ALBANY, NEW YORK

April 30, 1998

1:24 p.m.

REGULAR SESSION

SENATOR MICHAEL A.L. BALBONI, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BALBONI: The Senate will come to order. Please join me in saying the Pledge of Allegiance.

(Assemblage repeated the Pledge of Allegiance to the Flag. )

In the absence of clergy, we'll all bow our heads in a moment of silence.

(A moment of silence was observed. )

Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, April 29th. The Senate met pursuant to adjournment. The Journal of Tuesday, April 28th, was read and approved. On motion, Senate adjourned.

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

The presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Lack,

from the Committee on Judiciary, offers up the following nomination:

As a Justice of the Supreme Court for the Second Judicial District, Muriel Shaff Hubsher, of Brooklyn.

ACTING PRESIDENT BALBONI: Senator Lack.

SENATOR LACK: Mr. President, I rise to move the nomination of Muriel Shaff Hubsher, of Brooklyn, as a Justice of the Supreme Court for the Second Judicial District. Judge Hubsher appeared before the Judiciary Committee this morning, was unanimously moved by the committee to the floor of the Legislature. Her credentials have been examined by the staff of the Senate Judiciary Committee, have been found totally in order, and I would respectfully yield to Senator Connor for the purposes of a second.

ACTING PRESIDENT BALBONI: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Mr. President, I'm indeed honored to second the nomination to confirm

Judge Hubsher. She has served with distinction in the great county of Kings as a criminal court judge, and as an acting Justice of the Supreme Court and brings to the bench -- brings to this new appointment as a Supreme Court Justice her experience in the court system as a law secretary to some of the finest jurists that the county of Kings has been graced with over the past years. Besides her very astute legal mind, her human qualities will make her a good judge because, as I've said before in this chamber, being a judge is more than just learning of the law. Judging is about knowing and understanding people, knowing and understanding the community in which one resides and understanding the basic elements of human nature. Judge Hubsher has demonstrated in her tenure on the bench the ability to do that so well.

Besides all this, she's a wonderful person, a delightful person, and I'm indeed happy to move her confirmation.

Judge Hubsher is here today with us, and I urge all my colleagues to

support this nomination.

ACTING PRESIDENT BALBONI: The question is on the nomination of Judge Muriel Shaff Hubsher as a Justice of the Supreme Court for the Second Judicial District.

All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

Muriel Hubsher is hereby confirmed as a Justice of the Supreme Court of the Second Judicial District.

Congratulations! With her this afternoon are her husband, Dr. Mitchell Hubsher, grandchildren Sierra and Willow Hubsher, family members Dr. and Mrs. Steve Shaff, and friends Murray Tannenholtz and Dr. and Mrs. Joseph Fenton. Welcome, all. Congratulations.

(Applause)

Secretary will read.

THE SECRETARY: As Judge of the Court of Claims, Edgar C. Nemoyer, of Buffalo.

ACTING PRESIDENT BALBONI: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise once again to move the nomination of Edgar C. Nemoyer, of Buffalo, as a judge of the Court of Claims. Judge Nemoyer is already a member of the Court of Claims. His credentials were examined by the staff of the Judiciary Committee. They were found certainly to be in order. He appeared before the committee this morning, was unanimously moved to the floor.

I'm happy to call on Senator Volker for purposes of a second.

ACTING PRESIDENT BALBONI: The chair recognizes Senator Volker.

SENATOR VOLKER: Mr. President, I want to second the nomination of Judge Nemoyer who has been on the Court of Claims previously. A fine gentleman, as I said in the committee meeting. I've known Edgar Nemoyer for a number of years -- a former police officer, a former teacher at SUNY law school, a fine gentleman and a top flight

jurist, I think probably considered one of the best lawyers in the western New York area, and I think the Governor made really a great choice renaming Ed Nemoyer to the Court of Claims.

ACTING PRESIDENT BALBONI: Thank you, Senator Volker.

Senator Stachowski.

SENATOR STACHOWSKI: Thank you, Mr. President.

I, too, would like to rise to second the nomination of Edgar Nemoyer. He has done a great job on the Court of Claims and obviously the Governor made a great choice when he reappointed him. I was glad to follow Senator Volker because it's always good when one policeman/lawyer speaks first about another policeman/lawyer, not having been either, but he does a great job on the bench. He's always been active in his community. I'm glad that he's one of my constituents, and it's a thrill to have the opportunity to say a few words about Edgar Nemoyer.

