ALBANY, NEW YORK

December 17,1998

9:22 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to find your places, staff to find their places. Ask everybody to stand or to rise and join me in saying the Pledge of Allegiance to the Flag.

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

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

(A moment of silence was observed. )

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, December 16th. The Senate met pursuant to adjournment. The Journal of Monday, December 14th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees. Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: As Associate Judge of the Court of Appeals, Albert M. Rosenblatt of Pleasant Valley.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lack.

SENATOR LACK: Thank you, Mr. President.

It is with great pleasure that I rise to move the nomination of Albert M. Rosenblatt of Poughkeepsie, New York, nominated by the Governor to be a judge - Associate Judge of the New York State Court of Appeals, of course, our highest court.

Normally, I would immediately yield for purposes of a second to the Senator in whose district the nominated judge resides, in this case Senator Steve Saland, but I will take the privilege of my good intentions a minute and say a few words myself if I may. I'll try not to dwell or take any thunder from

my colleague, but say just a couple of things.

First and foremost, he and I are both graduates of the same university. That, of course, makes him eminently qualified to be Associate Judge of the Court of Appeals, and our spouses are both psychologists. That even more makes him eminently qualified to be a judge of the Court of Appeals.

Thereafter, fortunately for him, the differences between us are greatly magnified. He is, among other things, a ski instructor, particularly a ski instructor for the handicapped. He is a widely known and respected scholar of Sherlock Holmes. He has and is probably as well known as any judge currently sitting in the state of New York. I will not recite the litany of his official accomplishments, because Steve will. I'll just simply say that, in the days since he has been nominated by the Governor, the only - the only comments my office has received embedding this candidate for the Court of Appeals has been one in which the word "E" - "exemplary", "excellent" and the word "F" for

"fantastic" candidate; the Governor can do no better has come across telephone lines to such an extent that even the Chief Administrative Judge of the state of New York today left what he was doing in Westchester to immediately come to Albany to be the lead-off witness on behalf of Justice Rosenblatt as he appeared before the Judiciary Committee with respect to this nomination.

The Governor has made an excellent, excellent appointment as Associate Judge of the Court of Appeals, and I would now respectfully yield to his longtime friend, and for whom he is a constituent of, the Senator from Poughkeepsie, Steve Saland.

ACTING PRESIDENT KUHL: The chair recognizes Senator Saland on the nomination.

SENATOR SALAND: Thank you, Mr. President. I believe I am Senator Saland, not to confuse me with the gentleman who just went to my rear here.

Mr. President, I rise to second the nomination of Judge Rosenblatt. For those of you who didn't have the opportunity to

attend the Judiciary hearing earlier today, you missed a succession of speakers speaking on behalf of Judge Rosenblatt, all of whom, in one manner or another, spoke of his extraordinary abilities, whether it be his intellect, his character, his commitment to the justice system.

Speaking as one who has known Al for a number of years -- and I see a number of people who have joined him, not the least of whom is his wife Julie, but a number of longtime associates either in the district attorney's office, or those who have come to know him in other capacities as well -- his is a career of just one extraordinary accomplishment after another.

I learned a couple of things during the course of the comments. I don't recall who it was that said that Judge Rosenblatt arrived in Dutchess County to practice law in 1968. I arrived at the same time, and obviously he succeeded far more than I ever could have dreamt of succeeding; so the judge, whether it be as a district attorney, whether it be as a County Court judge, whether

it be as a Supreme Court judge or as a member of the Appellate Division or as the Administrative Judge of our state's system, has received nothing but kudos wherever he has served; and the Governor, with his appointment of Judge Rosenblatt, certainly has not merely added another extremely well qualified judge to the list of the multitude of judges that he has had the good fortune to be able to appoint, but I would say one who even excels the high standards that -- exceeds the high standards that his prior appointments have set.

Judge Rosenblatt has effectively trained for this opportunity for probably much of his life, whether he did it consciously or subconsciously. I can think of nobody who will do a finer job. I can think of nobody who better embodies the qualities that one expects when they come before the bar of justice than those that really are the personification of Al Rosenblatt.

I can wish him nothing but the best. The people of the state of New York will be well served. The people who come

before our courts and seek justice could not ask for a finer, more capable and more decent judge to sit and rule on the magnitude and multitude of cases which our Court of Appeals will be asked to do.

I wish him well. I congratulate him. I certainly join with his many friends who have taken this day, a rather lengthy one, and I understand they dined only in the finest of Albany cuisine tonight. I join them all in congratulating Judge Rosenblatt and wishing him the best and Julie the best as well.

