that correctly?

12 MR. CIGE: Cige. Good evening,

13 Distinguished Panel. I will be brief, as well.

14 I've been an attorney for 30 years. I have been

15 on a judicial administration, judicial

16 performance, prosecutor and selection

17 committees; but really what brought me to be

18 here today was in 1994 I was cochair of the

19 Looking Toward 2020, the Future of the Courts

20 and the Bar NJSBA conference 20 years ago and

21 not a lot has changed. We had great vision and

22 great goals for how much better things would be

23 in the future, starting in 1994; and that hasn't

24 been the case.

1 briefly is this. In looking at why judicial
2 independence is an issue, I think we have to
3 understand why judicial independence is so
4 easily challenged. And I think that's because
5 the beginning of the process is mostly
6 invisible, as has been mentioned earlier. The
7 pool of candidates, usually a secret. The
8 selection process, usually a secret. How the
9 Legislature acts on these things, generally
10 secret. The appointment process, generally
11 secret. The reappointment process, generally
12 secret. And we are now at a point in time where
13 information is the thing. So we need to do a
14 better job about communicating to the public so
15 that they will feel vested in the independence
16 of the judiciary.

17 At a minimum the judiciary should
18 have a public information officer. I think that
19 there should be one in every vicinage. Whenever
20 a controversial decision comes up and the press
21 calls for a reaction or an opinion or a
22 criticism of the judge, I understand, having
23 been on the Ethics Committee -- not the Judicial
24 Ethics Committee but the attorney Ethics

25 Commission -- the judges commenting disparately

1 and randomly on -- but whether it's for a police
2 department or governmental entity is so there is
3 some training, some uniformity and a teachable
4 moment, an opportunity to communicate why a
5 decision was made as it was or really what we
6 want the public to know. And I think that's
7 missing, and I think it's important that we have
8 it.

9 As far as suggestions, I think
10 that we need to look at how we want our
11 judiciary to be, hopefully not in another 20
12 years but what's the vision for change to
13 improve it. And so, you know, we can look at
14 things like the Federal Courts and say they have
15 magistrates and wouldn't that be something that
16 would help our judiciary?

17 We look at retirement age now of
18 70. And personally, lifetime sounds a little
19 bit too long for me; but, you know, 75 sounds
20 like a reasonable extension. My understanding
21 right now, judges aren't generally appointed if
22 they are more than 60 years old. And that's
23 basically tied to the tenure pension plan. I
24 don't see why we can't appoint judges who are

25 going to serve less than ten years or, you know,

1 if we appoint them, up to 65 if the age is 75.

2 So we need some flexibility. We
3 need to understand what the judges are going to
4 do after they retire, what their restrictions
5 are. On reassignments there is an opportunity
6 for judges to continue to work and teach.

7 So my point is as we educate the
8 public on the importance of the judiciary, as we
9 have the judiciary explained through a common
10 source why the judiciary is done, take advantage
11 of those teachable moments, then the effects on
12 the judiciary will have a reaction about maybe
13 this isn't a good idea. But if you don't know
14 where the judges come from and they're mute
15 during their appointment period and they can't
16 speak for themselves, then you're inviting this
17 kind of criticism that's going to be affected.

18 Thank you very much.

19 JUDGE GALLIPOLI: Thank you.

20 Craig Aronow. Mr. Aronow.

21 MR. ARONOW: Good evening, Members
22 of the Task Force. My name is Craig Aronow. I
23 am an attorney here in New Brunswick with the
24 law firm of Rebenack, Aronow, Mascolo. I am a

25 trustee of the State Bar Association, and I'm

1 President Elect of the Middlesex County Bar
2 Association. And that is in the -- the capacity
3 that I am here before you this evening, as
4 President of Middlesex County Bar Association.

5 First I would like to say that I
6 too will be brief. I want to echo the
7 sentiments of several of the gentlemen that
8 spoke before me, in particular the remarks of
9 the gentlemen from Bergen County, from Essex
10 County, the young lawyers representative and
11 Mr. Etish. And keeping in mind the vast
12 suggestions, that's what I would like to try to
13 address.

14 The issue before us is a
15 political issue. And attorneys, when we discuss
16 these issues, we like to believe that in the
17 context of being professionals we keep ourselves
18 above the fray. We don't get involved in
19 politics, unless you have chosen to be an
20 attorney and politician. But this case here is
21 clearly a political one, as applies to the way
22 attorneys can impact the issue.

23 And how can we impact the issue?
24 My opinion, the opinion of my bar association,

25 which we spent hours debating in our board

1 meetings, is that the lawyers of this State have
2 been too passive in the process and that it's
3 time to engage in this political debate. And
4 there are several ways to do that.

5 With respect to how to implement
6 change, I think that several suggestions have
7 been made that are excellent in terms of
8 amending the Constitution, lifetime tenure for
9 Supreme Court justices, a presumption of
10 reappointment.

11 But how do you implement that?
12 You have to have politicians vote in a
13 particular fashion in order to make these things
14 change. What do politicians understand? They
15 understand political donations and they
16 understand votes. How do you make that change?
17 How do you effect that?

18 Well, we have a lot of lawyers in
19 the State of New Jersey; and we hear about it
20 all too often that there is too many lawyers, X
21 number of lawyers per number of people in the
22 public. We also have a lot of organizations in
23 the State of New Jersey that represent lawyers.
24 Every county has a Bar Association. Most

25 nationalities, races, specialty areas have

1 specialty bar associations. The State Bar has a
2 bar association. Practice areas have bar
3 associations. What we fail to do as lawyers is
4 come up with a plan to have a quarterback to
5 pull these people together, to use our money and
6 our votes to effect political change.

7 JUDGE WEFING: That is a fine
8 idea, but how -- in terms of what our function
9 is --

10 MR. ARONOW: Well, I think in
11 terms of suggestions that you are going to make
12 when you issue your report is that the Bar
13 Association -- there needs to be -- in order to
14 affect the political change -- and this is a
15 political problem -- that the bar associations
16 need to work together with -- the State Bar
17 Association is the biggest in the State,
18 probably lead that charge and organizing the
19 lawyers of New Jersey to use their political
20 influence and their weight for what we know is
21 in the best interest of the public. So that's
22 component number one, organizing to spread the
23 message.

24 That leaves the \$64,000 question,

25 which is what is the message? And the follow-up

1 to that, how do you get it to the folks that

2 vote?

3 I think the message is the court
4 system affects you. And you've got to let them
5 know that it affects you. And some folks have
6 gotten up and spoken today about ways to educate
7 the public. I would like to add a couple of
8 ideas on how that -- that can be accomplished
9 because I think at the end of the day we could
10 talk about constitutional amendments and
11 theoretical ideas to effect this from a legal
12 perspective; but if you don't get the people of
13 the State of New Jersey behind this idea, it's
14 not going to go anywhere.

15 And education, more specifically,
16 not just the message but how you communicate it,
17 requires us not to just say, well, let's go to
18 the high schools, let's go to the junior high
19 schools, the -- let's go to the colleges. It's
20 a marketing campaign. And lawyers do not
21 necessarily welcome with open arms the concept
22 of marketing; but when politicians run a
23 campaign, they do marketing. When they have a
24 particular legislative initiative they want to

25 push, they do marketing.

1 What we're doing is marketing
2 what's in the best interests of the public. And
3 I think that no form of media should be left off
4 the table in getting these messages out. There
5 are college students that are very idealistic
6 that understand these concepts, law students
7 that understand these concepts. The key is to
8 let them know that this issue exists, it's going
9 to affect them in their lives as citizens, in
10 their careers as lawyers and down the road, if
11 they want to be judges someday.

