ALBANY, NEW YORK

January 14, 1997

11:34 a.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join with me in the Pledge of Allegiance.

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

The invocation today will be given by Ernest Smith from the New Lebanon Congressional Church in New Lebanon.

Reverend Smith.

REVEREND ERNEST SMITH: Let us pray. Our Father in heaven, I have been asked to stand here today between Yourself and these men who have been carrying on their work of this great state.

It is an honor to bring their proceedings to You today. I feel humble and honored at this request. They recognize You, dear Father, as the giver of all wisdom and righteousness. Millions await upon the outcome of their deliberations on this special day. Please don't let anyone in New York State be forgotten. Don't let anyone feel that they've been set aside.

Give of Your strength and wisdom and share a little of Your foresight with us who are really truly only finite beings, though we stand in the place where love should abound.

May the characteristics of love and peace and forgiveness be the special law of each and every Senator as they fulfill their duties today and at last bring each into Your heavenly and eternal home where You dwell. In the name of Christ our Lord. Amen.

THE PRESIDENT: Thank you.

The reading of the Journal, please.

THE PRESIDENT: In Senate, Monday, January 13th. The Senate met pursuant to adjournment. The Journal of Friday, January 10th, was read and approved. On motion, the Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

Motions and resolutions.

SENATOR SKELOS: Madam President, I move that we adopt the Resolution Calendar in its entirety.

THE PRESIDENT: All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

SENATOR SKELOS: Madam President, I believe there's a privileged resolution at the desk by Senator Mendez. I ask that the title be read and move its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Mendez, Legislative Resolution congratulating

Myriam and Monserrate Vidro upon the occasion of their 40th wedding anniversary.

THE PRESIDENT: All those in favor of adopting the resolution signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be a meeting of the Transportation Committee in Room 123 of the Capitol at 12:00 noon.

THE PRESIDENT: There will be a meeting of the Transportation Committee in Room 123 of the Capitol at 12:00 noon.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Judiciary Committee at the desk. I ask that it be read and that you recognize Senator Lack.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers up the following nomination: Associate judge of the Court of Appeals, Richard Wesley.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

Madam President, it's my privilege to rise to move the nomination of an associate judge of the Court of Appeals, a vacancy having occurred upon the retirement of Judge Simons. The Commission on Judicial Nomination is appointed pursuant to Article 6, Section 2 of the New York State Constitution. The commission considered and evaluated the qualification of candidates for appointment into the office of associate judge. Pursuant to Section 63 of the Judiciary Law, the commission then made a recommendation to the Governor pursuant to that section and the Governor had nominated Richard C. Wesley on January 9th, 1997 to conform to the 1997 rules but, of course, prior to that the Governor made his

nomination known.

As a result, the committee did an exhaustive investigation and there was a hearing held this morning, and if I may, Madam President, I first -- before speaking about Justice Wesley, about to become Judge Wesley, I really want to thank the Governor. He has made my job as Chair of the Senate Judiciary Committee a very easy job.

Over 30 times since he has become Governor he has nominated judges who have been confirmed by this Senate and all of them have been nominated and confirmed unanimously.

I think the Governor, his steering committee headed by former Chief Judge Cook, has done a superb job in presenting appointments to us and no less superb and indeed a pinnacle to that is the Governor's first nomination to the New York State Court of Appeals.

Dick Wesley, a former member of the Assembly, appeared before us today. Before I get into what Dick Wesley had to say, after he spoke, the hearing then had

presiding Justice Delores Denman of the Fourth Department who is sitting in our gallery next to Judge Wesley who, of course, since this is a political body, I can say is a Democrat and a former incarnation, the district attorney of Monroe County, also a Democrat, the public defender of Monroe County, also a Democrat who appeared strongly -- words don't describe in terms of strongly in support of Dick Wesley, not only as a capable judge but as a wonderful person in order to be on the Court of Appeals.

Now, for those of my colleagues who are not attorneys, you should know that, of course, an election to the Supreme Court of this state as our main trial part allows a judge to make a decision. That decision, of course, is reviewable by the appellate division of the Supreme Court, a panel of four -- if you live where I do, or five if you live anywhere else -- justices of the appellate division who will review the decision having been made by the Supreme Court judge -- justice, but it's only when you get to the Court of Appeals, the highest

court in our state, that you realize that, quite frankly, the buck stops here.

I've had appellate division justices who have told me, Well, a decision had to be made because that's what the law says, and that's what the law of this department is and we, of course, are following that, and I really don't have the right or the inclination not to follow that law, but when you become a judge of the Court of Appeals, things can change. You can evaluate and say, "Hey, if I can convince three of my colleagues on this court, it's possible that we can change where the law has been. We can move the law. We can change an understanding", and that requires a certain type of individual.

I would -- if I had to call it anything, an uncommon common person, and what I mean by that is you need a person who sits on the Court of Appeals to be common, to understand the needs and the life styles and the law of this state as it can be interpreted for the benefit of all the people of this state but uncommon, uncommon in the

sense that that requires an intensity and an evaluation that cannot be done by just any ordinary person, and if there was anything that came out of the hearing today, out of his own words and out of the words of those who spoke in his support was that Dick Wesley is an uncommon common person.

He has had the ability in terms of his own decisions, the ability as a member of this Legislature to evaluate and a responsibility to evaluate how we conduct our lives.

He now has the ability to sit as one of the seven people in final judgment of actions taken by this Legislature, confirmed by the Governor of those things that are signed into law. That is an awesome responsibility, and I am happy -- and I said it at the hearing -- that we will now have a former member of our legislative bodies sitting on the Court of Appeals.

You know, because of our process, whatever it is, we read in the newspapers that we're arcane, that we really don't know what we're doing, that we're

stumbling. Whatever it might be, that's fine, but sooner or later, that process, what it is that we've done, goes to the Court of Appeals for a final evaluation and, just think, my colleagues, that we're now going to have sitting as a member of that Court of Appeals and in those deliberations a person who can say, Hey, wait a minute. You've got to understand the legislative process. You might not like the result but understand the process. Understand what the Assembly had to do. Understand what the Senate had to do, that the Governor has to signed it, that there has to be 31 votes there and 76 votes in the other house and what it takes to reach that kind of consensus and perhaps that gives a little bit more understanding of the type of process and the deliberations that we go through in terms of a final evaluation by the Court of Appeals.

I said it's an awesome responsibility for a governor to appoint and an awesome responsibility for an individual to accept. I can't think of a better judge that I know of in this state to accept that

responsibility than the nominee that is before this body today, Dick Wesley.

In the interest of time, I'm not going to go much further. I could talk about his background and what he's done. There is certainly a member of this body who is much more qualified than I am to do so. He was very constrained in the interest of time at the hearing this morning. He can now be unfettered and, therefore, Madam President, I would like to yield at this time, if I could, to Senator Michael Nozzolio.

Michael.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President. Thank you, Senator Lack.

My colleagues, often I rise in this chamber sometimes to advocate, sometimes to respond to an inquiry, sometimes to engage in the battle of the moment, but it is, indeed, with honor and happiness that I rise today in support of Governor Pataki's first appointment to the New York State's highest

court, my former Assembly colleague and one of my closest friends, the Honorable Richard C. Wesley of Livonia.

As Chairman of the Senate Judiciary Committee, Senator Lack eloquently spoke of Judge Dick Wesley's exceptional qualifications, and I wholeheartedly agree.

It has been said the members of the state Legislature share a familial bond. We labor together day after day and too often night after night on behalf of our constituents and the common good.

Today, Dick Wesley becomes the very first member of the state Legislature in the state Legislature family ever appointed to the New York State Court of Appeals, and he will be one of the very few in the entire history of the court who had prior service in the state Legislature.

His record as a state Assemblyman will serve him very well on the court because that is where he first learned and trained to debate the ideas and fight to improve New York's laws as a member of the Republican Conference in the state Assembly.

It's there that I witnessed firsthand his keen intellect, respect for differing positions and his unflagging determination to fight for what he believed in.

He is truly a man blessed with the ability to influence many by the sheer force of his intellectual capacity, but Dick was blessed from the very beginning.

He was the second son born to Charlie and Betty Wesley. Charlie was a truck driver and worked hard to provide for his family, delivering oil and gas throughout the rural communities of Livingston and Ontario Counties. His mother Betty trained to be a nurse and although retired still volunteers her time.

Because of these wonderful parents, Dick learned early on in life the important values of hard work and community service. Hard work is what brought Dick Wesley from a small school located in a small town to graduate summa cum laude at the very large State University of New York at Albany and to edit the Law Review at the very prestigious Cornell University School of

Law. From law school, to private practice, to community service, to counsel to the Assembly Minority Leader, to election to the state Assembly representing Livingston, Allegany and Ontario Counties, from election as a Supreme Court judge, to his appointment of supervising judge of the criminal courts in the 7th Judicial District, to appointment by then Governor Cuomo as a justice of the appellate division of the Fourth Department, Dick Wesley throughout that time never lost sight of the values Charlie and Betty instilled in him. Work hard, remember your family and never forget your community.

Dick's tenure in the state Assembly was marked by legislative accomplishments that allowed better ways to test intoxicated drivers, remove difficult evidentiary requirements to better prosecute child molesters and streamline settlement procedures for health care of infants.

In the Assembly, I was fortunate to have worked with Dick and fight together for our ideals and beliefs. Those ideas of many years ago are gradually

becoming the laws of this state under Governor George Pataki.

It's also been said that in times of battle, you gain insight about the quality of a person's character. Getting our ideas and views heard in the Assembly as members of the Republican Minority was our challenge. Some of our brothers in arms that served with Assemblyman Wesley you may have heard of, Bill Paxon, Bob King, Tom Reynolds, "Rapp" Rappleyea and those Senators in this chamber, Senator Kuhl, Senator Larkin, Kemp Hannon, Vinny Leibell, Steve Saland, Nick Spano and, of course, George Pataki. Assemblyman George Pataki remembers Dick Wesley's ability to shape the debate. Governor George Pataki has selected Dick Wesley to help shape our future.

Dick Wesley's respect for his colleagues on both sides of the aisle allowed him to make significant contributions in those challenging legislative days. His thoroughness of preparation, his skilled analysis and his respectful mannered debate serve as a textbook for others to follow on

how to influence a policy as a member of the Minority party, an attribute that I'm sure will serve him very well in this new judicial challenge.