ACTING PRESIDENT BALBONI: Thank you, Senator Stachowski.

Chair recognizes Senator Rath.

SENATOR RATH: Thank you, Mr. Chairman.

It's my pleasure also to rise on behalf of a few words for Judge Nemoyer.

Judge Nemoyer is a friend and a comrade on the judiciary of many of the people that I know very well back in the district, thought of very highly by the bench and the bar and all the people of the community. I'm delighted that he's going to be reappointed and wish you well, Judge.

ACTING PRESIDENT BALBONI: The question is on the confirmation of Edgar C. Nemoyer as judge of the Court of Claims. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

Eric -- Edgar C. Nemoyer is hereby confirmed as a Court of Claims judge.

Congratulations, and the judge has with him today his wife Josephine. Congratulations.

(Applause)

Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Terry Jane Ruderman of Scarsdale.

ACTING PRESIDENT BALBONI: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Terry Jane Ruderman as a judge of the Court of Claims. Judge Ruderman is currently a member of that court. She was confirmed by this body in June of 1995, is completing almost three years on the Court of Claims. She, of course, has had her credentials once again examined by the staff of the Judiciary Committee. They've been found entirely in order, and I would just like to spend a moment or two myself, if I could, talking about Judge Ruderman because, since she has been on the bench for the last three years, I've gotten to know her and to know her work.

She took over a seat that had been vacant in White Plains in Westchester County, in a court that had a large backlog.

She's done an excellent job. She has erased the backlog. I know from her colleagues who sit on the Court of Claims that she has achieved an excellent record on that court, which is not surprising considering her back ground as a principal law clerk to the Honorable Kenneth Rudolph of the Supreme Court in Westchester County, as a practicing attorney in the office of the County Executive of Westchester County, the Westchester County Attorney, distinguished graduate of Pace University, articles editor of the Pace University Law Review.

Judge Ruderman, a -- one of the first appointees of then new Governor George Pataki, has certainly distinguished herself on the Court of Claims and, Mr. President, it is a distinct pleasure to rise to move her renomination as a judge of that court and to wish her Godspeed and good luck.

Like to also mention, she is joined today by her husband, Jerold Ruderman, and her daughter and son-in-law, Jill and Donald Sandford.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Chair recognizes Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

Senator Lack has very well and ably stated the great record of Judge Ruderman, but I would like to at this point join in and move this nomination, noting her great accomplishments as a member of the Court of Claims, and the distinguished career she had before she went to that bench.

This has certainly been a most excellent appointment by Governor Pataki, and I join in with my colleagues in wishing her a continued successful career as a jurist.

ACTING PRESIDENT BALBONI: The question is on the confirmation of Terry Jane Ruderman of Sand Lake as judge of the Court of Claims --sorry about that typo, Scarsdale. Sand lake is a nice place too though, your Honor.

All those in favor, please signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

Terry Jane Ruderman is hereby confirmed as judge of the Court of Claims. Congratulations, Judge Ruderman, and joining judge Ruderman today is her husband, Jerold Ruderman, daughter Jill and her husband, Donald Sandford, and friends Debbie Sellas, Susie Hickson and Tom Jefferson.

Congratulations, your Honor.

(Applause)

The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Jonathan Lippman, of Rye Brook.

ACTING PRESIDENT BALBONI: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

It is with great honor that I rise to move the nomination of Jonathan Lippman, of Rye Brook, as a judge of the Court of Claims. This, as with Judge Ruderman, is the second time that Judge Lippman has appeared before this body for a renomination. I'd like to spend a couple minutes, if I

could, just saying a couple things about Jon Lippman.

Jon Lippman, of course, as everybody knows, is not only a judge of the Court of Claims but is the chief administrative judge of the state of New York. As such, he has the hardest job of any judge in the court system. Up to not too long ago, when someone wasn't a judge, you could become chief administrator of the courts. Technically, under the law, you could do that still today. The court system, and I think rightly, found out not too long ago that trying to have a non-judge serving as the chief administrator of the state's judicial system severely hobbles the ability of that person to do his or her work.

Governor Pataki, I think in anticipation that there would be an opening in the chief administrative -- chief administrator's position, very wisely moved the nomination of the then deputy chief administrator of the courts, Jon Lippman, to become a judge of the Court of Claims and subsequently the deputy chief administrative

judge and not surprisingly, of course, he succeeded to the job of chief administrative judge.

