

1 Thank you, Mr. President.

2 ACTING PRESIDENT MAZIARZ: Thank
3 you, Senator Bruno.

4 The question is on the resolution.
5 All in favor signify by saying aye.

6 (Response of "Aye.")

7 ACTING PRESIDENT MAZIARZ:
8 Opposed, nay.

9 (No response..)

10 ACTING PRESIDENT MAZIARZ: The
11 resolution is adopted.

12 Congratulations very much, boys.
13 We appreciate you being here today.

14 (Applause.)

15 ACTING PRESIDENT MAZIARZ:
16 Senator Bruno.

* 17 SENATOR BRUNO: And,
18 Mr. President, can we at this time return to
19 reports of standing committees.

20 I believe there's a report from the
21 Judiciary Committee, and I would ask that it
22 be read at this time.

23 ACTING PRESIDENT MAZIARZ: The
24 Secretary will read.

25 THE SECRETARY: Senator

1 DeFrancisco, from the Committee on Judiciary,
2 reports the following nomination.

3 As an Associate Judge of the Court
4 of Appeals, Honorable Eugene F. Pigott, Jr.,
5 of Grand Island.

6 ACTING PRESIDENT MAZIARZ:
7 Senator DeFrancisco.

8 SENATOR DeFRANCISCO: I rise to
9 proudly move the nomination of Eugene F.
10 Pigott, Jr., of Grand Island, as associate
11 judge of the Court of Appeals. 91

12 We had a Judiciary Committee
13 meeting yesterday, we have reviewed his
14 qualifications, and the nominee was
15 recommended unanimously by that committee to
16 the full Senate for his confirmation.

17 Briefly, I would just like to say
18 that I've known Judge Pigott. I know not only
19 that he is an excellent judge, an excellent
20 lawyer, but an excellent and wonderful person
21 with integrity that we need on the bench.

22 I particularly applaud the
23 Governor's appointment because Judge Pigott
24 has common sense, good experience from
25 actually being in the trenches to try cases.

1 And I think that's a quality that all judges
2 should have that are passing upon the results
3 of various trials that take place in courts
4 below.

5 He is a man of integrity and a man
6 that we really are proud to recommend to the
7 full Senate.

8 And to second that nomination, I
9 would like to call on Senator Dale Volker.

10 ACTING PRESIDENT MAZIARZ: Thank
11 you, Senator DeFrancisco.

12 Could we just have a little bit of
13 order in the room, please.

14 Senator Bruno.

15 SENATOR BRUNO: Thank you,
16 Mr. President. Thank you, Senator.

17 I am just going to add a comment to
18 Judge Pigott and really commend the Governor
19 for such a fine selection of an outstanding
20 individual who has in his life so far
21 accomplished some great things.

22 And he probably couldn't have done
23 those great things without his wife, Peggy,
24 who is there by his side; without his
25 daughter, Martha, that's there on his left;

1 and without his son, Captain David Pigott, who
2 is at this time in Iraq and we hope maybe on
3 the Internet, following this proceeding.

4 This is a distinguished family,
5 this is a distinguished gentleman, this is a
6 man who has excelled in his life in public
7 service. And we are really proud to have this
8 nomination on the floor.

9 And I know that all of us here will
10 be proud to be supportive and to see you go
11 on, Judge, in the great work that you have
12 been doing in the great tradition of the
13 judges of the Court of Appeals in this state,
14 who most of the time make great decisions and
15 right decisions. And on occasions they do
16 some things that may need your diligence and
17 your review, but that will come with time.

18 Thank you very much and
19 congratulations to you. God bless you and
20 your family and your work. Thank you to your
21 son for his valor and his bravery and being in
22 service just keeping people free throughout
23 the world. You can be proud of him, as you
24 are of your daughter, who I know is an
25 outstanding individual, and your wife. You

1 have a great family, and you are an
2 outstanding individual.

3 Thank you, Mr. President.

4 ACTING PRESIDENT ROBACH: Thank
5 you, Senator Bruno.

6 Senator Paterson.

7 SENATOR PATERSON: Thank you,
8 Mr. President.

9 I just wanted to add my voice to
10 Senator Bruno's, who certainly complimented
11 Judge Pigott and spoke well of the Court of
12 Appeals. Listening to his comments, I got the
13 feeling Senator Bruno thought that he should
14 be nominated to the Court of Appeals today.
15 But as good an idea as that might be, short of
16 it, I think Judge Pigott will serve with
17 distinction.

