ALBANY, NEW YORK

March 9, 1993

3:39 p.m.

REGULAR SESSION

SENATOR JAMES J. LACK, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT LACK: The Senate will come to order.

Please rise for the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

The prayer this afternoon will be given by the Reverend Tom Stiles, Pastor of the First Baptist Church in West Seneca. Reverend?

REVEREND TOM STILES: Heavenly Father, I thank You for a beautiful day. We have to confess that we are a strange people though. We take Your many blessings for granted. We take a beautiful day for granted until there's bad weather. We take our health for granted until we're sick. Electricity is something we're used to and take advantage of every day, but then when the power is off we are quick to complain.

And so, Father, I pray that today we be a thankful people. I pray that freedom would be something that we would be very

thankful for today, the liberty that we enjoy because our forefathers had a vision and a dream of a country of liberty. As we look at the world scene, we see all these problems, Father, and so we're thankful that we live in America.

I thank You for these men and women that lead our great state, and I pray, Father, that You give them wisdom today that they might know what to do about the complex issues that are facing our state. Help them to understand that the purpose of government is to punish evil, to promote goodness, to protect the innocent, including the most innocent of all, the unborn, to provide services for the general well-being of our citizens.

Grant them Your blessing today. Give them Your wisdom and guidance that the decisions they make might be good. Thank You for the privilege of liberty. May we always protect it and defend it. In Jesus' name. Amen.

ACTING PRESIDENT LACK: Thank you very much.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 8th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Friday, March 5th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT LACK: Hearing no objection, the Journal stands approved as read.

Motions and resolutions. Senator Present, we have a Resolution Calendar.

SENATOR PRESENT: Mr. President, I move the adoption of the Resolution Calendar.

SENATOR GOLD: Yeah. Can we hold Senator Larkin's 619, or at least open it up for membership in the entire house?

SENATOR LARKIN: We can.

SENATOR GOLD: Don't need to hold it, but you want to -- hold on. If I can just point out to the chamber, this is a resolution asking that a day of remembrance for the victims of the Holocaust in the Warsaw ghetto uprising

and I know I and I assume many people would want to be on it, so you want to put them all. Why don't you take care of it? It's yours.

ACTING PRESIDENT LACK: Senator Larkin.

SENATOR LARKIN: Mr. President, on this Legislative Resolution 619 which was asked by a constituent of mine who is a Holocaust survivor, we put this resolution in, and I would like to ask the members to please join us so that we don't forget something that will be a mark in international history.

ACTING PRESIDENT LACK: May I see the hands of those Senators who would like to go on Resolution Number 619? And, Senator Larkin, with your permission and that of Senator Present and Senator Gold, for those members who are not here, the resolution will stay at the desk until after session and, as you come to session, if you'd like to be on Resolution 619, so indicate so the desk, and you'll be placed on the resolution until the end of the day.

Senator Present, is that all

right with you?

(Senator Present nods head.)

ACTING PRESIDENT LACK: On the resolution -- with that understanding, on the Resolution Calendar, all those in favor signify by saying aye.

(Response of "Aye.")

Contrary nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Cook.

SENATOR COOK: Mr. President, I offer up the following privileged resolution, waive its reading and ask its immediate adoption.

ACTING PRESIDENT LACK: Secretary will read its title.

THE SECRETARY: Legislative Resolution, by Senator Cook, proclaiming the month of March as Music in our Schools Month in Sullivan County.

ACTING PRESIDENT LACK: All those

in favor, aye.

(Response of "Aye.")

Contrary nay.

(There was no response.)

The resolution is adopted.

Senator Mega for a privileged resolution.

SENATOR MEGA: Mr. President, I offer up the following privileged resolution and ask that it be read in its entirety.

ACTING PRESIDENT LACK: Secretary will so read.

THE SECRETARY: Legislative Resolution, by Senators Mega, Marino and other members of the Senate: Legislative Resolution commending the city of New York, its citizens, servants, police, firefighters, and emergency medical personnel for their superlative efforts during the bombing of the World Trade Center.

WHEREAS, consistent with the duties of this legislative body to recognize the contributions and achievements of the citizens of this Empire State, we pay just tribute to the

men, women and children of the city of New York for their response during the aftermath of the bombing of the World Trade Center;

Attendant to such duty and fully in accord with our long-standing traditions, we, the elected representatives of the citizens of the state of New York, duly assembled in this legislative body, pause in our deliberations to convey our deepest gratitude to the emergency services personnel and our highest praise to the people of the city of New York for the unparalleled skill and impressive adeptness with which they handled this terrible tragedy;

During the afternoon of Friday, February 26th, a bomb of tremendous force and unknown origin, was detonated in the parking garage under the Twin Towers at the World Trade Center, killing at least five people, injuring more than a thousand and forcing the closing of the Twin Towers;

As a nation watched, thousands fled down smoke-filled stairways emerging from New York's most prominent landmark overcome by

smoke, covered in soot and breathing fumes;

Thanks to the timely response of emergency and volunteer personnel, including police, fire and rescue personnel from Manhattan, Brooklyn, Queens, Staten Island and New Jersey, the injuries were mercifully kept to a minimum and most, if not all, could be treated at local hospitals and released within hours;

The dedication to duty and unwavering devotion displayed by these individuals reflect proudly upon themselves, their communities and this state, proving once again the true character of all New Yorkers and, in turn, this great nation;

The toll in human suffering is only outweighed by the acts of extraordinary courage and heroism shown by those who were unwittingly caught by a savage act of cruelty;

We, the duly assembled members of this legislative body, are compelled to pause and honor but a few of those acts of courage knowing that in doing so they symbolize all the selfless acts performed this day, too numerous

to mention, and so we praise the Fire Lieutenant and the Port Authority Police Lieutenant who rescued the children of two Brooklyn public schools, who were trapped in an elevator near the observation deck; we praise the teachers and parents of those children who, trapped in that elevator for over five hours, were able to overcome their own anxiousness to keep the children calm and entertained until they were rescued; we praise those who, by helicopter in high winds and limited visibility, evacuated a pregnant woman from the roof of one of the towers; we praise those firefighters and paramedics who carried a second pregnant woman down 44 flights of stairs to deliver her baby at St. Vincent's Hospital; and, in addition, we praise all those whose acts of heroism are unknown due to the modesty of those who performed them;

We commend the Police Commissioner, Raymond Kelly, Fire Commissioner Carlos Rivera, Deputy Mayor for Public Safety Fritz Alexander, Executive Director Stanley

Brezenoff of the Port Authority and Superintendent of the Port Authority Police, Charles Knox, whose personnel performed so superbly in the City's time of need;

Because we can not forget the memory of those whose senseless murder must not go unpunished, it is the intent of this legislative body to express our deepest condolences to the families of Stephen Knapp of Staten Island; John DiGiovanni of Valley Stream; Monica Smith of Seaford; Robert Kirkpatrick of Suffern; William Macko of Bayonne, New Jersey and to the family of Wilfredo Mercado, who we hope and pray is found alive;

The Twin Towers serve as a symbol of our, and indeed the nation's industriousness and high aspirations, and this shocking act of desperation should only serve to strengthen our resolve against the methods of terror;

We cannot allow ourselves to submit to those whose actions are motivated by fear, hatred and disregard for human life for, if we do, we have surrendered more than they

could ever take from us;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations and commend the city of New York and its citizens, the police, fire and emergency services personnel for their outstanding conduct during the tragedy at the World Trade Center, fully confident that such pause indicates our shared commitment to the ideals of community service and the preservation of human life, which are our American heritage; and

BE IT FURTHER RESOLVED that our devotion to the security and safety of these United States, conjoined with our national government's commitment, shall shield our citizens from further peril and reinforce their peace of mind, and

BE IT FURTHER RESOLVED that copies of this resolution, suitably engrossed, be transmitted to the office of the Mayor of the city of New York, Police Commissioner Raymond Kelly, Fire Commissioner Carlos Rivera, Deputy Mayor for Public Safety Fritz Alexander,

Executive Director of the Port Authority Stanley Brezenoff, and Superintendent Charles Knox of the Port Authority Police.

ACTING PRESIDENT LACK: Senator Mega.

SENATOR MEGA: Mr. President. Thank you, Mr. President and my colleagues. That was a long resolution, and I thank you for the attentiveness that you showed in listening to the resolution.

The resolution really states all that has to be stated as far as that incident that occurred in New York City that was both at the same time a tremendous, tremendous tragedy, and yet it was something that was good, if I could put it that way, as far as New Yorkers were concerned because, you know, New York City most times takes a bad rap.

We have our problems in New York City. We have our problems in all the large cities in this country, but the people of New York City rose to the occasion individually and as a group, and I'm proud to say that I am a New

Yorker and I'm proud of all the individuals that were involved in doing what had to be done to make that day a less onerous day than it was, and I would ask that all my colleagues join in this resolution.

Thank you, Mr. President.

ACTING PRESIDENT LACK: Senator Goodman.

SENATOR GOODMAN: Mr. President, I very much appreciate Senator Mega's thought fulness in introducing this resolution and, obviously, the full body will subscribe to it in its entirety.

I would like to say very briefly, Mr. President, that as chairman of the Senate Investigations Committee, I paid a visit for purposes of inspecting the site with four members of my staff last Friday, to the World Trade Center, and we had the opportunity to observe at close range the damage which was caused by the bomb that went off at the center.

I would have my colleagues know that we really should be deeply thankful that

only five people, possibly six, lost their lives in this incident, because the sheer physical magnitude of this damage was absolutely staggering. We were taken through the F.B.I. lines to inspect the crater which was at least six stories in its total depth, and enormously wide, and metal beams and metal doors were crumpled like tin foil, and the sheer and extraordinary scope of this blast was absolutely astounding.

I rise at this moment to say not only that, of course, we subscribe to Senator Mega's resolution, but also that the investigat ive arm of this body will be doing its utmost to try to explore the basis on which the safety precautions which were lacking in the World Trade Center can be cured so that we will not have a recurrence of the type of incident that developed in this situation, specifically, as I dare say my colleagues are aware, there were no lights in the stairwells. There is no pressuri zation of the stairwells nor any venting to avoid the rising to the 110th floor of black

acrid smoke within ten minutes after the blast. There was no public address system so that instructions could be issued to those who were in the building at the time, and it is an extraordinary testament, particularly to those who had to evacuate the building, that despite the lack of any safety instructions of any kind, they were able in a reasonably orderly way to depart.

Some did it by descending; some did it by ascending to the roof including, as you know, a group of school children who were taken off by helicopter. It is my belief, Mr. President, that this body can and will render a service when the report of the Investigations Committee is -- comes through for the purpose of highlighting the minimal safety precautions which must be taken in high rise buildings like this, especially those which may be subject to terrorist attack.

There'll be more said about this later, but I did want the body to know that its investigative arm will be very much involved in

an attempt to avoid a recurrence of the enormous potential hazards which, thank God, were not realized in this case.

ACTING PRESIDENT LACK: On the resolution, all in favor aye.

(Response of "Aye.")

Contrary, nay.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT LACK: Excuse me, Senator Gold. With Senator Goodman's permission, would all those who are -- Senator Mega's permission, I should say. I'm sorry.

SENATOR MEGA: Thank you. Senator Goodman may have spoken a little longer than I did, but it is my resolution. Thank you.

ACTING PRESIDENT LACK: My apologies, Senator Mega.

For those members who are not - there are over 40 members already on that reso lution. As with Senator Larkin's resolution, for those members who are not on the resolution, please indicate now or by the end of session.

On the resolution, all in favor

signify by saying aye.

(Response of "Aye.")

Contrary nay.

(There was no response.)

The resolution is adopted, and it will remain in the chamber until the end of session for all those who wish to co-sponsor it but have not yet had the opportunity to do so.

Senator Present, we're ready for the Calendar.

SENATOR PRESENT: Mr. President, let's take up the non-controversial calendar, please.

ACTING PRESIDENT LACK: Third reading, non-controversial, Secretary will read please.

THE SECRETARY: On page 7, Calendar Number 134, by Senator Skelos, Senate Bill Number 950, an act to amend the Family Court Act and the Criminal Procedure Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This

act shall take effect -

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 138, by Senator Saland, Senate Bill Number 2363, an act to amend the Social Services Law.

SENATOR SALAND: Mr. President, lay that aside for the day, please.

ACTING PRESIDENT LACK: Lay it aside all day, please.

THE SECRETARY: Calendar Number 151, by Senator Saland, Senate Bill Number 1554, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 152, by Senator Volker, Senate Bill Number 2025, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 153, by Senator Present, Senate Bill Number 2063, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT LACK: Last

section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 154, by Senator Johnson, Senate Bill Number 2153, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49, nays one, Senator Gold recorded in the negative.

ACTING PRESIDENT LACK: The bill

is passed.

THE SECRETARY: Calendar Number 155, by Senator Mega, Senate Bill Number 2157, an act to amend the Penal Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 156, by Senator Volker, Senate Bill Number 2173, an act to amend the Penal Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 157, by Senator Johnson, Senate Bill Number 661.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT LACK: Lay the bill aside.

THE SECRETARY: Calendar Number 158, by Senator Johnson, Senate Bill Number 783, Environmental Conservation Law.

ACTING PRESIDENT LACK: Last section.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT LACK: Lay the bill aside.

THE SECRETARY: Calendar Number 159, by Senator Stafford, Senate Bill Number 955, Environmental Conservation Law.

ACTING PRESIDENT LACK: Last

section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 160, by Senator Johnson, Senate Bill Number 1303, Environmental Conservation Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: 161, by Senator

Johnson, Senate Bill Number 1326, Environmental Conservation Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: 162, by Senator Johnson, Senate Bill Number 1795, Environmental Conservation Law.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 165, by Senator Maltese, Senate Bill Number 2114.

SENATOR GOLD: Lay that aside.

ACTING PRESIDENT LACK: Lay the bill aside.

THE SECRETARY: Calendar Number 166, by Senator Holland, Senate Bill Number 34, authorize the Broad Acres Golf Company, Incorporated, to have a right of first refusal.

ACTING PRESIDENT LACK: Last section.

SENATOR SMITH: Lay the bill - lay that bill aside.