But a judge he is, and as the chief administrative judge of the state of New York, he's the one person every day who has to walk the fine line by being a judge and yet also part of the real politic system of how this state is governed, who has to daily deal with any one or more of the 211 legislators, the agencies of state government, the gubernatorial process, the people in the Governor's office, and has to move the billion dollar a year agency that the judiciary is through its paces 365 days a year and, at the same time, still adhere to the canons of judicial ethics and everything that that requires to be a judge.

If anybody thinks that that's an easy job and one that can be done without having to spend a good part of the day wondering where that line is between being an administrator and a judge, and how far you can operate into the political system and at the same time still be a judge, try to follow

Judge Lippman on his daily rounds and see how he does the job, and the answer you'll get from me as probably the member of the Legislature that he has to deal with him the most, is that he does the job spectacularly. He is totally honest. He is totally available. He is accessible not only to myself but to any member of this Legislature at any time.

He has taken a job that, in the past, has been considered a bureaucratic nightmare and turned it into a philosophically based operation where the judiciary as a whole under his guidance together with the guidance of the chief judge of the state, the chief judge of the Court of Appeals, Judith Kaye, are firmly in front of a leadership moving the judicial system. Whether you agree or not on how that system is being moved, no one can disagree that they have taken a very affirmative hold on the leadership of the judicial system, and they're carrying out in the best interests of that system a change to move us into the next century, and in that vein, particularly the chief administrative

judge, Jon Lippman, has done an excellent job.

There is no doubt that this state's judicial system would be in a far worse position were it not for his two and a half years of leadership as the chief administrative judge and although we are today merely concerned with his renomination as a judge of the Court of Claims, it is that basis, that basis to be called Judge Jonathan Lippman, and, therefore, the chief administrative judge, that is before this body and I very proudly for one stand up, one, to congratulate him on his renomination but, two, on behalf of this body, the Senate of the state, to thank him for everything that he has done for the entire population of the state and for his friendship and for his cooperation to myself and particularly to the members of this body.

So, Jon, congratulations to you today for your renomination and, again, thanks for everything that you've done for all of us.

Thank you, Mr. President.

(Applause)

ACTING PRESIDENT BALBONI: Thank you.

Thank you, Senator Lack.

The chair recognizes Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President.

All of these are fine, fine appointments, Mr. President, to the judiciary, and the difference in the judiciary, we have to be provincial here in this body and I have to point out that Judge Ruderman has ties to upstate New York and that I'd be less than doing my job if I didn't say that, but together all of these appointments are just fine, and I have to say this about Judge Lippman. I wanted to point this out. I've been around a while, and whether you're a judge or whatever you do, Judge Lippman has some attributes that are in a very difficult job, and as was pointed out here earlier, and I think it really bodes well for the entire state.

He listens. He does his best

to be fair and even if he has to say so, which unfortunately we all have to do, but in his position I'm sure he'd enjoy most of the time -- most of the time would enjoy saying yes more, but maybe that isn't the case either, but what I'm trying to say, if you don't agree with Judge Lippman, if you drove by his home in the middle of the night, you wouldn't hesitate to knock on the door and say, "I ran out of gas, and would you give me -- share with me, please, some fuel." What I mean is that is the type of individual he is. He does it so well and, again, together with all of the appointments, this is a fine day for us here in the state of New York.

Thank you.

ACTING PRESIDENT BALBONI: Thank you, Senator Stafford.

Senator Rath.

SENATOR RATH: Mr. President, it gives me a great deal of pleasure to rise and congratulate Judge Lippman on his reappointment and to speak on behalf of some folks who aren't here, but some folks I know very well, the Association of Supreme Court

Justices who, with your direction, Judge Lippman, have managed to yet again function for another year and looking to you for leadership, you are there with them at every step of the road. They know that; they appreciate that and, as Senator Lack so clearly pointed out, there are differences of opinion, but that does not mean that in a system such as ours that the differences cannot be aired, cannot be reviewed and found the best consensus to move forward.

We have a great and wonderful tradition in this country of three sections of government, and I think that having the greatest respect for the judiciary as they respect the Legislature and we all respect the execute, that tradition, I think, stands strong, and I know that Judge Lippman will be there to safeguard that tradition.

Good luck, Judge.

ACTING PRESIDENT BALBONI: Senator Leichter.