Congratulations, and I'm sure we will hear many more good things of and from Judge Al Rosenblatt, Justice Rosenblatt.

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

SENATOR LEICHTER: Mr. President, I'm very happy to rise to second the confirmation of Judge Albert Rosenblatt. Judge Rosenblatt really comes to this appointment with a great deal of experience and credentials on the bench.

As Senator Saland and Senator Lack have stated, he has served on the Appellate Division, was the Chief Administrative Judge. All of these are obviously very important attributes and qualities, but what is particularly important is the reputation of fairness that he's developed over these years, a reputation as a legal craftsman, as somebody who looks at the case on the merits, in fairness, without bringing any ideological view to it, and I certainly have been critical of the Governor at times; so I think it's only fair to commend him when, in my view, he makes such an outstanding appointment and I think it's particularly interesting that the Governor who started out, and I thought was very unfairly critical of the Court of Appeals, has now made, I think, two very distinguished appointments to that court, Judge Wesley and now Judge Rosenblatt who, of course, will be confirmed by us, and it really keeps the tradition of this court as one of the finest benches, if not the finest bench that we have in the United States.

So that I think we can be very proud of what we do today in confirming somebody to what is such a terribly important court for all the people of the state of New York. It's a court that we want to maintain the highest quality, and we certainly do that by confirming Judge Rosenblatt.

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

SENATOR LEIBELL: Thank you, Mr. President.

Judge Rosenblatt, as you continue your career on to the New York Court of Appeals, you will undoubtedly be working many late evenings writing decisions, and we're giving you a demonstration tonight that you will not be alone. We will also be working late at night for the common good.

I join my colleagues in praising this nomination. I think once again, Governor Pataki has sent us someone whom this body can feel warmly about and take great pride in recommending.

The judge before us has had a

tremendous career. I first became aware of his credentials when I was a young assistant district attorney in Westchester County. He was well known there for his efforts and especially in writing -- writing about the Rockefeller drug laws.

Over the last few years, of course, he's had a distinguished career as a jurist. He has impressed us all with his common sense and his great ability to relate to all parties who have come before the court. We can all take great pride, I believe, this evening in seeing this judge come before us to go to the New York Court of Appeals.

Thank you, sir.

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

SENATOR STAFFORD: Mr. President. I always try to wait until most everyone has spoken because people speak so well and say so many good things, and I just want to second them for this nomination.

A number of times, I've stood

here since the Governor took over and said once again we have a very, very fine nomination and, my friends, this evening again we do, and we are so pleased to be able to say that.

I have chaired a couple committees when the judge was the administrative judge for the state, and I second what's been said about being a scholar, about being so dedicated to the law, but I also want to point out -- and it's so important -- with the responsibilities that the judge will assume, a person -- a person, who, yes, can be firm, he's shown that he can do that in his career, but always, no matter what he's considering, no matter what the issue is, no matter how big or how small - and very often the issues that we were dealing with were small, technicalities in the law - but he showed a real understanding and a concern and a sensitivity for a person and people.

I will close by saying this, and you can't say this about everyone, but I think I've mentioned this on the floor before,

the type of person that Judge Rosenblatt is. I had a ski coach that once said that the way you ski is the way you live your life, and I'm not sure that's necessarily true. But if that is true, well, the judge is living his life very well, as Senator Lack mentioned; but when he has made his decisions professionally - and I'm sure any decisions that he makes, no matter what he has to determine or what he has to tell someone or maybe even if he has to say no -- he leaves that person so that if he would run out of gas in our rural area, and he knows the rural area of New York, if he was to run out of gas in front of that person's house out in the country, he could knock on the door and not hesitate to ask for gas and he'd get it.

This is a tremendous appointment, and I'm sure the judge will make a tremendous contribution to the Court of Appeals.

Thank you.

ACTING PRESIDENT KUHL: Senator Dollinger, on the nomination.

SENATOR DOLLINGER: Thank you,

Mr. President.

I was the member of the Judiciary Committee that was waylaid by a defective propeller in Rochester, so I didn't get a chance to talk with Judge Rosenblatt before.

I just have two real quick comments, Judge. One is, as part of our constitutional scheme, occasionally you will find members who are elected to the legis lative branch and the executive branch be critical of our judicial branch, and what we oftentimes do is we say good things about all these candidates who come before us, and I agree with Senator Leichter, this Governor has distinguished himself certainly by his appointments to the bench and most particular ly by his two appointments to the Court of Appeals: Dick Wesley, superb judge and a tremendous guy, and, Judge Rosenblatt, you fall under both of those categories.