12 And things such as social media
13 with a marketing campaign and messaging
14 including a civics lesson packaged in a way
15 that's going to engage people to think,
16 television -- frankly, one of the issues I think
17 that we should have been addressing while
18 this -- there has been all this media attention
19 on Bridgegate is getting our message out because
20 we know the media has been talking about the
21 judges. But the way New Jersey has been
22 affected in the way of the judicial crisis has
23 not been spoken about.

24 In addition to those concepts,

25 the use of other aspects of internet to get

1 these messages out, whether it be YouTube videos
2 on civics. There are many different forms of
3 inexpensive media that people use day-to-day.
4 The days of people sitting down, of reading The
5 Star Ledger on a Sunday morning, that's not how
6 most folks get their news now.

7 So when we talk about how to get
8 this message and educate people, I would ask the
9 Task Force consider the different types of media
10 effect, coordination and, if possible, make
11 specific suggestions on what you would like to
12 see in this plan to educate the electorate.
13 Because at the end of the day, if we don't
14 educate the electorate, if the politicians don't
15 understand that votes are involved, that
16 potential donations are involved, then we're not
17 going to make any headway.

18 And, frankly, some people have
19 said to me over the past couple of months,
20 Nothing is going to change. Why do this?

21 I don't agree. Even if at the
22 end of the day change is not effected today, the
23 next governor has to understand that this cannot
24 be the new normal. So the fight needs to be

25 fought to send the message for the future that

1 we value independent judiciary and that we will
2 do what needs to be done to protect the people
3 of the State of New Jersey.

4 Thank you for your time. I
5 appreciate the opportunity to speak.

6 JUDGE GALLIPOLI: Joel Siegal.

7 MR. SIEGAL: I want to thank you
8 for allowing me to answer some questions or make
9 some recommendations. Senior partner at the
10 firm of Hellring, Lindeman, Goldstein & Siegel
11 in Newark.

12 And I recognize, Ladies and
13 Gentlemen, that you have a very difficult task
14 before you. Something that's very popular,
15 judicial independence, but how do we accomplish
16 it? I think to have an impact that this
17 committee has to do something meaningful, just
18 not -- prior to perhaps impact legislation that
19 may not come about and, of course, make
20 recommendations; but I think you have to do more
21 than just make recommendations.

22 My background is more the Federal
23 area, the Federal Bar Association. And I've
24 been an officer there for about 40 years. I see

25 Carl is here, one of our former presidents. I'm

1 a former president and have been a member of the
2 New Jersey Bar Association and Essex County Bar
3 Association. But I think we can learn something
4 from the Federal way in which they do things.

5 In order to have decisional
6 independence, I think you have to have
7 guaranteed tenure. It's a big difference in
8 this State. I realize after seven years most
9 people are approved. And, of course, you go to
10 Supreme Court, it's another seven years. And
11 there, you know, politicians will say, you know,
12 we get somebody bad in there, you don't give us
13 a chance to review it. We don't want that. But
14 gives them power. And even though it's
15 routinely approved, I know as a fact that people
16 who consider being a state judge don't like the
17 idea that there is just going -- another seven
18 years they have to get approval, go before a
19 committee and so forth. That's politics.

20 JUDGE WEFING: Are you
21 distinguishing --

22 MR. SIEGAL: We don't have Federal
23 judges --

24 JUDGE WEFING: Are you

25 distinguishing guaranteed tenure from lifetime

1 appointment, or is it the same thing?

2 MR. SIEGAL: Yes, I'm saying that
3 when you get appointed, you have guaranteed
4 tenure. In Federal Court, when you're appointed
5 judge, unless he does something unethical or
6 something radical, he doesn't have to come back
7 in seven years and get the confirmation.

8 JUDGE WEFING: You're recommending
9 the Federal system?

10 MR. SIEGAL: Yes. That would
11 make -- you would get better people because they
12 don't want to go -- they don't want to have to
13 be approved; and when they have to be approved
14 again, they think about the politics. So even
15 though nothing is perfect -- guaranteed tenure
16 isn't perfect. And also Supreme Court should be
17 guaranteed tenure; don't have to come back. You
18 get approvals. You make some decisions somebody
19 doesn't like -- that's what's done in the
20 Federal system.

21 They tried to change it. They
22 have never changed it. Supreme Court of the
23 United States makes a decision that some people,
24 you know, don't like -- abortion rights or they

25 don't like this, they don't like that -- you

1 know, eliminate the judges. But it doesn't
2 happen. It's never happened. Have never been
3 able to get that through Congress. So I think
4 that's something we could learn from the Federal
5 system. And that's -- give judges decisional
6 independence.

7 I think the second thing I think
8 we can all agree on, you have to have adequate
9 salaries. I know it's a problem, but let me
10 give you an example. Fifty years ago I was a
11 judicial clerk for Arthur Lane, who was a
12 Federal judge in Trenton, District Court. Then
13 I went to the Court of Appeals with Judge
14 Forman. The differences between the salary -- I
15 received \$7,200 a year. And the State law
16 clerk's was not much. I mean, I think it was --
17 you know, I don't want to misstate. Maybe it
18 was a thousand dollars or \$500.

19 Now I don't know exactly what the
20 salaries are, but I know the law clerks in the
21 State courts do not approach what the -- they
22 get in the Federal Courts. You can say you
23 don't have the money and so forth, but I talked
24 to a lot of judges. I know a lot of ex-judges.

25 And they complain about the ability of their law

1 clerks. I'm not talking about the Appellate
2 Division and Supreme Court. The law clerks for
3 the judges in the State court are not what they
4 once were. Somebody could argue that, but it's
5 just common gossip that you can't get the good
6 law clerks. They want to go to the Federal
7 judges; they want to clerk there.

8 It's a very important -- and also
9 in the Federal Courts now -- and I don't
10 recommend this -- Federal judge will have two
11 law clerks. Has to agree to stay there two
12 years. It's very different when I was a law
13 clerk. So the salaries are different, and
14 you'll get better people with better salaries.

15 Of course, the judges should get
16 more money too. You want good people. And I
17 think you have to come out and try to push that.
18 I know it's all problems with money and things
19 like that, but judges are different. They're
20 not just some clerk. They really affect all our
21 lives. You want the best people. If you don't
22 think the salaries make a difference, you're
23 just not with it. I know the salaries some
24 law -- some lawyer in law firm is earning X

25 dollars. He has to cut his income in half. He

1 is not going to get raises or this or that.

2 It's a real problem. You want to get good

3 judges. That's what we want. A lot of good

4 judges now, but we want to get even better

5 judges. And you have to impact the salaries.

6 The last point -- I know you have

7 a lot of people here -- is the appointment

8 process. Now, for example, Senator shouldn't

9 have an ability to put a hold on anybody.

10 That's not in our Constitution. New York Times,

11 The Ledger, they always have editorials how that

12 is improper. And I know numerous instances

13 where some Senator doesn't like the person

14 that's --

15 JUDGE WEFING: You would agree

16 with the previous speakers in favor of a

17 constitutional amendment banning courtesy?

18 MR. SIEGAL: Yes, I would be for

19 that. But as a practical matter, I don't know

20 how you are going to be able to accomplish that.

21 It's just not right. I mean, somebody doesn't

22 even know -- somebody would say, Well, you know,

23 you were recommended by so-and-so; and I don't

24 like him, so, I'm sorry, I got to put you on a

25 hold. I mean, it happens. I know it happens.

1 And it happened also Congress too. Senator will
2 hold up somebody. And so that -- that is just
3 not right.

4 And we also -- I think this would
5 be part of recommendations. We have to have a
6 wide assortment of groups. We have to have
7 minorities. We have to have gay people. We
8 have to have straight people. We have to have
9 nationalities appointed as judges. People want
10 to see people like themselves as judges. It's
11 really important. That's the way we are.
12 Groups favor their own groups in voting and so
13 forth. That really has to be pushed to have --
14 and there are qualified people. If you get them
15 to be judges.

16 And the other point, lastly --
17 I'm almost finished -- is the bar associations.
18 I know they get involved in recommending judges,
19 but it has to really occur. I mean, I've been
20 on committees with the Federal judges appointed
21 by Senators and our association. And you may
22 not be able to make the appointment, but you
23 could eliminate people. People come up and say,
24 Well, if we say, well, so-and-so -- they talk to

25 the lawyers. They can't stand that judge.

1 That's going to knock off that judge -- pardon
2 the language -- to get the appointment.

3 So I think you have to really get
4 the bar association that's local, the New Jersey
5 Bar Association, form committees and everybody
6 ought to go before them before they get
7 appointed. Like the American Bar Association,
8 give them ratings.

9 JUDGE WEFING: We heard from the
10 previous speaker, head of the Bergen bar, how
11 important that was.

12 MR. SIEGAL: Yes. You give them
13 ratings, though, like in the federal. You give
14 somebody a C rating or A, B, C, person who is
15 appointing that person is not going to be so
16 happy about appointing that person. So my point
17 is you may -- maybe not going to tell somebody
18 who to appoint, but you can eliminate people.
19 You are doing a great job.

20 JUDGE WEFING: Thank you.

21 MR. SIEGAL: It is very difficult.

22 And good luck.

23 JUDGE WEFING: Thank you.

24 JUDGE GALLIPOLI: Stuart -- am I

25 saying this correctly?

1 MR. MEISSNER: Meissner.

2 JUDGE GALLIPOLI: Meissner. I am
3 going to blame it on the printing.

4 MR. MEISSNER: I want to thank the
5 panel for allowing me to speak. I'm going to
6 give a little different perspective than one you
7 have heard up until now.

8 As you heard, my name is Stuart
9 Meissner. I'm an attorney, although I'm
10 licensed in New York, not New Jersey. I don't
11 practice in New Jersey. However, I live in New
12 Jersey. I'm a taxpayer of New Jersey. And the
13 last three years I've had the unfortunate
14 experience of being involved in the court system
15 in New Jersey, specifically in the Family Court
16 system in divorce.

17 However, I practiced law for 26
18 years. I am a former assistant DA, Manhattan DA
19 Office, New York State Attorney General's
20 Financial Crime Section. I have clerked in law
21 school for Federal judge, as well as for New
22 York State Supreme Court judge, trial court
23 level. So I have experience of all facets. And
24 I now -- over the last decade I have my own

25 practice, both criminal defense and arbitration.

1 My experience in the New Jersey
2 court system was fairly enlightening. I must
3 say I hear from the prior speakers and members
4 of the Bar Association -- I'm also a member of
5 the New York City Bar Association, New York
6 State Bar Association, so I know where they're
7 coming from about educating the public. To some
8 degree I think the panel has to realize that
9 it's somewhat patronizing to say that you have
10 to educate the public, when a lot of the members
11 of the public have been educated by the system.

12 I'm also the head of a
13 organization that I formed, which basically its
14 focus is on, lack of a better term,
15 accountability, which I guess is somewhat --
16 little bit independent. And this means court
17 accountability, court watching, going and see
18 what's going on in the court system today. And
19 the members are made up of mostly lay people.
20 There are some attorneys but mostly lay people.

21 I think before -- although the
22 vast majority of judges, I think, all states
23 included, New Jersey, are well meaning, are
24 good, there are bad apples. And I think the --

25 the Bar and the judiciary has to look

1 introspectively before you go out and say let's
2 all go get a constitutional amendment, go to the
3 public and ask what are we doing wrong. Because
4 people are encountering the system; and when you
5 take the individual that's in your system,
6 whether they be the plaintiff, defendant, you
7 could multiply that by many, many people --
8 everyone has a sister, a parent, a mother, a
9 father who hears stories, goes to the court and
10 sees what happens to their sibling.

11 Now, in the Family Court system
12 many people, I think it's well known, have
13 limited resources to afford counsel.
14 Unfortunately, a lot of -- and primarily my
15 focus is not really on the Appellate Division or
16 the Supreme Court but more on the trial level
17 here. I feel that the trial level, from what
18 I've seen -- and I'm in Bergen County, which I
19 think is the most populous of the State -- has
20 maybe, I don't know, six, seven Family Court
21 judges for entire Bergen County.

22 So the contrast, where I practice
23 in Manhattan, the interaction between the
24 attorneys and judiciary is constant, daily. And

25 there is a feeling in the public that there --

1 there are tradeoffs going on that, you know,
2 there is interactions between the attorneys and
3 judges and judges are making decision based
4 on -- talking about the other one. And I think
5 there needs to be a consciousness by the
6 judiciary that -- that when you have constant
7 conferences in -- in -- in chambers that are off
8 the record and then you are told that the
9 judges -- then you go and have an oral argument
10 for the record, it engenders questioning in the
11 public's eyes. I know I did when I sat there.
12 What were you doing here, a show? I noticed
13 that --

14 JUDGE COLEMAN: I'm trying to
15 focus on that just a tiny bit.

16 MR. MEISSNER: Yeah, well --

17 JUDGE COLEMAN: The rules require
18 that judge in a contested matter to put on the
19 record the discussion that had occurred in
20 chambers. So I suggest that's what's probably
21 happening. And in the eyes of so many people in
22 the public, they may not have a real
23 appreciation of it; but I assume you are talking
24 about situation in which both sides are in

25 chambers.

1 MR. MEISSNER: Yes, both sides are
2 in chambers. A lawyer comes out and says the
3 judge -- this is what they're going to do, and
4 let's go do oral argument. And they spent the
5 next four hours doing oral argument to hear what
6 your -- judge said what your lawyer said he was
7 going to say.

8 JUDGE GALLIPOLI: Just -- I don't
9 have a problem -- I wouldn't have a problem
10 listening to what your experiences have been in
11 the past with regard to your individual case, or
12 you might be even speaking on behalf of Sons and
13 Daughters of Liberty.

14 MR. MEISSNER: That's correct.

15 JUDGE GALLIPOLI: But the focus of
16 these particular hearings is on judicial
17 independence in New Jersey, whether we should
18 have it, in accordance with our definition of
19 judicial independence and, if we should, what
20 steps or suggestions would you be able to make
21 with regard to maintaining or fostering that
22 judicial independence. We're not really here to
23 basically hear a grievance, an individual
24 grievance or grievance on behalf of the members

25 of the Sons and Daughters of Liberty with regard

1 to presumed untoward experiences they may have
2 had in the courtroom.

3 MR. MEISSNER: Well, Judge, if I
4 must say, if you are going to the public -- and
5 that's what I'm hearing -- you have to hear that
6 you will be facing an adamant opposition to more
7 independence and let alone lifetime
8 appointments, tenure and so on, if you don't
9 clean house.

10 And what I mean by cleaning
11 house, when you have a judiciary who knows that
12 many people that came before them don't have the
13 wherewithal to appeal a judge, they can't afford
14 an attorney or may not be able to represent
15 themselves like I can -- and therefore many
16 members of the judiciary feel they can just do
17 what they want, not without respect to the law.
18 And to the point of, for example, saying on the
19 record, You can appeal me; but if you do, then I
20 will -- then I will question whether you have
21 the ability -- your claims of having inability
22 to pay support, for example, is real.

23 JUDGE GALLIPOLI: All right. But
24 your suggestion is that before we go to the

25 public, try to educate the public on the

1 importance of judicial independence, we clean
2 house. Just amplify for me what you mean by
3 cleaning house.

4 MR. MEISSNER: Well, I think there
5 is an inconsistency. I hear that it is a need
6 or want -- and I understand why -- that when
7 judges are reappointed, there should be some
8 sort of -- I don't mean tenure -- there should
9 at least be guidelines as to what should be
10 heard or not heard or be used as a reason for
11 appointment, non-appointment.

12 So I have to say what's going on
13 right now -- by the way, I ran for the United
14 States Senate in New Jersey last year under the
15 slogan "Alimony Reform Now." What's going on in
16 New Jersey right now with regard to that
17 particular area is the entire bar, bar
18 association after bar association is writing
19 guidelines to be given to the judiciary to
20 decide whether or not or how to apply, for
21 example, alimony. So as a result, what ends up
22 happening -- and it puts the judiciary in a bad
23 situation, where the same case presented before
24 four judges will have four different results.

And so I think it's inconsistent

1 for a bar to say, Hey, we need judicial
2 discretion, judicial discretion to the point
3 where there is no guidelines for judiciary to
4 make these rulings and puts the judiciary in
5 awkward position where it is and will be the
6 focus of criticism by the public that will say,
7 Hey, we can't handle tenure and lifetime
8 appointments.

9 Because these words -- law,
10 justice, fair, impartial -- can't be just words.
11 There has to be consistency. And you can't have
12 consistency unless you have guidelines. So I
13 think the bar and the -- the judiciary -- and I
14 don't think, obviously, there is a view of
15 reform; but the bar, itself, certainly does --
16 is hurting itself in this aim of having judicial
17 independence.

18 JUDGE GALLIPOLI: May I just
19 suggest to you that if you really have a point
20 of view -- and I think you do -- with regard to
21 whether there should be any more and increase in
22 judicial independence -- and apparently you're
23 opposed to that to some extent -- that you just
24 submit a writing to us so that we can basically

25 fully understand what your position is, as

1 opposed to going through this right now, which
2 seems to be more specifically oriented to your
3 experience and your group's experience in the
4 family courts.

5 MR. MEISSNER: Well, I just think
6 that in general, in any respect, if an
7 organization wants to have legislation passed,
8 which it seems it does, or constitutional
9 amendment passed by members of the public, no
10 less, when you have for the past three months
11 the Supreme Court of this State reversing pro se
12 appeals one after the other, one after another,
13 week after week, lower court judges not giving
14 people pay hearings and putting people in jail,
15 I think there is a problem. And those reversals
16 are based on Supreme Court decisions going back
17 a decade.

18 The reason for those decisions
19 being made is because the judges counted on the
20 fact that those individuals cannot appeal. And
21 so when you have that situation -- and the
22 Supreme Court of this State rightly had to come
23 down and say that there was -- there was
24 mistakes made and reversed three people from

25 incarceration -- incarceration.

1 JUDGE WEFING: I would suggest
2 that you take up Judge Gallipoli's suggestion
3 because we have -- we will hear anybody who
4 wants to come in, but we do have other speakers.

5 MR. MEISSNER: Sure. Thank you
6 very much for your time.

7 JUDGE GALLIPOLI: James Maynard,
8 please.

9 MR. MAYNARD: Good evening. Thank
10 you very much for the opportunity to address the
11 Task Force in this very, very important matter.
12 I am a -- an attorney of Maynard & Sumner of
13 Morristown. I have been practicing law for
14 somewhat over 20 years, primarily in the area of
15 criminal defense. And my practice concentration
16 is sex offender representation.

17 The purpose of my being here
18 tonight is that I am the chairman of the Megan's
19 Law Subcommittee of the State Bar Association
20 and -- excuse me -- I would like to reflect some
21 of the interests and concerns that people -- the
22 attorneys practicing in this very difficult area
23 of the law encounter specifically with regard to
24 judicial independence and the integrity of the

25 judicial system.

1 It's paramount to practitioners
2 in this practice area, as well as generally in
3 criminal defense but specifically with people
4 engaged in the representation of very, very
5 difficult, socially charged, politically charged
6 types of clients and issues, such as sex
7 offender representation, that the -- they can
8 rely on judiciary that is completely free to
9 make decisions based on the law and the facts
10 presented and without any sense of political or
11 social retribution, pressure, coercion.

12 It's very difficult. We ask
13 judges to do very, very difficult things in sex
14 offender representation. We ask judges to
15 determine that certain aspects of laws passed by
16 Legislature are unconstitutional, to limit them
17 in their application to sex offenders
18 specifically. We ask judges to determine what
19 scope of provision is appropriate. We ask
20 judges to terminate sex offender supervision and
21 the status of sex offender for a person who's
22 eligible to be terminated from Megan's Law or
23 other supervision.

24 And these are all very, very

25 difficult things for a judge to decide, if they

1 are in any way feeling they're subject to
2 pressure, social, political, specific
3 legislators or anyone else that has strong
4 opinions related to this very difficult, very
5 socially charged, highly politicized area of the
6 law.

7 And the thing that in our
8 committee and that I constantly hear when I'm
9 discussing Megan's Law matters with prosecutors,
10 defense attorneys, et cetera and psychologists
11 is the -- the concept of the politicization of
12 the law. The politicization of the law is
13 largely a concept that occurs when the
14 perception is the judges are under pressure to
15 decide cases or issues in a certain manner and
16 not simply according to their own honest
17 judgment, related to the law and the facts.

18 And we, the persons who are
19 practicing in Megan's Law and the end users of
20 the judicial system, our clients, are -- are
21 desperately dependent on the integrity of the
22 judiciary.

23 JUDGE WEFING: Do you have any
24 particular suggestions?

MR. MAYNARD: Yes. I realize it's

1 late, and I'm going to wrap it up here. The
2 concept of the independence of the judiciary,
3 especially to those of us in Megan's Law and our
4 clients, is too important to fail. Therefore,
5 I'm sure you will get many good technical
6 suggestions of how to achieve the independence
7 of the judiciary.

8 My recommendation -- and I can
9 say this with sincerity -- that the judiciary
10 must maintain its independence by whatever it
11 takes. It's just that important. So my
12 suggestion is one of emphasis, rather than
13 technical process.

14 I think this Task Force is doing
15 some very important work; and I think the
16 emphasis should be on allowing judges to make
17 independent, unpressured decisions, even in the
18 most difficult, socially charged, pressurized
19 types of matters.

20 Thank you very much. I
21 appreciate it.

22 JUDGE GALLIPOLI: Thank you.
23 Mr. Ferrara.

24 MR. FERRARA: It's almost been

25 three hours.

1 When you mentioned age 70, I
2 thought that was really old, until last Saturday
3 when I turned 71. It's not that old.

4 But I second the other
5 recommendations, extending the age at least --
6 at least to 75.

7 Thank you, Members of the
8 Committee. My name is Mike Ferrara. And for
9 the last 41 years I've been a trial lawyer
10 trying mostly civil cases down in South Jersey.
11 And I'm a past president of the New Jersey Trial
12 Lawyers and past president of the American Board
13 of Trial Lawyers and International Academy and
14 Chair of the State Bar Med Mal Committee.