SENATOR LEICHTER: Yes. Mr. President, I too want to take this opportunity to acknowledge the superb work that Judge

Lippman has done as the chief administrative judge of the state of New York. It's an extremely difficult position and only because of the myriads of courts we have, and the large judicial establishment that we have, but also because you're dealing with judges who are elected, some are appointed. It requires a great deal of delicacy in dealing with them, and Judge Lippman has shown that tact at the same time that he has moved the system forward. He's made it more efficient, coordinated the functions of the judiciary.

Senator Lack mentioned today the Judiciary Committee, and it ought to be said that that same diplomacy, that same tact and that same ability working with people has also characterized Judge Lippman's relationship with the Legislature, and I think it never mattered to him whether you're Majority, Minority, how long you've been in the Legislature. He treats every legislator very fairly. He's accessible; he's available. He responds. He really is an important part of making this judicial system work, and I think that under Chief Judge Kaye

and with Judge Lippman, I think we have seen a judicial system that much better responds to enormous demands and great needs that are placed on it.

We're fortunate to have a judicial system that has so many fine judges. I see one of them sitting right in our midst here, Judge Mega, but to bring it and have it function as a whole requires exceptional skill and that is what Judge Lippman has brought to this position. So I'm delighted to join with my friends here in confirming Judge Lippman and wishing him success as a Court of Claims judge who will continue to administer the courts of the state of New York.

ACTING PRESIDENT BALBONI: Thank you, Senator Leichter.

Senator Velella.

SENATOR VELELLA: Mr. President, now that he's leaving, I finally find something that I agree with Senator Leichter on -- incredible, Franz.

But let me say that certainly Judge Lippman has been an effective administrator and a good judge. One who's a

good and effective an administrator sets a good for example, and I don't know how many people that are here can say they are the first one in every morning in their office before any of the staff, and that's the way Judge Lippman does the administration of our court system. I think he has done an outstanding job. I have not always agreed with him on everything he does, but he's got a reason, sometimes wrong, for what he does.

Let me say that I look forward to working together with him for a long time to come, and congratulate him on his appointment.

ACTING PRESIDENT BALBONI: Thank you, Senator Velella.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I'm always fascinated when I go out to my community and I meet with the state Supreme Court Judges and they talk about specific issues, and then the door closes and they all whisper quietly, Boy, OCA, they're the problem. Then I go to the lawyers, and we

have a meeting with the bar association, and someone whispers behind the door, Boy, it's all OCA's fault. And then I go to the court reporters, and they all say, Boy, it's always a problem with OCA.

What they all uniformly also agree on is that Jon Lippman has done a fabulous job, and my recommendation to you, Judge, is figure out another name for that thing they call OCA, change the name. It will be four or five years before everybody knows what to call it, but the bottom line is, you have been an agent of change. You have taken a system that for 150 years was resilient to change, composed of judges and lawyers, people who liked the way they practiced, don't like to be held accountable to the people of this state or to this Legislature. You have been at the forefront of creating that accountability and creating a system that serves the needs of the people of our state.

I applaud your work; I applaud the work of the chief judge. You're on the right path. Although you may get a lot of blame and you may hear those disgruntled

voices from time to time, don't lose your steam. Keep it up, you're doing the right thing, and I enthusiastically vote in favor of this nomination as a continuation down the path of making our courts courts that serve the people's interest.

ACTING PRESIDENT BALBONI: Thank you, Senator Dollinger.

The chair recognizes Senator Roy Goodman.

SENATOR GOODMAN: Mr. President, it's a pleasure and a privilege to rise as a non-member of the legal profession to comment upon the extraordinary capacity of Judge Lippman.

It's one thing to be a judge and a fine lawyer, but it's quite another to be a capable administrator, and I must say it is an exceptional rarity to find an individual who is able to clearly demonstrate skills of the highest order in both departments.

As the administrative judge, this particular individual is charged with immense and complicated administrative responsibilities requiring the highest skill,

tact, diplomacy, energy, and sheer guts and, if I may say so, having observed Judge Lippman testify before the joint legislative committees budgets, it's quite clear that his Phi Beta Kappa key was well earned, because his brain has obviously not deteriorated since his college days. He is able to give you a very complex discussion of any aspect of the judicial budget which you question him about, and I've observed this with great admiration on several occasions over the years.

