NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 11, 2009

11:26 a.m.

REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT VALESKY: The Senate will please come to order.

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

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

ACTING PRESIDENT VALESKY: In the absence of clergy, may we all bow our heads in a moment of silence.

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

ACTING PRESIDENT VALESKY: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Tuesday, February 10, the Senate met pursuant to adjournment. The Journal of Monday, February 9, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe that the report of the Judiciary Committee is at the desk, and I ask the President to have the report read at this time.

ACTING PRESIDENT VALESKY: There is a report of the Judiciary Committee at the desk.

The Secretary will read.

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

As Chief Judge of the Court of Appeals, the Honorable Jonathan Lippman, of New York City.

ACTING PRESIDENT VALESKY: Senator Sampson.

SENATOR SAMPSON: Yes, Mr. President, I rise to move forth the

nomination of the Honorable Jonathan Lippman, who is presently presiding justice of the Appellate Division of the First Department, to Chief Judge of the Court of Appeals.

We had a very hearty and fruitful meeting this morning, and I want to commend Jonathan Lippman but most of all commend the Governor on his appointment of Jonathan Lippman.

There's always been issues with respect to the selection process and the way in which a nomination list did not contain one of women. And this is of deep concern. And that is why I started conducting hearings dealing with the whole selection and judicial nominating process. But I want you to rest assured that it does not taint the Honorable Judge Lippman.

Judge Lippman is a person who I had an opportunity to have a conversation with with respect to the issues of concern not only to me but to our conference: The issue of diversity, the issue of morale within the court system, the issue of pay raises, and

also the issue of the appointment of acting Supreme Court judges not only in the city but throughout the State of New York.

And we had a very frank and very pointed discussion with respect to those issues, and then he had an opportunity to meet my colleagues. And one thing we walked away with is that this is a man who has heard our issues and concerns, and he's not going to just act with rhetoric or words, he's going to implement in deeds. And that has won over a lot of my colleagues with respect to this nomination who had questions.

So at this point in time I would like to move forth his nomination as Chief Judge of the Court of Appeals. And I want to first of all congratulate his family: his wife, Amy Lippman, his son, Russell Lippman, and also his daughter, Lindsay Lippman.

And, Your Honor, I want to commend you on going through a process which was uneasy at times, but you handled yourself as the jurist you are. And I look forward not only to being a partner but being a friend

when dealing with the judicial system.

Because at the end of the day, it's not about me, it's not about my colleagues, it's about the people of the State of New York. And it's about the judicial system, it's about restoring the faith, the trust, and the confidence in the judicial system and ensuring that Lady Justice continues to remain blind and the scales of justice are balanced.

In a lot of communities throughout the city and throughout the state, we don't feel that way. But under your leadership, Your Honor, we expect that to occur. And we look forward to working with you not only from this day forward but throughout the future and making sure that your issues are our issues, and our issues become your issues, and you understand how committed we are to those principles that are expressed to you.

So once again, at this point in time I would like to move his nomination forth as the Chief Judge of the Court of Appeals.

ACTING PRESIDENT VALESKY: Thank you, Senator Sampson.

Senator Maziarz.

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

Before I speak on this nominee on behalf of the Republican conference as the ranking Minority member, I just want to note for the record and thank the chairman, Senator John Sampson. Senator Sampson handled this nomination in a most courteous and professional manner. As a new ranking member and Senator, I want to thank you for the courtesies that you showed. Thank you very much.

SENATOR SAMPSON: Thank you very much, Senator Maziarz. And I learned the best from you, Senator.

SENATOR MAZIARZ: Thank you.

On the nomination, Mr. President. I want to rise in support, as the ranking member of this committee, in support of the Governor's nomination of Jonathan Lippman as the Chief Judge of this court.

Judge Lippman has made himself available to our members, answered all of our

questions in a professional and an excellent manner.

I just want to say, as many of you have heard me speak on the floor and in Judiciary Committee in the past, I feel very passionately about some issues, particularly as they evolve around the Court of Appeals. And I rise in support of this nomination for a lot of different reasons. I'm only going to mention one.

But Judge Lippman -- and maybe he didn't even remember this, but a long time ago there was a judge in upstate New York who was going through an extremely emotional personal situation involving the health of their child. And I don't think Judge Lippman ever even met that judge at that point in time, but through an intermediary he was asked to do something on that judge's behalf, and he did it. And I never forgot it, Judge.

So again, on behalf of our conference, I do want to mention that I received a call from a good friend of many of ours, a former chairman of this committee,

Jim Lack, in strong support of this nomination.

And, Mr. Chairman, I rise and second the nomination by my good friend Senator Sampson. Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Maziarz.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. Chairman.

Today we are having a day where sometimes I wish that this day would not happen. But, Mr. Chairman, I'm here today to express why I will abstaining from this nomination.

But I have to say it has nothing to do with Judge Lippman. I have great, great regard for Judge Lippman. His qualifications, his resume, and his life shows that he is well qualified to be in the position that he is today.

However, Mr. President and members of this body, the system, the way in which Judge Lippman was chosen, casts doubt on his

nomination. And I will tell you why, Mr. President.

There were two women that applied and were interviewed. One of them was Justice Fern A. Fisher, with a B.A. from Harvard University, with a juris doctor degree from Harvard Law School, admitted to the New York Bar Association in 1980. Deputy director of Harlem Legal Services. Assistant Attorney General of the New York State Department of Law. Four years of pro bono legal services to Harlem-based community organizations. Project director of the National Conference of Black Lawyers. Deputy supervising judge of the City Civil Court. Elected to the New York State Supreme Court in 1993. For the last 13 years, she has been the administrative judge of the Civil Courts of the City of New York.

Over 30 years' experience, Mr. President. But she was found not qualified, not qualified by the committee that gave it to Judge Lippman. An African-American lady. It has nothing to do with being African-American, it has nothing to do with

being a woman, it has nothing to do with being a minority. It has to do with her qualifications. Unqualified.

