

1 NEW YORK STATE SENATE

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4 THE STENOGRAPHIC RECORD

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9 ALBANY, NEW YORK

10 March 6, 2007

11 3:12 p.m.

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14 REGULAR SESSION

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18 SENATOR CARL L. MARCELLINO, Acting President

19 STEVEN M. BOGGESS, Secretary

1 Committee at the desk.

2 I ask that we take it up at this
3 time.

4 ACTING PRESIDENT MARCELLINO:

5 Yes, there is, Senator.

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

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

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

14 ACTING PRESIDENT MARCELLINO:
15 Senator DeFrancisco.

16 SENATOR DeFRANCISCO: Thank you,
17 Mr. President.

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

25 It is really an honor for me to

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

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

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

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

25 There's no question, from issues

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

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

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

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

20 SENATOR BONACIC: Thank you,
21 Mr. President.

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

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

7 When Judge Kaye was confirmed
8 14 years ago, Senator Cook made some remarks
9 in the record which I've pulled out. And one
10 of the things he said, and he quoted a
11 newspaper, he wondered how her soft voice
12 would be heard in the courtroom.

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

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

25 Fourteen years later, Governor

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

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

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

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

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

7 Thank you, Mr. President.

8 ACTING PRESIDENT MARCELLINO:

9 Thank you, Senator Bonacic.

10 Senator Saland.

11 SENATOR SALAND: Thank you,
12 Mr. President.

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

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

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

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

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

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

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

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

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

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

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

7 Thank you.

8 ACTING PRESIDENT MARCELLINO:

9 Thank you, Senator Saland.

10 Senator Volker.

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

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

23 SENATOR VOLKER: I'm sorry.
24 Sorry.

25 Anyways, I actually supported

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

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

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

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

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

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

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

25 ACTING PRESIDENT MARCELLINO:

1 Thank you, Senator Volker.

2 Senator Hassell-Thompson.

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

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

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

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

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

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

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

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

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

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

9 Thank you, Mr. President.

10 ACTING PRESIDENT MARCELLINO:

11 Thank you, Senator.

12 Senator Adams.

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

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

25 As a law enforcement person, you

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

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

16 ACTING PRESIDENT MARCELLINO:

17 Thank you, Senator Adams.

18 Senator Schneiderman. Oh, there
19 you are.

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

23 (Laughter.)

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

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

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

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

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

1 district, where the CFE case began by the
2 parents or the school board in Northern
3 Manhattan, children were in overcrowded
4 classrooms with unqualified teachers,
5 graduating year after year after year from the
6 12th grade with an 8th-grade reading level.

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

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

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

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

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

15 Thank you.

16 ACTING PRESIDENT MARCELLINO:
17 Senator Oppenheimer.

18 SENATOR OPPENHEIMER: Thank you.

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

1 their highest courts.

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

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

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

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

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

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

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

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

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

21 Thank you.

22 ACTING PRESIDENT MARCELLINO:

23 Thank you, Senator Oppenheimer.

24 Senator Connor.

25 SENATOR CONNOR: Thank you,

1 Mr. President.

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

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

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

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

1 interpret the Constitution and tell us what it
2 means.

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

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

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

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

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

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

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

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

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

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

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

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

7 Thank you, Mr. President.

8 ACTING PRESIDENT MARCELLINO:

9 Thank you, Senator Connor.

10 Senator Montgomery.

11 SENATOR MONTGOMERY: Thank you,
12 Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Thank you, Mr. President.

8 ACTING PRESIDENT MARCELLINO:

9 You're welcome, Senator.

10 Senator Duane.

11 SENATOR DUANE: Thank you,

12 Mr. President.

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

15 ACTING PRESIDENT MARCELLINO:

16 Senator Liz Krueger.

17 SENATOR LIZ KRUEGER: Thank you,

18 Mr. President.

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

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

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

6 ACTING PRESIDENT MARCELLINO:

7 Thank you, Senator Krueger.

8 Senator Stewart-Cousins.

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

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

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

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

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

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

15 ACTING PRESIDENT MARCELLINO:

16 Thank you, Senator Stewart-Cousins.

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

19 Senator Maziarz, to close.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ACTING PRESIDENT MARCELLINO:

8 Thank you, Senator Maziarz.

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

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

16 (Response of "Aye.")

17 ACTING PRESIDENT MARCELLINO: All
18 opposed, nay.

19 (Response of "Nay.")

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

23 (Extended applause.)

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

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

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

8 Senator Skelos.

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

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

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

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

21 ACTING PRESIDENT MARCELLINO:
22 Senator Johnson.

23 SENATOR JOHNSON: Move the
24 nomination.

25 ACTING PRESIDENT MARCELLINO: