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BEFORE THE NEW YORK STATE SENATE STANDING  
COMMITTEE ON THE JUDICIARY

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In the Matter

-of-

a Public Hearing on the Confirmation of  
JUDITH S. KAYE as Chief Judge of the New  
York State Court of Appeals

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Hearing Room A  
Legislative Office Building  
Empire State Plaza  
Albany, New York

March 17, 1993  
10:00 a.m.

PRESIDING:

SENATOR CHRISTOPHER J. MEGA, Chairman,  
Senate Committee on Judiciary

PRESENT:

- SENATOR CHARLES D. COOK
- SENATOR RICHARD A. DOLLINGER
- SENATOR PEDRO ESPADA, JR.
- SENATOR JOSEPH L. GALIBER
- SENATOR EMANUEL R. GOLD
- SENATOR JAMES J. LACK
- SENATOR FRANZ LEICHTER
- SENATOR JOHN J. MARCHI

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SENATOR GEORGE ONORATO  
SENATOR STEPHEN M. SALAND  
SENATOR JOHN B. SHEFFER II  
SENATOR MICHAEL J. TULLY, JR.  
SENATOR GUY J. VELELLA  
SENATOR DALE M. VOLKER  
EDWARD H. COLE, Chief Counsel

23

SENATOR MEGA: John H. Babigian,

PAULINE E. WILLIMAN  
CERTIFIED SHORTHAND REPORTER

1 Esq.

2 MR. BABIGIAN: Thank you for  
3 allowing me the opportunity to speak here today  
4 particularly in view of the fact that I'm here  
5 in a role of a devil's advocate and in  
6 opposition somewhat to the appointment of Judge  
7 Kaye as chief judge.

8 I'm a lawyer in the Law  
9 Department of the Civil Court of the city of New  
10 York.

11 In 1987, the Appellate Division,  
12 First Department, certified to the Court of  
13 Appeals a constitutional issue which has never  
14 been presented to any court in the United  
15 States. The issue involved a pure issue -- a  
16 pure issue of separation of powers. Can a judge  
17 appoint a person to office as a judge?

18 The issue involves the Housing  
19 Court judges in the city of New York. If the  
20 Housing Court judges are actually referees,  
21 obviously, they can be appointed by the judge or  
22 any other judge.

23 SENATOR MEGA: Excuse me, Mr.

1 Babigian. Is that how you pronounce your name?

2 MR. BABIGIAN: Babigian.

3 SENATOR MEGA: Babigian. I'm  
4 sorry. This hearing is in reference to  
5 determining the qualifications of the judge to  
6 be the chief judge of the Court of Appeals of  
7 the state of New York. If you have any  
8 testimony in reference to her qualifications,  
9 would you please testify in that area and  
10 determine whether she's qualified.

11 MR. BABIGIAN: Well, sir, to the  
12 extent that I testify that she has engaged in  
13 judicial misconduct in rendering a decision, it  
14 certainly goes to the issue of her  
15 qualifications.

16 SENATOR MEGA: You have the  
17 mike.

18 MR. BABIGIAN: O.K. When this  
19 case came up before the Court of Appeals, I had  
20 aimed my arguments at Judge Kaye as the  
21 acknowledged expert on the New York State  
22 Constitution. She approached me and asked me  
23 couldn't a judge delegate the authority to

1 another person, a referee? Yes.

2 She then asked me that whether  
3 what has happened indicates Housing Court judges  
4 and my answer was no, there is no delegation  
5 whatsoever of authority from a Civil Court judge  
6 to a Housing Court judge to handle the cases.  
7 The Housing Court judges are independent  
8 judges. They always have been. Their cases go  
9 on appeal in the same manner that any other  
10 judge.

11 Prior to 1976, while they were de  
12 facto judges, they lacked many critical powers  
13 that prevented them from being called first  
14 class judges. Number one, they never had the  
15 title of judge. They were dubbed court  
16 officers. The title was given to them in 1978.  
17 They lacked the critical power to enforce  
18 housing codes. They lacked the power to sign  
19 and decide orders to show cause and finally and  
20 most importantly, they lacked the power to  
21 impose civil and criminal contempt, which is  
22 what makes -- what makes a judge. You can't be  
23 a full-fledged judge without those powers.

1 In 1984, the Legislature passed  
 2 an amendment stating that the Housing Court  
 3 judges were now duly constituted judicial  
 4 officers. The following year they raised the  
 5 pay of the Housing Court judges to almost the  
 6 same level as that of Civil Court judges. They  
 7 gave them full-time law clerks paid in the same  
 8 way as the other law clerks of the civil courts,  
 9 and the decision of the Court of Appeals stated  
 10 as follows:

11 None of the changes which I have  
 12 just discussed, quote, "materially enlarged the  
 13 authority of Housing Court judges," which is  
 14 completely preposterous.

15 SENATOR MEGA: Sir, may I remind  
 16 you that this is a legislative hearing.

17 MR. BABIGIAN: I know that.

18 SENATOR MEGA: It is not a court  
 19 of law.

20 MR. BABIGIAN: I know that.

21 SENATOR MEGA: You have been in a  
 22 court of law. Your case apparently has been  
 23 decided, and some things have occurred which you

1 are not happy with. We cannot re-argue or  
2 re-hear a case and make a further decision, so I  
3 would appreciate it if you would get to the  
4 purpose of this hearing, the qualifications of  
5 Judith -- Judge Judith S. Kaye as chief judge of  
6 the Court of Appeals of New York State.  
7 Please.

8 MR. BABIGIAN: All right, fine.  
9 I would like to have Judge Judith Kaye comment  
10 on issuing per curiam unsigned opinions and the  
11 justification thereof in view of the criticism  
12 which has been made by the next speaker, who is  
13 an acknowledged expert on the Court of Appeals,  
14 Professor Vincent Bonventre. Thank you.

15 Any questions?

16 SENATOR MEGA: No, sir. Thank  
17 you for coming.

18 MR. BABIGIAN: All right. Thank  
19 you.

20 SENATOR MEGA: Thank you very  
21 much.

22 Vincent M. Bonventre, Assistant  
23 Professor of Law, Albany Law School, Albany Law