The other lady, woman, Justice Carmen Beauchamp Ciparick, graduated from Hunter College in 1963, a juris doctor degree from St. John's University. She has served as a Legal Aid attorney. She's been assistant counsel for the Judicial Conference of New York State. She's been chief law assistant of the New York City Criminal Courts, counsel to the Office of the New York City Administrative Judge. Judge of New York City Criminal Court.

In 1982, she was elected to the New York State Supreme Court. Member of the New York State Court of Appeals since 1993, 16 years a member of that body. And she is the senior associate judge of the New York State Court of Appeals. Thirty-two years of experience. Another woman, Hispanic, was found to be not qualified.

Two women. Two women -- one African-American, one Hispanic -- not

qualified. This is a shame, the way in which our system works. When is it that a woman or a minority person would have the possibility to compete?

Judge Lippman is superqualified. He's qualified. I'm glad, and I'm joining his family today in congratulating him. But these two women were prevented, Mr. President, they were prevented from competing.

And now my question is, with their resume, with their experience, with their education, why were they found not qualified? Because they're women? Are we discriminating against women, because one is black and one is Hispanic? Are we discriminating against a black? Are we discriminating against a Hispanic?

So there we've got a problem, as I said before. We have a big problem in this state. And if I vote yes, then I become part of the problem. If I vote no, people might think that I'm voting against Judge Lippman, which I would never do.

But I cannot vote yes to be part of

the problem, and I cannot vote no because I don't want to be under -- I don't want to give people the opportunity to say that I'm voting against him.

I'm abstaining. I will not vote, I will not take part in this process. Just to show my anger, to show my rejection of the way in which these two women were prevented and found not qualified.

The system has to be changed. And then they gave the Governor seven candidates and forced the Governor to choose from one of the seven.

These two ladies, Mr. President, were not qualified. I mean, this has sent a message to all of us. And I said before that this happens to us over and over and over. And then they say: We will fix it. Don't worry about it, vote yes and we will fix it. And then it happens again. And then we all have been promised that the system is going to be changed. Maybe, maybe because they think that we minorities, we come here, we talk, and then we say okay, yes.

No. The time is going to come -- and I think the time is going to come, I'm saying no, the time is going to come when we, black and Hispanic legislators, have to stand up and say no way, no how. That's why I'm abstaining, Mr. President. Thank you.

And I congratulate Judge Lippman on his nomination today.

ACTING PRESIDENT VALESKY: Thank you, Senator Diaz.

Senator Espada.

SENATOR ESPADA: Thank you, Mr. President, for giving me the opportunity to share some thoughts on the nomination and indeed, as my colleague Senator Diaz just articulated, on the process itself.

But first, as to the nominee, absolutely qualified.

I wish to thank Senator Sampson for his deliberations. And he was very thoughtful and very fair in taking his time. This is a deliberative process and a deliberative body. He's accomplished and made us very proud this day.

But I was particularly taken with the comments that Judge Lippman made on advocacy versus activism. And I was very pleased to hear you, sir, speak about the need to advocate for reform and advocate for change. And that doing so in no way, in no way sets the court apart from its essential process of become objective and weighing the facts in evidence.

And the facts in evidence in this case, as you so clearly articulate, Senator Diaz, is that we have a flawed and terrible system not only with respect to this process, but I navigated and traversed other counties and met with other people on my own about this process of our justice system. Not just this nomination of the Chief Judge, but those who serve as acting judges, those who serve on housing court and civil court, the highest courts of the land, visited on this issue that has politicized the judiciary in this country and in this state for far too long.

And so there are many issues that burden us today. But for me, this candidate

is worthy of support, but I must stay steadfast and focused on this process. This process will not only yield, in my humble estimation, the most powerful person in this state henceforward, today, will be Justice Jonathan Lippman, presiding over what many times is the last recourse for justice.

But we talked about the beginning of the process, the need to reform the grand jury system, when too many who cannot afford a lawyer have no voice and no defense. And to that point I congratulate you, sir, you were right on target with having, you know, the most indigent defendants get their day in court. But it starts there. And so he was clear on that, and I support him wholeheartedly on that.

The draconian Rockefeller Drug Laws that have seen generations of African-Americans, Hispanics, poor people that have not had the ability and judges who have not had the ability to pass judgment and to use their discretion to render justice.

And so to all of those points --

not the resume, but the person, his soul, his preparation, his character -- I think we will be well served.

But as the rules of the house do not provide for an abstention, when I walk through those doors, through that exit sign, I will join Senator Diaz, sir, in not voting against you but to make a point that so many issues in our justice system have to be visited.

And so for this moment and this day, I wish to join you in this protest, Senator Diaz. With no aspersions to you and your nomination, Judge Lippman.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Espada.

Senator Hassell-Thompson.

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

I rise to lend my support to the nomination of Judge Lippman to this, the highest post in the court system in the State of New York. And I do so not with the same

level of conflict as some of my colleagues have.

I have serious conflict with the process, I think I've made that publicly known. And I think that every opportunity that I get, I will be participating in a proactive way to ensure that this process is in fact changed as quickly as we possibly can do so.

My support of Judge Lippman, however, is based upon his history of his hiring practices, his support and nurturing of people of color in his historic rise to this position. I listened to testimony this morning, but certainly I have many friends in the court system across this state who revere the work that he has done and the efforts that he has made to ensure not only that they are in positions of importance and prominence, but certainly that they are a part of the policy process.

Many times we will have people who will come before us and talk about that they are regretful of the process and that they

feel very bad about it, and they pay lip service. But I happen to know that historically the work that I have had the opportunity to do with Judge Lippman in my district responds to the needs of those who were formerly incarcerated for drug use, and Judge Lippman helped to work in our community to ensure that we had alternative programs to incarceration.

And this was among a group of people who were unrepresented and who are black and who are poor and who are Latino. And so that set the tone for me in terms of observing how he would go about doing the work that he will do.