But I would just say to you, Judge, that, as you continue the tradition of the greatest common law court in this country, the New York Court of Appeals, don't be afraid

to tell this Legislature one of two things. Either when we've drafted a statute we haven't done it right, and perhaps have not dotted every "i" and crossed every "t" to make it specific enough so that we can give guidance to the people in this state as to what is lawful and unlawful; and also don't be afraid to tell us that there are times when we, in this Legislature, acting in what we believe in the public interest may be taking away precious rights that the people kept to themselves in both our state Constitution and our federal Constitution.

It seems to me that that delicate balance that the judiciary must strike is one that we in the Legislature ought to strive to protect and, when people make comment about our Court of Appeals or our judges, when they're interpreting the Constitution to protect the people, we should be loathe to criticize and to, frankly, take what oftentimes appears to be a cheap shot at the judiciary because they're enforcing those important constitutional rights.

Judge, everything I've seen in

your resume and everything Senator Lack has told me, everything I've heard about you suggests that striking that important balance is something that you can do extremely well, and I wish you the best on the Court of Appeals. You are a proud continuation of that fine tradition.

ACTING PRESIDENT KUHL: Senator Gold, on the nomination.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, we don't have to review what's been said about the gentleman's scholarship, and it's very obvious reading this quite amazing resume that the judge is a scholar and he belongs on the bench perhaps for that reason alone; but again with the resume, the thing that strikes me so importantly is the fact that Judge Rosenblatt is a really well-rounded individual who not only has had a distinguished career on the bench, but is involved with the community in which he lives: The Poughkeepsie Jewish Community Center, the opera house, the Community Chest, ski instructor. I mean this

is somebody who not only understands textbook law, but who lives, lives in the community, and I think that's important when we deal with the judiciary, particularly of the highest court in the land.

He is also somebody who is obviously loyal in remembrance, because I notice in his resume he spoke at Harvard Law School, moot court judge at Harvard Law School, so even after he left the school he was concerned about the future students to try and lift their educational level to something like perhaps a Cornell law education, so you were able to do that.

I think, Judge, that in probably the last words I'll say -- and everybody is happy about that -- I do have to echo it because it deserves to be echoed that this particular Governor has certainly shown his dedication to the quality of our judiciary, and certainly leaving the Legislature and having been on the Judiciary Committee and voted for judges for over 20 years, I feel some sense of pride that we've gone through a number of administrations, but

they have -- each governor in his turn has seen to it that we have maintained the Court of Appeals of this state as one of the absolutely major courts in the country.

And in closing, I want to say, Judge, you understand the word "dayenu". I take a look at your career in public life and we could say, Dayenu. It would have been enough. But as Jerry Herman said, The best of times is now, and the best is yet to come, and I, from the outside, will be very proud to see your career on our finest court, because I know that you will do nothing but bring it dignity from day to day.

ACTING PRESIDENT KUHL: Senator Balboni, on the nomination.

SENATOR BALBONI: Thank you, Mr. President.

I, too, had the privilege of sitting in with the Judiciary Committee today and watched the myriad of speakers come before the committee and talk about this man that was before us. In today's world, when we have so many people who question the integrity of every branch of government and every

individual associated therewith, to have a person who comes before us with impeccable qualities, a resume that anyone in professional life, particularly in law, would die for, and then to have individuals who work with him come before the committee and give stories about the person, the character, one woman in particular in Dutchess County, and I believe she was former president of the Women's Bar Association of Dutchess County. She gave a sterling story about her days in the D.A.'s office, and then Senator Leichter, even though we were on a tough time schedule he asked questions, substantive questions, and you know, instead of finding myself sitting back saying, Oh, please, you know let's get moving, we need to get to conference, I was literally hanging on the words of the judge because for the first time you began to see a little bit of the thought process of this man who's about to go to the bench, the formulation that he was talking about, brought back the lectures of law school, but more importantly brought back the logic of law.

In this day and age, we have so

few people that we could perhaps aspire to want to be like, and want our children to aspire to be like. In the many years when I had the privilege of serving as counsel to the Senate Judiciary Committee, I have sat on many, many occasions where judges were confirmed and, in fact, by my count, five Court of Appeals justices. I must tell you, not to offend any of my friends who are currently on the bench, this individual has probably the finest resume and background that I've ever seen. It is a tribute not only to this state and to this body, but to this Governor, to reach out and to pick a man of these credentials and to bring him before us, let him continue his public works on the highest court of our state.

