ALBANY, NEW YORK

May 4, 1993

6:19 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: The Senate will come to order. Senators will please find their seats. If you would please rise for the Pledge of Allegiance to the Flag.

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

This evening we're pleased to have with us Bishop Muriel Grant of the Mount Olivet Discipleship of Brooklyn, New York.

Bishop Grant.

BISHOP MURIEL GRANT: Let us pray.

May the divine presence of the Almighty God be with us this day, and though we are yet a short distance from the genesis of this administration, may He guide and bless the President of these United States. Bless our land with honorable industry, sound learning and pure manners. Save us from violence, discord and confusion, from pride and arrogance and from every evil way. Defend our liberty in its foundations and fashion us into one united

people, the multitudes brought hither out of many kindreds and towns, but yet one in divisible under God. Most especially, O Lord, we beseech Thee for our very Senate representatives here assembled, Democrats and Republicans, that Thou wouldst be pleased to direct and prosper all their consultations for the advancement of Thy glory, the good of Thy church, the safety, honor and welfare of Thy people that all things may be ordered and settled by their endeavors upon the best and surest foundations, that peace and happiness, truth and justice, religion and piety may be established among us for all generations.

These and all other necessities I do humbly pray in the name of Jesus Christ, our most blessed Lord and Savior. Amen.

ACTING PRESIDENT FARLEY: The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, May 3rd. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. Prayer

by the Reverend Michael Martin of St. Francis High School in Hamburg, New York. The Journal of Friday, April 30th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as read.

The order of business: Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yeah. Are there any messages at the desk from the Assembly?

THE SECRETARY: I don't have any.

ACTING PRESIDENT FARLEY: We have none.

SENATOR GOLD: It's my understanding, Mr. President, that the Assembly yesterday, I believe it was, adopted a resolu tion confirming the existence of a joint session

tomorrow at 10:30 in the Assembly Chamber called pursuant to a document signed by the Lt. Governor and by the Speaker, and I was informed that that was at least presented to our desk and is in the house. What the Chair does with it is up to the Chair, but I think that the document was, in fact, filed with us.

ACTING PRESIDENT FARLEY: They're not here at the desk.

SENATOR GOLD: Thank you, Mr. President.

Messages from the Governor.

Reports of standing committees. We have a report of a standing committee. We have a number of nominations, Senator Present. May we do them all at once?

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Member of the New York State Olympic Regional Development Authority: Frank Leonbruno, of Bolton Landing, and Serge Lussi, of Lake Placid;

New York Convention Center Operation Corporation: Gary J. Lavine, of Syracuse, and Jerome Reiss, of New York City;

Member of the Mental Health Services Council: M. Juliana Degone, of Canton;

Banking Member of the State Banking Board: George J. Vojta, of Bronxville;

Member of the Board of Visitors of the South Beach Psychiatric Center: Luis A. Castro, of Brooklyn;

Member of the Board of Visitors of the Creedmoor Psychiatric Center: Philip Click, of Flushing, and Judy Grubin, of Jackson Heights;

Member of the Board of Visitors of the St. Lawrence Psychiatric Center: Michael P. Frary, of Ogdensburg;

Member of the Board of Visitors of the Letchworth Village Developmental Disabilities Services Office: Judith Jurow, of Middletown;

Member of the Board of Visitors of the Newark Developmental Disabilities

Services Office: Anne M. Longo, of Geneva;

Member of the Board of Visitors of Syracuse Developmental Disabilities Services Office: John P. McCrea, of Jamesville;

Member of the Board of Visitors of the Bronx Developmental Disabilities Services Office: Jack Meyers, of the Bronx;

Member of the Board of Visitors of the Brooklyn Developmental Disabilities Services: Antoinette Mizrahi, of Brooklyn;

Member of the Board of Visitors of the Sagamore Children's Psychiatric Center: Emanuel Plesent, of Dix Hills;

Member of the Board of Visitors of the Bronx Psychiatric Center: Gladys Rodriguez, of the Bronx;

Member of the Board of Visitors of the Mohawk Valley Psychiatric Center, Flora L. Sainz, of Utica;

Member of the Board of Visitors of the Staten Island Developmental Disabilities Services Office: Richard Salinardi, of Staten Island;

Member of the Board of Visitors of the Capital District Psychiatric Center, Reverend Jared Van Wagenen IV, of Cobleskill.

ACTING PRESIDENT FARLEY: On the confirmation -- on the confirmations, all in favor say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

They're confirmed.

Next order of business is, let's see, reports of select committees.

Communications and reports from state officers.

Motions and resolutions. Senator Maltese.

Senator Present.

SENATOR PRESENT: Mr. President, I believe there are two privileged resolutions at the desk of our Majority Leader's. May I have the titles read on them at this time, please.

ACTING PRESIDENT FARLEY: Yes, we

may. The Secretary will read the titles of the privileged resolutions.

THE SECRETARY: Legislative Resolution by Senator Marino, and others, mourning the death of Reverend Lawrence J. McGinley, S.J., the 26th president and president emeritus of Fordham University;

Also legislative Resolution, by Senator Marino, and others, mourning the passing of Reverend James F. Finlay, S.J., 30th president of Fordham University and interim president of LeMoyne College.

ACTING PRESIDENT FARLEY: On the resolutions, all in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolutions are adopted.

ACTING PRESIDENT FARLEY: Senator Maltese.

SENATOR MALTESE: Mr. President, on behalf of Senator Saland, on page 15, I offer the following amendments to Calendar 334, Senate

Print 796.

ACTING PRESIDENT FARLEY: Amendments are received.

SENATOR MALTESE: And ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Bill will retain its place.

SENATOR MALTESE: On my behalf, on page 22, I offer the following amendments to Calendar Number 508, Senate Print 4518, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR MALTESE: On behalf of Senator Farley, on page 32, I offer the following amendments to Calendar Number 204, Senate Print 992, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments are received, bill will retain its place.

Senator Libous.

SENATOR LIBOUS: Pardon me?

ACTING PRESIDENT FARLEY: Senator Libous. A little slip there.

SENATOR LIBOUS: Thank you, Mr. President.

SENATOR SALAND: Did you say Libeth or Liveth?

SENATOR LIBOUS: Mr. President, I'd like to put a star -- a sponsor's star on my bill, Calendar Number 494, and it's Senate Bill 3917.

ACTING PRESIDENT FARLEY: The bill is starred at the request of the sponsor, Senator Libous.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Like Senator Libeth, I would like to place a sponsor's star on a bill, page 23, Calendar Number 516, Senate Print 3642.

ACTING PRESIDENT FARLEY: Bill is starred.

Senator Present.

SENATOR PRESENT: Mr. President, I move we adopt the Resolution Calendar.

ACTING PRESIDENT FARLEY: All those in favor of adopting the Resolution Calendar say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The Resolution Calendar is adopted. Senator Present.

SENATOR PRESENT: Would you recognize Senator Nozzolio, please.

ACTING PRESIDENT FARLEY: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. I have a privileged resolution at the desk. If you could please read the title.

ACTING PRESIDENT FARLEY: Secretary will read the title of Senator Nozzolio's resolution.

THE SECRETARY: Legislative Resolution, by Senator Nozzolio, honoring Dr. Anthony T. Beaudry upon his retirement as

superintendent of schools, Moravia Central School District.

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

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Would you recognize Senator Kuhl, please.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Yes. Mr. President, there's a privileged resolution, I believe, at the desk in my name. I'd like to move that at this time and ask the clerk to read the last -- read the resolution.

ACTING PRESIDENT FARLEY: Read the title.

THE SECRETARY: Legislative Resolution, by Senator Kuhl, memorializing Governor Mario M. Cuomo to declare

storm-stricken Schuyler County a disaster area in the state of New York.

ACTING PRESIDENT FARLEY: On the resolution, all those in favor say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present, we have a substitution.

THE SECRETARY: On page 31, Senator Volker moves to discharge the Committee on Corporations, Authorities and Commissions from Assembly Bill Number 1941-A and substitute it for the identical Third Reading 1141-A.

ACTING PRESIDENT FARLEY: Substitution is ordered.

Are there any other motions?

Senator Present?

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

ACTING PRESIDENT FARLEY: Non-controversial, Secretary will read.

THE SECRETARY: On page 16, Calendar Number 346, by Senator Skelos.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 495, by Senator Velella, Senate Bill Number 3583, an act to amend the Insurance Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 497, by member of the Assembly Gottfried, Assembly Bill Number 6927, Insurance Law, in relation to coverage for cervical cytology screening.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 499, by Senator Larkin.

SENATOR LARKIN: Lay aside for the day.

ACTING PRESIDENT FARLEY: Lay that bill aside for today.

THE SECRETARY: Calendar Number 503, by Senator Skelos, Senate Bill Number 4309, Judiciary Law, in relation to lawyer assistance committees.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 509, by Senator Holland, Senate Bill Number 28, appropriate funds to provide repayment to the Warwick Valley Central School.

ACTING PRESIDENT FARLEY: There's a -

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 510, by Senator LaValle, Senate Bill Number 1194, Executive Law, in relation to out-of-state provider pharmacies.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 512, by Senator Johnson, Senate Bill Number 1700, State Finance Law, relation to -

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: 513, by Senator Farley, Senate Bill Number 2469, New York State Printing -

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 515, by Senator Goodman, Senate Bill Number 2653, Executive Law and the State Finance Law.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 517, by Senator Johnson, Senate Bill Number 3659, establish a moratorium.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 518, by Senator Stafford, Senate Bill Number 4184, State Finance Law, in relation to providing for the acceptance of bids.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 519, by Senator Stafford, Senate Bill Number 4265, State Finance Law, in relation to certain examinations performed by the Comptroller.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57, nays two, Senators -- oh. Ayes 56, nays 3, Senators Kuhl, Pataki and Tully recorded in the negative.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 520, by Senator Maltese, Senate Print -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 521, by Senator Saland, Senate Bill Number 4020, authorize the payment of transportation aid to Poughkeepsie City School District.

ACTING PRESIDENT FARLEY: Read the last section.

Hold it. There's a local fiscal impact note here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 523, by Senator Cook, Senate Bill Number 2551, Highway Law, in relation to definition of the Southern Tier Expressway.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 527, by Senator Present, Senate Bill Number 2062-A, Workers' Compensation Law, in relation to payment of workers' compensation insurance premiums.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 534, by Senator Saland, Senate Bill Number 1065, General Municipal Law and the Education Law.

ACTING PRESIDENT FARLEY: There's a local fiscal impact note at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 535, by Senator Wright, Senate Bill Number 1150, making certain findings and determinations.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 537, by Senator LaValle, Senate Bill Number 1432.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 540, by Senator Volker, Senate Bill Number 2400-A, authorize the town of Collins to lease facilities.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk. You can

read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 541, by Senator Kuhl, Senate Bill Number 2449, County Law, in relation to investigation of death by coroners.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 542, by Senator Present, Senate Bill Number 2537, Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 543, by Senator Spano, Senate Bill Number 2557, General Municipal Law, in relation to requiring notice be given concerning a change -

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: 544, by Senator Cook, Senate Bill Number 2702, Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the -- somebody say lay it aside? Laid aside?

SENATOR GOLD: Last section.

ACTING PRESIDENT FARLEY: Hold on. Read the last section on Senator Cook's bill.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 548, by Senator Seward, Senate Bill Number 2957, legalize, validate the issuance of certain bond anticipation notes.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk. You can read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Withdraw the roll, lay it aside.

THE SECRETARY: Calendar Number 549, by Senator Skelos, Senate Bill Number 2959, amends Chapter 676 of the Laws of 1978.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 550, by Senator Daly, Senate Bill Number 2972, making certain findings and determinations with respect to certain bond anticipation notes.

ACTING PRESIDENT FARLEY: There's a home rule message at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 552, by Senator Sears, Senate Bill Number 3107, an act to amend the Village Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: 553, by Senator Bruno, Senate Bill Number 3281, establish a library district in the town of North Greenbush.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 554, by Senator Kuhl, Senate Bill Number 3064, Real Property Tax Law, in relation to small claim assessment review.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 556, by Senator Kuhl, Senate Bill Number 3412, Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 557, by Senator Larkin, Senate Bill Number 3985, General Municipal Law, in relation to voting authority of members.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 559, by Senator Kuhl, Senate Bill Number 1813, an act to amend the Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 560, by Senator Farley, Senate Bill Number 2384, an act to amend the State Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

SENATOR CONNOR: Could we read the title, please.

THE SECRETARY: An act in relation to the establishment of bluebird week.

SENATOR GOLD: Let it fly.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

SENATOR GOLD: Slow roll call.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT FARLEY: Results. What is this?

THE SECRETARY: Those recorded in the negative on Calendar Number 560 are Senators Galiber, Leichter, Libous, Pataki, Saland, Smith, Spano and Wright. Ayes 52, nays 8.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 561, by Senator Holland, Senate Bill Number 2659, an act to amend the Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 562, by Senator Present, Senate Bill Number 2956, an act to amend the Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 563, by Senator Mega, Senate Bill Number 3004, an act to amend the Tax Law.

ACTING PRESIDENT FARLEY: Read the last section. Oh. Oh, there's a local fiscal impact note at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 564, by Senator Kuhl, Senate Bill Number 3410, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 565, by Senator Levy, Senate Bill Number 3692, an act to amend Chapter 166 of the Laws of 1991.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 567, by Senator Seward, Senate Bill Number 4021, an act to amend the Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 568, by Senator Cook, Senate Bill Number 4156, authorizing the Commissioner of General Services to sell certain land in the town of -

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: 569, by Senator Cook.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: 573, by Senator Marino, Senate Bill Number 35...

SENATOR STACHOWSKI: Laid aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 577, by member of the Assembly DiNapoli, Assembly Bill Number 583, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 578, by Senator Cook, Senate Bill Number 4387.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

That's the first time through, Senator Present.

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

ACTING PRESIDENT FARLEY: Controversial, Secretary will read.

THE SECRETARY: On page 16, Calendar Number 346, by Senator Skelos, Senate Bill Number 3860-A, in relation to directing the Crime Victims Board.

SENATOR STACHOWSKI: Can we have a day on this bill, please?

SENATOR PRESENT: No objection.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: On page 22, Calendar Number 509, by Senator Holland, Senate Bill Number 28, appropriate funds to provide repayment to the Warwick Valley Central School.

SENATOR GOLD: Yeah.

ACTING PRESIDENT FARLEY: There's a local fiscal impact note at the desk.

SENATOR GOLD: Yeah. Will Senator Holland yield to one question, please.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR GOLD: Senator, I'm just curious about something. We passed this last year unanimously, and what I'm concerned about is, is there anything in the budget or in conversations which indicates that these people are going to get this money? I understand you want them to get it. I voted last year and if it got approved in the system, I certainly wasn't opposed to it. I'm not opposed to it this year, but what I'm concerned about is whether or not we, by passing it without any real negotiation, are just misleading these people in some way.

SENATOR HOLLAND: You're asking me is the money set aside, Senator? No, it's not set aside.

SENATOR GOLD: It is set aside.

SENATOR HOLLAND: It is not set aside, no, it is not.

SENATOR GOLD: Well, is there anything going on right now which would lead us to believe that this money will actually pass to them?

SENATOR HOLLAND: Not at this point. I'm sure we can work on that. But the relevant point, I think everybody agrees including the school district, I mean the Education Department and the Comptroller, that a mistake was made. The money was taken away from the schools seven years after they made the handicapped renovations, and somehow the money should be returned to the school, whether it's done in this resolution or whether it's done in the budget next year.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 512, by Senator Johnson, Senate Bill Number 1700, an act to amend the State Finance Law, in relation to the purchase of American-made goods.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Explanation has been asked for by Senator Leichter.

SENATOR JOHNSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 513, by Senator Farley, Senate Bill Number 2469, an act to amend the New York State Printing and Public Documents Law.

ACTING PRESIDENT KUHL: Last section.

SENATOR STACHOWSKI: Explanation,

please.

ACTING PRESIDENT KUHL: Explanation has been asked for. Senator Farley.

SENATOR FARLEY: Thank you. This bill would save the state tax money by requiring that most government documents be printed on the standard 8-1/2 by 11 paper. The cost of this paper is lower than the larger sizes such as the legal size 14-inch paper. In addition, the cost of filing, equipment, storage space should be considerably less.

Records administration experts believe that this standardization could reduce paper purchases and record-filing expenditures by as much as 25 percent. This bill is part of an interstate cooperation effort spearheaded by the Association of Records Managers and Administrators. 31 states, including New York, have adopted letter size paper standards in their state court systems. Federal court papers have been letter size paper for over a decade.

The bill excludes certain

specialized forms such as maps and architectural drawings, and it goes on. Also forms may be of a smaller size. So the bill does not affect driver's licenses, other pocket size documents.

The bill saves money by providing that existing paper stocks may be used until the supply is exhausted. The bill is sponsored and supported by the Association of Record Managers, the State Town Clerks Association, the National Federation of Independent Businesses, by General Motors Corporation, Morgan Stanley Company, the Chambers of Commerce of Schenectady, Saratoga, Otsego, Mount Vernon, Waddington and North Syracuse. The bill is sponsored in the Assembly by Assemblywoman Jenkins.

Last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, would Senator Farley yield?

ACTING PRESIDENT KUHL: He does.

SENATOR LEICHTER: Senator

Farley, does this bill apply to the Legislature?

SENATOR FARLEY: Yes, I think it would. That's a good question. I think it would. Yes.

SENATOR LEICHTER: All right. It's your intent that it does apply to the Legislature?

SENATOR FARLEY: That's as far as I know. This -- just a second.

SENATOR LEICHTER: I don't have the New York State Public Printing and Documents Law and I'm not sure that that necessarily applies to the Legislature, but I'm pleased to hear you say that you want to, in this instance at least, have the Legislature be subject to the same rules as everybody else.

I just suggest we double check that point because I think it would be embarrassing to find out that this great bill that you've sponsored doesn't apply to your own house, and I understand that's not your intent.

SENATOR FARLEY: That's a good point. I'll check on it for sure, and my

counsel is not here, but my best judgment is that it does apply because it applies to all public records.

ACTING PRESIDENT KUHL: Last section.

Senator Halperin?

SENATOR SOLOMON: Mr. President. Would Senator Farley yield, please?

ACTING PRESIDENT KUHL: Senator Solomon.

SENATOR SOLOMON: If the desk can just hold up the jackets to one of the bills, I don't want to pose any problems, but might that not be a problem for government functioning in this state because it is not 8-1/2 by 11 and that was just brought up by your comment?

SENATOR FARLEY: Well, this is done. This bill would exclude certain specialized forms such as maps and architectural drawings, computer printouts, forms of different sizes when an automated processing system makes the size more economical and, of course, tax forms.

The bill is -- is one that has been in effect in many other states. They're trying to be practical here. For instance, with the bill jacket, and so forth, I wouldn't say that that's a piece of paper that is used as necessarily as a public document, so I don't know that it would apply to that.

ACTING PRESIDENT KUHL: Senator Halperin.

SENATOR HALPERIN: Senator, I hold in my hand a grid. It's obviously not letter size. It fits a lot of information on it; it's easy to use. If I couldn't use a piece of paper this size to put it on, I'd probably have to have two different pieces of paper to put the same information on.

I -- I really don't understand why we need a state statute telling us in government that we -- that we can't use a certain size of paper that might be convenient to us and convenient to the public without amending the law.

Now, obviously, you've recognized

that it doesn't make sense to have this requirement apply in certain areas, and despite your vast knowledge and your insight and your intellectual capacity and all of those people who've worked on this bill with you, I dare say that there are other examples that are going to come up where it's just not going to be convenient and, for that matter, economical to use letter size paper, and I don't know why we need a state statute telling us, micromanaging us, in what we do either in the Legislature or in agencies.

Now, if it is felt that in most instances it is cost-effective to use letter size paper and you would wish to mandate that government use it in all circumstances unless there is reasonable cause not to use it -

SENATOR FARLEY: I think you've got reasonable cause in your hand.

SENATOR HALPERIN: But where does the bill say that? It says, I mean I can go through, you tell me where in this bill it says that I'm allowed to create something for -

SENATOR FARLEY: This is a uniform piece of legislation which -- which has been adopted in 30-some states. It's a piece of legislation that is reasonable and it's the whole purpose of it is -- you're a distinguished lawyer. You know that the New York State court system for the past, well, anyway the federal courts have had it for over a decade and the New York State court system has it now.

All we're trying to do is bring New York State -- this is a cost saving device that has been supported by everybody that -- in the free world.

SENATOR HALPERIN: All right, thank you. Well, Mr. President, on the bill. I guess there's one person in the free world -

ACTING PRESIDENT KUHL: Senator Halperin on the bill.

SENATOR HALPERIN: -- at least who is not convinced of the wisdom of this very restrictive legislation.

