

NEW YORK STATE SENATE

JUDICIARY COMMITTEE

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In the Matter of :
New York State Senate Standing :
Committee on the Nomination of :
HONORABLE JUDITH S. KAYE :
as Chief Judge of the Court of Appeals :

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Legislative Offices
Room 124
Albany, New York

March 6, 2007
Tuesday
10:00 a.m.

P r e s e n t :

- SENATOR JOHN A. DeFRANCISCO, CHAIRMAN
- SENATOR DALE VOLKER
- SENATOR HUGH FARLEY
- SENATOR STEPHEN SALAND
- SENATOR KENNETH LaVALLE
- SENATOR SERPHIN MALTESE
- SENATOR JOHN BONACIC
- SENATOR DEAN SKELOS

P R E S E N T (Continued):

SENATOR KEMP HANNON

SENATOR GEORGE WINNER

SENATOR MICHAEL NOZZOLIO

SENATOR GEORGE MAZIARZ

SENATOR RUTH HASSELL-THOMPSON, RANKING

SENATOR NEIL D. BRESLIN

SENATOR JOHN SAMPSON

SENATOR THOMAS DUANE

SENATOR ERIC SCHNEIDERMAN

SENATOR MARTIN CONNOR

SENATOR DIANE J. SAVINO

SENATOR ANDREA STEWART-COUSINS

SENATOR MARTIN DILAN

SENATOR ANDREW LANZA

SENATOR BILL PERKINS

I N D E X O F S P E A K E R S

<u>WITNESS</u>	<u>Page</u>
Hon. Richard C. Wesley Second Circuit Judge, United States Court of Appeals	55
Hon. Barry A. Cozier Former Assoc. Justice, Appellate Division Former Supreme Court Justice	69
Judith Herskowitz Florida Resident	77
Mark M. Meddaugh, President Association of Judges, New York State Family Court	97
Dean Loren, Out-Of-State Attorney	103
Fern Schair, Senior Vice President American Arbitration Association	112

1 P R O C E E D I N G S

2 CHAIRMAN DeFRANCISCO: All
3 right. I'd like to call the meeting of the
4 Senate Judiciary Committee to order. And
5 the purpose of the meeting today is to
6 consider the nomination of the Honorable
7 Judith S. Kaye of the New York City for
8 reappointment as Chief Judge of the Court of
9 Appeals.

10 There are other committees
11 meeting on various confirmations today so
12 Senators will be running in and out as well
13 as other activities on the budget, so it's
14 sort of a busy day. So what we thought we'd
15 do today is to give the Senators the
16 opportunity to ask questions, to have Judge
17 Kaye speak about her qualifications and her
18 desire to continue as Chief Judge and then
19 give the Senators the opportunity to ask
20 questions and so in case they have to
21 leave, and then we'll go with a list of
22 speakers that we have circulated.

23 Good morning.

1 JUDGE KAYE: Good morning.

2 CHAIRMAN DeFRANCISCO: Please
3 provide whatever information you'd like to.

4 JUDGE KAYE: Thank you. Thank
5 you so much, Senator DeFrancisco, and every
6 single member of your illustrious Committee.

7 This is actually my third
8 appearance before the Senate Judiciary
9 Committee. My first was on September 6,
10 1983 as a candidate for Associate Judge of
11 the Court of Appeals. The first woman
12 nominated by the Governor for the court, I
13 might add. I next came before this
14 Committee on March 17, 1993, always
15 memorable days for me, for the office of
16 Chief Judge, the first woman nominee for
17 that office. Today, in my third appearance
18 before you, I'm pleased to say that we now
19 have four women on the Court of Appeals and
20 one of whom, the Honorable Susan Reed, is
21 seated right behind me, and we happen to
22 have three terrific men as well.

23 CHAIRMAN DeFRANCISCO: Is that

1 an afterthought?

2 (Laughter)

3 JUDGE KAYE: Today I offer the
4 distinction that I will be the first Chief
5 Judge to complete the full constitutional
6 term of office. No Chief Judge before me
7 had completed this full term, and I'm sure
8 glad I didn't know that back in 1993.

9 I mention this background for
10 two reasons, the first is to express
11 profound thanks to the Committee for
12 enabling me to have the most extraordinary
13 professional life anyone could imagine,
14 surely far beyond anything I could have
15 imagined growing up in Monticello or,
16 indeed, lawyering in New York City.

17 My parents, both immigrants to
18 this country, having escaped poverty and
19 persecution in Eastern Europe and beginning
20 their life together as farmers in America,
21 impressed on my brother and me that with
22 education and dedication in this great
23 country, anything is possible; and in our

1 case they were absolutely right.

2 To have the opportunity to sit
3 as the Judge of the Court of Appeals with
4 outstanding staff and colleagues, weighing
5 difficult questions of law to assure a just
6 result in every case in accordance with the
7 will of the framers and the founders was
8 already more than a fantasy fulfilled.

9 The past nearly 14 years as
10 Chief Judge at the helm of the Third Branch
11 of Government have added even more, the
12 opportunity to assure that the superb New
13 York State Judiciary manages its enormous
14 dockets efficiently and effectively with
15 sufficient resources to do so, that it
16 retains integrity and quality and diversity,
17 all extremely important to us; and that it
18 is thoroughly up-to-date in every sense in
19 order to meet the breathtaking demands of
20 our rapidly changing world.

21 I said I had two reasons for
22 mentioning my prior appearances before this
23 Committee, the first to thank you for

1 enabling me to have this glorious
2 professional life in public service.

3 My second reason is to explain
4 why after nearly 24 years I am before this
5 Committee, yet again, to ask for even more,
6 precisely 22 months and 16 days more. I
7 feel that especially now the reasons for my
8 being before you go beyond a selfish love of
9 the position I am privileged to hold.

10 At the Court of Appeals we
11 have two remarkable new judges, Judges
12 Higgin and Jones, who have joined us within
13 the past few months. I humor myself to
14 think that the added stability of my
15 continuing on as Chief Judge, as I am now
16 suggesting, is a factor at this particular
17 moment in the Court's history, to be frank.
18 Already they are running circles around me.
19 But even more, it seems to me that just now
20 there is the opportunity for the Chief Judge
21 to work with the Executive and with the
22 Legislature on so many initiatives that we
23 have been nurturing for years, notably

1 salary reform, making the courts more
2 efficient and easier to navigate, and our
3 town and village justice court action plan.
4 I would like to be part of those ongoing
5 efforts.

6 Unquestionably, all of us have
7 done a lot together to assure the highest
8 level of justice in the State of New York.
9 I'd be most grateful just this one more
10 time, I promise just this one more time, to
11 have this Committee's approval to serve as
12 Chief Judge. Thank you.

13 CHAIRMAN DeFRANCISCO: Thank
14 you very much.

15 Are there any questions?
16 Senator Bonacic.

17 SENATOR BONACIC: We're
18 honored to have you here, Judge Kaye. We
19 have great judges coming out of Sullivan
20 County.

21 JUDGE KAYE: Thank you,
22 Senator.

23 SENATOR BONACIC: And I'm sure

1 you'll get confirmed in that regard. But my
2 question is, and not to worry about
3 political correctness, but what has been the
4 most frustrating part of your service as
5 Chief of the Court of Appeals in your time?

6 JUDGE KAYE: Oh, goodness.
7 Well, I think the principle qualification
8 for Chief Judge is high, wild,
9 unrealistically, insane, optimism, and I am
10 a great optimist. In fact, I think it was
11 Chief Judge Arthur Vanderbilt, Chief Judge
12 Britel who said, you have to be long winded
13 to be a Chief Judge. And, indeed, you do
14 have to be persistent and long winded but I
15 think above all very, very, very optimistic.
16 I always look at the bright side, so rather
17 than look at frustrations I always look at
18 things that make me feel good about things
19 what we have accomplished because
20 unquestionably the greatest source of
21 frustration is the need to accomplish
22 change.

23 People always advocate for

1 change or often advocate for change, and
2 it's always easy to advocate for change for
3 somebody else; it's very hard to accomplish
4 it. And we have in so many ways tried to
5 advocate for change. I would have to tell
6 you, frankly, since I had put salary reform
7 at the very top of my agenda, that I would
8 say that that has caused me the most
9 difficulty and the most frustration, and I
10 simply reflect the views of my colleagues
11 when I say that. Thank you.

12 CHAIRMAN DeFRANCISCO: Thank
13 you. Thank you, your Honor.

14 Yes, Senator Volker.

15 SENATOR VOLKER: I'm looking
16 around and I think I'm the only person here
17 that was -- I'm pretty sure.

18 JUDGE KAYE: You have a lot to
19 answer for.

20 (LAUGHTER)

21 SENATOR VOLKER: Yes, yes, I
22 do. It's a good point. I'll probably have
23 a lot to answer for when I'm done also.

1 I do want to say that -- and
2 first time -- couple times but I don't
3 believe any judges for the Court of Appeals,
4 regardless of the court has as much dignity
5 and straight forwardness that you have but
6 I've said several times that sometimes I
7 think that this state is so complex it's
8 almost as if there's different cultures,
9 upstate, downstate, but my compliments to
10 you for your stick-to-it-ive-ness.

11 JUDGE KAYE: Thank you,
12 Senator Volker. I very much appreciate
13 that. And the truth is we have accomplished
14 a great deal together, have we not?

15 CHAIRMAN DeFRANCISCO: Senator
16 Hassell-Thompson.

17 SENATOR HASSELL-THOMPSON:
18 Yes, thank you. Judge, I haven't been here
19 quite as long as Senator Volker but I have
20 had the opportunity of having you swear me
21 in, this was my fourth term, in January.

22 And everything that I've heard
23 about you has been more than commendable and

1 my grandson likes you, and that's important
2 to me. Tell me a little bit about your
3 decision on the campaign for fiscal equity.

4 JUDGE KAYE: Well, that's an
5 excellent question. Of course, it would be
6 hard for me to elaborate on that decision,
7 or indeed, any decision of the Court, I
8 would be most reluctant to do that. I would
9 do no more than to say that that was an
10 extremely difficult case for the entire
11 Court, and, indeed, it came before me three
12 times. The first time I had to recuse myself
13 from sitting because of an affiliation, my
14 law clerk had married one of the lawyers and
15 I just thought it was too close for comfort
16 and should not sit on that case.

17 I did author the opinion the
18 second time the case came before us, and I
19 was a descenter the third time the case came
20 before us. And, Senator, I think I would
21 have to say that I could do no more than
22 tell you that the Court struggled mightily
23 with those very, very difficult issues,

1 certainly the two times in which I was a
2 participant.

3 SENATOR HASSELL-THOMPSON:

4 Would you give me a sense of what you would
5 believe is the most difficult case before
6 you.

7 JUDGE KAYE: Well, since
8 you've focused my attention on CFE, I'll
9 stay with that for a moment. I will tell
10 you, I can hardly think of an easy case that
11 comes before our bench. By definition, the
12 cases that come before us are really tough
13 because they've come through a lengthy
14 process, usually a trial process, an
15 intermediate appellate court and then they
16 come to the Court of Appeals usually, almost
17 overwhelmingly, by our grant of leave to
18 come to our court. So by definition, every
19 case that comes before us is a really hard
20 case, difficult to decide. CFE I'll single
21 out in particular because it represents a
22 class of cases dealing with a New York State
23 constitution. It's a state constitutional

1 law question. Every constitutional law
2 question is especially hard for us because a
3 constitutional law decision has very deep
4 roots and wide ramifications. We have the
5 principle of stare decisis on our court
6 which means that once you decide something
7 you don't say the next day it was wrong.

8 State constitutional decisions
9 often fracture our court because we are on
10 new turf most of the time, and so I say if I
11 had to single out a class of cases I might
12 pick those, but I'm reluctant to do that
13 because I say we struggle so much with the
14 common law cases, with the statutory cases,
15 trying to implement the will of the
16 Legislature in the statutory cases. So when
17 I say I have a glorious professional life,
18 and I do hope I have communicated to you how
19 much, how privileged I feel to have the life
20 I have, I did not by any means to say it was
21 easy ever. And the decisions of the court
22 are undoubtedly the hardest thing I have to
23 do.