ACTING PRESIDENT LACK: Lay the bill aside, please.

THE SECRETARY: Calendar Number 167, by Senator Farley, Senate Bill Number 372, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT LACK: Last

section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT LACK: The bill is passed.

168.

THE SECRETARY: Calendar Number 168, by Senator Stafford, Senate Bill Number 441, an act to amend the Tax Law.

ACTING PRESIDENT LACK: Local fiscal impact note at the desk. Last section, please.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT LACK: The bill

is passed.

THE SECRETARY: Calendar Number 171, by Senator Spano, Senate Bill Number 1533, an act to amend the Penal Law.

ACTING PRESIDENT LACK: Last - last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 176, by Senator Hannon.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT LACK: Lay it aside.

THE SECRETARY: Calendar Number 177, by Senator Hannon.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT LACK: Laid aside.

Senator Present, that completes the non-controversial calendar.

SENATOR PRESENT: Mr. President, let's take up the controversial calendar, please.

ACTING PRESIDENT LACK: Controversial calendar, Secretary will read.

THE SECRETARY: On page 8, Calendar Number 157, by Senator Johnson, Senate Bill Number 661, Environmental Conservation Law, in relation to state employee use of electric vehicles.

SENATOR GOLD: Can we have a quick explanation.

ACTING PRESIDENT LACK: Senator Johnson, Senator Gold has requested a quick explanation.

SENATOR GOLD: No, never mind. Last section.

ACTING PRESIDENT LACK: Last section. Thank you, Senator Johnson. That was

pretty quick.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 158, by Senator Johnson, Senate Bill Number 783, Environmental Conservation Law, in relation to state employee vehicle efficiency.

SENATOR GOLD: Explanation.

ACTING PRESIDENT LACK: Senator Johnson, once again an explanation requested by Senator Gold.

SENATOR JOHNSON: Mr. President, this -- this bill would help to advance the objective of the federal Clean Air Act, in which employers of a hundred or more have to put in place employer trip reduction programs.

This would provide the same thing

for New York State except that they would have to begin this program and put in place where there's 50 or more employees in their trip reduction program.

SENATOR GOLD: Senator yield to a question?

ACTING PRESIDENT LACK: Senator, will you yield?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT LACK: Senator Gold.

SENATOR GOLD: Senator, what I don't understand, we're talking about the use of a vehicle -- God bless you. Are these private vehicles of employees we're talking about?

SENATOR JOHNSON: That's correct.

SENATOR GOLD: And these are vehicles that the private individuals use to get to work?

SENATOR JOHNSON: That's correct.

SENATOR GOLD: Now, the word "required" is used, isn't it? How do you -- I mean I don't understand what they're supposed to

really do in this situation. If you have a hundred employees and they live in various directions and they all drive to work, what is supposed to happen? The agency, is it supposed to put out lists of who is to pick up who or drive together; how does it work?

SENATOR JOHNSON: Well, that is the -- well, there are, of course, federal regulations going into effect for all private enterprises requiring them to do this same thing, trip reduction, of roughly 25 percent.

SENATOR GOLD: Well, what do they do, I mean? I'm just trying to find out.

SENATOR JOHNSON: Well, there are various techniques that could take place. For example, you could do car pooling. People could use public transportation. The employer could have a van picking up ten people at a time and satisfy the requirement, various methods by which to achieve this reduction in accordance -

SENATOR GOLD: Will the Senator yield to a question?

SENATOR JOHNSON: Yes.

SENATOR GOLD: What I'm just curious about is, I mean I'm an employee and, for whatever reason, I -- I drive to work. Can the employer take away my job if I don't carpool or use a van or public transportation?

SENATOR JOHNSON: Well, that's very interesting. That's a question we have to ask as well about the public program. Do we fire you if you refuse to use a carpool? I don't think all of the details have been worked out yet, and the reason we thought New York State ought to take a lead in this is that we could help to work out the details of these programmatic changes that would have to take place in order to achieve the objectives of the federal Clean Air Act.

SENATOR GOLD: Will the Senator yield to one more question?

SENATOR JOHNSON: Yes.

SENATOR GOLD: Is this bill the implementation of a mandate?

SENATOR JOHNSON: Well, there's a federal mandate that's coming down on all

employers of a hundred or more. What we're saying is the state should take the lead in trying to implement a program like this and work out the kinks before it's required for all the general employers in the state.

SENATOR GOLD: Senator, when is it required; as of what date will it be required of private employers?

SENATOR JOHNSON: 1996, and we're moving this up one year. We're saying the state should do it by 1995. The general employers in the state have to do it by 1996. The state would gain valuable experience during that year in determining how this program could be implemented.

SENATOR GOLD: Will the Senator yield to one more question?

Senator, have any other states passed similar legislation?

SENATOR JOHNSON: I'm not aware of it, Senator.

SENATOR GOLD: Senator Oppenheimer.

ACTING PRESIDENT LACK: Senator Oppenheimer.

SENATOR OPPENHEIMER: I would like to speak in favor of the bill and answer a question Senator Gold raised.

There are various techniques that are being suggested to decrease the amount of vehicle trips to an office park, an office building, and most of them are carrots, but some of them are sticks, and they -- they include things like providing for those people who drive more than one in a car to have parking spaces close in to the office building, whereas if you drive by yourself you may be a mile away down the road.

There are just a lot of different techniques that are being looked at, including jitney services and, at any rate, this is definitely the direction we have to take. We have to cut down the single drivers in cars that's a plague to New York City and its environs and absolutely essential if we're going to try and comply with the Clean Air Act, and

the Environmental Planning Lobby has given this two trees, so that's very high on their priority list, not quite three trees, but two trees.

So I would recommend for our - our health as well as the health of this area of New York City and surrounding environment, as well as the health of the planet, that we approve this.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 158 are Senators Kuhl, Paterson and Smith. Ayes 51, nays 3.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 165, by Senator Maltese, Senate Bill Number 2114, an act to repeal section 114-a of the

Correction Law.

ACTING PRESIDENT LACK: Senator Maltese, Senator Hoffmann has requested an explanation.

SENATOR MALTESE: Mr. President, section 114-a of the Correction Law requires correctional facilities superintendents to keep daily facility records regarding rule infractions by employees, punishments inflicted upon inmates, and inmate complaints regarding food, clothing or cruel and unusual punishments. Section 114-a would be repealed to eliminate duplication of facility record-keeping requirements.

This was a departmental request that we acceded to. Their information to us indicates that this provision, which was orig inally enacted in 1929, well before computers, was intended for specific use by the Commissioner of Correctional Services, and they indicate that all type -- all the types of incidents required to be recorded in this daily record are recorded, number one, via the inmate

disciplinary process, the inmate grievance process, and the unusual incident file and are accessible by computer in those official department records.

SENATOR HOFFMANN: Would Senator Maltese yield for a question?

ACTING PRESIDENT LACK: Senator, will you yield?

Senator.

SENATOR HOFFMANN: Senator Maltese, was there any change to this bill from the form that we saw it in when it came before the Crime and Corrections Committee?

SENATOR MALTESE: No, there was not, Senator.

SENATOR HOFFMANN: Thank you, Senator Maltese. On the bill, Mr. President.

ACTING PRESIDENT LACK: On the bill.

SENATOR HOFFMANN: I'm disturbed by this apparent desire by the Department of Corrections to eliminate some of its record keeping. I don't think that it's cumbersome at

all for the Department of Corrections to maintain a daily log. This has been standard operating procedure and should continue to be.

The suggestion that the same in formation is already available under separate incident reports evades the important fact that it would require a very complicated search and cross-reference to determine what incidents, or what pattern of incidents occurred under a specific watch at a specific institution.

In the computer age, in which we find ourselves it should be relatively simple to adjust the computer technology to afford a short title, if you will, or a short version of the daily log to be automatically indexed through the incidents report keeping. Rather than eliminating the daily log, there should be a way to simply allow the duplication of that log to take place in the normal course of reporting the other event, but it would not be in the interest of accountability for this legislative body to pass a measure that would allow the elimination of daily logs as we now know them.

I'll vote no.

ACTING PRESIDENT LACK: Senator Waldon.

SENATOR WALDON: Would the Senator yield to a question or two?

ACTING PRESIDENT LACK: Senator, will you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT LACK: Senator.

SENATOR WALDON: Mr. President, Senator Maltese, this record -- this daily log record, is it handwritten?

SENATOR MALTESE: Is it handwritten?

SENATOR WALDON: Yes.

SENATOR MALTESE: My understanding is that it's fed into a computer. There was a representative of the Department present at the committee meeting at which Senator Hoffmann was present, and he seemed to indicate that there was a handwritten record in addition to the computer record.

SENATOR WALDON: But the daily

log, by virtue of definition, the daily log, as is a police blotter, as is a log in the correctional facility, is it not handwritten?

SENATOR MALTESE: Yes, by definition it would be handwritten.

SENATOR WALDON: And then -

SENATOR MALTESE: Although my understanding, as you probably know better than I, Senator, is that, in addition it is fed into the computer as a Department record.

SENATOR WALDON: Yes, Senator, I understand that. Mr. President, if I may continue.

ACTING PRESIDENT LACK: Senator.

SENATOR WALDON: Senator, the recording of these incidents, as in normal business records and when handwritten, is it at your -- is it your understanding or do you have information which indicates differently that as the incident occurs, it is written into the log, then there's an extrapolation from the log and that is what is -- that information is then placed on the computer?

SENATOR MALTESE: That's my understanding, Senator.

SENATOR WALDON: Would it be also your understanding that the log itself could not be easily erased or somehow changed, as could the computer record that is supplemental to the log?

SENATOR MALTESE: Well, I guess it couldn't be any more easily replaced than any written record or as easily changed as any written record that -- I guess it depends, Senator, on whether it's in a permanent binder or whether it's in some looseleaf type of arrangement, and I couldn't answer your question as to which it's in.

I imagine it's in a permanent binder but I don't know that to be a fact.

SENATOR WALDON: Thank you very much, Senator.

Mr. President, if I may, on the bill.

ACTING PRESIDENT LACK: Senator on the bill.

SENATOR WALDON: It is my understanding that these books are similar to police blotters which I have some awareness of, and they are permanent. We don't just tear out the sheets of paper.

The overwhelming majority of the people who work for the Department of Correctional Services, both on the state level and the city level, are outstanding human beings, good citizens who are there to do their job in the most professional manner. However, there have been instances throughout the last years that I've been up here, where people have been abused or at least alleged that they were abused by correctional personnel, and it is my feeling that once something is handwritten into a log, it is much more difficult to eliminate, to erase, to alter, and so that I can see the protection need for not only the correction officers, but certainly the inmates. If the record is there, it cannot be destroyed. The officer's protected; the inmate is protected.

Based on that alone, I'll have to

vote in the negative on this bill.

ACTING PRESIDENT LACK: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I just rise to echo the sentiments expressed by my colleague, Senator Waldon.

I have represented at court request on a pro bono basis inmates who have been -- who have alleged civil rights violations against either in this case -- in the cases that I've represented them, against inmates and correction officers in the state of New York.

I litigated both of those cases and, in large measure, the only way I could track what had gone on in the facility was through the use of the daily log system in the Special Housing Unit and other places in the correctional facilities.

I think Senator Waldon's point is very good, well taken, because the documents proved to be an asset both to the corrections officer in detailing their conduct inside the facility, and they were an asset to the

plaintiff or to the potential claimant against the state, if they believed their rights had been violated because they would have a method to be able to trace what happened in the facility or what happened in the Special Housing Unit or in the correction facility itself.

So my experience suggests and, frankly, I have poured through these little books many, many hours in representing on a pro bono basis in federal court claimants in these cases, and I think they're valuable. I think that those handwritten notes can be important in both prosecution and defense, so that we make sure that our criminal justice system is exactly that, a place of justice, and I will concur in voting with my colleague in the negative.

ACTING PRESIDENT LACK: Senator Gold.

SENATOR GOLD: Will Senator Maltese yield to a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT LACK: Will you yield? Senator.

SENATOR GOLD: Senator, I understand that this bill was given to you by the Department and you're trying to help the Department. But the term "duplication" keeps coming up.

I understand that, under the present procedures, if there was an infraction by an employee or a punishment inflicted on an inmate, under the existing system, that gets put in the inmate's file or in the employee's file so there is a record.

But the argument that I'm hearing from the three Senators who already spoke is that a different kind of file is necessary to protect some rights. Now, if we eliminated this file that you're talking about, would there be any file that is a true duplicate; in other words, anything that the Department would be keeping which could track chronologically what happened on any particular day?

SENATOR MALTESE: My understanding, Senator, and as you've correctly pointed out, the information and the bill was

given to us as a departmental bill. They indicated that the inmate grievance procedure is a separate and distinct procedure with a separate writing, and that file would still be there.

The unusual incident file is an additional file, which it would also have a written copy.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT LACK: Senator Maltese will yield.

SENATOR GOLD: Senator, let me put it by way of example. A policeman in the city of New York says that he responded to a certain address because there were gunshots or whatever. You look at the policeman's book and you find that there's a marking, but you also find that there's a marking before it and a marking before that which starts to explain the routing and what that officer did, and it may or may not turn out that he told the truth. I know

of one specific case where the officer did not tell the truth and his own book bore that out.

Now, if that book had been destroyed which gave a chronological listing of what happened that day, all we would know is that, yes, the officer reported that at 11:00 o'clock there was a shot, and he went some place.

Now, by way of analogy, if we don't have a chronological record in the Corrections Departments, we wouldn't know, for example, from what you are saying that at a certain time there was an incident with a certain inmate that took place and someone was involved. But it might be important for the Department itself or maybe the Commission on Correction, which we all know is a separate agency, or a private lawyer, to know that maybe an hour before that, the same guard had an incident with a different inmate or that same guard had five incidents, and you wouldn't know that unless you had a chronological report of what happened on that specific day.

You'd have five incidents reported under five inmates, but how do you get that information and tie it up the same way? That, I think, is the concern of Senator Waldon and Senator Hoffmann and Senator Dollinger, and I'm sure you're concerned with it also.

Would we -- would there be any kind of a duplication of that record or are we correct in our assumption that we would be destroying that chronological record?

SENATOR MALTESE: Mr. President, in view of the objections and the concerns expressed by my colleagues in the Minority, I would respectfully lay aside this bill so that I could have a representative of the Department advise me on some of these facts that unfortunately were not done up until today.

SENATOR GOLD: Mr. President, let the record reflect that Senator Maltese is still a gentleman. Thank you.

ACTING PRESIDENT LACK: The record will so reflect. The bill is laid aside.

Regular order.

THE SECRETARY: Calendar Number 166, by Senator Holland, Senate Bill Number 34, authorize the Broad Acres Golf Club, Incorporated to have the right of first refusal on the lease of lands.

SENATOR GOLD: Explanation, please.

ACTING PRESIDENT LACK: Senator Holland, Senator Gold has requested an explanation.

SENATOR HOLLAND: Mr. President, Broad Acres Golf Club is a golf club approximately 50 years old on the Rockland Psychiatric -

SENATOR GOLD: Pardon me.

SENATOR HOLLAND: Mr. President, to start over: Broad Acres Golf Course is a nine-acre golf course on the Rockland Psychiatric Center hospital grounds and is approximately 50 years old.

It was built, I believe, by the German and Italian prisoners who were brought

over here during the second World War and were kept at Camp Shanks. Nonetheless, for the last seven years, there's been a not-for-profit organization that has operated Broad Acres. They have spent a lot of money. They have paid their own dues. They have improved the golf course, and they are leasing it year by year from OGS.

OGS, at this point, says they want to put the -- a five-year lease out to open up the bidding. All this bill says is, can the non-profit organization that has improved the golf course and operated the golf course for the last seven years have the right of first refusal. That means no cost to the state. They will pay whatever the high bid is on the lease.

SENATOR GOLD: Anything else?

ACTING PRESIDENT LACK: Last section. Senator Gold.

SENATOR GOLD: Senator Kuhl, do we have a problem? Senator Onorato, do we have a problem?

SENATOR ONORATO: It's a good

bill.

ACTING PRESIDENT LACK: Last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LACK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT LACK: The bill is passed.

THE SECRETARY: Calendar Number 176, by Senator Hannon, Senate Bill Number 277, an act to amend the Administrative Code of the city of New York.

SENATOR PRESENT: Lay it aside.

SENATOR GOLD: Next week?

ACTING PRESIDENT LACK: Laid aside.

SENATOR GOLD: Lay it aside.

THE SECRETARY: Calendar Number 177, by Senator Hannon, Senate Bill Number 644, Emergency Tenant Protection Act.

ACTING PRESIDENT LACK: Last section.

SENATOR GOLD: No, no. Explanation. Give me one second. Lay it aside for the day. Lay it aside. It's being laid aside, I believe.

ACTING PRESIDENT LACK: Lay it aside.

Senator Present, that completes the Calendar.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT LACK: Senator Gold.

SENATOR GOLD: Mr. President, if that's the end of the Calendar, I believe that Senator Dollinger has a motion which is now in order, and I'd like to go to that order of business and yield to Senator Dollinger.

ACTING PRESIDENT LACK: Motions to discharge and to amend the rules.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I have a motion to discharge from the

Finance Committee a resolution that I've sponsored. I believe it should be passed up to the -- to the President.

I speak on the motion, Mr. President?

ACTING PRESIDENT LACK: You'd like the Secretary to read the title?

SENATOR DOLLINGER: Yes, please.

ACTING PRESIDENT LACK: Secretary will read the title of the motion.

THE SECRETARY: By Senator Dollinger, in relation to Legislative Resolution Number 524, directing the Secretary of the Senate to comply with the February 18th, 1993 order and decision of the New York State Supreme Court, which will make public certain information regarding Senate mailings.

SENATOR DOLLINGER: I move that resolution. Is a motion in order at this time?

ACTING PRESIDENT LACK: On the resolution. Do you wish to speak on the motion?

SENATOR DOLLINGER: I'll speak on the motion.

Mr. President, I rise today because as a newcomer to this body, I believe that the issue that is poised for our consideration by that resolution is a critical one to the issue of governing this state.

The issue, it seems to me, is a very simple one: Are we going to disclose to the public what we do in the mailings that are financed by that very same public?

The resolution stems from a very simple principle, and that is the disclosure and open government is in the best interests of everyone. The more people know about our government, the more they'll understand and, frankly, the more public confidence in us they will have.

There's an old principle that was heard at the time of the Revolutionary government that there would be no taxation without representation. I'd simply offer to all my colleagues a minor variation of all that which is a rule in the 1990s and I hope for the rest of our democratic future, and that is there

should be no taxation without disclosure; and I offer two or three simple reasons for supporting this bill, or this resolution and the motion that accompanies it.

First of all, I'd ask that the 22 members of this body who were here 17 or 15 years ago, when the Freedom of Information Law was enacted, I'd simply ask you to reaffirm that vote. It passed this body unanimously. It passed the Assembly. Many of you were members of the Senate and Assembly at the time.

Judge Canfield, in his opinion in this case in the Supreme Court, simply quoted the declaration, the legislative declaration at the front of that act, and it's one that 22 members of this body agreed with.

The other thing, I think, that passing this resolution will do is, it will allow us to continue to do what we do well.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT LACK: Senator Leichter, why do you rise?

SENATOR LEICHTER: Yeah. Would Senator Dollinger yield for a question?

SENATOR DOLLINGER: Sure.

ACTING PRESIDENT LACK: Senator will yield. Senator Leichter.

SENATOR LEICHTER: Senator, could you explain and set forth to us exactly what your resolution does and the context, what brought -- what brought you to make or bring this resolution before us?

SENATOR DOLLINGER: Exactly, Senator. I perhaps should have done that. I'm assuming familiarity with my colleagues.

As most of you, I'm sure, know, there was a lawsuit brought by a man named Siris, who was running in a campaign for the New York State Senate. He had filed a Freedom of Information request with this body, with the Secretary of this body, asking for a disclosure of mailings undertaken by his incumbent opponent during the course of the -- I believe the year prior to the date of the election. He filed that request with this body. It was denied. He

filed an appeal with this body under the rules of the Temporary President, and that appeal was also denied.

In the wake of the denial of both of those appeals -- both of the request and the appeal, he commenced a lawsuit in the New York State Supreme Court. That lawsuit was decided, I assume, and I don't know this for actual fact, but I assume on motion for summary judgment and judgment was granted to Mr. Siris to require this body to disclose to him the mailings that he had requested in his initial Freedom of Information Law request.

When I became aware of that court decision, and it was discussed, it was my conclusion that this body should choose to abide by that and forego an appeal, that we should not be in the position of taking the taxpayers' money to finance an appeal when the purpose of the appeal was to simply keep secret the issue of what this body was spending the taxpayers' monies to promote in terms of mailings to our constituents.

That is the motion that is the basis behind the resolution that I submitted to this body.

SENATOR DALY: Mr. President.

ACTING PRESIDENT LACK: Senator Daly, why do you rise?

SENATOR DALY: Would the Senator yield to a question?

ACTING PRESIDENT LACK: Senator, will you yield?

SENATOR DOLLINGER: I will to my colleague.

ACTING PRESIDENT LACK: Senator Daly.

SENATOR DALY: Mr. President, would the Senator answer the following question? According to the resolution filed, the court has determined that the Secretary of the Senate has acted in an arbitrary and capricious *** contrary to the law, and abused his discretion.

Does the Senator mean to tell us that the Secretary of the Senate, who's been accused of doing something contrary to the

law, should be denied the right of appeal?

SENATOR DOLLINGER: I think the answer to that question is that, based on Judge Canfield's opinion, he had -- in fact, he had violated the law by failing to abide by the wishes of this body as expressed 15 years ago in the Freedom of Information Act.

I come here today to simply ask the Secretary of the Senate and all of my colleagues to abide by the same spirit of that Act.

SENATOR DALY: Mr. President, will the Senator answer the question?

ACTING PRESIDENT LACK: Senator Daly.

SENATOR DALY: Should the Secretary of the Senate be denied the right to appeal if he's been accused of doing something contrary to the law?

SENATOR DOLLINGER: And the answer to that question, Mr. President, and I'll cite it again, is this body employs the Secretary of the Senate. We can decide whether

this body will abide by the terms of the legislative declaration that unanimously passed this Senate 15 years ago. We can direct our - the Secretary of the Senate as to whether or not he should comply with the law as we see it. That's the power we have as lawmakers.

SENATOR DALY: Mr. President, would he yield to one more question?

ACTING PRESIDENT LACK: Senator, will you yield to one more question?

SENATOR DOLLINGER: Certainly.

SENATOR DALY: According to the Constitution, we've established -

ACTING PRESIDENT LACK: Senator Daly.

SENATOR DALY: -- an Appellate Division to hear appeals. We have a case where a person, representative of the Senate, has been charged with doing something contrary to the law. How dare anyone deny that person the right to appeal?

Mr. President, I'm not a lawyer; my honored colleague is, and he still hasn't

answered my question. He's walking around the question; he must have majored in sophistry.

Answer the question, sir: Should -- should we deny that man the right to appeal? It is the Secretary of the Senate.

SENATOR GALIBER: Point of order.

SENATOR DOLLINGER: Mr. President, can I answer the question? I'll even be more direct than I was.

ACTING PRESIDENT LACK: Senator Dollinger, excuse me. Senator Galiber, you have raised a point of order. Yes, Senator.

SENATOR GALIBER: Mr. President, I think on two occasions, the question was answered, and it would seem to me that my colleague and good friend is attempting to solicit what he calls an answer.

The question has been asked and it has been answered. That's my -- my point of order.

ACTING PRESIDENT LACK: Thank you, Senator Galiber.

Senator Daly, Senator Dollinger

has the floor.

SENATOR DALY: Yes, sir.

ACTING PRESIDENT LACK: Senator Dollinger.

SENATOR DOLLINGER: The -- the reason -- other reason why I think -- two other reasons actually why I think we should abide by this resolution and pass it, is I point to my colleague, Senator Sheffer.

I sat at a hearing on minor league baseball in which we brought in people from all over New York State, asked them all kinds of questions about the future of minor league baseball, a very, very well conducted hearing. We got tons of information that we need to be able to make effective decisions. I dare say that we found out more about minor league baseball than we know about the mailings from this very body that are financed by taxpayers.

We're doing good things in other areas. We're investigating and finding out information from third parties, but we can't

seem to find it out about ourselves, and we're not prepared to tell the public what we're doing. It seems to me that, when we send people mail, when we offer mail to them, when we use their money to send the mail to them, regardless of the message it conveys, we should also be able to tell them how much it costs and how frequently they have to pay for it.

I guess I'm amazed that, in this whole process, as we've looked at the process of public disclosure of mailings, one of the questions I asked, is there any more secret operating governments in the world, at least the United States as we know it, that doesn't disclose its information on how it spends its taxpayers' money, and the answer is there is. It's called the Central Intelligence Agency. It's the truly secret branch of the federal government.

I dare say, gentlemen, that without the kind of public information about mailings, we're operating the second most secret government to the tune of $180 million.

Lastly, I offer one other thought. I'm new to this body. I'm new to the gentlemen on the other side of the aisle. I'm just getting to know some of you, but I've been impressed with conviction and I've been impressed with your commitment: Senator Volker during the death penalty debate, obviously an important issue for him, obviously one that he has strong personal opinions about; Senator Saland, in his comments on the death penalty, strong conviction for the people of this state, as we deal with the crime problem. I mentioned Senator Sheffer and his work in the minor league baseball. I've worked with my colleague, Senator Daly, on the lake shore issue, as we try to deal with other problems. I think -- and I've worked with, add one other, Senator Mega in his handling of the Judiciary Committee as we deal with problems of creating new laws and their effect on our judicial system.

I see all of this good will, and yet I see myself standing up today to criticize my colleagues and to criticize a practice that

has been too long a part of the way we've operated. I think that the people of good will on all sides of this chamber can come together and deal with the critical problems that we face of crime and drugs and all those other things that our constituents are demanding that we do, and we can get over the silliness of whether or not we're going to disclose the cost of our mail.

It seems to me that we owe it to this state to get beyond this issue, to put it behind you. The last thing anyone needs is people from this side of the aisle carping about your failure to disclose. It's my hope that this resolution will pass, that we will instruct our employee, the Secretary of the Senate, who is employed by all of us, and we will instruct him to comply with the law as we believe it should be, and that we will disclose to the people of this state how we spend their money. It's the most important thing we can do.

I'd ask all of you to join hands across that aisle. Let's restore people's

confidence in government. Let's give them the confidence we're spending their money properly and let's tell them, by disclosing the cost of mail, tell them that the message is that we believe in disclosure, we believe that there should be no taxation without disclosure, and that we're prepared to get on to more serious business of financing this state, attacking our problems, and restoring people's confidence in government.

ACTING PRESIDENT LACK: Senator Volker.

SENATOR VOLKER: Mr. President. Senator Dollinger, I was here 15 years ago. In fact, just to recollect my memory, I talked to the sponsor of the Freedom of Information legislation, which was none other than Ralph Marino. I believe, in fact, I was a co-sponsor, it's a long time ago, but I think I was.

The ironic twist is that, Senator, you're -- by the way this, is a reso lution; it's not a bill. You're proposing a resolution, and a motion to discharge of the

resolution, to the television people who this is sort of aimed at to a certain extent. What that means is that there's no bill here to do this. This is just a resolution which tells the -- as I understand it, would tell the Secretary of the Senate that he should not attempt to uphold a piece of legislation that we passed here, the Freedom of Information Law, so many years ago.

Where you're wrong, Senator, is this. Your resolution does not at all attempt to uphold that act. In fact, it is totally in contradistinction to it. Judge Canfield ignored the legislation. In fact, the interesting thing about it is, I spoke with Senator Marino about this, and the reason that the exclusion was put into the Assembly or into the Legislature, in fact, the Senate was more inclined at the time to be more forgiving. We were inclined at the time to allow more latitude, but there was opposition at the time from some people in the Assembly who made a good point. They said, How much do we disclose? How far do we go in disclosing communications with our constituents?