Dick Wesley never forgot the lessons Charlie and Betty gave him to give back to his community. Dick still lives in Livonia where he was raised and where he and his wife Kathy have raised their two fine children, Sara and Matthew.

In his hometown, you'll see Judge Wesley still volunteering at youth basketball and soccer games and even serving his neighbors on one of the most important rides of their lives as a volunteer ambulance driver of the Livonia Volunteer Ambulance Corps.

Dick was an American History major at Albany State and one of his personal heroes is Abraham Lincoln. Lincoln forever shaped the history of our nation with his force and belief and his commitment to fairness and equality before the law.

Judge Richard Wesley shares Lincoln's view of government as described by

our 16th President in these words to Congress on July 4th, 1861, "We must maintain for the world that form and substance of government whose leading object is to elevate the condition of man, to lift artificial weights from all shoulders, to clear the paths of laudable pursuit for all, to afford an unfettered start and a fair chance in the race of life."

Dick Wesley has done very well in the race of life, always working to assist others along the way. He is truly a New York success story.

I know this is a very proud day for Dick, Kathy, Betty, Sara, Matthew and the entire Wesley family, and I'm sure Charlie is looking down on us with great pride, but this is also a very proud day for the entire state Legislature family who today thanks the Governor, George Pataki, for sending one of its former members to serve on the state's highest court.

Mr. President, I thank you for the time, and also speaking on behalf of our brother, Congressman Bill Paxon in

Washington, allow me to say congratulations, Justice Wesley, honorable justice of the New York State Court of Appeals.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter on the nomination.

SENATOR LEICHTER: Mr. President, thank you.

This is a really most significant confirmation that we're involved in. It's the first confirmation by a Republican governor of a member of the Court of Appeals. I think we all can recognize that the Court of Appeals plays such an important role in the lives of the people of the state of New York. Clearly the person that we're confirming will hold one of the 15, 20 most important positions in the state of New York. It was, therefore, very important for me to see that we had a good and thorough confirmation process and obviously to assure ourselves that the nominee was somebody who would carry on the tradition of what has been one of the most

significant and one of the most productive and one of the greatest courts in the country for many, many decades.

I want to say that I certainly think that the work that we've done in the Judiciary Committee, and I think the deliberation that we're having on the floor now certainly fulfills our constitutional responsibility of advising and consenting.

I want to particularly acknowledge and pay tribute to the leadership of the Chairman of the Judiciary Committee, our colleague, James Lack and also to the courtesy that he afforded the members of the Minority to make sure that we proceed in a very professional way, that we had a thorough and complete hearing and that when we made our recommendation to the full chamber that we could do so knowing that we had carefully looked into the qualifications of the nominee.

I think it's also fair to say that in a very highly politically charged body -- and we've heard how contentious the session may be and how so often as frequently

in Albany, everything seems to get put through the prism of partisanship, but that we proceeded in a very non-partisan manner, and it's in that manner that I get up to say in expressing my view, and I believe the view of the people on this side of the aisle, that Governor Pataki has made an exceptionally fine nomination to the Court of Appeals and in Richard Wesley and has given us somebody who will carry on the fine tradition, not only of his predecessor, Judge Simons but somebody who will continue for many years to contribute to the work of this important court.

I must say, I didn't know Judge Wesley when he was Assemblyman Wesley, which I guess is part of the leaders of a being in the Senate. You don't pay that much attention to who's on the other side of the Capitol. So I did not know him, but since his nomination, I've read his opinions. I've talked to people and I had the opportunity to hear him today at the hearing of the Judiciary Committee, and the one word that you heard so many of the members, those who

didn't know him from before and those who did know him, the one word to characterize him was impressive and certainly he showed great quickness of mind, learning, demeanor, all of the qualifications that you want to see in a judge.

What impressed me is that after hearing him, you're not going to be able to say, Well, wait a second. Is this a wild-eyed radical or is this a dyed-in-the-wool conservative? Is this a strict constructionist, or is this going to be an activist judge? That's not only the skill in which he answered questions, and I think there was sort of a philosophical bend to the questions and to the answers, but I think what it really showed to me is that this is a person of the law. This is a person who is deeply committed to the rule of law, to his role, to his function as a judge, and I found it extremely refreshing and very heartening to see that sort of outlook because I think that's exactly what you want to have in a judge, and obviously all judges bring a great deal of experience with them to

the bench. Maybe having served as a legislator, you bring even more experience, maybe more valuable experience in some instances. You certainly bring a lot of viewpoints, and I think it's important to be able to take on the role of the judge and carry that out which obviously differs in very significant respects from the role of a legislator, and certainly the feeling that I had and I think the other members of the Judiciary Committee had is that this is somebody who really understands what it is to be a judge, and I was given such a sense of fairness on the part of Judge Wesley.

So I'm delighted to get up here and do so with a great sense of satisfaction in seconding this nomination and in feeling that as we make this confirmation, we're adding to the Court of Appeals somebody who will carry on the great tradition of that court.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator DeFrancisco on the nomination.

SENATOR DeFRANCISCO: Thank

you, Mr. President.

I rarely speak at these confirmation hearings unless it's someone from my district and someone that I know well so that I have something meaningful to add. In this case, Senator Nozzolio amply demonstrated, you know, the intimate knowledge that he has for Justice Wesley, but I have to rise today.