18 Judge Pigott was going to be
19 speaking and attending a dinner in Rochester
20 this evening, and he told them that he had to
21 come down to be confirmed today, and they
22 said, "Well, Senator Paterson is going to be
23 there." So Judge Pigott is going to try to
24 get back up to Rochester as soon as he can,
25 and then, just to make sure that he doesn't

1 get there and get further agitated by my acts
2 today, I will be there as well.

3 But for a long period of time in
4 the Appellate Division, the judge has served
5 with distinction. This is certainly a fine
6 nomination by the Governor.

7 I just wanted to clear up the fact
8 that we are not in any way impugning the
9 reputations or the great work of any of the
10 outstanding appointments that have been made
11 to the Court of Appeals, to the Appellate
12 Division, or anyone else. But we're just
13 pointing out that, as the famous inscription
14 on the great courthouse in New York: "The
15 administration of justice is the firmest
16 pillar of good government."

17 And the administration of justice
18 has to include all the talented people around
19 the state who happen to be women, half of the
20 state's population; happen to be
21 African-American, 16 percent of the state's
22 population; happen to be Hispanic, 15 percent
23 of the state's population, or Asian, 9 percent
24 of the state's population.

25 There is great talent, great

1 ability, great service, great distinction, and
2 certainly documented evidence of it in
3 candidates all around this state. We are just
4 arguing that they be considered so that they,
5 who have that kind of talent, can serve all
6 along with those of outstanding talents such
7 as Judge Pigott.

8 And my congratulations go out to
9 him. I never met the judge's son, but I have
10 met his very lovely wife and daughter earlier
11 today, and I know they're proud of him. And
12 he will make this state even more proud of him
13 than we've been to this point because of his
14 outstanding service that rendered this
15 nomination today.

16 Thank you, Mr. President.

17 ACTING PRESIDENT ROBACH: Senator
18 Volker.

19 SENATOR VOLKER: Mr. President.
20 And I can't deny that this is a very proud day
21 for myself and for Western New York.

22 There has been a hoax in Western
23 New York that there hasn't been a judge on the
24 Court of Appeals since Judge Jason, Matthew
25 Jason, who actually was the chief judge.

1 A friend of mine and a former
2 Assemblyman -- I think he was from Western
3 New York -- Dick Wesley, who is a very close
4 friend of Gene's also, was a judge for a
5 while. But of course he was making such rapid
6 progress that he moved on to other things.

7 But the appointment of Gene Pigott
8 represents, in my opinion, another one of the
9 great appointments of Governor George Pataki.
10 And I've said this before, and I'm going to
11 say it again -- this is the last appointment,
12 barring some disaster or whatever, that
13 Governor Pataki will make on the Court of
14 Appeals -- I personally believe that -- I've
15 been in this house 32 years, 34 years in both
16 houses -- no governor has ever done as good a
17 job, in my opinion, with appointments as
18 George Pataki has.

19 The process, by the way -- it's a
20 little frustrating occasionally, because there
21 isn't the kind of guarantees there used to be
22 that if the Governor wants somebody, that he
23 can get them. I can assure you that, you
24 know, there's been a couple of incidents where
25 the person that George Pataki wanted was

1 turned down by his own committee. But that's
2 part of democracy. I've often said some
3 people say there's too much democracy, but I
4 guess it depends on your perspective.

5 But Gene Pigott was one of a cadre
6 of people who were reviewed by the fitness and
7 selection committee, and despite the fact that
8 we had somebody yesterday who objected to the
9 process because she didn't know anything about
10 it -- unfortunately, who knew nothing about
11 the whole system, but that's beside the
12 point -- it's a great system. And we have
13 probably as good a judiciary as any place in
14 the nation.

15 But we do need somebody as
16 assistance on the Court of Appeals to make
17 sure that all the people in this state, in my
18 opinion, are represented. And we need
19 somebody who doesn't decide that he or she
20 should make decisions against the wishes of
21 the majority of people represented by the
22 Legislature.

23 I can only cite a Carter-appointed
24 judge in Michigan who may have impugned the
25 President of the United States' ability to

1 secure this country with a decision on
2 wiretapping and so forth. It is not the place
3 of the judiciary to make decisions that
4 override generally accepted law. And I only
5 mention that because I think it's important.

