ALBANY, NEW YORK

December 16, 1993

12:01 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.)

THE PRESIDENT: In the absence of visiting clergy, I'd like to ask for a moment of silence.

(A moment of silence was observed.)

Secretary will read the Journal.

THE SECRETARY: In Senate, Wed nesday, December 15th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Tuesday, December 14th, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Hearing no objection, the Journal stands approved as read.

Senator Marino.

SENATOR MARINO: Mr. -

THE PRESIDENT: I'd like to ask for a little order.

Senator Marino.

SENATOR MARINO: Mr. President, before we proceed with the formal portion of our meeting today, I'd like to remind the members that, since we last met, we have secured two new members to our house and I'd like to introduce them:

Mary Lou Rath from Amherst. Congratulations.

(Applause)

And Robert DiCarlo from Brooklyn.

(Applause)

And, Mr. President, I have a privileged resolution. I'd like to hand it up and ask for its immediate adoption.

THE PRESIDENT: First, the Chair will say welcome to both Senator Rath and Senator DiCarlo, and it is a delight to have you

in the Senate. I'm sure I can speak for both sides of the aisle in welcoming you.

The Secretary will read the privileged resolution.

THE SECRETARY: Concurrent Resolution, by the Senate Committee on Rules: Concurrent Resolution of the Senate and Assembly for the purpose of appointing by joint ballot an Attorney General of the state of New York.

The Assembly sent for concurrence the following resolution: For the purpose of appointing *** joint ballot, an Attorney General of the state of New York.

THE PRESIDENT: Substitution ordered.

The question is on the adoption of the resolution. All those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The resolution is adopted.

SENATOR MARINO: Mr. President,

on behalf of Senator Levy, I'd like to announce a conference of the Majority in 332 immediately after the joint session.

And now, Mr. President, I move that the Senate stand in recess pending the completion of the joint session.

THE PRESIDENT: The Senate will be in recess and it's my understanding, is this correct, Senator Marino, that we are to immediately go into the joint session.

SENATOR MARINO: Into the Assembly, yes.

THE PRESIDENT: Into the Assembly chamber. Thank you. The Senate stands in recess.

(Whereupon at 12:06 p.m., the Senate recessed.)

...At 2:19 p.m....

SENATOR PRESENT: There will be an immediate meeting of the Republican Conference as soon as we can assemble.

There will be a Rules Committee meeting and a Finance Committee meeting later

upon call.

...At 4:29 p.m....

SENATOR LIBOUS: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332. Rules Committee meeting immediately in Room 332.

SENATOR LEVY: Mr. President, I'd like to announce a meeting of the Transportation Committee at 5:00 o'clock in Room 124 in the Capitol.

...At 4:50 p.m....

SENATOR PRESENT: I yield to Senator Marchi.

SENATOR MARCHI: Mr. President, there will be an immediate meeting of the Committee on the Judiciary in Room 332.

ACTING PRESIDENT SPANO: Meeting of the Judiciary Committee in Room 332.

Senator Present.

SENATOR PRESENT: Mr. President, can we go to reports of standing committees, please.

ACTING PRESIDENT SPANO: Reports

of standing committees. Secretary will read.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following bills:

Senate Bill Number 6029-A, by Senator Holland, an act to authorize Tier I status for certain members of the New York City Fire Department Pension Fund, restored to third reading.

ACTING PRESIDENT SPANO: Without objection, third reading.

THE SECRETARY: Senate Bill Number 6214, by Senator Spano, an act to amend the Mental Hygiene Law, in relation to the reinvestment of funds to community-based services;

Also 6215, by Senator Kuhl, an act to amend the Education Law, in relation to school building aid for refunding bond issues;

Senate Bill Number 6217, by the Committee on Rules, making an appropriation to pay Mona Talomie, widow of the late Frank Talomie, member of the Assembly.

Also Senate Bill Number 6218, by Senator Tully, an act to amend the Insurance Law, in relation to insurance coverage for the provision of preventive and primary care services to dependent children.

ACTING PRESIDENT SPANO: Without objection, all bills reported directly to third reading.

SENATOR PRESENT: Mr. President, we stand at ease.

ACTING PRESIDENT SPANO: Senate will stand at ease.

(Whereupon at 4:53 p.m., the Senate stood at ease.)

...At 5:13 p.m....

SENATOR STAFFORD: Mr. President, I would announce an immediate meeting of the Committee on Finance in Room 332.

ACTING PRESIDENT LIBOUS: Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President. I note that, even when we're away for a while, we don't change our habits. I guess

that goes for all of us.

I announce an immediate meeting of the Committee on Finance in Room 332, please.

ACTING PRESIDENT LIBOUS: There's an immediate meeting of the Finance Committee in Room 332.

(The Senate reconvened at 5:16 p.m.)

THE PRESIDENT: The Senate will come to order. Senator Present.

SENATOR PRESENT: Mr. President, call up Calendar Number 1709, please.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 1709, by Senator Tully, Senate Bill Number 6218, Senator Tully moves to discharge the Committee on Rules from Assembly Bill Number 8931 and substitute it for the identical Third Reading 1709.

THE PRESIDENT: Substitution ordered.

Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

THE PRESIDENT: The bill is passed.

Senator Tully.

SENATOR TULLY: Thank you, Mr. President. I'd just like to thank my colleagues on both sides of this house for the support they've given in connection with this most significant bill which will provide health care for children up to the age of 19 in this state. It's been supported by the Assembly as well as the Governor, and I'd like to congratulate Sheila Humiston, in my office, who worked so hard to move this bill along.

Thank you.

THE PRESIDENT: Thank you.

SENATOR PRESENT: Calendar Number 1710, please.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 1710, by Senator Spano, Senate Bill Number 6214, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 8928 and substitute it for the identical Calendar Number 1710.

SENATOR GOLD: Mr. President.

THE PRESIDENT: Substitution ordered. Senator Gold.

SENATOR GOLD: Yeah, Mr. - Senator Spano said it would be in my best interest to ask for a short explanation.

SENATOR SPANO: Thanks for asking. We're here today passing the community reinvestment bill, which is a fulfillment of a promise that was made to the mentally ill decades ago when we first started what we call deinstitutionalization.

There have been plenty of times on the floor of this house that I have spoken about the policies of deinstitutionalization and

how we treat the mentally ill, the provision of mental health services in this state, and I'll continue to say that. We have continued to discharge people from our psychiatric centers into a community-based system of care from back in the 1950s when we had 33,000 people in the institutions to some 10,000 today.

Today we're on the verge of completing that switch from institutional care to community-based care where a tremendous por tion of our budget would go towards institution alizing people, where just pennies of our state budget goes towards the community-based system of care where the people are living.

So we're recognizing today that it's not our purpose just to close psychiatric centers, not to accelerate a closure process of psychiatric centers in this state without first making sure that the consumers of mental health services have adequate facilities for them in the communities where they live.

This program, which will generate $210 million over five years, will give the com

munities all across the state of New York the tools that they need to establish that commun ity-based system. It will put in process in - put a process in place to close psychiatric centers, five psychiatric centers specifically, and it will be done in a way that will not disrupt the employees of those psychiatric centers, will not -- will cut down a lot on how it will affect the economic impact on the areas and, most importantly, will make sure that the quality of care to the individuals in our current state system will be cared for by putting 15 percent of this total back into improving the patient:staff ratio as well as at the same time improving the quality of care of these individuals in the community by making sure that these community-based systems are there.

There is nothing in this bill that will change the method that we will use to plan for the local programs. That plan will stay in place. At the same time it will provide for some $30 million of welfare will be available to

aid the homeless mentally ill populations all across the state.

SENATOR GOLD: Last section.

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Will Senator Spano yield for a couple quick questions?

SENATOR SPANO: Yes.

SENATOR LIBOUS: Senator Spano, of the $30 million that's in this bill for the mentally ill and the homeless mentally ill, how is this money going to be dispensed? Is the Governor just going to send this money out or is it going to be dispensed in another way? That's $30 million, and I'm not sure.

SENATOR SPANO: Of the money that's in the bill, some part of it goes back to the institution. Part of the bill, as you've been hearing all across the state, there's $30 million that's available for homeless mentally ill and that money will be planned -

THE PRESIDENT: Despite Senator Spano's outstanding projection, it is difficult to hear when there isn't order in the chamber.

Please, let's keep order in the chamber.

Senator Spano.

SENATOR SPANO: Senator Libous, out of the $30 million dollars, there are specifically in the bill, page 12 -- we outline how the services are planned and what the process will be for planning those services and it's done with a local planning process and we want to make sure we put that specifically in this bill.

On page 9 of the bill, lines 24 to 32 required the counties to plan for their own programs, so we felt it important not for the Governor, not for the Legislature, not for the Office of Mental Health or the Commissioner but for the local counties, a local planning process to implement the local mental health program to establish the procedures and policies for spending this money within their own area.

SENATOR LIBOUS: Thank you, Mr. President.

SENATOR GOLD: Last section.

THE PRESIDENT: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

THE PRESIDENT: The bill is passed.

(Applause from the gallery.)

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. May we return to the reports of standing committees and, after the report is read, I'd ask to yield the floor to Senator Marchi.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Senator Marchi, from the Committee on Judiciary, reports the nomination of Carmen Judith Beauchamp Ciparick, without recommendation.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Mr. President, as the clerk indicated, the nomination is made

without recommendation. However, it was by unanimous vote, and I will speak to this nomination. However, I am -- at this point, I would like to yield to Senator Goodman on behalf of a constituent, and who is interested in this confirmation.

THE PRESIDENT: Senator Goodman is recognized.

SENATOR GOODMAN: Thank you, Senator Marchi.

Mr. President, I deem it a very special privilege and, in fact, a high honor to present to this body the name of Carmen Beauchamp Ciparick, who has been appointed by the Governor subject to the advice and consent of this Senate chamber, to the highest judicial post in the state, justice of the New York State Court of Appeals.

Mr. President, Judge Ciparick, who is now a sitting justice of the Supreme Court of the state of New York, has been known to me for a number of years, and there is no one of my acquaintance in the court system of the

state of New York who enjoys a higher reputation for character, for consideration of her fellow justices and of those who appear before the court. There is no individual of greater compassion, ability -

May I ask for some order, please, Mr. President?

THE PRESIDENT: Senator Goodman's point is well taken. There will be order in the chamber.

Senator Goodman.

SENATOR GOODMAN: -- no person having great ability -- any greater ability in the state.

I should like to take a few moments to tell you something of the background of this nominee to this most important post, and then to deal with one or two matters that have come up in connection with this nomination.

First of all, Judge Ciparick was raised in Washington Heights. She is the daughter of immigrants from Puerto Rico. Her father was a clerk of the United States Army

Corps of Engineers and her mother a housewife. She is a graduate of George Washington High School receiving her undergraduate degree, her college degree, from Hunter College. She worked as a teacher in Harlem to finance her legal education at St. John's University School of Law.

