NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order.

I ask everyone to please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT MARCELLINO: In the absence of clergy, let's have a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT MARCELLINO: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 5, the Senate met pursuant to adjournment. The Journal of Sunday, March 4, was read and approved. On motion, Senate adjourned.

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

Can we have some order, please, so we can start.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motion and resolutions.

Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President. Would you recognize Senator Dilan, please.

ACTING PRESIDENT MARCELLINO: Senator Dilan.

SENATOR DILAN: Mr. President, there will be an immediate Minority conference in Room 315.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

There will be an immediate meeting of the Minority conference in Room 315.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:15 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO:

Senator Skelos.

SENATOR SKELOS: Mr. President, just to inform the members that I will be starting session in one minute. That means ten to 4:00.

We have confirmations to be accomplished. We have the Chief Judge of New York State of our Court of Appeals waiting. And I think it would be appropriate and show due respect if the Senate would reconvene in one minute to handle the confirmations.

ACTING PRESIDENT MARCELLINO: The Senate will convene in one minute -- that is, approximately ten minutes to 4:00 -- to finish the business of the day.

Thank you.

(Whereupon, the Senate reconvened at 3:50 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: 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 we take it up at this time.

ACTING PRESIDENT MARCELLINO: Yes, there is, Senator.

We will return to reports of standing committees. The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Judiciary, reports the following nomination.

As Chief Judge of the Court of Appeals, Honorable Judith S. Kaye, of New York City.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Mr. President.

As members continue to come in and we wait for the Minority, who is apparently still in conference, we wanted to move the nomination of Judith Kaye to continue as Chief Judge of the Court of Appeals and not have her wait any longer for that conference to be done.

It is really an honor for me to

stand here and move the nomination of Judith Kaye. Although many of the issues that arise we may have some differences of opinion on, no one can ever say that she hasn't moved the agenda that she thinks is the most important agenda for the State of New York, especially the judiciary.

No one could ever fault her for not doing everything she possibly can to move that agenda and to move it quite effectively, as we've heard from many speakers in the Judiciary Committee meeting this morning.

Those speakers spoke almost unanimously about her phenomenal qualifications and the great work that she has done. There was some dissent, but most of the dissent that we heard were not directly related to her but the conditions that they were concerned about, and I think mostly from personal matters that they may have had with the court.

Obviously, if you have to go before a court, you're not going to please everyone, and that's certainly true with any judge.

There's no question, from issues

such as reform of the jury system, from issues concerning Family Court dealing with children and the like, there's a vast improvement in the Judiciary under the tutelage of Judge Kaye. In addition, the specialty courts have been so unique that they're a model for the courts throughout the country.

And we're very pleased that Governor Spitzer did allow her to continue in that position as long as she's able to continue under the laws of this state and under the Constitution.

So I rise to move the nomination of Judith Kaye to continue her fine work as Chief Judge of the Court of Appeals. And I would request that you recognize Senator Bonacic to second the nomination.

ACTING PRESIDENT MARCELLINO: Senator Bonacic, to second the nomination.

SENATOR BONACIC: Thank you, Mr. President.

As I said in the Judiciary Committee, there must be something in the Catskill water, because Judge Kaye is in fact the second Chief Justice of the Court of

Appeals from Monticello, Sullivan County. The first, of course, was the Honorable Judge Lawrence Cooke. The names Cooke and Kaye are revered in Sullivan County, and there is a tremendous regional pride that the Catskills have produced two such outstanding jurists.

When Judge Kaye was confirmed 14 years ago, Senator Cook made some remarks in the record which I've pulled out. And one of the things he said, and he quoted a newspaper, he wondered how her soft voice would be heard in the courtroom.

I've seen Judge Kaye in action. I can tell you her voice is heard quite well, and all over.

Judge Kaye grew up on a farm, and perhaps that gave her the work ethic and the can-do spirit that make her, of course, the first woman to head the Court of Appeals. But again, I must recite some history. Which is to say that 14 years ago, Governor Cuomo nominated not just the first woman to lead the court, but also the most qualified candidate to do so.

Fourteen years later, Governor

Spitzer has renewed the term not only of the first woman to lead the court, but he has renominated the most qualified candidate. Our laws will require her to step down in a little over 22 months -- a law which, quite frankly, I think makes no sense. The good news is that the next President could elect a judge. And if a vacancy comes available, I would think he could look no further than Judge Kaye if she's so inclined.