1 CHAIRMAN DeFRANCISCO: Senator
2 Nozzolio.

3 SENATOR NOZZOLIO: Thank you,
4 Mr. Chairman. Good morning, Judge.

5 JUDGE KAYE: Good morning.

6 SENATOR NOZZOLIO: It's always
7 wonderful to see you. And if there's any
8 word to describe you, I'd have to say it's
9 dignity. You have comported yourself
10 throughout your period in court, the times
11 that I have had the privilege of observing
12 you, being with you, one of the most
13 dignified people that I certainly have ever
14 met. And that you are a credit to the court
15 and that we, in spite of the fact that I
16 have much trouble with the diversion of the
17 court from time-to-time, it's sometimes more
18 time than I'd like to think, from strict
19 statutory construction, the legislative
20 intent, the legislative mandate, the
21 legislative decisions, and CFE was certainly
22 one of those cases where I believe that the
23 court did not make the decision on the

1 record or intrude it into a legislative
2 prerogative and the legislative
3 responsibility. But having said that, there
4 is certainly, only with admiration, that
5 I'll be casting my vote for confirmation.

6 If any advice or counsel that
7 I could give the court; and we had Judge
8 Jones before this Committee a few weeks ago,
9 I congratulated him where some of my
10 colleagues were chastising him for strictly
11 construing the laws of this state; that we
12 make the laws for a reason and that as much
13 as we respect the court, we hope that the
14 court will respect the Legislature and the
15 legislative intent on measures in the
16 future.

17 A question to you relative to
18 the state of the Judiciary issue made a few
19 weeks ago, a few days ago, about the number
20 of violent felons that are in the system
21 today, and you have jurisdiction over that
22 process, could you advise my colleagues and
23 myself about what you see in the pipeline,

1 in the criminal justice pipeline, if you
2 will, for the numbers of violent felony
3 prosecutions in this state and the need, in
4 effect, to adequately incarcerate those
5 violent felons as they are moving into this
6 part of the criminal justice system.

7 JUDGE KAYE: That is, of
8 course, a matter of deep concern when I wear
9 my other hat as Chief Judge of the State of
10 New York, and you are absolutely correct,
11 Senator Nozzolio, I did note in my state of
12 the Judiciary measure that for the first
13 time in recent memory the number of felonies
14 that we have in the State Court has gone up.
15 We've been seeing them for some period of
16 time going down. The measures I addressed
17 in the state of the Judiciary were somewhat
18 -- I don't know how to stop crime, I wish I
19 did. And in truth, in my years as Chief
20 Judge what has become increasingly of
21 concern to me are the issues relating to
22 children, and that may be a very naive
23 answer to try to go so far back to prevent

1 crime, but I have devoted myself in so many
2 ways to improving the lives of children and
3 getting them permanency and health care and
4 issues such as that hopefully to divert
5 people from a life of crime and to a life of
6 productive citizenship; I feel that so
7 strongly.

8 The subjects to which I
9 devoted myself in the state of the Judiciary
10 were largely the indigent defense and doing
11 a better job, and I hope over the years
12 ahead that we will be able to work together
13 to assure a good system of indigent defense.
14 And I spoke as well about probation, but I
15 know again I'm not addressing your major
16 concern about how to prevent or deal with,
17 deal with the violent felons. And other
18 than assuring that our courts are up to
19 snuff and handling these cases and dealing
20 with the diversionary and prevention methods
21 that I described, I don't know what more we
22 can do in the court system just to see that
23 these cases are handled expeditiously and

1 well, that's what I think I should be
2 focusing on.

3 SENATOR NOZZOLIO: Well,
4 Judge, again thank you for your service,
5 thank you for the way you've conducted
6 yourself throughout your judicial career --

7 JUDGE KAYE: Thank you.

8 SENATOR NOZZOLIO: -- and that
9 it is a pleasure to know you.

10 CHAIRMAN DeFRANCISCO: Senator
11 Malave Dilan.

12 SENATOR DILAN: Yes. Good
13 morning, Judge. (Microphone Malfunction)

14 JUDGE KAYE: Good morning
15 and thank you. I'm glad you've raised that
16 as well because this has also been a central
17 focus for me for several years. And
18 actually to go back to genesis and tell you
19 how this all started for me, how this got on
20 my plate, as the Chief Judge I am a member
21 of a group called the Conference of Chief
22 Justices. We're about 56 chief justices of
23 the states and territories and

1 commonwealths, and we meet twice a year, and
2 it was at least seven years ago, maybe eight
3 years ago that one of the chief justices, I
4 believe the chief justice of Texas, very,
5 very concerned about abuses in the elective
6 system for choosing judges, convened a
7 meeting of all of the chief judges in states
8 where they had election of judges. And, my
9 goodness, we certainly have read about some
10 of the abuses in Texas, and I'm so thankful
11 that we have nothing like that in the State
12 of New York. But that meeting began a
13 national conversation within the Conference
14 of Chief Justices, every chief justice with
15 an elective system for judges was party to
16 that conference.

17 What it did for us here in New
18 York was to lead us to the appointment of a
19 commission. The commission system has
20 worked so effectively in the State of New
21 York where we assemble a nice group, a very
22 prestigious group of people with special
23 interests and special expertise in the

1 subject. We convened a group which has
2 gotten to be known, become to be known as
3 the Ferrick Commission, and that's the
4 origin of Ferrick Commission. It started
5 out of the concern of the nationwide chief
6 justices to do whatever could be done to
7 curb any abuses in the election system for
8 judges.

9 And I might pause for a moment
10 to tell you that we have a combined system
11 in the State of New York, as you know, of
12 appointed and elected judges, and I think we
13 have a great New York State Judiciary, a
14 really truly superb Judiciary in this state.

15 The Ferrick Commission worked
16 for several years, handed us a couple of
17 reports, excellent comprehensive reports,
18 really fine reports and their essential
19 recommendations came down to three. One was
20 that some change be made in the convention
21 system, that the Ferrick Committee, I
22 believe unanimously opposed a primary system
23 for judges because of the abuses in campaign

1 rhetoric and campaign financing that come
2 with open primaries. And instead they
3 recommended a few changes in the convention
4 system for all of you, I might say. This is
5 clearly not anything that we could or would
6 do, this is absolutely a matter for the
7 Legislature.

8 The Ferrick Committee
9 recommended a campaign ethics group, a place
10 where people in the heat of the campaign,
11 candidates, judges seeking re-election,
12 where they could consult quickly and get an
13 answer as to whether some conduct was
14 prohibited or not, that we could do and we
15 did do. We set up a resource center and I
16 think it's worked very well. And anyone who
17 wants an answer -- hi -- can get one very,
18 very quickly to a pending question.

19 The third recommendation,
20 general recommendation of the Ferrick
21 Commission was to organize independent
22 screening committees so that anyone who went
23 on the ballot would have kind of a seal of

1 approval and this would happen early in the
2 process, this would not be something that
3 would influence who got elected.

4 We very much hope that the
5 Legislature would do this, would organize
6 independent screening panels. In the
7 interim, we have gone forward believing that
8 it is within our authority. We have done
9 statewide independent screening panels, but,
10 goodness, nothing would please me more,
11 nothing than to have all of you adopt this
12 procedure and you would, of course,
13 immediately supplant our committees with our
14 most profound gratitude. I hope I haven't
15 over-answered your question.

16 CHAIRMAN DeFRANCISCO: Senator
17 Saland.

18 SENATOR SALAND: I recall the
19 Jacobs case and quite candidly I was
20 troubled by the decision of the
21 determination. (Microphone malfunction)

22 JUDGE KAYE: Well, again
23 focusing on that particular case makes me

1 uncomfortable not because of the case but
2 because I would have the same answer for any
3 case which is we hold what we hold in the
4 decision and steadfastly do not explicate
5 our decisions.

6 I believe in CFE-2 that we did
7 set forth many precedents for that
8 proposition, Senator Saland, and in CFE-3 we
9 were applying the decision in CFE-2. We
10 were -- CFE-3 was a determination of amount
11 for which the basic authority was
12 articulated in CFE-2. But let me tell you,
13 my process always is the same. I come to
14 this with no preconceived philosophy or
15 political end, and I just try to do the best
16 I can in each of these cases. When it's a
17 matter of statutory interpretation, as in
18 the Jacob-Dana case, I read everything I can
19 and three other judges thought that that was
20 the correct statutory interpretation. I
21 can't count the number of times that we
22 recite, that we are in matters of statutory
23 interpretation applying the will and intent

1 of the Legislature. These are not idle
2 words, we honestly do try to do that. In
3 other cases such as Senator Nozzolio raised,
4 the CFE case, that was a matter of a state
5 constitutional law; and again, we try and
6 study all of the references and read the
7 briefs and do the best we can. And I just
8 really can't elaborate more on how we --
9 four of us arrived at one result and three
10 of us arrived at another, but I can tell you
11 it was an honest effort in each case to
12 apply the law and not any philosophy or
13 political end.

14 SENATOR SALAND: (Microphone
15 malfunction)

16 JUDGE KAYE: Well, I want to
17 say, Senator Saland, I couldn't agree more
18 with you. I totally agree with everything
19 you've said. It would be a terrible thing
20 for us to usurp legislative authority or
21 reach for a political end and I just cannot
22 agree that the court does that or that I do
23 that.

1 SENATOR SALAND: Thank you.

2 JUDGE KAYE: Thank you.

3 CHAIRMAN DeFRANCISCO: Senator
4 Stewart-Cousins.

5 SENATOR STEWART-COUSINS: Good
6 morning, Judge.

7 JUDGE KAYE: Good morning
8 Senator.

9 SENATOR STEWART-COUSINS: It
10 is really certainly an honor to be in this
11 position and to have you there in your
12 position. I have only heard the very, very
13 best of what you've brought to the bench.

14 JUDGE KAYE: Thank you.

15 SENATOR STEWART-COUSINS: And,
16 unlike many of my colleagues here, probably
17 I guess I'm the only one who's actually had
18 a case --

19 JUDGE KAYE: Yes, you have.

20 SENATOR STEWART-COUSINS: --
21 that came from the court, and it was that,
22 although I realize that it's very hard for
23 you to, you know, actually rehash all the

1 deliberations and so on and so forth, but I
2 guess in this position now I have to ask
3 what it is that we could possibly do in
4 terms of the election law. The case in 2005
5 went through a number of channels and in
6 terms of the voting and whose ballots were
7 counted, every court reached a different
8 decision. The judge in the first case
9 decided that he was only going to keep
10 people who went to the right place and the
11 wrong pew, as they say.

12 In the Appellate Division they
13 decided that it would only be those who were
14 actually the pole inspectors. When it got
15 to the Court of Appeals it was both of the
16 categories, but the people who had gone to
17 the wrong church and the wrong pew were not
18 able to have their votes counted.

19 So my question is whether
20 there is much more that we need to do in
21 terms of election protection and voter
22 protection when you can go to three
23 different jurisdictions and have three

1 different conclusions.

2 Is there something that needs
3 to be tightened up or is it structurally
4 that way to give fluidity and flexibility in
5 terms of the case-by-case? And is New York
6 State doing as much as it possibly can,
7 frankly, to protect the votes of eligible
8 voters?

9 JUDGE KAYE: Well, I haven't
10 looked lately but I remember years and years
11 ago that we had half the election cases in
12 the entire country here in the State of New
13 York. My sense, just from looking at the
14 Court of Appeals docket is that that has
15 been greatly ameliorated. There have, of
16 course, been changes in the statute that I
17 know from our own dockets that we have many
18 fewer election cases than we used to, so I
19 have to draw the conclusion from the
20 circumstantial evidence that some of the
21 contention and ground for contention has
22 been addressed by statutory reform.

23 As for differences going all

1 up the scale, oh, my goodness, I said a few
2 moments ago that I thought we had a superb
3 dedicated wonderful State Judiciary, strong
4 independent people doing their own homework
5 and trying their best to arrive at a good
6 result. I can't think there's anything on
7 earth that's ever going to eliminate the
8 differences among us, and, believe me, we
9 try to accommodate them, especially at the
10 Court of Appeals, try to accommodate
11 differences and articulate them all in a
12 strong unified opinion but you can't always
13 do that and there are necessary differences
14 along the way.

15 CHAIRMAN DeFRANCISCO: Senator
16 Savino.

17 SENATOR SAVINO: Thank you.
18 Thank you. I'd like to thank you for your
19 service to the State and also thank you for
20 being involved.

21 In the next few years, what
22 would you like to do, what would your top
23 priority be, what would you like to

1 accomplish in the time that you would serve
2 as Chief Judge?