Following her graduation in 1967, she was named a member of the -- staff attorney of the Legal Aid Society of the Bronx. Starting in 1969, she held a series of important posts in the judicial administration, serving first as assistant counsel to the Judicial Conference of the state of New York, now known as the Office of Court Administration, and then as chief law assistant to the Criminal Court in New York City where she supervised law assistants in the conduct of legal research and the preparation of reports and memoranda of law.

She was appointed by Mayor Edward I. Koch to the Criminal Court in 1978 and elect ed to the Supreme Court in 1982. Therefore, she has served 11 years in that body.

Judge Ciparick has also served since 1985 as a member of the New York State Commission on Judicial Conduct and served from 1986 to 1989 on the New York City Commission on the Bicentennial of the Constitution, a document for which she, of course, has the highest rever ential regard.

Judge Ciparick was selected by Governor Cuomo from a short list of highly qual ified candidates who were intensively screened by the Commission on Judicial Nomination. I must say, in a bipartisan spirit, that the Governor has been noted for the excellence of, and the non-partisan nature of his selections to the Court of Appeals. So good have these designations been that the selection process of the Court of Appeals is a paradigm, an example, of an excellent judicial selection procedure which has been copied in a number of other states and is at this time being looked to as an exemplary manner -- as an exemplary method for the selection of high judicial talent.

The fact that the Governor sought

to designate Judge Ciparick as his first choice from an outstanding talent pool speaks volumes of her qualifications.

Mr. President, at the hearing which was held yesterday by the Judiciary Committee, several very eminent judicial figures came before that Committee to speak of Judge Ciparick. I would first cite former Chief Ad ministrative Judge Richard Bartlett, well known to this chamber as a former legislator of high reputation and a judicial administrative justice second to none.

He stated that during the 1970s, when he became chief administrative judge, he came to know Judge Ciparick well in her capacity as the chief law assistant of the Criminal Court of the city of New York and the Supreme Court, first branch -- First Judicial District. She also worked as a counsel to the Judicial Conference.

As I stated a moment ago, in that capacity, Judge Bartlett had the opportunity to work closely with her and to know intimately the

character and quality of her work. He stated that she was highly impressive as a lawyer and also as an administrator. He spoke of her fairness and her even-handedness and her ability to work with people, both her fellow justices and those who came before her in the court, both lawyers and people who were party to legal matters.

Mr. President, the record is very clear and, as emphasized by Judge Bartlett, that this is an individual of great decency. There isn't an arrogant bone in her body. She cares deeply about people, and she knows the law both upwards and downwards in terms of the way in which she deals with people on an individual basis, a very important quality for someone in the highest court in our land.

Also appearing before the Judiciary Committee was Betty Weinberg Ellerin, a highly esteemed justice in the Appellate Division, First Department. She met Judge Ciparick when Judge Ellerin went on the bench in 1977, when Judge Ciparick was the chief law

clerk to the criminal courts.

Throughout Judge Ellerin's tenure as a judge, she has observed that Judge Ciparick is highly admired within the system. As an Appellate Division judge, Judge Ellerin has reviewed Judge Ciparick's work product and has found it to be, and I quote, "of consistently high quality".

Also heard was Judge William C. Thompson, an associate judge of the Appellate Division in the Second Department. He wrote to the Committee to express his strong support for Judge Ciparick.

Now, I would note that certain questions have been raised with respect to one particularly significant decision made by Judge Ciparick. This decision was known as Hope vs. Perales. The decision is one charged with emotion and controversy, not because of any action that Judge Ciparick took with respect to the issues in the case, but rather because of a very important question which relates to the scope and ambit of the judge's work in applying

the Constitution and facts to the case.

Let it be said that in the de cision which she delivered, in Hope vs. Perales, it was the judgment of Judge Ciparick that certain people who were involved in the question of abortion, but who were indigent to the point of not being able to afford abortions even when they are prescribed for the health of the mother and for the safety of the mother, were placed in a position where, due to lack of funds, as Judge Ciparick saw it, that the intent of the Legislature could not, in fact, be carried out.

Now, I don't aim to open up the Pandora's box on the abortion debate tonight on this nomination. This is not either the place for this or the time for this. That issue has been heavily debated in this house since that moment 23 years ago when I recall vividly leading the debate with respect to the abortion reform laws in the state of New York.

But suffice it to say that, with respect to this decision, it was subject to review by the Appellate Division and, in a four

to-one decision, ladies and gentlemen, the findings of Judge Ciparick were upheld. Therefore, any scintilla of a suggestion that in the work that she did, she was seeking to legislate from the bench and to override the position taken in this Legislature with regard to the provision of abortion services to medically indigent people, was, at least in the opinion of four highly distinguished juris prudential scholars, absolutely inappropriate and was not something which had any sustained capacity to be under scrutiny in that light.

In short, what I'm saying is that Judge Ciparick's judgment was fully vindicated by a high Appellate Division court and, as it is widely known, the First Department Appellate Division is one of the most respected, if not the most respected, Appellate Divisions in this or any other state.

So I would respectfully submit to this body beyond any peradventure of a doubt that with this type of close judicial scrutiny and review concurred in by four out of the five

voting justices, that Judge Ciparick's interpretation of the Constitution was clearly upheld and is appropriate.

Now, obviously this matter could be subject to debate, and I dare say we're going to hear from some people with respect to that matter in due course, but the point that I wish to make is that there was no conscious effort on the part of this fine justice ever to torture or to strain or to reverse a stated legislative intent of this body in a manner that would not be fully mandated or dictated by a constitution al interpretation.

This, my friends, is the key point and dimension of this matter, and I hope it will be closely understood as we proceed with this matter this evening.

Let me just bring this to a close by saying that there are few things that we do in this body that are more important than providing our advice and consent to the highest judges in the state. It is to them that matters of the greatest importance ultimately come on

appeal, and it is in the confidence that we place in them that we have one of the greatest pillars of our entire judicial system in the state of New York.

It is for that reason, my colleagues, that I suggest to you, with the deepest conviction of which I am capable, that the Governor and his screening committee, which have looked so closely at this matter, have indeed chosen wisely and well and that in Judge Carmen J. Beauchamp Ciparick, we have an individual whose very record, whose character, whose temperament, whose compassion, whose capacity to deal with complex issues and, in short, whose high, high judicial stature and standards entitle her to the fullest support of this chamber and to her immediate confirmation.

I respectfully request that that be rendered forthwith and, on that note, Mr. President, to hereby submit this name to you and, in fact, to thank Senator Marchi for allowing me to do this on behalf of one of my most distinguished constituents.

THE PRESIDENT: Senator Ohrenstein.

SENATOR OHRENSTEIN: Mr. President, I feel it is a great privilege to rise to second the nomination of Carmen Ciparick for this really very -- for one of the most important positions we will consider.

I think Senator Goodman, very adequately and forcefully, covered the judge's background, so there is no need for me to do this. Fortunately, I know the judge quite well, and so this is not only a political pleasure but it's a personal pleasure to be able to stand here, talk about her, and urge my colleagues to vote for her overwhelmingly because of her outstanding qualifications.

We've talked many times on this floor about the Court of Appeals, about the process which we use to select judges for the Court of Appeals, because it is a unique process, one which was crafted, partly in this chamber, partly in the other chamber and one which has worked exceedingly well.

You don't always agree with the Governor. I don't always agree with the Governor, but I think we can agree that this Governor has done an outstanding job in selecting judges of the Court of Appeals, and as we look upon the present court, we can see the rest of it and how it has continued to gain in reputation and in credibility, and it is, in fact, one of the great courts of this land.

I think one of the things that we do, particularly those of you on the Majority side, have to recognize, is the Governor's fairness in addressing the question of politics on the court because he has, in fact, been as bipartisan as any governor has been on this matter. As you know, there are a number of distinguished former Republicans who are on the court who are as distinguished as are the Democrats that he has selected. I say that because, while we have to consider, of course, every nominee on their own merits -- and this nominee has exceptional merit -- we also have to consider that this is the Governor's prerogative

based upon a very, very extensive screening process.

But we also have to consider the Governor's record on this issue, and that he has not politicized this court ever. That hasn't always been the case because we have previous - we have previously had a different process and it would have been very easy to politicize this process, and whatever disagreements we may have, we may have with the Governor, I may have with the Governor, we have to agree that, on his selections to this court, he has been bipartisan, has been fair, has been open and has, in fact, been non-political.

So it is fair to ask that we consider that in making a judgment on each and every nominee and I believe, what he has evinced, bottom line, is an enormous respect for the law. I think this Governor has appreciated the key role that the highest court of this state, as does the Supreme Court of the United States, the key role that this court plays in our judicial process, because on this court it

is not only a question of law, but often a consideration of questions of judgment and judicial temperament that play a key role in the decision-making process because what this court says is final at least as far as the state of New York is concerned; and I can not reiterate often enough that, despite the highly political nature of our process, despite the highly political nature of the Governor's office, I have been -- I have nothing but the greatest admiration for Mario Cuomo for respecting the need to keep this court out of politics and he has succeeded. And he -- just the last time Judge Levine of Schenectady, I've never seen anybody who had such immediate universal acceptance. He was a Republican judge who came in and, in one day, literally swept this chamber off its feet and it was because it was so clear that here was a man of great and universal merit and that he would serve the Governor well, would serve this court well.

So I ask you to keep this in mind as you make a judgment, because I think, if you

agree with this Governor's approach to this court, I think it is very important that you vote to support this approach in order to keep the standing of this court as it is.

Now, Judge Ciparick has an extraordinary and distinguished record. She's bright. She's learned. She cares for the law and she cares for what she does and she cares for the people who come before her, and that is an opinion universally held in the First Department in which she served -- by the judges, by the lawyers, and by the people who come before her. I can simply testify to that from my own experience, and I don't say those things lightly about anyone, but that is the case, and she has had literally thousands of cases in which she applies her wisdom, her knowledge and her judgment, and that is what made her such a distinguished nominee and such a distinguished selection by the Governor.

The fact that she fulfills an ethnic requirement or an ethnic -- or an ethnic judgeship is to be applauded, because there was

a time when this court was lacking women, was lacking people of color or was lacking the broad spectrum which this state represents.

And so I am very proud to be here to say that here is a woman who has performed so outstandingly and who also is a member of a Hispanic community who has never been represented on this court and who should be represented.

Now, Senator Goodman has referred to one decision that the judge has made which apparently has aroused some dissension or some discussion in some quarters, some concern; and I think he has covered that extraordinarily well, and I think it's clear that the judge's decision was based upon her judgment of the Constitution. And who can disagree with that judgment? Because that's what judges do when they discuss constitutional matters. It is their judgment of the Constitution, and they have to give it their best shot.