Judge Kaye has presided over the court with dignity, grace, integrity, passion and intelligence for 14 years. Interpreting the statutes made by any legislature can certainly be a challenge. And if the critics are to be believed, interpreting the laws that this Legislature makes can be particularly challenging.

Judge Kaye has done, with skill and savvy, her work. She has recognized the constitutional principles which our founders laid clear, applying them in a responsible way to the laws of today. It is not the Catskill water that makes Judge Kaye the most qualified person to continue serving as Chief Justice,

it is her reasoned decisions, sincere advocacy on behalf of our judicial system, and passionate commitment to equal justice for all, that makes her the most qualified.

I am distinctly honored to second the nomination of the Honorable Judith Kaye.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Bonacic.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, earlier today we had the opportunity in the Judiciary Committee to go through the confirmation procedure for Judge Kaye. I at that time expressed some reservations having absolutely nothing to do with the character of this extraordinarily capable and gracious human being, somebody who has dedicated a good part of her life to the cause of the judiciary.

But I find myself somewhat conflicted, and I mentioned again particularly during the course of that proceeding that the two committees that I have chaired most

recently have had significant issues that came before the court, and the court in majority opinions, four-member opinions written by Judge Kaye, ruled certainly, I think, in accordance with her exceptional sense of social conscience, but to me ruled more like a legislator than a judiciary.

And some two or three years ago, whenever it was that we confirmed Judge Robert Smith, I said at that time that I no longer felt constrained by the standard that I had used in the course of viewing the credentials of judges, that it wasn't merely a matter of competence, it wasn't merely a matter of whether it was somebody who the Governor sent up who was qualified, it was really a matter of whether I believed that that person had the ability to serve in a fashion which effectively had as its cornerstone a commitment to judicial restraint.

During the course of those hearings, Judge Smith spoke in terms of being a member of the Federalist Society. Judge Pigott, the following instance, spoke in great terms about recognizing separation of powers.

Judge Jones, most recently, spoke at great length about recognizing separation of powers.

I am a legislator, and this is not the easiest business in the world. This is a business in which we're constantly subject to criticism. As I mentioned this morning in our confirmation hearing, it was Winston Churchill who said democracy is the worst of all possible systems, except all the rest of them that have been tried from time to time.

I find that I am constrained to vote against this nomination, not because I have no personal regard for Judge Kaye -- I have high personal regard for her -- but I believe that there are 212 members of the Legislature, all of whom are elected, all of whom come from their respective districts, bringing with them whatever it is they believe to be what the views of their districts may be, and from time to time, every two years in the case of this Legislature, are called upon to be held to task with respect to those votes and the positions that they've taken.

I don't believe that's a function of the Judiciary. And I believe certainly, in

those particular cases that I discussed somewhat briefly during the course of our confirmation proceeding, I don't believe that to have been the case.

So with a great deal of personal angst, I will not be voting for Judge Kaye.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Saland.

Senator Volker.

SENATOR VOLKER: Mr. President, I've told Judge Kaye this personally, so I -- she was not -- I think I'm the only person here that was on the committee, the Judiciary Committee, when Judge Kaye was first nominated and we confirmed her. And I can't remember whether -- Owen, I don't know if you were on the Judiciary or not. I think maybe he wasn't. I may be wrong. Anyway --

ACTING PRESIDENT MARCELLINO: Senator Volker, would you please speak up? We're having difficulty hearing your voice.

SENATOR VOLKER: I'm sorry. Sorry.

Anyways, I actually supported

another woman for Chief Judge of the Court of Appeals, and this was totally unbiased, the late great Dolores Denman, who was the Appellate Division judge up in Western New York. Had nothing to do with the fact that she was a classmate of mine -- in fact, sitting right down the row from me -- and her husband was also a classmate of mine. I have to admit it did have a -- no, I just want to tell you that. Because you may not remember, but I told you that before.

But I have to admit that your tenure, as we said in the committee, has been marked by class, by an understanding of the law. Although we have not all agreed, I've said before that that's not unusual for me, but I have to say that you will be remembered, very possibly, as the finest legal -- and I say "legal," by "legal" meaning a legal mind -- Court of Appeals Chief Judge in modern times. And I don't think there's any question of that.

Oh, I know, we've disagreed. And there are people that are going to say, Well, Dale, you should be opposed to the Chief Judge

because she hasn't done this or that. But the law is in an evolving process and a difficult process. What I believed when I was younger is a lot different from what I believe now.

My father, who was an Assemblyman -- and, by the way, who was -- at the time, he created the Family Court and was called the father of the Family Court. And he said before he died, "It's a good idea, but it's never operated the way we'd intended it." And as you said, part of the reason is we need a bunch of Family Court judges, and there's no question of that.

One of the things I have to say, that you have been willing to speak out about problems in the courts and problems with funding and many other things. And I commend you for that, because I think it's refreshing that someone in control of an administration does that.

So my congratulations to you. I firmly believe that you will be remembered as one of the finest, if not the finest, Chief Judges of the Court of Appeals. Good luck.

ACTING PRESIDENT MARCELLINO:

Thank you, Senator Volker.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

I rise to add my voice to those who are in support of Judge Kaye. And I'd like to just express some opinions that I feel about Judge Kaye at this time.

We can all admire Judge Kaye's dedication, integrity, and respect for the Constitution and the people of this state. Judge Kaye's exemplary service as head of the state court system has been marked with one visionary proposal after another on such issues as probation system reform, court consolidation, jury duty, no-fault divorce, and a host of other worthy initiatives.

As head of the state judicial system, Judge Kaye has been a force in improving the lot of jurors by shortening service and increasing pay, creating specialized courts to focus on drugs and domestic violence, getting better pay for court-appointed attorneys, and improving legal services for the poor.

Though considered one of the more liberal members of the seven-member court, Judge Kaye has not pushed the court toward the left during her tenure. The Kaye court has been known for its moderation and its tendency to not overreach in handing down decisions. Among the high-profile majority opinions she's authored are the landmark 2003 Campaign for Fiscal Equity case, which held the state's education funding system unconstitutional, and the 1995 decision allowing adoption in New York by unmarried couples, both heterosexual and homosexual.

For more than 14 years Judge Kaye has shown remarkable fortitude, diplomatically goading the state's mammoth court system out of inertia and into positive directions. Judge Kaye has realized innovation and reform despite polarizing politics all around.

New York's high court is among the nation's most respected, and Chief Judge Kaye has helped move the panel to the middle on issues such as criminal justice.

As the top court administrator, Judge Kaye has also instituted landmark

reforms, notably opening Family Court to the public and battling courthouse patronage.

It is my pleasure to be among those who revere this woman for the example that she has shown to the courts and to women across this state. And I am more than happy to put the name of Judge Kaye in nomination for the Chief Judge of the Court of Appeals.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Adams.

SENATOR ADAMS: Mr. President, I rise in support of our nominee for Chief Judge of the Court of Appeals.

I think that one of the most important things is throughout the years I had the opportunity to speak and interact with the judge at different events outside of her capacity as a member of the judiciary. And there was a level of professionalism, but what touched me the most is, as the Chief Judge of the Court of Appeals, to write the opinion around the Campaign for Fiscal Equity.

As a law enforcement person, you

begin to realize that the common denominator to those who are incarcerated is not ethnicity, it is not economics, it is education. And she understood the importance to make sure that our school system within New York City is fairly funded, that we don't produce those young men and women who are not prepared as they move on to be productive citizens in our society.

I think the judge brings a level of expertise, a level of compassion, and a level of diversity that's needed on the bench to ensure that we can move ahead as a great state with a great judiciary system. And I support her nomination.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Adams.

Senator Schneiderman. Oh, there you are.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I'm failing again to convince Senator Maziarz to do something intelligent.

(Laughter.)

SENATOR SCHNEIDERMAN: But I am -- we'll talk about it later.

I am urging everyone here, urging everyone here -- as a Senator, as a New Yorker, as a father, and as a lawyer -- that this is a nominee deserving all of our support.

I will tell you that there are two things that you have to do well to be a Chief Judge. One is to be a good judge. And this is truly a fine jurist.

I strongly disagree with my esteemed colleague Senator Saland about the issue of separation of powers. As long as this republic has been in existence, there's been a tension between the judiciary and the legislature, and that tension is what makes it all work. Marbury v. Madison is still good law.

And I am grateful that we have a Court of Appeals that, when it delved into the actual meaning and application of the provision of our State Constitution that requires a system of common schools for all the children of this state, it found on the unassailable record below that we were in violation of that provision. Because in my

district, where the CFE case began by the parents or the school board in Northern Manhattan, children were in overcrowded classrooms with unqualified teachers, graduating year after year after year from the 12th grade with an 8th-grade reading level.

That was a violation of the Constitution, and I am grateful that our highest court had the courage to stand up to the decades of inaction -- not by us, necessarily, individually, but by the state government as a whole -- and require us to fix it.

I am grateful for the judge's work in other areas, certainly. She's had a long and distinguished career as a judge and as an attorney before that. But she's more than just a great jurist. This is someone who is an activist. And I feel, as a practicing lawyer, that this is someone who is advocating for the good of the legal system for all of the people of this state, advocating for legal services for the poor, for fair compensation for judges, for access to courts, for reorganization of courts where they're not

working. She does not hesitate to criticize parts of the system that do not work.

So I would suggest, ladies and gentlemen, that none of us agree all the time. I mean, you know, I have great regard and great respect for a lot of my colleagues who I disagree with most of the time, especially Senator Maziarz.

But it's time to recognize good work and an effort where, even if you may disagree on one or two cases, this is a good judge and this is a great Chief Judge. And I am proud to support her nomination, and I urge everyone to do the same.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

I want to also say a word to Senator Saland before I speak about Judith, and that is that we are certainly not in the forefront as far as having our highest courts speak to the issue of education funding. Over half of our states in the United States have had decisions such as ours come down from

their highest courts.

So I firmly -- I agree totally with what Senator Schneiderman was saying. This is one of the tensions that makes our system work. And we are certainly not in the forefront in improving our education system under a court mandate.

But let me turn to Judith. One of the things that I think -- pardon me, Judge Kaye. I'm sorry, Judith. I've just known her for a long time before she came up here to Albany.

Judge Kaye, I feel the thing that is unique about her is not that she is a great jurist -- we know that -- but that she's an activist, that she's an activist jurist. That she has made so many efforts towards reform in so many different areas and tried to bring integrity into the process.

And her ideas are creative, and that's unusual. You don't always find that with a great judge; they may not have that ability to think creatively. And she does.

But also something that I think is unique is she's so down to earth in her

thinking and in her persona. Anybody approaches her, she is open, she is friendly, she is generous in spirit, she will listen to you and, you know, not turn her eyes away. She's concentrating on you, the person.

And I think the fact that when she decided that all of us should be potentially on juries, she said yes indeed, and so should the highest court judges be a part of a jury, and offered her services as a member of a jury.

So I think the thing that sets her apart -- well, first of all, she is the longest-serving Chief Judge, so that sets her apart. Her creativity and activism sets her apart. But it's also her kindness and generosity that sets her apart.

So I'm just very happy to be here and at this time to third or fourth or fifth your nomination.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Oppenheimer.

Senator Connor.

SENATOR CONNOR: Thank you,

Mr. President.

I'm certainly delighted to rise in support of the confirmation of the reappointment of Judge Kaye as Chief Judge of the Court of Appeals.

She has been a spectacular jurist, both when she was an associate judge and as the Chief Judge of the Court of Appeals. I must say I have appeared before the Court of Appeals many times. When I've won the cases, I've thought Judge Kaye and her colleagues were absolutely brilliant. When I've lost, it sometimes took me a day or two to reflect upon matters.

But that's what judges do. Judges decide cases. And there's always a winner and a loser. And both litigants arrive at the court firmly convinced of the righteousness of their cause. And that's why we need courts, and that's why we need judges.

Senator Saland, I respect your views. But, you know, since Justice Marshall shocked the President and most of the Congress in Marbury, it's been a principle in this country that the courts are the ones who

interpret the Constitution and tell us what it means.

And they also do the same thing with statutes. Usually, unless they've ruled the statute unconstitutional. Sometimes we see courts interpret a statute in a way that we may not have intended. But we are always free then to relegislate the matter.

You know, I must say a few years back there was a case -- and I wasn't exactly a party, but I actually wrote the brief. Someone else argued. And it was a very, very lengthy brief. I believe the argument, I believe it was on a Monday morning, and I think the briefs were handed in that same morning.

And I had fun writing this brief because the courts below had ventured to say what the legislative history of the statute was that was under question. And I learned through some research that there was no legislative history, because in the middle of this Capitol there had been a fire in October of 1911, and all of the bill folders, all the bill jackets were lost.