Mr. President, I am not -- he is not directly my constituent, but I do have a week end house in the country which is probably about 3,000 yards from where Judge Lippman lives and I, therefore, feel it ap propriate to comment upon the fact that I hope that he enjoys the recreational activities afforded him by that neighborhood. I doubt that he has much time for it, but look forward to encountering him in the Pepsi-Cola World Headquarters where sculpture and works of art abound, and I hope that we'll have an opportunity to see him, and I congratulate him most warmly on this richly deserved

appointment.

ACTING PRESIDENT BALBONI: Thank you, Senator Goodman.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I don't have a summer house in the district, but I'm very proud that you're -- you're living in my district, and thank you for touting, Senator Goodman, the wonderful recreation opportunities -- recreational opportunities available in my Senate District.

I also am not in the legal profession, and you don't have to be in the legal profession to know what has been accomplished by Judge Lippman. He has not only made an accessible court, an efficient court, but one that has garnered a great deal of praise from people both within the legal community and outside of the legal community.

So much has been said about his efficiency and his accessibility, and the wonderful combination of legal talent and organizational/managerial talent, but I would like to just take a moment to talk about the fact that this man and his family live in my

district. They are decent, warm, generous people and have added greatly to the community life, and I would like that to be noted on the record too, and we are just very, very fortunate that he is willing to really give so much of himself to the legal system and to the people of New York, and we thank you for that, Judge.

ACTING PRESIDENT BALBONI: Thank you, Senator Oppenheimer.

The question is on the confirmation of Jonathan Lippman of Rye Brook as judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

Jonathan Lippman is hereby confirmed as judge of the Court of Claims, and Jonathan Lippman is joined today by his wife Amy and his mother-in-law, Renee Fiedler, and let me allow one comment, if I may: You are a terrific judge. May you continue a great tenure, and the accolades have been consistently wonderful. Good luck in your

tenure.

(Applause)

Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Diane L. Fitzpatrick, of Tully.

ACTING PRESIDENT BALBONI: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Diane L. Fitzpatrick, of Tully, as a judge of the Court of Claims. Her credentials have been examined by the -- by the staff of the committee. They have been found to be totally in order. She appeared before the committee this morning, was unanimously moved to the floor, and I would be pleased to yield for purposes of a seconding to Senator Ray Meier.

ACTING PRESIDENT BALBONI: Senator Meier.

SENATOR MEIER: On behalf of myself and also Senator Alesi, I'm honored to rise and support the nomination of Diane Fitzpatrick to the Court of Claims. But I

just want to note as an aside, as we look at the calendar today, four of the distinguished jurists whom we've confirmed are women, and I need to tell a true story.

My wife and I have some friends who live in Connecticut, husband and wife, both lawyers, he a corporate lawyer, she a local criminal court judge. They have a four-year-old son named Charlie. One day I said to Charlie, "Think you might want to be a lawyer some day or even a judge, like your mom?" And Charlie said, "Nah, I don't want to be a judge." I said, "Why not?" He said, "Because that's a girl's job."

Well, Charlie may be onto something, and we in society are onto something, because we're no longer going to deprive ourselves of the brains and the talents and the abilities on the bench or any place else, of a majority of our population.

I've known Diane Fitzpatrick for many years. Her husband, the district attorney of Onondaga County, a distinguished public servant in his own right, was my law school roommate, and a friend of over 25

years, and so I have known Diane for some time. I've also had the opportunity to know her as a lawyer and to try cases with her and, if you look at her law practice, one of the impressive things is not just that she engages broadly in the general practice of law, but even after she attained some measure of success in the practice, she continued to take time to do things like serve as a law guardian to protect the rights of small children, and she found time for great community involvement in charitable work and to serve as a local elected official, and she also found time to do one heck of a great job as the mother of Daniel, Sara and Sean.

Judges find the law in law books, but judges also find justice and equity and compassion by having broad experience in life and by welcoming broad daily contact with people in every walk of life and, by that measure, Diane, you will be a great judge. Diane, Bill, Daniel, Sara and Sean, welcome to the Senate and, Judge, Godspeed with your important duties.

(Applause)

ACTING PRESIDENT BALBONI: The question is on the confirmation of Diane L. Fitzpatrick, of Tully, as judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

Diane L. Fitzpatrick is hereby confirmed as judge of the Court of Claims. Congratulations, and joining the judge in the chamber today are her husband, William and children Daniel, Sara and Sean. Congratulations, your Honor.

(Applause).

The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Susan Phillips Read, of West Sand Lake.