But it's hardly the only decision this judge has ever made, and I think, if you

examine and you talk to the litigants before her that in the thousands of decisions that are made, you will find that her discretion, her judgment, her wiseness and her knowledge of the law comes through time and again.

Now, I have a very specific decision that I'm interested in and that has nothing to do with the decision that Senator Goodman has talked about. The reason I wore a double breasted blazer today is because, while I'm not a sailor, I am a great fan of the Americas Cup. It is a -- it's an event which proceeds with majestic slowness across the television screen, but it is an event of enormous elegance and enormous excitement, and I confess to be a rabid fan of this event, have been for years, although I may be getting on a sailboat once every two years or maybe not even that often, and if the sailboat is of any size beyond that of a small canoe, I won't touch either the sail or the rudder because I'm afraid I might make a mistake. But, nevertheless, I have a passion for this sport.

And here is a -- a real New York City woman -- I don't think Judge Ciparick has been on a sailboat -- maybe she has, but I doubt it and, if she has, I don't see her frequenting the yacht clubs of Mamaroneck or of Westchester or other places like that -- and here she suddenly has a case before her which requires the acquisition of knowledge which may or might have been totally foreign to her. I don't know this, I've never discussed this with her, but I watched in utter fascination as she tried for a period of two years, I think, to wend her way through this extraordinary controversy which included -- and I'm not going to bore you with it -- suffice it to say that there was a disagreement between courts on this matter, but -- and Judge Ciparick had to make a decision and she made a decision, and I will tell you that as -- as sad as this event, it was the wise decision to make. Why was it wise? Because the event was done for one year in a totally bizarre way with two boats that were totally unmatched, mismatched, and were of different construction,

raced each other and took down the credibility of this very important race for one year until the members of the sport came to their senses and came back to where Judge Ciparick brought them, and that was to go back to describe a rule or rules that restrict how the participat boats would be built so that everybody was racing from the same -- on the same ball -- ball field rather than having two different sailboats racing each other.

And so even here, in something so foreign to most of us who live in Manhattan, who are not yachtsmen, she evinced, in my opinion, a wisdom which finally came to be because the race is now run according to the rules that she first laid down in her first decision and, as I said, to me I was utterly fascinated as she was involved in this matter.

So on a very personal basis, I can say to you members of the Senate that we've got a first class individual here who will grace this court, who will do -- who will do us all proud, and I hope you will support her.

Now, I have to say one other personal thing here which only the judge will understand. I'm not only speaking for myself when I speak. I speak for a mutual friend of ours who happens to be in the hospital and who had a lot to do with Judge Ciparick's first election to the Supreme Court and who is an old, old friend of mine, and who had a lot to do with my election on several occasions over the years. Her name is Elaine Berlin. None of you will know her or may not have even heard of her. Unfortunately, she was in the hospital with a heart attack and could not attend, and I know how much she yearned to be here, and I visited her last week and I promised her, Bobbie to those who love her, and I promised her that I would make the speech not only in my behalf but in her behalf. So, for the record, Bobbie, I'm talking for you.

So again, I offer you a real opportunity to support a very fine member of the judiciary, to vindicate the Governor's judgment and to make the Court of Appeals an even greater

-- even greater institution than it already is.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Mr. President, it is indeed a great honor and a pleasure, a personal pleasure, to be able to second the nomination of Judge Carmen Beauchamp Ciparick to the Court of Appeals. Senator Goodman and Senator Ohrenstein have well stated the high qualifications that Judge Ciparick has.

I've known Judge Ciparick for many years, since she became a member of the bench. I know that she's held in the highest esteem by her fellow judges, by attorneys who litigate before her. Her judicial temperament, calmness, are legendary in the, courts and I think she brings some very special qualifications, experience and background to the bench.

I think Senator Ohrenstein said something I stated, I think, at the time we confirmed the nomination of Judge Kaye, that I

think Governor Cuomo will be best remembered for the outstanding appointments that he made for the Court of Appeals, and this appointment of Judge Ciparick is in that tradition.

I'm particularly delighted to be able to point out that she was born in Washington Heights, a community that I represented for many years, and that she went to Washington High School, which is in my district, a good New York City public school. This is somebody who is living the American dream. By hard work, by her ability, she has reached really the pinnacle of her profession to be nominated to this distinguished court.

I just want to state, because I'm sure it's going to arise and, of course, was the subject of some discussion in the Judiciary Committee yesterday, the decision that Judge Ciparick made in the case of Hope vs. Perales. I think it's significant that of the thousands of decisions that Judge Ciparick has rendered, that the only one where some members of the Judiciary Committee raised some questions was on

that decision, and obviously that decision raised a subject that is very, very controversial, the issue of abortion which we've debated here for many years.

But that should not be the test. That is not the issue, and should not be the issue in considering what Judge Ciparick did in that case. Some members of the house asked whether you would declare unconstitutional an enactment of this Legislature. My friends, that happens all the time unfortunately. Sometimes the judge may be right and sometimes we feel that they're wrong. I voted for the particular law that was declared unconstitutional by Judge Ciparick, but I voted for it as the rest of you, I felt it was constitutional, but I would hate to have somebody come to me and say, Leichter, you voted for hundreds of bills, I'm sure the total by now must be in that magnitude, that were subsequently declared unconstitutional.

This is in the nature of our system of checks and balances, and the issue is solely Judge Ciparick applying the law and the

Constitution, federal and state, as she understands it, to the facts of that case and to the legislative enactment that was before her, and it is significant and needs to be emphasized strongly that she was affirmed by the Appellate Division of the First Department, a very highly regarded court. She was affirmed four to one in that decision now before the Court of Appeals. I think it's going to be argued in the next couple of days.

So I strongly urge my colleagues, I know some of them feel very strongly on this issue, the way I feel just as strongly about it in a different way, but that should not become the test. That should not be a litmus test on how anyone votes on Judge Ciparick.

I think, if you look at her back ground, her record, her endorsements, how she came out of a process that chose the very best that we had in this state and then was chosen by a Governor who deserves credit for the manner in which he made his appointment, you can tell, you know, you can not challenge the qualifications

of this nominee.

So, Mr. President, it's indeed for me a great pleasure to be here. When I first met Judge Ciparick and campaigned for her, I didn't know that one day I would have this rare opportunity of seconding her nomination for the Court of Appeals, and I do so with a great deal of pleasure.

Thank you.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Thank you, Mr. President.

I am going to assign my reasons for opposing the confirmation of this nomination notwithstanding the profession of faith that was articulated by my colleagues, a profession which in my own way I share. They spoke highly of her as a person, her intellect and her dedication, and I have no quarrel with any of these characterizations; but I am very disturbed, seriously disturbed, over the train of events that took place with the Hope case, the Hope v. Perales case.

PCAP -- PCAP, Prenatal Care and Assistance Program, was developed to meet the searing problem of undernourished, underweight, low weight children, giving New York State the awesome classification as the 12th worst state in the Union in terms of infant mortality and morbidity. This instrument was fashioned and, as a matter of fact, since its inception it did result and is resulting in an improvement, and a marked improvement in the lives of these children.

As Judge Ciparick herself pointed out, there was a stipulation entered into by all of the parties, that all of the assistance given in terms of special physicians, transportation to and from facilities for health care, were to be extended to people, to women, who were expecting, whether they were having a child or whether they were having an abortion, and that after-care was also provided. This is the nature of the case.

Justice -- Judge Ciparick felt that this was an under-inclusion because it did

not cover the cost of the moment when the abortion service was actually rendered. It's too bad that the issue is on something as sensitive as abortion, because people tend to rally for and against this argument on the basis of its highly emotional issue, but it did characterize and put the stamp on it of under-inclusion, and as proof of the -- the fact and the sustenance that was given to the concept of under-inclusion, was incorporated by Judge Ciparick herself, cited three cases, People vs. Liberta, Matter of Jessica C., Califano vs. Westcott, and you know, much was made of the validation given to this judgement although there was no specific comment made by the four justices. But I submit that these were of dubious validity, the confirmation made by the four justices in this case, as much as I respect them and as much as I have a feeling of friendship for each and every one of them.

Why? If we go to -- if we go to this Liberta case, which was decided a few years ago, this court's task is to discern what the

Legislature -- and I quote the opinion of Judge Wachtler in that case:

"This court's task is to discern what course the Legislature would have chosen to follow if it had foreseen our conclusion as to under-inclusiveness, as Judge Cardozo wrote over 50 years ago, the question in every case, whether the Legislature, if partial invalidity had been foreseen, would have wished the statute to be in force with the invalid part excinded***" excinded, taken out from the good part, excinded -- ex-scinded -- it's the basis from the Latin word, the basis of scissors, cutting it out, pulling it out -- "***excinded or rejected altogether," and I continue: "Unless physical evidence that the Legislature would not have enacted those provisions which are within its power independently of that which is not, the invalid part may be dropped if what is left is fully operative as law.

Is this -- can we accept this legitimately as supporting the concept of writing in what has been erroneously left out,

even absent, in the minds of the Legislature?

Well, I'll tell you what was taken out and let you be the judge. "While, of course, sexual assaults by females are undoubtedly less common than those by males upon females, this numerical disparity can not by itself make the gender discrimination constitutional. Women may well be responsible for a far lower number of all serious crimes than are men, but such a disparity would not make it permissible for the state to punish only men who commit, for example, robbery."

Now, there were over 200,000 rapes in this country last year. I don't know of any that were committed by women on men. Those of you who are lawyers know that a woman can be -- can be accused of abetting but not of the perpetration. Nevertheless, this is not the end of the world. It's a legalistic protocol which I believe does no harm to anyone. But the judge finished off here saying, "Accordingly, we find that Section 1130.35 of the Penal Law violates equal protection because it exempts

females from criminal liability for forcible rape."

Now, what kind of nonsense does that make? That was excinded. That was taken out, and the good part was left in. What was excinded? That was excinded, and this is the case that Judge Ciparick gave us.

There was the case of Jessica C., also cited in support of this same principle, and it also turned on the same thing, female committing rape. So we go off in La La Land here, and we go off on this conception, and as was observed, these principles of severance apply -- fully operative, apply as well as where elimination of an invalid exception would impose burdens on those formerly burdened by the statute.

The other two cases, the Califano case, that came a little closer to what she was thinking about because it -- it included both parents rather than the unemployed father in terms of the statutory scheme of Social Security.

And -- and the final case, the Childs case which was also cited in support, well, the Childs case was cited in the sense that the -- the -- in defining the wife, it should have been defined as spouse for the purpose of establishing the fees that a lawyer would earn in the conduct of litigation.

So that in every sense, all of these cases had the good part, and all of these cases there was an example of excision. Now, I don't know what these four judges did down there in the Appellate Division on this one. I do notice that they are not conspicuously mentioned, but these are the -- they had the full -- they had the review of all of these matters, and the part that I find difficult, that this is a seminal case or could be a seminal case. No longer will we say that it's unconstitutional. We will not do that. We'll save -- we'll fix it up for you.

Judges are not to legislate. That's the plain and simple matter of the issue, and the Presiding Justice, Francis Murphy, of

the Appellate Division, First Department, felt that there was a conflict here, that there was an undermining, undermining of the responsi bility that belonged to the Legislature.

Now, where does that leave us? It leaves us still -- and I say this with all sincerity, I respect Judge Ciparick. I believe she is a woman of integrity. I believe she was knowledgeable, and I believe she is caring. But I would hope that in my stating my opposition, and I know what the weight of the sentiment of this body is, so I envelop myself in the security of that knowledge, Judge, that you will have an excellent opportunity to convey to those judges that you are to interact with so that we may all function in a cooperative fashion.

Did I over-react to that one case? That one case was very important because the Appellate Division thought it was very, very important, although I didn't. But there is so much in your favor and the things that have been said in your behalf certainly do you honor. I wish for you a great career on the bench, and I

hope you will share the sentiments that I'm trying to convey to you, because I can assure you that it is shared by some of my colleagues and perhaps partially by everyone.

We're all human. None of us are perfect, and we try to help each other. I'd hope, and even in opposing this because I feel that it requires -- it requires to be said that you will draw strength from it and when these proceedings are done and you have taken your oath, that you will add luster in your future career on the bench.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Mr. President, if I might just first say about the way that Senator Marchi has conducted the Judiciary, I want to compliment him immensely on the manner in which he conducted the hearing and also say that I absolutely marvel at your ability, John, to deal with these issues, and your legal acumen. I always feel very humble when I listen to you. I don't always necessarily totally agree with you, and that's to be expected, but I

must say that you obviously, quite clearly, are one of the best legal minds that I have ever dealt with in the years that I have been here in the Legislature and back home practicing law, and I just wanted to comment on that because I think your tenacity and your ability to deal with these questions is really superb.

Having said that, this is a very difficult issue for me. I think, first of all, it's just not as much of an issue for Justice Ciparick, but the issue of the nomination is something that some of us in upstate New York have become extremely concerned about, and let me start out by saying that, as a disclaimer, I went to school with Judge Sam Green, who is a judge in Buffalo in the Supreme Court, and he was also a nominee. Obviously, I have some bias in this matter. I did help lead an effort to convince the Governor that Judge Green should be the choice, not just because I really believed that he was an excellent judge and that he would -- he would make an excellent judge on the Court of Appeals, but also because -- because of

the retirement of Justice Hancock, the -- there is no judge -- in fact, as far as I know, this in modern times has never happened -- from Syracuse on east, there is no judge on the Court of Appeals. To anybody's knowledge that has never happened. Somebody told me that has never happened in this century. The nearest judge in upstate New York is in Utica. There is no one from the entire upstate area. That could create some problems. As some lawyers know, the proximity of Court of Appeals judges sometimes can be -- can assist in dealing with some issues. It is a problem, and I think that many of us from upstate would like to state that.

The next issue revolves around Hope vs. Perales. It's no secret that I am very much anti-abortion. I feel very strongly about it. I am a Roman Catholic, it is true, but I believe that, even if I weren't, I would be opposed to abortion. The Hope vs. Perales case disturbs me not just because of the issue of abortion, but I think I am disturbed very much like Senator Marchi on the issue of the

judiciary acting like federal judges. Federal judges, in my opinion, legislate almost constantly. I think that's questionable, always has been questionable, and I think that, by the way, Senator Marchi, I guess one thing I would say there have been other judges who have done the same thing as you well know, and I think there are some -- we should certainly exercise whenever we can and make it clear to those judges that this is not the way to handle these issues.

Having said all that, frankly, I looked at Justice Ciparick's background. I went to the trouble to talk to some lawyers in New York City who are friends of mine, several rather conservative lawyers who have appeared before Justice Ciparick. Very honestly, their assessment of her was quite good. They felt that she had good judicial temperament, and I would point out that she does have 14 years of experience, more experience than several judges we have already confirmed to the Court of Appeals.

In the years that I've been here -- and I've now been here, it's hard to believe, just about 20 years in the Senate and 22 in both houses -- it is my recollection that we have never turned down a judge strictly on one decision. Certainly there have been judges, not for the Court of Appeals although we have had some disputes over Court of Appeals judges certainly, we have had judges withdrawn and judges that did not succeed in becoming judges; that is proposals made, but not to the Court of Appeals.

Frankly, it's my opinion in looking at the advice and consent that the issue really is, is this judge competent to be on the Court of Appeals? It's really not the issue of whether we happen to think that some other judge should have been on the Court of Appeals or not. That really is the prerogative of the Governor of this state.

As I look at Mrs. Ciparick's competence, it is clear to me that she is competent. There's an old saying that, when

you're in doubt, vote no, but I take my responsibility as a member of the Judiciary Committee and as a member of this body very, very assiduously. It is my belief that, despite the fact that I disagree with her decision in Hope vs. Perales, both from the abortion standpoint and from the standpoint of the type of decision it is, that is in the legislative - the judiciary legislating, it still stands only as really one decision by a judge who is clearly competent, who a number of lawyers who have practiced before her tell me that they feel has the judicial competence and, on its face, does.

So as far as I'm concerned, the issue then is of competence, and I think you definitely are competent to serve, and I intend to support your nomination.

THE PRESIDENT: Senator Gonzalez.

SENATOR GONZALEZ: Thank you, Mr. President.

I think that, in this particular day coming here is a very historic moment and,

based upon what my colleagues have said, Judge Carmen Ciparick is highly qualified, highly competent and would be and should be confirmed.

However, as we go on and every one is talking about their respective issues, I would say that in this particular -- in this state, I would feel that in -- in this area, every time there is someone who has to overly exceed their qualifications, their -- when it comes to someone of Puerto Rican/Latino descent and there is a bias out there, and I will say that I will ask my colleagues to undertake that this is going on in the state and we are going to work to correct that so that we all can feel very proud of our people in the state of New York.

As I said, this is a historic moment, and Judge Ciparick went to school, made it, a role model for all the people here in the state of New York. I'm extremely proud of that, and the people that I represent, and I wish her Godspeed and all the blessings in the world.

Thank you, Mr. President.

THE PRESIDENT: Senator Espada.

SENATOR ESPADA: Mr. President, I, too, rise in similar spirit. This is not just our history, her history. It's a real moment for this chamber that on this day years from now youngsters from Bed-Stuy, from South Bronx, from West Bronx, can -- and indeed from Morningside Heights, can look to the history books to look up the name of Carmen Judith Beauchamp Ciparick and to know that this native daughter of Manhattan defied the odds, became indeed, as Senator Gonzalez has mentioned, a mentor, a role model, a poor person's lawyer, a distinguished jurist in this state, only through hard work and perseverance. That I could be a small part of this exercise that this collective body is undertaking, to be a part of this exercise is a source of pride for all of us, a shining example of hard work, people that can defy the odds. As we look at our poverty rates, as we look at youngsters throughout this state carrying clubs and not books, what better example can we provide that we know when the

occasion is given to us, take a shot to retry a case in a legislative chamber, that, in fact, we hold true to what it is that I was led to believe.

I would always fight for the legislative prerogative, for legislative intent, for the laws that we pass to be upheld, but to retry through a confirmation proceeding one case when, in fact, we are so representative of the entire state, when we are here to weigh the total efforts -- I'm not a lawyer, but I understand burden of proof, I understand that there has to be a balance, and the balance has to tilt toward competence, towards merit, towards the kind of credentials that are presented in this candidacy. That's all we have to go by.

Yes, it is our moment as a legislative body. It is Judge Ciparick's moment, but there are 4 million Puerto Ricans on the island of Puerto Rico, 3 million spread throughout the United States of America, and many more, many more to come. We are the

fastest growing ethnic group in this state, who will not only read about in the history books but will get to look at, not only this judgment but the many, many, many cases that will come before Judge Ciparick in the Court of Appeals and will take great pride in knowing that this body acted together to promote excellence as I ask my colleagues to do that today and to do that in good faith.

Thank you very much.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: Thank you, Mr. President.

I rise to support this outstanding nomination, and we had an opportunity yesterday to go into deep detail, if you will, in regard to the narrow issue that is before us. I, too, want to compliment Senator Marchi on his patience and his indulgence and his fairness and justice as we went through the proceedings yesterday, and it was not easy.

What we were dealing with really is what Senator Marchi and I recall, I mentioned

it then, a real forum for this issue was when we served at the Constitutional Convention back in 1967. No one has any more feeling and praise and comfort about this great instrument of source, the Constitution, it's a fragile document as we mentioned before.

The issue becomes a difficult one because really what we're saying, we're re inventing or re-debating, if you will, the issue of choice, the issue of right to life, and we know as legislators and I am proud of my colleagues and the position that they've taken, not always necessarily in favor, but certainly not letting their personal opinion, and we all have a personal opinion on this particular issue, that we not carry them away to the point that they would really hold against someone who is so qualified, a person who has great judicial temperament, a person who has lived out the American dream, which says that all people are created equal and have an equal opportunity to proceed.

It's been a long time for this

young country of ours, but we're starting to see the diversity which represents this great country and state of ours to come alive again. Just look at the Court of Appeals. See the diversity there. This didn't come about by accident. It came about as reasonable men and women debate in a branch of government a give and take process as we have gradually seen things happen in this great state of ours.

I am so very proud that you are going on the Court of Appeals, so very proud. This has been an experience for me the last two years. I've seen Bundy Smith on the Court of Appeals, Justice Kaye become chief judge of the Court of Appeals. Isn't it a wonderful state and country that we live in, when we think of all the bad things that have happened, all the violence that's occurring and all the horrible things that are happening in our communities, that we still have a government of checks and balances?

Senator, that's what we were talking about in part, and you knew what we were

talking about. We were talking about not a perfect system. We were talking about a democracy that has a great instrument called the Constitution where they make mistakes from time to time and we have the capacity and the ability to weigh out, if you will, and then judge, and the majority of this body has carefully weighed out, and they've been very strong in a particular issue, in a particular direction, by justice and fairness and what is right, to win out in this body of ours.

My good friend, Earl Brydges, who served also at the Constitution of 1967, Ollie Koppell, Dick Bartlett, a host of people who firmly believe that this is the greatest deliberative body. We've lost a bit of that over the years, but it's true, so not only am I proud to put into nomination a person with great judicial temperament, great qualifications, who incidentally, for those of you who do not know, has tried and rendered more than this one decision, someone who is a family person, who brings with her a husband and a daughter -- I

have always thought of it as fairly sad that when you bring your family to be confirmed and we go through the process of hearings, that we still have a proclivity toward some things being negative about a person. Everything should be a bed of roses. My family is here, my daughter is here, my husband is here. How dare you, if you will, have something bad to say about me, someone who has done so very well?