3 JUDGE KAYE: Well, as I
4 mentioned in my brief opening remarks, this
5 matter of -- I cannot tell you how
6 frustrating and difficult this issue of
7 judicial compensation is and I could never
8 answer a question like that without
9 underscoring that heartily. And the other
10 issues mentioned, the town and village
11 justice courts, the issues that I outlined
12 in my state of the Judiciary, I would like
13 to see those come to fruition.

14 But I want to come back to the
15 issue of children, and, in fact, this week
16 starting Wednesday, which is, goodness,
17 tomorrow, we have a Children's Summit
18 because quite honestly I thought that I
19 might be finishing my term now. I didn't
20 know that I would have the privilege of
21 renomination, and I thought I wanted to end
22 it by bringing together just a group of
23 chief judges, judges, child advocates to

1 gather around the subject of children and
2 how we might better serve children because I
3 think it's something we owe children but I
4 think we're also feeding the network that
5 Senator Nozzolio has mentioned of criminals.

6 You know, so many children
7 graduate from Family Court into Criminal
8 Court; so my thought was to convene this
9 group, and we have 200 coming from all over
10 the country to find ways to expedite
11 permanency for children, to get every child
12 a permanent loving nurturing home, just do
13 everything we can to improve their lives.
14 And our lead theme is, it's their future,
15 it's ours too.

16 So I think in the next couple
17 of years, in addition to the initiatives
18 that I've outlined in my state of the
19 Judiciary, I would hope that we could make
20 noticeable improvement bringing down the
21 number of children in foster care, the
22 number of abused and neglected children,
23 bringing up the number of adoptions and

1 permanency for children. I mean, this is
2 something I would hope within my embed as
3 Chief Judge of the State of New York that I
4 could make some significant progress in
5 doing.

6 CHAIRMAN DeFRANCISCO: Senator
7 Duane, then Schneiderman.

8 SENATOR DUANE: I wanted to
9 thank you, Judge Kaye, from the bottom of my
10 heart for your years of service and your
11 efforts for really what has thus far been
12 the legacy.

13 I wanted to ask if you could,
14 just for a moment, tell me what you think
15 the overall role of the Court of Appeals was
16 and should be regarding civil rights in
17 general. And also maybe if you could
18 discuss Judiciary and its role as well.

19 JUDGE KAYE: Well, I want to
20 start by saying that present company aside I
21 think we should all be proud and happy about
22 the Court of Appeals of the State of New
23 York. I think it is just a remarkable

1 institution with wonderful hard-working
2 judges.

3 The Court of Appeals is a
4 court of law, as you know the highest court
5 of the State of New York with
6 constitutional, statutory and common law
7 cases that come before it. I have no
8 question about the role of the court and I
9 have no question about my Chief Judge role
10 at the Court of Appeals which is to apply
11 and enforce the law as best we can, whatever
12 the subject, civil rights, and, you know, to
13 study the law and to reach decisions within
14 the law.

15 I have an additional
16 responsibility as Chief Judge and I have
17 seen some criticism sometimes of positions;
18 for example, I remember one in particular
19 standing on the steps of the Capitol
20 advocating for victims of domestic violence
21 and, boy, I'll put that on my list, too,
22 Senator Savino.

23 But I have the additional role

1 as Chief Judge of the State of New York
2 which is an executive administrative role,
3 which goes beyond the role of the Court of
4 Appeals and Chief Judge of the Court of
5 Appeals, and that is to promote the
6 efficient and effective operation of the New
7 York State Court System in general. And
8 that is a different authority, that is a
9 broader and different authority than as
10 Chief Judge of the Court of Appeals. And
11 within that, just to take the example of
12 diversity, I am certainly a beneficiary of
13 efforts to diversify the Court of Appeals,
14 the legal profession to go back even
15 further, and apart from my selfish interest
16 it's something I believe profoundly in, that
17 our society is only the beneficiary of
18 efforts to promote diversity, and I intend
19 to commit myself fully to that end, whatever
20 the subject. And that just in short is a
21 very overall view of how I might answer your
22 question.

23 CHAIRMAN DeFRANCISCO: Senator

1 Schneiderman, then Perkins.

2 SENATOR SCHNEIDERMAN: Yes.

3 Thank you, Senator.

4 Judge Kaye, it's always a
5 pleasure to see you and it's really an honor
6 to be here with you as Chief Judge.

7 JUDGE KAYE: Thank you.

8 SENATOR SCHNEIDERMAN: When
9 you were at -- did you work on this at all.
10 It was the first trial I ever lost and I was
11 beaten by those guys.

12 (Laughter)

13 CHAIRMAN DeFRANCISCO: And it
14 wasn't the last one.

15 JUDGE KAYE: Well, prudence
16 tells me to say I was not involved.

17 (Laughter)

18 CHAIRMAN DeFRANCISCO: Just to
19 complete the record, he's lost many since.

20 SENATOR SCHNEIDERMAN: My
21 question for you is really to focus on the
22 area of money for civil legal services which
23 many of us view as travesty. Could you say

1 something about the extra \$5 million and how
2 you think that will be administered? Do you
3 have any thoughts about that, and how far
4 that gets us down the road?

5 JUDGE KAYE: Well, obviously
6 it doesn't get us very far down the road,
7 but as I said a few moments ago I am an
8 optimist. I look at the good news and I
9 think anything that augments, supplements
10 civil legal services is very much to be
11 celebrated. So I am delighted that we will
12 have these extra few dollars to commit to
13 civil legal services.

14 You know, we have any number
15 of initiatives that we have been promoting,
16 and I think we're on the horizon of some
17 very good steps to assure civil legal
18 services. And, indeed, I'm equally
19 committed to the indigent defense as well.

20 But on the civil front, we
21 have one whole administrative judge devoted
22 to finding ways to stimulate within the Bar
23 pro bono services at the same time that

1 we're working to better compensate people
2 for furnishing those services so I can
3 assure you this will always be a high
4 priority for the court system well before me
5 and beyond me, but hopefully for all the
6 time that I'm there this will be a very high
7 priority.

8 SENATOR SCHNEIDERMAN: Have you
9 had any thoughts about how we should handle
10 that?

11 JUDGE KAYE: Do you?

12 SENATOR SCHNEIDERMAN: Yeah, I
13 think we probably need a relatively
14 structure where it's housed.

15 JUDGE KAYE: We're happy to
16 accommodate it or to support your other
17 efforts to better serve this community.

18 CHAIRMAN DeFRANCISCO: Senator
19 Perkins.

20 SENATOR PERKINS: Thank you.
21 Good morning, Judge.

22 JUDGE KAYE: Good morning,
23 Senator

1 SENATOR PERKINS: For the next
2 22 months --

3 JUDGE KAYE: And 16 days.

4 SENATOR PERKINS: -- and 16
5 days, I don't want to take a day away, I'm
6 sure we'll be very happy to have you.

7 I also want to thank you for
8 your response to Senator Duane's question.
9 It's a very, very important part of the
10 process that speaks to the integrity and to
11 the faith that people have in the process.
12 Significant in that, however, is another
13 part of the system and that's the part where
14 the police play a role, which very often
15 results in a sense of a lack of justice in
16 terms of some of the processes and
17 particularly with regard to how they
18 interrogate suspects. And there have been
19 instances that I am personally familiar with
20 where professions have been found to have
21 been coerced. And I was wondering what your
22 thinking was in regard to the possibility of
23 videotaping the interrogations of witnesses?

1 JUDGE KAYE: Well, an
2 interesting suggestion, Senator Perkins. I
3 think you'll find in a footnote in one of my
4 decisions I -- quite frankly, I haven't gone
5 back and looked at it in a long time.
6 People against Combest, that I did make the
7 suggestion and it was my signed writing but
8 joined in by the full Court, I believe, that
9 it would be a good idea if prosecutors
10 videotape confessions. But just to stay
11 with the theme that we've discussed around
12 the table, it's not for the Court of
13 Appeals, it's not for the Chief Judge to
14 prescribe that prosecutors videotape
15 confessions. If you look at that footnote,
16 I remember -- I say, I haven't looked back
17 at it in a long time, but I do remember very
18 strongly suggesting that it would be a good
19 idea for them to do that in the future. But
20 not for me to do that.

21 SENATOR PERKINS: Well, I
22 thought I said interrogations.

23 JUDGE KAYE: Interrogation,

1 I'm sorry. Interrogations.

2 SENATOR PERKINS: Sometimes
3 precedes confessions.

4 JUDGE KAYE: Yeah, I
5 understand. Yes, of course. This was
6 interrogation that was at issue in the case.

7 CHAIRMAN DeFRANCISCO: Senator
8 Perkins.

9 SENATOR PERKINS: Your case
10 that you cited was in support of such --

11 JUDGE KAYE: It made the
12 suggestion, but I say clearly beyond our
13 authority as a court, clearly beyond my
14 authority as Chief Judge to prescribe that.

15 SENATOR PERKINS: Thank you.

16 CHAIRMAN DeFRANCISCO: Any
17 other Senators wishing to speak. Senator
18 Connor.

19 SENATOR CONNOR: Thank you and
20 good morning. Very, very appropriately and
21 aggressively taken action with respect to
22 and concerns and other appointments by the
23 courts read by a set of rules there no judge

1 in the State of New York may appoint the
2 child of any other judge in the State of New
3 York, and this rather bothers me
4 constitutionally. I -- well, you lawyers,
5 you know, estranged from his mother in
6 Suffolk County, the judge in Suffolk County,
7 judges in Buffalo having no idea of the
8 nature and why is that?

9 JUDGE KAYE: Well, tough
10 hypothetical in the one that you give, but
11 just think of the innumerable other
12 instances where the public perception would
13 just be so bad if we permitted that. And
14 that, of course, was a driving force in the
15 -- in all of the rules adopted by the
16 Administrative Board of the Courts.

17 SENATOR CONNOR: Thank you.

18 JUDGE KAYE: Mm-hmm.

19 CHAIRMAN DeFRANCISCO: Senator
20 Duane had one last question.

21 SENATOR DUANE: Thank you. I
22 want to preface this by just saying, I just
23 wanted to commend on your ideas to set up

1 the commission on matrimonial issues which
2 came out with just an outstanding report in
3 which I am grateful for the task force. I
4 commend all the work you have done on that.

5 You know, in the summertime I
6 try to visit and I had occasion to see the
7 Supreme Court and as well as the Family
8 Court where I stayed a couple of days this
9 fall. I observed one court which I couldn't
10 help but to notice that no matter which of
11 the several parts of the Family Court that I
12 observed, they were overwhelmed and I'm just
13 wondering if you have any thoughts on what
14 we might do as legislators to try to
15 alleviate what really I think objectively I
16 would say was just an overwhelmed Family
17 Court System, at least in three of the five
18 boroughs in New York City that I observed.

19 JUDGE KAYE: Well, Senator
20 Duane, I just couldn't agree more with you
21 that we drastically need some change in the
22 Family Court where the judges again -- and
23 the matters of course are so very stressful,

1 difficult.

2 In the Family Court last year
3 we had about 700,000 filings. We have 154
4 Family Court Judges. So my immediate answer
5 to your question is we desperately need more
6 Family Court judges, and we are asking for
7 39 more Family Court judges, and we -- if we
8 haven't already submitted our proposal to
9 you documenting the need for these
10 additional judges, then you will have that
11 very, very shortly.

12 And I think that would go a
13 great way, a great way to helping the Family
14 Court. And this is a matter of utmost
15 urgency to get more judges in the Family
16 Court. And I think that would help
17 tremendously with what you -- but just, I
18 say, do the math, 154 judges, 700,000 new
19 filings. Pretty staggering. Give us more
20 judges.

21 CHAIRMAN DeFRANCISCO: Senator
22 Hassell-Thompson.

23 SENATOR HASSELL-THOMPSON:

1 Thank you. Judge, just one final question.
2 In 2004, the Court of Appeals struck down
3 the State's death penalty provision on a
4 technicality. What new opportunity, if any,
5 does this now give the High Court to involve
6 itself in the capital punishment debate?

7 JUDGE KAYE: Well, I think we
8 had the case, we made the decision and that
9 just decided that case and that issue. I
10 know there is pending another death penalty
11 issue, a case called People against Taylor,
12 which the Court will hear in the next few
13 months, but that pretty well defines the
14 involvement of the Court of Appeals. That
15 absolutely defines the involvement of the
16 Court of Appeals to decide the cases that
17 are before it. We had that case that we
18 decided, and we'll have People against
19 Taylor which we will decide.

20 SENATOR HASSELL-THOMPSON:
21 Thank you, Judge.

22 JUDGE KAYE: Thank you.

23 CHAIRMAN DeFRANCISCO: Anyone

1 else? I just had a couple of areas that I
2 wanted to go over because I know that reform
3 is high on your agenda, but reform isn't
4 necessarily, depending upon your point of
5 view, necessary in some cases. And one of
6 them we talked about a minute ago, was
7 appointed judges as opposed to elected
8 judges.

9 Now, in discussing the current
10 report, I think it was Senator Dilan who had
11 asked about it, you indicated that whatever
12 the solution is was it going to be, it was
13 going to be absolutely a matter for the
14 Legislature. And on the other hand, one of
15 the recommendations of the Ferrick
16 Commission was to have judicial screening
17 committees which would seem to me to be part
18 of the administration or rule making
19 concerning elections, and you took that
20 recommendation and determined that you were
21 going to appoint -- you were going to create
22 a system of review of judicial
23 qualifications and appointed various people

1 in each judicial district to review the
2 qualifications and indicated they're there
3 to review qualifications. Now, how do
4 you -- what is your basis for authority to
5 do that? What is your authority for that?

6 JUDGE KAYE: Well, I'll just
7 step back a tiny bit, Senator DeFrancisco,
8 to assure you that just as this matter of
9 judicial selections is right at the top of
10 the list of the Legislature, it is also of
11 great concern to us within the court system.
12 We want the very, very best judges, elected
13 and appointed judges, because of the
14 enormous demands on our system and because
15 we so desperately need the trust and
16 confidence of the public.

17 And as I mentioned in response
18 to Senator Dilan's questions, we have been
19 on this issue for probably seven years since
20 it first became a subject of national
21 attention, and need I tell you of local
22 attention right here in the State of New
23 York as well, so we have been ringing our

1 hands to think what we could do -- and now
2 we know, and I absolutely am clear that the
3 system is one for the Legislature. I
4 believe that very firmly.

5 But I think within the
6 authority of the Chief Judge and the Chief
7 Administrative Judge to whom I delegate
8 responsibility, that there is room for this
9 screening mechanism.

10 We studied the entire issue
11 very carefully; studied the Ferrick reports
12 very carefully and it's clear that so many
13 parts of this question are well beyond us.
14 But the idea that we could find the very
15 best lawyers and non-lawyers to evaluate
16 candidates, you know, I guess it really --
17 the point really goes back to the fact that
18 judicial elections are different, there's no
19 question that they're different. And the
20 idea of -- until we have public financing of
21 campaigns, the idea that judges could go out
22 to the public, raise millions of dollars to
23 conduct campaigns, just engage in unbridled

1 campaign rhetoric, the sort of things that
2 one is accustomed to in getting the best
3 candidates in the political process, to me
4 that's just unthinkable in judicial
5 elections.

6 So we have to find a way, all
7 of us together, we have to find ways to
8 inform the electorate about the
9 qualifications of the candidates short of
10 people taking the stand and saying, I
11 support abortion, I'm against, abortion, I
12 support the death penalty. We don't want
13 judicial candidates to have to go out there
14 and do that sort of thing, so we thought
15 within the entire ambit of recommendations
16 of the Ferrick Commission that this was a
17 little piece that we could do to give voters
18 some information -- more information about
19 the candidates.

20 And I think if you look at the
21 people we've appointed, they've been -- it's
22 been a joint project of the local -- State
23 and local Bar Associations. I think it's

1 just a pretty spectacular group, and with no
2 intention of interfering at the end of where
3 candidates -- you know, we don't put
4 candidates on the ballot and we don't keep
5 candidates off the ballot. Candidates go on
6 the ballot, anyone who'd like to go on the
7 ballot can go on the ballot. It's just that
8 there would be kind of this review that
9 would say, this person is well qualified;
10 and that's something that we sort of owe the
11 electorate.

12 And, quite frankly, Senator,
13 we wish you would do this. We hope you
14 would do this and immediately supplant all
15 of the efforts that we've undertaken
16 statewide.

17 CHAIRMAN DeFRANCISCO:
18 Exactly, but this goes to the issue Senator
19 Saland and others have spoken about, the
20 separation of powers, and, you know, far be
21 it for me to question a decision that a
22 judge makes. Decisions got to go some way
23 and you're going to have a rationale and we

1 can disagree, but what I'm talking about
2 here isn't the merits of having these
3 groups. I'm talking about who's role is it
4 to really set the parameters for elections,
5 because there's elections right now. And I
6 could not find, quite frankly, any authority
7 for the courts to set up a system that puts
8 a layer into the election process. And I
9 thought maybe you might have had some
10 authority that you could have mentioned.

11 JUDGE KAYE: Well, there's no
12 question that it's within the legislative
13 prerogative to set up the parameters of
14 elections. We are not setting up the
15 parameters of elections.

16 CHAIRMAN DeFRANCISCO: All
17 right. With respect to -- just following up
18 on that, and your qualifications committees,
19 do they -- the judges do not have to appear
20 before them, correct? There's no
21 requirement to appear.

22 JUDGE KAYE: That's correct.

23 CHAIRMAN DeFRANCISCO: Okay.

1 And doesn't it -- if you choose not to
2 appear for whatever reason, maybe you've got
3 a philosophical feeling that this type of
4 thing is really left to the Legislature and
5 I don't want to participate in it. Doesn't
6 that put that individual, if it's a sitting
7 judge or not a sitting judge, at a
8 disadvantage in the election process? It
9 sets almost an inference that maybe there's
10 something wrong about that judge.

11 JUDGE KAYE: Well, first of
12 all, that person, of course, would be on the
13 ballot anyway. I say, we don't put people
14 on the ballot or keep people off the ballot.
15 And what this person would have an
16 opportunity to do is to explain to the
17 public why he or she chose not to go before
18 the commission, believing that we don't have
19 the authority to constitute them, that we're
20 somehow inept or whatever.

21 CHAIRMAN DeFRANCISCO: And you
22 don't believe that there's a negative
23 inference from that?

1 JUDGE KAYE: Well, we hope
2 people would choose to come before this
3 really first rate -- but the idea is to give
4 the voters the very best information that
5 they can have so they can cast an informed
6 vote.

7 CHAIRMAN DeFRANCISCO: Okay.
8 And also we've been going through the budget
9 process now and the Legislature has agreed
10 on some new budget measures to disclose
11 fully what -- with each line of spending in
12 the legislative bills, the legislative
13 recommendations in the budget process, and
14 the final budget will have those line items
15 for the Governor to do what he wants with
16 them. Would you, as Chief Judge, have any
17 objection to the Judiciary budget being
18 presented in the same way, that full
19 disclosure of spending in that budget?

20 JUDGE KAYE: Well, we've
21 always prided ourselves on having a
22 transparent budget, so I don't know what I'm
23 walking into with answering your question

1 with a yes or a no. And I say transparency
2 is very important to us so we always want to
3 have a transparent budget. And I think as
4 the Chief Administrative Judge we have Mr.
5 Transparency himself, Judge Littman.

6 CHAIRMAN DeFRANCISCO: Yeah,
7 he is kind of transparent. No, thank you
8 very much. Any other questions or comments?
9 I thank you.

10 JUDGE KAYE: Thank you. Thank
11 you.

12 CHAIRMAN DeFRANCISCO: It is a
13 pleasure for all of us to have you here.

14 JUDGE KAYE: Thank you. Thank
15 you so much.

16 CHAIRMAN DeFRANCISCO: Okay.
17 Thank you. Now, there are several speakers.
18 Well, there's basically some speakers in
19 favor, some opposed. But I just want to
20 caution everyone that what we're here for as
21 demonstrated by the questions that were just
22 asked, we're here to determine one thing,
23 the qualifications and fitness of this

1 nominee to continue on as the Chief Judge of
2 the Court of Appeals. That's the purpose,
3 and I am going to cut anyone off that goes
4 into something beyond that -- the purpose of
5 this Committee.

6 The first witness is Honorable
7 Richard Wesley, Circuit Judge, United States
8 Court of Appeals, Second Circuit.

9 HON. RICHARD C. WESLEY

10 **Second Circuit Judge**

11 **United States Court of Appeals**

12 JUDGE WESLEY: Chairman

13 DeFrancisco, members of the Senate,
14 Judiciary Committee, interested observers,
15 it is a distinct honor for me to appear here
16 today before this Committee to support the
17 nomination of Judith S. Kaye for Chief Judge
18 of the New York Court of Appeals.

19 I have to also confess it's a
20 great thrill for me to come back to Albany,
21 quite frankly a second home for me, and good
22 be among so many friends. I see several of
23 my former colleagues and my assembly have

1 stayed around for my testimony. I don't
2 know if that's good or bad, Mr, Chair, but
3 they're here, nonetheless, and I have to
4 deal with it.

5 I want the Committee to know
6 that I have consulted with all of my former
7 colleagues who served under Chief Judge Kaye
8 while I was at the New York Court. By my
9 count, that is three Republicans, one
10 Democrat, our brother Vito Titone is no
11 longer with us although I had a spiritual
12 sensation this morning of his viewpoint, and
13 one Independent. And we are unanimous in
14 our endorsement for a second term for our
15 Chief Judge.

16 Now, I might add that
17 unanimity is not a feat that those of us
18 that served under Chief Judge Kaye were
19 always able to accomplish during our time
20 together on the High Court.

21 My task this morning is to
22 give you a judicial perspective on what
23 Judith Kaye has meant to the New York

1 Unified Court System during her 14-year
2 tenure as Chief.

3 I think it appropriate to
4 begin with how I first met Judith Kaye for
5 it says, in my view, a great deal about her.
6 In the spring of 1993 I was the Supervising
7 Judge for the Criminal Courts of the Seventh
8 Judicial District, as Senator Nozzolio
9 knows, the western part of the state and the
10 Finger Lakes region that he represents. We
11 were experiencing a monumental back log in
12 criminal cases in Monroe County in the
13 Rochester community. I assembled a
14 committee of judges, prosecutors, defense
15 counsel and court staff to address that
16 problem.

17 The solution, felony
18 screening, presented a new way of handling
19 felony cases without compromising public
20 safety or the rights of the accused. The
21 process allows prosecutors and defense
22 counsel to quickly identify cases that might
23 be resolved by a plea before they're waived

1 to the Grand Jury.

2 We began our trial run of the
3 procedure in early April of 1993. One day,
4 as I was conducting court, taking pleas and
5 setting up conference dates, we had a
6 visitor. In walked the recently confirmed
7 Chief Judge. Of course, everything just
8 stopped. The Chief, with a pleasant smile,
9 said good morning to all and asked us to
10 proceed with our business. After court,
11 Judge Kaye came back to my Chambers. As some
12 of you may know, Judith's undergraduate
13 training was in journalism. She never lost
14 that inquisitiveness or the steady barrage
15 of careful questions that those in the press
16 like to practice. She had lots of questions
17 and was most attentive to my answers.

18 She encouraged me to keep
19 careful track of the results of our efforts
20 and to make sure that we got them out to
21 judges, legislators and other policymakers
22 so that they might benefit from our
23 successes and learn from our failures.

1 Thereafter, she regularly
2 corresponded with me, always asking about
3 the program and its progress. Felony
4 screening remains a vital fixture of the
5 criminal justice process in Monroe County to
6 this day and has been adopted quite
7 frequently around the state.

8 My experience with Judith Kaye
9 and felony screening parallels that of many
10 other hard-working and committed judges
11 across the state. No other judge has
12 presided over such a time of dynamic change
13 in how our courts operate and deliver
14 justice to New Yorkers than Judith Kaye.

15 Chief Judge Kaye has created
16 an environment where judges, lawyers, court
17 staff and lay people have been empowered to
18 look at our courts and ask, can't we do
19 better. The resounding answer has been yes.
20 The brilliance of Judith Kaye's leadership
21 is in her unbridled faith that people of
22 good will can come together and find common
23 ground to produce new solutions to long-

1 standing problems.

2 The list of creative, careful
3 reforms that she has nurtured is too long to
4 recite in full here today. Drug court,
5 Senator DeFrancisco, even in Livingston
6 County, a county of 60,000 people, we have a
7 drug court. The domestic violence part
8 where one judge hears all aspects of
9 domestic violence mentioned earlier.
10 Community courts, mental health courts, jury
11 reform. As I said, the list goes on and on.

12 No one in this great state of
13 ours has done more to ensure that the courts
14 of New York are open for the people's
15 business and that all who come to have their
16 grievances heard, be it a sophisticated
17 multi-national corporation involved in a
18 contract dispute in the commercial part or a
19 desperate mother looking for child support.

20 The Chief Judge's focused
21 devotion to leaving our court system better
22 than when she took its helm will be a
23 lasting testament to her vision, her energy,

1 her sense of purpose.

2 But the Chief Judgeship is
3 more than administrative responsibility.
4 The Chief is the head of the New York Court
5 of Appeals. The court is a direct
6 reflection of the chief stewardship and what
7 a wonderful court it is and what a wonderful
8 six-and-a-half years I enjoyed there.

9 In my new job, Senator, at the
10 Second Circuit, I am often called upon to
11 examine the State's laws to resolve a
12 dispute. With all due respect to the other
13 49 states, New York remains the gold
14 standard for State law issues. New York law
15 remains the bedrock of commercial
16 transactions around the world. Contracts
17 stipulate New York law to resolve complex
18 commercial transactions. The world
19 continues to respect the views of the New
20 York Court when businesses cannot resolve
21 their disputes. No other high court in the
22 nation receives more certified questions
23 from the Federal Court than the New York

1 High Court.

2 Certification is a procedure
3 where a federal court asks for help from a
4 state high court on an issue of state law
5 that is as yet unresolved and is
6 determinative of the federal case. Chief
7 Judge Kaye has been an enthusiastic
8 supporter of the certification process.

9 Judith Kaye brings the same
10 skills to her work at the court that she
11 employed as the Chief Judge of the Unified
12 Court System. She is always prepared, she
13 listens carefully to the views of her
14 colleagues, she conducts court with fairness
15 and dignity. She is first among equals.
16 The result is that the Court has remained a
17 constant during her tenure.

18 To be sure, the law has
19 changed in a number of areas and done so not
20 always without disagreement. For in any
21 appeal there are always those who have a
22 sense of winning and those who have a sense
23 of losing, but whatever the result it has

1 always been without any public display of
2 rancor among the judges that has plagued a
3 number of other high state courts in the
4 last few years, including Michigan and
5 Texas.

6 Much is often made of judicial
7 philosophy, indeed often times there are
8 questions during a confirmation about
9 judicial philosophy. I face those questions
10 myself on a number of occasions. I suppose
11 it is easier to understand a judge's efforts
12 if one is able to cabin the judge's views
13 into a particular camp. While it may make
14 good copy for the media, I fear it
15 simplifies things a bit too much.

16 I sat on hundreds of cases
17 with Judith Kaye during my time at the New
18 York Court of Appeals and it is fair to say
19 that we were on occasion not of one mind
20 with regard to the matter. However, not
21 once did I ever feel that the Chief decided
22 a case on prejudice or predilection. She
23 sets the standard for the Court.

1 No one who ever served with
2 Judith Kaye would ever even begin to suggest
3 that her views were anything other than the
4 result of careful and thorough analysis of
5 the problem at hand. The same is expected of
6 all who sit at the conference table at Eagle
7 Street.

8 Lastly, Senators, let me
9 briefly -- let me take a brief moment to
10 mention to you what Judith Kaye means to New
11 York and to the nation.

12 I frequently travel around the
13 country in my duties as a Circuit Judge. It
14 never ceases to amaze me how many people ask
15 me about the Chief Judge. Judith Kaye is
16 known throughout the nation for her work in
17 problem solving courts and other court
18 reforms.

19 During my professional life as
20 a lawyer, women have taken a prominent place
21 in the field of law. When I entered law
22 school at the Cornell Law School in the fall
23 of 1971, women made up less than 20 percent

1 of the first year class at the Cornell Law
2 School. In one generation in my lifetime,
3 that has changed to over 50 percent of the
4 women who now enter the Cornell Law School
5 and a majority of women make up the New York
6 Court of Appeals.

7 Judith Kaye stood at the
8 vanguard of the women who dared to enter the
9 all-male sanctuaries of the law. She was
10 the first woman Associate Judge of the New
11 York Court of Appeals. She remains a hero
12 and a role model for women like Sarah
13 Elizabeth Wesley, my 26-year-old, newly
14 minted lawyer daughter who serves at a law
15 firm on Wall Street, and quite frankly makes
16 almost as much money as her father, but
17 that's a federal issue, Senator, and I'm not
18 going to talk about compensation.

19 CHAIRMAN DeFRANCISCO: We
20 haven't heard about that statement, Senator.

21 JUDGE WESLEY: Oh, I'm sure
22 they heard about it in D.C., but it sounds
23 familiar to me.

1 But I ask you to watch my
2 friend, Judith Kaye, in a crowd. In the
3 years that I've known her, it's an
4 astounding thing to watch. Women flock to
5 her. Judith Kaye has become an icon of the
6 quality and successful women, a role model
7 many aspire to. As Senator Nozzolio knows
8 because he's been a visitor to my Chambers,
9 in my Chambers in Geneseo, New York hangs a
10 pen and ink drawing of the Livonia Post
11 Office, the town where I was born and
12 raised. It serves as a constant reminder of
13 me of a test that I've employed, the Livonia
14 Post Office Test, a device I've used on a
15 few occasions during my time at Eagle Street
16 and on the Federal Bench. You see, as I
17 indicated, I was born and raised in Livonia.
18 I continue to live there, and I am
19 surrounded by folks who have known me for my
20 entire life and with that familiarity comes
21 frankness.

22 The Livonia Post Office Test
23 is quite simple. It asks, how will I be

1 treated when I pick up the mail and a
2 decision in my court has drawn the public's
3 attention. Will someone say to me: "Dick,
4 what the hell were you thinking about when
5 you wrote that decision."

6 Well, not always
7 determinative, that test does require that I
8 be competent and that I be capable of
9 defending the result.

10 Members of this great
11 Committee, I submit to you today that a vote
12 for Chief Judge Kaye's reappointment for the
13 Court of Appeals is a sure winner under the
14 Livonia Post Office Test. It's the highest
15 accolade one can get in Livonia, I might
16 add.

17 In June of 2003 when I bid
18 goodbye to my colleagues and friends at the
19 Court of Appeals, I said of my dear friend
20 and Chief Judge, recorded at Page 5 of 100
21 NY 2d: "Is there any other human being on
22 this earth with more energy and enthusiasm
23 for just causes with a kinder heart, a

1 nobler view of what we do? I think not."

2 Senators, when the book is
3 closed, the portrait hung, the tally made,
4 Kaye will stand with the great judges of all
5 times. I reaffirm that view today and ask
6 that this Committee favorably report her to
7 the full floor of the Senate for her
8 confirmation. Thank you very, very much,
9 Senators.

10 CHAIRMAN DeFRANCISCO: Thank
11 you. Senator Nozzolio.

12 SENATOR NOZZOLIO: Judge
13 Wesley, this is for the record, thank you
14 very much for your heartfelt sentiments.
15 They are valued by this Committee.

16 I also, for the record, wish
17 to state that of those of the Finger Lakes
18 region and all of western New York, I'm very
19 proud of the fact that you're the first
20 member of the Federal District Court of
21 Appeals Second Circuit from that region in
22 over a generation. And for that, Judge
23 Wesley, we are very proud and very

1 appreciative of your remarks.

2 JUDGE WESLEY: Thank you very
3 much, Senator.

4 CHAIRMAN DeFRANCISCO: Thank
5 you very much.

6 SENATOR NOZZOLIO: Thank you
7 very much.

8 CHAIRMAN DeFRANCISCO: Anthony
9 DeRosa. Is Anthony DeRosa here? Okay.
10 Next speaker is Honorable Barry Cozier,
11 former Associate Justice of the Appellate
12 Division and former Justice of the Supreme
13 Court.

14 HON. BARRY A. COZIER

15 **Former Associate Justice**

16 **Appellate Division**

17 JUDGE COZIER: Good morning,
18 Senator DeFrancisco and members of the
19 Committee. It is my honor this morning to
20 appear before you in support of the
21 nomination of Chief Judge Kaye to
22 reappointment as Chief Judge of the State of
23 New York and of the Court of Appeals.

1 My perspectives are shaped by
2 some 20 years of service on the New York
3 State Judiciary on the adjudicative side as
4 a Judge of the Family Court within the City
5 of New York, as a Justice of the Supreme
6 Court and as a member of the Appellate
7 Division Second Department.

8 Judge Kaye's 14-year tenure as
9 Chief Judge of the State of New York has
10 been characterized by innovation,
11 collaboration and accountability.

12 Chief Judge Kaye has
13 tirelessly worked to ensure that the New
14 York State courts keep pace with demands of
15 our rapidly changing society.

16 As one of the largest court
17 systems in the nation, with ever-growing
18 massive caseloads, Chief Judge Kaye has
19 continued to demonstrate that our courts can
20 be responsive and relevant to the public.

21 She has propelled the New York
22 courts to the forefront of the national
23 movement to meet the challenges of the 21st

1 Century by embracing a problem-solving
2 approach to the way courts discharge their
3 constitutional and statutory mandates.

4 Chief Judge Kaye has worked
5 earnestly and in partnership with the
6 Executive and Legislative branches of
7 government to enhance the public's trust and
8 confidence in the State courts.

9 In her adjudicative role as
10 Chief Judge of the Court of Appeals, Chief
11 Judge Kaye has made an immeasurable
12 contribution to the development of New York
13 jurisprudence.

14 Rather than following a single
15 judicial philosophy, she views the job of
16 decision making as one of weighing
17 arguments, applying the laws and seeking the
18 right result on the merits of each
19 individual case that comes before the Court.

20 Chief Judge Kaye is a strong
21 advocate of independent decision making,
22 relying both on the provisions of the New
23 York State constitution, the statutes and

1 the common law.

2 Chief Judge Kaye has
3 emphasized the importance and, I dare say,
4 the need of the Court of Appeals to
5 definitively settle the law for New York
6 citizens such that there is stability and
7 predictability so the citizens will know
8 what rights they may reasonably expect to be
9 protected or enforced in both a fair and
10 even-handed manner.

11 In her role as Chief
12 Administrator of the State's court system,
13 she has introduced and refined innovative
14 initiatives and approaches to promote the
15 fair, efficient and qualitative treatment of
16 both civil and criminal cases, never
17 satisfied to rest on her past achievements
18 and always exploring new approaches to
19 seemingly insoluble problems.

20 Many of those initiatives I
21 think have been mentioned, but I will just
22 mention a few. Beginning in 1993, Chief
23 Judge Kaye announced sweeping reforms

1 designed to protect matrimonial clients
2 against unscrupulous practices by attorneys
3 and to expedite judicial treatment of
4 divorce cases. The new rules were among the
5 most comprehensive in the nation.

6 In 1994, prompted by Chief
7 Judge Kaye's interest in improving New
8 York's troubled jury system, she initiated
9 the Jury Project. This statewide critical
10 analysis lead to an unprecedented overhaul
11 of the system aimed at making jury service
12 more efficient, equitable and appealing to
13 perspective jurors.

14 In an effort to curb the
15 growing delays and costs in overburdened
16 courts, beginning in 1994, Chief Judge Kaye
17 announced plans to use mediation,
18 arbitration and other alternatives to
19 traditional courtroom trials by developing a
20 statewide menu of court-sponsored
21 alternatives resolving civil and criminal
22 cases.

23 Among her most transformative

1 initiatives was Chief Judge Kaye's creation
2 of the Center for Court Innovation. The
3 Center sponsored various demonstration
4 projects eventually leading to the
5 establishment of problem-solving courts
6 throughout the state.

7 Now numbering nearly 250,
8 these specialized courts include drug
9 treatment courts, domestic violence and
10 integrated domestic violence courts, mental
11 health courts, sex offense courts and
12 community courts.

13 To improve the fiduciary
14 appointment system in New York, Chief Judge
15 Kaye established a registration process for
16 fiduciaries, adopted restrictions on fees
17 and imposed limits on eligibility for
18 appointments of attorneys.

19 There have been numerous other
20 innovative reforms championed by Chief Judge
21 Kaye during her tenure, such as
22 differentiated case management in the
23 various trial level courts to track cases by

1 complexity and/or case type.

2 The introduction of computer
3 technology to assist judges and court
4 personnel and the public with case
5 management and to maximize productivity and
6 promote individualized treatment of the many
7 different categories of cases handled by the
8 courts.