I have never met the judge before. I have appeared several times before the appellate division, Fourth Department and he was on the panel on at least one of those occasions, but I have never met him. I've heard so many things about him from many, many people that I respect, and I think that's where a lot of us make our judgments, but today it was a very interesting hearing.

I sat back and just listened, and it was a very interesting hearing. I wish everyone could have been there. Rarely do you get a sense when you're hearing from somebody that this is a truly good person, a truly good person that not only has the qualifications for a position but also has

the qualifications of being a decent human being that you feel comfortable that he's going to do the right thing, and rarely do you get that feeling.

The broad ranges of experiences that he has, the background from which he comes only bodes well for this state in the decisions that are going to come down in the future for the Court of Appeals, and I want to say I was particularly impressed by the testimony of Christopher Genthner, and that shows a lot to have a young man who to come before a Senate committee -- I'm sure he was a little bit nervous -- to come before a Senate committee and say what this man has done for him and for so many other people, and that says a lot for an individual.

A few months ago I was at a sporting event at the Carrier Dome, which I have occasion to do from time to time, and I happened to be with Governor Pataki. The outcome of the game wasn't too satisfactory with Miami, but we were there together watching the game next to each other and I asked him, when -- did he make a decision yet

as far as who the new Court of Appeals nominee was going to be, and he was very coy, but he said, "John, you'll be impressed."

Well, Governor, I am impressed and I'm very proud to rise in support of his confirmation and to urge my colleagues to make it unanimous in this body.

ACTING PRESIDENT KUHL: Senator Waldon on the nomination.

SENATOR WALDON: Thank you very much, Mr. President, my colleagues.

I met Dick Wesley in 1983 when a great class entered the Assembly, people like the inimitable Nick Spano, Tommy Barraga, Clarence Norman who's now the county leader in Brooklyn, Barbara Patton who went on to greater heights. At that time I had the good fortune to experience the intellect of a lot of people in the Assembly as I have here, and everyone here is smart, in not only accomplished personalities but you are smart to be a part of this body and a part of that body that's down the hall, but there are two people there who impressed me with their ability to analyze and then their ability to

speak extemporaneously on the floor.

John Sheffer was one. You all know personally how skilled an orator he was because he served here with us, and Dick Wesley was the other. So we would exchange thoughts and ideas from time to time, and I learned and developed of him and developed a tremendous respect and admiration for him. Then our lives separated. I left for the Congress and then the fickle finger of fate chose to send me back here where I could hang out with guys like Franz Leichter and John Marchi and move on in terms of the legislative experience, but I rise to speak about Dick Wesley because I'm concerned about certain things and I'm comfortable that he will ensure the integrity of our Constitution and the integrity of our process.

I know we're in good hands with John Wesley in the Court of Appeals because those concerns I have about judicial imperatives and those concerns I have about the absolute inability of us or non-desire of us to interfere with constitutional imperatives will be protected by Dick

Wesley.

I think the smartest thing that he ever did was probably to marry Kathy, but he did a second smart thing. He chose to be the mentor, to be the inspiration, the uplifting influence to one of our colleagues when he chose to be the roommate of Michael Nozzolio.

Dick, as you all know, graduated with many plaudits next to his name at many levels of his education. He was cum laude, summa cum laude, magna cum laude and even someone like me who graduated thank you lordy learned to develop a tremendous admiration for him.

This man is a reasoned intellectual. This man has the capacity for tolerance, and I'm sure that no matter the station of the person who comes before him as he sits on the court, no matter the person's place of origin, no matter the person's religion, no matter the person's color, there will always be a level playing field as long as Dick Wesley sits on the Court of Appeals.

Thank you very much, Mr.

President.

ACTING PRESIDENT KUHL: Senator Volker on the nomination.

SENATOR VOLKER: Mr. President, a lot has been said about Dick who, by the way, is a constituent of mine.

On the radio this last week, I was listening to some weather reports from the Buffalo area which, of course, is always of interest to those of us who are from Western New York for obvious reasons, and one of the weather reports talked about the town of Livonia and the two people who were on said, "Where is the town of Livonia" and they said, "We've got to look on the map" and I said, Well, whether they realize it or not, on Tuesday, the town of Livonia is going to be one of the capitals of New York State because one of its favorite sons is going to become one of the top judges in the country because going to the Court of Appeals, I think possibly we as lawyers -- those of us that are lawyers realize maybe a little more incredible importance of this position.

In fact, I'm one of those

people, by the way, that believes that the most important thing that a president or a governor does, the most enduring thing, really, is the appointments that they make to the judiciary, particularly the Supreme Court of the United States, obviously and to the Court of Appeals.

When you think about it, over the years, probably that has been something which I think has been somewhat ignored sometimes by the press. Dick Wesley represents, I think, a typical example of one of the best kinds of appointments for the times that we live in.

I think that it is important obviously to know Dick, and obviously Mike who lived with Dick for some time and who has known him for many years as I have -- in fact, I probably had more dealings with Dick when he was a counsel to Jim Emery in many ways -- there were a lot of very difficult issues that we dealt with and in his biography it talks about one of the issues which is a single town mitigation, but I have to assure you there was a lot more to -- as

Dick well knows, to that problem and it involved a lot of towns.