I think that Judge Lippman, separate from the process, will be very important to our judicial system. He has waxed eloquently on those things that he recognizes, similarly to me, that the kinds of things that we need to do to ensure fairness and to restore the trust of the people in our judicial system in the State of New York are tantamount to his first priorities.

And therefore, the importance of what this appointment means, he represents. And therefore I join my colleagues in supporting this nomination, but I will be calling on Judge Lippman as we go forward to ensure that he stays actively involved in the process to change this system so that people who believe that we need stronger justice will see that that is so.

No one would consider Judge Lippman as liberal, but they certainly would judge him as fair-minded. And that is appropriate and necessary for our judicial system, particularly when you look at the numbers of minorities who come and go throughout our court systems.

And as our young girls are becoming more and more involved in the juvenile and the justice system, it becomes important to have someone at the head of our judicial system that understands the need to address these issues in a preventive as well as a judicious way as they come through the courts.

So I am very pleased to make, based

upon my knowledge of his experience and the opportunities that he has given, that he will be a justice that will be fair. And that he also know I will be breathing down his neck to ensure that the things that he has done in the past will be those that he will continue to do in the future. And those people who attempt to block his good efforts, he will have a champion in me to help him to move those roadblocks as he represents the people of the State of New York.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Hassell-Thompson.

Senator Klein.

SENATOR KLEIN: Thank you, Mr. President.

I rise today to second the nomination of Jonathan Lippman as our Chief Judge of the Court of Appeals.

I think this is sort of, I think, a celebration for the judge and his family, and also all of us as New Yorkers. A man who came from humble beginnings, growing up on the

Lower East Side, I think he reflects what many young lawyers at the time -- when they go to law school, when they graduate from law school -- what their dreams would be. And I'm sure there's many who dream of being just a judge. But many, I guess, wouldn't dare to dream to be Chief Judge, the top judge in the great State of New York.

And I think again, if anyone can plan their life on what the road map you would take to be the Chief Judge of the Court of Appeals in New York State, I think Judge Lippman followed that road map. Worked his way up from a law secretary in Manhattan, later became an administrative judge, then an Appellate Court judge, all the while learning and making our court system better.

Again, I think one of the things that Oliver Wendell Holmes once said, that the experience of the law is what's important. And I think in many cases there's no one in the court system that has more experience than Judge Lippman.

Everything that has been good about

our judicial system over the last 20 years, in many ways Judge Lippman had a very important and positive impact on all of that. Domestic violence courts, expanding the Family Courts, all types of different medical malpractice parts, Jonathan Lippman had a major impact on each and every one of those things.

And there's also, I think, when you think about the type of person who should be the Chief Judge -- I talked extensively about his administrative experience, but also his legal acumen. He understands the various issues that come before our great court in the State of New York. And I think he's going to be a credit to each and every one of us.

And I think all of us here should, I think, take pride in the fact, especially if we're an attorney, that we can rise not only to become a State Senator, as we all stand here today, but also become a great judge, even a Chief Judge.

And the only thing I can say, when Jonathan Lippman officially assumes his post as the Chief Judge of the State of New York, I

think the residents of the State of New York can rest assured that justice will be done.

Thank you, Judge.

ACTING PRESIDENT VALESKY: Thank you, Senator Klein.

Senator Volker.

SENATOR VOLKER: Mr. President, first of all, if I might just say that Senator Sampson did an excellent job at the hearing.

In fact, it was mentioned that former Judicial chairman Jim Lack mentioned support of Jonathan Lippman. The only reason I mention Senator Lack is that when he was chairman of Judiciary, I think that John Sampson did a better job of handling one particular witness who has testified on many occasions. And Senator Lack had a little bit bigger problem with that witness. In fact, I think that woman got thrown out of the room. But that's neither here nor there.

But I have to say, Jonathan, that you have always been, with me as chairman of Codes and as somebody who has worked for many years with the judiciary, a class individual,

forthright, ready to assist in any way possible.

In fact, I think one of the things that kind of bothers me a little is I heard some criticism of Judge Kaye, that it's a continuation of Judge Kaye. Gee, that's too bad. I thought Judge Kaye did a pretty good job, personally.

And, you know, I realize very much that the problem with the judiciary is, let's be very frank, the judges are all angry because they didn't get a pay raise. We know that. The last time I looked, the Chief Judge of the Court of Appeals doesn't get to vote in either house of the Legislature.

It is a shame, because the judiciary should have gotten a pay raise. But that's something that this house, I think, tried our best to make that happen. But -- I know we passed legislation. I didn't want to get into that.

But Jonathan Lippman -- and I understand the feelings of people here that there were other people who could have been on

the list. And, you know, I've got to say something, years ago I said that Jim McGuire should have been on the list also. And he wasn't on the list. And you could name any number of people. It wasn't that they weren't qualified, it's just that the list was picked based on a decision that had to be made.

And of course I will say this too, Judge. One of the Court of Appeals judges -- I happen to know him much, much, much longer than you -- Gene Piggott, since he comes from my area. Please take care of him and watch that he doesn't get into trouble. Okay?

But in any case, you'll make a fine chief justice. I'm happy to support you. I haven't always agreed in the past with the former Chief Judge's decisions. But then, as I've said, a lot of people disagree with me.

So I can only say this, that I think that the Office of Court Administration will be especially -- and maybe that's as critically important as anything -- will be run by somebody that knows more about it than anybody else. And in this time, this fiscal

time, that may be -- and I'm not saying that -- obviously, the decisions that are made are extremely important. But running the Office of Court Administration right now is going to be something that's almost equally as important.

So good luck to you, and Godspeed.

ACTING PRESIDENT VALESKY: Thank you, Senator Volker.

Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

This is probably one of the most important confirmations that we will have the opportunity to consider over the course of any term. The Chief Judge of the New York Court of Appeals leads our other branch of government, the judiciary.