I don't question the fact that there is waste that should be eliminated, that

in many circumstances using smaller pieces of paper would be advisable and trying to standardize the use of paper would be advisable, but I also feel that this type of government mandate is -- is uncalled for and that we could, by legislation, encourage the use of standardized pieces of paper without requiring us to come back to the Legislature every time we come up with a -- with a use of paper that isn't standardized.

I point out again, I can't imagine any advantage to trying to squeeze this onto a -- it's small enough as it is, the printing, to try to squeeze this onto an eight and a -- an eight or an 8-1/2 by 11 piece of paper. It just doesn't make sense, and it -- I don't understand why we're trying to do this by statute, and not everyone in the free world agrees because the Office of General Services, which is responsible for managing the operation of state government generally, opposes this legislation because they think that it will be more costly to try to switch over to certain

systems and certain circumstances and I think they know what they're talking about.

Now, once again, if we can encourage something and promote it through - and require people to justify why they're not going to -- to go along with a system that may make sense, that's one thing, but this bill goes beyond that, and I don't think it makes sense to try to micromanage government through a legis... through legislative fiat in this particular manner.

ACTING PRESIDENT KUHL: Senator Smith, on the bill.

SENATOR SMITH: Thank you, Mr. President.

Will Senator Farley yield for just two questions?

ACTING PRESIDENT KUHL: Senator Farley, do you yield?

SENATOR FARLEY: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR SMITH: I'm a little

perplexed. Do you know the cost of a ream of 8-1/2 by 11 paper?

SENATOR FARLEY: No, I don't know it off the top of my head.

SENATOR SMITH: Do you know the cost of a ream of 8-1/2 by 14?

SENATOR FARLEY: I know that the cost of 8-1/2 by 11 paper, which is standard paper is cheaper than the 14-inch paper and unusual size paper, and it's sold by the pound incidentally.

SENATOR SMITH: It's sold by the pound.

SENATOR FARLEY: Yes.

SENATOR SMITH: But when you buy Xerox paper, you can buy it by the pound or you can buy it by the ream or you can buy it by weight.

SENATOR FARLEY: It's also by weight, 16-pound paper, 20-pound paper, 25-pound bond. There's all different prices.

SENATOR SMITH: Senator Farley, is it not that a pound is the quality of the

paper, that they rate it by?

SENATOR FARLEY: Yes, yes.

SENATOR SMITH: Not by the cost. I mean a ream of paper is usually five hundred sheets; is that correct?

SENATOR FARLEY: That's correct.

SENATOR SMITH: Well, the last time I purchased a ream, I think the difference was somewhere around 50 cents, but if you -- if you use a ream of 8-1/2 by 11 and you need to use two sheets versus one sheet of the 8-1/2 by 14 to make up for the difference, wouldn't that still be more costly because you'd only have the advantage of using 250 sheets versus five hundred sheets? So I'm at a loss. Can you tell me where the savings is?

SENATOR FARLEY: Well, it -- this is -- this legislation has been in effect and the National Association of Record Managers and Administrators have said that this can save as much as 25 percent in the cost of paper. Do you know what a blizzard of paper New York State uses?

SENATOR SMITH: Senator Farley, may I make a suggestion that you buy them a new calculator?

SENATOR PRESENT: Last section.

ACTING PRESIDENT KUHL: Last section.

THE SECRETARY: Section 2.

SENATOR LEICHTER: Senator Farley.

THE SECRETARY: Section 2.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Senator, I just got the law that you're amending and while I have got it just at the moment when the clerk called the last section, it doesn't seem to me that this law will apply to the Legislature, so I just -- you might wish to, if -- since your intent was to have it apply to the Legislature, you may wish to lay the bill aside for a day.

SENATOR FARLEY: I don't wish to

do that.

SENATOR LEICHTER: And get it straightened out.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR FARLEY: As I'm reading the law, it says section 3 of the New York State Printing and Public Documents Law is amended. Now, when you're talking about New York State printing and public documents most of the public documents that we use here are -- most of -- at least the Legislature has public documents.

SENATOR LEICHTER: Well, Senator, excuse me.

ACTING PRESIDENT KUHL: Senator Leichter, is it your intention -- may I ask you to direct -

SENATOR LEICHTER: Senator Farley.

ACTING PRESIDENT KUHL: It's a little difficult to hear, so may I ask you to direct the questions you're asking the Senator to yield to through the Chair, please.

Senator Leichter.

SENATOR LEICHTER: Yeah, Senator, if you would yield, please.

ACTING PRESIDENT KUHL: Senator Farley, do you yield?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: I call your attention to Section 3 which says, the Commissioner of General Services shall have general supervision over the letting of all contracts for public printing to be provided herein. So I think that that section, and again I'm reading it quickly, seems to apply to those contracts let by the Commissioner of General Services.

My understanding is that the legislative branch lets its own contracts, makes its own arrangement. I think they'd be sort of aghast if they felt they would be -- were subject to the control of the Commissioner of General Services. So on a quick reading, I

would say this is not applicable to the Legislature.

I -- I just also wanted to say that I thought Senator Halperin made some good points, but if you're going to have this and as you said you intended it, it should apply to the Legislature. I -- I believe that it does not, and you may just wish to take a look at it and make sure that it does, if that's your intent.

SENATOR FARLEY: Well, the point of it is, I don't see where the Legislature is excluded.

ACTING PRESIDENT KUHL: Last section.

Senator Tully, why do you rise?

SENATOR TULLY: Mr. President, would Senator Farley yield to a few questions?

ACTING PRESIDENT KUHL: Senator Farley, would you yield?

SENATOR FARLEY: Yes, Senator Tully.

SENATOR TULLY: Senator Farley,

did you know that this legislation has been recommended by the Albany Chapter of the Association of Record Managers and Administrators?

SENATOR FARLEY: I was aware of that.

SENATOR TULLY: Did you know it's a part of a national efforts by the Association of Record Managers and Administrators to eliminate legal forms?

SENATOR FARLEY: I was aware of that.

SENATOR TULLY: Did you know that 31 states, including New York, have now adopted letter size paper in their state court systems?

SENATOR FARLEY: That's correct.

SENATOR TULLY: Did you know that, since 1983, the federal court papers have been on letter size paper?

SENATOR FARLEY: That's over ten years.

SENATOR TULLY: And I know because you know all these things, you proposed

this legislation. Thank you, Senator Farley.

SENATOR FARLEY: It's a great piece of legislation. It's even more significant than bluebird week, I tell you that.

ACTING PRESIDENT KUHL: Last section.

Senator Gold.

SENATOR GOLD: I just want to inform the house that I have a bill in one of the committees and if Senator Tully would ask me questions about it, I could get it out on the floor too, I think.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59 -- ayes 58, nays 2, Senators Halperin and Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 517, by Senator Johnson, Senate Bill Number 3659.

SENATOR LEICHTER: Explanation.

THE SECRETARY: Establish a moratorium on state regulations, establish a working task force.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Explanation has been asked for. Senator Johnson.

SENATOR JOHNSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 520, by Senator Maltese, Senate Bill Number 3304, Education Law, in relation to instruction in the display, use and proper respect for the flag.

ACTING PRESIDENT KUHL: Last section.

THE SECRETARY: Section 2. This

act shall take effect -

SENATOR STACHOWSKI: Explana tion.

ACTING PRESIDENT KUHL: An explanation has been asked for by Senator Montgomery.

Senator Maltese.

SENATOR MALTESE: Yes, Mr. President. This bill is an act to amend the Education Law in relation to instruction in display, use and proper respect for the flag.

The bill requires the instruction of the proper respect, and the way that it seeks to do so is to incorporate sections 170 to 177 of Title 36 of the United States Code as part of our Education Law.

The -- the present Education Law does not provide for a minimum as far as what instruction on proper respect shall be, and an inquiry to the New York City Board of Education and the New York State Department of Education indicated that they do not have a set curriculum as to what shall be included in said instruction

that's presently in the Education Law.

Mr. President, this bill was - was debated last year and passed this house by a vote of 59 to 1 with one absence.

ACTING PRESIDENT KUHL: Senator Jones.

SENATOR JONES: Mr. President, would the sponsor yield to a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The sponsor yields.

SENATOR JONES: Are you saying, Senator Maltese, that you have evidence that this is not occurring now in schools?

SENATOR MALTESE: Well, my office -- no, not that -- not that -- not that it's not occurring. What we have ascertained is that they had no curriculum and no mandate. For instance, we contacted a Mr. Bob Turta of the New York City Schools Board of Education. He indicated that they had no set curriculum as far as the instruction and a Joann Larson of the Department of Education who said that, while the

instruction of patriotism and citizenship is required, there is no specific flag or national anthem instruction as indicated by the Election Law.

SENATOR JONES: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Jones on the bill.

SENATOR JONES: I would like, I guess, certainly to speak in defense of the teachers in Monroe County, having come from 26 years in the educational system. Clearly, this is going on and many, many hours are devoted to this, and I certainly would not be against it, but I think I just need to make the point that a lot of instruction goes on about the flag from kindergarten on, through all of our schools and if it's missing in New York City, I'm certainly sorry about that.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Would Senator Maltese yield for a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield? He does.

SENATOR MONTGOMERY: Senator, I note that your bill directs the state Ed. Department to develop this. Did this request come from state Ed., I'm just curious?

SENATOR MALTESE: The original request for the bill? My record doesn't indicate that, Senator.

SENATOR MONTGOMERY: O.K. I have spoken to state Ed. regarding other kinds of curriculum issues, and whenever they have to develop a new curriculum, they generally need more funding. So I'm just wondering, is there any -- I don't see any funding attached to your -- any fiscal indication over here at least that's not on my file.

I don't know if you -- if this requires more funding or if this -- if they will just do this out of their current funds, and how does this relate to the social studies curriculum that they're now in the process of

revising, the curriculum of inclusion and all of that?

SENATOR MALTESE: Mr. President, in response to Senator Montgomery's question, we indicated that it would have no fiscal impact since it would seem that this simply provides a guide to the teachers and the school districts as to what should be included in the curriculum.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I have just one further question for Senator Maltese.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MONTGOMERY: We're now talking about a curriculum that tries to inculcate many different cultures and nations and groups, and I'm just wondering if your flag -- if you intend for this to be part of a move to try to enlarge our -- our understanding of other nations, other cultures? Will we be

talking about the flag of Puerto Rico, the flag of Mexico, you know, the flag as it rerelates to the United Nations, and do you intend for this to be more than just a very small curriculum dedicated to simply the American flag or is this part of a larger agenda to be included with the expansion of the social studies curriculum that the state Ed. is involved in?

SENATOR MALTESE: Mr. President, I didn't have that in mind when -- originally when I sponsored the bill, and it seems to me that an education in social studies or history or geography in some cases, knowledge of other countries, is very important, like -- and certainly our boards of education should include such studies.

At the same time, I believe we have an obligation to teach in our country schools, the -- about the United States flag and the proper respect and traditions of the United States flag and about the Pledge of Allegiance and the manner of delivery, the National Anthem, the proper response to the Star Spangled

Banner.

It seems to me that evidence indicates that at many social events and sports events giving the benefit of the doubt to many of the people that are present at these events that they do not act in a proper manner of respect for our country's flag. So I guess that's a round-about way of saying that I don't think this would be at all harmful. I think it's an important building block or foundation block, but this bill addresses itself only to our country's flag, but I certainly would have no personal objection to an extension in any of those courses to teach about the flags of other countries in addition to the teaching of the respect for our flag.

SENATOR MONTGOMERY: Thank you, Senator.

Mr. President, just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I think that

Senator Maltese has made an extremely important note for our record of his support for teaching about flags internationally, and I certainly would like to offer that we include that, extend the bill at some point, amend it to include that -- that idea and that concept, and with that I will vote for the bill because I'm certainly not opposed to teaching about the American flag, but I do want to make sure that we're not narrowing our focus and understanding as it relates to young people, but rather broadening it so that they begin to have an appreciation and understanding of other nations in this world.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

Would Senator Maltese yield for a question?

SENATOR MALTESE: Yes.

SENATOR SMITH: Senator Maltese, since this is the state of New York and we're

teaching about the American flag, will there be some provisions in this curriculum to deal with the placement of the state flag versus the American flag?

SENATOR MALTESE: Well, Mr. President, I believe that the U. S. Code refers only to the placement of the United States flag, but it does at the same time refer to, and I'll use the term advisedly, subordinate flags which would be flags of states, and it would refer to them. So the instruction would not zero in on the placement or respect for the flag of New York State, but simply concentrates on the flag of the United States.

SENATOR SMITH: Thank you.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield for a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The sponsor yields.

SENATOR DOLLINGER: Senator, I guess I'm intrigued by the answer that you gave earlier that there is as no fiscal impact of this bill. There's no anticipated fiscal impact.

SENATOR MALTESE: There's no anticipated fiscal impact, no.

SENATOR DOLLINGER: O.K. But someone, as I understand it, as I read the bill the Commissioner of Education is going to have to revise the curriculum; isn't that correct?

SENATOR MALTESE: My understanding is that the curriculum, Mr. President, that the curriculum itself already includes areas that this would fit into without a revision of the curriculum, and this wording would incorporate completely the wording of the United States Code, so it would be available and possibly to many social studies teachers in history and social studies at this point would already be part of their instruction.

SENATOR DOLLINGER: Well, if the speaker -- the sponsor would yield to one other

question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: He does.

SENATOR DOLLINGER: Is it my understanding, Senator, that this is already mandated by federal law; is that correct, by the United States Code?

SENATOR MALTESE: Yes. This portion, as it relates to the United States flag.

SENATOR DOLLINGER: So all of our school districts are required to do this by federal law and all we're doing is duplicating then the federal law, is that correct?

SENATOR MALTESE: I think the problem is, Mr. President, that while we have specifically in our Education Law the, if you would, mandate to provide instruction, that mandate does not include the specific instruction, and I believe in the U.S. Code, this would be simply a guide to follow for proper respect of the flag rather than a mandate on local education departments.

SENATOR DOLLINGER: But is it my understanding, again through you, Mr. President, if the Senator would yield.

ACTING PRESIDENT KUHL: Senator Dollinger. He will yield.

SENATOR DOLLINGER: It's my understanding we're taking the federal guideline and turning it into a mandate because we're requiring the Commissioner to do it in this case.

SENATOR MALTESE: All we're requiring the Commissioner to do is include this in the instruction that he would give as a curriculum guide to the teachers and local school districts.

SENATOR DOLLINGER: And again through you, Mr. President, one other question.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: What would the consequence be, Senator, if the school districts did not follow the curriculum guideline or mandate set out by the Commissioner

of Education?

SENATOR MALTESE: I -- Mr. President, I don't know of any consequence. I don't know that we should include this as under the Penal Law or make it a misdemeanor. I don't know whether I would be for that, but I do believe that we in the Legislature have a duty and an obligation to set certain guidelines, certain norms for respect for our country's flag and this is a better way than most to do it.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: One quick comment.

ACTING PRESIDENT KUHL: On the bill.

SENATOR DOLLINGER: I agree with Senator Maltese that this is a good mandate, but it's a mandate nonetheless. We're telling our school districts what to do. As I see it, we're ordering the Commissioner to do some more work over in the Department of Education, that little building across the street that many people in

this chamber may feel is filled with too many people already. We are going to tell them to do more. We are going to tell our school districts to do more. We're going to tell them to revise the curriculum. We're going to tell them to spend local taxpayer dollars to do it.

It may be wise in this case. I'm going to vote for it. But I'm going to point out that we passed a bill earlier that said no more unfunded mandates. My suggestion is that this is one under a guise of no fiscal impact of actually having a fiscal impact. I think in this case, and I agree with Senator Maltese it's probably well warranted because of the important civic lesson that underlies it, but don't think for a second that it isn't a mandate.

ACTING PRESIDENT KUHL: Senator Markowitz.

SENATOR MARKOWITZ: Senator Maltese, I just have a question to ask of you.

The American flag represents an awful lot to -- to most residents of our country. Does the American flag -- would you

agree that the American flag represents the collective contributions of our forebears?

SENATOR MALTESE: Sure.

SENATOR MARKOWITZ: And the flag not only represents the best of our past but also represents the challenge of tomorrow; I think you'd probably agree with that statement?

SENATOR MALTESE: Mr. President, Senator Markowitz waxes eloquent.

SENATOR MARKOWITZ: Let me ask you a question. With the proper instruction in the classrooms and a beautiful flag, with 50 kids in a classroom that can hardly hear their teachers, with classroom space being destroyed or in a terrible condition, decrepid condition, in cold classrooms with inadequate teachers, inadequate supervision, with inadequate supplies, do you think that the flag is being presented in the best way for the learning of the children under conditions that exist today in the city of New York, for instance?

SENATOR MALTESE: Mr. President, if Senator Markowitz chooses the introduction of

this bill as a vehicle to point to the fact that there are inadequacies and inequities in our city of New York, in our state of New York and in our educational system, I applaud it and I would agree that there certainly are inadequacies and certainly inequities as far as our educational system is concerned.

SENATOR MARKOWITZ: Thank you, Senator, really, and I appreciate it.

ACTING PRESIDENT KUHL: Senator Markowitz, on the bill.

SENATOR MARKOWITZ: I appreciate Senator Maltese raising or responding to some of the concerns I had. I'd like to see the same passion, Senator, that I see occasionally from you, flashes of your passion as it relates to upholding yesterday, and I'd like to hear that same passion exhibited for tomorrow, and that is that while the teaching of respect for the flag is certainly important, it is no more important than many other issues confronting education today.

In fact, I would tell you that I

can think of many other issues that, if our society was able to provide the kind of education that the children of our city and state need so desperately, in fact we owe them so very, very much, that the respect for the flag would be enhanced perhaps even without a mandate to the various school districts to have to do. It would be something that would come from the heart.

I really believe that, something that they would be eager to do, but it seems to me I hope that Senator Maltese and those of you who have a very similar opinion as exemplified by this bill will also in the coming months on the floor of the Senate talk about some of the real concerns, and I mean that, Senator, the real concerns and challenges facing education, particularly in many of our districts throughout our city and state, the real needs which this bill unfortunately doesn't even begin to talk about.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: A couple points in response to some of the questions.

Senator Jones mentioned that Rochester does these things admirably. I just want to mention that there is still a need for this because we had a situation in one of the high schools in Syracuse where some students chose to sit for the Pledge of Allegiance to the flag. Others choose to pledge, which I guess is part of what the Constitution, at least the interpretation of the Constitution requires.

However, there was some disrup tion or there was a difficulty that one group was in some way mocking the other group and the response from the school district, or at least that principal, was to suspend the Pledge of Allegiance to the Flag.

Now, I'm not quite sure whether that's the appropriate approach, so I think that if we're reaffirming this by this legislation it might send a message to those who might otherwise take it more lightly than it should be.

As far as the flag of Puerto Rico and the flag of Mexico and the flag of whomever else, I think the fact of this legislation isn't to teach social studies. I mean that's another curriculum. This is -- happens to be the United States where we all live, and I think that that was the intent of it, to show respect for the flag of our country. We can always educate on every other country and show respect in other ways and teach about other countries, but I think that missed the point of this legislation.

As far as fiscal implications, with all the talents we have at the state board, State Department of Education and with the very few items here on this list that would have to develop, be developed into a curriculum, I can't imagine that there would be any fiscal implication, and it would be any labor whatsoever for anybody, even in this room to take ten minutes out to establish a curriculum. So I can't imagine where there truly is a fiscal implication.

This isn't the mandate that we're trying to stop, this type of mandate. It's the one that costs money. We've got plenty of talent to do this type of legislation, so I rise in support of it.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I'm certainly going to support this legislation, Senator Maltese, but let me say I -- maybe I'm old-fashioned and conservative. Some of -- some subjects of instruction, I think, are best done in the family, by the family, and I think the kind of respect and etiquette toward the flag ought to be taught, even families ought to be encouraged to teach their children, and I find today unlike many, many years ago, many, many adults who really don't, and I don't think they mean to be deliberately disrespectful and certainly don't have conscientious objections, but they really

don't know what flag etiquette is.

I have noticed something in my years in public life. Our colleagues who serve in the U. S. Congress, and I'm talking about various events where they start with the National Anthem or the flag goes by with the parade, they seem to know what the proper etiquette is and it would not surprise me to find out, and I don't know that when one is elected to Congress as part of their orientation that perhaps as the United States officials, they are given some guidance on what proper flag etiquette is.

Regrettably, in this very city of Albany as well as throughout the state at various public events, I find there are public officials, local and state, who do not accord the proper respect to the flag according to the rules of etiquette with respect to the flag and I always chalk that up to ignorance that perhaps people don't know they're supposed to salute the flag when it passes by the reviewing stand, when all the elected officials and mayors and what

have you are up there on the stand or perhaps they don't know that at certain times you salute the flag and not just stand at attention and they don't know how to salute the flag when not in a uniform, and these are all set standards and I think it's admirable.