ACTING PRESIDENT BALBONI: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Susan Phillips Read as a judge of the Court

of Claims. Ms. Read's credentials have been examined by the committee. She appeared before the committee this morning and was unanimously moved to the floor.

It's -- I have a couple comments of my own. It's a great pleasure to welcome into the Court of Claims somebody with the experience of Susan Read. She, of course, went to Ohio Wesleyan University where, since she's sitting next to Judge Lippman, they can trade their Phi Beta Kappa keys with each other. She then went to one of the most distinguished law schools in the country, University of Chicago Law School where, of course, she graduated and was admitted into New York.

What I am particularly pleased about is that she brings to the bench a great knowledge of our system, having just completed several years as Deputy Counsel to the Governor.

I would like to make it a requirement -- unfortunately, I can't -- that before assuming the bench that judges have a knowledge of the process of how the executive

and the legislative bodies of this state actually work. Since we can't, I'd like to congratulate the Governor for taking somebody from his own staff who certainly has that knowledge and putting her on the bench.

I certainly wish her good stead in her career as a judge, and advancement in that career. Perhaps if we can do some of the restructuring proposals that are before this house and the Assembly, she will certainly have that chance to do so in the future, to reflect upon her experience of the executive and her knowledge of the legislative process as a member of the judiciary.

But I again congratulate her and certainly the Governor for this appointment because I do consider it to be a very good idea that our process include people entirely familiar with how every division of this government works and for purposes of second, I would be happy to yield to Senator Breslin.

ACTING PRESIDENT BALBONI: Senator Breslin.

SENATOR BRESLIN: Thank you,

Senator Lack. Thank you, Mr. President.

I rise to second the nomination of Susan Read, who has been a long time friend of over 20 years, who after her University of Chicago Law School days became the most prominent litigator and environmental lawyer for General Electric and subsequent to that, became a key player for Bond, Schoeneck & King, one of our most respected law firms in the state of New York, and the Governor chose her to be his deputy counsel.

Susan Read was chosen because she is bright; she's honest, capable, with no hidden agenda, and she will bring that wealth of experience and knowledge to the Court of Claims, and she will bring a dimension, an a political dimension, and the Governor should be complimented for his choice, and I wish Susan Read and her very distinguished husband and fellow lawyer, all the success in the world.

Congratulations.

ACTING PRESIDENT BALBONI: Thank you, Senator Breslin.

The question is on the

confirmation of Susan Phillips Read, of West Sand Lake as judge of the Court of Claims.

All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

Susan Phillips Read is hereby confirmed as judge of the Court of Claims.

Congratulations, your Honor, and joining Judge Read in the chamber today is her husband, Howard, mother Elizabeth Phillips, sisters Ann Polichene and Mary Phillips, and niece Beth Rabatin.

Congratulations, your Honor.

(Applause)

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. On behalf of Senator Velella, I wish to call up his bill, Print Number 6255-A, recalled from the Assembly which is now at the

desk.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: By Senator Velella, Senate Print 6255-A, an act to amend the Insurance Law.

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

ACTING PRESIDENT BALBONI: Secretary will call the roll.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 55.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT BALBONI: Amendments are received.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Meier, on page number 12, I offer the following amendments to Calendar Number 115, Senate Print Number 2497-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT BALBONI: Amendments received and so ordered that those bills will retain their place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there are two privileged resolutions at the desk that I have sponsored. May we please have the titles read and move for their immediate adoption.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: By Senator Skelos, commending the Stecher and Horowitz School of the Arts upon the occasion of honoring Miriam and Seymour B. Jeffries, Sonja and Alvin I. Kahn and Bernyce and Herbert R. Winick, for their dedicated service and participation in the development of the school.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Move the resolution.

ACTING PRESIDENT BALBONI: 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.

The Secretary will read.

THE SECRETARY: By Senator Skelos, Legislative Resolution commemorating the 75th Anniversary of Temple Beth El, Cedar hurst, New York, and honoring outgoing president, Allan Kroningold.

SENATOR SKELOS: Move the resolution.

ACTING PRESIDENT BALBONI: 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.

Secretary will read substitutions.

THE SECRETARY: On page 4, Senator LaValle moves to discharge from the

Committee on Local Government Assembly Bill 6005-B and substitute it for the identical Senate bill, 3314-A.

On page 8, Senator Johnson moves to discharge from the Committee on Finance assembly Bill 2587 and substitute it for the identical Senate bill 1765.