Hard work. The American dream. Can happen. Can come true. A person who came through meager -- of meager means early on, not wealthy, but certainly rich, rich in the love and companionship, the abundance of love that she's had for a family and still does.

So, Mr. President, I'm proud to and privileged to put my name in as the person -- one of the persons who nominated Justice Ciparick this evening and to say for the record that every now and then, I lose a bit of confidence in this great body and every time I'm ready to lose total confidence something good happens, and I've experienced that not here

tonight but in the hearing, Senator Marchi, and the mood and the whole entire feeling of this body.

Yes, there will be some who feel so strongly, and I respect that, that they will take this one issue and vote against a person who is highly qualified, a person who is put into an institution with the diversity of that institution, which is the Court of Appeals, one of the major institutions, that if we are to change things in our country, then this is where we have to work in our major institutions. There has to be a strong sense of fairness, equality, justice for all our people.

So, Mr. President, thank you for the opportunity, and I want this body to know I'm extremely proud of the total role of those who went through this, because I know how difficult it is on occasion to weigh out what's in your heart's heart and what's fair and just.

Thank you, Mr. President.

THE PRESIDENT: Senator Markowitz.

SENATOR MARKOWITZ: Mr. President, it's a pleasure for me to have this opportunity.

First off, I wonder if all my colleagues would agree that the Senate Republican Conference looks so much better. Why am I saying that? Diversity has happened among you, and it's not you, Senator DiCarlo, but Senator Rath, it's good to see you there. I can't tell you what a pleasure it is to look on your side of the aisle, and I mean that.

Secondly, to our new judge, I have marvelled at her from the early days when she and I and our dear mutual friend, Patricia Farrell, would enjoy ourselves at our annual St. Patrick's party. But I knew even in those beginning days that great things were about to happen for you, and you've proven by being here this evening that there is still something to be said about working hard, about merit, about really setting a goal and being true to oneself, and I know that in some of the decisions that Professor Marchi raised this evening -- and

there is no one that I trust in or believe in more than you, Professor, Senator -- I know that our judge, and if I may say, Carmen, you call 'em as you see 'em, and that's what we need, someone who makes decisions based on the best evidence irregardless of what your own personal beliefs may be. You call them as you see them, and I know that the Governor, as far as I'm concerned, our Governor, has hit another home run again.

Congratulations! Buena suerte! Good wishes.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I'm delighted to rise and second the nomination of Judge Carmen Ciparick. I followed her career these last years since I met her at a St. Patrick's day party when -- I have to tell you, you have to put this in context. Marty had a friend, Patricia Farrell, who had a lovely St. Patrick's Day party in her home, and she said, Invite a few people, Marty. He

invites about a hundred people, if you can imagine that, to her home. But among the people I met there was Carmen Ciparick, and I followed her career with great interest, she being a judge in Manhattan which I'm privileged to represent part of, a part of which I am privileged to represent in the Senate.

I really find her career remarkable. She certainly has displayed the intellect, the compassion, the professionalism, the good judgment and demeanor that one would expect of a judge. She is respected throughout the legal profession. Those who have had to appear before her and deal with her, and I know there are those who can look at a decision and say, "But I disagree with this decision of hers," and I dare say virtually every judge presently on the Court of Appeals also have passed through here on their way, passed through here for advice and consent, I can certainly look at decisions rendered by them before and after what had passed through here with which I would disagree. I would perhaps see it

differently, although one never knows because I've never sat on that side of the bench, and maybe you do take a different perspective. Perspective is important, but that's what our system is about.

Judges judge. They apply their legal skills and judgment to making a determination. That's our system. They do declare unconstitutional laws that pass the Legislature. That's what makes our system perhaps unique in the world, that our judiciary does sit in judgment on the constitutionality of legislative enactments. That's nothing legislators need get overly exercised about, frankly. That's just the way it is.

I do know that Judge Ciparick will be a fantastic addition to the Court of Appeals because of her skill and background, her hard work and her legal intellect, and I think there are many constituents in my district and throughout the state of New York who were proud of the other coincidence involved here, and that is that Judge Ciparick is a woman, that she is

of Pueerto Rican descent, and that's a good thing where you can get all of the finest qualities in a judge that you would look for in a judge as exemplified by her career, as proven by her hard work and dedicated service on the bench, and also get a first, if you will, the first Latino on the Court of Appeals, I guess the second -- the second woman on the Court of Appeals. That's a good thing, and I'm delighted to second this nomination, and I'll be delighted and proud to vote for her confirmation.

Thank you, Mr. President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I think it says a little bit about New York State, and I guess the United States, when today we get a chance to elevate two children of immigrants to positions of authority and power in the state. We did it earlier this afternoon with Oliver Koppell. We now have the chance to do it with Judge

Ciparick.

I would be remiss if I didn't comment on a couple things that were said here earlier as I did in the Judiciary Committee: First, to my colleagues Senator Volker and Senator Marchi, for the articulation of principal division about this nominee and the role of this body in fulfilling its constitutional obligation. I appreciate that, and I think it speaks well of the integrity of this body.

But I also would be remiss, your Honor, if I didn't place the comments made by Senator Marchi in a context for you. I think it's safe to say that the Legislature in this state has had sort of a bad year in front of the courts, and I think I can click off a couple of things that we had to do that this body decided to do because we had to be creative, we had to do inventive things.

We had budget pressures. We have had political pressures. We had pressures from our constituents to do things in a different

way, so we tried to do them. We did some writing of the tough problem with our pension system. We did a little thing about recalling bills. We did a little thing about debt financing, all those things that were sort of creative legislative enactments, and the good part of it is that there were a group of people, seven people, who sat across State Street who said, when all is said and done all the members of this chamber and the chamber across the hall, the people of this state did not give you the power to do those things. We were told they were unconstitutional. We've had to go back and check our books and come up, perhaps, with other creative ways to do it; but I think part of what you heard in the Judiciary Committee, part of what you've heard here is really the reflection we may not have had the best year in front of the courts.

But I think there's an important message there, and that is the distinction between the power that the people create in their Constitution and the power that's

exercised by this Legislature. I would just point out quoting from your decision, your Honor, and perhaps reminding all my colleagues that what was at stake in Hope against Perales was not just what this Legislature has done but Article I, section 3 of the New York State Constitution, which is our due process clause; Article I, section 6, our equal protection clause, and Article XVII, section 1 and section 3, which provide, one clause pledges the protection and promotion of the health of the habits of the people of this state, and the other section, I think, dovetails with that.

But the critical point is those are restrictions on the legislative power that were given to this Legislature. The Appellate Division, First Department, said we have no power, none, zero, zip, the 61 people in this room, the 150 in the other chamber, cannot take that power away, because the people never gave us the power in the first place to do it.

The power of the Legislature is circumscribed by the Constitution, by the people

who created it, and while we're clearly allowed to walk right up to that line, Senator Marchi, and I would defend the right of this chamber to walk right to that line, to go right up to it, to push that line as far as we can, when we step over that line, the only bulwark to tell us that we have violated the power given to us by the people is through our judicial system and through the 7-member body that Judge Ciparick would join.

It's that balance of power, that system of checks and balances so vital to the distribution of the power between the people and its governing body, and remember the important reason why that limitation is there, because the people were not going to let us exercise that power and take away their rights, so what Judge Ciparick did, what the Appellate Division approved in Hope against Perales was the important separation of powers between the people and their elected government.

My comment, Judge, as I told you in the Judiciary Committee, if you sit on the

Court of Appeals, don't be afraid to tell us we've taken the people's power away from them and that we cannot do that.

In closing, I'd like to dovetail some comments of my colleague, Senator Espada. I've often talked in this chamber to other Court of Appeals nominees about the common law, something that I have studied, something that I treasure, because the New York Court of Appeals, in my judgment, remains the greatest common law court in this land. But it's important that we, in looking at our common law, we look at the common man that that law is designed to serve, look at the state of New York, look at its changing population, look at its changing racial composition, and now its changing ethnic composition.

Senator Espada points out the large growing population of Latinos that live in this state. It's my fond hope that, when you think of the common law and think of the needs of this state, you will use your own personal experience to realize that the common law, the

common man, may no longer be just a man, it may no longer be a white man, it may have different faces, different needs, different desires, and we'll need a common law to serve all those needs and desires.

In concluding, I think that it's important that our common law court reflect a little bit about the common man that it serves. As a woman, the daughter of immigrants, I welcome you to the court. My pledge is that - my hope is that God will bless all your efforts and he will bless your family as well.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I hope Senator Dollinger would consider becoming a law professor at some point. I always learn when he gets up to speak.

But he took a line that I was going to say, which is we really witnessed the American dream today because we saw two children of immigrants elevated to the highest levels in our government, and that's very exciting because

it really says we are probably the only country where those things happen.

Because you are so -- so highly commended and respected, I think to then talk about the fact that you are a woman, ascending to the court, a Puerto Rican ascending to the court, is not as significant because we know of your skill. We have heard of the wisdom of your decisions and I must say I'm very thrilled to have another woman on the Court of Appeals to join my old friend of 30 years, Judith Kaye. It's another perspective, and one that is welcome and different.

Speaking about a case that seems to be absorbing us at the moment, as has been said, I doubt if any one of us would ever concur with all the decisions of any judge, or can I concur with many of the decisions made by my own husband. There are always different people of different interpretations, and I think that a benefit.

As you probably know, I was the organizer of the amicus brief in the Hope vs.

Perales case, and I think your decision obviously was a very wise one. It will now go to the Court of Appeals. We will see if it is considered there. I hear you are going to recuse yourself, but we have that system to bring us into check, to watch over us, to make sure that we don't go beyond the line that Senator Dollinger spoke about, and I can only say that that decision that you made brought a lot of hope to the majority of women in this state, indeed the majority of the people of this state. So I want you to hear the other voice.

I am very happy to congratulate you on this ascension to our highest court, and I note your birthday, I think it's a wonderful birthday, January 1st. Happy birthday, and I'm proud to second your nomination, Judge Ciparick.

THE PRESIDENT: Senator Waldon? Senator Smith. Oh, I'm sorry. Senator Waldon. I didn't see you.

SENATOR WALDON: I'll certainly defer to Senator Smith.

THE PRESIDENT: You're such a shy

retiring presence. Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

One decision a career does not make and, clearly, Judge Carmen Beauchamp Ciparick, you are more than qualified. It is often the case with those of us who are characterized as minorities that we have to be better than everyone else, and so you are, and so the Governor has made a smart move.

This move sends a signal, and the signal is that the diversity of the state will forever be better reflected in this court. The signal is that the vibrance, the character, the substance and soul of Puerto Rico will forever be a part of this court and its decisions. It will never, ever be the same because of this one move made by this one man on your behalf, on behalf of your family, but more importantly on behalf of all the people of the state of New York.

I applaud the Governor's wisdom in doing this. It is a good signal and it is

long, long overdue. It is time that an American of Puerto Rican ancestry sits on the Court of Appeals. I applaud you. This is a great day for all of us. Good luck.