9 Her efforts to upgrade and
10 maintain courthouse facilities throughout
11 the state, the opening of the family
12 courthouses to the public, addressing the
13 civil legal needs of the poor, restructuring
14 the state's indigent criminal defense system
15 and enhancing lawyer professionalism through
16 the imposition of mandatory continuing legal
17 education in the late 1990's.

18 On a more personal note, as
19 the first woman to be appointed as a Judge
20 of the Court of Appeals in 1983 and as the
21 first woman to serve as the Court's Chief
22 Judge, Chief Judge Kaye has recognized the
23 importance of access to justice by all New

1 Yorkers. She has consistently demonstrated
2 that the administration of justice must be
3 inclusive and that diversity within the
4 judicial and non-judicial ranks is essential
5 to safeguard both the perception and the
6 reality of fairness.

7 Her appointments of women and
8 members of racial and ethnic minorities
9 throughout her tenure to significant,
10 administrative positions and voluntary
11 positions within the court system ensure
12 that the justice system is reflective of the
13 public it serves.

14 Chief Judge Kaye has brought
15 to the court and to the people of the state
16 of New York a keen intellect, legal
17 scholarship, a love of the law, her
18 compassion, her commitment in the discharge
19 of her responsibilities, her energy, her
20 independence and her leadership.

21 Chief Judge Kaye's impact on
22 the court, on our system of justice and on
23 all New Yorkers has been nothing less than

1 extraordinary and unprecedented, and I,
2 therefore, respectfully urge this body to
3 approve the nomination of Chief Judge Kaye
4 for reappointment as Chief Judge of the
5 State of New York. Thank you.

6 CHAIRMAN DeFRANCISCO: Thank
7 you. Thank you very much.

8 Next speaker is Robert Schulz.
9 Is Robert Schulz here? Then we'll go to
10 Judith Herskowitz.

11 JUDITH HERSKOWITZ

12 **Florida Resident**

13 MS. HERSKOWITZ: Yes. I'd
14 like to let you know that I now reside in
15 Florida. I came up here all the way from
16 Florida because --

17 CHAIRMAN DeFRANCISCO: Could
18 you move the mic a little closer, please?

19 MS. HERSKOWITZ: Yes. I now
20 reside in Florida. I have lived there for
21 25 years, and I really have no connections
22 except for a lawsuit here in New York. And
23 I have traveled just for this from Florida,

1 so you can see that I have deep concerns.
2 And whatever I have to say, I'd appreciate
3 it if you do let me finish it, because it
4 may not be as praiseful as praises as, you
5 know, as all these other people have said
6 before me.

7 CHAIRMAN DeFRANCISCO: We're
8 not looking for praise, we're just looking
9 for relevancy. If it's about her -- Judith
10 Kaye's fitness and qualifications --

11 MS. HERSKOWITZ: Yes, yes,
12 that's --

13 CHAIRMAN DeFRANCISCO: -- then
14 we'll be more than happy to hear it.

15 MS. HERSKOWITZ: Okay. Thank
16 you very much. I have prepared a paper. I
17 don't know how much time I have, if I have
18 the time to read all of it, four pages, or I
19 can take just summaries out of it.

20 CHAIRMAN DeFRANCISCO: I have
21 the -- your remarks and I've already
22 provided them to each of the members of the
23 Committee.

1 MS. HERSKOWITZ: Oh, really?

2 CHAIRMAN DeFRANCISCO: Yes.

3 MS. HERSKOWITZ: Oh, that's

4 nice. Okay. So then I can --

5 CHAIRMAN DeFRANCISCO: So if

6 you want to hit highlights, or however you

7 want to handle it.

8 MS. HERSKOWITZ: Okay. It's -

9 - whatever you say, but, you know, there's

10 other people in here who are not heard. And

11 -- but it wasn't -- I am very much

12 impressed, I must say, you know, by the

13 qualifications and whatnot of Judith Kaye,

14 but there are certain areas here.

15 Most of the people who have

16 spoken here were really from the other side.

17 They were attorneys, practicing attorneys,

18 and judges. And, unfortunately, the public

19 is not here. It's not really publicized.

20 You know, I checked the New York Times and

21 there is nothing about it, that there's

22 going to be a confirmation hearing here.

23 The public really has no way of knowing, the

1 public really has no way of knowing the
2 significance of this.

3 And I come from Florida, and
4 our system is different, because on -- when
5 there's an election of judges, a nomination
6 or whatever, it goes to -- it's a public --
7 you know, the public goes and votes. The
8 public is a merit system, yes or no. And
9 here it's -- and that's what's proposed
10 again. It's really a closed shop. They
11 appoint the judge and it's all closed. The
12 public really has -- is not going to be
13 given, according to the proposal -- and that
14 disturbs me, you know, that according to the
15 proposals, what's going on here, the public
16 is not going to be given about how judges
17 are elected and it's going to be all closed
18 shop.

19 And in Florida, let me tell
20 you, they tried to take away the election
21 from people and the people voted down. But
22 this is just an observation that I had just,
23 you know, listening. It's really not, as

1 you can see, it's not here. It's just, you
2 know, a concern that I have and I just
3 wanted to let you know that it did go before
4 the public in Florida and it was voted down.
5 People want the election. They want to have
6 an input.

7 And the problem -- another
8 problem here is, okay, you don't have an
9 input but once the judges sit on the bench,
10 then there is no way that the public has
11 heard about any kind of complaints, because
12 the judicial complaints does not hear any
13 kind of -- judicial commission that you have
14 here, does not hear -- or anyplace, as a
15 matter of fact, does not hear any kind of
16 complaints from the public. So this is just
17 from what I heard here.

18 CHAIRMAN DeFRANCISCO: Okay.
19 Ms. Herskowitz, my -- I understand what
20 you're saying, but can we get to the
21 relevant points?

22 MS. HERSKOWITZ: Yes. Okay,
23 okay, but -- because Chief Judge Kaye has

1 expressed, you know, her statements of what
2 she intends to do with regard to election.
3 And the election is that it goes before a
4 closed commission without any input from the
5 people, okay, and it -- and that bothers me.

6 I also want to let you know
7 that I do have a law degree, I graduated
8 from law school, and because a lot of things
9 happening here I have not been able to
10 practice law.

11 Now, as was emphasized here
12 that Chief Judge Kaye is not only a Chief
13 Judge of the Court of Appeals, which is the
14 highest court here, but she also acts in the
15 executive and administrative capacity. In
16 that capacity she has established a lot of
17 committees and commissions, and I have
18 detailed here in my paper and I'm not going
19 to go into that. I'm just going to go into
20 what my concern is, and she wants to stay on
21 because she wants to put in more committees
22 and she has -- I'm not going to be
23 redundant, it was mentioned here, the

1 matrimonial, the election. Okay, and that
2 is one of her main concerns to stay on the
3 bench.

4 And I have discussed that with
5 people and I have here, as a matter of fact,
6 this book on fiduciary appointments, there
7 were two big books put out, Report of the
8 Commission on Fiduciary Appointments;
9 Fiduciary Appointments in New York, a Report
10 to the Chief Judge Kaye. And,
11 unfortunately, you know, then these go
12 around, you know, and were the result of
13 public hearings. And what happens is the
14 people are frustrated and then they come in
15 to these public hearings and the idea seems
16 to be, okay, let them let the steam off, you
17 know, let them speak whatever they want.
18 And the problem is that after these
19 commissions, committees and Inspector
20 General is set up, nothing happens, nothing
21 happens. There is no reform, nothing
22 happens.

23 Now, one of the main purpose

1 is setting -- as a matter of fact, Justice -
2 - Judge Kaye has, as of 1998, has delivered
3 her state of the Judiciary messages because
4 she wanted to be heard. Before that, I
5 believe it was only a report submitted, now
6 it's delivered in person. And one of the
7 main objectives of Judge Kaye is the public
8 trust, and to promote the public trust and
9 confidence of the people because she says
10 that's important to everything that we do,
11 which she stated in her '98 report.

12 Now, I don't think that
13 anybody has ever taken any kind of -- and I
14 did read about -- I think, about lawyers,
15 but I don't think anybody has done any kind
16 of research or asked the public of what --
17 you know, whether they have a public trust
18 and confidence in the system.

19 I mean, we just talk about it
20 in conclusion here, but does the public
21 really have a trust and confidence in the
22 judicial and the legal system. I don't see
23 any reports on it. I tried to find it on

1 the Internet and I didn't see any.

2 And this report on the
3 fiduciary appointments, there was a big
4 scandal and it's written up here that the
5 judges believe that they're above the law,
6 that they appoint their friends and then
7 they give a lot of money to these receivers
8 and these receivers appear to be a
9 fundraiser and they practically clean house
10 some of the people, you know, with all their
11 fees and appointing accountants and whatnot
12 on the side.

13 And for that purpose, Judge
14 Kaye has set up this -- it said in 2000 she
15 says that she established that this
16 commission, an office -- and that she
17 established an office especially Inspector
18 General for five years for appointments in
19 the Unified Court System to monitor and
20 enforce existing court rules governing
21 judicial appointments.

22 These rules cover appointments
23 of guardians, guardians ad litem, receivers,

1 referees and others that assist in resolving
2 cases before the Court. The new Inspector
3 General will, on an ongoing, statewide
4 basis, examine whether the existing rules
5 are being followed and will work closely
6 with a commission on judicial conduct, the
7 attorney disciplinary committees of the
8 Appellate Division and other appropriate
9 authorities as necessary to ensure
10 compliance.

11 And then she said that an
12 independent judiciary is essential and says,
13 I don't -- and will not allow the system to
14 be destroyed. That's -- these are the words
15 of Judge Kaye in her message, judiciary of
16 the state message in 2000.

17 And she said that this was
18 important, you know, for the great democracy
19 that we have and we have to educate the
20 public, and if the public doesn't really
21 appreciate it part of the problem is that we
22 are not educating the public. And I'm sorry
23 to say that you don't have to educate the

1 public because the way the public learns is
2 what happens to them in the courts.

3 And she also admitted, though,
4 that the public citizens of us doesn't rest
5 fully on a lack of knowledge about us, it
6 also rest in part on some things the public
7 doesn't know about us that generates concern
8 regarding integrity and impartiality. And I
9 haven't heard anything about it as how this
10 is going to be accomplished. Only all these
11 committees here and there but what is the
12 public response to this?

13 And then in her latest state
14 of the Judiciary messages she has -- she
15 felt that this system is working. So I went
16 and I tried to research it and I tried to
17 find out and I called even the Inspector
18 General's office. I'm really concerned
19 about the fiduciary appointments because I
20 have personal knowledge about whether that
21 permission, that Inspector General's office
22 that she set up works or it doesn't. And I
23 tried to call them up and I said, I'd like

1 you to give me a report, what happens to the
2 complaints that are made to the Inspector
3 General because they're supposed to take
4 complaints, and they couldn't answer me.

5 So I did some kind of research
6 on the Internet and what I found is that
7 this Inspector General's office on fiduciary
8 appointments is combined, has been combined,
9 with Office of Inspector General for Biased
10 Matters, and the Office of -- and with --
11 let me see, Office of Inspector General, the
12 Office of Specialty Inspector General for
13 Fiduciary Appointments and the Office of
14 Special Inspector General for Biased
15 Matters. In other words, three branches of
16 the -- what you have here, the -- what do
17 you call this, the Office of Court
18 Administration, have been combined. They do
19 not put out any kind of separate report as
20 to what these -- any one of these branches
21 do, it's combined. And when you look at the
22 combined report, and I would like to give
23 you -- which I have here, I have here

1 prepared exhibits. And one of the exhibits
2 is this combined report which only appears
3 as a budget request, and that budget request
4 has everything -- any kind -- all kind of
5 complaints here of civilian complaint,
6 excessive force, assault and inmate conflict
7 of interest. I don't see here any report as
8 to any disposition on fiduciary -- on the
9 fiduciary appointees. There is not one
10 here.

11 What the office states here is
12 a report on fiduciary appointments. Now, if
13 somebody doesn't report it, there is no way
14 of knowing it if a judge doesn't report a
15 fiduciary appointment and the fiduciary
16 appointment doesn't -- it's only the people
17 who report it, and there are something like
18 10,000 -- over 10,000 fiduciary appointments
19 in the state and just New York County has
20 over 1,000 appointments a year.

21 I don't know why they need all
22 these fiduciaries and all these receivers.
23 I mean, they cost whatever -- and in a state

1 whatever -- wherever they're appointed, it
2 costs the people money, you know. It comes
3 out of the private funds of the litigants
4 who are before the Court.