And we are really very fortunate today because we have someone whose name has been sent to us who has had a tremendous, tremendous career in the law and as a judge. He brings to this position every possible qualification that we could ask for as a

legislative body. He has great integrity, he has the disposition we would expect from a judge, he has the knowledge of the law that we would hope for from a judge. And he has a tremendous sense of fairness.

I've had the good fortune to know Judge Lippman for some time, worked with him on a number of issues. I cannot think of a better person to fill this position. So I am very pleased to stand here today and to lend my support to this nomination.

Thank you, sir.

ACTING PRESIDENT VALESKY: Thank you, Senator Leibell.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

I too rise in support of Judge Lippman's confirmation to the position of Chief Judge of the Court of Appeals.

I have had the good fortune of knowing the judge for a number of years here in Albany, in my capacity as a member of several committees with which the judiciary

deals with from time to time.

Certainly when I chaired the Senate Children and Families Committee, and as a member of the Judiciary and Codes Committees, I had opportunity to frequently have contact with Judge Lippman, and always found him to be extraordinarily dedicated, extraordinarily capable, a man possessed of keen intellect, a man dedicated to public service, a man whose word was his bond, a man who full-well understood that there is a process, a legislative process, which contains that ever-present element of give and take. A man who understood that, a man who tried his best to use his abilities to influence that system on behalf of his constituencies, particularly when he was chief administrative judge of the judiciary.

I mentioned earlier in the Judiciary Committee today that in my earlier time as an attorney, I spent a lot of time in court -- not as much since I came to this chamber -- and there were certain qualities that I would always hope to find in a judge.

And those qualities, whether it be the trial bench or the appellate bench, I think are critically important.

Obviously, first and foremost, you want somebody who's fair, somebody who can analyze with a kind of keen intellect, a person who doesn't have an agenda, a person who is about justice, a person who is judicious, a person who epitomizes everything that you believe in when you look at the symbol of that blind goddess.

Well, Judge Jonathan Lippman is such a person. Judge Jonathan Lippman has been a superb public servant. He will be an exemplary Chief Judge. He is certainly a credit to his family, he is a credit to the judiciary, and he will be an enormous credit to the State of New York.

I wish you well, Judge.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Yes, I too rise to second the nomination of Jonathan

Lippman for the Chief Judge of the Court of Appeals.

Certainly there's no question that the process is seriously flawed, and I would be remiss in not saying that. But I would also be remiss in not standing in support of someone who has been outstanding.

I had the privilege of being on the county board of legislators when Judge Lippman was our chief administrative judge. And during that time, he did what he does, make sure that we move ahead, make sure that we progress, make sure that there are no obstacles to reforming our court system or, as was the case in Westchester County, restructuring and rebuilding our courts.

It was a difficult time because the money was very, very large that was involved. There were many of us who were concerned with the expense. And at some point the process seemed to be stalled. And it was Judge Lippman who made sure that we understood the big picture, we understood the ramifications for all of our county residents and beyond.

And we understood that, while he showed leadership but an incredible amount of respect with every step.

There was never a question that this was about better service to the people -- not about ego, not about anything but making sure that our courts were the best they could be.

He has brought with him those values, those considerations, and that commitment. And whether it's the drug courts or restructuring the system or being part of the process that will change the process that has lingered, there couldn't be better leadership.

So I congratulate you, and I welcome working with you.

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

Senator Adams.

SENATOR ADAMS: Thank you, Mr. President.

I came to Albany this week intending, as a member of the Judiciary

Committee, intending to vote no on this nomination -- until I had a conversation with Senator Sampson, who's the chair of that committee, and he assured me that some of our concerns were laid to rest.

You know, if only life was as simple and as black-and-white as just going with the qualifications of an individual. But the reality is there are shades of gray. And my belief, as I listened to Senator Espada and Senator Diaz, is this is a sad moment for the State of New York. Where we can put a black man into the White House, we cannot put a black or Hispanic in a black robe in the highest court in our land.

And although there's a celebratory mood that's here, although we want to celebrate because a qualified person is reaching that level, but the reality is the dream that Judge Lippman is living is a nightmare that though black and Hispanic lawyers and judges are qualified, they're never getting there.

We cannot stay in the minor leagues

our entire life. We need to play in the major leagues. We need to sit on the top courts. We need to participate.

And so for those who dismiss the concerns of Diaz and Espada and others as mere just rhetoric, I say no to that. It's a real pain, it's a real concern. We can't continue to hear "Well, maybe next time, maybe next year, maybe next appointment, maybe next moment." No to that "next."

Now is the time. If a black can integrate the White House, then we can integrate black robes in our court system. Enough is enough.

And so what I'm hoping, out of all of this madness, I'm hoping that the judge doesn't see this as a step back but an opportunity, an opportunity to diversify the ranks.

And it's also an opportunity for us to look at the process. There's no way that in as diversified a state as New York, a group of male whites decide the criminal justice system. Our justice is supposed to be blind,

but I'm tired of a hole being in that blindfold, when it comes down to people of color, to look at the sentencing, to look at how we're treating the various people that come in front of the court system.

So this is our opportunity to change the process and not allow ourselves again to have a list where qualified black women and men were not on the list and no matter what people tried to color it with, they were deemed ineligible. If you're not on the list, you are ineligible. And there are too many eligible people of color that are capable of sitting on the high court and are constantly and continually being passed over.

So yes, I'm happy that Judge Lippman is here. Yes, I'm happy I had a conversation with Senator Sampson and he said we have an opportunity to do some great things. And I thank Senator Sampson for leading that committee and chairing it and saying let's have an opportunity.

But I don't want to sit here again and hear "maybe next time." I'm tired of my

community staying in the minor leagues. We don't want to live a lifetime of running fast, jumping high, but we can't coach the team. We've heard that before. I don't want to hear it anymore. I don't want to hear about, well, it's only fair. I want to deal with those shades of gray that other people want to ignore.

And this is not a statement towards Judge Lippman. I'm sure Judge Lippman is highly qualified to do this.