15 But I don't speak for any of
16 those organizations. I speak for myself. And
17 the reason I wanted to come here tonight was in
18 my 41-year career one of the most stunning
19 announcements that I ever read is what happened
20 to my friend Justice Wallace. And we have to
21 make sure, as a committee and as a society, that
22 something that happened to him and Justice Hoens
23 never happens again to anybody.

24 And we understand that, you know,

25 New Jersey's Governor is the most powerful of

1 all 50 states. We know that. They appoint the
2 Attorney General. He appoints the Insurance
3 Commissioner. He appoints every judge. No
4 other state has that amount of power. But it
5 has to come with -- with some degree of curbing
6 of that power. How that's done, I'm not quite
7 sure.

8 But the good news is -- and I'm
9 going to -- in the interest of time, I have from
10 the ABA the survey of all 50 states, which
11 states had appointed, states which had elected
12 judges at the various levels. And we're
13 fortunate; we're one of 11 or 12, depending how
14 you interpret it, states that do not elect
15 judges.

16 Because Judge Wefing at the very
17 beginning talked about the public. Well, in the
18 states that elect judges, you know, nine out of
19 ten voters and eight out of ten state judges say
20 they are quite concerned about special interest
21 groups buying advertising to influence
22 elections. Forget the fact you donate \$50,000
23 to a judge and then appear before him or her --
24 I mean, so we don't have that problem. So

25 that's -- that's the good news. And if I can

1 just leave that study here for your review at a
2 later time.

3 I was in Vietnam. I volunteered
4 for service in Vietnam. And in 1965 I was on
5 the DMZ; and I was reading a book about the
6 French, who had lost in Vietnam in 1954. So I
7 was there about -- '54, '64 -- I was there 11
8 years later. The French had lost at the Indian
9 Fu. And here we were back in '65, and we didn't
10 learn from our mistakes or from the French
11 mistake. So we have to understand history.

12 And I think -- and I want to give
13 this Governor the benefit of the doubt, as hard
14 as it is for me to do that, that maybe he really
15 didn't know what happened back in 1986, when the
16 justice for whom all this is named, Wilentz
17 Auditorium, when his appointment was up after
18 seven years.

19 For the lay people in the
20 committee, it was a big deal because he was a
21 resident of New York. He had authored the Mount
22 Laurel II decision, which was very
23 controversial. And it provided affordable
24 housing in communities. And some people don't

25 like the fact that minorities were coming to

1 affluent suburban communities. So his -- his
2 chance of reappointment was shaky. Even though
3 the democrats controlled the Senate 23/17, there
4 was -- it was going to be close or he wasn't
5 going to get it.

6 And fortunately -- you talk about
7 good timing -- Lee Laskin, who was -- who is now
8 a judge in Camden County, who was a Senator back
9 then, wrote an article for the Burlington County
10 newspaper, which I'm going to leave for the
11 committee, as well, where he described that
12 whole process of what happened back in '86. He
13 is a conservative Republican.

14 Governor Kean was the Republican.
15 He appointed -- he recommended that Chief
16 Justice Wilentz be reappointed, and yet wasn't
17 about to happen. And it was going to be subject
18 to all this. And Senator Laskin was the one who
19 brokered the deal where Chief Justice Wilentz
20 agreed to move back to Jersey, and -- and the
21 deal was done. And Justice Wilentz was
22 reappointed.

23 And what happened is Senator
24 Laskin said although he did not share Wilentz's

25 jurisprudence, Laskin did value judicial

1 independence. I want a judge to be free of the
2 politics and the pressure. So he -- what he did
3 is profile -- and I encourage all of you who
4 don't know this story to read.

5 Madam Chair, if I could leave
6 this and make this part of the record, as well.

7 Because Senator Laskin is still
8 active and still willing to actually talk about
9 what happened. So what I think may have
10 happened is that the Governor and maybe the
11 young folks, the men and women that surround
12 him, maybe didn't know that story when he
13 unilaterally destroyed the career of Justice
14 Wallace and Justice Hoens.

15 Now, as a trial lawyer, you know,
16 all we want is -- all we want is a fair
17 judiciary. That's all.

18 JUDGE GALLIPOLI: Suggestions.
19 Suggest to us, Mr. Ferrara --

20 MR. FERRARA: Pardon?

21 JUDGE GALLIPOLI: Suggest to us,
22 as the accomplished plaintiff's attorney that
23 you are, how we get there.

24 MR. FERRARA: How do you get a

25 fair judiciary?

1 JUDGE GALLIPOLI: How do we not
2 let it happen again? That's the question.

3 MR. FERRARA: Well, how do we
4 avoid reading that Chief Justice Rabner has not
5 been reappointed? How do we do that?

6 JUDGE WEFING: We are not dealing
7 with individual situations.

8 JUDGE GALLIPOLI: We are not
9 dealing with individuals. That is not the
10 problem. That's the reality.

11 MR. FERRARA: I think the fact
12 that we don't elect judges is great. So we have
13 a great system; we just have to fine-tune it.
14 And the way we could fine-tune it is we can --
15 we have to adopt a merit selection of judges,
16 and it has to be -- how it's done, I will leave
17 that to the Task Force to decide; but you can't
18 have somebody that wants to be a judge. Like
19 somebody I know right now wants to be a judge.
20 Well qualified applicant. What do you do? Go
21 speak to your state Senator. Well, there are
22 four state Senators in your town. Go talk to
23 the Republican chair. Well, I don't know the
24 Republican chair. Have you donated money? Go

25 to the Lincoln Day Dinner. All that stuff is --

1 there is -- it's not right --

2 JUDGE GALLIPOLI: Okay.

3 MR. FERRARA: -- if it's a merit

4 selection. So my recommendations -- and just

5 tick them off real quick.

6 Number one. Create a way to

7 select judges based on merit. Why do you have

8 to meet with the County chairs and go through

9 all the nonsense that you go through now?

10 Number two. Work with the NJEA.

11 Some people have talked about it already. You

12 have to be able to get this message to the

13 schools, grade school, middle school, high

14 school. They have to put it in a lesson block.

15 To get stuff in the curricula is tough thing,

16 but it can be done.

17 Number three. What the President

18 of State Bar said from the very beginning,

19 presumptive reappointment for State Justice.

20 Presumptive reappointment.

21 Number four. This -- you know,

22 the law journal does these studies where they

23 evaluate judges. And Chief Justice Rabner has

24 told us time and time again that he wants every

25 one of his judges to get a nine or ten on

1 civility on that survey. Well, that survey also
2 has a category for bias towards the prosecution,
3 bias towards the defense, bias towards
4 plaintiff, bias towards defendants. Those
5 biases can't be.

6 Then you talk about judicial
7 independence. You can't bring -- look,
8 everybody brings their human everything they
9 brought to life to bear when they're a judge;
10 but you can't continue to be an insurance
11 company lawyer when you're a judge. I mean, at
12 some point you have to be a neutral, fair judge.
13 And the same with plaintiffs.

14 You can't -- you know, so the way
15 to avoid that is to maybe make the evaluations
16 that we fill out for judges public. I tried to
17 get them -- you know, we fill out -- we fill out
18 judge -- we fill out evaluations on judges, not
19 the law journal evaluations but another. And I
20 asked to see those. And I was told they are not
21 available; they are only available to certain
22 people.

23 Maybe -- maybe shorten the seven
24 years for trial judges to -- somebody asked --

25 Professor asked about how long it takes to know.

1 Well, after a year or two or three and if every
2 one of those things says they're pro plaintiff,
3 pro plaintiff, pro plaintiff, maybe four
4 years -- maybe four years they get bounced or
5 some -- you know, some review of some kind.

6 JUDGE GALLIPOLI: Most of the
7 people who say they are pro plaintiff are
8 defendants, and most of those who say they are
9 pro defendant are plaintiffs.

10 MR. FERRARA: Well, that's --

11 JUDGE GALLIPOLI: That's probably
12 the reality. That's a problem, isn't it.

13 JUDGE CARCHMAN: Bias of the
14 responder.

15 MR. FERRARA: My other
16 recommendation is to restore the county JPAC's.
17 When we served on -- I served on the Burlington
18 County JPAC. We know that those people were
19 going to be improved, but we used it as an
20 opportunity to teach them to be civil. That if
21 you're in the middle of a trial and a lawyer
22 says I want to be home to go to the Halloween
23 parade that -- what would you do? Say, Yes, I
24 will let you go, you know. So we use that to

25 sandpaper some of these candidates. Plus, you

1 know, if somebody is really bad, then, you know,
2 we have a chance to knock them off there. There
3 is no reason not to have these county JPAC's.

4 When I was on the Federal
5 Judicial Selection Committee, Senators told us
6 from day one we have a No Jerk Rule. That is a
7 rule that should apply to every -- every
8 judicial selection committee, you know. I don't
9 care how -- you want to Harvard. I don't care.
10 But you have to treat lawyers and litigants with
11 respect.

12 JUDGE WEFING: At the bare
13 minimum.

14 MR. FERRARA: Very bare.

15 JUDGE GALLIPOLI: I think we are
16 up to number seven.

17 MR. FERRARA: You know, I could go
18 on for hours; but I'm not. So thank you -- oh,
19 the best definition -- I was reminded that
20 President H -- President George H.W. Bush in
21 1990 appointed Justice Souter to the Court. In
22 2000 Justice Souter voted against his son in
23 Bush versus -- so that is defined as -- you want
24 judicial independence, there it is. I mean, so

25 that's what we're looking for.

1 And good luck, and thank you all
2 for your efforts trying to get this done. It's
3 a great undertaking. And thanks so much.

4 JUDGE WEFING: Thank you.

5 JUDGE GALLIPOLI: Thanks,
6 Mr. Ferrara.

7 Mr. Little.

8 MR. LITTLE: Thank you, Members of
9 the Committee. I have heard you loud and clear,
10 listening to the line of other speakers. I am
11 here to give you some concrete suggestions.

12 Just briefly, I call myself a
13 grassroots lawyer, Superior Court, municipal
14 court. I've been before hundreds of judges over
15 my time. Some have been very good. Some have
16 never been good. And I think part of the root
17 of the problem is how they are ultimately
18 selected.

19 Frankly, every -- people that I
20 have known that have known somebody have been
21 active politically. And I agree with the last
22 speaker, that becoming a judge in this State, I
23 think it should be merit-based. I think there
24 should be really a full investigating of minimum

25 academic standards, minimum practice standards.

1 You don't want a judge who has done nothing but
2 real estate closings during his career or her
3 career. CLE qualifier, courtroom experience,
4 court trial experience, review of those
5 proceedings by a selection committee, ethics
6 qualifications, service to the legal community.

7 I suggest that it be
8 examination-based so that it opens up not just
9 people who are politically connected but who are
10 qualified academically to serve as a judge.

11 That they know the novel concept
12 of Rules of Evidence. Certainly, people can
13 disagree. There are many judges unfortunate --
14 there are some judges, unfortunately, that do
15 not know the Rules of Evidence.

16 I submit there should be a
17 review, very short review of their judicial
18 performance, whether that be by the Bar
19 Association, whether it be within the county.

20 While it -- I heard one of the
21 prior speakers mention we meet with judges and
22 we give them tips. Maybe their demeanor isn't
23 what it should be. I think it has to go beyond
24 that. Did you make the right decision under the

25 law? While people can disagree as to decision,

1 do you have the ability to interpret the facts?

2 Do you have the ability to understand if

3 somebody is telling the truth or is spinning a

4 tale?

5 I know there is judicial college

6 and I know that teaches courses. What I don't

7 know is that -- whether judges are actually

8 tested as a result of going to judicial

9 colleges. Are there mock performances? Are

10 they criticized? Is judicial college for baby

11 judges, as it's always been called; or should it

12 be for judges throughout their career?

13 I suggest the review of the

14 judge's performance perhaps goes outside of the

15 county. We all get to know judges. We tend to

16 like judges who seem to make better decisions

17 for our cases; but perhaps we would review it

18 differently if Monmouth County were reviewing

19 Middlesex County judges or something along those

20 lines.

21 I suggest the reappointment

22 process be much earlier than seven years.

23 Should be a three-year process. One of the --

24 Judge Feinberg, I think, said, yeah, you know,

25 after three years you are going to know if you

1 have somebody who has the qualification. Damn
2 right you will. Instead of waiting seven years
3 of letting innocent lawyers suffering through --
4 this is a small part of the judges -- suffering
5 through judges who don't know what they're doing
6 and will never know what they're doing. So
7 let's shorten the process to three years. Let's
8 delay tenure, though. I suggest it be a
9 ten-year before there is permanent appointment.

10 I think there has to be some
11 flexibility. I heard about ages and somebody
12 who is a certain age won't get appointed. I
13 haven't thought through that process completely,
14 but what I'm --

15 MR. BROWN: Can I ask something?
16 You're suggesting a three-year review but
17 ten-year period before tenure?

18 MR. LITTLE: That's right. It
19 would be a step-up cycle. So three years, we
20 like what we see, now you're on now a second set
21 of standards that is going to control you. I
22 suggest that be a six-seven year cycle at that
23 point. And if you pass that, great, at ten
24 years, God bless you, you can stay until you

25 want to leave or until you're -- you feel you're

1 not able to make decisions any further.

2 JUDGE GALLIPOLI: But at three
3 years you're gone, if you don't pass the test?

4 MR. LITTLE: That's correct. And
5 it's going to weed out the -- weed out the
6 judges that are not qualified and have not met
7 the minimum standards. Now, granted, before
8 that you're going to have to have tested, you're
9 going to have to be qualified in many certain
10 ways. So we are going to get the best of the
11 best ultimately in the judiciary.

12 JUDGE GALLIPOLI: Then, if you get
13 the best of the best, after three years,
14 regardless, that person can be -- hit the road,
15 Jack?

16 MR. LITTLE: Could be.

17 JUDGE GALLIPOLI: How many people
18 do you think are going to want to give up a
19 practice to come in for three years with the
20 likelihood that they're going to get bounced at
21 the end of three years after they've passed all
22 of those tests to get there to begin with?

23 MR. LITTLE: I think there will be
24 qualified people who would stay for that.

25 People who have not -- who have been lawyers for

1 25 years, have made a good income, it's not
2 going to be attractive to them. But somebody
3 who is committed to a independent judiciary, to
4 make the right decision, who are -- who have
5 practical experience and solid experience, I
6 think they're -- I think you will attract.

7 JUDGE GALLIPOLI: It almost sounds
8 like an institutional type judiciary, similar to
9 what they may have in Japan, where you basically
10 come out of law school and decide I want to be a
11 judge and I go to, quote, judge school. Is it
12 something like that?

13 MR. LITTLE: It's a mixture of --
14 of that.

15 JUDGE GALLIPOLI: Okay.

16 MR. BROWN: Can I ask one more
17 question? I am not quarreling with you; I just
18 never thought about two-stage review. If we had
19 that system, would you envision that lot of
20 people who were okay at three years would then
21 really need a subsequent review at ten?