5 And I made complaints to the
6 special -- to the Inspector General's
7 Office. For three years I haven't gotten
8 any response to -- the first of my
9 complaints was in 203 [sic]. I have not
10 received anything until April 205 [sic] and
11 it was just a form letter and it said that
12 upon review of my complaint this office has
13 determined that no administrative action is
14 warranted in this matter, and I was advised
15 that they not -- don't handle legal disputes
16 and they can't advise me on the appeal -- on
17 an appeal, and I didn't make any such
18 request. I'm not asking for any kind of
19 legal advise. And I submitted additional
20 complaints to which I have not received any
21 response. Now, I have written to Chief
22 Judge Kaye as well, you know, that I am not
23 getting any kind of response from the

1 Inspector General's Office, I have the
2 letter attached to -- I have received a
3 letter from Chief Judge Kaye which you will
4 be able to read here, and her -- and she
5 went along with this, you know, that
6 Inspector General, well, you know, whatever
7 they did. She did not even look into it,
8 the -- she's supposed to be here in a
9 administrative capacity. I don't know who
10 looks over what the Inspector General does,
11 whether they pursue these complaints or they
12 don't.

13 I mean, it's a wonderful thing
14 to set up these committees and then they
15 frustrate the public by not acting on the
16 complaints and they just send you a form
17 letter. I can't tell you how frustrating
18 that is because it takes a lot out of
19 somebody to sit down and write these
20 complaints.

21 And the other advise was that
22 Chief Judge Kaye, like I'm asking for appel
23 -- in her appellate capacity. I didn't ask

1 for anything for -- in her appellate
2 capacity, it was in her administrative
3 capacity and having established the
4 Specialty Inspector General's Office, and
5 that I should seek an appeal.

6 You know, that seems to be the
7 cliche or response in the court, that you
8 seek an appeal. I'm very much aware, you
9 know, having the legal training and having
10 been in that position, that you don't have
11 an appeal where you don't have a record in
12 the lower court. And one of the things that
13 the lower court does is that they don't give
14 you an evidentiary hearing. What they have
15 come --

16 CHAIRMAN DeFRANCISCO: Okay.
17 Ma'am, can you start to wrap up?

18 MS. HERSKOWITZ: Yeah. I'm
19 just trying to tell you that all this advice
20 to seek an appeal is -- has no meaning when
21 you have no record in the lower court
22 because the lower court won't give you an
23 evidentiary hearing.

1 CHAIRMAN DeFRANCISCO: I
2 understand.

3 MS. HERSKOWITZ: So I have
4 here a letter and Chief Judge Kaye has not
5 looked into as to what's happening with the
6 complaints that are made to the Inspector
7 General's Office.

8 Now, I'd like to tell you how
9 this came about. It came about that there
10 is a receiver, supposed --

11 CHAIRMAN DeFRANCISCO: Is this
12 your particular case, is that what you're
13 saying?

14 MS. HERSKOWITZ: It is my
15 particular case.

16 CHAIRMAN DeFRANCISCO: It's
17 outlined in here.

18 MS. HERSKOWITZ: But I have to
19 tell you, it was not just a complaint that
20 the Inspector General -- that there is --

21 CHAIRMAN DeFRANCISCO: But --

22 MS. HERSKOWITZ: -- that there
23 is --

1 CHAIRMAN DeFRANCISCO: Excuse
2 me a moment. But the -- I -- we can
3 understand your point, that you do not feel
4 that the way that the Office of Court
5 Administration is working is proper, and
6 that they're not --

7 MS. HERSKOWITZ: No, no, no,
8 no, no, no.

9 CHAIRMAN DeFRANCISCO: -- that
10 they're not providing the information,
11 they're not handing complaints. I
12 understand that. I don't know that it's
13 necessary to read what's already in here or
14 tell us what's already in here about your
15 personal situation.

16 MS. HERSKOWITZ: I want to
17 tell you -- no, I have to tell you what this
18 is, that one of the requirements --

19 CHAIRMAN DeFRANCISCO: All
20 right. Excuse me, you have two minutes.

21 MS. HERSKOWITZ: Okay. One of
22 the requirements is that there's a notice of
23 appointment filed by the receiver. Now, why

1 can't the Inspector General take that up, I
2 have it here also, exhibits that there are
3 no -- that nothing was found, you know, in
4 the office administration that this so-
5 called Mr. Windell who is trying to act as
6 the receiver, has filed any notice of
7 appointment, yet he's asked for
8 compensation.

9 So I don't know what these
10 rules and these violations of the rules mean
11 if an Inspector General does not act on it.
12 So what is the significance of the Office of
13 the Inspector General? I mean, these rules
14 don't mean anything. They don't -- the
15 receiver doesn't have to follow -- and
16 secondly, he's not a receiver. He's not a
17 receiver. There's no receiver of the
18 corporation. He's a bogus receiver, sir,
19 who walked away with \$700,000 to predators
20 who never filed their claim.

21 CHAIRMAN DeFRANCISCO: Okay.
22 Now we're getting into a specific case.
23 We've got to go on to the next speaker.

1 We've got several speakers.

2 MS. HERSKOWITZ: I understand,
3 but I'm trying to under -- tell you that
4 these reforms do not mean anything unless
5 these committees or commissions that are set
6 up follow up on it. Otherwise, what -- tell
7 me, what is the reform if they don't follow
8 it up. This -- it --

9 CHAIRMAN DeFRANCISCO: Okay,
10 okay. Thank you. Thank you. We're going
11 to have to go on to the next speaker.

12 MS. HERSKOWITZ: Okay. I also
13 would like to show you that the --

14 CHAIRMAN DeFRANCISCO: Okay.

15 MS. HERSKOWITZ: Okay. I'd
16 like to give this to you, all the complaints
17 --

18 CHAIRMAN DeFRANCISCO: All
19 right. We'll get copies -- all right.
20 We'll get copies to the rest of the members.

21 MS. HERSKOWITZ: Okay. Of all
22 the complaints, and I'd like you to see what
23 a litigant goes through in the court.

1 CHAIRMAN DeFRANCISCO: Okay.

2 Thank you. The next speaker is Mark Med --
3 how do you pronounce it?

4 MR. MEDDAUGH: Meddaugh.

5 CHAIRMAN DeFRANCISCO:

6 Meddaugh. President of the Association of
7 Judges of the Family Courts of the State of
8 New York. Thank you.

9 MARK M. MEDDAUGH

10 President

11 Association of Judges

12 New York State Family Court

13 MR. MEDDAUGH: Thank you,
14 Chairman DeFrancisco and members of the
15 Judiciary Committee. I am honored to appear
16 before this Committee as President of the
17 New York State Family Court Judges
18 Association to support the nomination of
19 Judith S. Kaye as Chief Judge of the Court
20 of Appeals.

21 On a personal note, as a
22 fellow native of Sullivan County, it is my
23 singular pleasure to be here today also to

1 support her nomination.

2 The Committee is well aware of
3 Judge Kaye's long list of accomplishments,
4 both as a jurist and a Chief Judge of the
5 State of New York, and I do not intend to
6 review them here.

7 My remarks will, instead,
8 focus on the work which she has done to
9 promote the interest of children and
10 families in New York State by improving the
11 Family Courts and developing innovative
12 programs which seek to better the lives of
13 some of New York State's most vulnerable
14 citizens.

15 It is the overriding public
16 policy of this State that we act in the best
17 interest of our children, and Judge Kaye has
18 demonstrated her commitment to not only to
19 the children of the state, but also to their
20 families.

21 In her most recent state of
22 the Judiciary address she placed family
23 justice as one of her highest priorities,

1 continuing the cause which she has promoted
2 throughout her entire 14-year term. Her
3 focus has not always been not what she has
4 accomplished today but what she can do to
5 improve services for families in New York
6 State.

7 In her recent state of the
8 Judiciary address she took pride in the fact
9 that her efforts and initiatives have
10 contributed to the reduction of the number
11 of children in foster care by over one-half
12 during the past decade, but her main concern
13 was to reduce that number even further so
14 that more children would find permanent
15 homes.

16 In order to achieve these
17 goals, Judge Kaye recognized that it takes
18 more than just the efforts of the Judiciary.
19 She has been in the forefront of encouraging
20 collaboration between the courts and the
21 agencies that appear before them. She co-
22 partnered with the State Office of Children
23 and Family Services and the Council on

1 Children and Families to sponsor an annual
2 Sharing Success Conference.

3 This conference brings
4 together judges, lawyers and the agencies
5 that deal with families in New York State to
6 work in unison on the extremely difficult
7 issues of child neglect and abuse.

8 She has championed the
9 expansion of the work of the permanent
10 Judicial Commission on Justice for Children
11 as well as the Adoption Now Partnership with
12 the State Office of Children and Family
13 Services and the New York State
14 Administration for Children's Services.

15 She was instrumental in the
16 creation of child care centers in
17 courthouses for children whose parents are
18 appearing in court.

19 In 2006, she gave her support
20 to the expansion of the Court Appointed
21 Special Advocates, or CASA Program, which
22 helps to monitor children in foster care or
23 those in danger of going into care.

1 Judge Kaye has led the way in
2 creating specialty courts to deal with
3 parents with substance abuse and mental
4 health issues, and by the creation of
5 parenting programs that bolster the
6 parenting skills of families at risk. These
7 programs seek to develop stronger families
8 and to ultimately lessen the burden on the
9 Court and on the Social Service system.

10 One has to be struck by her
11 philosophy and overwhelming concern for
12 fundamental fairness in her treatment of all
13 citizens in the State of New York. This has
14 carried over to her recommendation on the
15 method for selecting judges in the State of
16 New York and to the issue of fair and
17 adequate compensation for the Judiciary.

18 Judge Kaye has also urged this
19 Legislature to create 39 additional Family
20 Court judges throughout the state to be
21 added to the current 154 Family Court judges
22 to adequately handle the 700,000 filings
23 this year.

1 Finally, Judge Kaye has called
2 for the restructuring of the Courts of the
3 State to enhance the quality of services
4 that are being provided to the citizens of
5 this state.

6 On behalf of the Family Court
7 judges of the State of New York, we look
8 forward to the opportunity to continue to
9 work with the Honorable Judith S. Kaye as
10 Chief Judge of the State of New York and ask
11 that you confirm her nomination so that she
12 can continue her efforts on behalf of the
13 children and the families in our state.
14 Thank you.

15 CHAIRMAN DeFRANCISCO: Thank
16 you very much. Next speaker is Dean Loren.

17 MR. LOREN: Thank you,
18 Senators.

19 CHAIRMAN DeFRANCISCO: Would
20 you move that up a little, please. The mics
21 towards you.

22 MR. LOREN: There was some
23 feedback.

1 CHAIRMAN DeFRANCISCO: Oh,
2 okay.

3 MR. LOREN: So what I'll do is
4 I'll try to lean forward. I'm sorry, you're
5 Senator --

6 SENATOR HASSELL-THOMPSON:
7 Senator Ruth Hassell-Thompson.

8 MR. LOREN: Okay.

9 SENATOR HASSELL-THOMPSON: I'm
10 the Ranking Member on Judiciary.

11 DEAN LOREN

12 **Out-of-State Attorney**

13 MR. LOREN: Thank you for
14 staying; and Chief Judith Kaye,
15 congratulations on a very long term, and
16 Jonathan Littman.

17 My name is Dean Loren, and I'm
18 here to actually discuss some of the issues
19 that were brought up today by the various
20 senators. I am an attorney, although I'm
21 not licensed in New York. I am probably the
22 only official blacklisted attorney on record
23 in the Second Circuit, and that is actually

1 what we can discuss in some of the
2 recommendations that were actually brought
3 up by the Senate Committee.

4 There's three qualifications
5 that I think the Senate should look to when
6 it reviews Judge Kaye's nomination, and that
7 would be her construction of legislative
8 intent. As you know the legislative
9 mandates, when the Legislature speaks the
10 courts must act in the form of
11 administration. There is diversity and
12 judicial restraint in the terms of tolerance
13 for descent and the equality of civil
14 justice in the distribution to all citizens
15 in New York. And then, of course, there is
16 ethics reform and that is -- comes through
17 leadership and the appointment screening
18 committees.