Thankfully, if you read the Times Union today, it tells you that some people rescued the original draft of the Emancipation Proclamation. They also rescued the original Constitution of the State of New York. But legislative history was lost.

So we handed in this big brief, and the argument was maybe two hours later. And opposing counsel got up and started to talk about the legislative history. And Judge Kaye leaned over and said: "Sir, we don't really know what the legislative history is, do we?" And I knew in that short period of time that that lengthy brief had certainly been digested well by Judge Kaye, because she is a conscientious, brilliant, brilliant jurist.

Let me say this. You know, she bears two titles. You know, the Chief Justice -- people in Washington often refer to the Chief Justice as the Chief Justice of the Supreme Court. That's inaccurate. It's the Chief Justice of the United States.

In New York we have the Chief Judge of the Court of Appeals, who is also the Chief Judge of the State of New York. And in that

role, the Chief Judge, Judge Kaye, has been responsible for the entire administration of the court system, from the lowliest to the highest courts in the state.

And under her administration, because here strictly she doesn't act as a jurist, but a chief administrator, we have seen such wonderful reforms, such efficiencies and innovative changes in the court system that respond to the needs of the people and the needs of the bar that represents those people.

We have seen efforts to address serious concerns raised by the public about appearances in some aspects of court procedures, which Judge Kaye has immediately addressed and addressed in a very aggressive, conscientious way, to make sure that the highest standards are upheld in the courts.

In aspects of attorney-client relations and fee disputes, she has fostered and implemented rules that have really, sometimes despite the shortcomings of the bar, have actually elevated, I hope, the public's esteem and respect for the legal profession.

In sum, she more than deserves her reappointment. She has made all New Yorkers proud. Certainly as a legislator, as a lawyer, and as a parent I am really, really proud and happy that Chief Judge Kaye will continue to serve us.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Connor.

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I rise to also add to what my colleagues have said about Judge Kaye. I want to just make this very personal to me and my experience.

There have been a few people in my personal and political and professional career that have been profoundly significant to my own personal development and growth. One of those people, one of those few people is Judge Judith Kaye.

And I admire her, I admire you, Judge Kaye, because as a woman who has been able to rise to a very, very meaningfully

powerful position, you have -- I've watched you with so much grace and so much skill and so much diplomacy be able to begin to turn a system which is akin to an ant turning an elephant, I think.

And while doing that, I think one of the things that I really, really like so much is that in addition to being a role model to teach other women how to do that -- because it's not easy for women to be able to do that -- you have seen fit and taken the time to include us women of the Legislature in the process. You have taken the time to invite us over to give us an education, an understanding in what you were trying to do.

And you did that at a time, in those lunches that I cherish so much, it was a time when we were not really engaged in that dialogue. It was amongst the men of power. And you brought it to us and helped us to be part of that dialogue.

And so consequently I understand now much more what you were trying to do. And I also support some of the reforms that are based -- what I think much more on practical

rationale as it relates to the need to reform our court system, and I thank you for that.

And I also am very, very happy that despite the fact that there's this tremendous logjam and it's taken years and years and you've talked about it to everybody at all levels -- you still have not been able to get it done -- however, you, in your own capacity, have been able to make some significant changes.

I am so happy with the Community Court in my district. It is one of the most innovative things that's happened to people, for little people in Brooklyn, that they have a Community Court that they can go to that is different from the big courts.

And I'm so grateful that we have Drug Courts, because that's a whole different mindset in terms of dealing with people who are essentially sick in that capacity.

And I am so grateful for what you have done for domestic violence, for the women in particular in this state.

So as a woman who very often feels isolated and alienated from the central power

decision-making process, I am so thankful that I have you to look at and admire as a role model. And I can only look forward to continuing for you to be there so that we can appreciate your brilliance and your skill and what you've brought to New York State.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: You're welcome, Senator.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

History will prove you right. Keep it up. Thank you.

ACTING PRESIDENT MARCELLINO: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

Well, pretty much my colleagues have said everything I wanted to say. And then Senator Duane pretty much said it the way I wanted to, which was the fact that Judge Kaye could easily go home and retire and be incredibly proud of the work that she has done for the court system of the State of New York

and the people of the State of New York, and yet she is willing to continue to serve us.

And so I also wanted to say thank you for being willing to continue to serve us, Judge Kaye.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Krueger.

Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Yes, I too wanted to just add my voice to those of my colleagues, Mr. President, and thank Chief Judge Kaye for all that she's done.

I think there's not enough telling you what an important role model you are. And I realize during the whole course of my public career, there has been you. And the comfort, frankly, that that gives to me and others who would think that they might not be heard on these very highest of levels.

I also wanted to just mention what happened today in the hearing, how humble you are. You could have come in knowing, frankly, that, you know, overwhelmingly we want you to continue. But you didn't have that attitude. You came in with humility, you asked for the

continuation of service, you asked to be allowed to complete those things that are so important to you. You told us to the day how long you had. And I appreciate that.

And also you told us that you are an optimist. You would have thought, after all that you've gone through and how hard it's been, that you would have lost that optimism. You have not.

So you are indeed a role model. You are someone that we indeed are very, very proud of and certainly encourage you forward for all of the 22 months and 16 days that we'll be honored to have you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Stewart-Cousins.

Is there any other Senator wishing to be heard on this issue?

Senator Maziarz, to close.

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

Gee, I feel like I'm going to go against the grain here.

You know, I attended the Senate Judiciary Committee, very ably run by the

chairman, Senator DeFrancisco. And two of the people that testified in support of this nominee talked about, praised her for her ability to give the downtrodden access to justice. And they mentioned several groups.

But nobody ever mentioned access to justice for crime victims. Nobody ever mentioned somebody that I've mentioned on the floor of this Senate numerous times, Jill Cahill, murdered by her husband, beaten in the head by a basketball bat, had cyanide poison poured down her throat.

Jill's family, every time I see them, they say to me, "You know, we went through the system." The Onondaga district attorney did his job. The trial court judge did his job, you know. The jurors did their job, painfully did their job. And yet when it went up to the Court of Appeals, the Court of Appeals rejected the will and intent of this body, the Assembly, and the Governor who signed a death penalty bill in this state.

I implore my colleagues, there's not a more important decision we are going to make this year than this vote here today. You

know, we've got the budget coming up, healthcare, education, all very important. Not one of those votes is going to be more important than the one that we make on this nominee.

I implore my colleagues to do something for the crime victims in this state. It is out of control. You saw the front page of a New York City newspaper yesterday, an individual murdered 30 people. Thirty people he killed. Life without parole. I won't get into one of the graphic descriptions of how he murdered some of those people.

We have a system of selecting judges in this state where political leaders get in a back room, they decide who the voters are going to be able to select from to become Supreme Court judges. It's an embarrassment, it's unfair. The court has struck it down, as well they should.

The judge today at the Senate Judiciary Committee said that she supports a system where lawyers would get in a room, they would make a decision as to who the voters should choose from. To me, I don't see any

difference between those two systems. I think it's elitist and I think it's undemocratic, and I think it's an insult to the voters of this state.

I will be voting in the negative, Mr. President. Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Maziarz.

Any other Senators wishing to be heard? Seeing none, the question is closed.

The question is on the nomination of the Honorable Judith S. Kaye, of New York City, as chief judge of the New York State Court of Appeals. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: All opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MARCELLINO: The Honorable Judge Kaye is hereby confirmed as chief judge of the Court of Appeals.

(Extended applause.)

ACTING PRESIDENT MARCELLINO: Judge Kaye, the chair wishes to congratulate

you on your successful ascension back to the bench. You are joined, we know, by your daughter Luisa Hagemeier and your brother Allen Smith.

We wish you well. We know your job is a difficult one. Godspeed, and do a great job, make us all proud. Thank you.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a report of the Finance Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT MARCELLINO: The Secretary will read the report of the Finance Committee.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following nominations.

As Commissioner of the Department of Labor, M. Patricia Smith, of Brooklyn.

ACTING PRESIDENT MARCELLINO: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT MARCELLINO:

Senator Maziarz.

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

Unlike the previous nominee, Mr. President, I rise to support the nomination of M. Patricia Smith.

Commissioner Smith and I have met several times since Governor Spitzer nominated her, and she has an extensive background in labor law while she served under three different attorney generals in New York. She appeared before the Senate Labor Committee, was unanimously recommended for confirmation.

She and I have talked about some of the more important issues, one of which we're going to be taking up later on today, workers' comp reform in this state. She was intricately involved in the negotiations of that legislation and I think will serve the working women and men of New York State in an excellent fashion.