You know, you're seizing on one area, which is the area of cost and funding which, by the way, is in the budget, but I don't want to get into that. You're failing to recognize something: Judge Canfield made a decision. He said, based on the top part of the bill, he said the intent, he ignored the bill itself, which clearly says the Legislature is excluded.

If you want to change that, Senator -

ACTING PRESIDENT LACK: Excuse me, Senator Volker. Senator Gold is interrupting. Senator Gold.

SENATOR GOLD: Senator, would the Senator yield to one question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT LACK: Senator, will you yield? Senator Gold for your question.

SENATOR GOLD: Senator Volker, I understand your argument except I'd like to ask you a question. Isn't it a fact that Steve Sloan, the Secretary of the Senate -

SENATOR VOLKER: M-m h-m-m.

SENATOR GOLD: -- is an employee of the Senate?

SENATOR VOLKER: Right.

SENATOR GOLD: Meaning an employee of all of us, specifically recommended by the Majority, but he is our employee; isn't that correct?

SENATOR VOLKER: That's correct.

SENATOR GOLD: All right. Well, Senator, isn't it also a fact that in every single litigation in this state the law provides an appellate process, but in every single litigation there isn't an appeal; it is up to the litigants whether or not, in a particular case, they want to appeal or whether they want to accept the decision of the court, isn't that a fact?

SENATOR VOLKER: That's a fact, Senator.

SENATOR GOLD: All right. So Senator, isn't it also a fact, and then I'll sit down, that while this is a resolution, and if we

in a resolution, ask the Congress to do something or ask any other party to do something, that might have one effect, but in this resolution, if we, as a Senate, voted to do it, that we would have the capacity to have our employee withdraw from this litigation and look at the world and say, We are going to abide - whatever the statute said, whatever the resolution said, we choose as a body of 61 persons, to abide by the judge and open our books? Isn't that our capacity? Can't we do that?

SENATOR VOLKER: In other words, what you're saying, Senator, is we should ignore a statute passed by this Legislature many years ago, passed by the other house, signed by the Governor, which clearly says that Judge Canfield's decision was out of line, clearly and unequivocally?

SENATOR GOLD: No, Senator.

SENATOR VOLKER: Wait a minute, Senator, I'm answering you.

SENATOR GOLD: You're right; go

ahead.

SENATOR VOLKER: Clearly says it's out of line, and says that we should let a judge make a decision which flies in the face of what the sponsor of the bill understood the bill to be, which the meaning of the bill is pretty clear, and just say that we won't take an appeal because somebody thinks that the law is wrong.

Senator, that is not what we are elected here to do. What we are elected here to do is make decisions. We made a decision with the Freedom of Information legislation. If Senator Dollinger wants to repeal that section of the law, then he has every right to put in legislation to do that and this body can make a decision on whether we want to repeal that section of the law or not.

But this is a resolution aimed at, in my opinion, saying that a judge's decision which flies in the face of legislation that was passed by both houses, we should tell the Secretary of the Senate, Don't appeal it; by the way, an appeal which is going to be handled

by the Attorney General, which is not a cost to the taxpayers as other actions that have been done in this place have been at times when we have upheld the right of the Legislature like, if you remember, we upheld the Legislature here some several years ago at a fairly substantial cost, because a member of this body was attacked from the outside, and both sides of this aisle were willing to stand up at that time, because we felt this body was being attacked; and, Senator, I'm saying to you that I think this legislation, this resolution, says forget what this Legislature passed; forget the fact that the judge ignored the law and don't appeal, and I think that's completely wrong.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT LACK: Senator Gold.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT LACK: Senator, will you yield again to a question? Senator

Gold for your question.

SENATOR GOLD: Senator, we have created laws which say that, if an individual lends money to another individual, that if it's not paid back, that individual can enforce that debt. Wouldn't you agree with me that we have no capacity as a legislature to put in a private bill saying that Jones does not have to pay back Smith a particular debt? Isn't that true?

SENATOR VOLKER: That's true.

SENATOR GOLD: All right. Similarly, Senator, if somebody owes somebody a debt, we have created by statute a statute of limitations, which means that if a debt isn't sued upon in a certain period of time, the individual has a defense. Isn't it a fact that the individual who is sued can waive the defense and elect to pay the debt anyway because somehow they feel morally they should pay that amount of money; isn't that true?

SENATOR VOLKER: What you're saying, Senator, is that even though we know and are convinced that a piece of legislation we

pass has been unjustly decided upon by a judge in a -- and a member of the judiciary, Manny, and you many times have said to me, We have to uphold the right of the Legislature; we have to make sure that the Legislature takes care of itself.

I happen to agree with you, Senator Gold, and what I'm saying to you, Senator Gold, is we can't just change this world for political purposes. If you want to change that statute, you or Senator Dollinger or any other person in this chamber can put in the legislation to do it and do it that way.

SENATOR GOLD: Fine.

SENATOR VOLKER: You don't do it by allowing a bad judicial decision to be upheld.

SENATOR GOLD: And will the Senator yield to one more question?

ACTING PRESIDENT LACK: Senator, will you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT LACK: Senator

Gold.

SENATOR GOLD: Senator, I'm glad that you see where I'm going because there's no tricks to these questions. So the bottom line in that understanding that someone can waive the statute of limitations in their own one case is the following -- God bless you -- the following:

This legislation, Senator, is not legislation that is affecting the world. It's legislation affecting us. We are the parties. We are the parties, and assuming you're right, which I don't, I think the judge was absolutely right, but assuming you're right, and the legislation gives us the right to withhold this information, isn't it a fact, Senator Volker, that we have a right by resolution, as proposed by Senator Dollinger, to give up that right and say the public wants the books open, the press wants the books -- at least the editorial boards of the press want the books open.

SENATOR VOLKER: You got it. Thank you, Senator. I appreciate it.

SENATOR GOLD: And, therefore, we

will comply.

SENATOR VOLKER: Senator, we represent the people. Sometimes I think we forget, I think we should, that we are elected by the people. The people elect us. They don't elect, by the way, editorial boards and they don't elect the press.

SENATOR GOLD: Will you yield to a question?

SENATOR VOLKER: And, Senator -

ACTING PRESIDENT LACK: No, excuse me Senator Volker, Senator Gold.

SENATOR VOLKER: You're right.

ACTING PRESIDENT LACK: Senator Volker has the floor.

SENATOR GOLD: I apologize. I haven't finished yet.

SENATOR VOLKER: Let me -- let's keep in mind here, Senator, yes, we can give up our rights, but this house over the years has assiduously refused to do that. We have refused to give up our rights when challenged by decisions that we have felt have been improper,

and it seems to me clearly in this case the decision was improper, a decision by the way and keep in mind, we realize that there's a lot of politics involved here. The decision was a decision made by a Democratic judge ruling on Democratic challengers, and we understand all that.

As I've said many, many times, we have to understand what we're dealing with here. What we're dealing with here is an issue, though, of the credibility of the Legislature and, Manny, I think you were here 15 years ago.

SENATOR GOLD: Unfortunately.

SENATOR VOLKER: And -- if I'm not mistaken, and maybe you don't remember, but I think a number of people on your side, in fact, argued about this very provision and said we should go farther, and we should include the Legislature but it's not in this bill, and I would bet you that, if we could get the transcript of that debate, and looking at my colleagues to the left here, I would presume probably that my colleague Senator Leichter

probably would have been one of those people who said, You know, the legislature should have been included. But it wasn't.

So what I'm saying to you, Senator, is that this resolution says to this body, Don't follow the law, don't do what the law said. Just tell Steve Sloan that he shouldn't uphold the right of this Legislature, and I think that's wrong.

SENATOR GOLD: Will you yield to a question now, sir?

SENATOR VOLKER: Sure.

ACTING PRESIDENT LACK: Senator, will you yield? Senator Gold.

SENATOR GOLD: Senator - Senator, you started by saying we don't get elected by the editorial boards, we get elected by the people. You can't be saying with a straight face that our responsibility to the people means we keep our books closed. I haven't gotten one letter from a constituent that said, For God's sake, Senator, whatever you do, don't tell the public how you're spending

your money.

SENATOR VOLKER: Senator, that -

SENATOR GOLD: Yeah.

SENATOR VOLKER: May I respond to that?

SENATOR GOLD: Want to get to the bottom of that?

SENATOR VOLKER: Yeah. May I respond to that, Senator?

SENATOR GOLD: Of course.

SENATOR VOLKER: I mean I'll - he's proud of that, no -

SENATOR GOLD: Of course.

SENATOR VOLKER: What we're really saying here is, give us this mail, this mail that only went out to thousands and thousands of people. I mean, yeah, we're really hiding the mail. Remember what this fellow was asking for was, he wanted distribution of the mail, not just, as I understand it, not just the dollar amounts and all that; he wanted copies of the mail that was sent out to every constituent in whatever Senator's district it was. So it

wasn't a very good case of being secretive since the darned thing went out to thousands and thousands of people.

So I mean when you're talking about secretive here, let's look at what we're really talking about here.

SENATOR GOLD: Mr. President, last question.

SENATOR VOLKER: This is a different kind of thing. These are defeated candidates complaining about they couldn't get some information they could easily have gotten anyway.

SENATOR GOLD: May I ask one last question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT LACK: Senator Volker, one last question from Senator Gold.

SENATOR VOLKER: Sure.

ACTING PRESIDENT LACK: Senator Gold.

SENATOR GOLD: Senator -- isn't it a fact, Senator, that there is no statute on

the books that prohibits this Legislature from disclosing the amounts of money we spend on mail or giving a more detailed statement to the public of the money that we spend? And isn't it a fact, sir, that without debasing any prior legislatures, without -- without violating the rights of that lovely gentleman known as Steve Sloan, who is not evil -- he only works for us -- that this Legislature can pass a resolution saying the judge may be right, he may be wrong, but there is an outcry, the public wants to know what we're doing with their money and, therefore -- therefore, since there is no statute prohibiting us from opening our books, we do it because it's the right thing to do.

SENATOR VOLKER: Senator, I say to you, once again, what you're saying to me is that two wrongs make a right in your -- in your way of looking at things. What you're saying is that we should ignore the fact that we want to uphold a statute passed by this body with a resolution, by the way -- this is not the way this body operates; we operate by bills, bills

that are decided on by votes, and that's where this statute came from in the first place. Section 88 of the Freedom of Information Law is pretty clear and unequivocal.

I say to you that this is not the way to do this. You can argue if you want to that there should be changes in the way this body operates. You have a right to do that; Senator Dollinger has a right to do that, but, Senator, we have a great right also to make sure that statutes that are passed by this body, by both houses and by the governor, are upheld and the fact that -

ACTING PRESIDENT LACK: Excuse me, Senator Volker. Why do you rise, Senator Hoffmann?

SENATOR HOFFMANN: Would Senator Volker yield to a question, please?

SENATOR VOLKER: Yeah, I'll yield; I will yield, yes.

ACTING PRESIDENT LACK: Senator.

SENATOR HOFFMANN: Thank you. Senator Volker, you made earlier reference to an

issue that came up some years ago -

SENATOR VOLKER: M-m h-m-m.

SENATOR HOFFMANN: -- where another member of this body found himself in a court action. Could you tell me, please, what was the disposition of this body in terms of its show of unity behind that individual? Was it a bill, or was it a resolution?

SENATOR VOLKER: Senator, I think it was a bill, if I'm not mistaken.

SENATOR HOFFMANN: No. Senator Volker, it was a resolution.

SENATOR VOLKER: No, I think it was a bill.

SENATOR HOFFMANN: I remember it very well, because I voted against it at the time, so there is a very clear precedent. I just want to establish for some of my newer colleagues that resolution is, in fact, a correct way for this body to assert itself in reaction to a court case.

In that instance, I opposed the position taken by, I believe, every one of my

colleagues and said we should accept the ruling of the court in that case and should not appeal as a legislative body, a ruling relative to employment of some of our other Senate employees. But it was very -- it was very clear in my mind, because I still remember how the press accounts handled it.

It was a resolution, so I really wanted to rise to ask you that question to make sure that I could correct on the record that there is clear precedent for resolutions of this sort.

ACTING PRESIDENT LACK: Senator Volker.

SENATOR VOLKER: Senator, you're wrong, and let me tell you how you're wrong. The resolution you're talking about was a different issue. The resolution was the prosecution of the appeal, but the actual dollar amount was in statute that was passed as part of the budget, and let me point that out to you.

SENATOR HOFFMANN: Senator Volker yield for one other question?

SENATOR VOLKER: Yes, Senator.

ACTING PRESIDENT LACK: Senator? Senator Hoffmann.

SENATOR HOFFMANN: The process by which the ball began rolling was a resolution, was it not, Senator Volker?

SENATOR VOLKER: I'm not even sure that's true, Senator, but this is not a process to get the ball rolling. This is a resolution do say, Forget a statute.

SENATOR HOFFMANN: Well, that was a resolution that said, Ignore this judge; we'll go on about our own business. It was a resolution, as is this a resolution. We were at a process at a similar point in time in reaction to a court decision.

SENATOR VOLKER: Except -

SENATOR HOFFMANN: I just wanted to make sure the record was clear on that.

SENATOR VOLKER: Let me make the record clear on that, Senator.

ACTING PRESIDENT LACK: Senator Volker.

SENATOR VOLKER: The record is clear, Senator, that we passed a statute here, a statute that said -- that set up freedom of information and now, by a resolution, we are saying we should not uphold that statute.

Once again, I say I think that's wrong, no matter what your opinion is of the issue of freedom of information. The statute is clear. If you're going to change that, it ought to be changed by legislation and not by some resolution.

ACTING PRESIDENT LACK: Senator Halperin. Excuse me. There is a list: Senator Halperin, Senator Hoffmann, Senator Leichter, Senator Dollinger.

Senator Halperin.

SENATOR HALPERIN: Thank you, Mr. President.

There's a certain irony that strikes me in listening to this debate, because what we're really talking about is, should we be spending the public's money to prevent the public from knowing how we're spending its

money, and whether the court is correct or not -- and I do believe that the court is correct -- I think that for those of you who think that the court is correct, that we should be willing to give up our rights when our rights are wrong.