It involved the city of Rochester and all sorts of things, and it was a very delicate negotiation because there were property rights involved, the city of Rochester, the Health Department, all sorts of things that we finally were able to resolve after years of discussions and public beratings and all that sort of thing from the local media.

The thing about it, I think, is -- one of the reasons Dick was so important is because of his personality. He has the personality that can listen to the arguments and, although be very direct, can then in a very calm way make decisions, decisions that I think are very wise decisions.

Let me just say two things about the Court of Appeals and why I think this important -- this appointment is so important. I read the press like everybody else, Well, he's replacing somebody who's more conservative and all that sort of

stuff. Let me tell you, in my opinion, the importance -- first of all, the Court of Appeals, whether some of us realize it or not, has had a habit recently of making decisions and trying to change the plain language that the Legislature has sent in statutes. It's one of the more aggravating things for me. We are sending someone there who was in the Legislature, who realizes what plain language means, and my personal opinion is I think that's important.

Number two, there was a decision several years ago called the bankers' decision, and that decision, although I might have some disagreement with it on its merits -- but I think this certainly was a good argument for the Court of Appeals to make the decision -- my problem with the decision was it was a case that was pending for something like three years in regards to our budget process. The decision was made about five or six days before April 1st and it drastically changed the entire budget process of this state that had gone on for a century. What it did was to throw the

process into chaos. Of course, the press virtually ignored the fact that the reason we were -- the clear reason we were late with that budget that year -- and probably, by the way, the next year, but that's beside the point -- that year for certain was because that decision was made so close to the end of the budget process.

Now, I said to a very prominent judge at the time, who shall remain nameless, I said, "Why did the Court of Appeals do that? To me, the decision -- you could argue the decision. That's up to them, but why did they do it in the time they did?" His reply was, I don't think the Court of Appeals judges ever even thought about or recognized the fact that that decision was going to send the system into chaos, create a situation, by the way, where pieces of the budget -- because we had to divide up the budget into different bills and all sorts of things -- the reason the budget didn't pass actually until July, if my recollection is correct, when we followed up with having to follow up that decision.

The reason I mention that is whether you believe it or not and whether the press believes it or not, we have somebody now going to the Court of Appeals who understands the whole process of government, which I happen to think is very, very important. That doesn't necessarily mean that he's going to make decisions based on that, but he's going to understand and can tell the Court of Appeals of this state, This is the way the process works and when we make this decision, timing and all the rest of the things, this is what's involved. I think that is important and maybe in some ways as important as the ability that he has to make just and proper decisions.

Dick, let me just say to you that to me personally you have always been a good friend. As you know, Kathy too has been very, very active in the community and your mother, who I know very well, is a wonderful person and I've often said, if you see the parents, if you see your mother, you can pretty well tell where the stock came from, and she's a very direct and pointed person at

times and has told me a couple of things when she didn't think I did something right, and you have too, by the way, and we have disagreed on a few occasions, but I have to say that disregarding the fact that you obviously are a constituent and a friend, I can't think really of a better person that the Governor could have chosen for this particular time to be an associate justice of the Court of Appeals.

I wish you the very best. I know it's not an easy place to be despite, you know, all the problems of our times, but I know you're up to it, and I know you'll make everyone proud, not only here but certainly in Livonia. Good luck.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger on the nomination.

SENATOR DOLLINGER: Thank you, Mr. President.

Today I'm going to get an unusual privilege. I'm going to get to vote for Richard Wesley for the second time.

In 1986, there was a friend of

mine on the Supreme Court ballot in Monroe County and those of you who know me can imagine that dropping down to Row B is something of an unusual experience for me. I develop a certain cold sweat in the voting booth, but on that day, I gladly reached down to Row B and pulled the name of Richard Wesley, a friend of mine, to become a state Supreme Court judge. Today I get to elevate him to the highest court in New York State, and I do so as proudly today as I did on that day back in 1986.

I'd point out for my colleague and friend, Senator Nozzolio, that while Governor Pataki has clearly recognized Judge Wesley's substantial skills, he is not the first governor in this state to recognize those skills because three and a half years ago, a Democratic governor in what I can only describe which was received among the Democratic legal community in Monroe County with some consternation, a Democratic governor decided to appoint a Republican sitting member of the state Supreme Court to the appellate division. There were those who

are from the Row A side of the fence who said, "Gee, why is the Governor doing that?" When they asked me, I quite frankly said, "Because he's the best judge we've got on the state Supreme Court bench. So Dick Wesley's success has been celebrated in a bipartisan fashion before, as I hope it will be celebrated today.

Those of you who sat in on the questioning before the Judiciary Committee, I focused on one area in particular, and that is how can this man who has been a passionate advocate in conversations with Senator Nozzolio, in conversations in the Red Wing box seat that I shared with him in the mid-'80s, when we talk passionately about the issues of the day, the same kinds of issues that Senator Waldon addressed, how can this man who's been such a passionate advocate in the political process become someone who will become a referee of the political process oftentimes in its disputes with the people who, through their Constitution have said, that despite the vast power that we have in this chamber, it nonetheless has a limit, and

it seems to me that the man I know is one of the few in this state who could because of the power and conviction and commitment to our system of laws, say to his friend, the Governor and his friends in the state Legislature, You have made a mistake. The people did not give you the power to do what you wanted to do and hence your act violates our Constitution and cannot be sustained. Dick Wesley has the courage, the conviction and commitment to do that.