On page 9, Senator Stafford moves to discharge from the Committee on Finance Assembly Bill 9999-A and substitute it for the identical Senate Bill 6565-A.

On page 9, Senator Spano moves to discharge from the Committee on Finance Assembly Bill 10031 and substitute it for the identical Senate Bill 6671.

On page 23, Senator Spano moves to discharge from the Committee on Labor Assembly Bill 925 and substitute it for the identical Senate Bill 6261.

On page 27, Senator Balboni moves to discharge from the Committee on Water Resources Assembly Bill 9663 and substitute it for the identical Senate Bill 6706.

On page 33, Senator Trunzo moves to discharge from the Committee on

Finance Assembly Bill 10283 and substitute it for the identical Senate Bill 6853.

ACTING PRESIDENT BALBONI: Substitutions so ordered.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Would you please call a meeting of the Housing Construction and Community Development Committee in the Majority Conference Room.

ACTING PRESIDENT BALBONI: There will be an immediate meeting of the Housing Construction and -- and some other part of it -- I forget -- what is it? - Community Resources, sorry about that, Senator Leibell, in the Majority Conference Room. Please, all members proceed to that room now.

Senator Skelos.

SENATOR SKELOS: Mr. President, as we move to the calendar, would you first call up first 658, Senate 6853.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: Calendar Number 658, substituted earlier today, by member of the Assembly Vitaliano, Assembly Bill 10283, an act to amend the Executive Law and the State Finance Law.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

SENATOR SKELOS: Mr. President, if we could now move to the non-controversial calendar.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: Calendar Number 181, by Senator Rath, Senate Print 5470, an act authorizing the SUNY college of Environmental Science and Forestry at Syracuse

University.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 406, by Senator Hannon, Senate Print 6150, an act to amend the New York Health Care Reform Act of 1996.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 518, by Senator Spano, Senate Print 6412-A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 539, by Senator Holland, Senate Print 647, an act to amend the General Municipal Law, in relation to indexing.

ACTING PRESIDENT BALBONI: Read the last section.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT BALBONI: Lay that bill aside.

THE SECRETARY: Calendar Number 543, by Senator LaValle, Senate Print 1378, an act to amend the General Municipal Law, in relation to creating the town of Southampton.

ACTING PRESIDENT BALBONI: Read the last section. Home rule message is at the desk. Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 544, by Senator Leibell, Senate Print 1767, an act to amend the Real Property Tax Law, in relation to allowing municipalities to extend the redemption period.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 547, by Senator Lack, Senate Print 2378, an act to amend the County Law, in relation to permitting district attorneys.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number

581, by Senator Goodman, Senate Print 4056-A, an act to amend the Tax Law, in relation to providing.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 582, by Senator Goodman, Senate Print 4081-A, an act to amend the Tax Law, in relation to authorizing.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the

roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 599, by Senator Nozzolio, Senate Print 5183, an act to amend the Executive Law.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 600, by Senator Nozzolio, Senate Print 6606, an act to amend the Executive Law.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there is just one calendar -- one bill on the non -- on the controversial calendar, Calendar 539, by Senator Joe Holland.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: Calendar Number 539, by Senator Holland, Senate Print 647, an act to amend the General Municipal Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT BALBONI: Senator Holland, an explanation has been asked for.

SENATOR HOLLAND: Of course, it will be short.

This -- you question this bill every year. I really can't understand it, since it should save money for all taxpayers in the municipalities, and the municipalities, Senator, and you know what it does.

It changes the rate of interest paid by municipalities upon judgments or claims against the municipality from a discretionary amount not to exceed 9 percent, to the prime rate, but with a cap at 9 percent to prevent the rate from becoming excessive for municipalities and local taxpayers.

ACTING PRESIDENT BALBONI: Senator Paterson.

SENATOR PATERSON: Would Senator Holland yield for a couple questions?

SENATOR HOLLAND: Yes, sir.

SENATOR PATERSON: That's encouraging, Senator.

Senator, are you aware of a Court of Appeals decision December 17th of 1997 in the case of Rodriguez versus New York City Housing Authority, where the Court of Appeals ruled that the 9 percent is a maximum, not a mandate?

SENATOR HOLLAND: Yes.

SENATOR PATERSON: And that - you are aware of that?

SENATOR HOLLAND: Yes, sir, I am, but the problem is the judges always give 9 percent. They do not, as they are able to do within the context of this law, make it 8 or 7 or 6, or whatever they want to make it, so we're trying to limit the amount of money that it costs.