I suspect though, Senator Maltese, that perhaps in your bill, I can not imagine that the law presently mandates a daily salute to the flag and pledge of allegiance and I can't imagine and, you know, I've been surprised before, but it's difficult for me to imagine a teacher that would lead a class in the salute to the flag and the recitation of the pledge that wouldn't concurrently instruct the students on the proper behavior doing that, and I -- I don't address those who are conscientious objectors. I respect their rights and I've actually seen on some occasions when I think the person who, because of a religious conviction, refrains from saluting the flag is being far more respectful in quietly sitting in place not talking, not disturbing anyone else, than some

of the people who stood but chatted with their neighbor or whatever during the National Anthem or during a presentation of the colors.

So the legislation is good, but I just wish we could educate adults more. I suspect that's just because there is no public service effort on -- in the media to inform a generation or two of adults of what the proper behavior is. I really don't think, when they are disrespectful, they mean to be. I think it's ignorance, so perhaps some more instruction in schools will be a good thing.

I just remind my colleagues that very often people in positions such as ours in our state do set the example at a parade or a dinner or an event and, if we set a poor example, in fact we can't expect children or adults to accord the proper respect to the flag.

ACTING PRESIDENT KUHL: Senator Stachowski.

SENATOR STACHOWSKI: Would Senator Connor yield to a question?

SENATOR CONNOR: Certainly, Senator.

SENATOR STACHOWSKI: Senator, did you know there is a gentleman whose job it is to travel with a large flag that's basically kept in a container the year round and he goes to a number of special events each year and when he goes with this large flag and they present it in public, he goes through a whole speech on proper etiquette on the flag and why people should remain standing during the entire National Anthem, and why it's so offensive when, at sporting events, people start cheering part way through the National Anthem, and what the reasoning is for why they should wait until the whole anthem is finished before they start cheering? Did you -- were you aware of this?

SENATOR CONNOR: No, I wasn't, Senator, and I think we could, taking your word for the existence of such a person, I think we could use dozens more.

SENATOR STACHOWSKI: But there is such a person, and he travels throughout the

country stopping at X amount of stops through out the year, and the flag when it's not traveling with him, is kept stored in a very magnificent wooden box, that's stored on Old Ironsides in Boston and an interesting fact and in honor of your passing this bill, Senator Maltese, you may like to invite this gentleman to either Albany or to your district and have him, you know, get permission to put this large flag up and go through his whole presentation so that not only the children who would be fortunate enough to take this class but maybe some of the adults in your district that forgot and maybe didn't teach their children and, therefore, the need for this about saluting the flag, they didn't teach them at home, so that they can rekindle those memories and learn again why all this etiquette and flag etiquette should be done. Thank you.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Would Senator DeFrancisco yield to one question?

SENATOR DeFRANCISCO: Sure.

ACTING PRESIDENT KUHL: Senator does yield.

SENATOR GOLD: Senator, I really didn't understand your analogy. Apparently there is a school in Syracuse where there was some dispute or whatever and the principal, you say, suspended the pledge. Is it your understanding that, if this bill becomes law, that that will mandate that the principal re store the pledge to the school?

SENATOR DeFRANCISCO: No, not at all, Mr. President.

I think the point was made by Senator Jones that we already do this in schools in Rochester and the proper etiquette and the proper teaching is taking place and I gave that as an example to show that I don't believe that some teachers, at least in the district that I'm in, know the proper response when there is a situation pertaining to this type of event, and I think that was the wrong response and had there been teaching and a curriculum, maybe that

teacher would have known the proper response.

ACTING PRESIDENT KUHL: Last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day after it shall have become law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 537, by Senator LaValle, Senate Bill Number 1432, General Municipal Law and the Town Law.

SENATOR GOLD: Yeah. Will the Senator yield to a question?

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 543, by Senator Spano, Senate Bill Number 2557, an act to amend the General Municipal Law.

ACTING PRESIDENT KUHL: Last section.

Explanation has been asked for. Senator Spano.

SENATOR SPANO: Mr. President, this bill amends the General Municipal Law. It requires that residents -- it would give -- the residents would have an opportunity to have some input into the closure and into the removal and relocation of a fire department or fire company by requiring that a municipality in the state would have to give a 60-day public notice and a public hearing.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59, nays one, Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 548, by Senator Seward, Senate Bill Number 2957, to legalize and validate the issuance of certain bond anticipation notes.

SENATOR GOLD: Senator yield to a question?

ACTING PRESIDENT KUHL: There is a home rule message. Lay the bill aside.

THE SECRETARY: Calendar Number 561, by Senator Holland, Senate Bill Number 2659, an act to amend the Tax Law.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 568, by Senator Cook, Senate Bill Number -

(There was a pause in the proceedings.)

THE SECRETARY: Calendar Number 568, by Senator Cook, Senate Bill Number 4156.

ACTING PRESIDENT KUHL: Senator Cook.

Senator Present.

SENATOR PRESENT: Lay it aside for today.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 569, by Senator Cook.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay it aside for the day.

THE SECRETARY: Calendar Number 573, by Senator Marino, Senate Bill Number 3588, an act to amend the Executive Law, in relation to discretionary release on parole.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 578, by Senator Cook, Senate Bill Number 4387, authorize the Commissioner of Environmental Conservation to lease certain state land.

SENATOR GOLD: Can we have one day on this?

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: Lay it aside for the day.

SENATOR PRESENT: Mr. President, may we stand at ease for a moment.

(Whereupon, at 7:45 p.m., the Senate was at ease.)

(Whereupon, at 8:15 p.m., Senate reconvened.)

ACTING PRESIDENT KUHL: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President. I would like to call an immediate meeting of the Rules Committee in Room 433A. Room 433A,

immediate meeting of the Rules Committee.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee in Room 433A. Room 433A.

Senate will stand at ease.

(Whereupon, at 8:15 p.m., the Senate was at ease.)

(Whereupon, at 9:20 p.m., Senate reconvened.)

ACTING PRESIDENT KUHL: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President, may we have a report from a standing committee.

ACTING PRESIDENT KUHL: We have a report at the desk.

Secretary will read.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following Senate resolution for immediate adoption: Senate Resolution Number 1272, by Senator Marino and others, declaring the invitation by the Assembly to a joint session

for the purpose of filling a vacancy in the Office of State Comptroller to be without foundation in law and to declare any actions purported to be taken pursuant thereto to be null, void and without legal effect.

SENATOR OHRENSTEIN: Explanation.

ACTING PRESIDENT KUHL: Direct to third reading.

Explanation has been asked for. Senator Marino.

SENATOR MARINO: Mr. President. As I'm sure the members of this house can attest, I have a great deal of respect for the presiding officer of this house and, of course, my good friend and colleague on the other side of this house, the Speaker of the Assembly, but what is about to happen tomorrow, at least from what I have been told by the Speaker, at 10:30 a.m. either a session or a meeting is going to take place to appoint a Comptroller of the state of New York; and should that happen, that session or meeting would be clearly illegal and improper since it does not take into

consideration the will of the majority of the elected officials of this house.

Notice by the Lieutenant Governor and the Speaker by themselves is insufficient as a matter of law to convene any kind of a session or meeting between these two houses. We raised this problem during the period of reapportionment, you may recall, when the Lieutenant Governor took it upon himself to accept process on behalf of the Majority, and more will be said about that at a future date.

Despite all of that and despite the embarrassment of having to receive in my mail this notice about a meeting of my house with the Assembly from Stan Lundine and Saul Weprin, we contacted the Speaker and said, We don't want to upset the apple cart. We want to talk about this. Maybe we can do it legally.

Now, we understand, Mr. Speaker, that you have proposed a constitutional amendment to cure the defects in the present law regarding how a Comptroller or Attorney General would be appointed in the future, and we

understand that you would like a board rather than a sole trustee to make decisions concerning the pension rights of workers in this state, and we agree. We may not agree on language, but we agree that something on that nature has to be done, and we would like to discuss it, and we'd do it now. So we'd be willing to sit down and discuss these matters, these bills with you, if you'll give us more time until Monday to get to this, and then we would join you on a concurrent resolution on this very subject.

The Speaker said no, he would not consider it even though it was his idea and even though he proposed it, on both those issues. How did I know this meeting was going to take place tomorrow? Because I got a call Monday afternoon and was advised. Not told that we would discuss it but was advised that the meeting would take place at 10:30 on Wednesday morning and that the Assembly was going to pass a resolution to that effect.

This is a shabby way, Mr. President, to deal with the Majority in this

house, and I resent the fact that the presiding officer of this house has again taken it upon himself to speak for all of us without legal authority. We have been very reasonable. We have discussed and tried to make the Assembly understand that the people should have a voice in a matter as important as electing a Comptroller for the state of New York. Certainly we do it in special elections for Assemblymen, for state Senators. Why not for Comptrollers and Attorney Generals in this state?

So our position is a reasonable one. There is always the possibility, beyond this appointment, that the Attorney General of this state might decide to resign for some reason and we would have to deal with that, and it seemed important to us that we cure the defects in the system now. We've all talked about a board to deal with the $50 million in pension funds. We have a four-member board, the Assembly has a thirteen-member board, but we have all agreed that having one single person

make these important decisions was wrong. So to suggest that we discuss a new approach seems to me is reasonable.

To suggest, Mr. President, that to give us one week from the time that a nominee has been suggested to us, namely Monday, to discuss these changes, these important changes on behalf of the people of this state, seems reasonable to me, Mr. President. We take longer to discuss the nominees for board of trustees of hospitals in this house, and we are discussing the appointment of the Comptroller of the state of New York.

So we feel that we've been very responsible. We feel that we have set forth bills that are reasonable, and we feel that it's unconscionable for the Speaker to say, "It's my way or no way," and that's what he's done.

The newspapers have been reporting that it's one person making this appointment, and that the Democrats have agreed to a unit rule here. Whoever it is that the Speaker wants that's who it's going to be, and

it's going to be unanimous because, God forbid, we permit Republicans into the process. Okay. If that's the way it's going to be, we say let's try to improve on a process that is flawed, that you accept as flawed, that we accept as flawed, for the future. And we're told, "No way."

Historically, I would point out that four times in the history of this state a Comptroller has been appointed, a statewide officer has been appointed, since 1849, by concurrent resolution of both houses. That does not exist as we convene here this evening. We do not have a concurrent resolution agreed upon by both houses. We won't have at 10:30 tomorrow morning; and, therefore, any meeting at 10:30 tomorrow morning is illegal and improper to appoint a Comptroller of this great state.

We can cure this defect, but the Speaker doesn't care to listen. And, unfortunately, we have to drag the process out because of his intransigence, and I regret that. I would like to see an orderly process. We're not permitted to have an orderly process.

And so, Mr. President, I suggest that what's best for the people of this state is that the process go forward legally, that it be done by concurrent resolution of both houses, and that we as a house be given an opportunity which we have not had -- I'll say it again - which we have not had to discuss the rules for such an election. Who shall be nominated? How shall a vote be taken? How long can people speak on such an important matter? None of these matters have been discussed by the Speaker and I, nor have I been given the opportunity to discuss the rules for such a gathering, and all we have asked is for an opportunity to discuss the rules and regulations that would go into such a session and the opportunity to pass meaningful legislation that both houses have said is needed.

And so we will not permit, Mr. President, as a precedent the Speaker and the Lieutenant Governor to get together and convene a session or meeting of these houses because it's illegal. It's unconstitutional. It's

improper. It's embarrassing to this great house. It's uncalled for, and it's unreasonable.

For that reason, and all of the aforesaid reasons, Mr. President, I suggest that we immediately pass this resolution.

Thank you.

ACTING PRESIDENT KUHL: Senator Marchi on the resolution.

SENATOR MARCHI: Mr. President. The opportunity to address issues that were adequately spread on the record concerning aspects that are associated with the responsibilities that will be entrusted to the successor Comptroller in a -- if this was a more fortuitous opportunity offered to all of us to engage in the kind of productive dialogue addressing those very issues that have been recognized by the Assembly already by their own statements and their own positions and by the general consensus that this is something that should be addressed, to ask that this -- now that we have this focus, this opportunity, that

this is an ideal circumstance to present the resolution, to present the full array of considerations that will go with the conduct of this office. It does not affect the voting power of anybody. The vote will be taken and the candidate -- the candidates that are presented and command the majority of both houses will be our next Comptroller.

But to seize an opportunity and urge this as being a very fortunate starting point for the resolution of the larger issues that are involved should not be taken as a lesser respect. I would say that this is a finer respect and a stronger interest in approaching the entire problem associated with the action that is going to be undertaken, and I just will review very briefly the sections of this resolution.

Whereas,... the Legislature shall provide for the filling of vacancies in the Office of Comptroller and Attorney General.

Whereas, Public Officers Law section 41 provides, "When a vacancy occurs or

exists, other than by removal, in the Office of Comptroller or Attorney General, or a resignation of either such officer to take effect at any future day shall have been made while the Legislature is in session, the two houses..." -- the two houses, Mr. President. It doesn't say the members of the Legislature. It says the two houses, and we all know or we should know by this time that the two houses consist of the Senate and the Assembly. We all know that. So that we are saying in a shorthand fashion two houses, the Senate and the Assembly, "... by joint ballot shall appoint a person to fill such actual or prospective vacancy."

This is the constitution of the state of New York, and I'm sure that all of us want to honor that obligation under the constitution. I don't think there is anyone in this chamber that has a feeling different than what is proscribed by the Public Officers Section 41.

Section 9 of the constitution provides, "Each house shall determine the rules

of its own proceedings."

How do I know if somebody comes in, "The sergeant-at-arms from the Assembly said come on over, we're having a meeting"? We have to have an auspices under which we can attend the meeting in a responsible capacity, and we don't have this if anybody can just throw out a resolution.

Now, the Lieutenant Governor, for whom I have great respect, certainly is not the Senate -- is not the auspices under which we can respond. This has -- all of us have this institutional feeling, and I'm sure if you folks were in the majority you would also sustain that point of view. That's why we are now -- we are now considering the dignity and the responsibility that each house has; and once we recognize that, then we have to recognize that we have to provide an auspices that is reliable, that proceeds from our own organization, our own structure. And we don't have it by a Lieutenant Governor, not because the Lieutenant Governor is a person to be demeaned. No. He is an honorable

person, and he occupies a very important office, but it is not the product of this house. The product of this house is the Majority, the Temporary President of the Senate, and this is the structure by which we operate.

"Whereas, a majority vote of all the members elected to the Senate adopting a concurrent resolutions necessary to convene a joint session or meeting of the Legislature," which has been our practice sanctioned over one hundred years going right back to before the - up to -- well, more than a century. We're going back to the Civil War days.

"Such concurrent resolution has not been adopted by the Senate; and.

"Whereas, notice by the Lieutenant Governor and the Speaker of the Assembly are by themselves insufficient as a matter of law to convene such joint session or meeting; now, therefore, be it.

"Resolved, that the New York State Senate does hereby deem and declare the invitation by the New York State Assembly to a

joint session or meeting for the purpose of filling a vacancy in the Office of State Comptroller to be without foundation in law."

How can it be argued on any other basis? Are we being invited there under the law that we know, under the auspices and the organization that brings us all together as one family? No, we're not. And you can digress to other issues, and I would hope that this is an opportunity that we seize for further dialogue to produce a considered responsible consensus. We've done that in so many different budgets. We've done that through the years, each upholding our own responsibility not as a loyal opposition. We have never been a loyal opposition in this house. We have been part of the governance of this state, and we've acted concurrently. We've acted concurrently with the Assembly and with the Governor as part of that responsibility.

So we hold a coordinate responsibility, and we are not in the position of a loyal opposition. I was in the loyal

opposition for one year in 1965, but we also had an institutional responsibility, and it was honored then as you have always honored it, and hope you will honor it tonight because I believe that you feel that it is right to honor it in that fashion.

"That the New York State Senate does hereby deem and declare that any session or meeting held by the Assembly on May 5, 1993 for the purpose of appointing a Comptroller to fill a vacancy in such office, and at which fewer than a majority of the members of the Senate elected to attend, is without legal authority to fill such vacancy or meeting; and be it further.

"Resolved, that any action taken by such session or meeting which purports to elect a person to fill a vacancy in the Office of the Comptroller by a joint ballot shall be null and void without legal effect, and any purported acts taken by such person shall be without any legal effect; and be it.

"Resolved, that the Secretary of State is notified that any action to file any

document naming a person elected by such session or meeting recording such person as Comptroller of the state of New York is null, void and without legal effect; and

"That a copy of this resolution, suitably engrossed, be transmitted to the Lieutenant Governor, the Speaker of the Assembly, the Clerk of the Assembly, and the Secretary of State."

Mr. President, there is no alternative to this. There is an abundant area for intelligent dialogue and input on the questions that -- the collateral questions that are so basic to the efficient functioning of that office, and which have both been recognized in this house and in the other house. But attendance tomorrow at this will be an act of futility, of no purpose, because it is in defiance of the constitution which requires two houses, both houses -- both houses, Senate and Assembly. And unless you have an institutional presence, you do not have a valid and constitutional act.

So I would hope that we seize this opportunity to reassert the responsibility that we have as Senators and support in concept and with our vote here tonight that we are not going to be tread upon in this fashion, also contemporaneously extending a hand of cooperation to be seized by all of us in both houses of this Capitol, at both ends of the hall, seized to resolve some of these questions that are collateral and so significant to the efficient and effective operation of the Office of Comptroller.

Mr. President. I move the adoption of this resolution.

ACTING PRESIDENT KUHL: Senator Ohrenstein.

SENATOR OHRENSTEIN: Would Senator Marino yield?

SENATOR MARINO: Sure.

ACTING PRESIDENT KUHL: Senator Marino, do you yield? Senator yields.

SENATOR OHRENSTEIN: I'm interested in your assertion that we can not

meet in joint session or for the purpose of a "joint ballot," to be more accurate, without a concurrent resolution, and that it would be illegal to convene without a concurrent resolution. What is your authority for that assertion?

SENATOR MARINO: As I've indicated, Senator, on four occasions where vacancies have existed in statewide offices in New York beginning with a vacancy in I believe it was 1849 -- yes -- in the office of Comptroller, Millard Fillmore. You might recognize that name. That was done by concurrent resolution of both houses. And when Louis Lefkowitz was appointed, that was done by concurrent resolution of both houses. That was, I believe, the latest time when a vacancy was filled and two other occasions, on all occasions.

So, historically -- since the wording is a bit vague, historically, we have done it by concurrent resolutions; and the fact that the Speaker has passed a concurrent

resolution indicates to me that he believes it should be done by concurrent resolution. But, certainly, the way you are trying to do it is to get around that very fact. Every year, when we meet in joint session to listen to the Governor, it's done by concurrent resolution. The same applies to the Board of Regents. We go over there, and we meet, and it's always by some action of this house. But also by an action of the majority of this house. That hasn't been done here. I suggest to you that historically and by practice, if for no other reason, we can not have a session without the concurrent resolution of both houses.

SENATOR OHRENSTEIN: Well, Senator Marino, are you aware that on March 11, 1975, the -- there was a joint session to elect a Regent -

SENATOR MARINO: Well, that -

SENATOR OHRENSTEIN: Just -- may I finish? May I finish the question?

SENATOR MARINO: Sure.

SENATOR OHRENSTEIN: -- in which

there was no concurrent resolution?

SENATOR MARINO: Yes, because the Regents -- there is specific language regarding Regents that is different, but it requires an action of this house.

SENATOR OHRENSTEIN: What is the difference in the language?

SENATOR MARINO: The language? If you will give me the section -- read the section, and we'll see.

It says that on a certain day we shall meet, Senator. It directs us to meet on a certain particular day. And it says if you don't meet by that day, another day will be put.

SENATOR OHRENSTEIN: And who would convene such a meeting? Who would convene such a meeting?

SENATOR MARINO: It could be anyone.

SENATOR OHRENSTEIN: Do you mean the law happens by spontaneity?

SENATOR MARINO: The law outlines the procedure.

SENATOR OHRENSTEIN: No, it doesn't. It says the Legislature -- this is on the Regents. It says the Legislature -- where is it? "Then the two houses shall meet in joint session."

SENATOR MARINO: That's a different provision, Senator. It says anybody can do it providing a proper notice is given to the Legislature. It says that.

SENATOR OHRENSTEIN: That's not what the law says, Senator Marino. Senator Marino, the law with regard to the Regents says that the Legislature shall meet in joint session at noon on the second Tuesday of such a month.

Okay -

SENATOR MARINO: I said that. It gives you a specific date, yes.

SENATOR OHRENSTEIN: Yes. And who calls that session to order?

SENATOR MARINO: Anybody, I assume, can call it.

SENATOR OHRENSTEIN: I don't - well -

SENATOR MARINO: But that's the Regents, Senator. That's not the Comptroller of the state of New York.

SENATOR OHRENSTEIN: Let's cite a -

SENATOR MARINO: It doesn't apply here.

SENATOR OHRENSTEIN: -- precedent.

SENATOR MARINO: It does not apply here.

SENATOR OHRENSTEIN: Well, that's your version.

SENATOR MARINO: Yes, because we've done it all along.