But the reality is we can wear the handcuffs. The reality is we can occupy the prisons in the northern part of the state. The reality is we can sit inside the precincts cuffed to the benches. The reality is we can be called perps. The reality is that our justice system has a blindfold around the woman that holds the scales of justice. But when we come into that courtroom, when we fill out our qualifications to sit on the bench, all of a sudden the blindness of justice has some way to peek through and say "unqualified."

Enough is enough. Enough is enough. If we can occupy, again, the White House, we can wear a black robe on the high courts in our state.

So I say aye, but I respect the concerns of Senators Diaz and Espada and others that have constantly stated enough is enough. Enough is enough.

ACTING PRESIDENT VALESKY: Thank you, Senator Adams.

Senator Monserrate.

SENATOR MONSERRATE: Thank you, Mr. President, and to my distinguished colleagues here in the State Senate.

First I want to recognize the fine work of the Judiciary Committee and their chair, Senator John Sampson, for his diligence in this process.

I want to acknowledge that with Judge Jonathan Lippman we have an individual of impeccable credentials, an individual with a lifelong service record, one that is exemplary.

I stand here, however, to join my

colleagues Senator Reverend Diaz and Senator Espada to in essence cast an abstention vote to the process, a process which did not allow for the eligibility of women or Latinos in particular and other African-Americans.

And I stand here to say that I understand that Judge Lippman will do a fine job as our chief justice.

But we need to do more than just pay lip service to inclusion, particularly to large and emerging communities such as ours, which seems to be the fastest-growing and the largest in the state with respect to minority groups. We have to ensure that there's a process that integrates and doesn't segregate us out.

And we are standing, the three of us in particular, not to just make a political statement for the day, but to say that we are committed to the due diligence that this house will have for years to come to ensure that there is inclusion and a process that enfranchises people, people who have historically have felt disenfranchised from

this process.

And the finality of this process, though it produced a fine judge, a judge that will serve us well, still leaves millions of New Yorkers scratching their heads and asking the question, is the process ever going to be equitable for all of the people?

So I will be joining my colleagues and in essence not cast a vote on this.

Thank you very much.

ACTING PRESIDENT VALESKY: Thank you, Senator Monserrate.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I rise also in support of the nomination of Judge Lippman -- Chief Judge Lippman before the day is out.

And I would like to note, in keeping with the comments of my colleagues, that we are supporting Judge Lippman today. We are supporting you today, sir, and we will seek your support tomorrow as we seek to improve and open the judiciary to ensure that

all New Yorkers are represented.

Because the voice of the Chief Judge of the Court of Appeals is not just a powerful voice in rulings on the law from the bench, it is a powerful voice for reform, for justice, and for the ongoing process of improving the judicial system and the legal system in the State of New York.

So I'm honored to vote to confirm this highly qualified nominee. But I assure you all that the concerns voiced by my colleagues are not going away. And indeed, I would like to mention to all of my colleagues who are not on the Judiciary Committee, who were not present at the hearing we had earlier today, it is absolutely clear that our new Judiciary chair, Senator John Sampson, is committed to transforming the flawed process that brought us here today. He has already begun to hold hearings. We've already started to move on this.

So, ladies and gentlemen, reform is on the way. We're beyond the point of saying hope is on the way: Reform is on the way.

And I hope that Judge Lippman, I am confident that Judge Lippman will be our partner in that effort.

I am confident that he will join us because of his record so far. And I would urge all of my colleagues that if you look at the last decade in the New York court system, it has been a time of tremendous innovation. It has been a time where other courts and legislatures around the United States have looked to New York and looked to reforms made in New York for ideas of how we can do better.

We have to do better. We have to do better here and around the country. The United States is coming to a point, I believe, where we are all realizing that our failed national experiment with mass incarceration must be put to an end. We have 2.4 million people in prison in the United States. One out of every nine young African-American men is in jail or prison.

We have to change the system. We have to go with innovations that Judge Lippman has been a part of such as drug courts,

innovations such as changing our system of parole and probation. We have over 9,000 prisoners in the New York State correctional system for technical violations of parole. That wastes money, that wastes lives, that is unacceptable.

So I rise both to compliment our Judiciary Committee chair, Senator Sampson, for beginning the process of reform, and to voice my strong support for this great nominee, with the confidence that he will join all of us in the effort to continue to reform the system, to open the process, to ensure that all have adequate representation, and to ensure that this is a system of equal justice under law for all New Yorkers.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Schneiderman.

Senator Dilan.

SENATOR DILAN: Yes, Mr. President.

I rise to indicate that I will be voting in the affirmative for the nominee.

I'd like to congratulate him.

I would also like to indicate that despite that the process was flawed, I am still voting for him.

I had the opportunity to question Judge Lippman directly in committee, and I'm satisfied with his answers that he indicated that he will be reviewing a panel that was created in 2007 to review the qualification of sitting elected judges. He will also be reviewing court diversity. And also, he indicated to me that he will be staking out a clear and concise position on judicial pay raises.

And as a result of that, I will be working with my colleagues, and especially Senator Sampson, the chairman of the Judiciary Committee, and Judge Lippman to work on those reforms.

Thank you, and congratulations.

ACTING PRESIDENT VALESKY: Thank you, Senator Dilan.

Senator Perkins.

SENATOR PERKINS: Thank you,

Mr. Chair.

I want to rise and second the nomination and appreciation for Judge Lippman, our next Chief Judge of the Court of Appeals.

But first I want to send some love to my chairman of the Judiciary Committee for the outstanding work that he's been doing, and especially in this particular process.

And I daresay I would like to commend his partner, Senator Maziarz, because they've worked in a very collegial, bipartisan way during this process, but even in other instances. But this one especially, because it was controversial.

And rather than simply complain about the broken process and the shortcomings of the process, you took the leadership to see what could be done to reform it, to fix it. And I think that's a very, very important model for all of us, in or not in leadership, to look at as we move forward to address not just this type of a concern but the budgetary process and other areas as well.