There's no substantive argument that I've heard on the floor today explaining justification as to why we as a public body should not disclose to the public how we're spending the public's money. I haven't heard a single argument. I don't think there is an argument for it, and I think that everyone within earshot should know that the Assembly which was alluded to as the other body that voted to pass this into law, in fact, does exactly what this court decision says that we ought to do.

SENATOR VOLKER: Mr. President, Mr. President.

ACTING PRESIDENT LACK: Senator Volker, why do you rise?

SENATOR VOLKER: Will Senator

Halperin yield to a question?

ACTING PRESIDENT LACK: Senator Halperin, will you yield?

SENATOR HALPERIN: I would yield to a -- to a question, if I could just complete my thoughts a little more.

ACTING PRESIDENT LACK: In a moment, I think, was the answer. Senator Halperin.

SENATOR HALPERIN: Would be fine. My thought processes are so fragile, I wouldn't want them disrupted by your question, sir.

The other body of this Legislature discloses this information to the public, because it's the right thing to do. The Congress of the United States discloses information in far greater detail than this judge has told us to do, because it's the right thing to do. Legislatures across this country disclose this information. Local government, governmental legislatures disclose this information. My own city of New York, the City

Council, discloses information. There's nothing wrong with this information.

It does not make sense for us as a body to be spending money to prevent something from happening that's the right thing to happen. Whether or not we can win on some technical issue is not really the question here and what the court did is it pointed out the hypocrisy of our position here. I say "our" as a body, not my personal position.

The court pointed out language that was in the intent of the law that we then went on to ignore in carrying out our own responsibilities and in keeping our own house in order. The court said that the more -- pointed out that the more open a government is with its citizenry, and this is the language from the legislation, the greater the understanding and participation of the public in government.

Maybe you disagree with that. Maybe we don't want the citizens to understand how we spend their monies. The court went on to point out other language. It is incumbent upon

the state, and this is language that those of us who are here voted on. "It is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible."

Well, what's not feasible about providing this information to the public? It's very simple to do. We can do it.

The court went on to point out that "access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality." What's wrong with any of the language that the court pointed out?

Maybe we could end up reversing this decision at the Appellate Division; I don't know. I don't think it should be reversed. But why would we want to? What would be the purpose of it? What would we be accomplishing? I see no reason to proceed to appeal this decision.

So far as our good Secretary is concerned, I have no doubt that he did not intentionally violate the law, and once again, as has been stated, it's really not his decision what the policy of this body should be. He is

supposed to carry out the policy.

We can make it very clear that our policy is open government, and Steve Sloan can walk out of here with his head high knowing that he's always carried out his responsibil ities in a proper manner. So there's really no need whatsoever to appeal this.

And now, Senator Volker, I gladly yield to your question.

ACTING PRESIDENT LACK: Senator Volker.

SENATOR VOLKER: Yes, I wouldn't have, but I just wanted to ask a question. I assume you realize that the Assembly policy is not quite what this resolution says. The Assembly has all sorts of caveats in their policy that does not allow for totally open and free disclosure.

In fact, they, as I understand it -- tell me if I'm wrong -- they even have an officer over there that tells people what can be disclosed, and I think there's a policy clause that says something like, and it shall be not

subject to the Freedom of Information Act; isn't that correct?

SENATOR HALPERIN: Well, there - there may be such language and, once again, if this house were serious about implementing a rational policy, there might be a way to negotiate with the plaintiffs in the case and to come up with some kind of agreement. But what's really at issue here is an ongoing attempt by this body to stonewall any effort whatsoever to bring to the public's knowledge the -- a way that we spend their money.

SENATOR DALY: Mr. President.

SENATOR HALPERIN: Now, I mean we are going to be holding a hearing tomorrow on the legislative budget because I made an effort to have hearings held on the legislative budget. It was -- these efforts were ignored and so tomorrow the members, the Minority members of the Senate Finance Committee and some other members of the Minority are going to be holding a hearing on the legislative budget doing the best we can to bring to the public's

knowledge how we spend their money.

ACTING PRESIDENT LACK: Excuse me, Senator Halperin.

SENATOR HALPERIN: Yes.

ACTING PRESIDENT LACK: Will you yield to a question from Senator Daly?

SENATOR HALPERIN: Yes.

ACTING PRESIDENT LACK: Senator Daly.

SENATOR DALY: I have a copy of the Assembly rules, and perhaps I can shed a little light on that question.

Senator Volker is right. The Assembly rules begin and then go directly into a number of exceptions, and I think the final sentence sums it up. It says: The determination of the Assembly records access appeals officer with respect to the denial of access to any material to which access is voluntarily available under the provisions of this statement, shall be final and not subject to further review.

ACTING PRESIDENT LACK: Senator

Halperin.

SENATOR HALPERIN: Well, once again, I would be most pleased, even though I'm not sure that the Assembly rules do go as far as they should. I'd be most pleased if we in this house would be willing to accept the Assembly rules.

But what's really happening here is that a case that was brought without my knowledge for sure -- I don't know that any other member of this house knew about it on either side of the aisle until after it was brought -- happens to have catapulted this issue into the public view, and has really thrown into question our policy here.

So this is a very convenient way to deal with this issue in our own house. The issue is before us. It's before us in the courts, and we're going forward spending money, and the other irony is that, if anybody ever wanted to find out how much money we're spending on this case, they couldn't even do it unless through the munificence of those that control

the Senate, we're going ahead and spending the money in the cloak of secrecy which is what we said when we passed the public -- the public information law, that we didn't want to do.

Now, this resolution affects the Senate only. I think that our policy should be not to challenge this, and if you do have specific concerns about the decision itself, then instead of appealing it, I think it would make sense to try to work out with the plaintiffs in the case, a reasonable policy, maybe a little bit unreasonable, at least if it moves us in the right direction, but to once again just try to stone wall this thing, I don't think is the right way to go.

ACTING PRESIDENT LACK: Senator Hoffmann.

SENATOR ONORATO: Mr. President.

ACTING PRESIDENT LACK: Senator Onorato, why do you rise?

SENATOR ONORATO: Senator Halperin, would you yield to a question?

I believe you were here -

ACTING PRESIDENT LACK: Senator Onorato.

SENATOR ONORATO: I believe you were here 15 years ago when this bill was passed.

SENATOR HALPERIN: Yes.

SENATOR ONORATO: At that particular time -- I'm not an attorney -- do you believe it was the legislative intent when we enacted the Freedom of Information Act, that it was meant to exclude the legislative body from disclosing the finances that we spend of the taxpayers' money?

SENATOR HALPERIN: I think in asking in terms of intent, it was my understanding that the intent was to open up government, not part of government, not other people's parts of government, but to open up government.

There's nothing wrong with opening it up in the way that this court decision would suggest. So it was my intent when I voted for the bill, I can't speak for

anyone else, to open up government to the public scrutiny.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT LACK: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I'm pleased to rise in support of my colleague's resolution, and I want to compliment Senator Dollinger for having the common sense to bring such a matter before our house and to bring it in the only way that was available to him. He has been criticized now several times by another colleague for bringing a resolution. In fact, he's not even actually bringing the resolution. He's doing the very best he can under the arcane rules of this house by attempting to discharge a resolution that is locked in the grips of the Majority Leader, so that it can actually be voted on on the floor.

Let's make no mistake about what the limitations are here. Because of the absolute control over bills and resolutions in

this house, then Senator Dollinger's resolution is not even before us at this moment, only his urgent plea that we consider this resolution that would prevent the use of taxpayer dollars by having an appeal of the very logical court ruling which requires the members of this body through the leadership to publicize the amount of money that we spend on mailings.

What could really be more logical than that? We are elected by people across this state to do their bidding. If, in the course of communicating with them, we spend umpteen dollars in writing to them, isn't it perfectly logical for us to explain how much money we spent? Nobody is censoring our right to communicate. Nobody is even suggesting that we don't have an obligation to sometimes communicate to our constituents.

What is being suggested here through the courts is that we do have an obligation to list the dollars that we spend on such communication. I have no problem with that. The people I represent think it's

imminently logical.

What actually frustrates me in this whole process, I must confess, is the fact that I can not even say to my constituents how much money I have spent on mailings because of the secrecy with which mailing in this house is handled. I don't even know how much money I spent last term or two terms or the last four terms.

I did do this bit of accounting. I found out that, because I had decided at the beginning of my fourth term, that I would not do any newsletters -- I just made a little personal decision that I would try my own little bit of economizing. I knew we were in terrible fiscal straits as a state, and I just called my staff together back in January of 1991, and I said, Don't anybody bother me about newsletters; we're not going to do any. Several people thought that was not a good decision, that we should be writing often to people in the district. I said, Well, I'm really not comfortable doing that now; we have to show some place where we're

personally economizing.

I never made a press announcement about it. I never made any big announcement; didn't sent out a newsletter saying I wasn't going to send any newsletters. I just didn't send any.

Now, if it costs $25,000 to send a newsletter counting the printing, the mailing and the labels, which is the only estimate available to me, if it cost $25,000, and I didn't send six of them, then it goes to figure that I should have saved the taxpayers in the 48th Senate District about $150,000 in news letters.

And then I didn't send any targeted first class mailing. I didn't write to the realtors association; I didn't write to the bankers; I didn't write to presidents of insurance agencies, all the lists that are available. I didn't do any of that stuff. I just didn't send any targeted first class mailings. So let's take a modest figure and say maybe that was $50,000 that I saved for the

people of my district.

Now, I find out through a court decision that another Senator, maybe several other Senators in other parts of this state, may have used that money that I saved. I didn't save it at all. It was just moved through this big slush fund that is used as the Senate mailing allowance, it was just shifted over to somebody else, and possibly even to somebody who may have sent as many as 14 newsletters in a given district.

Now, there's just something wrong with a system that allows that much maneuvering internally and refuses to be publicly account able about taxpayers' spending.

I'm not suggesting that it's appropriate to limit everybody to one or to two newsletters or that we should say, new members are entitled to a whole bunch and older members don't have to do as many. I'm sure there is some flexibility, but let's at least do it openly.

The public has every reason to be

suspicious of us if we will make decisions in secret and if we refuse to divulge what we do with their dollars. And to Senator Volker, I must say how surprised I am at your comment addressed to Senator Dollinger about the cameras here today in the chamber. You said he was speaking to the cameras.

Well, I have -- I've seen you, Senator Volker, speak at length on an issue that you feel very committed to when the death penalty comes up, and I have sometimes debated alongside you on that, and I vote with you in favor of a death penalty in this house. Do you think that the cameras are here for some other reason today than they are when you debate on the death penalty?

I want you to understand some thing that Senator Dollinger understands. The cameras are here because this is newsworthy. When men and women who are elected to safeguard taxpayers' dollars refuse to divulge how they spend them on their own benefit, that is news, and sadly it supersedes news about almost

anything else we do which could be for the public good.

I want to pass this resolution. I want to bring it to the floor and then pass this resolution so we can put it behind us. I believe there is much good that comes out of this chamber, and I want to see us get on about the business that we are elected to be here for and not have to make excuses about our internal communications activities and how we evade ques tions, sensible questions, about expenditures of taxpayer dollars.

ACTING PRESIDENT LACK: Senator Leichter.

SENATOR LEICHTER: Yes. Mr. President, one hears much talk in this Capitol about public financing of campaigns. The Assembly talks about it. The Governor talks about it, but only the Senate Republicans practice it. You practice public financing. You're using public monies to finance the campaigns of some of your members.

Now, let's talk what this is all

about. What is this resolution? Why is it be fore us? It's before us because this body has a rule that a member can send out three district wide mailings a year plus a hundred thousand dollars in first class mail -- a hundred thousand pieces.

We have found out, we have pretty strong evidence, that in the past campaign, that some members of the Majority were given additional mailing rights in clear violation of the rules of this house in an obvious attempt to use public monies to help their reelection campaign. That's wrong.

Now, an effort was made to find this out. It wasn't of interest only to a defeated candidate. It was of interest to the public, and it was of interest, let me say, to me as a member of this house, because if you're limiting me to three newsletters and you're giving somebody else eight or nine or ten or even more newsletters, I want to know about that.

I didn't have a part of bringing

this lawsuit. I didn't know the lawsuit was brought, but it was, and it raised a very simple basic proposition which is, does the public have a right to know how public monies are spent? And not surprisingly the judge said, of course. In fact, to state the opposite is really to state a proposition that cannot be believed by anybody who has any sense, and I -- I must say that anybody who would listen to the debate here would say that we are -- that this Legislature is out of touch with reality.

To hear Senator Volker say that we're upholding the right of the Legislature! What right? We have a right to keep from the public how we spend public monies? We have a right to say that we're in favor of public financing of campaigns -

ACTING PRESIDENT LACK: Senator Paterson, why do you rise? Excuse me, Senator Leichter. Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, might you establish for me whether or not Senator Leichter would be willing to yield for a

question?

ACTING PRESIDENT LACK: Senator Leichter, would you yield to Senator Paterson?

SENATOR LEICHTER: Frankly, Senator, I would prefer if I could yield in just a few minutes even to as good a friend as you. I would, if I could -

SENATOR PATERSON: This is -

SENATOR LEICHTER: -- just to make some of the points that I was in the midst of making.

SENATOR PATERSON: This is -- I don't know if I can hold out a few minutes, Senator.

ACTING PRESIDENT LACK: Senator Leichter, Senator Paterson has denoted some urgency in his remarks.

SENATOR LEICHTER: Senator, keeping in mind the great impatience and obviously the very pertinent question you're going to ask, I will try to make this point very brief, buff I do want -

ACTING PRESIDENT LACK: One

moment, Senator Paterson. Senator Leichter will be with you after a brief moment. Senator.

SENATOR LEICHTER: But I -- but I I do want to make this point because I just want you for a moment to take a look at what Senator Volker said, and I love Senator Volker; he's a great Senator, but you know, maybe in this chamber, we have developed our own logic.

We are out of touch. That's why the public is so angry at not only this Legislature, but public officials to say, we are upholding the right of the Legislature. What right? The right to keep the public from knowing how their money is being spent? He said, you know, we sometimes forget that we represent the public, as if the public is saying, you go and spend public money so that I, the public, may not know how you're spending money. That's what I sent you up to do. Senator Volker!

Then he says it involves the credibility of the Legislature. I say to you, that if the public knew and understood what you are doing in, one, using monies surreptitiously

for campaigns, secondly, refusing to disclose it, thirdly, spending public money to fight a court decision which says you got to disclose it, we would have no credibility. I don't know whether we have any credibility now, but we would have -- they would drive us out of office.

I mean that's what this appeal is about, and to argue about, we can't have the Secretary of the Senate be found to have violated the law. My God, this is the due process, the civil rights of poor Steve Sloan are involved here. They're not civil rights. He's not being found guilty of any crime. He's not being sent off to jail.

The question is whether the Senate, that's what this is involved, not Steve Sloan, whether the Senate, as a body, should spend public money to keep the public from knowing what the public is entitled to know. How can you stand up here and, with a straight face, maintain that the public should not know what mailings are being sent out? That's all

that we ask for. Doesn't the public have a right to know? Aren't we talking about monies that's not our money? Belongs to the public, and we are the stewards of the public. We are the fiduciary. Fiduciary's have an obligation to account and, indeed, every other level of government must account.

If -- if an executive agency said, We will not tell the Legislature how much we spend on mailings, and so on, there'd be an outcry. We'd say outrageous! Undemocratic! We would fight that executive order or that executive agency that sought to carry -- to hide this from the public, I could see how outraged my good friend, Senator Daly, would be under those circumstances, and he'd be right.

How can we maintain that the Legislature has a different right? Are we above the law? Are we not subject to the rules that ought to apply to everybody else? I must say, listening to Senator Volker's argument, I think if he had been in Congress at the time that the House banking scandal occurred, he would say

that money should be spent to keep the public from knowing what members used that privilege in a fashion which some people have criticized.

Isn't the public entitled to know? And that didn't -- by the way, that wasn't even public money. That was their own private monies, and I think the public had a right to know, and certainly they have a right to know if there were mailings sent on behalf of members of the Majority in campaigns, and we have pretty strong evidence that it was -- that that indeed occurred.

Somebody sent me some 16 or, I don't know, 14 newsletters that Senator Goodman sent out. I don't know, by the way, I don't know why you guys need it. You in the Majority, you've got so much money anyhow, the PACs, the unions and this, they've given you all this money. Senator Goodman, you can't go on campaign time if you live in Manhattan, you can't walk the streets without seeing buses with enormous signs on it, saying "the Statesman of the Senate." He sends it all over Manhattan, in

my district. There's all these buses, and some of the upstaters may not know who I'm referring to, Senator Goodman. He says it, so it must be so. He says he's the Statesman of the state Senate.

In my district, people come up to me because these buses are all over Manhattan, and they say, "Leichter, you're not a statesman, you've been up there 20 years and you're still not a statesman?" I said, "I don't have enough money. You're a statesman if you have enough money to say you're a statesman."

So I don't know why he needed 16 mailings, but you know, this is really what it comes down to. I don't know why you don't reveal that information. I don't know why you take positions that are utterly in defensible, and that really brings, I think, disgrace to a body that we all love and that I think, by and large, that we serve honestly, intelligently, with good faith, but every once in a while, we do -- and I'm not just saying it's the Senate Republicans; it happens in the other house;

we've done things -- but at this moment we're talking about a principle that you're trying to establish, which is that you can keep the public from knowing how you're spending the taxpayers' money, and that's an indefensible principle, and that's what's involved in this resolution, not if it's legal, not if it's, as I said, the civil rights of poor Steve Sloan, or if we've got to uphold the sanctity, the integrity of the Legislature, by saying that we can do things that the public, if they understood, you know, would scream with anguish.

What this is all about is that the public has a right to know this, and you've got to reveal it, and I -- I think the sooner that you give up a position that you know is wrong, I think the sooner we can go on to more productive things. And Senator Halperin said, we're going to hold a hearing tomorrow on the legislative budget. You've heard me talk about it. Usually it's at 3:00 or 4:00 a.m., in the morning, and everybody is moaning and groaning, and it's wrong, and we don't need to do this.

We don't need to do this, and we shouldn't maintain this appeal.

Give the public this information; it has a right to know. That's what Senator Dollinger is saying. And it's good to get a new voice here, a new look because I think these new members come in, and they say, "My God, the emperor has no clothes."

ACTING PRESIDENT LACK: Senator Leichter, Senator Paterson is still holding it in.

SENATOR LEICHTER: My God, I forgot about him.

SENATOR PATERSON: Mr. President, I don't remember the question. But, Senator Leichter, what I would ask you is, have you noticed that the temperature in this chamber has dropped severely in the last half hour since we started this?

So being that the Calvin scale is measured by minus 270 degrees Celsius or minus 459 degrees Fahrenheit, I was wondering if you had an explanation for why the temperature has

dropped so severely in this chamber.

SENATOR LEICHTER: Senator, it was partly in recognition of this that I tried to put a lot of heat into my comments. Obviously I didn't do well enough.

SENATOR PATERSON: Mr. President, on the -

ACTING PRESIDENT LACK: Senator Paterson, I hate to interrupt you, but there is a list of several Senators before you. I recognized you to ask a question of Senator Leichter. I'm afraid you're going to have to hold it in a little bit longer.

Senator Gold.

SENATOR GOLD: Pardon me?

ACTING PRESIDENT LACK: You asked to be recognized.

SENATOR GOLD: No, I asked my questions. I'll wait for Senator Paterson.

ACTING PRESIDENT LACK: Senator Dollinger.

SENATOR DOLLINGER: I'll waive at this time too.

ACTING PRESIDENT LACK: Senator Daly.

SENATOR DALY: I'll waive.

ACTING PRESIDENT LACK: Senator Jones.

SENATOR JONES: Yes. I would like to rise and join my colleagues in support of this resolution. I understand that I have been referred to as the naive one here. Ordinarily, one might be insulted by that kind of comment. Today, frankly, I feel kind of good about it. I'm glad I'm naive and that I don't understand all these intricacies or whatever went into this.

As you all know, I taught elementary school, so to me it's fairly simple, two plus two is four. In this case, the way I look at this is there's money, I'm assuming it's public money because no one asked me to contribute when I came here, so I assume the pot of money we're working with must belong to the taxpayers. As a result, that makes one part of the equation.

The second part is, the tax payers, at least the ones I've heard from, are asking me, what are we doing with that money? We're sitting here asking the Governor day after day, what is he doing with the money? We ask our school districts at home what are they doing with the money, and everyone seems to have an answer but us.

So I guess what I'm left with is, as an educator, I also am a lifelong learner, so I would hope that one of my colleagues could help me learn. I did -- I didn't steal it, must be something public about it. I do have here the Assembly mailing totals and everything that I asked for, and no one made me sign an affidavit or whatever. I was able to get it. I have my Congresswoman's -- here this fills up 50 pages, and I really don't care that she sent a $1.98 letter, but I think it's nice that I know that and everywhere I go I find that, and I guess what I'm asking my colleagues, any one of them, is could you just tell me why; what was the rationale that we can't do these same

things?

ACTING PRESIDENT LACK: Senator Marchi.

SENATOR MARCHI: Yes, Mr. President.

It's a rather unusual course of events that bring us here today, and I don't think it's anybody's fault in this chamber, but we do have -- we do live in a land that's governed by law. The Latins had a saying, Nola pena sensa sine lege, no pain without a law. So you can't -- you can't, by reason of under inclusion supply that which is not in the law.

So if we're going to discharge our responsibilities in a responsible way, then we have to recognize that fact. The judge that made the decision spoke exclusively in terms of the declaration of intent. The declaration of intent.

Now, if that were descriptive of the whole law, there are any number of under inclusions that skillful people could avail themselves of for good reasons and for poor

reasons, and that is why it is, I think, very necessary for us to be in the position that we are in to sustain the law. I mean that's basic to our civilization.

As a matter of fact, there are penalties provided for, if you deny -- if you deny and you violate any reportage failure under the Public Officers Law. Section 79 provides, and there's no scienter provided, a fine of $250 upon the officer or member who has refused or neglected to be paid to the treasurer of the state.

So that this can be very serious. Section 195 of the Penal Law has provisions addressed to that. I'm not sure whether they apply the question of scienter or not, under 195 of the Penal Law, but they do have -- they do have also those provisions, and the judge didn't get very far because, after he left the declaration of intent, he says that, of course, the intent seeks to realize the greatest and most profound information that you possibly can elicit from a public agency, but he -- he

goes on to say that it's not correct of the Senate to go -- to take this course of action, because it denies petitioners access to information in light of the proclaimed legislative purpose of FOIL, the Freedom of Information Law, and in consideration of the fact that other branches of government would be routinely compelled to produce the requested records. Other branches of government. Of course, he got up to Section 87, agency records. Agency records.

ACTING PRESIDENT LACK: Excuse me, Senator Marchi. Senator Gold has risen for a question, Senator.

SENATOR MARCHI: When I -- when I'm completed, Senator.

SENATOR GOLD: Fine, sure.

ACTING PRESIDENT LACK: When he finishes.

SENATOR MARCHI: He got as far as Section 87. Had he continued to Section 88, he would have read that the state Legislature shall, in accordance with its published rules,

make available for public inspection and copying (a) bills and memorandums and (b), (c), (d), (e), (f), (g). There's a whole list of specific mandates where this is to be exercised, and he distinguishes that, but he doesn't distinguish here. He doesn't touch Section 88. It's not mentioned in the decision, but he does -- he did get as far as 87. He said it's routinely required of all other agencies, and he's correct in that statement, I believe.

So that we all know that there are penalties that are attached where there's a transgression of a right, that it's all in derogation of the common law. There are many, many of you are lawyers, very fine lawyers, and you know that it has to be strictly construed. You can't apply these lax rules of under inclusion and, by that, sweep into -- into the stream of our jurisprudence matters which were never addressed in a statute, matters which could -- now, I understand you're holding hearings, and you're doing some cogitation on this, but that could be embodied into law, a

proposal, a bill that is introduced that addresses certain issues.

I'm not prepared to say how I would react to that one way or the other, but I do say that there is an irregularity in the law in which we are pursuing it in this particular exercise. I don't think it's a waste of time because it gives you an opportunity to discuss an issue publicly, but it -- but its adoption and its intrusion into a process that has already gone to the courts should be addressed by the courts, because there are -- it leaves unanswered questions of the propriety of the Secretary of the Senate in discharging the responsibilities which were -- with total fidelity to the provisions that were in the Public Officers Law.

So you may make very good use of the time to propose something, but I submit that this is not -- not the way, and certainly I don't -- I don't know what the public -- I believe that the Attorney General is not viewing this with disfavor. I don't believe he is, if

anybody can help me out on that, but I believe that he is involved in these proceedings.

So I -- I think it's improper at this point other than to have it serve as a vehicle for discussion on certain elements that may or may not be included in a proposal or may be adjudicated with reasoning that is not apparent to any of us yet, but certainly was not apparent to the judge that drafted this decision, not even citing the sections which he thought were violated. Didn't mention them at all.

I -- I believe that it would be -- it would serve no useful purpose to accede to the thrust of this resolution, although I'm sure it was offered in good faith and with the hope that it might make a contribution.

ACTING PRESIDENT LACK: Senator Marchi, Senator Gold had a question.

SENATOR MARCHI: I'm sorry.

SENATOR GOLD: Will you yield, sir?

ACTING PRESIDENT LACK: Senator

Gold.

SENATOR MARCHI: Yes.

SENATOR GOLD: Senator, you used a phrase "under-inclusion" in your debate and I think you inferred that as a result of under inclusion or as a result of not being included in some way, we should not be involved in the process. Senator -

SENATOR MARCHI: Well, sometimes it's not -

SENATOR GOLD: Senator, my question -- my question is, I know you are a distinguished lawyer and a law-abiding citizen of this state, but are you saying to me that, if John Marchi, Senator John Marchi, were to make public the amount of money that you spent in your mailings or to make public how many times a year you sent newsletters and all of that, that you would be a law violator?

SENATOR MARCHI: No, I wouldn't be a law violator. I'm saying what I am -- what I do voluntarily and what I'm required to do, and the subject of the action I assume is the

Secretary of the Senate who is discharging the public responsibility and faces penalties.

SENATOR GOLD: Right.

SENATOR MARCHI: Under the terms of the Public Officers Law.

SENATOR GOLD: Right. So, Senator, if you yield to one more question. You said there is a difference between what you're mandated to do and what you do voluntarily. So am I right in understanding, Senator, that Senator John Marchi could voluntarily make these disclosures, that Senator Chris Mega could join you, that Senator Oppenheimer could join you and that, in fact, we all could join with each other and make this information public? As a matter of fact, I got a fabulous idea, maybe we could all pass a resolution and go on a public record that we all want to do it and then we do it. There would be nothing illegal about that; isn't that true, Senator?

SENATOR MARCHI: As expressive - as expressive as a matter of policy, if we wanted to -- if we wanted to -- to do it as a

matter of public policy, we would amend the rules so that it would provide for -- we would have -- we have, let's see, a (j) -- (j) (k) all the way up to, after (k) would be (l), section (l) would provide for, and then you would have the support of the Public Officers Law in whatever you undertake to do, yes.

SENATOR GOLD: Well, Senator, of course, we don't need the support of the Public Officers Law; isn't that true? The Public Officers Law doesn't bar us from giving the information. It may be a mandate, as you read the law, to others but it doesn't bar or forbid this body from passing a resolution that says, quote, Settle this darned case; get rid of it and let us make it public.

Isn't it a fact that the Public Officers Law does not bar us from doing that?

SENATOR MARCHI: If -- if we rest on its enforcement on the basis of the declaration of intent that the more you know, the better it is. I don't like to go to a reductio ad absurdum, going to the extreme to

illustrate a problem, but if the constituent comes with me and doesn't tell me anything unlawful, but he wants confidentiality, I may extend it to him because he has the right to advance his problem as long as there's no violation of the law, in -- in our constituency relationships.

I don't want to see the law prostituted or broadened in a way because this business of routing it only to generalities that are contained in a statement of intent and then pointing you to the specifics and how agencies will behave in response to it and how your behavior will follow access to state legislative records, then I think we're -- I think we have to treat it with a certain amount of reverence and respect, and I'm sure you'd join me on that.