ACTING PRESIDENT KUHL: Senator Ohrenstein.

SENATOR GALIBER: Mr. President.

ACTING PRESIDENT KUHL: Senator Ohrenstein. I know I'm flirting with danger here, but may I ask that you center your questions through the chair. Please.

SENATOR OHRENSTEIN: You are correct. You are correct.

I still ask you the question. I mean you have cited these precedents. I cite another precedent. You have cited these precedents. I still would like to understand what -- your assertion that a joint session that is called without a concurrent resolution, that that makes it illegal.

SENATOR MARINO: It's never been done any other way, Senator. Four times there was a vacancy in a statewide office, and four times you had concurrent resolutions. I submit, therefore, that historically that's the procedure that is to be followed, and I also submit that the Speaker thought that when he passed the concurrent resolution.

SENATOR OHRENSTEIN: And I suggest to you, Senator Marino, that the fact that it was done this way doesn't mean that it is a condition precedent or a legal requirement that it be done that way. The only legal requirement is in the law, which says that the -- while the Legislature -- when a vacancy occurs while we're in session, the two houses by

joint ballot shall appoint someone to fill a vacancy. It does not speak to how that joint ballot occurs. It can occur by the way you suggest, and it can occur in other ways. No one has ever spoken to the fact that only a concurrent resolution can convene the two houses in joint ballot. There is no such requirement in this bill. And there are other precedents, particularly those with regard to the Regents, where I concede to you the language is somewhat different, but it is equally -- it is vague in other ways; and, therefore, your assertion - I'm simply challenging your assertion that a concurrent resolution is the only way in which we convene a joint session under Section 41 of the Public Officers Law.

SENATOR MARINO: Senator, that's your opinion and I'm sure a court will tell us who's right.

SENATOR OHRENSTEIN: And that's your opinion. Okay. So then let's get on with the issue.

Senator Marino, I listened very

carefully to what you said before in justifying this resolution, which in fact, is also somewhat unprecedented. You are declaring a nullity or you are attempting to declare a nullity an act which hasn't even taken place. You are in advance saying, "If this act takes place in this way, we think it's illegal." So at best, this is an expression of your version of what the law is, and there are several instances in this resolution which indicate that there are assumptions to it, particularly the assumption that there has to be a concurrent resolution, that that's the foundation for this whole resolution; and, therefore, if that foundation is not correct, the resolution falls by its own weight.

But let me say that this resolution is really irrelevant because no resolution passed by one house or a majority of one house can nullify an act that is being executed pursuant to the existing law. The law is a bill that was passed some years ago, signed by the Governor. It is now the law and it

governs it, and that law definitely calls for a joint ballot by both houses in order to fill - fulfill a vacancy. It says nothing about concurrent resolution. It says nothing about how it is to be convened; and, therefore, I would suggest to you the method of convocation can be different in different instances and would be equally legal.

The question -- the one thing that is required by the law is that we meet in joint session to fulfill a vacancy. That law doesn't say we can only fill a vacancy in joint session if there are reforms passed with regard to the selection process for Comptroller or reforms passed with regard to how we manage our retirement system. I'll say this. At least on the question of reforms on the selection process for vacancy for Comptroller or Attorney General, at least it is somewhat relevant to this process, but it is not a condition which is required by the law. As regard to the reform of the trusteeship system with regard to the pension fund, that has absolutely nothing to do

with the selection of a Comptroller to fulfill a vacancy.

We do have a law in effect now. That is the law, and that is the law we are compelled to abide by, and we are not -- there is nothing in the law which says you don't have to abide by it unless to change the law to some version which you believe is correct or somebody else is correct. So that is the opening assumption of your statement. It is the opening assumption with all due respect, -- and I have, as you know, enormous respect for you personally and for your leadership, but that is the underlying basis for your whole challenge to what is mandated by law.

Your press reless today and the events preceding that with regard to the conversations that were related to me between you and your representatives and the representatives of the Speaker and the Assembly were that you would agree to a session next Monday; you would pass a concurrent resolution for a session next Monday provided the Assembly

agreed to pass a concurrent resolution which changed the law with regard to the selection of a Comptroller, and the Attorney General, I assume, some time in the future if that was ever to occur; and that, secondly, that the Assembly agree to a bill which was handed to them which created a new trusteeship group or whatever you call it, for the pension system.

That's the conditions which you presented to the Assembly.

SENATOR MARINO: Would you yield?

SENATOR OHRENSTEIN: Certainly.

ACTING PRESIDENT KUHL: Senator Marino.

SENATOR MARINO: Clearly, you are talking about hearsay, Senator, and I respect your right to talk about hearsay.

SENATOR OHRENSTEIN: I suggest we do a lot of things around here by hearsay.

SENATOR MARINO: No, I respect that, but I just want you to know that I believe I have a closer connection with the

conversation, and let me assure you that the proposals we made were not conditions, quid pro quo. They were concerns we had about the present status of the way we pick a Comptroller and the power we give an unelected Comptroller over the lives of those people who are concerned about their pensions. I shared the same concerns that the Assembly had. And all we said was let's sit down and see if we can work out some mutually satisfactory legislation. These were not conditions. These were concerns that they have and we have, and we said give us a chance to talk about them, and perhaps we can come to some conclusion on it. Okay. We didn't say you have to accept all of it, some of it, or whatever and that was it.

SENATOR OHRENSTEIN: May I quote your own words?

SENATOR MARINO: Yes.

SENATOR OHRENSTEIN: Your words are, "We have offered to pass a concurrent resolution..." -

SENATOR MARINO: Yes.

SENATOR OHRENSTEIN: -- "... to enable the Democrats to sit in joint session - to enable the Democrats to sit in joint session..."

SENATOR MARINO: Yes.

SENATOR OHRENSTEIN: I assume it would be the Legislature to sit in joint session. "... and hand pick the next Comptroller if they agree to reform the selection process and trusteeship of the retirement system."

That's your statement. It was a condition.

SENATOR MARINO: Does it say "passage" there?

SENATOR OHRENSTEIN: "If they agree to reform."

SENATOR MARINO: Yes. To reform, yes.

SENATOR OHRENSTEIN: I don't know what kind of agreements are made around here without the agreement on bills that are passed.

SENATOR MARINO: Senator, I would submit to you that, clearly, the first passage

of a constitutional amendment doesn't do anything except make a statement. That doesn't reform anything. I know it, and you know it, and the Assembly knows that, but we want to get started in the process.

SENATOR OHRENSTEIN: Well, what about your trusteeship proposal that you handed to the Speaker?

SENATOR MARINO: Yes. The difference was between four and thirteen and the nature of the members, basically. In five days, I can change that. We can agree or agree to agree or have some dialogue. The Assembly refused to talk about it, and it was their original proposal. That's chutzpah, Senator, I submit.

SENATOR OHRENSTEIN: We'll see if we can agree on a definition of what's chutzpah.

Senator Marino, with all due respect, the question -

SENATOR MARINO: Read the last paragraph. It says "consider changes."

SENATOR OHRENSTEIN: Well, you

know, you say something different in different paragraphs. And, Senator, I may even say to you, you said something different on the floor just before. Because on the one hand you were insisting on legislation, and then you were upset because you weren't privy to the rules or you don't know what the rules of the joint session are, that that has become a condition precedent. But be that as it may.

Senator Marino, the question of the trusteeship of the pension fund has been a matter which has been discussed in this Capitol for years. Indeed, the Assembly has year after year passed a bill which calls for a thirteen member trusteeship. But which -- which trusteeship council, or whatever it is called, is basically appointed by the Comptroller. Their bill provides one appointment by the Governor. The Comptroller is chairman of that trusteeship council, and there are certain requirements that public employees be represented in the appointments, in the eleven appointments the Comptroller makes, and that the

Conference of Mayors and of Counties be represented on this council because they have an interest too, because, as you know -- it is well known -- the pension fund also covers many counties and many cities, and it's certainly that the public employees of this state have every right to deal with their pension fund because it's their money.

The difference between the bill you presented today is huge. And, by the way, under that proposal that the Assembly has offered to you for years, the Comptroller would be the chairman of this council. He would select eleven appointees of that council and he would still be the -- he or she would still be the custodian of the fund and administer it. Under your proposal, you would substitute that with a trusteeship council of which the Comptroller would be the chair. There would be one appointment by the Governor, one by the Majority Leader of the Senate, and one by the Speaker, and would remove all powers with regard to investment decisions from the Comptroller and

enshrine it in this council and would remove custodial control over the retirement system from the Comptroller and put it into this council.

Senator Marino, on Monday of this week after weeks and weeks of an open process that was public and open -- we had public hearings to which you were invited and to which you originally agreed to and these were valid. They were there. The press was there after weeks and weeks of consideration, starting on February 18 when the Comptroller indicated he would resign. There was an open, public process which resulted on Monday at a meeting in which the members of this Legislature who are Democrats were present, in which that body of 127 agreed to make Mr. Carl McCall the Democratic nominee for Comptroller. And since, meeting in joint session, the Democrats 127 strong have the power to make that nomination stick and to make Mr. McCall the new Comptroller of the state of New York, that action spoke to you to tell you that we, the Democratic Party

here, made a decision on how to fill this vacancy.

Within 24 hours, you offer the leadership of the Assembly a bill which in one fell swoop would emasculate the new Comptroller of the state of New York.

SENATOR MARINO: Senator yield?

SENATOR OHRENSTEIN: When I finish, then I will be happy to yield to you any time, Senator Marino. Your bill is so different from what the Assembly bill provided for years and what has been under discussion that in some -- and I say this respectfully to you, it was in some respects an insult to the process which we followed and to the man who is highly quali fied and comes to this with enormous credential by moving ahead and trying to do this in 24 hours. You didn't even give him the courtesy of getting elected so that he could comment and work with us on this profound change in our pension system.

So if all of these years of dialogue and debate did not change, did not come

to a conclusion on this particular issue, how in blazes could you possibly think by offering a bill of the kind that you offered yesterday to the Speaker would lead to some conclusion within a matter of days? A bill which would have created a political boondoggle of our retirement system, because it is totally inappropriate that the political parties represented in this Legislature appoint the people who run the pension system. The pension system should be run by the Comptroller. And if we want to have a board to advise him or even to mandate him on the question of investment decisions, then it has to be a board which represents the parties in interest, the employees, the local government units which are represented, and the state of New York as represented by the Comptroller. But to offer this bill, with all due respect, Senator Marino, does not befit your high standards.

That is why it was rejected because there is no point in even discussing it, aside from the fact that it is not relevant to

our complying with the law which we passed years ago on how to fill the vacancy at this time.

Now, let's talk about that. I remember a couple years ago when the Governor or the Lieutenant Governor asked us, begged us to change the process by which the Lieutenant Governor is elected, by which the succession is mandated, because the Governor believed there were certain flaws. Indeed, the United States of America went through that process; and for a long time, the Congress considered changes in how to do this and finally came to an agreement in a constitutional amendment which finally passed. It took years.

We have never had a discussion here until this matter arose about how we should more appropriately fill the vacancies for Comptroller or Lieutenant Governor or, for that matter, of how we should provide for succession in this state should something happen to the Governor. Those are very appropriate matters which require long and thoughtful discussion and public hearings. Certainly on the question of

the trusteeship council, that requires input and hearings from the people who are affected by it who could not possibly be consulted in the next two or three days which is your time schedule.

So I must say to you, with all due respect to you and your integrity, which is without question, the proposal you made to the Speaker on the question of these things -- I will give you the best of motivations that you want these reforms. The Speaker wants reforms, we want reforms. But you are not going to get them in three days on matters that have been before us for years and have not been able to be resolved and get them in three days because you wish them so; and in the process, you tell the gentleman who will likely be the new Comptroller, "Well, we're going to make you Comptroller, but now we're going to take it all away from you," without even talking to him or her and consulting them. That is not an appropriate way.

Senator Marino, we're going to have a joint session whether it's tomorrow or

the next day or the day after that. Why must you throw roadblocks into this process when the result is inevitable? You have put forward a desire to reform the system. We join you in that desire, and we will work with you. The Speaker will work with you. But don't try to tell us we have to hold up this election and finish a process which has now lasted close to two months and put into office a new Comptroller who is highly qualified, a distinguished former member of this house, an ambassador to the United Nations, who will bring enormous credit to this state. Why do you want to sit four square in the wake of that?

So I would suggest to you no one wants to take your prerogatives away. Nobody wants to mistreat or ill treat members of the Majority of this house. God knows, we don't do it. We can't do it even if we tried.

But in the same time if you're in a minority in this joint session, why don't you have the grace to simply say, "Okay, you guys have made up your minds the way you want to go."

No one has taken any umbrage or suggested even in the slightest that the gentleman that we are about to nominate and elect is not qualified, in any way. On the contrary, every newspaper in this state has praised him to the sky. So why simply not finish it, and let's stop this quibbling about positioning ourselves politically or being on some kind of an ego trip because you don't like the way you have been treated.

Senator Marino, we don't like the way we're treated sometimes either, but that comes with the territory, and we go on and we come to the sessions here. Don't think that over the years from time to time there have not been suggestions in my conference that we simply walk out and not come to the session, and that has always been vetoed by members of my conference, because the Senate meets and we're going to be there whether we like what's happening or not. Protesting and going on some kind of a strike is not the way to do it.

The way this body is going to be

convened tomorrow is as legal as any other process. It is being convened by the presiding officer of the Senate and the presiding officer of the Assembly in one unique circumstance when we have a joint session. It is not interfering with the prerogatives or the rules of this house. And I think -- I beg you to have the grace to accede to this process and to let us finish to elect a Comptroller and not to question the process and have this matter hanging in the air for weeks and months simply because you in some way felt that you were not appropriately consulted. It isn't fair. It isn't necessary because you will be appropriately consulted, I promise you, from here on in every day, every day of the week and every month of the year, when we are in session because nobody has an alternative to you. You have the majority, and we accede to that, and you are going to be making the decision.

On this one, you can't make the decisions because you are not in the majority. There is nothing shameful about that. That's

the nature of the system which is the law. So, again, as I say to you, I think your arguments are specious. The scenario which you put out about conditioning this on some kind of a reform, it won't work. It is not credible because in all the years we've been here we haven't reformed this process despite intensive discussion on this matter.

So I ask you to withdraw this resolution. Come to the session tomorrow. Let's elect a new Comptroller. Then we will convene here and go about our business.

ACTING PRESIDENT KUHL: Senator Ohrenstein, do you yield to Senator Marino?

SENATOR OHRENSTEIN: Sure.

SENATOR MARINO: Senator Ohrenstein, I just wanted to correct a couple of your statements because they're factually incorrect. The bill that you said we just put together and threw at the Speaker was written and circulated last week. It was not done to get Mr. McCall or anyone else. So whoever the nominee was, in our opinion, should have been

subject to this type of legislation.

So we have not pointed to any particular person as a target for these bills. We just felt that these bills were important bills and should be addressed, because having a vacancy in the Office of Comptroller in mid-term is unusual. As you know -- you have been here a long time -- it's probably never happened in your time. It certainly hasn't happened in mine. You, yourself, said, Senator, that political parties ought not run the pension system. And we feel that four people using their brains perhaps might come to a different conclusion than one person over the lives of people who depend on a pension system and especially over a person who hasn't been elected by the people. You know, Ned Regan at least was elected by the people, so he was accountable to the people. That's what we're suggesting here. We need oversight because we have an unelected Comptroller under your system or under the one you're trying -

SENATOR OHRENSTEIN: Under my

system?

SENATOR MARINO: Under the system you are trying to enforce tomorrow.

SENATOR OHRENSTEIN: No, under the system that is in law. With all due respect, Senator Marino, under the law.

SENATOR MARINO: Under the law, Senator, the Lieutenant Governor has no right to convene any kind of a meeting of this house at any place, at any time.

SENATOR OHRENSTEIN: Would you yield?

SENATOR MARINO: Yes. You show me the authority, Senator, and I will bow to that authority.

SENATOR OHRENSTEIN: Well, if you won't pass a concurrent resolution and if the Lieutenant Governor doesn't have the authority, how would you propose such a meeting take place?

SENATOR MARINO: Answer my question first. What is the authority of the Lieutenant Governor?

SENATOR OHRENSTEIN: The Lieutenant Governor is the presiding officer under the constitution of the state of New York. This is, as I've said a unique -- there are certain unique meetings of the Legislature which are provided for by law. And when the two houses meet together in joint session, the Lieutenant Governor has presided always, and he is the presiding officer; and, therefore, he has as much color of authority as you have color of authority in terms of concurrent resolutions.

SENATOR MARINO: Senator, I don't wish to debate this at any length, but I just want you to know that I don't think you can cite any sections of our rules that would permit the Lieutenant Governor to convene any kind of a session since it is not by majority vote of this house. That's the only way we operate, as far as I know, in this house or in the other house.

SENATOR OHRENSTEIN: With all due respect, neither can you cite any sections of the law which require a concurrent resolution.

SENATOR MARINO: I've told you

by -- if for no other reason, by precedent, Senator, four times when it's happened. When we've had vacancies, that's the way it was handled. And I've submitted to you that the Speaker himself thought that, by passing a concurrent resolution.

Now, I don't think you would suggest that Al Gore can convene a session of the House of Representatives or the Senate or any other body, and that's what you are suggesting here -

SENATOR OHRENSTEIN: I -

SENATOR MARINO: -- that that can happen, and it can't happen. It can't happen there, and it's not going to happen here. And, Senator, you, I know, are anxious to uphold the rules of this house. And it's important, I believe and we believe on this side and you should believe, that this is a bad precedent that the presiding officer of this house can call a session together with the other house. I just think it's a bad precedent. It's illegal, improper, and we must challenge that kind of a

meeting. That's what our position is here, Senator.

SENATOR OHRENSTEIN: Will the Senator yield?

ACTING PRESIDENT KUHL: Senator Ohrenstein, you have the floor, sir.

SENATOR OHRENSTEIN: Senator Marino, there will be no bill within the next four or five days or a week to a concurrent resolution reforming the process by which Comptroller and Attorney General vacancies are made. There will be none, because it's going to take time. And there certainly should be public hearings, and the public should be consulted on this issue. I think there is a lot of desire to do this. It isn't going to happen in the next three or four days or week.

There certainly, after years of debate, isn't going to be a bill which both houses agree on to deal with a question of the trusteeship of the retirement system and a basic change with regard to the two major functions, which is investment decisions and the custodial

thing which is very complicated. And certainly with respect to that, there is not going to be a bill unless the public employees are consulted whose money this is and unless the counties are consulted whose pension monies we administrate or the cities of this state, with the exception of the city of New York, are consulted whose money is in the fund. That's not going to happen in four days or in a week.

So are you saying to us that unless these reforms take place some time in the next weeks or months, we should not fill this vacancy as mandated by law? Is that your proposal?

SENATOR MARINO: Senator, what you are proposing and what the Assembly is proposing that the majority of your side and the Assembly get together and in two days -- two days, not five days, not a week -- two days appoint a Comptroller. We suggested a referendum. You reject that. Everybody rejects that. The Assembly has rejected that.

You speak for the Assembly now,

obviously, when you say that they would reject four members rather than thirteen. How do you know that? I don't know that. They don't want to talk to me about it. So give us the opportunity, is all we say, to discuss this, and then we will go along with you on a concurrent resolution. They won't give me that opportunity. They won't even permit us to adopt the rules for such a meeting.

Senator, that's wrong.

SENATOR OHRENSTEIN: The rules for such a meeting will be adopted by the joint session as they have always been adopted by the joint session. Rules of the joint session have always been adopted by the joint session.

And, Senator Marino, forgive me, but you are being somewhat disingenuous, to tell us, "We won't agree to a change in the filling of a vacancy by special election and so on." You won't agree to a referendum. You are suddenly becoming this great reformer because of this vacancy. Where were you all last year, the year before, ten years ago, when we had the

chance to do this thoughtfully and properly? Suddenly you want to do this.

Senator Marino, let me tell you why I refer to the date of March 11, 1975. Because on that day Senator Anderson did not wish to accede to a joint session on the selection of a Regent as mandated by law. The Lieutenant Governor called up a concurrent resolution in order to convene that session. And when Senator Anderson replied, he came up with the idea that a reason they didn't want to go into joint session -- and I was there at that time because I'm quoted extensively in these debates. You would not accede to a joint session unless every member of the Senate was given two and a half votes. That was his proposal. So suddenly on that day, he came up with this ingenious reform and he expected that to be adopted on that day before he would agree to a joint session.

Well, obviously, there was no such agreement, and the Lieutenant Governor recessed this house. The Majority stayed in

this house. The Minority went over into session as required by law, and we elected a Regent without your presence. I would suggest to you that that same scenario is going to happen tomorrow not because we want it that way but because you haven't given us a single reason why we can't meet tomorrow in joint session, adopt rules, have our debates. We have never had a joint session in which there was a lack of debate or a lack of opportunity to nominate candidates or a lack of opportunity to speak for the candidates. That's a specious argument.