22 MR. LITTLE: I think the second
23 review would be -- would not be as difficult as
24 the first three years.

1 suggestions?

2 MR. LITTLE: No, those are my
3 suggestions. I really appreciate your hearing
4 me.

5 JUDGE GALLIPOLI: Thank you so
6 much.

7 Miss Stud home.

8 MS. STUDHOLME: Thank you very
9 much for holding this hearing, for staying so
10 late, for giving us all the opportunity to
11 speak. My name is Anne Studholme. I am of
12 counsel to Post, Polak, Goodsell, MacNeil &
13 Strauchler. We have offices in Princeton and in
14 Roseland. I also happen to be secretary of the
15 land use section board of directors.

16 I'm speaking on my own behalf,
17 although I would also like to note that the land
18 use section directors wrote a letter to the Law
19 Journal in support of Justice Hoens. I think
20 Judge Wefing, who's correct in saying general
21 public may not under the gravity of the current
22 issue. That's why I am very glad we have the
23 press here. And I think it's really important
24 to be able to encapsulate this the way the man

25 on the street, who is the one both politicians

1 are appealing to, understand.

2 I think the press can help spread
3 the word that every case concerns immediate
4 litigants. And I think that the man on the
5 street doesn't necessarily get that. They think
6 the high profile activism cases aren't about
7 litigants like them, and that's an incorrect
8 perception.

9 And I have to think about would
10 you want the judge hearing your case to worry
11 about getting fired if a more powerful political
12 force disagreed with the outcome?

13 Craig Aronow is also right. This
14 is going to be a political thing. It's going to
15 have to be a high profile sort of marketing
16 campaign. And with that in mind, those are just
17 little notes I put on listening to this entire
18 thing.

19 I have two points to make
20 quickly, and I know I will be off very briefly
21 because I timed this at four minutes when I was
22 practicing.

23 The paramount lawyer -- and this
24 is -- again, you all know this; but I don't

25 think it got brought out in this hearing. And

1 the press needs to make it clear. The paramount
2 goal of the 1947 Constitution was to reform New
3 Jersey's labyrinthian and parochial judicial
4 system. It was one of the most antiquated in
5 the country at that time.

6 Another aim was to create a
7 strong executive. And both were achieved. In
8 fact, the reorganization of the judicial branch
9 has given us a responsive and flexible court
10 system, as well as a judiciary and a Supreme
11 Court with a nearly unmatched reputation for
12 excellence and independence. And independence
13 in this sense could also be called the room to
14 act with integrity and clear conscience, that no
15 external factor, particularly not even an un --
16 involuntary human fear for job or pension play
17 any role in one's decision-making.

18 But in the shadow of the
19 comprehensive prerogatives of the executive
20 branch that widely respected judiciary was
21 created, in part, by self-restraint of previous
22 governors. Because the same Constitution
23 created that extremely strong executive which
24 now claims it has prerogatives under the

25 Constitution of what's going on with these

1 firings.

2 It was the self-restraint of
3 previous governors and unwritten but powerful
4 traditions in the process of appointments,
5 particularly to our highest court, that
6 protected that integrity. And that balance
7 worked extremely well for over 50 years. And
8 it's now in peril.

9 The game theory problem now
10 facing New Jersey is that once one governor
11 decides to politicize the court, will every
12 future governor feel constrained to follow suit?
13 And I think all of us here are afraid that they
14 will. This is not about one man. It's about a
15 genie that, once it's out of the bottle, no one
16 person is going to say, Well, I would -- my side
17 is not going to take advantage of that. They
18 are not going to be able to do that. And that's
19 why it's important that this Task Force has
20 convened and it gets the coverage it deserves.

21 And in closing I would like to
22 share a family anecdote. This was passed down
23 by my grandmother. It's about her father, my
24 great grandfather. My mother was his oldest

25 grandchild, and she adored him. And he -- she

1 was 11 when he died, so she knew him well. And,
2 of course, my grandmother did. Well, he died 17
3 years before I was born; I never met him.

4 But in the 1930s -- this is my
5 grandmother's father -- Newton Porter, he was a
6 trial judge in Essex County in Court of Common
7 Pleas. And as he told the story, he got a phone
8 call one day from Frank Hague. And, again, just
9 for the record, Hague was the Mayor of Jersey
10 City and widely acknowledged the political boss
11 of the entire State in the 1930s.

12 Porter said, "Hague?"

13 "Yes. How would you like to sit
14 on the ENN?"

15 And that's the Court of Errors &
16 Appeals, which was effectively New Jersey's
17 highest court in those pre-1940s days.

18 "Well, that would be nice."

19 Judge Porter always said he replied, "But can I
20 ask why me?"

21 "I hear you're honest," said
22 Hague. "And I want it said that Frank Hague can
23 put an honest judge on the high court when he
24 feels like it."

"Oh. And what does the Governor

1 think? Oh, nothing so far," said Hague. "I
2 haven't told him yet. I wanted to make sure you
3 were interested first and that it was okay with
4 you before I told the Governor that he is going
5 to appoint you."

6 And from everything I know, my
7 great grandfather was a wonderful judge and
8 wonderful person. We have heard a lot about
9 judges as people today. I didn't know this, but
10 he was the President of the Statewide New Jersey
11 Chamber of Commerce. When he was 11, his father
12 died. Had gone to work as an officer in the
13 IRS. Didn't have formal schooling. But he went
14 to law school as a young man. Went back to be
15 an IRS lawyer, then represented brewers. The
16 beer industry was very important in Northern New
17 Jersey, particularly in Newark. He was -- his
18 father had been an alcoholic, which caused his
19 father's death.

20 But he had friends all over New
21 Jersey, and he said the greatest loss to him
22 from joining the trial bench was that he no
23 longer could break bread with his friends in the
24 bar, that it really cut him off for many, many

25 of his friends because they were lawyers and,

1 even more so, especially more so when he went on
2 the high court. That was a real personal
3 consideration for him.

4 But he did not have what we've
5 already heard. And what I think the man on the
6 street doesn't understand, that if you take a
7 job as a judge, it makes it very hard to rebuild
8 your private practice. We have a tradition of
9 retired judges becoming mediators in law firms.
10 But if you're a young judge and only on for
11 seven years and you get booted in your 50s, that
12 may be a very, very difficult thing financially.

13 My great grandfather was a
14 Republican, so part of Hague's motivation may
15 have also to be seen as bipartisan, at least in
16 that appointment at that time.

17 Porter had a long career on the
18 trial bench, and he served for nine years on the
19 Errors & Appeals. Had a stroke during the court
20 spring 1945 sessions. That's how long ago this
21 was.

22 But in enacting our State
23 Constitution, its framers thought they were
24 moving away from bossism, toward what Justice

25 Vanderbilt called a more economically and

1 politically independent judiciary. When one man
2 feels free to raise up or to pose judges in
3 order to burnish his own reputation, that is, in
4 fact, what people say of him. I want to -- and
5 with the caliber of the appointee only a
6 secondary consideration. This isn't about bad
7 judges or good judges.

8 JUDGE WEFING: Are there any other
9 recommendations?

10 MS. STUDHOLME: Yes. My only
11 personal recommendation, I think the
12 interpretation of our Constitution that permits
13 this is incorrect. That is very rude deciding
14 that particular thing, and I can see why that
15 didn't happen. But I think if our Constitution
16 is permitted -- I think we have returned to
17 bossism, and I think it may take constitutional
18 amendment. If no one wants to challenge that
19 interpretation directly in court, we may be into
20 amending process. And that's going to be
21 difficult to achieve without the public really
22 having a feel for why it matters. Thank you.

23 JUDGE WEFING: Thank you.

24 JUDGE GALLIPOLI: Mr. Mergner.

25

MR. MERGNER: Good afternoon.

1 Last time I spoke in public I got a text message
2 from Mr. Lamparello telling me my time is up.
3 So I put my phone over there, so this doesn't
4 take longer than it should.

5 JUDGE GALLIPOLI: We'll let you
6 know how long it takes.

7 MR. MERGNER: Okay. I am sitting
8 trustee for the Bar Association and current
9 chair of the Civil Trial Bar Association. But I
10 don't come here to speak on behalf of the Bar
11 Association. President Lamparello has already
12 done that eloquently.

13 And I want to speak to my
14 interaction, my practical experience with couple
15 suggestions as a attorney who's been trying
16 cases on a daily basis in the State for the past
17 30 years. There has been a lot of discussion
18 about the educational component of this.

19 When my kids were going through
20 school and they had the same civics lessons
21 brought to them in elementary school, middle
22 school and high school, they would come to me by
23 the time they were in high school and say, "How
24 many times do we have to learn this?" And

25 according to 83 percent of those surveyed, would

1 have been -- one more time would have been good.

2 In almost every high school there

3 is either a mock trial or moot court room.

4 There are judges and lawyers in the high schools

5 of our State. These are students who are going

6 to be predominantly seniors, within one year of

7 being voters and plenty of time when they're

8 intellectually developed enough in order to

9 understand the subject that we're talking about.

10 Those judges and lawyers that are

11 participating in those programs should be

12 working with those schools as a condition of

13 doing that, serving as a moderator or a judge,

14 to have a program that is required to be

15 attended by the students in that school where

16 they discuss judicial independence from the

17 perspectives we're hearing about now.

18 A lot of what I have heard today

19 is people's experience with the system and

20 historic importance of the independence of the

21 State judiciary. What I believe is true is that

22 in our schools and our State much of what's

23 learned is about Federal system, not about the

24 State system and about the crisis that we're

25 facing.

1 I have a number of friends and
2 colleagues that I went to law school with. I
3 didn't go to law school in the State of New
4 Jersey. And many of them are judges in states
5 where they have to run for office on a regular
6 basis. And before this even arose I can't tell
7 you how many times I would speak with them when
8 we'd gather at some event and they would say how
9 jealous they were of judges in New Jersey, that
10 they had the ability to sit on a court and make
11 decisions without having to have at least in the
12 back of their mind, if not the front of their
13 mind, the impact of the decisions on their
14 judicial career.

15 That is a subject that can be
16 discussed in the schools so that kids that are
17 in those years where they're leading up to when
18 they're going to vote and learn that.

19 And I want to make another
20 observation. I think an opportunity was lost
21 already by us in terms of this; but let's try to
22 correct it, so it doesn't happen again. I read
23 in the Law Journal couple weeks ago about an
24 attorney who insulted and called into question

25 the character of a judge and that judge's

1 credentials in connection with a deposition.

2 And that lawyer's currently
3 serving a lengthy suspension as a result of
4 those remarks. Those remarks were made in a
5 room that involved no more than three people.
6 And violations that were found, RPC's included
7 3.2(a), failing to treat with courtesy and
8 consideration all persons involved in legal
9 process; 8.2(a), making a statement the lawyer
10 knows to be false or with reckless disregard as
11 to its truth or falsity concerning the
12 qualifications of a judge; 8.4(d), engaging in
13 conduct prejudicial to the administration of
14 justice.

15 You do not forfeit your
16 obligations to abide by the oath that we all
17 took as attorneys when you put your hand on the
18 Bible and take an oath for public office. And
19 shame on us, as lawyers, that we did not take to
20 task our Governor under the circumstances that
21 Judge Feinberg found herself. A judge -- and I
22 have never met her personally, but a judge that
23 had a long and distinguished public service.
24 It's one thing to criticize the opinion of the

25 court. I can say that every judge that's

1 sitting on this panel I have tried cases or
2 argued in front of occasionally lost and left
3 with some feelings of bitterness as to what
4 might have been. But I knew better and had
5 enough respect for the office than to make the
6 kind of comments that were made by our Chief
7 Executive Officer. And --

8 JUDGE GALLIPOLI: That's water
9 under the bridge.

10 MR. MERGNER: It's water under the
11 bridge. But the theme you've heard here is it's
12 happened once. Why won't it happen again?

13 JUDGE GALLIPOLI: But if it does
14 happen again, then presumably the Bar
15 Association or some interested lawyer can file
16 an ethics complaint.

17 MR. MERGNER: And what I'm.

18 JUDGE GALLIPOLI: That's not
19 what -- that's not our task.

20 MR. MERGNER: I don't disagree
21 with you. And I respect -- but what I'm
22 suggesting is that the ethics rules or the way
23 that the Ethics Committee set up reforms, so
24 that when that kind of statement gets made, that

25 it does occur, why is it that it didn't occur?

1 It didn't occur because people were afraid of
2 the consequences of it. And people were looking
3 at it, saying, Lawyers are easy target. The
4 Governor opportunity -- who cares if we're in
5 this to fight for something as important as
6 this? Why should we be afraid to take something
7 like that on? If that's part of the problem,
8 part of the solution is to put in place in the
9 existing ethics system a mandatory way, when
10 comments are made like that by public officials
11 regarding sitting judges that violate the ethics
12 provisions, that they are taken to task for it.
13 And hopefully that has some impact on it.

14 I will mention one other thing
15 quickly. And it's something that should concern
16 the committee. And I'll -- it's two things that
17 I now get asked regularly by clients. And many
18 of them mention having seen those articles in
19 The Star Ledger, so I can't emphasize enough the
20 damage that it's done.

21 Most of the public does not have
22 a day-to-day exposure to our judicial system,
23 but they're all exposed to the media. And so
24 now I have clients regularly bringing that up

25 and ask whether or not they can count on judges

1 to be fair and what a disgrace that is that that
2 question even has to be asked.

3 And I will tell you what I have
4 had happen at least twice within the past six
5 months. I have pending cases where I have
6 motions that have consequences where one of the
7 attorneys who's involved, the implications of
8 the motion are sitting elected officials on city
9 level. And I have substantial institutional
10 clients that have now researched those judges
11 and asked whether or not we should ask for those
12 motions to be moved to other judges or town.
13 That can't happen. And I'm telling you as a
14 sitting trial lawyer it's happening to me and
15 it's happening to colleagues of mine.

16 I want to just leave you with
17 that, at least my anecdotal experiences to the
18 importance of the mission and -- and the
19 necessity of the public feeling as though
20 restored confidence that we can have an
21 independent judiciary.

22 I thank you, the committee, for
23 their time, especially given the lateness of the
24 hour.

1 MR. MERGNER: And good luck.

2 JUDGE GALLIPOLI: I think we have
3 heard from all of the speakers who wanted to
4 speak.

5 Have we missed anyone at all?

6 I thank everyone who is still
7 here for your participation. Thank you very
8 much.

9 And for the court reporter, thank
10 you.

11 (Whereupon, the witness is
12 excused.)

13 (Whereupon, the proceeding is
14 concluded at 7:25 p.m.)

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1 C E R T I F I C A T E

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3 I, TRACEY R. SZCZUBELEK, a Certified Court
4 Reporter and Notary Public of the State of New
5 Jersey, do hereby certify that the foregoing is
6 a true and accurate transcript of the
7 stenographic notes as taken by and before me, on
8 the date and place hereinbefore set forth.

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