I wholeheartedly support this nomination, Mr. President.

Thank you.

ACTING PRESIDENT MARCELLINO:

Thank you, Senator Maziarz.

Senator Savino.

SENATOR SAVINO: Thank you, Mr. President.

I also stand to congratulate the Governor for his nomination of Pat Smith and to congratulate her on her being named Commissioner of the Department of Labor.

Her reputation precedes her. She is well known in the labor community for her assistance with some of the most vulnerable workers, making sure that they were paid the hourly wages they were entitled to. People who don't have a voice, this woman has stood up for them. She has assisted more working people than some of us in organized labor have.

And I'm very proud to stand here and second her nomination as Commissioner of the Department of Labor.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Savino.

The question is on the nomination of M. Patricia Smith as Commissioner of Labor. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: M. Patricia Smith is confirmed as Commissioner of Labor.

Ms. Smith is joined by her aunt, Jan O'Hare.

Congratulations, Commissioner.

(Applause.)

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: As Commissioner of the Division of Human Rights, Kumiki Gibson, of Brooklyn.

ACTING PRESIDENT MARCELLINO: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT MARCELLINO: Senator Thompson.

SENATOR THOMPSON: I'm glad that the commissioner is coming on and the director is coming on, but I also want to thank the

Governor for this appointment.

We have great expectations for this nominee. I think that throughout the years there have been a number of stories in terms of the backlog in this department.

And as a state we continue to look at a reform agenda, and one of the things that we need to reform is the ability, when people feel that they have been wronged in the private sector, in the housing sector, that when they take their concerns to a governmental agency that those concerns are addressed in a very timely fashion.

So we look forward to working with Ms. Gibson. We also look forward to making sure that this office does a better job of responding to the needs and concerns of the people of this great state of New York.

So I'm glad to support her nomination. Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I'm delighted to move to second the motion for confirmation of my constituent. I think in the few short weeks she has been at the commission she's taken steps to make it more efficient, to certainly dispose cases in a more timely way, and to enforce the law in the way that I think it was intended.

So I wish her well, and I urge all my colleagues to support the nomination.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Yes, Mr. President. I also rise to support the nomination of Ms. Gibson.

She is a breath of fresh air. Certainly, as someone who sat in on the hearings today, we talked about what has happened with the State Division of Human Rights. And listening to her, understanding her vision, and hearing her reaffirm the necessity to really create the type of commission that will not only be effective but be a model nationally is really very important and it's very, very encouraging.

I know that she's already spoken with our commissioner of human rights in Westchester County, and the word is out that the State Division of Human Rights has a chance to be all that it was destined and designed to be. It indeed was the very first in our nation and we are looking forward, through the leadership of Ms. Gibson, to having it take that role again.

So I certainly urge a unanimous vote for her.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Stewart-Cousins.

Does any other member wish to be heard on this nomination?

Seeing none, the question is on the nomination of Kumiki Gibson as Commissioner of the Division of Human Rights. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: Kumiki Gibson is hereby confirmed as

Commissioner of the Division of Human Rights.

Congratulations, Commissioner.

(Applause.)

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could continue, regular order, please.

ACTING PRESIDENT MARCELLINO: Senator Skelos, we have some substitutions to do.

SENATOR SKELOS: There's a substitution? If we could make them at this time.

ACTING PRESIDENT MARCELLINO: Yes. The Secretary will read the substitutions.

THE SECRETARY: On page 20, Senator Bruno moves to discharge, from the Committee on Finance, Assembly Bill Number 3736A and substitute it for the identical Senate Bill Number 2876, Third Reading Calendar 224.

And on page 20, Senator Bruno moves to discharge, from the Committee on Rules, Assembly Bill Number 6163 and substitute it

for the identical Senate Bill Number 3322, Third Reading Calendar 252.

ACTING PRESIDENT MARCELLINO: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar in its entirety, with the exception of Resolution 725.

ACTING PRESIDENT MARCELLINO: All in favor of adopting the Resolution Calendar, with the exception of Resolution Number 725, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Resolution 725, by Senator Joe Robach, have the title read and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The

Secretary will read.

THE SECRETARY: By Senator Robach, Legislative Resolution Number 725, memorializing Governor Eliot Spitzer to proclaim March 6, 2007, as Domestic Violence Awareness Day in the State of New York.

