ALBANY, NEW YORK

September 7, 1993

4:27 p.m.

REGULAR SESSION

LT. GOVERNOR STAN LUNDINE, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. The Senators will please find their places.

I'd like to ask everyone present to rise and repeat the Pledge of Allegiance with me.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

Please be seated.

In the absence of visiting clergy, may we now bow our heads in a moment of silence.

(A moment of silence was observed.)

Secretary will read the Journal.

THE SECRETARY: In Senate, Saturday, September 4th. The Senate met pursuant to adjournment, Senator Bruno in the Chair upon designation of the Temporary President. The Journal of Wednesday, September 1st, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Hearing no

objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Present.

SENATOR PRESENT: Mr. President, I move that we adopt the Resolution Calendar with the exception of Resolution 2002.

THE PRESIDENT: On the resolutions, all those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The resolutions are adopted.

SENATOR TRUNZO: Mr. President.

THE PRESIDENT: Senator Trunzo.

SENATOR TRUNZO: On Resolution

Number 2012, which commemorates the 15th Anni versary of the New York State Public Employees' Federation, I'd like to open that up for all members, if they wish to go on.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: I believe there is a report at the desk, Mr. President.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Senator Marchi, from the Committee on Judiciary, reports the following nomination: Associate Judge of the Court of Appeals, Howard Arnold Levine, of Schenectady.

SENATOR MARCHI: With great pleasure, I yield to Senator Farley.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Senator Marchi; thank you, Mr. President.

It is with perhaps one of the highest honors and distinctions that I have had since I've been a Senator here in 17, 18 years, to nominate and urge the confirmation of Howard

Levine, of Niskayuna, New York, actually Schenectady, my dear friend and associate for many years, 25 years or more.

Let me just tell you something about Judge Levine. A graduate of Yale University and Yale Law School, he's been a distinguished private practicing attorney coming from a legal family. Both his father and his mother were attorneys. Matter of fact, he has a legislative heritage in that his father was counsel to Speaker Oswald Heck, of Niskayuna.

Judge Levine was a district attorney in Schenectady in 1967 to 1970. He's been a Family Court judge and not just a Family Court judge, but a renowned one, one that has had an award during his lifetime named for him because of his concern for the welfare of children.

He served as a Family Court judge and was president of the Family Court Judges' Association for the state of New York. He was elected as justice of the Supreme Court in 1981 and was -- in 1982 his judicial excellence was

recognized by the Governor and he was appointed to the Appellate Division of the Third Department. Howard Levine has always had a judicial temperament. As a matter of fact, the legal part of his life has been absolutely overwhelming.

With him today is his son, Neil, who's a partner in the law firm of Whiteman, Osterman & Hanna. Neil is also an outstanding athlete, basketball player, and served, I believe, on -- played on the state champions in Niskayuna. His daughter-in-law, Neil's wife, Meg Levine, is with us in the gallery. She's an assistant counsel in the state Education Department, and his daughter, Ruth Levine Susmman, of Manhattan, is an adjunct professor in the New York University Law School, and her husband is also a lawyer and he's executive vice-president and general counsel of the New York Yankees. And, of course, Jim Levine, his son, is an associate in Mudge, Rose, Guthrie & Alexander, and you know how hard they work him in those kinds of firms, and he wasn't able to

be here today.

Let me say he had three children. They're all lawyers, two of them being married to lawyers. I was always very proud of the fact that two of my children are lawyers and they're both married to lawyers. I have a third one who is still in college. She may want to do something else; I'm not sure.

Let me just say that Judge Levine is one of the finest men that I have ever known. He's respected in this Capital District and throughout the state of New York. He's been nominated for the Court of Appeals seven times. The seventh time he's hit a home run, this time. He's well qualified, to say the least.

Today at the judiciary hearing, we had Judge Casey, who came off the bench and who had a case that he had to hear at 3:00 o'clock, but he wanted to come over and testify in his behalf. We also had the head of the New York State Bar Association that came and testified, and we had numerous letters. Unfortunately, there was a person in opposition

who had no substance to their complaint and, in my judgment, was totally out of line, and the entire committee dismissed it as not -- not relevant.