SENATOR PATERSON: Well, thank you, Mr. President.

Senator Holland, the reason I brought that case up is because in that case, the defendant proposed 3.5 percent as the interest rate, and the court, as it usually does, prescribed 9 percent and the Appellate Division unheld, but the Court of Appeals reversed and it actually said that a lower rate could actually be used if the lower rate that was proposed was actually reasonable. So my question is, isn't what you're trying to accomplish actually something that already would exist now based on the dicta in the Court of Appeals decision?

SENATOR HOLLAND: Yes, it is, Senator, but we're trying to put it in law because what happens is exactly what I've explained to you before, the judges always or usually set the rate at 9 percent. They do not set it lower than 9 percent and we're trying to put that into law.

SENATOR PATERSON: O.K. I understand, Senator. If the Senator would yield to another question?

SENATOR HOLLAND: Yes, sir.

SENATOR PATERSON: Senator, do you -- why have you created a situation where you put a cap on the elevated interest rate but you don't have a floor? You have a ceiling but you have no floor, so in other words if the prime rate went down to 4 percent or something like that, and that became the interest rate that would really discourage defendants from even responding. In other words, this would be the classic way of avoiding any kind of outside settlement, and so, in other words the problem I have with the legislation is that it's not really even-handed.

SENATOR HOLLAND: Senator, I think it is even-handed. I think it's a reasonable thing to do, and that's why I've limited it to 9 percent.

SENATOR PATERSON: O.K., Senator, one final question. What if the prime rate went up to something like 14 percent? The prime rate has gone up before. Now, you're going to have a prime rate which is so much higher than the interest rate.

SENATOR HOLLAND: That's a cap, that's a cap at 9 percent.

SENATOR PATERSON: No, but I'm saying the interest rate on the money itself would enure to the benefit of the defendant because the defendant is sitting there making money at a 14 percent rate and paying it back at a 9 percent rate. It would actually be an incentive not to pay it back. In other words, if the -- the general average of the amount of money that someone can make just by holding their money goes up high enough, your interest rate is now too low, and what I'm saying is we'd have to come back here and do something because now it would actually reward

defendants for not paying back their judgment.

SENATOR HOLLAND: Well, that's true, Senator. I agree with you on that one, but you know -

SENATOR PATERSON: I'll stop right there.

SENATOR HOLLAND: No, no. You know as well as I do that it was set at 3 percent before, and it's been raised to 9 and I'm sure that we could adjust it if necessary later on.

SENATOR PATERSON: O.K. Then Mr. President, on the bill.

I just don't think we need to keep coming back here and readjusting it. I think actually some legislation proposed by Senator Volker, Senate 3730, where he's talking about a more flexible rate kind of, the way the Tax Commission uses for taxpayers, something that's a little more flexible or responsive might be actually the answer; but I understand the concern that Senator Holland is -- I understand the concern that Senator Holland has raised, but I just don't think

that this is the way to solve it, and it's really not even-handed because it sets a ceiling but no floor.

ACTING PRESIDENT BALBONI: Thank you, Senator Paterson.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on November 1st.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Those recorded in the negative on Calendar Number 539 are Senators Connor, Dollinger, Gentile, Leichter, Paterson and Sampson. Ayes 49, nays 6.

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Mr. President, may we leave the roll open for just a couple minutes. We have a couple members that may want to vote no but are in committee right now?

ACTING PRESIDENT BALBONI:

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT BALBONI: I do not believe so, Senator.

SENATOR SKELOS: You can leave the roll open pending completion of the Housing Committee, because there are some members in there that wish to come in and vote.

ACTING PRESIDENT BALBONI: We will keep the rolls open, Senator.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT BALBONI: Roll; we will only keep one roll open.

SENATOR SKELOS: Recognize Senator Montgomery and then Senator Seabrook for the purposes of voting.

ACTING PRESIDENT BALBONI: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I'd like to be recorded in the negative on Calendar Number 539.

ACTING PRESIDENT BALBONI: Without objection.

Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. President. I'd like to be recorded in the negative on roll -- Calendar 539.

ACTING PRESIDENT BALBONI: Without objection, that will be done.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move that we adjourn until Monday, May 4th at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT BALBONI: The house stands adjourned until Monday, May 4th, at 3:00 p.m., the intervening days being legislative days.

(Whereupon at 2:18 p.m., the Senate adjourned. )