SENATOR GOLD: Senator -

SENATOR MARCHI: But you've just -- you just feel that -

SENATOR GOLD: But if you'll yield to a question -

SENATOR MARCHI: I don't argue

with you on that.

SENATOR GOLD: It's not a question of respect. I mean I respect Steve Sloan, I really do. I think he's a loyal employee of the Senate. I don't think he's out there on his own doing anything; he's a loyal employee, and I respect him.

But, Senator, you know, you're a practicing lawyer and I respect that, when I - emphasis on the word "practicing". Isn't it a fact, Senator, that the case is over and a jury makes an award and every day in this state people settle the awards even after the jury cases because they don't want to go on an appeal and so instead of paying $2 million, the insurance company pays 1.7, or in another case, there are mandates -- I had one case years ago, I had a jury order the people had to turn over property and the people decided after the jury verdict that they were going to make a settlement.

So, Senator, isn't it a fact that there is nothing in the law that prohibits this

body from meeting just as we are now, thanks to Senator Dollinger and others, and saying, Let's all talk it out. Our agent, Steve Sloan, was named, not because he did anything other than us, he -- that's the way you bring a lawsuit against the Senate.

SENATOR DALY: Mr. President.

SENATOR GOLD: As soon as I finish my question, Senator.

ACTING PRESIDENT LACK: Excuse me, Senator Daly.

SENATOR GOLD: No, I'll yield. That's all right.

ACTING PRESIDENT LACK: No, excuse me, Senator Gold. It's Senator Marchi's yield. Senator Marchi is yielding to a question from you.

SENATOR GOLD: Oh. Any way you want it, any way you want it.

ACTING PRESIDENT LACK: So, Senator Daly, Senator Gold is supposed to be asking a question.

SENATOR DALY: Will Senator

Marchi allow me to question Senator Gold?

SENATOR GOLD: All right. The answer is, I'll take you off the hook. All right? I think I made the point. I'll withdraw the question. Senator Marchi is finished. You want to ask me to yield to a question?

SENATOR DALY: Yes, I do.

ACTING PRESIDENT LACK: Now, Senator Daly, do you want Senator Gold to yield to a question as a result of his earlier question to Senator Marchi?

SENATOR DALY: Yes, I do, Mr. President.

ACTING PRESIDENT LACK: Senator Gold, will you yield to a question based on your earlier question?

SENATOR GOLD: Piece of cake.

ACTING PRESIDENT LACK: Senator Daly.

SENATOR DALY: Mr. Gold, I notice on the resolution that you again, going back to a point that I raised before, that the judge has determined that the Secretary of the Senate has

acted contrary to law. Do you think that we should allow a decision like that to stand? In other words, he's saying that Mr. Sloan wrongly interpreted the law, wrongly interpreted the law, that he acted contrary to law, that he literally broke the law?

Mr. Gold, do you think that - that Mr. Sloan acted contrary to law in this case?

SENATOR GOLD: All right. I'm glad you asked that question. Glad you asked that question. If you will give me the authority, and by "you" I mean every member of your side and every member of my side, I'm willing to bet you right now that I can enter into a stipulation in this case which will say the petitioner acknowledges that Stephen Sloan is an agent of the Senate and did not willfully in any way become a law violator but irrespective of whether the law requires it or not, this body settles the case by agreeing to open up our books and make our payrolls and our mailings -- sorry, our mailings public.

In doing that, Senator, we will have done a number of things. We will -

SENATOR DALY: Mr. President.

SENATOR GOLD: I'm not finished with my answer.

SENATOR DALY: O.K.

SENATOR GOLD: In doing that, we will have taken away the stigma from that great gentleman, Steve Sloan, as to whether or not he violated the law, and we would remove the stigma from ourselves in the fact that we will not open up our books. So there you go.

I won't even charge for it. I won't -- don't submit a bill to Herzfeld & Rubin at 40 Wall Street, New York 5...(212) 344-5500.

SENATOR DALY: Mr. President, I don't need the address; I can always find them in the book.

ACTING PRESIDENT LACK: Excuse me, Senator Daly.

SENATOR DALY: Will you yield to another question?

SENATOR GOLD: Yes.

ACTING PRESIDENT LACK: Senator Gold, will you yield another question? Senator Daly.

SENATOR DALY: Are you a party to this case? I'm not a lawyer, sir, so you'll have to put up with me -

SENATOR GOLD: No, I -

SENATOR. You are not a party, I gather?

SENATOR GOLD: No, I don't believe that I'm directly a party except that I'm affected because it blackens the name of the Senate, and I'm a proud member of this body.

SENATOR DALY: Mr. President, I'll come up -- I don't have the floor right now. I will ask that my name be put on the list so I can answer that properly.

ACTING PRESIDENT LACK: Senator Paterson, it is now your time.

SENATOR PATERSON: Thank you, Mr. President.

I have the Public Officers Law in front of me, and I'm looking at Section 88,

which applies to the records of state legislators and under section 2, and actually the subdivision (i) it just basically states that the Legislature should make all those records, papers and documents as decreed for public copying and also for public information, and I would tend to think that it was this that the Judge Canfield referred to in his decision, as what would have been the legislative intent 15 years ago when the Legislature passed the Freedom of Information Act.

Now, that might not be right, but I would tend to think that that was what the decision of the Supreme Court justice was, and it is certainly appealable and that's how our judicial system works, that the judiciary has review over the actions of the Legislature and then there is review over the action of the judiciary by appeal.

The fact that Senator Dollinger would like to introduce a resolution at this time calling for this body to make a decision as to whether or not the Secretary of the Senate

should exercise the option to appeal this particular case is, in my opinion, I think, a judgment that we might want to have made.

It would have better been expressed in a bill. It would have been better expressed in a resolution that was actually on the floor. It was expressed in the best way that Senator Dollinger could publicize the issue, which was a motion to discharge this resolution, which I support.

I think that I remember being about 19 or 20 years old and getting the mail one day and getting a newsletter from my state Senator, and I remember thinking, and I think this is probably closer to what the public thinks, that it was very nice of my state Senator to take time out to send me a record of what the Senator was working on.

The fact is that the perception that I had as of the time I read this news letter that was sent to me, was a perception that was extended to my value of how hard the Senator was working. So I think it's time for

somebody to get up around here and say that, in a sense, legislative mailings as sincere as they may be, are quasi-campaign literature, and that those who read it may think very fondly of the individuals who wrote it and may think very fondly of them the next time they are up for reelection.

In spite of the fact that I think that the majority of legislators here try to use the newsletters as catalysts for information, that is inevitably the reason why people fight so hard over how many news letters they're getting, and I think it is the reason that we're discussing this issue today.

I don't think that it is a situation that necessarily needs to be changed, but it is one that we have to be scrupulously fair, if we -- about, if we are going to maintain the public confidence in our ability to make other decisions -- decisions that Senator Mendez was saying earlier she would rather discuss than discuss this, decisions relating to housing, to substance abuse, to unemployment,

under-employment, decisions relating to labor relations, decisions relating to health care and our educational facilities which really, at this point, need a longer discussion than our legislative mailings.

So only for the value of what our perception is as a body and what our integrity is, I think that we have to disclose as much information as we can to the public so that it is in the public interest that there not be any misunderstanding of what the legislative news letters are.

I think that any attempt to resist the publication of how much money is being spent which is a direct indication of how serious this issue is being taken by this body, really, is not acting in the public interest.

The fact that the Secretary wants to appeal is fine. The Secretary might want to exercise that option, but the elected officials, 61 of us in this chamber, also have an opportunity to have our voices heard on this issue, and I am thankful that Senator Dollinger

used whatever was left of him within our rules to at least put this information out, so that the public may not ever get to find out how much money is being spent on mailings but may get to find out that there are a few people that think that the process could be more fair.

ACTING PRESIDENT LACK: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

I want to say that I, for one, do not think that Steve Sloan turned off the heat so that we could freeze and move out of here quickly. I know that was Senator Paterson's question a half hour ago before he forgot it.

Now, I'm not a lawyer and I don't know if that's beneficial or not beneficial, but I am listening to what's going on here and it's sort of sounding a lot like LaLa Land to me, and I don't mean to be disrespectful, and I do want to compliment the three Republican Senators who have spoken up. They've been good soldiers; they're trying to do the best they can, but this is -- I can not see a higher law that exists

than the people's right to know about what's happening with their own government.

Almost every other legislative body, I don't -- I can't say all but I believe almost all, maybe all do provide this kind of information and, while you mention the Assembly, I believe the Assembly provides that information concerning mailings twice a year, but that isn't saying that they're doing enough.

I think both houses should be doing more, and two wrongs wouldn't make a right if they were doing, you know, less than us. It still isn't right. It is the public's right to know what we are doing, and what's happened in recent years is, the public is questioning us. They're suspicious of us. We are them. We have nothing to hide from them. What we do is good work. Why aren't we proud of it? Why don't we open up everything and say the public should know? We want to restore confidence and certainly I feel that -- that to say that we should spend the public's money so that the public shouldn't know, I mean that I guess is

why I said it's LaLa Land, just doesn't make sense, and I don't think any reasoning mind would say it makes sense.

ACTING PRESIDENT LACK: Senator DeFrancisco.

SENATOR DeFRANCISCO: I think there's two issues here and they seem to be muddled together and I can understand why because politically it's very easy to say the public has a right to know. I mean who could ever disagree with that, with the press writing vigorously over there.

Of course, the public has a right to know and issue number one, I think that's true. I think if this was a resolution dealing with disclosure of things like how much somebody spent for mailing, that would be something totally different, and I would vote in favor of something like that, because I think the public does have a right to know. I think -

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT LACK: Senator Leichter, why do you stand?

SENATOR LEICHTER: I wonder if the Senator would yield?

SENATOR DeFRANCISCO: No, I'm not going to yield for a filibuster because I heard him for quite a while, and I'd just like the opportunity to finish my thought.

ACTING PRESIDENT LACK: Not at this moment, Senator.

SENATOR DeFRANCISCO: All right?

ACTING PRESIDENT LACK: Senator DeFrancisco.

SENATOR DeFRANCISCO: The second thought -- the second thought is this, that the other issue is whether this lawsuit should be appealed which, in my mind, is a totally separate and distinct issue.

If we are going to use the judge's ruling that the declaration of intent in this piece of legislation is going to determine all further questions under this legislation, then it's going to open a very -- a lot of different issues. Maybe you want them to be opened, but I don't think you would if you

thought about it.

For example, a constituent writes a piece of mail, a letter to me, maybe a very confidential thing, something about someone that they don't want to have disclosed to the world. I write a response back; a dialogue takes place that leads to legislation. That may have been the seed that placed the piece of legislation, the thought in my mind.

If we're going to look to the declaration of intent to this legislation that the people have the right to know we've got to disclose everything to the public about what our thoughts are in the thought process as to how the legislation starts from the inception to the end, and this law -- and this case is still on the books because we did not appeal, that is precedent for another petitioner to say, Why did Jane Jones send you a letter and why did you respond in that fashion? We have a right to see that communication because the public has a right to know.

So my point is simply this, that

if we do not appeal this decision that base all decisions on the Freedom of Information Law on the declaration of intent, it's a precedent that could be used in a much broader fashion. So on the legislation as if sits before us today, I'm going to vote no.

But I just want to make clear that I'm not saying the people don't have a right to know on the issue that this judge happened to decide or that the Assembly is wrong in giving out the numbers for each mailing. That's a different issue and, when that's framed, I'll vote differently, but I think you really ought to see what you're really doing and think it through before we go forward with passing something and leaving this on the books.

The last -- and I better leave it at that. So I'm going to vote no on this specific legislation, but be very clear that doesn't mean I don't want the public to know about this particular issue.

ACTING PRESIDENT LACK: Senator

Leichter, you had a question?

SENATOR LEICHTER: Senator, if you -- if you will yield not for a filibuster but because I -- I thought you made some interesting comments, and I wanted to fully understand it, and do I understand from your comments that you would -- are in favor of the right of the public to know the mailings that are sent out by the Senate?

SENATOR DeFRANCISCO: And the Assembly.

SENATOR LEICHTER: And the Assembly, absolutely. You're in favor of that, right?

SENATOR DeFRANCISCO: Generally, yes.

SENATOR LEICHTER: Well, what does "generally" mean?

SENATOR DeFRANCISCO: Well, when the issue is framed in a piece of legislation, I will explain my vote fully as I explained it today. It depends upon what the specific piece of legislation is, and I will -- I will react to

it.

SENATOR LEICHTER: Senator, I'm not referring to any specific legislation. I'm asking you for the simple proposition. You got up here and you obviously wanted to tell your constituents. Wait a second, I'm not saying you don't have a right to know.

Now, I'm asking you specifically, do you favor the right of your constituents to know what mailings are sent out by the Senate and what the cost of those mailings are; in other words, how their monies are being spent on mailings?

SENATOR DeFRANCISCO: I have -- I agree with the manner in which the Assembly lists their mailings.

SENATOR LEICHTER: So you would be in favor of disclosing the information?

SENATOR DeFRANCISCO: I would be in -- I will tell you whether I'm in favor or against a specific piece of legislation when I see how it's framed. For example, this piece of legislation is being touted as something that it

really isn't. This is not a question of full disclosure. It's a question of whether to appeal a decision that could leave a bad precedent. That's what I'm saying.

I fully explained the vote. I have explained to you that I would be in favor of disclosure in the manner that the Assembly did. Beyond that, I would like to see a specific piece of legislation before I react fully on it.

SENATOR LEICHTER: All right. Then, Senator, I -- I gather and I'm sorry to say this, do you mean when you say "generally," you mean it's a nice thing to tell people, but when you get specific then you seem to have some problem with it?

SENATOR DeFRANCISCO: No, no, that's quite unfair. I said specifically, I think some of your own members pointed up the Assembly's version of disclosure, and I said, just like some of them said, that that makes sense to me.

If there was a piece of

legislation in proper form, I'll react to it and I'll tell you specifically the way I stand, but to answer hypothetical questions when we're dealing with a specific resolution here, I don't think is very productive.