6 But I will say this about Gene, and
7 I've known him for many, many years. In fact,
8 he became a judge because of the unfortunate
9 illness of a very close friend of mine, Judge
10 Wolf, who is still around but very, very ill,
11 and the death of another very close friend of
12 mine lifted him to -- or the -- well, she died
13 a little after, later, Dolores Denman, who was
14 also very close to Gene and to all of us, who
15 was a classmate of mine in law school.

16 And I told the story about how I
17 admitted to the chief judge that actually
18 Dolores Denman was my choice for chief judge
19 of the Court of Appeals. But it was pretty
20 obvious why; we were great friends, and she
21 was a good person.

22 But Gene Pigott has always been a
23 model of judicial conduct. And he's very,
24 very popular with the judges in Western
25 New York. And that's not just the younger

1 judges, because you must -- I assume that you
2 understand, those of you that practice law,
3 that there's sort of a diversity of
4 judgeships. And some of the older people get
5 a little crotchety sometimes about some of the
6 younger people that do things.

7 But Gene Pigott has always been a
8 person who will talk to everyone. In fact,
9 and I will say this, on several occasions
10 where he had decisions to make on cases, he
11 did call me and called other lawyers. One of
12 them that was mentioned was the \$75 -- or the
13 increase in assigned counsel fees. And both
14 of us agreed with that, by the way, but the
15 law was otherwise. And he did say to me, "Are
16 you people in the Legislature going to do
17 that?" I said, "Don't worry, we'll take care
18 of it."

19 But my point was that even though
20 he realized that his own personal feeling was
21 on behalf of the litigants who were asking for
22 the changes, they wanted a judge to make the
23 changes rather than the Legislature. That's
24 not the way it's supposed to be done. And he
25 agreed with that, and he took care of it.

1 So all I can say is that Gene is,
2 in my opinion, a true moderate. And I was
3 challenged by the idea of moderation by my
4 friend in front here. But by that I mean he's
5 a balanced person who I don't expect to always
6 make decisions, by the way, that I agree with.
7 Most people don't, but that's neither here nor
8 there.

9 But seriously, he's a person I
10 believe, though, that is fair and just and
11 will make decisions I think that, generally
12 speaking, this house will feel is proper for
13 the Court of Appeals.

14 And very important, Gene, I wish
15 you the best of luck. I also want to say from
16 my good friend and your good friend
17 Tom Reynolds, congratulations.

18 ACTING PRESIDENT ROBACH: Senator
19 Nozzolio.

20 SENATOR NOZZOLIO: Mr. President,
21 on the nomination.

22 Mr. President and my colleagues, I
23 rise with great pride in endorsing
24 wholeheartedly Governor Pataki's nomination of
25 Judge Gene Pigott to the United -- to the

1 New York State Court of Appeals. Got ahead of
2 myself.

3 It's interesting that Governor
4 Pataki's first appointment to the Court of
5 Appeals, Dick Wesley, a number of years ago
6 was from the Fourth Department, and Gene
7 Pigott, our nominee today, is from the Fourth
8 Department. And as Senator Volker indicated,
9 this very well could be the Governor's last
10 appointment. So that's a nice sandwich for
11 Western New York.

12 And that certainly we look to
13 Judge Pigott as being certainly extremely well
14 qualified for this position, but, as
15 importantly, he has earned this position. He
16 has earned the right to go to the Court of
17 Appeals because he's been an outstanding judge
18 at the trial court level, at the appellate
19 court level. He understands the court system
20 and, more importantly to us, understands
21 Western New York.

22 That I am very proud that he has
23 been chosen for this important position. I
24 know he will serve with great distinction and
25 that he does us all honor. We're proud to

1 know him and very proud that this nomination
2 is moving forward.

3 Thank you, Mr. President.

4 ACTING PRESIDENT ROBACH: Thank
5 you, Senator Nozzolio.

6 Senator Smith.

7 SENATOR MALCOLM SMITH: Thank
8 you, Mr. President. On the nomination.

9 I rise to support the nomination of
10 Justice Gene Pigott, who clearly has had a
11 distinguished record in the Appellate
12 Division.