And let me just tell a little story. I don't think I'm talking out of school. Before I came to the state Legislature, I wanted to know what it was like to manage a family -- my children are roughly comparable in age to Dick's -- and I wanted to know what it was like to live part of your life in Albany and how do you manage your family. I called then Supreme Court Justice Dick Wesley and said, "Can you meet me for a drink?" He did. He was very candid. We talked about our families, about things that we believed were very important to us and how you manage this dual life of

living in Albany and coming back. He gave me great inspiration. He gave me great insight. He talked about how you have to make better use of your time and your family and your home. I've tried to do that, but he also told me one other story that I think demonstrates his most powerful attribute, and that is for want of a better term, I'll use one that doesn't have a legal equivalent. It's called guts.

Dick Wesley had presided over a very, very difficult trial. It involved a family that I was very close to. It involved an unfortunate death of a promising young man. It had been a terrible death. There was a personal injury case, product liability case brought in the wake of that death. It was a widely publicized trial. The family was a Republican family, a very influential family. A terrible, terrible tragedy had occurred.

In the course of that trial, there was an evidentiary ruling when the plaintiff attempted to introduce evidence about how this particular young man would

have been successful in a given profession. Richard Wesley sat down and made a difficult call. He decided that based on the law that evidence could not be admitted. The trial was resolved and a verdict in favor of the defendants and against the plaintiff.

Several days later -- several weeks later, Richard Wesley was introduced in a social situation to the father of this child and in that terribly difficult situation, the father obviously distraught said, "Gee, Judge, I wish you had the guts to let that evidence in." Dick Wesley looked at this man and said, "I did what the law told me to do", and it seems to me that that guts, to look someone in the eye and say, the law must dictate how we decide issues, that it is not an issue of passion, it is not an issue of the moment, but it is nonetheless something that we all swear a fealty to. That showed the guts of Richard Wesley.

I am willing to put him on the Court of Appeals because if he has the guts to do that, he has the guts to tell this Legislature when it has trampled on the

powers that the people reserve to themselves in their Constitution, that he has the guts to look prosecutors in the eye and say, You have exceeded your authority and the evidence must be suppressed because individual liberty is that important. He has the guts to resolve the critical issues of our days, and it seems to me that that attribute alone will serve him well in this current position.

I'll close, Dick, by just summing up the memory and spirit of the other man who came from the Southern Tier, from a small village and a small town, who brought those small town values that you so strongly possess to the Court of Appeals. His name was Domenick Gabrielli. He had a background roughly comparable to Richard Wesley's.

I'm telling you, Dick, I believe you will follow in the foot steps of Dom Gabrielli, in those hollowed foot steps in which he made a contribution to juris prudence in this state that is among the finest ever reached. My opinion is that Richard Wesley, with all of those same qualities and the guts to go with them, will

achieve that same level of success and I will remember my career in the state Legislature as the day that I was able to proudly vote for Richard Wesley as a member of the Court of Appeals.

Godspeed and good luck.

ACTING PRESIDENT KUHL: Senator Leibell on the nomination.

SENATOR LEIBELL: Thank you, Mr. President.

And certainly the Governor has sent to us many fine names to consider over the course of the last couple of years, and as we meet here today there are probably very few greater responsibilities than we have conducting this deliberation.

I think most of us can sit here regardless of the side of the aisle we're on and sit in somewhat awe of the comments and the statements that are being made because they are certainly of the highest caliber.

Mike Nozzolio very well summarized a great deal about the life of Dick Wesley, and as someone who came into the

same class with Dick -- and certainly not to disparage in any way many other fine members who are in that class -- without question, Judge, you stood out.

You stood out as a debater, yes, but more than the words you uttered, it was the way you went about putting legislation together, his sense of decency, of fairness, the eagerness, even for a member of the Minority when it certainly is easy enough at times to be discouraged. You set a standard for everyone in that class, as well as for the Legislature while you served there.

You are truly a proud son of this great state. Born here, raised here, educated here, having brought up your own family here and now, and as you have throughout so many years, leading this state.

A comment was made concerning our families and at times the difficulties that this life poses for our families, and I can remember many times speaking with you about that, both of us having young children and how greatly it concerned you. I hope

that we send you legislation and laws that you will feel comfortable with and that we will have done a good job as legislators.

I do know this, that we could not personally have a person of higher character, greater integrity or someone who could do a finer job for the people in the state of New York than you, Judge Wesley.

ACTING PRESIDENT KUHL: Senator Gold on the nomination.

SENATOR GOLD: Thank you, Mr. President.

I'll be brief. So much has been said. I would like to clear the record, though, on something because Senator Leichter made reference to the judge. He said quickness of mind. He was impressive, fairness and you look at his record and you might be misled because in 1971, you'll read that he graduated summa cum laude from college, but if the truth be told, there was a little floundering in his life from that point, but from the fall of '71 through the spring of '74, he had the opportunity of having his mind enriched and nurtured and

probed and expanded, and I think the members of the court will appreciate that Cornell law education which you bring there. Jimmy Lack made me do that.

At any rate, I wanted to say in response to something that Senator Volker said, that I don't believe that the way a judge approaches the job is necessarily liberal or conservative in terms of philosophy and, Judge, I am one of those who agrees with Senator Volker that this is the place for legislation. We ought to do the legislating and the judges ought to do the judging, and I feel very, very refreshed and good about the fact that one of our own and I'm a Democrat but you're still one of mine when it comes to your background -- is going to this court.

I have admired the appointments of Governor Cuomo to that court, and I think we have a fine court. I particularly admire Governor Pataki's general appointments to the court. I have had disputes with him in some of the other areas and some of the department heads and

whatever, but I think that Governor Pataki has really been superb when it comes to what he's done for our courts.

So I just really wanted to wish you well, Judge, and I'm always proud when somebody from Cornell gets the proper recognition.

ACTING PRESIDENT KUHL: Senator Larkin on the nomination.

SENATOR LARKIN: Thank you very much, Mr. President.

I rise as a non-lawyer who first met Dick Wesley when he was a counsel for then Assembly Minority Leader Jim Emery, and I was amazed how he would come by and he would listen to all the great orators in the Minority telling how and why and what we should do and after all the desks cleared, Dick Wesley would stand up and in a very calm order he would look at Nozzolio first and then Paxon as if to say "Here we go", and it was very clear that he had studied the issue and he wanted to make sure that the non-lawyers received a thorough indoctrination, not trying to be rude or

anything, but to make sure because of the finer points that somebody didn't go off the ranch and say things that weren't true, didn't reflect what the legislation was about.

When he ran and became a member of the Assembly, he became the same person, a cooperative, hard worker. You could tell then that members in the Majority in the Assembly would say, you know, some day great things are going to happen to Dick Wesley. Never talked about you, Mike, or Paxon, but they always referred to Dick Wesley about how he had the ability to gain the most cooperation from everybody that he came in contact with. I was amazed because having been a retired colonel I didn't ask. I told people what to do. Dick Wesley had the ability to get it.

I think that when we look and see what the Governor has been trying to search out for our courts, I think a best example of it is last week I talked to a high school class and their comments were the bickering back and forth between the

Legislature, the Governor and the courts, and some of the decisions that are rendered right here in our home area makes us question the type of caliber of an individual we place on the court. I tried to proceed and tell them about an individual who was going to the court and, you know, it was very easy. I took out the Red Book and I read something. I really found out how he became something important. He married a young lady who said, Listen to me. Follow me, and he did, but I really told them about his process and how he addressed issues.

I can remember people coming to the Capitol from his home area and how he would address the young people and he made them feel so comfortable and so important, and that's the type of an individual we need, but we also need someone who doesn't try to interpret so much as Mr. Doll... Senator Dollinger said, the law, and I think what we have here today is a colleague who has gone this final step, and I think that we all should be very proud.

It's really nice to sit here

in this chamber and see members of both parties, lawyers and non-lawyers, willing to stand up and say the real truth about an individual, not that we were politically pushed to vote in favor of some individual but here we were voting for an individual to this court which is so prestigious, and as we heard people from all the media say, that this level of court needs the best, the brightest, the sincerest, and the dedicated, and that's Dick Wesley.

God bless you, Dick.

ACTING PRESIDENT KUHL: Senator Rath on the nomination.

SENATOR RATH: Thank you, Mr. President.

Judge Wesley, Judge Denman, I don't remember when I met either of you. It was so long ago. Maybe, Delores -- Judge Denman, it might have been before I knew Dick Wesley. I think that was some time in the days when the county legislators were coming to Albany and, of course, you and Assemblyman Nozzolio and Assemblyman Paxon were advising us on some of the things we needed to know

that we would carry back to our respective counties. I'm sure that was when it was, and because I'm a neighbor of yours in Western New York, I'm taking the liberty to stand up and say a word or two inasmuch as my district runs right through Genesee County and snuggles right up there next to Monroe County.

This morning in the Judiciary Committee hearing, a number of approaches were made and a number of items discussed, but there was one that caught my attention particularly, and it was when the pace seemed to slow and you picked up the judicial aura which we see in judges so often and which we all hold in awe, in respect and the kind of reverence that we hope never, ever leaves the judiciary, because when and if it ever does, I think we as Americans would have to -- to wonder what our future holds, but I saw you pick up that aura today when there was a discussion of a particular case that was particularly difficult for you. You stopped and you said, quote, "I was required to make a judgment call", and I think that's what we

expect of our judges, and it's interesting how our characters are forged in the crucibles of the areas wherein we serve. Your Assembly days have been noted and talked about at some length, and I know some would talk about their colleagues who present with enthusiasm. Others would always talk about someone's humor. Your passion was mentioned, but that's not -- those are not the items I would like to highlight.

This morning, I think I heard your friends, your colleagues, people who know you far better than I do, talk about your integrity, your independence and your courage and, Judge, this morning there were discussions of the weighty times that are coming in front of the courts of New York State and, indeed, in coming in front of all Americans, we have some very weighty times in front of us. They will appear in the courts of New York State and you will be there, I'm sure, and the crucible, again, wherein you learned to function with integrity, independence and courage will be the qualities that you carry into those decisions

and when you are facing those decisions, I, for one, as a Senator of the state of New York in casting my vote for you, will be happy to say that I know that when Judge Wesley is called upon to make a judgment call, it will be made with that same integrity, independence and courage.

And so, Judge, good luck. Godspeed and God bless New York.

ACTING PRESIDENT KUHL: Senator Marchi on the nomination.

SENATOR MARCHI: Mr. President, when I first came to the Senate 41 years ago, I requested appointment to the Judiciary Committee as my number one choice. So I have gone through countless proceedings all through the years, and I must say that the experience I enjoyed today -- and I say "enjoyed" purposely -- has never been surpassed. It was a very inspiring exercise that we went through.

Senator Lack as Chairman and Senator Leichter as ranking Minority member set a tone which was respected and elicited very fine expressions from those who

addressed the record. Certainly all the evidence of brilliance, intellectual integrity, some of the qualities that have been summoned and cited in support of this nomination, courage, encyclopedic knowledge of American juris prudence and the span of years in which he manifested these qualities was relatively brief by comparison to most appointments to this court.

So it was, indeed, a very, very fine experience with people from the Bar Association, the Association of the Bar and the very meticulous care that they took in describing each step, thorough steps and then coming out with a consensus that was total and unanimous. This was -- also added substance and enriched the value of this nomination, and then Senator Waldon mentioned the uniformed respect that he has of all God's children. This is a moral dimension. This is a spiritual quality, and the rest of it would mean much less than nothing if this were not present, and that was projected with such an airing quality by Mr. Genthner, a young teacher, explaining the terms and the

impact that it had on his own personal life and others in the community.

This all added up, Mr. President, to a mosaic, and the mosaic is a fine one, a good one, and I ask you, Judge, carry the expressions of sincere estimations of value and the feeling that you generated among those who attended the hearings and those who are participating in the function today. I'm sure that they will enrich you as it has enriched us to have you before us and your splendid family to assist at this proceeding. If nothing else, we're missing to really give us a reflection of the function of this chamber.

Today's experience certainly is one that should give us all pride and satisfaction in being able to assist at it and to wish you Godspeed in your new challenges.

ACTING PRESIDENT KUHL: Senator Saland to close on the nomination.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I rise as so

many have and so many have eloquently before me to sing the praise of Judge Richard Wesley, and pardon my formality. During the course of the judiciary hearing earlier today, I had a brief opportunity to exchange some comments with the judge and as would reasonably be expected, once again he bested me. So congratulations.

I had the good fortune to serve two terms in the Assembly with the judge, and let me avoid the levity and get right to the heart of it. I can think of nobody who either by way of demeanor, always judicious or by way of intellect or ability would be a better nominee than Governor Pataki has chosen to serve on this Court of Appeals.

He's an extraordinary gentleman. He brings talent. He brings integrity. He brings commitment. He brings all of the qualities that the people of the state of New York can rest assured knowing that they have their life, their liberty and their property being safely guarded by the newest addition to the Court of Appeals.

Congratulations and all the luck in the world to you.

ACTING PRESIDENT KUHL: The question is on the confirmation of the Honorable Richard C. Wesley as an associate judge of the Court of Appeals. All those in favor of the nomination signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominee is unanimously confirmed.

It's my pleasure to welcome the Honorable Richard C. Wesley, the newest associate judge to Court of Appeals to the chamber. Judge Wesley, we're happy to see you.

Judge Wesley is also joined by his wife, Kathy. Kathy, welcome to the chamber. It's wonderful to see you here.

(Applause)

Senator Skelos.

SENATOR SKELOS: If we could continue with reports of standing committees,

I believe there's a report of the Transportation Committee at the desk. I ask that it be read.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Senator Levy, from the Committee on Transportation, hands up the following bills directly for third reading: Senate Print Number 26, by Senator Volker, an act to amend the Vehicle and Traffic Law, in relation to suspensions;

Senate Print 119, by Senator Stafford, an act to amend the Vehicle and Traffic Law, in relation to the operation of school buses;

Senate Print 184, by Senator Tully, an act to amend the Vehicle and Traffic Law, in relation to revoking driver's licenses;

Senate Print 188, by Senator Tully, an act to amend the Vehicle and Traffic Law, in relation to authorizing towns and villages to establish a prepaid parking permit system;

Senate Print 203, by Senator

Levy, an act to amend the Highway Law, in relation to designating the Bethpage State Parkway;

Senate Print 358, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to authorizing registration fees;

Senate Print 362, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to distinctive plates for police officers. All bills directly for third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I offer up the following resolution amending the Senate rules, notice of which was filed during yesterday's session and ask that the

title be read and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: By Senator Bruno, Senate Resolution proposing an amendment to Section 1 of Rule 7 of the Senate rules, relating to the composition of standing committees.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The motion is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I offer up the following committee assignments and ask that they be filed in the Journal.

ACTING PRESIDENT KUHL: The memorandum is accepted and filed.

SENATOR SKELOS: Mr. President, there being no further business, I

move we adjourn until Tuesday, January 21st at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until Tuesday, January 21st at 3:00 p.m., all intervening days to be legislative days.

(Whereupon, at 12:52 p.m., the Senate adjourned.)