That all will be done, and we will debate the rules if you disagree with the rules; and I would dare say, if you have amendments that are meritorious, they will be adopted. You tell us that all the time when we do that, and I mean that sincerely. There is only one reason that you don't want to convene tomorrow, and that is because of the conditions you seek to effect here which are conditions which are impossible to obtain.

ACTING PRESIDENT KUHL: Senator

Waldon.

SENATOR WALDON: Thank you very much, Mr. President.

This is the best of times and the worst of times. It's the best of times because we have the opportunity in New York State to do something that's quite historic. Long after the state of Illinois, long after the state of South Carolina, long after even the state of Mississippi, we have a chance to have an African-American hold statewide office.

The worst of times because, on the eve of that historic occasion, someone has muddied the waters. I'm concerned that the integrity of the Senate is important. No one wishes to be disrespected, treated as a second-class citizen, be labeled impotent politicians or not allowed to exercise the mandate from the people who voted each of us to come here and do the people's business. But on this side of the aisle, this is almost a daily experience at times.

My reading of the constitution

and of the Public Officers Law disagrees with that of Senator Marino. But my concerns in rising, Mr. President, are not so much about the big issue that he is talking about but a more parochial issue, and that parochial issue is about color and race.

And I ask the question of those in this body. Some of you I've gone to dinner with, we've chatted, we've gone on vacation together, and I know in your heart of hearts on that side of the aisle that you are not racist, but what is happening here tonight sends a signal to a large percentage of the people of the state of New York which will be interpreted as racist.

Let me tell you why I feel that way. Why now, when Carl McCall is about to be appointed the Comptroller, do we propose to take away his power as the steward of the New York State employees' pension system?

Why now do we propose that four people replace the board that is in place at this time or even the board that has been

proposed in the Assembly and put the pension system in charge of the most political animals in Albany, the Governor, the Speaker and the leader of this house, and relegate the Comptroller to a subservient position?

To do these things proposed by my colleagues on this side of the aisle sends a signal to my people that we are not qualified. Whether you mean to do that or not, it says to someone who grew up in my shoes, in my community, from my heritage, that we're not qualified.

It says that even when the process is right and lawful -- and I believe the process described by the Minority Leader is right and lawful -- that even though the process is right and lawful, we will not abide the process. We will change it to suit our personal means.

It says no matter how credentialized, how experienced politically, how much support one has from white or black, Jew or gentile, if you don't get your way in this

process, the process is unacceptable and that you won't play the game and that you'll take your ball and bat and go home.

It says to all who look like me in the state, who have been historically the most disenfranchised people of this country, that we will further disenfranchise you, and this is happening in 1993.

My colleagues, my friends, I think that this action is beneath the dignity of this house. It is unacceptable; it is immoral; it is not astute politically. And I would hope that in your heart of hearts, in your reasoning of reasons -- in your reasoning capability, that you will reject this resolution and let us be about the business for all of the people of the state of New York, not just a few.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

First of all, I want to thank

Senator Ohrenstein for laying out this -- these issues in what I thought was a very cogent and wonderful way, and I'm proud that he is our spokesman.

Senator Waldon, I heard Senator Marino, perhaps in anticipation of your comments, make a remark that this bill was drafted about a week ago before it was Carl McCall. And I guess if one were a skeptical kind of person, they might say it really wasn't aimed at Carl McCall. Maybe they were afraid it would be a woman. Maybe someone was afraid it could have been the Borough President of the Bronx.

The answer is that whatever the thoughts were, you are exactly right, Senator Waldon. You are exactly right. The timing of this is terrible. The individuals involved on the other side of the aisle are gentlemen of good will, I'm sure. But the timing is terrible in terms of the message it conveys.

There's been reference all evening to why this two-day rush to do this act,

and I'm flabbergasted. I mean I haven't agreed with Ned Regan day in and day out, but there is a gentleman, and I use that word and I mean it, who on or about February 18th said, I'm going to do something at the end of April. Get ready. I'm going to do something. I'm not going to tell you the day before and leave the state afloat without a Comptroller elected in a proper way. And, by the way, the constitution tells us the proper way and we're going to do that.

Now, am I being told by 35 Republicans in this house that Ned Regan is a liar and, therefore, we couldn't believe him until the day it happened? That's outrageous. It's outrageous. He did it because he had respect for the state, and he wanted a process.

The law involved says, "Shall." We can do it. And one of the gentlemen on your side of the aisle said at the Rules Committee meeting, "Well, it says shall, but it doesn't say today." And the implication is, we could do it a month, two months, maybe never.

Well, yes, the power to tax is

the power to destroy. The power to say "never" is the power to undercut the constitution, and that is terrible, terrible logic and reasoning.

But more important than that, with the Comptroller of your party, who gives us notice in February of what he is going to do the end of April, the Majority Leader of this house, the Minority Leader of the Assembly agreed to a process. A process -- probably the most open process in the history of this state in these kinds of circumstances, and then they picked up their marbles and left.

Not only did they pick up their marbles and leave, but they issued press statements, criticizing the process, accusing Democrats of doing things behind closed doors, things that we should be ashamed of, that we were abusing the system.

And listening very carefully to everything you say, because everybody should listen to everything you say, the newspapers reacted, and they reacted by endorsing Carl McCall because they knew what you said was

hogwash. They know it.

I mean NEWSDAY, they didn't go all over Long Island and New York City and say that the Democrats are abusing the system, it's got to be changed, it's antique, et cetera, et cetera. They said, Come on, stop this nonsense. Go with Carl McCall.

The New York Times, Mr. McCall for state Comptroller. "Don't you get any kind of a message from that? I can't stop you from saying anything you -

SENATOR DALY: Mr. President. Will the Senator yield?

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

SENATOR DALY: Do you believe, from the way you speak, and I think you do, that the -

ACTING PRESIDENT KUHL: Excuse me, sir.

Senator Gold, do you yield?

SENATOR DALY: Does the Senator yield?

SENATOR GOLD: Yes, sir.

ACTING PRESIDENT KUHL: The Senator yields.

Senator Daly.

SENATOR DALY: Thank you.

Senator, do you actually think that the newspaper editorial boards that you are reading right now speak ex cathedra?

SENATOR GOLD: Speak what?

SENATOR DALY: Speak from the throne. They're always right.

SENATOR GOLD: Oh, excuse me. Excuse me. Sir -

SENATOR DALY: Why do you throw it in our face?

SENATOR GOLD: I didn't plant that question, did I?

Senator, the answer is very simple. I don't put any newspaper on a pedestal. I don't put anybody on a pedestal. I believe in only one God.

But what I'm saying to you is, isn't it obvious to you that people who don't

have an interest have listened to your arguments and have put them in the trash basket and have understood that this process is the most open process that has ever been in this history?

Doesn't it seem weird to you that there isn't anything that says, "Hey, wait a minute, you gentlemen and ladies" -- ladies, referring obviously to this side of the aisle - "you should pay some more attention, do some other things"? None of that -- none of that happened, and all of those arguments were thrown out.

The process was always okay with you, and I say "you "and I'm not going to get into the argument of what was everybody doing in 1957. But for generations, Republicans with majorities in both houses felt the process was wonderful. Now it ain't your guy, and we get this kind of business.

In this resolution -- no, excuse me. In the press release, which was referred to before, Senator Marino says something which I regret very much that he said. He says that if

there is a court challenge, quotes, "Such a challenge will only call into question the legality of the selection process, the actions of anyone acting as Comptroller," and then he goes, "the state's ability to borrow, "et cetera, et cetera.

Why would you do that? I could never understand why you insisted on carrying budgets over six and seven weeks and affect the credibility of the fiscal integrity of this state. Now, for no reason you are telling us that for your ego, and it says -- and I remember the word was used. I think it was Senator Marino. He said, "This is happening without taking into consideration the will of the Majority."

Are you using a dictionary that confuses the word "will" with "ego"? In other words, for your will or ego, you are going to affect the credit rating of this state by questioning the election of a Comptroller that will have a majority of the elected people in both houses, not somebody who gets in under a

technicality because you didn't show up and we're taking this, we're doing that.

You're suggesting in your press release, Senator Marino, and I don't understand it and I know you know better and I respect you, but you're suggesting that you would bring a lawsuit to oust someone elected by a majority of both houses and you, Senator Marino, would be responsible for affecting the credit rating of this state?

SENATOR MARINO: Could I answer that, please?

SENATOR GOLD: I'd be delighted.

ACTING PRESIDENT KUHL: Will the Senator yield?

SENATOR MARINO: What I'm suggesting, Senator, is that you and the Lieutenant Governor and the Speaker would be on notice that you are going to commit an illegal act, and that's why it's in the press release. And that's why we told you a day ahead of time, so you don't do an illegal act at 10:30 a.m. That's why it's in there.

SENATOR GOLD: As I was saying, Mr. President, I'm not going to argue the legality of the act because I would only repeat every word said by Senator Ohrenstein because he laid it out beautifully. It is ridiculous if a majority of the people elected in these chambers are in a room at a time we all know it's going to happen, and they agree on somebody -- that's what the constitution requires, the law requires. The person will be the selection of a majority of that house. Senator Marchi said time and time again, two houses, two houses. Senator Marchi, the idea of writing a lot of words and bills means you read to the end of the sentences. The two houses get together and then you have one -- one -- and it's that one that votes, and each of us will have the 1/211th of the vote and 127/211th is a majority.

So why frustrate it? What are we accomplishing? We are accomplishing, Senator Marino, an unrequired, unnecessary putting into question the credibility of the state of New York because it's a bad precedent?

Can I tell you something about precedent? We on this side of the aisle, as pointed out by Senator Ohrenstein, make arguments day in and day out, and then we have to lose a vote with dignity. That's a precedent that you ought to understand also; that when you have the minority and you don't have the votes, you ought to at least learn to lose it with dignity. It's got to happen. That's what the will of the people is all about. You can't have it, by the way, both ways.

And another thing, Senator Marchi, you said that you have never been the loyal opposition; you are part of the governance. Do you want to read all of the campaign literature that I have seen which says that you people never voted for taxes and never voted for the budgets, and it's the Governor and it's everybody else in the world?

Well, if you don't want to be part of the governance on election day, then - you know. Very strange. The fact of the matter -

ACTING PRESIDENT KUHL: Senator Marchi, why do you rise?

SENATOR MARCHI: Will Senator Gold yield?

SENATOR GOLD: For you, Senator Marchi, of course.

ACTING PRESIDENT KUHL: Senator Gold yield? Yes, Senator does.

SENATOR MARCHI: I would like to ask you a rhetorical question. Have I ever put out any literature that I didn't vote for a tax when it was needed? And haven't many of your own members voted, even with your own administration, the other way? I'm talking about institutional -- or do we understand each other? Do we understand each other?

We have been together through thick and thin. Most of these questions are on the same side, so how can you talk that way?

SENATOR GOLD: Mr. President. At least he didn't call me a whited sepulcher this time. I remember when you did that, and it took me an hour to find out what that meant.

SENATOR MARCHI: I like good music so I would never tell you that.

SENATOR GOLD: You did, too. I'll tell you where you did it. We held a session in Room A.

Mr. President. The bottom line is that this really is totally unnecessary. It puts into question our integrity. It puts into question the questions raised by Senator Waldon as to this particular individual of fantastic background who does not deserve being put into this situation, and we just shouldn't do it. I know everybody in this place, and we're better than that. We really are better than that.

Unfortunately, if you do what you're doing, I'm going to win a bet I made that I wanted to lose. We shouldn't do it. We should do this with dignity, get it finished, and let the processes continue.

SENATOR TULLY: Mr. President.

ACTING PRESIDENT KUHL: Senator Tully, why do you rise?

SENATOR TULLY: Point of

information. Would you be able to enlighten us as to how many speakers you have listed?

ACTING PRESIDENT KUHL: The Chair has listed seven more speakers. For your information also, the debate started at 9:22 if that's of any interest.

The Chair has Senator Volker next on the list. I don't see Senator Volker in the room.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I rise. I think this has been an interesting debate for me, and I just want to comment. I will try to be very brief. I'd just like to comment on a couple quick things that have been said. I understand the comments from the leader of the Majority when he talks about intransigence and the need to discuss process.

I think most of the members of this house will know that I've been here since day one talking about process in this, as Senator Marchi put it "beloved house." I have been talking about that process. Because I

think the process that we have here of late night meetings, late night budget decisions, lack of access to information is all inappropriate.

I started that discussion the day I walked in. I can sympathize with the Majority Leader's comment about the process, about the need for process.

But I think the process that's been followed in this case has been an exemplary one. There have been public hearings, the kind we should have on our legislative budgets. There's been a discussion about qualifications, an in-depth discussion and analysis of qualifications of candidates. And I believe, consistent with the representations of the Minority Leader, that tomorrow when we meet in joint session we will adopt rules that will give fair debate, give fair opportunity to be heard, and give a chance for all the members, the 211 members of a joint session to be able to have their opinions known.

So I understand the complaints

about process. My hope is that the Majority Leader's comments about process will not fall on deaf ears among all of our members, that we'll look to the process of this institution.

And that turns me to my second topic, the topic of the house, as Senator Marchi properly points out. I recognize the importance of the house, but I can't let it do one thing, and that is, overwhelm my sense of obligation to the people who benefit from the actions of this house.

SENATOR DALY: Mr. President. Will the Senator yield to a question?

SENATOR DOLLINGER: Not at this time, Mr. President.

ACTING PRESIDENT KUHL: Senator refuses to yield, Senator Daly.

SENATOR DOLLINGER: It seems to me that when we elevate the house and the institution over the need of the public that it's supposed to serve, we do our public and our constituents a great disservice.

My hope is that we won't hold

Carl McCall a house hostage; that we won't hold him a hostage to this house and what it believes is its institutional need that overwhelms the needs of our constituents. Because our constituents have an important need; and that is the need for the transformation of political power. We in this country have a long constitutional history at the federal level that emphasizes transitions of power. When there are vacancies in the most important office in this country, we don't wait a week. We don't wait ten days. We don't wait two weeks.

Lyndon Baines Johnson was sworn in as the President after the death of John Kennedy in an hour. Richard Nixon resigned. Gerald Ford was sworn in an hour and a half later. Then what did he do? He appointed some one to be Vice-President. We had a President and a Vice-President of the United States who had never been elected. Why? Because that's what the Constitution -- that's the power that the people gave the government to do.

In this state, in this instance,

we have a constitution and we have statute. We have a power given to us by the people and we exercise this power. This body exercises that power. The Senate approved a statute that said that it would be filled by a meeting of the houses in "joint ballot." That was the one phrase that Senator Gold properly pointed out that Senator Marchi when he emphasized the two houses forgot the other phrase that immediately follows which is, "by joint ballot." That's the part you forgot.

That's how we took the power given to us by the people in the constitution, incorporated it in a statute, and that's the law that we now deal with. We are law makers. We must also be law abiders. Have the respect for the house that passed that law, Public Officers Law, and let's follow it. Respect the wish of the prior house that decided that that was the way to fill this vacancy. The constitution demands it. A prior body adopted it, and we ought to follow it.

I will close with one other

thought. I recognize what this document is. I recognize that this is your findings of fact and conclusions of law for a judge somewhere. I think it's a transparent attempt to try to tell the judiciary that your opinion about what the law and the constitution are is the only opinion that matters. It's my suggestion to all the members of this house, this resolution seeks to take on even more power. What you are trying to do is tell an independent judiciary how they should resolve what may be a legal issue in this case. I disagree with it. I think it's wrong. I think it's wrong-headed.

And I would simply ask all of you. Abide by the will of the people as reflected in the constitution and the wisdom of a prior house that decided this ought to be done by joint ballot. Don't risk the future of this state and its Comptroller, a man who is well qualified and entitled to this permission. Don't risk that.

ACTING PRESIDENT KUHL: Excuse me, Senator.

Senator Daly, why do you rise?

SENATOR DALY: I thought the Senator was finishing a statement and I would still like him to yield to a question.

SENATOR DOLLINGER: I'll be finished in one minute, Mr. President, and then I will yield to a question.

ACTING PRESIDENT KUHL: Senator refuses to yield at this time, Senator Daly.

SENATOR DOLLINGER: I'd simply ask that you abide by the wishes of a prior house, respect the law that we have in front of us. Let's get the next Comptroller elected. Let's do it the way this body, the Assembly and the Governor in passing that law decided it should be done. We all swore an oath to respect the constitution of the United States, the state of New York, and the laws of that state. Let's fulfill that oath and meet tomorrow morning to elect the Comptroller to fulfill that position.

I will yield to a question.

ACTING PRESIDENT KUHL: Senator Dollinger yields to Senator Daly. Senator

yields.

SENATOR DALY: Yes. Mr. President. The Senator mentioned the powers of the house, and I wondered about that. I wonder what power does he think the executive branch should have in dictating what this house should do?

SENATOR DOLLINGER: Mr. President. As I think I pointed out, there is a constitution that contains the powers vested in this Legislature and in the Executive. In addition, we exercised that power -- this body exercised that power in, I believe, 1909, and then amended the statute in 1949. That's the procedure under which we work.

SENATOR DALY: Will the Senator yield for another question?

ACTING PRESIDENT KUHL: Will you continue to yield?

SENATOR DOLLINGER: I will continue to yield.

ACTING PRESIDENT KUHL: He does.

SENATOR DALY: Mr. President. I

ask does he believe that the executive branch has the right to dictate to this house? In other words, Mr. President, does he not believe that the legislative branch, by constitution, is completely separate and distinct from the executive branch and that this executive branch has no power whatsoever to dictate to this house? Yes or no?

SENATOR DOLLINGER: The answer to that question, Mr. President, I don't believe that's what the constitution says. My colleague the Minority Leader pointed out that the presiding officer of this body is the Lieutenant Governor. That is, I believe, Mr. Minority Leader, either established by constitution or by statute. Because of his position as the presiding officer, he has certain powers and abilities. In my judgment, that's the way the constitution created it, and that's the way the statute provides.

We, who are law makers, ought to be law abiders and simply follow those rules established by a people at an earlier time and

by a Legislature at an earlier time.

SENATOR DALY: Mr. President. That is the weirdest -- the weirdest conception of the relationship established -

SENATOR CONNOR: Point of order, Mr. President. It's not a question.

SENATOR DALY: It will be a question.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR DALY: It will be a question. It will be a question.

ACTING PRESIDENT KUHL: Senator Daly, are you asking Senator Dollinger to yield?

SENATOR DALY: Yes, I am. I'm asking a question.

ACTING PRESIDENT KUHL: Senator Dollinger, will you continue to yield?

SENATOR DALY: Mr. President. Have you ever heard -

ACTING PRESIDENT KUHL: Senator Daly.

SENATOR DOLLINGER: No, I will not, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger refuses to yield, Senator Daly.

SENATOR DALY: Mr. President. Am I next on the agenda?

ACTING PRESIDENT KUHL: Yes, you are, I believe, Senator Daly.

SENATOR DALY: Mr. President. I've heard of some pretty weird interpretations of the constitution, but for someone to stand in this house and tell me that the executive branch has the right to dictate to this house -

ACTING PRESIDENT KUHL: Senator Daly. Excuse me just a minute. We have a recording problem. I don't mean to interrupt you.

SENATOR DALY: Mr. President. I want this on.

ACTING PRESIDENT KUHL: Hold up just a minute.

Senator Daly, the Chair recognizes you. You have the floor, sir.

SENATOR DALY: As I was saying, Mr. President, this is an explanation of the relationship established between the -- by the constitution between the Legislature and the executive branch that is absolutely incredible. I don't believe that any person in this house will tell me that the executive branch has the right and the power to send us a note and say you will meet on such and such an issue on such and such a day. I take strong exception to that, Mr. President. I would like to see, if I may, I will give all of my colleagues on the other side all the opportunities in the world to present me with evidence in days to come of why this holds true.

One other question I was going to ask the Senator. When does a house become a house? When does the Senate officially become the Senate? When it was 25 members in attendance? No, Mr. President. The Senate is not the Senate, is not convened, unless it has 31 -- 31 members. And our constitution calls for, as we said before, that both houses -- both

houses -- will convene in joint session.

I read that, Mr. President, to mean the Senate goes in as a house, and that's what Senator Marino was trying to tell our colleagues on the other side; that if we convene tomorrow without the Senate as a house, unless 31 members of the Senate are in that other house, what will be done tomorrow will not be done by a joint session of both houses because one house will not be there. And you can have 127. You can have 150 votes. But if this Senate Majority is not in that other chamber, you will have an illegal session.

I'm not finished, Mr. President, because I've been insulted and I'm upset.

I have been accused of being a racist because I stand on principle. I have been accused of not acting -- of acting now, why haven't I acted in ten years? But I have a problem. See, I have a problem that has just arisen out of the hearings, and I read the hearings, Senator. And that apparition, Mr. President, is something called social

engineering.