Judge Levine is an outstanding father, lawyer, justice and citizen. His -- his background in -- in my area is -- he is renowned in the fact that he's heavily involved in the community and totally respected by everybody that knows him. As a matter of fact, Judge Levine and I go back politically even when he was running for district attorney. He took me door to door and when I was also running on the same ticket, and in spite of me he got reelected.

Judge Levine always had a judicial temperament even when he was district attorney. He's fair; he's concerned; he's compassionate. He also has an intellect that is truly remarkable. I think that's one of the major -- his colleagues respect him because of his brilliance, not only as a judge, but as an individual.

Judge Levine is eminently qualified, and let me start off by -- or finish off by complimenting the Governor. Somebody said at the hearing, and I couldn't agree more, if there's a legacy to his governorship, it's been his fairness and his bipartisan approach to appointing people to the bench. He's chosen the best that he could find, and Howard Levine certainly is among those.

He's with us with his family in the gallery, and it's truly a thrill for me to nominate my dear friend and my buddy, Judge Howard Levine, for the Court of Appeals. I always thought he was a candidate -- I still think he's a candidate for the Supreme Court of the United States, but this is his next stop.

I move his confirmation.

THE PRESIDENT: Senator Ohrenstein.

The Chair will state that -

SENATOR OHRENSTEIN: No, please don't.

THE PRESIDENT: -- I scrupulously

go in order of the Senators as I see them asking for recognition, but occasionally, if the Majority Leader or the Minority Leader want to bump one of their own brethren I honor that request.

Senator Ohrenstein.

SENATOR GOLD: What a rule!

SENATOR OHRENSTEIN: What a coward's way out of this dilemma!

Thank you, Mr. President. Mr. President, it's my great pleasure to rise to second the nomination of Judge Levine for the Court of Appeals. I do so for several reasons. The first is, to follow the reasoning of my good friend from Schenectady, I want to also commend the Governor for this very, very excellent choice for a judge of the Court of Appeals. So I want to congratulate him for his wisdom, and for his continued wisdom, in exacting the highest standards from the judiciary in terms of his appointments to the Court of Appeals.

I think the Governor truly has made history. He made history even just this

year in elevating our new chief justice or chief judge, and now in selecting this very, very eminent jurist for the vacancy which was left by her elevation to the chief position.

I say this not only because I admire the Governor for the way he's gone about this whole question of the Court of Appeals for the last decade or so, and in selecting a bench which continues to rise in excellence, but it's also a vindication for a process which I feel I have had some little -- some little part in fashioning, and that is the process of making this an appointive position rather than an elective position, which it was in the past.

As a legislator, as a politician, I am keenly committed to the democratic process and to the democratic electoral process. I've just felt almost from the beginning of my political career that the electoral process does not really work when it comes to the judiciary, because in selecting members of the judiciary we look for qualities and for histories and for abilities that are not necessarily best served

by that process.

I know there's a lot of disagreement on that. I simply cite the experience in our highest court of this state as being one which vindicates that particular judgment. I've been very pleased to be able to participate in this process through the appointments I have made to the Judicial Nominating Commission and, as I said, I feel very good about the history and the history that the Governor has -- and the judgment he has exercised in furthering this history.

I also feel very good about this nominee. We only met this afternoon, but I want to say, to his credit, he immediately gave me an avenue for exploration which I didn't know I had because it turned out that he had served on the Temporary Commission for Mental Health, or what was previously known as the Governor's Advisory Committee on Mental Health. A member of that commission is my wife, who is a social worker. So that apparently he gave me a way of checking him out and, Judge, I want you to know I called

her because -- and your very future lay in the balance of that call, and I want you to know you came up with very, very high numbers. The reason I say that your future lay in the balance of that call, because I related to you and your family that another member of this chamber knows my wife very well and goes by her word, and that's the Senator sitting immediately in front of me, Senator Galiber. So, on her word, there were two votes which were critical to the future of this nomination. So I want you to know it isn't Joe Galiber or Fred Ohrenstein who is voting, it's Lynn Ohrenstein who is casting a ballot in your favor, and I will say to you, she was delighted to hear this is going forward and that you are the object of our coming to Albany today which, again, she was not delighted about. We came back from our vacation yesterday. We had to come here today, but she told me, if it was for this purpose, my coming here today was vindicated.