Mr. President, it will be an honor and privilege to support this nomination.

ACTING PRESIDENT KUHL: Senator Larkin, on the nomination.

SENATOR LARKIN: Mr. President, Judge, as one of the non-lawyers here to stand up in your support, it just seems like

yesterday we were running for the last campaign, and I remember going around and people would say, you know, Look at him, you know he stands up, he speaks straight, talks to young people. Young people ask this judge questions about law, and he addressed them in a manner that he was a teacher. He was giving them guidance.

I think somebody said to me today when they were calling from home and said, Please support him; he is a judge that understands the people as well as understanding the law, and I think that that says a lot.

Since the nomination by the Governor, I've had probably 25 or 30 phone calls, not just from lawyers, from some of your colleagues on the bench, but some people who served on juries with you years ago. One lady said she remembered when you were the district attorney, and she said, "I felt sorry for him and he won the case." It just says something about a man that our Governor has selected for this very important, important position.

You know, we always talk about people in the courts and some of us that are not lawyers always can find fault, but I think it really tells us something about, when you look at the resume of Judge Rosenblatt, you start to see a man who has extended himself on every level. I've talked to people who have talked to me about your skiing, and have said, Yeah, you could learn a little bit more, Judge, but they always said how intent he was on helping somebody else, no matter what it was, whether it was Bard Avon or what else. You were a player in the community, as Senator Gold said; your heart and soul was in the community that you're in and you built up to what you are today.

It's going to be great to see you in the new robes. I hope that you'll get a new set because you are now going on to something that we're all in this chamber, I know, very proud. You've done us well. We look forward to greater things from you.

Congratulations.

ACTING PRESIDENT KUHL: Senator DeFrancisco, on the nomination.

SENATOR DeFRANCISCO: I never met Judge Rosenblatt until today in the Judiciary Committee meeting, and the resume speaks for itself. I think Senator Balboni indicated that most people would kill for or die for this resume. Well, Judge Rosenblatt did it the old-fashioned way, he worked for the resume. He worked hard for the resume, through his whole life doing what was right and making certain that each step went to something bigger and better, and I want to thank not only Governor Pataki for nominating the judge, but also Judge Rosenblatt for being here in this day and age when you cannot listen to a TV program, you cannot listen to a radio. You can not pick up a paper or magazine, without seeing public officials' integrity and character being questioned and constantly being criticized, which paints all of us in that light. To have a man of your character, integrity and scholarly manner is truly something that I, and I know all of us in this chamber, respect and it's a very refreshing thing for us.

You reflect all of us, and

we're very pleased to be here to support your nomination and, on a side note, anyone who knows the difference between pled and pleaded and knows the correct way to speak has got my vote any day of the week.

Thank you.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

(There was no response. )

ACTING PRESIDENT KUHL: Hearing none, the question is on the nomination of Albert M. Rosenblatt to become an Associate Justice 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.

Judge Rosenblatt, we welcome you here this evening. We congratulate you on the tremendous accomplishments in the past. We certainly wish you well in the future. We

know you're going to do us proud, and anybody who can bring a crowd like this out on a snowy Thursday night at ten o'clock has got to have something going for him.

So good luck and congratulations.

(Applause)

Senator Skelos.

SENATOR SKELOS: If we could stand at ease, please. Do we have reports to do?

ACTING PRESIDENT KUHL: We haven't heard reports from select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR SKELOS: Then we'll stand at ease.

ACTING PRESIDENT KUHL: Senate will stand at ease.

(The Senate stood at ease at 9:52 until 11:00 p.m.)

SENATOR PATERSON: There will be a conference of the Minority in 15 minutes sharp, 11:15 sharp, in Room 314. There will

be a conference of the Minority in Room 314, Minority Conference.

(The Senate stood at ease from 11:00 p.m. until 12:27 a.m.)

ACTING PRESIDENT SPANO: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT SPANO: Immediate meeting of the Rules Committee in the Majority Conference Room. Meeting of the Rules Committee.

(The Senate stood at ease from 12:27 until 12:41 a.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to take their chairs, the staff to take their places.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, there being no further business to come before the Senate on this particular date, I move that we stand adjourned until December 18th,

at 12:42.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until December 18th at 12:42.

(Whereupon at 12:41 a.m., the Senate adjourned.)