THE PRESIDENT: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

As a female, and as a minority, I am extremely proud to be able to stand here today and read to you just one sentence from the Legal Aid Society of Kings County, which is my home county, and that sentence says: Your vote to confirm Judge Ciparick to the Court of Appeals will continue the Senate's fine tradition of confirming excellent jurists to the state's highest court.

Carmen Beauchamp Ciparick is a shining example of the best that our community has to offer. I'm proud to count her as a friend, and I'm even prouder to be able to second this nomination for her to become a part of the Court of Appeals where she will serve us well, and we can all be proud of her. Justice

Beauchamp Ciparick, I wish you and your family all the best, and may you continue to serve this great state.

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

(Response of "Aye.")

Opposed nay.

(There was a show of hands.)

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will record the negatives.

THE PRESIDENT: Senator DeFrancisco is recognized to explain his vote.

SENATOR DeFRANCISCO: Yes. I just want to, for the record, explain my "no" vote.

I think there's some merit in what Senator Volker has said concerning the lack of an upstate judge, nothing further west than Utica, which causes substantial problems for the

bar in that area.

Also there's substantial weight for the very strong legal argument that Senator Marchi made because there is, I believe, a substantial difference between excising a constitutionally defective part of the statute as opposed to adding a part of a statute that was consciously not put there by a legislative body, and I think there's a substantial distinction there, and that that bears a lot of weight.

One other point that I did want to make, and I think it's certainly no reflection on this candidate, but I think it's really my own hope to raise a little red flag about the procedure here a little bit. There's no question that the Hispanic community has got to be very, very proud this day on this nomination and this appointment and this confirmation. However, there simply are not enough spots on the Court of Appeals for every ethnic, for every religious group known to this very, very diverse state of New York, and it's a

real risky proposition in my mind when you have candidates that were nominated or candidates found to be well qualified, five of them who are overlooked, some of whom are minorities and some of whom are women, who distinguished themselves in their career at least as well as this nominee and who the bar association felt were "most qualified" and this nominee "qualified".

So the point I'm just trying to make is, very simply, diversity is obviously an important consideration. It's important to many people. The warning I'm just saying is that the point is that there simply are not enough positions for every racial, ethnic and religious group and in this nomination we should be cognizant of the fact that we are passing over possibly very likely more qualified candidates who happen to be minorities and women.

Thank you.

THE PRESIDENT: The Secretary will report.

THE SECRETARY: Ayes 38, nays 21.

THE PRESIDENT: The nominee is confirmed.

(Applause)

THE PRESIDENT: On the nomination, Carmen Beauchamp Ciparick of New York City. The Secretary will -- the Chair will state that, if a Senator has not been recognized as voting "no" as of this time, the time to so indicate has passed, but yes, the last three will be recognized even though I had announced the vote. Senator Larkin, you're recognized. O.K. Now, the Secretary will again report the results.

THE SECRETARY: Ayes 35, nays 24.

THE PRESIDENT: The nominee, Carmen Judith Beauchamp Ciparick, is confirmed to fill the vacancy caused by the retirement of Stewart Hancock, Jr.

Senator Present.

SENATOR PRESENT: Mr. President, may we continue on reports of standing committees, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Commissioner of Parks, Recreation and Historic Preservation, Joan K. Davidson of New York City.

THE PRESIDENT: Senator Goodman is not here right now.

Senator Johnson.

SENATOR JOHNSON: Mr. President.

THE PRESIDENT: There will be order in the chamber.

Senator Johnson.

SENATOR JOHNSON: I know why Senator Goodman wanted to make a nomination, but I shall certainly speak on this nomination, Joan K. Davidson, as Commissioner of Parks, Recreation, and Historic Preservation.

This lady has a very impressive background of interest in public affairs, principally parks, historic places; other environmental concerns, very strong interest has

been demonstrated. She's made a lot of friends in that field. They are advocates.

After my speaking with her on numerous occasions and observing her during the period from her nomination to now, I'm certainly one of her advocates. She has visited many of our parks. She attended a series of hearings we've had concerning the Rockefeller report on the condition of the parks in the State of New York. She's been very interested.

She's already looked into many of the problems, has definite plans how to proceed to improve our parks, protect our historic places, protect the environment and provide facilities in these parks for the natives of New York and others who visit those parks.

I think she's going to be a dynamic leader at a time when we need one and an effective advocate for the parks and for the resources that are needed to bring them up to snuff.

All in all, Mr. President, she is a fine nominee. Myself and the entire

committee, Environmental Conservation Committee, who sat and heard her exposition and asked her questions, are very pleased with her. Her report, as you know, went to the Finance Committee, and ultimately her recommendation is to this floor.

I would commend the Governor for making a fine choice and Ms. Davidson for being willing to accept this position, and I would like to -- at this point, if Roy Goodman isn't here, I'd like to -- oh, Roy is here.

I'm going to second her nomination because Roy would like to make the nomination speech.

So, Roy, be my guest.

SENATOR GOODMAN: Thank you, Senator Johnson.

Mr. President.

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: I am personally very pleased, indeed, to be able to put forth this name in nomination, because it just so

happens that I have known this nominee since approximately 1940. And by my best reckoning, that means that it has been 53 years since we first met as schoolmates in New York City. Looking at her, it would not be possible to imagine this chronology.

But I should like to say that in the years in between the more than half a century she has shown a extraordinary degree of growth and constructive citizenship participation in so many of the things that she's done that her resume is truly a rather awe-inspiring one.

A graduate of Cornell with a Bachelor of Arts degree in English and Government, she went on to study postgraduate work in the Bank Street College and became a teachers of 4th graders in a variety of schools, then had a brief stint in none other than R. H. Macy writing advertising copy, and proceeded from there to work in the United States Senate as a staff member of the Preparedness Subcommittee of the Senate Armed Forces

Committee writing reports on strategic minerals.

Along the way, she had time to marry and to have four fine children, one of whom was, as it turned out, interestingly, a classmates of my daughter at a school very similar to the one which the nominee and I attended in the 1940s.

She undertook the very major task of overseeing the design construction organization and the first five years of management of a noted complex in New York called Westbeth, located in Greenwich Village, a multimillion dollar artists housing studio complex, the first and the biggest one in America.

She served as Chairman of the New York State Council on the Arts, a post which she assumed in 1976 -- no, excuse me -- in 1975. She undertook the leadership of innumerable worthwhile civic endeavors, including the renovation of Gracie Mansion. And as the head of the celebrated J. M. Kaplan fund, started as

the result of the benefaction of her extraordinary father, she assumed a very active role as both philanthropist and philanthropoid giving away approximately $7 million a year to organizations throughout New York State.

The catalogue of her good works in that capacity is quite extraordinary. I would cite to you some of the following: The refurbishment of the Gracie Mansion residence of New York's mayors; the establishment of the South Street Seaport; the launching of the New School Center for New York City affairs and its newly open environmental simulation center; the project known as Rural New York, providing support across the state for small, locally based organizations in the field of land conservation, land use planning, environmental issues and historic preservation.

She has also been involved in Green Markets. The initial funding from her fund enabled the Council on the Environment to launch Green Markets in New York City, and Green Markets program keeps some 15,000 acres of

regional farmland in active production.

She's been involved in the protection of New York City's drinking water supply.

And among her other many considerate public services was the creation of a project to provide public toilets to the citizens of New York hard put to find such facilities on the streets of the big city.

She's been involved in a coat drive which collects money and distributes over 50,000 winter coats.

She's been involved in the Land Trust Alliance of New York, the American Farmland Trust, Technical Assistance Program for the Preservation League of New York State.

If I may say in conclusion, Mr. President, it is not a coincidence that this fine individual has done so much because she really comes from a tradition of extraordinary public service. Both her father and mother, in whose home I spent many of my childhood hours, were people who were highly respected all around

the city for their many, many good works of philanthropy and other things.

I served with her mother on the Board of the Carnegie Hall Society and Carnegie Hall itself in New York City, and had the pleasure of spending much time with her unique father, an extraordinarily successful industrialist who turned in the latter part of his very long life -- he reached an age beyond 90 -- helping others almost continuously and deriving great satisfaction from particularly assisting those who were oppressed and under privileged.

Mr. President. It is an honor and, indeed, a very special personal privilege to place in nomination for the high office before us the name of Mrs. Joan K. Davidson, who at the moment is seated in our balcony.

SENATOR OHRENSTEIN: Mr. President.

ACTING PRESIDENT KUHL: Senator Ohrenstein on the nomination.

SENATOR OHRENSTEIN: This morning

was Bronx day. This afternoon seems to be Manhattan day, and I'm delighted to follow my good friend Roy Goodman for a second time. We may get use to this, Roy. It's very dangerous.

But I'm delighted to rise to second this nomination. I did not know Joan Davidson when I went to school, but I have known her since, certainly, and her extraordinary contributions to the life of the City of New York, particularly the cultural life of the City of New York.

I am not going to repeat all of the things which Senator Goodman has put on the record, but I can tell you of one unique thing that she did in my constituency. I have talked about this before when we have passed the Loft Bill, and I'm glad Senator Hannon is here.

One of the things I've talked about when I described the loft community is the extraordinary development that's taking place in a part of Manhattan by using older buildings and reconverting them to extraordinary uses, residential uses, artistic uses; and Joan

Davidson, and her family, was instrumental in converting an old factory, which was known as Westbeth, into an incredible living space particularly for the arts community. And it's a real monument to her and to our community and to the life of downtown Manhattan.

And if she could do that for that little place in downtown Manhattan, what can she do to the parks, to the magnificent parks of the State of New York.

We were extraordinarily lucky to have someone like Orin Lehman, who has been with us for so many years, in charge of the parks and saw the burgeoning of our park system all across the state.

And I can't think of anybody better who can carry on that legacy and put her own imprimatur it than Joan Davidson.

I'm glad to be here to second the nomination.

ACTING PRESIDENT KUHL: On the nomination.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I was very impressed with Joan Davidson's comments during the confirmation hearing held by Senator Johnson's committee, and I also was extremely impressed with the testimony that was mailed into us and phoned in by the many people who have had the pleasure of working with Joan Davidson.

But those of us who have been here for any number of years recognize that she faces an awesome task ahead, because she is going to be inheriting the helm of another distressed state agency for which there are many, many more demands for assistance than there will be resources. There will be stains on the already strained work force of the Department of Parks and Recreation and Historic Preservation.

So what we truly need is a woman of remarkable talent and creativity at the helm; and in Joan Davidson, we seem to have found one.

Just to reinforce the scope of the problem that she inherents at Parks and Recreation -- I don't want to burst the bubble of this great euphoria today, Joan, but the Rockefeller Institute of Government issued a report stating that:

The state park system needs an immediate infusion of $1.8 billion over the next ten years to prevent the infrastructure of the parks from crumbling. The agency itself has documented a backlog of 7,000 man-hours, or woman-hours, take your pick, of maintenance and repairs yet to be done.