I haven't had to face that too much in the last ten years. I haven't heard too much about it. Our present Comptroller did a pretty good job of investing the people's money, the pensioners' money. And I'm sorry.

I will not yield, Mr. President.

I'm sorry. That concerns me. You are literally attacking one of my principles. I take exception to be called a racist because I have a problem with that. I believe -- and I read -- I got this problem by reading what was said by the people who were interviewed and by Mr. McCall, for whom, by the way, I have absolutely great respect. I like him as a person. I respect him as a man, and let no one ever take exception to that.

But he and I have a difference of opinion, which is very important to me, because I think it's more important than the selection -- than the selection of the Comptroller; and that is, the policy we will establish, Mr. President, in the handling of those billions of

dollars that pensioners, people have invested for their future to take care of them when they are old and when they retire. And why? It is discriminatory. Why should they be held accountable? Their money. Their money, not the state's money. Why should their money be used for social engineering. That's not their responsibility. That's our responsibility as a Legislature. That's our responsibility as an entire state.

And so, Mr. President, that is why -- that's why a new apparition -- a new - we have a new awakening if I can use the Deputy Minority Leader's words that he used on us the other day. We're very concerned about that, and that's why. That's why to us the establishment of a commission to oversee the pensions is important. You see, I believe that the only criteria that should be used in determining how the pensioners' monies are invested is the safety of the investment and the return on investment.

Now, you might disagree with me.

I'm sure you do, and I respect you for it, but I would hope you would respect me for what I believe, and I take very strong, very great exception, going back to my original, on being literally -- literally, I think I was -- it was not implied. I think it was more than implied. It was used.

There were some cheap shots over there too. Cheap shots. I'm not a racist. I'll stand on my principle. This I believe in, and I don't give a damn the color of a man's skin, his religion, and whatever.

And let me go back and say, because I like this man. I like Mr. McCall. I have great respect for him. I might agree with you he'd be a good appointment. I'm not going to say that for the record. But let me tell you this. I think we stand on very substantial ground, Mr. President. The Senate is right.

I respect the integrity of this house. I know you do on that side of the aisle, but that integrity has been violated. The executive branch has spoken ex cathedra, and it

said from on high that you will meet. You will meet.

I refuse to listen to the executive branch, Mr. President. This is my house. This is my branch, and I'm going to defend it.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: Will the gentleman yield to a question?

ACTING PRESIDENT KUHL: Senator Daly, will you yield to a question?

SENATOR DALY: Yes, sir, I will.

ACTING PRESIDENT KUHL: Senator Daly yields.

SENATOR GOLD: Senator Daly, I thought I heard you say that we could not have a meeting unless there were a majority of the members of this house present.

SENATOR DALY: Yes, sir, you heard me say that.

SENATOR GOLD: Was that your

comment?

SENATOR DALY: Oh, you can have a meeting. You can have a meeting with no one from this house present. I would sincerely question the legality of that joint session in this case.

SENATOR GOLD: If the Senator will yield to a question?

ACTING PRESIDENT KUHL: Will you yield, Senator Daly?

SENATOR DALY: Yes.

SENATOR GOLD: Senator, let me read you just a couple of sentences. I think it's only one sentence from the court's decision in Krupsak -- in Anderson versus Krupsak, 1976, Court of Appeals, "to require that a majority of each house be present at a joint session would permit the statute to be too easily frustrated particularly as here were or an originally dead locked result from a political division of the house."

Senator. Senator, forgetting the issue of calling the session, won't you at least

concede to me that if the session is called properly -- get past that -- that at that point we're meeting as one house and a quorum is a quorum? I mean the Court of Appeals couldn't have made that any clearer; otherwise, a minority of the 211 votes -- and you will accede to me, I'm sure, that 35 people here is a minority of 211 -- would be able to frustrate everything else by just not showing up?

SENATOR DALY: That's the end of the question.

SENATOR GOLD: Yes.

SENATOR DALY: Mr. President. The Senator uses apples and oranges, talking about a completely different case. It's a completely different situation dealing with the Regents. It does not apply in this case, and I don't believe he can legitimately use that as an excuse and to tell us that if they meet tomorrow without a majority of this house in attendance that that will not be an illegal convocation.

SENATOR GOLD: Will Senator yield

to a question?

ACTING PRESIDENT KUHL: Senator Daly, will you continue to yield?

SENATOR DALY: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR GOLD: I have just one more question here, and then I have one other, if you don't mind. Senator, I'm not getting involved in how the meeting occurred with the Regents or anybody else, but the court is making a different ruling here. The court is saying that once you are meeting at one house, no matter where you come from, if you were to require -- and that's what Warren Anderson argued. Warren Anderson said you can not have a session unless there is a majority of our house that concur. And the court said no, no. Once you have a session, you can't be in a position where 35 people can frustrate a legally called 211-person session.

SENATOR DALY: Mr. President.

SENATOR GOLD: Yes.

SENATOR DALY: May I ask -- but the contention I'm making, Mr. President, is that this meeting is not legally called.

SENATOR GOLD: Senator, that's another issue. Another issue.

SENATOR DALY: Okay.

SENATOR GOLD: My last question, Senator Daly, is simply this. You said, and I'm glad you said it, that with regard to the pension fund there are people whose lives depend upon it, people who in their old age depend upon it, and they shouldn't be concerned.

Doesn't it bother you, Senator, having said that, that your Majority Leader is trying to pass a bill which gives those people nothing to say about it, that would create a board where the Governor and the Comptroller and two political leaders of the Legislature have the appointments, and none of the labor organizations or the municipalities are involved? Isn't that directly contrary to your philosophy?

SENATOR DALY: Mr. President.

It's certainly not contrary to Senator Gold's because he's about to select one who will not be elected by the people.

SENATOR GOLD: It's according to the constitution.

SENATOR DALY: I'm not finished answering my question. No.

Mr. President, I do believe the Comptroller will play a very vital role in that group. I believe for this reason. But for other reasons which I will not refer to at the present time because they entail some other problems that I see that I believe that a commission so established would be in the best interests of the people and do a better job in protecting their interests.

SENATOR OHRENSTEIN: Will you yield, Senator Daly?

ACTING PRESIDENT KUHL: Senator Ohrenstein. Senator Daly, do you yield to Senator Ohrenstein?

SENATOR DALY: Yes.

SENATOR OHRENSTEIN: I certainly

listened to your impassioned plea about your principles and your deep belief, and I don't question you.

SENATOR DALY: I have respect for you, too, sir.

SENATOR OHRENSTEIN: Tell me how come, then, if you have such intense need to protect the pensioners, which we all agree on, how come this house has never passed a bill which would change the methodology by which that protection is effectuated? Never.

SENATOR DALY: Mr. President. I wish we had. I wish we had.

SENATOR OHRENSTEIN: Why did you wait -- forgive me. Why did you wait until we came up with a candidate?

ACTING PRESIDENT KUHL: Senator Ohrenstein.

SENATOR DALY: Mr. President. I did not wait.

ACTING PRESIDENT KUHL: Senator Daly, will you yield to a question from Senator Ohrenstein?

SENATOR OHRENSTEIN: I apologize.

SENATOR DALY: I did not wait. If you will note, sir, go back in your mail, and you will find out. You will find a notice that we were trying to hold a hearing on exactly that question. I have been talking about this thing for quite a long time. You have to take my word for that, but the fact that we tried to establish hearings just for that very question of questioning what criteria should be used in the determination of how the people's money should be invested.

SENATOR OHRENSTEIN: May I ask you to yield one more time?

SENATOR DALY: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR OHRENSTEIN: I certainly don't question your sincerity, and I don't question that you called the hearing, and I don't question that you sincerely wish to do this. All I know is for all these years it hasn't been done. Why do you think it's going

to be done before we select the next Comptroller pursuant to law?

SENATOR DALY: Mr. President. As I said, I thought, when I was speaking before that truly the question of social engineering in the use of pension funds has become -- has become a major issue that was not there before. This, above all, has caught my attention, and certainly made me aware of something that perhaps subconsciously I was aware of before, but now I really am aware of a significant problem that I can see occurring unless we take action.

ACTING PRESIDENT KUHL: Senator Lack, on the resolution.

SENATOR LACK: Thank you, Mr. President. Senator Gold, I listened to your recitation of the sentence in Anderson v. Krupsak and, indeed, Senator Gold, you are correct, particularly when you say "frustrate the statute," and the issue in Anderson v. Krupsak was not holding the joint session on the day certain called for, for the election of the

Regent, frustrated the statute.

So any member of this body or to any body, I ask you what statute, with what day certain is being frustrated using the Anderson v. Krupsak doctrine for the election or appointment of a new Comptroller of the state of New York. Certainly not Public Officers Law Section 41 which doesn't provide a day certain. So it is totally distinguishable.

What do we have here? We have, I assume -- and if the Senate Minority was not included in the meetings, I guess it's because your colleagues in the Assembly kept you out of the loop. Well, if they kept you out of the loop, I'm sorry. But, obviously, there were some secret meetings that took place between the Assembly and the Lieutenant Governor of this state. Now, maybe you knew about it and maybe you didn't know about it. But since I and only some of my colleagues got a piece of paper that was jointly signed by Speaker Weprin and Lieutenant Governor Lundine, at least the two of them knew they were signing the same piece of

paper. I'll assume that all of you knew, as well. Now, if that's the case -

You knew? Thank you. Senator Ohrenstein and Senator Gold are indicating that they knew.

Now, if that's the case, why was Lieutenant Governor Lundine utilized? Obviously, you picked up Anderson v. Krupsak and said, "oh, look, we don't have to go to the Senate Majority. We can, using Anderson v. Krupsak, a case involving a Regent with a statute that sets a day certain for a joint session, utilize that and ignore, ignore the Majority, ignore the Senate."

Now, I can't really blame Speaker Weprin. He is Speaker of the Assembly. I don't even know how much I can blame Lieutenant Governor Lundine, because he is the Lieutenant Governor and a member of the executive. But for shame, my colleagues in the Senate Minority, if you certainly wanted to not frustrate the statute, Senator Gold, but frustrate the institution of the Senate of the state of New

York.

I listened to Senator Dollinger. And I remember last week, Senator, in another debate -- excuse me for not remembering the bill -- that you prided yourself on being a constitutional scholar. I am not, so you will have to forgive me, Senator Dollinger, if I don't get it all correctly.

But as I read Article IV, Section 6 of the constitution of the state of New York as to the powers of the Lieutenant Governor, it says, "He shall be the President of the Senate but shall have only a casting vote therein." Now, Senator Dollinger, since I'm not a constitutional scholar and you are, I assume, other than that sentence, you can point to me some place in the constitution that further defines the powers of the Lieutenant Governor in terms of his ability to be President of the Senate. I assume, Senator Dollinger, that you can find, because I can not, some other section in the constitution of the state of New York which delineates the duties of the Lieutenant

Governor, when he serves as President of the Senate, other than what the sentence says after the word, "but shall only have a casting vote therein." Because as I read that, Senator, it says, Lieutenant Governor, you can call yourself President of the Senate. You can sit up there, but the only thing you can do in this house is have a casting vote therein.

And then, Senator Dollinger, as we look at Article III, Section 9 of the constitution, it says "Powers of Each House." Let me read it for you, if I may. I know as a constitutional scholar, you know it far better than I do. But for those of us who are not, I'd like to read it, anyway. "A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings and be the judge of election returns and qualification of its own members; shall choose its own officers," oh boy, "and the Senate shall choose a Temporary President, and the Assembly shall choose a Speaker."

I got a piece of paper

yesterday. On one side was the signature block of the Speaker of the New York State Assembly. On the other side was the Lieutenant Governor purporting to act as President of the Senate.

No, I won't yield right now, Senator. You will get your time in a moment.

Purporting to act as President of the Senate. I can only assume by that that somebody or some bodies made a decision that equates the powers of the Speaker of the New York State Assembly with that of the President of the New York State Senate. That, Senator, is not my reading of the constitution, specifically where it says the Assembly shall choose a Speaker and the Senate shall choose a Temporary President. Obviously, and this was last done in 1938 and amended in 1963, so obviously in our last two constitutional conventions, both, this particular section was looked at. Obviously, the framers of that section of the constitution were equating the Speaker of the Assembly with the Temporary President of the Senate, and it's those two signatures that are required to cause

a joint meeting to both houses.

Obviously, since Senator Ohrenstein and Senator Gold were part of the papers and the meetings that were then sent to every member of the house, you all would agree that to have a joint meeting of the Assembly and the Senate, the Senate has to be called to that meeting. And I defy any of you to show me where in the constitution it is the power of the Lieutenant Governor of this state, acting as President of the Senate but only doing a casting vote therein, it gives him the power to call a joint session involving this house and encumbering the majority of the members of this house to a meeting. Wherein, Senator Gold, if it actually did take place and everybody was there, conceivably there would be an arguable precedent as to Anderson v. Krupsak, but it's not taking place.

It's not taking place because we're not there, and we've announced we're not going. And it's not out of disrespect to Carl McCall. It's out of disrespect to the manner by

which the Democrats in the Senate and the Assembly and obviously in the executive decided to call the meeting. There was no announcement by Speaker Weprin, "Senator Marino is refusing to come to a meeting, therefore, I have to look for an alternative to have a joint session in order to get Carl McCall installed as Comptroller of the state of New York as soon as possible."

I have been up here all week. Did I miss that press release? Did I miss that statement from the Speaker in which he said we can not deal with the Senate Majority Leader; therefore, I have to look for alternative means?

Senator Ohrenstein, did you call the Senate Majority Leader and say, "I have been informed by the Speaker that the houses cannot reach agreement on when or how to have a joint session; and, therefore, we are looking for alternative means?"

Senator Gold, did you? Both of you have indicated you knew about this manner by

which this session was going to take place.

Did anybody bother to call the Senate Majority Leader and say, "You're being obstructionist; you're not acting in good faith, you are not doing anything; you are not coming to a joint session that we want to call on Wednesday?"

No. No. All you did is tiptoe in secrecy in to the Lieutenant Governor and say, "Here, Lieutenant Governor Lundine. Sign this piece of paper and we'll Xerox it, and we'll send it to everybody, ha-ha-ha. They're going to come to a joint session."

And that's what this session this evening, unfortunately, at 11:15, is about because of the procedures you felt like adopting as you, thinking this is some kind of unicameral Legislature that we're going to be called into joint session without proper action involving the Senate.

There's nobody in this Senate that is objecting to a proper call for a joint session. Nobody is not acknowledging. We've

all read the newspapers. We all know how to count. We've all waited with baited breath, just as you have for Speaker Weprin to announce his choice as Comptroller of the state of New York. We understand that. We're not saying we wouldn't be there. We're just saying that in order to be there, you're got to agree with the Senate and call a proper joint session.

So it's not woe be unto us that we're trying to damage the credit rating of the state of New York. We didn't slink into the Lieutenant Governor's office and hand him a piece of paper to surreptitiously sign and to be secretly Xeroxed and sent to only some of the members in the Majority, but not all, in this house. That was not our doing. That was your doing, or at least your participation in how it was done.

We stand ready under proper call and to preserve the integrity of this institution, the Senate of New York, to have a joint session with the Assembly and to elect the next Comptroller. And we're all here and ready

to do just that but under the procedures that are proper for this house, not just for you but for this house, all of us, you and us.

And when that happens, we're happy to have a joint session. Until then, you're right, there is a problem. There is a problem because this resolution says, in our opinion, the confirmation of a Comptroller not called as to a proper call for a joint session is without legal merit and is null and void; and further, that actions taken by that person, regardless of who he or she may be, is without legal effect. And yes, that raises some very serious legal questions, and I would hope serious enough legal questions that Speaker Weprin and Minority Leader Ohrenstein would cut it out, would cut it out, and say to the Temporary President, the duly elected Temporary President pursuant to the constitution of the state of New York of the New York State Senate, "Let's have a proper joint session." Let's get together. Let's have that session, and let's elect, according to the rules of the joint

session, a new Comptroller of the state of New York that all of us can take pride in that it was properly done, not slinking around and doing it behind closed doors in secret.

SENATOR TULLY: Mr. President.

ACTING PRESIDENT KUHL: Senator Tully, why do you rise?

SENATOR TULLY: Will Senator Lack yield?

ACTING PRESIDENT KUHL: Senator Lack, will you yield?

SENATOR LACK: Yes, Senator Tully.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR TULLY: Thank you, Senator. Mr. President. Senator Lack, you are familiar with the resolution before us this evening?

SENATOR LACK: Yes, I am.

SENATOR TULLY: Is there anything in the resolution dealing with a vacancy on the Board of Regents?

SENATOR LACK: No, Senator, there is not.

SENATOR TULLY: Does it deal with a joint session for the purpose of filling a vacancy in the office of state Comptroller?

SENATOR LACK: Yes, pursuant to Section 41 of the Public Officers Law and the constitution of the state of New York.

SENATOR TULLY: Senator Lack, I know you are familiar with the rules of the Senate, are you not?

SENATOR LACK: Yes.

SENATOR TULLY: There was some reference made earlier to the effect that we should respect the law as members of this body. Some reference was made, I take it, that we also respect the rules of this house.

SENATOR LACK: Correct, Senator.

SENATOR TULLY: Are you familiar with the rules of this house?

SENATOR LACK: Yes, I am.

SENATOR TULLY: Did you know, Senator Lack, that you previously made reference

to the state constitution and the powers of the Lieutenant Governor in this house, and did you know that in Rule I, Section 1, exactly what you mentioned in the state constitution is contained here in the rules of the house; that the Lieutenant Governor of the state shall be President of the Senate but shall only have a casting vote therein? Did you know that, Senator?

SENATOR LACK: Yes, I did, Senator.

SENATOR TULLY: I am glad that everyone else knows it now, too.

Thank you, Senator.

SENATOR LACK: Thank you, Senator.

SENATOR DOLLINGER: Will Senator Lack yield?

SENATOR LACK: Yes, Senator Dollinger.

SENATOR DOLLINGER: The provision of the constitution that you cited, Senator Lack, and the provision that was just read by

Senator Tully, as I understand it, under your interpretation, provides that the only thing in the Senate the Lieutenant Governor can do is cast a vote in the case of a tie. Is that correct?

SENATOR LACK: That is the provision I read, Article IV, Section 6.

SENATOR DOLLINGER: Okay. Just for my edification, and the question is, where does he get the authority to preside at the meetings?

SENATOR LACK: Excuse me?

SENATOR DOLLINGER: Where does he get that authority, do you know?

SENATOR LACK: It's in our rules and which he can do as President of the Senate.

SENATOR DOLLINGER: It's also contained in the New York State constitution, is it not?

SENATOR LACK: Only the -- well, Senator, I quoted you the one sentence in the New York State constitution. I acknowledged - wait a minute, Senator, I'll finish the answer.

I acknowledged your status as a constitutional scholar and asked if you knew any other sentence in the constitution that pertains to the powers of the Lieutenant Governor other than that sentence. Since I only know that one sentence, unless you know something I don't, that's the sentence.

SENATOR DOLLINGER: My question again, Mr. President, through you.

ACTING PRESIDENT KUHL: Do you continue to yield, Senator Lack?

SENATOR LACK: Yes.

SENATOR DOLLINGER: Where does he get the power to wield the gavel in this chamber?

SENATOR LACK: From the rules adopted by this house.

SENATOR DOLLINGER: And they are identical to the constitution, are they not?

SENATOR LACK: Excuse me?

SENATOR DOLLINGER: They are identical to the constitution, are they not?

SENATOR LACK: No, the rules are

not identical to the constitution. The only thing that's identical to the constitution is the section Senator Tully just quoted to me which quotes in our own rules the constitution. Other than that, our rules are our rules. I believe Rule II would help you.

SENATOR DOLLINGER: Senator Lack yield?

ACTING PRESIDENT KUHL: Senator Lack, do you continue to yield?

SENATOR DOLLINGER: You are not aware of anything that further restricts any power the Lieutenant Governor would have as the presiding officer of this chamber, are you?

SENATOR LACK: Yes. The rules of this chamber restrict the power of the Lieutenant Governor.

SENATOR DOLLINGER: Again, through you, Mr. President. Can you just tell me what specific rule?

SENATOR LACK: Rule II and every rule restricts the powers of the Lieutenant Governor as to how he shall preside, what he

shall do. Senator Dollinger, this could really probably go on. We've had all sorts of challenges. There are bodies of law based on precedent and rulings by Lieutenant Governors which bind them as presiding officers, et cetera. There are all sorts of -- there are ways in which Robert's Rules of Order when there is no specific rule takes over, and it requires the conduct of this house. There are all sorts of rules. There were even proper dress codes which existed at one time in this Senate, which obviously are not followed now for which I assume the Lieutenant Governor, acting as President and standing up there, threw somebody out of the chamber because they weren't in a morning coat or something.

But, in any event, Senator, it's all done through the rules of this chamber which, by the way, Senator, is adopted by this chamber.

SENATOR TULLY: Mr. President.