13 But more importantly than that, in
14 addition to being a Vietnam vet -- of course
15 which we all know is near and dear to many of
16 the members in this chamber -- I will tell you
17 that I knew he had humility when I ran into
18 him in the cafeteria today. And there he was,
19 by himself -- I think his wife was with him.
20 They were strolling through the cafeteria like
21 they were workers up in here in the chamber.
22 And you would have never known this is a
23 gentleman who was about to become appointed to
24 the highest court in the State of New York.
25 And it was then that I recognized that that

1 kind of humility will only do the bench well.

2 But I would be remiss also,
3 Mr. President, if I didn't at least, for the
4 record and to my colleagues who are here,
5 underscore what Senator Paterson also raised
6 earlier. And that is the importance, as we go
7 forward, in terms of diversity on the bench.

8 While we obviously know that we are
9 not the ones that hand up names to the
10 commission, who hands it to the Governor, we
11 do have the authority to either vote yea or
12 nay on those particular nominees. And it is
13 very clear to me, given the way things are on
14 the Court of Appeals as of right now, there
15 will be a tremendous void with regard to
16 diversity.

17 And therefore it is my hope that as
18 we move forward we'll be very sensitive to
19 that issue. Sensitive because, as you know,
20 the public clearly will have more confidence
21 in our justice system if they recognize that
22 there is a bench that is rich with the same
23 diversity that we have in the State of
24 New York.

25 We have 55 appellate justices in

1 the State of New York, two of which are
2 African-American, two of which are Hispanic,
3 one of which is Asian. And clearly that being
4 the back bench for the Court of Appeals in
5 terms of where they are selected from, it
6 becomes critically important that that
7 particular Appellate Division represents what
8 we have as a rich diversity in the State of
9 New York.

10 But I am proud to support the
11 nominee. I think he will do a great job. And
12 I'm quite sure his wife is happy that this day
13 has come.

14 Congratulations to you, Judge.
15 Peggy, also to you too.

16 ACTING PRESIDENT ROBACH: Thank
17 you, Senator Smith.

18 Senator Rath.

19 SENATOR RATH: Thank you,
20 Mr. President.

21 I rise to support the Governor's
22 nomination and congratulate the Governor on
23 such a wise choice.

24 I am happy to see Peggy,
25 Mrs. Pigott here and Martha here, neighbors

1 and friends from Western New York.

2 Judge Pigott and I started out
3 together many years ago. And Gene was
4 always -- pardon me for calling you Gene, but
5 that's what it is -- always smarter than the
6 rest of us and worked harder than the rest of
7 us.

8 And in his very first venture into
9 public life, he was not successful. And so
10 you see what happens to people who are not
11 successful on their first venture; they ascend
12 to the highest court. You see those were
13 successful on their first venture, we labor in
14 the fields.

15 And that's not saying that the
16 judge will not be laboring in the fields,
17 because I know his work ethic. And he will be
18 laboring in the fields.

19 And as you know, I was married to a
20 judge, a Supreme Court judge, who, when Gene
21 Pigott ascended to the bench, was delighted
22 because he knew that there was someone of
23 judicial temperament. And however the
24 decisions came out in my husband's opinion was
25 one thing, but if you have judicial

1 temperament and a respect for the law and the
2 bench and the bar, that was critical.

3 And I've heard that reflected in
4 the comments of others. Senator Smith just a
5 moment ago said something that reflected that
6 thought, and Senator Volker and Senator
7 Nozzolio reflected those thoughts.

8 His experience is far and deep
9 beyond - before the bench, county attorney,
10 clerk of the county legislature. I remember
11 the days well. And so I know from work ethic
12 as to what we're going to see from this judge.

13 And I'd like to read you just a
14 small piece that appeared in the *Buffalo News*
15 today, and these are Gene Pigott's own words:
16 "'I don't think I'm much smarter than this
17 body or any other court,' said Pigott,
18 pointing out unpopular decisions he has made
19 because a law may have expired. He added that
20 statutes passed by the Legislature have to 'be
21 the basis of any decision we make.'"

22 I think that's reassuring to
23 legislators, Judge Pigott. And I know that
24 there are decisions that you have made that I
25 have not agreed with. But what I do know

1 beyond that is that I trust you, I trust your
2 personal decisions, I trust how thoughtful you
3 will be as you come to those decisions because
4 I know you well. And that gives me great
5 confidence that you will serve with
6 distinction on the bench.

7 And I would say, in closing, number
8 one, Judge Pigott does not take himself too
9 seriously, we know that. And that's part of
10 his judicial temperament. But what I do know
11 is that you take the law and your
12 responsibility to the people of the State of
13 New York very seriously.