19 To address the first,
20 legislative intent, construction under the
21 title of administration, Administrative Law
22 Judge. Judiciary law sets out at the very
23 beginning that the court, the Supreme Court

1 of New York State, the entire court is a
2 court of record. Yet we have specific
3 defects in many cases throughout the state.
4 There are cases without index numbers,
5 dockets, and many times the captions don't
6 adequately address the litigants.

7 I must say that Judith Kaye
8 has acted in many of these cases. I, for
9 one, am no longer termed anonymous before
10 the Court of Appeals. They actually have my
11 name listed on the caption. However, I,
12 like many others, have no dockets or index
13 numbers, so there is no way for a Senate
14 committee to do research and look at cases
15 across the street. And I'm sure this is an
16 administrative problem throughout the courts
17 that could be easily ramified with perhaps a
18 larger budget or IT technology, because I do
19 know in the appellate courts these dockets
20 and index numbers do appear on their
21 computer systems, but they are not being
22 transferred to the Court of Appeals. So if
23 the lower courts have them on their computer

1 systems but cannot translate them to the
2 higher courts, then what we need is an
3 increased Judiciary budget to allow for that
4 IT transfer.

5 And so the issue here are
6 omissions and then the statutory duty
7 because if we can't have the IT transfer,
8 then we still need to ask the clerks, the
9 personnel, to personally handwrite or
10 transfer that information. It may take a
11 little bit longer, but in the case of
12 justice I think it's warranted.

13 The second issue, tolerance
14 for descent in the terms of diversity and
15 judicial restraint. Now, the Court of
16 Appeals occasionally acts in a unilateral
17 manner to the detriment of the integrity of
18 the court system.

19 On her behalf, Judge Kaye has
20 corrected a situation, in which I did bring
21 to her, by way of quid pro quo, conflicts of
22 interest in a matrimonial decision, however
23 there was a opposition kickback by a

1 appointed screening committee that termed
2 this as a lack of character when, in fact,
3 it is a duty and a statutory mandate that
4 that disclosure be made.

5 So we need to argue or ask the
6 issue, is there a need for greater tolerance
7 for descent when we form these screening
8 committees?

9 Clearly, the Legislature has
10 set out specific mandates of what needs to
11 be fulfilled. There are certain exams;
12 there are certain fees to be paid, and then
13 there is this amorphous issue of character
14 which really should not be there because
15 that should be established by the
16 legislative mandate in the form of a
17 criminal record or no criminal record,
18 because the First Amendment does, or is
19 supposed to, protect our right to petition
20 for redress. And that is really what most
21 of the descent is.

22 And I'm really glad that I
23 came here today because I really see the

1 issue is not so much what Judge Kaye has
2 done in the past, but what the Legislature
3 needs to step back and review its job.

4 Clearly, you have set out
5 mandates that have been interpreted,
6 statutory interpretation, but if the Court
7 decides to interpret those statutes not in
8 compliance or not in the manner or the
9 spirit that the Legislature intended, then
10 there is, in fact, an override by the
11 Legislature that should come in and say the
12 statute stands, the Legislature has spoken,
13 the Court must act. So then this comes,
14 again, tolerance for descent.

15 The last issue I'd like to
16 address is leadership in the examination of
17 ethics and ethics reform. It was discussed
18 today about screening committees for
19 Judiciary elections. And I believe, Senator
20 DeFrancisco, you inquired whether there was
21 a basis in judiciary law, perhaps stare
22 decisis for Judith Kaye having the power to
23 appoint these screening committees and I

1 believe her response was that it was, of
2 course, the legislative initiative to set
3 those standards.

4 And in doing so, I believe
5 that the Legislature should be the one to
6 establish those committees because we are in
7 an elections. To address the fairness of
8 those elections, we need those people that
9 are chosen by the people.

10 And, as we know, in 1977 there
11 was a constitutional convention in which our
12 right to vote for the chief judge was taken
13 from us, the people. I say taken because it
14 was not advertised, for the most part. And
15 I really would like to see the Legislature
16 give us that right back because voting is so
17 important.

18 And with that, these screening
19 committees are acting without standards to
20 deal with their own internal conflicts of
21 interest. And that's what we're really
22 dealing with, could they knock somebody off
23 the ballot. And, that is, indeed, what they

1 can do by saying they're not qualified nor -
2 - or are they qualified. In fact, I know of
3 one judicial candidate who did win this year
4 and I did support her and she was deemed
5 unqualified, but watching her with the
6 people on the lower east side, she is
7 qualified.

8 And so I will end with the
9 issue that Judge Kaye has to set the
10 standard, and she has set the standard, but
11 there needs to be guidance from the
12 legislative body to remind the Judiciary
13 what the people desire, and that is the most
14 important point that I want to bring to this
15 Committee because you are elected by the
16 people. We want you there. That's why we
17 voted for you. We want you to voice your
18 descent or your agreement.

19 And so with that I'm going to
20 ask that the Senate review Judge Kaye's
21 qualifications in the light of statutory
22 intent, in the construction of the basic
23 laws, whether the intolerance for descent

1 has risen to a level where perhaps there may
2 need legislative input and indeed ethics
3 reforms for screening committees, is that
4 indeed a role for the Judiciary.

5 And again, I am very proud to
6 be here today and I am also pleased to say
7 that it was 35 years ago that Doris Sassower
8 penned a most poignant paper called, The
9 Chief Justice Wore Red in which she
10 predicted that one day we would have a woman
11 justice and that she would sit before this
12 very nomination committee in a red dress.

13 CHAIRMAN DeFRANCISCO: Thank
14 you.

15 MR. LOREN: Thank you.

16 CHAIRMAN DeFRANCISCO: Next
17 speaker, Mr. Eli Vigliano, e-mailed me that
18 he wasn't going to be here, but we have a
19 copy of his -- he wrote me and wanted me to
20 present his e-mail to each of the Committee
21 members which I will.

22 The next speaker is Fern
23 Schair.

1 MS. SCHAIR: Good morning, Mr.
2 Chairman, members of the Committee.

3 CHAIRMAN DeFRANCISCO: I think
4 it's afternoon now.

5 MS. SCHAIR: You are right as
6 always, Senator.

7 CHAIRMAN DeFRANCISCO: Not
8 always, but that's fine.

9 **FERN SCHAIR**

10 **Senior Vice President**

11 **American Arbitration Association**

12 MS. SCHAIR: I approach with
13 great humility the opportunity to address
14 this body, particularly on behalf of our
15 extraordinary Chief Judge.

16 Judge Kaye has often expressed
17 the delight she has in occupying the desk at
18 Court of Appeals Hall of Judge Cardoza, and
19 how obvious the parallel. He was known for
20 his brilliance; his love for the law; his
21 passion for justice and his sympathy for
22 humanity. It's a perfect parallel to the
23 great qualities that Chief Judge Kaye brings

1 to this position.

2 I met Judge Kaye soon after I
3 became Staff Director at the City Bar
4 Association, and she was, and I remind you,
5 already an extraordinary member of the
6 profession.

7 She had acted on the governing
8 body of that association and had chosen
9 committees to work on that particularly
10 foreshadowed her great judicial career,
11 including professional and judicial ethics,
12 access to legal services, and lectures in
13 continuing education.

14 What's particularly striking
15 about her being the first woman on the Court
16 and the first woman Chief Judge is that she
17 avoided doing what many first women do.
18 Many are afraid to deal with so-called
19 women's issues, actually issues of children
20 and families. In fact, she dove right into
21 making the court system more responsive to
22 New York's families, particularly the most
23 vulnerable in a society, the children.

1 The examples I would have
2 mentioned have already been mentioned,
3 brought to you earlier, except for one which
4 I want to point out, has made a big
5 difference in so many courts around the
6 state. Because of her specific efforts
7 there have been established in many courts
8 all over this state special children's
9 centers so that children brought to court
10 under very difficult circumstances have a
11 safe place to be.

12 Many of us knew that as Chief
13 Judge she would improve New York System of
14 Justice, but she has gone well beyond
15 improving the efficiency of court
16 operations. In many ways she's reinforced
17 the mission of the courts.

18 I think we all agree that the
19 task of judging is not merely dispositions,
20 it is justice. She understands so well that
21 in bringing individual justice, not just
22 assemblyline dispositions, there need to be
23 outcomes tailored to both help the

1 individual and to help the judges who had
2 become so frustrated by seeing the same
3 individuals appear before them time and time
4 again often on the very same or similar
5 legal problems.

6 That gave birth to the problem
7 solving courts and, as many have said before
8 me, we can all take pride in New York having
9 become a leader because of those courts and
10 because of all the other areas that again
11 others have mentioned, the jury system, the
12 commercial parts, other prescriptions that
13 have made such a difference.

14 One of the more important
15 areas has been the extraordinary innovations
16 in access to justice. As this body is well
17 aware, there are growing numbers of New
18 Yorkers that have no one to help them
19 through the court system. No lawyers at
20 their side. And she has worked at all the
21 nitty gritty to make the court more
22 understandable; to make court forms more
23 understandable; to have court clerks and

1 others more helpful to those that come to
2 the court for assistance; to provide
3 interpreters in more languages, trained
4 better, more widely available for the large
5 population that continues to grow of people
6 who come to the court system and whose
7 English is limited.

8 She has also, for those same
9 people, linked volunteer efforts by the Bar
10 pro bono to those in desperate need in much
11 more effective ways.

12 What she's been able to
13 achieve thus far is quite extraordinary.
14 How has she done it? Well, I've watched
15 carefully and I'm still not quite sure, but
16 there's no doubt that personal qualities
17 matter. Her joyful sense of humor, which
18 you saw some this morning, her willingness
19 to work more days and hours than is
20 reasonable, and her grace under pressure as
21 well as a deep commitment to do the right
22 thing all have played a part.

23 She's also perfected the art

1 of bringing the nay-sayers to the table, as
2 has been mentioned by a number of speakers.
3 The committees and commissions have brought
4 together those, anyone with a reasonable
5 opinion can speak and can be heard in the
6 forming of the solutions to these
7 intractable problems.

8 In closing, I will just
9 restate that providing an extraordinary
10 service to the Bench, Bar and public above
11 and beyond the call of duty has been the
12 norm for her.

13 On a point of personal
14 privilege, I'll testify that I have work
15 with every Chief Judge since there has been
16 a centralized administration in the courts
17 and none of them have more effectively
18 utilized the dual role that was then
19 assigned at that time to the Chief Judge
20 under our Constitution as Chief Judge of the
21 Court of Appeals and Chief Judge of the
22 State of New York.

23 The literally millions, and it

1 is millions, every year of our fellow New
2 Yorkers that come to their courts, our
3 courts seeking justice are certainly better
4 served because of her creativity, integrity,
5 intelligence and deep sense of service.

6 I thank you most sincerely for
7 your attention and consideration, and urge
8 this Committee to report her to the Senate
9 for confirmation.

10 CHAIRMAN DeFRANCISCO: Thank
11 you very much.

12 MS. SCHAIR: Thank you,
13 Senator.

14 CHAIRMAN DeFRANCISCO: On the
15 nomination is there a motion? A motion?

16 SENATOR HASSELL-THOMPSON: A
17 motion, a submission of --

18 CHAIRMAN DeFRANCISCO: There's
19 a motion by Senator Hassell-Thompson, and
20 I'll second it. All in favor --

21 MS. E. SASSOWER: May I
22 testify?

23 CHAIRMAN DeFRANCISCO: For the

1 record, the following voted yes before they
2 had to leave. The rest -- there's 19 of
3 them. DeFrancisco, Volker, Farley, Maltese,
4 Bonacic, Skelos, Hannon, Winner, Nozzolio,
5 Hassell-Thompson, Breslin, Sampson, Duane,
6 Schneiderman, Connor, Dilan, Savino, Perkins
7 and Stewart-Cousins. We're now
8 Recommendation 2, Saland and LaValle; and
9 no's, Maziarz and Lanza. There is more than
10 ample majority here to move the nomination
11 to the full floor of the Senate. Thank you.

12 Excuse me, one other thing. I
13 should mention that there was written
14 testimony by Elena Sassower, who we just
15 heard from, but I've provided that to
16 everyone else on the Committee, and there's
17 testimony from The Fund for Modern Courts as
18 well as Eli Vigliano and Doris Sassower as
19 well.

20 MS. E. SASSOWER: And George
21 Sassower additionally.

22 CHAIRMAN DeFRANCISCO: All
23 right. Thank you. The meeting is

1 concluded.

2 (Whereupon, at 12:12 p.m., the

3 Hearing concluded.)