But on the record, Judge Levine is obviously an outstanding lawyer, an out

standing jurist, who has paid his dues in a thousand different ways, in both the private law practice as well as the -- as his service as a public prosecutor in Schenectady County, and then as a judge through several steps in our judicial system.

He has gained the respect of everyone who has known of him, who has read his opinions, and I would suggest to you particular ly the opinion that the chief judge expressed upon hearing of this nomination would weigh very very heavily with us and obviously Judge Kaye, who has been sitting on the court now for a very long time, is very familiar with the opinions of this particular nominee, and I think her evaluation of his opinions and his history and his service is of great weight and obviously is of the highest compliment to him.

So, Mr. President, I'm delighted to rise here to second this nomination. I congratulate Judge Levine for having achieved this great eminence. I look forward to his making this Court of Appeals, which is probably

the most preeminent court -- state court in the country, an even greater one.

I congratulate his family, and I'm delighted to be here to participate in this auspicious moment.

THE PRESIDENT: Senator Stafford.

SENATOR GOLD: I'm not ready.

SENATOR STAFFORD: I will be very brief.

At the committee meeting today, I wanted to speak, but everyone just keeps saying or kept saying what I was going to say, I mean, and it was obviously positive. I had two or three points I would make, however.

For over 30 years, I've worked with Judge Levine. I can remember when we were making some changes in the Family Court Law, the County Court Law, we'd have meetings on Saturday. He'd be there; want everyone to realize legislators were there too, but a great deal of work got done, and much that's in the C.P.L.R. today and the Family Court Law is the

work of Howard Levine.

I would say, like others have said so well, that he has done so well. He's a brilliant scholar despite where he went to law school, but we understand that Yale is the top. Some of us would name some other schools, but we don't -- we don't get into that.

But on a serious note also, properly within the governmental system as was mentioned, the political system. I do know his colleagues well on the Appellate Division. I have heard them, to the person, state their support for Howard for the Court of Appeals and how pleased they are, and I, too, compliment the Governor on this very, very fine choice.

I would only conclude by saying that I think this says a lot about a person. When he was D.A., when he was a Family Court judge, Supreme Court judge, the Appellate Division, now, no matter how hard he was working, no matter what his responsibilities, his main concern was for the other person, and that has been proven time in and time out, and

now by his decisions, and I, too, join all here today in moving this very, very fine appointment and moving Judge Levine's confirmation.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Thank you, Mr. President. I'm ready now.

Mr. President, I agree with the conclusion reached by Senator Ohrenstein on the nominee, even though he may be wrong on his basic philosophies on elected versus appointed judges, but we won't discuss that today.

The Governor should be commended. I'm amused when I am in the presence of certain judges, and I won't mention that group by name, who tell you ad nauseum how their particular court is the best court in the state, in the country, in the world, and to me it's more important when other people say that, and the Governor has certainly taken major steps to make sure that, when people talk about our Court of Appeals, they really do talk about a great court.

I was excited, as so many other

people were, when Judge Kaye got the opportunity and became the chief judge, and now after being a bridesmaid often enough, we finally have the opportunity to recognize a great talent in Judge Levine, and also to open up the door to our people, which is more important, to have the opportunity to have this very fine man serve on this court.

I think that the background that was submitted to us is significant, and the record ought to indicate it. I know reference was made to Judge Casey, but we also should indicate that the presiding judge of the Third Department, Judge Weiss, who is certainly a great gentleman and someone I respect to the Nth degree, submitted testimony in support. The president of the New York State Bar Association was there, the vice-president of the Women's Bar. There was a memo from the New York City Bar Association.

In addition, the committee which made the recommendation of the list from which Judge Levine was selected, has very distinguish

ed members on it, many of whom are known to members in this chamber.

I am not overly concerned, as some other people may be, with the Yale education. Judge Kaye has Cornell graduates in her family, and I'm sure there's others around and, if the issues get too difficult, I'm sure you can consult with those people. Senator Oppenheimer was the one who just said Ha-ha-ha. Otherwise she couldn't go home tonight.

At any rate, what impressed me most about the nominee was his legal experience because, while he did practice law for a New York City firm for two years and while in those days as an assistant district attorney -- and as a district attorney you could still maintain some private practice -- the fact of the matter is that his whole life has shown a background and dedication to public service and to the intellectual side of public service through involvement in instruction at law school and, as I indicated, the district attorney's offices, the Family Court and, of course, his latest

stint as a justice of the Supreme Court.

It really is an honor, Judge, that you allowed us to consider you, and I consider it an honor on my part to be able to cast an affirmative vote.

THE PRESIDENT: Senator Larkin.

SENATOR LARKIN: Mr. President, my colleagues, I can't stand here in front of you and talk as you do about being in court. The only time I've been in court is to see my son in action one time, but when I was telling him about being here today, he said, "No, Dad, let me tell you something about the judge." He said, "I went to Albany Law School. I consider myself well educated. You paid a nice price for it, but the most important thing to remember about this man was that he taught the students. He taught them law and," he said, "in all my time and education and still taking courses, I find that he was one that could impart the knowledge to you so that you would understand it and know how to use it, not just to be a criminal lawyer, Legal Aid lawyer, but to go

into a situation where you could advise your clients, handle their issues, and really be a partner with them, and," he said, "for that, Dad, your money was well spent." And, Judge, I'm glad. He's doin' very good. Thank you.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Hello, Judge.

I think we should talk a little bit about your brilliance in light of -- I hate to disagree with my esteemed colleagues, Senator Stafford, Senator Gold, but, in my opinion, you certainly got the finest legal training that is available in America today at Yale Law School where you are a colleague and classmate of my husband.

And we know you to be a leader in the fight for juvenile justice and for child care and for care of our youth and our delinquent youth, and we praise you for that and for your work in the social justice arena. But I would like to take a moment to just talk about

what you are as a person too, in my esteemed husband's opinion. After all, if Senator Ohrenstein can talk about his wife's opinion, I can talk about my husband's opinion.

My husband has said that you are a man who was liked by every single person in the Yale Law School. That is quite amazing. He said nobody ever had a single bad word to say about you. He said you seemed to care for everybody, and everybody wanted to care for you and did care for you. He said he sees that continuing right until this day, that people care for you because you take great care of people, and I thought you would like to hear those remarks.

They are also my remarks. We had said we would meet here in Albany. I hardly thought it was going to be in this chamber, and I'm very delighted to be here today to second your nomination.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Mr. President, Senator Ohrenstein, I think, indicated that this

was a vindication of a process that we all took great satisfaction in, and it went beyond the abundant testimony on the wealth of back ground, the quality of that background, the legal acumen, the wisdom and the temperament that will serve us well in the future.

I also took very careful note of some of the personal observations that were made which really must have filled the entire Levine family with a great sense of pride and self fulfillment.

You're a wonderful family, and you all deserve each other, and it was really edifying to just look at your expressions and the way you interacted among yourselves, and you must have been impressed by the evident sincerity of the statements that were being made by the witnesses and by the rejoinder of the members of the committee. This was a sincere feeling, a warm feeling that went out to you and it must be a matter of great personal satisfaction.

God bless you, and the best is

yet to come, I'm sure.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

There isn't much that I can add to what has already been said, but I wanted to stand up and just add a word of seconding. My classmate, Senator Farley, has the honor of having the judge as a constituent, but I am honored in that he is a neighbor.

But one of the first things, and I think we visited about this, that happened to me when I moved into the community that I live in, was that a good friend of mine who had been in Family Court, Judge Marc Filley, was sort of a mentor to me, said one day, "You know, there's a judge over in Schenectady that you've got to meet. He is an up and coming young fellow and he is the kind of person that anyone can relate to. He's astute; he's objective; he's caring. He just is a fine person who does a good job."

I did meet the judge as a consequence of that conversation, and Judge Marc

Filley, no longer residing in this state, was absolutely right in all of the things that he had to say and, as I have been fortunate enough to get to know the judge and his family, I can relate in that you truly are an outstanding individual and will continue the great service to the entire state that you've been providing previously.

I am honored to add my second to the others that have been presented.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I've never been a judge, but I guess today I get a chance to act like one. Now, your Honor, I don't know you, have never met you before, but I feel a little bit like one of those Appellate Division judges who has never heard the case before, and someone walks in and presents their petition, their record on appeal, their brief, and from my view, your Honor, the presentation in support of your nomination has

been extraordinary.

The evidence, both from my colleagues who know you personally and know of your character, has been substantial and certainly the witnesses that testified on your behalf. Faced with all of that, I'm going to rule in the affirmative and affirm my colleagues' and my lower court opinions with respect to this nomination, but I do so with just three brief comments:

First of all, my questions to you during the course of the confirmation about both the issue of racial bias and gender bias in our court system. It's my view, as an elected official, that we have vestiges of both present in our system and that we need to be committed as a state, not just as an elected Legislature but as a judiciary, to making sure that the eradication of those vestiges of old patterns of thinking, of old thoughts, of old ways, that we now as a society have decided to eradicate, we need to be sure that we're following down that path. I think your comments in response to my

questions indicate that you will continue that path and continue the leadership.

The second question deals with one of the issues that Senator Marchi brought up in his questioning about the role of the state Constitution. It seems to me, as an elected official and a political person, that perhaps one of the age of "New Federalism" ideas is that in this country we've embarked on a pattern the last 12 years of pushing more and more decisions down to the states, more and more decisions about spending, more and more decisions about what the governance pattern should be in a particular state.

As a consequence of that trend, the state judiciary begins to assume an even more important position because we now have to ask the state judiciary to provide leadership for this state in conjunction with this Legislature about issues involving our spending, about the role of government, about the power of the people through a Constitution versus the power of the Legislature.

I have noted your opinions, I think in Brady against the state of New York and in other cases in which you haven't been shy about telling the government of this state that they have trampled on the people's rights by exercising powers that they do not constitution ally have. It's my hope that as part of that "New Federalism" which seems to be the wave of this -- the political science in this country, that you will continue to embark on a pattern of expanding the Constitution where it's appropriate in your eyes, for the people of this state, and that you will continue to let that Constitution grow and develop and give us our own constitutional base in this state.

My final comment comes to something that I learned at Albany Law School. I was there when you taught there, although I didn't have you as a professor, and that is my great concern about the growth of the common law.

Look around this chamber. I wish all my colleagues were here. You would see a

very different picture of who the common man in New York State is. It's no longer an old common man. There's a new "common man" -- women, minorities, African-Americans, Hispanics, Puerto Ricans. The entire panoplia of New York State has now created a new "common man" with a different face, with different needs.

We need a new and a different common law to accommodate the growing needs of our growing and diverse society. It's my hope that you will take the common law of this state and continue to drive it forward. You follow in the footsteps of great, great legends in the common law.

I have every hope and every indication from the speeches I've heard on the floor, from the testimony gathered in the Judiciary Committee, that you will be a strong contributor to the continuing growth of that law. The people in this state need it. The people in this country need it. We need leadership in the court system. I have every confidence, based on what I've heard here, that

you will provide that leadership.

Congratulations and Godspeed.

THE PRESIDENT: The question occurs on the confirmation of the nominee. All those in favor, say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The nominee is confirmed, Howard Arnold Levine, of Schenectady to be Associate Judge of the Court of Appeals, to fill the vacancy caused by the appointment of Judith S. Kaye.

(Standing applause.)

THE PRESIDENT: Congratulations, Judge Levine.

Senator Saland.

SENATOR SALAND: Mr. President, I wish to call up my bill, Print Number 5881, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Saland, Senate Bill Number 5881, an act to amend the Family Court Act.

SENATOR SALAND: Mr. President, I now move to reconsider the vote by which this bill was passed.

THE PRESIDENT: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 46.

SENATOR SALAND: Mr. President, I offer up the following amendments.

THE PRESIDENT: Amendments received.

SENATOR SALAND: Mr. President, please recommit the bill to the Committee on Rules.

THE PRESIDENT: So ordered.

Senator Present.

SENATOR PRESENT: Mr. President, in behalf of Senator Levy, I'd like to announce an immediate conference of the Majority in Room

335.

There being no further business, I move we adjourn subject to the call of the Majority Leader, intervening days to be legislative days.

THE PRESIDENT: The Senate stands adjourned.

(Whereupon at 5:03 p.m., the Senate adjourned.)