ACTING PRESIDENT KUHL: Senator Tully, why do you rise?

SENATOR TULLY: Will Senator Lack yield?

ACTING PRESIDENT KUHL: Senator Lack, will you yield to Senator Tully?

Senator yields.

SENATOR TULLY: Senator Lack, is there anything in the rules of the Senate that gives the Lieutenant Governor the right to convene a joint session of the Senate and the Assembly?

SENATOR LACK: No, Senator. In my opinion that would violate Article III, Section 9, of the constitution.

SENATOR TULLY: Thank you, Senator.

ACTING PRESIDENT KUHL: Senator Padavan, why do you rise?

SENATOR PADAVAN: Debate began at 9:22. If I look at that clock, it's 11:22. I'm therefore moving to close debate.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Yes, Senator Gold, why do you rise?

SENATOR GOLD: Just to really urge Senator Padavan not to do it. Because if we are really going to go that way when there is just a few more people to speak, that motion is going to take a slow roll call with everybody explaining their vote, and it would be a lot longer than just letting this important debate go to a natural conclusion.

I don't want to do that, Senator Padavan. People have spoken and have had the attention of the floor, and they've done what they've got to do. I would like to respect the people who may be on that list who haven't done it. So I'm asking you as a gentleman to withdraw that request.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan, this is a motion that's made if you continue to offer it that is non-debatable. You understand that.

SENATOR PADAVAN: Exactly. And what I would like to suggest, Mr. President, having made the motion, that while it's true

that during the course of a vote, members will have an opportunity, Senator, to speak as they obviously have the right to do. However, it's not my desire to prevent anybody from being heard, but I do feel that this issue has been discussed fully.

I will withdraw my motion, but I do reserve the right to present it again.

SENATOR GOLD: Appreciate the courtesy.

ACTING PRESIDENT KUHL: Continuing on the list, the next speaker that the Chair has is Senator Galiber.

SENATOR GALIBER: Thank you, Mr. President. I will attempt to be brief.

This is a sad evening and almost a very sad morning for us. Senator Daly, you talked about the house. There are those of us here like Senator Marchi and a few others of us who remember when this house was truly a home. That doesn't exist any longer.

I'm concerned about gimmicks. I'm concerned with what type of message we will

be sending out to this great state of ours. Senator, we know that this cauldron of racism does, in fact, exist in this great state of ours. You just pick up the papers any day, any day of the week, and you can see this.

But can you imagine the message that we are sending to New York State residents? That here for the first time in the history of our state, we have a man of color, with dignity and distinction, a man who is a minister, a man who was an ambassador, a man who shared this chamber with us with dignity when it was, in fact, a home, a man who was president of the board of education, a man who is vice-president of one of our major institutions, banking institutions, in this state.

Troubles me, Senator Marchi, troubles me, colleagues. The message that is attached to it, that when this man and those who believe, that work hard to make a success of yourself and we will adopt you and we'll see to it that you progress, we're sending a message if your skin color isn't white, we're going to

change the rules and that's what we're attempting to do here, change the rules.

I'll leave the constitutional arguments to those who are better qualified to do so, but I've been here long enough to know that we can use arguments as shields or swords. Constitution included. We can either hide behind it or we can cut you up with it, and I fear that these arguments tonight will be interpreted merely as just loose conversation by those here in this house and the other house. But to the general population, what it's going to mean that this body, this institution, is saying to the entire state of New York, to those who slowly come through the system, that if you make it we're going to change the rules.

That is my feeling, and racism is something that we throw around from time to time and like sexism and age-ism, it's tough to accept and collectively this will be interpreted as a racist act and racism is a pejorative adjective which calls on some bad connotations. It says that those of a certain race believe

that their race is better than some other race. It differs from racial discrimination. Racial discrimination is a mere practice, a practice of something that you do not like, and I speak to you because I love most of you. I used to love you all, but some have become so ugly I can't find any love any longer. But most of you I do.

I would like to sit in, if you will, not tap your conversation, those who stick their chest out and say "I'm not this" and "I'm not that," just to sit in on your conference, but not the skin color, neutral, and to hear what you say about those of us on this side of the aisle who are with color and when the good Majority Leader -- good friend and love him - suggests that this has been out for three or four days, the fact that we were going to object and Senator Gold hit it on the head when he said that you are shrewd political persons, not politicians, shrewd political persons.

I know how to put something out if we know the count, if there's going to be two

or three persons in that race, you can put it out very easily, the message, colleagues, that we're sending out is so horrible, so very horrible. I sat here and listened and I was going to waive, very frankly, but I was hoping that something would come out in the course of the discussion, of the debate, because there's one or two alternatives here.

Either you are bitter enders, but you're sore losers, as you know, because you've been in the Majority so long that you don't know how it feels to be in the Minority. I've been here 20-some-odd years in a double minority, black and a Democrat. You don't know, and I was hoping that as this debate went on, that we would really be able to accuse you of being bitter enders. It hasn't developed that way.

Unfortunately, how it has developed that you are sending a message out with a qualified person, with all the credentials and all the background who incident ally happens to be black African-American. You're sending out a message. When it gets into

the position where that person gets in or she gets into a position, let's change the rules.

Colleagues, the battle ribbons of earlier wars will not win the battles of the day. Things are changing, and we are negatively contributing to the racism that exists in this state of ours and our country, in our cities where racial hatred has all of a sudden sprung up again. You're ig... pardon me; you're ignoring this factor, through the children that are not being educated who listen to us.

The daughters day last week, wouldn't it be shameful if those daughters that we brought here last week were sitting here this week? What a shame! What a shame! The old TV program we see in New York, Shame on You, Shame on You. Because of the message.

So, Senator Daly, I recall when this house was a home, when this house was a home, when the Earl Brydges and the ghosts of Brydges and the ghosts of Zaretzki and the ghosts of other leaders here floating around tonight, and they're saying the same as I am

saying. Shame on the institution, because that's what this was, an institution.

It is no longer that. It is little tricks of groups of persons, and I've always said this, and I still say this, individually I have not a problem with anyone on that side and a few on this side. It's collectively where I have the problem, collectively, because collectively we do some bad things.

So, ladies and gentlemen and colleagues, this is a sad, sad day because all these things that I have mentioned do exist. Racism is alive and doing well. Racial discrimination is still a practice and doing horrible, and to hide behind some procedural process, a Constitution -- when, for heaven's sake, have we ever been concerned in the 25 years that I've been here about a Constitution? We say, Let's pass it and test it. If need be, we'll amend it.

Why is it then, colleagues, that when we have a qualified person, a minister, an

ambassador, a former colleague, a president of a bank, president of a board of education, we can't say, let's put him in and then let's go to court. Why can't we do that? Know why? Because, unfortunately, it wasn't the first thought that I would believe that you were just suffering because you were in the minority, you won't do it because of the nature of the person who is to be put in there, and that's the horrible message, whether in your heart's heart, you mean to do so or no, the message that you are sending is a horrible, horrible message for the future.

Please, colleagues, if this is not the way you wish to go, put him in. Then go to court and at least that would be following the same procedure that you have talked to or talked about so very long.

Thank you for your time.

SENATOR VELELLA: Senator Galiber yield?

ACTING PRESIDENT KUHL: Senator Galiber, will you yield to Senator Velella?

SENATOR GALIBER: Colleague from Westchester County any time.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR VELELLA: From Bronx County, Senator; let's not forget our roots.

SENATOR GALIBER: You're the one who forgot my roots last time, not me.

SENATOR VELELLA: Senator, I'm a little surprised at what I hear you saying to night and I'd like to ask you this question: Do you honestly in your heart believe that the colleagues you've spoken about individually on this side of the aisle who occasionally have helped you along and some of your other colleagues on that side of the aisle actually made the decision based on Carl McCall's race that they were going to take this action, or do you believe it would have happened either way?

SENATOR GALIBER: I'm saying that individually I would be even further saddened if we can pick out individuals, at least those who are quiet about it, individuals again I'm not

too concerned about, but collectively, because, Senator, what you have really said is that some of my best friends are, haven't we helped you?

SENATOR VELELLA: Therefore -

SENATOR GALIBER: Let me finish. You asked a question; let me finish, and that's an old lousy cliche of purposes -- persons who don't understand. Some of my best friends are -- I have a next door neighbor, I can eke out a little love, but not when you come next door to me, live down the block.

Whether you help me or not, it's been a mutual understanding. I've tried to help you; I don't mean you personally but in the general sense. We don't have the votes over here to help you. We don't have the votes.

Senator, I mean we won't get into it. We went to a committee meeting today and they said, Where does non-participation -- I'm running off a little bit -- and they say this is the last day, next week, for bills. I looked at the calendar, there is not a Democratic bill there in all the committees.

You had -

SENATOR VELELLA: Senator, that was white and black Democrats, correct?

SENATOR GALIBER: Senator -

SENATOR VELELLA: White and black Democrats didn't have any bills on; right?

SENATOR GALIBER: Senator, wait until I finish. I can't out-talk you.

SENATOR VELELLA: Yeah.

SENATOR GALIBER: Maybe I can, yeah, but let me finish. Let me finish.

The fact of the matter is that was all a bit off the track. But there's not a participatory involvement here.

But back to your question. Senator, I'm not talking individually. If the shoe fits, wear it. Secondly, I'm your best friend, but don't use me as a black, say some of my best friends are, I've helped you and it borders -- borders on being racist. Borders, not actually but borders, comes closer to racial discrimination perhaps.

I hope that answers your

question, Senator.

SENATOR VELELLA: Well, Senator, I'm going to try to ask it a different way.

SENATOR GALIBER: Please do.

ACTING PRESIDENT KUHL: Do you continue to yield, Senator Galiber?

SENATOR GALIBER: Sure.

SENATOR VELELLA: Do you believe that the same action would have been taken by the Majority in this house had Carol Bellamy been the nominee, or do you really believe that it's only because it's Carl McCall?

SENATOR GALIBER: I believe, very frankly, that the procedure that you're taking now could have very well have happened as far as Carol Bellamy is concerned.

SENATOR VELELLA: Thank you, Senator.

SENATOR GALIBER: Very welcome.

SENATOR VELELLA: That's the only point I want to make, Senator. That's the point. I appreciate that answer.

SENATOR GALIBER: It just becomes

a question of intensity. I would have argued, very frankly, argued the same way only from another vantage point, because I'm certainly not female.

SENATOR VELELLA: Senator, how about one more question, Senator?

ACTING PRESIDENT KUHL: Excuse me, Senator Galiber, Senator Velella. Senator Galiber, do you continue to yield?

SENATOR VELELLA: One last question.

SENATOR GALIBER: No, no, no. When you snap your finger, I interpret that as doubting what I am and, since you snapped your finger, I don't want to yield to you right now.

ACTING PRESIDENT KUHL: Senator refuses...

SENATOR VELELLA: I snapped my finger?

SENATOR GALIBER: Yes, you snapped your fingers.

SENATOR VELELLA: That was just a thought I -

ACTING PRESIDENT KUHL: Senator Velella, Senator Galiber.

SENATOR GALIBER: Oh, if that's a thought, fine, Senator, go right ahead, ask the question.

SENATOR VELELLA: No, I went like that; I don't know whatever -- I think maybe -

ACTING PRESIDENT KUHL: Senator Galiber, gentlemen, let's get a little order here.

SENATOR GALIBER: I can't hear him.

ACTING PRESIDENT KUHL: Please, through the Chair. Senator Velella.

SENATOR VELELLA: Would you yield?

ACTING PRESIDENT KUHL: Senator Galiber, Senator Velella is asking if you yield. Do you yield, sir?

SENATOR GALIBER: Oh, sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR VELELLA: You've indicated you made the speech for Carl McCall,

and you probably would have made the same speech for Carol Bellamy because she might have been discriminated against by our side for other prejudicial reasons in your mind.

How about Joey Lentol, would you have made the same speech if we took that action for Joey Lentol?

SENATOR GALIBER: I can only deal in the world of reality. There were two contenders. Whether I would have talked the same way for Joey Lentol -

SENATOR VELELLA: I think my point is well made, Senator. You're asking for preferential treatment, in my opinion.

SENATOR GALIBER: Most of my friends who have racial tendencies usually use either "my best friends are", or your argument. Any other questions?

Thank you for your time, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: I pass.

ACTING PRESIDENT KUHL: Senator Leichter passes.

Senator Connor.

SENATOR CONNOR: Thank you. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Thank you, Senator Leichter.

SENATOR CONNOR: I will be very, very brief, but I have a few thoughts and I'll try not to repeat anything that's so -- I -- I feel superbly elucidated by the Minority Leader, Deputy Minority Leader and my colleagues here. But I'll give you a couple thoughts.

You say how can this Senate meet anywhere without a Majority voting to do so or the Temporary President acting? Well, you know, we all take an oath. We swear to uphold the Constitution of the state of New York and to follow its laws. We read the Constitution and every two years after an election, the Constitution tells us we have to be up here on a Wednesday early in January. We all get here. We don't have a Majority Leader then. We don't

have a Secretary of the Senate. We don't have a Sergeant-of-Arms. But we arrive here and when 31 people show up, the Lt. Governor pounds the gavel, not by leave of a Majority Leader, not by leave of any other official in this Senate. He stands up there, when he sees 31 members, he calls the session to order because the Constitution makes him the presiding officer, and the Constitution says we ought to meet and certainly a quorum of this body recognizes their own responsibility as Senators to come to the meeting, come to the session and then, when we've come together in a quorum and the Lt. Governor has called us to order, only after that do we adopt rules, elect a Majority Leader, elect a Sergeant-of-Arms, elect a Secretary and have officers as a house, and for those first few days in January, this Senator has -- this Senate has but one officer, the Lt. Governor.

SENATOR DALY: Mr. President.

ACTING PRESIDENT KUHL: Senator Daly.

SENATOR CONNOR: When I'm

finished, Mr. President.

ACTING PRESIDENT KUHL: He refuses to yield.

SENATOR CONNOR: Now, just the thought, you know, before there's a Majority, there's a Senate, you know. Someone said earlier we've got this notice commanding us to go. Well, no one in this state or in this Legislature has gotten a notice commanding anything since they threw out George III.

You got an announcement putting you on notice that legislators are meeting, and you know what? If less than 106 members show up, I agree there's no meeting, but you all know where it is. You all got a notice of the time and place, just like you get from reading the Constitution. Nobody sends you a letter and says you got to be here in January, you know that's the day, and if a quorum shows up, you have a legal meeting, and I suggest to you that if a quorum doesn't show up tomorrow, you don't have a legal meeting. If a quorum does show up you do have a legal meeting, and the fact of the

matter is that's what the notice is, an attempt to let everybody know, if enough people show up, if everybody shows up we do have a meeting and nobody is excluded. Every member can show up.

Now, we hear all this stuff. Now, I've been ranking member on the Civil Service and Pensions Committee for fifteen and a half years now and you know last year the Rules Committee, not at the behest of anyone on this side of the aisle, but last year the Rules Committee put in this bill -- your Rules Committee; Senator Marino is the chair, I believe -- put in a bill providing for a board to make the investment decisions of the pension fund.

What did you provide in your bill? The Comptroller would be on it, three appointees by the Governor, confirmed by the Senate, who represent labor unions and three appointees by the Governor, confirmed by the Senate, who represent management, you know, the counties, state government, the people on the other side of the aisle -- other side of the

bargaining relationship.

This was your bill last year, your bill, and we know year after year after year virtually every year of Ned Regan's reign there, the Assembly passed a bill saying, Hey, a sole trustee, 52-, $55 billion.

Let's have some collective wisdom there, let's give representatives of the workers whose pension money it is, and of the localities and the state government who put the money in there pursuant to negotiating and the pension plans that we enact, let's give them all a say, and then we hear in the last few days that you want to entrust our workers' pensions to the appointees, not by confirmation of the Senate, not officers appointed by the Governor confirmed by the Sen- ate, which gives a certain independence to an officer, but to the designees, the represent- atives of the Speaker, the Majority Leader and the Governor, the three people who balance our budgets every year, the three people who frantically look around for a couple hundred million dollars here and there,

the people who sold bridges, highways and prisons to balance the budgets.

My colleagues, do you really want to give -- and I don't -- I don't refer to Speaker Weprin or Senator Marino or Governor Cuomo, institutionally. Do you want to give whoever holds those three offices the right to invest $55 billion in our workers' money? They'll invest in prisons. They'll buy highways from the state. They'll buy toll bridges from the state. Ah, what a great investment, a cash cow. Oh, gee, they bought the bridge for several hundred million dollars; the budget is balanced this year.

Do you really want to do that? Do you think the people of this state want you to do that? Do you think the workers and pension participants want you to do that? Do you think the unions want you to do it? You think your counties trust you to do that, to give those three officers with their designee, you know, hire and fire him if he doesn't do what you want? Do you really think there's any public

support? Do you think there's a economist, a financial manager on Wall Street, is there a sane person in this state who wants to give those three people $55 billion to invest?

It's incredible. I can't believe it, and that's not an aspersion on them. They have other responsibilities like balancing the budget. Gee, we're a billion dollars short. Just think how easy those billion and two billion and three billion shortfalls would have been if the people who cut up those budgets had control of $55 billion dollars.

What did we do last year? Let's see, we made the Port Authority buy a parking lot from the racing, told them they had to sell it or we'd fire them, and we sold some highways and prisons. You think about that.

Senator Daly is worried about whether the prudent investor standards are going to apply to the incoming sole trustee. I ask you, does anyone think the prudent investment standard applies to this Legislature and its leaders when they have to balance the budgets?

Or the Governor?

Now, I -- by the way, Senator Daly, I sat through those hearings and I heard all the leading candidates say, repeatedly, while they would have certain concerns, McBride principles, South African investment, things that we told the Comptroller he or she has to take a look at, things that this body has told them, they all said when asked questions about social engineering with the pension funds, My first obligation is to get a return, and they said things like when people say, Well, what about environment, they said, Listen, of course, you have to look at that, because is it a prudent investment to invest in a corporation that's out there polluting the environment and potentially liable for billions of dollars in damages? They would look at it from the standpoint is that a good investment? Are you going to get -- is the money safe? Are you going to get a good return on that? Not from the standpoint of we're making a moral judgment and shut them off because they pollute.

You have to agree, you want to invest your money in a polluter, go ahead, you're not going to get much of a return down the road. They all adhered, including Mr. McCall, they adhered strictly to that fiduciary responsibility. We're not talking about a social engineer here, and anybody who sees spectres of that with respect to the pension money and, at the same time supports letting the real social engineers, the Governor, the Speaker, the Majority Leader, have control of all this money, isn't thinking too clearly.

You know, you can say, Well, the Constitution -- we agree the Constitution says this is the body that does it, but there's no time limit. There's no time limit. Is our standard under our oath of office to uphold the Constitution?

I mean that we uphold the Constitution, but only when there's a time limit? You know, we'll do our duty but only when they have a date there. If they don't have a date in the law, we don't have to do our duty.

We can slink away from it. We can duck it. We can stall. We can wait months and, you see, you're worried, you know, but this is a bad precedent.

What about the precedent? What about the precedent of conceding that in a divided Legislature, one house can refuse to meet until they're good and ready? Isn't the precedent then, Well, what do you want this time? Three, four weeks.

Well, isn't that a precedent for three or four months in some future Legislature and isn't that a precedent for waiting a year? Gee, we like the guy who's acting Comptroller better than the guy the other folks might elect.

You see, if you're worried about precedent, then the only precedent you have to establish is the Constitution says "shall", the statute says "shall", and that means you shall do it with some degree of immediacy and somebody -- look, if the date was real inconvenient and the Speaker or the Lt. Governor invited the

Legislature to join, you wouldn't get a quorum. If it was such a bad day, you worried about it falling on a midnight, Saturday night, don't worry about it, lot of people won't show up. They won't have a meeting, but the Constitution has to mean something, and it has to mean it with some reasonable degree of immediacy.

You know, if it's O.K. to let the office be vacant for a few weeks or months whatever, then why did the people who wrote the Constitution use that language, "shall appoint" a comptroller? Why does the statute say that? What you would urge would frustrate the very purpose of the stat... of the Constitution.

Its very purpose is not to let the vacancy go to the end of the term, not to let somebody else automatically succeed to the office. These things are done elsewhere in law and, if the -- if the framers of the Constitution and the people who enacted it - the people enacted this Constitution, the voters -- if they had meant to let it drift, then they wouldn't have said what they said. They had to

mean something when they said it, and we have an obligation to do our best and not to let things go.

Well, that's not very courteous to this house or that's not very nice to me or it's embarrassing to me, stand in the way of your constitutional duties. The Majority of this house has a right, if they feel they haven't been adequately consulted to say, We're insulted, we don't like this, you'll hear about more of this later. But I don't think you have a right to say, Aha! We weren't treated properly. We weren't accorded the respect we're entitled to, so, therefore, we don't have to do our constitutional duty until somebody pays proper respects to us. I don't think that's right, my colleagues.