ACTING PRESIDENT MARCELLINO: Senator Robach.

SENATOR ROBACH: Yes, Mr. President. If I could, just for a moment, on this resolution.

Today was the Lobby Day for advocates to try and reduce, stop domestic violence. And I think it's very fitting that while we have Domestic Violence Month, that we also take a day out for this very, very important topic.

And while we may have made great strides, there's a lot more that could be done in terms of policy as well as resources to stop that. And while we spend a lot of time in this chamber doing all we can to reduce all types of violence, in many ways sometimes I think it's almost worse when the violence comes from someone we know, love, count on for

support, many times economic stability and other things.

So as an extra reminder as we go on to create good policy, continue our efforts of education and trying to turn away any of the ideas that anything like this could be acceptable in society today, I suggest we move this resolution forward and mark this day in honor of all the victims as well as the advocates trying to stamp out domestic violence in New York State.

Thank you.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could open up the resolution for cosponsorship. Anybody that does not wish to

sponsor the resolution, they should notify the desk.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Skelos. So ordered.

SENATOR SKELOS: If we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 152, by Senator Flanagan, Senate Print 845, an act to amend the Penal Law, in relation to definitions of criminal enterprise.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

156, by Senator Saland, Senate Print 1076, an act to amend the Penal Law, in relation to establishing a presumption.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 2. Senators DeFrancisco and Montgomery recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 157, by Senator Saland, Senate Print 1077, an act to amend the Penal Law, in relation to custodial interference.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the first of January.

ACTING PRESIDENT MARCELLINO:

Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 171, by Senator Trunzo, Senate Print 882, an act in relation to requiring state agencies.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 185, by Senator Larkin, Senate Print 644, an act to amend the Penal Law, in relation to forgery.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 2. This

act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 196, by Senator Skelos, Senate Print 2086, an act to amend the Penal Law, in relation to concurrent and consecutive terms of imprisonment.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

197, by Senator Volker, Senate Print 2369, an act to amend the Criminal Procedure Law, in relation to expanding.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 203, by Senator Alesi, Senate Print 263, an act to amend the Vehicle and Traffic Law, in relation to additional penalties.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 224, substituted earlier by Member of the Assembly Silver, Assembly Print Number 3736A, an act to amend the Executive Law, in relation to establishing the Commission on Public Integrity.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 46. This act shall take --

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MARCELLINO: Lay the bill aside for the day, please.

THE SECRETARY: Calendar Number 252, substituted earlier today by Member of the Assembly Silver, Assembly Print Number 6163, an act to amend the Workers' Compensation Law and others, in relation to increasing benefits.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: On the workers' comp bill, the last bill we just passed, I would just like to explain my vote.

ACTING PRESIDENT MARCELLINO: Without objection, Senator DeFrancisco will be allowed to explain his vote.

SENATOR DeFRANCISCO: Despite Senator Robach's objection to my explaining my vote, I just want to say --

ACTING PRESIDENT MARCELLINO: The chair recognized no objection.

SENATOR DeFRANCISCO: I just wanted to state very briefly that this is a very, very important bill.

New York State was known as a state that had one of the lowest benefits and some of the highest costs for business. That's not

a good situation. For years we've been attempting to make this happen, where benefits are increased and also at a lower cost to employers.

This is a great bill. I'm proud to support it. And it's a good thing for the economy of the state of New York and, just as importantly if not more importantly, mit's a good thing for the worker in this state.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator DeFrancisco.

The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: If you would put all members of the Senate on this bill. If anybody wishes not to cosponsor the legislation, they should notify the desk as soon as possible.

ACTING PRESIDENT MARCELLINO: Anyone wishing not to sponsor this bill please notify the desk.

SENATOR SKELOS: Mr. President,

is there any further business to come before the Senate?

ACTING PRESIDENT MARCELLINO: No, Senator, the desk is clean.

SENATOR SKELOS: Mr. President, in consultation with the Minority Leader, Senator Bruno hands up the following committee assignment and asks that it be filed in the Journal.

ACTING PRESIDENT MARCELLINO: So be it.

SENATOR SKELOS: And there being no further business to come before the Senate, I move we stand adjourned until Wednesday, March 7th, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: The Senate will stand adjourned, on motion, until Wednesday, March 7th, at 11:00 a.m.

(Whereupon, at 4:48 p.m., the Senate adjourned.)