SENATOR LEICHTER: Senator, if you would be so good as to yield to just one more question.

SENATOR DeFRANCISCO: Absolutely.

SENATOR LEICHTER: Thank you.

I didn't think I was being hypothetical at all. I didn't think I could be much more specific than talking about mailings and I do appreciate your saying that you would be at least willing to go as far as the Assembly goes.

But, Senator, my question is, you heard Senator Gold say that this case could be easily settled on the basis, just give the information as to the mailings and we would forget -- there would be no precedent whatsoever. You could withdraw the -

SENATOR DeFRANCISCO: Let me just ask you something.

SENATOR LEICHTER: Let me just finish the question.

SENATOR DeFRANCISCO: O.K.

SENATOR LEICHTER: You could withdraw the -- withdraw the decision. In deed, Senator, there would have been no lawsuit if the information had been supplied in the first instance. Just say how many mailings were sent out by a particular Senator during the 1992, I guess it was for a 12-month period, and as I understand it, you seem to be in favor of making that information available, so you ought to support this resolution.

SENATOR DeFRANCISCO: Well, then, you obviously didn't understand what I said, and I'm not going to repeat it, because it's clear on the record, but to to answer your question, I listened to Senator Gold about his willingness to enter a stipulation.

I don't know, maybe I went to the wrong law school. I went to Duke; I think it's

pretty good. But Duke Law School taught me that in order to enter a stipulation you have to be a party to the lawsuit; you have to be either the plaintiff or the plaintiff's representative and I don't believe -

SENATOR GOLD: Mr. President.

SENATOR DeFRANCISCO: May I finish?

SENATOR GOLD: You didn't understand what I said. I have said if this body authorized me to be the attorney I'd take it over, I'd settle it, and we'd all be out of here, and you could buy lunch.

SENATOR DeFRANCISCO: That's correct, but this body -- this body, all what I'm suggesting to you is we cannot, whether you want to enter a stipulation or not is not the point. The point is presently at this time there is a resolution on this -- on the floor right now, and I think I was clear in saying that all I'm concerned about, I don't think anybody on either side of the aisle would want the type of correspondence that I -- I was

referring to disclosed and it's at a risk of being disclosed in the event that this precedent stays on the books.

ACTING PRESIDENT LACK: Senator Daly.

SENATOR DALY: Mr. President, I think it's clear that what we're taking strong exception to truly is not the message as much as the instrument, and the reason for the instrument.

You know, I'm amazed that a group of individuals who I know truly are defenders of individual freedom, and I constantly hear from Senator Gold and Senator Leichter about how important it is that we defend individual freedom, and then I look at a resolution that, by the way, includes -- is so broad and to go along with the points well made by both Senator DeFrancisco and Senator Paterson, it includes first class mailings. Again, a direct violation potential of confidentiality.

But what gets me most of all is that here you use the language in the resolution

of a judge saying that the Secretary of the Senate was arbitrary, capricious and contrary to the law, and that's key, and an abuse of discretion in interpreting the existing law - the existing law, not the law that you feel we should have, and I don't take -- I take no exception to that, but not -- to deny that person the right of appeal who has been accused of that, to me, is something so undemocratic, unconstitutional, and knowing you, and I'm sincere, knowing how strongly you feel about the rights of the individual, to come up with an instrument, a resolution such as this, would just throw out the appeals.

Again, as I said, I'm not an attorney, but to me the Constitution, the separation of powers, the establishment of the appellate court, truly, truly, ladies and gentlemen, indicates how important it is that we maintain the process, the judicial process, that we maintain the separation of powers and, most importantly, that we maintain the right of appeal.

And I don't think this body -- I don't think this body has the right really to deny the Secretary of the Senate, who has been accused, and you've mentioned again in your resolution, of violating the law -- of violating the law, which potentially -- potentially could create serious problems for him. There is potential.

Let us say that he released all this information, and a member took exception to it and said, You went well beyond; here, read, read the Freedom of Information Act. You went beyond your power, and, therefore, I'm going to charge you, either procedurally inside the Senate or even potentially in the court.

Now, you can't be serious; I know you too well, I know you too well, and you recognize this for what it is. I don't take any exception. You've got a political instrument. You're making a point. I respect that, I understand it, but for goodness' sakes, when you try to make that point, don't come up with a resolution that literally deprives a person of

his constitutional right because that's what you're doing.

SENATOR DOLLINGER: Mr. President, Senator Daly yield to one question?

ACTING PRESIDENT LACK: Senator, will you yield?

SENATOR DALY: Yes, I will.

ACTING PRESIDENT LACK: Senator Dollinger.

SENATOR DOLLINGER: Senator Daly, if this body, determined by majority vote that Steve Sloan should not appeal, would he still have the power to appeal, in your opinion?

SENATOR DALY: On his own? I don't know. I'm not -- you tell me.

SENATOR DOLLINGER: Well, simply asked, isn't he our employee? He does what we tell him; isn't that correct?

SENATOR DALY: Yes.

SENATOR DOLLINGER: So if we told him to -

SENATOR DALY: Wait a minute. If we tell him to do something illegal or wrong,

no, he does not do it.

SENATOR DOLLINGER: Well, but if we told him to do something because we thought that was what was necessary to do to comply with the law, I assume Mr. Sloan would do it, wouldn't he?

SENATOR DALY: If he interpreted -- if he interpreted the order to be a correct and proper one, yes.

SENATOR DOLLINGER: O.K.

SENATOR DALY: If he interpreted that to be incorrect and improper, hopefully no.

SENATOR DOLLINGER: All right. And if he decided that it was improper for him to follow our direction, do you know where he would get the money to finance the appeal?

SENATOR DALY: No.

SENATOR DOLLINGER: I assume he'd get it from the taxpayers, wouldn't he? Shouldn't we have to disclose where he gets the money for the appeal?

SENATOR DALY: I'm sorry.

SENATOR DOLLINGER: How he's paying for the appeal?

SENATOR DALY: You're denying him the right to the appeal in this resolution. If we pass it as a body and because he is subject, but he's -- I would -- I would gainsay that he would not appeal.

SENATOR DOLLINGER: O.K. But he is our employee and he does what we tell him, does he not?

SENATOR DALY: Senator, believe me, the point -- you're not getting my point. I'm saying that basically this -- that in this resolution that you sponsored, you mentioned the word, you mentioned the language. You said the judge has accused him of this. You put it in resolution.

SENATOR DOLLINGER: That's correct.

SENATOR DALY: And the appeal, now, let's look at what the appeal is about. By the way -

SENATOR DOLLINGER: Let me -

ACTING PRESIDENT LACK: Excuse me, Senator Daly and Senator Dollinger. Senator Dollinger, in this chamber, all remarks are addressed to the floor. You've asked the question; Senator Daly is responding to it. Until he finishes responding, Senator Daly has the floor.

SENATOR DOLLINGER: That's correct, Mr. President. I apologize.

SENATOR DALY: Mr. President, you just made me forget the very important point I was going to make, but just give me a second, and I'm sure it will come back.

Basically the point I've been making is that, in allowing -- in denying someone the right to take exception in court of being accused of acting contrary to the law is something that I just cannot understand. I certainly cannot accept it.

And again, going back to my basic point, I take very strong exception to the instrument you've used. I know what you're doing. You know what you're doing. I respect

it. You feel strongly about a given issue and you're using this as a means of expressing it but I'm saying when you do that, do that, please don't put together a resolution that so violently violates the Constitution that it's abhorrent.

ACTING PRESIDENT LACK: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

We're going to close debate for this side, and I have just a moment, and I'm going to yield to Senator Dollinger.

First of all, I have a very significant document here. I've heard people talking all day about the Assembly, the Assembly and the Assembly, and I don't know how we have the nerve to criticize the Assembly on this particular issue, because in my hand is a document which specifically sets forth what each Assemblyman spends for their mailing. It's got first class, UPS, and telegrams, each Assembly person, their name and the amount of money that

they spend.

There's another part of this, each Assemblyperson's name and under "miscellaneous bulk" and "districtwide bulk" the exact penny amount of what each person spends. There's even something here which tells you what the Speaker spends, what the Minority Leader spends, so when we get to the point where we do at least this, we ought to throw rocks at the Assembly, but with all of the talk about what they have to do, they should have done or whatever, this is what they're doing.

Senator Daly says that what we're doing is political and, of course, you know, you have an answer to that. All you have to do is the right thing and you take away the issue. If you open up the books, you take away the issue, and then you are politically right. You are the ones who run this place, but the arguments that I've heard today really are hogwash.

There is nothing illegal about us settling a case. There is nothing illegal about us opening our books. There's no statute that

stops us from opening our books. There's no statute that stops us from settling this case with an honorable statement about Steve Sloan and then this body saying, since there is no law that prohibits us, and since it is the right thing to do, we're going to do it.

I've heard people like Senator DeFrancisco and others say they aren't opposed to a new law. Why are we opposed to just letting out the information? Enough of this business. Enough of it. There isn't anyone here, including Steve Sloan, whose ego is more important than the rights of the people in this issue.

I yield to Senator Dollinger.

SENATOR DOLLINGER: Thank you, Senator Gold, and I appreciate the comments of my colleagues pro and con on this -- this resolution or this motion.

I think it's an important debate to have had. I wish we could get into the technical issues of what we spend on mailing and how we account for it, because I think it would

be important to have for the people of this state a further debate if this res... motion to discharge is approved. Then we can look at the resolution, and I hope at some time we'll look for the kinds of things that Senator Volker has mentioned, Senator DeFrancisco, Senator Daly has mentioned, to look at bills that will actually put into law clearly and concisely exactly how we should operate this body.

Let me just summarize a couple quick things. One, people have talked about the Assembly. We ought to set the standard for the Assembly. We don't need the Assembly to set the standard for us, and I'll tell everybody in this room, if we do set a standard of disclosure, I'll be the first to walk across the hall, find sponsors and, frankly, take the same message to them that I'm trying to get across to this body, that disclosure is a good thing, and the people who pay the bills ought to know what they're paying for. I'll be right there. I'll join all of you to do it.

Two, I can't believe we spend any

time talking about government secrecy. This isn't a secret government. We're not the Central Intelligence Agency. We're the Senate of the state of New York. We're spending the people's money. We ought to tell them what we're spending it for.

I drew a simple analogy when I was sitting here. We are the board of directors of the corporation. Would we call the marketing department downtown -- downstairs in our corporation and say, How's the marketing for the corporation going, and the message we get back is, We're not going to tell you. We're not going to tell you who we're sending first class mail to. We're not going to tell you who we're sending bulk mail to. We're not going to tell you who we're sending newsletters to. The marketing department isn't going to tell us, the board of directors, what we're doing in our contact with our consuming public or, in our case, our constituents and taxpayers.

I submit there isn't a person in this room who would sit on a corporation and

allow the marketing department to tell you, We're not going to tell you what we spend your money on.

I'll close on one lawyer point. Senator Marchi and Senator DeFrancisco talked about the law and the impact of the law. Well, it's a combination of the law and a simple thing that I'm used to saying to my children and they oftentimes box me into a little corner, and the corner is very simple, when they say to me, "Listen, what you're telling us is, 'do as I say, not as I do'."

If we don't support this resolution, our message to the rest of this state is exactly that. We want you to abide by the Freedom of Information Act, but we're not prepared to do it. We want to carry on in secrecy. In that view, a Freedom of Information Act becomes the cruelest hoax and the cruelest mandate because we're telling every other level of government to be open, but we're not open ourselves.

I'll close on a very lawyer-like

point. I'm sure my counsel -- my colleagues who are attorneys will understand there's an old rule of law called the "missing witness" charge. When you go to trial, and you're supposed to produce a witness and the witness doesn't show up, the judge then turns around to the jury and says, This party was required to bring this witness to the podium and to the witness stand. Because they failed to do that, you, the members of the jury, can draw the most adverse inference from their failure to appear.

My sense is, all of my colleagues, you fall into the "missing Senate" charge when you vote against this resolution because, in essence, everyone in this state will be able to assume what Senator Leichter assumes, which is that this mailing budget is not used for a legitimate government purpose, to take a message of our achievements and our concerns to our constituents, but instead it's used for blatantly political purposes.

It's the taxpayers' money being used by one political organization against

another. That's the adverse inference that you will all be subject to, the adverse speculation that you're all going to be a part of unless you vote in favor of disclosure.

I would ask all of you, don't take our collective credibility and put it at risk. Our credibility is dependent upon telling the people what we buy and what we pay for and what they're having to pay the bill for. That's what this resolution is designed to do.

I understand from Senator Daly and Senator DeFrancisco, I wish it were in a different form. It can be in a different form. I've drafted legislation to make the Freedom of Information Act specifically expressly applicable to the Legislature so there won't be any question in anyone's mind. I'll circulate the bill and those who've expressed support for the concept, I hope you'll sign on.

Senator Halperin has already circulated a bill to the members of this body asking this body to support quarterly financial accounting so that we can publish for our

constituents the exact same thing that the House of Representatives does. What's good for them must be good for us.

We can change the process. The process is already beginning to change. I would simply ask all of you, we're not doing anything that's too broad. We're simply shining a little bit of light in one of those dark nooks and crannies where the taxpayers deserve to have the light turned on. This resolution begins to turn on the first light bulb of what I hope will be a process that will bring this organization from out of the 17th Century and into the 21st Century.

Please support this resolution.

ACTING PRESIDENT LACK: On the motion to discharge, all those in favor, aye.

Contrary nay.

SENATOR GOLD: Party vote in the affirmative.

ACTING PRESIDENT LACK: Party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes 23, nays 34. Party vote.

ACTING PRESIDENT LACK: The motion fails.

Senator Present.

SENATOR PRESENT: Mr. President, in behalf of Senator Levy, I'd like to announce there will be a Republican Majority Conference immediately following adjournment, in 332, and there being no further business, I move we adjourn until tomorrow at 11:30 a.m.

ACTING PRESIDENT LACK: There is an immediate conference of the Senate Majority in Room 332. There being no further business, I move we stand adjourned until tomorrow at 11:30 a.m. The Senate is adjourned.

(Whereupon at 6:16 p.m., the Senate adjourned.)