ALBANY, NEW YORK

June 1, 1993

3:16 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: Senate will come to order. Senators will find their seats.

If you will please rise with me for the Pledge of Allegiance to the Flag.

Senator Libous.

ACTING PRESIDENT LIBOUS: It is my pleasure today on Disability Awareness Day to introduce to my colleagues in the chamber the Rome School for the Deaf that will be leading us in the Pledge of Allegiance this afternoon.

(Whereupon, the Senate was led in the Pledge of Allegiance to the Flag by children from the Rome School for the Deaf, both verbally and signing. )

ACTING PRESIDENT FARLEY: In the absence of visiting clergy, we will bow our heads for a moment of silence.

(Whereupon, there was a moment of silence. )

The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Saturday, May 29. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Friday, May 28th, 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.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. Could I ask that the Secretary read Resolution Number 1589, please.

ACTING PRESIDENT FARLEY:

Secretary will read 1589.

THE SECRETARY: Legislative Resolution Number 1589, by Senators Libous, Marino, and all members of the Senate, proclaiming Tuesday, June 1st, 1993, as Legislative Disability Awareness Day in the state of New York.

Whereas, the New York State Senate Select Committee on the Disabled in conjunction with the New York State Assembly Task Force on the Disabled are sponsoring the Thirteenth Annual Legislative Disability Awareness Day.

It is the feeling of this legislative body that persons with disabilities merit our recognition as they realize the goals of inclusion and equality in our communities and society at large.

It is the intent of this legislative body to recognize persons with disabilities for the benefit to New York State of their contributions to our economic, educational and social growth.

Among the activities scheduled for this year's event will be performers from the Rome School for the Deaf and the Broome Developmental Center, who will provide musical entertainment; this day will also include sporting events featuring the Adirondack Thunder wheelchair basketball team and the Area 10 Albany County Special Olympic Unified Volleyball Team, with participation by legislative members and staff.

Legislative Disability Awareness Day will conclude with both the Assembly and Senate considering legislation significant to persons with disabilities.

Legislative Disability Awareness Day provides individuals with an opportunity to acknowledge and understand the legislative process.

Now, therefore, be it resolved, that this legislative body pause in its deliberations to proclaim Tuesday, June 1st, 1993, as Legislative Disability Awareness Day at the State Capitol, Albany, New York; and be it

further

Resolved, that copies of this resolution suitably engrossed, be transmitted to select representatives of persons with disabilities.

ACTING PRESIDENT FARLEY: On the resolution. Senator Libous.

SENATOR LIBOUS: Thank you very much, Mr. President. I just want to make some brief remarks on the activities that have taken place today.

It's been a very, very busy day for a lot of people, and I want to stress the importance of this day and what it means to a lot of New Yorkers.

We are very pleased today to share with the Assembly, our colleagues in the Assembly, sponsorship of Legislative Disability Awareness Day. What we have done throughout the day is have many displays throughout the Legislative Office Building that have programs that deal with persons in New York State with disability in giving them assistance and helping

them with everyday needs.

I think the other thing we try to do today, Mr. President, is try to enhance throughout New York State the real meaning of what it's like for an individual who has a disability on an everyday basis.

There are a number of things that have taken place in New York State and a number of things throughout the United States with the passage of the Americans with Disabilities Act and, of course, a number of pieces of major legislation that have passed this house in the past and that will hopefully pass today. Our goal here is to give a full meaning that there are individuals with disabilities in this state and that these individuals are no different than anyone else. They have the same opportunities and the same rights to living normal lives as everyone else does.

I'm very pleased today to have a couple of special guests, and I want to mention them as we talk about this resolution. Certainly, as I mentioned, we have the young

people from the Rome School for the Deaf. They have joined us again this year, and we want to thank them for sharing in this busy day and by leading the Pledge of Allegiance not only in this chamber but also in the Assembly chamber today. And to all of you on behalf of all of my colleagues, I want to sincerely thank you and invite you to come back again next year when we celebrate Legislative Disability Awareness Day again.

We also have with us Ms. Deaf New York, Nancy Hlibok, who we will talk about in a moment.

And we have Special Olympic Male Athlete of the Year, Kevin Brown, who is up in the gallery with his team today, and Kevin is standing up, and we'll talk about Kevin in a second, when we do two quick resolutions to honor them.

Another guest we have with us is Peter Crowley, and Peter is a remarkable individual. He did a demonstration downstairs with the Governor and some others, and Peter is

an expert -- I believe a black belt, if I'm correct -- in Tae Kwon Do, and he demonstrates blindness Tae Kwon Do using sonic eyes and sonar glasses, and he gave quite an incredible display earlier today, and, as I said, the Governor and others were there to witness it.

What we're trying to do today again as we do each year is emphasize the need to pass important legislation as it pertains to people in New York State who have disabilities and that this chamber is committed to continuing its hard work in making a commitment to the lives of all New Yorkers, including those who have disabilities in New York State.

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 unanimously adopted.

We have two more resolutions.

SENATOR LIBOUS: Two more

resolutions, yes.

ACTING PRESIDENT FARLEY: Senator Libous.

SENATOR LIBOUS: Mr. President, could we have the Secretary call up Resolution 1591 and ask that it be read, please.

THE SECRETARY: Legislative Resolution Number 1591, by Senators Libous, Marino, and all members of the Senate, commending Kevin Brown upon the occasion of his designation as Special Olympic Male Athlete of the Year.

Whereas, it is the sense of this legislative body that those who give positive definition to the profile and disposition of the communities of the state of New York do so profoundly strengthen our shared commitment to the exercise of freedom.

Attendant to such concern and fully in accord with its longstanding traditions, it is the intent of this legislative body to commend Kevin Brown upon the occasion of his designation as Special Olympic Male Athlete

of the Year.

Kevin Brown has been involved in Special Olympics for more than 18 years; in the past year, Kevin has competed at the area, sectional, state and international levels of Special Olympics.

Kevin Brown's training and competition schedule is busy as he participates in Volleyball, Basketball, Softball, Nordic Skiing, Bowling, Athletics, and Powerlifting.

His competitive experiences are diverse, and include a second place finish at the International Special Olympic Summer Games in Minneapolis in 1991 as a member of the NYSO Unified Volleyball Team; he also competed in two Nordic Skiing events in the 1989 International Winter Games in Reno, Nevada.

Kevin is a custodial worker for the Albany County Association for Retarded Citizens and has a special security clearance needed to enter the offices of the Albany Branch of the Federal Bureau of Investigation.

Kevin Brown's success mirrors an

unyielding concern for the primacy of self determination, for the prerogative of personal initiative so paradigmatic to our American manner.

Through his long and sustained commitment to excellence in competitive sports, Kevin Brown has so unselfishly advanced that spirit of united purpose and shared concern which is the unalterable manifestation of an American experience.

Now, therefore, be it resolved that this legislative body pause in its deliberations and most joyously commend Kevin Brown upon the occasion of his designation as Special Olympic Male Athlete of the Year fully confident that such procedure mirrors our shared commitment to preserve, to enhance and to yet effect that patrimony of freedom which is our American heritage; and be it further

Resolved, that a copy of this resolution, suitably engrossed, be transmitted to Kevin Brown.

ACTING PRESIDENT FARLEY: On the

resolution. Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

There is not an awful lot that I can add, except, Kevin, if you will stand one more time. Kevin is certainly an outstanding individual, who we should all be very proud of.

I know that many of us in this chamber work from time to time and attend the various Special Olympics. I know that in Broome County I attend every year.

Kevin, on behalf of all of my colleagues in the New York State Senate, we are extremely proud of your efforts, the recognition that you have received that is mentioned in this resolution, and it's an honor for us to have you here today. And I salute you.

(Applause)

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

(Response of "Aye.")

Those opposed, nay.

(There was no response. )

The resolution is unanimously adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I have one more resolution that I would ask to be read, please, 1590.

THE SECRETARY: Legislative Resolution 1590, by Senators Libous, Marino, and all members of the Senate, honoring and commending Nancy Sherman Elizabeth Hlibok.

Whereas, it is the sense of this legislative body that those who give positive definition to the profile and disposition of the communities of the state of New York do so profoundly strengthen our shared commitment to the exercise of freedom.

Attendant to such concern and fully in accord with its longstanding traditions, it is the intent of this legislative body to honor and commend Nancy Sherman Elizabeth Hlibok for her distinguished tenure as Ms. Deaf New York.

Throughout her tenure, Nancy

Sherman Elizabeth Hlibok's characteristic commitment to the deaf and hearing impaired never wavered.

As Ms. Deaf New York 1991-1993, Nancy Sherman Elizabeth Hlibok attended deaf mainstreaming schools in New York State to set a positive example for these children to help build their self-esteem; gave presentations in Washington, D.C., Maryland, New York, Finland, Switzerland and Austria to sign language students; was a spokesperson for the deaf community in New York City at VESID, a conference at Hofstra University; represented New York at the National Pageant in Denver, Colorado and came out as a second runner-up; and gave lectures at various organizations in New York State.

Nancy Sherman Elizabeth Hlibok will graduate from Gallaudet University with a Bachelor of Arts Degree in May 1993.

Her collegiate history is a chronology of compelling dimension; she has served at Gallaudet University as: An Intern at

the International Center of Deafness; Student Tour Guide at the Visitors Center; and Tutor for Government and Latin Courses.

In addition, Nancy Sherman Elizabeth Hlibok served as an Intern at the World Federation of the Deaf in Helsinki, Finland.

The life of Nancy Sherman Elizabeth Hlibok mirrors an unyielding concern for the primacy of self-determination, for those prerogatives of personal initiative and accountability so paradigmatic of our American manner.

Through her long and sustained commitment to the efflorescence of human dignity, Nancy Sherman Elizabeth Hlibok has so unselfishly advanced that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience.

Now, therefore be it resolved, that this legislative body pause in its deliberations and most joyously honor and

commend Nancy Sherman Elizabeth Hlibok, fully confident that such procedure mirrors our shared commitment to preserve, to enhance, and to yet effect that patrimony of freedom which is our American heritage; and be it further

Resolved, that a copy of this resolution, suitably engrossed, be transmitted to Nancy Sherman Elizabeth Hlibok.

ACTING PRESIDENT FARLEY: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Earlier today, Nancy Hlibok spoke to us downstairs on the third floor; and in her remarks she referenced when she was a small little girl she went to a grocery store with her parents, her parents who are also deaf, and she recognized that someone was talking and she - Nancy, I hope I say this close to accurate. She looked at her mother and she said, "Why are those people different?", those people that were talking. And her mother basically said to her at that time, is that, we are all equal but we

are all different, and some people talk and some do not.

And I think that really is what we want to sum up today in not only honoring Nancy but everyone else and the message that we're trying to portray here in the Senate when we talk about Disability Awareness Day: That we are all equal, but yet we are all different in many ways and that many times, we need to be aware of this.

And unfortunately, we tend to - I think as a society to avoid or walk away or not work with people and talk with people who are disabled, and I think that is wrong, and I think that the message we're trying to portray today through Nancy and through many others is that people with disabilities are no different than anyone else and that they do share normal lives and that, as you can see from this resolution, Nancy certainly has some tremendous qualities that she has shared.

And so, Nancy, again on behalf of all my colleagues here in the Senate, we honor

you today, and your parents are certainly welcome to stand up as we salute you.

(Applause)

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

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

You may have noted that I came over to this side. I am studying sign language, and it's not an easy language, let me tell you, but it's a very rewarding language because it's so descriptive. You see the hand movement. They are so descriptive of what the words are and what you want to convey -- you know, from the heart.

And I want to also second what Tom said as far as productive lives. About a third of my family is deaf and my sister-in-law has worked for 25 years in Chase Manhattan Bank in a very responsible job. My brother-in-law has been with an aerodynamics firm. My nephew is the principal of a deaf school, and my niece is one of the heads of admissions, was at Gal

laudet, and is now at Rochester Institute. So they lead very wonderful productive lives. They can be part of society, the speaking society or they can be within their own deaf community.

But I must say that I have never seen people that are happier than the deaf people, and I think it is something special. Perhaps their silence is what gives them this specialness and this great affection and caring for one another, and they are the most beautiful people I have ever met.

And I just wanted that to be on record. Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Thank you, Senator. On the resolution. All in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response. )

The resolution is unanimously adopted. The young lady is here.

Nancy, on behalf of the New York State Senate, congratulations. We are very

proud of you.

(Applause. )

ACTING PRESIDENT FARLEY: Senator Present. There's some motions on the floor if you wish to go to them.

Senator Saland.

SENATOR SALAND: Mr. President, on page 16, I offer the following amendments to Calendar 643, Senate Print 4545A, and ask the bill retain its place on the Third Reading Calendar.

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

SENATOR SALAND: Continuing, Mr. President. On behalf of Senator Lack, on page 26, I offer the following amendments to Calendar Number 864, Senate Print 4768, ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR SALAND: On behalf of

Senator Levy, on page 35, I offer the following amendments to Calendar 727, Senate 4887, and ask that the bill retain its place on the Third Reading Calendar.

And on behalf of Senator Tully, on page 16, I offer the following amendments to calendar 653, Senate 2689, and ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments received. The bills will retain their places.

Senator Sears first, then I'll go to you, Senator Larkin.

SENATOR SEARS: Mr. President, on page 20, I offer the following amendments to calendar 732, Assembly -- Senate Print 3875, and ask that the said bill retain its place on the Third Reading Calendar.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: I checked out that

request with my chief of staff, Jack McPadden, and we have no objection to that.

ACTING PRESIDENT FARLEY: Without objection.

Senator Sears, you still have the floor.

SENATOR SEARS: Would Senator Gold please repeat what he said? I didn't hear him.

(Comment off the record. )

Oh, okay.

Mr. President, on page 31, I offer the following amendments to Calendar Number 178, Senate Print 1129, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

Senator Larkin.

SENATOR LARKIN: Mr. President, I wish to call up my bill, Print Number 2071, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Larkin, Senate Bill Number 2071, an act to amend the General Municipal Law.

ACTING PRESIDENT FARLEY: Senator Larkin.

SENATOR LARKIN: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT FARLEY: The Secretary will call the roll on reconsideration.

(The secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Larkin.

SENATOR LARKIN: I now offer the following amendments.

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

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Johnson.

SENATOR JOHNSON: Mr. President, on page 16, I offer the following amendments to Calendar Number 647, Senate Print Number 2477, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection, the bill will retain its place.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Last Wednesday, I was out of the chamber when votes were taken on Calendar Number 825 and also Calendar Number 848. I would like the record to reflect that had I been in the chamber when the vote was taken, I would have been recorded in the negative on both those calendar numbers.

ACTING PRESIDENT FARLEY: The record will so show.

SENATOR KUHL: Thank you.

ACTING PRESIDENT FARLEY: Are

there any other motions on the floor?

Senator Present.

SENATOR BRUNO: Mr. President, can we please take up the non-controversial calendar.

ACTING PRESIDENT FARLEY: Secretary will read the non-controversial calendar.

THE SECRETARY: Page 30, Calendar Number 62, by Senator Levy.

SENATOR BRUNO: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: On page 7, Calendar Number 317, by Senator Libous.

SENATOR BRUNO: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 333, by Senator Volker, proposing amendment to the Constitution.

SENATOR GALIBER: Lay it aside.

THE SECRETARY: Senator Galiber,

you said to lay it aside, sir?

SENATOR GALIBER: Yes.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 344, by Senator Johnson, Senate Bill Number 1703A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 427, by Senator Nolan, Senate Bill Number 3438A, an act to amend the city charter of the city of Cohoes.

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 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 434, by Senator LaValle, Senate Bill Number 3722A, Education Law and the State Finance Law.

SENATOR JONES: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 441, by Senator Holland.

SENATOR HOLLAND: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

SENATOR HOLLAND: For a day.

ACTING PRESIDENT FARLEY: For the day.

THE SECRETARY: Calendar Number 465, by Senator Hannon, Senate Bill Number 643A, Emergency Housing Rent Control.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 491, by Senator Wright, Senate Bill Number 4280A, incorporate the Adams Center Fire Department Benevolent Association.

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 42.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar 494, by Senator Libous.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 553, by Senator Bruno, Senate Bill Number 3281A, 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 45.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 623, by member of the Assembly Luster, Assembly Bill Number 5913A, authorizing the conveyance of certain real property of the state of New York.

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 45.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 625, by Senator Libous.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 486, by Senator Libous.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 747, by Senator Skelos, Senate Bill Number 4540B, Executive Law, in relation to creating the New York State Committee for the Coordination of Police Services.

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 45.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 791, by member of the Assembly Cahill, Assembly Bill Number 5789A, Domestic Relations 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 45.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

805, by Senator Libous.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 827, by Senator Libous, Senate Bill Number 45...

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 916, by Senator Nozzolio, Senate Bill -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Yes, Senator Present.

SENATOR PRESENT: Instead of calling them all out, can we lay aside 916, 917, 918, 919, 920, 921 and 922 and 924.

ACTING PRESIDENT FARLEY: The bills are laid aside, and 924, all laid aside.

SENATOR PRESENT: 923 will be

laid aside for the day.

ACTING PRESIDENT FARLEY: 923 is aside for the day.

Senator Present, that takes us through the first time.

SENATOR PRESENT: Mr. President, on behalf of Senator Levy, I would like to please remove the sponsor star on Calendar Number 62, Senate Print 80.

ACTING PRESIDENT FARLEY: Without objection, the star is removed.

SENATOR PRESENT: Mr. President, I would like to ask unanimous consent to suspend Rule VIII, Section 7 (c), so that Calendar Num ber 62 can have its third reading at this time.

SENATOR GOLD: No objection.

ACTING PRESIDENT FARLEY: Without objection.

Secretary will read Calendar Number 62.

THE SECRETARY: On page 30, Calendar Number 62, by Senator Levy, Senate Bill 80, an act in relation to requiring the

Commissioner of Transportation to conduct a review of the transportation of disabled children.

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 317, by Senator Libous, Senate Bill Number 2060, an act to amend the Mental Hygiene Law and the Public Health Law, in relation to creating the New York State Traumatic Brain Injury Institute.

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 46.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, call up Calendar 494.

ACTING PRESIDENT FARLEY: 494. The Secretary will read it.

THE SECRETARY: Calendar Number 494, by Senator Libous, Senate Bill Number 3517B, an act to amend the Insurance Law, in relation to prohibiting discrimination on the basis of disability.

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 46.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESIDENT: Calendar 625, please.

ACTING PRESIDENT FARLEY: 625. The Secretary will read that one.

THE SECRETARY: Calendar 625, by Senator Libous, Senate Bill Number 3815B, General Business Law, in relation to motorized wheel chair warranties.

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 45, nays 1, Senator Kuhl recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Calendar 686, please.

ACTING PRESIDENT FARLEY: 686. The Secretary will read it.

THE SECRETARY: Calendar Number

686, by Senator Libous, Senate Bill Number 4489, an act is to amend the Vehicle and Traffic Law, in relation to increasing the amount of a fine imposed for illegally parking.

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: His 45, nays 1, Senator Kuhl recorded in the negative.

ACTING PRESIDENT FARLEY: That bill is passed.

Senator Present.

SENATOR PRESENT: Calendar 805, please.

ACTING PRESIDENT FARLEY: 805. The Secretary will read that one.

THE SECRETARY: Calendar Number 805, by Senator Libous, Senate Bill Number 2293A, an act to amend the Education Law, the

State Finance Law, and the Vehicle and Traffic 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 46.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, Calendar 916, and then regular order following that.

ACTING PRESIDENT FARLEY: 916, and then the Secretary will follow regular order.

THE SECRETARY: Calendar Number 916, by Senator Nozzolio, Senate Bill Number 3184A, an act to amend the Election Law, in relation to polling places for physically

disabled voters.

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 46.

ACTING PRESIDENT FARLEY: The bill is passed.

We are going to start with Calendar Number 333.

No? Senator Present, what's your pleasure on this?

SENATOR PRESENT: I may have not correctly spoken. Go through 917 through the balance.

ACTING PRESIDENT FARLEY: 917 through the rest of the calendar.

SENATOR PRESENT: Yes.

THE SECRETARY: Calendar Number 917, by Senator Libous, Senate Bill Number

3814A, an act to amend the 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 46.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 918, by Senator Larkin, Senate Bill Number 4066, an act to amend the Real Property Tax Law, in relation to improvements required by the Americans with Disabilities Act of 1990.

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 47.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 919, by Senator Sears, Senate Bill Number 4215A, an act to amend the Tax Law, in relation to allowing the deduction from gross income for expenditures for a guide.

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 40.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 920, by Senator Libous, Senate Bill Number 4762, Economic Development 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 49.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 921, by Senator Libous, Senate Bill Number 4881, Education Law, in relation to procedures for conducting impartial hearing for students with disabilities.

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 50.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 922, by Senator Libous, Senate Bill Number 5056, 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 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 924, by Senator Libous, Senate Bill Number 5439B, an act to amend the Vehicle and Traffic Law, in relation to design specifications for new, repaved or repainted handicapped parking spaces.

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 51.

ACTING PRESIDENT FARLEY: That bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, let's go to the controversial calendar, please.

ACTING PRESIDENT FARLEY: Controversial. Secretary will read.

THE SECRETARY: On page 30, Calendar Number 62, by Senator Levy, Senate Bill Number 80, an act in relation -

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 333, by Senator Volker, Senate Bill Number 800A, proposing amendment to the Constitution in

relation to the imposition of the death penalty.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for, Senator Volker.

(Whereupon, there was a pause in the proceedings. )

SENATOR ONORATO: Explanation satisfactory. Read the last section.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President, in order to accommodate a member or two, can we have the last section of this bill read?

ACTING PRESIDENT FARLEY: There is no last section, of course. On the resolution, how do you vote, Senator Sears?

SENATOR SEARS: Aye.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: No.

ACTING PRESIDENT FARLEY: Are there any other ones, Senator Present?

SENATOR PRESENT: No, but while

we're at this, can we suspend this one temporarily and call up and read the last section on Calendar 465.

ACTING PRESIDENT FARLEY: 465. The Secretary will read the last section of 465.

THE SECRETARY: Calendar Number 465, by Senator Hannon, Senate Bill Number 643A, Emergency Housing Rent Control Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Senator Sears, how do you vote?

SENATOR SEARS: Aye.

ACTING PRESIDENT FARLEY: Senator Leichter, how do you vote?

SENATOR LEICHTER: No.

ACTING PRESIDENT FARLEY: Senator Nolan, how do you vote?

SENATOR NOLAN: No.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator

Present.

SENATOR PRESENT: Suspend the roll call.

ACTING PRESIDENT FARLEY: Suspend the roll call. Lay the bill aside.

SENATOR PRESENT: Right.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes, with regard to Senator Volker's bill, if we could once again open up the roll call. Senator Nolan has to attend to some very important matters. He has discussed every single one of them with me, and I know it's urgent. So if we could call his name and let him vote.

ACTING PRESIDENT FARLEY: Senator Present, do you agree?

Read the Resolution 333.

THE SECRETARY: Calendar Number 333, by Senator Volker, Senate Bill Number 800A, proposing amendment to the Constitution.

ACTING PRESIDENT FARLEY: How do

you vote on that resolution, Senator Nolan?

SENATOR NOLAN: No.

ACTING PRESIDENT FARLEY: He votes no.

Suspend that roll call. Lay that resolution aside. Oh, we're on that resolution, is that right?

Senator Volker, there has been an explanation asked for.

SENATOR VOLKER: All right. Fine.

ACTING PRESIDENT FARLEY: The roll call has been suspended.

SENATOR VOLKER: Thank you.

Mr. President, let me just start out by very quickly giving a quick resume of how we arrived at this Constitutional Amendment.

It's pretty clear. I don't think I have to tell anybody in this chamber, over the years, we have done death penalty legislation. This house for many, many years has passed legislation not only with a majority vote but normally with enough votes to

override. The bills have been vetoed by Governor Carey and, later, by Governor Cuomo and we have on numerous occasions attempted overrides and been unsuccessful.

The Assembly within the last several years was within several votes of overriding. In fact, for various reasons, it was our belief that the Assembly was actually within one vote of overriding at a point last year before the reapportionment.

In all candor and as many of you in this chamber know, I am very practical at this sort of thing. We lost a number of votes in reapportionment, several votes in this house and a number of votes in the Assembly. In anticipation of the possibility of that last year, in fact for several years, we had been working on an alternative.

Those of you who know me know how strongly I feel about this issue. When the death penalty was abolished in this state in 1965, I was at that time in law enforcement, and I saw the impact, what we believe to be the

impact, on a very personal level of what happened when the death penalty was abolished.

I have used the analogy -- and I laugh at people who have said that there is no such thing as deterrence. I have used the analogy because it was so clear to anyone who would look to when the Legislature -- and I wasn't here at the time; my father was here - passed unauthorized use of a motor vehicle as regards to stolen cars. The intention was very good. The reason was that so many young people were stealing cars, but the feeling was that theft of cars was a fairly manageable kind of crime. So the Legislature passed unauthorized use of a motor vehicle, which meant that the theft of a car was reduced from grand larceny to what amounted to petit larceny, a misdemeanor.

Within three years, the amount of cars stolen in this state not only doubled, quintupled, but went up ten-fold. The law enforcement department I was with was chasing stolen cars around so much, we had difficulty keeping track of anything else.

Except there was one other thing that we had a lot of trouble keeping track of, like most law enforcement people. After the death penalty was abolished, we started finding bodies.

As I pointed out to someone today that I was talking to, there are a number of people who are still in prison who I personally dealt with one way or another who committed murder and who either threatened me or threatened people close to me, and I can tell you that the trouble I think we have with the issue of the death penalty is it is hard for those of us who are in this chamber or anyone who has not dealt personally with murders to understand the impact of death penalty legislation.

I firmly believe that a turning point in this state -- and you can see it in the numbers, a turning point in this state as far as murder and serious crime was a time in 1965 when this Legislature in good faith at a time when murder was not near as prevalent passed

legislation that abolished the death penalty. Within a matter of a few years, the murder rate burgeoned to a point that within six or seven years it reached proportions that no one really had anticipated at the time. It doubled and then eventually tripled.

The interesting thing is that we have, in the last few weeks, talked in this session about the proliferation of drugs and guns. And yet, what I think a lot of people don't realize is if you want to blame the murder rate on drugs and guns, you better realize something, that that murder rate didn't go up during the guns and drugs time. It went up long before that. The surge of murder in this state came within a few years after we abolished the death penalty in this state.

I have often said that one of the things about anti-death penalty people across this country, they always worried about New York, and the reason they worry about New York is that no other state that I know of or that they know of showed such dramatic increase in

murder after the death penalty was abolished. What they really are concerned about not that they're not -- that they wouldn't like to see murder decline, but I think many of them are afraid that when we restore the death penalty, if a decline in murder shows in this state, it will have a huge impact on the entire country.

It is something that I have looked for for many, many years. I know there are many that don't agree on the death penalty. I understand that, but I would tell you this. There are many of us that feel so strongly about this issue that we feel that this is -- not the only criminal justice issue, because there is no one issue that is going to deal with crime in this state which unfortunately deal with family breakups and everything has created such a burden, but there is no question that there is no greater signal that we can send to the street in the opinion of many people than a death penalty bill.

For a number of years the Governor challenged myself and a number of us to

put the issue of the death penalty to the vote of the people. He even chided us at one point for not doing a Constitutional Amendment. As I think you all know, the Governor has been pretty silent for the last year. The reason is that the Constitutional Amendment he was talking about was one that many of us felt really wouldn't work.

The Constitutional Amendment we are proposing today we believe very firmly will work and will restore the death penalty to New York. It is a limited Constitutional Amendment. What it does basically is a Constitutional Amendment that would put the death penalty back in this state and use the legislation that was previously passed and which previously is still on the books would define murder first as the killing of police officers, correction officers, actually employees of correctional institutions, and killing by lifers.

The expansion of the death penalty, then, would have to be done by the

normal manner, that is, by implementing legislation. It was suggested to us at one point, by the way, and there are people who proposed Constitutional Amendments that would totally eliminate the Governor, because of course the veto power of the Governor has been a central reason why we have been unable to restore the death penalty in this state. The reason we did not do that was for the very reason that some people have tried to criticize us for this Constitutional Amendment; and that is, that we do not intend to change the system and turn it on its head and create such confusion that we will have long-term litigation.

The people who have memoed against this bill, one group in particular, several very prominent attorneys, very competent attorneys, who were asked by the Assembly to look at this proposal, basically said this. We don't like it. You people can win with this and, therefore, we don't like it because we're opposed to the death penalty. If you read it,

that's what it says.

What this Constitutional Amendment does is to restore the death penalty to this state; in other words, if this passes two consecutive legislatures, this Legislature and a Legislature to be elected in '94, then it would go to the voters in November of 1995, and the voters could vote on the issue of the death penalty.

Now, some people have said they are not voting on the issue of the death penalty. Yes, they are. They vote on the issue of whether the death penalty should be put in the Constitution knowing full well that the implementing legislation is already there for a piece of the death penalty, and knowing full well that the rest of the -- that movement will then be made to restore the death penalty after that.

Basically, that's what this Constitutional Amendment does. It restores the death penalty of this state. Some have said, well, you are trying to get around the

Governor. Yes, I guess that's true. Remember this, that substantial majorities in both houses of this Legislature have passed the death penalty year after year. Those who would try to deny that the people of this state are strongly in favor of the death penalty, frankly haven't looked at the numbers that virtually anybody who has ever done any kind of polling in this state has done; and, frankly, I think you would have to say that the reason we don't have a death penalty in this state is very honestly because so few people vote in this state; and, therefore, do not put their vote where their feelings are.

Now, what this Constitutional Amendment will do, and I assume it will eventually pass the Assembly no matter what is being said because an Assembly that has already passed death penalty legislation year after year after year despite their reluctance is going to eventually end up doing it.

What will happen is that, when this passes two consecutive legislatures, then

if will go to the voters, and we will have reestablished the death penalty. In the meantime, by the way, let's make no mistake. I do not intend not to pursue the normal route which is the normal legislative route. And if we do get the votes to override, then we will certainly attempt the override. But in the meantime, I think that this is the most -- under the circumstances we have that is a way to accomplish -- admittedly on a more long-term basis, but admittedly a way to accomplish what we have tried to accomplish for many years, and that is to restore the death penalty.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: Thank you, Mr. President. Mr. President. I have been here long enough to know that on this particular issue of the death penalty, minds have pretty much been made up. And as we talk and debate about it, the best hope we have is those who come in changing their view or establishing their view.

But, Mr. President, I rise for a different reason. I am no longer prepared to argue the cost of this legislation, no longer want to talk about the deterrent factor, no longer want to talk about interpretation of the Bible, whether Cain and Abel whether that was the first recorded homicide or not, not prepared to discuss or debate any longer whether the death penalty impacts on a particular ethnic group or not.

I rise, Mr. President, today in a sad state because what we are attempting to do here today brings somewhat of a tear in my eye, and I mean that sincerely. I don't get emotional about too many things, but I can recall back in 1967, and we have here just one member who was with me at the time -- no, I was with him -- and that's John Marchi. And the other person was a competent staff person Manny Gold.

Senator, nobody but nobody has any more respect for you than I do, and we say that from time to time, and it almost comes in

the category of massaging. But not so. You are a man of great integrity. Integrity spells out the kind of person who stays with something and believes in it and hangs in there.

It is unfortunate that we have to go this route today. What we are asking and, Senator Marchi, I can reflect back on April the 4th, 1967, as we saw some of our great leaders in this state at a constitutional convention and the one before that in 1938, Senator, and we were privileged to have a couple of delegates from the 1938 convention. And history has recorded that 1915 before then; and if we go back in history -- and I'm only going back a little bit to let everybody realize what you are tampering with -- in 1777, one year after the Declaration of Independence, the first convention that we had. And in each one of those conventions something became crystal clear. It was clear that we shouldn't tamper with the Constitution for any reason whatsoever.

I have watched you, Senator, with

this death penalty and I know of your family's concern about the criminal justice system. I have watched, and I say this in all due respect, this matter has become almost an obsession with you. There are those of us, out of respect, we nudge you once in a while to say, "Senator, when are you going to let this thing go?" Let it go, Senator, before it goes to the extreme, and that's what we have here today.

We're tampering with an instrument called the Constitution of this state. Keep that in mind. Each and every one of you who are co-sponsors on this piece of legislation, today we are dealing not with the death penalty, which is merely the instrumentality through which we dabble with the Constitution of this great state of ours, and nowhere in this Constitution does it allow for this kind of intervention on a legislative level. Keep focused. Keep focused because this is the Constitution of the state of New York that we're dealing with today, not the death penalty. Not the death penalty.

Senator Volker believes so strongly about this matter. He is candid with us. He says never mind checks and balances, never mind veto that the Governor has. We're going to change that, and we're going to change it because we have to pass this death penalty.

Senator Kennedy and Senator Javits and Senator Marchi were there that day with a number of other great persons in our state, and Senator Kennedy laid out four criteria. They were simple criteria for a Constitution. He indicated clearly that it was there for simplification. It was there for flexibility. It was there with a range of certain issues that had changed from time to time.

But he warned us and he said, Senator Volker, and it applies, this Assembly, meaning the convention, must renounce particular interests and party advantage, that no man seek merely to advance his personal standing, win acceptance of his favorite projects or end an outlet for his private feelings and beliefs.

This wasn't directed at you, Senator Volker. It was directed at the delegates who the people asked to come and either write a new Constitution, amend it, or do nothing at all. And most of us at that convention paid heed to what was said because no longer can we dabble with this Constitution. No longer can we take this legislative process and intermingle it into the Constitution merely because we are frustrated and cannot do it any other way.

The Governor's veto power is there. If we can't win a few is part of what America is all about, and win a few battles and lose a few battles, but certainly we don't become bitter enemies that we have to resort to tampering with the Constitution of this great state of ours in order to accomplish that end.

Senator Marchi -- there were some great people at this convention, and I want you to know that there's just some of the names that were there so you can understand that it wasn't a question of just the Democrats or the

Republicans. Democrats were in power at that convention. Shouldn't be that way, very frankly.

I didn't understand, as I thought back on the convention, why the Governor had suggested that he wanted no legislators at the next constitutional convention. I was hurt being a legislator. Understood exactly what he meant after a while, because the legislators in the constitutional convention have their own kind of interest, own interest. So notwithstanding the fact that we attempted in the constitutional convention to find a non-partisan group, it couldn't happen. Earl Brydges, Tony Travia, our president, and a number of others, VandeHeuvel, Marietta Tree, Mangano, and the list goes on, but in the final analysis it was a political situation and we have to change that.

We need another constitutional convention but, Senator, I say that this state will go down in history because it's not a question of the votes on the death penalty.

That's not what in issue as I say over and over again. What it is is that you hang onto something so long, and you can't udge and you can't move it and you get a little desperate and a little frustrated, and I know once in a while I get a little abrasive but not further than that. Don't mean any harm by it, as Grandma used to say.

But the fact of the matter is if you can't win fair and square, then why bother? Why would you want to mess with, if you will, the Constitution of this state? There is absolutely no reason for it. There are other of my colleagues who will argue the technicalities of it all. How do you commingle a criminal procedure and a criminal law into a Constitution without jeopardizing every time that we want to move one that we are going to have to change it. We're going to have to move and change it each and every time.

This Constitution means so very much to this young country of ours, to this young state of ours. It was just a few years

ago. We can still count back on them, when we had this convention not in '67, but in 19 - 1777 historically. So, Senator, I say to my colleagues, you don't seek headlines. There are some who perhaps will jump on the bandwagon for that singular purpose to see their name in print, notwithstanding the fact that we're dealing with this Constitution. I see absolutely no reason except disappointment, feeling too strong about an issue, cost benefit.

What do we have at stake in order to pass this piece of legislation? The price I say is too high, and we should think very carefully before we move in that direction. Anyone within the sound of my voice who can recall historically what this Constitution really means, that the sacrifices that were made in order for it to come about, that the power that we have -- and we have the power. We don't need the Constitution from the central government. We have the power right here in the state.

It's just a question are you prepared now to abuse this power? Are you prepared to vitiate the checks and balances that we talked about? Are you prepared to do away with the Governor's veto because the Governor hasn't seen fit -- two governors have not seen fit -- not seen fit to let this piece of legislation go.

Senator, it's merely a system. I don't know about you. Maybe they will allow you a little more time, if you will. These come down to practicalities where they allow you a little more time, but can you imagine this Constitutional Amendment being in a booth in a year that we're all running and trying to explain it. People couldn't even explain the bond issue the last time. Can you imagine?

Senator, is there anything fair about that? The answer is no. You know it's not fair. You know that this is not the route. In your heart's heart you know that this is not the route to go. But can you imagine in three minutes trying to explain to someone what this

constitutional change really means?

It is cumbersome. It won't work. The price is too high. And, Senator, you and I will leave here one day. Hopefully, we'll walk out under our own power, and I would not want this record to reflect, if you will, someone like yourself who I have the greatest respect for, a family that's steeped in criminal justice looking for the right approach, to go down in history as the person who is responsible, person who is responsible for changing the Constitution of the state of New York. With this amendment, I dare say that you destroy or you open up the door for all sorts of horrendous possibilities of doing damage to this great instrument that has held this state in such good stead, and certainly this great country of ours.

Senator, nobody but nobody understands the frustration of not having the votes to get whatever we desire through than I do, but I merely say to you, Senator, this is not the right way to do it. I have no argument

with you about how you feel about the death penalty. That's a matter of opinion, and we respect that opinion. What I do object to is the procedural process. So desperately do you want this piece of legislation that you are prepared to do away with our check and balances and do away with this Constitution and do away with this form of government to have the legislative branch of government take over, if you will. Every now and then, the Governor tries to take over from us. I know that. But meanwhile, you are the one who says we're not going to go this route. We are going to damage the Constitution.

I think it's the wrong, wrong way to go, and I think in your heart's heart you believe that. My argument, my comments today, my feelings strong as they are is directed at one thing. Because I respect each one of you here in terms of what your opinion may be on the death penalty, abortion issue, whatever it may be. Don't even debate it, as I said before. But I want you to know, ladies and gentlemen,

colleagues, friends, that when you vote yes on this bill today, if you vote yes, you are voting against one of the greatest instruments in the history of this state, which is the Constitution.

ACTING PRESIDENT FARLEY: Senator Solomon.

SENATOR SOLOMON: Thank you, Mr. President.

We spoke about this legislation in the committee several weeks ago, in the Judiciary Committee.

First of all, I think I have voted for the death penalty 15 times, and I voted to override the Governor's veto 15 times. And as far as I'm concerned, it is not an issue of whether or not the death penalty should be implemented in this state, but this Constitutional Amendment, the problem that I have with this as a Senator is the method that we're using to implement a legislative policy that we have not been able to pass as a result of the check that has allowed the executive

branch in our basic form of government to veto.

I think we're dealing with a situation here, as Senator Galiber said, of the method and the methodology and the Constitution. Are we to take every piece of legislation that's vetoed by the Governor and if we don't like that veto, to attempt to implement that legislation via the method of a Constitutional Amendment? Are we to be like children that say, Well, we can't win the game by playing by the rules so let's changes the rules of the game? Because that's what this legislation smacks of, literally changing the rules of the game.

We have a rule. The rule is the state Constitution. But the most important thing is the basis for that Constitution and the basis for both the federal and state government are checks and balances between the legislative, the judicial and the executive branch.

And it's plainly stated here in the sponsor's memo and in the debate, we have failed to override the veto of the Governor 15 times; so since we can't win by playing the

rules, let's change the rules of the game in this one instance. Let's have a Constitutional Amendment.

I think there are a lot of things that we have to talk about including the fact that the real details of a statute are transitory in nature in some respects as was cited in the constitutional convention by Senator Javits back in I believe 1967.

We have a situation where even if this is passed, there are some questions as to whether or not the changes that invariably come along with court interpretation of a statute or Constitutional Amendment, the federal court and the Supreme Court on the death penalty, whether or not we'll be able to implement those changes legislatively or be locked into a box as a result of this Constitutional Amendment, and those are some real changes that you have to be concerned with especially if you are a supporter of the death penalty and have supported it, whether or not we'll end up locking ourselves into a situation where it cannot be implemented.

And I just would like to raise a couple of questions. As I said before, I think this one abuses the checks and balances. I think we take a look at a situation of where obviously the Governor and governors -- because Governor Carey opposed the death penalty and was reelected in 1978 -- have been able to continue to get re-elected even though they voiced their opposition to this piece of legislation.

But I would just like to ask Senator Volker a question or two if Senator Volker will yield.

SENATOR VOLKER: Sure.

SENATOR SOLOMON: Senator, have any other states implemented the death penalty via constitutional amendment?

SENATOR VOLKER: I believe that several have. I think the thing you have to understand is, and I haven't really researched this, but I know that there were several states some years ago that had to change their Constitution, and the reason they had to change their Constitution was because their local

court, whether it was Supreme Court -- in most cases the Supreme Court is the top court -- and in keeping with the federal court had overturned the death penalty, so that what the legislators had done was to establish Constitutional Amendments to re-establish the death penalty as a constitutional prerogative.

So my recollection is, and frankly we did studies on this years ago and it's a while, was that there were a number of states that did do Constitutional Amendments prior to moving on legislatively because they virtually had to, to overcome court objections. It seems to me -- I am not positive -- that Texas was one of those states, one of the southern states that had had their statute thrown out.

I know you know, Senator Solomon, the specific cases that threw out the death penalty statutes nationwide were centered in the southwest and in the south, and Texas was one. Florida was another. And I think that those states at that time way back when had to do

Constitutional Amendments in order to implement new statutes in their own states to create death penalty legislation.

So my recollection is this is not totally unusual. I think what you are getting at is, recently, have any states done Constitutional Amendments to implement the death penalty? Not to my knowledge, not on a recent basis. But my recollection is that years ago when the current new death penalty statutes were put in place, it was not unusual for legislatures, and every Constitution is a little different. Some of it didn't take as long to do as it would take here with the checks and balances that are still in place in order to change the Constitution.

So the answer is as far as I know there were legislatures that did implement constitutional changes but not in the last few years.

ACTING PRESIDENT FARLEY: Senator Solomon, you have the floor.

SENATOR SOLOMON: Thank you, Mr.

President. Senator Volker, if you will just yield for one or two more questions.

SENATOR VOLKER: Yes.

SENATOR SOLOMON: Senator, do you know how many bills have been vetoed by the Governor in the last year, for instance?

SENATOR VOLKER: How many bills were vetoed?

SENATOR SOLOMON: How many pieces of legislation were vetoed by the Governor?

SENATOR VOLKER: I would have no idea. I would imagine -- I really don't know. Probably -- my colleague Senator Gold says a couple hundred. That's very possible.

SENATOR SOLOMON: Senator, just one other quick question, and then I will wrap up my remarks on this. As a lawyer, I sit on and attend and you attend almost every Judiciary Committee meeting as I do, and I think it's very important that some of the issues raised - again, as I said, I take out the philosophical argument whether for or against the death penalty, as I've voted for it and voted to

override it. What concerns me, don't you see this as an abuse in possibly opening up the door some time into the future some 20 years from now in terms of our Constitutional Amendment process?

SENATOR VOLKER: Senator, if I did, I wouldn't do it. Let me point out something to you.

I think the argument you make, and I have seen some of the -- we have looked at the memos that have been put out. Actually, there have been very few, but there were a couple of very scholarly memos.

If we proposed a Constitutional Amendment, as was suggested, that would, in effect, say that the Governor had no power over death penalty at all, that is, over implementing legislation; in other words, that made the death penalty Constitutional Amendment state that the Governor could not veto implementing legislation, then I think your argument frankly would be absolutely correct.

By the way, Senator, let me point

out that last week a Constitutional Amendment that was vehemently debated by Senator Leichter and several other people on this floor passed as relates to local funding, and the argument on that Constitutional Amendment was that we were again invading in the legislative area.

Remember that a Constitutional Amendment is not something that you just pass through both houses of the Legislature. It's got to be by two consecutive legislatures, and I only point out it goes to the people for a vote.

I mean it's been said that the ultimate in determination is the people's vote, and I only point that out. So this is not something that is easily done, nor do I do it without some trepidation. But I think your argument -- and I understand your argument. It seems to me is we are not doing great damage to the Constitution. In fact, we are following the rules as the framers of the Constitution set up to amend the Constitution.

SENATOR SOLOMON: Thank you. On

the bill, again.

As I said before, I think this is a poor way to implement the legislative policy which has not been able to pass or override the veto by the executive.

And to go at the heart of the matter, if we believed that the people as a final arbitrator, that it was so important to deliver it and have it put out by the people for a vote, then I find it odd to understand why this house refuses to pass initiative and referendum.

In that's the philosophy, "Let's give it to the people, and let's let the people vote on the Constitutional Amendment," well, then let's throw in initiative and referendum. And if we had initiative and referendum, none of us would be in this position because you could have put a death penalty on the ballot through the referendum process.

I think what we have here is what I said before. We are attacking the basic system of government, the basic checks and

balances that are established in both the federal system and the state system which we have today.

A piece of legislation which we have tried to pass time after time after time has been vetoed by the Governor. We have tried to override that Governor's veto on numerous occasions. The end result has been that we have not been successful in the lower house. The Governor's veto has never been overridden in the Assembly.

The basic constitutional concepts had worked. The check of the executive branch upon the legislative branch had worked and continued to work in the way in which it might have been anticipated by the people who had drafted our original state Constitution and, indeed, along the similar lines of the people that drafted the federal Constitution.

I think we are setting a very dangerous precedent to take something as important as the basic functions of government in this state and to overrule those foundations

because we as a legislative body, sitting for a very small period of time in terms of the total concept of history of this state, over a 14-year period, has been frustrated in implementing one specific piece of legislation, and to say let's do it by Constitutional Amendment, it's two different shots at two different legislatures, we can bypass the Governor's veto, we can put it on the ballot and hopefully the people will vote in favor of this, because we as a Legislature couldn't play by the rules that were established when the state Constitution was originally implemented over 200 years ago.

And I don't think this is something that should be taken very lightly by the members of this house, by people that say well, it's just one way of doing something politically; it's just one way of finally implementing the death penalty.

I think this is something where in good conscience you have to sit down and think about the oath of office you took or that document you signed if you didn't take the oath

of office before a notary public and really think where you're going on something that attacks the basic concepts of the Constitution.

Because there is no question this is being done as the result of frustration over the fact that we have not been able to override the Governor's veto on this specific issue. This is not being done because the Constitution has a flaw and we need a specific amendment to resolve that flaw.

And as I said before, this really attacks that basic concept of three governmental branches with checks and balances. And as someone who has always voted for the death penalty and voted to override the Governor's veto, I think it's important for many of us who have done so to vote against this bill because it tries to change the rules of the game.

It's not the issue whether it's right or wrong to implement the death penalty. It's changing the rules of the game, and I think that's what is very wrong about this Constitutional Amendment.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President. I am in one respect very happy that the debate is going along the lines that it's going because there seems to be attention paid to the structure rather than just the code words "death penalty," and I was afraid when this debate first got under way or I heard that it was going to take place today that people would get lost in the slogan "death penalty" and not be concerned about the process, because the process is essential.

But first let me say this to put it in perspective. Senator Volker started by saying that there is a need for this, the death penalty. And let me just address that very simply. There is no need for it.

There is a need to do something, and the Governor has made a suggestion. Put people away for the rest of their lives without

the possibility of parole. They will never kill again. They will be in prison, and that's fine and society does not then have to become as barbaric as the barbarians who kill in our streets. So it's not that the death penalty is needed. It is some people's answer, but it is not the only answer.

Senator Volker, what we're doing today is very, very dangerous. Now, I'm not saying that Dale Volker is dangerous. Dale Volker, as I've said so many times, is a gentleman of good will who happens to have a belief. But, Senator, what we're talking about today is very, very dangerous.

There is a reason why it is different procedurally to pass a law and to amend the Constitution. There is a reason for it. Our forefathers and mothers -- well, I guess in those days it was forefathers, knew what they were doing. The word "Constitution" and the word "law" are different.

A Constitution is something which sets a framework for an entire government and a

society and the way you are going to live and set up your business. And you've got an article that deals with the judiciary, and you've got an article that deals with the legislature, and there are massive concepts of how people will live that get set forth in a Constitution.

United States Constitution is a perfect example of that. Ours is a less perfect one, and I know in 1967, when we had our last constitutional convention, there were many people who had hoped that we could shorten this Constitution and bring it in, bring it in tighter, so that those items which were more appropriately dealt with as laws would be dealt with as laws, and our grandiose principles would be set forth in a Constitution.

The Constitution is bigger than any one issue and particularly this one, and if you can't have your way as other people have not had their way, you don't tamper with the process to win a point. And, Senator Volker, I know how important you think this point is, but there are other people who think points are important,

too.

And as I said, Senator Volker, if you take a look at the list of proposed Constitutional Amendments that are sitting in the Legislature today, you will find that there really are a couple of different kinds of philosophies.

One of our members believes there ought to be a unicameral legislature. That is a governmental philosophy, and you can only deal with that by affecting the constitutional because the Constitution provides for two houses.

We specifically forbid gambling in this state by Constitution. So if you want to deal with gambling, you must by necessity go to the Constitution.

Some people believe that judges should not be elected and there should be other processes. Some people believe all judges should be elected. Those are matters which you must deal with in the Constitution.

However, as I said, there are

other philosophies. One member of this house who has voted against certain reforms believes that the Constitution ought to tell us that we shouldn't work past 12:00 o'clock at night in this Legislature. I mean can you really believe that that is an issue that we can't decide ourselves that must go to the people in a Constitutional Amendment.

We have members that believe that if the Governor is going to give pardons and commutations that the Constitution ought to provide who writes to him and what kind of information he handles, matters which are for the law which may change day in and day out.

One member believes we should be out of here at a certain time and that ought to be a Constitutional Amendment.

Take a look at it. Read the Legislative Index for yourselves and decide whether or not you think that some of these items are entitled to the dignity of being Constitutional Amendments or not.

You get to a pooint of belittling

the system. Unfortunately, you know, once this train gets on the wrong track, it is very hard to get it back again. I will give you a perfect example.

I have spoken to many of you in private off this floor, and I think almost all of us are in agreement that we don't have the competence to give out pensions. Somebody did it about five years ago. Next year, there were about four or five. Now we're getting flooded, and poor Caesar Trunzo has a bill that he can't get past the Assembly, to their lack of credit, which would get us out of that business, but we got out on this track and now we're lost.

There are other issues around. I believe if we submitted a Constitutional Amendment proposal to the people, they might determine women's right of self-determination of their body and put it right in the Constitution, and some of you would shiver and shudder that that would go in the Constitution, but that might in fact be such.

There are people over here who

say isn't it ridiculous. There are people who get beaten up. Their lives are taken away merely because of their preferences, where they were born, their color. And, gee, let's go to the Constitution. We can even get that as a law.

Maybe we should have a whole litany, and maybe as the Governor has said there should be a constitutional convention. But doing this one issue in this way, I say again is a danger.

Thanks to my very dear and distinguished colleague, Senator Galiber, I have in front of me an AP story which is very, very old. It is old. It is about seven hours old. Comes out of Washington today, and it talks about a fellow by the name of John L. Sullivan, not the famous boxer, but a man who was sentenced death in 1980 in Louisiana, and it took until 1993 for the Supreme Court to finally say that the charge to the jury was so unfair that the conviction had to be thrown out.

Interestingly enough, in reading

the story, the first relief that this man got was not in 1993. Because, before this, the Louisiana court said, well, the trial stunk enough so we'll eliminate the death penalty part of it, but we're going to keep him in jail, anyway. But it took the United States Supreme Court to say thirteen years later that the man ought to have a fair trial.

I guarantee you with a death penalty provision in New York and what you are talking about under this bill, Senator Volker, he would have been dead. Because I know that you don't want a death penalty bill that is going to last for years and years and years because what I hear from everybody that talks about the death penalty unless you start frying people or doing something to them, there's no deterrent. So the only way you are going to get a deterrent is when people start seeing these dead bodies of people we convict and you can't have people sitting around on death row for thirteen years.

Bottom line of this is very

simple. I don't agree with the death penalty, Senator Volker, and you know that. I have another colleague who spoke a little earlier who said he does agree, but he is going to vote no today.

I really urge everybody in this house to consider what we are doing. If you have voted for the death penalty to become a law in New York State, you have made your political statement. You have made your conscience statement. And I don't say political statement in a nasty way, because I don't think anybody here is voting for the death penalty for political reasons. I know it comes from the heart, and I give everybody the same benefit of the doubt I would give myself.

But you've made your statement of what you believe the law ought to be. Today, you have to make a statement that stands up for the Constitution as a document which is more sacred than any one law that we have in this state. That is the issue.

The side issue to that is whether

or not we are going to surrender our authority, abdicate our authority, and in situations where we either do not want to make a decision because it's politically hot or in a situation where we may not be able to get our way because the structure of government is such that it's checks and balances, we are going to abdicate our authority to the people. Our power in this house comes from the people. They want us to have it. They didn't give it to us for us to abdicate it back to them if the issue gets tough or if the politics gets tough.

I'll close in telling you one story. I was in an election campaign a number of years ago, a very difficult one, and I didn't agree with many of the people in my community on a certain issue. And I was explaining to somebody there that I had to do what I thought was the proper thing. My conscience would require me to do it, what I thought was in the best interest of my people, and I was getting a lot of heat from the one young man who wouldn't let go.

And finally, I said to him -- I said, "Look, if you had a belief that something was absolutely the proper governmental thing to do but the people in your community, the majority of them, didn't agree with that and now you are on the floor of the Legislature, what would you do?" And the guy throws back his chest; he says, "I'd abstain." And I said, "Well, I'm sorry. I'm not running for office to abstain. I'm running for office to vote."

Today, we're about to do something that is dangerous. We are not being asked to change the Constitution because the legislative structure is wrong. We're not being asked to discuss how we elect or don't elect judges. We are not being asked anything about structure of our government. We're being asked to tamper with our Constitution to change a law, and that is a horrible, horrible precedent to get involved in.

And I hope that everybody, no matter how you feel about the death penalty, will join me and Senator Galiber and many others

in voting no on this proposal.

(Senator Seward was in the chair. )

ACTING PRESIDENT SEWARD: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise today to speak against this proposed Constitutional Amendment. And before I start on the substance I want to share Senator Volker's frustration. He's been in the Legislature for seventeen years on something that is very close to his heart, something that he has strong convictions on. Now, I've been in this Legislature for five months. I've had strong convictions on a number of issues, and I have already tasted frustration. So I can imagine what seventeen years does, especially when you think the majority of the people are behind you as Senator Volker thinks they are on this issue.

But I look at this Constitutional Amendment, and I have to ask a very simple

question. What is broken? Why do we need this amendment? Where does the need, the essence of this come from? And it seems to me that the answer to that question is equally simple.

What is broken is not our constitutional system and not even our system of checks and balances, but the pure and simple fact that for the last seventeen years under the Constitution of this state there has been power vested in one person through use of executive veto to deny the majority of both houses their will on a particular piece of legislation.

Many people would find that repugnant. After all, we're thwarting the will of the majority. Except the people this state decided by establishing the two-thirds requirement for veto that that was the limitation that was put on the legislative power.

Those of you who have been present in our debate about the Comptroller and the power of appointing the Comptroller and the concepts of the constitutional requirements for

that appointment know that constitutional power and enabling power is something close to my heart as a lawyer.

And I stand here today because it seems to me that we don't have to change the allocation of power in this state to solve the problem that the sponsor of this legislation sees as impeding the imposition of a death penalty. The solution, I submit, is very simple.

The people of this state can elect a governor who agrees with Senator Volker; and when they do, there will be a death penalty in this state. It will be over my strong opposition and over my strong advocacy against it, but that is clearly what can happen in our constitutional system, because the system of power that we've established says that that one person will have the ability to sign the legislation and take it into effect.

It seems to me that this bill is designed to address one particular person's one particular view on a particular issue, and that

I submit, ladies and gentlemen, is a very dangerous precedent in the history of this state and in country that we would modify our underlying constitution because of the predilections of one particular person.

Where does it stop? Where is the end point? Do we simply change the Constitution because of one person every time that one person uses the power vested in him by the people to effectuate his own beliefs. It seems to me that we are embarking on an extremely dangerous approach.

I also rise, Mr. President, because I think that if you look at the context of this proposed amendment, you will see that the real problem that Senator Volker is seeking to address is not something that affects the legislative power in Article III of our Constitution but is actually better found in Article IV, section 7, which creates in the executive branch the ability to impose a veto on the majority of both houses.

And my suggestion to Senator

Volker is that if your intent is to change the scope of the veto power, this amendment belongs in Article IV, not in Article III. It's homeless in Article III because there is nothing to attach it to.

Read the text of Article III in the Constitution. You will see it's a litany of empowering the Legislature to conduct a particular activity. The word "shall" is contained in each section of Article III. The Legislature shall maintain a Journal. The Legislature shall have legislative power. It shall be vested in two houses. It is an enabling document. It is giving us the power under the restrictions of Article IV to enact legislation on behalf of the people.

What we seek to do today is to jump over those checks and balances in what I believe is a very, very dangerous precedent.

But I throw one other word of caution in all of my colleagues, and that is I believe that this amendment is the first step in altering the entire power vested in the

Legislature of this state. I believe that what we will do is fundamentally restrict our own power to enact legislation and in fact invest the judiciary with the dangerous ability through interpretive power to set constitutional standards that this Legislature cannot change by interpreting this death penalty to require certainly additional protections or minimal protections for the accused, by interpreting the sections that deal with criminal procedure.

All of those can be interpreted in a fashion in which the majority of both houses disagree with and the Governor of this state disagrees with, and yet we will no longer have the ability to change the underlying Constitution without an approval vote from the people, a process that even the sponsor agrees will take many, many years.

I would just point to another time in history. My colleague, Senator Galiber, talked about the constitutional convention. I just ask you all to recall in the early 1960s when you saw the signs throughout the United

States that said impeach Earl Warren, and why, because there was a perception in this country that the judiciary had too much power through the power of interpretation of the Constitution. They had created rights. They had created liberties. They had rewritten the standards, in my view properly so, but there was an entire body in this country that felt that the judiciary had too much power through interpretation.

My fear is that by enacting a Constitutional Amendment on the death penalty, we will shift from this body the legislative power to decide what is appropriate in the context of the state imposition of death for criminal activity, and we will shift it instead to the judiciary, and we may never be able to get it back.

So, in my view, this amendment is not a solution to the underlying problem that Senator Volker finds. It is not a constitutional problem. It is at best a political problem. It is one that can have a

political solution. The voters have the ability to do that. They have decided for the last eighteen years to elect two candidates who happen to be strongly against the death penalty, who repeatedly vetoed the death penalty, and yet the people of this state have continued to vest them with the power to veto death penalty legislation which is passed by the majority of both houses.

It seems to me that that's the political solution that Senator Volker seeks. It's not to set a dangerous precedent by taking a Constitutional Amendment to the people that would give away the power of this body, that would run the risk that we would never be able to change the legislation, underlying legislation in the event that there were an unfavorable determination from the Court of Appeals.

We may give away the very legislative power that the people originally in the Constitution gave to us. Before we give away that constitutional power, I think we have

to examine this extremely carefully, realize that in fact there is nothing broken in this state, that the political solution can be had through the voters through the ballot box, and we should retain the legislative power to ourselves.

Although I disagree with the exercise of that power on the death penalty, I do believe that that power ought to continue to reside in this body and should not be frivolously given away through a Constitutional Amendment that is wrong-headed.

For those reasons, Mr. President, I am opposed. I would ask that my colleagues vote no on this proposal.

ACTING PRESIDENT SEWARD: Senator Espada.

SENATOR ESPADA: Yeah, Mr. President. My people, Senators and staff on both sides of this question, I thank you for preparing the questions and the statements that by the time my turn comes around they've been asked and commented upon, and, quite frankly, I

will admit that we all have respect for that, but there were many that I think Senator Volker had answered about whether or not in the Constitution of this state, something so inappropriate as the whole issue of death, a document that speaks to this whole issue of liberty, freedom, hopes and promises now will speak to death after two votes of this body, a couple of votes of the other body or the other house, and it will then go to the voters.

So the question of whether we abdicate, abrogate, surrender our powers as a Legislature don't become so important any more. They have been covered by eloquent testimony already. I want to skip and go back to my home turf where I come from in the South Bronx because these are some of the rare occasions I get to speak about life and death in the South Bronx.

But this time around I get to speak about -- when I go back home Thursday, I get to speak about Volker and Graber. I get to speak about what they have to say about it, life

and death and the people in my district when we talk about -- talk to them about issues of death and how an eye for an eye is good for the soul; it's only just, you know. They took your brother or your sister or they shot a cop or corrections officer, Miss Guana or Miss Smith. Is it fair to take somebody's death after they did that? You know what their answer would be? We don't need no fancy Constitutional Conventions or amendments. They say yes. They're colder and harder than anybody here. They're tougher than anybody here. They say yes, fry 'em once, fry 'em twice. All because, you know, that's the free will of the people.

If I go to some of the other counties in this state, they may have some free exercise of their will too. They may not allow me and my kind to live in their area, free exercise of the will of the people.

That's wrong. Miss Guana, Miss Smith in my district may be wrong too. But we have to be consistent. We're elected up here because we've convinced a whole lot of people

that we know a little bit about governance, a little bit about public policy setting. Let's talk about some of that free will of the people then, and how it affects social policy.

This will pass, not because your side has won or some virtuous side has won over a less virtuous or less side or less right side. The fact of the matter is it's a question of power. And what does that have to do with the free exercise of the will of the people? Senator Gold has already said that there's a bunch of amendments that speak to all kinds of rights and all kinds of things that people would like to see exercised as a matter of right in their daily lives that won't see the light of day here. Why? Question of power. It's a question of an imbalance of power.

This time around, this time in history you got it, enjoy it. Should that affect our Constitution? Should that affect a document that has lived for so long, untampered by the practicalities of politics, the frustrations of 17, 18 years of not getting

one's way?

Go back to this issue of the free will of the people. Volker and Graber had their way, once, twice, and now it's your say, we tell the people in the South Bronx. But two years from now, what about the housing that they come to my district office for? Have we built any of that? What about fixing up some of those school roofs that are leaking and some of those classrooms that are in disrepair? And what about that health care system and that municipal hospital and no primary care? What about that other stuff that you guys voted on for no abortion for women on Medicaid? How can they spend on the one hand for life and fight so hard for life, and on the other hand fight so hard to take it away and put it all in one document? What brilliant people they are! But how in consistent they really, truly can be.

And so the Constitution was meant for many things but it wasn't meant for practical politics. It wasn't meant for inconsistencies. It wasn't meant to have the

free will of the people exercised sometimes when the power swings your way.

So for all those reasons, Mr. President, we have to vote no for this. The exercise of power and the balance of power in this issue and in this house will dictate otherwise, I'm sure. But in the end we'll pay a heavy price for it.

Thank you so much.

ACTING PRESIDENT SEWARD: Senator Volker to close.

SENATOR VOLKER: Mr. President, very briefly.

Let me just say that certainly there are many in this chamber who have a -- I don't want to say I have as high regard for the Constitution as many people in this chamber because I don't want to presume to do that. I will say, though, that let me point out that truly there was not one substantive argument as such against this Constitutional Amendment. A lot of procedural arguments and, Senator Dollinger, as we discussed it -- discussed in

the committee, the issue of whether this Constitutional Amendment goes in Article III or Article IV is certainly a debatable one, but, as I asked you at the time, whether it's in Article III or Article IV does not make it invalid nor constitutionally shaky. I suppose it depends on your perspective of how it should be, but it certainly does not mean that it is improper.

I have an immensely high regard for the Constitution. Let me point out also, though, that I don't know if I agree that the Constitution was meant as a static document. In fact, I don't agree.

Now, you can argue that the reason we are doing this is because of events that have occurred, but let me point out to you that there was nothing that I know of that says that anyone in framing the Constitution or since then has said that this sort of action couldn't or shouldn't be taken.

Let me point out that the Governor of this state is proposing a Constitutional Amendment, or Constitutional

Convention, I'm sorry because I -- Senator Galiber reminded me, I was there not as a delegate or anything of that nature; I was there with my father, who was a counsel to the Constitutional Convention in 1967. I remember it very well.

I can remember that there was an awful lot of debate and unfortunately very little came out of it, but as my father said, that was just as well considering the situation. But I guess that depends on your perspective.

But the point I'm trying to make is and I've told some people this and my good friend, Governor Cuomo, and I have had a few discussions, it's arguable that the main reason that the Governor wants the Constitutional Convention is because there are several bills in my committee that he has not been able to get accomplished in this house, and I could name them, but I think I would be better not to.

The point I'm trying to make is that, whether you do it by Constitutional

Convention or Constitutional Amendment, we are part of a process here that attempts to accomplish certain things. Let's face facts. The real argument here is the people who oppose this Constitutional Amendment are saying to me, We don't like it because you may accomplish it and we don't really like the way you accomplished it and we would prefer you didn't accomplish it.

I understand that. But I say to you this: If I agreed with you, Senator Galiber, that this was doing some sort of severe damage to the Constitution, I would be the first one to withdraw this and to say I would not do it. In fact, the proposal that was made by some people in the past that would eliminate the Governor totally from the process and would say, in effect, that you would have -- you would not need any implementing legislation, was something to me that, first of all, as a practical matter I think constitutionally would have been questionable. That is, that when you completely change the process in one case, I think you are

in a situation where you are asking, in fact, for interminable litigation. Certainly in the death penalty area, the one thing that we don't need is interminable litigation.

As I have pointed out in the past, when I hear about people who are retried after ten years, it's no secret that if you can get a new trial for a person in a death penalty issue, the chances of reconvicting him are very, very slim whether they committed the crime or not because witnesses are gone and in death penalty cases are much more difficult to convict people. Rightfully so.

That's why, as I pointed out to a number of these people who run around the country desperately trying to get people out of jail who are tried on death -- in death penalty situations, the one problem is, as I pointed out to a fellow from Harvard, how does it feel to be somebody who has let a number of people out of jail who have killed people and are now out there in our society with the possibility of killing again because a number of those people

clearly did the crime.

And that I think is the problem here. The problem here is that, yes, this is not the normal processes, but there is nothing here that violates the Constitution, in fact, it seems to me, or the spirit of the Constitution. I think that, if I had my druthers, obviously I would do it in the normal way. But the arguments that I think everybody made against this Constitutional Amendment basically say, Hey, we would prefer that it not be done this way, one reason being you may be able to do it and we don't want you to do it.

I understand that. I think that what we should do is move on this. If the Assembly does it, then, we'll deal with it in the next Legislature and then the people can deal with it because, remember, there is an argument that the people are the final arbitrators on this, and that maybe democracy in certain cases has to make that decision where there was a close case such as this, where the people at least on the surface are so

overwhelmingly in favor and for various reasons have not been able to do it. But I think under the circumstances, as I said, that this is the best way to proceed at this time, and I think we should pass this amendment, and I would hope that the Assembly would do it also.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT FARLEY: Slow roll call. Slow roll call has been asked for. Ring the bell. The acting Majority Leader asked that Senator Gold's name be called out of order.

THE SECRETARY: Senator Gold.

SENATOR GOLD: No.

SENATOR GALIBER: Mr. President, would it quicken the process if I asked that my name be called to explain my vote, or do you want to wait.

ACTING PRESIDENT FARLEY: That's up to -- Senator Present says certainly.

Senator Galiber to explain his vote and to have his name called.

Senator Galiber, your name has

been called.

SENATOR GALIBER: Yes.

Mr. President, I listened very carefully to my good colleague and friend, Senator Volker, suggest that there was nothing substantive about some of the objections that we had, and those of you who can recall the embarrassment when this was attempted, this sort of legislation was attempted and put into the federal Constitution under the 18th Amendment called "Prohibition," they were so embarrassed about that that it took us years and years to repeal the 18th Amendment.

ACTING PRESIDENT FARLEY: Senator Galiber, excuse me just a moment.

The Senators are coming in for a slow roll call. I'm going to ask that the noise please be kept down so we can hear Senator Galiber explain his vote.

SENATOR GALIBER: -- where we, in reality, Mr. President, were so embarrassed on a federal level that we had to repeal the 18th Amendment. So we have some history, some sub

stantive history, on this kind of transaction.

Senator Volker, if this bill passes today, this first go-round, if this resolution passes, New York will be -- New York will be the first state that has in their Constitution a death penalty, the first one. You are right about the various amendments, but not -- we will be -- have the dubious distinc tion of being the first state.

In addition thereto, that if this bill passes, for all practical purposes, the Governor is out of the loop. But never mind this business about the enacting piece of legislation. He is out of the hoop, and the sponsor of this legislation knows that, and your amendment, Senator Volker, is highly technical and it's complicated, and the real purpose of any Constitutional Amendment should be based on broad principles and constitutional simplicity which doesn't have the same effect that -- if this piece of legislation passes.

The Constitution should be a framework as was mentioned before. It is not a

place of detailed legislation. That should be left up to us and, Senator, those who were not at the Convention I'm proud that I was there and you were there with your father.

Let me give you an idea of what this simplistic instrument with its flexibility, the kinds of issues that they were talking about, the committees that were formed, and the Committee on Economic Development, Committee on Education, Committee on the Executive Branch, the Committee on Health, Housing and Social Services, Committee on Inter-Government Relations, Committee on the Judiciary, Committee on State Finance and Taxation Expenditure, Committee on the Rules, Natural Resources and Agriculture.

These are the kinds of things that are in our Constitution, not this what you wish to put in. There is no -- absolutely no place in the Constitution for this.

So to suggest that this merely has been a procedural process is misleading us, and I know in your heart you don't wish to do

that, but we have the strength of some substantive changes in this instrument, and I close, Mr. President, as I did before, we had an experience on a federal level with Prohibition. We will be the first state to have in its constitution a death penalty. We will take the Governor out of the loop. We will do away with checks and balances.

This is a disgrace that we have this piece of legislation before us, merely because of frustration, merely because we can't go through the process. You got to deal the hand; the hand that you're dealt, that's the one you play, Senator, and if you can't win fair and square, why do we have to circumvent and go into the Constitution which has held us in good stead for so very long?

There's plenty of substantive matters here, and I say again a vote in favor is not in favor of the death penalty. A vote for this resolution is against the Constitution of this great state of ours.

ACTING PRESIDENT FARLEY: How do

you vote?

SENATOR GALIBER: I vote no.

ACTING PRESIDENT FARLEY: Senator Galiber in the negative.

Start the roll call.

THE SECRETARY: Senator Babbush.

(There was no response. )

Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

(There was no response. )

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.

THE SECRETARY: Senator Espada.

(Negative indication. )

THE SECRETARY: No.
Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Galiber voting in the negative earlier.
Senator Gold voting in the negative earlier.
Senator Gonzalez.
SENATOR GONZALEZ: No.
THE SECRETARY: Senator Goodman.
SENATOR GOODMAN: Aye.
THE SECRETARY: Senator Halperin.
(There was no response. )
Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann.
SENATOR HOFFMANN: Aye.
THE SECRETARY: Senator Holland.
SENATOR HOLLAND: No.
THE SECRETARY: Senator Johnson.
(There was no response. )

Senator Jones.

SENATOR JONES: Explain my vote.

ACTING PRESIDENT FARLEY: Senator Jones to explain her vote.

SENATOR JONES: I find this a very difficult vote to make, and I have listened as have all of you, and read all the material on this. I personally am opposed to the death penalty. I will continue to be opposed to it. I will speak against it. All the reasons have already been given. It is not a deterrent to crime. There's a minority issue and the chance of even one innocent person being sent to the death chamber are all valid reasons, I think, that the death penalty should not be in this state. If it is on the ballot, I will personally go to the poles and exercise my right as a voter and vote no.

In this case, however, I agree with my colleague who said a vote on this issue is not a vote in favor of the death penalty. It is a vote in favor of the people also having the same rights that I do to vote. I'm sorry to say

that life without parole is combined with this. I think it should be a separate issue, because I believe if it were, the people in this state would choose life without parole. I also think initiative and referendum would have been the correct way to go about this, but since none of these choices are here in this case, I feel as though I must cast my vote in favor of the people of the state having a right to vote on this, just as I do.

So I vote yes.

ACTING PRESIDENT FARLEY: Senator Jones in the affirmative.

Continue the roll call.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

SENATOR LACK: On the resolution aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leichter voting in the negative earlier today.

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: No.

THE SECRETARY: Senator Marino.

(Affirmative indication.)

THE SECRETARY: Aye.

Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Masiello.

(There was no response. )

Senator Mega.

SENATOR MEGA: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator

Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nolan voting in the negative earlier today.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT FARLEY: Senator Nozzolio to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

My colleagues, I support this measure. I support this measure because it puts the people into the loop of decision-making. To whether or not our state should have a death penalty, this house has been clear. Time and time again, the Legislature has decided it to be in the best interests of justice and of the people of this state to have a death penalty.

I've supported a death penalty for 11 years and support this measure, this measure to put the people into the loop of decision-making. The Governor, for too long, has kept this behind closed doors in the sense

of not allowing the will of the people to prevail. We're asking that will to prevail through this measure, and that's why I urge its passage.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Nozzolio in the affirmative.

Continue the roll call.

THE SECRETARY: Senator Ohrenstein.

(Negative indication.)

THE SECRETARY: No.

Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No, and I'd like to explain my vote.

ACTING PRESIDENT FARLEY: Senator Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: Well, actually, I don't want to so much explain as to -- to question what was just said a moment ago

by Senator Nozzolio, which is that we ought to be letting people of the state make decisions on -- on -- make their decision on this issue.

I think it would be interesting to put the question to the other side of the aisle and to Senator Nozzolio about permitting this kind of an issue, at least an emotional issue, the Pro-Choice issue, to also come up to the people of this state. The people of this state in large numbers have said that they support Pro-Choice.

I personally don't think that it's the right way to go, to put major issues or the majority of issues or, for that matter, any issue up to the people willy-nilly because the facts are, we have been voted into office to do a job and, if our job isn't appreciated, then we are voted out of office, and I think it is simply a way to diffuse and blunt criticism of ourselves to put major burning issues back on the public.

We are here to do a job. We should be doing it. I vote no.

ACTING PRESIDENT FARLEY: Senator Oppenheimer is in the negative.

Continue the roll call.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Yes.

THE SECRETARY: Senator Paterson excused.

Senator Present.

SENATOR PRESENT: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Yes.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears voting in the affirmative earlier today.

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.

THE SECRETARY: Senator Solomon.

SENATOR SOLOMON: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Yes.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Mr. President, I rise for the purpose of explaining my vote.

ACTING PRESIDENT FARLEY: Senator Stavisky to explain his vote.

SENATOR STAVISKY: In the course of the debate, some members have cited the experience of Constitutional Conventions and the wisdom of other legislators who have spoken on

this issue.

This may be an appropriate time to recall the service of a previous member of the state Senate. He was middle of the road; on some issues he was conservative, on other issues he was considered more liberal, but he served with great distinction here. His name was Senator Frank O'Connor, and in the course of his service here he did as other members of the Legislature have done, he maintained a law practice.

There came to Senator Frank O'Connor's office one day long before he became district attorney of Queens County or President of the New York City Council or a state Supreme Court justice, while he was a state Senator sitting in one of these seats, there came a man by the name of Belistrato, a musician who was unemployed, who went to a lending institution and sought a loan, which was turned down.

Desperate, this man had no idea of where to turn. By a twist of fate, hours after this man, a resident of Jackson Heights in

Queens, had appeared at this lending institution and was turned down, somebody appeared who rob bed that institution, and there were witnesses who said that it was Mr. Belistrato who did this.

He was indicted; he was tried; he was convicted. He was imprisoned. His family life was destroyed. His wife went insane and committed suicide. Years later someone came forward, was arrested and tried for this crime. A major motion picture was made of this case. It was called THE WRONG MAN, and some of you may recall Henry Fonda portraying the role of Mr. Belistrato, and some may recall that the distinguished Irish actor, Anthony Quayle, portrayed Frank O'Connor.

Belistrato was subsequently re leased because they truly had the wrong man. But who in this chamber, whether by Constitu tional Amendment or by ordinary legislation, would wish to sentence the wrong person to the death penalty and then discover at a later date that we truly had the wrong man. In the

Belistrato case, it was possible for him to be released, although his life had been shattered, but in the case of capital punishment, there is no turning back when you have convicted and sentenced the wrong man.

I vote in the negative.

ACTING PRESIDENT FARLEY: Senator Stavisky in the negative.

Continue the roll.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Mr. President, to explain my vote.

Very quickly, and you know, Senator Stavisky, I've heard those stories on a regular basis and certainly many of them are certainly valid. But, Senator, 2500 people-plus last year, innocent people, were killed in this

state.

What I'm trying to point out to you, Senator, is that innocent people are executed every day in this state. In the history of this state, by the way, there has been no case verified of a person who has been executed who was later found to be innocent. Three professors from California came in here and tried to do an interesting study which we've pretty well shown -- we were able to show that the cases that they dealt with were cases where there was ample evidence of the guilt of the people, but mainly what happened is that they were cases where the person, as he was being executed, said, "I wasn't guilty" or somebody else said they weren't guilty, and so forth.

Yes, there is, I suppose, the possibility and there certainly is. I would point out to you one thing about death penalty cases, though. Many people who have been convicted in non-death penalty cases, had there been a death penalty available, the likelihood of their conviction would have been much less

because, clearly, in death penalty cases there is a much, much greater impetus to check the evidence and make sure that everything in the case is absolutely proper.

It's one reason why, 13 years later, Senator Gold pointed out today that a person was released, simply, or not released but was given a new trial simply because of the charge to the jury. Those of us who are lawyers know what that is. They didn't like the way things went; there was some risk involved there, so they decided to find a reason to do a new trial.

Senator, the only thing I'm saying is this, and I understand that there are bad cases. Senator, I say once again the bad cases out there, several thousand of them every year, and they cry out for some sort of legisla tion, and I believe that the Constitutional Amendment that we're talkin' of today is the thing that needs to be done to deal with those kinds of innocent people.

I vote aye.

ACTING PRESIDENT FARLEY: Senator Volker in the affirmative.

Continue the roll call.

THE SECRETARY: Senator Waldon.

ACTING PRESIDENT FARLEY: Senator Waldon to explain his vote.

SENATOR WALDON: Mr. President, briefly to explain my vote.

I've listened to my colleagues here today, and I've heard the arguments not only today but in previous years about the death penalty but never in the context of a Constitu tional Amendment process via referendum or otherwise, and I find it very interesting that we're going to tamper with the very foundation of what government is all about in this state in order to express the will of certain of our colleagues.

The argument was made that we are here to represent the people and that the reason that such a referendum is necessary is that the Governor sitting today and the Governor who preceded him would always veto when the death

penalty was passed as legislation. And perhaps in the human experience of going to the ballot box, the population of the state of New York, eighteen and a half million people make a mistake in terms of choosing the leader, but when you break the state down into its smaller compartments, the 150 Assembly Districts and the 61 Senatorial Districts, certainly all of the people all of the time have not made a mistake.

The greatest right that we have perhaps in America, the greatest rights I should say, are freedom of speech, freedom of religion and the freedom to go to the ballot box and express ourselves. If the will of the people is truly to be done, could they not go to the ballot box next time around and, in each Assembly District and in each Senatorial District, express themselves in such a way that the Governor's veto would be overridden? Then we wouldn't have to tamper with the Constitution. We would not have to attack the foundation of our governance in this state of New York.

I think that would be the better way. Let all of us who are political animals rally around the flag that is our particular will in terms of this penalty, this death penalty, this thing that we argue today. I would hope that that would be the better route to follow than the route that's being expressed in terms of this constitutional recommendation which, in my opinion, is the worst thing that we can do in terms of changing the way we do business as a government in the state of New York, and I vote negatively, in the no.

ACTING PRESIDENT FARLEY: Senator Waldon is in the negative.

Continue the roll call.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT FARLEY: Absentees.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Halperin.

(There was no response. )

Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Masiello.

(There was no response. )

ACTING PRESIDENT FARLEY: That's it. Results.

THE SECRETARY: Ayes 37, nays 20.

ACTING PRESIDENT FARLEY: The resolution is adopted.

SENATOR WALDON: Such gusto, Mr. President!

ACTING PRESIDENT FARLEY: Where are we at? Senator Present, is that -

SENATOR PRESENT: Regular order.

ACTING PRESIDENT FARLEY: Regular order.

THE SECRETARY: Calendar Number 434, by Senator LaValle, Senate Bill Number 3722-A, an act to amend the Education Law.

ACTING PRESIDENT FARLEY: O.K.

SENATOR JONES: Explanation.

ACTING PRESIDENT FARLEY: Explanation.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 465, by Senator Hannon, Senate Bill Number 643 A, Emergency Housing Rent Control Law.

SENATOR STAVISKY: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Hannon.

Senator Mega?

SENATOR HANNON: Yes, Mr. President.

This bill requires landlords be given a written notice before -- in 21 days prior to the filing of a service reduction complaint. Because there is so much of an enormous backlog of these cases at the Division of Housing and Community Renewal, many times the people who run the buildings are not informed of the problems until months and months later when

all the facts are very much hazy and not able to be totally ascertained.

So the idea would be to cut down on the backlog, allow people to make corrections by knowing immediately as to what the complaints would be, and to discourage the administrative costs that are attendant upon the current system.

ACTING PRESIDENT MEGA: Senator Espada.

SENATOR ESPADA: Yes, Mr. President. I rise to speak to a better way there. Senator Goodman's Senate Bill 1330 speaks to providing notice, speaks to an administrative process that certainly can be enacted, remedies could be enacted within 14 days. Inasmuch as a remedy, a better way, is in place available to us, I would argue and I would suggest that we not vote in favor of this particular bill but await the introduction, the debate, the hopeful approval of Senate Bill 1330, a true bipartisan remedy to this problem.

ACTING PRESIDENT MEGA: Read the

last section.

SENATOR SOLOMON: Oh, no, no.

SENATOR STACHOWSKI: Slow roll call.

SENATOR SOLOMON: Mr. President.

ACTING PRESIDENT MEGA: Senator Solomon.

SENATOR SOLOMON: Senator Hannon, will you yield, please?

SENATOR HANNON: Yes.

ACTING PRESIDENT MEGA: Senator Hannon yields.

SENATOR SOLOMON: Senator, let me ask you a question. Let's say the New York City agency comes in, housing inspector comes in and they issue a violation to the landlord, and the landlord gets a copy of the violation.

Under this legislation, if the - after that violation was issued to the landlord and the tenant subsequently puts in a decrease or an application for a decrease in rent as a result of the violation, would that tenant still have to inform the landlord in writing of the

decrease, for the repair?

SENATOR HANNON: Yes. Yes.

SENATOR SOLOMON: So, if this - Senator, just one step. So official notice from an agency of the city of New York is not sufficient notice to the landlord?

SENATOR HANNON: No. Your premise is wrong because there are two separate systems. We haven't even attempted to address that inequity. There is currently systems in regard to rent levels, and there's a whole separate building code inspection system.

SENATOR SOLOMON: Right.

SENATOR HANNON: So that those cannot be mixed up. One is not dealt with at all in this legislation.

SENATOR SOLOMON: Senator, let - let me ask you another question. Senator, an inspector comes in, and the ceiling has fallen down, and the inspector writes a violation and the landlord receives the violation and, under the rent stabilization code, the tenant would be entitled to reduction of rent for that

violation.

That notice is not sufficient unless the tenant sends written -- additional written notice to the landlord.

SENATOR HANNON: Currently that -- your premise is wrong and it doesn't happen that way. If the building code came in and found a violation, that results in absolutely nothing happening to the rent.

SENATOR SOLOMON: That's correct. The tenant subsequently files for a rent decrease.

SENATOR HANNON: Excuse me. I don't think I've yielded again.

ACTING PRESIDENT MEGA: Senator Solomon, before -

SENATOR HANNON: The current system.

ACTING PRESIDENT MEGA: Senator Solomon, would you please address the chair. Senator Hannon's point is well taken. Do you wish him to yield?

SENATOR SOLOMON: Senator

Hannon?

ACTING PRESIDENT MEGA: Yes, to additional questions?

SENATOR SOLOMON: No, I want to speak on the bill.

ACTING PRESIDENT MEGA: Senator Solomon on the bill.

SENATOR SOLOMON: On this bill, despite twists and turns that I just heard, the fact of the matter is that there is a long list of housing code violations, housing code items for which violations are issued in the city of New York.

The fact of the matter is that, if a violation is issued, in many instances a tenant can subsequently file for a decrease in rent as a result of a decrease in services, i.e., a bell buzzer system that does not work for security reasons that a tenant may have been paying an increased rent level for over a number of years, or if he hasn't can still apply for a reduction in rent services, reduction in rent as a result of decrease in services.

Now, those violations in many instances, many times before the tenants apply for them, are issued by an official agency of the city of New York. The landlord receives a copy of that violation. What this bill is doing is taking every tenant and saying, even though you receive the notice, even though the landlord received the notice from an official agency of the city of New York that there was a violation, that tenant still has to write to that landlord before the tenant can subsequently apply for a decrease in rent under the rent stabilization code, and that's what's wrong with this bill.

If this bill was reworded and drafted properly and said "or", that's a different consideration. However, to require the tenant, after a violation has been issued, to still notify the landlord and then still get into the issues of whether or not notice was received, et cetera, et cetera, I think we're having duplicity implemented here, and the fact of the matter is that we're not making the system simpler; we're making the system much

more complicated because we're going to have constant arguments as to whether or not there was sufficient notice and, in fact, I think we would even have a court case as to whether or not there was a sufficient notice.

This is a bad piece of legislation which wasn't thought through, in my opinion, and I think this legislation is going to make the situation worse, create additional problems, and the fact of the matter is, in many instances that my office has dealt with this situation, that tenants are only applying for decreases in services after violations have been issued by the housing agencies within the city of New York, and I think this bill just complicates the system. As I said, it's going to make it much worse for a lot of the people that are involved in the system.

ACTING PRESIDENT MEGA: Is there any further debate on Senator Hannon's bill?

SENATOR STACHOWSKI: Slow roll call.

ACTING PRESIDENT MEGA: Read the

last section.

Slow roll call asked for, five members please.

THE SECRETARY: Section 9. This act shall take effect immediately.

ACTING PRESIDENT MEGA: Call the roll. Slow roll call.

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.

THE SECRETARY: I didn't hear what he said.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Espada.

(Negative indication. )

THE SECRETARY: Senator Farley.

(There was no response. )

Senator Galiber.

(There was no response. )

Senator Gold.

(There was no response. )

Senator Gonzalez.

(There was no response. )

Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Halperin.

(There was no response. )

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Yes.

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.
(There was no response. )
Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Yes.
THE SECRETARY: Senator Leichter voting in the negative earlier today.
Senator Levy. 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.
(Affirmative indication. )
THE SECRETARY: Aye.
Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Masiello.
(There was no response. )
Senator Mega.
SENATOR MEGA: No.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nolan voting in the negative earlier today.
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Ohrenstein. No.
Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

(There was no response. )

Senator Padavan.

SENATOR PADAVAN: Mr. President, I rise to explain my vote.

ACTING PRESIDENT MEGA: Senator Padavan to explain his vote.

SENATOR PADAVAN: Mr. President, the points made by Senator Solomon are very much, very much to the point of what makes this bill somewhat of a problem, with all due respect to the sponsor.

The notion that we are providing equity for the landlord by giving him notice so that he could correct the violations and thereupon -- thereby not have to incur a loss of revenues in terms of rents -

ACTING PRESIDENT MEGA: Senator Padavan, excuse me.

Can we have some order in the house, please. Some order in the house, please,

and take conversations outside.

Senator Padavan.

SENATOR PADAVAN: As I said, Mr. President, the notion that we are providing for equity between the tenant and the landlord, by giving that landlord proper notice so that he can make the repairs and not have to incur the loss of rents is really specious because that isn't the reality of the world we live in.

The fact of the matter is, prior to this action ever being taken in every instance that I've been aware of and there have been many of them, there are violations after violations imposed by city agencies, city Department of Rent and Housing Maintenance or the Building Department, for serious code infractions, and landlords in some cases find it to their economic benefit to simply ignore those violations or pay a fine of a minimal magnitude.

It isn't until they get faced, they are faced with the reality of having rents reduced or withheld, that appropriate remedial

actions are taken.

It's undesirable that it ever has to get to this point. The fact of the matter is without it, these code violations simply are not addressed in too many instances, and I don't wish to categorize all landlords in that statement, but there are enough of them which makes it necessary for us not to change the one tool, the only effective tool that many tenants have to live in a decent house in a decent building in a decent apartment.

I vote no.

ACTING PRESIDENT MEGA: Senator Padavan in the negative.

Continue the roll call.

THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Yes.

THE SECRETARY: Senator Paterson excused.

Senator Present.

SENATOR PRESENT: Yes. Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Yes.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears voting in the affirmative earlier today.

Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Sheffer.

SENATOR SHEFFER: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Aye.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Senator Smith says no.

THE SECRETARY: Senator Solomon.

SENATOR SOLOMON: No.

THE SECRETARY: Senator Spano.

(Negative indication. )

THE SECRETARY: No.

ACTING PRESIDENT MEGA: Senator Spano in the negative.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: No.
THE SECRETARY: Senator Trunzo.
SENATOR TRUNZO: Aye.
THE SECRETARY: Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: No.
THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(Negative indication.)
THE SECRETARY: No.
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT MEGA: Absentees, please.
THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.
THE SECRETARY: Senator Galiber.
(There was no response. )
Senator Gold.
(There was no response. )
Senator Galiber.
SENATOR GALIBER: No.
THE SECRETARY: Senator Gold.
(There was no response. )
Senator Gonzalez.
(Negative indication. )
THE SECRETARY: No.
Senator Halperin.
(There was no response. )
Senator Lack.
(There was no response. )
Senator Masiello.
(There was no response. )
Senator Oppenheimer.
SENATOR OPPENHEIMER: Nay.
THE SECRETARY: Senator Masiello.
(There was no response. )

ACTING PRESIDENT MEGA: We call the absentees, please. Absentees.

THE SECRETARY: Senator Gold.

(There was no response. )

Senator Halperin.

(There was no response. )

Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Masiello.

(There was no response. )

ACTING PRESIDENT MEGA: Results, please.

THE SECRETARY: Ayes 31, nays 25.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 827, by Senator Libous, Senate Bill Number 4588, an act to amend the Public Health Law, in relation to requiring consent for visual observation.

ACTING PRESIDENT MEGA: Last

section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 55, nays 2, Senators Kuhl and Maltese recorded in the negative.

ACTING PRESIDENT MEGA: The bill is passed.

ACTING PRESIDENT MEGA: Can we do some house... Senator Present, there's several motions that have to be -

SENATOR PRESENT: Mr. President, let's take care of the housekeeping.

ACTING PRESIDENT MEGA: Senator Marchi.

SENATOR MARCHI: Mr. President, on page 37, I offer the following amendments to Calendar Number 900.

ACTING PRESIDENT MEGA: Amendments received and adopted.

Senator Saland.

SENATOR MARCHI: And -- I haven't finished yet.

ACTING PRESIDENT MEGA: Oh, Senator Marchi, I'm sorry.

SENATOR MARCHI: I ask that the bill retain its place on the Third Reading Calendar, if you will remove the star.

ACTING PRESIDENT MEGA: Star removed.

Senator Saland.

SENATOR SALAND: Mr. President, on page 29, I offer the following amendments to Calendar 923, Senate Print 5372, and ask that the bill retain its place.

ACTING PRESIDENT MEGA: So ordered.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Skelos, who is senior to me, I call up his Bill Number 4309 recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEGA: Secretary

will read.

THE SECRETARY: By Senator Skelos, Senate Bill Number 4309, an act to amend the Judiciary Law, in relation to lawyer assistance committees.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which Senator Skelos' bill was passed.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

SENATOR LIBOUS: Mr. President, I offer up the following amendments.

ACTING PRESIDENT MEGA: Amendments received and adopted.

Senator Libous.

SENATOR LIBOUS: And on behalf of Senator Skelos, I wish to call up his bill Print Number 4540-B, which is now at the desk.

ACTING PRESIDENT MEGA: Secretary will read.

THE SECRETARY: Calendar Number 747, by Senator Skelos, Senate Bill Number 4540 B, an act to amend the Executive Law.

SENATOR LIBOUS: Mr. President, on behalf of Senator Skelos, who is standing next to me, I now move to reconsider the bill which was passed and ask that the bill be restored to Third Reading Calendar.

ACTING PRESIDENT MEGA: So ordered. Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

SENATOR LIBOUS: Mr. President, I now move to discharge the bill from the Committee on Rules, Print Number 6706-A and substitute it for Mr. Skelos' identical bill. The Senate bill on first -- O.K.? The Senate bill on first passage was voted unanimously. I now move that the substituted Assembly bill have its third reading at this time, Mr. President.

ACTING PRESIDENT MEGA: Substitution ordered. Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Unanimous.

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT MEGA: Senator Kuhl.

Oh, the bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I wish to call up my bill, Senate Print 4428, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT MEGA: Secretary will read.

THE SECRETARY: By Senator Kuhl, Senate Bill Number 4428, Agriculture and Markets Law.

SENATOR KUHL: I now move to re consider the vote by which this bill was

passed.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 57.

SENATOR KUHL: Offer up the following amendments.

ACTING PRESIDENT MEGA: Amendments received.

SENATOR KUHL: Thank you.

ACTING PRESIDENT MEGA: Secretary will read substitutions.

THE SECRETARY: On page 8 of today's calendar, Senator Farley moves to discharge the Committee on Rules from Assembly Bill Number 6368 and substitute it for the identical Calendar Number 321.

ACTING PRESIDENT MEGA: Substitution ordered.

That it? Senator Present.

SENATOR PRESENT: Mr. President, I'd like to announce an immediate meeting of the

Rules Committee in Room 332.

ACTING PRESIDENT MEGA: Immediate meeting of the Rules Committee in the usual place.

SENATOR PRESENT: Right, and then following that Rules Committee report, we will be voting on all those actions to be taken tomorrow or later. I'll adjourn following the report of the Rules Committee.

ACTING PRESIDENT MEGA: There will be a Rules Committee report after meeting and you say adjourned until tomorrow. Stand in recess for now.

(The Senate recessed from 5:56 p.m., to 6:35 p.m.)

ACTING PRESIDENT VOLKER: Senator Present.

SENATOR PRESENT: Mr. President, may we return to reports of standing committees and have them read, please.

ACTING PRESIDENT VOLKER: Clerk will read.

THE SECRETARY: Senator Marino,

from the Committee on Rules, reports the following bills directly for third reading:

Senate Bill Number 379, by Senator Volker, General Municipal Law;

1548, by Senator Farley, permitting the establishment of the town of Day Fire Protection District;

1936, by Senator Maltese, Court of Claims Act;

2281-A, by Senator Cook, Education Law;

2523, by Senator Stafford, an act to amend the County Law;

2683, by Senator Present, conveyance of certain lands, purposes by the county of Allegany;

2696, by Senator Volker, service credit for time served in the Cadet Nurse Corps;

2961, by Senator Trunzo, amends Chapter 736 of the Laws of 1975;

3009, by Senator Sheffer, an act to amend the Tax Law;

3062, by Senator Johnson, State

Finance Law and the Environmental Conservation Law;

3101, by Senator Padavan, Alcoholic Beverage Control Law;

3129, by Senator Volker, Local Finance Law;

3130, by Senator Volker, Local Finance Law;

3352, by Senator Sears, State Finance Law and the General Municipal Law;

3787, by Senator Spano, service credit in the New York State and local police;

3950-B, by Senator Volker, an act to amend the Tax Law;

4176, by Senator Cook, exemption from real property, certain property owned by the county of Sullivan;

4180-A, by Senator Lack, amends Chapter 994 of the Laws of 1984;

4402, by Senator Larkin, an act to amend the County Law;

4474-A, by Senator Maltese, Retirement and Social Security Law;

4660, by Senator Saland, Family Court Act;

4734, by Senator Saland, Executive Law;

4795, by Senator Daly, Education Law;

4849, by Senator Levy, Public Authorities Law;

4872, by Senator Hannon, relation to the duration of eligible lists for police officer;

4963, by Senator Stafford, conveyance of certain state lands to the Malone Central School District;

5008, by Senator Nozzolio, extension of the maximum maturity of certain bond anticipation notes;

5289, by Senator Mega, an act to amend the Judiciary Law;

5311, by Senator Cook, Education Law;

5324, by Senator Bruno, Highway Law;

5479-A, by Senator Cook, Delaware Valley Central School District;

5552-B, by Senator Levy, Election Law;

5572, by Senator Padavan, General City Law; and

5701, by the Committee on Rules, certain police disability retirement benefits.

All bills reported directly for third reading.

ACTING PRESIDENT VOLKER: Without objection, third reading.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move we adjourn until tomorrow at 3:00 p.m.

ACTING PRESIDENT VOLKER: Senate adjourns until tomorrow at 3:00 p.m., June 2nd.

(Whereupon at 6:39 p.m., the Senate adjourned.)