I understand, so you feel insulted. So you're insulted. You know, I get insulted as a member of the Minority, institutionally insulted, constantly in this place for years. I don't take the attitude, well, they're insulting me so I don't have to

show up at session and I don't have to vote on things because they're insulting me and I'm not going.

You know, you can't -- the remedy for what you perceive to be the insult to you that you would impose is far extreme and I don't think it's permissible. We all have a duty to follow the Constitution, and I think that to say in the face of the Constitution which lets the Lt. Governor preside, that he's strictly a member of the executive, he's a hybrid. That office is a hybrid and it was written that way in the Constitution and that had to mean something and, as I say, we come here every two years, and he's the only person standing up there with any authority to pound the gavel on that day.

So I would urge all of you, I think -- I think you make a terrible mistake in the Majority here if you say, Well, we're not going to agree this time. We're mad, so we won't go to the meeting. I don't think the public will accept that. I don't think the

public that adopted and supports this Constitution will view that as a legitimate response to whatever you perceive to be the insult to -- to the Majority in this house in not being consulted one way or the other.

So I would urge all of you, it's getting late. I have to get up in time to be at the meeting at 10:30 in the morning, and I would urge all of you to be there and help us adopt the rules, help us elect a Comptroller. Help us fulfill the collective responsibility of the Legislature under the Constitution and laws to make this appointment.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan, why do you rise?

Senator Daly, why do you rise?

SENATOR DALY: I would ask Senator Connor to yield to one question.

ACTING PRESIDENT KUHL: Senator Connor, do you yield? He does, Senator Daly.

SENATOR DALY: Just one question. Going back to your original comments

on the powers of the Lt. Governor, Mr. President, will the Senator tell me if the -- in this chamber at that time, and the Lt. Governor is calling to order the first time has the right or the power, not the right, the power to pass one bill or make one appointment outside this house?

SENATOR CONNOR: Senator, I don't understand your question, frankly.

SENATOR DALY: Maybe he doesn't want to answer it. May I repeat the question?

ACTING PRESIDENT KUHL: Continue to yield.

SENATOR DALY: Senator was talking about the power of the Lt. Governor.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR DALY: I'm asking him one question. On reconvening on the first day, the Lt. Governor is up there and before we select our Majority Leader, can this house pass one bill or make one appointment?

SENATOR CONNOR: No, but it can

convene when the Lt. Governor pounds the gavel. The Lt. Governor has the power to preside and he has a casting vote which I've researched back to the 1890s; it was a fashionable term which political scientists used when they wrote the Meiji constitution in Japan in 1890, and modernized it, they used the identical language for the president.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan.

ACTING PRESIDENT KUHL: Senator Padavan, why do you rise?

SENATOR PADAVAN: I'm now requesting that the two-hour limit be imposed and that the debate be terminated.

ACTING PRESIDENT KUHL: Senator Padavan has made a motion to limit debate. The motion is non-debatable, non-amendable. So the Secretary will call the roll on the motion to curtail debate. Call the question on the resolution. Call the roll.

(The Secretary called the

roll.).

SENATOR OHRENSTEIN: Party vote in the negative.

SENATOR PRESENT: Party vote in the affirmative.

ACTING PRESIDENT KUHL: On the question of limiting debate, party vote in the negative.

THE SECRETARY: Ayes 35, nays 25, party vote.

ACTING PRESIDENT KUHL: The debate is ended.

On the resolution. All those in favor signify by saying aye.

SENATOR HALPERIN: Mr. President.

ACTING PRESIDENT KUHL: Senator Halperin, why do you rise?

SENATOR HALPERIN: Explain my vote.

ACTING PRESIDENT KUHL: Senator Halperin to explain his vote.

SENATOR HALPERIN: Thank you, Mr.

President.

I had intended to speak although not very much longer than I would in explaining my vote, but I somehow felt that Senator Leichter's, by passing his opportunity to speak, left a tremendous void, and I'm not quite used to it.

I was very interested in the colloquy initiated by Senator Velella with Senator Galiber, and I would, without coming to a conclusion about what might have happened, I think the argument that I heard Senator Velella making was we would have tried to have subverted this process no matter who your candidate was.

Well, that, to me, was the message that I heard, and I tend to believe it although I certainly agree with Senators Galiber, Waldon and certain others who tried to make it clear that a very bad message is being sent out that will be interpreted in a certain way.

But that, the point is that I believe that from the beginning there was never

an intent to permit this process to go forward in the way envisioned by the Constitution and by the people of this state, that there was an attitude that, if we can't have our way and if we can't get something out of this process, we're just going to try to do anything we can to upset it, and there's a doctrine in the law of equity that, when you enter into a court you must enter into it with clean hands. I don't believe you've done this.

You knew two months ago or so that the Comptroller was going to resign. From that point on, you did nothing to move the process along that could smoothly and properly and lawfully bring the new Comptroller into position, and that has been your strategy throughout.

I sat through every minute of every hearing of the Comptroller candidates. We had an open process, a good process. You could have participated and you chose not to and now you're coming in here trying to raise spurious legal arguments which I simply cannot agree with

and I would just point out that the language which appears in your very own resolution taken from Section 41 of the Public Officers Law speaks in terms -- and this has been said before -- of a joint ballot. The reference to the houses does not mean, in my interpretation of this, that each house has to act with the integrity of each house, but simply should be interpreted to mean that the members of the house shall -- of each house shall, by joint ballot, vote and if a sufficient number of members show up tomorrow morning at 10:30 and take a vote, then we will duly appoint a new Comptroller, a historical action which I personally will be proud to participate in.

ACTING PRESIDENT KUHL: Senator Nolan to explain his vote.

SENATOR NOLAN: Mr. President, I find that really this whole -- this resolution that was presented and we're acting upon tonight is absolutely on the face of it absurd.

Mr. President, could we have some order in the house, please.

ACTING PRESIDENT KUHL: Senator Nolan raises a good point. May we have order in the house, please.

SENATOR NOLAN: It's patently, on the face of the resolution, illegal. It's - it's wrong. The courts are going to quickly deal with this. Presumably you are going to go to court and you're going to lose. Very simple, you're going to lose. You don't have a prayer of winning.

But what happens if you did win? What happens if, by some quirk, that you were successful? The best you'd accomplish is delay this happening that's going to happen tomorrow for a month or two. That's the best thing that you could hope for. And what are you proving by that?

We've nominated, through a very difficult process which you decided not to participate in, one of the most highly qualified people in the state of New York to be Comptroller.

Senator Galiber touched on some

of the qualifications of our former colleague, Senator McCall, a true Horatio Alger story that a lot of you in this chamber know Carl. Grew up in poverty in the Roxbury section of Boston, went to Dartmouth College on a scholarship, graduated from Dartmouth, graduated from divinity school as a Master's and Doctor of Divinity.

High school teacher, a minister, headed up the poverty program, anti-poverty program in Brooklyn under your mayor at that time, John Lindsay. One of the founders of Inner City Broadcasting Corporation, today the single largest minority-owned communications business in the United States. Very successful business person. Elected to the Senate from Harlem in 1974; one of the four top people in the United Nations when he served as a Deputy Ambassador to the United Nations under former President Carter. A Commissioner of Human Rights for the state of New York, executive director of Channel 13 public interest tele vision station, the largest public interest

television station in the United States. For the last eight years a senior vice-president at Citicorp, the largest banking institution in the United States. At one time ran for two and a half years, their Queens retail banking division, the largest single retail banking division in the Citibank retail structure, and the last two years not only has served Citibank on a daily basis but also as an additional task having taken on the job as president of the board of education of the city of New York, the largest public education system in the United States.

And you all, for political reasons, are going to try and, at the best, hold this man off from becoming Comptroller for a month or two? The best you could accomplish. For what reason? For what reason? Because you are now in the minority for one of the few times in the 19 years that I've been in the Senate.

ACTING PRESIDENT KUHL: Senator, if you will excuse me, there is a rule that you are on the very, very close fringe of breaking.

That is a rule requires a Senator to cast his vote, explain his vote within two minutes. Now, you have now extended yourself to about three and a half. I would remind you of that rule and ask that you show the house the courtesy of complying with that rule and cast your vote.

SENATOR NOLAN: All right. Just like one final sentence and to urge my colleagues to please have a change of heart and to participate in the joint session tomorrow and elect Carl McCall as the state Comptroller.

ACTING PRESIDENT KUHL: Thank you, Senator Nolan.

Senator Smith to explain her vote.

SENATOR SMITH: Thank you, Mr. President.

Some five years ago I came to this body, and I was extremely proud to be able to sit with people whom I felt were fair and compassionate. Tonight I'm embarrassed and I'm ashamed to even think that some of you would contemplate bringing forth this resolution

because you anticipated that our nominee would either be a female or an African-American. And God forbid had the third place person who happened to have been born in Puerto Rico was our nominee.

I'm saddened that you would hope to dilute the powers of an office based on someone's sex or race or where they were born. I'm really ashamed to think that any one of you that I've oftentimes called my friends could consider aborting a process that clearly gives us the opportunity to be the shining star of all the states in this United States of America.

And I choose to answer a question that Senator Velella asked Senator Galiber: Had it been Joey Lentol, I would have fought just as hard for him if he had been challenged because of his being Italian just as I have stood for those Italians in CUNY. I abhor discrimination no matter whom it's against, and I ask my colleagues that I'd often called my friends to please reconsider tonight what you did because it will impact on the entire state of New York.

Therefore, Mr. President, I clearly vote in the negative on this resolution.

ACTING PRESIDENT KUHL: Senator Nozzolio to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

What's happened in this process that is so heralded tonight is that, during this process those participants have rejected cam paign contribution and disclosure requirements. They herald campaign election reform but when it's time to establish real reform, that's rejected.

This house debated at length and many members on the other side of the aisle rejected a referendum to get a sense of the feelings of the citizens of this state, whether they'd have an unelected Comptroller serve virtually half a term. We wanted to see what the people believed should be the next Comptroller, who the people believed the next Comptroller should be, and although passed in

this house it was rejected by a joint session.

May I continue, Mr. Speaker - Mr. President?

ACTING PRESIDENT KUHL: Certainly.

SENATOR NOZZOLIO: But let's tell it like it is: From the very onset of Comptroller Regan's resignation, you have been part and parcel of -- those who are rejecting this resolution tonight have been part and parcel of the Governor's attempt to dominate the process.

The final selection apparently is the Governor's first choice. Only a few days after the vacancy was established, the Governor said who his first choice was and surprise, surprise, even after this lengthy process, who is the Speaker's choice? It's the same individual who the Governor said from day one was his choice.

How many mirrors and smoke can you use to justify a process that's not justifiable? You had the opportunity to be part of a process, to be independent and you did not

take that opportunity. You rolled over at the first chance you had. You got rolled. The Assembly rolled this house in its attempt and you let them, you let them do that, and that's why I believe this resolution is absolutely essential and that's why I applaud it being before this house, and I support it wholeheart edly.

I vote aye.

ACTING PRESIDENT KUHL: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: This is a sad, sad day in this house because what we're doing here is trying to pave the way for an illegal meeting which would appoint a man as Comptroller.

Now, I know most of you individually now, and I know in your hearts of heart you don't mean to be sexist by this vote in not selecting a woman candidate because I know individually you would never do that and choose a man over a woman because you're not sexist. I know you're not, because I know every

one of you individually.

But we have an opportunity here, the majority population in this state to be represented in one of the highest positions as the state Comptroller, and that person could be a female. We're sending a terrible message to the community out there. I know we all understand it. We understand it, but I fear they out there, they're not going to understand it.

This person who you could have chosen was a president of the biggest city council in the whole United States except for L.A. She works as an investment broker now or in an investment brokerage house. She's a former Senator of this body, when it was a home, when this house was a home, so because of that and because it's an illegal meeting, I have to rise and vote yes.

ACTING PRESIDENT KUHL: Is there any other Senator who wishes to explain his or her vote prior to Senator Marino?

Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. I'll be very brief.

At least two points I want to make. One, we are doing the will of the people because we are here by virtue of the voting which makes us a representative body. So whatever we do regarding the Comptroller's designation is the will of the people and to characterize the action of tomorrow morning, which will certainly happen otherwise, is in disrespect of the votes which brought us here.

Lastly, you spoke of your frustration, your frustration in this one time since I've been here both in the Assembly and in the Senate, of not being in absolute control of your destiny. But think of the frustration that what you're doing this evening will mean to millions of African and Caribbean-Americans and Latino Americans in this state.

No matter how you cut it, what you're saying is that you're less and what you're saying is, even if you have a record, as does Carl McCall, you don't qualify. You're not

equal to. You're not saying it in words and substance, but you're saying it more importantly by your actions and that's unfortunate. That's very unfortunate, because there are people who go to work every day believing that, if they put their children through school, if they lead the good life, if they work hard, anything is possible and yet it is not so, because you frustrate one of the best that we have to offer and in turn frustrate all people of color in this state.

Please be mindful of that, and I encourage you to do as this African-American is going to do and vote in the negative on this resolution.

ACTING PRESIDENT KUHL: Senator Ohrenstein to explain his vote.

SENATOR OHRENSTEIN: Mr. President, to explain my vote briefly.

Unfortunately, having listened to all of this, I have to conclude one thing and I say this with respect to my friend, Ralph Marino, and the Majority Leader of this house,

and I think several of my colleagues have pointed this out.

You guys have gotten into a very bad habit, and that's because of the way this place is run, not just the Senate, the Assembly as well to a certain degree, and I've criticized this on many occasions but nothing in this place happens without being leveraged onto something else. The hostaging that takes place here, whether it's on the budget or on legislation is right; that's how we operate. Everything else is hinged on everything else. That's the habit we're into.

I think it's a bad way to go. I've said it before. It isn't just your fault, it's the way the structure works in this Legislature, and that's another issue for another day.

But what you are doing is so apparent and so patent, you can't come to -- you can not bring yourselves to agree to come to a meeting which you know will take place and, as Senator Nolan indicated, will take place

eventually, whether it's today, next week, or three months. You can't bring yourself to go to a meeting without trying to exact a price, and that's what you tried to do here.

You tried to squeeze out some bills or at least to make believe you're trying to squeeze out some bills and to put the Democrats in a position where they're against these high principles that you're espousing because they won't pass a bill today or tomorrow because it may take a little time to put these two very important measures that you have selected as being hostage on the question of a concurrent resolution.

That's what you're doing and I think you ought to stop. This is a sui generis process that happens once in a while under unique historic circumstances. You know the law requires that there be a joint meeting. How it's called we can argue 'til we're blue in the face and only some court eventually is going to decide who's right or who's wrong. But the color of right exists under the Constitution and

under the law. And so I think you make just a bad mistake in trying to leverage something onto this concurrent resolution which you believe is the only way you can call this meeting when it is clear there are several other ways that are perfectly legal and perfectly callable.

So I would just wish you would think for a moment and stop it. Let's meet tomorrow, do this in a decent way. Let's not ring up the consequences, Senator Marino, that you suggested in your own press release that show the credit of the state and other things are going to be impaired.

If that happens, the blame isn't going to fall on the Democrats. The blame is going to fall on all of us. The blame is going to fall on the way we run the state collective ly. Nobody gains by this. I don't think -- I think your strategy was ill conceived. It was thoughtless. We have time to withdraw from this kind of silly argumentative way in which we come to the conclusions, and let's finish up tomorrow, let's bring this to a conclusion.

Let's elect this very decent and highly qualified individual that the Democrats - individual the Democrats have elected to be Comptroller and let's be done with it, and let's go on with the rest of the session.

I ask that this resolution be defeated.

ACTING PRESIDENT KUHL: Senator Marino to conclude explanation of votes.

SENATOR MARINO: To be very brief, Mr. President.

I'm sorry that we're here at this hour, this late hour, because it's all unnecessary. All of this could have been avoided very simply by the leaders of the Democrat Party showing respect, Senator Dollinger. You talked about respect. I think if they had shown some respect for this house and this institution, this could have all been avoided. But to have the Speaker tell me on Monday what hour and what day we're going to meet, without suggesting that I had any input in the process, in fact clearly suggested that I

had no input in the process, is a lack of respect for this house.

For him to suggest that he's going to, or you collectively are going to sum up the rules of this procedure and as late as this afternoon dictate what those rules would be without any input on the part of this house, Senator, shows a lack of respect for this house.

I would expect more from the leadership of the Democrat Party than this type of posturing. I don't believe we should reward arrogance, and that's what you're suggesting. It's a clearly arrogant posture to tell me or this house that we must arrive at 10:30 tomorrow. I had nothing to say about it. It can't be next Monday. It must be tomorrow at 10:30 and, you know, if you just waited until Monday, this would all go away.

No. Arrogantly you're going to tell us that it must be at 10:30 tomorrow and the Lt. Governor is going to dictate that, the time and place where we're going to meet in

contravention of every rule of this house. He's done it before; he's tried to establish this precedent before, illegally in my opinion, and improperly. He's now trying to do it again in concert with the other house, and I'm not going to let it happen, because I respect the integrity of this house and everybody in it. I show respect. I would never do that to the Speaker, to the Lt. Governor or any other person elected in this state.

That's what this is all about. It's not about Carl McCall, who everybody loves as an individual. Not about him. It's about the process; that's what this is all about. It's about arrogance. It's about dictator ship. We resent it. It's illegal; it's wrong.

For that reason, I vote for this resolution and I'll ask for a slow roll call.

SENATOR OHRENSTEIN: Party vote in the negative.

SENATOR MARINO: Slow roll call.

ACTING PRESIDENT KUHL: The question is on the resolution. The question is

on the resolution. I see five Senators standing at the request of Senator Marino. A slow roll call is being called. The clerk will commence with the calling of the roll slowly.

THE SECRETARY: Senator Babbush excused.

Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

SENATOR DALY: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: No, for the second time.

THE SECRETARY: Senator Espada.

(There was no response.)

THE SECRETARY: Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Galiber.
SENATOR GALIBER: No.
THE SECRETARY: Senator Gold.
SENATOR GOLD: No.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Halperin.
SENATOR HALPERIN: No.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann.
SENATOR HOFFMANN: No.
THE SECRETARY: Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Jones.

SENATOR JONES: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

SENATOR LACK: Mr. President, I rise to explain my vote.

ACTING PRESIDENT KUHL: Senator Lack to explain his vote.

SENATOR LACK: I vote in the affirmative, Mr. President.

ACTING PRESIDENT KUHL: Senator Lack in the affirmative.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Nay.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Marino.
SENATOR MARINO: Yes.
THE SECRETARY: Senator Markowitz.
(There was no response.)
Senator Masiello.
(There was no response.)
Senator Mega.
SENATOR MEGA: Yes.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
(There was no response.)
Senator Nolan.
SENATOR NOLAN: No.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator

Ohrenstein.

SENATOR OHRENSTEIN: No.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Yes.

THE SECRETARY: Senator Paterson.

(There was no response.)

Senator Present.

SENATOR PRESENT: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Yes.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.
SENATOR SEWARD: Yes.
THE SECRETARY: Senator Sheffer.
SENATOR SHEFFER: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No, and nay.
THE SECRETARY: Senator Solomon.
(There was no response.)
Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
(There was no response.)
THE SECRETARY: Senator Trunzo.
SENATOR TRUNZO: Aye.

THE SECRETARY: Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Yes.
THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
SENATOR WALDON: No.
THE SECRETARY: Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT KUHL: Clerk will call the absentees.
THE SECRETARY: Senator Espada.
(There was no response).
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Markowitz.
(There was no response.)
Senator Masiello.
(There was no response.)
Senator Mendez.

(There was no response.)

Senator Montgomery.

(There was no response.)

Senator Paterson.

(There was no response.)

Senator Santiago.

(There was no response.)

Senator Solomon.

(There was no response.)

Senator Stavisky.

(There was no response.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 34, nays 15.

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Marino.

SENATOR MARINO: Mr. President, Senator Volker has an announcement.

SENATOR VOLKER: Mr. President, I know it's late, but I'd just like to remind everybody that tomorrow at 8:00 o'clock at St.

Mary's Church is the ecumenical memorial service for deceased legislators. I'm going to -- I'm going to be there at 8:00 o'clock, and I hope that as many members as is possible will be there and, of course, there will be the traditional breakfast afterwards. This year it will be at the Sign of the Tree since, for various reasons, we were not able to get the Green Room. So we'd appreciate anyone who can be there. This ecumenical service will, thanks to Senator Nolan, will have a rabbi, a Protestant minister and a Catholic priest and we'd like to have as many of our members there as possible.

Thank you.

ACTING PRESIDENT KUHL: Senator Marino.

SENATOR MARINO: Senator, you want to -- any Senator wish to speak?

(There was no response.)

There being no further business, I move we adjourn until tomorrow at 11:30.

ACTING PRESIDENT KUHL: Senate

stands adjourned until Wednesday, May 5th, at 11:30 a.m.

(Whereupon, at 12:29 a.m., May 5, 1993, the Senate adjourned.)