And to Judge Lippman, I want to

thank you for your availability as we were exploring the problems of the process and as we were looking for solutions. And you were open and frank. You heard criticism. Where it was appropriate, you accepted it, and where it was not, you didn't. But at the same time, you offered, I think, a very positive approach to the concerns that were not only expressed here but also were expressed in those moments that we had together.

And I'm very pleased. For those who are concerned about the injustice of the Rockefeller Drug Laws, there is a judge about to become the Chief Judge of the Court of Appeals who heard that concern, understands that it needs corrections, and is prepared to provide visible leadership -- not just a memo to the parties that are interested, but actually really looking at the problem and making sure that a change, a difference will be made.

And that I think is very, very important for the kind of reform that all of us are looking for, not only with regard to

the Rockefeller Drug Laws but other areas of criminal justice that are important to us.

And I think that yes, the process raised a lot of concerns, from the Governor's office to the man and woman in the street. And we need to see how we can continue the efforts on our part in the Judiciary Committee and other areas to bring about that kind of reform.

But I just wanted to make sure that I lent my voice to your candidacy, to what I believe is going to be an outstanding leadership in the Court of Appeals, and want you to know that I and I daresay all of my colleagues are there to be with you.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Perkins.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

Your concerns about the process of my colleagues is certainly shared by, I think, almost all of us. And the process, as I understand it, is in the process of being

changed.

And so I would like to take these few moments to speak about Jonathan Lippman.

And I feel that if we all loved the courts under Judith Kaye, we will continue to love the courts under Jonathan Lippman. There are no two people who worked more closely together, that shared a similar philosophy of reform of our courts. And I think this is an amazingly good appointment.

And on a personal level, Jonathan lives in my district, Judge Lippman lives in my district and is well-regarded in Rye Brook. And his family is.

And this is person that has not only the intellectual skills, but he also has excellent interpersonal skills and skills of compassion and thoughtfulness. And I think in this appointment we are going to see the finest that we could possibly see.

And, Jonathan, I'm just very happy, not only for you but for us too. And I second the nomination.

ACTING PRESIDENT VALESKY: Thank

you, Senator Oppenheimer.

Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you very much, Mr. President. I too rise to support the nomination of Judge, soon to be Chief Judge Lippman.

Of course I want to add my kudos to my very good friend and chairman of the Judiciary Committee, John Sampson.

And maybe I'm unique, but I'm one of the few lawyers that don't sit on the Judiciary Committee. But I've had the opportunity to speak with a number of the members through the process, to hear their concerns as well as their wisdom.

I want to add a few things. As a practicing attorney, I've had the privilege of working and appearing before a number of judges on the bench. And what I've noticed in my short tenure as an attorney is when Jonathan Lippman became the chief administrative judge for all of the courts in New York State, justice moved. Justice became swift.

It was a problem that numerous practitioners -- it was widely known, the backlogs on the civil side. And quite frankly, with a little bit of an iron fist, but a deft touch, Jonathan Lippman improved the New York State court system.

But I think what's very important to my colleagues, I urge you, take a moment to look at a resume that is not simply one page, but it's a resume of accomplishment and demonstrates the superior legal mind that we are getting in Jonathan Lippman as the Chief Judge for the Court of Appeals.

And you have a difficult chore ahead of you. You are succeeding a great chief judge in Judith Kaye, and it goes on from there. And we could talk about the accomplishments, but I am confident that you are going put your own imprint on the Court of Appeals -- a Court of Appeals that in recent years has seen a little bit of division in terms of philosophies and needs to be the strong Court of Appeals that it once was.

And I am confident that you will

bring that. And I'm confident that when plaintiffs and defendants, prosecutors and defenders come before you on issues, they will get a fair and impartial hearing and the decision that you render or help craft will be one of wisdom and one of fairness.

So I congratulate you today. It's an honor well-deserved. I think all of New York's residents should look forward and should have the confidence that when they appear before you, if they have to appear before you -- and hopefully they don't have to appear before you -- that they will have a wise Chief Judge to make their arguments to.

I congratulate you, I wish you the best of luck.

Thank you very much, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Johnson.

Senator Squadron.

SENATOR SQUADRON: Thank you very much, Mr. President. I also rise in support of the nomination of Chief Judge Jonathan Lippman.

We know and I think we've heard a lot today about how important it is that the scales of justice are fair. But of course it's also very important that the scales of justice work.

And Chief Judge Nominee Lippman's career in the judiciary in this state, really making sure that it works, that our state judiciary works, is so important and so welcome in the position of Chief Judge. It leads to all of the issues we've talked about today, whether it's increasing justice by reforming how we deal with the Rockefeller Drug Laws or increasing access for those who are most in need to our court system. Or making the process that we all go through of jury duty easier so that the civic engagement of it is effective.

And your background on the courts is something that I think will be welcome across the state. But of course there's another background that you have that I want to rise and mention, which is on the Lower East Side of Manhattan, which is where you

come from and what I represent.

And so many of us in this room and across this country started on the Lower East Side; if not personally, our families did. My grandfather did, you did personally. And when you look at these same issues, when you look at questions of equity, questions of justice, questions of diversity, which has been such a subject -- for good reason -- today, the Lower East Side of Manhattan is the best place to find those issues.

And I am confident that with your background there, your history of coming from the place where the melting pot melts, from around the world and then goes forth to the rest of the country, that your focus on the courts and as Chief Judge will help to push for those goals of diversity, of equity, of justice.

And I do, before I sit, just want to also congratulate Senator Sampson for having really brought these issues to the fore at the same time that he moved you forward, so that we can both have a Chief Judge with all

of these skills and also make sure that these issues which have been raised today and so often do not get lost in the shuffle.

So I look forward to working with you. And it is another -- it's a good day for the State of New York and, as so many days are, a good day for the Lower East Side of Manhattan.

Thank you very much.

ACTING PRESIDENT VALESKY: Thank you, Senator Squadron.