14 Congratulations. We are happy that
15 you're going to be serving in this position.

16 ACTING PRESIDENT ROBACH: Senator
17 Maziarz.

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

20 I too rise, along with my
21 colleagues, in support of this nomination.

22 I've known Judge Pigott for a
23 number of years in Western New York. He's
24 fair, he's honest, has a high degree of
25 integrity. An excellent appointment by the

1 Governor to the court.

2 Judge, when one of the clerks said
3 to me -- they asked me if I thought that you
4 would be a little bit upset by the fact that
5 we had to do the East Greenbush Little League
6 resolution before we did a nomination to the
7 Court of Appeals. I said, "No, Judge Pigott
8 worked in the Erie County legislature. He'll
9 understand this stuff that goes on here."

10 But again, I want to congratulate
11 Judge Pigott, most particularly his family,
12 and most particularly his son David, who's
13 watching via the Internet in Iraq today.

14 And, Judge, you were here on a very
15 difficult day for us with the resolution that
16 we had. And I would just ask you, Judge,
17 during the confirmation process yesterday in
18 front of the Senate Judiciary Committee one of
19 the people who testified in your behalf talked
20 about the importance that you placed upon
21 legislative intent when you made your
22 decisions during the course of your legal
23 career.

24 And I would only implore you to
25 remember the victims of crimes. I think all

1 too often victims or their families, in the
2 instances when someone is murdered, they look
3 to the court. It's their only place that they
4 can look to for justice for those individuals
5 who are no longer here.

6 And I would just ask you that in
7 the weighty decisions that you have coming
8 before you in the future on the court that you
9 keep those individuals in mind. A lot of
10 those people have a rather low economic
11 station in life. They're not professors,
12 doctors, lawyers, senators; they're not in
13 public service. But they're human beings, and
14 they deserve justice just like everyone else.

15 So I would only implore you and ask
16 you, and I know that you will, from your past
17 record, keep those victims of crimes in mind.

18 Mr. President, I wholeheartedly
19 endorse this nomination. Thank you.

20 ACTING PRESIDENT ROBACH: Thank
21 you, Senator Maziarz.

22 Senator Stachowski.

23 SENATOR STACHOWSKI: Thank you,
24 Mr. President. I too rise to second the
25 nomination of Justice Pigott.

1 And I think that he'll do a
2 marvelous job. In talking to judges and
3 lawyers, they all had nothing but good things
4 to say about him, which is surprising on its
5 own. I didn't hear anybody say anything bad.

6 I know Justice Pigott since he was
7 in the county legislature, which goes back
8 quite a ways. And more important than all his
9 decisions, I'm proud to say that Judge
10 Pigott's my friend, and I'm glad to see him
11 get this position.

12 And piggybacking off something
13 Senator Maziarz alluded to, and Senator
14 Volker, I think it's a great comment to say
15 that here's a judge that says that legislative
16 intent is very important to him, and the
17 Governor sent him up anyway.

18 (Laughter.)

19 SENATOR STACHOWSKI: So the fact
20 is I think that Judge Pigott will do a great
21 job, and I'm proud to have had the opportunity
22 to second his nomination.

23 ACTING PRESIDENT MAZIARZ: Any
24 other Senator wishing to speak on the
25 nomination?

1 On the nomination of Eugene F.
2 Pigott, Jr., as an associate judge of the
3 Court of Appeals, all in favor signify by
4 saying aye.

5 (Response of "Aye.")

6 ACTING PRESIDENT MAZIARZ:

7 Opposed, nay.

8 (No response.)

9 ACTING PRESIDENT MAZIARZ: Judge

10 Pigott is hereby confirmed as an associate
11 judge of the Court of Appeals.

12 I want to introduce Judge Pigott,
13 his wife, Peggy, daughter, Martha, and his
14 son -- most importantly, his son, David, who
15 is watching these proceedings in Iraq.

16 Judge, congratulations.

17 (Standing ovation.)

18 ACTING PRESIDENT MAZIARZ:

19 Senator Skelos.

20 SENATOR SKELOS: Mr. President,
21 there will be an immediate meeting of the
22 Rules Committee in the Majority Conference
23 Room, and the Senate will stand at ease
24 pending the report of the Rules Committee.

25 ACTING PRESIDENT MAZIARZ: