

NEW JERSEY STATE BAR ASSOCIATION

IN THE MATTER OF: *

TASK FORCE ON JUDICIAL * TRANSCRIPT

INDEPENDENCE HEARING * OF

X-----X PROCEEDINGS

BORGATA HOTEL & CASINO

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3 TASK FORCE ON JUDICIAL INDEPENDENCE

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1 (The start time is approximately 1:00
2 p.m.)

3 JUDGE WEFING: Ladies and gentlemen,
4 thank you very much for coming today and showing
5 your interest in a topic which is vitally important
6 to the citizens of New Jersey, not just those
7 involved in the legal system.

8 The members of the Task Force have
9 been asked to study the question of what can be done
10 to improve our current system in New Jersey with
11 respect to the nomination, confirmation and
12 appointment of members of the judiciary.

13 Our purpose is not to ascribe fault,
14 it is not to ascribe blame and we are really not
15 interested and won't permit people to come up here
16 and give diatribes on one side or another. What we
17 are interested in hearing are suggestions of how our
18 system can be improved to the extent that that's
19 possible.

20 This is a subject which is vitally
21 important to all citizens of this state and we've
22 received a number of requests from individuals to
23 testify and we have also received requests for the
24 order in which people will testify. To the extent
25 that we can do that, we will certainly accommodate.

1 Not all members of the Task Force
2 could be here today because of their own particular
3 busy schedules. Some are participating in other
4 panels and will be joining us later during the
5 proceedings. But our proceedings are being
6 transcribed and all those who are not here will read
7 the transcript and be fully aware of all the
8 testimony to help us as we come to conclusions on
9 this subject. So with that, I will start.

10 We received a request from Mr. Uliano
11 to testify early. Mr. Uliano, if you can come
12 forward. The witnesses will sit in that chair.
13 There is a microphone there. The microphone will
14 amplify and I'd ask that you speak forward and use
15 it so that the people who are sitting behind you can
16 hear.

17 MR. ULIANO: Yes, Judge, good
18 afternoon, Judge Wefing and Judge Gallipoli, members
19 of the committee. I was invited to testify as a
20 former chair of JPAC committee where we had the
21 honor and privilege of reviewing prospective
22 judicial nominees and I would submit that in these
23 critical times, it is essential that we get the best
24 people possible to become judges.

25 I believe that something that can, in

1 fact, be helpful is to redefine certain aspects of
2 judicial compensation. So I would like to present a
3 position for the purpose of the repeal of N.J.S.A.
4 43:6A-13A. N.J.S.A. 43:6A-13A as it pertains to the
5 members of the judicial retirement system reads as
6 follows.

7 No member of the retirement system
8 shall, while receiving a pension or retirement
9 allowance pursuant to this Act, engage in the
10 practice of law before any of the courts of this
11 state. Despite the language in the New Jersey
12 constitution, Article VI, Section 2, Paragraph 3
13 that the Supreme Court shall make rules governing
14 the administration of the courts of this state is
15 the legislature that has the authority to enact
16 statutes that may impinge upon the courts
17 constitutional concerns in judicial area. This is
18 cited from Schwartz, versus, Judicial Retirement
19 System, a Federal District Court case.

20 N.J.S.A. 43:6A-13A went into effect in
21 1973 at the same time the legislature enacted --
22 this is the key -- the noncontributory judicial
23 retirement system. It was in effect a trade off
24 concession that in return for a noncontributory
25 pension upon retirement and receiving of same, the

1 retired judge or justice would be bound by
2 prohibition against appearing in any state court.

3 On July 1st, 2011 legislation was
4 passed increasing pension contributions for all
5 state employees. A significant part of this
6 legislation was the increase in pension contribution
7 upon the judiciary. Under said legislation, a
8 judge's pension contribution would gradually
9 increase over a seven year period from three percent
10 to twelve percent making the judiciary's
11 contribution the highest of any state employee.

12 When this legislation was first being
13 considered as A37:96 which was introduced in
14 February of 2011, it referenced the judicial
15 retirement system bill and acknowledged the history
16 of the JRS by specifying that higher contribution
17 rates would only apply to new members of the JRS and
18 to future salary increases of current members of the
19 retirement system. The statement accompanying the
20 bill provided further explanation for that approach.
21 The increase in the contribution rate for members of
22 the JRS shall be implemented in a manner that
23 conforms to a prohibition in the state constitution
24 against the reduction in the compensation of a judge
25 during the judge's term of appointment.

1 Shortly after the Supreme Court ruled
2 in favor of the judiciary in a suit intended to
3 prohibit this legislation's application to the
4 judiciary, the public passed a constitutional
5 amendment which in effect negated the Supreme
6 Court's decision.

7 Prior to the passage of the recent
8 constitutional amendment dealing with judicial
9 salaries, the only time the noncontributory aspect
10 of the JRS was altered occurred during Chief Justice
11 Robert Wilentz's tenure. At that time in
12 conjunction with the judicial pay raise, the Chief
13 Justice agreed that the institution and application
14 of a three percent pension contribution for all new
15 judges and to any increase in income over sixty
16 thousand dollars for then sitting judges.

17 As originally intended, Article VI,
18 Section 6, Paragraph 6 would appear to exhibit a
19 trade off or balancing a prohibition against
20 diminishing a judge's salary during their term with
21 a further prohibition in the next sentence
22 acknowledging that in return for this provision, a
23 sitting judge shall not during their term of
24 service, quote, engage in the practice of law of
25 other gainful pursuit. Interestingly, this

1 prohibition about outside employment does not apply
2 to Federal judges. Thus, accepting the legislation
3 in the public's authority to act to amend Article
4 VI, Section 6, Paragraph 6 in the New Jersey
5 Constitution, fundamental fairness should dictate
6 that if a judge's salary and compensation packages
7 can be tampered with, judges should then be allowed
8 to compensate themselves for the loss by pursuing
9 outside income as any other state employee could.
10 In the form of stipends for teaching, writing,
11 speaking as permitted in the case of Federal judges.

12 In New Jersey's pension compensation
13 system, judges are the only state or county worker
14 who cannot hold outside employment. Many state and
15 county employees including legislatures hold one or
16 two additional jobs. Many of these same public
17 workers can earn compensatory and overtime. Law
18 enforcement personnel, most notably, correction
19 officers routinely earn up to double their salary in
20 overtime.

21 Equally unfair is N.J.S.A. 43:6A-13A
22 is a prohibition prohibiting retired judges and
23 justices from engaging in the practice of law before
24 any of the courts of this state while retired and
25 receiving a state pension. No other former state or

1 county employee on the state pension is prohibited
2 from engaging in employment in their chosen field.

3 The Governor of this state, a licensed
4 attorney, does not suffer such a prohibition.

5 Today, several former county prosecutors as well as
6 a former U.S. attorney and deputy Attorney Generals
7 on Federal, state or county pensions are not
8 prohibited from collecting their respective pensions
9 while at the same time being employed by state or
10 county government.

11 In addition, former legislators on
12 state and county pensions are not prohibited from
13 returning to their chosen profession while
14 collecting a government pension. As previously
15 outlined in this position paper in support of the
16 repeal of N.J.S.A. 43:6A-13A, the statutory
17 prohibition against former judges on state pensions
18 practicing law in state courts was a concession put
19 in place for the acknowledgment that judges, unlike
20 other state and county employees, benefited from a
21 noncontributory pension.

22 With this recent amendment to the
23 constitution and the legislation that preceded same,
24 the original purpose behind this concession no
25 longer exists. Thus, in light of these recent

1 changed circumstances never contemplated when
2 N.J.S.A. 43:6A-13A was enacted, no rational argument
3 can be made supporting the retention of the
4 prohibition reflected in this statute.

5 Further, any argument against the
6 repeal of this statute premised on the idea that a
7 retired judge on a state pension appearing in a
8 state court would present some type of conflict of
9 interest to provide an appearance of some
10 impropriety is spicious at best. A sitting judge
11 upon leaving his or her appointment may appear in
12 any court of the State of New Jersey the day after
13 he or she removes his or her robes without any
14 perceived conflict as long as they are not
15 collecting a pension from the state. At this time,
16 there are at least four former Supreme Court
17 Justices who left their positions after seven years
18 on that court who may actively practice law in the
19 state under no such prohibition. Yet, no conflict
20 of interest exists against any of them appearing in
21 state courts.

22 What is it about collecting a pension
23 that creates a conflict for a retired judges, but
24 not for any other member of the state or county
25 government. Now, the judges do not enjoy a

1 noncontributory pension. The rationale for the
2 inclusion of this prohibition at N.J.S.A. 43:6A-13A
3 no longer exists.

4 I would submit fundamental fairness
5 dictates that in light of recent events this
6 legislation should now be repealed and the
7 prohibition contained in it abolished. Judges
8 should not be treated differently from any other
9 state or county employees. This equal treatment for
10 public employees was the very argument made recently
11 by the Governor in the legislature when they moved
12 to have Article IV of the constitution amended.

13 In light of the fact that the
14 legislature did not deem it appropriate to further
15 amend the constitution to allow for sitting judges
16 to be able to supplement their judicial salaries, to
17 compensate them for the approximate eighteen
18 thousand dollars loss of the disposable income is
19 imperative that retired judges at least be able to
20 make up for the years of lost income in their
21 retirement. This is not the equal footing with
22 other state workers collecting a state pension who
23 work in a private sector after retirement.

24 Finally, it is important to note the
25 public will not be harmed by this action. No added

1 cost to the public will be borne by any of these
2 proposed changes. I submitted that N.J.S.A.
3 43:6A-13A is antiquated and should be abolished.
4 It's that simple.

5 I would submit to you that this is
6 something that is important issue regarding quality
7 people going on the bench. What's happened here
8 regarding judicial independence is we have to let
9 the people who are becoming judges know what they
10 are going to be able to do, the sacrifices that they
11 are making to become a judge and do public service.
12 There should be some benefit and I would submit to
13 you that this proposal, its time has come.

14 JUDGE WEFING: As I understand it, you
15 have two prongs to your proposal. One relates to
16 the pension issue and you are also urging that
17 sitting judges should be allowed to supplement their
18 income.

19 MR. ULIANO: Absolutely, Federal
20 judges can do it and there is no reason why a
21 sitting judge right now -- we have to be practical
22 here. The sitting judges now when the changes in
23 the pension laws are finally implemented are going
24 to be paying the highest rate of any employee in the
25 state with reference to their pensions.

1 Now, let's look at the bottom line and
2 be practical here. You have to look at the net and
3 the net for a sitting judge is going to be down at
4 least eighteen thousand, maybe more with the
5 additional payments they have to make for medical.
6 Now, when the noncontributory aspects went in in
7 1973, that was the trade off. Say, well, they are
8 not contributing to their pension so maybe they
9 should not be going to court after they retire, but
10 as I submit to you, that's all changed now.

11 JUDGE WEFING: Okay.

12 MR. ULIANO: Thank you for your time
13 and attention.

14 MR. HARTNETT: Do you agree that with
15 regard to sitting judges that would require a
16 constitutional amendment?

17 MR. ULIANO: Yes, I would submit to
18 you that sitting judges should be able to -- should
19 be able to supplement their income. I see
20 Mr. Poplar there and I know he is aware like I am of
21 some Federal judges have had extensive seminars all
22 over the country where they were sitting adding
23 income if we recall.

24 JUDGE WEFING: Thank you.

25 Our next speaker who requested to

1 speak early is Deanne Wilson, Judge Wilson.

2 MS. WILSON: I didn't request to speak
3 early, if there is somebody else.

4 JUDGE WEFING: That's fine.

5 MS. WILSON: Thank you, judges and
6 counsel for the opportunity to address you. I
7 submitted a writing to you last week which I'm sure
8 that you have all read. I just wanted to make a
9 correction. Underneath the quote from Judge Bear's
10 book is the next two paragraphs.

11 JUDGE WEFING: Can I ask you to be
12 closer to the microphone.

13 MS. WILSON: That is the first time
14 anyone had said they can't hear me.

15 The two paragraphs following the cite
16 to Judge Bear's book are actually his writings and
17 in the e-mail transmission I got a copy of what you
18 have. It looks like they are mine, but they are
19 indeed his.

20 I know you have all read this so I am
21 not going to repeat the statement. I am just going
22 to re-read for the benefit of the audience so they
23 will know what I am talking about just two brief
24 paragraphs and the first is there is good wisdom
25 behind the American maxim that courts cannot be made

1 a tool of the executive power. There is not a
2 nation in the world that has achieved any degree of
3 peace or prosperity without an independent
4 judiciary. Citizens must feel and experience that
5 there is a place where they can proceed to right
6 wrongs and redress grievances. If no such place
7 exists, citizens will take to the streets to right
8 their wrongs and redress their grievances, most of
9 the time in a riotous manner. One need only turn on
10 CNN any evening of the week to test this
11 proposition.

12 In an effort to avoid e-mail and the
13 Internet, I planned my vacations with my husband to
14 very remote places of the world. I've been largely
15 successful in avoiding e-mails, but the result was
16 that we traveled to places like Laos, Cambodia,
17 Siberia, eight weeks in China and as we visited
18 those places, I read about the culture and history
19 and one theme kept repeating itself. No independent
20 judiciary and when we visited the countries, I would
21 talk to the guides and the professors that we
22 visited with and they confirm that the judiciary is
23 nothing more than a tool of the executive. This is
24 not the way our country was founded. We have a
25 unique form of government. I happen to believe as

1 Judge Baer did, and way before him Justice Douglas,
2 that the judiciary is the cornerstone of that unique
3 form of government.

4 I believe further that the citizenry
5 does not really understand that and the recent
6 referendum on judicial salary and benefits that was
7 alluded to with the speaker just before me,
8 Mr. Uliano, I think would confirm that.

9 So the question is, if you agree with
10 my basic proposition, that it is not just an issue
11 of comfort of judges, but the risk that we put to
12 our form of government. Then the question is what
13 do we do about it. I think that the Bar Association
14 has started down that road. I think they started
15 down that road with benchmarks which had really a
16 limited -- you all know what I am talking about I'm
17 sure -- benchmarks, the program.

18 JUDGE WEFING: Perhaps you can explain
19 it for members of the audience.

20 MS. WILSON: It's a program whereby
21 attorneys and judges address civic groups and they
22 play a game essentially of how many people do you
23 think are in Congress. How many of them are
24 senators. They talk about voting and it is like a
25 bingo game or you can do a variation of that. You

1 can have a group discussion. There are various
2 patterns where counsel and judges go out into the
3 community.

4 After I retired, I became involved in
5 benchmarks and I found that the public was really
6 not very receptive to this kind of a presentation.
7 Kate Coscarelli and I tried to get a seminar going
8 with a certain group and nobody would sign up.
9 Publicized in the newspapers, nobody would sign up.
10 The local woman who was the coordinator said she
11 just didn't think that people were interested in
12 learning about their government. Well, I think that
13 that may be true with regard to adults, but I think
14 that part of this answer is starting young and the
15 administrative office of the courts has essentially
16 taken benchmarks and turned it into what they call
17 One Judge, One School and Atlantic Cape May County
18 is doing this. Judge Grant was kind enough to send
19 me a couple of weeks ago the materials that were
20 sent out by Atlantic Cape May and the judges in that
21 vicinage go out to the schools, middle school, high
22 school. One of them I think went out even younger
23 than that and talked to them about their government,
24 their judiciary, why it is important for them to be
25 involved. They see a real judge which most people

1 are born, live and die without having seen a real
2 judge and while the results of One Judge, One School
3 maybe slow to be realized because it is going to be
4 a while before these people can vote, at least we
5 are starting with a fertile ground and perhaps those
6 students will go home to their parents and tell them
7 what they've learned.

8 I say in my writing to you, the answer
9 I believe is the education of the public as to the
10 value to them of an independent judiciary. This
11 process will be tedious and exhausting and probably
12 with scant immediately perceptible success, but it
13 must be commenced and if we are not the ones to
14 commence it, who will.

15 I'm open to any questions that you
16 might have.

17 JUDGE WEFING: Thank you very much.

18 MS. WILSON: Thank you.

19 JUDGE WEFING: From the New Jersey
20 Education Association, is Mr. Hadley here?

21 MR. HADLEY: Yes, I have ten copies of
22 my testimony. Do you want them now or afterwards?

23 JUDGE WEFING: Afterwards.

24 MR. HADLEY: Good afternoon
25 distinguished members of the committee. My name is

1 Sean Hadley and I am the associate director of
2 government relations at the New Jersey Education
3 Association.

4 Allow me to thank you for the
5 opportunity to share some of our organization's
6 perspectives on this critically important issue with
7 you this afternoon. I am here today representing
8 the one hundred and ninety-six thousand members of
9 the New Jersey Education Association. Our
10 organization's members are teachers, support staff
11 members, professors and other important individuals
12 who strive each and every day to make our public
13 schools the best in the nation and among the very
14 best they are. But it is not just the dedication of
15 our educators that make our public schools a
16 success. Our exceptional schools are possible with
17 the support of an independent, fair-minded judiciary
18 that interprets the state constitution based on law,
19 not politics.

20 Now, most of us in this room are
21 attorneys or other distinguished jurists, leaders of
22 the New Jersey State Bar Association so I don't need
23 to read for you the part of the state constitution
24 that guarantees New Jersey children the right to
25 attend great public schools, but for your reference

1 I have included that in my testimony which you will
2 get afterwards. This clause of course is commonly
3 known as the thorough and efficient education
4 clause. I am sure we are all very familiar with it.

5 Now, over the years a balanced and
6 impartial judiciary has construed this provision not
7 for the judiciary's benefit and certainly not for
8 any political benefit, but only for the benefit of
9 New Jersey's children which is what our constitution
10 demands. It would certainly be an understatement to
11 say that strong reactions on both sides have greeted
12 court decisions on this provision. As someone who
13 is born and raised in New Jersey who went to public
14 high school and public university and public law
15 school in New Jersey and is a New Jersey taxpayer
16 and homeowner, I certainly knew about the Supreme
17 Court decisions long before I had the privilege the
18 representing the New Jersey Education Association.
19 I'm sure that anyone who has lived in New Jersey for
20 any period of time is equally aware of the Robinson,
21 versus, Cahill line of decisions as well as the more
22 recent Abbott, versus, Burke decisions.

23 Now, this awareness has translated
24 into strong views among state officials. We have
25 seen candidates for political office run both for

1 and against these decisions. We have seen many
2 other leaders in the state call for the repeal of
3 these decisions. Now, whatever strong sentiments
4 exist and regardless of whatever charges are lodged
5 against the judiciary, we know that no jurist ever
6 took the interpretation of this provision lightly or
7 failed to consider deliberately the full import of a
8 ruling on the matter.

9 When Justice Handler in Abbott One or
10 Chief Justice Wilentz in Abbott Two considered their
11 decisions, they took great pains to analyze
12 carefully the issues surrounding the controversy
13 based on the facts and the law. I won't repeat
14 their analyses here as they are easily found among
15 the many pages of their opinions.

16 What is revealed, however, is a
17 judiciary that is thoughtful, deliberate and
18 oftentimes reluctant to engage in extraordinary
19 remedies. Indeed, these decisions arose after
20 repeated failures of other branches of government to
21 live up to the constitutional mandate required in
22 the thorough and efficient education clause.

23 Fortunately, having this
24 constitutional guarantee supported by an independent
25 judiciary has led to great accomplishments within

1 New Jersey's public schools. Attached as Exhibit A
2 to my testimony is a comprehensive list of almost
3 forty recent achievements of New Jersey's public
4 schools by various respected national organizations.
5 Now, don't worry, I am not going to list every
6 single one of them for you here today, I know we
7 don't want to take up that much time, but I do think
8 they are all equally important. However, I would
9 like to share with you just five of them for right
10 now. So let me give you one example.

11 Achievement scores and growth are
12 among the nations best. So if we look at all grades
13 and across all subject areas for all students, New
14 Jersey's track record is second in the nation in
15 performance and improvement on the national
16 assessment for education progress which is in
17 edu-speak, as we like to call it, the NAEP and that
18 is a very valid reliable indicator used among the
19 states to compare the differences in how students
20 performed.

21 Also, we also hear a lot about science
22 these days. In New Jersey, science scores are among
23 the world's best, not just the nation's best, the
24 world's best. In a recent study by the National
25 Center for Education Statistics, New Jersey's eighth

1 grade NAEP science scores were only worse than three
2 other Asian countries in the entire world. So only
3 students in three Asian countries scored better for
4 New Jersey's science scores for eighth grade NAEP.

5 Furthermore, New Jersey leads the
6 nation in student achievement and growth among
7 low-income students. Again, looking at all grades
8 and across all subject areas, New Jersey's track
9 record is second in the nation in low-income student
10 performance and growth and performance on the NAEP.
11 This is from the Education Trust.

12 Couple more quick examples. Now
13 low-income students are scoring high enough to earn
14 college credit on AP exams for New Jersey's
15 low-income public high school students scoring three
16 or higher which is very important on the AP exams.
17 This has more than tripled since 2003.

18 Finally, very important issue
19 especially in regards to many of the decisions that
20 have been made by the Supreme Court. New Jersey is
21 one of two top states in the nation in the
22 percentage of three and four year olds who are
23 enrolled in preschool. A very significant
24 accomplishment. We should be proud of our great
25 achievements in New Jersey's public schools, but I

1 think about these achievements and I kind of shutter
2 at the thought of what would the results have been
3 if the judiciary had to think of other
4 considerations when making these decisions.

5 For example, what about simple
6 political considerations or job security. Would the
7 results have been any different. Would I be able to
8 read to you a litany of successes in New Jersey
9 public schools especially among our low-income
10 children. As we know, this issue does go beyond a
11 single case or a single clause in the constitution
12 or the actions of one jurist.

13 As educators, NJEA members teach our
14 students to be good citizens. We teach them that
15 American is a Democracy. That New Jersey is one of
16 its founding states and that we must be vigilant to
17 ensure that principles of fairness, justice and
18 liberty are upheld for all branches of government
19 including the judicial system. This is what
20 Democracy means and an impartial court is a
21 foundation of this system.

22 New Jersey has a long history of
23 balanced, deliberate and fair judicial process.
24 Let's ensure that our work today will continue this
25 tradition into tomorrow. Thank you for this

1 opportunity to share my testimony with you.

2 JUDGE WEFING: A question, Mr. Hadley.
3 We have heard in prior sessions as we heard today
4 individuals saying that they think one of the steps
5 that has to be taken is improving the education that
6 is given to children in terms of the structure of
7 our government and so on. Are you in a position to
8 talk to us at all about that?

9 MR. HADLEY: About school improvement
10 in general?

11 JUDGE WEFING: The thrust that there
12 should be curriculum revision, that is one of the
13 items that this group should be looking at. Are you
14 in a position to address that issue at all?

15 MR. HADLEY: We can certainly talk
16 generally about some of the things that are going on
17 right now, for example, in the State Department of
18 Education is rolling out for the first time this
19 year what they are calling the PARCC Assessments and
20 that is based on the core curriculum content
21 standards. New Jersey is one of many states, I
22 believe it is about forty, forty-one states across
23 the nation that are struggling and that is to put it
24 mildly with changing the teaching plans and kind of
25 combining them with this new core curriculum content

1 standard. So our organization's position is that we
2 supported the common core. We are a little weary
3 about its implementation at the moment. We are
4 facing technology issues, for example, I will just
5 give you a quick example and if this is off-track,
6 feel free to interrupt me of course, but one of the
7 issues we are having in our schools is that
8 everything now is moving to electronic testing. A
9 lot of schools made significant technology
10 investments over the last few years. One school,
11 for example, invested in all these new Chrome books
12 which are very nice pieces of equipment, work very
13 efficiently, they are very cheap, but when the state
14 rolled out the PARCC assessments, they were not
15 meshing with the Chrome book so all of a sudden all
16 these investments in technology, you know how
17 technology is, if it is a year old, it is obsolete.
18 That was suddenly unable to work with this new
19 system and we are facing these issues where we
20 essentially need IT professionals, many of them in
21 classrooms as they are taking these standardized
22 tests because there are issues with the exams
23 freezing, students losing their work. A lot of
24 these technology challenges are very large and they
25 do require a significant investment unfortunately

1 for that to happen.

2 So we certainly support the direction,
3 but we are very concerned about the implementation
4 of a lot of these factors at the moment, but again,
5 in New Jersey we think that we usually serve as the
6 model for a lot of states in how our achievement is
7 made, especially in our low-income districts. So as
8 an organization, we are happy to work with you and
9 the rest of the distinguished members of the Task
10 Force should you want to engage in more discussions
11 about education reform. We'd be happy to do so.

12 JUDGE GALLIPOLI: I guess the question
13 I am going to try to hook onto what Judge Wefing
14 just asked. Going back, you know, when at least
15 when I went to school a long time ago, they had
16 courses in government or civics, whatever you want
17 to call it, where generally you got to learn --
18 didn't have to be from a computer, but maybe from a
19 teacher or a book -- how the Federal Government was
20 established, the three branches of government. Same
21 thing with regard to state government.

22 The question really is with regard to
23 the core curriculum and any changes to it. Are you
24 in a position on behalf of the organization you
25 represent to basically say yay or nay to a change in

1 the core curriculum which basically would have the
2 same purpose as this starting young that Judge
3 Wilson talked about of getting the citizenry to
4 basically understand what the government is all
5 about. My position is, I dare say I could go out
6 into the casino floor right now and pick ten people
7 and ask them if you want how many senators are in
8 the U.S. senate and I'd get any number to maybe ten
9 to a thousand. If I ask them what the three
10 branches of government are in the State of New
11 Jersey, I bet you I wouldn't get two people who can
12 give me the right answer. So it is an educational
13 problem whether we start young or we start old.
14 Presumably starting young is best, but it takes a
15 longer time to see the benefit. Is your
16 organization in tune with that kind of thing? Have
17 I articulated this?

18 MR. HADLEY: Yes, I understand your
19 concern because many of our civics teachers, history
20 teachers, et cetera and it is kind of a -- depending
21 on what age group you are teaching the terms are a
22 little different. We hear this a lot because one of
23 the complaints is that we become very test heavy in
24 the United States. This is not just in New Jersey
25 trend, this is a national trend and the unfortunate

1 result is that if it's not tested, the resources
2 tend not to follow. This is an issue with art
3 teachers, for example, and to some extent in civics
4 we are finding that unless you are requiring this as
5 a test, that the resources tend not to flow towards
6 that particular subject area and we have many of our
7 educators who complain about that, but on the other
8 hand it brings up this problem that you mentioned.
9 Is it just rote memorization that we want our
10 students to learn or do we want them to learn how to
11 critically think, how to analyze the immense amount
12 of information that our young people are going to be
13 bombarded with in the future from every facet of
14 life. These are questions that come up all the time
15 and there are only limited resources to address
16 these problems, but I think that concern that you
17 raise is one our organization would be happy to work
18 with you on and consider the details of a proposal.
19 I am not in a position to say yes or no, but I'm in
20 a position to say that our organization is happy to
21 work with this distinguished body to come up with
22 something that we all agree would improve the
23 citizenship of our young people.

24 JUDGE GALLIPOLI: That may not be what
25 the political aspect of government wants is an

1 educated electorate, but certainly you need an
2 educated electorate I think you would agree to
3 basically protect what we call independent judiciary
4 and I am not so convinced that just rote
5 memorization isn't a good thing. Sometimes you have
6 to remember by rote and then basically delve into
7 the substance of it.

8 MR. HADLEY: Absolutely.

9 MR. EVENCHICK: Just a quick question
10 somewhat of a follow up. Is your organization or
11 you personally, do you have a suggestion for how to
12 connect, if you will, the importance of judicial
13 independence with the importance of civics and
14 education that you've been speaking about, to put it
15 differently, I have the impression sometimes that
16 the citizenry at large, not the folks in this room
17 or in this building today attending the State Bar
18 convention, have very little awareness of the
19 importance of judicial independence and one of my
20 questions is how do we address that issue if you
21 agree with what I said.

22 MR. HADLEY: Absolutely, it is a great
23 question. I think that as a follow up, what our
24 organization would be willing to do is to have an
25 additional conversation on how we would address

1 that, whether this is a core curriculum content
2 requirement. Quite frankly, I would need to see
3 what the core curriculum content standards currently
4 addresses it and if that is not being emphasized
5 enough in some form or another. The core curriculum
6 content standards of very extensive and detailed.