The agency's capital backlog, accumulated since 1972, is estimated at nearly $600 million by its own estimate.

We have great times ahead trying to figure out how we will keep our park system afloat much less how we will create new parks opportunities in areas where the population is moving.

But Joan Davidson through her work with the Kaplan foundation apparently has

demonstrated the ability to be remarkably creative where few other people have been before.

I am astounded by the statistics that were provided on her tenure at the Kaplan Fund. During her tenure at the Kaplan Fund, the assets of the foundation increased from $27 million to $90 million. I wonder if perhaps we might want to reconsider and give Joan Kaplan Davidson the Comptroller's position. Certainly anybody who has the ability to turn $27 million into $90 million is someone that we need in state government right now more than ever before.

When Joan testified, she listed a series of objectives she had, and I jotted down a couple of them because I thought that they meshed so neatly with the responsibility she's going to face.

She said she plans to think creatively in meeting the public need at parks.

She wants better cooperation between state agencies.

And she wants to work with existing groups like friends of parks and hunting and fishing organizations.

All three of these would be unremarkable if they weren't so unique for some of our moribund state agencies. These are assets that are going to be invaluable in the years ahead.

Probably the most important telling point for Joan Davidson, though, was the testimony that came in from people with whom she has worked over a period of years.

In my district in Casanovia, the Friends of Lorenzo wrote that "Over 20 years, I have been actively involved in historic preservation professionally, first at the historic Anapolis Foundation and as a volunteer chairman of the Anapolis Historic District Commission. I have known Joan Davidson through her work in national preservation organizations. We are very fortunate that she is a New Yorker willing to undertake the demanding position of Commissioner." That from

Mary Pringle Simmons, President of the Lorenzo Foundation.

From Scenic Hudson the testimony came, "I have known and worked with Ms. Davidson for over fifteen years. During this time, she has demonstrated the leadership skills, creativity, boundless energy and management abilities that will be necessary to invigorate the Office of Parks during these trying budgetary times."

The American Farmland Trust, an organization that's come into its own in New York State and nationally, protecting agriculture and promoting agriculture as an industry at the same time it protects the agricultural and scenic landscape, stated that "Joan Davidson has demonstrated a strong interest in farmland protection and land conservation issues. She clearly understands the details of complex land transactions and recognizes the wider policy implications of these projects, as well."

And it further states that "Ms.

Davidson's ability to make difficult decisions about allocation of limited resources will benefit both the taxpayers of New York and the Office of Parks, Recreation and Historic Preservation.

Probably the most moving testimony of all came from a group entitled the Hudson River Heritage. I would just like to close by mentioning that one of the comments that was made about Joan Davidson stated her nurturing with this same organization. The Hudson River Heritage described how "She made all the difference for our organization. It was the confidence of the J. M. Kaplan Fund in Hudson River Heritage that helped us grow from a small group of volunteers meeting around a kitchen table to a more substantial organization with a staff and an office. At first, she helped us pay for these small operating expenses that motivate volunteers to more effective efforts. Then she assisted us in hiring experts to document the building of landmark district. Joan Davidson empowered us and transformed us

and many groups like us."

My colleagues, we need people in state government now who are capable of empowering and transforming the taxpayers of this state and of directing state agencies to meet our needs, and, in that, we have found Joan Davidson.

Congratulations, Joan. We look forward to working with you.

ACTING PRESIDENT KUHL: On the nomination.

Senator Leichter.

SENATOR LEICHTER: Yes, thank you very much, Mr. President.

The Governor has really given us an exceptionally qualified candidate, a very special person, for a state agency that's terribly important and very special because of the importance of open space, recreation, parks, for our society.

I have known Joan Davidson for many, many years, admired her energy, admired her work. She's been such an important part of

the cultural life of this state.

But, recently, I had the opportunity to work with her on the Hudson Valley -- Hudson River Valley Green Way Council, and it was just such a particular delight and pleasure to have her contribution to our effort to save that wonderful historic scenic feature of New York's geography.

And this is just an indication of her varied interest, her abilities. Her contribution to the Green Way Council were immense, but then she and the Kaplan Fund have been involved for many years in open space and historic preservation.

It's really wonderful when you can find somebody, when you get that fit of somebody with her background, experience, ability in an agency. The Governor could not have made a better appointment. I'm delighted to second the nomination.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the nomination.

SENATOR OPPENHEIMER: Welcome,

Joan Davidson. You have big shoes to fill in filling Orin Lehman's shoes; but after reading what you have accomplished, I think we've found the right candidates to fill those shoes. Particularly, I also had to note your fund raising efforts, and I must say we could use those efforts. And any directions that you can find that will permit us to spend more. And often I think through public/private coordination and cooperation, if we turn our attention there, I think we may be able to do better by the parks than we have been doing in the last several years, where because of tight budgets we have seen our parks really deteriorate, and that is a tragedy.

But I will be very, very anxious to work with you. I represent part of the Hudson River now after the re -- the relining of our districts last year and have been very involved in the watershed issue, protecting the watershed, working with Bobby Kennedy and various people in Westchester who are very concerned about that issue and what will

transpire between New York City and the suburban areas, perceiving different needs, but we will find a resolution to that, and I'm sure you are going to be part of the solution, and I'm just very delighted to be able to second your nomination and, again, to see a very competent woman, a woman who can achieve what we know has to be done be selected by our governor.

Thank you.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: I would just like to emphasize and second everything that has been said so well here today concerning Mrs. Davidson. There probably isn't a district that has more parks than my own. Now, a couple people might stand up here. I can understand why.

But I would point out, with the commissioner-to-be here, that I think the Legislature as far as appropriating funds, as was pointed out earlier, is going to have to

take some hard looks at our parks. We have some very severe problems. It supports many industries including tourism. And I would only point out that we have to meet our responsibility as our Commissioner accepts her responsibility.

ACTING PRESIDENT KUHL: Ladies and gentlemen, the question on the confirmation of Joan K. Davidson to the Commissioner of Parks, Recreation and Historic Preservation is before you. All those in favor, signify by saying aye.

(Response of "Aye.")

Contrary, nay.

(There was no response.)

The confirmation is confirmed.

Commissioner Davidson, on behalf of all my colleagues, let me extend to you our congratulations and tell you how happy we are to have you working for us, a person of your capabilities and experience, and we really do look forward to working with you.

(Applause.)

THE SECRETARY: Senator Stafford from the Committee on Finance reports the following nomination: Commissioner of Mental Retardation and Developmental Disabilities Thomas A. Maul of Schenectady.

ACTING PRESIDENT KUHL: Senator Farley, on the nomination.

SENATOR FARLEY: Thank you, Mr. President. Gives me a great deal of pleasure to move the nomination of Thomas A Maul of Schenectady. Tom Maul, incidentally a graduate of Canisius College, which I'm sure that Senator "Mayor" Masiello won't hold against him, has been a career person not only in the old Department of Mental Hygiene, but a person that has been a public servant par excellence.

Tom Maul has -- is absolutely adored by everybody that works in that department, by everybody that's been involved in the Legislature. And to see somebody that's come up through the ranks -- he looks like he started as a real young fellow -- as a junior reimbursement agent.

I commend the Governor for making this appointment in recognizing this excellence of public service and now that he is reached the pinnacle of his career as the Commissioner of this department.

I know the chairman, Senator Spano, who has done such a suburb job in the area of mental retardation and developmental disabilities, has the highest regard. And my colleagues that I serve with, one after the other, have told me what a delight this man is to work with.

And it is with a great deal of pleasure that I move the nomination of Thomas A. Maul as Commissioner of Mental Retardation and Developmental Disabilities.

ACTING PRESIDENT KUHL: On the nomination. Senator Masiello.

SENATOR MASIELLO: Thank you very much.

Ladies and gentlemen, in the waning hours of my tenure here in Albany, probably my last or second last meeting, it's

certainly a pleasure that I get the opportunity to second the nomination of a Buffalonian, somebody who was born and raised in Buffalo, who attended Canisius High School and my alma mater, Canisius College, but somebody who is very, very dedicated, somebody who is very competent, somebody who did come up through the ranks, paid his dues, made a lot of sacrifices, but somebody whose heart and whose mind has been in the right place.

Dealing with the developmentally disabled is a difficult issue. Often times, it's very emotional, controversial. But I think Tom Maul is the supreme type of person who believes in what he does, certainly has a very competent staff with him. And all the issues that I have had to deal with over the many years I have been here, 13 years, pertaining to the developmentally disabled, whether they were emotional or financial, dealt with families, dealt with the concerns of that constituency, he has always been a very true professional.

And I'm just very, very happy

that the last nomination of Governor Cuomo that I have an opportunity to vote on is certainly for one who is not only a native son of Buffalo but a supreme human being who has done a great job dealing with a very difficult issue and a very difficult constituency, but certainly a Commissioner whose mind and whose heart is in the right place.

And it is my pleasure that I second the nomination of Tom Maul as Commissioner of OMRDD.

Good luck to you, Tom.

ACTING PRESIDENT KUHL: The question is on the nomination.

Excuse me. Senator Stachowski.

SENATOR STACHOWSKI: Mr. President. I, too, would like to rise to second the nomination of Tom Maul.

I heard from the Department people how much they think of Tom Maul. I've heard Senator Masiello and Senator Farley speak of Tom Maul, so there is not much to say about him, but I think he'll do a terrific job.

I know of his reputation. I had the opportunity to deal with him on a few issues; and in spite of the fact that he is a friends of Al Kaplan's and thinks the world of him, I'm still going to support him, and I'm glad I have the opportunity to stand up and second him and, hopefully, his favorite football team will have another good season.

Thank you.

ACTING PRESIDENT KUHL: On the nomination.

Senator Stafford.

SENATOR STAFFORD: I can only, again, emphasize what's been said so well. But I also will point out that in the Finance Committee we were impressed. There is no question that the Commissioner is going to be dealing with some very, very sensitive areas, so to speak, with some of the changes that are being suggestion, but he certainly has proven that he can be sensitive, and I think that he explained to us how he will be moving forward, and we realize that we're not going to keep

everyone happy but, on the other hand, I would again emphasize how sensitive this field is, and when we start doing certain things in neighborhoods. But I'm sure that Commissioner Maul will be able to do this, again, with sensitivity and I compliment the Governor on this nomination as the one before.

Thank you.

ACTING PRESIDENT KUHL: Senator Spano on the nomination.

SENATOR SPANO: Thank you, Mr. President. It's my pleasure to join with my colleagues in saying some real nice things about a person that -- he was described by me in the newspaper as "a real nice guy." He is a person who has got almost 30 years experience in the system, has seen a lot of changes in the Office of -- Department of Mental Hygiene, now the Office of Mental Retardation Developmental Disabilities, has seen many changes as we treat people with developmental disabilities, and has seen the system change substantially from an institutional settings to a community-based

setting.

He has served for the past four years as an Executive Deputy Commissioner under an outstanding Commissioner, Elin Howe, who has done an outstanding job for developmentally disabled, also during the period that she served in her career in the Office of Mental Retardation and Developmental Disabilities.

I think the Governor made an excellent choice today, and it was a timely choice, because it was very important to have Tom Maul confirmed as Commissioner during this critical period as we discuss the state budget, the Governor's proposed budget. That's the reason why I felt as chairman of the Mental Health and Developmental Disabilities Committee that it was important to accelerate the process of confirmation.

His confirmation is probably one of the fastest we've seen in the history of the Senate. The Governor sent his confirmation down to Senator Marino, the Senate Finance Committee just yesterday around 4:00 o'clock.

And although it's been a long day for him today, while he started the process today around 11:00 o'clock, and he's been sitting for the last eight and a half hours, it is going to be a day that will culminate in his selection, confirmation by all the members of this house as a Commissioner so that he will be able to continue to do the fine jobs that were done by his predecessors, both Art Webb when he served as Commissioner and, of course, Elin Howe.

So it's my pleasure to stand here and to join with all the members of this house, and particularly Senator Farley, who said some real nice remarks, and to join with my colleagues in seconding the nomination of Tom Maul as Commissioner of the Office of Mental Retardation and Developmental Disabilities.

ACTING PRESIDENT KUHL: Senator Waldon, on the nomination.

SENATOR WALDON: Thank you, Mr. President. My colleagues.

Commissioner, in one of my other

lives, I was the counsel to Tom Schirtz, Manhattan County and New York County Services Group, for about 18 months. Prior to that time, I thought I knew a lot about life. I thought I was sensitive to most issues, but a few trips out to Willowbrook, Flower Fifth Avenue and other places and participating before Judge Bartels in the trying of the case, sensitized me in a way that has affected my life tremendously. In fact, I believe it was the single most sobering work experience that I've ever had.

The reason that I gladly rise to second your nomination and will vote to confirm you is not because of the experience that I had but because in numerous conversations with people who work for OMRDD at this time, they applaud you in terms of your administrative capability, they applaud you in terms of your sensitivity to all of the people who work in OMRDD, but they especially applaud you in your knowledge of the system and your ability to make it work for those who are your clients.

I am especially pleased that those who are African-American and Caribbean America hold you in the highest regard, and I am hopeful that your administration will prove to be one of the very best that the state has ever had.

I applaud the Governor, I applaud you and your family, and I wish you all the best.

ACTING PRESIDENT KUHL: Senator Libous, on the nomination.

SENATOR LIBOUS: Thank you, Mr. President. I, too, rise to second the nomination and join my colleagues in just briefly saying a few things about Tom Maul.

As chairman of the Select Committee on the Disabled we certainly had the pleasure with my staff in working with Tom and his people. We have also found him to be a professional and one who understands the area of the developmentally disabled.

I think the next couple years are going to be very difficult times in this area,

very challenging times, and I think that Tom Maul is the proper person, the one who is dedicated, the one who has the expertise to lead this area into the next few years, and I look forward to working with Tom.

Tom, I just want to wish you the very best.

ACTING PRESIDENT KUHL: The question is on the nomination of Thomas A. Maul as Commissioner of Mental Retardation and Developmental Disabilities. All those in favor of the confirmation, signify by saying aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The nominee is confirmed.

Tom Maul, congratulations.

(Applause.)

THE SECRETARY: Senator Stafford reports the nomination of Catherine Johnson of Watertown as a member of the Thousand Island State Park, Recreation, and Historic Preservation Commission.

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: Mr. President. I rise to move the nomination of Catherine C. Johnson of Watertown. Mrs. Johnson was first appointed to the Thousand Island State Park Commission in 1961 and has served the State of New York for in excess of 32 years, representing our region and representing the interests of the park system, and has been subsequently renominated by three different Governors, confirmed by this house on a number of occasions, and I think it is exemplary of the dedication of an individual who has given of her valuable time and knowledge to support the efforts of our park system.

And I think it is particularly important having just been appointed as the chairman of that regional commission by Governor Cuomo that we are now in a position to confirm her reappointment today and at the same time that we've also confirmed a new Commissioner, because I think they both face a great deal of

challenges ahead in dealing with the challenges that the state park system is facing at this present time.

So it is my honor to move the nomination. Mrs. Johnson has long been an advocate of the park system and very responsible steward of this state's valuable assets and resources.

Thank you.

ACTING PRESIDENT KUHL: Question is on the nomination. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

Confirmation is confirmed.

THE SECRETARY: Senator Stafford reports the nomination of David S. Mack of Kings Point, member of the Metropolitan Transportation Authority.

ACTING PRESIDENT KUHL: Question is on the nomination. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The confirmation is confirmed.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: Oh, it's fun talking to you sometimes.

Mr. President. Just a little bit of housekeeping if I can, very quickly.

On behalf of Senator Babbush, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: 3376, 6196A.

ACTING PRESIDENT KUHL: So ordered.

SENATOR GOLD: Mr. President. On behalf of Senator Santiago, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause:

5376, 5460, 5696 and 5697.

Not only that, on behalf of Senator Smith, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Bill Number 3546.

Mr. President. Now, on a certainly much more serious note, I served notice, Mr. President, of motions to suspend the rules, and it is my understanding that the Majority has a technical problem.

And rather than tie up the chamber today, we are going to re-serve these motions and notices, and they are at the desk now.

One of them is a notice to suspend the rules so that we can basically have a debate and hopefully pass a wonderful piece of legislation which passed the Assembly and is sponsored in this house by Senator Padavan and basically would bar assault weapons in the State of New York. And I think that there can be nothing more timely for us to do at this moment

than to handle that legislation.

And the second motion deals with -

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, Senator Present is asking to be recognized if I might.

Senator Present.

SENATOR PRESENT: Mr. President. I think Senator Gold is out of order. There is no issue before us, and he is speaking out of order.

SENATOR GOLD: I was just explaining what I was doing.

SENATOR PRESENT: I know what you were doing.

SENATOR GOLD: Very briefly for me. And the second motion is on the issue of bringing before the house a resolution memorializing Congress to take action again in the area of gun control.

So I just want to alert the members. That motion is on for tomorrow, and we

will take that up at an appropriate time.

And I want to thank Senator Present for reminding me that I was probably going a little too long. I can't thank you enough, Senator Present.

ACTING PRESIDENT KUHL: Thank you, Senator Gold, for your announcements.

And your previous motions are ordered.

SENATOR GOLD: Thank you.

ACTING PRESIDENT KUHL: Senator Present, what's your wish?

SENATOR PRESENT: Return to the calendar, please.

ACTING PRESIDENT KUHL: Clerk will read.

SENATOR DeFRANCISCO: Mr. President. May I take care of a house cleaning matter before I forget.

ACTING PRESIDENT KUHL: Sure. Senator DeFrancisco.

SENATOR DeFRANCISCO: May I call up my bill 6169 recalled from the Assembly which

is now at the desk.

THE SECRETARY: By Senator DeFrancisco, Senate Bill Number 6169, an act to amend the Executive Law.

SENATOR DeFRANCISCO: I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT KUHL: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is before the house.

SENATOR DeFRANCISCO: Mr. President, please strike the enacting clause.

ACTING PRESIDENT KUHL: Without objection, so ordered.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Jealousy is a terrible thing. Senator Ohrenstein was so

excited on the announcements we made on some other people's bills, he wants one done, too.

And, on the following bill, by Senator Ohrenstein, we ask that its enacting clause be stricten: It's 1801C.

ACTING PRESIDENT KUHL: So ordered.

Clerk will read the calendar.

THE SECRETARY: Calendar Number 1450, by Senator Holland, Senate Bill Number 6029A, authorize Tier I status for certain members of the New York City Fire Department Pension Fund.

Senator Holland moves to discharge the Committee on Rules from Assembly Bill Number 8696A and substitute it for the identical Third Reading 1450.

ACTING PRESIDENT KUHL: Substitution is ordered.

There is a home rule message at the desk.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1711, by Senator Kuhl, Senate Bill Number 6215, an act to amend the Education Law, in relation to school building aid for refunding bond issues.

ACTING PRESIDENT KUHL: Is there a local fiscal note at the desk?

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1712, by the Senate Committee on Rules, Senate Bill Number 6217, making an appropriation.

Senator Marino moves to discharge the Committee on Rules from Assembly Bill Number 8930 and substitute it for the identical Third Reading 1712.

ACTING PRESIDENT KUHL: Substitution is ordered.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

That completes the calendar, Senator Present.

SENATOR PRESENT: Mr. President. I move we adopt the Resolution Calendar with the exception of Resolutions 2065, 2067 and 2068.

And, Mr. President, please recommit those three resolutions back to the Finance Committee.

ACTING PRESIDENT KUHL: Without objection, so ordered. The question is on the adoption of the Resolution Calendar. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Present.

SENATOR GALIBER: Mr. President.

ACTING PRESIDENT KUHL: Senator Galiber.

SENATOR GALIBER: Mr. President. I have a privileged resolution. I would respectfully ask that the title be read and then call the roll.

ACTING PRESIDENT KUHL: I ask the clerk to read.

THE SECRETARY: By Senator

Galiber, Legislative Resolution, commending Marie E. Thomas, principal of Community Elementary School 132 upon the occasion of her retirement.

ACTING PRESIDENT KUHL: The question is on the adoption. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Stachowski.

SENATOR STACHOWSKI: On behalf of Senator Gold, he has a privileged resolution at the desk. Could you read the title.

ACTING PRESIDENT KUHL: The resolution is at the desk. Clerk will read.

THE SECRETARY: By Senator Gold, Legislative Resolution, mourning the death of Arthur J. Katzman, former councilman for the 22nd District, Queens, New York.

ACTING PRESIDENT KUHL: The question is on the resolution. All those in

favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Hannon.

SENATOR HANNON: Yes. There is a privileged resolution at the desk, and ask that the title be read.

ACTING PRESIDENT KUHL: Resolution is at the desk. Ask the clerk to read.

THE SECRETARY: By Senator Hannon, Legislative Resolution, expressing sincerest sorrow upon the occasion of the senseless and tragic killings which occurred on the Long Island railroad commuter train December 7, 1993.

ACTING PRESIDENT KUHL: The question is on the resolution. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Mr. President. I now move that the Senate adjourn until tomorrow at noon -- you got something, Joe? - we adjourn until tomorrow at noon. And on behalf of Senator Levy, I would like to announce a Majority Conference at 11:00 a.m.

ACTING PRESIDENT KUHL: Senate stands adjourned until 12:00 o'clock tomorrow.

(Whereupon, at 7:38 p.m., Senate adjourned.)