Senator Sampson.

SENATOR SAMPSON: Thank you very much.

In closing, I want to thank all my colleagues, especially those who spoke on this nomination.

And, Senator Squadron, as you said, the judge comes from the Lower East Side in your district. But what I can say is you have a kid from Brooklyn who, along with the gentleman from the Lower East Side, is not going to only make change with respect to rhetoric, but we're going to go from hope to

reforming this system.

So, Judge Lippman, I want to commend you. And you heard my colleagues. You know, we don't want to be in the minor leagues no more. We want to be in the major leagues. We don't want lip service as to inclusion, because we want to be included. We want to be at the table when decisions are being made.

But most of all, as Senator Adams said, there is a hole in the blindfold of Lady Justice. And I want to make sure your commitment as well as my commitment is making sure that we change that blindfold and we make sure that the scales of justice are balanced. Because time and time again throughout communities throughout the State of New York, justice is not balanced.

And this is what I talked about when challenging the whole selection process. It's about restoring the faith, the trust, and the confidence in the judicial system. And that's what it's all about.

You know, justice is supposed to be

color-blind, but a lot of times it's not. And that is the reality of the day. And that is the reality of the people on the streets -- in Brooklyn, Bedford-Stuyvesant, East New York, Brownsville -- because we experience it on a day-to-day basis.

So, Your Honor, I want to commend you on being very frank, being very forthright, on listening to us but also implementing, as you're saying, certain resolutions. We're a body that we're not concerned about rhetoric or words, because they are meaningless to us. We want to see action. And we don't want to see action a year from now, two years from now. Action needs to take place as soon as you are sworn in and your confirmation is done here today.

That's what we're about. We're about an active body. We're not a dysfunctional body, we're a body concerned about the issues and concerns of the people in the State of New York, from Brooklyn all the way to Buffalo.

So, Your Honor, I want to commend

you but most of all commend your family on the journey that you have taken.

Thank you very much, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Sampson.

Senator Libous, to close for the Minority.

SENATOR LIBOUS: Thank you, Mr. President.

I rise to support this nominee and this nomination. I have known Judge Lippman for a number of years and have had the pleasure of working with him on a number of very important issues as they pertain to the citizens of the State of New York.

And as many of my colleagues have mentioned, there at least in my opinion is not a more qualified individual, or I would say he is extremely qualified for this chief justice position.

But I want to speak on behalf of those New Yorkers today -- many of my colleagues got up as attorneys and talked about the legal process and their experiences

with Judge Lippman. But I want to speak on behalf of probably some 19 million New Yorkers who are not attorneys. And on behalf of all of them, I want to say that the Governor has picked a man who is compassionate, someone who is a good person, he is kind, he is smart. But as I said before, he is extremely qualified.

I am very pleased that Jonathan Lippman will soon be our Chief Judge on the Court of Appeals.

ACTING PRESIDENT VALESKY: Thank you, Senator Libous.

Senator Smith, to close for the Majority.

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

I rise to second the nomination, to support the nomination of Justice Lippman. But I also want to give a tremendous amount of respect and credit to our chair of Judiciary, Senator John Sampson.

You had to deal with a matter that required you to address your personal

concerns, your concerns on behalf of 19.5 million people in this state, concerns of other legal scholars throughout the state as well as this body of members. And you did it with tremendous respect, you did it with the type of honor and dignity that I think most of our colleagues were able to recognize that you have set the bar higher for chairs.

And I want to tell you myself the respect that I have for you and how you had to deal with this matter, which I know was sensitive to some members as relates to the process, as relates to the selection process, having nothing to do with the candidate. And you did a tremendous job under difficult circumstances at a time when change is in the air, and that's what is present for everyone.

So I want to go on record as saying that I appreciate the difficult situation you were in, I appreciate what you have done, and I would hope all of our colleagues respect you as well as your deputy or your ranker, Senator Maziarz, as well. To both of you, you did a tremendous job, and I thank you on behalf of

the State of New York.

Judge Lippman, Amy, Lindsay, Russell -- to the law firm of Lippman, Lippman, Lippman and Lippman -- this is a proud day for you. It's a proud day for your childhood friend, Sheldon Silver, who I know, while he is not here on the floor, he is watching the proceedings, saying, "Hurry up, guys, get this over with so I can smile."

But I will tell you, I've had the experience of knowing Justice Lippman when I was ranker on Judiciary. And aside from his obvious scholarship as relates to the legal profession, what he has done for the Family Court, which is very important for constituents, in particular black and Hispanic constituents, who that Family Court at one point was like a factory -- and I use that word very guardedly.

And he knows what had to be done to make that system at least give the dignity and respect to individuals who are going through very difficult times. Family Court is a very difficult, pressing matter that weighs on the

heart. And what he did with that system to show and allow dignity and respect for people going through difficult times, I'm hoping that becomes a national model. And so my hat is off to you for that.

This is a good day for us, colleagues. You know, we have three branches of government. We have the executive branch, we have the legislative branch, and we have the judicial branch. And while they are in separate places, they work together for the good of the people of this state, meaning that we get elected because we believe the 300,000 people that we represent believe in us, and so we try to do the best that we can.

The Governor gets elected, along with the Lieutenant Governor and the Comptroller and the Attorney General, and they have a job to do. And now today we have nominated and will be electing Justice Lippman to be the Chief Judge in the highest court of the State of New York, and he will do as we expect to do in terms of representing the people of this state.

So, Judge, this is a good day. Your family, I know -- Amy, it's good to see you resting. Good to see you. And I will be forever grateful to each and every one of you for allowing Justice Lippman to put the time that he's put in.

It's not easy, just like it's not easy for any of us. Our families suffer a great deal because of the absence of that individual. And when he comes home, he's wearing that day. And I know sometimes you have to allow him that space, which is not always easy. And many people don't get that. But as elected officials, one who is constantly having the public on our mind, decisions on our mind, I know how that weighs on you and the rest of the family.