7 The question that always comes up is
8 just because it is a standard, do the results always
9 match what we want the standards to be and getting
10 to that point might require a bit more of a focus
11 that perhaps isn't occurring right now and we are
12 kind of in this transitional phase where it is hard
13 to say it is working or not working because we are
14 just rolling out the new standards this year.

15 Usually, in education you need two
16 years to see how standards are working because the
17 first year is the baseline year to see where the
18 students are under the new standards and the second
19 year is to see if there is growth and that they have
20 actually absorbed the standards. Most educators
21 right now think that the standards for this year are
22 just -- it is going to be hard to rely on the
23 results from this year because of all the other
24 problems I mentioned earlier, but I'd be happy to
25 share with the committee and follow up with what's

1 currently in the core curriculum content standards
2 and let's have a discussion about whether or not
3 this body thinks it is sufficient. I can certainly
4 follow up with you with that information.

5 JUDGE WEFING: I think that will be
6 helpful.

7 MR. HADLEY: Absolutely. I will make
8 a note of it here and I have your e-mail so I will
9 be able to be in touch with you with this
10 information very quickly.

11 JUDGE WEFING: Thank you very much.

12 JUDGE GALLIPOLI: If you would just
13 leave your statement.

14 MR. BROWN: I think this is actually
15 pretty important. I sense that there is a consensus
16 among the community of people who are focused on
17 judicial independence that some kind of engagement
18 with the broad citizenry is important. I was struck
19 by what Judge Wilson said about her travels. My
20 wife and I do a fair amount of human rights works in
21 other countries where there is no judiciary or a
22 significantly corrupted judiciary and the question
23 in terms of engagement is not just a question of
24 what we can learn more about our system. I remember
25 the civics class, Judge, and I am not sure I paid as

1 much attention as I should have at the time, but
2 there is a great interest I think about Pacoima
3 2012, the things that happened, the Nigerian girls.
4 The question is whether it is possible to expand our
5 concepts to look at countries, without being
6 self-righteous, where there is no judicial
7 independence and how it has an impact. Maybe
8 starting with that first step.

9 So as you respond to us, I would be
10 interested in any interest that the association or
11 its members have in questions that go beyond just
12 explaining how our system works, but also
13 recognizing there are other systems that are just as
14 good and some other systems where there is no
15 judicial function at all and those are systems we
16 read about on a daily basis and maybe that is a way
17 to engage people maybe of a variety of ages in
18 really being interested because it is one thing to
19 talk about this being one of the finest systems in
20 the world. It is another to be confronted by
21 regimes where torture is commonplace or regimes
22 where people are regularly beaten in the streets by
23 police and paramilitary forces and say that is the
24 absence of judicial independence. So I know it is a
25 lot of ask of you in what I suspect may be outside

1 your normal scope of responsibility, but if you
2 could also include some response to that question
3 which may be even further outside the current core
4 curriculum, but which -- except for maybe Holocaust
5 victims -- where there might be some creative
6 engagement at that level to go back to the core
7 question which is what do we do to get people
8 engaged. It my not just be what we have here.

9 MR. HADLEY: Fortunately, with access
10 to a hundred an ninety-six thousand very smart
11 educators in the state, I am going to be able get
12 the answer to your question. What I am reading this
13 is we really want to look at some kind of
14 comparative standard or comparative requirement
15 looking at other systems across the world.

16 MR. BROWN: That is the way to get
17 around having obviously the need to know how many
18 people there are in the senate. They also need to
19 know what are the policies and also how do we
20 connect to the rest of the world. People all over
21 the world struggle with these same questions to the
22 extent that people care about Darfur for this month,
23 Syria next month or Nigeria the following month, how
24 do those situations relate in terms of what a
25 government looks like and it might be a way of

1 capturing interest of young people and getting them
2 to look at questions so they then turn back and say
3 maybe I should not take for granted what happens in
4 New Jersey. That is just my personal view of it,
5 but I think if we are in this area, we ought to look
6 at it and hopefully engage creatively with those
7 that do this professionally.

8 MR. HADLEY: Absolutely, because it is
9 not an abstract concept when you have current
10 examples of where there is not judicial
11 independence. That is certainly helpful with any
12 education program because we can always speculate
13 and talk about, well, this is what will happen if we
14 don't have it, but it is another thing to have
15 another examples contemporaneously that we can point
16 to. In some of our schools as well, we have
17 students from all over the world in some of our
18 great public high schools and sometimes that helps
19 with providing these examples too.

20 MR. BROWN: I have been finding the
21 last couple years where Egyptian Americans are very
22 interested in judicial independence based on the
23 experience in their home country.

24 MR. HADLEY: Absolutely. Thank you
25 for that comment. I will follow up and get that

1 information as well.

2 JUDGE WEFING: Thank you very much.

3 Mr. Staehle.

4 MR. STAEHLE: Judges Wefing and
5 Gallipoli, Task Force members, thank you for hearing
6 from me today. I am William Staehle. I am a civil
7 trial lawyer in Morristown and very concerned for an
8 independent judiciary. While I do not speak for any
9 group to which I belong or for the company for which
10 I work or anyone other than myself and only I am
11 responsible for my comments, I do hope to persuade
12 you and others to my point of view.

13 In my view, the issue before this Task
14 Force is not whether a judiciary completely
15 independent of pressure, politics and outside
16 influence is essential to our administration of
17 justice, history confirms that is a certainty. The
18 issues for you are what you are going to do to bring
19 attention to the importance of independent justices
20 and judges and just as important to address the
21 assault on their independence.

22 There is much you can do to educate
23 the public about the crisis and, for instance,
24 supporting an amendment to our constitution to
25 ensure that justices and judges will be reappointed

1 so long as they possess the knowledge and decorum to
2 serve could be valuable. Though trying to amend our
3 constitution could also be dangerous.

4 Nevertheless, I request that you
5 consider doing more than that. The judiciary's
6 independence has been diminished and we must do all
7 we can to reassert it. Let me provide a little
8 context if I may although I know all of this is
9 known to you, just a couple of paragraphs.

10 The assault on judicial independence
11 already has produced three catastrophes. First, our
12 chief executive in May 2010 refused to reappoint a
13 well respected justice for the first time since our
14 constitution was adopted in 1947 and quickly thrust
15 our Supreme Court into the middle of a childish tug
16 of war between the senate and themselves. When the
17 organized bar cried foul, we were ignored. Let's
18 not forget that shortly thereafter another
19 thoroughly able justice caught up in the controversy
20 requested not to be reappointed. At last year's
21 annual meeting of the State Bar Association, Justice
22 Albin spoke eloquently and forcefully about judicial
23 independence inspiring the Bar Association to vote
24 last June to create your noble Task Force. Then in
25 August, just two months later, the Governor refused

1 to reappointment a third altogether accomplished and
2 honorable justice and one whom we all believed was a
3 shoe in for reappointment. We should understand
4 that the person who caused those catastrophes is
5 also a lawyer with ethical responsibilities beyond
6 politics. Yet he has undermined the administration
7 of justice, contrary to his obligations as an
8 attorney under our rules of professional conduct --

9 JUDGE WEFING: I said at the outset
10 that we did not want to be attributing blame on the
11 current situation and all of us are acutely aware of
12 the current situation, but I would urge you in your
13 remarks not to focus on the issue of causation or
14 attribute fault. If you have suggestions for us on
15 how to get out, but I think the situation is very
16 delicate and we should not be attributing fault
17 right now.

18 MR. STAEHLE: Well, I heard your
19 opening remarks and, you know, whether you call it
20 attributing fault or simply identifying the scope of
21 what is occurring, which is what I'm really trying
22 to do, I think it is important to bring attention to
23 that. I suppose my overarching concern is that
24 there is a grave urgency to the situation right now.
25 If a fourth justice is chased from the Supreme Court

1 there is going to be --

2 JUDGE WEFING: Mr. Staehle, I think
3 the situation is very delicate right now. I think
4 everybody here is aware of the situation, but I
5 think it would be helpful -- it might be
6 counterproductive to focus on things such as that
7 right now.

8 JUDGE GALLIPOLI: Aside from it being
9 possibly counterproductive with regard to the
10 situation which you allude to which is of somewhat
11 emergent nature going forward, there is nothing that
12 the Task Force can do with regard to that particular
13 situation. So it really serves no purpose to
14 basically go into that now. We are looking for
15 suggestions with regard to going forward. We are
16 not really interested in the historical past.

17 MR. STAEHLE: I understand and I just
18 presented those couple of paragraphs by way of
19 context, but in terms of going forward --

20 JUDGE GALLIPOLI: We have the context
21 anyway.

22 MR. STAEHLE: I finished with the
23 context, Judge Gallipoli, but I am going to respect
24 what Judge Wefing is saying, apparently you don't
25 want to hear what I have to say about how I think

1 you ought to fight back or to recognize that there
2 is an ethical component to this that we have a
3 process for redressing and I think it ought to be
4 redressed.

5 JUDGE GALLIPOLI: If you have
6 suggestions with regard to going forward, no one is
7 suggesting that you shouldn't express those. We are
8 certainly willing to hear those with the
9 understanding that we may cut you off if we think
10 you are going astray, that is all.

11 MR. STAEHLE: I thought I was being
12 cut off.

13 JUDGE GALLIPOLI: You were.

14 JUDGE WEFING: You got the message.

15 JUDGE GALLIPOLI: Call it what it is,
16 you were. You have been before me before, you know
17 how this works.

18 MR. STAEHLE: That's fine.

19 JUDGE WEFING: And me as well.

20 MR. STAEHLE: I have appreciated the
21 independence that you've shown in cutting me off.

22 JUDGE GALLIPOLI: Touché, go ahead.

23 MR. STAEHLE: Let me make it brief
24 then because apparently -- I don't want to scare
25 anyone or cause anyone to go running from this room

1 if I mention names or am too explicit about the
2 action that I believe should be taken to redress an
3 ethical issue beyond the other dimensions to what it
4 is you are doing.

5 JUDGE GALLIPOLI: Go ahead.

6 MR. STAEHLE: I do think that at some
7 point, whether it be now or later, given the damage
8 to the judicial independence that has been done and
9 the potential loss of confidence in a court where
10 justices are replaced for the stated purpose of
11 bringing on to the court like thinking individuals
12 and the consequent potential loss in the confidence
13 of Jersey justice, I really think that an ethics
14 grievance should be initiated at some point.
15 Whether it is too delicate to do so now, that ought
16 to be considered. In fact, I don't think it can be
17 ignored for goodness sake.

18 We do have a rule of professional
19 conduct 8.4D which we adopted from the model rules
20 of professional conduct from the ABA. It is a rule
21 that governs attorney conduct in every state court
22 jurisdiction. It prohibits a lawyer from engaging
23 in conduct that is prejudicial to the administration
24 of justice and from my point of view it is hard to
25 imagine anything more prejudicial to the

1 administration of justice than what I call the
2 assault on judicial independence that we are seeing
3 now. That, by the way, is the same rule under which
4 the Arkansas judiciary disciplined President Clinton
5 and the former President Clinton saw his license
6 suspended for five years and certainly I think if
7 they had the temerity to discipline President
8 Clinton, we certainly have the courage to take
9 appropriate action. So that's the point I want to
10 make. I hadn't heard it made before and probably
11 because it is as you, Judge Wefing, said at the
12 beginning, somehow you deem that to be outside your
13 stated purpose or what you believe to be your
14 purpose and maybe it is too delicate, but I wanted
15 to make that point. I thank you for giving me that
16 opportunity.

17 Did you have questions for me?

18 JUDGE GALLIPOLI: Maybe I don't need
19 to make a statement, but isn't there an ethics rule
20 that basically obligates lawyers to report unethical
21 conduct and if there is such an ethical obligation,
22 it doesn't have to fall to the Task Force even if
23 the Task Force were to assume it was a step it
24 wanted to take. Presumably you if you wanted to or
25 any member of the Bar presumably could file an

1 ethics grievance against the person who you
2 attribute the fault, the ethical falling of the
3 fault to, correct?

4 MR. STAEHLE: Yes.

5 JUDGE GALLIPOLI: So there is no
6 prohibition about anyone doing that if they think
7 that is what they legitimately should be doing. It
8 doesn't have to fall to the Task Force.

9 MR. STAEHLE: I understand that and
10 what I hear you saying is that the Task Force
11 doesn't want any part of that.

12 JUDGE GALLIPOLI: No, you didn't hear
13 that at all. You didn't hear that at all. You
14 misheard if you heard that. Thank you.

15 MR. STAEHLE: Okay, thank you.

16 MR. POPLAR: So the record is clear,
17 Chair People, 8.3 has a conditions order that is the
18 duty to report and I don't think it is a mandatory
19 requirement to file a grievance under 8.3 because
20 the caveats with the limitations so the record is
21 clear.

22 JUDGE WEFING: Thank you for the
23 clarification.

24 JUDGE GALLIPOLI: I didn't say that.

25 MR. POPLAR: I'm sorry, I misspoke.

1 JUDGE WEFING: Barbara Schweiger from
2 the Rutgers Alumni Association.

3 MS. SCHWEIGER: Good afternoon, your
4 Honors and committee members, Task Force members.
5 I've been president of the Alumni Association of the
6 Rutgers School of Law Newark since last summer.
7 Every year we have the annual Chief Justice Joseph
8 Weintraub lecture at the law school that the Alumni
9 Association and the dean's office co-sponsors and
10 when we were thinking of a topic for this year's
11 lecturer, it just so happened that Justice Hoens was
12 failed to be reappointed. Right at the time when we
13 were deciding what we were going to do as a topic so
14 we had our topic and it was judicial independence.

15 We invited the Honorable Harold Baer
16 to speak from the global and Federal perspective and
17 retired Justice Gary Stein to speak from the New
18 Jersey perspective. So we had two speakers and we
19 had our lecture in April and at that lecture Justice
20 Stein presented his proposed constitutional
21 amendment.

22 In the meantime, the New Jersey State
23 Bar Association adopted a resolution supporting the
24 amendment that Justice Stein proposed and then with
25 a quorum present at the next regular board meeting

1 on May 5th of 2014, the Board of Trustees voted in
2 favor of adopting the following resolution of the
3 Rutgers School of Law Newark Alumni Association
4 endorsing an amendment of the New Jersey State
5 Constitution requiring reappointment of justices of
6 the Supreme Court and judges of the Superior Court
7 unless they have demonstrated unfitness for such
8 reappointment.

9 I submitted a copy of this resolution
10 to the New Jersey State Bar Association earlier this
11 week so it should be available on the website.

12 Whereas, an independent judiciary
13 standing firmly as a coequal branch of government is
14 a central underpinning the 1947 New Jersey
15 Constitution and has provided a stable base for the
16 state's nearly four hundred judges and justices to
17 produce fair decisions of extraordinary importance
18 for the citizens of New Jersey.

19 And, whereas, Governor Alfred E.
20 Driscoll speaking at the 1947 constitutional
21 convention said the primary purpose in the drafting
22 of a new constitution is to secure beyond any
23 question a strong, competent, easily functioning,
24 but always independent judiciary.

25 And, whereas, the debate at the 1947

1 constitutional convention made clear that
2 reappointment would be denied only to a justice or
3 judge who had demonstrated unfitness during his or
4 her initial seven year term.

5 And, whereas, eight governors hailing
6 from the Democratic and Republican political parties
7 who succeeded Governor Driscoll reappointed
8 twenty-five Supreme Court justices because those
9 governors understood judicial independence is an
10 American value and that a disagreement with a court
11 decision or judicial philosophy was not envisioned
12 under the 1947 constitution as grounds for denying
13 reappointment to a sitting justice.

14 And, whereas, on May 3rd, 2010 Justice
15 John E. Wallace, Jr. without any indication that he
16 was not fully qualified for reappointment became the
17 first justice to be denied reappointment to the
18 Supreme Court since the adoption of the 1947
19 constitution.

20 And, whereas, on August 12, 2013
21 Justice Helen E. Hoens without any indication that
22 she was not fully qualified for reappointment became
23 the second justice to be denied reappointment to the
24 Supreme Court since the adoption of the 1947
25 constitution.

1 And, whereas, the current judicial
2 appointment and reappointment process under Article
3 VI, Section 6, Paragraph 3, have been plagued by
4 delays for reasons wholly unrelated to the
5 qualifications of nominees including, but not
6 limited to negotiations over the nominations of the
7 other state officials.

8 And, whereas, uncertainty over
9 judicial reappointments has resulted in many
10 nontenured judges who now comprise roughly
11 forty-six percent of the state judiciary requesting
12 reassignment from controversial or novel cases for
13 fear of antagonizing political figures and
14 jeopardizing their reappointments.

15 And, whereas, the unsettled nature of
16 the judicial reappointment process undermines the
17 ideal of judicial independence by exposing judges to
18 unnecessary political and public pressures and
19 effects public confidence in and respect for judges
20 and the court system.

21 And, whereas, it is evident that the
22 time has come to reaffirm the stature, respect and
23 independence of the state judiciary and allow judges
24 to be free to make difficult decisions based on the
25 rule of law regardless of tenure status by expressly

1 conforming the state constitution to the intent of
2 the framers and by guaranteeing that the
3 reappointment of a judge or justice be based only on
4 their fitness to serve.

5 And, whereas, the Rutgers School of
6 Law Newark has historically demonstrated a strong
7 commitment toward advancing the public interest.

8 And, whereas, the Rutgers School of
9 Law Newark Alumni Association is committed to the
10 ideals of the law school.

11 And, whereas, if the stature, respect
12 and independence of the state judiciary is not
13 upheld, the public interest is being undermined.

14 And, whereas, judicial independence
15 was the topic of the annual Chief Justice Joseph
16 Weintraub lecturer on April 3rd, 2014 co-sponsored
17 by the Alumni Association and the dean's office of
18 the law school at which a constitutional amendment
19 to protect judicial independence was first proposed
20 by the Honorable Gary S. Stein, associate justice
21 retired of the Supreme Court of New Jersey.

22 Be it, therefore, resolved that the
23 Rutgers School of Law Newark Alumni Association
24 strongly supports the call of the New Jersey State
25 Bar Association upon the New Jersey legislature to

1 enact a concurrent resolution to place a
2 constitutional question on the ballot for the
3 consideration of New Jersey voters on November 4th,
4 2014 to approve an amendment to the New Jersey
5 Constitution stating that Article VI, Section 6,
6 Paragraph 3 shall read in pertinent part as follows.

7 The justices of the Supreme Court and
8 the judges of the Superior Court shall hold their
9 offices for initial terms of seven years. They
10 shall be reappointed by the governor with the advice
11 and consent of the senate unless they have
12 demonstrated unfitness for such reappointment and
13 upon reappointment shall hold office during good
14 behavior.

15 Thank you.

16 JUDGE WEFING: Thank you.

17 You realize that the Task Force, we
18 recognize that the Bar Association did pass a
19 resolution in favor. The Task Force issued a
20 statement that it was not taking a position on that
21 question at all because we have not finished our
22 work.

23 MS. SCHWEIGER: Correct.

24 MR. HARTNETT: Would it be appropriate
25 to ask this witness questions about this amendment?

1 Has any consideration been given to
2 the question of how the standard of unfitness
3 relates to the standard of unfitness in the current
4 statute for removal by the Supreme Court of Supreme
5 Court judges? That is the current statute provides
6 that the Supreme Court can remove a Superior Court
7 judge for conduct evidencing unfitness for judicial
8 office. If one can be removed for unfitness during
9 one's term, is that the same standard as the
10 unfitness standard with regard --

11 MS. SCHWEIGER: It should be the same
12 standard. There shouldn't be a political reason to
13 fail to reappoint in my opinion. I can't speak for
14 the entire association because you are putting the
15 question to me, but in my opinion, there shouldn't
16 be a political reason because somebody disagrees
17 with a philosophy whether it be the political
18 philosophy or some other as a reason to not
19 reappoint. So I think the standard should be the
20 same and I understand a judge can be removed, but
21 some times that's a process, somebody has to make a
22 complaint. This is just like a tenure situation
23 where at the end there is an assessment about the
24 fitness of the judge during the term.

25 MR. HARTNETT: Is judicial review of

1 this determination envisioned so that Justices
2 Verniero, Wallace, Rivera-Soto and Hoens could have
3 sued their respective governors and if successful
4 got orders directing a renomination?

5 MS. SCHWEIGER: I haven't considered
6 that part of it.

7 MR. POPLAR: Issues of immunity if it
8 is done in the course no matter how bad he is at his
9 job as a government official.

10 MR. HARTNETT: Immunities in general
11 only apply to damage actions, not to injunctive
12 actions and we are talking about the question about
13 the nature of the amendment of what's been proposed
14 here. I take it the answer is we don't know.

15 MS. SCHWEIGER: It is more injunctive
16 relief.

17 JUDGE WEFING: Are there any other
18 questions? Thank you.

19 Eric Lesh. Is Mr. Lesh here?

20 MR. LESH: Yes, good afternoon your
21 Honors and members of the Task Force. My name is
22 Eric Lesh. I am an attorney with and I head up the
23 Fair Courts Project at Lamda Legal. Lamda Legal is
24 the oldest and largest national legal organization
25 working to achieve full recognition of the civil

1 rights of LGBT people and those with HIV and our
2 Fair Courts Project works to educate people about
3 the importance of the courts in the role that they
4 serve in our lives, to strengthen judicial
5 independence, to promote diversity on the bench and
6 to strengthen access to justice.

7 Lamda Legal has been on the ground
8 advocating for LGBT New Jerseyans for many years.
9 Some of our cases include Boy Scouts of American,
10 versus, Dale; Lewis v. Harris and most recently
11 Garden State Equality, versus, Dow which secured the
12 right to marry for same sex couples in New Jersey.

13 I would like to speak to two very
14 important issues today. Number one, the need for a
15 constitutional amendment to clarify the
16 reappointment process and number two, the importance
17 of engaging in educating the public.

18 At the first Task Force meeting former
19 Chief Justice Deborah Poritz gave an impassioned
20 call to action to preserve the integrity of the
21 courts saying that some branch of government has to
22 exist to protect the minority from the majority.
23 Unfortunately, when judges rule on high profile
24 civil rights cases, they sometimes face backlash
25 from those who stand in opposition to the rights of

1 minority populations who the courts are designed to
2 protect.

3 In January, Lamda Legal began reaching
4 out to other national groups that work on fair
5 courts issues including the Center for American
6 Progress, Justice at Stake, the American
7 Constitution Society as well as local groups in New
8 Jersey, legal groups and citizens groups to discuss
9 the threat to judicial independence, how we would
10 communicate with our constituents about this issue,
11 how we would communicate with the media about this
12 issue.

13 In March we organized a successful
14 citizens action demanding fair courts on the steps
15 of the Superior Court in Trenton. Last week we
16 launched a citizens petition asking that the current
17 governor not play politics with the New Jersey
18 courts. We have organized forums for law students,
19 one at Rutgers where we worked with CAP on the issue
20 of judicial independence. President Lamparello
21 spoke as well as Professor Wefing as well.

22 So without a well informed public, the
23 judiciary is even more vulnerable to these types of
24 attacks. There is perhaps no better cautionary tail
25 to illustrate the threat to judicial independence

1 stemming from political attacks and a lack of an
2 educated populace than the retention election in
3 Iowa in 2009. Their special interest groups
4 succeeded in ousting three well respected Iowa
5 Supreme Court justices to punish them for a ruling
6 in Lamda Legal's case which resulted in the freedom
7 to marry, their marriage ban being struck down in
8 Iowa. Outside groups like the National Organization
9 for Marriage poured nearly a million dollars in the
10 sleepy retention election. Basically, went on a
11 twenty city bus tour urging citizens to throw out
12 the justices for this ruling.

13 Those judges declined to campaign or
14 raise funds because they deemed it unseemly for a
15 judge to be asking for votes. This was the first
16 time in Iowa history that any justice had not been
17 retained and those three justices were ousted. The
18 message that these groups wanted to send to judges
19 in Iowa and across the country was clear, rule
20 against us and you will be next.

21 There have been an explosion of
22 spending, campaign spending in judicial races.
23 There was more than 33.7 million spent in this last
24 election cycle by special interests on T.V. adds.
25 We used to think that New Jersey was the system that

1 we had in place kept New Jersey safe from those
2 types of attacks. It's recently become clear that
3 despite the original intent the framers, the 1947
4 constitution no longer protects all qualified judges
5 from being removed from the bench for political
6 reasons.

7 New Jersey Supreme Court justice Gary
8 Stein has proposed an amendment to the constitution
9 which the State Bar has endorsed. The proposed
10 amendment would clarify that a judge shall be
11 reappointed by the governor unless they have been
12 deemed unfit for such reappointment. We would ask
13 that the Task Force strongly consider this amendment
14 and we would ask that if the Task Force recommends
15 this constitutional amendment, we will work to
16 engage with community groups and citizens to educate
17 them about why this is important in preserving
18 judicial independence.

19 With respect to public education, a
20 recent poll showed that two-thirds of U.S. citizens
21 didn't know a single U.S. Supreme Court justice. At
22 the Task Force hearing in April, Chief Justice
23 Poritz recounted an experience where she was
24 speaking and attendees at that conference were asked
25 if they could name the three branches of government

1 and they replied Federal, State and Local.

2 So in order to strengthen public
3 confidence in the courts so that we understand, as
4 this Task Force knows the importance of judicial
5 independence, it is necessary for advocacy
6 organizations, for members of the Bar, for judges
7 and courts all to engage in the public engagement
8 campaign. There are a lot of resources out there
9 that are available to do this. Just a few, the
10 American Bar Association has developed a Least
11 Understood Branch Project which they provide to
12 state and local bar associations to help them
13 educate communities about bringing the message of
14 fair and impartial courts to those communities.

15 In the aftermath of the Iowa retention
16 election, we built a citizens group called Justice
17 Not Politics. It was a nonpartisan coalition of
18 folks that went around talking to folks about what
19 the courts are designed to do and make sure they
20 protected their retention and merit selection system
21 there. We worked with One Iowa which is the state
22 LGBT advocacy group on educational materials,
23 publications and forums for this campaign and also
24 the Iowa State Supreme Court took it on themselves
25 to go out and engage in a public relations campaign

1 of their own. They sent justices to speak at
2 forums. They also took the work of the court on the
3 road so the court frequently holds oral argument
4 hearings at high school gymnasiums and in community
5 centers across the state in all parts of the state
6 so that citizens can observe the work of the court,
7 ask questions of the justices after the hearings and
8 then in conjunction with that the justices meet at
9 high school classes, civics classes and talk to the
10 students about the role of a judge whenever they
11 travel.

12 Lamda Legal has materials that we
13 have. We have a curriculum that we use to educate
14 folks about what the courts are designed to do. We
15 also provide state specific materials to talk to
16 folks about how the courts are structured, how
17 judges are selected and the important decisions that
18 impact their lives. This is our gear up tool kit.
19 It explains the importance of why courts matter to
20 folks lives and highlights important civil rights
21 cases and it asks folks to imagine what life would
22 be like -- using graphic arts to imagine what life
23 would be like without Brown, versus, Board of
24 Education. To understand the importance of the
25 courts to our lives.

1 So we would be happy to assist by
2 providing some of these materials to the Task Force.
3 I want to thank you for your important work and if
4 you have any questions, I'd be happy to answer them.

5 JUDGE GALLIPOLI: Do you have material
6 that's specific to New Jersey?

7 MR. LESH: We have created
8 publications that are specific to New Jersey, but
9 they address LGBT citizens, but yes, talking about
10 how the courts are structured, how judges are
11 selected, et cetera.

12 JUDGE GALLIPOLI: Thank you very much.

13 MS. MALDONADO: We talked a lot, we've
14 hard how it is, it seems to be effective to go to
15 schools and educate students so middle school
16 students, high school students, but we are
17 struggling a little bit more with adults. So can
18 you tell us specifically other than providing
19 materials, how do you reach the adult population who
20 we have heard sometimes just aren't that interested.

21 MR. LESH: Right, I don't think -- it
22 is very difficult to engage in a citizens, like a
23 civics class with an adult population. We have
24 worked with other groups to put out publications
25 like in the American Prospect Magazine talking about

1 how judges -- special interests are spending extra
2 money in judicial races to try to engage folks
3 through the lens of the threat that is posed by
4 special interest to the courts. We have used video
5 as a tool to highlight the importance of fair
6 courts. We have used webinars as ways to engage
7 with local citizens groups like in Iowa, One Iowa,
8 the Hispanic Bar Association also puts out some of
9 our materials in Spanish so that we can educate
10 those communities, but thinking of creative ways to
11 engage folks that should be talking about how the
12 courts impact their rights through webinars, through
13 video, through publications like this that make the
14 case in a more news friendly and compelling way as
15 opposed to in a teaching way.

16 JUDGE WEFING: Thank you very much.

17 MR. EVENCHICK: In your opinion, is
18 there is any practical difference between Justice
19 Stein's proposed amendment and an amendment that
20 would essentially copy the Federal system, i.e.,
21 appointing a judge or justice for life.

22 MR. LESH: Lamda Legal would be
23 supportive of either constitutional amendment.
24 There are other states that certainly are based on a
25 quasi-federal system where there is no retention

1 mechanism in place and there is already, as you
2 raised, there is already a mechanism in place for
3 removing justices or judges should they be unfit.
4 So we would support eliminating the tenure system as
5 well.

6 But in terms of making the case to New
7 Jersey citizens about slight clarifications to the
8 constitutional -- constitutional amendments are very
9 hard obviously to pass and persuade the public and I
10 think this one is the most achievable solution.

11 MR. BROWN: I know this is a long-term
12 solution and maybe early in the process, but is
13 there either anecdotal or empirical evidence to the
14 response of the Iowa courts holding its hearings and
15 process on the road in Iowa?

16 MR. LESH: All I can say is that in
17 the 2009 retention where the justices were voted
18 off, they were voted off fifty-four to
19 forty-five percent. Since then in 2012 the fourth
20 justice from that decision was up for retention
21 again. So in that time we had all of that time to
22 educate the public, to get favorable ads, to talk
23 about the role of judicial independence and that
24 justice was successfully retained despite the very
25 same efforts by special interests spending to remove

1 that justice using the same tactics. So there is at
2 least that kind of evidence to show that the public
3 was moved, that the public was receptive to the
4 efforts of the community groups and the organized
5 bar and the judges.

6 MR. BROWN: My question would be do
7 you have a sense, and I don't know what kind of
8 tools you have, as to whether that was a shift in
9 the population on the substantive issues or a shift
10 in understanding of the independence of judiciary.

11 MR. LESH: There is public polling
12 that has been done by Justice at Stake, the
13 nonpartisan justice group in this issue. To talk to
14 voters about what changed between the first
15 retention election and the second and to really
16 gauge that question so I would be happy to submit
17 those materials to you so that you could see it
18 empirically.

19 JUDGE GALLIPOLI: We would appreciate
20 that.

21 MR. LESH: Thank you.

22 JUDGE WEFING: AnnaMaria Tejada.

23 MS. TEJADA: Good afternoon
24 distinguished members of the Task Force. My name is
25 AnnaMaria Tejada. I am the president of the

1 Hispanic Bar Association of New Jersey. I will
2 begin by saying we will be offering solutions and we
3 do support what some of the other speakers have said
4 with respect to the constitutional amendment, but I
5 do want to provide some context as to our position.

6 The Hispanic Bar Association of New
7 Jersey as some of you may know is a nonpartisan Bar
8 Association. It is a statewide organization that
9 consists of hundreds of Latino and nonLatino
10 attorneys in every sector, public, private,
11 government. We have a number of judges, law
12 professors, law students and other professionals.

13 Over the past thirty-four years, the
14 Hispanic Bar Association of New Jersey has taken
15 pride in advocating on issues of concerns to our
16 members and regarding the legal profession as well
17 as addressing the issues affecting the Latino
18 community. We have consistently taken a stand on
19 the importance of maintaining judicial independence
20 and emphasizing that the judiciary must be
21 representative of the state that it serves in the
22 great State of New Jersey.

23 We have voiced our position on issues
24 such as the non-reappointment of the Honorable
25 Justice Wallace despite his impeccable record of

1 being a pragmatic jurist. That I and several
2 colleagues of mine from the Hispanic Bar Association
3 witnessed firsthand as we started our careers as law
4 clerks to Justice Wallace.

5 Most recently the Board of Trustees of
6 the Hispanic Bar Association of New Jersey adopted a
7 resolution supporting the renomination and
8 reappointment of the New Jersey Supreme Court Chief
9 Justice Stuart Rabner.

10 As you are aware, judicial
11 independence is the ability of the judiciary to
12 issue decisions based on the facts and relevant law.
13 Without looking at the rear view mirrors when
14 rendering an opinion. Judicial independence is
15 heart of what creates justice in our courts. A
16 threat to judicial independence is a threat to
17 justice in New Jersey and as Thurgood Marshall said
18 with respect to judges, judges must never forget
19 that the only real source of power that they ask
20 judges are being tasked is the respect of the
21 people. Judges will command that respect only and
22 as long as judges strive for neutrality and as such
23 and attack on the judicial independence threatens
24 the neutrality of the judges and diminishes the
25 public trust in the courts.

1 Now, why is judicial independence
2 important to the Latino community. According to the
3 2010 U.S. Census Bureau data, the Hispanic
4 population is the largest minority group in New
5 Jersey, about 17.7 percent. More than ever it is of
6 paramount importance that a New Jersey Supreme be
7 been composed of professionals of the highest
8 caliber while at the same time reflect the
9 demographic make up of our great state. Achieving
10 that dual goal will help foster public trust in the
11 state's core principles of providing equal access to
12 justice and a fair and impartial New Jersey
13 judiciary.

14 The Latino community is not a
15 homogenous community. Some of us have been here
16 since before this country became the United States
17 of America. Others have been here for generations.
18 Others like myself are children of immigrant parents
19 and some are immigrants. Many of us that have
20 recently immigrated to this country have done so
21 because of political oppressions in our native
22 country and the inability to secure any type of
23 justice. The attacks on the independence of the
24 judiciary and the record number of vacancies make
25 the judicial system of New Jersey vulnerable to

1 continuing political attacks, the very reason many
2 immigrants immigrated and integrated into this
3 country and the states.

4 With that said, the judiciary and the
5 Supreme Court of New Jersey have played an impactful
6 role in the lives of minorities by extending equal
7 protections and rights. The courts are often the
8 last resort and sometimes the only resort for
9 minorities seeking redress from inadequate or unfair
10 laws. Like other minorities, Hispanics have faced
11 discrimination which often can only be addressed by
12 the courts and ultimately the Supreme Court of New
13 Jersey or at the Federal level, as we know, the U.S.
14 Supreme Court.

15 The Supreme Court of New Jersey
16 particularly has power to find discriminatory
17 practices unconstitutional pursuant to the New
18 Jersey Constitution. Namely, and as significant as
19 has already been discussed today are the Abbott
20 decisions addressing the disproportionate impact of
21 the school funding formula on children in the poorer
22 school districts of the State of New Jersey. As we
23 know, there were thirty, now thirty-one and while we
24 moved away from calling them Abbott school
25 districts, they are now special needs districts.

1 The majority of the students that attend those
2 school districts are Latinos and African Americans
3 and hence are adversely impacted by the school
4 funding formula and had it not been for the justices
5 on the Supreme Court applying the law and
6 understanding that a thorough and efficient
7 education should be provided to every student in the
8 State of New Jersey, those decisions would not have
9 been made.

10 This is particularly important for
11 Latinos. As I mentioned, we are the growing or the
12 top minority in the State of New Jersey and I
13 personally am very aware and familiar with the
14 impact that education can have on students in these
15 school districts. I am a graduate of the Passaic
16 school district hence an Abbott school district and
17 I understand the value and the energy that these
18 children have and without the support of the Supreme
19 Court in ensuring that the school funding formula is
20 properly applied, these kids would be left at a
21 loss.

22 As I mentioned, if justices on the
23 Supreme Court are going to being penalized for doing
24 justice, then we have ultimately sacrificed the true
25 measure of integrity and neutrality in the judicial

1 system. We cannot allow judges to fear losing their
2 jobs because they make unpopular rulings or because
3 of existing political battles.

4 As the Hispanic Bar Association of New
5 Jersey, as attorneys, we need to know that our
6 clients will get their day in court and that their
7 cases will be adjudicated in a fair and timely
8 fashion. For judges, we also need to ensure that
9 decisions will be reviewed with respect and they
10 should not be intimidated by their decisions that
11 they make based on applying the law to the specific
12 facts before them. As lay people and as a Latino
13 community, Latinos need to know they will have
14 access to the court and will be treated fairly.

15 The attack on judicial independence
16 has created, as I mentioned before, a historical
17 number of vacancies in our courts creating a
18 tremendous backlog. In effect, the vacancies have
19 citizens of the state from having access to justice.

20 For those reasons, we do support a
21 constitutional amendment that will allow automatic
22 tenure for those individuals that are fit to serve
23 on the courts. For the Task Force to consider the
24 issues of compensation that have been raised before
25 and also the issues that have been raised regarding

1 raising the retirement age for justices that are
2 competent and justices that have experience on the
3 courts.

4 Also, an issue that was raised before
5 is how do we reach our citizens, how do we reach the
6 population as to educating them on the courts and
7 the different branches of government. One
8 suggestion which has been sort of intimated before
9 is that each vicinage perhaps hold a public session
10 on judicial independence. It can either be hosted
11 by the state or county bars in collaboration with
12 each county or assignment judge and include the
13 specialty bars in that as well.

14 Another important way to educate the
15 community is by social media. That is how people
16 are communicating now. My mother-in-law is on
17 social media, she's on Facebook. So we have
18 different generations and new generations that
19 that's how they communicate. So we need to use
20 those tools to educate the citizens of New Jersey on
21 the importance of the courts.

22 Lastly, one thing that we take pride
23 of in the Hispanic Bar Association is being the
24 voice of the Latino community, but also working with
25 and giving back and this year we instituted a

1 pipeline program in the Passaic school district
2 where we meet with the kids on a monthly basis and
3 we teach them about the law. We teach them about
4 the court and we have spent a significant amount of
5 time explaining to them the importance of the
6 courts, the importance that those decisions have on
7 their every day lives. So if programs like that are
8 also copied throughout the state by other Bar
9 Associations, I think that will definitely benefit
10 everyone and benefit educating individuals regarding
11 judicial independence.

12 Thank you.

13 MR. HARTNETT: I guess I ask the same
14 question I asked before. If you have any position
15 or your organization has any position on the
16 relationship between the proposed Stein amendment
17 and the current statutory standard for removal of
18 Superior Court judges and whether you have got any
19 thoughts on whether this proposed constitutional
20 amendment would be judiciary enforceable.

21 MS. TEJADA: We haven't pondered that
22 specific question. I think it is an interesting
23 question that we would have to look into. I would
24 say that the same standards should most likely be
25 applied to Supreme Courts as well with respect to

1 the definition of unfit.

2 JUDGE WEFING: Thank you.

3 Mr. Jeff Golden.

4 MR. GOLDEN: I want to thank the Task
5 Force for giving me this opportunity to testify here
6 today. My name is Jeff Golden. I am one of the
7 founders, a board member and vice-president of
8 Fathers and Children's Equality in New Jersey. FACE
9 is a non-profit support and self-help group for
10 noncustodial parents and their family. Part of that
11 support includes helping people learn to effectively
12 represent themselves in court or to take the lead in
13 directing their lawyers how they want to be
14 represented.

15 As a senior member of FACE, I have
16 observed in courtrooms in New Jersey literally
17 hundreds of times. I have also organized groups of
18 people to testify at judge's reappointment hearings.
19 But today I am not here as an official
20 representative of FACE. I am here as a private
21 individual giving my own position based on my own
22 familiarity with New Jersey courts and judges.

23 From what I've been reading, it seems
24 that the New Jersey State Bar Association's position
25 is that judges should be completely independent and

1 have a guaranteed job for life. I disagree.
2 Everyone should be responsible to someone and the
3 public needs to know that if a judge makes bad
4 decisions, there is some way to get rid of them. In
5 the United States, governmental powers is divided
6 into three branches, legislative, executive and
7 judiciary and there are checks and balances to keep
8 any one branch from becoming too powerful. In New
9 Jersey, those checks and balances are specified in
10 our Constitution.

11 The governor nominates a judge and
12 with the approval of the senate, we get to try them
13 out for seven years before making a final decision.
14 The check on that judge is that if he is not making
15 decisions that reflect the will of the people, the
16 governor can decline to renominate him at the end of
17 his initial term or the senate can disapprove his
18 reappointment.

19 As for independence, once the judge is
20 reappointed, he has the ultimate independence, he is
21 tenured for life to at least until age seventy.
22 This procedure is not in some old moldy document
23 from a century or two ago. The New Jersey
24 Constitution was drafted in 1947 by the
25 constitutional convention of delegates. This was

1 right after World War II and the beginning of the
2 cold war when the public was very aware of the
3 danger of out of control governments. Our
4 constitution has served us just as it was intended
5 to.

6 Just because our current governor
7 chooses to exercise some power that no prior
8 governor has doesn't mean we should scrap the whole
9 constitution. It is working just as those delegates
10 designed it to work. There are some things we
11 should do however to preserve the independence and
12 integrity of our judges. The first and most
13 important is to keep the lawyers away from the
14 judges. I can't decide which is more offensive, the
15 Bar Association treating judges like kings by
16 inviting them to be guests at its convention at a
17 luxurious Atlantic City Casino Hotel or inviting
18 them to its luxury retreats at resorts around the
19 world or the judges accepting those invitations.

20 Once a judge has been nominated and is
21 on the path to becoming a judge, his first priority
22 should be as quickly and graciously as possible to
23 withdraw from his current cases by turning them over
24 to other lawyers and separate himself until
25 retirement from his lawyer buddies both

1 professionally and socially. Some people ask how do
2 these guys get to be judges anyway. Why don't we
3 get to vote for them.

4 To see why judges should not be
5 elected, you will only have to look as far as the
6 next state. In Pennsylvania judges actually have to
7 run in a political campaign and those campaigns cost
8 money. And who would contribute to a judge's
9 election campaign, lawyers. And the biggest law
10 firms make the biggest donations, sometimes to both
11 candidates and I can assure you that those lawyers
12 are looking for a return on their investment. Who
13 votes for a judge. No one knows anything about
14 them. Very few people go to court watch. So no one
15 knows what the judge has really been doing.

16 The most a John Q. Voter might know
17 about a judge is I remember him, he was in the
18 newspaper after he gave a stiff sentence to that
19 murderer. This gives a big advantage to the
20 incumbent or in Pennsylvania where there are big
21 levers on the voting machines labeled Republican and
22 Democrat, the judge who is the candidate for the
23 predominant party automatically wins.

24 Appointing judges is the right way to
25 go, but the people should have more of a role in the

1 selection and retention of judges. There should be
2 a procedure whereby any individual or association
3 and not just the Bar Association can propose to the
4 governor a candidate to be nominated for a
5 judgeship. And the people should be able to take a
6 more active role in the retention of judges too. It
7 is a big sacrifice to take a day off of work and go
8 to Trenton. Reappointment hearings should be held
9 in the county where the judge sits and should be
10 well advertised at least sixty days in advance.

11 Again, I thank the Task Force for this
12 opportunity to speak. I hope the news media and
13 some of the lawyer legislatures in the audience who
14 can affect change are listening to the will of the
15 people.

16 JUDGE WEFING: Thank you, Mr. Golden.
17 Questions? Thank you.

18 Is Mr. Corriher here?

19 MR. CORRIHER: Thank you very much
20 Judges Wefing and Gallipoli and all the members of
21 the Task Force. I want to thank also the State Bar
22 for convening this Task Force to study this really
23 vital and important issue of judicial independence.

24 I also want to echo the concerns that
25 were raised earlier about knowledge of how the

1 courts work among the public. That's a problem that
2 I run into a lot with my work. I work at the Center
3 for American Progress in Washington D.C. and my work
4 focuses exclusively on state courts. So I spent a
5 lot of time looking at judicial independence issues
6 in other states.

7 I also want to applaud the
8 recommendation from Justice Stein that was endorsed
9 by the State Bar. I think that such an amendment
10 would be helpful for New Jersey, but I think that
11 the Task Force can go even further to ensure that
12 future governor or legislature doesn't abuse the
13 standard for the tenure process.

14 The constitutional amendment that
15 still allows the governor or legislature to deny
16 tenure could still be exploited by the political
17 branches if a governor didn't like the justice's
18 rulings, what's to stop that governor from claiming
19 that the judge is unfit for office. That is the
20 concern that we have.

21 But I think the even more important
22 question for the Task Force is this. If the only
23 reason to deny tenure is for unfitness for office,
24 why should the political branches be the ones making
25 that decision. It seems like if the political

1 branches are asking themselves, you know, do I like
2 this judge, do I agree with this judge's ruling,
3 that is a tough decision. That is a decision where
4 you would want a legislative deliberate process, but
5 if the question is is this judge fit for office,
6 almost every judge is going to pass that test. So
7 it doesn't seem to me very worthy use of our
8 legislatures time to have them involved in just
9 asking a question where 99.9 percent of the time the
10 answer is going to be yes.

11 So I'm going to just run down a few
12 recommendations that we've come up with. The first
13 is an independent commission to decide on tenure.
14 This Task Force should consider a constitutional
15 amendment that sets up an independent commission
16 that decides whether to grant tenure. Members of
17 the Hawaii Supreme Court are chosen through a
18 process that is similar to New Jersey's except that
19 they use a merit selection commission in the front
20 end. They also, after the justices are appointed,
21 they serve a ten-year term and then after that the
22 merit selection commission decides whether or not
23 they should be reconfirmed and this really takes the
24 decision out of the hands of the politician and puts
25 it in the hands of folks who have experience

1 assessing judicial qualifications. The Hawaii
2 commission has passed regulations kind of flushing
3 out its mandate and they have rules now that say it
4 shall consider background, character, professional
5 skills and a long list of other criteria and they
6 have also passed rules detailing the procedures for
7 deciding whether the judges should be retained or
8 not.

9 I believe this solution would really
10 get at the heart of the problem here in New Jersey.
11 An amendment to clarify the criteria for a tenure
12 decision would help with the amendment that Judge
13 Stein proposed, but I think taking the decision out
14 of the hands of the political branches would help.
15 Even if a constitutional amendment is not feasible,
16 I think the Task Force could suggest a statute that
17 establishes an independent commission that issues
18 recommendations on tenure for judges and even though
19 in this system the final decision would remain in
20 the hands of the political branches, I think that
21 having a credible independent commission would make
22 it more difficult to abuse the process for political
23 reasons.

24 JUDGE WEFING: Who would appoint the
25 members of this commission?

1 MR. CORRIHER: Well, in states that
2 have a merit selection commission, they all set up
3 their commission differently, but usually the State
4 Bar has some role in appointing members of the merit
5 selection commission. The governor appoints some
6 and the legislature appoints some. In some states
7 the Chief Justice him or herself serves on the
8 commission and one state the chief justice is only a
9 tiebreaker if there is a tie. So there is really a
10 variety of ways that you can structure these
11 commissions.

12 JUDGE GALLIPOLI: Is that for initial
13 selection or for retention?

14 MR. CORRIHER: Most states that use
15 them for retention also use them for initial
16 selection, but I don't think there is any reason why
17 New Jersey couldn't have a commission for the tenure
18 decision. A commission for the initial selection
19 process would be great too, but I think in terms of
20 making sure that judges are independent once they
21 are on the bench, the key is fixing the retention
22 process.

23 JUDGE GALLIPOLI: Just the question is
24 how would you propose that this could work by
25 passing a statute as opposed to a constitutional

1 amendment.

2 MR. CORRIHER: What I was proposing
3 there is that the commission could issue a
4 non-binding recommendation on tenure. I think that
5 would sort of make it more difficult for the
6 political branches to differ with that
7 recommendation and say that a judge is unfit for
8 office if the commission has already said that the
9 judge is fit for office.

10 The other option that we were
11 interested in is actually eliminating the initial
12 seven year term. That is something that's been
13 discussed briefly today, but New Jersey could
14 consider doing away with the seven year term and
15 instead appoint the judges to serve until the
16 mandatory retirement age of seventy. The high court
17 justices in New Hampshire and Massachusetts are
18 appointed by the governor and they serve until age
19 seventy and every Federal judge that you know is
20 appointed for life and Rhode Island is the only
21 state that still appoints its Supreme Court justices
22 for life, but there is no reason why New Jersey
23 couldn't emulate the U.S. Constitution when it comes
24 to judicial selection.

25 The Federal judicial nomination

1 process seems to have worked out well for Federal
2 courts at least in terms of judicial independence
3 and the legitimacy of the court's decisions. There
4 are many recent U.S. Supreme Court decisions which I
5 disagree, but I don't think that any of those
6 decisions were the results of political pressure or
7 anything like that.

8 The final option that we have explored
9 is constitutional amendment with regard to the
10 partisan balance in the court. There's been an
11 unwritten rule in New Jersey. I have heard it
12 phrased in different ways so I am not quite sure how
13 to articulate it, but it basically is a tradition of
14 partisan balance in the court to make sure one party
15 doesn't have more appointees than the other party.
16 Delaware actually has a similar provision in their
17 constitution. They have a provision that says that
18 no more than three justices out of five can belong
19 to the same political party and this would give the
20 unwritten rule in New Jersey the force of law.
21 There would be some draw backs to such an amendment.
22 Many good judges are not affiliated with a political
23 party and we have seen in the current court
24 sometimes it is difficult to determine party
25 affiliations of judges, they may be registered as an

1 independent.

2 In conclusion, I would like to say I
3 hope the Task Force will consider these suggestions.
4 I'd also like to conclude by mentioning that what is
5 happening in New Jersey comes at the same time that
6 politicians in other states are also seeking to
7 reign in courts. We had an Oklahoma legislator
8 recently drafted articles of impeachment because he
9 didn't like a death penalty decision from the State
10 Supreme Court. We have seen as Mr. Lesh mentioned
11 earlier special interests spending more and more
12 money to influence courts in judicial elections.

13 If the citizens of New Jersey want to
14 protect their Supreme Courts independence, they
15 should consider reforms that ensure that the state's
16 constitution system of checks and balances remains
17 intact.

18 JUDGE WEFING: Questions?

19 MS. MALDONADO: I have a question
20 about the independent commissions. If the members
21 of the commission are basically come from Bar
22 Associations and sort of similar organizations, does
23 that mean that the commission is no longer
24 completely independent? I guess I am just wondering
25 does it now become partisan in a sense or

1 representing the interest of certain organizations.

2 MR. CORRIHER: That is certainly a
3 concern that a lot of critics of merit selection
4 have raised in other states. You know, in states
5 that have these commissions are still sort of
6 tinkering with the composition of the commissions,
7 but I think there are ways that you can structure
8 the commissions to ensure that that partisanship is
9 not a concern. Some states have a partisan balance
10 requirement for their commissions and I think that
11 as long as you have a transparent process where
12 application and evaluations are all public and that
13 the public has a role to play in the process, I
14 think that can sort of mitigate some of those
15 concerns about partisanship.

16 MR. EVENCHICK: Just one quick
17 question. Were the suggestions that you offered
18 given in their order of preference?

19 MR. CORRIHER: Well, yes, I think so.
20 Preference and feasibility I think. It seems like
21 eliminating the initial seven year term would be a
22 very heavy lift, but given the work that I do, I
23 write about and talk about judicial independence all
24 day so I see these attacks on courts for the rulings
25 that they make. So having had that experience, a

1 Federal system is really the ideal where judges are
2 appointed and once they are appointed on the bench,
3 they have total independence and political branches
4 don't really have any way to sort of pressure them,
5 but I think that given discussions that I have had
6 with folks on the ground here in New Jersey, it
7 seems like an independent commission might be more
8 feasible.

9 JUDGE GALLIPOLI: Do you have
10 materials?

11 MR. CORRIHER: Yes, I have e-mailed
12 them actually to Kate and she will be glad to
13 provide them to you.

14 JUDGE GALLIPOLI: Thank you so much.

15 JUDGE WEFING: Thank you very much.

16 Robert Pinizzotto.

17 MR. PINIZZOTTO: Thank you. Good
18 afternoon, my name is Bob Pinizzotto, I'm an
19 attorney in New Jersey. I don't have any prepared
20 statement because I was in court this morning, but
21 hopefully you will understand where I am going as
22 soon as I read you the statute.

23 N.J.S.A. 2B:12-4, judge of municipal
24 court term of office appointment. Judge of
25 municipal court term of office appointment, A, each

1 judge of a municipal court shall serve for a term of
2 three years from the date of appointment until a
3 successor is appointed and qualified.

4 I have been taking great interest in
5 the issue of judicial independence because I am a
6 municipal court practitioner in the State of New
7 Jersey. Every Chief Justice of our Supreme Court
8 since the adoption of the constitution of 1947 has
9 indicated that the most important division of our
10 courts are the municipal division and yet since 1947
11 we have municipal court judges that are required to
12 be appointed every three years. If, in fact, the
13 municipal division is the most important division of
14 our system of justice, why is this Task Force not
15 addressing municipal courts.

16 If you want to educate the public
17 about the importance of judicial independence, you
18 could reach six million people a year. That is how
19 many cases are in the municipal courts throughout
20 the State of New Jersey every year. A couple of
21 weeks ago I found Judge Grant's comments about the
22 issue of revenue going down in our court system and
23 how the funding has become a question and the
24 article indicated that Judge Grant noted that I
25 think the revenue of the court system was fifty-five

1 million dollars last year. He was mistaken. He was
2 off by three hundred and forty-five million dollars.

3 The New Jersey municipal court system
4 for the last statistical year available brought in
5 through fines, assessments, court costs, et cetera
6 approximately three hundred and forty-five million
7 dollars.

8 The judges are appointed by simply
9 being a licensed practicing attorney for five years.
10 Once that happens, they can be appointed to the
11 municipal court bench with zero vetting process. No
12 municipal court judges go through a vetting process
13 except for those judges that are appointed to joint
14 municipal courts that hold multiple jurisdictions,
15 obviously they -- it's sort of a vetting process.
16 They have to be nominated by the governor and
17 appointed by the governor, but it's nowhere near the
18 vetting process of a Superior Court judge.

19 This problem effects six million
20 people a year in the State of New Jersey and yet no
21 one is addressing the judicial independence of
22 municipal court judges. I have been listening today
23 about whether or not judges are impacted if their
24 jobs are on the line. Their jobs are on the line
25 every three years. If they're impacted by what they

1 are doing on the bench, I bet you if you ask a
2 municipal court judge and if they were honest with
3 you, if they were concerned about the revenue that
4 the courts bring into their individual
5 municipalities, each and every one of them would
6 tell you yes and the reason is is because they are
7 the head of that judicial department. They have to
8 deal with revenue on a daily basis and they are
9 questioned about it by the elected officials who are
10 also have significant concern of revenue. It goes
11 then to the general municipal fund, any monies
12 generated by that municipal court such as court
13 costs.

14 I think this Task Force could do all
15 of New Jersey a great benefit if you start at the
16 most important court in the land which is our
17 municipal courts and work your way up. That is
18 where the general public deals with the judiciary on
19 a daily basis. If those judges that are so
20 appointed have no right to tenure, let alone
21 anything else, lifetime appointments, I think this
22 Task Force is missing a great opportunity to educate
23 the public on the issue.

24 I don't know if you've talked about
25 this before. I don't know if it can be done through

1 an additional constitutional amendment -- well,
2 obviously it can be, but it's got to be done through
3 the cooperation of the legislature as well as the
4 governor as well as a study being done on the
5 municipal court system. It is a travesty if it is
6 not addressed.

7 Thank you.

8 JUDGE GALLIPOLI: Do you sit as a
9 municipal court judge?

10 MR. PINIZZOTTO: Do I sit as a judge,
11 no.

12 JUDGE GALLIPOLI: Have you ever sat
13 as a judge?

14 MR. PINIZZOTTO: No, I have not. I
15 have -- I was a founding member of the New Jersey
16 State Municipal Prosecutors Association. I have
17 been a municipal court practitioner for thirty
18 years. I have also been the founding member of the
19 Atlantic County Municipal Defense Attorney
20 Association. I have sat on administrative office of
21 the courts committee for municipal courts in the
22 past.

23 JUDGE GALLIPOLI: What would you
24 suggest by way of remedy for the problem you've
25 basically brought to our attention?

1 MR. PINIZZOTTO: From looking at
2 another jurisdiction, the State of California which
3 had a similar system to our's back in the seventies,
4 they decided to pool their municipal court system
5 into the Superior Court system and make those judges
6 Superior Court judges. That is one remedy. I
7 happen to favor that remedy.

8 Another remedy is you can give
9 municipal court judges tenure just like Superior
10 Court judges after a period of time. Perhaps not
11 three years, but perhaps after seven they should be
12 tenured. Another system is you could set up a whole
13 different court system and make them regionalized
14 municipal courts instead of the individual municipal
15 courts.

16 I can go on for a long time about this
17 problem. The real significant issue that I think
18 all of you or whoever is going to address the
19 problem is going to face is home rule in the State
20 of New Jersey. Elected officials of the
21 municipality want the ability to hire that municipal
22 court judge, to hire that municipal prosecutor, to
23 hire that public defender and we all know why.
24 Those individuals getting appointed are not
25 necessarily the best people for the job, but are the

1 ones that are politically contributing to those
2 particular administrations when they get elected.

3 While I am -- may I say something
4 else.

5 JUDGE GALLIPOLI: It all depends on
6 what you are about to say, but preliminarily the
7 answer is yes.

8 MR. PINIZZOTTO: Being a prosecutor, I
9 have often found something incredibly bizarre in our
10 state. We have a constitutional provision that
11 indicates that no member of one legislative or one
12 branch of the government is permitted to be a member
13 of another branch of government, kind of makes
14 sense, correct, I would think. Yet we have state
15 senators, we have state assemblyman who are
16 municipal prosecutors. They are members of the
17 legislature and agents of the executive branch. Do
18 you really think we are going to have the ability to
19 change.

20 JUDGE GALLIPOLI: Do that again. They
21 are agents of the executive branch.

22 MR. PINIZZOTTO: They are municipal
23 prosecutors.

24 JUDGE GALLIPOLI: Yes, you are
25 correct.

1 MR. PINIZZOTTO: I've always found
2 that to be intriguing to me. Why would they change
3 the law if, in fact, they are members -- here's
4 something even more bizarre. You want to talk about
5 judicial independence. Three of the senators that
6 are on the judiciary committee are municipal
7 prosecutors and you want to talk about judicial
8 independence, how can we have a member of the
9 executive branch who are also members of the
10 legislature approving or disproving appointments to
11 the judiciary. The municipal court system itself
12 has to be reviewed in its entirety and we have to
13 start questioning how independent is the entire
14 municipal court scheme.

15 MR. HARTNETT: We have heard a bit
16 about this at our first meeting and I for one am
17 quite interested in it. In preparation for today's
18 hearing, I re-read the proceedings of the '47
19 Constitution with regard to the judiciary. It might
20 be worth noting what Dean Powell said about lower
21 courts I believe in the context of municipal courts.
22 Small causes do not require small judges, but good
23 judges, big judges. If you have an organization of
24 your small causes and you put small men into the
25 system, nobody has confidence in them. If you have

1 a smaller number of first class men doing work in
2 the first class manner, that is infinitely better
3 than the greater number of third class men doing
4 work in a third class manner.

5 MR. PINIZZOTTO: Can I get a copy of
6 that.

7 MR. HARTNETT: I thought you'd be
8 interested.

9 JUDGE GALLIPOLI: It sort of
10 summarizes your entire presentation.

11 MR. PINIZZOTTO: Very well said.

12 MR. POPLAR: What do you recommend for
13 the initial appointment?

14 MR. PINIZZOTTO: Of a municipal court
15 judge? Going back, I really believe the municipal
16 court division has to become a true division of the
17 Superior Court. So I would indicate that those
18 judges would be Superior Court judges, but in the
19 event that would not happen, I would think that a
20 seven year term. A term longer than the terms of
21 the elected officials and in that way you could
22 protect their jobs at least through one
23 administration. Beyond that, I would think they
24 would be entitled to tenure.

25 MR. POPLAR: But if the municipality

1 appoints the municipal court judge, is there or is
2 there not a major political component to the
3 appointment.

4 MR. PINIZZOTTO: Oh, it is huge. It's
5 absolutely huge, every three years.

6 MR. POPLAR: If it was seven years --

7 MR. PINIZZOTTO: I don't know of any
8 municipality that has a mayor for seven years. I
9 think under the Faulkner Act, the longest term is
10 four years. So if you made it longer than that, at
11 least you can attempt to get it by the political
12 process initially.

13 MR. POPLAR: How many municipal judges
14 are there in the state?

15 MR. PINIZZOTTO: Well, five hundred
16 and twenty-five municipalities. There are joint
17 courts now so the number is starting to get
18 lessened. My guess is probably somewhere around
19 four hundred and fifty and while we are on the
20 number, I don't know if you know this, there is a
21 belief that the highest paid judges in the United
22 States of America are New Jersey municipal court
23 judges.

24 MR. POPLAR: Sure, because they have
25 multiple courts.

1 MR. PINIZZOTTO: There is one
2 individual that is making about three hundred and
3 forty-five thousand dollars a year and it is because
4 of the issue of the multiple courts that they hold.

5 JUDGE GALLIPOLI: One of the biggest
6 problems with regard to your suggestion and that is
7 not to suggest that I don't think your suggestions
8 have merit, but is the sharing of revenue from the
9 municipal courts. That is a major problem.

10 MR. PINIZZOTTO: I absolutely agree.
11 In fact, Chief Justice Rabner in a speech I believe
12 to the New Jersey State Bar Association recognized
13 that it is complex when you start dealing with
14 whether or not municipal courts are going to be
15 become joint municipal courts because the
16 municipalities start fighting over the money and he
17 recognized that as an impediment to competing joint
18 municipal courts. Having said that, if you
19 create -- if you allow the jurisdiction of the
20 Superior Court to include motor vehicle violations
21 and disorderly persons offenses, et cetera, at that
22 point the municipalities do not get the funding. On
23 the flip side, they also do not have the expense of
24 running their municipal courts. They no longer have
25 the court staff, the security issues, building

1 issues, et cetera. So although the revenue won't be
2 there, the expense won't be there either for the
3 municipality.

4 MR. EVENCHICK: Mr. Pinizzotto,
5 putting to one side for the moment how municipal
6 court judges are appointed or whether the municipal
7 court system should one day be assimilated into the
8 upper court system, is it your impression, if you
9 have an impression, that there is some pervasive
10 assault on judicial independence that exists in New
11 Jersey with respect to municipal judges.

12 MR. PINIZZOTTO: It is not my
13 impression, I know it for a fact.

14 MR. EVENCHICK: You do?

15 MR. PINIZZOTTO: I do.

16 MR. EVENCHICK: I take it from that
17 that the assault on judicial independence of which
18 you speak has to do with the fear on the part of
19 municipal court judges that depending on how they
20 decide the motor vehicle accident case they may lose
21 their job?

22 MR. PINIZZOTTO: No.

23 MR. EVENCHICK: Maybe you can give me
24 an example of what you are talking about because I
25 really don't understand it.

1 MR. PINIZZOTTO: Revenue.

2 MR. EVENCHICK: You mean it is your
3 opinion that municipal court judges render decisions
4 based on how much revenue they will be able to
5 obtain for their municipalities?

6 MR. PINIZZOTTO: I can give you
7 statistics.

8 MR. EVENCHICK: That struck me as
9 unusual. I was once a municipal attorney and I can
10 say without mentioning the community I was very
11 proud of the municipal court judges in this
12 particular community. I was struck by the fact over
13 twelve years I saw consistent decisions which at
14 least in my view were based on the merits of each
15 case. That is just my opinion.

16 MR. PINIZZOTTO: I too know many, many
17 municipal court judges that are excellent at what
18 they do and they take pride in what they do, very
19 high ethical standards and make the right decisions
20 based on the information being provided to them in
21 the courtroom. I also know of other municipal court
22 judges that have indicated that they're proud of the
23 fact that they have doubled the income of the court.
24 So at the same time I can agree with you that there
25 are many, many professional municipal court judges

1 and at the same time I can probably tell you there
2 may be just as many that should not be on the
3 municipal court bench.

4 JUDGE GALLIPOLI: Whether they should
5 be on the court or not, the reality is and I think
6 there was a recent case from down in either Ocean or
7 Monmouth County where there was presumably pressure
8 put on a municipal court judge with regard to his or
9 her reappointment because the revenue of that
10 particular court had dropped significantly from
11 prior years and the municipal court judge as I
12 understood it was being blamed for that drop in
13 revenue and the threat was that he or she would not
14 be reappointed.

15 MR. PINIZZOTTO: That was Eatontown
16 and it was as a result of a memo or an e-mail being
17 leaked that indicated that somebody pulled their
18 name out of the race for an appointment because he
19 learned that a councilperson indicated we have to be
20 very careful of who we appoint because the revenue
21 has gone down so much since we appointed X.

22 JUDGE GALLIPOLI: One of the concerns
23 with regard to the judicial independence of the
24 municipal court judge which you probably have
25 alluded to, but not specifically is that when your

1 term is up, you continue in office until your
2 replacement and that has within it the germs of a
3 problem because at that particular point the
4 appointing authority can let you basically be in
5 limbo and let you stay in limbo for a long time as
6 long as you are basically in tune with the
7 appointing authority.

8 MR. PINIZZOTTO: Absolutely.

9 JUDGE GALLIPOLI: I agree with you
10 that there are many, many problems associated with
11 municipal courts and I think we all thank you for
12 your comments.

13 MR. PINIZZOTTO: Thank you.

14 JUDGE WEFING: Judge John Harper.

15 MR. HARPER: Good afternoon, Judge
16 Wefing, Judge Gallipoli, other distinguished members
17 of the Task Force. I'm here to provide to you a
18 rather unique perspective. First, let me introduce
19 myself briefly. For twenty-one years I served on
20 the Superior Court bench. I served in Essex County,
21 Morris County and Sussex County over the twenty-one
22 years of service.

23 JUDGE GALLIPOLI: It was penance in
24 Essex County.

25 MR. HARPER: I was a volunteer. For

1 twenty-one years I served in various divisions,
2 family, civil and criminal. I share an experience
3 in common with a number of my colleagues for whom I
4 speak today. I'm here as a representative of the
5 Retired Judges Association of New Jersey. We
6 appreciate the opportunity to do so. My words
7 reflect the knowledge and the experience of hundreds
8 of retired New Jersey judges.

9 Our Democratic systems of government
10 both Federal and state rests on the foundation of
11 three independent and coequal branches of government
12 which provide the checks and the balances inherent
13 in our Democracy. It is obviously true that members
14 of the judicial branch serve after nomination by the
15 chief executive of this state and with the consent
16 of the senate. Once appointed, however, it is
17 paramount to an independent judiciary that its
18 judges are both empowered and constrained to decide
19 every issue in every case solely on the law and the
20 facts presented.

21 Much has been written about the
22 concept of judicial independence since the very
23 founding of this nation. This Task Force has
24 described judicial independence as starting with,
25 quote, the role of the judiciary in a representative

1 Democracy to fairly resolve in accordance with the
2 law and the facts deduced at proceedings open to the
3 public, disputes involving life, liberty, property
4 or reputation of private or governmental parties.
5 The Task Force statement continues, quote, the
6 ultimate authority of the judiciary rests upon the
7 confidence of our citizens that their controversies
8 and disputes no matter their nature will be decided
9 by a judge who will decide such matters in
10 accordance with the law and the evidence without
11 fear of any political, professional or economic
12 retaliation.

13 It goes without question and the rules
14 of judicial conduct require that a judge step aside
15 from hearing a case if the outcome in that case
16 would have a financial or other personal effect upon
17 the judge or anyone close to her or to him. It
18 should be obvious then as an extension of that rule
19 that every judge must be secure in the knowledge
20 that no member of the executive or legislative
21 branch of the government who disagrees with the
22 judge's decision in a case has the power to affect
23 the judge's professional or financial position
24 because of that disagreement.

25 Only if we guarantee our judges that

1 security can members of the public be secure in the
2 knowledge that if they find themselves before a
3 court, their case will be heard and ruled upon by an
4 objective judge who has no stake in the outcome and
5 no motive other than to do justice. Judges must be
6 guided by case precedent and the law and must not
7 feel pressure to decide cases based upon public
8 opinion or political or social goals favored by
9 either the executive or the legislative branch. The
10 judiciary cannot be subject to the political,
11 social, religious or other ideologies of elected or
12 appointed officials of the other branches. To allow
13 such control over members of the judiciary goes to
14 the very core of a fair and impartial system of
15 justice. To permit outside influence is to shape
16 judicial decisions by applying a, quote, decisional
17 litmus test, unquote, that has been promulgated by
18 any one group or segment of society is to corrupt
19 the role of the judiciary and to destroy its very
20 essence as an independent arbiter of disputes.

21 The fair administration of justice
22 requires that judges be chosen and retained based
23 upon their demonstrated ability and capacity for
24 well-reasoned, objective, unbiased decision making
25 for competence, diligence and integrity. It is no

1 coincidence that our constitution provides that a
2 judge or justice serves an initial term longer than
3 any other elected official, seven years and if we
4 appointed as he or she should be after seven years
5 of competent diligent work performed with integrity,
6 the judge or justice serves to age seventy.

7 In other words, the authors of our
8 state constitution plainly intended that judges and
9 justices serve independently of the state's elected
10 officials. This is a basic concept of an
11 independent judiciary. Each branch of the
12 government has its role. The judiciary cannot do
13 justice if judges are vulnerable to retaliation or
14 punishment for their substantive decisions.

15 To reshape the judiciary to reflect
16 the political or social philosophy of the current
17 executive or legislative branches strikes at the
18 heart of a Democracy. In the long run will subvert
19 the very underpinnings of our representative form of
20 government.

21 As retired judges who served in years
22 past, we have each done our best to be fair and
23 impartial in every case, but we are very aware that
24 our ability to do so was empowered and enabled by
25 our understanding of the then prevailing concept of

1 judicial independence. Most of us never had to
2 worry that a decision we made in our particular case
3 might affect our opportunity for reappointment and
4 tenure.

5 I will relate just a few instances
6 recalled by several retired judges who might face a
7 rather different set of pressure in the current
8 environment. Judges who are appointed to the
9 Superior Court are generally rotated through the
10 various divisions and parts and are often assigned
11 to the family part at some point during their first
12 seven years on the bench. I was one of those. Not
13 infrequently the parties to a divorce case with
14 financial issues as well as issues involving child
15 custody and visitation are themselves people with
16 powerful positions in state government or have
17 family members in powerful positions or have
18 powerful friends in state government. Many of us
19 look back at such cases and wonder whether an
20 untenured judge today would feel as confident in his
21 or her own objectivity as we felt.

22 How about the times when a domestic
23 violence complaint was lodged against the public
24 official, perhaps a local police chief. Or when
25 sexual harassment case was brought against the

1 county sheriff. What about a medical malpractice
2 case filed against the prominent physician. Perhaps
3 one whose patients included public officials. And
4 from time to time even large and successful law
5 firms bring their disputes before the courts.
6 Election cases come before the courts in situations
7 where decisions have the clear potential for
8 affecting the outcome of that election.

9 There have been and will continue to
10 be cases where environmental concerns impact private
11 property and profits. We haven't even mentioned
12 some of the notorious criminal trials involving
13 politicians themselves. Most of us served without
14 fear that we would be targeted by members of the
15 other branches of government for doing what we
16 thought was right and just under the law.

17 Do we want judges or justices to be
18 afraid to rule based on where the law and the
19 evidence take them. More and more that is where the
20 current atmosphere is taking us. It is this common
21 experience and collective wisdom that informs our
22 understanding of judicial independence and leads us
23 as retired judges to feel strongly about the
24 reappointment process and the need to prevent the
25 nearest hint that political considerations may

1 infect judicial decisions. Judges must never
2 succumb to the influence of the rich or the
3 powerful, to the politically and economically
4 connected or to the lore of popularity. Our
5 citizens expect and deserve judiciary that is fair
6 and impartial, impervious to the claims of those in
7 power so that everyone has equal access to a just
8 result. The highest compliment any judge can
9 receive at the end of a case is that he or she was
10 fair, especially when that compliment comes from the
11 losing side.

12 In all seriousness, order in our
13 society depends upon public faith in the fairness of
14 the dispute resolution process, whether in the
15 civil, criminal or family arena. Without that
16 faith, civilized society disappears. As the Task
17 Force statement I quoted earlier stated so well,
18 quote, the absence of an independent judiciary
19 creates the specter of disputes being resolved by
20 force or the exercise of political power.

21 Examples abound when we look around
22 the world outside of the United States. The
23 greatest threat to a fair and impartial and
24 independent judiciary in New Jersey today is the
25 degradation of the reappointment process. The long

1 time understanding in New Jersey since the adoption
2 of the 1947 constitution has been that when a judge
3 or justice has demonstrated confidence, diligence
4 and integrity during his or her initial seven year
5 term, that judge or justice will be nominated and
6 confirmed to a term of tenure to the mandatory
7 retirement age of seventy. That norm was long
8 respected by both political parties, irrespective of
9 which party held the governorship or the majority in
10 the state legislature.

11 The Retired Judges Association of New
12 Jersey urges a prompt and swift return to that
13 tradition and that norm. A related concern with
14 respect to maintaining public faith in the fairness
15 of our judicial system is the extraordinary number
16 of judicial vacancies that have continued with some
17 populous counties the hardest hit. We all know that
18 saying justice delayed is justice denied. There is
19 simply no excuse for allowing political infighting
20 to thwart the judicial appointment process. Because
21 sitting judges are not in a position to speak before
22 the Task Force, we feel it is important to pass
23 along the sense of some of the off-the-record
24 conversations many of us have had with sitting
25 judges.

1 A very significant instance is our
2 awareness that an assignment judge today feels
3 obligated to consider carefully in assigning cases
4 whether there is a likelihood of public or political
5 controversy before assigning a case to an untenured
6 judge. The burden of administering justice in each
7 venue especially in light of numerous vacancies is
8 only exacerbated when such a consideration becomes a
9 practical necessity. Several untenured judges have
10 approached us as retired judges to share the
11 pressures they feel in today's atmosphere. We are
12 talking about highly competent successful lawyers
13 who gave up private practice to serve on the bench
14 and now face the possibility that after seven years
15 they will not be reappointed for reasons that have
16 nothing to do with their competence, diligence or
17 personal or professional integrity.

18 Judges are expected to minimize the
19 potential for community and professional context
20 that would require them to recuse themselves from
21 cases. The mere passage of time, seven years,
22 effectively destroys a sitting judge's previous
23 private practice thus a judge who is not reappointed
24 faces a substantial hardship in returning to private
25 practice and to return to prior public service is an

1 unlikely prospect. Whereas in our time it was
2 reasonable to assume that competent performance
3 would lead to reappointment, that assumption is no
4 longer reliable. As a result, many fine prospective
5 appointees to the bench are thinking longer and
6 harder about taking the risk. That factor will in
7 the long run effect the quality of the bench itself.

8 Even in the context of initial
9 appointments, the fact that nominations are either
10 withheld or remain in limbo for lengthy periods
11 often due to power struggles between members of the
12 other two branches of government discourages some of
13 the most qualified persons from seeking to join the
14 bench.

15 For these reasons and more we urge the
16 Task Force to press for reaffirmation of the
17 traditional standard for the reappointment of judges
18 and justices and for a commitment to fill all
19 judicial vacancies expeditiously in each
20 circumstance based upon demonstrated competence,
21 diligence and integrity.

22 Our thanks for the Task Force for
23 taking on this important mission and for hearing our
24 views. Thank you very much for your kind
25 consideration.

1 MR. HARTNETT: In your experience, how
2 long does it take to be confident that a Superior
3 Court judge has what it takes to be a good judge?
4 In my review of the '47 constitutional proceedings,
5 it appears to me that the way we wound up with the
6 7/70 spread was a compromise between those who
7 wanted the prior scheme of seven years, seven years,
8 seven years and those who wanted life tenure.
9 Nobody seems to have thought that it would take
10 seven years to determine fitness. A justice
11 colleague commented that certainly wouldn't be
12 anything like even five years. Earlier in the
13 hearing we heard something like maybe two or three
14 years. The only thing I have been able to pick up
15 from those earlier proceedings about the seven year
16 term other than that it was what had been done
17 before was so that the governor upon reappointment
18 would very likely be a different governor then on
19 appointment, but if we are talking about determining
20 fitness, do you have a sense of how long that takes?

21 MR. HARPER: Well let me say this. I
22 will provide you my own personal opinion. I have
23 not been authorized to speak for the association on
24 the issue nor would I, but personally speaking I
25 came in under a system wherein we were first

1 initially educated with becoming a judge. We had
2 what we call baby judges school and my colleagues,
3 Judge Gallipoli is one of my class members from that
4 experience. We started off being trained both in
5 terms of the procedure of the law in terms of
6 handling a courtroom and other things so
7 substantively and then we had practical on-the-job
8 training. How long it takes? It became recognized
9 after a period of time that judges were going to be
10 evaluated initially within I think the first
11 three-year period and I was and then there was a
12 subsequent I think evaluation done and we were then
13 revetted in effect before we were reappointed.
14 There is no magic number of years and I think what
15 you really need in my view is a substantive
16 experience, in other words, you have to see how the
17 judge handles herself or himself over a series of
18 assignments. Could be to different parts of the
19 court or it could be in the same part of the court,
20 but you have to have a sense of do they have the
21 judicial demeanor. Do they have the ability to
22 analyze. Are they courteous to the public. Can
23 they handle themselves with the respect and command
24 the respect that the position requires.

25 This statement that we made today is a

1 statement in part based on what you good folks saw.
2 The confidence of the citizenry has to be engendered
3 and built and earned by the judge and if the
4 judge -- and I can speak from personal experience
5 because I've had enough of it as a judge and I loved
6 every day that I served -- but if you have a feel of
7 what is going on in your courtroom and how the
8 lawyers react to you and how the public reacts to
9 you and if you treat them with respect and courtesy
10 and you show them you have a command of what you are
11 doing, that's so much engenders the confidence that
12 they have. Even, as I said, if somebody losses, I
13 can't tell you I had a number of people say, Judge,
14 I didn't agree with your decision, but you listened
15 to me, you allowed me the opportunity to be heard,
16 you considered what I said and you made your
17 decision based on the facts in law as you found them
18 to be.

19 There is no magic number. I said get
20 a quantum of experience because that's what that
21 person should be evaluated against for a given
22 period. There must be evaluation that demonstrates
23 the integrity, the confidence, the actual
24 performance of that judge must be worthy. A judge
25 must earn respect and a judge must earn

1 reappointment.

2 MR. POPLAR: Is the evaluations the
3 lawyer surveys, is that what you are talking about?

4 MR. HARPER: There are two things,
5 sir. One, yes, is the lawyers' surveys. There was
6 another survey that I think it is still being done
7 by the New Jersey Law Journal. I was subject to
8 both of those surveys. The lawyers' surveys are the
9 ones that the judiciary themselves initiated. They
10 asked lawyers and others who appeared before us how
11 they found us, give us your experience, your opinion
12 of how the judge handled the situation, how the case
13 was decided. Was the judge civil, was the judge
14 courteous, did the judge really conduct himself or
15 herself as a judge should.

16 MR. POPLAR: I am familiar with the
17 surveys, but other than lawyers' surveys and maybe
18 some kind of anecdotal survey with the Law Journal,
19 there is no formal --

20 MR. HARPER: No, but there is -- when
21 I say no formal, there is within the AOC system an
22 established evaluation and a set of criteria, yes,
23 they are doing it and I've had as others of my
24 colleagues have had judges come to us and go over
25 our survey. My assignment judge went over my survey

1 with me, my evaluation I should say and another
2 judge came and reviewed that with me. There was my
3 presiding judge who also sat with me and talked to
4 me to help me grow and develop as a judge. So I
5 don't want to give the impression there is no
6 normal. There is a normal one within the system. I
7 prefer the one the AOC has to the Law Journal one
8 which to me was more of a popularity contest than
9 really I had confidence that they truly understood
10 what we were doing.

11 MR. CARCHMAN: The administrative
12 office of the courts conducts during the seven year
13 period two surveys. They are not surveys, they are
14 really evaluations and they are done with some
15 scientific basis in that before a response will be
16 considered valid, both sides of the case must
17 respond. Unlike the Law Journal survey which is
18 unilateral, one side can flood the box if they want
19 or stuff the box if you will. So the official
20 judiciary evaluation covers a whole gamut of areas
21 and as Judge Harper pointed out, the evaluations go
22 to the judge, they go to the assignment judge.
23 There is a mentor judge assigned who sits with the
24 judge. They go over it very carefully and it is
25 proven to be not only effective in New Jersey. It

1 has proven to be a model for other evaluations
2 throughout the United States.

3 There is nothing magic about the seven
4 year term, however, the seven year term has worked
5 very well for our evaluation program because it
6 allows us to evaluate twice. One of the things that
7 should not be lost and you have actually alluded to
8 it in your statement. During the seven years,
9 judges develop, they change. The evaluation number
10 one measured against evaluation number two and the
11 first evaluation in the first three years, the
12 second evaluation is generally in the fifth year
13 going into the sixth year before the tenure time
14 runs, you watch judges develop. You watch skills
15 enhance. You watch assignment changes bring out
16 certain skill sets in judges and it has proven to be
17 a very effective measure for the tenure process.

18 Now, there is one other recipient of
19 the evaluation, the governor's office. They receive
20 the evaluation scores, if you will, and that is used
21 in the reappointment process. So I am just going to
22 reiterate what I said before. The New Jersey model
23 has become a model for the rest of the country.

24 MR. HARPER: Judge Carchman, I want to
25 tell you something as a judge like yourself who has

1 gone through this process. I have grown and
2 developed. I grew and developed over twenty-one
3 years. I thought I knew a lot about law when I
4 became a judge. I found out because of all the
5 various things I subsequently became involved with
6 that I didn't know half as much as I thought. I
7 learned a great deal thanks to the continuing
8 education programs that the judiciary provides and
9 also the fact of sitting on cases and developing as
10 a judge. I can't tell you the process is so
11 important that because you are dealing with lives,
12 you are dealing with all kinds of decisions that
13 have a great magnitude and consequence on our
14 society. I mean you must understand if you sit in
15 the family court, the family dynamic. You have to,
16 you have to be attuned to what is going on and that
17 just doesn't come overnight, that comes with
18 experience and you don't learn insight, you have
19 insight, but your insights are sensitized and you
20 become aware of what is going on when you get
21 immersed in a case in the family part which has a
22 great deal of importance to that family.

23 So I can't speak to you enough and
24 underscore the benefit I had from service of
25 twenty-one years. I loved every minute of it and I

1 know I speak for my colleagues in their respective
2 service as well so we thank you.

3 JUDGE WEFING: Thank you.

4 JUDGE GALLIPOLI: Is there anyone else
5 that we have not heard from who wanted to speak or
6 who signed up to speak.

7 MS. COSCARELLI: I have no others.

8 MR. WOLFE: Good afternoon, I'm Saul
9 Wolfe, former president of this association and I'm
10 speaking purely as Saul Wolfe and not on behalf of
11 anyone else.

12 What you are doing is vital. The
13 independence of the judiciary is critical to our
14 system of government. I just want to share with you
15 some perspectives that I learned in the course of
16 dealing with the ABA committee on the independence
17 of the judiciary.

18 The judiciary that we love and
19 treasure is also frequently referred to by those who
20 don't love and treasurer it as the unelected third
21 branch of government. Speakers who talk about the
22 independence of the judiciary as protecting the
23 minority from the majority are right and as a first
24 generation American, I treasure all the rights that
25 the judiciary provides for us. But in terms of the

1 marketplace of ideals where these issues are going
2 to be addressed, the ABA has a different approach.
3 Not everyone likes the idea of a, quote, independent
4 judiciary.

5 Certain segments of our society see
6 that as a bad thing, it is anti-Democratic, but
7 everybody from the far right to the far left wants a
8 fair and impartial judiciary and the ABA has taken
9 that phrase and used it very effectively as the
10 jumping off point to stress the importance
11 ultimately of what we all seek and what we all want
12 and continue to have which is a fair and independent
13 judiciary. That means both fair, impartial and they
14 can't do that unless they are independent.

15 So I just offer for what it is worth.
16 It is just all in some respects critical thinking.
17 It is also unfortunately public relations and fair
18 and impartial is something that people favor. Thank
19 you and keep up your good work.

20 JUDGE WEFING: Thank you all.

21 We are now concluded.

22

23 (Whereupon, the proceedings were
24 concluded at 3:35 p.m.)

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C E R T I F I C A T E

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I, ANTHONY HOFMANN, a Certified Court Reporter, and Notary Public within and for the State of New Jersey, certify that the foregoing is a true and accurate transcript of the stenographic notes of said witness(es)who were first duly sworn by me, on the date and place hereinbefore set forth.

ANTHONY HOFMANN, C.C.R.
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