So we appreciate the fact that you have allowed him to take this position. And we would hope that as the future presents itself to us that there will be other individuals who have an opportunity, just as Jonathan Lippman, to rise themselves up to that place as the highest court in the state.

So my hat is off to you and the family. God bless you. We will continue to pray for you as you move forward in this position.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Smith.

The question at this time before this Senate is on the motion to confirm the nomination of Jonathan Lippman as Chief Judge of the Court of Appeals. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The motion carries. The nomination of Jonathan Lippman as Chief Judge of the Court of Appeals is hereby confirmed.

(Lengthy standing ovation.)

ACTING PRESIDENT VALESKY: Judge Lippman is joined in the gallery today by his wife, Amy; his son, Russell; his daughter,

Lindsay. Congratulations and all best wishes.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe Senator Aubertine has a resolution at the desk. I ask that the resolution be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT VALESKY: We'll do that in just a moment, Senator Klein.

Reports of select committees.

Communications and reports from state officers.

Now we're on motions and resolutions.

Senator Aubertine, the Secretary will read.

THE SECRETARY: By Senator Aubertine, Legislative Resolution Number 371, urging the New York State Congressional delegation to support the United States dairy economy in this time of impending crisis.

"WHEREAS, The dairy industry is a keystone industry which not only supports rural communities but enhances other sectors

of agriculture, providing open space for recreation, sportsmen and women, and tourism; and

"WHEREAS, The dairy industry provides an economic impact of an estimated $14,000 per cow per year, primarily in the local economy; and

"WHEREAS, The lack of stable prices, concentration of processing and capacity, outdated regulations and labor shortages are creating a crisis in the industry; and

"WHEREAS, A significant loss of capacity would create a dependence on imported milk and other dairy products and reduce our nation's food security; and

"WHEREAS, The 2008 Farm Bill creates a review process for federal milk marketing orders; and

"WHEREAS, This Legislative Body joins the state agricultural and rural leaders in acknowledging the importance of the dairy industry nationwide, as well as the unique aspects of the dairy industry region by

region, by funding and implementing the federal milk marketing order study as outlined in the 2008 Farm Bill, with regional representation from producers, processors, and state policymakers; implementation of fair tariffs on imported dairy solids; setting regional prices to reflect accurately and realistically the cost of production; and addressing the problems of labor shortages within the dairy industry by providing more opportunity for training and education as well as a fair and sensible approach to imported labor; now, therefore, be it

"RESOLVED, That the New York State Congressional delegation be and hereby is respectfully memorialized by this Legislative Body to support the United States dairy economy in this time of impending crisis; and be it further

"RESOLVED, That this resolution, suitably engrossed, be transmitted to each member of the Congressional delegation from the State of New York."

ACTING PRESIDENT VALESKY:

Senator Aubertine.

SENATOR AUBERTINE: Thank you, Mr. President. Briefly on the resolution.

This resolution was first drafted several weeks ago at the Council on State Governments' Agricultural Chairs Summit. And what that means is that agricultural chairs from all across the country had the opportunity to review and look at this resolution and support it. It was supported unanimously there, and I would certainly hope that we could get all the support we can here for this resolution.

It is important. I think all too often agriculture is not given the status that it should be given. I think that all too often people look at places like Wall Street, they look at the LME, they look at Toronto Stock Exchange, they look at exchanges, the CME, and they look at that as places where wealth is created. It is not. Wealth changes hands there, but wealth is created in places like farms.

And I think it's important that as

we look at the dairy industry today -- and we've seen crisis after crisis in the past, most noticeably in 2006, when nationally and worldwide the dairy industry as a whole was probably in one of the worst financial crises that it's ever been in.

But this year presents, I believe, even more issues for the dairy industry, and probably a worse financial state for that industry.

So with that, Mr. President, I would ask that everyone present support this resolution. It's important not only for the dairy industry but for the state as whole.

So thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Aubertine.

Senator Young.

SENATOR YOUNG: Thank you, Mr. President.

I'm proud to say that in the past few years the New York State Senate has led the charge on behalf of the dairy industry right here in New York State. We started the

Center for Dairy Excellence, we started the Farm Viability Institute. We've strongly supported Cornell University milk programs.

And Senator Aubertine references 2006, and that's when the State Senate led the charge to establish the Dairy Assistance Program, which invested $30 million into our family dairy farms in New York State.

But so much really rests in the hands of the federal government. We do as much as we can in Albany -- and we have done that -- for the dairy industry. But really in Washington it's where the decisions are made that make a difference as to how farmers are able to make a profit or not. And I'm speaking of the milk price and how that is set in Washington.

Our dairy farmers desperately need help right now. Milk prices have reached dangerous lows, and they are facing rising costs with inflationary prices on feed, fuel, fertilizer, and so on. And so it's incumbent on us to raise our voices.

I want to commend Senator Aubertine

for putting in this resolution. And we need to continue to work together with our colleagues in Washington so that they're making the right choices for the dairy industry, because it is an economic engine right here in New York State. So I would urge everyone to get on this resolution.

And again I thank you, Senator Aubertine, for putting this in.

ACTING PRESIDENT VALESKY: Thank you, Senator Young.

The question is on the resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

At the request of the sponsor, the resolution is open for multisponsorship by the entire house. Any member wishing not to cosponsor this resolution should inform the

desk.

Senator Klein.

SENATOR KLEIN: Mr. President, is there any further business at the desk?

ACTING PRESIDENT VALESKY: There is none.

SENATOR KLEIN: I just want to make one brief announcement, Mr. President. Immediately after session, there will be a Banking Committee meeting in Room 124.

ACTING PRESIDENT VALESKY: Banking Committee meeting in Room 124 immediately following the close of session.

Senator Klein.

SENATOR KLEIN: Mr. President, there being no further business, I move we adjourn until Monday, February 23th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT VALESKY: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Monday, February 23rd, at 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 12:43 p.m., the Senate adjourned.)